



Australian Government
Department of Employment
and Workplace Relations

Pacific Australia Labour Mobility Scheme - Approved Employer Deed

Effective 26 June 2023

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Background

- A. The Commonwealth's Pacific Australia Labour Mobility Scheme (the Scheme) is a whole-of government temporary labour mobility program with key objectives to contribute to the economic development of participating countries and to offer a reliable, returning workforce to Australian employers who, despite their commitment to employing Australian job seekers, have an unmet demand for labour.
- B. The Department of Employment and Workplace Relations administers the Scheme on behalf of the Commonwealth.
- C. In order to participate in the Scheme, the Approved Employer must be:
 - (a) approved to participate in the Scheme by the Department of Employment and Workplace Relations; and
 - (b) approved as a Temporary Activities Sponsor by the Department of Home Affairs.
- D. By entering into this Deed, the Approved Employer agrees to participate in the Scheme, in accordance with the terms of this Deed.

CHAPTER A – INTRODUCTION

Section A1.1 – Definitions and interpretation

1. Definitions

1.1 In this Deed, unless the contrary intention appears, capitalised terms have the meaning given to them in the definitions in this clause 1.

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

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

‘Accommodation Arrangement’ means any legally binding arrangement entered into by the Approved Employer with an Accommodation Provider in accordance with clause 13.2 in relation to the provision of accommodation to one or more Workers under the Scheme.

‘Accommodation Plan’ means a plan, required to be prepared and submitted by the Approved Employer in accordance with clause 9.7, for the accommodation of one or more Workers as amended from time to time and completed in accordance with the Guidelines.

‘Accommodation Provider’ means any organisation providing accommodation for one or more Workers under an Accommodation Arrangement.

‘Action Plan’ means a plan, required to be prepared and submitted by the Approved Employer, or issued by the Department to the Approved Employer, in accordance with clause 63.1.

‘Adjustment Note’ has the meaning given in section 29-75 of the GST Act.

‘Alternative Approved Employer’ means an organisation other than the Approved Employer that is an approved employer under the Scheme.

‘Application’ means the application, submitted to the Department by the Approved Employer, for approval to become an approved employer under the Scheme.

‘Approved Employer’ means the entity contracted by the Department under this Deed.

‘Approved Employer's IT System’ means an information technology system or service (including any cloud storage platform) used by the Approved Employer or any Subcontractor in association with the Scheme or to Access the Department's IT Systems.

‘Approved Offer of Employment’ means an Offer of Employment that has been approved by the Department in accordance with clause 9.14.

‘Approved Plan’ refers to any Plan which has been approved by the Department under clause 9.8.

‘Approved Recruitment’ means a Recruitment Application that has been approved by the Department in accordance with clause 9.2.

‘Australian Cyber Security Centre’ means the centre which is the Australian Government's lead on national cyber security, accessible here: <https://www.asd.gov.au/cyber-security>.

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

‘Australian Information Commissioner’ means the individual appointed in accordance with section 14(1) of the *Australian Information Commissioner Act 2010* (Cth).

'Breach Notice' means a Notice issued by the Department to the Approved Employer in relation to a breach of one or more of the Approved Employer's obligations under this Deed.

'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; or
- (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.

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

'Child-Related Personnel' means any Personnel involved, or who may be involved, with the Scheme 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 85.2 and 85.3 of this Deed.

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

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

'Commonwealth Material' means any Material:

- (a) provided by the Department to the Approved Employer 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 Approved Employer 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 the Guidelines.

‘Confidential Information’ means any information that:

- (a) is by its nature confidential;
- (b) the Parties agree to treat as confidential;
- (c) the Department Notifies the Approved Employer is confidential; or
- (d) a Party knows, or ought reasonably to know, is confidential to the other Party,

but does not include information that:

- (e) is or becomes public knowledge otherwise than by breach of this Deed or any other confidentiality obligation;
- (f) is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt; or
- (g) has been independently developed or acquired.

‘Conflict’ means an actual, potential or perceived conflict between any interest of the Approved Employer and the performance of the Approved Employer's obligations under this Deed, including any interest that may interfere with or restrict the Approved Employer in performing those obligations fairly and independently.

‘Contact Person’ means:

- (a) in relation to the Department, the individual holding the position specified in item 1 of the schedule to the Particulars; and
- (b) in relation to the Approved Employer, the individual holding the position specified in item 2 of the schedule to the Particulars,

unless otherwise Notified by the relevant Party.

‘Contingency Plan’ means a plan prepared by the Approved Employer when the Approved Employer is not able to meet the obligations of its employment contract with its Workers in accordance with the Guidelines.

‘Contract Manager’ means the person that the Department has appointed to be the Approved Employer's contract manager, as advised by the Department to the Approved Employer from time to time.

‘Contractor’ means an approved employer under the Scheme that provides a service to eligible host organisations by entering into agreements with those host organisations, under which the approved employer agrees to arrange the placement of workers it employs with the relevant host organisation on a fee for the service basis, but not as a labour hire arrangement.

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

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

‘Corporations Act’ means the *Corporations Act 2001* (Cth).

‘Critical Incident’ means any incident described in clause 17.1, and any other incident specified to be a Critical Incident in the Guidelines.

‘Cyber Incident’ means a single or series of unwanted or unexpected cyber security events that have a significant probability of compromising business operations and threatening information security. This includes denying, disrupting or theft of information on IT systems and the confidentiality, integrity or availability of a system or the information stored, processed or communicated by it may be affected.

‘Deed’ means this document, as varied or extended by the Parties from time to time in accordance with this Deed, and includes any Special Conditions, the Particulars, the Guidelines, any attachments and any documents incorporated by reference.

‘Deed Commencement Date’ means the date on which this Deed is executed by the Commonwealth.

‘Deed Completion Date’ means either:

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

‘Deed Material’ means all Material:

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

‘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 Data’ means any:

- (a) Material provided to the Approved Employer by the Department under this Deed, and any Material copied or derived from that Material;
- (b) Personal Information, including sensitive information, obtained in the course of participating in the Scheme and performing its obligations under this Deed, including the Personal Information of any Worker; and
- (c) data or information relating to the Department, or its operations, facilities, customers, Personnel, assets and programs (including Personal Information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Department.

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

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

‘Department of Foreign Affairs and Trade’ or ‘DFAT’ means the Commonwealth Department of that name, or such other agency or department as Notified by the Department from time to time, and includes its officers, delegates, employees, contractors and agents.

‘Department of Home Affairs’ means the Commonwealth Department of that name, or such other agency or department as Notified by the Department from time to time, which is responsible for administering the *Migration Act 1958* (Cth), and includes its officers, delegates, employees, contractors and agents.

‘Department’s IT Systems’ means the Department’s IT computer system accessible by the Approved Employer and potentially Subcontractors, and through which information is exchanged between the Approved Employer, Subcontractors and the Department and any other identified agencies in relation to the Scheme.

'Department's Security Policies' means policies relating to the use and security of the Department's IT Systems and Records, and any other security policies Notified or advised by the Department. Relevant policies are available at a location as advised by the Department, as detailed in the Guidelines.

'Direct Employer' means an approved employer under the Scheme that arranges the placement of workers it employs with its own business.

'Documentary Evidence' means those Records of the Approved Employer, including any Records held in the Approved Employer's IT System, as specified in this Deed, including in the Guidelines, which evidence that the Approved Employer has met its obligations under this Deed and/or that the Approved Employer is entitled to a Payment.

'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 Deed Period' means any period of time after the Initial Deed Period End Date.

'Fair Work Act' means the *Fair Work Act 2009* (Cth).

'Fair Work Instrument' has the meaning given in the Fair Work Act, that is, a modern award or enterprise agreement or workplace determination or a Fair Work Commission order, which includes a national minimum wage order.

'Fair Work Ombudsman' means the Fair Work Ombudsman established under the Fair Work Act and includes any other entity that may, from time to time, perform the functions of the Fair Work Ombudsman. The Fair Work Ombudsman is an independent Australian Government agency created by the Fair Work Act, whose role is to promote harmonious, productive and cooperative workplace relations and ensure compliance with Australian workplace laws.

'Fair Work Regulations' means the *Fair Work Regulations 2009* (Cth).

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

'Force Majeure Event' means an event or circumstance that is any of the following:

- (a) an act of God, including a natural disaster such as a bushfire, an earthquake, a flood, a landslide or a cyclone;
- (b) war, invasion, acts of foreign enemies, hostilities between nations, a terrorist act, civil insurrection or riots;
- (c) a pandemic or epidemic;
- (d) industrial action or labour disturbance other than in the Approved Employer's workforce; and
- (e) action or inaction by a government body including by executive or administrative order,

but does not include the financial circumstances of a party.

'Grievance' means any complaint or other type of feedback specified to be a Grievance in the Guidelines.

'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 from time to time.

'Home Country' means, in relation to a Worker, the country in which the Worker usually resides.

'Host Organisation' means an organisation that hosts Workers and provides them with work in accordance with a Host Organisation Arrangement with the Approved Employer.

'Host Organisation Arrangement' means any legally binding, written arrangement between the Approved Employer and a Host Organisation in relation to the provision of work to Workers employed under the Scheme.

'Implementation Arrangements' means the document of that name Notified by the Department to the Approved Employer, and which gives effect to the Memoranda of Understanding between the Commonwealth and the Participating Countries.

'Initial Deed Period End Date' means the date specified in item 3 of the schedule to the Particulars.

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

'Insolvency Event' means that the Approved Employer, any Subcontractor and/or any party having or exercising control over the Approved Employer or any 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, trademarks (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 Approved Employer effects full payment of the debt to the Commonwealth, using the following formula:

$$SI = UA \times GIC \times D:$$

where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = 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); 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 Approved Employer's system generates a payment request into the banking system for payment to the Commonwealth.

'Labour Hire Organisation' means an approved employer under the Scheme that arranges the placement of workers it employs with host organisations using a labour hire arrangement.

'Labour Market Testing' means the activities described in the Guidelines for assessing the extent to which positions are able to be filled with Australian workers and required to be submitted by the Approved Employer as part of a Recruitment Application in accordance with clause 9.1.

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

'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.

'Memorandum of Understanding' means the arrangement between the Commonwealth and a Participating Country, which sets out the mutual understandings for sending and receiving workers from that country.

'Migration Regulations' means the *Migration Regulations 1994* (Cth) as varied from time to time.

'Modern Slavery' has the meaning given to that term in the Modern Slavery Acts and includes all other slavery-like practices.

'Modern Slavery Acts' means the *Modern Slavery Act 2018* (Cth) and any State or Territory legislation relating to the same or similar subject matter.

'Modern Slavery Law' means any law in connection with Modern Slavery in force in Australia from time to time, including:

- (a) if and to the extent applicable, the Modern Slavery Acts; and
- (b) Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth).

'Modern Slavery Offence' means any:

- (a) offence set out in, or other conduct or practices which amount to an offence under, any Modern Slavery Law; or
- (b) conduct which constitutes Modern Slavery.

'Modern Slavery Statement' means a statement within the meaning of section 12 of the *Modern Slavery Act 2018* (Cth).

'Modern Slavery Statements Register' means the register established under section 18 of the *Modern Slavery Act 2018* (Cth).

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

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

'Net Financial Benefit' has the meaning given in the Guidelines.

'New Approved Employer' means an approved employer under the Scheme who was not a party to a Previous Deed immediately prior to becoming an approved employer under the Scheme.

'New Approved Employer Recruitment Cap' means, where the Approved Employer is a New Approved Employer, a cap on the maximum number of Workers that the Approved Employer may recruit:

- (a) as Notified by the Department prior to execution of this Deed; or
- (b) where the Department has not Notified any such limit prior to execution of this Deed, as specified in the Guidelines.

'Notice' means a notice given in accordance with clause 87.

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

'Objectives' means the objectives for the Scheme specified in clause 6 of this Deed.

'Offer of Employment' means the document prepared by the Approved Employer and provided to the Department for approval as part of the Approved Employer's Recruitment Application, and which, once approved by the Department, is to be provided to each relevant Worker and sets out the terms and conditions of employment for the Worker, in accordance with the Guidelines and the Fair Work Act.

'Other Incident' means any incident described in clause 17.2, and any other incident specified to be an Other Incident in the Guidelines.

'Pacific Australia Labour Mobility scheme' or 'Scheme' means the program established by the Commonwealth to provide citizens of a Participating Country with the opportunity to undertake work in Australia where there is demonstrated demand for labour, unmet by Australian workers.

'Pacific Australia Mobility Stream - Temporary Work (International Relations) visa (subclass 403)' has the meaning given in the Migration Regulations.

'Pacific Labour Scheme' means the Commonwealth program of that name, which is or was, administered by the Department.

'Participating Country' means a country that is a party to a current Memorandum of Understanding with the Commonwealth in support of its citizens' participation in the Scheme.

'Particulars' means the document of that name in which the Parties execute this Deed, and includes the schedule to the Particulars.

'Party' means a party to this Deed.

'Payment' means any Reimbursement payable under this Deed.

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

‘Personnel’ means:

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

‘Placement’ means any work placement for a Worker in accordance with the relevant Worker's Offer of Employment.

‘Placement Risk Assessment’ means a risk assessment in relation to a potential or actual Placement, which is undertaken and/or updated in accordance with clause 16 and the Guidelines.

‘Plan’ refers to a plan which is required to be prepared by the Approved Employer and submitted to the Department under this Deed for approval, including any Recruitment Plan, Welfare and Wellbeing Plan, Accommodation Plan, Transport Plan and Contingency Plan.

‘Previous Deed’ means a deed entered into by an approved employer under the Scheme with the Commonwealth in relation to the Pacific Labour Scheme or the Seasonal Worker Programme.

‘Privacy Act’ refers to the *Privacy Act 1988* (Cth).

‘Protective Security Policy Framework’ or ‘PSPF’ means the Australian Government's protective security requirements for the protection of its people, information and assets, as amended or replaced from time to time, and can be accessed at: <http://www.protectivesecurity.gov.au> .

‘Provider’ means any entity that is one or more of the following:

- (a) an Accommodation Provider;
- (b) a Transport Provider; and
- (c) a Welfare and Wellbeing Provider.

‘Provider Arrangement’ means any of one or more of the following:

- (a) an Accommodation Arrangement;
- (b) a Transport Arrangement; and
- (c) a Welfare and Wellbeing Arrangement.

‘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 Scheme related Records.

‘Recruitment Application’ means an application of the same name completed by the Approved Employer in accordance with the Guidelines and submitted to the Department for its review and approval under clause 9, and includes:

- (a) the Recruitment Plan, Accommodation Plan, Transport Plan, Contingency Plan, Welfare and Wellbeing Plan and Labour Market Testing; and
- (b) the Offers of Employment in respect of each Worker proposed to be recruited.

‘Recruitment Cap’ means a cap on the maximum number of Workers the Approved Employer can recruit under this Deed, as Notified by the Department from time to time.

‘Recruitment Plan’ means a plan for recruitment of one or more Workers in accordance with the Guidelines, required to be prepared and submitted by the Approved Employer in accordance with clause 9.7.

‘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.

'Relevant Agency' means the Department of Home Affairs, Department of Foreign Affairs and Trade; the Fair Work Ombudsman, the Australian Federal Police or relevant state/territory police, the Australian Taxation Office, the Auditor-General, the Australian Information Commissioner, any Commonwealth, state, territory or local government authority, including any work health and safety authority, and any other agencies Notified by the Department from time to time.

'Report' means any Deed Material that is provided to the Department for the purposes of reporting on the Approved Employer's activities under this Deed.

'Risk Assessment' means, as relevant, a Placement Risk Assessment and/or a Worker Risk Assessment.

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

'Scheme Website' means the publicly available website maintained by the Department that contains details of the Scheme, including copies of the Guidelines, as updated from time to time.

'Seasonal Worker Programme' means the Commonwealth program of that name, which is or was, administered by the Department.

'Security Representative' means one or more Approved Employer Personnel with responsibility:

- (a) for ensuring the Approved Employer'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.

'Short-Term Worker' has the meaning given in the Guidelines.

'Special Conditions' means any conditions set out in item 6 of the schedule to the Particulars.

'Subcontract' means an arrangement entered into by the Approved Employer under which some or all of the Approved Employer's obligations under this Deed are provided by another entity.

'Subcontractor' means any party which has entered into a Subcontract with the Approved Employer to perform a part (as determined by the Department) of the obligations under this Deed, and includes the party's Personnel, successors and assigns as relevant.

'Supervision' means the action or process of directly monitoring and managing Workers participating in the Scheme.

'Supervisor' means an individual who has the responsibility for the Supervision of Workers engaged in a Placement.

'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 4.1.

'Temporary Activities Sponsor' means an entity approved by the Department of Home Affairs as a sponsor in relation to the temporary activities sponsor class under the *Migration Act 1958* (Cth), as varied 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 the Deed Material.

'Transition Advice' means any document of that name issued by the Department to the Approved Employer prior to the Deed Commencement Date relating to the transition from any Previous Deed to this Deed.

'Transition Period' means any period of time leading up to the expiry, termination or reduction in scope of this Deed, and Notified by the Department to the Approved Employer under clause 72.1.

'Transition Recruitment' means a recruitment that meets all of the conditions specified in clauses 71.1(a) to 71.1(c).

'Transport Arrangement' means any legally binding arrangement entered into by the Approved Employer with a Transport Provider in accordance with clause 13.2 in relation to the provision of transport to one or more Workers.

'Transport Plan' means a plan, required to be prepared and submitted by the Approved Employer in accordance with clause 9.7 for the transportation of one or more Workers in accordance with the Guidelines.

'Transport Provider' means any organisation providing transport for one or more Workers under a Transport Arrangement.

'Travel Costs' means, subject to the Guidelines, costs incurred by the Approved Employer directly related to the travel of a Worker between the relevant Participating Country and Australia.

'Warranted Material' means any:

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

'Welfare and Wellbeing Arrangement' means any legally binding arrangement entered into by the Approved Employer with a Welfare and Wellbeing Provider in relation to the provision of welfare and wellbeing support to Workers.

'Welfare and Wellbeing Plan' means a plan, required to be prepared and submitted by the Approved Employer in accordance with clause 9.7, regarding the welfare and wellbeing support to be provided by the Approved Employer to Workers.

'Welfare and Wellbeing Provider' means any organisation or individual, other than the Approved Employer, that is engaged by the Approved Employer, to provide welfare and wellbeing support to Workers.

'Welfare and Wellbeing Support Person' means Personnel appointed by the Approved Employer or a Welfare and Wellbeing Provider to provide welfare and wellbeing support to Workers.

Note: The Approved Employer may appoint or engage more than one Welfare and Wellbeing Support Person.

'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.

'Worker' means a citizen of a Participating Country who is issued an Approved Offer of Employment in accordance with this Deed, and who is granted a Pacific Labour Mobility Stream - Temporary Work (International Relations) visa (subclass 403), as defined in the Migration Regulations (or such other visa category as may be specified in the Guidelines).

'Worker Risk Assessment' means a risk assessment in relation to a Worker's involvement in a Placement undertaken and updated in accordance with the Guidelines.

'Worker's Offer of Employment' means an Approved Offer of Employment given to a Worker in accordance with this Deed.

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

'Working with Children Laws' means the:

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

2. Interpretation

2.1 In this Deed, unless the contrary intention appears:

- (a) words in the singular include the plural and vice versa;
- (b) 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;
- (c) a reference to any legislation or legislative provision is to that legislation or legislative provision as in force from time to time;
- (d) 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;
- (e) 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;
- (f) a reference to an internet site or webpage includes those sites or pages as amended from time to time;
- (g) a reference to a Guideline, form, agreement or other document is to that document as revised or reissued from time to time;

- (h) a reference to the name of a Commonwealth program is to that name as amended from time to time;
- (i) 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;
- (j) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (k) a reference to time is to the time in the location where the relevant obligations are to be performed; and
- (l) a reference to A\$, \$A, dollar or \$ is to Australian currency.

2.2 The Approved Employer agrees that:

- (a) Special Conditions form part of this Deed;
- (b) the Guidelines form part of this Deed;
- (c) it must perform all obligations in this Deed in accordance with the Guidelines, even if a particular clause does not expressly refer to the Guidelines;
- (d) the Guidelines may be varied by the Department at any time and at the Department's absolute discretion; and
- (e) any action, direction, advice or Notice that may be taken or given by the Department under this Deed, may be taken or given from time to time and at the Department's absolute discretion.

2.3 The Department's exercise of any right under this Deed does not in any way limit the Department's other rights under this Deed or the law.

2.4 For avoidance of doubt, the Department's exercise of any right under this Deed, except under clause 66, does not amount to a reduction of scope or termination for which any amount is payable by the Department.

3. Priority of Deed Documents

3.1 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 Special Conditions;
- (b) clauses 1 to 87;
- (c) the Particulars, including the schedule to the Particulars;
- (d) the Guidelines;
- (e) the Implementation Arrangements;
- (f) any Transition Advice; and
- (g) any documents incorporated by reference.

Section A2.1 – Deed length

4. Term of this Deed

- 4.1 This Deed starts on the Deed Commencement Date and, unless terminated earlier, expires on the Deed Completion Date.
- 4.2 The Department may, at its absolute discretion, extend the Term of this Deed for one or more Extended Deed Periods up to 30 June 2033 by giving Notice to the Approved Employer not less than 20 Business Days prior to the Deed Completion Date.

5. Survival

- 5.1 The termination or expiry of this Deed for any reason does not extinguish or otherwise affect the operation of:
 - (a) clauses 23 (Approved Employer's conduct), 24 (Information provided to the Department), 26 (Approved Employer obligation to assist and cooperate with the Department and others), 28 (Evidence to support entitlement to Payments), 30 (Overpayment), 31 (Debts), 35 (Assurance activities), 37 (General), 38 (Security assurance), 39 (Protection of Department Data), 41 (Intellectual Property Rights), 42 (Moral Rights), 43 (Personal Information), 44 (Confidential Information), 45 (Records to be kept and provided), 46 (General reporting), 47 (Public Sector Data), 48 (Access by Workers to Records held by the Approved Employer), 49 (Access to documents for the purposes of the *Freedom of Information Act 1982* (Cth)), 50 (Scheme Assurance Activities and audits), 51 (Access to Premises and Material), 52 (Indemnity), 53 (Insurance), 54 (Liability of the Approved Employer to the Department), 59 (Dispute resolution), 65 (Remedies), 72 (Transition out leading up to expiry, termination or reduction in scope of this Deed), 78 (Protection of rights) and 83 (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.
- 5.2 Clause 51 (Access to Premises and Material) of this Deed survives for seven years from the expiry or earlier termination of this Deed.

CHAPTER B – SCHEME REQUIREMENTS

Section B1.1 – GENERAL REQUIREMENTS

6. Scheme Objectives

- 6.1 The Approved Employer acknowledges and agrees that the Scheme has the following objectives:
- (a) to address workforce shortages and provide Australian employers with access to a pool of reliable, productive workers to meet their labour needs, where Australians are unable to fill available roles;
 - (b) to support the economic growth of Australia's neighbouring countries by providing workers from Participating Countries with jobs, income and opportunities to increase their skills;
 - (c) to ensure the wellbeing of workers participating in the Scheme, which is of central importance to the Australian Government and Participating Countries, noting that Approved Employers are responsible for upholding worker wellbeing; and
 - (d) to uphold the workplace rights and protections of all workers participating in the Scheme, which are the same workplace rights and protections enjoyed by Australian workers.

7. Maintaining the status of Approved Employer

- 7.1 The Approved Employer acknowledges that the Application has been accepted by the Department on the basis of the claims made by the Approved Employer in the Application.
- 7.2 By entering into this Deed, the Department approves the employer as an approved employer under the Scheme, subject to the terms of this Deed.
- 7.3 The Approved Employer agrees that the Department may publish:
- (a) the Approved Employer's name and contact details;
 - (b) the capacity in which the Approved Employer is participating in the Scheme (e.g. Direct Employer, Labour Hire Organisation and/or Contractor); and
 - (c) the regions and industries in which the Approved Employer has been appointed to participate in the Scheme,
- including any updates to such information, on the Department's website or otherwise as advised by the Department.
- 7.4 In order to retain its approval as an approved employer under the Scheme, the Approved Employer must:
- (a) maintain approval as a Temporary Activities Sponsor;
 - (b) maintain its eligibility, capacity and capability to be an approved employer under the Scheme, as specified in the Application;

- (c) obtain and maintain any licences, registrations, accreditations, approvals and permits as required by Australian laws or the laws of any Participating Country that apply to the Approved Employer's participation in the Scheme and/or performance of its obligations under this Deed;
- (d) only carry on a business of the type specified in item 4 of the schedule to the Particulars for the purposes of the Scheme;
- (e) where the Approved Employer is a Labour Hire Organisation and is required to be licensed under the relevant state or territory law in which they operate, hold and maintain its relevant licence;
- (f) ensure that its relevant Personnel and Subcontractors attend and/or undertake any training and information sessions as specified in the Guidelines or as otherwise Notified by the Department, prior to recruiting any Workers; and
- (g) effect and maintain, or cause to be effected and maintained, the insurances specified at clause 53.

7.5 The Approved Employer must Notify the Department within 10 Business Days:

- (a) of any significant change to any information provided as part of the Application; or
- (b) if the Approved Employer no longer complies with clause 7.4.

7.6 The Department may conduct an assessment of whether the Approved Employer is compliant with clause 7.4 at any time.

7.7 The Department may revoke the approval of the Approved Employer as an approved employer under the Scheme (by terminating this Deed under clause 68.1) if at any time the Approved Employer fails to comply with clause 7.4 as determined by the Department at its absolute discretion.

7.8 The Department may vary the requirements in clause 7.4 from time to time, at its absolute discretion, and will Notify the Approved Employer of any such change.

7.9 The Approved Employer must provide to the Department copies of any Industry Accreditation, licences, registrations, approvals and permits required under clause 7.4 and the Guidelines immediately on request.

8. No guarantee or exclusivity

8.1 The Approved Employer acknowledges that it is one of a number of approved employers that are approved to participate in the Scheme.

8.2 Despite any other provision of this Deed, the Department provides no guarantee:

- (a) that it will:
 - (i) approve any Recruitment Application, including any Plan submitted by the Approved Employer; or
 - (ii) approve any document (including any Offer of Employment) submitted by the Approved Employer;

- (b) of the:
 - (i) number of Recruitment Applications the Department may approve;
 - (ii) duration of any Recruitment Application the Department may approve;
 - (iii) number of Workers the Approved Employer may be approved to recruit;
 - (iv) number of Workers that may accept any Offers of Employment from the Approved Employer; and
 - (v) type of work Workers may be able to perform; and
- (c) that Workers will be available and/or will remain in Australia for the length of any Approved Recruitment.

Section B1.2 – RECRUITMENT AND EMPLOYMENT OF WORKERS

9. Recruitment Applications

- 9.1 Subject to this Deed, including the Guidelines, the Approved Employer may submit Recruitment Applications to the Department for its review and approval under this clause 9, where:
 - (a) each Plan and Labour Market Testing forming part of a Recruitment Application is subject to the review and approval process specified in clauses 9.7 to 9.11; and
 - (b) each Offer of Employment forming part of a Recruitment Application is subject to the review and approval process specified in clauses 9.13 to 9.15.
- 9.2 The Approved Employer must, in its Recruitment Application, demonstrate its cultural competency of the relevant Participating Country.
- 9.3 The Department may, at its absolute discretion, approve a Recruitment Application. If the Department gives its approval, the Department may do so on such conditions as it thinks fit.
- 9.4 The Approved Employer acknowledges and agrees that the Department's approval of each Recruitment Application, including:
 - (a) its approval of a Plan and any Labour Market Testing forming part of a Recruitment Application (including any conditions or directed amendments); and
 - (b) its approval of an Offer of Employment forming part of a Recruitment Application,

is for the purposes of Scheme requirements only and does not limit or otherwise affect the Department's rights or the Approved Employer's obligations, under this Deed, including the Guidelines or at law.
- 9.5 For the avoidance of doubt, and without limiting clause 9.4:
 - (a) the Department's approval of an Offer of Employment does not relieve, limit or otherwise affect the Approved Employer's obligations to ensure that the terms and conditions of employment it prescribes comply with Australia's workplace laws, including, where applicable, a Fair Work Instrument and WHS Laws;

- (b) the Department's approval of any document is not, under any circumstances, to be relied upon or represented by the Approved Employer, as confirmation of, or advice on, the Approved Employer's compliance with its obligations under Australian law, including Australia's workplace laws and WHS Laws; and
 - (c) the Department is not liable to the Approved Employer under any circumstances, if any document which is approved by the Department under this clause 9 does not comply with Australian law, including Australia's workplace laws and WHS Laws.
- 9.6 If the Approved Employer does not make a Recruitment Application within 24 months from the Deed Commencement Date, the Department may terminate this Deed in accordance with clause 68.

Approvals - Plans and Labour Market Testing

- 9.7 The Approved Employer must submit all Plans and Labour Market Testing forming part of a Recruitment Application to the Department for its review and approval in accordance with this Deed, including the Guidelines prior to recruiting any Worker under that Recruitment Application.
- 9.8 The Department may, at its absolute discretion, and by providing Notice to the Approved Employer:
 - (a) approve a Plan or Labour Market Testing submitted by the Approved Employer in accordance with clause 9.7; or
 - (b) direct the Approved Employer to:
 - (i) amend a Plan or Labour Market Testing submitted by the Approved Employer in accordance with clause 9.7; and
 - (ii) resubmit the Plan or Labour Market Testing to the Department for its approval, in the manner and within the timeframe specified by the Department, and the Approved Employer must comply with any such direction.
- 9.9 In giving its approval of:
 - (a) a Plan or and Labour Market Testing under clause 9.8; or
 - (b) a proposed change to an Approved Plan under clause 9.10,the Department may, at its absolute discretion, impose such conditions as the Department thinks fit, and the Approved Employer must comply with those conditions as directed by the Department.
- 9.10 Subject to the Guidelines, the Approved Employer must not implement a Plan, or any proposed change to an Approved Plan, unless the Department gives its prior written approval by Notice to the Approved Employer in accordance with this clause 9.
- 9.11 The Approved Employer must comply with:
 - (a) all Approved Plans; and

- (b) any condition imposed by the Department as part its approval of a Plan or proposed change to an Approved Plan,

immediately from the time of Notification by the Department of its approval of:

- (c) the Plan under clause 9.8; or
- (d) proposed change to an Approved Plan under clause 9.10.

Scheme family accompaniment

- 9.12 Subject to the passage of relevant legislation and the Guidelines, the Approved Employer may be eligible to support eligible Scheme Workers to bring their immediate family to Australia.

Note: The Approved Employer will need to comply with specific requirements in the Guidelines if it wishes to support eligible Scheme Workers to bring their immediate family to Australia.

Approval - Offer of Employment

- 9.13 In respect of each Worker, the Approved Employer must submit an Offer of Employment to the Department for its review and approval:
- (a) as part of the relevant Recruitment Application; and
 - (b) at all other times as specified in the Guidelines, including where the Approved Employer proposes any change to an Offer of Employment.
- 9.14 The Department may, at its absolute discretion and by giving Notice to the Approved Employer, approve an Offer of Employment.
- 9.15 The Approved Employer must not recruit a Worker unless it receives the Department's prior written approval of the Offer of Employment for the Worker.

10. Approved Recruitments

- 10.1 The Approved Employer agrees that once all Plans and Offers of Employment that form part of a Recruitment Application are approved respectively by the Department, the Recruitment Application becomes an Approved Recruitment.
- 10.2 The Approved Employer must only recruit Workers:
- (a) in accordance with an Approved Recruitment and this Deed, including the Guidelines;
 - (b) within any applicable Recruitment Cap; and
 - (c) in accordance with this Deed, including the Guidelines.
- 10.3 The Approved Employer must not recruit any Worker:
- (a) under an Approved Recruitment, after the termination or expiration of the relevant Approved Recruitment;
 - (b) if the recruitment of the Worker would exceed an applicable Recruitment Cap;
 - (c) after the expiration or termination of this Deed; or

- (d) in the event the Approved Employer ceases to be, or is barred from being, a Temporary Activities Sponsor or its approval to be a Temporary Activities Sponsor is cancelled.
- 10.4 The Department may, at its absolute discretion and for any reason, impose or vary a Recruitment Cap by providing Notice to the Approved Employer.
- 10.5 If the Approved Employer is a New Approved Employer, the Approved Employer must comply with the New Approved Employer Recruitment Cap from the Deed Commencement Date, unless otherwise Notified by the Department.
- 10.6 In determining whether to impose or vary a New Approved Employer Recruitment Cap in accordance with clause 10.4, the Department may take into account any matter regarding the Approved Employer's performance of the Deed, including:
 - (a) the Approved Employer's pay and conditions;
 - (b) the Approved Employer's demonstrated ability to manage the welfare and wellbeing of Workers; and
 - (c) the absence of assurance issues or concerns and other risk factors in relation to the Approved Employer's participation in the Scheme,following the first four months of the Approved Employer's first Approved Recruitment or as otherwise Notified by the Department.
- 10.7 The Department will Notify the Approved Employer of any changes to the New Approved Employer Recruitment Cap.
- 10.8 The Approved Employer acknowledges that clause 10.4 does not limit the Department's ability to issue a direction to the Approved Employer under clause 60 in respect of the number of Workers the Approved Employer may recruit, including in relation to imposing a Recruitment Cap.
- 10.9 The Department may, at its absolute discretion and for any reason, by providing Notice to the Approved Employer, impose conditions on any Approved Recruitment, including any conditions in relation to the relevant Workers' location of work, type of work, accommodation or transport.
- 10.10 The Approved Employer must comply with any conditions imposed by the Department under clause 10.9.

11. Employment

- 11.1 The Approved Employer must:
 - (a) select, employ and engage each Worker directly and in accordance with Australia's workplace laws, including the Fair Work Act, WHS Laws and, where applicable, a Fair Work Instrument;
 - (b) employ each Worker in accordance with terms and conditions consistent with the applicable Approved Offer of Employment;

- (c) ensure that each Worker:
 - (i) is employed for at least the minimum working hours; and
 - (ii) receives at least the minimum rates of pay,
either:
 - (iii) specified in the Guidelines; or
 - (iv) as required by law, including the Fair Work Act,
whichever is higher;
- (d) ensure that any deductions that the Approved Employer makes from any Worker's wages:
 - (i) are in accordance with the requirements of:
 - (A) any relevant law, including the Fair Work Act; and
 - (B) this Deed, including the Guidelines; and
 - (ii) do not include any part of the Approved Employer's related costs, such as costs associated with:
 - (A) the selection, recruitment and arrangement of accommodation and transport for that Worker;
 - (B) travel to Participating Countries;
 - (C) obtaining a licence to recruit from a Participating Country; and
 - (D) using a recruitment agent to recruit on behalf of the Approved Employer;
- (e) maintain appropriate records in relation to each Worker, including by complying with record keeping obligations in accordance with:
 - (i) the Fair Work Act, the Fair Work Regulations and, where applicable, a Fair Work Instrument; and
 - (ii) requirements in the Guidelines related to the minimum working hours;
- (f) upon request by the Department, demonstrate that any Worker:
 - (i) will gain; or
 - (ii) has gained,

a reasonable Net Financial Benefit during their stay, in accordance with the Guidelines; and

- (g) provide information, instructions, training and supervision to each Worker in a culturally appropriate way, including in a format and language that can be understood by each Worker.

For the avoidance of doubt, the Approved Employer must not enter into a Subcontract in relation to its obligations under clause 11.1.

11.2 The Approved Employer must comply with the requirements in this Deed, including the Guidelines, relating to the employment of Workers, including in respect of:

- (a) Labour Market Testing and Offers of Employment;
- (b) Worker portability arrangements;
- (c) costs, expenses and deductions;
- (d) Worker welfare and wellbeing;
- (e) visa applications, pre-departure arrangements and briefings, arrival briefings and inductions, and departure requirements for Workers;
- (f) banking, taxation and superannuation;
- (g) accommodation and transport; and
- (h) reporting and Records.

11.3 Where the Department determines that the Approved Employer has breached this clause 11, the Department may, at its absolute discretion and by Notice to the Approved Employer:

- (a) exercise any remedies specified in clause 65.2; or
- (b) terminate this Deed under clause 68.

Section B1.3 – PLACEMENTS AND PROVIDER ARRANGEMENTS

12. Placements and Host Organisations

12.1 Subject to this Deed, the Approved Employer must arrange a Placement for each Worker it employs with:

- (a) the Approved Employer; or
- (b) a Host Organisation,

in accordance with the requirements of this Deed, including the Guidelines, and the applicable Approved Recruitment, including the relevant Worker's Offer of Employment.

12.2 The Approved Employer must not arrange a Placement with the Approved Employer or a Host Organisation (as applicable) without the Department's prior written approval.

12.3 For the purposes of clause 12.2, any approval by the Department of a Placement will be provided as part of the approval of a Recruitment Plan or proposed change to an approved Recruitment Plan.

- 12.4 If the Approved Employer suspects or becomes aware that a Host Organisation has breached any Host Organisation Arrangement, the Approved Employer must immediately Notify the Department and provide information about the relevant breach as requested by the Department or as specified in the Guidelines.
- 12.5 The Approved Employer must, at all times, ensure that it is the employer of any Workers and is responsible for the Workers' employment conditions.

13. Accommodation Providers and Transport Providers

- 13.1 The Approved Employer must:
- (a) provide suitable accommodation and transportation; or
 - (b) arrange suitable accommodation and transportation with an Accommodation Provider or Transport Provider, respectively,
- for each Worker it employs, in accordance with this Deed, including the Guidelines, and the applicable Approved Recruitment, including the relevant Worker's Offer of Employment.
- 13.2 If the Approved Employer arranges in respect of a Worker:
- (a) accommodation with an Accommodation Provider; and/or
 - (b) transportation with a Transport Provider,
- the Approved Employer must enter into a Provider Arrangement in accordance with the Guidelines prior to the Worker being accommodated and/or transported (as applicable) by the relevant Provider(s).
- 13.3 The Approved Employer must not arrange any accommodation or transportation for a Worker without the Department's prior written approval.
- 13.4 For the purposes of clause 13.3, any approval by the Department of an Accommodation Provider and/or Transport Provider will be provided as part of the approval of the relevant Plan or a proposed change to a relevant Approved Plan (as applicable).
- 13.5 The Approved Employer must not coerce a Worker to arrange their own accommodation.
- 13.6 Where any Worker arranges their own accommodation, the Approved Employer must:
- (a) not make any deductions from the Worker's wages in relation to the Worker's accommodation;
 - (b) not impose any rules on the Worker in relation to that accommodation;
 - (c) continue to provide welfare and wellbeing support to the Worker in accordance with this Deed;
 - (d) comply with any provisions in the Guidelines that relate to circumstances where a Worker arranges their own accommodation; and
 - (e) otherwise comply with the Approved Employer's obligations under this Deed.

14. Welfare and Wellbeing Support Person/s and Providers

- 14.1 The Approved Employer must, in accordance with this Deed, including the Guidelines, appoint a suitable Welfare and Wellbeing Support Person/s to provide welfare and wellbeing support to Workers.
- 14.2 For the purposes of clause 14.1, the Approved Employer may, in accordance with the Guidelines:
- (a) appoint its Personnel; or
 - (b) engage a Welfare and Wellbeing Provider,
- to perform the role of the Welfare and Wellbeing Support Person/s.
- 14.3 The Approved Employer must obtain the Department's written approval of each Welfare and Wellbeing Support Person prior to that person providing any welfare and wellbeing support for any Worker.

Section B1.4 – WHS, RISK ASSESSMENTS, SUPERVISION, INCIDENTS AND OTHER REQUIREMENTS

15. Work health and safety

- 15.1 The Approved Employer must at all times:
- (a) ensure that it carries out its obligations under, and any activities related to, this Deed 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 any health and safety matter relating to this Deed (including meeting with the Department as required by the Department and communicating any issues or concerns, or any specific requirements related to this Deed under or arising from the WHS Laws, as soon as practicable);
 - (d) if the Approved Employer is required by the WHS Act to report a Notifiable Incident to the Regulator arising out of the any activity related to this Deed:
 - (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 the following circumstances, inform the Department of the full details of:
 - (i) any suspected or actual contravention of the WHS Laws relating to this Deed;

- (ii) any workplace entry by a WHS Entry Permit Holder, or an inspector appointed under the WHS Act, to any place where activities related to this Deed are being performed or undertaken;
 - (iii) any proceedings against the Approved Employer, or any decision or request by the Regulator given to the Approved Employer, under the WHS Laws; and
 - (iv) any cessation or direction to cease work relating to this Deed, due to unsafe work, immediately upon the Approved Employer being informed of any such cessation or direction; and
 - (f) provide the Department with copies of all notices and correspondence issued to the Approved Employer by any entity under the WHS Laws, within 24 hours of receiving any such notice or correspondence.
- 15.2 The Approved Employer 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 Approved Employer's work health and safety performance, arising out of, or in respect of, this Deed.

Placements

- 15.3 The Approved Employer must, in accordance with the Guidelines, ensure that there is a safe system of work in place for each Placement, both prior to the commencement of and throughout the Placement, including, where a Placement is with a Host Organisation, that the relevant Host Organisation is complying with all work health and safety requirements in the jurisdiction in which the Placement occurs.

16. Risk Assessments

- 16.1 To meet its obligations under clauses 16.2 to 16.4, the Approved Employer must use a Competent Person.
- 16.2 The Approved Employer must, in accordance with the Guidelines:
- (a) undertake a Placement Risk Assessment of every Placement before the start of the Placement;
 - (b) undertake a Worker Risk Assessment for each Worker, with regard to their potential participation in any such Placement, before their commencement in the Placement; and
 - (c) retain Records of each Risk Assessment referred to in clause 16.2(a) and 16.2(b) and any action taken in accordance with the Risk Assessment, and provide the relevant Records to the Department upon request.
- 16.3 In relation to each Placement, the Approved Employer must, in accordance with the Guidelines:
- (a) ensure that, if the Placement is with a Host Organisation, the Host Organisation is obliged to immediately advise the Approved Employer of any proposed or actual changes to the tasks being undertaken by a Worker or the circumstances in which those tasks are being undertaken;

- (b) when negotiating the relevant Host Organisation Arrangement confirm with the Host Organisation:
 - (i) whether any required actions, identified in the relevant Risk Assessment, have not been undertaken; and
 - (ii) whether there have been any changes in relation to the relevant Placement, 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 Placement, to immediately review and update, as necessary, the relevant Risk Assessment and to address any such changes; and
- (d) undertake ongoing work health and safety monitoring of the Placement.

16.4 Before any Worker starts in a Placement and throughout the Placement, the Approved Employer must, in accordance with the Guidelines:

- (a) ensure, with reference to the relevant Risk Assessments, that the Placement is appropriate for the Worker 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 Worker can participate in the Placement safely, and ensure that training of sufficient length and quality is provided to the Worker;
- (c) ensure that appropriate facilities (such as toilets and access to drinking water) will be available to the Worker;
- (d) ensure that the Worker will be provided with any specific equipment, clothing or materials required to participate safely in the Placement;
- (e) ensure that the Worker has been advised of the process for reporting any work health and safety issues regarding the Placement; and
- (f) ensure that the Approved Employer, and the Host Organisation (where relevant), 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 Placement, and purchase or fund additional insurance for the Placement, if required.

17. Incidents

17.1 The Approved Employer must, as soon as possible, and in all cases within 24 hours of a Critical Incident occurring, Notify the Department of any Critical Incident including of:

- (a) a death of a Worker;
- (b) any serious or significant accident, injury, or illness of a Worker;

- (c) any serious or significant accident, injury, illness or death of any other employee or member of the public on an Approved Employer's or Host Organisation's site; and
 - (d) any other incident that may negatively impact upon the Department or bring the Approved Employer or the Scheme into disrepute.
- 17.2 Without limiting clause 17.1, the Approved Employer must, as soon as possible, and in all cases within 3 Business Days of becoming aware of an Other Incident occurring, Notify the Department of any Other Incident including of any injuries or illnesses that occur to Workers that:
- (a) result in the Worker being admitted to hospital; or
 - (b) must be reported under WHS obligations,
- which result in the Worker having more than 3 calendar days off work.
- 17.3 In Notifying the Department of the matters under clause 17.1 and clause 17.2 the Approved Employer must:
- (a) do so in the form, if any, specified in the Guidelines; and
 - (b) include any information required by the Guidelines or otherwise requested by the Department.

18. Supervision

Note: Supervisors may be engaged/employed by the Approved Employer or a Subcontractor to Supervise Placements or may be engaged/employed by Host Organisations to Supervise Placements that they provide.

- 18.1 The Approved Employer must, subject to and in accordance with the Guidelines, ensure that:
- (a) it or, where relevant, each Host Organisation, provides adequate and appropriate Supervision so that relevant Workers are undertaking appropriate tasks and operating in a healthy and safe environment;
 - (b) the Supervision provided is continuous over the entire duration of the Placement where:
 - (i) any Placement involves:
 - (A) people who are elderly, disabled or otherwise vulnerable; or
 - (B) Children (excluding other Workers); or
 - (ii) the Approved Employer otherwise considers that Supervision should be continuous having regard to the nature of the tasks to be undertaken, the potential Workers in the Placement and any risks identified in the relevant Risk Assessments.
- 18.2 The Approved Employer must conduct relevant checks on all Workers and all relevant Personnel and Supervisors in accordance with clause 85.

- 18.3 The Approved Employer must ensure that any:
- (a) Approved Employer Personnel, any Host Organisation or any Subcontractor who has direct involvement in (including where they have close contact with Workers); and
 - (b) Supervisor for,
any Placement:
 - (c) is a fit and proper person to be involved in the relevant Placement;
 - (d) has cultural competency related to the Worker's Home Country;
 - (e) is able to liaise and work with the Worker in a culturally appropriate way; and
 - (f) has a high level of skill/knowledge, training and/or experience in:
 - (i) each part of the Placement they are involved in; and
 - (ii) working with, training and supervising individuals in such activities.
- 18.4 The Department may give Notice, on reasonable grounds related to the performance of any Placement, requiring the Approved Employer to remove, or arrange for the removal of any:
- (a) Approved Employer Personnel, any Host Organisation or any Subcontractor who has direct involvement in the Placement (including where they have close contact with Workers); and/or
 - (b) Supervisor, whether engaged by the Approved Employer, any Subcontractor or any Host Organisation,
- from involvement in the Scheme.
- 18.5 Where the Department gives Notice under clause 18.4, the Approved Employer must, at its own cost, promptly arrange for the removal of the relevant Personnel or Supervisor from work in relation to the Placement and their replacement with one or more Personnel or Supervisors acceptable to the Department.

19. Other matters

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

- 19.2 The Approved Employer must ensure that, to the extent allowed by law and unless otherwise expressly agreed by the Parties, there is no intention or understanding on the part of a Host Organisation, Provider or Worker that any Placement or Provider Arrangement, will in and of itself create legal relations between the Worker and:
- (a) the Commonwealth;
 - (b) the Provider; or
 - (c) the Host Organisation.

Section B1.5 – PAYMENTS

20. Reimbursement of Travel Costs

- 20.1 Subject to this clause 20 and the Guidelines, the Approved Employer may seek a Reimbursement from the Department for reasonable Travel Costs incurred by the Approved Employer in relation to a Short-Term Worker where the Approved Employer has not been able to be reimbursed for those costs by the relevant Worker due to circumstances beyond the Approved Employer's control.
- 20.2 When seeking a Reimbursement from the Department under this clause 20, the Approved Employer must provide to the Department the information specified in the Guidelines.
- 20.3 Subject to the Approved Employer complying with this Deed, including the Guidelines, the Department will Reimburse the Approved Employer for the Travel Costs that it seeks a Reimbursement for in accordance with this clause 20.
- 20.4 The Department's obligation to make a Payment under this clause 20 is subject to the Approved Employer providing to the Department full and proper substantiation, to the Department's complete satisfaction, of any amounts claimed under this clause 20.
- 20.5 The Approved Employer agrees that the Department is under no obligation to Reimburse the Approved Employer for any Travel Costs where the Approved Employer has failed to make a claim for Reimbursement in accordance with this clause 20 and the Guidelines.

CHAPTER C – GENERAL TERMS AND CONDITIONS

Section C1.1 – Basic rules

21. General Requirements

- 21.1 The Approved Employer must perform its obligations:
- (a) in accordance with:
 - (i) this Deed, including the Guidelines;
 - (ii) any direction by the Department;
 - (iii) the obligations set out in the Implementation Arrangements that apply in relation to the relevant Participating Country; and
 - (iv) any representation or undertaking made by the Approved Employer in the Application, unless otherwise agreed with the Department; and
 - (b) in a manner which meets the Scheme Objectives and supports Australia's strong bilateral relationships with Participating Countries.
- 21.2 Subject to the express provisions of this Deed, the Approved Employer is fully responsible for the performance of its obligations, for ensuring compliance with the requirements of this Deed, and for all costs of meeting the Approved Employer's obligations under this Deed, notwithstanding any other matter or arrangement, including any Subcontract, Provider Arrangement or Host Organisation Agreement.

22. Use of interpreters

- 22.1 The Approved Employer must provide an interpreter to facilitate communication between the Approved Employer and Workers where a Worker requires assistance:
- (a) to communicate comfortably and effectively with the Approved Employer, on account of language or hearing barriers;
 - (b) to understand complex information in a workplace of a technical or legal nature;
 - (c) during stressful or emotional situations where a Worker's command of English may decrease temporarily; or
 - (d) at group forums or public consultations, where Workers do not speak or understand English, or have a hearing impairment.

23. Approved Employer's conduct

- 23.1 The Approved Employer must:
- (a) at all times, act in good faith towards the Department and Workers, and in a manner that does not bring the Scheme, the Approved Employer 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 Scheme, the Approved Employer, or the Department should it become publicly known.
- 23.2 The Approved Employer must not have a remuneration or rewards structure that encourages its Personnel to act in a manner that is inconsistent with:
 - (a) the Scheme Objectives as specified in clause 6; or
 - (b) the requirements of this Deed.
- 23.3 Where the Department determines that the Approved Employer has breached clause 23.2, the Department may, at its absolute discretion and by Notice to the Approved Employer:
 - (a) exercise any remedies specified in clause 65.2; or
 - (b) terminate this Deed under clause 68.

24. Information provided to the Department

- 24.1 The Approved Employer must ensure that:
 - (a) all information it provides to the Department, in any form and by any means, is true, accurate, and complete at the time of its provision to the Department;
 - (b) it diligently, and in accordance with the Guidelines, takes all necessary steps to verify the truth, completeness and accuracy of any information referred to in clause 24.1(a); and
 - (c) any data entered into Department's IT Systems is consistent with any associated Records held by the Provider.

25. Liaison and directions

- 25.1 The Approved Employer 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.
- 25.2 For the day-to-day management of, and communication under, this Deed, the Department and the Approved Employer must each nominate 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.

26. Approved Employer obligation to assist and cooperate with the Department and others

- 26.1 The Approved Employer must, if directed by the Department, provide sufficient assistance and cooperation to any entity nominated by the Department in relation to any Worker who is, or will be, transferred to an Alternative Approved Employer for any reason, including:
- (a) the expiry, termination or reduction in scope of this Deed; or
 - (b) any transfer of the Worker under any provision of this Deed.
- 26.2 The assistance and cooperation the Approved Employer must provide under clause 26.1 includes complying with the Department's directions in relation to:
- (a) the transfer of Records, Deed Material and Commonwealth Material in the Approved Employer's possession or control, including that stored in the Approved Employer's IT System; and
 - (b) the redirection of Workers, to any Alternative Approved Employer or entity nominated by the Department.

Section C1.2 – Some basic rules about financial matters

27. General

- 27.1 Subject to sufficient funds being validly appropriated for the Scheme and the Approved Employer's compliance with this Deed to the Department's complete satisfaction, the Department will make Payments to the Approved Employer, at the times and in the manner specified in this Deed, including the Guidelines.
- 27.2 The Approved Employer must not claim or accept a Payment from the Department if the requirements under this Deed, including the Guidelines, which must be satisfied to qualify for the Payment have not been fully and properly met.
- 27.3 Where the Department determines that the Approved Employer is in breach of clause 27.2, the Department may recover some or all of the amount of the relevant Payment, at its absolute discretion, from the Provider as a debt in accordance with clause 31, and exercise any other remedies specified in clause 65.2.
- 27.4 Subject to the Guidelines, the Approved Employer 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 Approved Employer:
- (a) is entitled to the Payment;
 - (b) has performed the obligations relevant to its claim for Payment; and
 - (c) has done so in accordance with this Deed, including the Guidelines.

- 27.5 If the Approved Employer 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 requested by the Department.

- 27.6 The Approved Employer 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 the Guidelines, submit a Tax Invoice to the Department for payment.

28. Evidence to support entitlement to Payments

- 28.1 The Approved Employer must provide Documentary Evidence to the Department:

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

- 28.2 If:

- (a) the Approved Employer does not comply with a request by the Department under clause 28.1, including if the Documentary Evidence provided is not true, complete and accurate; and
- (b) the Department has already paid the Approved Employer the relevant Payment,

the Department may recover some or all of the amount of the relevant Payment, at its absolute discretion, from the Approved Employer as a debt in accordance with clause 31, and exercise any other remedies specified in clause 65.2.

- 28.3 The Department may contact Workers, Host Organisations or Providers or any other relevant parties to verify Documentary Evidence provided by the Approved Employer.

29. Costs

- 29.1 The Approved Employer acknowledges and agrees that:
- (a) it is fully responsible for all costs of meeting its obligations under this Deed;
 - (b) the Department will not pay any money to the Approved Employer in excess of the Reimbursements.
- 29.2 The Department is not liable or responsible for any Loss incurred by the Approved Employer in connection with its operations as an approved employer under the Scheme, including and without limitation:
- (a) in the event that:
 - (i) the Approved Employer is suspended under clause 64.1;
 - (ii) this Deed is terminated under clauses 66 or 68; or
 - (iii) the requirements to retain its approval as an approved employer under the Scheme under clause 7.4 change; and/or
 - (b) in connection with the provision of any other information requested by the Department under this Deed, including under clause 45.3.
- 29.3 The Approved Employer is responsible for all payments to, and in relation to, its Personnel and the Workers, including payment by way of salary, remuneration (including work-related allowances, penalty rates or other paid entitlements) or commissions, bonuses, paid leave entitlements, termination, redundancy, taxes, superannuation and worker's compensation premiums and liabilities.

30. Overpayment

- 30.1 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 Approved Employer, at its absolute discretion, as a debt in accordance with clause 31.

31. Debts

- 31.1 If the Approved Employer owes the Department any amount 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 Approved Employer without further proof of the debt being necessary.
- 31.2 The Approved Employer must continue to perform its obligations under this Deed despite any action taken by the Department under clause 31.1.

- 31.3 Unless otherwise agreed by the Department in writing, the Approved Employer must pay to the Department any debt due to the Commonwealth from the Approved Employer within 30 calendar days of receipt of a Notice from the Department requiring payment.
- 31.4 Where the Approved Employer owes any debt to the Commonwealth under this Deed, Interest is payable by the Approved Employer 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.

32. Taxes, duties and government charges

- 32.1 If a Payment is not in relation to a Taxable Supply, the Approved Employer must only claim or accept an amount exclusive of GST.
- 32.2 Unless otherwise advised by the Department or specified in the Guidelines, the Approved Employer must give to the Department a Tax Invoice for any Taxable Supply before any Payments are made to the Approved Employer as consideration for the Taxable Supply.
- 32.3 The Approved Employer must not claim or accept from the Department any amount for which it can claim an Input Tax Credit.
- 32.4 Where any debt is repaid, an Adjustment Note must be provided to the Department if required by the GST Act.
- 32.5 Subject to this clause 32, all taxes, duties and government charges imposed in Australia or overseas in connection with this Deed must be borne by the Approved Employer.

33. Fraud

- 33.1 The Approved Employer must:
- (a) not engage in, and must ensure that its Personnel, Subcontractors, Host Organisations, Workers, Providers 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.
- 33.2 If, after investigation, the Department considers that the Approved Employer has failed to comply with clause 33.1, the Department may:
- (a) exercise any remedies specified in clause 65.2; or
 - (b) terminate this Deed under clause 68,
- by providing Notice to the Approved Employer.

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

34. Financial statements

- 34.1 If directed by the Department, the Approved Employer must provide to the Department audited financial statements in a form, with the content and within the timeframe, as directed by the Department.

Section C1.3 – Scheme Assurance Activities

35. Assurance activities

- 35.1 The Approved Employer agrees that:
- (a) Scheme Assurance Activities may be undertaken by the Department for the purposes of evaluating the Approved Employer's performance of its obligations under this Deed, and may include:
 - (i) the Department monitoring, measuring and evaluating the performance of obligations by the Approved Employer;
 - (ii) the Approved Employer's Personnel, Subcontractors, Workers, Host Organisations and Providers being interviewed by the Department or an independent evaluator nominated by the Department;
 - (iii) the Approved Employer giving the Department or the Department's evaluator access to its premises and Records in accordance with clause 51; and
 - (iv) the Department issuing surveys to Workers; and
 - (b) it will fully cooperate with the Department in relation to all such activities.

Section C1.4 – Grievance

36. Grievance process

- 36.1 The Approved Employer must establish and publicise a Grievance process in accordance with the Guidelines.
- 36.2 The Approved Employer must, when requested by the Department, actively assist:
- (a) the Department in its investigation of any Grievance, including providing a detailed response to issues Notified by the Department within the timeframe specified by the Department in the Notice;
 - (b) the Department in negotiating a resolution to any Grievance; and
 - (c) other authorities in negotiating a resolution to any Grievance, where the relevant Worker or other entity has chosen to utilise legislative or other complaints mechanisms.

Section C1.5 – Information Technology

37. General

- 37.1 The Approved Employer must carry out its obligations under this Deed by Accessing the Department's IT Systems provided by the Department for that purpose.

- 37.2 The Department may require that data relating to specific transactions must only be stored on the Department's IT Systems, and the Approved Employer must comply, and ensure that all Subcontractors comply, with any such requirements.
- 37.3 The Approved Employer must not allow any of its Personnel or Subcontractors to have Access to the Department's IT Systems until they have successfully completed any training specified by the Department.
- 37.4 The Approved Employer must, and must ensure that its Personnel and Subcontractors, only Access and use the Department's IT Systems solely to carry out its obligations under this Deed.
- 37.5 The Approved Employer warrants that its information technology equipment, infrastructure and arrangements:
- (a) are compatible with the Department's IT Systems, and will:
 - (i) not cause the Department data breaches or data loss;
 - (ii) provide protection against security threats, such as:
 - (A) attacks from malicious outsiders or insiders; or
 - (B) account or service traffic hijacking;
 - (b) only use secure interfaces and application programming; and
 - (c) otherwise comply with the Department's reasonable security requirements.
- 37.6 The Approved Employer is responsible for all costs of meeting its obligations under this clause 37.

38. Security assurance

- 38.1 The Approved Employer must comply, and ensure that its Personnel and Subcontractors comply, with the Department's Security Policies, as relevant.
- 38.2 The Approved Employer must ensure that a Security Representative is nominated as a point of contact for any IT security related issues during the Term of this Deed, and that, at all times, the Department has up-to-date contact details for the current Security Representative.
- 38.3 The Approved Employer must (through its Security Representative) promptly report all breaches of IT security to the Department via the Department's Security Compliance Contact specified in Item 5 of the schedule to the Particulars, 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.
- 38.4 If required to do so by the Department, the Approved Employer must:
- (a) activate a login for the Approved Employer; and
 - (b) submit an "access" request to the Department for approval for each of the Approved Employer's and Subcontractor's Personnel who require Access to the Department's IT Systems.

- 38.5 For each of the Personnel whose "access" request submitted under clause 38.4(b) is approved by the Department, the Approved Employer must ensure that those Personnel:
- (a) do not share their individual logon identifiers or passwords used to Access the Department's IT Systems;
 - (b) have correctly entered their details in the Department's IT Systems and regularly update those details as required; and
 - (c) comply with any security and privacy policy Notified by the Department to the Approved Employer.
- 38.6 If the Approved Employer gives Access to Department Data, or any derivative thereof, to third parties, including:
- (a) third-party hosting entities; or
 - (b) outsourced information technology service providers,
- the Approved Employer must ensure that a deed of confidentiality and privacy substantially in the form specified by the Department, is signed by each relevant third party prior to that third party being granted any such Access and only grant such Access in accordance with this clause 38.
- 38.7 Where the Department considers that the Approved Employer may be in breach of this clause 38, or there is a risk of such a breach, the Department may, at its absolute discretion, immediately suspend Access, or require the Approved Employer to cease all Access, to the Department's IT Systems for any one or more of the following:
- (a) the Approved Employer;
 - (b) any Subcontractor; or
 - (c) any Personnel of the Approved Employer or any Subcontractor,
- by providing Notice to the Approved Employer.
- 38.8 If the Department suspends or ceases Access to the Department's IT Systems under clause 38.7:
- (a) the Department may impose conditions on any resumption of Access; and
 - (b) the Approved Employer must immediately take all actions necessary to ensure that such Access is suspended or ceased for the affected Personnel of the Approved Employer or any Subcontractor.
- 38.9 Where the Department determines that the Approved Employer is in breach of, or has previously breached, this clause 38, the Department may immediately exercise any remedies specified in clause 65.2.
- 38.10 If the Department gives Notice to the Approved Employer that Access to the Department's IT Systems is terminated for any particular Approved Employer's Personnel or Subcontractor, the Approved Employer 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.

39. Protection of Department Data

Use of Department Data

- 39.1 The Approved Employer must not (and must ensure that its Personnel and the Personnel of any Subcontractor do not) use Department Data held by the Approved Employer, or which the Approved Employer has Access to, other than for the purposes of fulfilling its obligations under this Deed.
- 39.2 The Approved Employer must:
- (a) safely and securely store all Department Data;
 - (b) take reasonable steps to ensure that all Department Data and the information contained in the Department's IT Systems is protected from:
 - (i) misuse, interference or loss; and
 - (ii) unauthorised Access, modification or disclosure;
 - (c) maintain a security and data protection policy that complies with any protective security policies as may be Notified by the Department from time to time;
 - (d) provide the Department with a copy of its security and data protection policy upon request;
 - (e) only provide its Personnel and the Personnel of any Subcontractor with Access to the Department's IT Systems as permitted, or in accordance with, any directions, restrictions, procedures, or guidance provided by the Department; and
 - (f) generally provide for, and maintain, security and Access arrangements in relation to Department Data and the Department's IT Systems at the highest possible standard as may be achieved in the circumstances.

Subcontracts

- 39.3 The Approved Employer must ensure that any Subcontract imposes on the Subcontractor the same obligations as the Approved Employer has under this clause 39, including this requirement in relation to Subcontracts.

40. Security

Interpretation

- 40.1 In this clause 40, regardless of whether or not the first letter of any word is capitalised, 'security incident' has the meaning given to them in the Protective Security Policy Framework.

Note: The reference to the Protective Security Policy Framework in clause 40.1 does not require the Approved Employer to comply with the Protective Security Policy Framework.

Security compliance

- 40.2 The Approved Employer must comply with:
- (a) any security requirements specified in this Deed; and

- (b) any additional security requirements Notified by the Department from time to time. Such other security requirements must be complied with from the date specified in the Notice, or if none is specified, within five Business Days of receipt of the Notice.

Security checks

- 40.3 The Department may undertake any security checks it considers appropriate of the Approved Employer, its Personnel, any Subcontractor or the Personnel of any Subcontractor.

Cyber Incident

- 40.4 The Approved Employer must Notify the Department immediately on becoming aware of any actual or suspected security incident or Cyber Incident.
- 40.5 The Approved Employer agrees that if a security incident or Cyber Incident occurs, the Approved Employer will immediately comply with all directions of the Department in order to address the security incident or Cyber Incident, including by:
 - (a) notifying the Australian Cyber Security Centre, or any other relevant body, as required by the Department;
 - (b) obtaining evidence about how, when and by whom the Approved Employer's information system and/or the Department Data has or may have been compromised, providing it to the Department on request, and preserving and protecting that evidence for a period of up to 12 months;
 - (c) implementing any mitigation strategies to reduce the impact of the security incident or Cyber Incident or the likelihood or impact of any future similar incident; and
 - (d) preserving and protecting Department Data (including as necessary reverting to any backup or alternative site or taking other action to recover Department Data).
- 40.6 The Approved Employer acknowledges that, if the Personnel of the Approved Employer or any Subcontractor causes a security incident or Cyber Incident, the Department may:
 - (a) require the replacement of that person; or
 - (b) immediately terminate this Deed under clause 68.

Section C1.6 – Intellectual Property Rights and Moral Rights

41. Intellectual Property Rights

- 41.1 This clause 41 does not affect the ownership of the Intellectual Property Rights in any Commonwealth Material, Existing Material or Third Party Material.
- 41.2 All:
 - (a) Intellectual Property Rights in; and
 - (b) rights of ownership of any physical documents comprising,any Deed Material vest in the Approved Employer on creation.

- 41.3 The Approved Employer grants to, or must obtain for, the Department a perpetual, irrevocable, world-wide, royalty-free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify, communicate, distribute, and publish any:
- (a) Deed Material;
 - (b) Existing Material;
 - (c) Third Party Material provided to the Department by the Approved Employer,
- for any Department or Commonwealth purpose in the interests of the Scheme or any future similar scheme or program.
- 41.4 The Department agrees that the licence granted under clause 41.3 does not permit the Department or any of its sublicensees to exploit the relevant Intellectual Property Rights in return for the payment of a royalty or a commercial return.
- 41.5 To the extent that the Approved Employer needs to use any of the Commonwealth Material for the purpose of performing its obligations under this Deed, the Department grants to the Approved Employer, subject to any direction by the Department, a royalty-free, non-exclusive, non-transferable licence to use, reproduce, adapt, modify and communicate such Material solely for the purpose of performing its obligations under this Deed.
- 41.6 On the expiration or earlier termination of this Deed or on such earlier date as may be specified by the Department, the Approved Employer must deliver to the Department a copy of any Commonwealth Material in the possession or control of the Approved Employer, any of its Personnel or any Subcontractor, or deal with the Material as otherwise directed by the Department.
- 41.7 The Approved Employer warrants, to the extent that the Department is using the Material referred to in clause 41.3 for the purposes described in that clause, 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 41.

Commonwealth Coat of Arms

- 41.8 The Approved Employer must not use the Commonwealth Coat of Arms for the purposes of this Deed or otherwise, except as authorised in accordance with the Commonwealth Coat of Arms Information and Guidelines (available at <https://www.pmc.gov.au/resource-centre/government/commonwealth-coat-arms-information-and-guidelines>).

42. Moral Rights

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

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

- (a) falsely attributing the authorship of any Deed Material, or any content in the Deed Material (including literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
- (b) materially altering the style, format, colours, content or layout of the Deed Material and dealing in any way with the 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.

Section C1.7 – Control of information

43. Personal Information

- 43.1 Clauses 43.2 to 43.7 apply only where the Approved Employer deals with Personal Information for the purpose of participating in the Scheme and performing its obligations under this Deed, and the terms 'agency', 'APP Code', 'Australian Privacy Principle' (APP), 'eligible data breach', 'organisation' and 'sensitive information' have the same meaning as they have in section 6 of the Privacy Act.
- 43.2 The Approved Employer agrees, in participating in the Scheme and performing its obligations under this Deed:
- (a) to use or disclose Personal Information, including sensitive information, obtained in the course of participating in the Scheme and performing its obligations under this Deed ('relevant Personal Information'), only for the purposes of this Deed or where otherwise permitted under the Privacy Act;
 - (b) except where this clause 43 expressly requires the Approved Employer to comply with an APP that applies only to an organisation, and subject to clause 43.3, to carry out and discharge the obligations contained in the APPs as if it were an agency;
 - (c) subject to clause 43.3, 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 Approved Employer 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 Approved Employer;
 - (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 43;
 - (i) to its name being published in reports by the Australian Information Commissioner;
 - (j) if the Approved Employer suspends or terminates any of its relevant Personnel, or if any of its relevant Personnel resign, the Approved Employer must immediately:
 - (i) remove any access that the Personnel have to any relevant Personal Information;
 - (ii) require that the Personnel return to the Approved Employer 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;
 - (k) otherwise comply with the Guidelines.
- 43.3 The Approved Employer will not, by reason of this clause 43, be bound by any provision of the Privacy (Australian Government Agencies – Governance) APP Code 2017.
- 43.4 Unless such act or practice is expressly authorised by this Deed, no clause in this Deed will be interpreted so as to authorise the Approved Employer or its Subcontractors to engage in an act or practice that would breach an APP if done or engaged in by the Department.
- 43.5 The Approved Employer 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 43 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 Approved Employer by the Australian Information Commissioner or by an individual claiming that their privacy has been interfered with.

Notifiable data breaches

- 43.6 If the Approved Employer 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 Approved Employer holds as a result of this Deed or its participation in the Scheme, the Approved Employer must:
- (a) Notify the Department in writing no later than the Business Day after the Approved Employer 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.

- 43.7 Where the Approved Employer is aware that there are reasonable grounds to believe that there has been, or where the Department Notifies the Approved Employer that there has been an eligible data breach in relation to any Personal Information the Approved Employer holds as a result of this Deed or its participation in the Scheme, the Approved Employer 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.

44. Confidential Information

Confidential information not to be disclosed

- 44.1 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.
- 44.2 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

- 44.3 The obligations on the Parties under this clause 44 will not be breached to the extent that Confidential Information is disclosed:
- (a) unless otherwise Notified by the Department, by the Approved Employer to its Personnel to enable the Approved Employer to comply with its obligations, or to exercise its rights, under this Deed;
 - (b) unless otherwise Notified by the Department, by the Approved Employer 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, or to any of its contractors or agents, where this serves the Commonwealth's legitimate interests;
 - (d) by the Department to relevant Commonwealth, state or territory departments or agencies, local government authorities, or the government of a Participating Country;
 - (e) by the Department to the responsible Minister or the Minister's staff;
 - (f) by the Department, in response to a request or direction by a House or a Committee of the Parliament of the Commonwealth of Australia;

- (g) by the Department, to a third party entity in order to facilitate an investigation, audit or review in relation to the Approved Employer's, its Subcontractors', Host Organisations' or Providers' activities in relation to this Deed or the Scheme; or
- (h) by a Party as authorised or required by law.

Obligation on disclosure

- 44.4 Where the Approved Employer discloses Confidential Information to its Personnel pursuant to clause 44.3(a) or 44.3(b), the Approved Employer must notify the Personnel that the information is Confidential Information.

No reduction in privacy or access obligations

- 44.5 Nothing in this clause 44 limits the obligations of the Approved Employer under clauses 43, 50 or 51.

Section C1.8 – Records and Reports

45. Records to be kept and provided

- 45.1 The Approved Employer must:
- (a) create and maintain detailed Records of the Approved Employer's performance of its obligations under this Deed, 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.
- 45.2 Notwithstanding this clause 45, if the Department considers it appropriate, the Department may, at its absolute discretion, impose special conditions in relation to Records management, and the Approved Employer must comply with those special conditions as directed by the Department.
- 45.3 Without limiting its obligations under clause 51, when requested by the Department, the Approved Employer must provide to the Department, or the Department's nominee, any Records in the possession or control of the Approved Employer:
- (a) within the timeframe specified by the Department;
 - (b) in such form, and in such manner, as reasonably specified by the Department; and
- at no cost to the Department.

Financial Accounts and Records

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

46. General reporting

- 46.1 Without limiting any other provisions of this Deed, the Approved Employer must provide, as requested by the Department:
- (a) specific Reports on:
 - (i) the Approved Employer's participation in the Scheme and/or performance of its obligations under this Deed, including on minimum hours offered by the Approved Employers to Workers, action taken to address performance issues raised by the Department and training provided to its Personnel and Subcontractors; and
 - (ii) the financial status of the Approved Employer; and
 - (b) a suitably qualified, informed and authorised representative at any meeting arranged by the Department, in order to discuss and accurately answer questions relating to the Reports referred to in clause 46.1(a) or those otherwise required under this Deed.
- 46.2 The Approved Employer must also provide any other Reports to the Department or the Department's nominee:
- (a) as requested by the Department, within five business days of receiving the relevant request from the Department or within the timeframe otherwise specified by the Department; or
 - (b) as specified in the Guidelines.
- 46.3 The Approved Employer 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 Approved Employer must submit a revised Report to the Department's complete satisfaction within 10 Business Days of Notice to the Approved Employer from the Department to do so.

47. Public Sector Data

- 47.1 The Approved Employer acknowledges that the Department may be authorised by law to share 'Public Sector Data' with third parties, including under the *Data Availability and Transparency Act 2022* ('**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 ..." and therefore includes any data provided by the Approved Employer to the Department for the purpose of the Scheme.

48. Access by Workers to Records held by the Approved Employer

- 48.1 Subject to this clause 48, the Approved Employer must allow Workers 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 require or authorise the refusal of such access.
- 48.2 The Approved Employer must, in providing access to the requested Records in accordance with clause 48.1:
- (a) ensure that the relevant Worker requesting the access in clause 48.1 provides proof of identity to the Approved Employer before access is given to the requested Records;
 - (b) ensure that any third party requesting the access in clause 48.1 on behalf of a Worker provides to the Approved Employer written authority from the relevant Worker 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.

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

- 49.1 In this clause 49, 'document' has the same meaning as it has in section 4 of the *Freedom of Information Act 1982* (Cth).
- 49.2 The Approved Employer agrees that:
- (a) where the Department has received a request the *Freedom of Information Act 1982* (Cth) for access to a document created by, or in the possession of, the Approved Employer or any Subcontractor and the document relates to the performance of this Deed, the Department may, at any time by Notice, require the Approved Employer to provide the document to the Department and the Approved Employer must, at no additional cost to the Department, promptly comply with the Notice;
 - (b) the Approved Employer must assist the Department in respect of the Department's statutory obligations under the *Freedom of Information Act 1982* (Cth), as required by the Department; including by conducting comprehensive searches for documents; and
 - (c) the Approved Employer must include in any Subcontract, provisions that will enable the Approved Employer to comply with its obligations under this clause 49.

50. Scheme Assurance Activities and audits

- 50.1 The Department may conduct Scheme Assurance Activities and audits relevant to the performance of the Approved Employer's obligations under this Deed, including in relation to:
- (a) the Approved Employer's operational practices and procedures as they relate to this Deed and the Approved Employer's participation in the Scheme and/or performance of its obligations;
 - (b) the accuracy of the Approved Employer's invoices and reports provided, or claims for payments made, under this Deed;

- (c) the Approved Employer's compliance with its confidentiality, privacy and security obligations under this Deed;
 - (d) Material (including Records) in the possession of the Approved Employer relevant to the Scheme or this Deed;
 - (e) the financial statements of the Approved Employer; and
 - (f) any other matters determined by the Department to be relevant to the Scheme or this Deed.
- 50.2 Each Party must bear its own costs in relation to any action under this clause 50.
- 50.3 The Approved Employer's compliance with this clause 50 does not in any way reduce the Approved Employer's responsibility to perform its obligations in accordance with this Deed.

51. Access to Premises and Material

- 51.1 The Department may access, locate, inspect, copy and remove any Record, including Records stored on the Approved Employer's IT System, for any purpose connected with this Deed, including for the purposes of improving the Scheme, and conducting Scheme Assurance Activities and audits.
- 51.2 For the purposes of clause 51.1, the Approved Employer 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;
 - (ii) the Approved Employer's 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;
 - (B) any Material, however stored, relevant to claims for Payment, determining the Approved Employer's financial viability and compliance with relevant WHS Laws and industrial relations legislation; and
 - (iv) its Personnel and Subcontractors; and
 - (b) all assistance to or for the Department to:
 - (i) undertake any activities for the purposes of any audit under clause 50.1;
 - (ii) access any Host Organisation and/or Provider;
 - (iii) access and inspect its premises and those of any Personnel, Subcontractor, Provider and/or Host Organisation;
 - (iv) access and inspect the accommodation of any Worker;

- (v) access and inspect any vehicle that has been or will be used to transport any Worker;
- (vi) inspect the Approved Employer's compliance with its obligations under this Deed;
- (vii) access the Approved Employer's IT System, including through the Department's IT Systems; and
- (viii) locate, inspect, copy and remove, any Records including data stored on the Approved Employer's IT System.

51.3 Subject to clause 51.4, the obligations referred to in clause 51.2 are subject to the Department providing reasonable prior Notice to the Approved Employer and compliance with the Approved Employer's reasonable work health and safety, security and/or biosecurity procedures.

51.4 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) an actual or suspected breach of this Deed; or
 - (iii) suspected fraud;
- (b) the Department is conducting Scheme Assurance Activities or an audit in relation to the Approved Employer; or
- (c) the Department accesses the Approved Employer's IT System and any related Material pursuant to a regular, automated process of retrieval of Records, including through the Department's IT Systems,

clause 51.3 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 51.4, provided that, in the case of clauses 51.4(a) and 51.4(b), the Department returns a copy of all such Records to the Approved Employer within a reasonable period of time.

Note: There are additional rights of access under the *Fair Work Act 2009* (Cth), *Ombudsman Act 1976* (Cth), the *Privacy Act 1988* (Cth), and the *Auditor-General Act 1997* (Cth).

51.5 The Approved Employer must, in accordance with any reasonable request by the Department, give or arrange:

- (a) reasonable access for any person nominated by the Department (including any representative from a Participating Country) to:
 - (i) any of the Approved Employer's premises; and
 - (ii) the Approved Employer's Personnel; and
- (b) all reasonable assistance to or for any person nominated by the Department (including any representative from a Participating Country) to access and inspect the accommodation of any Worker.

- 51.6 Each Party must bear its own costs in relation to any action under this clause 51.
- 51.7 The Approved Employer's compliance with this clause 51 does not in any way reduce the Approved Employer's responsibility to perform its obligations in accordance with this Deed.

Section C1.9 – Indemnity and insurance

52. Indemnity

- 52.1 The Approved Employer 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 Approved Employer and/or its Personnel; or
 - (ii) any Subcontractor (whether or not the relevant entity is a current Subcontractor);
 - (iii) any Provider; or
 - (iv) any Host Organisation,in connection with this Deed and/or their participation in the Scheme, where there was fault on the part of the entity whose conduct gave rise to the Loss;
 - (b) breach by the Approved Employer of this Deed or failure to meet an undertaking given under this Deed; or
 - (c) publication of the information referred to in clause 74, where the published information was provided by the Approved Employer to the Department.
- 52.2 The liability of the Approved Employer to indemnify the Department under this clause 52 will be reduced proportionately to the extent that fault on the Department's part contributed to the relevant Loss.
- 52.3 The Department's right to be indemnified under this clause 52 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

- 52.4 In this clause 52, '**fault**' means any negligent or unlawful act or omission or wilful misconduct, including fraud.

53. Insurance

- 53.1 Subject to this clause 53 and unless the Department otherwise agrees in writing, the Approved Employer 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 to adequately cover the Approved Employer's risks and liabilities arising under or in connection with this Deed:
- (a) public liability insurance;

- (b) professional indemnity insurance, if appropriate;
- (c) insurance for workers compensation as required by law or where common law claims by such workers are permissible outside of the workers compensation statutory scheme, insurance for employer's liability at common law, including:
 - (i) in each Australian state or territory where the Approved Employer is performing its obligations under this Deed; and
 - (ii) 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;
- (d) for any motor vehicle used in the performance of this Deed:
 - (i) insurance which covers third party property damage and injury; and
 - (ii) compulsory third party motor vehicle insurance for all registrable vehicles used in the performance of this Deed (including transporting Workers in the Approved Employer's or the Approved Employer's employees' vehicles); and
- (e) any other insurance reasonably required by the Department from time to time.

53.2 The Approved Employer must effect and maintain, or cause to be effected and maintained, the insurances specified at clause 53.1 and any other insurance policies that are required, based on independent expert advice, to adequately cover the Approved Employer's business risk that a similar entity performing obligations under this Deed, acting reasonably, would acquire, and any other insurance cover required by law.

53.3 Unless otherwise agreed by the Department in writing, all insurances required under this clause 53 (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.

53.4 In relation to the insurances specified in this clause 53, the Approved Employer 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.

53.5 In relation to each insurance policy relied upon by the Approved Employer in compliance with the Approved Employer's obligations to effect and maintain, or cause to be effected and maintained, insurance as required by this Deed, the Approved Employer must provide to the Department:

- (a) a fully copy of the insurance policy (including all schedules and endorsements); and
- (b) a certificate of currency,

at any time that the Department requests.

Note: Clause 53.5 allows the Department to request information relating to the insurances of any Subcontractor of the Approved Employer.

- 53.6 The Approved Employer 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 53, as appropriate given the nature of the work to be performed by each such Subcontractor.

54. Liability of the Approved Employer to the Department

Joint and several liability

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

Proportionate liability

- 54.2 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 83, this clause 54.2 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 83 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.

Section C1.10 – Changes in entities delivering the Scheme

55. Change in Control of the Approved Employer or a Subcontractor

- 55.1 The Approved Employer must not, without the Department's prior written consent, cause or allow to occur a Change in Control of:
- (a) the Approved Employer; or
 - (b) any Subcontractor.
- 55.2 The Department may, at its absolute discretion, grant, or refuse to grant its consent to a Change in Control of the Approved Employer or any Subcontractor. If the Department grants its consent, the Department may do so on such conditions as the Department sees fit.
- 55.3 The Approved Employer 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,
- (i) of the Approved Employer or any Subcontractor, including the dates of any changes to those matters.

55.4 If the Approved Employer breaches clause 55.1 or clause 55.3, the Department may:

- (a) vary this Deed under clause 82;
- (b) exercise any remedies specified in clause 65.2; or
- (c) terminate this Deed under clause 68,

by providing Notice to the Approved Employer.

55.5 In determining whether to take action under clause 55.4, the Department may take into account any matter, including whether the Department considers, at its absolute discretion, that the relevant Change in Control:

- (a) presents a risk to the Commonwealth; or
- (b) has an impact on the Scheme.

55.6 If the Department exercises its rights under clause 55.4(a):

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

56. Notice regarding Insolvency Events

56.1 Without limiting any other provisions of this Deed, the Approved Employer 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 Approved Employer, a copy of any:

- (i) record of a decision of the Approved Employer; 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 Approved Employer's winding up;

- (v) decisions and orders of any court or tribunal made against the Approved Employer, or involving the Approved Employer, including an order for the Approved Employer'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 Approved Employer's winding up; or
- (vii) notice that the Approved Employer has become bankrupt or has entered into a scheme of arrangement with their creditors (if the Approved Employer is an individual).

57. Subcontracting

Note: The term 'Subcontract' is defined in clause 1.1 to mean 'an arrangement entered into by the Approved Employer under which some or all of the Approved Employer's obligations under this Deed are provided by another entity'. Further, the term 'Subcontractor' is defined in clause 1.1 to mean 'any party which has entered into a Subcontract with the Approved Employer to perform a part (as determined by the Department) of the obligations under this Deed, and includes the party's Personnel, successors and assigns as relevant'. Note that those definitions only apply in relation to the Approved Employer's obligations under this Deed, not in relation to the Approved Employer's obligations under any other contract.

- 57.1 The Approved Employer must not, without the Department's prior written approval, enter into, or terminate, a Subcontract.
- 57.2 In giving approval under clause 57.1, the Department may impose such terms and conditions as the Department thinks fit and the Approved Employer must comply with any such terms and conditions.
- 57.3 The Department may revoke its approval of a Subcontractor on any reasonable ground by giving Notice to the Approved Employer, and, on receipt of the Notice, the Approved Employer must, at its own cost, promptly:
 - (a) cease using that Subcontractor; and
 - (b) if the Approved Employer continues to require that the relevant function is Subcontracted, arrange for its replacement by another Subcontractor acceptable to, and approved by, the Department.
- 57.4 The Approved Employer must ensure that any Subcontract includes:
 - (a) a right of termination for the Approved Employer to take account of the Department's right of termination under clause 68 and the Department's right of revocation of approval of a Subcontract under clause 57.3, and the Approved Employer 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 performance of this Deed 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; and

- (c) obligations on the Subcontractor that are the same as the obligations imposed on the Approved Employer under any provision of this Deed that is relevant to any aspect of the performance of obligations that have been Subcontracted, including the obligations imposed on the Approved Employer under clauses 43 (Personal Information), 44 (Confidential Information), 45 (Records to be kept and provided), 51 (Access to Premises and Material), 53 (Insurance), 77 (Negation of employment, partnership and agency) and 84 (Compliance with laws and government policies).
- 57.5 The Approved Employer 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); and/or
 - (b) listed as a terrorist under section 15 of the *Charter of the United Nations Act 1945* (Cth).
- 57.6 The Department may publicly disclose the names of any Subcontractors.
- 57.7 The Approved Employer must inform all Subcontractors that their participation in performing any of the Approved Employer's obligations under this Deed may be publicly disclosed.
- 57.8 If the Approved Employer does not comply with this clause 57, the Department may:
 - (a) exercise any remedies specified in clause 65.2; or
 - (b) terminate this Deed under clause 68.

58. Assignment and novation

- 58.1 The Approved Employer must not assign any of its rights under this Deed without the Department's prior written approval.
- 58.2 The Approved Employer must not enter into an arrangement that will require the novation of this Deed, without the Department's prior written approval.
- 58.3 In determining whether to approve any proposed assignment or novation, the Department may take into account any matter, including whether the Department considers, at its absolute discretion, that the assignment or novation:
 - (a) presents a risk to the Commonwealth; or
 - (b) has an impact on the Scheme.

Section C1.11 – Resolving Problems

59. Dispute resolution

Best endeavours, good faith and cooperation

- 59.1 Subject to clause 59.7, 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 59.

59.2 Each Party must:

- (a) only seek to rely on this clause 59 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 59, in order to achieve a prompt and efficient resolution of any dispute.

Informal resolution

59.3 Subject to clause 59.7, the Parties agree that any dispute arising in relation to this Deed will be dealt with, in the first instance, through the following process:

- (a) the Approved Employer initially discusses any issues relating to the dispute directly with their Contract Manager;
- (b) if the dispute can't be resolved through discussions between the Approved Employer and the Contract Manager, the Approved Employer requests that it be raised with the Department's Contact Person; and
- (c) if the above process does not resolve the dispute, an individual holding a position within the Senior Executive Service (SES) within the Department will attempt to facilitate a resolution.

Formal resolution

59.4 Subject to clause 59.7, if any dispute arising in relation to this Deed cannot be resolved using the process in clause 59.3, 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 59.4(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 59.4(c), the Parties will engage in a mediation in accordance with clause 59.5.

Mediation

59.5 If clause 59.4(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

59.6 Each Party must bear its own costs of complying with this clause 59 , and the Parties must bear equally the cost of any Mediator engaged under clause 59.5.

59.7 This clause 59 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 7 (Maintaining the status of Approved Employer), 9 (Recruitment Applications), 10 (Approved Recruitments), 11 (Employment), 15 (Work health and safety), 18 (Supervision), 23 (Approved Employer's conduct), 27 (General), 28 (Evidence to support entitlement to Payments), 30 (Overpayment), 31 (Debts), 33 (Fraud), 37 (General), 38 (Security assurance), 40 (Security), 45 (Records to be kept and provided), 47 (Public Sector Data), 48 (Access by Workers to Records held by the Approved Employer), 49 (Access to documents for the purposes of the Freedom of Information Act 1982 (Cth)), 50 (Scheme Assurance Activities and audits), 51 (Access to Premises and Material), 55 (Change in Control of the Approved Employer or a Subcontractor), 57 (Subcontracting), 60 (Directions), 61 (Transfer of Workers), 62 (Removal and training of Approved Employer, Subcontractor and Host Organisation Personnel), 63 (Action Plan), 64 (Approved Employer suspension and other temporary measures), 65 (Remedies), 66 (Performance under other government arrangements), 67 (Termination or reduction in scope with costs), 68 (Termination or reduction in scope for default), 71 (Transition in), 72 (Transition out leading up to expiry, termination or reduction in scope of this Deed), 75 (Conflict of interest) and 82 (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 Approved Employer.

59.8 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.

60. Directions

60.1 The Department may, at any time, give a direction to the Approved Employer in relation to this Deed, including the Guidelines, the Scheme, a Placement, a Provider Arrangement or a Worker, including a direction that the Approved Employer must:

- (a) take specific actions, including within a specified timeframe and/or for any period;
- (b) cease specific actions, temporarily or permanently; or
- (c) take necessary steps to mitigate any compliance risk the Department anticipates under this Deed or the Scheme.

60.2 Without limiting or otherwise affecting clause 60.1, the Department may give the Approved Employer a direction in respect of:

- (a) the numbers of Workers the Approved Employer may recruit, including by imposing a Recruitment Cap;
- (b) the industries or types of work in respect of which the Approved Employer may recruit Workers;
- (c) the Host Organisations and/or Providers that the Approved Employer may enter into or continue arrangements with, whether or not such Host Organisations and/or Providers have been approved under clauses 12.2 and 13.3;
- (d) the termination or reduction in scope of a Provider Arrangement, Host Organisation Agreement and/or a Subcontract;
- (e) action that must be taken in relation to Workers, including to cease interacting with, remove, place or transport Workers;
- (f) action or other measures that must be taken to address the impacts, or potential impacts, of any natural disaster or pandemic;
- (g) the locations in which the Approved Employer can recruit Workers to work in; and
- (h) the date until which the Approved Employer may recruit Workers.

60.3 If the Department gives the Approved Employer a direction under clause 60.1 or 60.2, the Approved Employer must:

- (a) immediately comply with the direction; and
- (b) otherwise continue to perform its obligations in accordance with this Deed.

61. Transfer of Workers

61.1 Subject to:

- (a) the relevant Worker's visa conditions; and
- (b) the Worker providing their genuine written consent,

the Department may, at any time and at its absolute discretion, by Notice to the Approved Employer direct that some or all of the Approved Employer's Workers be transferred to an Alternative Approved Employer.

61.2 If the Department gives the Approved Employer a direction under clause 61.1, the Approved Employer must:

- (a) immediately comply with the direction; and
- (b) otherwise continue to meet its obligations in accordance with this Deed.

62. Removal and training of Approved Employer, Subcontractor and Host Organisation Personnel

62.1 The Department may give Notice, on reasonable grounds related to the performance of the obligations under this Deed or risk to the Scheme or the Commonwealth, requiring the Approved Employer to:

- (a) ensure that one or more Personnel of the Approved Employer, any Subcontractor or any Host Organisation do not have any interaction with any Workers while the Department conducts an investigation in relation to those Personnel; and/or
- (b) remove any Personnel of the Approved Employer, any Subcontractor or any Host Organisation from work relating to the Scheme or the obligations under this Deed.

62.2 Upon receipt of a Notice under clause 62.1, the Approved Employer must, at its own cost, promptly comply with the Notice and arrange for the replacement of the relevant Personnel with Personnel acceptable to the Department.

62.3 For the purposes of clause 62.1, if the Approved Employer is unable to provide replacement Personnel (including Subcontractor Personnel) who are acceptable to the Department, the Department may terminate this Deed under clause 68.

62.4 The Approved Employer must provide for, and ensure that its Personnel, Host Organisations and Subcontractors participate in, any training as requested by the Department or as specified in the Guidelines.

63. Action Plan

- 63.1 The Department may, at its absolute discretion and for any reason:
- (a) require the Approved Employer by Notice, to prepare and submit an Action Plan for the Department's approval, in relation to any matter and/or to address any issues identified by the Department; or
 - (b) issue an Action Plan to the Approved Employer in relation to any matter and/or to address any issues identified by the Department.
- 63.2 If the Department Notifies the Approved Employer under clause 63.1(a), the Approved Employer must submit the Action Plan as requested by the Department and within 5 Business Days, or such other period specified by the Department, of receiving a Notice from the Department to do so.
- 63.3 The Department may, in its absolute discretion:
- (a) approve an Action Plan required to be submitted by the Approved Employer under clause 63.1(a); or
 - (b) direct the Approved Employer to:
 - (i) amend an Action Plan required to be submitted by the Approved Employer under clause 63.1(a); and
 - (ii) resubmit the Action Plan to the Department for its approval,in the manner and within the timeframe specified by the Department, and the Approved Employer must comply with any such direction.
- 63.4 The Approved Employer must comply with an Action Plan immediately from the time of:
- (a) Notification by the Department of its approval of the Action Plan under clause 63.1(a); or
 - (b) issuance of an Action Plan by the Department under clause 63.1(b).
- 63.5 The Approved Employer must not make changes to an approved or issued Action Plan without the prior written agreement of the Department.
- 63.6 Where the Department determines that the Approved Employer has breached this clause 63 the Department may, at its absolute discretion and by Notice to the Approved Employer:
- (a) exercise any remedies specified in clause 65.2; or
 - (b) terminate this Deed under clause 68.

64. Approved Employer suspension and other temporary measures

- 64.1 The Department may suspend the Approved Employer's participation in the Scheme, or require the Approved Employer to comply with other temporary measures, by Notice if the Department is of the opinion that:
- (a) the Approved Employer may be in breach of its obligations under this Deed, and while the Department investigates the matter;
 - (b) the Approved Employer is subject to any allegation, and/or an investigation by the Department or any Relevant Agency, including involving the employment, welfare and/or wellbeing of Workers and/or the Approved Employer's business practices or performance;
 - (c) there is potentially a risk to the safety of any Worker;
 - (d) the Approved Employer's performance of any of its obligations under this Deed is less than satisfactory to the Department; or
 - (e) the Approved Employer may be engaged in fraudulent activity, and while the Department investigates the matter.
- 64.2 Upon receipt of a Notice under clause 64.1, the Approved Employer must:
- (a) reduce the scope of any Approved Recruitment as specified in the Notice, until Notified otherwise by the Department;
 - (b) comply with any conditions relating to any Approved Recruitment as specified in the Notice, including any conditions in relation to the relevant Workers' location of work, type of work, accommodation or transport, until Notified otherwise by the Department; or
 - (c) immediately cease all Approved Recruitments and transfer any Workers as directed by the Department, until otherwise Notified by the Department;
 - (d) not enter into any new, or any extension of an existing, Provider Arrangement and/or Host Organisation Arrangement, until otherwise Notified by the Department; and
 - (e) within 10 Business Days of receiving Notice under clause 64.1, notify any Provider and/or Host Organisation who has contracted with the Approved Employer in relation to the Scheme of the contents of the Notice.

65. Remedies

- 65.1 If:
- (a) the Approved Employer fails to rectify a breach, or pattern of breaches and/or conditions of the Action Plan, 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 Approved Employer 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 Approved Employer'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 68; or
 - (e) this Deed otherwise provides for the Department to exercise rights under clause 65.2,
- the Department may, at its absolute discretion and by providing Notice to the Approved Employer, immediately exercise one or more of the remedies specified in clause 65.2.

65.2 The remedies that the Department may exercise are:

- (a) suspending any or all of the following, until otherwise Notified by the Department:
 - (i) any Payment under this Deed, in whole or in part; and/or
 - (ii) Access to all or part of the Department's IT Systems for any Personnel of the Approved Employer and/or any, Subcontractor, and/or other entity;
- (b) terminating, or requiring the cessation of all Access to the Department's IT Systems for any particular Personnel of the Approved Employer and/or any Subcontractor, or any other entity;
- (c) requiring the Approved Employer to obtain new logon IDs for any Personnel of the Approved Employer and/or any Subcontractor, and/or other entity, and if so required, the Approved Employer 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 Approved Employer and/or any Subcontractor, and/or other entity;
- (e) requiring the Approved Employer to prepare and implement an IT security plan to the Department's complete satisfaction, and if so required, the Approved Employer must do so within the timeframe required by the Department;
- (f) imposing special conditions on:
 - (i) the manner of delivery of the Approved Employer's obligations;
 - (ii) any Approved Recruitment, including any conditions in relation to the relevant Workers' location of work, type of work, accommodation or transport;
 - (iii) the claiming or making of Payments; and/or
 - (iv) the management of Records,

as the Department thinks fit, and the Approved Employer 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 Approved Employer, recovering some or all of the relevant payment from the Approved Employer, at the Department's absolute discretion, as a debt in accordance with clause 31;
- (j) imposing additional financial or performance reporting requirements on the Approved Employer;
- (k) taking any other action that the Department is entitled to take under this Deed, including:
 - (i) issuing a direction under clause 60;
 - (ii) imposing conditions on its approval of any Recruitment Application under clause 9.3;
 - (iii) imposing or varying a Recruitment Cap under clause 10.4; and/or
 - (iv) requiring the Approved Employer to prepare, submit and implement an Action Plan under clause 63; and/or
- (l) reducing the scope of this Deed.

65.3 If the Department takes any action under this clause 65:

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

66. Performance under other government arrangements

66.1 Where the Approved Employer was or is:

- (a) a party to any agreement with the Commonwealth, state, territory or local government; or
- (b) participating in any program, scheme, initiative, policy or activity that is organised, facilitated, supported or funded by the Commonwealth, state, territory or local government, ('other government arrangement'), and

the Department determines that the Approved Employer:

- (c) has failed to fulfil, or was or is in breach of, any of its obligations under the other government arrangement;
- (d) provided false or misleading information, or omitted to provide information under the other government arrangement;
- (e) has been suspended or excluded from participating in the other government arrangement; or

- (f) claimed any payment under the other government arrangement and the requirements under that arrangement to be entitled to, or to qualify for, the payment were not fully or properly satisfied by the Approved Employer,

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

- (g) exercise any remedies specified in clause 65.2; or
- (h) terminate this Deed under clause 68.

67. Termination or reduction in scope with costs

Termination or reduction in scope with costs

- 67.1 The Department may, at its absolute discretion, at any time by Notice to the Approved Employer, terminate or reduce the scope this Deed.
- 67.2 If this Deed is terminated or reduced in scope under clause 67.1, the Department is only liable:
 - (a) to make the Payments as specified in clause 67.3 or 67.4, as relevant; and
 - (b) subject to clauses 67.6, 67.7 and 67.8, for any reasonable, unavoidable costs actually incurred by the Approved Employer and directly attributable to the termination or reduction in scope of this Deed.

Limitation on Payments in the case of termination

- 67.3 Where the Department terminates this Deed under clause 67.1:
 - (a) subject to clause 67.3(b), the Department will only be liable to make Payments that are properly due to the Approved Employer before the date on which the termination takes effect; and
 - (b) the Department will only be liable to pay any Reimbursement to the Approved Employer to the extent that the Approved Employer legally committed the relevant monies before the Approved Employer received the relevant Notice issued by the Department under clause 67.1.

Limitation on Payments in the case of reduction in scope

- 67.4 Where the Department reduces the scope of this Deed under clause 67.1, with respect to the obligations that cease after the reduction in scope ('Ceased Obligations') the Department will only be liable to pay any Reimbursement in respect of relevant monies legally committed by the Approved Employer:
 - (a) before the Approved Employer receives the relevant Notice issued by the Department under clause 67.1; or
 - (b) after the Approved Employer receives the relevant Notice issued by the Department under clause 67.1 to the extent that the commitment of the relevant monies does not relate to the Ceased Obligations.

Approved Employer's obligations

- 67.5 Upon receipt of a Notice of termination or reduction in scope under clause 67.1, the Approved Employer 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 its participation in the Scheme;
 - (c) 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
 - (d) in the case of a reduction in scope, continue to perform its obligations in accordance with this Deed up to and following the date on which the reduction in scope takes effect, except for the obligations that will cease after the reduction in scope.

Limit on liability

- 67.6 The Department's liability to pay under this clause 67 is subject to the Approved Employer's:
- (a) strict compliance with this clause 67; and
 - (b) full and proper substantiation, to the Department's complete satisfaction, of any amounts claimed under clause 67.2.
- 67.7 The Department will not be liable under this clause 67 to pay any amounts for, or in connection with:
- (a) any loss of the Approved Employer's prospective profits attributable to the termination or reduction in scope under this clause 67;
 - (b) any loss of any benefits that would have been conferred on the Approved Employer had the termination or reduction in scope under this clause 67 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 obligations, but for a termination or a reduction in scope under this clause 67.
- 67.8 In addition, the Department will not be liable to pay the Approved Employer, and the Approved Employer agrees that its reasonable costs do not include:
- (a) any amounts owed by the Approved Employer under any contract of employment or to any of its Subcontractors; and
 - (b) payment of any liabilities arising from commitments the Approved Employer has made in relation to the performance of its obligations under this Deed beyond the end of the Financial Year in which the termination or reduction in scope takes place.

68. Termination or reduction in scope for default

- 68.1 The Department may terminate or reduce the scope of this Deed, by giving Notice to the Approved Employer, if:
- (a) the Approved Employer 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 Approved Employer is in breach of any of its obligations under this Deed that are capable of being rectified, and fails to rectify the breach, or pattern of breaches, within 10 Business Days, or such other period specified by the Department, of receiving a Notice from the Department to do so;
- (c) the Department determines that the Approved Employer has committed three breaches of its obligations under this Deed within an 18-month period, notwithstanding that the Approved Employer may have rectified the breach/es;
- (d) to the extent permitted by law, any Insolvency Event occurs;

Note: For the avoidance of doubt, clause 68.1(d) does not apply where the Approved Employer has transferred its incorporation or registration in accordance with the legislation under which it is incorporated or registered.

- (e) the Approved Employer fails to comply with any direction issued by the Department under this Deed;
- (f) the Approved Employer admits to, is under investigation for, or is charged with, a breach of any of its statutory obligations (including under the Fair Work Act or other relevant workplace laws, WHS Laws or the *Migration Act 1958* (Cth));
- (g) the Approved Employer, including any Director or other office holder of the Approved Employer, is subject to a criminal investigation or is charged with a criminal offence;
- (h) the Approved Employer fails to maintain its approval as a Temporary Activities Sponsor from the Department of Home Affairs;
- (i) the Department determines at its absolute discretion that, prior to or during the Term of this Deed, the Approved Employer has:
 - (i) engaged in misleading or deceptive conduct;
 - (ii) made a statement and/or provided information that is incorrect, misleading and/or incomplete to the Department or any Relevant Agency; or
 - (iii) omitted to provide information to the Department or any Relevant Agency; or
- (j) the Department becomes expressly entitled to terminate this Deed under any other provision of this Deed (excluding clause 66), including under any other provision of this Deed giving the Department the right to terminate under this clause 68.

69. Effect of Termination

69.1 Upon receipt of a Notice of termination under clauses 67.1 or 68.1, the Approved Employer must:

- (a) immediately cease all Approved Recruitments and transfer any Workers as directed by the Department;
- (b) not enter into any new, or any extension of an existing, Provider Arrangement and/or Host Organisation Agreement in relation to the Scheme after the date of termination;
- (c) immediately otherwise cease participating in the Scheme as an approved employer; and

- (d) within 10 Business Days of receiving Notice under clauses 67.1 or 68.1, Notify any Host Organisation and/or Provider who has contracted with the Approved Employer in relation to the Scheme that it is no longer an approved employer.

70. Force Majeure Events

- 70.1 In the instance of an actual or threatened Force Majeure Event, the Approved Employer must take all precautions, measures and actions reasonably within its control to:
- (a) avoid any delay or failure to carry out any obligations under this Deed;
 - (b) mitigate the effects of a Force Majeure Event promptly and mitigate any loss suffered as a result of their failure to carry out any obligations under this Deed (including by the expenditure of funds); and
 - (c) minimise or reduce the impact of the Force Majeure Event on the Workers, including by finding them alternative work to perform within the Approved Employer's organisation or implementing a Contingency Plan (with the Department's agreement).
- 70.2 If the Approved Employer becomes aware of any matter likely to constitute a Force Majeure Event affecting its performance of any of its obligations under this Deed, the Approved Employer must Notify the Department as soon as possible, but within 24 hours of becoming so aware. The Notice must contain the matters specified in the Guidelines.
- 70.3 If:
- (a) the Department considers that the Approved Employer is prevented from performing an obligation under this Deed by reason of the Force Majeure Event for which no work-around exists to allow the obligation to be performed; and
 - (b) the Approved Employer has complied, and is complying with, clause 70.1, and has met the requirements under clause 70.2,

the Department may issue a Notice to the Approved Employer advising that the relevant obligation will be suspended from the date specified in the Department's Notice until the cessation of the relevant Force Majeure Event.

Section C1.12 – Other matters

71. Transition in

- 71.1 The Parties acknowledge that clause 71.2 applies if:
- (a) prior to the Deed Commencement Date, the Approved Employer was a party to a Previous Deed;
 - (b) the Commonwealth approved recruitments of workers under Schedule 1 to the Previous Deed ('Previous Recruitment/s'); and
 - (c) the duration of the Previous Recruitment/s extends beyond the Deed Commencement Date.

- 71.2 The Parties acknowledge and agree that, from the Deed Commencement Date:
- (a) a Transition Recruitment is deemed to be an Approved Recruitment for the purposes of this Deed, subject to the Approved Employer meeting any requirements:
 - (i) specified in the Guidelines with respect to Transition Recruitments;
 - (ii) specified in any Transition Advice; and
 - (iii) Notified by the Department; and
 - (b) except as otherwise Notified by the Department, including under clause 71.3:
 - (i) all terms and conditions of this Deed apply to the Transition Recruitment; and
 - (ii) to the extent of any inconsistency between the conditions applying to a Previous Recruitment and the terms and conditions of this Deed, the requirements of this Deed will apply to the Transition Recruitment and the Previous Recruitment is deemed to be varied accordingly.
- 71.3 The Department may Notify the Approved Employer that one or more of the requirements specified in this Deed, including the Guidelines, do not apply in respect of a Transition Recruitment for a specified period of time.
- 71.4 Nothing in this clause 71 limits or otherwise affects the Parties' respective rights and obligations arising under or in connection with any Previous Deed prior to the Deed Commencement Date in relation to the Previous Recruitment/s.

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

Transition Period

- 72.1 The Department may Notify the Approved Employer of a Transition Period at any time and for any reason.
- 72.2 If the Department Notifies the Approved Employer of a Transition Period under clause 72.1, the Department may, at its absolute discretion, Notify the Approved Employer that:
- (a) the Approved Employer must stop participating in the Scheme, or a part of the Scheme;
 - (b) the Approved Employer must immediately cease some or all Approved Recruitments and transfer any Workers as directed by the Department; and/or
 - (c) certain provisions of this Deed do not apply to the Approved Employer's participation in the Scheme and/or performance of the obligations under this Deed,
- during the Transition Period, and where the Approved Employer receives any such Notice, the Approved Employer must comply with the Notice.
- 72.3 Unless Notified otherwise by the Department, the Approved Employer must, during the Transition Period, continue to perform all obligations that it is required to comply with under this Deed.

- 72.4 If the Approved Employer will, after the Transition Period, be undertaking activities similar to those that it undertakes under this Deed, the Department may, during the Transition Period, take any action to:
- (a) facilitate the transition of particular activities or Workers to the Approved Employer;
or
 - (b) transition the Approved Employer to activities after the Transition Period.

73. Acknowledgement and promotion

- 73.1 The Approved Employer 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 Approved Employer relating to the Scheme or this Deed:
 - (i) comply with the Guidelines or Notice from the Department relating to promotion, style, badging or signage; and
 - (ii) acknowledge the support the Approved Employer has received from the Commonwealth, in the manner consistent with the Guidelines; and
 - (b) deliver to the Department (at the Department's request and at the Approved Employer's own cost) copies of all promotional, publicity and advertising Materials that the Approved Employer has developed for the purposes of this Deed.
- 73.2 The Approved Employer must market and promote the Scheme, as requested by the Department, and deal with enquiries relating to the Approved Employer's participation in the Scheme, in accordance with the Guidelines.

74. The Department's right to publicise the Scheme and best practice

- 74.1 The Department may, by any means, publicise and report on the Scheme and on approval of the Approved Employer under this Deed, including:
- (a) the name and contact details of the Approved Employer;
 - (b) the Approved Employer's participation in the Scheme (including whether the Approved Employer is a Labour Hire Organisation or other type of entity); and
 - (c) the regions and industries in which it has been appointed as an approved employer for the purposes of the Scheme.
- 74.2 Where the Department identifies best practice on the part of the Approved Employer, the Department may disseminate advice of such best practice to any other entity, including other approved employers.

75. Conflict of interest

- 75.1 The Approved Employer 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.
- 75.2 The Approved Employer must not enter into any arrangement that may cause a Conflict.

- 75.3 If a Conflict arises, or is anticipated to arise, including as determined and Notified by the Department, the Approved Employer must:
- (a) immediately Notify the Department of the Conflict and the steps that the Approved Employer 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.
- 75.4 If the Approved Employer:
- (a) fails to take action in accordance with this clause 75; and/or
 - (b) is unable or unwilling to resolve or deal with the Conflict as reasonably requested by the Department,
- the Department may terminate this Deed under clause 68.

76. Where the Approved Employer is the trustee of a trust

- 76.1 Where the Approved Employer is the trustee of a trust, the Approved Employer warrants that:
- (a) it is, and will be, the employer of any Workers under this Deed;
 - (b) it is the sole trustee of the trust;
 - (c) it has full and valid power and authority to enter into this Deed and perform the obligations under it on behalf of the trust;
 - (d) it has entered into this Deed for the proper administration of the trust;
 - (e) all necessary resolutions, consents, approvals and procedures have been obtained or duly satisfied to enter into this Deed and perform the obligations under it; and
 - (f) it has the right to be indemnified out of the assets of the trust for all liabilities incurred by the Approved Employer under or in connection with this Deed.

77. Negation of employment, partnership and agency

- 77.1 The Approved Employer, its Personnel, agents, Host Organisations, Providers and Subcontractors 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.
- 77.2 Subject to this Deed, the Approved Employer must not represent itself, and must ensure that its Personnel, agents, Host Organisations, Providers and Subcontractors 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.

78. Protection of rights

78.1 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.

78.2 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.

79. Severance

79.1 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.

80. Entire agreement

80.1 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.

81. Variation of Deed

81.1 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.

82. The Department may vary certain terms

82.1 The Department may, at any time, vary:

- (a) Payment related provisions under this Deed;
- (b) the number of Workers the Approved Employer may recruit, including by imposing, or varying, the Recruitment Cap;
- (c) the industries or types of work for which the Approved Employer may recruit Workers;
- (d) an Approved Recruitment, including by imposing any conditions in relation to the Workers, regions, accommodation or transport (if relevant);
- (e) the types or particular Host Organisations or Providers the Approved Employer may use, whether or not such Host Organisations or Providers have been approved by the Department;
- (f) the locations in which the Approved Employer can recruit Workers to work in; and
- (g) the date until which the Approved Employer may recruit Workers; or

- (h) any provision of this Deed relating to the way in which the Scheme is delivered or the Approved Employer is performing its obligations,

for all or part of the Term of this Deed:

- (i) based on the Department's assessment of the extent to which the Scheme Objectives are being met;
- (j) where the Department becomes expressly entitled under any other provision of this Deed to vary this Deed under this clause 82; or
- (k) acting reasonably, for any other reason as determined by the Department at its absolute discretion, by providing Notice to the Approved Employer.

82.2 If the Department exercises its rights under clause 82.1:

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

83. Applicable law and jurisdiction

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

83.2 Both Parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales in respect to any dispute under this Deed.

84. Compliance with laws and government policies

84.1 The Approved Employer must:

- (a) in carrying out its obligations under this Deed; and
- (b) ensure that its Personnel, Subcontractors, Host Organisations, Providers 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 any workplace laws (including any WHS Laws, the Fair Work Act, the Fair Work Regulations and any applicable Fair Work Instrument) and anti-discrimination legislation, including the *Disability Discrimination Act 1992* (Cth);
- (d) all laws of any Participating Country that apply to the Approved Employer's participation in the Scheme and/or performance of its obligations under this Deed; and
- (e) any Commonwealth policies Notified by the Department to the Approved Employer, referred to or made available by the Department to the Approved Employer (including by reference to an internet site), including any listed in this Deed.

Workplace Gender Equality Act 2012 (Cth)

- 84.2 Clauses 84.3 to 84.4 apply only to the extent that the Approved Employer is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012 (Cth)* ('**the WGE Act**').
- 84.3 The Approved Employer must:
- (a) Notify the Department as soon as practicable if the Approved Employer becomes noncompliant with the WGE Act during the Term of this Deed; and
 - (b) provide a current letter of compliance issued to the Approved Employer by the Commonwealth Workplace Gender Equality Agency within 18 months from the Deed Commencement Date, and following this, annually, to the Department.
- 84.4 For the avoidance of doubt, compliance with the WGE Act does not relieve the Approved Employer from its responsibility to comply with its other obligations under this Deed.

85. Checks and reasonable care

Personnel and other individuals

- 85.1 Before arranging for any of its Personnel, any Subcontractor, any Host Organisation, any Provider, or any Supervisor, to be involved in the Scheme, the Approved Employer must arrange and pay for all checks or similar, and comply with any other requirements, to ensure that the relevant Personnel, potential Host Organisation, Provider or individual'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 they are participating in the Scheme; and
 - (b) the Guidelines.

Child Safety

- 85.2 The Approved Employer must:
- (a) comply with all applicable Working with Children Laws in relation to the involvement of Child-Related Personnel in the Scheme, including obtaining, at the Approved Employer's cost, all necessary Working With Children Checks however described; and
 - (b) ensure that Working With Children Checks obtained in accordance with clause 85.2(a) remain current and that all Child-Related Personnel continue to comply with all applicable Working with Children Laws for the duration of their participation in the Scheme.

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

- 85.3 The Approved Employer must, in relation to participating in the Scheme and/or performing its obligations under this Deed:
- (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 Approved Employer 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 85.3(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 Approved Employer 's risk management strategy required under clause 85.3(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 Approved Employer'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.
- 85.4 With reasonable Notice to the Approved Employer, the Department may conduct a review of the Approved Employer's compliance with the Child Safety Obligations.
- 85.5 The Approved Employer agrees to:
- (a) promptly Notify the Department of any failure by the Approved Employer 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 Approved Employer's implementation of the National Principles for Child Safe Organisations or compliance with the Child Safety Obligations; and
 - (c) promptly, and at the Approved Employer'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.
- 85.6 Wherever Child Safety Obligations may be relevant to a Subcontract, the Approved Employer must ensure that:
- (a) any Subcontract imposes on the Subcontractor the same Child Safety Obligations that the Approved Employer 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.

- 85.7 The Approved Employer must not allow any of its Personnel, any Subcontractor, any Host Organisation, any Provider or any Supervisor to participate in the Scheme:
- (a) if any relevant legislation or the 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 Scheme; or
 - (ii) there is otherwise a reasonably foreseeable risk that the individual may cause loss or harm to any other individual, unless the Approved Employer has put in place reasonable measures to remove or substantially reduce that risk.

Workers

- 85.8 If any Placement involves close proximity with people who are elderly, disabled or otherwise vulnerable or Children, before arranging for a Worker to start work in the Placement, the Approved Employer must, unless Notified otherwise, arrange and pay for all checks or similar, and comply with any other requirements, to ensure that the Worker's work in the Placement does not breach:
- (a) any relevant legislation, and in particular, any Working with Children Laws, in effect in the jurisdiction(s) in which the Placement is conducted or the Employment exists; and
 - (b) the Guidelines.
- 85.9 The Approved Employer must not allow a Worker to work in a Placement:
- (a) if any relevant legislation or Guidelines provide or mean that the Worker must not work in the Placement; 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 Placement; or
 - (ii) there is otherwise a reasonably foreseeable risk that the individual may cause loss or harm to other individuals involved in the Placement,
- unless the Approved Employer has put in place reasonable measures to remove or substantially reduce that risk.

Note: Where the Approved Employer arranges for a Worker to work in a Placement with a Host Organisation, 'reasonable measures' may include, if relevant and consistent with any requirements under the law, advising the Host Organisation of any information that may be relevant to assisting the Host Organisation to mitigate relevant risks.

86. Modern slavery

86.1 In this clause 86:

‘Reporting Period’ means a reporting period within the meaning of section 4 of *the Modern Slavery Act 2018* (Cth).

86.2 The Approved Employer represents and warrants to the Department that, as at the Deed Commencement Date, the Approved Employer has no knowledge of any Modern Slavery Offence that has occurred or is occurring in its operations or supply chains.

86.3 The Approved Employer must at all times during the Term of this Deed and in performing its obligations:

- (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.

86.4 The Approved Employer 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.

86.5 If for a Reporting Period the Approved Employer's consolidated revenue is \$100 million or more, the Approved Employer 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>.

87. Notices

87.1 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;
 - (C) hand delivery; or
 - (D) through the Department's IT Systems; and
 - (ii) except for Notices given through the Department's IT Systems, either:
 - (A) the email address, postal address or physical address of the Party as set out in items 1 and 2 of the schedule to the Particulars, unless paragraph (ii)(B) applies; or
 - (B) where the Party has Notified the other Party of an updated address for Notices, that updated address,

- (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 Notices given other than by email or through the Department's IT Systems, be signed by the sending Party or by an individual duly authorised by the sending Party.

87.2 A Notice given in accordance with clause 87.1 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;
- (c) if hand delivered, on delivery; and
- (d) if given through the Department's IT Systems:
 - (i) in the case of Notices given by the Department to the Approved Employer, when the Notice is sent to the Approved Employer's account in the Department's IT Systems, as evidenced by an audit log generated by the Department's IT Systems; or
 - (ii) in the case of Notices given by the Approved Employer to the Department, when the Notice is submitted to the Department by the Approved Employer in the Department's IT Systems, as evidenced by an audit log generated by the Department's IT Systems.