



Australian Government

A large, stylized Indigenous artwork in the background, featuring a central circular motif with concentric rings of dots in teal, black, and white, surrounded by a thick black band with a white dotted border, all set against a teal background.

# **Time to Work Employment Service Deed 2018-2024**

**Effective 1 July 2023**

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## ACKNOWLEDGEMENT OF COUNTRY

In the spirit of respect and reconciliation, the Commonwealth of Australia acknowledges and pays respect to the traditional custodians of this country, the Aboriginal and Torres Strait Islander people of Australia, and their continuing connection to land, waters, sea and community.

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**Deed Variation History:** A complete variation history, which reflects all general deed variations made to date, is provided at the end of this document. Minor formatting changes for accessibility have also been applied to this document, but do not appear in the Deed Variation History.

## Reader's Guide to this Deed

### Introduction

The Australian Government is committed to creating better opportunities for Aboriginal and Torres Strait Islander peoples to secure employment and help to close the gap in employment outcomes between Aboriginal and Torres Strait Islander peoples and non-Aboriginal and Torres Strait Islander peoples.

In the 2017–2018 Federal Budget, the Australian Government announced the introduction of the Prison to Work program, a new in-prison employment service targeted at Aboriginal and Torres Strait Islander prisoners. Subsequently renamed, the Time to Work Employment Service is aimed at better preparing prisoners for their release, improving the prospect of a prisoner connecting with post-release support services and better supporting the post-release Employment Services Provider to place ex-offenders in employment.

The Time to Work Employment Service is an initiative of the broader Closing the Gap – Employment Services package and responds to the recommendations made in the Prison to Work Report, released by the Council of Australian Governments (COAG) on 9 December 2016.

### Overview of Services

Under the Time to Work Employment Service, Time to Work Providers will be required, amongst other things, to provide a minimum of three face to face meetings to Participants. Generally speaking, during these meetings, the Time to Work Provider must:

- conduct a Job Seeker Classification Instrument assessment
- assist the Services Australia to conduct the Employment Services Assessment
- discuss and prepare a Participant's Transition Plan, and
- organise and attend a Facilitated Transfer Meeting with the Participant and their post-release Employment Services Provider.

The Services must be delivered in a culturally competent manner and be tailored to the needs of the Participant.

## **Structure**

This Deed is comprised of 'Parts' which are divided into 'Chapters', which are subdivided into 'Sections'.

There are two Parts:

1. Part A – TIME TO WORK EMPLOYMENT SERVICE
2. Part B – GENERAL CONDITIONS

There are two Chapters in Part A – TIME TO WORK EMPLOYMENT SERVICE:

- A1. Time to Work Employment Service
- A2. Payments

There are four Chapters in Part B - GENERAL CONDITIONS:

- B1. Introduction
- B2. Basic Conditions
- B3. Information Management
- B4. Deed Administration

There are four Annexures to this Deed:

- Annexure 1 – Definitions
- Annexure 2 – Payments
- Annexure 3 – Joint Charter
- Annexure 4 – Time to Work Employment Service Guarantee

Schedule 1 to this Deed contains the Deed and business details which are particular to individual Providers.

- Schedule 1 – Deed and business details

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

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# **PART A – TIME TO WORK EMPLOYMENT SERVICE**

## **CHAPTER A1 – SERVICES**

### **Section A1.1 – General requirements for Time to Work Employment Service**

#### **1. Time to Work Employment Service**

- 1.1 The Provider must provide Services:
- (a) to all Eligible Prisoners, in accordance with clause 5.1(b); and
  - (b) to all Participants:
    - (i) for the duration of their Period of Service; and
    - (ii) in accordance with this Part A.
- 1.2 The objective of the Time to Work Employment Service is to connect Indigenous prisoners with employment services to better prepare them to transition back into the community and find work following their release from prison.

#### **2. Implementation Plan and Time to Work Employment Service Guarantee**

##### **Approval of Implementation Plan**

- 2.1 The Provider must, within four weeks of the Deed Commencement Date, develop and submit a draft implementation plan for the Department's approval in the manner specified in the Guidelines.
- 2.2 The Department may, at its absolute discretion:
- (a) approve the draft implementation plan as the Implementation Plan; or
  - (b) direct the Provider to:
    - (i) amend the draft implementation plan; and
    - (ii) resubmit the draft implementation plan to the Department for its approval, in the manner and within the timeframe specified by the Department, and the Provider must comply with any such direction.
- 2.3 The Parties agree that on Notification by the Department of its approval of the draft implementation plan, the draft implementation plan becomes the Implementation Plan.
- 2.4 The Department may immediately exercise its rights under clause 62.2 [Remedies] if the Provider fails to comply with clause 2.1 or clause 2.2(b).
- 2.5 The Provider must conduct the Services:
- (a) at or above the minimum standards in the Time to Work Employment Service Guarantee and make copies of the Time to Work Employment Service Guarantee available to Participants, Eligible Prisoners and Prisons; and
  - (b) in accordance with all representations made by the Provider with regards to Services, as specified in the Implementation Plan and the Provider's response to the request for proposal for this Deed.

#### **3. Working with Prisons**



- 3.1 The Provider must work cooperatively with each Prison to deliver the Services, including by:
- (a) negotiating the manner and time of the Provider's attendance at the Prison and communication with Eligible Prisoners and Participants; and
  - (b) complying with the Prison's:
    - (i) policies and procedures; and
    - (ii) requests and directions.

#### **4. Working with other services in the community**

- 4.1 The Provider must identify, and work collaboratively with, providers of other initiatives and services to understand and facilitate other assistance available to Participants, including programs and services provided by:
- (a) the Commonwealth, state or territory governments;
  - (b) relevant local governments;
  - (c) private and community organisations;
  - (d) Employment Services Providers;
  - (e) education institutions; and
  - (f) healthcare and hospital organisations.

### **Section A1.2 – Sourcing Participants**

#### **5. Promoting the Time to Work Employment Service to Eligible Prisoners**

- 5.1 Subject to clause 16.4(a), the Provider must:
- (a) develop links with each Prison and any in-prison service providers to attract and retain Participants; and
  - (b) promote the Time to Work Employment Service to Eligible Prisoners in each Prison, including by:
    - (i) providing information about the Time to Work Employment Service;
    - (ii) providing information about Employment Services Programs available to Eligible Prisoners on release from Prison;
    - (iii) explaining how Participants' Personal Information is handled in the Time to Work Employment Service; and
    - (iv) encouraging Eligible Prisoners to volunteer to participate in the Time to Work Employment Service.

#### **6. Registration of Participants**

- 6.1 Before providing Services to a Participant, the Provider must ensure that the Participant has completed a:
- (a) privacy consent form; and
  - (b) registration form,
- using the forms, and in the manner, specified by the Department.

- 6.2 As early as possible after a Participant has completed a privacy consent form in accordance with clause 6.1, the Provider must request a copy of the Participant's:
- (a) education records relevant to preparing the Transition Plan, from the relevant education authorities and the Participant's Prison; and
  - (b) medical records relevant to the conduct of an ESAt from the relevant health and medical authorities and the Participant's Prison,
- using the form specified by the Department.
- 6.3 The Provider must Commence each Participant:
- (a) as early as possible after a Participant has completed a registration form in accordance with clause 6.1; and
  - (b) prior to the first day of the Transition Out Period.

## **7. Transfer of Participants between Prisons**

- 7.1 If the Provider becomes aware that a Participant who has previously received Time to Work Employment Services from another Time to Work Provider has been transferred to a Prison, the Provider must:
- (a) Refer the Participant to the Provider in the Department's IT Systems; and
  - (b) provide Services to the Participant, except any Time to Work Employment Service that has already been provided to the Participant by the other Time to Work Provider.
- 7.2 If the Provider becomes aware that a Participant has been transferred to a prison that is serviced by another Time to Work Provider, the Provider must immediately provide sufficient assistance and cooperation to:
- (a) the Participant's new Time to Work Provider;
  - (b) the Participant's new prison; and
  - (c) any other person nominated by the Department,
- to facilitate the continuity of the Time to Work Employment Service to the Participant.

## **Section A1.3 – Services to Participants**

### **8. Services to Participants generally**

- 8.1 In addition to the Services specified in:
- (a) sections A1.1 and A1.2;
  - (b) the Time to Work Employment Service Guarantee; and
  - (c) the Provider's response to the request for tender for this Deed,
- the Provider must, for each Participant:
- (d) continually assess and respond to employment barriers in accordance with clause 9;
  - (e) provide Contacts in accordance with clause 10;
  - (f) conduct a JSCI assessment in accordance with clause 12;
  - (g) facilitate the conduct of an ESAt in accordance with clause 13;

- (h) prepare a Transition Plan in accordance with clause 14; and
- (i) facilitate the Participant's transfer to an Employment Services Program in accordance with clause 15.

## **9. Identifying and addressing employment barriers**

- 9.1 The Provider must continually identify and assess each Participant's employment barriers, including any need to:
  - (a) address Non-vocational and Vocational Barriers and improve their personal situation;
  - (b) address literacy and numeracy deficits;
  - (c) obtain a Year 12 or Certificate III or higher qualification;
  - (d) obtain a drivers licence; or
  - (e) improve their Work Readiness.
- 9.2 The Provider must identify initiatives, services and education courses available to address each Participant's employment barriers and:
  - (a) facilitate the Participant's access to the initiatives, services and education courses available to the Participant while in Prison; and
  - (b) prepare for the Participant's access to the initiatives, services and education courses available to the Participant post-release from Prison.

## **10. Contacts**

- 10.1 Subject to any Guidelines, the Provider must engage each Participant in a minimum of three Contacts that include:
  - (a) an Initial Appointment (clause 11);
  - (b) one or more Contacts to:
    - (i) assess the Participant's level of disadvantage using the JSCI (clause 12.1);
    - (ii) facilitate the conduct of an ESAt (clause 13.2);
    - (iii) discuss and approve the Transition Plan (clause 14.3);
    - (iv) discuss the Participant's employment, education and training history (including any work, education and training while in prison), and any vocational and career aspirations;
    - (v) identify any employment barriers evident from the Participant's education and medical records;
    - (vi) discuss the services received by the Participant while in Prison; and
    - (vii) provide information to the Participant on the Employment Services Programs available to the Participant on release from prison (clause 15.1); and
  - (c) if the relevant Participant completes a Pre-Release Interview before they are Exited from the Services and is referred by Services Australia to an Employment Services Provider, a Facilitated Transfer Meeting (clause 15.2).

Note: the requirements at clauses 10.1(b)(iii) to 10.1(b)(vii) may be met during any Contact (including the Initial Appointment and the Facilitated Transfer Meeting, if appropriate). The requirements at clauses 10.1(b)(i) and

10.1(b)(ii) may be met during any Contact (including the Initial Appointment, if appropriate) other than the Facilitated Transfer Meeting.

**10.2 The Provider must ensure that:**

- (a) Contacts are face to face between the Participant and the Provider, except where face to face contact is not possible due to circumstances outside of the Provider's control;
- (b) Contacts are delivered by the Provider in a culturally competent manner in accordance with any Guidelines, and appropriately tailored to meet the individual circumstances of the Participant;
- (c) in all Contacts, the Provider uses its best endeavours to develop a rapport with the Participant; and
- (d) the result of all Contacts, except the Initial Appointment, is recorded in the Department's IT Systems.

**11. Initial Appointment**

**11.1 During the Initial Appointment for each Participant, the Provider must:**

- (a) explain how the Participant's Personal Information is handled in the Time to Work Employment Service;
- (b) ensure the Participant has completed the privacy consent form and registration form in accordance with clause 6.1; and
- (c) explain the Services that the Provider will provide to them.

**12. Job Seeker Classification Instrument**

**12.1 Prior to the Facilitated Transfer Meeting or the Participant's release from Prison, (whichever occurs earlier), the Provider must:**

- (a) during a Contact, assess the Participant's level of disadvantage using the JSCI in accordance with any Guidelines; and
- (b) record all information relevant to the JSCI in the Department's IT Systems.

**13. Employment Services Assessment**

**13.1 As early as possible after the request at clause 6.2(b), the Provider must obtain each Participant's medical records relevant to the conduct of an ESAt from the relevant health and medical authorities and the Participant's Prison.**

**13.1A As early as possible after the Provider receives a Participant's medical records relevant to the conduct of an ESAt, the Provider must provide a copy of those medical records to Services Australia.**

**13.2 Subject to any Guidelines and clause 13.3, prior to the Facilitated Transfer Meeting or the Participant's release from Prison (whichever occurs earlier), the Provider must, for each Participant:**

- (a) arrange for Services Australia to participate in a meeting with the Participant to conduct an ESAt; and
- (b) where the Participant has consented to the Provider being present at the meeting specified at clause 13.2(a), attend the meeting and assist the Participant

to engage with and provide information to Services Australia to facilitate the ESAt.

Note: Services Australia does not have to attend a meeting with the Participant in person to conduct the ESAt.

- 13.3 If it is not possible for the Provider to arrange, or a Participant fails to attend, a meeting pursuant to clause 13.2 due to circumstances relating to the Participant that are outside of the Provider's control, the Provider may arrange for Services Australia to conduct an ESAt in the absence of the Participant and the Provider.

Note: For the avoidance of doubt, an ESAt conducted by Services Australia in accordance with clause 13.3 will not amount to a Contact.

## **14. Transition Plan**

- 14.1 As early as possible after the request at clause 6.2(a), the Provider must obtain each Participant's education records relevant to the preparation of the Transition Plan from the relevant education authorities and the Participant's Prison.
- 14.2 Prior to the Facilitated Transfer Meeting or the Participant's release from Prison (whichever occurs earlier), the Provider must prepare a Transition Plan for each Participant:
- (a) in consultation with:
    - (i) the Participant;
    - (ii) the relevant Prison; and
    - (iii) other in-prison service providers assisting the Participant;
  - (b) in the form, and containing the content specified in, the Department's IT Systems;
  - (c) with reference to the Participant's relevant education records; and
  - (d) specifying the employment barriers and relevant initiatives, services and education courses identified by the Provider in accordance with clause 9.
- 14.3 Prior to the Participant's Exit, the Provider must, during a Contact, discuss the Transition Plan with the Participant and use its best endeavours to obtain the Participant's approval to the Transition Plan in accordance with any Guidelines.
- 14.4 The Provider must record the Transition Plan and any Participant approval of the Transition Plan in the Department's IT Systems.

## **15. Facilitated Transfer to Employment Services Programs**

- 15.1 Subject to any Guidelines, in preparation for a Facilitated Transfer Meeting, at least 21 days prior to each Participant's scheduled release from Prison, the Provider must, during a Contact:
- (a) discuss with the Participant which Employment Region the Participant intends to live in on release from prison;
  - (b) provide information to the Participant regarding:
    - (i) the Employment Services Programs available to the Participant in the Employment Region in which the Participant intends to live on release from prison;

- (ii) how Employment Services Providers are allocated to job seekers including the Department's policy in relation to job seeker's choice of Employment Services Provider;
    - (iii) the activity test or participation requirements that the Participant may have to meet in order to receive an Income Support Payment; and
    - (iv) the job vacancies and skills in demand in or near the Employment Region in which the Participant intends to live on release from prison; and
  - (c) explain the purpose of, and encourage the Participant's attendance at, a Pre-Release Interview.
- 15.2 If a Participant attends a Pre-Release Interview before they are Exited from the Services and is referred by Services Australia to an Employment Services Provider, the Provider must arrange for the Participant's proposed Employment Services Provider and the Participant to participate in a Facilitated Transfer Meeting. During the Facilitated Transfer Meeting, the Provider must:
- (a) introduce the proposed Employment Service Provider to the Participant;
  - (b) facilitate discussion between the Participant and the proposed Employment Service Provider about the Participant's transition to an Employment Services Program following their release from prison, including the Participant's Transition Plan; and
  - (c) confirm the first post-release meeting between the Participant and the proposed Employment Services Provider.

Note: A Facilitated Transfer Meeting may occur pre or post-release of the Participant from Prison. The proposed Employment Service Provider does not have to attend a Facilitated Transfer Meeting in person.

## **Section A1.4 – End of Services**

### **16. End of Services**

#### **Exits**

- 16.1 Where an Exit occurs, the Participant's Period of Service ends and the Provider may cease providing Services to the Participant.
- 16.2 A Participant is Exited:
- (a) when the Participant commences in an Employment Services Program (other than Self-Employment Assistance);
  - (b) when a Provider Exit occurs in accordance with clause 16.2;
  - (c) when any other event specified by the Department occurs; or
  - (d) on the Completion Date.

Note: A Participant who is Exited for the reason at clause 16.2(a) will be automatically removed from the Department's IT Systems as being eligible for the Time to Work Employment Service.

- 16.3 The Provider must perform a Provider Exit if a Participant:
- (a) advises the Provider that they no longer wish to participate or otherwise ceases to participate in the Time to Work Employment Service;
  - (b) ceases to be an Eligible Prisoner;

- (c) is not eligible for an Employment Services Program, or is Exempt, on release from prison;
- (d) does not complete a Pre-Release Interview or commence in an Employment Services Program within 13 weeks of release from prison;
- (e) is referred to Self-Employment Assistance; or
- (f) does any other act or fails to do an act, as specified by the Department.

Note: For the purposes of clause 16.3(b), a Participant who does not have their parole granted, and has a new release date which is more than four months in the future, ceases to be an Eligible Prisoner.

- 16.4 Where an Exit occurs for any reason but the Participant later returns to the Services, the Provider must Commence the Participant and:
- (a) if the Participant returns to the Services less than 13 weeks after the date of the Exit, resume delivering Services that have not yet been provided to the Participant; or
  - (b) if the Participant returns to the Services more than 13 weeks after the date of Exit, provide all Services to them as a new Participant.

#### **Transition Out Period**

- 16.5 During the Transition Out Period, the Provider must:
- (a) cease delivering Services under clause 5 (“Promoting the Time to Work Employment Service”); and
  - (b) use its best endeavours to deliver all other Services in full to Participants prior to the Completion Date.

### **Section A1.5 – Performance management**

#### **17. Performance Indicators**

##### **KPIs**

- 17.1 The KPIs are as follows:
- (a) KPI 1 - Effectiveness: The extent to which Participants successfully commence with an Employment Services Provider following their release from Prison.
    - (i) KPI 1 measurement: The Department’s assessment of the Provider’s performance based on the number of Participants who received a Facilitated Transfer and who commenced with the Employment Services Provider that they were referred to.
  - (b) KPI 2 - Engagement: The extent to which the Provider has developed links with the Prisons and any in-prison service providers to attract and retain Participants.
    - (i) KPI 2 measurement: The Department’s assessment of the Provider’s performance based on:
      - (A) the number of Participants as a percentage of the number of Eligible Prisoners; and
      - (B) the number of Transition Plans that are approved by Participants as a percentage of the number of Participants.

- (c) KPI 3 – Satisfaction and Service Quality: The Participants’ and other stakeholders’ level of satisfaction with the Provider’s delivery of the Services.
- (i) KPI 3 measurement: The Department’s assessment of the Provider’s quality of Services and assurance based on feedback from Participants and other stakeholders, including Prisons, other in-prison service providers and Employment Service Providers.

**Other factors in performance assessment**

- 17.2 The Department may also take into account other factors when assessing the Provider’s performance, including but not limited to:
- (a) the Provider’s cultural competence in accordance with any Guidelines, in assisting Eligible Prisoners and Participants;
  - (b) the Provider’s performance in working collaboratively with other initiatives and services to understand and facilitate other assistance available to Participants;
  - (c) the Provider’s collaboration with:
    - (i) Prison(s);
    - (ii) other Time to Work Providers; and
    - (iii) Employment Services Providers;
  - (d) the Provider’s compliance with this Deed and any representation made by the Provider in its response to the request for tender for this Deed; and
  - (e) any other information available to the Department, including Provider feedback, feedback from Participants, the Prison(s), intelligence from the Department’s Employment Services Tip off Line and Services Australia.

**18. Action about performance**

- 18.1 Without limiting the Department’s rights under this Deed or the law, if the Provider’s performance is not to the Department’s satisfaction, the Department may:
- (a) engage another Time to Work Provider to provide the Time to Work Employment Service at a Prison;
  - (b) transfer some or all Participants who are Registered with the Provider to the other Time to Work Provider;
  - (c) limit the number of Participants that the Provider may provide Services to; and/or
  - (d) require the Provider to cease providing Services to the Prison(s).
- 18.2 For the avoidance of doubt, any exercise of the Department’s rights under this clause 18 is not a reduction of scope or termination for which compensation is payable.
- 18.3 If the Department takes any action under this clause 18:
- (a) where relevant, this Deed is deemed to be varied accordingly; and
  - (b) the Provider must perform all its obligations under this Deed as varied.



## CHAPTER A2 –PAYMENTS

### Section A2.1 – PAYMENTS

#### 19. Payments

##### Service Fee

- 19.1 Subject to this Deed, the Department will pay the Provider upfront Service Fees ('Upfront Payment') for each Prison:
- (a) at the Service Start Date for each Prison, on a pro-rata basis in accordance with the calculation at clause 19.3; and
  - (b) thereafter, at the beginning of each Six Month Period for the Term of this Deed.
- 19.2 Subject to clause 19.3, the Upfront Payment for each Six Month Period for each Prison is calculated as:

##### Estimated Commencements x Service Fee

Where:

'Estimated Commencements' is calculated as:

Service Percentage x Estimated Eligible Prisoners;

'Service Percentage' is calculated as:

$$\frac{\text{number of Participants Commenced in the preceding Six Month Period}}{\text{number Estimated Eligible Prisoners for the preceding Six Month Period}}$$

or 50%, whichever is higher; and

'Estimated Eligible Prisoners' is calculated as:

- (a) the Department's estimation of the number of Eligible Prisoners that will be in the Prison for the relevant Six Month Period; or
  - (b) the estimated number of Eligible Prisoners as specified at item 6.5 of Schedule 1, whichever is higher.
- 19.3 The Upfront Payment to be paid at the Service Start Date for each Prison is calculated as:

$$\text{Upfront Payment amount x } \frac{\text{No. of days from Service Start Date until the end of the relevant Six Month Period}}{\text{No. days in the relevant Six Month Period}}$$

##### Transition Plan Fee

- 19.4 Subject to this Deed, the Department will pay the Provider a Transition Plan Fee:

- (a) for each Participant;
- (b) once on:
  - (i) the Provider's approval of the Transition Plan in accordance with the Guidelines, following agreement of the Participant to the Transition Plan; or
  - (ii) if the Participant does not agree to the Transition Plan, as otherwise specified in any Guidelines; and
- (c) in accordance with Table 1 in Annexure 2.

#### **Limits on Payments**

- 19.5 Subject to this Deed, the Department will not pay the Provider, and the Provider must not claim, a Payment:
- (a) on a pro rata basis;
  - (b) for a Participant Commenced on or after the first day of the Transition Out Period; or
  - (c) after the Completion Date.

Note: Preconditions for Payment also apply under clause 35.

#### **Reserved**

- 19.6 Reserved.

#### **Ancillary Payments**

- 19.7 The Department may pay the Provider Ancillary Payments to support the viability of the Services, on such terms and conditions as the Department determines.

# **PART B – GENERAL TERMS AND CONDITIONS**

## **CHAPTER B1 - INTRODUCTION**

### **Section B1.1 – Definitions and interpretation**

#### **20. Definitions and interpretation**

- 20.1 In this Deed, unless the contrary intention appears, all capitalised terms have the meaning given to them in the definitions in Annexure 1. All other words have their natural and ordinary meaning.
- 20.2 Unless the contrary intention appears:
- (a) words in the singular include the plural and vice versa;
  - (b) a reference to a person includes a partnership and a body whether corporate or otherwise;
  - (c) a reference to an entity includes an association of legal persons, however constituted, governed by deed, an incorporated body, an unincorporated association, a partnership and/or a trust;
  - (d) a reference to any legislation or legislative provision is to that legislation or legislative provision as in force from time to time;
  - (e) the chapter headings, section headings, clause headings and subheadings within clauses, notes and information boxes are inserted for convenience only, and have no effect in limiting or extending the language of provisions of this Deed;
  - (f) any uncertainty or ambiguity in the meaning of a provision of this Deed is not to be interpreted against a Party just because that Party prepared the provision;
  - (g) a reference to an internet site or webpage includes those sites or pages as amended from time to time;
  - (h) a reference to a Guideline, form or other document is to that Guideline, form or other document as revised or reissued from time to time; and
  - (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.
- 20.3 The Provider agrees that:
- (a) Conditions of Offer form part of this Deed;
  - (b) Guidelines form part of this Deed;
  - (c) it must perform all obligations in this Deed in accordance with:
    - (i) any direction, advice or Notice given by the Department; and
    - (ii) the Guidelines;even if a particular clause does not expressly refer to any direction, advice, Notice or Guidelines;
  - (d) Guidelines may be varied by the Department;

- (e) any action, direction, advice, Notice, determination or right of the Department may be taken, given, made or exercised from time to time and at the Department's absolute discretion, to the extent permitted by law; and
  - (f) any approval or consent by the Department may be refused, given subject to conditions or later revoked by the Department.
- 20.4 Unless the contrary intention appears, if any conflict or inconsistency arises between any part of:
- (a) any action, direction, advice, Notice, determination or right that is taken, given, made or exercised by the Department;
  - (b) this Deed, including any Condition of Offer and Annexure 1 [Definitions];
  - (c) the Schedules;
  - (d) the Particulars;
  - (e) the Guidelines; or
  - (f) Annexure 3 [Joint Charter] and Annexure 4 [Service Guarantee],
- then the material mentioned in any one of paragraphs (a) to (f) above has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

## **CHAPTER B2 – BASIC CONDITIONS**

### **Section B2.1 – Deed length**

#### **21. Term of this Deed**

- 21.1 This Deed takes effect from the Deed Commencement Date and ends on the Completion Date.

#### **22. Survival**

- 22.1 The termination or expiry of this Deed for any reason does not extinguish or otherwise affect the operation of:
- (a) clauses 19, 25.2, 26, 30.1, 30.3, 35, 36, 37, 39, 41, 43, 44, 45, 46, 47, 48, 48A, 49, 50, 51, 52, 53, 54, 61, 62 or 72 of this Deed; or
  - (b) any provisions, other than those aforementioned, that:
    - (i) are expressly specified as surviving; or
    - (ii) by implication from their nature are intended to survive.
- 22.2 Clause 51 of this Deed survives for seven years from the expiry or earlier termination of this Deed.

### **Section B2.2 – Some basic rules about the Services**

#### **23. General Requirements**

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

- (ii) any representation or undertaking made by the Provider in its response to the request for tender for this Deed, unless otherwise agreed with the Department;
  - (b) in a manner which meets the objective of the Time to Work Employment Service as specified at clause 1.2; and
  - (c) so as to achieve optimum performance when measured against the KPIs.
- 23.2 The Provider must immediately Notify the Department if it becomes aware that it is unable to satisfy or has otherwise failed to comply with any of the requirements in this Deed.
- 23.3 The Provider must take all reasonable steps to minimise delay or the negative impact of any matter(s) that affects the Provider's ability to meet its obligations under this Deed.

## **24. Timing and location of the Services**

- 24.1 The Provider must deliver the Services at each Prison from the Service Start Date until the Completion Date.
- 24.2 Unless otherwise directed by the Department and subject to this Deed, the Provider must provide the Services in accordance with, and only as specified in, item 6 of Schedule 1.

Note: Schedule 1 specifies, amongst other things, the Provider's Prisons.

## **25. Provider's conduct**

- 25.1 The Provider must, at all times, act in good faith towards the Department, Participants, Eligible Prisoners and the Prison(s), and in a manner that maintains the good reputation of the Services.
- 25.2 The Provider must:
- (a) not engage in, and must ensure that its Personnel, Subcontractors, Third Party IT Vendors and agents do not engage in, any practice that manipulates or impacts, as relevant, any aspect of the Services including any:
    - (i) Record, including any Documentary Evidence;
    - (ii) Payment or Payment-related process;
    - (iii) Participant; or
    - (iv) monitoring of the Services by the Department,
 with the effect of improperly, as determined by the Department, maximising payments to, or otherwise obtaining a benefit for, the Provider or any other person or persons; and
  - (b) without limiting the Department's rights under this Deed or the law, where an improper practice is identified by the Provider, immediately:
    - (i) take all action necessary to appropriately remedy the practice; and
    - (ii) Notify the Department of the practice identified and the remedial action taken and provide all information in relation to the situation as required by the Department.
- 25.3 The Provider must advise its officers and employees that:

- (a) they are Commonwealth public officials for the purposes of section 142.2 of the *Criminal Code Act 1995* (Cth);
- (b) acting with the intention of dishonestly obtaining a benefit for any person is punishable by penalties including imprisonment; and
- (c) disclosures of “disclosable conduct” under the *Public Interest Disclosure Act 2013* (Cth) can be made directly to their supervisors within the Provider, or to an Authorised Officer of the Department as specified on the Department’s website (<https://www.dewr.gov.au/about-us/corporate-reporting/freedom-information-foi/foi-disclosure-log/public-interest-disclosure-act-2013>), and where a disclosure of “disclosable conduct” is made to a supervisor within the Provider, the supervisor is required under section 60A of the *Public Interest Disclosure Act 2013* (Cth) to pass information about the conduct to an Authorised Officer of the Department.

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

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

26.1 The Provider 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 any Guidelines, takes all necessary steps to verify the truth, completeness and accuracy of any information referred to in clause 26.1(a); and
- (c) any data entered into the Department’s IT Systems is consistent with any associated Documentary Evidence held by the Provider.

26.2 Subject to clause 35.4, the Provider must submit Documentary Evidence to the Department within five Business Days of any request by the Department to do so.

26.3 The Provider must develop and submit Reports to the Department in the manner and within the timeframes specified in any Guidelines or as requested by the Department.

## **27. Checks and reasonable care**

### **Personnel and Supervisors**

27.1 Before arranging for any Personnel to be involved in the Services, the Provider must arrange and pay for all checks, and comply with any other conditions in relation to the person’s involvement, as required by:

- (a) each Prison that the Personnel will visit;
- (b) any relevant legislation in effect in the jurisdiction(s) in which the Services are conducted; and
- (c) the Department.

27.2 The Provider must not arrange for any Personnel to be involved in the Services:

- (a) at a Prison, unless the Prison has agreed to that Personnel’s involvement;

- (b) if any relevant legislation or any Guidelines provide or mean that the person must not be allowed to be so involved; or
- (c) if:
  - (i) a relevant check shows that they have been convicted of a crime and a reasonable person would consider that the conviction means that the person would pose a risk to other persons involved in the Services; or
  - (ii) there is otherwise a reasonably foreseeable risk that the person may cause loss or harm to any other person,
 unless the Provider has put in place reasonable measures to remove or substantially reduce that risk.

## **28. Provider's responsibility**

- 28.1 The Provider is fully responsible for the performance of the Services, for ensuring compliance with the requirements of this Deed, and for all costs of meeting the Provider's obligations under this Deed, notwithstanding any other matter or arrangement, including any Subcontracting arrangements.

## **29. Joint Charter**

- 29.1 Subject to clause 29.2, the Department and the Provider agree to conduct themselves in accordance with the Joint Charter.
- 29.2 Clause 29.1 does not in any way limit the right of either party to take action or exercise rights that would, if not for the Joint Charter, be available to it under this Deed.

## **30. Communication and directions**

- 30.1 The Provider must comply with any direction given to the Provider by the Department relating to this Deed and/or the Services, including, without limiting the foregoing, directions relating to:
- (a) action that must be taken by the Provider where the Department determines that the Provider has breached this Deed;
  - (b) work, health and safety matters;
  - (c) transfer of Participants to another Time to Work Provider or Employment Services Provider;
  - (d) Customer Complaints;
  - (e) communicating with, and providing information to, the Department, or any other person nominated by the Department;
  - (f) assisting the Department with its Program Assurance Activities;
  - (g) using the Department's premises or facilities; and/or
  - (h) providing to the Department:
    - (i) financial statements and financial guarantees;
    - (ii) Reports;
    - (iii) Records;
    - (iv) Documentary Evidence;

- (v) proof of insurance;
- (vi) a copy of the Provider's Constitution;
- (vii) a credentials information form, as required by the Department, that authorises the Department to undertake a credit check of a particular individual involved in the management of the Provider;
- (viii) information relating to the Control of the Provider or of any Material Subcontractor; and/or
- (ix) a copy of the indigenous employment strategy referred to in clause 67.1(a).

Note: 'other person' referred to in clause 30.1(e) includes, for example, an auditor appointed by the Department.

- 30.2 Any direction given by the Department to the Provider does not in any way limit the Department's rights under this Deed or the law.
- 30.3 The Provider must immediately Notify the Department of any matter or incident relating to the Services that could be damaging to the reputation of the Provider, the relevant Prison or the Department should it become publicly known.
- 30.4 The Department and the Provider must respectively nominate a Provider Lead and a Contact Person for the Term of this Deed to handle the day to day management of, and communication under, this Deed.

### **31. Business level expectations**

- 31.1 The Department provides no guarantee of:
  - (a) the number of Participants for the Services under this Deed, including the number of Eligible Prisoners or Participants for any Prison;
  - (b) the number of Prisons and additional prisons for the Services under this Deed, including the number of Prisons and additional prisons in any State, Territory or location; and
  - (c) the accuracy of market and other information provided in the request for tender for this Deed.

### **32. Additional Prisons**

- 32.1 The Department may, by any means or method:
  - (a) invite an expression of interest from the Provider to offer to deliver the Services at one or more additional prisons; and
  - (b) determine whether or not the Provider has the capability and capacity to deliver the Services at specific additional prisons.
- 32.2 The Department and the Provider may agree to provision by the Provider of the Services at additional prisons on the same terms as specified in this Deed.

### **33. Additional Services**

- 33.1 The Department and the Provider may agree to the provision of additional Time to Work Employment Services, other employment services or employment related services by the Provider, including agreeing on applicable terms and conditions and Ancillary Payments.

### **34. The Department may vary certain terms**



- 34.1 Without limiting the Department's rights under this Deed or the law, the Department may, at any time, vary Payments, Services and/or Prisons for all or part of the Term of this Deed:
- (a) based on the Department's assessment of projected changes to demand including the number of Eligible Prisoners and prisons;
  - (b) if a State, Territory or Prison withdraws from participation in the Time to Work Employment Service; or
  - (c) acting reasonably, for any other reason as determined by the Department, by providing Notice to the Provider.
- 34.2 If the Department exercises its rights under clause 34.1 this Deed is deemed to be varied accordingly and the Provider must perform all of its obligations under this Deed as varied.

## **Section B2.3 – Some basic rules about financial matters**

### **35. Payments**

- 35.1 Subject to:
- (a) sufficient funds being validly appropriated for the Services;
  - (b) the preconditions for Payment specified in this clause 35 being met; and
  - (c) compliance by the Provider with this Deed to the Department's complete satisfaction,
- the Department will make Payments to the Provider:
- (d) at the times and in the manner specified in this Deed; and
  - (e) to the Provider account(s) specified in item 5 of Schedule 1.
- 35.2 The Provider must not claim or accept a Payment from the Department if the requirements under this Deed which must be satisfied to qualify for the Payment have not been fully and properly met.

#### **Documentary Evidence precondition for Payment**

- 35.3 It is a precondition of the Provider's entitlement to be paid a Payment that the Provider has, at the time it makes a claim for or accepts the Payment, true, complete and accurate Documentary Evidence sufficient to prove that the Provider:
- (a) is entitled to the Payment; and
  - (b) has delivered the Services relevant to its claim for Payment, and has done so in accordance with this Deed, including any Guidelines.
- 35.4 The Provider must submit the Documentary Evidence referred to in clause 35.3 to the Department:
- (a) if required by any Guidelines, through the Department's IT Systems at the time of making the relevant claim for a Payment; and
  - (b) otherwise, within five Business Days of any request by the Department to do so.

- 35.5 If the Provider does not comply with clause 35.4, the Provider will be taken not to have delivered the relevant Services and the Department may recover some or all of the relevant Payment from the Provider in accordance with clause 37.
- 35.6 The Department may contact Participants, the Prison(s) or any other relevant parties to verify Documentary Evidence provided by a Provider.

#### **General preconditions for Payment**

- 35.7 It is a further precondition of the Provider's entitlement to be paid a Payment that it:
- (a) has a valid ABN, and correctly quotes its ABN on all Tax Invoices provided to the Department; and
  - (b) submits a Tax Invoice to the Department within 12 months after the Completion Date for the Payment, addressed to the Provider Lead and including the following information:
    - (i) the words "tax invoice" stated prominently;
    - (ii) the Provider's name and ABN;
    - (iii) the Department's name and address;
    - (iv) the date of issue of the invoice;
    - (v) the title of this Deed and the agreement number (if any) or date of execution;
    - (vi) details of the Services to which the invoice relates;
    - (vii) the total amount payable (including GST); and
    - (viii) the GST amount shown separately.

#### **Timing of Payments**

- 35.8 Despite any other provision of this Deed, the Department is not required to make any Payment to the Provider earlier than within 20 Business Days after the Department receives a Tax Invoice for the Payment in accordance with clause 35.7(b).

#### **Ensuring correct claims for Payment**

- 35.9 The Provider must immediately Notify the Department if the Provider identifies that it has claimed, or accepted, a Payment:
- (a) in breach of this Deed; or
  - (b) in circumstances where the requirements under this Deed to qualify for the Payment have not been fully and properly met.

### **36. Overpayment and double payment**

#### **Overpayment**

- 36.1 If the Department determines that it has paid any amount to the Provider that the Provider was not entitled to receive under this Deed, then the Department may recover some or all of the relevant amount from the Provider (with the recoverable

amount being determined by the Department) as a debt in accordance with clause 37, without limiting the Department's rights under this Deed or the law.

#### **Double payment**

- 36.2 The Provider must not demand or receive any payment or any other consideration either directly or indirectly from any Participant or any Prison for, or in connection with, the Services.
- 36.3 Subject to any Guidelines and any express written agreement with the Department to the contrary:
- (a) the Provider warrants that neither it, nor any Related Entities, are entitled to payment from the Department, other Commonwealth sources or state, territory or local government bodies for providing services that are the same as, or similar to, the Services as provided under this Deed; and
  - (b) the Department may require the Provider to provide evidence, in a form acceptable to the Department, proving that neither the Provider, nor any Related Entities, are so entitled.
- 36.4 Throughout the Term of this Deed, the Provider must Notify the Department if it intends to deliver services that are, or could be perceived to be, the same as or similar to, the Services provided under this Deed.
- 36.5 For the purposes of clause 36.3, if the Department determines, at its absolute discretion, that the Provider, or any Related Entity, is entitled to payment from the Department, other Commonwealth sources or state, territory or local government bodies for providing the same or similar services as provided under this Deed, the Department may, at its absolute discretion:
- (a) make any Payment related to the relevant Services;
  - (b) decide not to make such a Payment; or
  - (c) recover any such Payment made by the Department as a debt in accordance with clause 37.
- 36.6 Regardless of any action the Department may take under clause 36.5, the Department may, at any time, issue Guidelines setting out the circumstances in which the Department will or will not make Payments in connection with any situation of the type described in clause 36.5.

### **37. Debts and offsetting**

- 37.1 Without limiting the Department's rights under this Deed or the law, the Department may recover any amount owed to the Department under this Deed, including any Interest, as a debt due to the Commonwealth and without further proof of the debt being necessary.
- 37.2 The Provider must pay:
- (a) any amount owing to the Department under this Deed within 30 Calendar Days of receipt of a Notice from the Department requiring payment; and
  - (b) Interest on any part of the amount that is not repaid within 30 Calendar Days of receipt of the Notice.

- 37.3 Without limiting the Department's rights under this Deed or the law, the Department may offset against any amount owing to the Provider under this Deed, an amount equal to any amount owing by the Provider under this Deed or under any other arrangement with the Department or the Commonwealth.
- 37.4 Notwithstanding any action taken by the Department under clause 37.3, the Provider must continue to perform its obligations under this Deed.

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

- 38.1 All taxes, duties and government charges imposed in Australia or overseas in connection with this Deed must be borne by the Provider.
- 38.2 Unless expressly stated to the contrary, all dollar amounts in this Deed are inclusive of GST.
- 38.3 The Provider must:
- (a) only claim or accept an amount exclusive of GST if a Payment is not in relation to a Taxable Supply;
  - (b) not claim or accept from the Department any amount that it can claim an Input Tax Credit;
  - (c) provide an Adjustment Note to the Department where any amount is repaid (including by offset under clause 37.3) if required by the GST Act; and
  - (d) immediately Notify the Department if it ceases to have a valid ABN or of any changes to its GST status.

### **39. Fraud**

- 39.1 The Provider must:
- (a) not engage in, and must ensure that its Personnel, Subcontractors 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 implementing an appropriate fraud control plan.

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

## **Section B2.4 – Financial statements**

### **40. Financial statements**

- 40.1 The Provider must, for the Term of this Deed, provide financial statements to the Department:
- (a) within 20 Business Days of its annual general meeting, or where no annual general meeting is held, within 20 Business Days after the compilation of the financial statements; and
  - (b) no later than 120 Business Days after the end of its financial year.
- 40.2 If the Provider is a Group Respondent or a partnership, then the Provider must provide one copy of the consolidated financial statements for the Group Respondent or partnership, if available, and individual annual financial statements for each member of the Group Respondent.

- 40.3 For clauses 40.1 and 40.2, the financial statements provided to the Department must be, at a minimum:
- (a) audited if the Provider is required to produce audited annual financial statements under Commonwealth or state or territory legislation;
  - (b) reviewed if the Provider is required to have annual financial statements reviewed under Commonwealth or state or territory legislation; and
  - (c) in a form consistent with the Australian Equivalents to International Financial Reporting Standards requirements for financial statements.

## **Section B2.5 – Performance**

### **41. Performance assessment, Program Assurance and other evaluation activities**

- 41.1 The Department may conduct, and the Provider must provide all reasonable assistance to the Department when it conducts:
- (a) performance monitoring, measuring and evaluation activities for assessing the Provider's performance against the requirements of this Deed;
  - (b) Program Assurance Activities; and
  - (c) additional evaluation activities for evaluating the Time to Work Employment Service.

Note: The Department may take action under this Deed in relation to a Provider's performance or as a result of Program Assurance Activities. For example, the Department may issue a direction that the Provider must comply with under clause 30.1 or, if the Provider's performance is less than satisfactory or in breach of this Deed, take action against the Provider under clauses 18 and 62.

- 41.2 The Department may publish information the Department holds in relation to the Provider's performance.

### **42. Customer feedback**

- 42.1 The Provider must, in accordance with the Guidelines:
- (a) implement a Customer feedback process that deals with feedback, including the investigation and response to Complaints, about the Provider's conduct of the Services;
  - (b) communicate the Customer feedback process to its Customers;
  - (c) refer a Customer who is dissatisfied with the Customer feedback process or the Provider's investigation of a Complaint to the Department's National Customer Service Line;
  - (d) assist authorities investigating any Complaint by a Customer, if the Customer chooses to use legislative or other complaint mechanisms; and
  - (e) keep a Customer feedback register.

## **CHAPTER B3 – INFORMATION MANAGEMENT**

### **Section B3.1 – Information Technology**

#### **43. General**

- 43.1 The Provider must conduct the Services by Accessing the Department's IT Systems provided by the Department for that purpose.

- 43.2 The Department may require that data relating to specific transactions must only be stored on the Department's IT Systems, and the Provider must comply, and ensure that all Subcontractors and Third Party IT Vendors comply, with any such requirements.
- 43.3 The Department may:
- (a) provide training on Accessing the Department's IT Systems, by computer-assisted learning packages or otherwise; and
  - (b) require that Personnel, Third Party IT Vendors and Subcontractors must not Access the Department's IT Systems until they have successfully completed the relevant onboarding processes and training specified in any Guidelines, and the Provider must comply with any such requirement.
- 43.4 The Provider is responsible for all costs of meeting its obligations under this clause 43.

#### **44. Access and information security assurance**

##### **Access to the Department's IT Systems**

- 44.1 The Provider must provide information technology systems, to Access the Department's IT Systems and to carry out its other obligations under this Deed, that meet the requirements set out in this clause 44.

##### **External IT Systems**

Note: An 'External IT System' means any information technology system or service, other than the Department's IT Systems, used by the Provider or any Subcontractor in association with the delivery of the Services or to Access the Department's IT Systems. 'External IT System' includes a Provider IT System and any Third Party IT.

- 44.2 The Provider must:
- (a) advise the Department by email to [securitycompliancesupport@dewr.gov.au](mailto:securitycompliancesupport@dewr.gov.au), or such other address as advised by the Department from time to time, of any proposed:
    - (i) use of any External IT System to Access the Department's IT Systems, and if the Department imposes any terms and conditions in respect of such use, comply, and ensure that all relevant Subcontractors comply, with those terms and conditions; and
    - (ii) modification to the functionality of any Provider IT System that impacts, or may have an impact, on the security of that Provider IT System, and if the Department imposes any terms and conditions in respect of the use of that Provider IT System, comply, and ensure that all relevant Subcontractors comply, with those terms and conditions;
  - (b) ensure that any External IT System used:
    - (i) meets the minimum requirements of the Department, for Access to the Department's IT Systems, as specified in any Guidelines or as otherwise advised by the Department;
    - (ii) does not negatively impact the performance, availability or data integrity of the Department's IT Systems;
    - (iii) meets the relevant requirements of the ESAF;

- (iv) does not introduce or permit the introduction of Malicious Code into the Department's IT Systems;
- (v) has secure log ons for each operator such that each operator's logon is uniquely identifiable to the Department and entries are traceable, and have date and time stamps;
- (vi) does not default answers to questions or input fields where the Department's IT Systems has no default setting; and
- (vii) meets the minimum requirements of the Department for Record keeping and program assurance purposes, as specified in this Deed including any Guidelines or as otherwise advised by the Department; and

ensure that any and all Records held in any External IT System relating directly or indirectly to the Services can be, and are, provided on request to the Department and in an unadulterated form (i.e. with no amendments or transformations to the Records or their data structures).

**44.3 The Department:**

- (a) may make changes to the Department's IT Systems at any time, notwithstanding that such changes may affect the functioning of an External IT System; and
- (b) will provide reasonable information about those changes to the Provider; and the Provider:
- (c) must, notwithstanding any such change, at its sole cost, ensure that all External IT Systems are consistent with the Department's IT Systems at all times; and
- (d) agrees that the Department is not responsible for any loss, costs or legal liability of the Provider arising from such changes.

**Provider IT System accreditation**

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

**44.4 Subject to the requirements of the ESAF, the Provider must:**

- (a) obtain accreditation for any Provider IT System in accordance with the requirements and timeframes set out in the ESAF and bear any costs associated with doing so; and
- (b) maintain such accreditation until the Completion Date.

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

**44.6 For the purposes of clause 44.4(b), the Provider must obtain reaccreditation of all Provider IT Systems in accordance with the requirements of the ESAF.**

**44.7 Unless otherwise expressly set out in this clause 44, accreditation and reaccreditation under this clause 44 must be awarded by the Department.**

- 44.8 If the Provider does not obtain accreditation or reaccreditation within the timeframes specified in the ESAF or this clause 44, the Provider must immediately cease using, and ensure that any relevant Subcontractor ceases using, the relevant Provider IT System.
- 44.9 If the ESAF requires that any Personnel or Subcontractors of the Provider must complete specific personnel vetting requirements for the purposes of accreditation or reaccreditation:
- (a) the Provider must ensure that its relevant Personnel and Subcontractors successfully complete the required personnel vetting processes, and bear any costs associated with doing so; and
  - (b) the Department will sponsor any Australian Government clearances as required by the ESAF.

### **Third Party IT**

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

#### **44.10 The Provider must:**

- (a) not directly or indirectly allow Access to electronic Records relating to the Services, or any derivative thereof, to any Third Party IT Vendor until such Third Party IT Vendor has met the relevant requirements of the ESAF and has:
  - (i) for any Third Party IT Vendor that provides or uses a Third Party Employment System, entered into a Third Party IT Vendor Deed with the Department, and only grant such Access in accordance with the terms of the relevant Third Party IT Vendor Deed and any Guidelines; and
  - (ii) for any Third Party IT Vendor that provides or uses a Third Party Supplementary IT System, been assessed and accredited by the Provider in accordance with the requirements of the ESAF, and only grant such Access in accordance with the terms of the ESAF;
- (b) in any contract with any Third Party IT Vendor that provides or uses Third Party IT, ensure that any and all Records held in Third Party IT relating directly or indirectly to the Services, can be, and are, provided on request to the Department or the Provider and in an unadulterated form (i.e. with no amendments or transformations to the Records or their data structures);
- (c) in any contract with any Third Party IT Vendor that provides or uses a Third Party Employment System:
  - (i) provide that the Third Party IT Vendor may only subcontract its obligations under that contract to another entity that has entered into a Third Party IT Vendor Deed with the Department; and
  - (ii) reserve a right of termination to take account of the Department's right of termination in the relevant Third Party IT Vendor Deed;
- (d) on receipt of any advice from the Department that it has revoked accreditation of any Third Party Employment System or terminated a relevant Third Party IT



Vendor Deed, terminate the Provider's contract with the relevant Third Party IT Vendor and, at its own cost, promptly cease using the Third Party IT Vendor;

- (e) impose the obligations set out in this clause 44.10 on any Subcontractor Accessing electronic Records relating to the Services; and
- (f) advise the Department by email to [securitycompliancesupport@dewr.gov.au](mailto:securitycompliancesupport@dewr.gov.au), or such other address as advised by the Department from time to time, of any proposed use of any Third Party IT for the analysis of Records relating directly or indirectly to the Services, or any derivative thereof, and if the Department imposes any terms and conditions in respect of such use, comply, and ensure that all relevant Subcontractors and Third Party IT Vendors comply, with those terms and conditions.

44.10A.1 The Provider acknowledges and agrees that the Department:

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

44.10A.2 In addition to any applicable requirements under clause 59, the Provider must ensure that any arrangement with a Third Party IT Vendor includes a right of termination for the Provider to take account of the Department's:

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

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

### **Technical advice**

44.11 The Provider must:

- (a) nominate Personnel to receive technical advice from the Department on the Department's IT Systems, and to provide advice to the Department on technical issues arising from Accessing the Department's IT Systems ('IT Contact');
- (b) ensure that the IT Contact:
  - (i) disseminates technical advice to any Subcontractor and Personnel of the Provider in order to minimise disruption to the Services; and
  - (ii) provides advice, as requested by the Department:
    - (A) to assist in the resolution of the Department's IT Systems technical issues; and
    - (B) in relation to the Provider's readiness to deploy system upgrades to the Department's IT Systems; and

- (c) where the IT Contact changes, advise the Department accordingly.

### **Security**

- 44.12 The Provider must comply, and ensure that its Subcontractors and Third Party IT Vendors comply, with the Department's Security Policies and the Cybersafety Policy, as relevant.
- 44.13 The Provider must ensure that a Security Contact is appointed at all times during the Term of this Deed, and that, at all times, the Department has up to date contact details for the current Security Contact.
- 44.14 The Provider must (through its Security Contact) promptly report all breaches of IT security to the Employment Systems Service Desk, including where any Personnel or any Subcontractor suspect that a breach may have occurred or that a person may be planning to breach IT security, and provide updates on their resolution.
- 44.15 Where the Department considers that the Provider may be in breach of this clause 44, or there is a risk of such a breach, the Department may, at its absolute discretion, immediately suspend Access, or require the Provider to cease all Access, to the Department's IT Systems for any one or more of the following:
  - (a) any Personnel;
  - (b) any Subcontractor;
  - (c) any Third Party IT Vendor;
  - (d) the Provider; or
  - (e) any External IT System,by providing Notice to the Provider.
- 44.16 Where the Department determines that the Provider is in breach of, or has previously breached, this clause 44, the Department may immediately take action including any one or more of the following:
  - (a) suspending, terminating, or requiring the cessation of all Access to the Department's IT Systems for any Personnel, Subcontractor, Third Party IT Vendor, External IT System or the Provider;
  - (b) applying bandwidth throttling measures in respect of all Access to the Department's IT Systems for any Personnel, Subcontractor, Third Party IT Vendor, External IT System or the Provider;
  - (c) requiring the Provider to obtain new logon IDs for any Personnel, Subcontractor or Third Party IT Vendor and if so required, the Provider must promptly obtain such new logons; or
  - (d) requiring the Provider to prepare and implement an IT security plan to the Department's satisfaction, and if so required, the Provider must do so within the timeframe required by the Department.
- 44.17 Any action taken by the Department under clauses 44.15 to 44.16 does not limit any other rights the Department has under this Deed, including pursuant to clause 62.2, or under the law.

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

### **Cybersafety Policy**

- 44.19 For the purposes of clauses 44.20 to 44.23:

**'Clients'** means persons who may use the Provider's computers and/or other digital technology that is supported through public funding provided pursuant to this Deed, and includes but is not limited to, the Provider, the Provider's staff and the public, whether they be adult or Children.

**'Reasonable Steps'** means having in place strategies to minimise and manage risks of exposure to inappropriate or harmful on-line content by users of computers, particularly Children, and may include, but is not limited to, having a policy in place regarding appropriate use and protection for Clients, installation of filters, audits and provision of information or training to the Provider's staff regarding the risks of, and protection from, inappropriate or harmful on-line content.

- 44.20 The Cybersafety Policy is that where an organisation is funded by the Department to carry out the Services using computers and/or other digital technology, the safety of Clients when using those computers and/or other digital technology must be assured.
- 44.21 The Provider must take Reasonable Steps to protect its Clients' cybersafety.
- 44.22 If the Department gives the Provider Notice requiring it, the Provider must provide the Department, within 10 Business Days of receiving the Notice, with evidence satisfactory to the Department that the Provider has complied with the requirements of this Cybersafety Policy.
- 44.23 The Provider agrees to include its obligations in relation to this Cybersafety Policy in all Subcontracts it enters into in relation to the Services.

## **Section B3.2 – Property rights**

### **45. Intellectual Property Rights**

#### **Commonwealth Material and Deed Material**

- 45.1 Subject to clause 45.4, the ownership of Intellectual Property Rights in, and the actual documents comprising, all Commonwealth Material and Deed Material vests in the Department.
- 45.2 The Department grants the Provider a licence to use, copy and reproduce Commonwealth Material and Deed Material, but only within Australia, for the purposes of this Deed and in accordance with any conditions or restrictions Notified by the Department to the Provider.
- 45.3 The licence in clause 45.2 is revocable on 10 Business Days' Notice by the Department, and expires on the Completion Date.

#### **Existing Material**

- 45.4 This Deed does not affect the ownership rights in any Existing Material.
- 45.5 The Provider grants the Department, or must arrange for the grant to the Department of, a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Existing Material for any purpose.

#### **Dealing with Intellectual Property Rights**

- 45.6 The Provider warrants that it:
- (a) is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in Deed Material and Existing Material in accordance with this clause 45; and
  - (b) has obtained valid, unconditional and irrevocable written consents from all Intellectual Property Rights owners and authors of Deed Material and Existing Material so that the Department's use of that Material will not infringe:
    - (i) the Intellectual Property Rights of any third party; or
    - (ii) any author's Moral Rights.
- 45.7 For clause 45.6, 'infringe' includes unauthorised acts that would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), and section 25 of the *Circuits Layouts Act 1989* (Cth), constitute an infringement.
- 45.8 The Provider must:
- (a) if requested by the Department to do so, create, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 45; and
  - (b) deliver all Deed Material to the Department at the Completion Date, unless otherwise Notified by the Department.

#### **Commonwealth Coat of Arms**

- 45.9 The Provider must not use the Commonwealth Coat of Arms for the purposes of this Deed or otherwise, except as authorised in accordance with the Commonwealth Coat of Arms Information and Guidelines available at <https://www.pmc.gov.au/resources/commonwealth-coat-arms-information-and-guidelines>.

### **Section B3.3 – Control of information**

#### **46. Personal and Protected Information**

- 46.1 Clauses 46.1 to 46.3 apply only where the Provider deals with Personal Information for the purpose of conducting the Services under this Deed, and the terms 'agency', 'APP Code', 'contracted service provider', 'eligible data breach', 'organisation', 'sensitive information' and 'Australian Privacy Principle' (APP) have the same meaning as they have in section 6 of the Privacy Act, and 'subcontract' and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.
- 46.2 The Provider acknowledges that it is a contracted service provider and agrees, in respect of the conduct of the Services under this Deed:

- (a) to use or disclose Personal Information, including sensitive information, obtained in the course of conducting the Services ('relevant Personal Information'), only for the purposes of this Deed or where otherwise permitted under the Privacy Act;
- (b) except where this clause expressly requires the Provider to comply with an APP that applies only to an organisation, to carry out and discharge the obligations contained in the APPs as if it were an agency;
- (c) not to do any act or engage in any practice that if done or engaged in by an agency, or where relevant, an organisation, would be a breach of an APP or contrary to the Privacy Act;
- (d) to co-operate 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:
  - (i) complaints about its acts or practices may be investigated by the Australian Information Commissioner who has power to award compensation against the Provider in appropriate circumstances; and
  - (ii) their Personal Information may be disclosed and passed on to the Department and to other persons in relation to providing the Services;
- (f) unless expressly authorised or required under this Deed, not engage in any act or practice that would breach:
  - (i) APP 7 (direct marketing);
  - (ii) APP 9 (adoption, use or disclosure of government related identifiers); or
  - (iii) any registered APP code that is applicable to the Provider;
- (g) to comply with any request under section 95C of the Privacy Act;
- (h) to comply with any directions, Guidelines, determinations, rules or recommendations of the Australian Information Commissioner to the extent that they are consistent with the requirements of this clause 46;
- (i) not to transfer relevant Personal Information outside of Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Department;
- (j) to its name being published in reports by the Australian Information Commissioner;
- (k) if the Provider suspends or terminates Personnel:
  - (i) to remove any access that the Personnel have to any relevant Personal Information;
  - (ii) to require that the Personnel return to the Provider or the Department any relevant Personal Information held in the Personnel's possession; and
  - (iii) it must remind the Personnel of their relevant obligations under this Deed; and
- (l) to ensure that any of its Personnel who are required to deal with relevant Personal Information:

- (i) where required by the Department, undertake in writing to comply with the APPs (or a registered APP code, where applicable); and
- (ii) are made aware of their obligations in this clause 46, including to undertake in writing to comply with the APPs (or a registered APP code, where applicable).

46.3 The Provider must immediately Notify the Department if it becomes aware:

- (a) of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 46 by any Personnel or Subcontractor;
- (b) that a disclosure of Personal Information may be required by law; or
- (c) of an approach to the Provider by the Australian Information Commissioner or by an individual claiming that their privacy has been interfered with.

#### **Notifiable data breaches**

46.4 Where one party Notifies the other party that an eligible data breach in relation to Personal Information received, created or held by the Provider in the course of conducting the Services has or may have occurred, the Provider must:

- (a) carry out an assessment in accordance with the Privacy Act;
- (b) take all reasonable action to mitigate the risk of the eligible data breach causing serious harm to any of the individuals to whom the Personal Information relates;
- (c) 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
- (d) take any other action as reasonably directed by the Department or the Australian Information Commissioner.

#### **Protected Information**

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

### **47. Confidential Information**

47.1 Subject to this clause 47, the Parties must not, without each other's prior written approval, disclose any of each other's Confidential Information to a third party.

47.2 The obligations on the Parties under this clause 47 will not be breached if information:

- (a) is shared by the Department within the Department, or with another agency, where this serves the Commonwealth's legitimate interests;
- (b) is disclosed by the Department to the responsible Minister or the Minister's staff;
- (c) is disclosed by the Department in response to a request or direction by a House or a Committee of the Parliament of the Commonwealth of Australia;

- (d) is authorised or required by law to be disclosed; and/or
- (e) is in the public domain otherwise than due to a breach of this clause 47.

47.3 Nothing in this clause 47 limits the obligations of the Provider under clauses 46 or 51.

## **Section B3.4 – Records Management**

### **48. Keeping and dealing with Records**

48.1 The Provider must:

- (a) create and maintain true, complete and accurate Records in connection with the performance of its obligations under this Deed; and
- (b) only use, store, retain, provide access to, transfer and destroy Records, in accordance with this Deed and the Records Management Instructions.

48.2 The Provider must ensure that Records in its custody are not transferred outside of Australia, or to any other person, entity or organisation, without the prior written approval of the Department.

#### **Financial Accounts and Records**

48.3 The Provider must keep financial accounts and Records of its transactions and affairs relating to Payments received under this Deed:

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

#### **Access to Records**

48.4 The Provider must ensure that its:

- (a) Personnel and Subcontractors do not access, copy, disclose or use any:
  - (i) Record containing any information about any participant in any employment services program; or
  - (ii) Record in the Department's IT Systems containing any information about any individual (including individuals who are not participants in any employment services program),  
unless such access, copying, disclosure or use is for the purpose of:
    - (iii) providing Services to the participant under this Deed (i.e. the participant is a 'Participant' under this Deed); or
    - (iv) otherwise complying with this Deed; and
- (b) Third Party IT Vendors do not access, copy, disclose or use any electronic Record unless such access, copying, disclosure or use is for the purpose of assisting the Provider to comply with this Deed.

### **Third Party IT Vendors**

- 48.5 If any Third Party IT Vendor creates or maintains Records in association with the delivery of the Services by the Provider, the Provider must comply, and must ensure that the Third Party IT Vendor complies, with the requirements in this clause 48 in respect of any such Records.

### **48A. Public Sector Data**

- 48A.1 The Department may at any time require the Provider by Notice to provide Public Sector Data to the Department or a third party nominated by the Department for the purposes of sharing that data pursuant to the *Data Availability and Transparency Act 2022* (Cth) ('DAT Act').

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

- 48A.2 Where Notified under clause 48A.1, the Provider must:

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

- 48A.3 If the Department requires the Provider to provide Public Sector Data directly to a nominated third party, the Department may require the Provider to register as an 'Accredited Data Services Provider' pursuant to the accreditation scheme in Part 5.2 of the DAT Act.

- 48A.4 The Provider agrees that compliance with this clause 48A is at the Provider's own cost.

### **49. Access by Participants and Employers to Personal Information held by the Provider**

- 49.1 Subject to clause 46.2, where an individual requests access to Records that contain their own Personal Information, the Provider must:

- (a) allow access to the requested Records unless Commonwealth legislation would require or authorise refusal of access if the Records were in the possession of the Commonwealth;
- (b) obtain proof of identity from the individual before access is given; and
- (c) notate relevant files with details of the Records accessed, the name of the person granted access and the date and time of access.

- 49.2 The Provider must direct a request for access to the Department for consideration where the Record contains:

- (a) information about another person;
- (b) medical/psychiatric records, other than those actually supplied by the individual requesting access, or where it is clear that the individual requesting access has a copy or has previously sighted a copy of the records;
- (c) psychological records; and
- (d) information provided by third parties.

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



- 50.1 In this clause 50, 'document' has the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 50.2 The Provider agrees that:
- (a) where the Department has received a request for access to a document created by, or in the possession of the Provider, any Subcontractor or any Third Party IT Vendor, the Department may, at any time, by Notice, require the Provider to provide the document to the Department and the Provider must, at no additional cost to the Department, promptly comply with the Notice;
  - (b) the Provider must assist the Department in respect of the Department's obligations under the *Freedom of Information Act 1982* (Cth), as required by the Department; and
  - (c) the Provider must include in any Subcontract, or contract with a Third Party IT Vendor, provisions that will enable the Provider to comply with its obligations under this clause 50.

## **51. Access to premises and Records**

- 51.1 The Provider must at all reasonable times give or arrange for any Department Employee:
- (a) unfettered access to:
    - (i) its premises and those of any Subcontractor or Third Party IT Vendor;
    - (ii) any External IT System;
    - (iii) all Material, including Material relevant to claims for Payment, determining the Provider's financial viability, and compliance with relevant work, health and safety and industrial relations legislation; and
    - (iv) its Personnel, Subcontractors and Third Party IT Vendors; and
  - (b) all assistance, as required by the relevant Department Employee, to:
    - (i) inspect its premises and those of any Subcontractor or Third Party IT Vendor;
    - (ii) inspect the performance of Services; and
    - (iii) locate, inspect, copy and remove, all Material including data stored on the Provider's information technology systems or those of any Subcontractor or Third Party IT Vendor.
- 51.2 Subject to clause 51.3, the obligations referred to in clause 51.1 are subject to the provision of reasonable prior notice to the Provider and compliance with the Provider's reasonable security procedures.
- 51.3 If:
- (a) a matter is being investigated that, in the opinion of the Department, may involve:
    - (i) an actual or apprehended breach of the law;
    - (ii) a breach of this Deed; or
    - (iii) suspected fraud; or

- (b) the Department is otherwise conducting Program Assurance Activities in relation to the Provider,

clause 51.2 does not apply, and Department Employees may remove and retain any Material that the Department determines is relevant to the investigation, including items stored on an electronic medium, provided that the Department returns a copy of all such Material to the Provider within a reasonable period of time.

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

## **CHAPTER B4 – DEED ADMINISTRATION**

### **Section B4.1 – Indemnity and insurance**

#### **52. Indemnity**

- 52.1 The Provider must indemnify the Department against any:
  - (a) loss, cost or liability incurred by the Department; and
  - (b) loss or expense incurred by the Department in dealing with any claim against the Department, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid,arising from or in connection with:
  - (c) any act or omission by the Provider or a Subcontractor (whether or not the relevant entity is a current Subcontractor) in connection with this Deed, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;
  - (d) any breach by the Provider of this Deed;
  - (e) any publication of the information referred to in clauses 41.2 or 69, where the published information was provided by the Provider to the Department; or
  - (f) the use by the Department of the Deed Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights in Deed Material or Existing Material.
- 52.2 The liability of the Provider to indemnify the Department under this clause 52 will be reduced proportionately to the extent that the Department's fault contributed to the cost, loss, damage, expense, or liability.
- 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.
- 52.4 In this clause 52, 'fault' means any negligent or unlawful act or omission or wilful misconduct, including fraud.

#### **53. Insurance**

- 53.1 The Provider must effect and maintain the insurance specified in item 9 of Schedule 1.
- 53.2 This clause 53 continues in operation for so long as any obligations remain in connection with this Deed.

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

##### **Joint and several liability**

- 54.1 To the extent permitted by law, where:
- (a) more than one Party is a signatory to this Deed as the Provider – each of those Parties;
  - (b) the Provider is a partnership – each partner; or
  - (c) the Provider is a Group Respondent – each member of the Group Respondent;
- is jointly and severally liable for:
- (d) the performance of all of the obligations of the Provider under this Deed; and
  - (e) all losses caused by any Subcontractor engaged for the purpose of this Deed.

**Proportionate liability**

- 54.2 To the extent permitted by law:
- (a) the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to rights, obligations and liabilities under, or in connection with, this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract, a claim in tort or otherwise; and
  - (b) in accordance with clause 76, this clause 54.2 applies to rights, obligations and liabilities under, or in connection with, this Deed whether they arise in the state of New South Wales or elsewhere in Australia.

Note: Clause 76 provides that the laws of New South Wales apply to this Deed.

**55. Special rules about Group Respondents**

- 55.1 If the Provider is a Group Respondent, as specified in the Particulars, the Provider:
- (a) warrants that each of its members have given authority to the member named in the Particulars as the lead member to negotiate, bind and act on each member's behalf in relation to this Deed; and
  - (b) must not change its membership as specified in item 7 of Schedule 1, without the Department's written agreement.

**Section B4.2 – Changes in persons delivering Services**

**56. Corporate governance**

- 56.1 The Provider must inform the Department in writing within five Business Days of any change:
- (a) in its Constitution, structure, management or operations that could reasonably be expected to have an adverse effect on the Provider's ability to comply with its obligations under this Deed; and
  - (b) to the membership of its board of Directors, board of management or executive during the Term of this Deed.

**Personnel**

- 56.2 The Provider must not employ, engage or elect any person in a management or financial administration role or, if Notified by the Department, the performance of the Services, if:

- (a) the person is an undischarged bankrupt;
- (b) a composition, deed of arrangement or deed of assignment is in operation with the person's creditors under the law relating to bankruptcy;
- (c) the person is subject to a judgment debt that has not been satisfied;
- (d) subject to Part VIIC of the *Crimes Act 1914* (Cth), the person has been 'convicted' within the meaning of paragraph 85ZM(1) of that Act of an offence under the *Crimes Act 1914* (Cth), or any other offence relating to fraud, unless there is clear evidence that:
  - (i) the conviction is spent under paragraph 85ZM(2) (taking into consideration the application of Division 4 of Part VIIC);
  - (ii) the person was granted a free and absolute pardon because the person was wrongly convicted of the offence; or
  - (iii) the person's conviction for the offence has been quashed, in accordance with any relevant law;
- (e) the person is or was a Director or a person who occupied an influential position in the management or financial administration of an organisation that failed to comply with the terms of any agreement with the Commonwealth and where that failure gave the Commonwealth the right to terminate the agreement; or
- (f) the person is otherwise prohibited from being a member or Director or employee or responsible officer of the Provider.

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

56.3 The Provider must not, without the Department's prior written consent, cause or permit a Change in Control of:

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

### **57. Provider's Personnel**

57.1 The Department may give Notice, on reasonable grounds related to the performance of the Services or risk to the Services or the Commonwealth, requiring the Provider to remove Personnel from the Services.

57.2 If the Department gives a Notice under clause 57.1:

- (a) the Provider must, at its own cost, promptly arrange for the removal of the Personnel from work on the Services and replace them with Personnel acceptable to the Department; and
- (b) if the Provider is unable to provide replacement Personnel acceptable to the Department, the Department may terminate this Deed under clause 65.

57.3 The Provider must ensure that its Personnel participate in any training required by the Department or a Prison.

### **58. External administration**

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

- (a) any notice requiring the Provider to show cause why the Provider should not come under any form of external administration referred to in clause 58.1(b);
  - (b) any record of a decision of the Provider, notice or orders that the Provider has, or will, come under one of the forms of external administration referred to in:
    - (i) Chapter 5 of the *Corporations Act 2001* (Cth);
    - (ii) the equivalent provisions in the incorporated associations legislation of the Australian states and territories; or
    - (iii) Chapter 11 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth);
  - (c) any statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
  - (d) any proceedings initiated with a view to obtaining an order for the Provider's winding up;
  - (e) any decisions and orders of any court or tribunal made against the Provider, or involving the Provider, including an order for the Provider's winding up;
  - (f) any notice that a shareholder, member or Director is convening a meeting for the purpose of considering or passing any resolution for the Provider's winding up; or
  - (g) being an individual, any notice that the Provider has become bankrupt or has entered into a scheme of arrangement with his or her creditors.
- 58.2 The Provider must immediately Notify the Department if the Provider:
- (a) has decided to place itself, or has otherwise come under, any one of the forms of external administration, referred to in clause 58.1(b); or
  - (b) is ceasing to carry on business.

## **59. Subcontracting**

- 59.1 The Provider must obtain the Department's prior written approval before:
- (a) entering into a Subcontract for the performance of any obligation under this Deed;
  - (b) terminating an approved Subcontractor; or
  - (c) replacing an approved Subcontractor with another Subcontractor.
- 59.2 The Subcontractors that the Department has approved at the Deed Commencement Date, and any terms and conditions relating to their use, are identified in item 8 of Schedule 1.
- 59.3 The Provider must ensure that any Subcontract:
- (a) is in writing;
  - (b) reserves a right of termination to take account of the Department's right of termination under clauses 64 and 65 and the Department's right of revocation of approval of a Subcontractor under clause 59.5;
  - (c) binds the Subcontractor, with respect to the Department, to all relevant terms and conditions of this Deed including clauses 46, 47, 48, 51, 53, 71, and 77; and

- (d) permits the Department to publically disclose the names of any Subcontractors engaged to perform any of the Provider's obligations under this Deed.
- 59.4 The Provider must:
- (a) not enter into a Subcontract under this Deed with a Subcontractor named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
  - (b) ensure every Subcontractor is aware of all terms and conditions of this Deed relevant to the Subcontractor's part in the provision of the Services; and
  - (c) pay its Subcontractors in accordance with the terms of the relevant Subcontract.
- 59.5 The Department may revoke its approval of a Subcontractor on any reasonable ground by giving Notice to the Provider. On receipt of the Notice, the Provider must:
- (a) at its own cost, promptly cease using that Subcontractor; and
  - (b) arrange for its replacement by Personnel, or another Subcontractor approved by the Department.

## **60. Assignment and novation**

- 60.1 The Provider must not assign any of its rights under this Deed, or enter into an arrangement that will require the novation of this Deed, without the Department's prior written approval.

## **Section B4.3 – Resolving Problems**

### **61. Provider suspension**

- 61.1 Without limiting the Department's rights under this Deed or the law, the Department may suspend:
- (a) any Payment or part of any Payment; and/or
  - (b) access to all or part of the Department's IT Systems for the Provider or any Personnel, Subcontractor, Third Party IT Vendor, External IT System or other person,
- if the Department is of the opinion that:
- (c) the Provider may be in breach of this Deed, and while the Department investigates the matter; or
  - (d) the Provider has outstanding or unacquitted money under any arrangement, whether contractual or statutory, with the Commonwealth.
- 61.2 Despite any action taken by the Department under clause 61.1, the Provider must continue to perform its obligations under this Deed.

### **62. Remedies**

- 62.1 Without limiting the Department's rights under this Deed or the law, if:
- (a) the Provider fails to rectify a breach, or pattern of breaches, of this Deed as determined and specified by the Department, to the Department's satisfaction within 10 Business Days of receiving a Notice from the Department to do so, or such other period specified by the Department;

- (b) the Provider fails to fulfil, or is in breach of, any of its obligations under this Deed that are not capable of being rectified, as determined by the Department;
- (c) the Provider's performance of any of its obligations under this Deed is less than satisfactory to the Department;
- (d) an event has occurred which would entitle the Department to terminate the Deed in whole or in part under clause 65; or
- (e) this Deed otherwise provides for the Department to exercise rights under clause 62.2,

the Department may immediately exercise one or more of the remedies set out in clause 62.2, by providing Notice to the Provider.

62.2 The remedies that the Department may exercise are:

- (a) suspending:
  - (i) any Payment or part of any Payment; and/or
  - (ii) access to all or part of the Department's IT Systems for the Provider, any Personnel, Subcontractor, Third Party IT Vendor, External IT System and/or other person;
- (b) stopping, or requiring the Provider to stop, any person (including any Personnel, Subcontractor or Third Party IT Vendor) or External IT System from Accessing the Department's IT Systems;
- (c) requiring the Provider to obtain new logon IDs for any Personnel, Subcontractor, Third Party IT Vendor or other person, and if so required, the Provider must promptly obtain such new logons; or
- (d) imposing special conditions on:
  - (i) the claiming or making of Payments; and/or
  - (ii) the management of Records,
 as the Department thinks fit, and the Provider must comply with any such special conditions;
- (e) reducing or not paying specific Payments that would otherwise have been payable under this Deed;
- (f) reducing the total amount of any Payments, permanently or temporarily;
- (g) recovering some or all Payments already made by the Department under this Deed, as a debt;
- (h) imposing additional financial or performance reporting requirements on the Provider; and
- (i) reducing the scope of this Deed.

62.3 If the Department takes any action under this clause 62:

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

- 62.4 For the avoidance of doubt, any reduction of Payments or the scope of this Deed under this clause 62 does not amount to a reduction of scope or termination for which compensation is payable.

### **63. Performance under other Commonwealth agreements**

- 63.1 Where the Provider was or is engaged to deliver employment services, or employment related services, under any agreements between the Provider and the Commonwealth at any time after seven years prior to the Deed Commencement Date ('another Commonwealth agreement') and the Department determines that the Provider:
- (a) has failed to fulfil, or was in breach of, any of its obligations under another Commonwealth agreement; or
  - (b) without limiting clause 63.1(a), claimed payment(s) under another Commonwealth agreement and the requirements under that Commonwealth agreement to be entitled to, or to qualify for, the payment(s) were not fully or properly satisfied by the Provider,
- the Department may, at its absolute discretion and by Notice to the Provider:
- (c) exercise one or more of the remedies set out in clause 62.2 of this Deed; or
  - (d) terminate this Deed, if the failure, breach, or conduct under clause 63.1(a) or (b) permitted the Commonwealth to terminate the relevant Commonwealth agreement.
- 63.2 A termination of this Deed under clause 63.1(d) entitles the Department to claim damages from, and exercise any other rights against, the Provider as a result of that termination, as if the termination was for a breach of an essential term of the Deed at law.
- 63.3 Any action taken by the Department under this clause 63 does not in any way limit any rights of the Department under a past Commonwealth agreement, under this Deed (including, but not limited to, rights in relation to debts and offsetting under clause 37) or at law.

### **64. Termination or reduction in scope with costs**

- 64.1 The Department may, at any time by Notice to the Provider, terminate this Deed in whole or in part, or reduce the scope of any part, or all of this Deed, without limiting the rights, liabilities, or obligations of either Party accruing before the date on which the termination or reduction takes effect.
- 64.2 If this Deed is terminated in whole or part or reduced in scope under this clause 64.1, the Department is only liable for:
- (a) Payments as set out in clause 64.3; and
  - (b) subject to clauses 64.6, 64.7, 64.8 and 64.9, any reasonable, unavoidable costs actually incurred by the Provider and directly attributable to the termination, in whole or in part, or a reduction in scope of this Deed.

#### **Payments**

- 64.3 Where the Department terminates this Deed in whole or in part or reduces the scope of this Deed under clause 64.1:



- (a) the Department will only be liable to make Payments which are properly due to the Provider before the date on which the termination or reduction in scope takes effect;
- (b) any the Upfront Payment will abate according to the extent it relates to the conduct of the Services after the date on which the termination or reduction in scope takes effect; and
- (c) the Department will be entitled to recover from the Provider any Upfront Payment paid that relates to the conduct of the Services after the date on which the termination or reduction in scope takes effect.

**Provider's obligations**

- 64.4 Upon receipt of a Notice of termination or reduction in scope under this clause 64, the Provider must:
- (a) cease or reduce the performance of its obligations under this Deed in accordance with the Notice;
  - (b) not legally commit any further monies in connection with the Services;
  - (c) immediately return to the Department any Upfront Payment paid, in accordance with clause 64.3(c);
  - (d) immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the Notice; and
  - (e) continue work on any part of the Services not affected by the Notice.

**Limit on compensation**

- 64.5 The Department's liability to pay any compensation in relation to this clause 64 is subject to the Provider's:
- (a) strict compliance with this clause 64; and
  - (b) substantiation of any amounts claimed under clause 64.3.
- 64.6 The Department will not be liable:
- (a) to pay compensation for loss of prospective profits attributable to a termination or reduction in scope under this clause 64;
  - (b) for loss of any benefits that would have been conferred on the Provider had a termination or a reduction in scope made under this clause 64 not occurred; or
  - (c) for any amounts that would, in aggregate, exceed the maximum Payments that would have been payable by the Department under this Deed in respect of the relevant Services, but for a termination or a reduction in scope made under this clause 64.
- 64.7 In addition, in relation to a reduction in scope under this clause 64, the Department will not be liable to pay the Provider, and the Provider agrees that its reasonable costs do not include:
- (a) any amounts owed by the Provider under any contract of employment or to any of its Subcontractors or Third Party IT Vendors; and

- (b) payment of any liabilities arising from commitments the Provider has made in relation to the conduct of the Services beyond the end of the Financial Year in which the reduction in scope takes place.
- 64.8 If the Department terminates, or reduces the scope of, this Deed under this clause 64:
- (a) the Department's actions will not constitute a breach of this Deed; and
  - (b) the Parties agree that the amounts payable to the Provider under this clause 64, represent a reasonable pre-estimate of any loss that may be incurred by the Provider.

## **65. Termination for default**

- 65.1 The Department may terminate this Deed in whole or in part, by giving Notice to the Provider, if any of the following events or matters arise:
- (a) the Provider fails to fulfil, or is in breach of, any of its obligations under this Deed that are not capable of being rectified (as determined by the Department);
  - (b) the Provider is in breach of any of its obligations under this Deed that are capable of being rectified, and 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 Provider fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
  - (d) to the extent permitted by law, any event referred to in clause 58 occurs, other than an event under clause 58.1(c);
  - (e) the Department becomes aware of any information which indicates that, prior to entering into this Deed, the Provider has, including in any response to the request for tender for this Deed:
    - (i) engaged in misleading or deceptive conduct;
    - (ii) made a statement that is incorrect or incomplete; or
    - (iii) omitted to provide information to the Department, andthe Department is satisfied that such information may have affected the Department's decision to enter into this Deed or any action taken by the Department under this Deed;
  - (f) notice is served on the Provider or proceedings are taken to cancel its incorporation or cancel its registration or to dissolve the Provider as a legal entity; or

Note: For the avoidance of doubt, clause 65.1(f) does not apply where a Provider has transferred its incorporation or registration in accordance with the legislation under which it is incorporated or registered.

- (g) the Department becomes expressly entitled to terminate this Deed under any other provision of this Deed (excluding clause 64) including under any other provision of this Deed which gives the Department the right to terminate under this clause 65.
- 65.2 Subject to clause 65.3, where the Department terminates this Deed in whole or in part under clause 65.1:

- (a) the Department is liable to pay Payments and entitled to recover Payments as set out in clause 64.3; and
  - (b) clauses 64.4 and 64.5 apply as if the Deed were terminated in accordance with clause 64.1.
- 65.3 Clause 65.1 does not limit or exclude the Department's other rights under this Deed or the law, including the right to recover any other amounts from the Provider on termination of this Deed, the right to reduce (including to zero) payments due on termination on the basis of breach or poor performance, or any rights of offset.

## **Section B4.4 – Other matters**

### **66. Indigenous Procurement Policy**

- 66.1 The Provider must use reasonable endeavours to increase its:
- (a) purchasing from Indigenous Enterprises; and
  - (b) employment of Indigenous persons,
- in the delivery of the Services.
- 66.2 For the purposes of clause 66.1(a), purchases from Indigenous Enterprises may be in the form of engagement of an Indigenous Enterprise as a Subcontractor, and/or use of Indigenous Enterprises in the Provider's supply chain.

Note 1: The Indigenous Procurement Policy is the Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (for further information, see the Indigenous Procurement Policy, available at <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>).

### **67. Indigenous peoples**

- 67.1 The Provider must:
- (a) within three months of the Deed Commencement Date, develop an indigenous employment strategy which is designed to attract, develop, and retain Indigenous persons as employees within the Provider's Own Organisation; and
  - (b) implement and maintain that strategy for the Term of this Deed.
- 67.2 The Provider must work in partnership with Jobs, Land and Economy Programme providers, employers, and community service organisations, on employment related strategies or initiatives to maximise employment of Indigenous peoples in local jobs.
- 67.3 The Provider may enter into agreements with relevant Jobs, Land and Economy Programme providers in locations where they are both operating for the purpose of maximising employment outcomes for Indigenous peoples in relation to specific Jobs, Land and Economy Programme projects.

### **68. Acknowledgement and promotion**

- 68.1 The Provider must:
- (a) in all publications, and in all promotional, publicity and advertising Materials or activities of any type undertaken by, or on behalf of, the Provider relating to the Services or this Deed:
    - (i) comply with any promotion and style guidelines issued by the Department;
    - (ii) use badging and signage in accordance with any Guidelines; and

(iii) acknowledge the financial and other support the Provider has received from the Commonwealth; and

(b) deliver to the Department (at the Department's request and at the Provider's own cost) copies of all promotional, publicity and advertising Materials that the Provider has developed for the purposes of this Deed.

#### **69. The Department's right to publicise the Services and best practice**

69.1 The Department may publicise and report on the Services and the awarding of this Deed to the Provider, including the name of the Provider, the amounts of Fees paid, or expected to be paid to the Provider, and a description of the Services.

69.2 Where the Department identifies best practice on the part of the Provider, the Department may disseminate advice of such best practice to any other person, including other Time to Work Providers.

#### **70. Conflict of interest**

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

70.2 The Provider must not enter into or engage in any arrangement, scheme or contract, however described, that may cause a Conflict in the performance of its obligations under this Deed.

70.3 If a Conflict arises, or is likely to arise the Provider must:

- (a) immediately Notify the Department of the Conflict and the Provider's proposed steps to resolve the Conflict; and
- (b) fully disclose all relevant information relating to the Conflict to the Department.

70.4 The Department may terminate this Deed under clause 65 if the Provider fails to take action in accordance with this clause 70 or is unable or unwilling to resolve or deal with the Conflict as reasonably required by the Department.

#### **71. Negation of employment, agency and subcontract**

71.1 The Provider, its Personnel, agents, Subcontractors and Third Party IT Vendors are not, by virtue of this Deed or any Subcontract, deemed to be Department Employees, agents or subcontractors or otherwise able to bind or represent the Commonwealth.

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

#### **72. Waiver**

72.1 A failure by a Party to exercise (or delay in exercising) any right does not operate as a waiver of that right.

72.2 A single or partial exercise by a Party of any right does not prevent the further exercise of that right.

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

72.4 In this clause 72, 'rights' means rights provided by this Deed, or at law.

### **73. Severance**

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

### **74. Entire agreement**

74.1 This Deed records the entire agreement between the Parties in relation to its subject matter and supersedes all communications, negotiations, arrangements, and agreements, whether oral or written, between the Parties about the subject matter of this Deed.

### **75. Variation of Deed**

75.1 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.

### **76. Applicable law and jurisdiction**

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

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

### **77. Compliance with laws and government policies**

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

- (a) all relevant laws and requirements of any Commonwealth, state, territory or local authority, including the WHS Laws, *Working with Children Laws* and the *Workplace Gender Equality Act 2012* (Cth); and
- (b) any Commonwealth policies Notified by the Department to the Provider in writing, referred to or made available by the Department to the Provider (including by reference to an internet site), including any listed in this Deed.

#### ***Workplace Gender Equality Act 2012 (Cth)***

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

77.3 The Provider must:

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

77.4 Compliance with the WGE Act does not relieve the Provider from its responsibility to comply with its other obligations under this Deed.

#### **Work health and safety**

77.5 The Provider must at all times:

- (a) ensure that the Services are carried out in a safe manner;
- (b) comply with any directions issued by any person having authority under the WHS Laws to do so;
- (c) if the Provider is required by the WHS Act to report a Notifiable Incident to the Regulator arising out of the Services:
  - (i) at the same time, or as soon as is possible in the circumstances, give Notice of such incident, and a copy of any written notice provided to the Regulator, to the Department; and
  - (ii) provide to the Department 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;
- (d) within 24 hours of becoming aware of such circumstances, inform the Department of the full details of:
  - (i) any suspected or actual contravention of the WHS Laws relating to the Services;
  - (ii) any workplace entry by a WHS Entry Permit Holder, or an inspector appointed under the WHS Act, to any place where the Services are being performed or undertaken;
  - (iii) any proceedings against the Provider, or any decision or request by the Regulator given to the Provider, under the WHS Laws; and
  - (iv) any cessation or direction to cease work relating to the Services, due to unsafe work, immediately upon the Provider being informed of any such cessation or direction; and
- (e) provide the Department with copies of all notices and correspondence issued to the Provider by any person under the WHS Laws, within 24 hours of receiving any such notice or correspondence.

77.6 The Provider must cooperate with any investigation undertaken by the Department concerning any Notifiable Incident, or breach or alleged breach of the WHS Laws, or any audit of the Provider's work health and safety performance, arising out of, or in respect of, the Services.

## **77A. Modern Slavery**

77A.1 In these clauses 77.7 to 77.11:

- (a) 'Modern Slavery' has the meaning given to that term in the Modern Slavery Acts and includes all other slavery-like practices;
- (b) 'Modern Slavery Acts' means the *Modern Slavery Act 2018* (Cth) and any State or Territory legislation relating to the same or similar subject matter;
- (c) 'Modern Slavery Law' means any law in connection with Modern Slavery in force in Australia from time to time, including:
  - (i) if and to the extent applicable, the Modern Slavery Acts; and
  - (ii) Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth);
- (d) 'Modern Slavery Offence' means any:

- (i) offence set out in, or other conduct or practices which amount to an offence under, any Modern Slavery Law; or
  - (ii) conduct which constitutes Modern Slavery;
  - (e) 'Modern Slavery Statement' means a statement within the meaning of section 12 of the *Modern Slavery Act 2018* (Cth);
  - (f) 'Modern Slavery Statements Register' means the register established under section 18 of the *Modern Slavery Act 2018* (Cth); and
  - (g) 'Reporting Period' means a reporting period within the meaning of section 4 of the *Modern Slavery Act 2018* (Cth).
- 77A.2 The Provider represents and warrants to the Department that, as at the Deed Commencement Date, the Provider has no knowledge of any Modern Slavery Offence that has occurred or is occurring in its operations or supply chains.
- 77A.3 The Provider must at all times during the Term of this Deed and in performing the Services:
- (a) take reasonable steps to identify the risk, and prevent the occurrence, of any Modern Slavery Offence in its operations and supply chains; and
  - (b) comply with any Modern Slavery Law.
- 77A.4 The Provider must Notify the Department as soon as practicable, and no later than five Business Days after becoming aware, of any Modern Slavery Offence or alleged Modern Slavery Offence in its operations or supply chains.
- 77A.5 If for a Reporting Period the Provider's consolidated revenue is \$100 million or more, the Provider must for that Reporting Period prepare a Modern Slavery Statement and submit it to the Australian Government's Modern Slavery Statements Register at <https://modernslaveryregister.gov.au>.

## **78. Notices**

- 78.1 A Party giving Notice under this Deed must do so in writing by email, hand delivery or pre-paid post to the address of the Provider Lead or the Contact Person, as relevant.
- 78.2 A Notice given in accordance with clause 78.1 is taken to be received:
- (a) if sent by email, upon actual receipt by the addressee;
  - (b) if hand delivered, on delivery; or
  - (c) if sent by pre-paid post, 5 Business Days after the date of posting, unless it has been received earlier.
- 78.3 For the purposes of this clause 78, the Provider Lead's and the Contact Person's address is as specified in items 2 and 3 of Schedule 1.

# Annexure 1 – Definitions

The term **‘Income Support Payment’** has the meaning given to it, in its decapitalised form, in the *Social Security Act 1991* (Cth).

**‘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.

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

**‘Ancillary Payment’** means a payment made to the Provider under clause 19.7 or clause 33.1.

**‘Annexure’** means an annexure to this Deed.

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

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

**‘Authorised Officer’** means a person who is an ‘authorised officer’ as defined under the *Public Interest Disclosure Act 2013* (Cth).

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

**‘Calendar Day’** means any day including a Saturday, Sunday or public holiday in Australia.

**‘Change in Control’** means:

- (a) subject to paragraph (b) below, in relation to a Corporation, a change in any of the following:
  - (i) Control of more than one half of the voting rights attaching to shares in the Corporation, whether due to one or a series of transactions occurring together or on different occasions;
  - (ii) Control of more than one half of the issued share capital of the Corporation, whether due to one or a series of transactions occurring together or on different occasions, excluding any part of the issued share capital which carries no right to participate beyond receipt of an amount in the distribution of either profit or capital; or
  - (iii) Control of more than one half of the voting rights attaching to membership of the Corporation, where the Corporation does not have any shareholders;
- (b) in relation to a Corporation which is owned or controlled by a trustee company, any change as set out in paragraph (a) above in relation to either that Corporation or its corporate trustee;
- (c) in relation to a partnership:
  - (i) the sale or winding up or dissolution of the business by the partners;
  - (ii) a change in any of the partners; or
  - (iii) the retirement, death, removal or resignation of any of the partners;
- (d) in relation to an Exempt Public Authority, a change in relation to any of the following:
  - (i) the composition of the board of Directors;
  - (ii) ownership of any shareholding in any share capital; or



- (iii) the enabling legislation so far as it affects Control, if any; or
- (e) in relation to a Group Respondent:
  - (i) any change in the membership of the Group Respondent;
  - (ii) a change of the lead member of the Group Respondent, if the Group Respondent has appointed a lead member for the purposes of this Deed; or
  - (iii) a Change in Control as defined in paragraphs (a) to (d) above in any member of the Group Respondent.

**‘Commence’** means to Register, and Refer a Participant to the Provider, in the Department’s IT Systems.

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

**‘Commonwealth Coat of Arms’** means the Commonwealth Coat of Arms as set out in the Commonwealth Coat of Arms Information and Guidelines (available at <https://www.pmc.gov.au/resources/commonwealth-coat-arms-information-and-guidelines>).

**‘Commonwealth Material’** means any Material provided by the Department to the Provider for the purposes of this Deed and Material which is copied or derived from Material so provided.

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

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

**‘Completion Date’** means either:

- (a) the Service Period end date; or
- (b) if this Deed is terminated before the day specified in paragraph (a), the day on which this Deed is terminated.

**‘Community Development Program’** or ‘CDP’ means the Commonwealth program of that name (or such other name as advised by the Department), which is administered by the National Indigenous Australians Agency.

**‘Community Development Program Provider’** means any entity that is contracted by the Commonwealth to deliver Community Development Program services.

**‘Condition of Offer’** means a condition placed by the Department on its offer of this Deed to the Provider.

**‘Confidential Information’** means all information that the Parties agree to treat as confidential by Notice to each other after the Deed Commencement Date; or that the Parties know, or ought reasonably to know, is confidential to each other.

**‘Conflict’** refers to a conflict of interest, or risk or perception of a conflict of interest, in connection with the Provider’s activities or interests that may affect the Provider’s fair and independent performance of the Services.

**‘Constitution’** means (depending on the context):

- (a) a company’s constitution, which includes any rules and amendments that are part of the company’s constitution; or
- (b) in relation to any other kind of body:

- (i) the body's charter, rules or memorandum; or
- (ii) any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members.

**'Contact'** means a contact between the Provider and a Participant in accordance with clause 10.

Note: Third parties may also participate in Contacts. For example: Services Australia may participate in a Contact to conduct an ESAT (clause 13); and an Employment Services Provider may participate in a Facilitated Transfer Meeting (clause 15).

**'Contact Person'** means the person specified in item 3 of Schedule 1 who has authority to receive and sign Notices and written communications for the Provider under this Deed and accept any request or direction in relation to the Services.

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

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

**'Customer'** includes a Participant, Eligible Prisoner, Prison and any other user of the Services.

**'Cybersafety Policy'** means the Department's policy of that name as specified in clause 44.

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

**'Deed Commencement Date'** means the later of the date specified at item 1 of Schedule 1, or the date on which this Deed is signed by the last Party to do so.

**'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 paragraph (a) above; or
- (c) copied or derived from Material referred to in paragraphs (a) or (b),

and includes all Records in relation to the Services.

**'Department'** means the Commonwealth Department of Employment and Workplace Relations or such other agency or department that administers this Deed on behalf of the Commonwealth from time to time, and where the context requires, includes the Commonwealth's relevant officers, delegates, employees and agents.

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

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

**'Department's IT Systems'** means the Department's IT computer system accessible by a Provider, delivered as web-browser applications optimised for Internet Explorer 11, and through which information is exchanged between the Provider, Subcontractors, Services Australia and the Department in relation to the Services.

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

**'Department's Security Policies'** means policies relating to the use and security of the Department's IT Systems and Records, and includes the policy by the name of Security Policy for External Employment Services Providers and Users and any other security policies Notified by the Department. Relevant policies

are available on the Department's IT Systems through the following path: Provider Portal > TWES > Provider Operations > IT Security & Access, or at such other location as advised by the Department.

**'Disability Employment Services'** means the Commonwealth program of that name (or such other name as advised by the Department), which is administered by the Department of Social Services.

**'Disability Employment Services Provider'** means any entity that is contracted by the Commonwealth to deliver services under the Disability Employment Services.

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

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

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

**'Eligible Prisoner'** means a person who:

- (a) is an Indigenous person;
- (b) is over 18 years old;
- (c) is serving a sentence of imprisonment of three months or more; and
- (d) is identified by a Prison as having a known release date (whether due to fully serving their sentence of imprisonment or on parole) that is no less than one month and no more than four months in the future.

**'Employment Region'** means a geographical area identified and displayed at the Labour Market Insights Website ([labourmarketinsights.gov.au](http://labourmarketinsights.gov.au)).

**'Employment Services Assessment' or 'ESAt'** means an assessment of a person's barriers to employment and work capacity conducted by Services Australia.

**'Employment Services Program'** means:

- (a) Workforce Australia Services;
- (b) the Transition to Work Service;
- (c) ParentsNext;
- (d) Disability Employment Services;

- (e) Community Development Program; or
- (f) Self-Employment Assistance.

**‘Employment Services Provider’** means a:

- (a) Workforce Australia Employment Services Provider;
- (b) Workforce Australia – Transition to Work Provider;
- (c) ParentsNext Provider;
- (d) Disability Employment Services Provider;
- (e) Community Development Program Provider; or
- (f) Workforce Australia - Self Employment Assistance Provider.

**‘Employment Services Tip off Line’** means a telephone and email service, developed primarily for current and former employees of Employment Services Providers who suspect, or have evidence of incorrect claims or acceptance of Payments, or any other activities that may be a breach of the Deed that Employment Services Providers have signed with the Department, and which allows those persons to report their concerns to the Department.

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

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

**‘Exempt’** means the Participant has been given an exemption by Services Australia from complying with the activity test or participation requirements that the Participant must meet in order to receive an Income Support Payment.

**‘Existing Material’** means all Material, except Commonwealth Material, in existence prior to the Deed Commencement Date or developed independently of this Deed:

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

**‘Exit’** means an exit of a Participant from Services in accordance with clause 16 and ‘Exited’ has an equivalent meaning.

**‘External IT System’** means any information technology system or service, other than the Department's IT Systems, used by the Provider or any Subcontractor in association with the delivery of the Services or to Access the Department's IT Systems. 'External IT System' includes a Provider IT System and any Third Party IT.

**‘External Systems Assurance Framework’ or ‘ESAF’** means the framework of mechanisms used by the Department to get assurance over External IT Systems and includes requirements in relation to Provider IT System accreditation and Third Party IT accreditation and associated timeframes, standards and guidelines and is available on the Department's IT Systems or at such other location as advised by the Department from time to time.

**‘Facilitated Transfer Meeting’** means a Contact in accordance with clause 15.2, which is arranged with a Participant’s proposed Employment Services Provider to prepare the Participant for their transition to an Employment Services Program following their release from prison.

**‘Fees’** means any amounts payable by the Department under this Deed specified to be Fees.

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

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

**‘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’** mean the guidelines, if any, as described in this Deed and issued by the Department.

**‘Implementation Plan’** means the plan outlining how the Provider will organise and prepare itself in order to implement the Services in each Prison, which has been developed by the Provider and approved by the Department in accordance with clauses 2.1 to 2.3 of this Deed.

**‘Indigenous’** means a person who:

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

**‘Indigenous Enterprise’** means an organisation that is 50 per cent or more owned by Indigenous persons and is operating as a business.

**‘Initial Appointment’** means an initial Contact between the Provider and a Participant in accordance with clause 11.

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

**‘Intellectual Property Rights’** includes:

- (a) all copyright (including rights in relation to phonograms and broadcasts);
- (b) all rights in relation to inventions (including patent rights), plant varieties, trademarks (including service marks), designs, circuit layouts; and
- (c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include:
  - (d) Moral Rights;
  - (e) the non-proprietary rights of performers; or
  - (f) rights in relation to Confidential Information.

**‘Interest’** means interest calculated at 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) less 10 basis points.

**‘Job Seeker Classification Instrument’** or **‘JSCI’** means the tool used to measure a Participant’s relative level of disadvantage based on the expected difficulty in finding the Participant employment because of the Participant’s personal circumstances and labour market skills.

**‘Jobs, Land and Economy Programme’** means the Commonwealth program administered by the Department of Prime Minister and Cabinet which aims to get adult Indigenous persons into work, foster viable Indigenous businesses and assist Indigenous persons to generate economic and social benefits from land and sea use and native title rights.

**‘Joint Charter’** means the charter at Annexure 2 which embodies the commitment by the Department and Employment Services Providers to work cooperatively to achieve shared goals and outcomes in the delivery of employment services.

**‘KPI’** means the performance indicators specified in clause 17 or as Notified by the Department.

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

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

**‘Malicious Code’** means any software that attempts to subvert the confidentiality, integrity or availability of a system.

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

**‘Non-vocational Barriers’** means the range of barriers that can prevent a person from obtaining and sustaining employment or education or from undertaking further skills development, including homelessness, mental illness, drug or alcohol addiction, sexual abuse or violence and physical or mental abuse.

**‘Notice’** means a written notice in accordance with clause 78 and ‘Notify’ has an equivalent meaning.

**‘Notifiable Incident’** has the meaning given in the WHS Act.

**‘Ombudsman’** means the Commonwealth Ombudsman established under the *Ombudsman Act 1976* (Cth) and includes any other entity that may, from time to time, perform the functions of the Commonwealth Ombudsman.

**‘Own Organisation’** means the Provider or that part of the Provider that delivers the Services.

**‘ParentsNext’** means the Commonwealth program of that name (or such other name as advised by the Department), which is administered by the Department.

**‘ParentsNext Provider’** means any entity that is contracted by the Commonwealth to deliver ParentsNext services.

**‘Participant’** means an Eligible Prisoner who volunteers to participate in the Time to Work Employment Service prior to the first day of the Transition Out Period.

**‘Particulars’** means the document of that name in which the Parties execute this Deed.

**‘Party’** means a party to this Deed.

**‘Payments’** means the Fees and Ancillary Payments payable to the Provider under this Deed and includes any amount of GST that may form part of these payments.

**‘Period of Service’** means the period for each Participant:

- (a) beginning when they meet the definition of a Participant; and
- (b) ending when they are transferred from the Provider or Exited, whichever is the earliest.

**‘Personal Information’** has the same meaning as under section 6 of the Privacy Act which currently is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

**‘Personnel’** means:

- (a) in relation to the Provider, any natural person who is an officer, employee, volunteer or professional advisor of the Provider; and

- (b) in relation to any other entity, any natural person who is an officer, employee, volunteer or professional advisor of the entity.

**'Pre-Release Interview'** means the interview of a Participant conducted by Services Australia for the purpose of preparing any application for an Income Support Payment post-release from prison and identifying the Participant's proposed post-release Employment Services Provider.

**'Prison'** means a prison listed at item 6.2 of Schedule 1.

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

**'Program Assurance Activities'** means any activities to assist the Department in determining whether the Provider is meeting its obligations under the Deed.

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

**'Provider'** means the Time to Work Provider contracted under this Deed, and includes its Personnel, successors and assigns, and any constituent entities of the Provider's organisation, and includes reference to a Group Respondent contracted under this Deed, where applicable.

**'Provider Exit'** means the manual exiting of a Participant from the Services by the Provider, through its recording of the exit and the relevant reasons on the Department's IT Systems, in accordance with clause 16.2 of this Deed and any Guidelines.

**'Provider IT System'** means an information technology system used by the Provider or any Subcontractor in association with the delivery of the Services or to Access the Department's IT Systems.

**'Provider Lead'** means the person for the time being holding, occupying or performing the duties of the position specified in item 2 of Schedule 1.

**'Public Sector Data'** has the meaning given to that term in section 9 of the *Data Availability and Transparency Act 2022* (Cth).

**'Record'** means any document, information or data stored by any means, and any copies or extracts of the same relating to the Services.

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

**'Refer'** means the act of identifying a Participant as being serviced by the Provider in the Department's IT Systems.

**'Register'** means creating or activating a Participant's record on the Department's IT Systems.

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

**'Related Entity'** means:

- (a) those parts of the Provider other than Own Organisation;
- (b) 'entities connected with a corporation' as defined in section 64B of the *Corporations Act 2001* (Cth) with the word 'Provider' substituted for every occurrence of the word 'corporation' in that section;
- (c) an entity that:
  - (i) can control, or materially influence, the Provider's activities or internal affairs;
  - (ii) has the capacity to determine, or materially influence, the outcome of the Provider's financial and operating policies; or
  - (iii) is financially interested in the Provider's success or failure or apparent success or failure;
- (d) if the Provider is a company, an entity that:
  - (i) is a holding company of the Provider;

- (ii) is a subsidiary of the Provider;
  - (iii) is a subsidiary of a holding company of the Provider;
  - (iv) has one or more Directors who are also directors of the Provider; or
  - (v) without limiting clauses (d)(i) to (iv) of this definition, controls the Provider; or
- (e) an entity, where a familial or spousal relationship between the principals, owners, Directors, officers or other like persons exists between that entity and the principals, owners, Directors, officers or like persons of the Provider.

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

**‘Schedule’** means a schedule to this Deed.

**‘Security Contact’** means one or more Personnel with responsibility:

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

**‘Self-Employment Assistance’** means the Commonwealth service of that name (or such other name as advised by the Department), administered by the Department.

**‘Services’** means the services that the Provider is contracted to provide under this Deed.

**‘Services Australia’** means the Commonwealth department of that name or such other agency or department as Notified by the Department from time to time, and where the context so admits, includes its relevant officers, delegates, employees and agents.

**‘Service Fee’** means the Fee of that name specified at Table 1 in Annexure 2 and paid in accordance with clause 19.

**‘Service Period’** means, subject to any contrary stipulation in this Deed, the period of that name specified in item 4 of Schedule 1.

**‘Service Start Date’** means the date(s) for each Prison as specified in item 6.4 of Schedule 1.

**‘Six Month Period’** means any one of the following:

- (a) 1 January to 30 June; or
- (b) 1 July to 31 December.

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

**‘Subcontractor’** means any party which has entered into a Subcontract with the Provider, including a Material Subcontractor.

**‘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 21.

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

- (a) contains program specific functionality or modules; or



(b) is used, in any way, for the analysis of Records relating to the Services, or any derivative thereof.

**‘Third Party IT’ or ‘TPIT’** means any:

- (a) information technology system developed and managed; or
- (b) information technology service provided,

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

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

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

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

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

**‘Time to Work Employment Service’** means the Commonwealth service of that name (or such other name as advised by the Department), which is administered by the Department.

**‘Time to Work Employment Service Guarantee’** means a set of minimum service standards for the Time to Work Employment Service as specified in Annexure 4.

**‘Time to Work Provider’** means any entity contracted by the Commonwealth to provide the Time to Work Employment Service under the Time to Work Employment Service Deed.

**‘Transition Out Period’** means the two months preceding the end of the Service Period.

**‘Transition Plan’** means a plan developed by the Provider for each Participant in accordance with clause 14.

**‘Transition Plan Fee’** means the Fee of that name specified at Table 1 in Annexure 2 and paid in accordance with clause 19.4.

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

**‘Upfront Payment’** means the upfront payment of Service Fees in accordance with clauses 19.1 to 19.3.

**‘Vocational Barrier’** means a lack of appropriate training, skills or qualifications for employment.

**‘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.

**‘Work Readiness’** means possessing the core skills and behaviours required by employers, including:

- (a) teamwork skills;
- (b) communication skills; and
- (c) a positive attitude and work ethic, including motivation, reliability and a willingness to work.

**‘Workforce Australia Employment Services Provider’** means any entity contracted by the Commonwealth to provide services under the Workforce Australia Services Deed of Standing Offer 2022–2028.

**‘Workforce Australia – Self-Employment Assistance Deed’** or **‘Self-Employment Assistance Deed’** means the Workforce Australia – Self-Employment Assistance Deed 2022–2027, being an agreement for the provision of Self-Employment Assistance with the Department.

**‘Workforce Australia – Self-Employment Assistance Provider’** or **‘Self-Employment Assistance Provider’** means any entity that is a party to a Workforce Australia – Self-Employment Assistance Deed.

**‘Workforce Australia Services’** means the Commonwealth services of that name (or such other name as advised by the Department), administered by the Department.

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

**‘Workforce Australia - Transition to Work Provider’** or **‘Workforce Australia - TtW Provider’** means any entity that is a party to a Workforce Australia - Transition to Work Deed.

## Annexure 2 – Payments

Table 1

Payment Type	Payment amount (GST inclusive)	Clause reference
Service Fee	\$693.53	Clauses 19.1 to 19.3
Transition Plan Fee	\$255.81	Clause 19.4



Australian Government  
Department of Employment  
and Workplace Relations

## Annexure 3 – Joint Charter



### Respectful

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

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

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

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

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



### Connected

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

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

**Technology is used** to:

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

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

**Decisions are transparent** and informed by evidence and data intelligence.



### Simple

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

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

**Automation supports** streamlined processes and workflows.

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

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



### Supported

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

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

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

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

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

## Joint Charter

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

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

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

## **Annexure 4 – Time to Work Employment Service Guarantee**

### **Time to Work Employment Service Guarantee**

This Service Guarantee reflects the Australian Government's expectations of Time to Work Providers. It sets out the minimum level of service each participant can expect to receive, as well as what each participant will need to do to benefit from the program.

The Australian Government is committed to creating better opportunities for Aboriginal and Torres Strait Islander peoples to secure employment. The Time to Work program will provide eligible Aboriginal and Torres Strait Islander prisoners with employment assistance while they are in prison to help them prepare for employment post-release.

### **What you can expect from your Time to Work provider**

Your provider will:

- explain to you the services you will receive and what you will need to do
- provide you with an assessment to identify any employment barriers you might face when released
- work with you to develop your Transition Plan. This sets out the skills you have, the work you would like to do and any help you may need
- provide you with an introduction to an employment services provider who will assist you to find employment when you are released from prison
- ensure you are aware of any other services that are available to you
- treat you fairly and with respect in a culturally sensitive way
- ensure that staff are appropriately trained and committed to assisting Aboriginal and Torres Strait Islander participants transition from prison to employment services following their release from prison.

### **What is expected of you**

There are some things you need to do, including:

- attend all scheduled meetings, where possible
- answer all questions as best you can
- assist us to develop your Transition Plan and agree to what is written in the plan
- participate in a meeting with your post-release employment services provider
- let us know if there are any changes in your circumstances, e.g. your living or parenting arrangements or your health, so we can update your Transition Plan.

## **Your personal information is confidential**

Your personal information is protected by law, including the *Privacy Act 1988*. We will only collect information from you that will assist us to provide employment related services to you.

We may also share information with other government agencies, where needed, to make sure you are getting the right level of support.

## **Compliments, suggestions or complaints**

Your views about the services you are receiving are important. The Department of ] Employment and Workplace Relations and your Time to Work provider value any compliments, suggestions or complaints that you may have.

If you think you are not receiving the right help, you should talk to us first. We will offer a feedback process which is fair and will try to resolve your concerns.

If you cannot do this or are still not happy, you can call the Department of Employment and Workplace Relations' National Customer Service Line on 1800 805 260 (free call from land lines).

If you have suggestions to improve the services that you are receiving, please let us know or call the National Customer Service Line.

# SCHEDULE 1 – Deed and business details

**Item 1**            **Deed Commencement Date** (clause 21.1, Annexure 1)  
                         (As previously specified)

**Item 2**            **Provider Lead** (clause 30.4, Annexure 1)  
                         (As previously specified)

**Item 3**            **Contact Person** (clause 30.4, Annexure 1)  
                         (As previously specified)

**Item 4**            **Service Period** (clause 24.1, Annexure 1)

Deed Commencement Date – 30 June 2024

Item 5            Account details for payment (clause 35.1(e))

Bank BSB Number	Bank Account Number	Bank Account Name
(As previously specified)	(As previously specified)	(As previously specified)
Bank Name		Bank Branch
(As previously specified)		(As previously specified)

Item 6            Time to Work Employment Service (clause 24, Annexure 1)

6.1 State/Territory	6.2 All Prisons (clause 24.1, Annexure 1)	6.3 Prison (clause 24.1, Annexure 1)	6.4 Service Start Date (clause 24.1, Annexure 1)	6.5 Estimated number of Eligible Prisoners (clause 19.2)
(As previously specified)	(As previously specified)	(As previously specified)	(As previously specified)	(As previously specified)



**Item 7**      **Group Respondent members** (clause 55.1(b), Annexure 1)

Name	Address	ABN
(As previously specified)	(As previously specified)	(As previously specified)

**Item 8**      **Subcontractors approved at the Deed Commencement Date** (clause 59.2, Annexure 1)

Name	Address	ABN	Terms and conditions
(As previously specified)	(As previously specified)	(As previously specified)	(As previously specified)

**Item 9**      **Insurance** (clause 53.1, Annexure 1)

Insurance type	Terms and Conditions
Public liability insurance	Written on an occurrence basis with a limit of indemnity of at least \$20 million in respect of each and every occurrence
Workers' compensation insurance	As required by law in each Australian state or territory where the Services are performed or delivered
Any other insurance policies required to adequately cover the Provider's business risk that a similar Employment Services Provider, acting reasonably, would acquire, and any other insurance cover required by law.	As appropriate

# Deed Variation History

## Reader's Guide to this Deed

Clause	Variation, effective date
Introduction	GDV 3, 1 January 2020
Overview of Services	GDV 3, 1 January 2020
	GDV 7, 1 July 2023

## Part A – Time to Work Employment Service

Clause	Variation, effective date
8.1(e)	GDV 4, 1 July 2020
10.1	GDV 4, 1 July 2020
10.1(c)	GDV 3, 1 January 2020
13.1A	GDV 4, 1 July 2020
13.2	GDV 4, 1 July 2020
	DoV, 1 July 2021
13.2(a), (b), (c)	GDV 3, 1 January 2020
	GDV 4, 1 July 2020
13.2 Note	GDV 3, 1 January 2020
13.3 and Note	DoV, 1 July 2021
15.1	GDV 4, 1 July 2020
15.1(c)	GDV 3, 1 January 2020
15.2	GDV 3, 1 January 2020
16.2(a)	GDV 6, 1 July 2022
16.3(d)	GDV 3, 1 January 2020
16.3(e)	GDV 6, 1 July 2022
17.2(e)	GDV 3, 1 January 2020
19.4(b)(i) and (ii)	DoV, 1 July 2021
19.6	GDV 7, 1 July 2023

## Part B – General Terms and Conditions

Clause	Variation, effective date
20.4(f)	GDV 7, 1 July 2023
21.2	GDV 7, 1 July 2023
22.1(a)	GDV 7, 1 July 2023

Clause	Variation, effective date
25.2(a)	GDV 2, 1 July 2019
25.3(c)	GDV 7, 1 July 2023
29 Heading 'Joint Charter'	GDV 7, 1 July 2023
29.1, 29.2	GDV 7, 1 July 2023
30.4	GDV 7, 1 July 2023
35.7(b)	GDV 7, 1 July 2023
36.3, (a) and (b)	GDV 1, 1 January 2019
	GDV 7, 1 July 2023
36.4	GDV 7, 1 July 2023
36.5, (a), (b) and (c)	GDV 7, 1 July 2023
36.6	GDV 7, 1 July 2023
37.2(a) and (b)	GDV 7, 1 July 2023
43.2	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
43.3(b)	GDV 7, 1 July 2023
44 Heading 'Access and information security assurance'	GDV 1, 1 January 2019
44.2 Subheading 'External IT Systems' and Note	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
44.2(a)	GDV 1, 1 January 2019
	GDV 3, 1 January 2020
	GDV 4, 1 July 2020
	GDV 7, 1 July 2023
44.2(a)(i), (b), (i), (v), (c)	GDV 1, 1 January 2019
44.2(a)(ii) and (b)(iii)	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
44.2(b)(iv)	GDV 3, 1 January 2020
44.2(b)(vi), (vii), (viii)	GDV 1, 1 January 2019
	GDV 3, 1 January 2020
44.3(a) and (c)	GDV 1, 1 January 2019
44.4 Subheading 'Provider IT System accreditation' and Note	GDV 1, 1 January 2019
44.4	GDV 7, 1 July 2023
44.4(a)	GDV 1, 1 January 2019
44.5	GDV 1, 1 January 2019

Clause	Variation, effective date
44.6	GDV 1, 1 January 2019
	GDV 7, 1 July 2023
44.7	GDV 1, 1 January 2019
44.8	GDV 1, 1 January 2019
	GDV 7, 1 July 2023
44.9	GDV 1, 1 January 2019
44.10 Subheading 'Third Party IT' and Note	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
44.10(c) and (e)	GDV 1, 1 January 2019
44.10(a), (i), (ii), (b), (c), (d)	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
44.10(d)	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
	GDV 7, 1 July 2023
44.10(e)	GDV 1, 1 January 2019
44.10(f)	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
	GDV 3, 1 January 2020
	GDV 4, 1 July 2020
	GDV 7, 1 July 2023
44.10A.1	GDV 7, 1 July 2023
44.10A.2	GDV 7, 1 July 2023
44.12	GDV 2, 1 July 2019
44.14	GDV 1, 1 January 2019
	GDV 4, 1 July 2020
44.15(c)	GDV 2, 1 July 2019
44.15(e)	GDV 1, 1 January 2019
44.16(a) and (b)	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
44.16(c)	GDV 2, 1 July 2019
44.18	GDV 2, 1 July 2019
44.20	GDV 2, 1 July 2019
45.9	GDV 7, 1 July 2023

<b>Clause</b>	<b>Variation, effective date</b>
46.1	GDV 1, 1 January 2019
46.2(c), (d), (e), (i), (f), (g)-(l)	GDV 1, 1 January 2019
46.3(c)	GDV 1, 1 January 2019
46.4	GDV 1, 1 January 2019
46.5	GDV 1, 1 January 2019
	GDV 4, 1 July 2020
48.1(a)	GDV 2, 1 July 2019
48.4 Subheading 'Access to Records'	GDV 4, 1 July 2020
48.4	GDV 2, 1 July 2019
	GDV 4, 1 July 2020
48.4(a), (i)-(iv), (b)	GDV 4, 1 July 2020
48.5	GDV 2, 1 July 2019
48A	GDV 7, 1 July 2023
50.2(a) and (c)	GDV 2, 1 July 2019
51.1(a)(i), (iv), (b)(i), (iii)	GDV 2, 1 July 2019
51.1(a)(ii)	GDV 1, 1 January 2019
61.1(b)	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
62.2(a)(ii) and (b)	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
62.2(c)	GDV 2, 1 July 2019
63 Heading 'Performance under other Commonwealth agreements'	GDV 7, 1 July 2023
63.1, (a), (b) and (d)	GDV 7, 1 July 2023
64.7(a)	GDV 7, 1 July 2023
66.2 Note 1	GDV 4, 1 July 2020
68.1	GDV 1, 1 January 2019
71.1	GDV 2, 1 July 2019
71.2	GDV 2, 1 July 2019
77.6	GDV 7, 1 July 2023
77A	GDV 7, 1 July 2023
78.1	GDV 7, 1 July 2023
78.3	GDV 7, 1 July 2023

## **Annexure 1 – Definitions**

Clause	Variation, effective date
'Account Manager'	GDV 7, 1 July 2023
'Australian Information Commissioner'	GDV 1, 1 January 2019
	GDV 7, 1 July 2023
'Calendar Day'	GDV 7, 1 July 2023
'Commonwealth Coat of Arms'	GDV 7, 1 July 2023
'Community Development Program'	GDV 3, 1 January 2020
'Community Development Program Provider'	GDV 3, 1 January 2020
'Completion Date'	GDV 7, 1 July 2023
'Contact' Note	GDV 3, 1 January 2020
	DoV, 1 July 2021
'Cybersafety Policy'	GDV 2, 1 July 2019
'Department'	GDV 2, 1 July 2019
	GDV 4, 1 July 2020
	GDV 7, 1 July 2023
'Department's IT Systems'	GDV 3, 1 January 2020
'Department's Security Policies'	GDV 4, 1 July 2020
'DHS'	GDV 3, 1 January 2020
'DHS Pre-Release Interview'	GDV 3, 1 January 2020
'Documentary Evidence'	GDV 2, 1 July 2019
'Eligible Prisoner'	DoV, 1 July 2021
'Employment Region'	GDV 3, 1 January 2020
	GDV 7, 1 July 2023
'Employment Services Program'	GDV 3, 1 January 2020
	GDV 6, 1 July 2022
'Employment Services Provider'	GDV 6, 1 July 2022
'Employment Services Assessment' or 'ESAt'	GDV 3, 1 January 2020
'Employment Services Provider'	GDV 3, 1 January 2020
'Employment Systems Service Desk'	GDV 4, 1 July 2020
'Exempt'	GDV 3, 1 January 2020
'Extended Service Period'	GDV 7, 1 July 2023
'External IT System'	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
'External Systems Assurance Framework' or 'ESAF'	GDV 1, 1 January 2019

Clause	Variation, effective date
'Guide to Social Security Law'	GDV 3, 1 January 2020
	GDV 7, 1 July 2023
'Harmful Code'	GDV 3, 1 January 2020
'jobactive'	GDV 6, 1 July 2022
'jobactive provider'	GDV 6, 1 July 2022
'Jobs, Land and Economy Programme'	GDV 3, 1 January 2020
'Joint Charter'	GDV 7, 1 July 2023
'Malicious Code'	GDV 3, 1 January 2020
'NEIS'	GDV 6, 1 July 2022
'New Employment Services Trial' or 'NEST'	GDV 3, 1 January 2020
	GDV 6, 1 July 2022
'New Employment Services Trial Provider' or 'NEST Provider'	GDV 3, 1 January 2020
	GDV 6, 1 July 2022
'Pre-Release Interview'	GDV 3, 1 January 2020
'Privacy Commissioner'	GDV 1, 1 January 2019
'Protected Information'	GDV 7, 1 July 2023
'Provider IT System'	GDV 1, 1 January 2019
'Provider Lead'	GDV 7, 1 July 2023
'Public Sector Data'	GDV 7, 1 July 2023
'Self-Employment Assistance'	GDV 6, 1 July 2022
'Services Australia'	GDV 3, 1 January 2020
'Social Security Law'	GDV 7, 1 July 2023
'Statement of Applicability'	GDV 1, 1 January 2019
'Third Party Employment System' or 'TPES'	GDV 1, 1 January 2019
	GDV 3, 1 January 2020
'Third Party IT' or 'TPIT'	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
'Third Party IT Vendor'	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
'Third Party IT Vendor Deed'	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
'Third Party System'	GDV 1, 1 January 2019
'Third Party Supplementary IT System' or 'TPSITS'	GDV 1, 1 January 2019

Clause	Variation, effective date
	GDV 3, 1 January 2020
'Transition Out Period'	GDV 7, 1 July 2023
'Transition to Work'	GDV 6, 1 July 2022
'Transition to Work Provider'	GDV 6, 1 July 2022
'Transition to Work Service' or 'TtW'	GDV 6, 1 July 2022
'Workforce Australia – Self-Employment Assistance Deed' or 'Self-Employment Assistance Deed'	GDV 6, 1 July 2022
'Workforce Australia – Self-Employment Assistance Provider' or 'Self-Employment Assistance Provider'	GDV 6, 1 July 2022
'Workforce Australia Services'	GDV 6, 1 July 2022
'Workforce Australia - Transition to Work Deed' or 'Workforce Australia - TtW Deed'	GDV 6, 1 July 2022
'Workforce Australia - Transition to Work Provider' or 'Workforce Australia - TtW Provider'	GDV 6, 1 July 2022

## Annexure 2 – Payments

Clause	Variation, effective date
Table 1	GDV 4, 1 July 2020
	GDV 6, 1 July 2022
	GDV 7, 1 July 2023

## Annexure 3 – Joint Charter

Clause	Variation, effective date
Joint Charter	GDV 1, 1 January 2019
	GDV 2, 1 July 2019
	GDV 4, 1 July 2020
	GDV 7, 1 July 2023

## Annexure 4 – Time To Work Employment Service Guarantee

Clause	Variation, effective date
Time to Work Employment Service Guarantee	GDV 2, 1 July 2019
	GDV 4, 1 July 2020
	GDV 7, 1 July 2023

## SCHEDULE 1 – Deed and business details



Clause	Variation, effective date
Item 2	GDV 7, 1 July 2023
Item 4	GDV 7, 1 July 2023
Item 9	GDV 7, 1 July 2023