

# **New Employment Services Trial Deed 2019-2022**

**Effective 1 October 2019**

**RELEASE VERSION**

# Reader's Guide to this Deed

This New Employment Services Trial Deed 2019-2022 (**Deed**) replaces the jobactive Deed 2015-2022 (**jobactive Deed**) in respect of the provision of services by Trial Providers in Employment Regions covered by the Trial. The Trial will test key aspects of the Australian Government's new model of employment services.

If a Trial Provider is contracted to service other Employment Regions under its jobactive Deed that are not covered by the Trial, the Trial Provider must continue to provide services in those other Employment Regions under its jobactive Deed.

This Deed is comprised of:

1. Part A - GENERAL CONDITIONS
2. Part B - TRIAL PARTICIPATION SERVICES
3. Part C - GENERAL TRIAL PROVIDER SERVICES
4. Part D - ENGAGEMENT, ACTIVITIES AND COMPLIANCE
5. Part E - PAYMENTS

There is one Schedule to this Deed, Deed and business details, which contains details which are particular to individual Trial Providers.

There are various information boxes 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 - General Conditions

## CHAPTER A1 – INTRODUCTION

### Section A1.1 – Definitions and interpretation

#### 1. Definitions and interpretation

- 1.1 In this Deed, unless the contrary intention appears, all capitalised terms have the meaning given to them in the definitions in Attachment 1 – Definitions. All other words have their natural and ordinary meaning.
- 1.2 Unless the contrary intention appears:
  - (a) the definitions in Attachment 1 – Definitions apply to the whole of this Deed;
  - (b) words in the singular include the plural and vice versa;
  - (c) a reference to a person includes a partnership and a body whether corporate or otherwise;
  - (d) 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;
  - (e) a reference to any legislation or legislative provision is to that legislation or legislative provision as in force from time to time;
  - (f) 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;
  - (g) 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;
  - (h) a reference to an internet site or webpage includes those sites or pages as amended from time to time;
  - (i) 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
  - (j) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning.
- 1.3 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 any Guidelines, even if a particular clause does not expressly refer to any Guidelines;
  - (d) Guidelines may be varied by the Department at any time and at the Department's absolute discretion; and
  - (e) any action, direction, advice or Notice that may be taken or given by the Department under this Deed, may be taken or given from time to time and at the Department's absolute discretion.
- 1.4 The word 'Reserved' indicates that a particular clause is not applicable to the Services.

- 1.5 Unless the contrary intention appears, if there is any conflict or inconsistency between any part of:
- (a) the Parts of this Deed, including any Condition of Offer, Annexure E1 – Payments and Employment Fund Credits and Attachment 1 – Definitions;
  - (b) Schedule 1;
  - (c) the Particulars;
  - (d) the Guidelines; and
  - (e) Attachment 2 – Joint Charter of Deed Management and Attachment 3 – Service Guarantee,

then the material mentioned in any one of paragraphs 1.5(a) to 1.5(e) above has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

## **CHAPTER A2 – BASIC CONDITIONS**

### **Section A2.1 – Deed length**

#### **2. Term of this Deed**

- 2.1 This Deed takes effect from the Deed Commencement Date and, unless terminated earlier, expires on the Completion Date.
- 2.2 The Department may, at its sole option, offer the Provider an extension of the Term of this Deed:
- (a) for one or more Extended Service Periods up to a maximum total period of two years; and
  - (b) if the Department determines at its absolute discretion, on the basis of additional terms and conditions, or variations to existing terms and conditions,
- by giving Notice to the Provider not less than 20 Business Days prior to the end of the Service Period or any Extended Service Period, as relevant.
- 2.3 Subject to clauses 2.2 and 59, if the Provider accepts the Department’s offer to extend the Term of this Deed, the Term of this Deed will be so extended and all terms and conditions of this Deed continue to apply, unless otherwise agreed in writing between the Parties.

#### **3. Survival**

- 3.1 The termination or expiry of this Deed for any reason does not extinguish or otherwise affect the operation of clauses 16 (Evidence to Support entitlement to Payments), 21 (Debts and offsetting), 24 (General reporting), 27 (Evaluation activities), 33 (General), 34 (Access and information security assurance), 35 (Ownership of Intellectual Property Rights and Materials), 36 (Licensing of Intellectual Property Rights), 37 (Personal and Protected Information), 38 (Confidential Information), 39 (Records the Provider must keep), 40 (Access by Participants and Employers to Records held by the Provider), 41 (Access to documents for the purposes of the *Freedom of Information Act 1982* (Cth)), 42 (Access to premises and Records), 43 (Indemnity), 44 (Insurance), 45 (Liability of the Provider to the Department), 52 (Dispute Resolution), 54 (Remedies), 56 (Liquidated Damages), 59 (Transition out), 66 (Waiver) and 70 (Applicable law and jurisdiction) of this Deed, and any provisions, other than those aforementioned, that are expressly specified as surviving, or by implication from their nature are intended to continue.
- 3.2 Clause 42 of this Deed survives for seven years from the expiry or earlier termination of this Deed.

## Section A2.2 – Some basic rules about Services

### 4. General Requirements

- 4.1 The Provider must carry out the Services:
- (a) in accordance with this Deed, including any Guidelines, as relevant to the Services;
  - (b) in a manner which meets the objective of the Services as specified in the request for expressions of interest for this Deed; and
  - (c) so as to achieve optimum performance when measured against the KPIs.
- 4.2 If the Provider becomes aware that:
- (a) it is unable to satisfy or has otherwise failed to comply with any of the requirements in this Deed,
- the Provider must Notify the Department immediately of:
- (b) the details of the requirements which it is unable to satisfy or failed to comply with; and
  - (c) any other information that the Department requests.
- 4.3 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.

### 5. Location and timing of the Services

- 5.1 The Provider must deliver the Services from:
- (a) for Trial Participation Services, the Deed Commencement Date;
  - (b) for Services for Digital Participants, the Services for Digital Participants Start Date; and
  - (c) for Enhanced Services, the Enhanced Services Start Date,
- until the end of the Service Period and any Extended Service Periods.
- 5.2 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 Schedule 1.
- 5.3 The Provider must ensure that:
- (a) any location from which Services are provided is:
    - (i) accessible to people with a disability; and
    - (ii) presented in a manner that upholds and maintains the good reputation of the Services, as determined by the Department; and
  - (b) it takes all reasonable steps to avoid acts or omissions which the Provider could reasonably foresee would be likely to cause injury to Participants or any other persons at the locations referred to in clause 5.3(a).
- 5.4 The Provider must ensure that its Sites are open for the provision of the Services:
- (a) on all Business Days and any other days specified in Schedule 1; and
  - (b) at the times specified in items 6.4, 6.5 and 6.6 of Schedule 1,
- unless otherwise Notified by the Department.

5.5 The Provider may, at any time during the Term of this Deed, request a change to its Sites, including any changes to:

- (a) the Business Days specified in Schedule 1; and
- (b) the times specified in items 6.4, 6.5 and 6.6 of Schedule 1,

and the Department may, at its absolute discretion, approve such a request.

Note: The Department will act in good faith and in consultation with the Provider in determining whether to approve such a request.

## 6. Provider's conduct

6.1 The Provider must, at all times, act in good faith towards the Department and Participants, and in a manner that maintains the good reputation of the Services.

6.2 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) Outcomes or Work for the Dole Place;
  - (iii) Payment or Payment-related process;
  - (iv) Participant or Employer; or
  - (v) monitoring of the Services by the Department,with the effect of improperly, as determined by the Department, maximising payments to, or otherwise obtaining a benefit for, the Provider or any other person or persons; and
- (b) without limitation to any rights of the Department under this Deed or at 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.

6.3 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 \(https://www.employment.gov.au/public-interest-disclosure-act-2013\)](https://www.employment.gov.au/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.

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

- 7.1 The Provider must ensure that:
- (a) all information it provides to the Department, in any form and by any means, including all Documentary Evidence and information about change in the circumstances of Participants, is true, accurate and complete at the time of its provision to the Department;
  - (b) it diligently, and in accordance with any Guidelines, takes all necessary steps to verify the truth, completeness and accuracy of any information referred to in clause 7.1(a); and
  - (c) any data entered into the Department's IT Systems is consistent with any associated Documentary Evidence held by the Provider.
- 7.2 Subject to clause 16.2, the Provider must submit Documentary Evidence to the Department within five Business Days of any request by the Department to do so.

## **8. Checks and reasonable care**

### **Personnel and Supervisors**

- 8.1 Before arranging for any Personnel or a potential Supervisor to be involved in the Services, including any Activity (other than EST, CTA, a Launch into Work Placement or a RET Activity), the Provider must arrange and pay for all checks, and comply with any other conditions in relation to the person's involvement, as specified in:
- (a) any relevant legislation, and in particular, any Working with Children Laws, in effect in the jurisdiction(s) in which the Services are conducted; and
  - (b) any Guidelines.
- 8.2 The Provider must not allow any Personnel or a potential Supervisor to participate in the Services, including any Activity (other than EST, CTA, a Launch into Work Placement or a RET Activity):
- (a) if any relevant legislation or any Guidelines provide or mean that the person must not be allowed to be so involved; or
  - (b) if:
    - (i) a relevant check shows that they have been convicted of a crime and a reasonable 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.

## **Participants**

8.3 If an Activity or Employment involves close proximity with people who are elderly, disabled or otherwise vulnerable or Children (excluding other Participants), before arranging for a Participant to be involved in the Activity or placed in the Employment, the Provider must, unless Notified otherwise, arrange and pay for all checks in relation to a Participant's involvement or placement as specified in:

- (a) any relevant legislation, and in particular, any Working with Children Laws, in effect in the jurisdiction(s) in which the Activity is conducted or the Employment exists; and
- (b) any Guidelines.

Note: The Privacy Guideline provides that the relevant Employer is responsible for sourcing the check in relation to the Participant's placement where the Participant is being offered Employment (either part or full-time).

8.4 The Provider must not allow a Participant to be involved in an Activity or place a Participant into Employment:

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

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

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

## **9. Provider's responsibility**

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

## **10. Joint Charter of Deed Management**

10.1 Subject to clause 10.2, the Department and the Provider agree to conduct themselves in accordance with the Joint Charter of Deed Management.

10.2 Clause 10.1 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 of Deed Management, be available to it under this Deed.

## **11. Liaison and directions**

11.1 The Provider must:

- (a) liaise with and provide information to the Department, or any other person nominated by the Department, as requested by the Department;
- (b) immediately comply with all of the Department's requests and directions; and
- (c) immediately Notify the Department of any matter or incident that could be damaging to the reputation of the Provider or the Department should it become publicly known.

Note: 'other person' referred to in clause 11.1(a) includes, for example, an auditor appointed by the Department.

- 11.2 The Department and the Provider must respectively nominate an Account Manager and a Contact Person for the Term of this Deed, and Notify of any change to the details of persons occupying those positions.
- 11.3 The day to day management of, and communication under, this Deed:
- (a) is to be handled by the Account Manager and the Contact Person or their delegates; and
  - (b) may be undertaken by the Account Manager and the Contact Person or their delegates by means of electronic mail.
- 11.4 The Provider must ensure that it has, and Notifies to the Department, a valid electronic mail address for receipt of all communications with the Department.
- 11.5 The Provider must provide all reasonable assistance to the Commonwealth in relation to the Social Security Appeals Process including ensuring the availability of its Personnel, agents and Subcontractors to appear at hearings (including appeals to any court or tribunal) and to provide witness or other statements as required by the Department.
- 11.6 The Provider must notify DHS of any change in the circumstances of a Participant:
- (a) as required in relation to any claim for a Pay Slip Verified Outcome Payment under any Guidelines; and
  - (b) that impacts on their Income Support Payments,
- and do so within five Business Days of becoming aware of the change in circumstances.
- 11.7 The Provider must respond within five Business Days to any request for information by DHS or the Department about any change in circumstances referred to in clause 11.6.

## **12. Business level expectations**

- 12.1 The Department provides no guarantee of:
- (a) the volume or type of business the Provider will receive, including the number of Referrals or Allocations;
  - (b) the number of Enhanced Services Participants who may be Referred for Enhanced Services under this Deed;
  - (c) the number of Digital Participants who may be Allocated for Services for Digital Participants under this Deed; or
  - (d) the accuracy of market and other information provided in the request for expressions of interest for this Deed.

Note: Enhanced Services Participants Referred to the Provider will be on the Provider's caseload. Digital Participants Allocated to the Provider will not be on the Provider's caseload.

## **13. Gap filling**

- 13.1 For the purposes of filling gaps in employment services, the Department and the Provider may agree to the provision of additional Services by the Provider, including in additional Employment Regions, on the same terms as specified in this Deed, at the times requested by the Department.

## **14. Additional Services**

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

## Section A2.3 – Some basic rules about financial matters

### 15. General

- 15.1 Subject to sufficient funds being validly appropriated for the Trial and compliance by the Provider with this Deed to the Department's complete satisfaction, the Department will make Payments to the Provider, at the times and in the manner specified in this Deed, to the account(s) specified in item 3 of Schedule 1.
- 15.2 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.
- 15.3 Where the Department determines that the Provider is in breach of clause 15.2, the Department may, at its absolute discretion, recover some or all of the relevant Payment from the Provider, with the recoverable amount being determined by the Department at its absolute discretion, as a debt in accordance with clause 21, without prejudice to any other rights that the Department may have under this Deed or the law.
- 15.4 With the exception of Payments:
- (a) verified by DHS data in accordance with any Guidelines;
  - (b) for Full Outcomes involving Pre-existing Employment; and
  - (c) for Partial Outcomes under paragraph (f) of the definition of Partial Outcome,
- 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:
- (d) is entitled to the Payment;
  - (e) has delivered the Services relevant to its claim for Payment; and
  - (f) has done so in accordance with this Deed, including any Guidelines.
- 15.5 It is a further precondition of the Provider's entitlement to be paid a Payment that it:
- (a) has a valid ABN;
  - (b) immediately Notifies the Department if it ceases to have a valid ABN;
  - (c) correctly quotes its ABN on all documentation provided to the Department, where relevant;
  - (d) supplies proof of its GST registration, if requested by the Department;
  - (e) immediately Notifies the Department of any changes to its GST status; and
  - (f) submits Tax Invoices to the Department for payment, unless otherwise advised by the Department.
- 15.6 Without limiting the Department's rights under this Deed or at law, if the Provider identifies that it has claimed, or accepted, a Payment:
- (a) in breach of this Deed; or
  - (b) in circumstances where the requirements under this Deed to qualify for the Payment have not been fully and properly met,
- it must immediately Notify the Department of the same and provide all information in relation to the situation as required by the Department.

- 15.7 The Provider must:
- (a) ensure that any of its Personnel or Subcontractors that are required to submit claims for Payments, have successfully completed Claims Processing Training prior to submission of any claim for a Payment is made to the Department by them; and
  - (b) when requested by the Department, provide evidence that the relevant Personnel or Subcontractors have successfully completed Claims Processing Training.

## **16. Evidence to support entitlement to Payments**

- 16.1 Subject to any Guidelines, the Provider must retain the Documentary Evidence specified at clause 15.4(d) for such period as is required under clause 39.9.
- 16.2 The Provider must submit the Documentary Evidence referred to in clause 16.1 to the Department:
- (a) if required by any Guidelines, at the time of making the relevant claim for a Payment, and through the Department's IT Systems; and
  - (b) otherwise, within five Business Days of any request by the Department to do so.
- 16.3 If:
- (a) the Provider does not comply with a request by the Department under clause 16.2, including if the Documentary Evidence provided is not true, complete and accurate;
  - (b) the Department has already paid the Provider the relevant Payment; and
  - (c) an extension of time has not been requested and agreed to by the Department,
- then:
- (d) the Provider will be taken not to have delivered the relevant Services in accordance with this Deed and not to be entitled to the relevant Payment; and
  - (e) the Department may, at its absolute discretion, recover the relevant Payment from the Provider as a debt in accordance with clause 21, without prejudice to any other rights that the Department may have under this Deed or the law.
- 16.4 The Department may contact Employers or Participants or any other relevant parties to verify Documentary Evidence provided by a Provider.

## **17. Exclusions**

- 17.1 The Department is not responsible for the payment of any money in excess of the Payments set out in this Deed.
- 17.2 The Department is not required to make any superannuation contributions in connection with this Deed.
- 17.3 Unless otherwise agreed in writing with the Department, the Provider must not demand or receive any payment or any other consideration either directly or indirectly from any Participant for, or in connection with, the Services.

## **18. Ancillary Payments**

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

## **19. Overpayment and double payment**

### **Overpayment**

- 19.1 If, at any time, the Department determines that an overpayment by the Department has occurred for any reason, including where a Tax Invoice is found to have been incorrectly rendered after payment, or a payment has been made in error, then the Department may, at its absolute discretion, recover some or all of the relevant payment amounts from the Provider, with the recoverable amount being determined by the Department at its absolute discretion, as a debt in accordance with clause 21, without prejudice to any other rights that the Department may have under this Deed or the law.

### **Double payment**

- 19.2 Subject to clause 19.3, any Guidelines and any express written agreement with the Department to the contrary, 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 the Department may require the Provider to provide evidence, in a form acceptable to the Department, which proves that the Provider is not so entitled.
- 19.3 Clause 19.2 does not apply to any payment that the Provider, or any Related Entities, are entitled to under the ParentsNext Deed.
- 19.4 For the purposes of clause 19.2, if the Department determines, in 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 and unfettered discretion:
- (a) make the relevant payment;
  - (b) decide not to make the relevant payment; or
  - (c) recover any relevant payment made by the Department as a debt in accordance with clause 21.
- 19.5 Regardless of any action the Department may take under clause 19.4, the Department may, at any time, issue Guidelines setting out the circumstances in which the Department will or will not make payments in connection with any situation of the type described in clause 19.4.

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

- 20.1 Without prejudice to any other rights that the Department may have under this Deed or the law, the Department may, at any time, vary:
- (a) Payments under this Deed;
  - (b) Business Share of the Provider;
  - (c) Sites and/or Employment Regions of the Provider;
  - (d) Referrals to the Provider and the number of Enhanced Services Participants on the Provider's caseload; and/or
  - (e) Allocations to the Provider and the number of Digital Participants Allocated to the Provider,
- for all or part of the Term of this Deed:
- (f) based on the Department's assessment of:
    - (i) the progress or requirements of the Trial; or

- (ii) projected changes to labour market conditions in an Employment Region (including past and/or future projected Participant demand); or
- (g) acting reasonably, for any other reason as determined by the Department at its absolute discretion,

by providing Notice to the Provider.

20.2 Without limiting its other rights under this Deed, the Department may vary the payment model for the delivery of the Trial Provider Services, including any Fees, at its sole discretion and at any time during the Term of this Deed by providing Notice to the Provider, to ensure that the objectives of the Trial are met.

20.3 If the Department exercises its rights under clause 20.1:

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

## **21. Debts and offsetting**

21.1 Any amount owed to the Department, or deemed to be a debt to the Department under this Deed, including any Interest, will, without prejudice to any other rights available to the Department under this Deed or the law, be recoverable by the Department, at its absolute discretion, as a debt due to the Commonwealth from the Provider without further proof of the debt being necessary.

21.2 Unless otherwise agreed in writing by the Department, the Provider must pay to the Department any debt due to the Commonwealth from the Provider within 30 calendar days of receipt of a Notice from the Department requiring payment.

21.3 Unless otherwise agreed in writing by the Department, where any debt is owed to the Commonwealth under this Deed, Interest accrues on that debt if it is not repaid within 30 calendar days of receipt of a Notice from the Department requiring payment, until the amount is paid in full.

21.4 Without limiting the Department's rights under this Deed or the law, if the Provider owes the Commonwealth any debt or has outstanding or unacquitted money, under this Deed, or under any other arrangement with the Department or the Commonwealth, the Department may offset or deduct an amount equal to that debt owed, or outstanding or unacquitted money, against any Payments due to the Provider under this Deed.

21.5 The Department will Notify the Provider if it exercises its rights under clause 21.4 within 10 Business Days after having exercised those rights.

21.6 Notwithstanding any action taken by the Department under clause 21.4, the Provider must continue to perform its obligations under this Deed, unless the Department agrees otherwise in writing.

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

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

22.2 If a Payment is not in relation to a Taxable Supply, the Provider must only claim or accept an amount exclusive of GST.

22.3 The Provider must give to the Department a Tax Invoice for any Taxable Supply before any Payments are made to the Provider as consideration for the Taxable Supply.

22.4 The Provider must not claim or accept from the Department any amount for which it can claim an Input Tax Credit.

22.5 Where any debt is repaid, including by offset under clause 21.4, an Adjustment Note must be provided to the Department if required by the GST Act.

- 22.6 Subject to this clause 22, all taxes, duties and government charges imposed in Australia or overseas in connection with this Deed must be borne by the Provider.

## **23. Fraud**

- 23.1 The Provider must not engage in, and must ensure that its Personnel, Subcontractors and agents do not engage in, fraudulent activity in relation to this Deed.
- 23.2 The Provider must take all reasonable steps to prevent fraud upon the Commonwealth, including the implementation of an appropriate fraud control plan, a copy of which must be provided to the Department on request.
- 23.3 If, after investigation, the Department determines that the Provider has been engaged in fraudulent activity, the Department may, without limitation to any other rights available to the Department:
- (a) take action under clause 54.2; or
  - (b) terminate this Deed under clause 58,
- by providing Notice to the Provider.

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

## **Section A2.4 – Reports**

### **24. General reporting**

- 24.1 Without limiting any other provisions of this Deed, the Provider must provide, as required by the Department:
- (a) specific Reports on:
    - (i) the Services, including on the results of internal and external audits of Payment claims and claim processes, action taken to address performance issues raised by the Department, and training provided to Personnel and Subcontractors; and
    - (ii) the financial status of the Provider; and
  - (b) a suitably qualified, informed and authorised representative at any meeting arranged by the Department, in order to discuss and accurately answer questions relating to the reports referred to at clause 24.1(a) or those otherwise required under this Deed.
- 24.2 The Provider must also provide any other Reports that may reasonably be required by the Department, within the timeframes requested by the Department.
- 24.3 The Provider must provide:
- (a) all Reports in a form acceptable to the Department; and
  - (b) if, in the Department's opinion, either the form or the content of a Report is not satisfactory, the Provider must submit a revised Report to the Department's satisfaction within 10 Business Days of Notice to the Provider from the Department to do so.

### **25. Financial statements and guarantees**

- 25.1 Subject to clause 25.3, the Provider must, for the Term of this Deed, provide to the Department audited financial statements:
- (a) within 20 Business Days of its annual general meeting, or where no annual general meeting is held, within 20 Business Days after the compilation of the financial statements; and
  - (b) no later than 120 Business Days after the end of its financial year.

- 25.2 If the Provider is a Tendering Group or a partnership, then the Provider must provide one copy of the consolidated audited financial statements for the Tendering Group or partnership, if available, and individual annual audited financial statements for each member of the Tendering Group.
- 25.3 If required by the Department, the Provider must provide to the Department:
- (a) any other financial statements, in a form, with the content and at a frequency, as directed by the Department; and
  - (b) within 20 Business Days of the relevant direction by the Department, a financial guarantee in a form and in terms satisfactory to the Department.

## **Section A2.5 – Assessment and management of Provider’s performance**

### **26. Quality Assurance Framework conformance**

#### **Certificate of Quality Assurance Framework conformance**

- 26.1 The Provider must maintain the currency of the Quality Assurance Framework Certificate obtained by the Provider under its jobactive Deed 2015-2022 for the duration of the Service Period and any Extended Service Period(s).

Note: The Provider's conformance with the jobactive Quality Principles will not be assessed in the Trial Employment Regions.

### **27. Evaluation activities**

- 27.1 The Provider agrees that:
- (a) evaluation activities may be undertaken by the Department for the purposes of evaluating the Services and the Trial, including the Provider’s performance, and may include, but are not limited to:
    - (i) the Department monitoring, measuring and evaluating the delivery of the Services by the Provider;
    - (ii) the Provider’s Personnel and Subcontractors being interviewed by the Department or an independent evaluator nominated by the Department; and
    - (iii) the Provider giving the Department or the Department’s evaluator access to its premises and Records in accordance with clause 42;
  - (b) it will actively contribute to the design of the evaluation of the Trial and the delivery of Services; and
  - (c) it will fully cooperate with the Department in relation to all such activities both during, and after the conclusion of, the Trial.

### **28. Program Assurance Activities**

- 28.1 Throughout the Term of this Deed, the Department may conduct Program Assurance Activities and the Provider must fully cooperate with the Department in relation to all such activities as required by the Department.

### **29. Performance Indicators**

#### **KPIs**

- 29.1 The Provider acknowledges that a key priority for the Department in conducting the Trial is to obtain learnings (including the successes and challenges) to inform the national roll-out of the New Employment Services model from July 2022.
- 29.2 The Department has developed KPIs to support the achievement of the Department's objective as set out in clause 29.1. The KPIs are as follows:

- (a) KPI 1: the Department's assessment of the Provider's performance in assisting Enhanced Services Participants to obtain Employment and progress toward Employment;
  - (b) KPI 2: the Department's assessment of the quality of Services delivered by the Provider to Participants and Employers, and appropriate mix and timing of activities offered to individual Participants; and
  - (c) KPI 3: the Department's assessment of the Provider's level of engagement and support to facilitate the effective co-design, implementation, monitoring and evaluation of the Trial.
- 29.3 For the purposes of clause 4.1(c) of the Deed, the Provider's performance against the KPIs will be assessed by the Department in accordance with any Guidelines.
- 29.4 Taking into account the Department's objective as set out in clause 29.1, the Provider's performance in respect of the KPIs will neither advantage nor disadvantage the Provider in respect of:
- (a) any future open tender (or licensing) processes with the Department for the provision of employment services;
  - (b) any business reallocation processes conducted by the Department under the jobactive Deed 2015-2022; or
  - (c) the Provider's jobactive star rating in non-Trial Employment Regions.

### 30. Performance assessments

#### **Reader's Guide**

For the purposes of the Trial, the Department will not utilise star ratings, performance periods or six-monthly business reallocation processes as provided for in the jobactive Deed 2015-2022. Rather, the Department will monitor performance of Trial Providers on an ongoing basis throughout the Trial in order to ensure the success of the Trial.

- 30.1 The Department will monitor, measure and evaluate the Provider's performance against the requirements of this Deed throughout the Trial, including, without limitation, and as relevant, the KPIs, the Joint Charter of Deed Management, the Service Guarantee and any other factors as specified in any Guidelines.
- 30.2 For the purposes of clause 30.1, the Department may rely on data collected from any source, including, without limitation, feedback from Participants, Employers, Transition to Work Providers, ParentsNext Providers, Time to Work Providers and NEIS Providers and intelligence from the Department's Employment Services Tip off Line.
- 30.3 At any time during the Trial, the Department may:
- (a) review the Provider's performance in each location, Employment Region and at each Site where the Provider delivers the Services; and
  - (b) subsequently provide feedback to the Provider on the Department's assessment of its performance.
- 30.4 This clause 30 does not in any way limit the rights of the Department under this Deed or at law, including rights to take remedial action against the Provider, arising out of the monitoring, measuring, evaluating or reviewing of the Provider's performance under this clause 30, or otherwise.
- 30.5 The Provider agrees that the Department may publish information that the Department holds concerning the Provider's performance of the Services.

## 31. Sample reviews

### Reader's Guide

The Department may conduct sample reviews of claims for payments made by the Provider, based on a methodology that is verified by a qualified statistician or actuary as being statistically valid and producing results with a high confidence level. If a sample review identifies a proportion of invalid claims, the methodology will enable the extrapolation of that proportion across all claims within the relevant type or class of claims for the sample period. The Department may then apply remedies in relation to the deemed invalid claims.

Example: The Department might decide to conduct a sample review of all claims for 26 Week Employment Outcomes for Tier 2 Enhanced Services Participants made by the Provider during a specific six month period. The Department might choose to sample 15% of these claims, selected through a sampling methodology that meets the requirements of this clause 31. If the sample review finds that 20% of the sample claims are invalid, then the Department may treat up to 20% of all relevant Outcome Payment claims made by the Provider during the sample period as being invalid and apply relevant remedies under the Deed.

- 31.1 Without prejudice to any other rights of the Department under this Deed or the law (including the right to engage in any other form of sampling activity):
- (a) the Department may:
    - (i) evaluate how the Provider has claimed Payments, by reviewing and investigating only a sample of claims for Payments generally, or of Payments of a particular type or class (**'Sample Review'**); and
    - (ii) for the purposes of a Sample Review, take into account data collected from any source without limitation; and
  - (b) if the results of a Sample Review show that the Provider has, in relation to all or a proportion of the claims for Payments included in a Sample Review, made claims for Payments:
    - (i) in breach of this Deed; or
    - (ii) in circumstances where it was not entitled to claim the Payments, as determined by the Department, then the Provider is, subject to clause 31.3, taken to have invalidly claimed all Payments, or that proportion of all Payments, as relevant:
      - (iii) generally; or
      - (iv) of the relevant type or class of Payments, as relevant to the Sample Review, for the period of the Sample Review (**'Deemed Invalid Claims'**).
- 31.2 In relation to Deemed Invalid Claims, the Department may, at its absolute discretion and without limiting its other remedies under this Deed or the law, do any one or more of the following by providing Notice to the Provider:
- (a) exercise its rights under clause 15.3 in respect of some or all of those claims;
  - (b) exercise any remedies specified in clause 54.2;
  - (c) recover any amounts under clause 56.1(b) in respect of those claims; or
  - (d) exercise any of its rights under clause 58.

### **Sampling methodology**

- 31.3 For the purposes of clause 31.1, the Department may use any statistical methodology to undertake a Sample Review, provided that the Department has been advised by a statistician who is a Fellow of the Actuaries Institute of Australia or is accredited by the Statistical Society of Australia Inc. that the methodology:
- (a) is, or will give results that are, statistically valid for the purpose of demonstrating the matters covered by this clause 31; and
  - (b) will provide at least a 95% confidence level that the proportion and/or value of invalid claims identified in the Sample Review can be extrapolated under clause 31.1(b) to that proportion and/or value of Payments generally or of the relevant type or class of Payments as relevant to the Sample Review, for the period of the Sample Review.
- 31.4 The Department must disclose the methodology used in a Sample Review to the Provider before exercising the Department's rights under clause 31.2.

## **Section A2.6 – Customer feedback**

### **32. Customer feedback process and Customer feedback register**

- 32.1 The Provider must establish and publicise to its Customers the existence and details of a Customer feedback process which will deal with feedback, including Complaints lodged by Customers, about its conduct of the Services. The process must:
- (a) be consistent with this clause 32, the Joint Charter of Deed Management and the Service Guarantee; and
  - (b) clearly indicate that Customers may also make a Complaint directly to the Department using the Department's National Customer Service Line.
- 32.2 If a Customer is dissatisfied with the results of the Customer feedback process, the Provider must refer the Customer to the Department's National Customer Service Line for further investigation of the matter.
- 32.3 Upon request, the Provider must give to the Department and Customers copies and details of the process it has established to manage Customer feedback.
- 32.4 The Provider must:
- (a) explain the Customer feedback process to each potential Participant upon their initial Contact with the Provider;
  - (b) ensure that all Complaints it receives are investigated by an appropriately senior staff member of the Provider;
  - (c) effectively and promptly communicate the outcome of any investigation and any action the Provider proposes to take about a Complaint to the relevant complainant and, if requested by the Department, to the Department; and
  - (d) when approached by the Department, actively assist:
    - (i) the Department in its investigation of any Complaint, including providing a detailed response to issues notified by the Department within the timeframe required by the Department;
    - (ii) in negotiating a resolution to any Complaint; and
    - (iii) other authorities in negotiating a resolution to any Complaint, where the relevant Customer has chosen to utilise other legislative or other complaints mechanisms.

- 32.5 The Provider must keep:
- (a) a Customer feedback register for each Site which includes the following information:
    - (i) details of all Customer feedback received directly by the Provider, and the outcome of any investigation where relevant;
    - (ii) details of all Customer feedback referred to the Provider by, or through, the Department; and
    - (iii) in relation to Complaints, details which provide enough information to identify the nature of the Complaint, where detailed information relating to the Complaint is stored (if not in the Customer feedback register), the Site or Employment Region to which the Complaint relates, as relevant, and the date of the Complaint and the Customer(s) involved; and
  - (b) Records, in accordance with the Records Management Instructions, as to how any Complaint was handled, the outcome of the relevant investigation and any follow up action required.

## **CHAPTER A3 – INFORMATION MANAGEMENT**

### **Section A3.1 – Information Technology**

#### **33. General**

- 33.1 The Provider must conduct the Services by Accessing the Department's IT Systems provided by the Department for that purpose.
- 33.2 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.
- 33.3 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 and Subcontractors must not Access the Department's IT Systems until they have successfully completed the relevant training, and the Provider must comply with any such requirement.
- 33.4 The Provider is responsible for all costs of meeting its obligations under this clause 33.

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

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

- 34.1 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 34.

##### **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.

- 34.2 The Provider must:
- (a) advise the Department by email to [securitycompliancesupport@employment.gov.au](mailto:securitycompliancesupport@employment.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
- (c) ensure that any and all Records held in any External IT System relating directly or indirectly to the Services can be, and are, provided on request to the Department and in an unadulterated form (i.e. with no amendments or transformations to the Records or their data structures).

34.3 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.

- 34.4 Subject to the requirements of the ESAF, the Provider must, and must ensure that its Subcontractors:
- (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.
- 34.5 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.
- 34.6 For the purposes of clause 34.4(b), the Provider must, and must ensure that its Subcontractors, obtain reaccreditation of all Provider IT Systems in accordance with the requirements of the ESAF.
- 34.7 Unless otherwise expressly set out in this clause 34, accreditation and reaccreditation under this clause 34 must be awarded by the Department.
- 34.8 If the Provider or any Subcontractor does not obtain accreditation or reaccreditation within the timeframes specified in the ESAF or this clause 34, the Provider must immediately cease using, and ensure that any relevant Subcontractor ceases using, the relevant Provider IT System.
- 34.9 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.

- 34.10 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 IT 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 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 34.10 on any Subcontractor Accessing electronic Records relating to the Services; and
- (f) advise the Department by email to [securitycompliancesupport@employment.gov.au](mailto:securitycompliancesupport@employment.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.

### **Technical advice**

34.11 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
  - (iii) where the IT Contact changes, advise the Department accordingly.

### **Security**

34.12 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.

34.13 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.

- 34.14 The Provider must (through its Security Contact) promptly report all breaches of IT security to the Employment Systems Help 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.
- 34.15 Where the Department considers that the Provider may be in breach of this clause 34, 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.
- 34.16 Where the Department determines that the Provider is in breach of, or has previously breached, this clause 34, 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.
- 34.17 Any action taken by the Department under clauses 34.15 to 34.16 does not limit any other rights the Department has under this Deed, including pursuant to clause 54.2, or under the law.
- 34.18 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**

34.19 For the purposes of clauses 34.20 to 34.23:

**'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.

34.20 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.

34.21 The Provider must take Reasonable Steps to protect its Clients' cybersafety.

34.22 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.

34.23 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 A3.2 – Property rights**

### **35. Ownership of Intellectual Property Rights and Material**

35.1 Subject to clause 36, as between the Department and the Provider (but without affecting the position between the Provider and a third party), the ownership of Intellectual Property Rights in, and the actual documents comprising:

(a) Commonwealth Material; and

(b) Deed Material,

vest at all times in the Department.

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

35.2 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 the Existing Material in accordance with this clause 35 and clause 36, as relevant; and

(b) has obtained valid, unconditional and irrevocable written consents from all owners of Intellectual Property Rights in, and all authors (including Subcontractors) involved in creating Deed Material and Existing Material so that the Department's use of that Material in accordance with this clause 35 and clause 36, as relevant, will not infringe:

(i) the Intellectual Property Rights of any third party; or

(ii) any author's Moral Rights.

35.3 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 clause 35.1;

- (b) not deal with the Intellectual Property Rights in the Deed Material, except as expressly provided for in this Deed; and
  - (c) deliver all Deed Material to the Department at the Completion Date, unless otherwise Notified by the Department.
- 35.4 For the purposes of this clause 35, '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 Layout Act 1989* (Cth), constitute an infringement.

## **36. Licensing of Intellectual Property Rights**

### **Licence of Commonwealth Material and Deed Material**

- 36.1 The Department grants the Provider a licence to use, copy and reproduce Commonwealth Material and Deed Material, but only for the purposes of this Deed and in accordance with any conditions or restrictions Notified by the Department to the Provider.
- 36.2 The licence in clause 36.1 is revocable on 10 Business Days' Notice by the Department, and expires on the Completion Date.
- 36.3 If the Department specifies in the Records Management Instructions that Intellectual Property Rights in some Deed Material vests in the Provider, the Provider grants the Department 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 Deed Material for any purpose as required by the Department.
- 36.4 The Provider must not do anything that would prejudice the Department's right title and interest in Commonwealth Material or Deed Material.

### **Licence of Existing Material**

- 36.5 This Deed does not affect the ownership of any Intellectual Property Rights in any Existing Material. The Provider, however, grants to 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 as required by the Department.
- 36.6 If requested by the Department to do so, the Provider must create, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 36.

### **Commonwealth Coat of Arms**

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

## **Section A3.3 – Control of information**

### **37. Personal and Protected Information**

- 37.1 Clauses 37.1 to 37.3 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.

- 37.2 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 37;
  - (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 37, including to undertake in writing to comply with the APPs (or a registered APP code, where applicable).

37.3 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 37 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**

37.4 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**

37.5 The Provider must ensure that when handling Protected Information, it complies with the requirements under Division 3 [Confidentiality] of Part 5 of the *Social Security (Administration) Act 1999* (Cth).

### **38. Confidential Information**

38.1 Subject to this clause 38, the Parties must not, without each other's prior written approval, disclose any of each other's Confidential Information to a third party.

38.2 In giving written approval to disclosure, a Party may impose conditions as it thinks fit, and the other Party agrees to comply with the conditions.

38.3 The obligations on the Parties under this clause 38 will not be breached if information:

- (a) is shared by the Department within the Department's organisation, 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; or
- (e) is in the public domain otherwise than due to a breach of this clause 38.

38.4 Nothing in this clause 38 limits the obligations of the Provider under clauses 37 or 42.

## Section A3.4 – Records management

### 39. Records the Provider must keep

- 39.1 The Provider must create and maintain true, complete and accurate Records in connection with the performance of its obligations under this Deed, in accordance with this Deed and the Records Management Instructions.
- 39.2 Notwithstanding this clause 39, if the Department considers it appropriate, the Department may, at its absolute discretion, impose special conditions in relation to Records management, and the Provider must comply with those special conditions as directed by the Department.
- 39.3 Without limiting its obligations under clause 42.1, when requested by the Department, the Provider must provide to the Department, or the Department's nominee, any Records in the possession or control of the Provider or a Third Party IT Vendor:
- (a) within the timeframe required by the Department;
  - (b) in such form, and in such manner, as reasonably required by the Department; and
  - (c) at no cost to the Department.

#### Financial Accounts and Records

- 39.4 The Provider must keep financial accounts and Records of its transactions and affairs regarding Payments that it receives from the Department under this Deed:
- (a) in accordance with Australian Equivalents to International Financial Reporting Standards maintained by the Australian Accounting Standards Board created by section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth); and
  - (b) such that:
    - (i) all Payments made by the Department are clearly and separately identified from each other and from other money of the Provider; and
    - (ii) an auditor or other person may examine them at any time and thereby ascertain the Provider's financial position.

#### Storage

- 39.5 The Provider must store all Records in accordance with the Records Management Instructions and the Department's Security Policies, and where relevant, its Privacy Act obligations.

#### Register of Records

- 39.6 The Provider must maintain an up to date register of the Records held by the Provider and any Third Party IT Vendor, as specified in the Records Management Instructions, and make this register available to the Department on request.

#### Access

- 39.7 Subject to clauses 37 and 42, the Provider must ensure that copying of, use of, and access to, Participant Services Records, is restricted to Personnel directly assisting the Provider with the provision of Services to a Participant, any Subcontractor or any Third Party IT Vendor.

#### Transfer

- 39.8 Subject to clause 37.2(h), the Provider must:
- (a) not, without the prior written approval of the Department, transfer, or be a party to an arrangement for the transfer of, custody of the Records outside of Australia or to any person, entity or organisation other than to the Department; and
  - (b) where transferring Records, only transfer the Records in accordance with the Records Management Instructions or as otherwise directed by the Department.

### **Retention**

- 39.9 Subject to clause 37, all Records must be retained by the Provider for a period of no less than seven years after the creation of the Record, unless otherwise specified in the Records Management Instructions or advised by the Department.
- 39.10 At the Completion Date, the Provider must manage all Records in accordance with the Records Management Instructions or as otherwise directed by the Department.

### **Destruction**

- 39.11 The Provider must:
- (a) not destroy or otherwise dispose of Records, except in accordance with the relevant Records Management Instructions, or as otherwise directed by the Department; and
  - (b) provide a list to the Department of any Records that have been destroyed, as directed by the Department.

### **Third Party IT Vendors**

- 39.12 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 39 in respect of any such Records.

## **40. Access by Participants and Employers to Records held by the Provider**

- 40.1 Subject to this clause 40, the Provider must allow Participants and Employers who are individuals to access Records that contain their own Personal Information, and provide them with copies of such Records if they require, except to the extent that Commonwealth legislation would, if the Records were in the possession of the Commonwealth, require or authorise the refusal of such access by the Commonwealth including Records of the type set out in clause 40.3.
- 40.2 The Provider must, in providing access to the requested Records in accordance with clause 40.1:
- (a) ensure that the relevant Participant or Employer requesting the access in clause 40.1 provides proof of identity before access is given to the requested Records; and
  - (b) notate the relevant files with details of the Records to which access was provided, the name of the person granted access and the date and time of such access.
- 40.3 Where a Participant or an Employer requests access to records containing information falling within the following categories:
- (a) records also containing information about another person;
  - (b) medical/psychiatric records (other than those actually supplied by the Participant or Employer, or where it is clear that the Participant has a copy or has previously sighted a copy of the records);
  - (c) psychological records; and
  - (d) information provided by other third parties,
- the request must be directed by the Provider to the Department for consideration.
- 40.4 The Provider must comply with any direction given by the Department in relation to the provision, or refusal, of access to Records held by the Provider to a Participant or Employer.

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

- 41.1 In this clause 41, 'document' has the same meaning as in the *Freedom of Information Act 1982* (Cth).

- 41.2 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 41.

## 42. Access to premises and Records

- 42.1 The Provider must at all reasonable times give or arrange for any Department Employee:
- (a) unfettered access to:
    - (i) its Sites or premises and those of any Subcontractor or Third Party IT Vendor;
    - (ii) any External IT System;
    - (iii) all Material, including that 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 Sites or 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.
- 42.2 Subject to clause 42.3, the obligations referred to in clause 42.1 are subject to the provision of reasonable prior notice to the Provider and compliance with the Provider's reasonable security procedures.
- 42.3 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 42.2 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 A4 – DEED ADMINISTRATION

### Section A4.1 – Indemnity and insurance

#### 43. Indemnity

- 43.1 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 by the Department,
- arising from or in connection with:
- (c) any act or omission by:
    - (i) the Provider;
    - (ii) a Subcontractor (whether or not the relevant entity is a current Subcontractor); or
    - (iii) an Activity Host Organisation engaged by the Provider other than as a 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 or failure to meet an undertaking given under this Deed;
  - (e) any publication of the information referred to in clauses 30.5 or 63, 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.
- 43.2 The liability of the Provider to indemnify the Department under this clause 43 will be reduced proportionately to the extent that fault on the Department's part contributed to the relevant cost, loss, damage, expense, or liability.
- 43.3 The Department's right to be indemnified under this clause 43 is in addition to any other right, power, or remedy provided by law, but the Department will not be entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.

#### Meaning of fault

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

#### 44. Insurance

- 44.1 Subject to this clause 44 and unless the Department otherwise agrees in writing, the Provider must, for the Term of this Deed, effect and maintain or cause to be effected and maintained, the following insurances, which must be valid and enforceable and, except for the statutory workers compensation insurance referred to at clause 44.1(b)(i)(A) and the professional indemnity insurance or errors and omissions insurance at clause 44.1(d), be written on an occurrence basis:
- (a) public liability insurance with a limit of indemnity of at least \$10 million in respect of each and every occurrence, which covers:
    - (i) the Provider's liability and the liability of its Personnel, representatives and agents (including to the Department and to the Participants) at general law and additionally as assumed under the terms of clause 45; and

- (ii) the vicarious liability of the Department in respect of the acts or omissions of the Provider, its Personnel, representatives and agents;
- in respect of:
- (iii) loss of, or damage to, or loss of use of any real or personal property (including property of the Department in the care, custody or control of the Provider); and
  - (iv) the bodily injury, disease or illness (including mental illness) or death of any person (other than a liability insured under the insurance referred to at clause 44.1(b)), arising out of, or in connection with, the Provider's performance of this Deed;
- (b) insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged in work by the Provider under this Deed:
- (i) giving rise to a claim:
    - (A) under any statute relating to workers' compensation; and
    - (B) where common law claims by such workers are permissible outside of the statutory scheme referred to at clause 44.1(b)(i)(A), for employer's liability at common law with a limit of indemnity of at least \$50 million in respect of each and every occurrence;
  - (ii) in each Australian state or territory where the Services are performed or delivered; and
  - (iii) where possible under the relevant law or scheme governing workers compensation insurance and in respect of all employers' liability policies, extending to indemnify the Department for its liability as principal in relation to any such claim;
- (c) for any motor vehicle used in the performance of this Deed:
- (i) insurance with a limit of indemnity of at least \$20 million in respect of each and every occurrence which covers:
    - (A) third party property damage arising from the use of any plant or vehicles (registered or unregistered) used in respect of the performance of this Deed (including transporting Participants); and
    - (B) the bodily injury, disease or illness (including mental illness) or death of, any person arising from the use of any unregistered plant or vehicles used in or in connection with the performance of the Services pursuant to this Deed (including transporting Participants);
  - (ii) compulsory third party motor vehicle insurance for all registrable vehicles used in the performance of this Deed (including transporting Participants in the Provider's or the Provider's employees vehicles);
- (d) for any Services provided in a professional capacity – professional indemnity insurance or errors and omissions insurance to be maintained during the Term of this Deed and for at least seven years following the Completion Date with a limit of indemnity of at least \$5 million in respect of each claim and in the aggregate for all claims in any one 12 month policy period with one right of reinstatement which covers the liability of the Provider at general law and additionally as assumed under the terms of clause 45 arising from:
- (i) a breach of duty owed in a professional capacity in connection with the performance of this Deed or, where errors and omissions insurance is effected, arising from an error or omission in judgement by the Provider, its Personnel, representatives or agents; and
  - (ii) unintentional breaches of Intellectual Property Rights;

- (e) if the provision of the Services involves the provision a product – products liability insurance with a limit of indemnity of at least \$10 million in respect of each and every occurrence, which covers:
    - (i) the Provider’s liability and the liability of its Personnel, representatives and agents (including to the Department and to the Participants) at general law and additionally as assumed under the terms of clause 45; and
    - (ii) the vicarious liability of the Department in respect of the acts or omissions of the Provider, its Personnel, representatives and agents;
 in respect of:
    - (iii) loss of, damage to, or loss of use of any real, personal or intangible property (including property of the Department in the care, custody or control of the Provider, and including the Department’s IT Systems); and
    - (iv) the bodily injury, disease or illness (including mental illness) or death of, any person (other than a liability insured under the insurance referred to in clause 44.1(b)),
 arising out of or in connection with any products installed, repaired, serviced, sold, supplied or distributed in the performance of the Services, or in connection with, this Deed;
  - (f) personal accident insurance providing a sliding scale of benefits (in conformance with current insurance market practice for such policies) with a maximum benefit of at least \$250,000 in respect of each and every occurrence that covers Participants while:
    - (i) on the Provider's premises;
    - (ii) undertaking employment services activities, but not including undertaking an Activity or any other activity specified in any Guidelines; and
    - (iii) travelling by the most direct route between:
      - (A) the Provider's premises and the Participant’s home or DHS following Referral or Allocation;
      - (B) the Provider's premises and job interviews; and
      - (C) the Participant’s home and job interviews, following referral by the Provider; and
  - (g) if the Provider will use an aircraft or marine vessel for the purposes of performing this Deed and the aircraft or marine vessel is owned or chartered by the Provider, marine liability and/or aircraft liability insurance, as is appropriate, covering the liability of the Provider, its Personnel, representatives and agents (including to the Department, Participants and passengers) in respect of liability for third party personal injury or death or loss of or damage to third party property (including cargo) with a limit of indemnity of at least \$20 million in respect of each and every occurrence unless such liability is otherwise insured under the insurance effected in compliance with clause 44.1(a).
- 44.2 The Provider must also effect and maintain, or cause to be effected and maintained, any other insurance policies required to adequately cover the Provider’s business risk that a similar Trial Provider, acting reasonably, would acquire, and any other insurance cover required by law.
- 44.3 Unless otherwise agreed by the Department in writing, all insurances required under this clause 44 (other than statutory workers compensation insurance and compulsory third party motor vehicle insurance) must be obtained from an insurer authorised by the Australian Prudential Regulation Authority.

- 44.4 Each of the insurances required by this clause 44 (other than statutory workers compensation insurance and compulsory third party motor vehicle insurance) that insures more than one person, must include:
- (a) a cross-liability clause, whereby the insurer agrees that the policy shall be construed as if a separate policy has been issued to each insured person (but not so as to increase the overall limit of liability) (this clause does not apply to any professional indemnity or errors and omissions insurance required by this clause 44);
  - (b) a waiver of subrogation clause, whereby the insurer agrees to waive all rights of subrogation or action that it may have or acquire against any or all of the persons insured (at least to the extent that they are insured under the policy);
  - (c) a non-imputation clause, whereby the insurer agrees that any failure by any insured person to observe and fulfil the terms of the policy, or to comply with the terms of the policy, or to comply with that insured person's pre-contractual duty of disclosure does not prejudice the insurance of any other person insured under the policy;
  - (d) a severability clause in which the insurer agrees to treat the insurance policy as if a separate policy has been issued to each insured person for the purposes of determining rights to indemnity; and
  - (e) a clause whereby notice of a claim given to the insurer by any insured person will be accepted by the insurer as notice of a claim given by all the persons insured under the policy.
- 44.5 Clauses 44.4(a), 44.4(c) and 44.4(e) do not apply to any personal accident insurance required by this clause 44.
- 44.6 In relation to the insurances specified in this clause 44, the Provider must abide by the terms and conditions of any relevant policy, and do everything reasonably required to claim and to collect or recover monies due under any policy.
- 44.7 The Provider must Notify the Department immediately when it:
- (a) becomes aware of any actual, threatened or likely claim under any of the insurances which the Provider is obliged to effect and maintain, that could materially reduce the available limits or involve the Department (other than a claim by the Department against the Provider which would be insured under the insurance referred to in clause 44.1(d)); or
  - (b) receives a notice of cancellation in respect of any of the insurances that the Provider is obliged to effect and maintain.
- 44.8 The Provider must ensure that all Subcontractors retained by it to perform work in connection with this Deed are covered by insurance of the types specified in this clause 44, as is appropriate (including as to limits of indemnity) given the nature of the work to be performed by each such Subcontractor.

#### **Evidence of insurance**

- 44.9 Subject to clause 44.10, the Provider must obtain written independent professional advice that the insurances obtained by it and any Subcontractors pursuant to this clause 44 meets the requirements of this Deed:
- (a) before commencing the performance of any Services and in any event within 20 Business Days of the Deed Commencement Date; and
  - (b) within 10 Business Days of the date of renewal of each of the insurances required under this Deed.

- 44.10 Where the advice referred to in clause 44.9 relates to insurances obtained by a Subcontractor, the written independent professional advice in relation to that insurance may be obtained by either the Provider or the Subcontractor.
- 44.11 Clause 44.9 does not apply to statutory workers compensation insurance or compulsory third party motor vehicle insurance.
- 44.12 The Provider must, within 10 Business Days of 1 July each year, or at any other time that the Department requests, provide to the Department an insurance declaration form, in the form required by the Department.
- 44.13 In relation to each insurance policy relied upon by the Provider in compliance with the Provider's obligations to effect and maintain, or cause to be effected and maintained, insurance as required by this Deed, the Provider must provide to the Department:
- (a) a full copy of the insurance policy;
  - (b) a certificate of currency; and
  - (c) a copy of the independent professional advice required by clause 44.9,
- at any time that the Department requests.

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

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

#### **Assistance to the Department**

- 44.15 The Provider must:
- (a) give full, true and particular information, in respect of any proposal for a policy of insurance (including any policy issued pursuant to any self-insurance scheme of the Commonwealth) to be effected by the Department, of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or the payments of all or any benefits under a policy; and
  - (b) provide all reasonable assistance to the Department, in order to facilitate the Commonwealth making a claim under any insurance policy or self-insurance scheme effected for the Commonwealth's benefit.
- 44.16 For the avoidance of doubt, the provisions of this clause 44 are not to be read so as to reduce a Party's liability under any other provision of this Deed, and compliance by the Provider with the provisions of this clause 44 does not limit its liability under any other provision of this Deed.

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

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

- 45.1 To the extent permitted by law, where:
- (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 Tendering Group – each member of the Tendering Group;
- 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**

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

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

### **46. Special rules about Tendering Groups**

- 46.1 If the Provider is a Tendering Group, the Provider:
- (a) agrees that its members are as specified at item 4 of Schedule 1;
  - (b) warrants that each of its members have given their authority to the member named in the Particulars as the Tendering Group's lead member to negotiate, bind and act on that member's behalf in relation to this Deed and any variations thereto; and
  - (c) must not change its membership without the Department agreeing in writing, and the Provider complying with any direction from the Department in relation to the change.

## **Section A4.2 – Changes in persons delivering Services**

### **47. Corporate governance**

- 47.1 The Provider must provide a copy of its Constitution to the Department upon request.
- 47.2 The Provider must:
- (a) inform the Department in writing within five Business Days of any change:
    - (i) in its Constitution, structure, management or operations that could reasonably be expected to have an adverse effect on its ability to comply with the Provider's obligations under this Deed; and
    - (ii) to the membership of its board of Directors, board of management or executive during the Term of this Deed; and
  - (b) obtain a completed credentials information form (as supplied by the Department) from any Director, or member of its board of management or executive, and supply it to the Department, if the Department requests it, within 10 Business Days of the Department's request.

Note: The credentials information form authorises the Department to undertake a credit check of a particular individual.

### **Personnel**

- 47.3 Unless otherwise agreed by the Department in writing at its absolute discretion, the Provider must not employ, engage or elect any person who would have a role in its management, financial administration or, if Notified by the Department, the performance of the Services, if:
- (a) the person is an undischarged bankrupt;
  - (b) there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy;

- (c) the person has suffered final judgment for a debt and the judgment has not been satisfied;
  - (d) subject to Part VIIC of the *Crimes Act 1914* (Cth), the 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 regarded as 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 had failed to comply with the terms of any agreement with the Commonwealth and where that failure gave the Commonwealth the right to terminate the agreement; or
  - (f) the person is otherwise prohibited from being a member or Director or employee or responsible officer of the organisation of the Provider.
- 47.4 Unless otherwise agreed by the Department in writing at its absolute discretion, where a person falls, or is discovered as falling, within any of clauses 47.3(a) to 47.3(f) while employed or engaged by the Provider, or elected as an officer of the Provider, in a role in:
- (a) its management or financial administration, the Provider will be in breach of clause 47.3, if the Provider does not:
    - (i) transfer the person to a position that does not have a role in its management or financial administration; or
    - (ii) terminate the employment or engagement of the person or remove the person from office, as the case may be, and immediately Notify the Department of its action; or
  - (b) the performance of the Services, the Provider must Notify the Department on becoming aware that the person falls or has been discovered as falling within any of clauses 47.3(a) to 47.3(f), and take any action in respect of that person, that is Notified by the Department.

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

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

- 47.5 The Provider must not, without the Department's prior written consent, cause or permit to occur a Change in Control of:
- (a) the Provider; or
  - (b) any Material Subcontractor.
- 47.6 The Department may, at its absolute discretion, grant, or refuse to grant its consent to a Change in Control of the Provider or any Material Subcontractor. If the Department grants its consent, the Department may do so on such conditions as the Department sees fit.
- 47.7 The Provider must, within five Business Days of receiving a written request from the Department, provide such information and supporting evidence as the Department may request in relation to the:
- (a) shareholdings;

- (b) issued shares;
- (c) board of Directors;
- (d) board of management;
- (e) executive;
- (f) voting rights;
- (g) partnership composition, if relevant; or
- (h) Tendering Group membership, if relevant,

of the Provider or any Material Subcontractor, including the dates of any changes to those matters.

47.8 If the Provider does not:

- (a) obtain the Department's consent to a Change in Control as required by clause 47.5; or
- (b) provide the Department with any information required by the Department in accordance with clause 47.7,

the Department may do either or both of the following:

- (c) take action under clause 54.2; or
- (d) terminate this Deed under clause 58.

#### **48. Provider's Personnel**

- 48.1 The Department may give Notice, on reasonable grounds related to the performance of the Services or risk to the Services or the Commonwealth, requiring the Provider to remove Personnel from work on the Services. The Provider must, at its own cost, promptly arrange for the removal of such Personnel from work on the Services and their replacement with Personnel acceptable to the Department.
- 48.2 For the purposes of clause 48.1, if the Provider is unable to provide replacement Personnel who are acceptable to the Department, the Department may terminate this Deed under clause 58.
- 48.3 The Provider must provide for, and ensure that its Personnel participate in, any training as directed by the Department.

#### **49. External administration**

- 49.1 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 49.1(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) if an individual, any notice that the Provider has become bankrupt or has entered into a scheme of arrangement with his or her creditors.
- 49.2 The Provider must, immediately upon the event happening, give Notice to the Department that the Provider:
- (a) has decided to place itself, or has otherwise come under, any one of the forms of external administration, referred to in clause 49.1(b); or
  - (b) is ceasing to carry on business.

## **50. Subcontracting**

- 50.1 The Provider must not, without the Department's prior written approval:
- (a) enter into a Subcontract for the performance of any of its obligations under this Deed;
  - (b) terminate a Subcontractor who has been approved by the Department; or
  - (c) replace an approved Subcontractor with another Subcontractor.
- 50.2 In giving approval under clause 50.1, the Department may impose such terms and conditions as the Department thinks fit and the Provider must comply with any such terms and conditions.
- 50.3 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 5 of Schedule 1.
- 50.4 If the Department gives any approval under clause 50.1 following the Deed Commencement Date, item 5 of Schedule 1 is deemed to be varied to add or remove the relevant Subcontractor.
- 50.5 The Provider must ensure that any arrangement it enters into with a Subcontractor is in writing.
- 50.6 The Provider is liable to the Department for all losses caused under, or in connection with, this Deed by the acts or omissions of any Subcontractor whether or not the relevant entity is a current Subcontractor.
- 50.7 The Provider must ensure that every Subcontractor is aware of all terms and conditions of this Deed relevant to the Subcontractor's part in the provision of the Services.
- 50.8 The Provider must pay its Subcontractors in accordance with the terms of the relevant Subcontract.
- 50.9 The Department may revoke its approval of a Subcontractor on any reasonable ground by giving Notice to the Provider, and, on receipt of the Notice, the Provider must, at its own cost, promptly cease using that Subcontractor and arrange for its replacement by Personnel or another Subcontractor acceptable to, and approved by, the Department.
- 50.10 The Provider must, in any Subcontract:
- (a) reserve a right of termination to take account of the Department's right of termination under clauses 57 and 58 and the Department's right of revocation of approval of a Subcontractor under clause 50.9, and the Provider must, where appropriate, make use of that right in the Subcontract in the event of a termination, or revocation of approval of the Subcontractor, by the Department; and

- (b) bind the Subcontractor, with respect to the Department, to all relevant terms and conditions of this Deed including clauses 37 (Personal and protected information), 38 (Confidential Information), 39 (Records the Provider must keep), 42 (Access to premises and Records), 44 (Insurance), 65 (Negation of employment, partnership and agency), and 71 (Compliance with laws and government policies).
- 50.11 The Provider must 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).
- 50.12 The Department may publically disclose the names of any Subcontractors engaged to perform any of the Provider's obligations under this Deed.
- 50.13 The Provider must inform all Subcontractors that their participation in performing any of the Provider's obligations under this Deed may be publically disclosed.
- 50.14 If the Provider does not comply with this clause 50, the Department may:
- (a) take action under clause 54.2; or
  - (b) terminate this Deed under clause 58.

## **51. Assignment and novation**

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

## **Section A4.3 – Resolving Problems**

### **52. Dispute Resolution**

- 52.1 Each Party agrees that they will:
- (a) only seek to rely on this clause in good faith, and only where the Party seeking to rely on this clause has made a reasonable assessment that the rights and obligations of the Parties in respect of a matter subject to this clause 52, are genuinely in dispute; and
  - (b) cooperate fully with any process instigated in accordance with this clause, in order to achieve a prompt and efficient resolution of any dispute.

#### **Informal resolution**

- 52.2 Subject to clause 52.5, the Parties agree that any dispute arising in relation to this Deed will be dealt with, in the first instance, through the process outlined in the Joint Charter of Deed Management.

#### **Formal resolution**

- 52.3 Subject to clause 52.5, if any dispute arising in relation to this Deed cannot be resolved using the process in clause 52.2, the Parties will use the following process:
- (a) the Party claiming that there is a dispute will give the other Party a Notice setting out the nature of the dispute;
  - (b) within five Business Days of receipt of the Notice under clause 52.3(a), each Party will nominate a representative who has not been previously involved in the dispute;
  - (c) the Parties' representatives will try to settle the dispute by direct negotiation between them;

- (d) if the dispute is not resolved within 10 Business Days of the date on which the last Party to do so nominates a representative under clause 52.3(b), the Party claiming that there is a dispute will refer the dispute to an independent third person, as agreed between the Parties, with power to mediate and recommend some form of non-binding resolution;
- (e) if the dispute is not resolved within 10 Business Days of the date on which the dispute was referred to an independent third person in accordance with clause 52.3(d), the Party claiming that there is a dispute will refer the dispute to an independent third person, as agreed between the Parties, with power to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution; and
- (f) if:
  - (i) agreement on an independent third person cannot be reached under clauses 52.3(d) or 52.3(e); or
  - (ii) the dispute is not resolved within 20 Business Days of referring the dispute to an independent third person pursuant to clause 52.3(e),
 either Party may commence legal proceedings.

### **Costs and application of this clause**

52.4 Each Party will bear its own costs of complying with this clause 52, and the Parties must bear equally the cost of any independent third person engaged under clauses 52.3(d) and 52.3(e).

52.5 This clause 52 does not apply to the following circumstances:

- (a) either Party commences legal proceedings for urgent interlocutory relief;
- (b) where action is taken, or purportedly taken, by the Department under clauses 15 (General), 16 (Evidence to support entitlement to payment), 19 (Overpayment and double payment), 20 (The Department may vary certain terms), 21 (Debts and offsetting), 23 (Fraud), 30 (Performance assessments), 31 (Sample reviews), 34 (Access and information security assurance), 40 (Access by Participants and Employers to Records held by the Provider), 42 (Access to premises and Records), 47 (Corporate governance), 48 (Provider's personnel), 50 (subcontracting), 53 (Provider suspension), 54 (Remedies), 55 (Performance under past Commonwealth Agreements), 56 (Liquidated damages), 57 (Termination or reduction in scope with costs) or 58 (Termination for default);
- (c) where the Department is conducting its own breach of contract or fraud investigation or taking consequential action; or
- (d) where an authority of the Commonwealth, or of a state or a territory is investigating a breach, or suspected breach, of the law by the Provider.

52.6 Despite the existence of a dispute, both Parties must (unless requested in writing by the other Party not to do so) continue to perform their obligations under this Deed.

### **53. Provider suspension**

53.1 Without limiting the Department's rights under this Deed or at law, the Department may, in addition to taking any other action available to it under clause 54, and prior to taking action under clause 58, take action under clause 54.2(a), if the Department is of the opinion that:

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

- (d) the Provider may be engaged in fraudulent activity, and while the Department investigates the matter.
- 53.2 Notwithstanding any action taken by the Department under clause 53.1, the Provider must continue to perform its obligations under this Deed, unless the Department agrees otherwise in writing.

## 54. Remedies

- 54.1 Without limiting any other rights available to the Department under this Deed or at 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 58; or
  - (e) this Deed otherwise provides for the Department to exercise rights under clause 54.2, the Department may, at its absolute discretion and by providing Notice to the Provider, immediately exercise one or more of the remedies set out in clause 54.2.
- 54.2 The remedies that the Department may exercise are:
- (a) suspending any or all of the following, until otherwise Notified by the Department:
    - (i) Referrals, including at some or all Sites;
    - (ii) Allocations;
    - (iii) any Payment under this Deed, in whole or in part;
    - (iv) access to the Employment Fund; and/or
    - (v) 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) terminating, or requiring the cessation of all access to the Department's IT Systems for any particular Personnel, Subcontractor, Third Party IT Vendor, External IT System or any other person;
  - (c) requiring the Provider to obtain new logon IDs for any Personnel, Subcontractor, Third Party IT Vendor and/or other person, and if so required, the Provider must promptly obtain such new logons;
  - (d) imposing special conditions on:
    - (i) the claiming or making of Payments;
    - (ii) access to the Employment Fund; and/or
    - (iii) 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 in respect of a relevant obligation;

- (f) reducing the total amount of any Payments, permanently or temporarily;
  - (g) where the Department has already made Payments, recovering, at the Department's absolute discretion, but taking into account the extent and nature of the breach, some or all of those Payments, as a debt;
  - (h) imposing additional financial or performance reporting requirements on the Provider;
  - (i) reducing Business Share (including to zero in one or more Employment Regions, and by reducing Referrals to the Provider or transferring Enhanced Services Participants to another Trial Provider or an Employment Provider);
  - (j) reducing Allocations (including to zero in one or more Employment Regions or transferring Digital Participants to another Trial Provider or an Employment Provider);
  - (k) reducing the scope of this Deed; and
  - (l) taking any other action set out in this Deed.
- 54.3 If the Department takes any action under this clause 54:
- (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.
- 54.4 For the avoidance of doubt, any reduction of Business Share, Payments or the scope of this Deed under this clause 54 does not amount to a reduction of scope or termination for which compensation is payable.

## 55. Performance under other Commonwealth agreements

- 55.1 Where the Provider was engaged to deliver services under the jobactive Deed 2015-2022 or any other employment services or employment related services agreements between the Provider and the Commonwealth, within 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 55.1(a), claimed payment(s) under another Commonwealth agreement and the requirements under the past 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 54.2 of this Deed; or
  - (d) terminate this Deed, if the failure, breach, or conduct under clause 55.1(a) or 55.1(b) permitted the Commonwealth to terminate the relevant past Commonwealth agreement.
- 55.2 A termination of this Deed under clause 55.1(d) entitles the Department to claim damages from, and exercise any other rights against, the Provider as a result of that termination, including Liquidated Damages under clause 56, as if the termination was for a breach of an essential term of the Deed at law.
- 55.3 Any action taken by the Department under this clause 55 does not in any way limit any rights of the Department under another Commonwealth agreement, under this Deed (including, but not limited to, rights in relation to debts and offsetting under clause 21) or at law.

## 56. Liquidated damages

56.1 Without limiting any other rights available to the Department under this Deed or the law, if the Provider:

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

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

- (c) where clause 56.1(a) applies, \$25,000 per limited tender or other process used for sourcing an alternative arrangement acceptable to the Department; and
- (d) where clause 56.1(b) applies:
  - (i) \$3,000, where the Department identifies that the Provider has made 100 to 149 invalid claims in a Financial Year;
  - (ii) \$6,250, where the Department identifies that the Provider has made 150 to 199 invalid claims in a Financial Year;
  - (iii) \$9,750, where the Department identifies that the Provider has made 200 to 249 invalid claims in a Financial Year; and
  - (iv) \$13,500, where the Department identifies that the Provider has made 250 or more invalid claims in a Financial Year, and for every 50 invalid claims the Department identifies that the Provider has made in excess of 250 in a Financial Year, an additional amount of \$3,750 per 50 such invalid claims will apply.

Note 1: For the purposes of clause 56.1(b) and 56.1(d), and by way of example, the total amount payable for 350 invalid claims made in a Financial Year would be \$21,000.

Note 2: For the purposes of clause 56.1(b) and 56.1(d), the amount of Liquidated Damages that the Department may require the Provider to pay at a particular time will depend on whether the number of invalid claims are identified by the Department at one time, or at various times throughout the relevant Financial Year. For example, if the Department identifies that the Provider has made 100 invalid claims during the first three months of a Financial Year and requires the Provider to pay Liquidated Damages in the amount of \$3,000, and later determines that the Provider has made a further 100 invalid claims in the relevant Financial Year, the Department may only require the Provider to pay the difference between the amounts specified at clauses 56.1(d)(i) and 56.1(d)(iii), namely \$6,750 (that is, the Provider would be liable to pay \$9,750 to the Department for that Financial Year in total).

- 56.2 Where clause 56.1(a) or 56.1(b) applies, the Parties agree that all relevant loss and damage will, having regard to the governmental and non-commercial nature of the Services and their significance to the Commonwealth's provision of employment services, be impossible, complex or expensive to quantify accurately in financial terms, and therefore the Parties agree that the Liquidated Damages are a reasonable and genuine pre-estimate of the loss incurred by the Commonwealth in relation to:
- (a) in the case of clause 56.1(a), identifying, selecting and entering into contractual relations with an alternative Trial Provider to provide services at the relevant Site(s), and transferring Participants, records, monies and relevant materials to the alternative Trial Provider; and
  - (b) in the case of clause 56.1(b), the administrative costs in processing and resolving invalid claims for Payments.
- 56.3 For the avoidance of doubt:
- (a) clause 56.1(a) does not apply where the Department reallocates business at the relevant Site(s) without going to tender;
  - (b) clause 56.1(b) does not apply where the Provider self identifies invalid claims for Payments through its internal compliance practices and Notifies the Department of those invalid claims; and
  - (c) the Department may, at its absolute discretion, recover the amount of Liquidated Damages from the Provider as a debt for the purposes of clause 21, if and when the Commonwealth Notifies the Provider that it elects to recover the Liquidated Damages as a debt under clause 21.

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

- 57.1 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 prejudice to the rights, liabilities, or obligations of either Party accruing before the date on which the termination or reduction takes effect.
- 57.2 If this Deed is terminated in whole or part or reduced in scope under clause 57.1, the Department is only liable for:
- (a) payment of Fees as set out in clause 57.3; and
  - (b) subject to clauses 57.6, 57.7, 57.8 and 57.9, 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**

- 57.3 Subject to clause 57.4, where the Department terminates this Deed in whole or in part or reduces the scope of this Deed, under clause 57.1:
- (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 Payments that would have been Payments in advance will abate according to the extent that they relate 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 Payments paid in advance that relate to the conduct of the Services after the date on which the termination or reduction in scope takes effect.

### **Reimbursements**

- 57.4 Where the Department terminates this Deed in whole or in part, or reduces the scope of this Deed, under clause 57.1, the Department will only be liable to make Reimbursements to the extent that relevant monies have been legally committed by the Provider before receipt of the notice of termination, or as otherwise commensurate with any reduction in scope of any part, or all of this Deed.

### **Provider's obligations**

- 57.5 Upon receipt of a Notice of termination or reduction in scope under this clause 57, the Provider must:
- (a) cease or reduce the performance of this Deed in accordance with the Notice;
  - (b) not legally commit any further monies;
  - (c) immediately return to the Department any Payments in accordance with clause 57.3(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.

### **Abatement of the Payments**

- 57.6 If there is a reduction in scope of this Deed, the Department's liability to pay any part of the Payments will, unless otherwise agreed, abate proportionately to the reduction in the obligations under this Deed.

### **Limit on compensation**

- 57.7 The Department's liability to pay any compensation under or in relation to this clause 57 is subject to the Provider's:
- (a) strict compliance with this clause 57; and
  - (b) substantiation of any amounts claimed under clause 57.3.

- 57.8 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 57;
- (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 57 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 57.

- 57.9 In addition, in relation to a reduction in scope under this clause 57, the Department will not be liable to pay the Provider, and the Provider agrees that its reasonable costs do not include:

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

- 57.10 If the Department terminates, or reduces the scope of, this Deed under this clause 57:

- (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 57, represent a reasonable pre-estimate of any loss that may be incurred by the Provider.

## 58. Termination for default

58.1 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 49 occurs, other than an event under clause 49.1(c);
- (e) the Department becomes aware of any information which indicates that, prior to entering into this Deed, the Provider has:
  - (i) engaged in misleading or deceptive conduct;
  - (ii) made a statement that is incorrect or incomplete; or
  - (iii) omitted to provide information to the Department, 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;

Note: For the avoidance of doubt, clause 58.1(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 Provider's jobactive Deed 2015-2022 is terminated for default by the Department; or
- (h) the Department becomes expressly entitled to terminate this Deed under any other provision of this Deed (excluding clause 57) including under any other provision of this Deed which gives the Department the right to terminate under this clause 58.

58.2 Subject to clause 58.3 where the Department terminates this Deed in whole or in part under clause 58.1:

- (a) the Department is liable to pay Payments and entitled to recover Payments as set out in clause 57.3; and
- (b) clauses 57.4 and 57.5 apply as if the Deed were terminated in accordance with clause 57.1.

58.3 Clause 58.1 does not limit or exclude any of the Department's other rights under this Deed or at 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 A4.4 – Other matters

### 59. Transition out

#### Transition Period

59.1 The Department may Notify the Provider of a Transition Period at any time and for any reason.

59.2 If there is:

- (a) any form of procurement or other process after the Deed Commencement Date, under which the Commonwealth seeks the delivery of the Services or services similar to the Services, and the Provider:
  - (i) does not submit a response to this process;
  - (ii) refuses an offer to provide further services;
  - (iii) is not successful in obtaining a further agreement; or
  - (iv) is successful in obtaining a subsequent agreement, but the subsequent agreement does not require the Provider to provide the Services, or services similar to the Services, on the same or similar terms and conditions for which the Provider is contracted to deliver Services under this Deed,

from the date of the announcement of the allocation of agreements or business to new employment services providers, or earlier if both Parties agree; or

- (b) any other situation in which the Provider will not be providing the same level of services to the Department after the Completion Date,

the Department may, at its absolute discretion, Notify the Provider that:

- (c) the Department is ceasing or reducing the number of Referrals and/or Allocations to the Provider;
- (d) the Services, or a part of the Services, are not to be provided; and/or
- (e) certain provisions of this Deed do not apply to the provision of Services,

during the Transition Period, and where the Provider receives any such Notice, the Provider must comply with the Notice.

59.3 Unless notified otherwise by the Department, the Provider must, during the Transition Period, continue to provide all Services which it is required to provide under this Deed.

59.4 If the Provider will be providing services to the Department similar to the Services after the Completion Date, the Department may, during the Transition Period:

- (a) increase the number of Referrals and/or Allocations and transfers of Participants to the Provider;
- (b) negotiate with the Provider in relation to gap filling in accordance with clause 13; and
- (c) take any other action to facilitate transition of business or Participants to the Provider, or to transition the Provider to services after the Completion Date.

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

59.5 The Provider must, if directed by the Department, provide sufficient assistance and cooperation to any person nominated by the Department to enable services to continue to be provided to Participants who are transferred to another employment services provider:

- (a) on the termination of this Deed in whole or in part before the Completion Date;
- (b) at the Completion Date;
- (c) in accordance with clauses 88 and 91; or

- (d) at any time for any other reason.
- 59.6 The sufficient assistance and cooperation the Provider must provide under clause 59.5 includes complying with the Department's directions in relation to:
- (a) the transfer or destruction of Deed Material and Commonwealth Material in the Provider's possession or control, including that stored in External IT Systems; and
  - (b) the redirection of Participants,
- to any person nominated by the Department, or to the Department.

## **60. Indigenous Procurement Policy**

- 60.1 The Provider must use reasonable endeavours to increase its:
- (a) purchasing from Indigenous Enterprises; and
  - (b) employment of Indigenous Australians,
- in the delivery of the Services.
- 60.2 For the purposes of clause 60.1(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: 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 https://www.pmc.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp](https://www.pmc.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp)).

## **61. Indigenous Australians**

- 61.1 The Provider must:
- (a) maintain an indigenous employment strategy which is designed to attract, develop, and retain Indigenous Australians as employees within the Provider's Own Organisation for the Term of this Deed; and
  - (b) provide a copy of that strategy to the Department on request.
- 61.2 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 Australians in local jobs.
- 61.3 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 Australians in relation to specific Jobs, Land and Economy Programme projects.

## **62. Acknowledgement and promotion**

- 62.1 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, in the manner consistent with any Guidelines; and

- (b) deliver to the Department (at the Department's request and at the Provider's own cost) copies of all promotional, publicity and advertising Materials that the Provider has developed for the purposes of this Deed.
- 62.2 The Provider must market and promote the Services, as required by the Department, and deal with enquiries relating to the Provider's provision of the Services, in accordance with any Guidelines.

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

- 63.1 The Department may, by any means, publicise and report on the Services, the Trial and on 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.
- 63.2 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 Trial Providers or Employment Providers.

### **64. Conflict of interest**

- 64.1 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.
- 64.2 The Provider must not during this Deed enter into, or engage in, any arrangement, scheme or contract, however described, which may cause a Conflict in the performance of its obligations under this Deed.
- 64.3 If, during the Term of this Deed, a Conflict arises, or is likely to arise, including as determined and Notified by the Department, the Provider must:
- (a) immediately Notify the Department of the Conflict and the steps that the Provider proposes to take to resolve or otherwise deal with the Conflict;
  - (b) make full disclosure to the Department of all relevant information relating to the Conflict; and
  - (c) take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.
- 64.4 If the Provider:
- (a) fails to take action in accordance with this clause 64; and/or
  - (b) is unable or unwilling to resolve or deal with the Conflict as reasonably required by the Department,
- the Department may terminate this Deed under clause 58.

### **65. Negation of employment, partnership and agency**

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

- 65.2 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.

## **66. Waiver**

- 66.1 If either Party does not exercise (or delays in exercising) any rights under this Deed, that failure or delay does not operate as a waiver of those rights.
- 66.2 A single or partial exercise by either Party of any of its rights under this Deed does not prevent the further exercise of any right.
- 66.3 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.
- 66.4 In this clause 66, 'rights' means rights provided by this Deed, or at law.

## **67. Severance**

- 67.1 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.

## **68. Entire agreement**

- 68.1 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.

## **69. Variation of Deed**

- 69.1 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.

## **70. Applicable law and jurisdiction**

- 70.1 This Deed is to be construed in accordance with, and any matter related to it is to be governed by, the laws of the State of New South Wales.
- 70.2 Both Parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales in respect to any dispute under this Deed.

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

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

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

- 71.3 Clauses 71.4 to 71.5 apply only to the extent that the Provider is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) ('the WGE Act').

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

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

**Work health and safety**

- 71.6 The Provider must at all times:
- (a) ensure that the Services are carried out in a safe manner;
  - (b) comply with any reasonable instruction from the Department relating to work health and safety and any directions issued by any person having authority under the WHS Laws to do so;
  - (c) communicate, consult and coordinate with the Department in relation to health and safety matters arising from the Services (including meeting with the Department as required by the Department and communicating any issues or concerns, or any specific requirements applying to the Services under or arising from the WHS Laws, as soon as practicable);
  - (d) if the Provider is required by the WHS Act to report a Notifiable Incident to the Regulator arising out of the Services:
    - (i) at the same time, or as soon as is possible in the circumstances, give Notice of such incident, and a copy of any written notice provided to the Regulator, to the Department; and
    - (ii) provide to the Department, within such time as the Department specifies, a Report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future;
  - (e) within 24 hours of becoming aware of such circumstances, inform the Department of the full details of:
    - (i) any suspected or actual contravention of the WHS Laws relating to the Services;
    - (ii) any workplace entry by a WHS Entry Permit Holder, or an inspector appointed under the WHS Act, to any place where the Services are being performed or undertaken; and
    - (iii) any proceedings against the Provider, or any decision or request by the Regulator given to the Provider, under the WHS Laws; and
    - (iv) any cessation or direction to cease work relating to the Services, due to unsafe work, immediately upon the Provider being informed of any such cessation or direction; and
  - (f) provide the Department with copies of all notices and correspondence issued to the Provider by any person under the WHS Laws, within 24 hours of receiving any such notice or correspondence.
- 71.7 The Provider must cooperate with any investigation undertaken by the Department concerning any Notifiable Incident, or breach or alleged breach of the WHS Laws, or any audit of the Provider's work health and safety performance, arising out of, or in respect of, the Services.

## **72. Use of interpreters**

- 72.1 The Provider must, when carrying out the Services, provide an interpreter to facilitate communication between the Provider and Participants wherever necessary, including where a Participant requires assistance:
- (a) to communicate comfortably and effectively with the Provider, on account of language or hearing barriers;
  - (b) to understand complex information of a technical or legal nature;
  - (c) during stressful or emotional situations where a Participant's command of English may decrease temporarily; or
  - (d) at group forums or public consultations, where Participants do not speak or understand English, or have a hearing impairment.
- 72.2 The Provider must provide access to interpreter services fairly and without discrimination, based on a proper assessment of a Participant's needs.
- 72.3 Where a Participant requests the use of an interpreter and the Provider refuses to provide one, the Provider must record the reason for the Provider's decision.
- 72.4 The Provider must ensure that those of its Personnel and Subcontractors who, when providing Services, engage with Participants who may require interpreter services, have received training in the use of interpreters in accordance with the training requirements specified in any Guidelines or as otherwise advised by the Department.

## **73. Notices**

- 73.1 A Party giving Notice or Notifying under this Deed must do so in writing, or by email, addressed to the Account Manager or the Contact Person, as relevant, and if:
- (a) in writing, the Notice must be hand delivered or sent by pre-paid post to the street address;
  - (b) by email, the Notice must be sent to the email address of the Account Manager or the Contact Person, as relevant.
- 73.2 A Notice given in accordance with clause 73.1 is taken to be received:
- (a) if hand delivered, on delivery;
  - (b) if sent by pre-paid post, five Business Days after the date of posting, unless it has been received earlier; and
  - (c) if sent by email, upon actual receipt by the addressee.
- 73.3 For the purposes of this clause 73, the Account Manager's and the Contact Person's address details are as specified in items 1 and 2 of Schedule 1.

## **PART B – TRIAL PARTICIPATION SERVICES**

### **Reader's Guide**

Australian Government employment services are being transformed to deliver better services to job seekers and Employers and a better system for Providers. Through the Trial, key elements of the New Employment Services will be tested.

The Department will work closely with Providers in the Trial Employment Regions to establish and deliver the Trial Services. The new settings will be tested and evaluated and enhancements made through a co-design process with Providers, Employers and Participants.

The Department, Providers and other key stakeholders will be involved in forums and other consultations to support the operation of the Trial and refinement of the New Employment Services during the Trial Period.

## **CHAPTER B1 - TRIAL PARTICIPATION SERVICES**

### **Section B1.1 – General**

#### **74. Trial Participation Services**

- 74.1 The Provider acknowledges that the Trial is intended to test key aspects of the New Employment Services, including innovative service delivery models that will meet the needs of users, and will be implemented progressively during the Term of this Deed.
- 74.2 During the Term of this Deed, the Department may request the Provider to participate in Trial Participation Services which are intended to ensure that the:
  - (a) Trial is delivered in accordance with this Deed;
  - (b) Department is able to successfully test elements of the New Employment Services; and
  - (c) New Employment Services will meet the needs of users, including Employers and job seekers.

#### **75. Transition and implementation**

- 75.1 The Provider will support the transition from jobactive in the Trial Employment Regions and implementation of the Trial from the Deed Commencement Date, in accordance with this clause 75 and any Guidelines.
- 75.2 To ensure that the Provider is fully able to commence providing the relevant components of the Trial Provider Services from the Services for Digital Participants Start Date and the Enhanced Services Start Date, as relevant, the Provider will, in accordance with any Guidelines:
  - (a) conduct staff training for its Personnel who will be involved in providing Trial Provider Services (as necessary);
  - (b) perform general start-up services that will support the delivery of Trial Provider Services;
  - (c) support the progressive commencement of the Trial Provider Services by cooperating with the Department;

- (d) undertake any organisational change management processes that the Provider considers is necessary to deliver the Trial Provider Services; and
- (e) undertake any other activities as requested by the Department.

## **76. Stakeholder engagement**

- 76.1 The Department may request that the Provider participates in stakeholder engagement activities at any time during the Term of this Deed, in accordance with this clause 76 and any Guidelines.
- 76.2 The stakeholder engagement activities that the Department may request the Provider to participate in include:
  - (a) participating in any reference group (or similar advisory body in relation to the Trial) established by the Department;
  - (b) participating in working group meetings;
  - (c) participating in ad-hoc consultations with the Department, either face-to-face or via teleconference; and
  - (d) participating in and supporting user-centred design research to further develop the Trial.
- 76.3 Stakeholder engagement activities may be undertaken for a range of purposes as requested by the Department, including to:
  - (a) share information on the Trial's progress;
  - (b) provide feedback on aspects of the Trial;
  - (c) co-design approaches to be tested during the Trial;
  - (d) support the evaluation of the Trial;
  - (e) engage with other local stakeholders in relation to the Trial;
  - (f) identify any issues with the Trial; and
  - (g) develop local strategies and employment pathways.
- 76.4 If the Provider is requested by the Department to participate in any stakeholder engagement activities under clause 76.1, the Provider and its Personnel must actively participate in and contribute to such activities in good faith.

## 77. Self-help Facilities for job seekers

### Reader's Guide

To ensure that no job seekers are disadvantaged whilst the New Employment Services (and, in particular, the Digital Services) are being tested in the Trial, several additional safeguards will be put in place. One of those safeguards is that the Department requires Providers to allow any Participant, Volunteer or Volunteer Online Employment Services Trial Participant to use their Self-help Facilities. This includes Digital Participants (who are not on the Provider's caseload). Existing evidence on digital access does not suggest that this measure will significantly increase demand for access to Provider Self-help Facilities, though the Department will collect information on demand and any impacts on Providers as part of the Trial.

The Department expects Providers to provide Self-help Facilities that will enable any Participant, Volunteer or Volunteer Online Employment Services Trial Participant to access digital devices (such as a computer) and the internet (including by offering free Wi-Fi) to access Digital Services and undertake job searches. However, Participants, Volunteers and Volunteer Online Employment Services Trial Participants that use Self-help Facilities are expected to self-serve. For example, the Department does not expect Providers to assist Participants who are not in Enhanced Services to develop resumes, obtain a MyGov login or apply for jobs. If a Participant, Volunteer or Volunteer Online Employment Services Trial Participant needs additional assistance or faces difficulties with digital access, the Provider should advise the Participant, Volunteer or Volunteer Online Employment Services Trial Participant to contact the Contact Centre.

The Department will monitor the use of Self-help Facilities throughout the Trial. Providers are encouraged to advise the Department of any emerging challenges or opportunities in relation to the use of Self-help Facilities.

#### 77.1 The Provider:

- (a) must make available at each of its Sites appropriate Self-help Facilities that each Participant, Volunteer and Volunteer Online Employment Services Trial Participant can access for free for the purpose of accessing Digital Services and undertaking job searches, including:
  - (i) access to suitable digital devices (including computers with internet access);
  - (ii) free Wi-Fi facilities;
  - (iii) a telephone line that enables Participants to call the Contact Centre; and
  - (iv) printing facilities; and
- (b) must ensure that the Self-help Facilities available at each of its Sites allow each Participant, Volunteer and Volunteer Online Employment Services Trial Participant to:
  - (i) access Digital Services (including providing access to the jobactive website and the Participant's job seeker dashboard); and
  - (ii) undertake job searches (for example, by enabling access to careers websites and job listing websites).

#### 77.2 The Provider must establish and implement controls to ensure the appropriate use of Self-help Facilities by Participants, Volunteers and Volunteer Online Employment Services Trial Participants including with regard to the Cybersafety Policy.

## PART C – GENERAL TRIAL PROVIDER SERVICES

### Reader's Guide

Australian Government employment services are being transformed to deliver better services to job seekers and Employers, with a particular focus on providing more intensive, tailored and professional support for job seekers who face more complex barriers to Employment. This PART C – GENERAL TRIAL PROVIDER SERVICES details the different employment services Providers are expected to deliver during the Trial in addition to the services set out in PART D - ENGAGEMENT, ACTIVITIES AND COMPLIANCE.

#### Enhanced Services

Improving the outcomes of disadvantaged job seekers through Enhanced Services is one of the key aims of the New Employment Services. As such, Providers are expected to focus on delivering high quality and intensive services to all Enhanced Services Participants in order to support them to overcome their Vocational Barriers and Non-vocational Barriers and prepare for, obtain and sustain Employment.

The intent is for Providers to have more flexibility to identify and deliver tailored services for each individual Enhanced Services Participant, with Enhanced Services Participants also expected to have more choice over the types of services and support they receive. Enhanced Services will be delivered in two Tiers (Tier 1 and Tier 2), with more detail in respect of the intent of each Tier provided in the relevant reader's guides below.

#### Activities for Digital Participants

Job-ready job seekers who are being serviced in Digital First or Digital Plus are expected to predominantly self-service via the new Digital Services. This will free up time and resources to enable Providers to focus on delivering Enhanced Services. However, from time-to-time, Digital Participants may be required to participate in Activities or supporting programs. In these instances, the Provider may be expected to arrange the relevant Activities needed by the Digital Participant. The Provider's relationship with Digital Participants is temporary in nature, and Digital Participants will not be considered part of the Provider's caseload.

#### Employer servicing and engagement

The New Employment Services also seeks to improve services and support offered to Employers. This includes helping them to fill vacancies and providing Post-placement Support to develop tailored employment pathways for Enhanced Services Participants. The Trial also provides the opportunity to try innovative approaches to engaging with Employers and helping them to benefit from the opportunities available to them through employment services.

## **CHAPTER C1 – ENHANCED SERVICES**

### **Section C1.1 – General requirements for Enhanced Services**

#### **78. Enhanced Services**

- 78.1 The Provider must deliver intensive, individually tailored and high-quality Enhanced Services to all Enhanced Services Participants to support them to overcome their Vocational Barriers and Non-vocational Barriers and prepare for, obtain and sustain Employment.
- 78.2 The Provider must provide each Participant with professional and integrated case management support.
- 78.3 The Provider must provide Post-placement Support to all Enhanced Services Participants, as required, to enable them to effectively sustain Employment.
- 78.4 The Provider must provide, Broker, Purchase or arrange Activities (as defined in Attachment 1 – Definitions), other interventions, training, services and other opportunities as necessary that:
- (a) are tailored to the individual needs of the Enhanced Services Participant;
  - (b) are delivered in a manner that supports each Participant to exercise choice over the services they receive;
  - (c) assist the Participant to progress towards Employment (including by addressing Vocational Barriers and Non-vocational Barriers) and/or achieve Employment outcomes; and
  - (d) where applicable and appropriate, assist the Participant to meet their Mutual Obligation Requirements.
- 78.5 The Provider is expected to support Enhanced Services Participants to utilise digital resources to support them on their pathway to Employment as appropriate, including:
- (a) supporting them to address digital access issues, including barriers associated with lack of access to suitable devices and/or necessary internet access or mobile data requirements; and
  - (b) arranging Activities and interventions that can support them to improve their digital skills;
  - (c) providing Digital Training to them in accordance with clause 106;
  - (d) supporting them to utilise Self-help Facilities (as necessary); and
  - (e) supporting them to report their Job Search and other Mutual Obligation Requirements using digital services.

## Section C1.2 – Enhanced Services

### Reader's Guide

Tier 1 Enhanced Services Participants are assessed as being ready to participate in intensive work readiness activities including vocational and non-vocational activities to address their barriers to Employment. Providers have the discretion to determine the most appropriate combination of requirements and Activities for Tier 1 Enhanced Services Participants (including in relation to the timing or sequencing of Activities and how often Providers meet with Tier 1 Enhanced Services Participants), which will be tailored to their individual circumstances.

Tier 2 Enhanced Services Participants are those Enhanced Services Participants who are assessed as facing more substantial, Non-vocational Barriers to Employment than Tier 1 Enhanced Services Participants. Providers have the discretion to determine the most appropriate combination of requirements and Activities for Tier 2 Enhanced Services Participants (including in relation to the timing or sequencing of Activities and how often Providers meet with Tier 2 Enhanced Services Participants). Job Plans for Tier 2 Enhanced Services Participants are expected to have a stronger focus on non-vocational interventions but will also include vocational-based activities where appropriate.

Providers will have the discretion to place Enhanced Services Participants into either of the two Tiers of servicing based on the Provider's own assessment and consideration of the Enhanced Services Participant's personal circumstances. Noting the different focusses of the Tiers (as detailed above), this will provide flexibility around the different servicing needs that Enhanced Services Participants have at different points in time.

The Department's intention is not to be prescriptive, but rather to allow Providers to exercise their judgement regarding which Tier is more appropriate for each Enhanced Services Participant. This will enable the Department to test the impact of giving Providers more scope to exercise discretion during the Trial.

The Department will monitor how Enhanced Services Participants are being allocated to the Tiers and work with stakeholders (including working groups in the Trial Employment Regions) to ensure Enhanced Services Participants receive the Services they need without imposing unnecessary "red tape" on Providers.

## 79. Tier 1 Enhanced Services

79.1 In addition to the requirements specified in PART D - ENGAGEMENT, ACTIVITIES AND COMPLIANCE, the Provider must, for each Tier 1 Enhanced Services Participant, provide individually tailored and intensive work-readiness services. This must include:

- (a) professional and integrated case management to support the Tier 1 Enhanced Services Participant's capacity and engagement, including support to address Vocational Barriers and Non-vocational Barriers where appropriate;  
and may include:
- (b) an intensive and individually tailored mix of vocational and non-vocational activities (up to a Tier 1 Enhanced Services Participant's full capacity) that aim to improve the work readiness of the Tier 1 Enhanced Services Participant over the short to medium term and focussed on achieving successful Employment outcomes; and
- (c) other support as appropriate to the Participant's needs,  
in accordance with any Guidelines.

## **80. Tier 2 Enhanced Services**

- 80.1 In addition to the requirements specified in PART D - ENGAGEMENT, ACTIVITIES AND COMPLIANCE, to help achieve the objective of increasing the capacity of Tier 2 Enhanced Services Participants to achieve successful Employment outcomes and participate in more intensive vocational and non-vocational activities to improve their work readiness, the Provider must, for each Tier 2 Enhanced Services Participant, provide an individually tailored combination of services and comprehensive case management. This must include:
- (a) provision of, or referral to, necessary support, including specialist services provided by a private sector or community entity in order to increase the Tier 2 Enhanced Services Participant's job competitiveness and assist in addressing their Non-vocational Barriers;  
and may include:
  - (b) referral to Transition to Work Services, if the Tier 2 Enhanced Services Participant:
    - (i) is eligible for Transition to Work Services; and
    - (ii) the Provider reasonably considers that the Tier 2 Enhanced Services Participant would benefit from Transition to Work Services;
  - (c) vocational activities and services, including Activities specified in clause 115.5, that are specifically tailored to maintaining or increasing the Tier 2 Enhanced Services Participant's progression toward Employment; and
  - (d) other support as appropriate to the Participant's needs,  
in accordance with any Guidelines.

## **81. Determining a Participant's Tier within Enhanced Services**

- 81.1 Subject to clause 81.2, and informed by the individual circumstances and needs of each Enhanced Services Participant at any point in time, the Provider must determine, in accordance with any Guidelines, whether an Enhanced Services Participant should be serviced as a:
- (a) Tier 1 Enhanced Services Participant; or
  - (b) Tier 2 Enhanced Services Participant.
- 81.2 The Department expects the Provider to service an Enhanced Services Participant as a Tier 1 Enhanced Services Participant unless the Provider reasonably considers that the Participant:
- (a) is unlikely to benefit from intensive participation in Activities, informal activities, and services, with a primary focus on work-readiness; or
  - (b) is likely to benefit from comprehensive case management and intensive support to address Non-vocational Barriers to Employment.
- 81.3 The Provider must promptly record each Enhanced Services Participant's Tier in the Department's IT Systems.

## Section C1.3 – Employer Engagement

### 82. Employer servicing and engagement

- 82.1 In delivering Enhanced Services, Providers must actively service Employers in accordance with any Guidelines.
- 82.2 The Provider is expected to engage with a range of Employers in each Employment Region to:
- (a) deliver timely and tailored support that meets the needs of Employers;
  - (b) co-design and develop Employment pathways for Enhanced Services Participants, giving consideration to the local labour market and economy and any emerging opportunities (such as upcoming large recruitment campaigns or occupations experiencing increased demand);
  - (c) arrange and negotiate Employment and placements in Activities (including PaTH Internships and NWEF Placements) for Enhanced Services Participants;
  - (d) reduce the costs incurred by Employers in respect of hiring an Enhanced Services Participant, including through the use of the Employment Fund and/or Wage Subsidies, in accordance with any Guidelines; and
  - (e) provide Post-placement Support to the Employer, as necessary, to enable them to effectively manage those Enhanced Services Participants in a work placement.
- 82.3 The Provider must coordinate its Employer engagement and servicing approaches with other stakeholders in the Employment Region, including by:
- (a) coordinating its Employer engagement activities with other Providers, including DES Providers and Transition to Work Providers;
  - (b) working with the Department’s Personnel;
  - (c) engaging with local stakeholders such as local councils; and
  - (d) engaging with peak bodies and industry representatives.

## CHAPTER C2 - SERVICES FOR DIGITAL PARTICIPANTS

### Reader's Guide

Digital Participants will predominantly self-service via a digital employment services platform, though may be in need of additional support (for example to undertake a work experience placement or other Activity). To help meet the demand for these Activities in the Trial, the Contact Centre may Allocate Digital Participants to Providers to provide, Broker, Purchase or arrange an appropriate Activity as necessary. Providers are encouraged to have a range of Activities available for Digital Participants to undertake. The Department expects that, across all Providers in an Employment Region, all types of Activities will be made available, with the diverse Activity offerings of Providers complementing each other. The Department encourages Providers in an Employment Region to work together and with the Contact Centre to optimise the provision of Services for Digital Participants.

The frequency and volume of Allocations will vary depending on the servicing needs of Digital Participants. The Department anticipates that, as the Trial progresses, it will be able to provide more detailed guidance to Providers to give an indication of expected future demand for Activities. For example, the Department will have more robust estimates of caseload numbers and how many Digital Participants are undertaking NWEF, Work for the Dole and PaTH Internship Placements each month. This will support Providers to plan their available Activities more effectively into the future. Trial Providers are well placed to provide Services for Digital Participants, given they will already be arranging a range of Activities for Enhanced Services Participants. There may be circumstances where Digital Participants and Enhanced Services Participants may benefit from the same Activity.

To avoid doubt, Digital Participants will not form part of the Provider's Enhanced Services caseload. The management of a Digital Participant's Job Plan and Mutual Obligation Requirements (including in relation to the Targeted Compliance Framework) will predominantly remain the responsibility of the Digital Participant and the Contact Centre.

### Section C2.1 - General requirements for Services for Digital Participants

#### 83. Services for Digital Participants

- 83.1 Subject to clause 83.2, the Provider must:
- (a) in accordance with any Guidelines, notify the Department of any Activity it elects to make available to Digital Participants on the Department's IT Systems or in such other manner as required by the Department;
  - (b) if it does not have any available Activities but is willing and able to source an Activity for a Digital Participant, notify the Department of its willingness to source such an Activity;
  - (c) consider any requests from the Contact Centre to place Digital Participants in an Activity; and
  - (d) liaise and collaborate with the Contact Centre and other Trial Providers to support the delivery of Services for Digital Participants.
- 83.2 The Provider is not required to comply with clause 83.1 in relation to Employment Preparation Activities.
- 83.3 Subject to clause 83.1, the Contact Centre may Allocate Digital Participants to the Provider for Activities as specified in Chapter D2 - Activities and Supporting Programs (as relevant) from time to time.

- 83.4 If the Provider has an Activity available in accordance with clause 83.1(a) or is willing and able to source an Activity in accordance with clause 83.1(b), then the Department may notify the Provider of the identity of a Digital Participant for the purpose of enabling the Provider to assess the Digital Participant to determine if that Activity is suitable for the Digital Participant.
- 83.5 Unless:
- (a) the Provider considers that the Activity is unsuitable for the Digital Participant;
  - (b) that Activity becomes unavailable because it has been filled by an Enhanced Services Participant; or
  - (c) any other allowable circumstance, as set out in any Guidelines, arises in relation to the Digital Participant or Activity,
- then:
- (d) the Digital Participant may be Allocated to the Provider by the Contact Centre under clause 83.3 for the purpose of undertaking the Activity; and
  - (e) the Provider must arrange that Activity for the Digital Participant.
- 83.6 The Provider must:
- (a) only provide to a Digital Participant those Services for Digital Participants as directed by the Contact Centre; and
  - (b) not provide to a Digital Participant any other Services, including any other Services for Digital Participants, unless directed to do so by the Contact Centre.
- 83.7 Clause 83.6 does not limit the Provider's obligation under clause 77 to provide Self-help Facilities to all Participants, Volunteers and Volunteer Online Employment Services Trial Participants.

# **PART D - ENGAGEMENT, ACTIVITIES AND COMPLIANCE**

## **CHAPTER D1 - JOB SEEKER ENGAGEMENT**

### **Section D1.1 – General Requirements for Trial Provider Services**

#### **84. Trial Provider Services**

- 84.1 Subject to this Deed, the Provider must provide Trial Provider Services to all Participants:
- (a) who are transitioned to, Referred to, transferred to or Allocated to the Provider;
  - (b) in accordance with:
    - (i) this PART D - ENGAGEMENT, ACTIVITIES AND COMPLIANCE;
    - (ii) for an Enhanced Services Participant, the Tier identified for them in the Department's IT Systems; and
    - (iii) their Job Plan; and
  - (c) for the duration of their Period of Registration.
- 84.2 To avoid doubt, this PART D - ENGAGEMENT, ACTIVITIES AND COMPLIANCE applies to:
- (a) Enhanced Services Participants Referred to the Provider; and
  - (b) Digital Participants Allocated to the Provider.

#### **85. Service Guarantee**

- 85.1 The Provider must:
- (a) conduct Enhanced Services at or above the minimum standards in the Service Guarantee and in accordance with all representations made by the Provider with regards to Enhanced Services; and
  - (b) prominently display the Service Guarantee in its offices and all Sites, and make these available to any Participants serviced by the Provider and Employers.

#### **86. Engagement with other services in the community**

- 86.1 In providing Trial Provider Services, the Provider will work cooperatively, and in accordance with any Guidelines, with other programs and services provided by the Commonwealth, state or territory governments, relevant local governments, and private and community services and stakeholders.

#### **87. Transition in**

- 87.1 The Provider must provide Trial Provider Services to each Transitioned Participant in accordance with this Deed as a Participant and subject to:
- (a) clause 87.2;
  - (b) any Guidelines; and
  - (c) any directions given by the Department.

- 87.2 The Provider must commence providing Trial Provider Services to each Transitioned Participant in Trial Provider Services within 6 weeks following their Transition Date or within any other timeframe as Notified by the Department.

## **88. Relocation of Participants between Provider's Sites**

- 88.1 If a Participant moves to a new location and their new location is within:
- (a) a reasonable distance of a Site of the Provider; and
  - (b) the same Employment Region,
- the Provider must continue to provide Trial Provider Services to them at no additional cost to the Department.

Note: Subject to clause 120.13, if a Participant moves to a new location in accordance with clause 88.1, the transfer of any Fees or Employment Fund credits is an internal matter for the Provider.

## **Section D1.2 – Referral, Direct Registration and Transfer of Enhanced Services Participants to the Provider**

### **89. Referrals**

- 89.1 The Provider must only accept Referrals of Enhanced Services Participants made through the Department's IT Systems or directly by DHS.
- 89.2 Subject to this Deed, the Department's IT Systems will allow a flow of Referrals of Enhanced Services Participants to the Provider within a 30 per cent tolerance of the Provider's Business Share within each Employment Region.

### **90. Direct Registration**

- 90.1 Where a person presents to the Provider without a Referral, the Provider must confirm their eligibility for Direct Registration in accordance with any Guidelines, and if eligibility is confirmed, Directly Register and immediately provide Enhanced Services to that Enhanced Services Participant in accordance with this Deed, including any Guidelines.

#### **Vulnerable Youth or Vulnerable Youth (Student)**

- 90.2 Where a Vulnerable Youth or Vulnerable Youth (Student) presents to the Provider without a Referral, and in the case of a Vulnerable Youth (Student), no appropriate local youth services are available, the Provider must:
- (a) immediately Directly Register them, conduct an Initial Interview, and provide them with Enhanced Services;
  - (b) if they present in crisis, immediately provide, or refer them to relevant crisis assistance; and
  - (c) within four weeks of the Direct Registration refer them to DHS to:
    - (i) determine their eligibility for Income Support Payments, regardless of whether the Provider expects them to be eligible for Income Support Payments; and
    - (ii) conduct an Assessment of them.

- 90.3 If the Assessment referred to in clause 90.2(c)(ii) determines that:
- (a) a Vulnerable Youth or Vulnerable Youth (Student) is eligible for Services as an Enhanced Services Participant, the Provider must continue providing Enhanced Services to them as an Enhanced Services Participant for the remainder of their Period of Registration;
  - (b) a Vulnerable Youth (Student) is not eligible for Services as an Enhanced Services Participant, the Provider must immediately Exit the Vulnerable Youth (Student);
  - (c) a Vulnerable Youth:
    - (i) should be referred to Disability Employment Services, the Provider must continue to provide Enhanced Services to the Vulnerable Youth as an Enhanced Services Participant until the Vulnerable Youth starts receiving Disability Employment Services; or
    - (ii) is not eligible for Services as an Enhanced Services Participant, the Provider must refer the Vulnerable Youth to the Contact Centre.

## **91. Transfer of Enhanced Services Participants from the Provider**

- 91.1 An Enhanced Services Participant may, at any time, be transferred from the Provider to another Trial Provider, an Employment Provider or the Contact Centre, as relevant:
- (a) by DHS or the Department, where the Enhanced Services Participant moves to a new location that is not within:
    - (i) a reasonable distance of a Site of the Provider; or
    - (ii) the same Employment Region;
  - (b) by the Department, where the Department is satisfied that:
    - (i) the Enhanced Services Participant will receive services that could better enhance their Employment prospects from the other Trial Provider or an Employment Provider;
    - (ii) the Enhanced Services Participant and the Provider are unable to achieve or maintain a reasonable and constructive servicing relationship, as determined by the Department;
  - (c) if initiated by the Enhanced Services Participant:
    - (i) through the Contact Centre and the Department is satisfied that the Enhanced Services Participant considers that they will receive services that could better enhance their Employment prospects from the other Trial Provider or an Employment Provider; or
    - (ii) through the Department's IT Systems and, subject to clause 91.2 and any Guidelines, the Provider does not oppose the transfer of the Enhanced Services Participant to the other Trial Provider within three Business Days following notification by the Department that the Enhanced Services Participant has initiated the transfer;
  - (d) if the Department, the Provider, another Trial Provider or Employment Provider and the Enhanced Services Participant agree to the transfer; or
  - (e) by the Department, for any other reason at its sole discretion.

- 91.2 For the purpose of clause 91.1(c)(ii), the Provider may only oppose the transfer of the Enhanced Services Participant to the other Trial Provider in accordance with Guidelines or as otherwise approved by the Department in writing.
- 91.3 If an Enhanced Services Participant is transferred in accordance with clause 91.1, the Provider must, in accordance with any Guidelines:
- (a) immediately provide sufficient assistance and cooperation to any person nominated by the Department to facilitate the transfer;
  - (b) comply with the Department's directions in relation to the transfer or destruction of Deed Material and Commonwealth Material in the Provider's possession or control, including that stored in External IT Systems; and
  - (c) subject to clause 91.3(b), maintain all Records relating to the Enhanced Services Participant in accordance with clause 39.9.

## **92. Transfer or Referral of Enhanced Services Participants to the Provider**

- 92.1 If an Enhanced Services Participant is transferred or Referred to the Provider for any reason, the Provider must, in accordance with any Guidelines:
- (a) immediately provide sufficient assistance and cooperation to any person nominated by the Department, to enable Trial Provider Services to be provided, or continue to be provided, to the Enhanced Services Participant;
  - (b) conduct an Initial Interview with the Enhanced Services Participant in accordance with clause 96;
  - (c) immediately provide Trial Provider Services to the Enhanced Services Participant in accordance with this Deed; and
  - (d) comply with any direction given by the Department in relation to the transfer of Material and the Enhanced Services Participant.
- 92.2 Where an Enhanced Services Participant is the subject of a Wage Subsidy Agreement or a RATTUAJ Agreement on the date of their transfer to the Provider, the Provider must:
- (a) notwithstanding that the Enhanced Services Participant has Exited or is not part of the Provider's caseload, use its best endeavours to enter into a Wage Subsidy Agreement or a RATTUAJ Agreement, as relevant, with the Wage Subsidy Employer or the Enhanced Services Participant, as relevant, for a period as advised by the Department;
  - (b) advise the Department if it is unable to enter into a Wage Subsidy Agreement or RATTUAJ Agreement, as relevant; and
  - (c) comply with any direction by the Department in relation to the Enhanced Services Participant.

Note to clauses 91 and 92:

If an Enhanced Services Participant is transferred or Referred to or transferred from the Provider:

- (a) clause 120.12 describes when Employment Fund transfers are allowed; and (b) during a 4 Week Period, 12 Week Period or 26 Week Period, clause 136 describes the situation with regards to eligibility to claim an Outcome Payment.

- 92.3 Except for an Activity Host Agreement for a Work for the Dole activity, where an Enhanced Services Participant is the subject of an Activity Host Organisation Agreement on the date of their transfer to the Provider, the Provider must:
- (a) use its best endeavours to:
    - (i) novate the relevant Activity Host Organisation Agreement to it; or
    - (ii) enter into a new Activity Host Organisation Agreement with the relevant Activity Host Organisation on the same terms as the current Activity Host Organisation Agreement;
  - (b) advise the Department if it is unable to novate the relevant Activity Host Organisation Agreement or enter into a new Activity Host Organisation Agreement within 10 Business Days of becoming aware of this inability; and
  - (c) comply with any direction by the Department in relation to the Enhanced Services Participant.

#### **Transfer or Referral of Transition to Work Participants to the Provider**

- 92.4 Where the Provider is advised by the relevant Transition to Work Provider that a Transition to Work Participant is exiting the Transition to Work Service and is to be serviced as an Enhanced Services Participant, the Provider must, in accordance with any Guidelines:
- (a) cooperate, as required, with the Transition to Work Provider to help the Transition to Work Participant to move into Enhanced Services;
  - (b) participate in a meeting with the Transition to Work Participant and the Transition to Work Provider to prepare the Transition to Work Participant for their commencement of servicing under the Trial, including, amongst other things, advising the Transition to Work Participant of their Mutual Obligation Requirements (if relevant) and determining appropriate activities for the Transition to Work Participant to participate in so as to meet their Mutual Obligation Requirements (if relevant); and
  - (c) conduct an Initial Interview with the Transition to Work Participant and the Transition to Work Provider in accordance with clause 96 in the Transition to Work Participant's final week of their participation in the Transition to Work Service.

#### **Transfer or Referral of Time to Work Participants to the Provider**

- 92.5 Where the Provider is advised by a Time to Work Provider that a Time to Work Participant is exiting the Time to Work Employment Service and transitioning to participate in Enhanced Services, the Provider must:
- (a) cooperate with the Time to Work Provider to help the Time to Work Participant move into Enhanced Services; and
  - (b) during the three week period preceding the Time to Work Participant's release from prison, participate in a facilitated transfer meeting with the Time to Work Participant and the Time to Work Provider to prepare the Time to Work Participant for their commencement of servicing under the Trial.

## **Section D1.3 – Engagement with Enhanced Services Participants**

### **93. Appointments with Enhanced Services Participants**

- 93.1 Unless otherwise agreed with the Department, the Provider must ensure that the Electronic Calendar has, at all times, capacity to receive an Appointment within the next two Business Days.
- 93.2 Where the Provider or an Enhanced Services Participant needs to reschedule an Appointment, the Provider must make an Appointment with the Participant at the next available opportunity.
- 93.3 Where an Enhanced Services Participant has an Appointment with the Provider, the Provider must, in accordance with this Deed including any Guidelines:
- (a) provide the Enhanced Services Participant with a Contact on the date and at the time of the Appointment as recorded in the Electronic Calendar; and
  - (b) record the Enhanced Services Participant's attendance at the Appointment in the Electronic Calendar by close of business on the day that the Appointment is scheduled to occur.

### **94. Recording Engagements in the Electronic Calendar**

- 94.1 Clause 94.2 applies to any:
- (a) Enhanced Services Participant (Mutual Obligation); and
  - (b) other Enhanced Services Participant as specified in any Guidelines.
- 94.2 Subject to clause 94.1, the Provider must, in accordance with the requirements of the Department's IT Systems and any Guidelines, record in each Participant's Electronic Calendar details of all:
- (a) Mutual Obligation Requirements; and
  - (b) other:
    - (i) Contacts;
    - (ii) Activities;
    - (iii) job interviews;
    - (iv) Employment, if the hours are regular and can reasonably be scheduled by the Provider;
    - (v) Education and training;
    - (vi) drug and/or alcohol treatment;
    - (vii) workshops, training and other activities delivered by the Provider to Participants; and/or
    - (viii) third party engagements,in which the Participant is engaged to participate.
- 94.3 When recording an Engagement, the Provider must also:
- (a) notify the Enhanced Services Participant, in the manner required by the Department's IT Systems, of:
    - (i) the dates and times recorded by the Provider for the Engagement; and

- (ii) if it is the first time that the Enhanced Services Participant will participate in an Engagement of that kind, the evidence required (if any) to confirm their participation in the Engagement; and
- (b) if the Engagement forms a part of an Enhanced Services Participant (Mutual Obligation)'s Mutual Obligation Requirements:
  - (i) notify the Enhanced Services Participant, in the manner required by the Department's IT Systems, of whether the Engagement is:
    - (A) compulsory;
    - (B) a voluntary activity; or
    - (C) a Reconnection Requirement; and
  - (ii) ensure that the Enhanced Services Participant understands how to meet the Mutual Obligation Requirement and the consequences for failing to meet the Mutual Obligation Requirement.

### **Engagements conflicting with Personal Events**

- 94.4 Where the Provider is considering recording an Engagement in an Enhanced Services Participant's Electronic Calendar with the Engagement scheduled to occur at a Personal Event Time, the Provider must, in accordance with any Guidelines:
- (a) if the Engagement is not a Mutual Obligation Requirement, record the Engagement so that it is not scheduled to occur at the Personal Event Time; or
  - (b) if the Engagement is a Mutual Obligation Requirement:
    - (i) advise the Enhanced Services Participant that, even though the Enhanced Services Participant has recorded a Personal Event, the Provider may still record the Mutual Obligation Requirement so that it is scheduled to occur at the Personal Event Time;
    - (ii) discuss with the Enhanced Services Participant whether it is appropriate to so record the Mutual Obligation Requirement, including whether the Enhanced Services Participant has sufficient notice, and is able, to make other arrangements for the Personal Event; and
    - (iii) record the Mutual Obligation Requirement so that it is scheduled to occur at:
      - (A) the Personal Event Time if the Provider assesses that it is appropriate to do so, record the Provider's reasons for this assessment, and manage the conflicting events in the Electronic Calendar; or
      - (B) a time that is not the Personal Event Time.

## **95. Contacts**

- 95.1 The Provider acknowledges the importance of building positive relationships with Participants and providing quality, individually tailored services that support job seeker choice.

- 95.2 To support Participants to overcome any Vocational Barriers and Non-Vocational Barriers and prepare for, obtain and sustain Employment, the Provider must provide each Enhanced Services Participant with Contacts, including:
- (a) an Initial Interview on the date of the relevant Appointment in the Provider's Electronic Calendar, or as subsequently arranged between them and the Provider;
  - (b) for each Enhanced Services Participant (Mutual Obligation):
    - (i) Capability Interviews;
    - (ii) any Contact that is a Reconnection Requirement; and
    - (iii) any other Contacts required in accordance with Section D3.1 – Mutual Obligation Requirements Generally;
  - (c) for Transition to Work Participants, participate in a preparation meeting in accordance with clause 92.4(b) and an initial meeting in accordance with clause 92.4(c);
  - (d) for Time to Work Participants, participate in a facilitated transfer meeting in accordance with clause 92.5(b); and
  - (e) any other Contacts as otherwise required to ensure the Enhanced Services Participant satisfies the requirements of their Job Plan,
- in accordance with this Deed including any Guidelines.
- 95.3 The Provider must, in accordance with any Guidelines, ensure that:
- (a) each Contact is appropriately tailored to meet the circumstances of the individual Enhanced Services Participant; and
  - (b) the result of the Contact is recorded in the Department's IT Systems.

## **96. Initial Interviews**

- 96.1 The Provider must, during the Initial Interview for each Enhanced Services Participant:
- (a) confirm the Participant's identity;
  - (b) explain the Enhanced Services that the Provider will provide to them;
  - (c) undertake their own assessment of the Participant's skills, strengths, circumstances and any issues they may have in relation to finding Employment, in order to inform servicing tailored to the Enhanced Services Participant's individual needs;
  - (d) for Enhanced Services Participants (Mutual Obligation), explain their rights and obligations under the Social Security Law and the consequences of not meeting their Mutual Obligation Requirements;
  - (e) for Disability Support Pension Recipients (Compulsory Requirements), explain their rights and obligations under the Social Security Law and the consequences of not participating in accordance with their Job Plan;
  - (f) prepare or update a Job Plan for them;
  - (g) provide them with details of the current National Minimum Wage, the Fair Work Ombudsman website (including the Pay and Conditions Tool) and contact details for the Fair Work Ombudsman;

- (h) undertake other steps, activities or processes as appropriate to the Enhanced Services Participant's individual needs; and
  - (i) otherwise comply with any Guidelines.
- 96.2 When servicing each Enhanced Services Participant, and in addition to the requirements set out in clause 96.1, the Provider must at such times as is deemed appropriate by the Provider based on each Enhanced Services Participant's individual needs:
- (a) canvass with them the jobs that Employers have available in the local labour market;
  - (b) refer them to suitable Vacancies in accordance with clause 104; and
  - (c) provide Self-help Facilities in accordance with clause 77.1.
- 96.3 The Provider may conduct the Initial Interview by a mode other than face to face, as agreed by the Enhanced Services Participant and the Provider, in accordance with any Guidelines.
- 96.4 Notwithstanding clause 96.3, the Provider must offer, and if requested by the Participant, conduct the Initial Interview face to face.

## **Section D1.4 – Job Plans**

### **97. General requirements for a Job Plan**

- 97.1 When servicing each Enhanced Services Participant, the Provider must ensure that, at all times, each Enhanced Services Participant has a current and up to date Job Plan that is regularly updated to reflect their current circumstances and servicing needs.
- 97.2 The Provider must:
- (a) provide each Enhanced Services Participant with the assistance;
  - (b) arrange and support participation in any activities; and
  - (c) monitor the Participant's participation in any activities, specified in the Enhanced Services Participant's Job Plan.
- 97.3 The Provider must comply with its obligations under clause 132 in relation to the Social Security Law and ensure that the relevant Delegate complies with the rules set out in any Guidelines when entering into or updating a Job Plan.

#### **Entering into a Job Plan**

- 97.4 If, at their Initial Interview with the Provider:
- (a) an Enhanced Services Participant does not have a Job Plan;
  - (b) in any case, they have transferred to the Provider from another Trial Provider or Employment Provider; or
  - (c) they have been transferred from Digital Services to Enhanced Services,
- the Provider must:
- (d) ensure that a Delegate creates, enters into and approves a new Job Plan with the Enhanced Services Participant; and
  - (e) explains the Job Plan to the Enhanced Services Participant, in accordance with any Guidelines.

## Contents of a Job Plan

- 97.5 The Provider must ensure that the Job Plan for each Enhanced Services Participant:
- (a) contains the details of vocational and/or non-vocational activities that are specifically tailored to address the Enhanced Services Participant's individual needs or Partial Capacity to Work (if relevant), and that are designed to help them overcome any Vocational Barriers and Non-vocational Barriers having regard to the particular Enhanced Services the Enhanced Services Participant is receiving;
  - (b) contains the details of any voluntary activities, if the Participant:
    - (i) is subject to an Exemption or fully meeting their Mutual Obligation Requirements (if any); and
    - (ii) volunteers to participate in additional activities;
  - (c) contains the terms with which the Enhanced Services Participant must comply in order to satisfy their Mutual Obligation Requirements (if any), including:
    - (i) subject to clause 97.6, the Activities that the Enhanced Services Participant agrees to participate in to progress towards Employment and, where relevant, which enable them to meet their Mutual Obligations Requirements;
    - (ii) the Enhanced Services Participant's Job Search Requirements (if any); and
    - (iii) the Enhanced Services Participant's personal responsibility for self-reporting participation against their Mutual Obligation Requirements, unless the Provider has assessed that the Enhanced Services Participant is not capable of self-reporting in accordance with clause 126.1(a);
  - (d) where the Enhanced Services Participant has participated in the Time to Work Employment Service, takes into account any current Transition Plan identified in the Department's IT Systems;
  - (e) is updated, within the timeframe specified in any Guidelines, when any event occurs that results in the need to change the Enhanced Services Participant's Mutual Obligation Requirements or servicing (including to take into account the outcome of any Capability Interview or Capability Assessment); and
  - (f) is in a form approved by the Department and specifies all information required by any Guidelines.
- 97.6 If an Enhanced Services Participant is undertaking an Activity at the time of their Initial Interview, the Provider must:
- (a) take the Activity into account when creating the Job Plan for that Enhanced Services Participant in accordance with:
    - (i) any direction from the Contact Centre;
    - (ii) any Guidelines; and
  - (b) if the Enhanced Services Participant will continue to undertake the Activity, work cooperatively with the Trial Provider or Employment Provider who is providing or has Brokered, Purchased or arranged that Activity.

- 97.7 Subject to passage of the *Social Services Legislation Amendment (Drug Testing Trial) Bill 2019* (Cth), where an Enhanced Services Participant is a Drug Test Trial Participant, the Provider must:
- (a) as relevant, enter into or update the Enhanced Services Participant's Job Plan so as to include a compulsory requirement relating to undertaking Drug Treatment; and
  - (b) assist the Enhanced Services Participant to participate in Drug Treatment in accordance with any Guidelines.

### **Job Search Requirements**

- 97.8 The Provider must ensure that a Delegate:
- (a) specifies the Job Search Requirement (as appropriate) for each Enhanced Services Participant (Mutual Obligation) in their Job Plan; and
  - (b) ensures that the Job Search Requirement is appropriately recorded in the Enhanced Services Participant's (Mutual Obligation) Job Plan at all times during their Period of Registration.
- 97.9 The Provider must ensure that each Enhanced Services Participant (Mutual Obligation) is aware at all times:
- (a) of their current Job Search Requirement;
  - (b) that they must report details of their Job Searches through the jobactive Website, through the jobseeker application (app) or directly to the Provider and the frequency of such provision; and
  - (c) how they can record their Job Searches for the purposes of clause 126.2(b).
- 97.10 For each Enhanced Services Participant (Mutual Obligation), the Provider must, as specified in any Guidelines:
- (a) if the Enhanced Services Participant does not report details of their Job Searches through the jobactive Website or through the jobseeker application (app), record:
    - (i) in the Department's IT Systems; and
    - (ii) no later than close of business on the same day that each Job Search is reported,the number of Job Searches reported by the Participant directly to the Provider and do so as specified in any Guidelines; and
  - (b) determine whether the Enhanced Services Participant's Job Search efforts satisfactorily meet their Job Search Requirement for each Job Search Period by reviewing and confirming the quality of the Job Search effort reported by the Participant (whether through the jobactive Website or directly to the Provider) no later than five Business Days after the end of each Job Search Period.

Note 1: The Department's IT Systems will identify if the number of Job Searches reported (whether through the jobactive Website or directly to the Provider) meets the Enhanced Services Participant's Job Search Requirement for each Job Search Period.

Note 2: Clause 128 (Compliance Action – Mutual Obligation Failures) will apply if the number or quality of Job Search efforts reported by an Enhanced Services Participant fails to satisfy their Job Search Requirement for a Job Search Period.

## Section D1.5 – Suspensions and Exits

### 98. Managing Suspensions

- 98.1 If the Provider identifies, or is notified by DHS, that an Enhanced Services Participant who is Suspended under clause 99 has ceased to fully meet his or her Mutual Obligation Requirements:
- (a) the Provider must:
    - (i) update the Enhanced Services Participant’s Job Plan as appropriate; and
    - (ii) provide Trial Provider Services to the Enhanced Services Participant, in accordance with their updated Job Plan and their current Tier; and
  - (b) the Enhanced Services Participant’s Period of Registration and current Period of Service resume from the date that the Provider or DHS records on the Department’s IT Systems that the Enhanced Services Participant has ceased to fully meet his or her Mutual Obligation Requirements.

#### **Enhanced Services Participants who volunteer while Suspended**

- 98.2 If DHS or the Provider identifies, or the Provider is notified by DHS, that an Enhanced Services Participant who is Suspended under clause 99.1 has decided to volunteer to participate in additional activities, the Provider must:
- (a) agree with the Enhanced Services Participant on what voluntary activities they will participate in;
  - (b) update the Enhanced Services Participant’s Job Plan as appropriate;
  - (c) record on the Department’s IT Systems that the Enhanced Services Participant is participating as a Participant (Voluntary); and
  - (d) provide Trial Provider Services to the Enhanced Services Participant, in accordance with their updated Job Plan and their current Tier, for the period of the agreed voluntary activity, taking into account the reason for the Exemption, where applicable.
- 98.3 Where an Enhanced Services Participant who was Suspended under clause 99.1(b) decides to participate as a Participant (Voluntary) under clause 98.2, and DHS or the Provider identifies, or the Provider is notified by DHS, that the Participant (Voluntary) has ceased to fully meet his or her Mutual Obligation Requirements, the Provider must update the Enhanced Services Participant’s Job Plan to remove reference to the voluntary activities and to change the Mutual Obligation Requirements activities, if required, and record on the Department’s IT Systems that the Enhanced Services Participant is participating as an Enhanced Services Participant (Mutual Obligation), and not as a Participant (Voluntary).

### **Participants (Voluntary)**

- 98.4 If DHS or the Provider identifies, or the Provider is notified by DHS, that an Enhanced Services Participant is a Participant (Voluntary) and has experienced a situation that affects his or her ability to participate in voluntary activities for a specified period of time:
- (a) the Provider must immediately record on the Department's IT Systems that the Enhanced Services Participant is no longer participating as a Participant (Voluntary) and the Suspension period resumes; and
  - (b) the Enhanced Services Participant is Suspended and will remain Suspended until the Suspension ends or is lifted in accordance with clause 99.2.

## **99. Suspensions**

### **Application of Suspensions**

- 99.1 The Provider agrees that a Participant is Suspended if:
- (a) DHS identifies that a Participant:
    - (i) has an Exemption;
    - (ii) who has part-time Mutual Obligation Requirements, is fully meeting these requirements; or
    - (iii) who is aged 55 years or over, and has Mutual Obligation Requirements, is meeting those requirements; or
  - (b) the Participant:
    - (i) has a temporary reduced work capacity of less than 15 hours per week; or
    - (ii) is identified as a PCW Participant who has a current and future work capacity of less than 15 hours per week.
- 99.2 The Provider agrees that a Participant will remain Suspended until, as relevant:
- (a) DHS identifies that their Exemption has reached its end date;
  - (b) the Provider or DHS identifies, or the Provider is notified by DHS, that the Participant has:
    - (i) ceased to fully meet his or her Mutual Obligation Requirements; or
    - (ii) volunteered to participate in additional activities in accordance with clause 98.2;
  - (c) the period of temporary reduced work capacity specified in the Participant's ESAt or JCA as recorded in the Department's IT Systems ends; or
  - (d) the Participant Exits in accordance with clause 101.

### **Delivery of Services following cessation of a Suspension**

- 99.3 Where a Participant (Mutual Obligation) who is being serviced by the Provider:
- (a) has been Suspended for fully meeting their Mutual Obligation Requirements; and
  - (b) then ceases to be Suspended for any reason,
- the Provider must immediately resume providing Trial Provider Services to the Participant (Mutual Obligation).

## 100. Effect of Suspensions

- 100.1 Where a Participant is Suspended, the Participant's Period of Unemployment continues but the Participant's:
- (a) current Period of Service; and
  - (b) current Period of Registration,
- are halted and recommence when the Suspension ends.

## 101. Exits

- 101.1 A Participant is Exited when:
- (a) an Effective Exit occurs;
  - (b) a Contact Centre Exit occurs;
  - (c) a Provider Exit occurs; or
  - (d) any other event, as advised by the Department or as specified in any Guidelines, occurs.
- 101.2 Where an event under clause 101.1 occurs, the Provider may cease providing Services to a Participant unless clause 101.3 applies.
- 101.3 Where an Exit occurs for a Participant, but the Participant returns to the Services less than 13 Consecutive Weeks after the date of the Exit:
- (a) the Participant's:
    - (i) Period of Service;
    - (ii) Period of Registration (if relevant); and
    - (iii) Period of Unemployment,continue from the date of the Participant's return, and
  - (b) the Provider must, as soon as it becomes aware of the Participant's return:
    - (i) in the case of an Enhanced Services Participant, resume providing Trial Provider Services to the Enhanced Services Participant;
    - (ii) in the case of a Digital Participant, resume providing Trial Provider Services to the Digital Participant as directed by the Contact Centre; and
    - (iii) record the resumption of Trial Provider Services on the Department's IT Systems in accordance with any Guidelines.
- 101.4 Where an Exit occurs for a Participant and the Participant subsequently returns to the services at 13 Consecutive Weeks or more after the date of the Exit, the Participant begins a new:
- (a) Period of Service;
  - (b) Period of Registration; and
  - (c) Period of Unemployment.

### **Participants (Voluntary)**

- 101.5 Subject to clause 101.6, if a Participant (Voluntary) who is being serviced by the Provider:
- (a) ceases to participate in voluntary activities;

- (b) no longer wishes to participate in voluntary activities; and
- (c) for which the Provider has confirmed that the Participant (Voluntary) is:
  - (i) either fully meeting their Mutual Obligation Requirements or is the subject of an Exemption; and
  - (ii) the Participant (Voluntary) is eligible for a Provider Exit in accordance with any Guidelines,

then the Provider may perform a Provider Exit for the Participant (Voluntary).

101.6 If a Participant (Voluntary) who is receiving Services for Digital Participants from the Provider:

- (a) ceases to participate in voluntary activities;
- (b) no longer wishes to participate in voluntary activities; and
- (c) for which the Provider has confirmed that the Participant (Voluntary) is:
  - (i) either fully meeting their Mutual Obligation Requirements or is the subject of an Exemption; and
  - (ii) the Participant (Voluntary) is eligible for a Contact Centre Exit in accordance with any Guidelines,

then the Provider must refer the Participant (Voluntary) to the Contact Centre.

## **102. Effect of Exits**

- 102.1 Subject to clause 101.2 , when a Participant is Exited in accordance with clause 101, the:
- (a) current Period of Service;
  - (b) Period of Registration; and
  - (c) Period of Unemployment,
- for the Participant end.

## **Section D1.6 – Change of Circumstances Reassessment**

### **103. Change of Circumstances Reassessment**

- 103.1 If, at any time, the individual circumstances of an Enhanced Services Participant change in a manner specified in any Guidelines, the Provider must, in accordance with any Guidelines, arrange for a Change of Circumstances Reassessment to be conducted.
- 103.2 The Provider must have clear evidence of a change in circumstances from the relevant Enhanced Services Participant, in accordance with any Guidelines, before arranging a Change of Circumstances Reassessment to be conducted by DHS, or by the Participant using the Job Seeker Snapshot, or conducting a Change of Circumstances Reassessment itself.

- 103.3 Where the Provider conducts a Change of Circumstances Reassessment itself, the Provider must make a Record of the evidence or information referred to in clause 103.2 on the Department's IT Systems, in accordance with any Guidelines.
- 103.4 If the Provider breaches this clause 103, the Department may, at its absolute discretion, immediately:
- (a) take action under clause 54.2; or
  - (b) terminate this Deed under clause 58.

## **Section D1.7 – Vacancy Management**

### **104. Vacancy management**

- 104.1 The Provider must engage and work with Employers to understand their needs and identify job opportunities.
- 104.2 The Provider must, in accordance with any Guidelines, lodge every Vacancy that it creates or obtains on the Department's IT Systems.

Note: The Provider may lodge more than one similar vacant position with the same Employer as a Vacancy, on the Department's IT Systems.

- 104.3 The Provider must:
- (a) where a position for paid Employment is sourced by the Provider, ensure that the position is paid at a rate at least equivalent to:
    - (i) the minimum rate prescribed in any Modern Award that covers or applies to the position; or
    - (ii) if no Modern Award covers or applies to the position, the National Minimum Wage,before lodging the position as a Vacancy;
  - (b) not lodge an Unsuitable position as a Vacancy; and
  - (c) ensure that the details of each Vacancy lodged on the Department's IT Systems are complete, up to date, and comply with any conditions of use specified in any Guidelines.

Note 1: For the avoidance of doubt, the Provider is not required to:

- (a) comply with clause 104.3(a) in relation to Unsubsidised Self Employment, Pre-existing Employment or any position sourced by a Participant themselves;
  - (b) for clause 104.3(a), ensure that the relevant position is paid in accordance with any applicable Enterprise Agreement; or
  - (c) verify that the Employment was paid in accordance with any applicable Enterprise Agreement, Modern Award or the National Minimum Wage at the point of claiming a related Outcome.
- 104.4 The Provider must, in accordance with any Guidelines:
- (a) refer suitable Enhanced Services Participants to Employers with Vacancies;
  - (b) advise Enhanced Services Participants (Mutual Obligation) that they are required to take any suitable job and of the consequences of failing to do so;

- (c) record the Job Seeker Placement Start Date in the Department's IT Systems within 56 days of each Enhanced Services Participant commencing in:
  - (i) Employment, where the Participant is successful in gaining Employment; or
  - (ii) Unsubsidised Self Employment, as relevant.

Note: The Provider can only claim Outcome Payments in relation to referrals of Enhanced Services Participants from its own caseload.

## CHAPTER D2 - ACTIVITIES AND SUPPORTING PROGRAMS

### Reader's Guide

Subject to certain conditions, this section requires the Provider to provide, Purchase, Broker or arrange Activities for Participants, where it is appropriate to the Participant's circumstances and in some cases as specified in their Job Plan and which are designed to satisfy their Mutual Obligation Requirements (if any) and help them improve their employment prospects. This Chapter D2 - Activities and Supporting Programs deals with Activities which are available to all Participants. Activities which may only be provided, Purchased, Brokered or arranged for Enhanced Services Participants are set out in Section D2.2 - Activities for Enhanced Services Participants only. Activities which may only be provided, Purchased, Brokered or arranged for Digital Participants are set out in Section D2.4 – Activities for Digital Participants.

Digital Participants will also be required to undertake Employment Preparation Activities, usually from their fourth month of receiving Digital Services, subject to any restrictions applied by, and directions of, the Department and any Guidelines.

### Section D2.1 – Activities for all Participants

#### 105. Activities for all Participants

- 105.1 Subject to this Deed, if it is appropriate to the individual Participant, the Provider must ensure that Participants participate in Activities which:
  - (a) for Participants (Mutual Obligation), enable them to meet their Mutual Obligation Requirements; and
  - (b) for all Participants, are in accordance with their Job Plan and take into account their circumstances and work capacity.
- 105.2 Subject to this Deed including any Guidelines, the Provider must provide, Broker, Purchase or arrange Activities for the purposes of clause 105.1.
- 105.3 In complying with clauses 105.1 and 105.2, the Provider must give priority to Participants (Mutual Obligation) over other Participants.
- 105.4 For the purposes of clauses 105.1 to 105.3, the Provider may:
  - (a) provide the Activities itself;
  - (b) Broker or Purchase the Activities with, or from, an Activity Host Organisation;
  - (c) arrange Activities for Participants (Mutual Obligation) in accordance with any Guidelines;
  - (d) refer EST Eligible Participants to EST Courses; or
  - (e) refer CTA Eligible Participants to a CTA Course.

- 105.5 Where the Provider:
- (a) Brokers an Activity, it must do so under an Activity Host Organisation Agreement and such an agreement is not a Subcontract; and
  - (b) Purchases an Activity, it must, as relevant to the particular arrangement, do so under:
    - (i) a Subcontract and comply with clause 50; or
    - (ii) an Activity Host Organisation Agreement; or
  - (c) arranges Activities for Participants, it does not need to do so under a formal agreement, except for Work for the Dole activities, National Work Experience Programme Placements, Work Experience (Other) Placements, PaTH Internships, CTA and any other Activities as specified in any Guidelines.
- 105.6 Any Activity Host Organisation or other Subcontractor that provides Services directly in relation to an Activity under a Subcontract with the Provider is deemed to be an approved Subcontractor for the purposes of clause 50.1(a) in relation to those Services.
- 105.7 The Department may, at any time and at its absolute discretion, give a written direction to the Provider in relation to an Activity, a proposed Activity or a type of Activity, including a direction that:
- (a) an Activity may not be undertaken, or continue, as an Activity;
  - (b) an Activity be varied;
  - (c) an Activity be managed directly by the Provider, rather than a Subcontractor or an Activity Host Organisation who is not a Subcontractor;
  - (d) the Provider must provide, Broker, Purchase or arrange an Activity for Participants; or
  - (e) the Provider must not provide, Broker, Purchase or arrange an Activity or type of Activity for Participants.
- 105.8 If the Department gives a direction to the Provider in relation to an Activity, a proposed Activity or a type of Activity, the Provider must:
- (a) immediately take any action required by the direction; and
  - (b) otherwise continue to perform the Services in accordance with this Deed.
- 105.9 If the Provider becomes aware that an Activity Host Organisation has used an Activity to displace paid workers or to reduce the amount of paid work available to its workers, the Provider must:
- (a) immediately advise the Department of the same, if the Department is not already aware; and
  - (b) renegotiate, terminate or not renew any Activity Host Organisation Agreement or Subcontract with the Activity Host Organisation as directed by the Department and in accordance with any Guidelines.

### **Recording information about Activities in the Department's IT Systems**

- 105.10 For Participants (Mutual Obligation), the Provider must, in accordance with any Guidelines, record details of the following in the Department's IT Systems:
- (a) relevant Activities, including referrals to and placements in Activities and Work for the Dole Places;
  - (b) required hours of participation for each Participant (Mutual Obligation) participating in Activities to meet their Mutual Obligation Requirements;
  - (c) the number of hours completed by each Participant (Mutual Obligation) in Activities to meet their Mutual Obligation Requirements; and
  - (d) any other information as specified in any Guidelines.

### **106. Digital Training**

- 106.1 If the Department directs the Provider to provide Digital Training for a Participant, the Provider must provide Digital Training to that Participant in accordance with such direction and as specified in any Guidelines.

Note: The specific requirements for Digital Training will be specified in Guidelines.

### **107. Employment Preparation Activities**

- 107.1 If the Provider is an Employment Preparation Activity Provider, the Provider must provide Employment Preparation Activities for:
- (a) Enhanced Services Participants; and
  - (b) Digital Participants Allocated to the Provider for the purpose of undertaking an Employment Preparation Activity,
- in accordance with any direction of the Department and any Guidelines.

Note: The specific requirements for Employment Preparation Activities will be specified in Guidelines.

### **108. Work for the Dole**

#### **Who can participate in Work for the Dole activities**

- 108.1 The Provider must only:
- (a) provide, Broker, Purchase or arrange Work for the Dole activities for:
    - (i) Enhanced Services Participants; and
    - (ii) Digital Participants Allocated to the Provider for the purpose of undertaking a Work for the Dole activity; or
  - (b) provide Work for the Dole activities for DES Participants,
- and do so in accordance with any Guidelines.
- 108.2 The Provider must not place a Participant into Work for the Dole activities if the Participant is aged less than 18 years.
- 108.3 The Provider may place Participants into Group Based Activities in accordance with any Guidelines.
- 108.4 Subject to this Deed, the Provider may, in accordance with any Guidelines:

- (a) claim and fill Work for the Dole Places which have been Sourced by another Trial Provider or an Employment Provider, and advertised as available on the Department's IT Systems; or
- (b) itself Source Work for the Dole Places, and claim and fill those Work for the Dole Places; and
- (c) claim in accordance with clause 145 and clause 146 respectively:
  - (i) a Work for the Dole Fee for each Work for the Dole Place; and
  - (ii) a Work for the Dole Place Fee for each Work for the Dole Place Sourced by the Provider.

**Advertised Work for the Dole Places**

- 108.5 The Provider may claim a Work for the Dole Place, which is advertised on the Department's IT Systems and which commences in the future, up to 10 Business Days prior to the start date of the relevant Work for the Dole activity.
- 108.6 If the Provider claims a Work for the Dole Place referred to in clause 108.5, the Provider must in accordance with any Guidelines:
- (a) immediately record the relevant Participant's Job Seeker ID to the Work for the Dole Place; and
  - (b) commence the relevant Participant in that place within 10 Business Days of the start date of the relevant Work for the Dole Place.
- 108.7 If the Provider claims a Work for the Dole Place, which is advertised on the Department's IT Systems and which is available to commence immediately, the Provider must in accordance with any Guidelines:
- (a) immediately record the relevant Participant's Job Seeker ID against the Work for the Dole Place on the Department's IT Systems; and
  - (b) commence the relevant Participant in the Work for the Dole Place within 10 Business Days of the Provider claiming it.
- 108.8 If the Provider fails to comply with clauses 108.6(b) or 108.7(b), the Department may advertise the Work for the Dole Place as available to other Trial Providers, Employment Providers or DES Providers on the Department's IT Systems without Notice to the Provider, unless the relevant Activity Host Organisation requests a change to the start date of the relevant Work for the Dole activity beyond the timeframes referred to in clauses 108.6(b) or 108.7(b), and the Department agrees with the Provider to the relevant extension of time.
- 108.9 Notwithstanding clauses 108.5 to 108.7, the Department may, at its absolute discretion and for any reason, by providing Notice to the Provider:
- (a) remove from the Provider any Work for the Dole Place that has been previously advertised on the Department's IT Systems and claimed by the Provider, provided that a Participant or a DES Participant has not yet commenced in that place, and where such Notice is received by the Provider, it must not act to fill the relevant place; and
  - (b) allocate to the Provider any Work for the Dole Place that has been previously advertised on the Department's IT Systems and claimed by another Trial Provider, a DES Provider or an Employment Provider, and where such Notice is received by the Provider, it must act to fill the relevant place.

### **Work for the Dole Places that are Sourced by the Provider**

- 108.10 When Sourcing Work for the Dole Places, the Provider should give priority to places in Individual Hosted Activities over any other type of Work for the Dole Places.
- 108.11 If the Provider Sources a Work for the Dole Place, it must, in accordance with any Guidelines and prior to the Work for the Dole Place being claimed and filled:
- (a) perform a risk assessment in accordance with clause 113.2(a)(ii);
  - (b) determine if there is any reason why it would not be appropriate for the potential Work for the Dole Place to be filled by a Participant or a DES Participant, including with regard to clause 108.23 and any relevant work, health and safety issues; and
  - (c) if the Provider is satisfied that there is no such reason:
    - (i) fill the Work for the Dole Place with an appropriate Participant or DES Participant, taking into consideration any relevant circumstances and work restrictions of the Participant or DES Participant and the characteristics of the Work for the Dole Place, and comply with clause 113.5; or
    - (ii) advertise the Work for the Dole Place to DES Providers, other Trial Providers and Employment Providers on the Department's IT Systems.

### **Commencement of Participants and DES Participants in Work for the Dole Places**

- 108.12 Subject to any Guidelines, the Provider must, prior to the commencement of a Participant or DES Participant in any Work for the Dole Place:
- (a) ensure that the Work for the Dole Place is appropriate for any Participant being considered for placement by the Provider, taking into consideration any relevant circumstances and work restrictions; and
  - (b) if the Provider is the Lead Provider:
    - (i) negotiate and execute an Activity Host Organisation Agreement with each Activity Host Organisation that hosts the Work for the Dole Place;
    - (ii) comply with clause 113.3; and
    - (iii) identify whether the Work for the Dole Place may be appropriate for any DES Participant to participate in, subject to advice from the DES Provider.

### **Replacement of Lead Provider for a Work for the Dole Activity**

- 108.13 Where the Provider replaces another Trial Provider or an Employment Provider as the Lead Provider of a Work for the Dole activity:
- (a) the Provider must:
    - (i) use its best endeavours to:
      - (A) novate the relevant Activity Host Organisation Agreement to it; or
      - (B) enter into a new Activity Host Organisation Agreement with the relevant Activity Host Organisation on the same terms as the current Activity Host Organisation Agreement, as the Lead Provider;

- (ii) advise the Department if it is unable to novate the relevant Activity Host Organisation Agreement or enter into a new Activity Host Organisation Agreement within 10 Business Days of becoming the Lead Provider; and
  - (iii) comply with any direction by the Department in relation to the Work for the Dole activity; and
- (b) clauses 145.10 to 145.13 apply in relation to any Work for the Dole Fee claimed in advance by the previous Trial Provider or Employment Provider under clause 145.9, as if that Work for the Dole Fee were claimed by the Provider.

### **Replacement of Participants in Work for the Dole Places**

- 108.14 Where the Provider has commenced a Participant in an Individual Hosted Activity, and the Participant subsequently leaves the relevant Work for the Dole Place, the Provider must, if the Activity Host Organisation wishes to continue the relevant Work for the Dole activity, replace the Participant in that place and do so in a timely manner.
- 108.15 Where the Provider has commenced a Participant in a Group Based Activity and the Participant subsequently leaves the relevant Work for the Dole Place, and the Activity Host Organisation wishes to continue the relevant Work for the Dole activity:
- (a) the Provider should replace that Participant in that place within five Business Days; and
  - (b) if the Provider does not do so, and the relevant Work for the Dole Place was previously advertised on the Department's IT Systems, the Department will re-advertise the Work for the Dole Place on the Department's IT Systems.

Note: Timeliness in replacing Participants in Work for the Dole Places and utilisation of Work for the Dole Places will be monitored.

### **Training**

- 108.16 The Provider must ensure that:
- (a) each Enhanced Services Participant on the Provider's caseload; and
  - (b) each Digital Participant Allocated to the Provider for the purpose of undertaking a Work for the Dole activity,
- participating in Work for the Dole activities receives the training required for the specific activity, including as specified in any relevant risk assessment, or as otherwise specified in any Guidelines.

### **Collaboration**

- 108.17 In order to deliver Work for the Dole effectively, the Provider must collaborate with DES Providers and Activity Host Organisations in its Employment Region(s).
- 108.18 For the purposes of clause 108.17, the Provider must work with Activity Host Organisations and DES Providers in the Provider's Employment Region(s) to:
- (a) plan ahead so that, where relevant, a suitable Work for the Dole Place, with regards to timing, location and any special requirements, is available:
    - (i) for each relevant Enhanced Services Participant on the Provider's caseload to support them to meet their Mutual Obligation Requirements;
    - (ii) for relevant DES Participants, as requested by a DES Provider; and

- (iii) for each relevant Digital Participant Allocated to the Provider for the purpose of undertaking a Work for the Dole activity;
- (b) help develop and Source Work for the Dole Places that are suitable for a wide variety of Participants (i.e. with different characteristics and needs) and DES Participants;
- (c) make a positive contribution to the local community through the delivery of Work for the Dole activities;
- (d) identify and deliver best practice in Work for the Dole; and
- (e) if requested by a DES Provider, arrange a suitable Work for the Dole Place for a DES Participant using reasonable endeavours to identify a Work for the Dole Place advertised on the Department's IT Systems that may be suitable for the DES Participant, and refer the DES Provider to the relevant Lead Provider.

108.19 The Department may, at any time and at its absolute discretion, give a direction to the Provider in relation to a Work for the Dole Place, including a direction that a Work for the Dole Place is:

- (a) to be reallocated to another Trial Provider, an Employment Provider or a DES Provider;
  - (b) not to be used; or
  - (c) to be used, or used differently, within a specific timeframe,
- and if the Provider receives such a direction, the Provider must:
- (d) immediately take any action required by the direction; and
  - (e) otherwise continue to perform the Services in accordance with this Deed.

**Insurance for Work for the Dole activities exclusively on private property**

108.20 Subject to clause 108.19, where Work for the Dole activities involve work exclusively on private property and are:

- (a) a Community Support Project; or
- (b) any other activity specified in any Guidelines,

the Provider must ensure that, for the duration of the activities, there is public liability insurance, written on an occurrence basis, with a limit of indemnity of at least \$10 million in respect of any one occurrence, which covers the liability of the lessor or owner of the land on which the activities take place, including to Participants or DES Participants, as relevant.

108.21 Where the Provider cannot ensure that there is public liability insurance in accordance with clause 108.20, the Provider must not provide, Broker or Purchase the activities without the Department's prior written approval.

Note: The Department has purchased personal accident insurance, and public and products liability insurance that covers Participants and DES Participants who are undertaking particular approved activities, in employment assistance programs. The Provider should refer to the Insurance Readers Guide and insurance policies on the Provider Portal for further details.

The Department has also purchased public and products liability insurance for Activity Host Organisations, owners of private property, and lease holders and farms who are receiving assistance on their property from job seekers undertaking Work for the Dole – Community Support Projects. This insurance covers liability where a claim is denied under the Activity Host Organisation, owner or lease holder or farm’s own public liability insurance policy because that policy excludes particular claims arising in relation to Work for the Dole – Community Support Projects. A copy of this policy is available on the Provider Portal. The amount and form of these insurances is at the Department’s absolute discretion.

### **Transport**

- 108.22 If required under an Activity Host Organisation Agreement to provide transport for Participants, the Provider must do so in accordance with any Guidelines.

### **Categories of Work for the Dole activities**

- 108.23 Unless otherwise agreed by the Department in writing, the Provider must not provide, Purchase, Broker or arrange Work for the Dole activities if they, in whole or in part, and as specified in any Guidelines:
- (a) involve working exclusively on private property, unless they are:
    - (i) a Community Support Project; or
    - (ii) otherwise specified in any Guidelines;
  - (b) subject to clause 108.23(a), require Participants or DES Participants to enter private homes or grounds;
  - (c) compete with established businesses;
  - (d) are in child care or preschools;
  - (e) involve personal care of people, of an intimate nature, including dressing, showering, feeding or toileting, or professional services;
  - (f) fulfil a function that is part of a commercial contract or enterprise;
  - (g) fulfil a function which would normally be undertaken by the Provider under this Deed, or any other contract or arrangement between the Provider and the Department;
  - (h) are undertaken for a for-profit organisation or on a for-profit basis, unless they are:
    - (i) a Community Support Project; or
    - (ii) otherwise specified in any Guidelines;
  - (i) result in a benefit or gain to the Provider, or would fund any operations, activities or infrastructure of the Provider;
  - (j) involve work which would have been undertaken by a paid worker if the Work for the Dole activity had not taken place; or
  - (k) are otherwise prohibited under any Guidelines or by any advice provided by the Department.

## **109. National Work Experience Programme Placements and Work Experience (Other) Placements**

- 109.1 The Provider may provide, Purchase, Broker or arrange National Work Experience Programme Placements and Work Experience (Other) Placements for:
- (a) eligible Enhanced Services Participants (Mutual Obligation), as part of meeting their Mutual Obligation Requirements or at any other time; and
  - (b) other eligible Enhanced Services Participants, if specified in their Job Plan, but only:
    - (c) if each National Work Experience Programme Placement and Work Experience (Other) Placement does not, in whole or in part, involve work which would have been undertaken by a paid worker if the National Work Experience Programme Placement or Work Experience (Other) Placement had not taken place;
    - (d) if the Provider is satisfied that, for each National Work Experience Programme Placement, there is a likelihood that the relevant Participant will obtain paid employment with the relevant Activity Host Organisation following the National Work Experience Programme Placement, and the Provider has made an assessment of the likely length of that employment; and
    - (e) in accordance with any Guidelines.

- 109.2 The Provider must provide, Purchase, Broker or arrange a National Work Experience Programme Placement for Digital Participants that are Allocated to the Provider to have a National Work Experience Programme Placement provided, Purchased, Brokered or arranged.

Note: Work Experience (Other) Placements must not be provided, Purchased, Brokered or arranged by the Provider for a Digital Participant.

- 109.3 The Provider must ensure that each National Work Experience Programme Placement and Work Experience (Other) Placement does not exceed a maximum of four weeks duration with a maximum of 25 hours participation per week.

Note: Where the Provider has assessed, for the purpose of clause 109.1(d), that the likely length of a subsequent paid employment opportunity is for less than six months the placement should be for less than the maximum of four weeks (e.g. less than two weeks).

- 109.4 Where the Provider places an eligible Participant into a National Work Experience Programme Placement or a Work Experience (Other) Placement, the Provider must, prior to the Participant starting that National Work Experience Programme Placement or Work Experience (Other) Placement, ensure that:

- (a) the Participant; and
- (b) the Activity Host Organisation,

have signed an agreement as specified by the Department in any Guidelines.

### **NWEP Incentive for Activity Host Organisations**

- 109.5 Subject to clause 109.6:
- (a) the Provider may claim, and the Department will pay to the Provider, one NWEP Incentive for each commencement of an eligible Participant in an NWEP Placement; and

- (b) the Provider must pay the NWEPI Incentive to the relevant Activity Host Organisation from the Provider's own funds no later than five Business Days after receiving the relevant invoice from the Activity Host Organisation, unless otherwise agreed by the Activity Host Organisation.
- 109.6 The Provider must only claim and pay an NWEPI Incentive if the Provider has confirmed that:
- (a) the Participant, NWEPI Placement and Activity Host Organisation satisfy the eligibility requirements for an NWEPI Incentive;
  - (b) the Participant has commenced in the relevant NWEPI Placement;
  - (c) the Participant and the Activity Host Organisation have entered into an agreement in relation to the NWEPI Placement; and
  - (d) an NWEPI Incentive has not been paid by any Trial Provider (including the Provider), Transition to Work Provider or Employment Provider for any other NWEPI Placement of the same Participant with the same Activity Host Organisation.

## **110. PaTH Internships**

- 110.1 Subject to this Deed including any Guidelines, the Provider:
- (a) may arrange PaTH Internships for PaTH Interns; and
  - (b) must arrange a PaTH Internship for Digital Participants Allocated to the Provider to have a PaTH Internship arranged.
- 110.2 The Provider must ensure that each PaTH Internship that it arranges:
- (a) is for a duration of no less than 4 weeks and no more than 12 weeks; and
  - (b) involves participation by the relevant PaTH Intern of between 30 and 50 hours per fortnight.
- 110.3 Where the Provider places a PaTH Intern into a PaTH Internship, the Provider must, prior to the PaTH Intern starting that PaTH Internship, and in accordance with any Guidelines, ensure that:
- (a) if the PaTH Intern is an Enhanced Services Participant, the Provider has updated the PaTH Intern's Job Plan to include details of the PaTH Internship;
  - (b) the Provider has created the relevant PaTH Internship Agreement in the Department's IT Systems; and
  - (c) the PaTH Intern, the Activity Host Organisation and the Provider have signed the relevant PaTH Internship Agreement.
- 110.4 The Provider must promote, deal with enquiries, manage and report on PaTH Internships, in accordance with any Guidelines.
- 110.5 If the Provider suspects or becomes aware that any Activity Host Organisation has breached a PaTH Internship Agreement, the Provider must immediately Notify the Department and provide information about the relevant breach as required by the Department.

### **PaTH Internship Amounts payable to Activity Host Organisations**

- 110.6 The Provider must only pay the PaTH Internship Amount to an Activity Host Organisation with respect to a PaTH Internship for a Participant (Mutual Obligation) if the Provider has:
- (a) confirmed that:
    - (i) the Participant is a PaTH Intern;
    - (ii) the relevant position meets the requirements of a PaTH Internship as specified in this Deed, including any Guidelines;
    - (iii) the Activity Host Organisation satisfies the eligibility requirements to host, and receive a PaTH Internship Amount for, a PaTH Internship, as specified in this Deed, including any Guidelines; and
    - (iv) the PaTH Intern has commenced in the relevant PaTH Internship; and
  - (b) entered into a PaTH Internship Agreement in relation to the PaTH Internship with the relevant PaTH Intern and the Activity Host Organisation, and done so in accordance with any Guidelines.
- 110.7 Subject to any contrary provision specified in any Guidelines, the Provider must ensure that each payment of a PaTH Internship Amount is paid:
- (a) from the Provider's own funds;
  - (b) to the relevant Activity Host Organisation;
  - (c) only once for each PaTH Intern; and
  - (d) otherwise in accordance with any Guidelines.

### **Reimbursement**

- 110.8 The Department will Reimburse the Provider for each PaTH Internship Amount that is:
- (a) paid in accordance with this Deed; and
  - (b) claimed by the Provider in accordance with this clause 110.
- 110.9 Once the Provider has properly paid a PaTH Internship Amount in accordance with clauses 110.6 and 110.7, the Provider may submit a claim for Reimbursement through the Department's IT Systems, but only in accordance with this clause 110 and any Guidelines.
- 110.10 Each claim for Reimbursement under this clause 110 must be rendered by the Provider to the Department no more than 56 days after the end of the relevant PaTH Internship Period.

## **111. Launch into Work Placements**

- 111.1 The Provider:
- (a) may arrange Launch into Work Placements for:
    - (i) eligible Enhanced Services Participants (Mutual Obligation), as part of meeting their Mutual Obligation Requirements or at any other time; and
    - (ii) other eligible Enhanced Services Participants; and
  - (b) must arrange Launch into Work Placements for Digital Participants Allocated to the Provider to have a Launch into Work Placement arranged,

but only if the Launch into Work Placement:

- (c) does not, in whole or in part, involve work which would have been undertaken by a paid worker if the Launch into Work Placement had not taken place; and
- (d) is arranged in accordance with any Guidelines.

111.2 The Provider must, in accordance with any Guidelines:

- (a) identify potentially suitable Participants for the Launch into Work Placement and refer them to an information session by the Launch into Work Organisation; and
- (b) refer any eligible Participants to the Launch into Work Placement.

111.3 For each Participant that the Provider refers to a Launch into Work Placement, the Provider must:

- (a) if the Participant is an Enhanced Services Participant, prior to the Enhanced Services Participant starting in the Launch into Work Placement, update the Enhanced Services Participant's Job Plan to include details of the Launch into Work Placement; and
- (b) comply with any requirements specified in any Guidelines with respect to the Participant's participation in, and completion of the Launch into Work Placement.

111.4 The Provider must:

- (a) develop and maintain effective relationships with Launch into Work Organisations in its Employment Region(s) so as to ensure the successful delivery of the Launch into Work program; and
- (b) promote, deal with enquiries, manage and report on Launch into Work, in accordance with any Guidelines.

111.5 The Department may give a direction to the Provider in relation to a Launch into Work Placement, or the referral of a Participant to a Launch into Work Placement, and if the Provider receives such a direction, the Provider must:

- (a) immediately take any action required by the direction; and
- (b) otherwise continue to perform the Services in accordance with this Deed.

## **112. Regional Employment Trials**

112.1 The Provider may, in accordance with any Guidelines, arrange RET Activities, or provide RET Activities if they are a RET Grant Recipient, for:

- (a) eligible Enhanced Services Participants (Mutual Obligation), as part of meeting their Mutual Obligation Requirements or at any other time; and
- (b) other eligible Participants.

112.2 The Provider must, in accordance with any Guidelines, arrange or provide RET Activities for Digital Participants Allocated to the Provider to have RET Activities arranged or provided.

112.3 The Provider may refer any eligible Participant to a RET Activity in accordance with any Guidelines.

- 112.4 For each Participant that the Provider refers to a RET Activity, the Provider must:
- (a) if the Participant is an Enhanced Services Participant, prior to each Enhanced Services Participant starting in the RET Activity, update the Enhanced Services Participant's Job Plan to include details of the RET Activity; and
  - (b) comply with any requirements specified in any Guidelines with respect to the Participant's participation in, and completion of, the RET Activity.
- 112.5 The Provider must promote, deal with enquiries, manage and report on RET, in accordance with any Guidelines.

### **113. Work health and safety**

- 113.1 Prior to the commencement of any Work for the Dole activity, Voluntary Work, PaTH Internship, Launch into Work Placement, National Work Experience Programme Placement, Work Experience (Other) Placement or RET Activity, and throughout these Activities, the Provider must, in accordance with any Guidelines, satisfy itself that there is a safe system of work in place, including that the relevant Activity Host Organisation, Launch into Work Organisation or RET Grant Recipient is complying with work health and safety requirements relevant to the jurisdiction in which the Activity occurs.
- 113.2 The Provider must, in accordance with any Guidelines:
- (a) undertake a risk assessment:
    - (i) for any Voluntary Work, PaTH Internship, Launch into Work Placement, National Work Experience Programme Placement or Work Experience (Other) Placement;
    - (ii) for any Work for the Dole activity, but only if the Provider itself Sources the relevant potential Work for the Dole Place;
    - (iii) for any RET Activity, but only if the Provider is the RET Partnering Provider; and
    - (iv) in any case, for each individual Participant, with regard to their potential participation in any Work for the Dole activity, Voluntary Work, PaTH Internship, Launch into Work Placement, National Work Experience Programme Placement, Work Experience (Other) Placement or RET Activity,  
  
prior to the commencement of:
      - (v) any such Activities; and
      - (vi) each Enhanced Services Participant or Digital Participant Allocated to the Provider in such Activities;
  - (b) if the Provider is the Lead Provider, confirm that the relevant DES Provider has undertaken a risk assessment for each individual DES Participant with regard to their potential participation in any Work for the Dole activity;
  - (c) retain Records of each risk assessment referred to in clause 113.2(a) and 113.2(b) and any action taken in accordance with the risk assessment, and provide the relevant Records to the Department upon request; and

- (d) ensure that each Activity Host Organisation is obliged to immediately advise:
  - (i) in the case of any Work for the Dole activity, the Lead Provider; and
  - (ii) in the case of any Voluntary Work, PaTH Internship, National Work Experience Programme Placement or Work Experience (Other) Placement, the Provider,
 of any proposed or actual changes to the tasks being undertaken by a Participant or DES Participant involved in such Activities or the circumstances in which those tasks are being undertaken.

113.3 If the Provider:

- (a) is the Lead Provider in relation to a Work for the Dole Place;
- (b) has brokered, Purchased or arranged a Voluntary Work, PaTH Internship, Launch into Work Placement, National Work Experience Programme Placement or Work Experience (Other) Placement; or
- (c) is the RET Partnering Provider in relation to a RET Activity,

it must in accordance with any Guidelines:

- (d) when negotiating the relevant Activity Host Organisation Agreement, or arranging a Launch into Work Placement or a RET Activity, as relevant, confirm with the relevant Activity Host Organisation, Launch into Work Organisation or RET Grant Recipient:
  - (i) whether any required actions, identified in the relevant risk assessment, have not been undertaken; and
  - (ii) whether there have been any changes in relation to the relevant Activity, including work, health and safety issues, since the date of the relevant risk assessment;
- (e) undertake ongoing work health and safety monitoring of the Work for the Dole activity, Voluntary Work, PaTH Internship, Launch into Work Placement, National Work Experience Programme Placement, Work Experience (Other) Placement or RET Activity, as relevant; and
- (f) ensure that all required action is taken:
  - (i) as identified in the relevant risk assessment; and
  - (ii) if there have been any changes in relation to the relevant Activity, to immediately review and update, as necessary, the relevant risk assessment and to address any such changes.

113.4 If the Provider does not itself employ a Competent Person relevant to meeting the obligations at clauses 113.1, 113.2 and 113.3, it must engage a relevant Competent Person, as required, for this purpose.

- 113.5 Prior to the commencement of a Participant in any Work for the Dole activity, Voluntary Work, PaTH Internship, Launch into Work Placement, National Work Experience Programme Placement, Work Experience (Other) Placement or a RET Activity, and at all times during each Activity, the Provider must, in accordance with any Guidelines:
- (a) examine the relevant risk assessment to ensure that the Work for the Dole activity, Voluntary Work, PaTH Internship, Launch into Work Placement, National Work Experience Programme Placement, Work Experience (Other) Placement or RET Activity is appropriate for the Participant being considered for placement, with regard to their health and safety, taking into consideration any relevant circumstances and work restrictions;
  - (b) identify any training, including work health and safety training, that will be required to ensure that the Participant can participate in the Activities safely, and ensure that training of sufficient length and quality is provided to all Participants by the Activity Host Organisation, Launch into Work Organisation or RET Grant Recipient;
  - (c) ensure that appropriate facilities (such as toilets and access to drinking water) will be available to all Participants;
  - (d) identify if any specific equipment, clothing or materials are required for Participants to participate safely in the relevant Activities, and ensure that such materials will be provided to Participants;
  - (e) ensure that the Participant being considered for placement in the Activity has been advised of the process for reporting any work health and safety issues regarding the Activities; and
  - (f) purchase or fund additional insurance for the Work for the Dole activity, Voluntary Work, PaTH Internship, Launch into Work Placement, National Work Experience Programme Placement, Work Experience (Other) Placement or placement in a RET Activity, if required.

### **Incidents**

- 113.6 Whether an Activity is conducted by the Provider, a Subcontractor, an Activity Host Organisation who is not a Subcontractor, an EST Provider, a CTA Provider, a Launch into Work Organisation or a RET Grant Recipient, the Provider must Notify the Department as soon as possible, and within 24 hours, of any incident involving the Activity, including:
- (a) any accident, injury or death occurring during, or as a result of, the Activity, including in relation to a Participant, a DES Participant or a member of the public;
  - (b) any incident which relates to a work, health and safety issue; and
  - (c) any incident that may negatively impact upon the Department or bring the Services into disrepute.

- 113.7 Where an incident referred to in clause 113.6 is an accident, or involves injury or death, the Provider must also, as soon as possible, and within 24 hours, notify the Department in the form specified in any Guidelines giving full details of the accident, injury or death.
- 113.8 The Provider must comply with any instructions issued by the Department or the Department's insurance broker, and any Guidelines, in relation to insurance purchased by the Department for Participants and DES Participants.

## 114. Supervision

Note: Supervisors may be engaged / employed by the Provider to supervise Activities (other than PaTH Internships or RET Activities), or may be engaged/employed by Activity Host Organisations to supervise Activities that they provide. EST Providers are responsible for arranging Supervision in relation to EST Courses, CTA Providers are responsible for arranging Supervision in relation to CTA Courses, Launch into Work Organisations are responsible for arranging Supervision in relation to Launch into Work Placements, and RET Grant Recipients are responsible for arranging Supervision in relation to RET Activities.

- 114.1 The Provider must, in accordance with any Guidelines, ensure that:
- (a) it, or where relevant each Activity Host Organisation, provides adequate and appropriate Supervision for any Voluntary Work, PaTH Internship, National Work Experience Programme Placement or Work Experience (Other) Placement so as to ensure that relevant Participants are undertaking appropriate tasks and operating in a healthy and safe environment;
  - (b) it, or where relevant each Activity Host Organisation, provides adequate and appropriate Supervision for any Work for the Dole activity so as to ensure that relevant Participants and DES Participants are undertaking appropriate tasks and operating in a healthy and safe environment;
  - (c) where any Voluntary Work, PaTH Internship, National Work Experience Programme Placement or Work Experience (Other) Placement involves:
    - (i) people who are elderly, disabled or otherwise vulnerable; or
    - (ii) Children (excluding other Participants),the Supervision provided is continuous over the entire duration of the Activity;  
and
  - (d) where any Work for the Dole activity involves:
    - (i) people who are elderly, disabled or otherwise vulnerable; or
    - (ii) Children (excluding other Participants or DES Participants),the Supervision provided is continuous over the entire duration of the Activity.

- 114.2 The Provider must ensure that relevant checks are conducted:
- (a) by the Provider on all Participants and all relevant Personnel and Supervisors in accordance with clause 8; and
  - (b) by the relevant DES Provider on all DES Participants,
- whenever an Activity involves close proximity with people who are elderly, disabled or otherwise vulnerable or Children (excluding other Participants or DES Participants).
- Note: EST Providers are responsible for conducting relevant checks on their Personnel and Supervisors prior to their involvement in EST, CTA Providers are responsible for conducting relevant checks on their Personnel and Supervisors prior to their involvement in CTA Courses, Launch into Work Organisations are responsible for conducting relevant checks on their Personnel and Supervisors prior to their involvement in Launch into Work Placements, and RET Grant Recipients are responsible for conducting relevant checks on their Personnel and Supervisors prior to their involvement in RET Activities.
- 114.3 The Provider must ensure that all relevant Personnel and Supervisors for any Work for the Dole activity, Voluntary Work, PaTH Internship, National Work Experience Programme Placement or Work Experience (Other) Placement:
- (a) are fit and proper persons to be involved in the Activities;
  - (b) have a high level of skill/knowledge, training and/or experience in:
    - (i) the part of each Activity in which they are engaged; and
    - (ii) working with, training and supervising persons in such activities;
  - (c) have had checks as specified in clause 8.1 and have met any additional statutory requirements (including under state and territory law), prior to being given responsibility for the Supervision of Participants; and
  - (d) have had checks as specified in clause 8.1 and have met any additional statutory requirements (including under state and territory law), prior to being given responsibility for the Supervision of DES Participants in Work for the Dole.
- 114.4 The Department may give Notice, on reasonable grounds related to the performance of any Work for the Dole activity, Voluntary Work, PaTH Internship, Launch into Work Placement, and National Work Experience Programme Placement or Work Experience (Other) Placement, requiring the Provider to remove, or arrange for the removal of, a Supervisor, whether engaged by the Provider or engaged by an Activity Host Organisation or Launch into Work Organisation, from work on the Activities.
- 114.5 Where the Department gives Notice under clause 114.4, the Provider must, at its own cost, promptly arrange for the removal of such a Supervisor from work on the Activities and their replacement with one or more Supervisors acceptable to the Department.
- 114.6 Except for PaTH Internships, Launch into Work Placements and RET Activities, the Provider must ensure that each Supervisor, whether engaged by the Provider or engaged by an Activity Host Organisation, is required to notify the Provider of:
- (a) the non-attendance at all relevant Activities; and
  - (b) any other non-compliance with the Activities,
- of a Participant as soon as practicable, but no later than at the end of the relevant working week.

- 114.7 All Supervisors who:
- (a) are contracted by the Provider to provide Supervision for any Work for the Dole activity, Voluntary Work, National Work Experience Programme Placement or Work Experience (Other) Placement that the Provider provides itself; and
  - (b) are not employees of the Provider,
- are deemed to be approved Subcontractors for the purposes of clause 50.1(a).

**Other matters**

- 114.8 The Provider must:
- (a) ensure that each Participant, DES Participant, Activity Host Organisation, and any Supervisor engaged by the Provider, are aware that the Activity Host Organisation, the Provider or the Department may terminate an Activity at any time;
  - (b) reserve a right of termination in any relevant agreement to take account of these rights of termination and, where appropriate, make use of that right in the event of a termination of an Activity;
  - (c) ensure that each Participant is aware of the process to lodge a complaint or voice safety concerns about an Activity; and
  - (d) ensure that each DES Participant participating in a Work for the Dole Place, for which the Provider is the Lead Provider, is aware of the process to lodge a complaint or voice safety concerns about a Work for the Dole activity.
- 114.9 The Provider must ensure that, to the extent allowed by law and unless otherwise expressly agreed by the Parties, there is no intention or understanding on the part of an Activity Host Organisation or a Participant that any Activity itself will create legal relations between the Participant and:
- (a) the Commonwealth;
  - (b) the Provider; or
  - (c) the Activity Host Organisation.

**Section D2.2 - Activities for Enhanced Services Participants only**

**115. Activities for Enhanced Services Participants only**

- 115.1 The Provider acknowledges its responsibility to support Enhanced Services Participants to participate in Activities, services and interventions, and other programs, that the Provider determines will support the Participant to progress towards and move into Employment.
- 115.2 The Provider further acknowledges its responsibility to support diverse pathways to Employment to meet the needs of individual Enhanced Services Participants, including by arranging individually tailored vocational and/or non-vocational activities and other opportunities.

- 115.3 For Enhanced Services Participants who are NEIS Prospective Participants who:
- (a) have completed a Workshop;
  - (b) are identified by the Provider and the relevant Workshop Provider as being eligible and suitable to undertake a Complementary Placement; and
  - (c) have agreed to undertake a Complementary Placement,
- the Provider must provide, Broker, Purchase or arrange a Complementary Placement, subject to this Deed including clause 118.2 and any Guidelines.
- 115.4 Where it is appropriate to the Participant's individual circumstances, the Provider must provide, Broker, Purchase or arrange Activities for each Enhanced Services Participant, in accordance with the relevant requirements for each Enhanced Services Participant's Tier to prepare them for Employment and enable them to meet their Mutual Obligation Requirements (if any).
- 115.5 For the purposes of clauses 115.1 to 115.4, Activities may include any one or more of the following:
- (a) Digital Training (clause 106);
  - (b) if the Provider is an Employment Preparation Activity Provider, Employment Preparation Activities (clause 107);
  - (c) Work for the Dole (clause 108);
  - (d) National Work Experience Programme Placements and Work Experience (Other) Placements (clause 109);
  - (e) PaTH Internships (clause 110);
  - (f) Employability Skills Training (clause 116);
  - (g) Launch into Work Placements (clause 111);
  - (h) Career Transition Assistance (clause 117);
  - (i) Regional Employment Trials (clause 112);
  - (j) other Commonwealth or state or territory government programs; and
  - (k) other activities as directed by the Department.

## **116. Employability Skills Training**

- 116.1 Subject to this Deed, and without limiting clause 105.1, if the Provider considers that EST Courses are the most suitable or appropriate Activity for an Enhanced Services Participant who is also an EST Eligible Participant, the Provider must refer the EST Eligible Participant to EST Courses through the Department's IT Systems in accordance with any Guidelines.
- 116.2 The Provider must not refer an EST Eligible Participant to an EST Course delivered by the Provider's Own Organisation or a Related Entity.

- 116.3 Before referring a Participant to an EST Course, the Provider must, in accordance with any Guidelines:
- (a) confirm that the Participant is an EST Eligible Participant;
  - (b) unless advised otherwise by the Department, ensure that the Participant has not previously completed that type of EST Course;
  - (c) determine whether the Participant has the capacity to undertake the EST Course on a full time basis or on a part time basis; and
  - (d) ensure that the EST Course is suitable for the Participant.
- 116.4 For each EST Eligible Participant that the Provider refers to an EST Course, the Provider must:
- (a) prior to the Participant starting the EST Course, update the Participant's Job Plan to include details of the EST Course; and
  - (b) comply with any requirements specified in any Guidelines with respect to the Participant's attendance at, and completion of, the EST Course.
- 116.5 The Provider must:
- (a) develop good working relationships with EST Providers in its Employment Region(s) so as to ensure the successful implementation of Employability Skills Training; and
  - (b) promote, deal with enquiries, manage and report on EST, in accordance with any Guidelines.
- 116.6 The Department may give a direction to the Provider in relation to an EST Course, or the referral of a Participant to an EST Course, including a direction that:
- (a) a Participant be referred to another EST Course delivered by the same or another EST Provider; and
  - (b) no Participants are to be referred to one or more EST Courses delivered by an EST Provider,
- and if the Provider receives such a direction, the Provider must:
- (c) immediately take any action required by the direction; and
  - (d) otherwise continue to perform the Services in accordance with this Deed.

## **117. Career Transition Assistance**

### **Referral of Enhanced Services Participants to CTA**

- 117.1 Subject to this Deed, and without limiting clause 105.1, the Provider may, in accordance with any Guidelines:
- (a) if the Provider is contracted to deliver Trial Provider Services within a CTA Trial Region, refer any CTA Eligible Participant to a CTA Provider in that CTA Trial Region to undertake a CTA Course; or
  - (b) if the Provider is contracted to deliver Trial Provider Services in an Employment Region other than a CTA Trial Region, refer any CTA Eligible Participant to a CTA Provider in that Employment Region to undertake a CTA Course.

- 117.2 Before referring an Enhanced Services Participant to undertake a CTA Course, the Provider must, in accordance with any Guidelines:
- (a) confirm that the Enhanced Services Participant is a CTA Eligible Participant;
  - (b) unless advised otherwise by the Department, ensure that the Enhanced Services Participant has not previously, in the same Period of Service, completed the CTA Course to which the Provider proposes to refer the Participant;
  - (c) determine whether the Enhanced Services Participant has the capacity to undertake the CTA Course on a full time basis or part time basis;
  - (d) ensure that the CTA Course is suitable for the Enhanced Services Participant; and
  - (e) ensure that the Provider has a CTA Agreement in place with the relevant CTA Provider, as required, in accordance with any Guidelines.

- 117.3 For each CTA Eligible Participant who the Provider refers to a CTA Course, the Provider must:
- (a) prior to the Enhanced Services Participant starting the CTA Course, update the Enhanced Services Participant's Job Plan to include details of the CTA Course; and
  - (b) comply with any requirements specified in any Guidelines with respect to the Enhanced Services Participant's attendance at, and completion of, the CTA Course.

#### **Working with CTA Providers**

- 117.4 If the Provider delivers Trial Provider Services and Employment Provider Services:
- (a) in one or more CTA Trial Regions; or
  - (b) for the purposes of the CTA National Rollout, in an Employment Region that is not a CTA Trial Region, or in Employment Regions that are not CTA Trial Regions,
- the Provider must:
- (c) develop strong and sustainable working relationships with the CTA Providers in those CTA Trial Regions or Employment Regions, as the case may be, so as to ensure the successful delivery of CTA; and
  - (d) promote, deal with enquiries, manage and report on CTA, in accordance with any Guidelines or as otherwise directed by the Department.

#### **Directions regarding CTA**

- 117.5 The Department may give a direction to the Provider in relation to a CTA Course, or in relation to the referral of an Enhanced Services Participant to a CTA Course delivered by a CTA Provider, including a direction that:
- (a) the Enhanced Services Participant be referred to a CTA Course delivered by another CTA Provider; and
  - (b) no Enhanced Services Participants are to be referred to CTA Courses delivered by a CTA Provider,
- and if the Provider receives such a direction, the Provider must:

- (c) immediately take any action required by the direction; and
- (d) otherwise continue to perform the Services in accordance with this Deed.

## **Section D2.3 – New Enterprise Incentive Scheme Services**

### **118. NEIS Services**

- 118.1 Where the Provider and an Enhanced Services Participant who has been identified as eligible for NEIS on the Department's IT Systems have agreed that it may be appropriate for the Enhanced Services Participant to receive NEIS Services, the Provider must:
- (a) advise the Enhanced Services Participant of the matters which they must satisfy before they can receive NEIS Services, as specified in any Guidelines;
  - (b) identify the location in which the Enhanced Services Participant proposes to attend a Workshop and/or conduct his or her NEIS Business (as relevant) and:
    - (i) where the relevant location is within an Employment Region in which the Provider is a NEIS Provider, the Provider may choose to provide the relevant NEIS Services itself or, subject to clause 118.1(c), refer the Enhanced Services Participant to another NEIS Provider in the relevant Employment Region; or
    - (ii) where the relevant location is not within an Employment Region in which the Provider is a NEIS Provider, subject to clause 118.1(c), refer the Enhanced Services Participant to a NEIS Provider in that location;
  - (c) if the Enhanced Services Participant has expressed an interest in participating in a Workshop, use reasonable endeavours to refer the Enhanced Services Participant to a NEIS Provider who is a Workshop Provider with an available Workshop place;
  - (d) where the Enhanced Services Participant is assessed as NEIS Eligible by the relevant NEIS Provider, comply with any record keeping requirements specified in any Guidelines; and
  - (e) where the Enhanced Services Participant is assessed by the relevant NEIS Provider as:
    - (i) not NEIS Eligible;
    - (ii) NEIS Eligible, but not suitable to participate in a Workshop and not having a NEIS Business Plan that meets the NEIS Business Eligibility Criteria; or
    - (iii) not participating appropriately in a Workshop or NEIS Training, and is referred back to the Provider, immediately provide the Enhanced Services Participant with alternative Services in accordance with this Deed.
- 118.2 The Provider must work with Workshop Providers to arrange Complementary Placements for Enhanced Services Participants in accordance with clause 115.3.

## Section D2.4 – Activities for Digital Participants

### 119. Activities for Digital Participants

- 119.1 Subject to clause 83.5, if the Contact Centre Allocates a Digital Participant to the Provider, the Provider must provide, Broker, Purchase or arrange any one or more of the following Activities in accordance with any Guidelines:
- (a) Digital Training (clause 106);
  - (b) if the Provider is an Employment Preparation Activity Provider, Employment Preparation Activities (clause 107);
  - (c) Work for the Dole (clause 108);
  - (d) National Work Experience Programme Placements (clause 109);
  - (e) PaTH Internships (clause 110);
  - (f) Launch into Work Placements (clause 111);
  - (g) Regional Employment Trials (clause 112); and
  - (h) any other activities identified by the Contact Centre, in accordance with any Guidelines.
- 119.2 The Provider must, prior to the commencement of a Digital Participant in an Activity for which the Digital Participant has been Allocated to the Provider:
- (a) confirm the Participant's identity;
  - (b) explain the Services for Digital Participants that the Provider will provide to them;
  - (c) identify and seek to resolve any issues they may have in relation to participation in the relevant Activity, including by consulting with the Contact Centre; and
  - (d) otherwise comply with any Guidelines.
- 119.3 The Provider must record in the Department's IT Systems details of the Activities it provides, Brokers, Purchases or arranges for each Digital Participant in accordance with any Guidelines.

## Section D2.5 – Employment Fund

### Reader's Guide

The Employment Fund General Account is a flexible pool of funds held by the Department which may be accessed by Trial Providers for Reimbursement of purchases of goods or services which genuinely assist Enhanced Services Participants to build experience and skills to get a job. It must also be used by Trial Providers for Reimbursement of a Restart Wage Subsidy, Youth Wage Subsidy, Parent Wage Subsidy or Long Term Unemployed & Indigenous Wage Subsidy where the relevant Wage Subsidy Agreement was entered into on or after 2 January 2019.

### 120. Employment Fund

Note: Clauses 120.1 to 120.8 apply to both the General Account and the Wage Subsidy Account.

- 120.1 Subject to this clause 120, the Provider may seek Reimbursements from the Employment Fund only in relation to Enhanced Services Participants and only in accordance with any Guidelines.
- 120.2 Each claim for Reimbursement must be rendered by the Provider to the Department:
- (a) for a Reimbursement from the General Account, no more than 56 days after the relevant purchase has been made by the Provider or as otherwise specified in any Guidelines; or
  - (b) for a Reimbursement of a Wage Subsidy from the General Account or the Wage Subsidy Account, as relevant, no more than 56 days after the end of the relevant Wage Subsidy Period or as otherwise specified in any Guidelines.
- 120.3 The Provider may purchase goods and services for Enhanced Services Participants in advance in accordance with any Guidelines, and where it claims a Reimbursement in relation to such goods and services, the Provider must, where required by any Guidelines, record the details of each Enhanced Services Participant that was assisted by such a purchase in the Department's IT Systems.
- 120.4 If, in the Department's view, the Provider has claimed Reimbursement from the Employment Fund in a manner which is inconsistent with this clause 120, the Department may, in addition to any other action available under this Deed, take the action described in clause 120.7(a).
- 120.5 The Department may advise the Provider of persons other than Enhanced Services Participants in relation to which the Employment Fund may be used, and where the Department so advises, this clause 120 will apply to those persons as if they were Enhanced Services Participants.
- 120.6 The Department may direct the Provider to deliver specific additional services to support the local labour market, for which an agreed Employment Fund credit or funding will be made available in accordance with any Guidelines, and for which amounts may be quarantined or reserved in accordance with clause 120.7(b).

- 120.7 The Department may, at any time:
- (a) impose limits upon the Provider's access to the Employment Fund; and
  - (b) determine that amounts within the Employment Fund are to be quarantined or reserved for particular purposes and, where such amounts have been so quarantined or reserved, the Provider must not seek Reimbursement for a purpose other than that for which the amounts have been quarantined or reserved.

120.8 The Provider must not represent notional credits allocated to it in the Employment Fund in its financial accounts.

### **The General Account**

Note: Clauses 120.9 to 120.15 only apply to the General Account

- 120.9 Subject to clauses 120.10 to 120.12, the Employment Fund will be credited once, in the amounts and at the times specified in Table 1 of Annexure E1 – Payments and Employment Fund Credits.
- 120.10 The Provider may only seek Reimbursements from the General Account in accordance with the credits available to them as specified in the Department's IT System at the time of the Provider's claim.
- 120.11 For each Transitioned Participant that Commences in Enhanced Services, the Employment Fund will be credited in accordance with Table 2 in Annexure E1 – Payments and Employment Fund Credits (and not in accordance with clause 120.9), on the Transitioned Participant's Commencement in accordance with clause 87.2.
- 120.12 Where a Participant transfers from the Provider to another Trial Provider or Employment Provider or to Digital Services, the transfer of General Account credits (if any) will be as set out in any Guidelines.
- 120.13 Subject to clause 120.14 and 120.15, the Provider may transfer amounts credited at one Site to another Site (whether or not the Sites are within the same Employment Region).
- 120.14 The Provider must not transfer amounts credited within:
- (a) a Trial Employment Region to a non-Trial Employment Region; or
  - (b) a non-Trial Employment Region to a Trial Employment Region.
- 120.15 The Department may, at any time:
- (a) increase or reduce the amounts credited to the Employment Fund; or
  - (b) place limits on or restrict the Provider's ability to transfer amounts credited to the Employment Fund between its Sites.

## **Section D2.6 – Employment Incentives**

### **121. Relocation Assistance to Take Up a Job (RATTUAJ)**

- 121.1 The Provider must only pay a RATTUAJ Payment if the Provider has first, in accordance with any Guidelines:
- (a) correctly confirmed that:
    - (i) the person is a RATTUAJ Participant;
    - (ii) the relevant Employment position is a RATTUAJ Placement; and

- (iii) the proposed address to which the RATTUAJ Participant is relocating is eligible for a RATTUAJ Payment at the amount of the proposed payment;
  - (b) received from the relevant RATTUAJ Participant, Documentary Evidence to support their entitlement to a RATTUAJ Payment at the amount of the proposed payment;
  - (c) entered into a RATTUAJ Agreement with the RATTUAJ Participant; and
  - (d) confirmed that the RATTUAJ Participant is compliant with the RATTUAJ Agreement.
- 121.2 The Provider must ensure that each RATTUAJ Payment is paid in full from the Provider's own funds, and otherwise paid in accordance with the requirements specified in any Guidelines.
- 121.3 The Provider must end each RATTUAJ Agreement in the circumstances and in the manner specified in any Guidelines.

### **Reimbursement**

- 121.4 Once the Provider has properly paid a RATTUAJ Payment in accordance with this clause 121, the Provider may submit a claim for Reimbursement through the Department's IT Systems for no more than the same amount as that RATTUAJ Payment, but must only do so in accordance with any Guidelines.
- 121.5 The Department will Reimburse the Provider for each RATTUAJ Payment that the Provider makes in accordance with this Deed and properly made claims under clause 121.4.

## **122. Wage Subsidies**

- 122.1 The Provider must offer, manage, deal with enquiries and report on Wage Subsidies, in accordance with any Guidelines.
- 122.2 Subject to any contrary provision specified in any Guidelines, the Provider must only pay a Wage Subsidy to a Wage Subsidy Employer with respect to a Wage Subsidy Participant if the Provider has, for each Wage Subsidy Period, first:
- (a) confirmed that:
    - (i) the Participant is a Wage Subsidy Participant; and
    - (ii) the relevant Employment position is a Wage Subsidy Placement;
  - (b) entered into a Wage Subsidy Agreement with the relevant Wage Subsidy Employer;
  - (c) received from the relevant Wage Subsidy Employer, Documentary Evidence of the Wage Subsidy Participant's Employment for each relevant Wage Subsidy Period; and
  - (d) confirmed that the Wage Subsidy Employer is compliant with the Wage Subsidy Agreement,
- and done so in accordance with any Guidelines.
- 122.3 Subject to any contrary provision specified in any Guidelines, the Provider must ensure that each payment of a Wage Subsidy is:
- (a) paid from the Provider's own funds;

- (b) paid to the relevant Wage Subsidy Employer only once for each Wage Subsidy Participant;
- (c) paid for the relevant Wage Subsidy Period and in the instalment amount as specified in any Guidelines; and
- (d) otherwise paid in accordance with any Guidelines.

### **Reimbursement**

- 122.4 Once the Provider has properly paid a Wage Subsidy in accordance with clauses 122.2 and 122.3, the Provider may submit a claim for Reimbursement through the Department's IT Systems, but must only do so in accordance with clauses 120 and 122, and any Guidelines.
- 122.5 The Department will Reimburse the Provider for each Wage Subsidy that has been paid by the Provider in accordance with this clause 122 and properly claimed by the Provider in accordance with clauses 120 and 122, and any Guidelines.
- 122.6 The Provider agrees that the Department is under no obligation to Reimburse the Provider for a Wage Subsidy paid by the Provider where the Provider has failed to make a claim for Reimbursement in accordance with clauses 120 and 122, and any Guidelines.

## **Section D2.7 – Specific Requirements for Cohorts and Complementary Programs within Enhanced Services**

### **123. Early School Leavers**

- 123.1 For Enhanced Services Participants who are Early School Leavers, the Provider must provide Activities for up to 25 hours per week in accordance with any Guidelines, and manage any failure to meet their Mutual Obligation Requirement in accordance with Section D3.2 – Compliance Action, while they are an Early School Leaver.

#### **Records for Early School Leavers**

- 123.2 If an Enhanced Services Participant who has been assessed as being an Early School Leaver advises the Provider that they have attained a Year 12 or equivalent qualification, the Provider must:
  - (a) request the Enhanced Services Participant to provide evidence of that qualification to the Provider;
  - (b) retain Records of this request and a copy of any evidence provided by the Enhanced Services Participant, in accordance with clause 39; and
  - (c) if requested by the Department, provide a copy of the Record to the Department or DHS, in accordance with any Guidelines.

## **124. Stronger Transitions Eligible Participants**

### **Initial Interviews**

- 124.1 In addition to the requirements at clauses 77 and 96, at the Initial Interview for each Enhanced Services Participant who is a Stronger Transitions Eligible Participant, the Provider must, in accordance with any Guidelines:
- (a) explain to the Stronger Transitions Eligible Participant the assistance that they can receive which is specific to Stronger Transitions Eligible Participants, including immediate access to Relocation Assistance To Take Up a Job and the New Enterprise Incentive Scheme;
  - (b) assist the Stronger Transitions Eligible Participant to access a foundation skills assessment (such as literacy, numeracy and language skills), if required, and help them to identify any training needs they may have;
  - (c) if the Stronger Transitions Eligible Participant provided a Stronger Transitions Support Statement to the Provider, take this statement into account in determining any additional training and assistance that they might require;
  - (d) provide the Stronger Transitions Eligible Participant with assistance to apply for jobs, where required;
  - (e) assist the Stronger Transitions Eligible Participant to access Relocation Assistance To Take Up a Job in accordance with this Deed; and
  - (f) identify if the Stronger Transitions Eligible Participant has undertaken a Comprehensive Skills Assessment.

### **Comprehensive Skills Assessments**

- 124.2 If a Stronger Transitions Eligible Participant has not undertaken a Comprehensive Skills Assessment, the Provider must, in accordance with any Guidelines:
- (a) explain to the Stronger Transitions Eligible Participant what a Comprehensive Skills Assessment is; and
  - (b) determine if the Stronger Transitions Eligible Participant should undertake a Comprehensive Skills Assessment, and, if the Provider determines that they should:
    - (i) issue an RFQ to a TSP Member in the Stronger Transitions Region in which the Stronger Transitions Eligible Participant resides;
    - (ii) consider any quotation from the TSP Member in response to the RFQ, and if the quotation is acceptable to the Provider, negotiate and execute a relevant CSA Work Order with the TSP Member; and
    - (iii) refer the Stronger Transitions Eligible Participant to the TSP Member.

### **Payment of TSP Members for Comprehensive Skills Assessments**

- 124.3 Subject to any Guidelines, the Provider must only pay a CSA Amount to a TSP Member if:
- (a) the Provider has executed a relevant CSA Work Order and the CSA Amount is in accordance with that CSA Work Order;
  - (b) the TSP Member has, within the timeframe specified in the relevant CSA Work Order, provided a written report, which details the outcomes of the Comprehensive Skills Assessment, to:

- (i) the relevant Stronger Transitions Eligible Participant; and
- (ii) the Provider; and
- (c) the CSA Amount is otherwise payable to the TSP Member under the terms of the CSA Work Order.

124.4 The Provider must ensure that any CSA Amount is paid:

- (a) from the Provider's own funds;
- (b) to the relevant TSP Member;
- (c) only once for each Participant; and
- (d) otherwise in accordance with any Guidelines.

**Reimbursement**

124.5 Once the Provider has properly paid a CSA Amount in accordance with clauses 124.3 and 124.4, the Provider may submit a claim for Reimbursement from the Employment Fund in accordance with clause 120, as relevant.

124.6 The Department will Reimburse the Provider, for each CSA Amount that is validly paid and claimed under this Deed, in accordance with clause 120, as relevant.

## CHAPTER D3 - TARGETED COMPLIANCE FRAMEWORK

### Reader's Guide

In the Trial, job seekers will have greater flexibility and choice in how they meet their Mutual Obligations. The Targeted Compliance Framework will remain in place, ensuring there are consequences for those who choose not to meet their Mutual Obligations.

Under the Targeted Compliance Framework, an Enhanced Services Participant (Mutual Obligation)'s Income Support Payment may be suspended, reduced and/or cancelled if the Enhanced Services Participant commits a:

- Mutual Obligation Failure, i.e., fails to comply with obligations such as compulsory requirements in their Job Plan, attending appointments, undertaking activities, or taking action to gain employment;
- Work Refusal Failure, i.e., refuses or fails to accept an offer of suitable employment; or
- Unemployment Failure, i.e., becomes unemployed because of a voluntary act (except a reasonable act) or misconduct.

Amongst other things, Trial Providers must for each Enhanced Services Participant (Mutual Obligation):

- actively monitor and manage Mutual Obligation Requirements;
- ensure that Enhanced Services Participants (Mutual Obligation) are aware of their requirements and are able to meet them; and
- after three confirmed demerits for an Enhanced Services Participant (Mutual Obligation), conduct a Capability Interview for that Enhanced Services Participant (Mutual Obligation) to assess if their Mutual Obligation Requirements are appropriate for their circumstances.

For a Mutual Obligation Failure or a Work Refusal Failure, the Enhanced Services Participant (Mutual Obligation)'s Income Support Payment will be suspended until a Reconnection Requirement is met. The Income Support Payment may then be back paid. Additionally, if the Enhanced Services Participant (Mutual Obligation):

- does not meet their Reconnection Requirement within 4 weeks, DHS will usually cancel the Enhanced Services Participant's Income Support Payment;
- does not have a Valid Reason for a Mutual Obligation Failure, the Enhanced Services Participant will also accrue a Demerit;
- has persistently committed Mutual Obligation Failures (determined largely by the accrual of Demerit) and does not have a Reasonable Excuse, DHS will also reduce their Income Support Payment (by either 50% or 100% for a period) or cancel their Income Support Payment; and
- does not have a Reasonable Excuse for a Work Refusal Failure, DHS will also cancel their Income Support Payment.

No Income Support Payments may be paid to the Enhanced Services Participant (Mutual Obligation) for 4 weeks if an Income Support Payment is cancelled where the Enhanced Services Participant has committed a Work Refusal Failure or persistently committed Mutual Obligation Failures.

For an Unemployment Failure, no Income Support Payment may be paid to the Enhanced Services Participant (Mutual Obligation) for either 4 or 6 weeks, depending on whether a RATTUAJ Payment has been made to help the person take up the employment concerned.

## **Section D3.1 – Mutual Obligation Requirements Generally**

### **125. Mutual Obligation Requirements – Generally**

#### **General requirements for Enhanced Services Participants**

125.1 For each Enhanced Services Participant (Mutual Obligation), the Provider must:

- (a) ensure that the Enhanced Services Participant understands:
  - (i) their Mutual Obligation Requirements;
  - (ii) their personal responsibility to self-report participation against their Mutual Obligation Requirements (unless the Enhanced Services Participant is assessed as not being capable of self-reporting under clause 126.1(a));
  - (iii) the circumstances in which a Mutual Obligation Failure, Work Refusal Failure, Unemployment Failure and failure to meet a Reconnection Requirement can occur, including where the Enhanced Services Participant does not communicate an Acceptable Reason prior to failing to meet a Mutual Obligation Requirement; and
  - (iv) the consequences for the Enhanced Services Participant's Income Support Payment if the Enhanced Services Participant persistently commits Mutual Obligation Failures without a Reasonable Excuse, commits a Work Refusal Failure without a Reasonable Excuse, commits an Unemployment Failure, or fails to meet a Reconnection Requirement;
- (b) assess the Enhanced Services Participant's capability to take personal responsibility for self-reporting in accordance with clause 126.1(a);
- (c) actively monitor and record each Enhanced Services Participant (Mutual Obligation)'s participation against their Mutual Obligation Requirements in accordance with clause 97.8 and clause 126;
- (d) respond to any non-compliance by an Enhanced Services Participant with their Mutual Obligation Requirements in accordance with Section D3.2 – Compliance Action; and
- (e) confirm, at least once every six months following the Commencement of each Enhanced Services Participant (Mutual Obligation), that all relevant contact details are accurately reflected in the Department's IT Systems, including the Enhanced Services Participant (Mutual Obligation)'s phone number(s), email address and postal address.

## **General requirements for Disability Support Pension Recipients (Compulsory Requirements)**

- 125.2 For each Disability Support Pension Recipient (Compulsory Requirements) in Enhanced Services, the Provider must:
- (a) notify the Disability Support Pension Recipient (Compulsory Requirements) of the full details of any requirement that the Participant must meet to remain eligible for Income Support Payments, if the full details of that requirement (for example, the time, date and location that the requirement is to be undertaken):
    - (i) are not specified in the Participant's Job Plan; and
    - (ii) have not otherwise been notified to the Participant,and document the details of the relevant notice in the Department's IT Systems if the Department's IT Systems are not used to generate the notice.
  - (b) monitor the participation of the Disability Support Pension Recipient (Compulsory Requirements), including monitoring whether they attend Appointments, enter into a current Job Plan and participate in Activities, as specified in any Guidelines; and
  - (c) if the Provider determines that the Disability Support Pension Recipient (Compulsory Requirements) has not attended an Appointment, entered into a current Job Plan or appropriately participated in any Activities, as specified in any Guidelines, promptly take action in accordance with this Deed, including Section D3.2 – Compliance Action and any Guidelines.

## **126. Personal Responsibility and Monitoring**

- 126.1 For each Enhanced Services Participant (Mutual Obligation), the Provider must:
- (a) when entering into a Job Plan, assess the Enhanced Services Participant's capability to take personal responsibility for self-reporting participation against the Mutual Obligation Requirements in their Job Plan, in accordance with any Guidelines, and record the result of this assessment in the Department's IT Systems; and
  - (b) actively monitor the Enhanced Services Participant's compliance with the Mutual Obligation Requirements, including as specified in:
    - (i) clause 126.2 for Mutual Obligation Requirements other than Job Search Requirements; and
    - (ii) clause 97.8 for Job Search Requirements.
- 126.2 For each Enhanced Services Participant (Mutual Obligation), the Provider must:
- (a) if the Provider assesses the Enhanced Services Participant as capable of self-reporting, confirm the Enhanced Services Participant's self-reporting of; or
  - (b) if the Provider assesses the Enhanced Services Participant as not capable of self-reporting, record for the Enhanced Services Participant, participation against each of the Mutual Obligation Requirements scheduled in their Electronic Calendar:
  - (c) no later than close of business on the day that the Engagement is scheduled to occur in the Enhanced Services Participant's Electronic Calendar; or
  - (d) as otherwise specified in any Guidelines.

## **127. Active Management of Mutual Obligation Requirements**

- 127.1 If the Provider is satisfied that an Enhanced Services Participant (Mutual Obligation) has an Acceptable Reason for being unable to comply with a Mutual Obligation Requirement on the date or at the time the Mutual Obligation Requirement is scheduled to occur in their Electronic Calendar, the Provider must reschedule or remove the Mutual Obligation Requirement from the Electronic Calendar in accordance with any Guidelines.

Note: An Enhanced Services Participant (Mutual Obligation) will not commit a Mutual Obligation Failure if the relevant Mutual Obligation Requirement is rescheduled or removed by the Provider in accordance with clause 127.1.

## **Section D3.2 – Compliance Action**

### **128. Compliance Action – Mutual Obligation Failures**

#### **Same Business Day response to Mutual Obligation Failures**

- 128.1 Subject to clause 128.2, if the Provider becomes aware that an Enhanced Services Participant (Mutual Obligation) has apparently committed a Mutual Obligation Failure, the Provider must:
- (a) attempt to contact the Enhanced Services Participant on the same Business Day on which the Provider becomes aware of the apparent Mutual Obligation Failure; and
  - (b) if:
    - (i) there is contact between the Provider and the Enhanced Services Participant on that day, comply with clause 128.3 immediately during that contact; or
    - (ii) clause 128.2(b)(i) does not apply, comply with clause 128.5.
- 128.2 Where a Mutual Obligation Failure has occurred because:
- (a) the Enhanced Services Participant is required but has failed to self-report participation against the Mutual Obligation Requirements in their Job Plan, then:
    - (i) clause 128.1 does not apply;
    - (ii) if the Enhanced Services Participant's Reconnection Requirement is a Capability Interview or a Capability Assessment, the Provider must impose a Reconnection Requirement and schedule a date and time for the Reconnection Requirement to occur within the timeframe specified in any Guidelines;
    - (iii) if the Enhanced Services Participant does not have SMS or e-mail details recorded in the Department's IT Systems for automated notification, the Provider must send the notice prepared by the Department's IT Systems in response to the Mutual Obligation Failure to the Enhanced Services Participant's postal address; and

- (iv) if the Enhanced Services Participant later contacts the Provider to discuss the Mutual Obligation Failure, the Provider must comply with clause 128.6 immediately during that contact; or
- (b) the Enhanced Services Participant refused to enter into a Job Plan, then:
  - (i) clause 128.1 does not apply; and
  - (ii) the Provider must immediately comply with clause 128.5.

Note: Clause 128.2(a) only applies in relation to the Enhanced Services Participant's Job Search Requirements. Clause 128.1 applies if the Enhanced Services Participant self-reports participation against the Mutual Obligation Requirements in their Job Plan but the quality of the Enhanced Services Participant's Job Search effort is not adequate.

### **Successful same Business Day contact**

128.3 For the purposes of clause 128.1(b)(i), the Provider must:

- (a) discuss the circumstances of the apparent Mutual Obligation Failure; and
- (b) if the Provider considers that a Mutual Obligation Failure has been committed, comply with clause 128.4.

128.4 For the purposes of clause 128.3, the Provider must:

- (a) discuss the Enhanced Services Participant's reasons for the Mutual Obligation Failure and assess if the Participant has a Valid Reason;
- (b) set an appropriate Reconnection Requirement as specified in any Guidelines;
- (c) schedule a date and time for the Reconnection Requirement to occur within the timeframe specified in any Guidelines;
- (d) advise the Enhanced Services Participant:
  - (i) of the action taken by the Provider under clauses 128.4(b), 128.4(c) and 128.4(f);
  - (ii) that their Income Support Payment will, as a minimum, remain suspended until they comply with their Reconnection Requirement;
  - (iii) of the effect of not complying with the Reconnection Requirement; and
  - (iv) if the Enhanced Services Participant is identified as being in the penalty zone on the Department's IT Systems, that the Mutual Obligation Failure will be automatically referred to DHS;
- (e) record the details and outcomes required in the Department's IT Systems for each matter specified in this clause 128.4; and
- (f) take any other action specified in any Guidelines, including (where relevant):
  - (i) suspending the Enhanced Services Participant's Income Support Payment; and
  - (ii) confirming a Demerit.

### **Unsuccessful or unrequired same Business Day contact**

128.5 For the purposes of clause 128.1(b)(ii) and 128.2(b)(ii), the Provider must:

- (a) immediately:

- (i) set an appropriate Reconnection Requirement as specified in any Guidelines;
  - (ii) if the Enhanced Services Participant does not have SMS or e-mail details recorded in the Department's IT Systems for automated notification, send the notice prepared by the Department's IT Systems in response to the Mutual Obligation Failure to the Enhanced Services Participant's postal address;
  - (iii) record the details and outcomes required in the Department's IT Systems for each matter specified in this clause 128.5; and
  - (iv) take any other action specified in any Guidelines, including (where relevant), suspending the Enhanced Services Participant's Income Support Payment; and
- (b) if the Enhanced Services Participant later contacts the Provider to discuss the Mutual Obligation Failure, comply with clause 128.6 immediately during that contact.

128.6 For the purposes of clause 128.5(b), the Provider must:

- (a) discuss the circumstances of the apparent Mutual Obligation Failure and, if the Provider considers that a Mutual Obligation Failure has been committed:
  - (i) discuss the Enhanced Services Participant's reasons for the Mutual Obligation Failure and assess if the Enhanced Services Participant has a Valid Reason;
  - (ii) schedule a date and time for the Reconnection Requirement to occur within the timeframe specified in any Guidelines; and
  - (iii) advise the Enhanced Services Participant of the action taken by the Provider under clause 128.6(a)(ii);
- (b) record the details and outcomes required in the Department's IT Systems for each matter specified in this clause 128.6; and
- (c) take any other action specified in any Guidelines (including confirming or removing a Demerit where relevant).

### **Capability Interview**

128.7 The Provider must conduct a Capability Interview in accordance with clauses 128.8 and 128.9 if an Enhanced Services Participant (Mutual Obligation):

- (a) incurs, in any 6 Active Months:
  - (i) three or more confirmed Demerits; or
  - (ii) a confirmed Demerit for failing to attend a job interview, failing to behave appropriately at a job interview or failing to act on a Job Referral; and
- (b) has not been found incapable of meeting their Mutual Obligation Requirements during a Capability Interview or a Capability Assessment conducted within the preceding '60 days', where '60 days' is calculated as specified in any Guidelines.

128.8 During each Capability Interview, the Provider must:

- (a) ensure the Enhanced Services Participant understands the purpose and potential outcomes of the Capability Interview;

- (b) if they are an Enhanced Services Participant, review the Enhanced Services Participant's JSCI and:
    - (i) confirm that the JSCI accurately reflects their current circumstances; or
    - (ii) if the Enhanced Services Participant's JSCI does not accurately reflect their current circumstances, conduct a Change of Circumstances Reassessment in accordance with clause 103.1;
  - (c) using the Capability Management Tool, identify and consider all known personal circumstances against the Enhanced Services Participant's Mutual Obligation Requirements;
  - (d) assess if the Enhanced Services Participant's Mutual Obligation Requirements are appropriate to their circumstances and update the Enhanced Services Participant's Job Plan if required; and
  - (e) record the details and outcomes required in the Department's IT Systems for each matter specified in this clause 128.8.
- 128.9 Except in allowable circumstances as specified in any Guidelines, each Capability Interview must be:
- (a) with one Enhanced Services Participant;
  - (b) conducted within two Business Days of the Enhanced Services Participant incurring the Demerits referred to in clause 128.7(a); and
  - (c) face to face.

### **Capability Assessment**

- 128.10 Where DHS has conducted a Capability Assessment for an Enhanced Services Participant (Mutual Obligation), the Provider must:
- (a) review the outcome of the Capability Assessment and consider actioning any recommendations arising from the outcome; and
  - (b) if the Capability Assessment found that the Enhanced Services Participant is not capable of meeting the Mutual Obligation Requirements in their Job Plan, ensure that a Delegate updates the Enhanced Services Participant's Job Plan within the timeframe and as specified in the findings of the Capability Assessment and any Guidelines.

### **Removing Demerits**

- 128.11 Where an Enhanced Services Participant (Mutual Obligation) has incurred a Demerit for a Mutual Obligation Failure and the Provider subsequently becomes aware that:
- (a) the Mutual Obligation Failure relates to a Mutual Obligation Requirement that the Provider considers was not appropriate to the Enhanced Services Participant's circumstances at the time;
  - (b) the Mutual Obligation Failure was:
    - (i) caused or substantially contributed to by previously undisclosed circumstances that the Enhanced Services Participant is now seeking treatment for; and
    - (ii) the Provider is satisfied that a Valid Reason would have existed for the Mutual Obligation Failure had the relevant circumstances been disclosed at the time;

- (c) the Mutual Obligation Failure occurred because the Enhanced Services Participant is required but has failed to self-report participation against the Mutual Obligation Requirements in their Job Plan or failed to enter into a Job Plan, and the Provider is satisfied that the Enhanced Services Participant had a Valid Reason for the Mutual Obligation Failure; or
  - (d) the Mutual Obligation Failure or Demerit was recorded in error, the Provider must remove the Demerit, change the related Reconnection Requirement (if required), and record the reasons for removal on the Department's IT Systems, within one Business Day of becoming aware of the relevant matter, in accordance with any Guidelines.
- 128.12 Where requested by an Enhanced Services Participant (Mutual Obligation), the Department or DHS, the Provider must consider if clause 128.11 applies to a Demerit, and remove the Demerit if it does.

## **129. Compliance Action – Work Refusal Failures**

### **Same Business Day response to Work Refusal Failures**

- 129.1 If the Provider becomes aware that an Enhanced Services Participant (Mutual Obligation) has apparently committed a Work Refusal Failure, the Provider must:
- (a) attempt to contact the Enhanced Services Participant on the same Business Day on which the Provider becomes aware of the apparent Work Refusal Failure; and
  - (b) if:
    - (i) there is contact between the Provider and the Enhanced Services Participant on that day, comply with clause 129.2 immediately during that contact; or
    - (ii) clause 129.1(b)(i) does not apply, comply with clause 129.4.
- 129.2 For the purposes of clause 129.1(b)(i), the Provider must:
- (a) discuss the circumstances of the apparent Work Refusal Failure (including any reason why the employment offered may not be suitable for the Enhanced Services Participant); and
  - (b) if the Provider considers that a Work Refusal Failure has been committed, comply with clause 129.3.
- 129.3 For the purposes of clause 129.2(b), the Provider must:
- (a) discuss the Enhanced Services Participant's reasons for the Work Refusal Failure and assess if the Participant has a Valid Reason;
  - (b) create a Work Refusal Failure report and record the details and outcomes required in the Department's IT Systems; and
  - (c) take any other action specified in any Guidelines.
- 129.4 For the purposes of clause 129.1(b)(ii), the Provider must:
- (a) no later than 10 Business Days after the Provider becomes aware of the apparent Work Refusal Failure:
    - (i) create a Work Refusal Failure report and record the details and outcomes required in the Department's IT Systems; and

- (ii) if the Enhanced Services Participant does not have SMS or e-mail details recorded in the Department's IT Systems for automated notification, send the notice prepared by the Department's IT Systems in response to the Work Refusal Failure report to the Enhanced Services Participant's postal address;
- (b) take any other action specified in any Guidelines; and
- (c) if the Enhanced Services Participant contacts the Provider to discuss the apparent Work Refusal Failure, comply with clause 129.5 immediately during that contact.

Note: When the Provider creates a Work Refusal Failure report, the Enhanced Services Participant's Income Support Payment will be suspended and a reconnection requirement set to make contact with the Provider. If the Enhanced Services Participant does not contact the Provider within 4 weeks, the Participant's Income Support Payment will be cancelled.

129.5 For the purposes of clause 129.4(c), the Provider must:

- (a) discuss the circumstances of the apparent Work Refusal Failure (including any reason why the employment offered may not be suitable for the Enhanced Services Participant);
- (b) if the Provider considers that a Work Refusal Failure has been committed, discuss the Enhanced Services Participant's reasons for the Work Refusal Failure and assess if the Participant has a Valid Reason;
- (c) update the Work Refusal Failure report (including by closing the report if the Provider considers that no Work Refusal Failure has been committed) and record the details and outcomes required in the Department's IT Systems; and
- (d) take any other action specified in any Guidelines.

### **130. Compliance Action – Unemployment Failures**

130.1 If the Provider becomes aware that an Enhanced Services Participant (Mutual Obligation) has become unemployed apparently as:

- (a) a direct or indirect result of a voluntary act of the Enhanced Services Participant; or
- (b) a result of the Enhanced Services Participant's misconduct as an employee, the Provider must:
- (c) attempt to contact the Enhanced Services Participant on the same Business Day on which the Provider becomes aware of the unemployment; and
- (d) if:
  - (i) there is contact between the Provider on that day, comply with clause 130.2 immediately during that contact; or
  - (ii) clause 130.1(d)(i) does not apply, comply with clause 130.3.

130.2 For the purposes of clause 130.1(d)(i), the Provider must:

- (a) discuss the circumstances of the Enhanced Services Participant becoming unemployed (including the Enhanced Services Participant's reasons);

- (b) if the Provider considers it likely that the Enhanced Services Participant became unemployed for a reason specified at clause 130.1(a) or (b), create an Unemployment Failure report and record the details and outcomes required in the Department's IT Systems; and
  - (c) take any other action specified in any Guidelines.
- 130.3 For the purposes of clause 130.1(d)(ii), the Provider must:
- (a) immediately create an Appointment to occur within 10 Business Days after the Provider becomes aware of the apparent Unemployment Failure, if an Appointment is not already scheduled to occur within that time;
  - (b) no later than 20 Business Days after the Provider becomes aware of the apparent Unemployment Failure, create an Unemployment Failure report and record the details and outcomes required in the Department's IT Systems;
  - (c) take any other action specified in any Guidelines; and
  - (d) during the next Contact, or if the Enhanced Services Participant contacts the Provider to discuss the apparent Unemployment Failure, comply with clause 130.4 immediately during that contact.
- 130.4 For the purposes of clause 130.3(d), the Provider must:
- (a) discuss the circumstances of the apparent Unemployment Failure (including the Enhanced Services Participant's reasons);
  - (b) update the Unemployment Failure report (including by closing the report if the Provider considers that the Enhanced Services Participant did not become unemployed for a reason specified at clause 130.1(a) or (b)) and record the details and outcomes required in the Department's IT Systems; and
  - (c) take any other action specified in any Guidelines.

### **131. Non-compliance action for Disability Support Pension Recipients (Compulsory Requirements)**

- 131.1 Where the Provider becomes aware that any Disability Support Pension Recipient (Compulsory Requirements) who is being serviced under Enhanced Services has failed to comply with one or more of their Mutual Obligation Requirements by failing to:
- (a) attend an Appointment;
  - (b) enter into a current Job Plan; or
  - (c) appropriately participate in any Activities as specified in any Guidelines,
- the Provider must attempt to contact the Disability Support Pension Recipient (Compulsory Requirements) on the same Business Day that they become aware of the failure to comply.
- 131.2 If the Provider has been able to make contact with the Disability Support Pension Recipient (Compulsory Requirements), it must, within 10 Business Days of becoming aware of the failure to comply referred to in clause 131.1 and in accordance with any Guidelines:
- (a) determine whether the failure to comply should be reported to DHS;

- (b) if the Provider determines that the failure to comply should be reported to DHS, document any information relevant to the failure to comply in the Department's IT Systems and report the failure to comply to DHS via the Department's IT Systems; and
  - (c) if the Provider determines that the failure to comply should not be reported to DHS, use its best endeavours to ensure that the Disability Support Pension Recipient (Compulsory Requirements) complies with their Compulsory Requirements at the next available opportunity.
- 131.3 If the Provider has not been able to make contact with the Disability Support Pension Recipient (Compulsory Requirements), it must, within 10 Business Days of becoming aware of the failure to comply referred to in clause 131.1:
- (a) determine whether any action should be taken under arrangements in relation to the failure to comply as specified in any Guidelines; and
  - (b) if the Provider determines that such action should be taken, document any information relevant to the failure to comply in the Department's IT Systems and report the failure to comply to DHS via the Department's IT Systems.

## **132. Delegate obligations**

- 132.1 The Provider must ensure that the Provider's Personnel and Subcontractors:
- (a) are aware of, fully understand, and receive training on, the powers and functions that have been delegated to them under the Social Security Law including in relation to:
    - (i) preparation, approval and variation of Job Plans including specifying Mutual Obligation Requirements in Job Plans;
    - (ii) setting the date, time and manner of participation (including by recording Engagements in the Electronic Calendar) for the requirements specified in a Participant (Mutual Obligation)'s Job Plan;
    - (iii) identifying Mutual Obligation Failures, Work Refusal Failures and apparent Unemployment Failures; and
    - (iv) determining suspension of an Enhanced Services Participant's Income Support Payment following a Mutual Obligation Failure or Work Refusal Failure, imposing Reconnection Requirements and giving appropriate notice of those requirements and the effect of not complying with them;
  - (b) have, prior to taking action under Section D3.2 – Compliance Action, successfully completed all mandatory targeted compliance framework training identified in the online Learning Centre; and
  - (c) comply with the Social Security Law.

## PART E - PAYMENTS

### Reader's Guide

#### Payments for Enhanced Services

Payments for Enhanced Services include Engagement Fees, Outcome Payments, a Very Long Term Unemployment Bonus, and Progress in Service Bonus and Progress Fees. Providers may also claim Payments for Activities provided, Brokered, Purchased or arranged for Enhanced Services Participants (as described below).

The Engagement Fee is a once off fee payable to Providers for each Enhanced Services Participant. Engagement Fees replace the periodic administration fees payable to Employment Providers under the jobactive Deed 2015-2022, and aims to encourage greater up-front investment in job seekers by Providers.

Outcome Payments for Enhanced Services Participants are payable for Employment Outcomes and have been simplified. Rates of payment are dependent on an Enhanced Services Participant's JSCI score (not Tier), and aim to encourage Providers to focus on achieving sustainable Employment outcomes.

The Very Long Term Unemployment Bonus is payable to Providers when a Participant meets the requirements for a Partial Outcome or Full Outcome and the Participant's Period of Unemployment is longer than 24 months. The amount payable for a Very Long Term Unemployment Bonus varies depending on the type of Outcome. This Fee recognises achieving Outcomes for very long term unemployed Enhanced Services Participants and encourages Providers to focus on the most disadvantaged Enhanced Services Participants in their cohort.

The Progress in Service Bonus is payable if an Enhanced Services Participant progresses from Tier 2 Enhanced Services to Tier 1 Enhanced Services or from Tier 1 Enhanced Services to Digital Plus Services. This Fee is intended to be an incentive for Providers to help Enhanced Services Participants progress towards a lower intensity of servicing.

Progress Fees are payable if there has been an improvement in an Enhanced Services Participant's Employment prospects, or if they achieve an Employment Outcome (if not already claimed). Progress Fees are intended to be an incentive for Providers to support all Enhanced Services Participants progress towards Employment.

#### Advance Trial Payments

Due to the innovative nature of the Trial, some Payments will operate under an Advance Trial Payments arrangement. Advance Trial Payments will only apply to the Trial and are not a feature of the payment model that will be implemented nationally for the New Employment Services in 2022. Providers will receive, in advance, an Advance Trial Payment for each Payment Period. The Advance Trial Payment is based on a proportion of the total amount of certain Payments that the Department forecasts that the Provider would receive during the relevant Period Payment and calculated as the total of:

- 100 per cent of forecast Engagement Fees;
- 90 per cent of forecast Outcome Payments;
- 90 per cent of forecast Very Long Term Unemployment Bonuses;
- 90 per cent of forecast Progress in Service Bonuses; and
- 90 per cent of forecast Progress Fees.

If the Payments a Provider is entitled to claim under this Deed in a Payment Period exceed the total Advance Trial Payments paid to the Provider for that Payment Period, the Provider will be eligible to claim, and the Department will pay, those additional Payments to the Provider, in accordance with the Deed.

Except in relation to Engagement Fees and without limiting the Department's rights to recover or offset any amount for any other reason under this Deed or at law, if the Payments a Provider is entitled to claim under this Deed in a Payment Period are less than the Advance Trial Payments paid to the Provider for that Payment Period, the Department will not recover or offset the amount by which the Advance Trial Payments exceed the amount of Payments the Provider is entitled to claim.

If the Engagement Fees a Provider is entitled to claim in a Payment Period are less than the Advance Trial Payments paid to the Provider for Engagement Fees for that Payment Period (due to the actual number of Commencements being less than the forecast number of Commencements in the Payment Period), the Department will adjust the Advance Trial Payments in relation to Engagement Fees in the next or any subsequent Payment Period to reflect the actual Commencements in the relevant Payment Period, including under clause 147.3.

The first Payment Period for Advance Trial Payments aligns with the Enhanced Services Start Date and ends on 31 December 2019. Each subsequent Payment Period for Advance Trial Payments will be at six-month intervals from January 2020 until 30 June 2022, unless otherwise advised by the Department.

The Advance Trial Payments provide a level of financial certainty for Providers in recognition of the flexible and agile nature of the Trial, and will support innovation and testing of new approaches during the Trial.

#### **Payments for Activities (including for Digital Participants)**

Providers will be able to claim Payments for a range of Activities and related Outcomes depending on whether the Participant is an Enhanced Services Participant or a Digital Participant. These include PaTH Internship Outcome Payments, NWEF Completion Outcome Payments and Work for the Dole Fees. Payments for Activities are intended to be an incentive for Providers to coordinate work experience opportunities for all Participants to help them progress towards Employment.

#### **Payments for Services for Digital Participants**

The Department will Reimburse the Provider for costs directly associated with delivering Services for Digital Participants Allocated to the Provider.

Further details in relation to Payments for the delivery of Employment Preparation Activities and other Services for Digital Participants are still being developed by the Department and will be separately notified to Providers.

## CHAPTER E1 - PAYMENTS

### Section E1.1 – Payments

#### 133. Trial Participation Payment

- 133.1 Subject to this Deed, the Department will pay the Provider a Trial Participation Payment:
- (a) in three instalments, with the first instalment payable on the Deed Commencement Date; and
  - (b) as specified in Table 3 of Annexure E1 – Payments and Employment Fund Credits.
- 133.2 The Department will pay the Provider a variable component of the Trial Participation Payment as specified in item 7 of Schedule 1.
- Note: The variable component of the Trial Participant Payment is based on the expected Enhanced Services caseload of the Provider. The calculation of this variable component does not take into account Digital Participants who may be Allocated to the Provider to undertake Activities.
- 133.3 The Provider must comply with any Guidelines in relation to the payment of the Trial Participation Payment.

#### 134. Advance Trial Payments

- 134.1 Subject to this Deed, the Department will pay the Provider the Advance Trial Payments within 10 Business Days after the start of each Payment Period, calculated in accordance with clause 134.2.
- 134.2 The Department will calculate the amount of the Advance Trial Payments as the sum of:
- (a) 100 per cent of forecast Engagement Fees;
  - (b) 90 per cent of forecast Outcome Payments;
  - (c) 90 per cent of forecast Very Long Term Unemployment Bonuses;
  - (d) 90 per cent of forecast Progress in Service Bonuses; and
  - (e) 90 per cent of forecast Progress Fees,
- that are payable to the Provider for the relevant Payment Period in accordance with clauses 135, 136, 137, 138, 139 and Annexure E1 – Payments and Employment Fund Credits.
- Note: Advance Trial Payment amounts are based on annual forecasts incorporating national average performance and the Provider's caseload. The forecasts used to calculate the Advance Trial Payments for 2020-21 and 2021-22 are subject to change, to reflect changes to Provider caseloads and Treasury unemployment forecasts to be published in the 2020-2021 budget.
- Note: The Department will provide written notice to the Provider of the Advance Trial Payment amount prior to the commencement of each Payment Period.
- 134.3 To avoid doubt, notwithstanding that the Department will pay the Provider the Advance Trial Payments for each Payment Period in accordance with clause 134.1, the Provider must submit a claim through the Department's IT Systems for each:
- (a) Engagement Fee;
  - (b) Outcome Payment;

- (c) Very Long Term Unemployment Bonus;
- (d) Progress in Service Bonus; and
- (e) Progress Fee,

that the Provider becomes entitled to claim under this Deed in accordance with clauses 135, 136, 137, 138 and 139, as relevant, and any Guidelines.

134.4 In any Payment Period, if the Provider claims under this Deed an amount greater than the total Advance Trial Payments paid to the Provider in that Payment Period, the Department will pay the Provider each additional:

- (a) Engagement Fee;
- (b) Outcome Payment;
- (c) Very Long Term Unemployment Bonus;
- (d) Progress in Service Bonus; or
- (e) Progress Fee,

which is payable to the Provider in accordance with clauses 135, 136, 137, 138 and 139, as relevant, and any Guidelines.

134.5 Subject to clause 134.6 and without limiting the Department's rights to recover or offset any amount for any other reason under this Deed or at law, if the Payments the Provider is entitled to claim under this Deed in a Payment Period are less than the Advance Trial Payments paid to the Provider for that Payment Period, the Department will not recover or offset the amount by which the Advance Trial Payments exceed the amount of Payments the Provider is entitled to claim.

Note: To avoid doubt and without limiting the Department's rights to recover or offset any amount for any other reason under this Deed or at law, clause 147.3 (Offsetting of Advance Payments) does not apply to Outcome Payments, Very Long Unemployment Bonuses, Progress in Service Bonuses and Progress Fees paid by the Department as part of Advance Trial Payments.

134.6 If the amount of Engagement Fees a Provider is entitled to claim in a Payment Period is less than the Advance Trial Payments paid to the Provider for Engagement Fees for that Payment Period (due to the actual number of Commencements being less than the forecast number of Commencements in the Payment Period), the Department will, in accordance with this Deed, adjust the Advance Trial Payments in relation to Engagement Fees in the next or any subsequent Payment Period to reflect the actual number of Commencements in the relevant Payment Period.

134.7 If, on the Completion Date, the Department has not recovered from the Provider any Advance Trial Payments for Engagement Fees in accordance with clause 134.6, the difference between:

- (a) the total amount of Advance Trial Payments paid to the Provider for Engagement Fees; and
  - (b) the total amount of Engagement Fees the Provider is entitled to claim,
- is an overpayment for the purposes of clause 19.

134.8 The Provider must comply with any Guidelines in relation to the Advance Trial Payments.

### **135. Engagement Fees**

- 135.1 The Department will pay the Provider a once off Engagement Fee as specified in clause 134 and Table 4 of Annexure E1 – Payments and Employment Fund Credits for each Enhanced Services Participant.
- 135.2 To avoid doubt, the Department will not pay the Provider any Engagement Fees or recover a pro-rata amount of any Engagement Fees from the Provider for:
- (a) transfers of Enhanced Services Participants between Trial Providers;
  - (b) Suspensions of Enhanced Services Participants; or
  - (c) Digital Participants serviced by the Provider.
- 135.3 The Provider must comply with any Guidelines in relation to the payment of Engagement Fees.

### **136. Outcome Payments**

- 136.1 The Department will pay the Provider the Outcome Payments as specified in clause 134 and in Table 5 of Annexure E1 – Payments and Employment Fund Credits.
- 136.2 For the purpose of clause 134.4, the Department will pay the Provider an Outcome Payment where:
- (a) for Employment Outcomes, excluding a Full Outcome under paragraph (f) of the definition of Full Outcome and a Partial Outcome under paragraph (f) of the definition of Partial Outcome, an Enhanced Services Participant who was on the Provider’s caseload on the date that they began the relevant Job Seeker Placement, has satisfied:
    - (i) a 4 Week Period for an Employment Outcome;
    - (ii) a 12 Week Period for an Employment Outcome; and
    - (iii) a 26 Week Period for an Employment Outcome,respectively;
  - (b) for an Employment Outcome which satisfies paragraph (f) of the definition of Full Outcome, an Enhanced Services Participant who was on the Provider’s caseload on the date of the Significant Increase in Income has satisfied:
    - (i) a 4 Week Period for an Employment Outcome;
    - (ii) a 12 Week Period for an Employment Outcome; and
    - (iii) a 26 Week Period for an Employment Outcome,respectively;
  - (c) for an Employment Outcome which satisfies paragraph (f) of the definition of Partial Outcome, an Enhanced Services Participant who was on the Provider’s caseload on the date of their NEIS Commencement, has satisfied:
    - (i) a 4 Week Period for an Employment Outcome; and
    - (ii) a 12 Week Period for an Employment Outcome,respectively;
  - (d) for Full Outcomes, an Enhanced Services Participant (except a Participant that has been transferred to the Provider for any reason):

- (i) participates in Pre-existing Employment; and
  - (ii) a Significant Increase occurs in the Pre-existing Employment during the Participant's Period of Registration;
- (e) for Employment Outcomes, the Employment Outcome Start Date occurs on or after Commencement with the Provider;

provided that:

- (f) the Provider has rendered a Tax Invoice for the relevant Outcome Payment to the Department within 12 months of the Completion Date and the Department accepts the Tax Invoice;
- (g) data and/or Documentary Evidence is entered into the Department's IT Systems (either by DHS or, where relevant, by the Provider or a NEIS Provider) confirming the Employment Outcome Start Date and the satisfaction of the requirements of an Employment Outcome; and
- (h) the Provider has, when recording the relevant Vacancy in the Department's IT Systems, selected the Vacancy type as specified by any Guidelines.

136.3 To avoid doubt, the Department will not pay the Provider an Outcome Payment for an Employment Outcome for a Digital Participant.

#### **Pay Slip Verified Outcome Payments**

136.4 Where the Provider considers that:

- (a) all requirements for payment of an Outcome Payment for an Employment Outcome under clause 136.2(a) have been met; but
- (b) the data in the Department's IT Systems provided to the Department by DHS does not correctly record or reflect the details of that Employment Outcome,

the Provider may claim a Pay Slip Verified Outcome Payment from the Department if:

- (c) the Employment Outcome Start Date for the Employment Outcome is entered on the Department's IT Systems in accordance with any Guidelines;
- (d) the Provider has rendered a Tax Invoice for the Pay Slip Verified Outcome Payment to the Department within 12 months of the Completion Date and the Department accepts the Tax Invoice; and
- (e) the Provider:
  - (i) holds and submits any Documentary Evidence as specified under clauses 15.4(d) and 16.2(a); and
  - (ii) complies with any procedural requirements specified in any Guidelines, at the time it makes the claim.

#### **Placement in a Vacancy by another Trial Provider or Employment Provider**

136.5 For the avoidance of doubt and subject to clauses 136.2 and 136.4, where an Enhanced Services Participant:

- (a) is placed in a Vacancy by a Trial Provider or an Employment Provider other than the Provider, but the relevant Enhanced Services Participant was Commenced with the Provider; and

(b) all requirements of clause 136.2 are met,  
the Provider may claim and the Department will pay the applicable Outcome Payment.

### **Limits on Outcome Payments**

136.6 The Department will not pay the Provider, and the Provider must not claim, an Outcome Payment under clauses 136.2 or 136.4:

- (a) on a pro rata basis;
- (b) in relation to a Non-Payable Outcome;
- (c) for a Full Outcome which satisfies paragraph (a) or (f) of the definition of Full Outcome and for a Partial Outcome which satisfies paragraph (a) of the definition of Partial Outcome, where:
  - (i) the Enhanced Services Participant is placed into Employment; and
  - (ii) the Enhanced Services Participant ceases to receive the relevant Income Support Payment due to reasons other than participating in that Employment, including as specified in any Guidelines;
- (d) in relation to a Full Outcome Conversion, unless all the requirements of the definition of Full Outcome Conversion are satisfied;
- (e) except as otherwise provided for in any Guidelines, if the Outcome Period for the Outcome overlaps with the Outcome Period for another Outcome that has already been claimed in relation to the same Enhanced Services Participant by any Trial Provider, including the Provider, or Employment Provider;
- (f) where the relevant Employment Outcome Start Date occurs after the Completion Date; and
- (g) in any other circumstances specified in any Guidelines.

136.7 The Provider must not claim, and the Department will not pay, more than a maximum of four Outcome Payments for a 4 Week Period for an Employment Outcome for any single Enhanced Services Participant over any one 12 month period.

136.8 The Provider acknowledges that if an Enhanced Services Participant moves from a Complementary Service into an employment or related activity that satisfies the requirements for an Employment Outcome, the Provider may only claim, and the Department will only pay, an amount equal to the difference between:

- (a) the Outcome Payment payable under this Deed in relation to the employment or related activity; and
- (b) the fee, if any, paid by the Commonwealth to the provider of the Complementary Service.

## **137. Very Long Term Unemployment Bonus**

137.1 The Department will pay the Provider a Very Long Term Unemployment Bonus as specified in clause 134 and Table 6A of Annexure E1 – Payments and Employment Fund Credits.

137.2 For the purpose of clause 134.4, the Department will pay the Provider a Very Long Term Unemployment Bonus where:

- (a) the Enhanced Services Participant meets the requirements for:

- (i) a Partial Outcome for a 12 Week Period;
  - (ii) a Full Outcome for a 12 Week Period; or
  - (iii) a Full Outcome for a 26 Week Period;
- (b) the Enhanced Services Participant's Period of Unemployment is longer than 24 months; and
  - (c) the Provider has complied with any Guidelines in relation to the payment of the Very Long Term Unemployment Bonus.

Note: For the purposes of clause 137.2(b), a Very Long Term Unemployment Bonus will be calculated in accordance with the definition of 'Period of Unemployment' in Attachment 1 - Definitions.

- 137.3 To avoid doubt, the Department will not pay the Provider a Very Long Term Unemployment Bonus for a Digital Participant.

### **138. Progress in Service Bonus**

- 138.1 The Department will pay the Provider a Progress in Service Bonus as specified in clause 134 and Table 6B of Annexure E1 – Payments and Employment Fund Credits.
- 138.2 For the purpose of clause 134.4, the Department will pay the Provider a Progress in Service Bonus, where:
  - (a) an Enhanced Services Participant progresses from Tier 1 to Digital Plus Services; or
  - (b) an Enhanced Services Participant progresses from Tier 2 to Tier 1 Enhanced Services; and
  - (c) the Provider has complied with any Guidelines in relation to the payment of the Progress in Service Bonus.
- 138.3 To avoid doubt, the Department will not pay the Provider a Progress in Service Bonus for a Digital Participant.

### **139. Progress Fees**

- 139.1 The Department will pay the Provider a Progress Fee as specified in clause 134 and Table 6C of Annexure E1 – Payments and Employment Fund Credits.
- 139.2 For the purpose of clause 134.4, the Department will pay the Provider a Progress Fee:
  - (a) for each Tier 1 Enhanced Services Participant, once for each Period of Service; and
  - (b) for each Tier 2 Enhanced Services Participant, once for each 24 month Period in Tier 2 Enhanced Services.
- 139.3 The Provider may claim a Progress Fee for each Enhanced Services Participant:
  - (a) for whom there has been an improvement in the Enhanced Services Participant's employment prospects, as determined in accordance with any Guidelines, through the provision of the Enhanced Services by the Provider; and
  - (b) an Employment Outcome and a Progress Fee has not already been claimed for that Enhanced Services Participant in accordance with clause 139.2.
- 139.4 The Provider must comply with any Guidelines in relation to the payment of Progress Fees.

- 139.5 To avoid doubt, the Department will not pay the Provider a Progress Fee for a Digital Participant serviced by the Provider.

#### **140. Fees for delivery of Digital Training**

- 140.1 Subject to this Deed and in accordance with any Guidelines, the Department will pay the Provider a Digital Training Fee as specified in Table 7A of Annexure E1 – Payments and Employment Fund Credits for:
- (a) each Digital Participant Allocated to the Provider for the purpose of undertaking Digital Training who has undertaken the Digital Training; and
  - (b) any other Participant referred by the Contact Centre to the Provider for the purpose of undertaking Digital Training in preparation for transitioning to Digital Services who has undertaken the Digital Training.
- 140.2 To avoid doubt, the Department will not pay the Provider a Digital Training Fee for an Enhanced Services Participant.

#### **141. Payments for the delivery of Employment Preparation Activities**

- 141.1 If the Provider is an Employment Preparation Activity Provider, for each Digital Participant Allocated to the Provider for the purpose of undertaking an Employment Preparation Activity, the Department will pay the Provider for delivering the Employment Preparation Activity, in accordance with any Guidelines.

Note: Further details in relation to Payments for the delivery of Employment Preparation Activities are to be confirmed by the Department and will be separately notified to Providers.

- 141.2 To avoid doubt, the Department will not pay the Provider for delivering an Employment Preparation Activity for an Enhanced Services Participant.

#### **142. Other Payments for Services for Digital Participants**

- 142.1 For each Digital Participant Allocated to the Provider, the Department will Reimburse the Provider for costs directly associated with delivering Services for Digital Participants in accordance with any Guidelines.
- 142.2 The Provider is not eligible to receive, and must not claim from the Department, a Reimbursement for costs associated with the delivery of one of the following Activities for Digital Participants:
- (a) Work for the Dole;
  - (b) National Work Experience Programme Placement; or
  - (c) PaTH Internship.

Note: The Provider will be eligible to receive Work for the Dole Fees, Work for the Dole Placement Fees, Payments for NWEPP Completion Outcomes and Payments for PaTH Internship Outcomes (as relevant) in relation to each of the Activities specified in clause 142.2.

## **143. PaTH Internship Outcome Payments**

### **PaTH Internship Outcome Payments payable to the Provider**

- 143.1 Subject to this Deed, the Department will pay the Provider an Outcome Payment as specified in Table 7B or Table 7C of Annexure E1 – Payments and Employment Fund Credits, as relevant, for a PaTH Internship Outcome, provided that:
- (a) a PaTH Intern who is on the Provider’s caseload or who has been Allocated to the Provider for the purpose of undertaking a PaTH Internship has satisfied the relevant requirements for a PaTH Internship Outcome;
  - (b) the Provider has rendered a Tax Invoice for the relevant Outcome Payment to the Department within 12 months of the Completion Date and the Department accepts the Tax Invoice; and
  - (c) the Provider has complied with any relevant procedural requirements as specified in any Guidelines.

Note: To avoid doubt, clause 143.1(a) applies if the PaTH Intern is an Enhanced Services Participant or a Digital Participant.

### **Limits on PaTH Internship Outcome Payments**

- 143.2 The Department will not pay the Provider, and the Provider must not claim, an Outcome Payment under clause 143.1:
- (a) on a pro rata basis;
  - (b) where the Provider is in breach of any of clauses 110.1, 110.2 or 110.3;
  - (c) where the relevant PaTH Internship Start Date occurs outside of the Participant’s Period of Registration or after the Completion Date; or
  - (d) in any other circumstances specified in any Guidelines.

## **144. NWEF Completion Outcome Payments**

### **NWEF Completion Outcome Payments payable to the Provider**

- 144.1 Subject to this Deed, the Department will pay the Provider an Outcome Payment specified in Table 7D in Annexure E1 – Payments and Employment Fund Credits for an NWEF Completion Outcome, provided that:
- (a) a Participant who is on the Provider’s caseload or who has been Allocated to the Provider for the purpose of undertaking an NWEF Placement has satisfied the relevant requirements for an NWEF Completion Outcome;
  - (b) the Provider has rendered a Tax Invoice for the relevant Outcome Payment to the Department within 12 months of the Completion Date and the Department accepts the Tax Invoice; and
  - (c) the Provider has complied with any relevant procedural requirements as specified in any Guidelines.

Note: To avoid doubt, clause 144.1(a) applies if the Participant is an Enhanced Services Participant or a Digital Participant.

### **Limits on NWEF Completion Outcome Payments**

- 144.2 The Department will not pay the Provider, and the Provider must not claim, an Outcome Payment for an NWEF Placement under clause 144.1:
- (a) on a pro rata basis;
  - (b) where the Provider is in breach of clause 109;
  - (c) where the Participant commences in the relevant NWEF Placement outside of the Participant's Period of Registration or after the Completion Date; or
  - (d) in any other circumstances specified in any Guidelines.

### **145. Work for the Dole Fees**

- 145.1 Subject to this clause 145, the Department will pay the Provider the applicable Work for the Dole Fees as specified in Table 7E and Table 7F of Annexure E1 – Payments and Employment Fund Credits calculated in accordance with any Guidelines:
- (a) in respect of each Work for the Dole Place in an Individual Hosted Activity, when the first Participant commences in that Work for the Dole Place; and
  - (b) in respect of each Work for the Dole Place in a Group Based Activity, in accordance with clause 145.7,

provided that:

- (c) the Work for the Dole Place starts after, as relevant:
  - (i) the relevant Participant's Commencement; or
  - (ii) the Allocation of the relevant Participant to the Provider for the purpose of undertaking a Work for the Dole activity; and
- (d) the Provider has complied with Section D2.1 – Activities and any requirements for claiming the payment as specified in any Guidelines.

Note: To avoid doubt, clause 145.1(c)(ii) applies if the Participant is a Digital Participant.

- 145.2 The Provider is not entitled to payment under this Deed of:
- (a) an additional Work for the Dole Fee where, under clauses 108.12, 108.13 or otherwise, the Provider replaces a Participant who leaves a Work for the Dole Place with another Participant; or
  - (b) a Work for the Dole Fee for a Work for the Dole Place that is claimed for a DES Participant.

Note: If a DES Provider claims a Work for the Dole Place, the DES Provider must make a DES Work for the Dole Payment to the Lead Provider, or otherwise pay a fee directly to the Activity Host Organisation, as determined by the Activity Host Organisation Agreement.

- 145.3 Except as expressly provided for in this Deed, the Provider must not demand or receive any payment or any other consideration either directly or indirectly from any DES Provider or DES Participant for any reason relating to DES Participants undertaking Work for the Dole.

- 145.4 If a Work for the Dole Place in an Individual Hosted Activity ends prior to the anticipated end date registered on the Department's IT Systems, without limiting the Department's rights under this Deed, the Department may, at its absolute discretion, recover a pro-rata amount of the relevant Work for the Dole Fee from the Provider as a debt in accordance with clause 21, calculated by the Department based on the period of time from the commencement of the first Participant in the Work for the Dole Place to the date of the end of the Work for the Dole Place.
- 145.5 Subject to clause 145.9, the Provider may only use Work for the Dole Fees or DES Work for the Dole Payments for a Work for the Dole Place:
- (a) to pay the costs of a Participant or DES Participant in the relevant Work for the Dole Place;
  - (b) to make a payment to the Activity Host Organisation, either directly or through the Lead Provider, which partially or fully offsets the costs of the Activity Host Organisation in hosting the Work for the Dole Place;
  - (c) to pay Group Based Activity Overhead Costs, which may include the costs described in clause 145.5(b); and
  - (d) otherwise as permitted by any Guidelines.
- 145.6 Where the Provider Sources a Work for the Dole Place itself, it must, in accordance with any Guidelines:
- (a) subject to clause 145.5, negotiate with the relevant Activity Host Organisation as to:
    - (i) if the Work for the Dole Place is claimed for a Participant, the proportion of the Work for the Dole Fee that will be passed on to the Activity Host Organisation by the Lead Provider; or
    - (ii) if the Work for the Dole Place is claimed for a DES Participant:
      - (A) the proportion of any DES Work for the Dole Payment that will be passed on to the Activity Host Organisation by the Lead Provider; or
      - (B) the amount of any fee to otherwise be paid directly by a DES Provider to the Activity Host Organisation; and
  - (b) pass on the agreed proportion of the Work for the Dole Fee or the DES Work for the Dole Payment to the Activity Host Organisation, and keep appropriate Records of such expenditure.

Note: The Provider cannot renegotiate the cost of a Work for the Dole Place that has already been agreed between an Activity Host Organisation and a Trial Provider, unless otherwise specified in any Guidelines.

#### **Work for the Dole Fees for Group Based Activities**

- 145.7 The Lead Provider for a Group Based Activity may claim a Work for the Dole Fee either by way of:
- (a) payment in advance for each Work for the Dole Place in the Group Based Activity, in accordance with clauses 145.9 to 145.13; or
  - (b) payment by Reimbursement for each Work for the Dole Place in the Group Based Activity that was claimed for a Participant, in accordance with clauses 145.14 to 145.15.

- 145.8 The Lead Provider for a Group Based Activity must:
- (a) negotiate the relevant Group Based Activity Budget for one or more of the purposes specified in clause 145.5 with:
    - (i) the Activity Host Organisation; and
    - (ii) where applicable, with the Trial Provider or Employment Provider that Sourced the Work for the Dole Place;
  - (b) negotiate the relevant Activity Host Organisation Agreement with the Activity Host Organisation;
  - (c) unless the Activity Host Organisation otherwise agrees, be the primary point of contact for the Activity Host Organisation;
  - (d) subject to clause 145.6, discuss and agree with any other Trial Providers or Employment Providers that have claimed one or more Work for the Dole Places in the Group Based Activity:
    - (i) the proportion of the Work for the Dole Fees to be passed on to those Trial Providers or Employment Providers for one or more of the purposes specified in clause 145.5; and
    - (ii) the timeframe in which the Lead Provider will pass on that agreed proportion of the Work for the Dole Fees to those Trial Providers or Employment Providers;
  - (e) provide the agreed proportion of the Work for the Dole Fees to the other Trial Providers or Employment Providers within the agreed timeframe; and
  - (f) take any other action as specified in any Guidelines.

**Payment in advance to the Lead Provider**

- 145.9 Subject to clause 145.10 and any Guidelines, if:
- (a) a Group Based Activity has been identified and approved in the Department's IT Systems; and
  - (b) the Provider has:
    - (i) been identified as the Lead Provider for the Group Based Activity;
    - (ii) created a Group Based Activity Budget on the Department's IT Systems for that Group Based Activity in accordance with any Guidelines; and
    - (iii) entered the total cost of the Group Based Activity on the Department's IT Systems in accordance with any Guidelines,
- the Provider may claim up to 80% of the Work for the Dole Fees (up to a maximum of \$80,000) in respect of the Work for the Dole Places in that Group Based Activity and do so up to 28 calendar days in advance of the start date of the Group Based Activity.

- 145.10 In addition to any other applicable requirements in any Guidelines, if the Provider makes a claim pursuant to clause 145.9, it must, in the following order:
- (a) acquit the total of all Work for the Dole Fees and DES Work for the Dole Payments (if any) for the Work for the Dole Places in the Group Based Activity, in accordance with clause 145.11; and
  - (b) return to the Department any part of the Work for the Dole Fees:
    - (i) not spent in accordance with the Group Based Activity Budget; and
    - (ii) paid in advance by the Department for a Work for the Dole Place that was claimed by a DES Provider,  
within 10 Business Days of submission of acquittal Report in accordance with clause 145.11.
- 145.11 For the purposes of clause 145.10(a), the Provider must submit an acquittal Report:
- (a) within 56 calendar days of completion, or cessation, of the relevant Group Based Activity;
  - (b) which includes a statement from a properly authorised representative of the Provider showing the actual expenditure of Work for the Dole Fees and DES Work for the Dole Payments (if any) against the Group Based Activity Budget, and clearly identifying any Work for the Dole Fees required to be returned to the Department under clause 145.10(b); and
  - (c) which is to the complete satisfaction of the Department.
- 145.12 Subject to this Deed and:
- (a) acceptance of the acquittal Report referred to in clause 145.11 by the Department; and
  - (b) the Provider complying with clause 145.10(b),
- the Provider may claim the balance of the Work for the Dole Fees payable in respect of the Work for the Dole Places in the relevant Group Based Activity.
- 145.13 If, at any time during the Term of this Deed, the Department determines, at its absolute discretion, that an amount of Work for the Dole Fees paid in advance for a Work for the Dole Place in a Group Based Activity:
- (a) has not been acquitted in accordance with this Deed; or
  - (b) has not been returned to the Department in accordance with clause 145.10(b),
- the Department may, at its absolute discretion, recover some or all of the relevant amount of the Work for the Dole Fees from the Provider as a debt in accordance with clause 21.

**Payment by Reimbursement to the Lead Provider**

- 145.14 Subject to this Deed, including this clause 145, if the Provider has been identified as the Lead Provider for a Group Based Activity, it may claim a Work for the Dole Fee, in respect of each Work for the Dole Place in that Group Based Activity claimed for a Participant, as a Reimbursement for expenditure for one or more of the purposes specified in clause 145.5.

145.15 Each claim for Reimbursement made under clause 145.14 must be rendered by the Provider to the Department no later than 56 calendar days after the completion of the relevant Group Based Activity.

**Work for the Dole Fees for Individual Hosted Activities - multiple Work for the Dole Places**

145.16 The Lead Provider for an Individual Hosted Activity with multiple Work for the Dole Places must:

- (a) negotiate the relevant Activity Host Organisation Agreement with the Activity Host Organisation;
- (b) unless the Activity Host Organisation otherwise agrees, be the primary point of contact for the Activity Host Organisation;
- (c) subject to clause 145.6, discuss and agree with any other Trial Provider, Employment Provider or DES Provider that has claimed a Work for the Dole Place in that Individual Hosted Activity as to how and when the proportion of the Work for the Dole Fees or DES Work for the Dole Payments, as applicable, will be provided to the Lead Provider to pass on to the Activity Host Organisation;
- (d) provide the agreed proportion of the Work for the Dole Fees and DES Work for the Dole Payments to the Activity Host Organisation within the agreed timeframe; and
- (e) take any other action as specified in any Guidelines.

145.17 If the Provider is not the Lead Provider and claims a Work for the Dole Place in an Individual Hosted Activity with multiple Work for the Dole Places it must, in accordance with any Guidelines:

- (a) discuss and agree with the relevant Lead Provider as to how and when the proportion of the Work for the Dole Fees to be provided to the Activity Host Organisation as specified in the relevant Activity Host Organisation Agreement will be provided to the Lead Provider to pass on to the Activity Host Organisation; and
- (b) provide those funds to the Lead Provider within the agreed timeframe.

**Assets purchased with Work for the Dole Fees**

145.18 Subject to any contrary written direction by the Department, the Provider owns any Asset acquired using Work for the Dole Fees and/or DES Work for the Dole Payments.

145.19 The Provider must, after acquiring an Asset:

- (a) use the Asset only for the purposes of Group Based Activities and in accordance with this Deed; and
- (b) retain that Asset, and where appropriate in order to reduce the cost of subsequent Group Based Activities, or where directed to do so by the Department, continue to use that Asset in other Group Based Activities.

- 145.20 Throughout the Term of this Deed, the Provider must:
- (a) not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 145, without the Department's prior written approval;
  - (b) hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
  - (c) maintain all Assets in good working order;
  - (d) maintain all appropriate insurances for all Assets to their full replacement cost;
  - (e) if required by law, maintain registration and licensing of all Assets;
  - (f) be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets;
  - (g) maintain, during the Term of this Deed, an assets register which records for each Asset, the date of its creation or acquisition, its purchase price, as relevant, its description and its location; and
  - (h) when requested by the Department, provide copies of its assets register to the Department.
- 145.21 The Provider must develop an assets disposal plan for the continued use or Disposal of each Asset listed in the assets register required under clause 145.20(g), and comply with any Guidelines in relation to assets disposal plans.
- 145.22 At the Completion Date, the Provider must Dispose of each Asset in accordance with the assets disposal plan required under clause 145.21 with the effect that neither the Provider, nor a Related Entity, obtains any material or commercial benefit from the Disposal or subsequent use of that Asset.
- 145.23 Unless the Department agrees otherwise in writing, if any Asset is lost, damaged or destroyed, the Provider must promptly reinstate the Asset at its cost, including from the proceeds of the relevant insurance, and this clause 145 continues to apply to the reinstated Asset.

#### **Audits of Work for the Dole**

- 145.24 The Department may at any time appoint an auditor (to be paid for by the Department) to conduct an audit of any of the following:
- (a) the Provider's use of Work for the Dole Fees and/or DES Work for the Dole Payments;
  - (b) any Work for the Dole activity; or
  - (c) the Provider's assets register (clause 145.20(g)) and asset disposal plans (clause 145.21),
- and the Provider must assist the auditor to conduct the audit, including by providing access and assistance in accordance with clause 42.

#### **146. Work for the Dole Place Fees**

- 146.1 Subject to this Deed, the Department will pay the Provider a Work for the Dole Place Fee, calculated in accordance with clauses 146.2 and 146.3, for each Work for the Dole Place that:
- (a) is Sourced by the Provider;

- (b) is approved in the Department's IT Systems in accordance with this Deed; and
  - (c) has a Participant or DES Participant commence in it.
- 146.2 The Work for the Dole Place Fee payable to the Provider under clause 146.1 is the amount specified in the applicable row in Table 7F of Annexure E1 – Payments and Employment Fund Credits.
- 146.3 If a Work for the Dole Place is for a period of more or less than six months, the Work for the Dole Place Fee payable to the Provider will be a pro-rata amount of the amount specified in the applicable row in Table 7F of Annexure E1 – Payments and Employment Fund Credits, calculated on the basis of the duration of the Work for the Dole Place up to a maximum of 12 months.
- 146.4 The Department will not pay the Provider, and the Provider must not claim, a Work for the Dole Place Fee for a Work for the Dole Place that:
- (a) the Provider has not Sourced itself; or
  - (b) the Department has directed, prior to the Work for the Dole Place being claimed and filled, not be used.
- 146.5 Without limiting the Department's rights under clause 54, if a Work for the Dole Place in an Individual Hosted Activity ends prior to the anticipated end date registered on the Department's IT Systems, the Department may, at its absolute discretion, recover a pro-rata amount of the relevant Work for the Dole Place Fee from the Provider as a debt in accordance with clause 21, calculated by the Department based on the period of time from the commencement of the first Participant in the relevant Work for the Dole Place to the date of the end of the Work for the Dole Place.

## **147. Advance Payments**

- 147.1 The Department may:
- (a) at its absolute discretion, Notify the Provider that the Provider may claim a Payment in advance and the amount that may be claimed; and
  - (b) specify in the Notice any other requirements with which the Provider must comply in order to be eligible for an advance payment.
- 147.2 Subject to this Deed, if, after receiving a Notice from the Department under clause 147.1, the Provider claims a Payment in advance, then provided that the Provider has complied with any requirements in the Notice, the Department will pay the Provider the amount of the advance payment as specified in the Notice.

### **Offsetting of advance Payments**

- 147.3 On and from the date on which the Department makes a Payment in advance under this clause 147, the Department will, in such amounts and at such times as it determines, offset the Payment against all entitlements to Payments of the Provider under this Deed until the total of the offset entitlements equals the total amount of all Payments made in advance.
- 147.4 If on the Completion Date the total amount of all Payments made in advance have not been offset under clause 147.3, the difference between:
- (a) the total amount of Payments made in advance; and
  - (b) the total amount of the offset entitlements to Payments,
- is an overpayment for the purposes of clause 19.

## ANNEXURE E1 – PAYMENTS AND EMPLOYMENT FUND CREDITS

### Employment Fund

**Table 1 – General Account credits for new Commencements in Enhanced Services**

Participant type	Period	General Account credit	General Account credit with regional loading	When credited
Enhanced Services Participant	Enhanced Services Start Date to the end of the Service Period (and any Extended Service Periods)	\$1,250	\$1,500	Once on Commencement in Enhanced Services only

Note 1: In addition to Table 1, where a Participant is identified as subject to a Structural Adjustment Package or the Stronger Transitions Package, the Employment Fund will be credited in accordance with any Guidelines.

Note 2: The Mid North Coast in New South Wales and Kangaroo Island in Adelaide South will attract a regional loading.

Table 2 below sets out the amount that the Employment Fund will be credited for Transitioned Participants that commence in Enhanced Services based on their Period of Unemployment. This payment will be in addition to a partial Engagement Fee of \$500 per existing Enhanced Services Participant transitioning into the Trial.

**Table 2 – General Account credits for Transitioned Participants that transition to Enhanced Services**

Service type	Period of Unemployment	General Account credit	General Account credit with regional loading	When credited
Enhanced Services	0-12 months	\$313	\$375.60	Once on Commencement in Enhanced Services
	13-24 months	\$625	\$750	
	25+ months	\$938	\$1,125.60	

Note: The Mid North Coast in New South Wales and Kangaroo Island in Adelaide South will attract a regional loading.

### Trial Participation Payment

**Table 3 – Trial Participation Payment**

Instalment	Payment amount - fixed (GST inclusive)	Time for Payment
Instalment 1	\$55,000	Deed Commencement Date
Instalment 2	\$27,500	1 July 2020
Instalment 3	\$27,500	1 July 2021
<b>Total</b>	<b>\$110,000</b>	

Note: The variable component of the Trial Participation Payment payable in accordance with clause 133.2 is specified in item 7 of Schedule 1.

## Engagement Fees

**Table 4 – Engagement Fees**

Participant type	Fee (GST inclusive)
Transitioned Participants that commence in Enhanced Services	\$500
Enhanced Services Participants - new Commencements	\$1,000

## Outcome Payments

**Table 5 – Employment Outcome Payments for Enhanced Services Participants**

Outcome type	Duration of Employment satisfying the requirements of an Employment Outcome	Moderate JSCI score (GST inclusive)	High JSCI score (GST inclusive)
Partial	4 Week	\$240	\$400
	12 Week	\$400	\$1,000
Full	4 Week	\$500	\$1,000
	12 Week	\$1,000	\$3,000
	26 Week	\$2,000	\$5,000

Note: The amount of the Outcome Payment payable to the Provider is determined by:

- (a) the Enhanced Services Participant's JSCI score (either Moderate JSCI score or High JSCI score) as specified in the Department's IT Systems; and
- (b) whether the Enhanced Services Participant has satisfied the requirements for a Full Outcome or a Partial Outcome.

## Very Long Term Unemployment Bonus, Progress in Service Bonus and Progress Fees

**Table 6A – Very Long Term Unemployment Bonus for Enhanced Services Participants**

Outcome type	Fee (GST inclusive)
12 Week Partial Outcome	\$1,000
12 Week Full Outcome	\$2,000
26 Week Full Outcome	\$4,000

**Table 6B – Progress in Service Bonus**

Progress type	Fee (GST inclusive)
Progress from Tier 1 to Digital Plus Services	\$400
Progress from Tier 2 to Tier 1 Enhanced Services	\$500

**Table 6C – Progress Fees**

<b>Enhanced Services Participants</b>	<b>Fee (GST inclusive)</b>	<b>Claim period</b>
Tier 1 Enhanced Services Participant	\$500	Maximum of one claim for each Period of Service
Tier 2 Enhanced Services Participant	\$750	Maximum of one claim for each 24 month Period in Tier 2 Enhanced Services

**Activity Fees****Table 7A – Digital Training Fee**

<b>Participant type</b>	<b>Fee (GST exclusive)</b>
Digital Participant	\$200

**Table 7B – PaTH Internships: Outcome Payments for PaTH Interns in Non-regional Locations**

<b>PaTH Intern type</b>	<b>Period of Unemployment (less than 24 months inclusive) (GST inclusive)</b>	<b>Period of Unemployment (24-59 months inclusive) (GST inclusive)</b>	<b>Period of Unemployment (60 months inclusive plus) (GST inclusive)</b>
<b>Digital Participant</b>	\$431.20	\$539.00	\$646.80
<b>Enhanced Services Participant with Moderate JSCI score</b>	\$808.50	\$1,078.00	\$1,347.50
<b>Enhanced Services Participant with High JSCI score</b>	\$1,078.00	\$1,617.00	\$2,156.00

**Table 7C – PaTH Internships: Outcome Payments for PaTH Interns in Regional Locations**

<b>PaTH Intern type</b>	<b>Period of Unemployment (less than 24 months inclusive) (GST inclusive)</b>	<b>Period of Unemployment (24-59 months inclusive) (GST inclusive)</b>	<b>Period of Unemployment (60 months inclusive plus) (GST inclusive)</b>
<b>Digital Participant</b>	\$539.00	\$673.75	\$808.50
<b>Enhanced Services Participant with Moderate JSCI score</b>	\$1,011.16	\$1,347.50	\$1,684.91
<b>Enhanced Services Participant with High JSCI score</b>	\$1,347.50	\$2,021.25	\$2,695.00

Note: The amount of the Outcome Payment payable to the Provider is determined by:

- (a) the PaTH Intern's Period of Unemployment; and
- (b) whether the PaTH Intern was a Digital Participant or an Enhanced Services Participant on the date that the relevant PaTH Internship Agreement was created in the Department's IT Systems.

**Table 7D – NWEF Placements: NWEF Completion Outcome Payments**

<b>NWEF Completion Outcome</b>	<b>Fee (GST inclusive)</b>
<b>Digital Participants and Enhanced Services Participants</b>	\$400

**Table 7E – Work for the Dole Fees**

<b>Place</b>	<b>Fee (GST inclusive)</b>
Six month Work for the Dole Place in an Individual Hosted Activity	\$1,000
Six month Work for the Dole Place in Group Based Activity	Up to \$3,500

Note: Where a Work for the Dole Place is for more or less than six months in duration or the date on which the relevant Participant commences in the place is after the start date of the relevant Work for the Dole activity, the applicable Work for the Dole Fee will be pro-rated in accordance with any Guidelines.

**Table 7F – Work for the Dole Place Fees**

<b>Place</b>	<b>Fee (GST exclusive)</b>
Six month Work for the Dole Place in an Individual Hosted Activity or Group Based Activity in a Non-regional Location	\$100
Six month Work for the Dole Place in an Individual Hosted Activity or Group Based Activity in a Regional Location	\$125

Note 1: If the duration of a Work for the Dole Place (calculated in accordance with any Guidelines) is for more or less than six months in duration, the applicable Work for the Dole Place Fee will be pro-rated in accordance with clause 146.3.

## ATTACHMENT 1 – DEFINITIONS

### Social Security Law definitions

The terms **'Carer Payment'**, **'Disability Support Pension'**, **'Income Support Payment'**, **'Mutual Obligation Failure'**, **'Newstart Allowance'**, **'Parenting Payment'**, **'Partial Capacity to Work'**, **'Pension Age'**, **'Reasonable Excuse'**, **'Reconnection Requirement'**, **'Unemployment Failure'**, **'Work Refusal Failure'** and **'Youth Allowance'** have the meanings given to them, respectively and in their decapitalised form, in the *Social Security Act 1991* (Cth) or the *Social Security (Administration) Act 1999* (Cth) (as relevant).

The terms **'6 Active Months'** and **'Demerit'** have the meanings given to them, respectively and in their decapitalised form, in an instrument made under section 42AR of the *Social Security (Administration) Act 1999* (Cth) dealing with Mutual Obligation Failures.

### General definitions

**'4 Week Period'** means, for Employment which satisfies the requirements of an Employment Outcome, a period of 4 Consecutive Weeks:

- (a) from the Employment Outcome Start Date; and
- (b) which does not overlap with the Outcome Period for any other Outcome that has been claimed in relation to the relevant Participant by any Trial Provider or Employment Provider, except a 12 Week Period that begins from the same Employment Outcome Start Date or as otherwise provided in any Guidelines.

**'12 Week Period'** means, for Employment which satisfies the requirements of an Employment Outcome, a period of 12 Consecutive Weeks:

- (a) from the Employment Outcome Start Date; and
- (b) which does not overlap with the Outcome Period for any other Outcome that has been claimed in relation to the relevant Participant by any Trial Provider or Employment Provider, except a 4 Week Period that begins from the same Employment Outcome Start Date or as otherwise provided in any Guidelines.

**'26 Week Period'** means, for Employment which satisfies the requirements for an Employment Outcome, a period of 14 Consecutive Weeks which:

- (a) follows and is in addition to the completion of a 12 Week Period; and
- (b) does not overlap with the Outcome Period for any other Outcome that has been claimed in relation to the relevant Participant by any Trial Provider or Employment Provider, except as otherwise provided in any Guidelines.

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

**'Acceptable Reason'** means that a Participant (Mutual Obligation):

- (a) has notified the Provider, before the start time scheduled for a Mutual Obligation Requirement, that the Participant is unable to satisfy the Mutual Obligation Requirement; and
- (b) the Provider is satisfied that the Participant has a Valid Reason for being unable to satisfy the Mutual Obligation Requirement.

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

**'Account Manager'** means the person for the time being holding, occupying or performing the duties of the position specified in item 1 of Schedule 1, who has authority to receive and sign Notices and written communications for the Department under this Deed.

**‘Activity’** means an activity approved by the Department and specified in Section D2.1 – Activities for all Participants, Section D2.2 - Activities for Enhanced Services Participants, Section D2.4 – Activities for Digital Participants and any Guidelines.

**‘Activity Host Organisation’** means an organisation that hosts an Activity, but does not include:

- (a) a Launch into Work Organisation in relation to its delivery of a Launch into Work Placement;
- (b) an EST Provider in relation to its delivery of an EST Course;
- (c) a CTA Provider in relation to its delivery of a CTA Course; or
- (d) a RET Grant Recipient in relation to its delivery of a RET Activity.

**‘Activity Host Organisation Agreement’** means a written and signed agreement between the Provider and an Activity Host Organisation in relation to the provision of Activities, in accordance with any Guidelines.

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

**‘Advance Trial Payment’** means a payment made in advance by the Department to the Provider in accordance with clause 134.

**‘Allocation’** or **‘Allocated’** means an allocation of a Digital Participant to the Provider by the Contact Centre for the purpose of providing, Brokering, Purchasing or arranging an Activity for that Digital Participant, as recorded on the Department's IT Systems.

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

**‘Appointment’** means a date and time for a Contact recorded in the Electronic Calendar.

**‘Assessment’** means a formal assessment of a Participant’s level of disadvantage, conducted by:

- (a) DHS, using the JSCI and/or an ESAt or JCA;
- (b) a Provider, using the JSCI; or
- (c) a Participant, using the Job Seeker Snapshot.

**‘Asset’** means any item of tangible property which has a value equal to or greater than \$1,000 and is purchased, leased, created or otherwise brought into existence either wholly or in part with the use of a Work for the Dole Fee and/or a DES Work for the Dole Payment for the purpose of a Group Based Activity.

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

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

**‘Australian Information Commissioner’** means the person appointed to the position of that name and responsible for the administration of the Privacy Act under relevant legislation.

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

**‘Basic Rate’** has the meaning given to the term ‘basic rate’ by the *Social Security Act 1991* (Cth), where the term applies in relation to the payment of Income Support Payments.

**‘Broker’** means to acquire Activities from an Activity Host Organisation or a Supervisor, without the payment of money, and in accordance with any Guidelines.

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

**‘Business Share’** means, in relation to Trial Provider Services, the proportion of Enhanced Services Participants for each Employment Region specified in item 6.2 of Schedule 1.

**‘Capability Assessment’** means an assessment by DHS to ensure that the Mutual Obligation Requirements specified in the Participant’s Job Plan are appropriate to their circumstances and the Participant is capable of meeting them.

**‘Capability Interview’** means a contact between a Trial Provider or Other Program Provider and a Participant or Other Program participant, respectively, to ensure that the Mutual Obligation Requirements specified in the participant’s Job Plan or other employment pathway plan under the *Social Security Act 1991* (Cth) are appropriate to their circumstances and the participant is capable of meeting them.

**‘Capability Management Tool’** means the tool used by Providers to review a Participant’s barriers and vulnerability indicators, and to recommend interventions and services.

**‘Career Transition Assistance’** or **‘CTA’** means the services provided by CTA Providers.

**‘CTA Agreement’** means an agreement between the Provider and a CTA Provider that meets the requirements specified by the Department in any Guidelines.

**‘CTA Course’** means a course delivered by a CTA Provider that provides Participants with Career Transition Assistance as described in the *Career Transition Assistance Trial Panel Deed 2018-2022* or as described in the *Career Transition Assistance Panel Deed 2019-2022*, as the case may be.

**‘CTA Eligible Participant’** means a Participant who meets the eligibility requirements for CTA as specified in any Guidelines.

**‘CTA National Rollout’** means the establishment of the *Career Transition Assistance Panel* in respect of each Employment Region other than the CTA Trial Regions.

**‘CTA Provider’** means an entity that is a party to a *Career Transition Assistance Trial Panel Deed 2018-2022* with the Department, or an entity that is a party to a *Career Transition Assistance Panel Deed 2019-2022* with the Department, as the case may be, and includes that entity’s Personnel, successors and assigns, and any constituent entities of the CTA Provider’s organisation, and includes reference to a Tendering Group contracted under either the *Career Transition Assistance Trial Panel Deed 2018-2022* with the Department or the *Career Transition Assistance Panel Deed 2019-2022* with the Department, as the case may be.

**‘CTA Trial’** means the *Career Transition Assistance Trial* to be conducted by the Department from 2 July 2018 to 30 June 2022.

**‘CTA Trial Region’** means any of the following regions:

- (a) Ballarat, Victoria;
- (b) Somerset, Queensland;
- (c) Central West, New South Wales;
- (d) Adelaide South, South Australia; or
- (e) Perth North, Western 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;
- (e) in relation to a Tendering Group:
  - (i) any change in the membership of the Tendering Group;
  - (ii) a change of the lead member of the Tendering Group, if the Tendering Group has appointed a lead member for the purposes of this Deed; or
  - (iii) a Change in Control as defined in paragraphs (a) above to (d) above in any member of the Tendering Group.

**‘Change of Circumstances Reassessment’** means a formal reassessment of an Enhanced Services Participant’s level of disadvantage, using the JSCI or the Job Seeker Snapshot, which is arranged in accordance with clause 103.

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

**‘Claims Processing Training’** means the online training provided by the Department for Providers in relation to the processing of claims for Payment.

**‘Commence’** or **‘Commencement’** means for Enhanced Services Participants, the time at which the Provider has recorded the completion of the Initial Interview (which includes entering into, or updating, a Job Plan, as relevant) on 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 [Use of the Commonwealth Coat of Arms General Guidelines \(https://www.pmc.gov.au/government/commonwealth-coat-arms\)](https://www.pmc.gov.au/government/commonwealth-coat-arms).

**‘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, and includes Commonwealth Records.

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

**‘Community Development Program’** means the Commonwealth program of that name, or such other name as advised by the Department of the Prime Minister and Cabinet from time to time.

**‘Community Support Project’** means an activity which may occur on private property and which contributes to recovery efforts following a disaster event in local communities, or an activity for nationally significant projects at a local level, as specified in any Guidelines or advised by the Department.

**‘Competent Person’** means a person who has acquired through training, qualification or experience the knowledge and skills to carry out specific work health and safety tasks, and as otherwise specified in any Guidelines.

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

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

**‘Complementary Placement’** means an Activity arranged by a Workshop Provider and a Trial Provider for a Participant who has completed a Workshop in accordance with clauses 118.2 and 115.3.

**‘Complementary Service’** means an employment or training program administered by the Commonwealth, including the Department, or provided by a state or territory government (including by state or territory government funded providers), as advised by the Department, which the Provider may access to provide additional specialised assistance to a Participant.

**‘Complete’** or **‘Completed’** means, in relation to a PaTH Internship, that the relevant PaTH Intern has Participated in the PaTH Internship for the full PaTH Internship Period.

**‘Completion Date’** means either:

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

**‘Comprehensive Skills Assessment’** means a skills assessment conducted by a Transition Services Panel Member, with regard to a Stronger Transitions Eligible Participant, in accordance with the Transition Services Panel Deed 2018-2020.

**‘Comprehensive Skills Assessment Work Order’** or **‘CSA Work Order’** means a work order placed by the Provider, for a Comprehensive Skills Assessment, in a form as specified in any Guidelines or otherwise by the Department.

**‘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 of a conflict of interest, or an apparent conflict of interest arising through the Provider engaging in any activity or obtaining any interest that may interfere with or restrict the Provider in performing the Services to the Department fairly and independently.

**'Consecutive Weeks'** means a continuous period of weeks broken only by one or more Permissible Breaks, except in the case of Partial Outcomes where no Permissible Breaks are permitted, and as adjusted by DHS.

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

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

**'Contact'** means a contact between the Provider and an Enhanced Services Participant in accordance with clause 95.

**'Contact Centre'** means the service managed by the Department to provide support to Participants.

**'Contact Centre Exit'** means the exiting of a Participant from Trial Services by the Contact Centre.

**'Contact Person'** means the person specified in item 2 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).

**'CSA Amount'** means a payment for the conduct of a Comprehensive Skills Assessment.

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

**'Cybersafety Policy'** means the Department's policy of that name as specified at clauses 34.19 to 34.23.

**'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 1 October 2019, 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 (a) above; or
- (c) copied or derived from Material referred to in paragraphs (a) or (b); and  
includes all Deed Records.

**'Deed Records'** means all Records:

- (a) developed or created or required to be developed or created as part of or for the purpose of performing this Deed;

- (b) incorporated in, supplied or required to be supplied along with the Records referred to in paragraph (a) above; or
- (c) copied or derived from Records referred to in paragraphs (a) or (b); and includes all Reports.

**‘Delegate’** means a person engaged by the Provider, who is a delegate of the Secretary of the Department under the Social Security Law.

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

**‘Department Employee’** means an employee of the Commonwealth working for the Department 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 of Human Services’** or **‘DHS’** means the Australian Government agency known as the Department of Human Services, or any other name advised by the Department from time to time, and includes its officers, delegates, employees, contractors and agents.

**‘DHS Fortnight’** means the period determined under section 43(1)(b) of the *Social Security (Administration) Act 1999* (Cth) that applies to a Participant.

**‘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, DHS and the Department in relation to the Services.

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

**‘Department’s Security Policies’** means policies relating to the use and security of the Department’s IT Systems and Records, and includes the policy by the name of the Department’s External Security Policy - For Contracted Service 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 > jobactive> Provider Operations > IT Security & Access, or at such other location as advised by the Department.

**‘DES Participant’** means a person who is in receipt of services from a DES Provider.

**‘DES Provider’** means a contracted provider of services under the Disability Employment Services Deed.

**‘DES Work for the Dole Payment’** means an amount paid by a DES Provider to a Lead Provider in relation to the placement of a DES Participant in a Work for the Dole Place as specified in the relevant Activity Host Organisation Agreement.

**‘Digital First Participant’** means a Participant who is identified as a Digital First Participant in the Department’s IT Systems.

**‘Digital First Services’** means the services provided by the Department to Digital First Participants through a digital employment services platform and the Contact Centre.

**‘Digital Participant’** means a Digital First Participant or a Digital Plus Participant.

**‘Digital Plus Participant’** means a Participant who is identified as a Digital Plus Participant in the Department’s IT Systems.

**'Digital Plus Services'** means the Services provided by the Department to Digital Plus Participants through a digital employment services platform and the Contact Centre.

**'Digital Services'** means Digital First Services and Digital Plus Services.

**'Digital Training'** means the training that must be provided to Participants to assist them to use digital services to self-service, as directed by the Department.

**'Digital Training Fee'** means the Fee, set out in Table 7A in Annexure E1 – Payments and Employment Fund Credits, paid in accordance with clause 140 for the provision of Digital Training to Digital Participants.

**'Direct Registration'** or **'Directly Register'** means Registration by the Provider of a person who does not have a Referral, in accordance with clause 90 and any Guidelines.

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

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

**'Disability Employment Services'** means the services provided under the Disability Employment Services Deed administered by the Department of Social Services.

**'Disability Employment Services Deed'** means the agreement for the provision of Disability Employment Services with the Department of Social Services.

**'Disability Support Pension Recipient (Compulsory Requirements)'** means a Participant who is in receipt of the Disability Support Pension, is under the age of 35, and has compulsory requirements.

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

**'Documentary Evidence'** means those Records of the 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.

**'Drug Test Trial Participant'** means an Enhanced Services Participant who is identified as a Drug Test Trial Participant in the Department's IT Systems.

**'Drug Treatment'** means relevant treatment for the use of drugs, as appropriate to the Drug Test Trial Participant's circumstances, prescribed by an appropriately qualified medical professional.

**‘Early School Leaver’** means a person who falls within the meaning given to the term ‘early school leaver’ by the *Social Security Act 1991* (Cth) and who has early school leaver participation requirements under the Social Security Law.

**‘Education’** means any education activity unless otherwise advised by the Department.

**‘Effective Exit’** means the automatic removal of a Participant from the Department’s IT Systems as being eligible for the full range of Services when:

- (a) the Department is advised by DHS that the Participant has stopped receiving an Income Support Payment;
- (b) the Department is advised by DHS that the Participant is fully meeting their part-time Mutual Obligation Requirements and no longer needs to remain connected to the Provider;
- (c) the Participant is commenced in Disability Employment Services or the Community Development Program or equivalent;
- (d) the Participant becomes a NEIS Participant;
- (e) the Participant is commenced in the Time to Work Employment Service, except if the Participant is a Pre-release Prisoner; or
- (f) the Participant participates in an activity, or an event occurs in relation to the Participant, that the Department may advise as being an Effective Exit.

**‘Electronic Calendar’** means the electronic calendar in the Department’s IT Systems used by the Provider for managing, and/or setting dates and times for:

- (a) Referrals;
- (b) Engagements; and
- (c) referrals by the Provider to other employment services, including to Other Programs.

**‘Employability Skills Training’** or **‘EST’** means the Commonwealth initiative of that name, administered by the Department, which provides eligible Participants with employability skills training.

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

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

**‘Employment Facilitator’** means a person contracted by the Department to provide a local point of contact for the Department and who works directly with local communities, business and stakeholders, as well as certain Participants or potential Participants where required to connect them with training and job opportunities and to link them with other existing support.

**‘Employment Fund’** means funding collectively available for the General Account and the Wage Subsidy Account.

**‘Employment Outcome’** means:

- (a) a Partial Outcome; or
- (b) a Full Outcome.

**‘Employment Outcome Start Date’** means:

- (a) in the case of a Participant who is:
  - (i) in receipt of an Income Support Payment:

- (A) subject to paragraph (a)(i)(B) below, the first day of the DHS Fortnight that applies to the Participant following the relevant Job Seeker Placement Start Date; or
  - (B) if the relevant Job Seeker Placement Start Date is the first day of the DHS Fortnight that applies to the Participant, that Job Seeker Placement Start Date; or
  - (ii) not in receipt of an Income Support Payment, the relevant Job Seeker Placement Start Date; or
- (b) as otherwise specified in any Guidelines or advised by the Department.

**'Employment Preparation Activity'** means an Activity identified by the Department as an Employment Preparation Activity that the Department requires a Digital Participant to undertake, as directed by the Department and as specified in any Guidelines.

**'Employment Preparation Activity Provider'** means an entity that is approved by the Department to provide Employment Preparation Activities.

**'Employment Provider'** means any entity contracted to the Commonwealth to provide Employment Provider Services under the jobactive Deed 2015-2022.

**'Employment Provider Services'** means services of that name provided under the jobactive Deed 2015-2022.

**'Employment Region'** means a geographical area:

- (a) identified and displayed at the Labour Market Information Portal Website (lmip.gov.au), as varied by the Department at the Department's absolute discretion; and
- (b) that the Provider is contracted to service under this Deed, as specified in item 6.1 of Schedule 1.

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

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

**'Employment Systems Help 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.

**'Engagement'** means an engagement that is recorded in the Electronic Calendar in accordance with clause 94.2.

**'Engagement Fees'** means the Fees, set out in Table 4A in Annexure E1 – Payments and Employment Fund Credits, paid in accordance with clause 135.

**'Enhanced Services Start Date'** means 4 November 2019.

**'Enhanced Services'** means the services set out in PART C – GENERAL TRIAL PROVIDER SERVICES (as applicable) and PART D - ENGAGEMENT, ACTIVITIES AND COMPLIANCE (as applicable) of this Deed.

**'Enhanced Services Participant'** means a Participant who is identified as an Enhanced Services Participant in the Department's IT Systems.

**'Enhanced Services Participant (Mutual Obligation)'** means an Enhanced Services Participant who is a Participant (Mutual Obligation).

**'Enterprise Agreement'** has the same meaning given to it under the *Fair Work Act 2009*.

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

**'EST Eligible Participant'** means a Participant (Mutual Obligation) who meets the eligibility requirements for EST as specified in any Guidelines.

**'EST Provider'** means an entity that is a party to the Employability Skills Training Services Panel Deed 2017 – 2022 with the Department.

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

**'Exemption'** means circumstances recorded by DHS, resulting in an exemption by DHS from Mutual Obligation Requirements of a Participant (Mutual Obligation) for a specified period of time.

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

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

the Deed Material.

**'Exit'** means an exit of a Participant from Trial Services in accordance with clause 101.1 and **'Exited'** and **'Exits'** has an equivalent meaning.

**'Extended Service Periods'** means one or more periods of time from the end of the Service Period.

**'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.

**'Fair Work Ombudsman'** means the Fair Work Ombudsman established under the *Fair Work Act 2009* (Cth) and includes any other entity that may, from time to time, perform the functions of the Fair Work Ombudsman.

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

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

**'Full Outcome'** means that, for the duration of a 4 Week Period, 12 Week Period or 26 Week Period, as relevant, an Enhanced Services Participant:

- (a) who was in receipt of a Newstart Allowance or a Youth Allowance (other) on the relevant Employment Outcome Start Date:
  - (i) generates sufficient income from Employment or Unsubsidised Self-Employment or a full-time apprenticeship or traineeship or part-time apprenticeship or traineeship to have caused the Participant's Basic Rate of Newstart Allowance or Youth Allowance (other) to cease; or
  - (ii) remains each week in a full-time apprenticeship or traineeship;

- (b) who was:
  - (i) receiving Newstart Allowance, Youth Allowance (other) or Parenting Payment (Partnered or Single) with part-time Mutual Obligation Requirements; and
  - (ii) identified on the Department's IT Systems as a parent or as having a disability, on the relevant Employment Outcome Start Date, is, for at least 30 hours or more each fortnight, in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship;
- (c) who is:
  - (i) not in receipt of Newstart Allowance, Youth Allowance (Other) or Parenting Payment and is not otherwise identified in paragraphs (d) or (e) below; or
  - (ii) a Disability Support Pension Recipient (Compulsory Requirement); and is in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship for at least 80 hours over a 4 Week Period, or 240 hours over a 12 Week Period, and 280 hours over a 26 Week Period;
- (d) who was identified on the Department's IT Systems on the relevant Employment Outcome Start Date as having a disability and a Partial Capacity to Work, is in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship that equals or exceeds the minimum number of hours per week in the range as assessed by DHS through an ESAt or JCA, but is not less than eight hours of work each week;
- (e) who:
  - (i) was in receipt of a Parenting Payment (Partnered or Single) without Mutual Obligation Requirements, or Carer Payment on the relevant Employment Outcome Start Date; and
  - (ii) chooses to work reduced hours due to caring responsibilities (this choice being identified on the Department's IT Systems on or before the relevant Employment Outcome Start Date), is in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship for at least 30 hours each fortnight;
- (f) who was in receipt of any Income Support Payment, has, and maintains, a Significant Increase in Income; or
- (g) meets the requirements for any other event that the Department may Notify the Provider of as being a Full Outcome.

**'Full Outcome Conversion'** means a change, as specified in any Guidelines, in an Enhanced Services Participant's Employment and the change:

- (a) occurs during a 26 Week Period;
- (b) is permanent and results in a Full Outcome; and
- (c) is recorded on the Department's IT Systems in accordance with any Guidelines.

**'Full-Time'** means for a Site, Monday to Friday from 9.00 am to 5.00 pm daily on Business Days, or as otherwise agreed with the Department.

**'Full-Time Study'** means:

- (a) a university course that, for the purposes of the Higher Education Contribution Scheme, represents a standard student load for the equivalent of a full-time student;
- (b) a course that is at least 15 class contact hours a week; or
- (c) a course determined as being full-time by the relevant educational institution.

**‘General Account’** means a flexible pool of funds which is part of the Employment Fund, held by the Department and nominally credited to the Provider at the Site level, which may be accessed by Trial Providers for Reimbursement of:

- (a) purchases of goods or services which genuinely assist Enhanced Services Participants to build experience and skills to get a job; and
- (b) a Restart Wage Subsidy, Youth Wage Subsidy, Parent Wage Subsidy or Long Term Unemployed & Indigenous Wage Subsidy where the relevant Wage Subsidy Agreement was entered into on or after 2 January 2019.

**‘Group Based Activity’** means a Work for the Dole activity, hosted by an Activity Host Organisation and designed for more than one Participant or DES Participant, which involves carrying out tasks as part of a specific group project.

**‘Group Based Activity Budget’** means the Group Based Activity budget described in clause 145.9(b)(ii).

**‘Group Based Activity Overhead Costs’** means the costs directly associated with the establishment and running of a Group Based Activity, including:

- (a) the costs of Supervisors, capital equipment, transportation of Participants, rent and associated infrastructure, activity materials and training;
- (b) insurance (limited only to the additional costs of insurance where the nature of a Group Based Activity means that it is not covered by Department funded insurance, or insurance that the Provider is required to obtain in accordance with clause 44, being insurance only for the period of the Group Based Activity); and
- (c) any other item as specified by the Department,

but does not include the cost of items provided to individual Participants.

**‘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).

**‘Guide to Social Security Law’** means the [guidelines published by the Department of Social Services, \(http://guides.dss.gov.au/guide-social-security-law\)](http://guides.dss.gov.au/guide-social-security-law) as amended.

**‘Guidelines’** refers to the guidelines, if any, as described in this Deed and issued by the Department, as amended by the Department.

**‘Indigenous Australian’** means a person who:

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

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

**‘Individual Hosted Activity’** means a Work for the Dole activity, hosted by an Activity Host Organisation, in which the Work for the Dole Place(s) are designed for individual Participants or DES Participants.

**‘Initial Interview’** means an initial Contact between the Provider and a Participant in accordance with clause 96, and where appropriate, includes an Initial Interview for Enhanced Services.

**‘Initial Interview for Enhanced Services’** means an initial Contact between the Provider and an Enhanced Services Participant when the Participant has moved into Enhanced Services, and in accordance with clause 96.

**‘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; and
- (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.

**‘jobactive’** means the Commonwealth program of that name (or such other name as advised by the Department from time to time), administered by the Department.

**‘jobactive Quality Principles’** means the principles against which the Provider must demonstrate adherence to under the jobactive Deed 2015-2022.

**‘jobactive Star Rating’** means the relative measure of performance of the Provider for jobactive services delivered under the jobactive Deed 2015-2022, calculated by the Department at its absolute discretion.

**‘jobactive Website’** means the jobactive website that is owned and maintained by the Department and accessible via the internet.

**‘Job Capacity Assessment’** or **‘JCA’** means an assessment conducted by DHS to determine eligibility for the Disability Support Pension and includes assessment of barriers to employment and work capacity.

**‘Job Plan’** means the plan described in clause 97, and which includes an employment pathway plan under the *Social Security Act 1991* (Cth) and a participation plan for Disability Support Pension recipients with compulsory requirements under the *Social Security Act 1991* (Cth), or, if the *Social Security Act 1991* (Cth) is amended, any other such plans.

**‘Job Referral’** means a job opportunity that the Provider requests the Participant to act on.

**‘Job Search’** means an instance of active contact with a potential Employer to apply for a job, and includes a contact by phone or in person, by submitting a written application, or by attending a job interview.

Note: Relevant job vacancies do not need to have been publically advertised to count as a Job Search. However, looking for job vacancies in newspapers or online does not count as a Job Search unless actual contact is made with the relevant potential Employer.

**‘Job Search Period’** means, unless otherwise specified in any Guidelines, the first month and each successive month thereafter, of a Participant’s (Mutual Obligation) or Disability Support Pension Recipient’s (Compulsory Requirements) Period of Unemployment.

**‘Job Search Requirement’** means the number of Job Searches that a Participant (Mutual Obligation) or a Disability Support Pension Recipient (Compulsory Requirements) must complete, as specified in any Guidelines, and which must be specified in the Participant’s Job Plan in accordance with clause 97.8.

**‘Job Seeker Classification Instrument’ or ‘JSCI’** means the tool used by DHS and Providers 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.

**‘Job Seeker Placement’** means a Vacancy or a position in an apprenticeship or a traineeship, that is recorded or lodged on the Department’s IT Systems by the Provider as being occupied by the Participant in accordance with this Deed.

**‘Job Seeker Placement Start Date’** means:

- (a) unless paragraphs (b) or (c) below apply, the date on which the Participant first commences in a Job Seeker Placement;
- (b) if the Job Seeker Placement includes an initial Paid Induction Period, either:
  - (i) the day on which the Participant first commences in the Job Seeker Placement; or
  - (ii) the first day of continuous Employment following the Paid Induction Period, whichever the Provider selects; or
- (c) if there is a Significant Increase in Income or a Significant Increase in Pre-Existing Employment in relation to the Job Seeker Placement, the date of the relevant significant increase which the Provider records on the Department’s IT Systems, or as otherwise specified in any Guidelines or advised by the Department.

**‘Job Seeker Snapshot’** means the online version of the JSCI which may be used by a Participant.

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

**‘Joint Charter of Deed Management’** means the charter at Attachment 2 – Joint Charter of Deed Management 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.

**‘Key Performance Indicators’ or ‘KPIs’** means the indicators of that name, as specified in clause 29 and any Guidelines.

**‘Launch into Work’** means the Commonwealth program of that name designed to provide suitable Participants with training, mentoring and short-term, unpaid work experience in order to prepare Participants for employment.

**‘Launch into Work Organisation’** means an organisation that hosts a Launch into Work Placement.

**‘Launch into Work Placement’** means a placement of a Participant into a Launch into Work activity, arranged in accordance with clause 111 and any Guidelines.

**‘Lead Provider’** means the Trial Provider or Employment Provider assigned to that role in accordance with any Guidelines.

**‘Liquidated Damages’** means the amount that the Department may recover from a Provider in accordance with clause 56.

**‘Long Term Unemployed & Indigenous Wage Subsidy’** means the Wage Subsidy of that name identified in any Guidelines.

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

**‘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.

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

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

**‘Mutual Obligation Requirement’** means the activity test, participation requirements or other requirements that a Participant or Other Program participant must meet in order to receive an Income Support Payment, including a requirement that, if not complied with, would be a:

- (a) Mutual Obligation Failure;
- (b) Work Refusal Failure;
- (c) Unemployment Failure; or
- (d) failure to meet a Reconnection Requirement,

under the Social Security Law.

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

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

**‘National Work Experience Programme Placement’** or **‘NWEPP Placement’** means a short-term unpaid work experience placement that meets the eligibility requirements for a National Work Experience Programme Placement, as specified under clause 109 and any Guidelines.

**‘NEIS Allowance’** means an allowance payable by the Department to a NEIS Participant in accordance with the NEIS Participant Agreement.

**‘NEIS Assistance’** means the assistance provided to a NEIS Participant in accordance with this Deed, including any Guidelines:

- (a) including, where applicable, the payment of NEIS Allowance and NEIS Rental Assistance, NEIS Business Mentoring, monthly contact, business advice and counselling; and
- (b) for a period of 52 weeks (or as otherwise extended or reduced by the Department), commencing on the date on which the relevant NEIS Participant Agreement is approved by the Department, but excluding any period during which the NEIS Participant Agreement is suspended by the Department.

**‘NEIS Business’** means the NEIS Participant’s business, the details of which are set out in the schedule to the NEIS Participant Agreement, and which is to be operated in accordance with the NEIS Business Plan.

**‘NEIS Business Eligibility Criteria’** means the criteria specified in any Guidelines against which a proposed NEIS Business is assessed to determine if it meets the eligibility requirements for a NEIS Business.

**‘NEIS Commencement’** means the date on which a NEIS Participant commences receipt of NEIS Assistance, as identified in the Department’s IT Systems.

**‘NEIS Eligible’** means that a person meets the eligibility requirements for NEIS in accordance with any Guidelines.

**‘NEIS Participant’** means a person who is a party to a current NEIS Participant Agreement and who is in receipt of NEIS Assistance.

**‘NEIS Participant Agreement’** means an agreement, in a form prescribed by the Department:

- (a) entered into between a NEIS Prospective Participant and the Department; and
- (b) for a period of 52 weeks (or as otherwise extended or reduced by the Department), commencing on the date on which the relevant NEIS Participant Agreement is approved by the Department, but excluding any period during which the NEIS Participant Agreement is suspended by the Department.

**‘NEIS Prospective Participant’** means a person who has been assessed by the NEIS Provider as NEIS Eligible and has not executed a NEIS Participant Agreement.

**‘NEIS Provider’** means any entity that is contracted by the Commonwealth to provide NEIS Services under Part C of the jobactive Deed 2015-2022, including the Provider, where relevant.

**‘NEIS Rental Assistance’** means rental assistance payable by the Department to a NEIS Participant in accordance with the NEIS Participant Agreement.

**‘NEIS Services’** means the Services that must be provided by the NEIS Provider to NEIS Prospective Participants and NEIS Participants in accordance with clause 118, including for the purpose of assisting NEIS Participants in establishing and running viable new small businesses in accordance with any Guidelines or written instructions issued by the Department.

**‘NEIS Training’** means training for a Certificate IV in New Small Business or Certificate III in Micro Business Operations, or as otherwise advised by the Department, and which must be undertaken in a face to face setting, unless otherwise specified in any Guidelines.

**‘New Employment Services’** or **‘NES’** means the Australian Government's new model of employment services.

**‘Non-Payable Employment Outcome’** means one or more of the following:

- (a) Employment, including a retail position, involving nudity or in the sex industry;
- (b) volunteer work;
- (c) Activities;
- (d) unpaid work;
- (e) a job that involves taking up employment in another country, regardless of whether the salary is paid in Australian Dollars or by an Australian company;
- (f) a job involving illegal activity;
- (g) a job involving income or funds from gambling deemed to be inappropriate by the Department;
- (h) Employment that started before the Commencement of the relevant Participant in Enhanced Services except where a Significant Increase in Income or a Significant Increase in Pre-Existing Employment applies to the Employment;
- (i) a program, including a Work Trial program, funded by the Australian Government, or a state or territory government, including a Complementary Service and as advised by the Department;
- (j) non-ongoing Employment or a Work Trial where the Enhanced Services Participant’s wages are subsidised by the Provider’s own funds and the Provider subsequently seeks Reimbursement of the subsidy from the Employment Fund;

- (k) a 4 Week Period Employment Outcome if:
  - (i) the Provider has claimed an Outcome Payment in relation to another Enhanced Services Participant that previously occupied the same or a similar position (the prior outcome); and
  - (ii) the Employment Outcome Start Date occurs less than 12 weeks after the end of the Outcome Period for the prior outcome;
- (l) Employment that contravenes Commonwealth, state or territory legislation or provides terms and conditions of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws, excluding where the Employment has not been paid in accordance with any applicable Enterprise Agreement, Modern Award or the National Minimum Wage;
- (m) Employment that pays a commission as either the entire remuneration or part of the remuneration, except where the commission being paid to the Participant is in addition to an amount which is paid to the Participant in accordance with any applicable Commonwealth, state or territory legislation and any applicable Modern Award or the National Minimum Wage;
- (n) Employment or Unsubsidised Self-Employment which is Recurring, except for:
  - (i) 4 Week Period Full Outcomes and 4 Week Period Partial Outcomes; and
  - (ii) Employment Outcomes that satisfy item (f) of the definition of Full Outcome; or
- (o) any other situation that the Department may advise or as specified in any Guidelines.

**'Non-Payable Outcome'** means a Non-Payable Employment Outcome.

**'Non-regional Location'** means a location identified on the Department's IT Systems as not attracting a regional loading.

**'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 73 and 'Notify' has an equivalent meaning.

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

**'NWEP Completion Outcome'** means an eligible Participant has participated in an NWEP Placement for at least two weeks.

**'NWEP Incentive'** means an amount of \$300, unless otherwise specified in any Guidelines, payable to an Activity Host Organisation for an NWEP Placement that meets the eligibility requirements for an NWEP Incentive, as specified under clause 109 and any Guidelines.

**'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.

**'Other Program'** means:

- (a) ParentsNext; or
- (b) Disability Employment Services.

**‘Other Program Provider’** means a:

- (a) ParentsNext Provider; or
- (b) DES Provider.

**‘Outcome’** means only an Employment Outcome, a PaTH Internship Outcome or an NWEF Completion Outcome.

**‘Outcome Payment’** means a Fee for:

- (a) an Employment Outcome as set out in and below Table 5 in Annexure E1 – Payments and Employment Fund Credits;
- (b) a PaTH Internship Outcome as set out in Table 7B or Table 7C in Annexure E1 – Payments and Employment Fund Credits; or
- (c) an NWEF Completion Outcome as set out in Table 7D in Annexure E1 – Payments and Employment Fund Credits.

**‘Outcome Period’** means for an Employment Outcome, the period from the relevant Employment Outcome Start Date to the achievement of a 4 Week Period, 12 Week Period or 26 Week Period, as relevant.

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

**‘Paid Induction Period’** is a period before the start of continuous Employment of a Participant where the Participant undergoes associated job training supported by the Employer and where the Employer remunerates the Participant in compliance with all applicable legislation.

**‘Parent Wage Subsidy’** means the Wage Subsidy of that name identified in any Guidelines.

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

**‘ParentsNext Deed’** means the agreement for the provision of ParentsNext services with the Department as varied from time to time.

**‘ParentsNext Provider’** means any entity that is a party to a ParentsNext Deed with the Department.

**‘Part-Time’** means, for a Site, set weekly hours on Business Days with hours of operation less than Full-Time, as agreed with the Department.

**‘Partial Outcome’** means that, for the duration of a 4 Week Period or a 12 Week Period, as relevant, an Enhanced Services Participant:

- (a) who was in receipt of Newstart Allowance or Youth Allowance (other) on the relevant Employment Outcome Start Date, generates sufficient income in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship to reduce the Participant’s Basic Rate of Newstart Allowance or Youth Allowance (other) by an average of at least 60 per cent;
- (b) who was:
  - (i) in receipt of Newstart Allowance, Youth Allowance (other) or Parenting Payment (Partnered or Single) with part time Mutual Obligation Requirements; and
  - (ii) identified on the Department’s IT Systems as a parent or as having a disability, on the relevant Employment Outcome Start Date, is in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship for an average of 10 or more hours per week;

- (c) who is:
  - (i) not in receipt of Newstart Allowance, Youth Allowance (Other) or Parenting Payment and is not otherwise identified in paragraphs (d) or (e) below; or
  - (ii) a Disability Support Pension Recipient (Compulsory Requirements); and is in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship for an average of 15 or more hours per week, which does not lead to a Full Outcome;
- (d) who was identified on the Department's IT Systems on the relevant Employment Outcome Start Date as having a disability and a Partial Capacity to Work, is in Employment, Unsubsidised Self-Employment or an apprenticeship or a traineeship that is on average at least 70 per cent of the minimum number of hours per week in the range as assessed by DHS through an ESAt or JCA but is not less than an average of 8 hours of work per week;
- (e) who:
  - (i) was in receipt of a Parenting Payment (Partnered or Single) without Mutual Obligation Requirements or Carer Payment on the relevant Employment Outcome Start Date; and
  - (ii) chooses to work reduced hours due to caring responsibilities (this choice being identified on the Department's IT Systems on or before the relevant Employment Outcome Start), is in Employment or Unsubsidised Self-Employment or an apprenticeship or a traineeship for an average of 10 hours or more per week;
- (f) has in operation an executed NEIS Participant Agreement and is receiving NEIS Assistance; or
- (g) meets the requirements for any other event that the Department may Notify the Provider as being a Partial Outcome.

**'Participant'** means a person, who is identified by DHS, the Department, or the Provider on the Department's IT Systems as eligible for receiving Trial Services, and includes a Digital Participant, an Enhanced Services Participant, a Participant (Mutual Obligation), a Participant (Voluntary), a Disability Support Pension Recipient (Compulsory Requirements) and any other person identified in any Guidelines.

**'Participant (Mutual Obligation)'** means a Participant with Mutual Obligation Requirements, including any Participant as specified in any Guidelines, but excluding a Disability Support Pension Recipient (Compulsory Requirements).

**'Participant (Voluntary)'** means a Participant who:

- (a) is subject to an Exemption;
- (b) has part-time Mutual Obligation Requirements and is fully meeting their Mutual Obligation Requirements;
- (c) has a temporary reduced work capacity of less than 15 hours per week, as determined by an ESAt or JCA, for the period determined by an ESAt or JCA;
- (d) is a PCW Participant with a current and future work capacity of less than 15 hours per week;
- (e) is a Stronger Transitions Eligible Participant; or
- (f) is otherwise identified by the Department as being a Participant (Voluntary),

and volunteers to participate in additional activities.

**'Participant Services Records'** means Deed Records (including documents associated with the Customer feedback register) about a Participant, that are directly created for the purposes of providing Services.

**‘Participated’** means, in relation to a PaTH Internship, that the relevant PaTH Intern has participated in the PaTH Internship in accordance with any Guidelines.

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

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

**‘PaTH Intern’** means a Participant (Mutual Obligation) who meets the eligibility requirements for a PaTH Intern as specified in any Guidelines.

**‘PaTH Internship’** means a short-term unpaid work experience placement that meets the eligibility requirements of a PaTH Internship as specified in any Guidelines.

**‘PaTH Internship Agreement’** means an Activity Host Organisation Agreement between the Provider, an Activity Host Organisation and a PaTH Intern in relation to a PaTH Internship, in accordance with any Guidelines.

**‘PaTH Internship Amount’** means an amount of \$1000, unless otherwise specified in any Guidelines.

**‘PaTH Internship Outcome’** means that a PaTH Intern has:

- (a) Completed a PaTH Internship;
- (b) Participated in a PaTH Internship for at least 2 weeks and then obtained Employment with either:
  - (i) the relevant Activity Host Organisation; or
  - (ii) another Employer, prior to the end of the PaTH Internship Period; or
- (c) Participated in the PaTH Internship for at least 4 weeks and then agreed with the Provider and the relevant Activity Host Organisation to end the relevant PaTH Internship prior to the end of the PaTH Internship Period.

**‘PaTH Internship Period’** means a period, of no less than 4 weeks and no more than 12 weeks, that is specified in the relevant PaTH Internship Agreement as being the duration of the PaTH Internship.

**‘PaTH Internship Start Date’** means the date on which the PaTH Intern commences in the relevant PaTH Internship, if that day occurs during the Participant’s Period of Registration.

**‘Payment Period’** means, for Advance Trial Payments:

- (a) the period which starts on the Enhanced Services Start Date and ends on 31 December 2019; and
  - (b) each subsequent consecutive six month period during the Term of this Deed,
- unless otherwise advised by the Department.

**‘Payments’** means the Fees, Reimbursements and Ancillary Payments payable under this Deed.

**‘Pay Slip Verified Outcome Payment’** means an Outcome Payment for an Employment Outcome that is verified by a pay slip, payroll summary or other evidence in accordance with any Guidelines.

**‘Period in Tier 2 Enhanced Services’** means a period:

- (a) which commences on the date on which a Tier 2 Enhanced Services Participant Commences in Tier 2 Enhanced Services;
- (b) which is halted when the Tier 2 Enhanced Services Participant is Suspended and recommences when the Suspension ends;
- (c) which ends on the date on which the Tier 2 Enhanced Services Participant moves into Tier 1 Enhanced Services, Digital Services or is Exited; and
- (d) during which the Provider must provide Tier 2 Enhanced Services to the Tier 2 Enhanced Services Participant.

**'Period of Registration'** means the continuous period that a Participant is serviced by the Provider, beginning:

- (a) in the case of an Enhanced Services Participant, on their Commencement; or
- (b) in the case of a Digital Participant, when they are Allocated to the Provider,

and which halts when the Participant is Suspended and recommenced when the Suspension ends, and which ends when:

- (c) in the case of an Enhanced Services Participant, when they are transferred from the Provider in accordance with this Deed;
- (d) in the case of a Digital Participant, when the Services for which the Digital Participant was Allocated to the Provider cease or are completed; or
- (e) the Participant is Exited.

**'Period of Service'** means a period:

- (a) which begins as specified in the Department's IT Systems;
- (b) which halts when the Participant is Suspended and recommences when the Suspension ends; and
- (c) which ends when the Participant Exits.

**'Period of Unemployment'** means the period which commences on the date on which a Participant registers with DHS, and concludes in accordance with clause 102.1.

**'Permissible Break'** means, where an Enhanced Services Participant is working towards a Full Outcome, a period of time during which a Participant has a break in Employment caused by a situation which is outside the control of the Participant or the Provider and which satisfies the requirements specified in any Guidelines.

**'Personal Event'** means a Participant's personal event that has been recorded in their Electronic Calendar.

**'Personal Event Time'** means the time that a Personal Event is scheduled to occur.

**'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.

**'Post-placement Support'** means support and assistance provided to Participants and/or Employers to help sustain the Employment of a Participant, in accordance with any Guidelines, and may include the provision of mentoring and coaching, work-related training, work-related equipment and attire, support through the Employment Fund and/or Wage Subsidies, and other relevant support.

**'Pre-existing Employment'** means a position in Employment, Unsubsidised Self Employment, an apprenticeship or traineeship occupied by the Enhanced Services Participant prior to them receiving Trial Provider Services from any Trial Provider.

**'Pre-release Prisoner'** means a Participant who is identified as a Pre-release Prisoner in the Department's IT Systems and specified as such in any Guidelines.

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

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

**'Progress Fees'** means the Fees, set out in Table 6C in Annexure E1 – Payments and Employment Fund Credits, and paid in accordance with clause 139.

**'Progress in Service Bonus'** means the Fees, set out in Table 6B in Annexure E1 – Payments and Employment Fund Credits, and paid in accordance with clause 138.

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

**'Provider'** means the employment services 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 Tendering Group contracted under this Deed, where applicable.

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

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

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

the Deed Records.

**'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.

**'Purchase'** means to acquire Activities from an Activity Host Organisation or a Supervisor by the payment of money, in accordance with any Guidelines, but excludes transfer or payment of money between Trial Providers and/or Employment Providers as part of collaborating on Work for the Dole activities.

**'Quality Assurance Framework Certificate'** or **'QAF Certificate'** means a certificate, issued by the Department, under the jobactive Deed 2015-2022.

**'Reasonable Excuse'** has the meaning given to the term 'reasonable excuse' in the Social Security Law.

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

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

**'Recurring'** means Employment or Unsubsidised Self-Employment which results in more than one Employment Outcome for the same Enhanced Services Participant during the same Period of Unemployment with the same Employer, as specified in any Guidelines.

**'Referral'** or **'Referred'** means a referral of an Enhanced Services Participant to the Provider by DHS or the Department.

**‘Regional Location’** means a location identified in Note 2 of Table 1 of Annexure E1 – Payments and Employment Fund Credits, or on the Department’s IT Systems as attracting a regional loading.

Note: Note 2 of Table 1 in Annexure E1 – Payments and Employment Fund Credits indicates the locations that attract a regional loading, however, to the extent of any inconsistency between this table and the Department’s IT Systems with respect to relevant locations, the Department’s IT Systems prevails.

**‘Regional Employment Trials’** or **‘RET’** means the Commonwealth program of that name, administered by the Department, designed to support local stakeholders to develop and implement tailored projects across 10 selected disadvantaged regions. The program also includes earlier access to RATTUAJ for eligible job seekers.

**‘Register’**, **‘Registration’** or **‘Registered’** means the act of registering the creation or activation of 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.

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

**‘Related Entity’** means:

- (a) those parts of the Provider other than Own Organisation;
- (b) ‘entities connected with a corporation’ as defined in section 64B of the *Corporations Act 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 (d)(iv) of this definition, controls the Provider; or
- (e) an entity, where a familial or spousal relationship between the principals, owners, Directors, officers or other like persons exists between that entity and the principals, owners, Directors, officers or like persons of the Provider.

**‘Relocation Assistance to Take Up a Job Agreement’** or **‘RATTUAJ Agreement’** means a written agreement, entered into between a Provider and a RATTUAJ Participant in relation to a RATTUAJ Payment, in a form as specified in any Guidelines.

**‘Relocation Assistance to Take Up a Job Participant’** or **‘RATTUAJ Participant’** means a Participant who meets the eligibility requirements for a RATTUAJ Participant, as specified in any Guidelines.

**‘Relocation Assistance to Take Up a Job Payment’** or **‘RATTUAJ Payment’** means a payment to assist a RATTUAJ Participant to prepare to relocate, to move and/or to settle into a new location, in the amounts the RATTUAJ Participant is eligible in accordance with any Guidelines.

**‘Relocation Assistance to Take Up a Job Placement’** or **‘RATTUAI Placement’** means an Employment position that meets the eligibility requirements for a RATTUAI Placement, as specified in any Guidelines.

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

**‘Request for Quotation’** or **‘RFQ’** means a request for quotation for a Comprehensive Skills Assessment issued by the Provider to a TSP Member.

**‘Restart Wage Subsidy’** means the Wage Subsidy of that name identified in any Guidelines.

**‘RET Activity’** means an Activity provided by a RET Grant Recipient.

**‘RET Grant Recipient’** means an entity that has a funding agreement with the Commonwealth under which it is funded to provide RET Activities, among other things.

**‘RET Partnering Provider’** means, in relation to a RET Activity, the Trial Provider, Transition to Work Provider or ParentsNext Provider that is the nominated partnering provider for that RET Activity in accordance with any Guidelines.

**‘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-help Facilities’** means personal computers or similar devices with broadband internet connectivity, printers and other sundry equipment and local area wireless technology that allows an electronic device to exchange data or connect to the Internet (i.e. Wi-Fi access) at no charge to Participants in accordance with any specifications that may be notified by the Department from time to time and any Guidelines.

**‘Serious Non-vocational Barrier’** means, for a Vulnerable Person, a Non-vocational Barrier that requires immediate intervention with a view to stabilising the circumstances of the Vulnerable Person.

**‘Service Guarantee’** means a set of minimum service standards for Enhanced Services as specified in Attachment 3 – Service Guarantee, and any other Service Guarantee as otherwise Notified by the Department.

**‘Service Period’** means, subject to any contrary stipulation in this Deed, the period from the Service Start Date to 30 June 2022.

**‘Services’** means:

- (a) Trial Participation Services;
- (b) Trial Provider Services;
- (c) any additional services to be provided by the Provider under clause 14; and
- (d) any other services reasonably related or required to be provided by the Provider for the proper provision of the Services under this Deed,

but does not include Digital Services.

**‘Services for Digital Participants’** means the Services set out in PART C – GENERAL TRIAL PROVIDER SERVICES (as applicable) and PART D - ENGAGEMENT, ACTIVITIES AND COMPLIANCE (as applicable).

**‘Services for Digital Participants Start Date’** means 1 October 2019.

**‘Significant Increase in Income’** means circumstances where an Enhanced Services Participant:

- (a) participates in Employment, Unsubsidised Self Employment, an apprenticeship or a traineeship that:
  - (i) was first occupied by the Participant during their current Period of Unemployment; and
  - (ii) did not satisfy a 4, 12 or 26 Week Period for a Full Outcome because the income earned or hours worked were insufficient to satisfy the relevant paragraph (a)-(e) of the definition of a Full Outcome; and
- (b) generates sufficient income from Employment, Unsubsidised Self Employment, an apprenticeship or a traineeship to have caused the Participant’s Basic Rate of Income Support Payment to cease.

**‘Significant Increase in Pre-existing Employment’** means circumstances where the income received or hours worked (as relevant) by the Enhanced Services Participant from Pre-existing Employment increases:

- (a) after their commencement in the Trial;
- (b) from less than the level of income or hours described at the relevant item (a)-(g) of the definition of a Partial Outcome to the level of income or hours described at the relevant item (a)-(f) of the definition of a Full Outcome; and
- (c) as specified in any Guidelines or advised by the Department.

**‘Site’** means the one or more physical locations in an Employment Region specified in item 6.3 of Schedule 1, as relevant.

**‘Social Security Appeals Process’** means reviews and appeals of decisions made under the *Social Security Act 1991* (Cth) or *Social Security (Administration) Act 1999* (Cth).

**‘Social Security Law’** means the *Social Security Act 1991* (Cth), the *Social Security (Administration) Act 1999* (Cth), and includes all relevant subordinate legislation and the Guide to Social Security Law and instruments, each as amended from time to time.

**‘Source’** means the act of identifying and securing a Work for the Dole Place by providing or arranging the same, and ‘Sourced’ and ‘Sources’ have an equivalent meaning.

**‘Stronger Transitions Eligible Participant’** means an Enhanced Services Participant who is eligible for services under the Stronger Transitions Package, in accordance with any Guidelines.

**‘Stronger Transitions Package’** means the package of support described in the Mid-Year Economic and Fiscal Outlook 2017-18 under the Stronger Transitions – transition of retrenched workers into future jobs measure.

**‘Stronger Transitions Region’** means a region, as specified in any Guidelines, in which services under the Stronger Transitions Package are provided by a TSP Member.

**‘Stronger Transitions Support Statement’** means a statement provided to a Stronger Transitions Eligible Participant who has participated in pre-Trial support under the Stronger Transitions Package by their Employment Facilitator which outlines the training and support that the Stronger Transitions Eligible Participant has received to date, as part of the Stronger Transitions Package.

**‘Structural Adjustment Package’** means a package of services and support available to eligible Participants as part of a labour or structural adjustment programme announced by the Australian Government and included in any Guidelines.

**‘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.

**‘Supervisor’** means a person who has the responsibility for the Supervision of Participants engaged in an Activity.

**‘Supervision’** means the action or process of directly monitoring and managing Participants participating in Activities.

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

**‘Suspension’** means a period of time of that name, as recorded by either the Provider (in accordance with this Deed), the Department or DHS on the Department’s IT System, during which Engagement Fees will not be triggered for payment and the requirement to provide Trial Provider Services to a Participant is suspended in accordance with clause 100.

**‘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.

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

**‘Term of this Deed’** refers to the period described in clause 2.1.

**‘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, successor and assigns, and any constituent entities of the Third Party IT Vendor's organisation. A 'Third Party IT Vendor' includes a cloud services vendor, an infrastructure as a service vendor, a software as a service vendor, a platform as a service vendor, an applications management vendor, and also any vendor of infrastructure (including servers and network hardware) used for the purpose of Accessing or storing Records.

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

**‘Third Party 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.

**‘Tier’** means either or both of Tier 1 and Tier 2.

**‘Tier 1’** means the group of Services specified in PART C – GENERAL TRIAL PROVIDER SERVICES as Tier 1, which are to be provided for Tier 1 Enhanced Services Participants.

**‘Tier 1 Enhanced Services Participant’** means an Enhanced Services Participant who is identified in the Department’s IT Systems as a Tier 1 Enhanced Services Participant.

**‘Tier 2’** means the group of Services specified in PART C – GENERAL TRIAL PROVIDER SERVICES as Tier 2, which are to be provided for Tier 2 Enhanced Services Participants.

**‘Tier 2 Enhanced Services Participant’** means an Enhanced Services Participant who is identified in the Department’s IT Systems as a Tier 2 Enhanced Services Participant.

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

**‘Time to Work Participant’** means a person who is participating in the Time to Work Employment Service.

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

**‘Training Block 1 Course’** means a course of that name delivered by EST Providers that is designed to equip young job seekers with pre-employment skills and prepare them to meet the expectations of Employers.

**‘Training Block 2 Course’** means a course of that name delivered by EST Providers that is designed to equip young job seekers with advanced job hunting, career development and interview skills.

**‘Transition Date’** means the date on which a Transitioned Participant is transferred to the Provider in the Department’s IT Systems, or as otherwise Notified by the Department.

**‘Transitioned Participant’** means a person identified as transitioned to the Provider by the Department’s IT Systems.

**‘Transition Period’** means the period, if any, Notified by the Department to the Provider in accordance with clause 59.1.

**‘Transition Plan’** means the plan prepared under the Time to Work Employment Service that identifies a Time to Work Participant’s post-release requirements for parole; reintegration and rehabilitation services; vocational Education, Employment and other activities; and support services.

**‘Transition Services Panel Member’** or **‘TSP Member’** means an entity contracted by the Department to provide services for the purposes of the Stronger Transitions Package under the Transition Services Panel Deed 2018-2020.

**‘Transition to Work Participant’** means a Participant who is participating in the Transition to Work Service.

**‘Transition to Work Provider’** means any entity contracted by the Commonwealth to provide Transition to Work Services under the Transition to Work Deed 2016-2022.

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

**‘Trial’** means the trial, administered by the Department, that will test key aspects of the New Employment Services.

**‘Trial Participation Payment’** means the Fee, set out in Table 3 in Annexure E1 – Payments and Employment Fund Credits and in item 7 of Schedule 1, paid in accordance with clause 133.

**‘Trial Participation Services’** means the services set out in PART B – TRIAL PARTICIPATION SERVICES of this Deed.

**‘Trial Provider’** means any entity contracted by the Commonwealth to provide Services under the New Employment Services Trial Deed 2019-2022.

**‘Trial Provider Services’** means:

- (a) Enhanced Services; and
- (b) Services for Digital Participants.

**‘Trial Services’** means Trial Provider Services and Digital Services.

**‘Unsubsidised Self-Employment’** means self-employment where a Participant does not receive a personal income subsidy of any kind.

**‘Unsuitable’** means that a position is, in accordance with any Guidelines:

- (a) a position, including a retail position, involving nudity or in the sex industry;
- (b) a position in volunteer work, work experience or unpaid work;
- (c) except in relation to wage rates, a position in contravention of Commonwealth, state or territory legislation or which involves terms and conditions of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws;
- (d) in relation to wage rates, a position sourced by the Provider where the wage rate paid is not at least equivalent to the rate specified in clause 104.3(a)(i) or 104.3(a)(ii), as relevant;
- (e) a position in a training course;
- (f) a position in a program funded by the Commonwealth or by a state or territory government as advised by the Department;
- (g) in another country, regardless of whether the salary is paid in Australian dollars or by an Australian company;
- (h) a position involving illegal activity;
- (i) a position involving income or funds from gambling deemed to be inappropriate by the Department;
- (j) a position that pays a commission as either the entire remuneration or part of the remuneration, except where the commission being paid to the Participant is in addition to an amount which is paid to the Participant in accordance with any applicable Commonwealth, state or territory legislation and any applicable Modern Award or the National Minimum Wage; or
- (k) a position that the Department has advised is not acceptable.

**‘Vacancy’** means a:

- (a) vacant position for:
  - (i) paid Employment with an Employer; or
  - (ii) Unsubsidised Self Employment; or
- (b) Pre-existing Employment,

that is not Unsuitable.

**‘Valid Reason’** means a valid reason as specified in any Guidelines.

**'Very Long Term Unemployment Bonus'** means the Fee, set out in Table 6A in Annexure E1 – Payments and Employment Fund Credits, paid in accordance with clause 137.

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

**'Voluntary Work'** means an Activity which meets the criteria specified by the Department for voluntary work in any Guidelines, provides Participants with opportunities to gain personal and workplace skills that will directly improve their Employment prospects and is undertaken in a not-for-profit Activity Host Organisation.

**'Volunteer'** means a person who is:

- (a) in receipt of Income Support Payments, but:
    - (i) does not have Mutual Obligation Requirements; or
    - (ii) is not a Disability Support Pension Recipient (Compulsory Requirements);
  - (b) a full-time student seeking an apprenticeship or traineeship;
  - (c) not in receipt of Income Support Payments and is not:
    - (i) undertaking Full-Time Study, unless the purpose for seeking Services from the Provider is to obtain an apprenticeship or traineeship;
    - (ii) Employed for 15 hours or more each week;
    - (iii) an overseas visitor on a working holiday visa or an overseas student studying in Australia;
    - (iv) prohibited by law from working in Australia; or
  - (d) otherwise identified by the Department as being a Volunteer,
- and volunteers to participate in additional activities.

**'Volunteer Online Employment Services Trial'** means the Commonwealth initiative of that name (or such other name as advised by the Department from time to time), administered by the Department.

**'Volunteer Online Employment Services Trial Participant'** means a person who is identified in the Department's IT Systems as participating in the Volunteer Online Employment Services Trial.

**'Vulnerable Person'** means a person who is:

- (a) a Vulnerable Youth;
- (b) a Vulnerable Youth (Student); or
- (c) otherwise identified by the Department as being a Vulnerable Person.

**'Vulnerable Youth'** means a person who:

- (a) is aged 15 to 21 years;
- (b) is not Employed for more than 15 hours per week;
- (c) is not in Full-Time Study;
- (d) is not in receipt of Income Support Payments;
- (e) has at least one Serious Non-vocational Barrier; and
- (f) has a legal right to work in Australia.

**'Vulnerable Youth (Student)'** means a person who:

- (a) is aged 15 to 21 years;
- (b) is in Full-Time Study;

- (c) presents in crisis;
- (d) has at least one Serious Non-vocational Barrier; and
- (e) has a legal right to work in Australia.

**‘Wage Subsidy’** means a payment identified as a Wage Subsidy in any Guidelines, and any other wage subsidy as advised by the Department.

**‘Wage Subsidy Account’** means funds collectively available within the Employment Fund for Reimbursement of:

- (a) a Restart Wage Subsidy, Youth Wage Subsidy, Parent Wage Subsidy or Long Term Unemployed & Indigenous Wage Subsidy where the relevant Wage Subsidy Agreement was entered into prior to 2 January 2019; and
- (b) a Youth Bonus Wage Subsidy.

**‘Wage Subsidy Agreement’** means an agreement for the purposes of the Wage Subsidy substantially in a form specified by the Department.

**‘Wage Subsidy Employer’** means an Employer who meets the eligibility requirements for a Wage Subsidy as specified in any Guidelines.

**‘Wage Subsidy Participant’** means a Participant who meets the eligibility requirements for a Wage Subsidy as specified in any Guidelines.

**‘Wage Subsidy Period’** means the payment period for a Wage Subsidy as specified in any Guidelines.

**‘Wage Subsidy Placement’** means an Employment position that meets the eligibility requirements for a Wage Subsidy as specified in any Guidelines.

**‘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 Experience (Other) Placement’** means a short-term, observational, unpaid work experience placement that meets the eligibility requirements for a Work Experience (Other) Placement as specified under clause 109.1 and any Guidelines.

**‘Work for the Dole’** means the Commonwealth program of that name designed to help job seekers gain the skills, experience and confidence that they need to move to work as soon as possible, while at the same time, making a positive contribution to their local community.

**‘Work for the Dole Fees’** means the Fees set out in Table 7E and Table 7F in Annexure E1 – Payments and Employment Fund Credits.

**‘Work for the Dole Place’** means a place in Work for the Dole activities of a minimum of 15 hours per week duration and in accordance with any Guidelines in which a Participant or DES Participant can participate.

**‘Work for the Dole Place Fee’** means the Fee specified at clause 146.2.

**‘Working with Children Laws’** means the:

- (a) *Child Protection (Working with Children) Act 2012* (NSW);
- (b) *Working with Children (Risk Management and Screening) Act 2000* (Qld);
- (c) *Working with Children (Criminal Record Checking) Act 2004* (WA);
- (d) *Working with Children Act 2005* (Vic);
- (e) *Children’s Protection Act 1993* (SA);
- (f) *Working with Vulnerable People (Background Checking) Act 2011* (ACT);
- (g) *Care and Protection of Children Act 2007* (NT);
- (h) *Registration to Work with Vulnerable People Act 2013* (Tas); and
- (i) any other legislation that provides for the checking and clearance of people who work with Children.

**‘Workshop’** means an ‘Exploring Being My Own Boss’ workshop or any other workshop specified by the Department to be a Workshop.

**‘Workshop Provider’** means a NEIS Provider that is contracted by the Department to deliver Workshops (including the Provider where relevant).

**‘Work Trial’** means a short period of paid employment on a trial or probation basis.

**‘Youth Bonus Wage Subsidy’** means the Wage Subsidy of that name identified in any Guidelines.

**‘Youth Wage Subsidy’** means the Wage Subsidy of that name identified in any Guidelines.

## ATTACHMENT 2 – JOINT CHARTER OF DEED MANAGEMENT



Australian Government  
Department of Employment,  
Skills, Small and Family Business

### EMPLOYMENT SERVICES JOINT CHARTER OF DEED MANAGEMENT

The Department of Employment, Skills, Small and Family Business ('the Department') and providers delivering services under this Deed (and all other employment services deeds with the Department) agree to conduct themselves in accordance with this Joint Charter of Deed Management.

#### A JOINT APPROACH FOR STRONGER EMPLOYMENT SERVICES

The Employment Services Joint Charter reflects our commitment to work together to ensure that employment services meet the needs of participants, employers, communities and the Australian Government.

Together, we are committed to maintaining the reputation and integrity of employment services, strengthening the employment services industry and working together to make sure services are managed and delivered effectively and provide value for money.

#### OUR COMMITMENTS

***What providers can expect from the Department:***

***What the Department can expect from providers:***

<b>Respect and support</b>	<b>Respect</b>
<b>Openness and transparency</b>	<b>Collaboration</b>
<b>Integrity and accountability</b>	
<b>Continuous improvement</b>	

## WHAT PROVIDERS CAN EXPECT FROM THE DEPARTMENT

### 1 Respect and support

The Department will:

- respect providers' role, experience and expertise
- treat each provider with courtesy and consideration
- meet regularly with providers
- adhere to agreed communication protocols with providers
- respond to providers' queries, generally within 10 business days
- work with providers to resolve complaints, disputes or problems, and consider the perspective of all parties—including employers and participants—when developing resolutions
- support providers to implement program changes effectively
- maintain the National Customer Service Line
- maintain the Employer Hotline to facilitate connections between employers and providers.

### 2 Openness and transparency

The Department will:

- be transparent in our business dealings
- maintain honest and open communication
- provide consistent, accurate and timely advice
- maintain feedback mechanisms to support formal and informal feedback from providers
- consult providers wherever possible, generally through industry representatives—including on contract variations
- provide reasonable notice for providers to implement new or amended guidelines.

### 3 Integrity and accountability

The Department will:

- observe the Australian Public Service (APS) Code of Conduct and APS Values
- adhere to the Commonwealth Procurement Rules, including on principles of probity and ethical and fair dealings
- act honestly and in the best interests of the Government, the employment services industry, participants and the community
- be accountable for our decisions and actions
- support providers to comply with their deed requirements by:
  - streamlining and simplifying guidelines
  - providing timely feedback from contract monitoring and program assurance activities
- treat provider's information confidentially (subject to relevant deed provisions)
- exercise its rights under the deeds in good faith.

### 4 Continuous improvement

The Department will:

- work with the industry to promote better practice and innovation
- regularly review provider performance and deliver balanced and consistent feedback
- work with providers to help them meet the needs of employers and industry
- work with providers to reduce the administrative burden of managing and complying with deeds
- continually develop its contract management capability to make sure providers receive high quality support.

## WHAT THE DEPARTMENT CAN EXPECT FROM PROVIDERS

### 1 Respect

Providers will:

- respect the Department's role, experience and expertise
- treat participants, the Department, other providers, host organisations and industry stakeholders with courtesy and consideration
- respond to queries appropriately.

### 2 Collaboration

Providers will:

- develop and maintain effective relationships with the Department, employers, other providers, host organisations, industry stakeholders and communities
- work with the Department to resolve complaints, disputes or problems, using the following informal dispute resolution process in the first instance (except for matters that are excluded under the relevant deeds):
  1. The provider initially discusses any issues or problems directly with a contract or account manager.
  2. If the dispute, complaint or problem can't be resolved, the provider requests that it be raised with the relevant state manager.
  3. If the above process does not resolve the issue, the National Contract Manager will attempt to facilitate a resolution.
  4. Any dispute or problem that cannot be resolved through this informal resolution process will be managed through the formal procedures set out in the relevant deed.

### 3 Integrity and accountability

Providers will:

- maintain high standards of professional conduct
- recognise and act on the Government's employment services policies
- implement program changes in a timely way
- maintain effective governance and control frameworks to provide assurance of the quality of services and compliance with relevant deeds
- act in accordance with the law and avoid any practice or activity which could bring employment services or the Department into disrepute
- manage feedback fairly, ethically and confidentially (subject to relevant deed provisions)
- make sure staff deliver accurate and consistent advice and information to participants, employers, host organisations and other stakeholders
- actively identify and manage risks.

### 4 Continuous Improvement

Providers will:

- work to increase outcomes for participants
- further develop service strategies that increase job outcomes for Indigenous participants
- develop tailored and effective services that meet employers' needs
- regularly review performance and work to address performance management issues
- encourage and foster innovative approaches and better practice
- support efforts to streamline activities without compromising the integrity of employment services
- maintain and strengthen the capability of staff.

## ATTACHMENT 3 – SERVICE GUARANTEE



Australian Government  
Department of Employment,  
Skills, Small and Family Business

### SERVICE GUARANTEE - NEW EMPLOYMENT SERVICES TRIAL

This Service Guarantee reflects the Australian Government's expectations for providers delivering services to job seekers as part of the trial of new employment services. It sets out the minimum level of service each job seeker can expect, as well as the requirements they need to meet while looking for employment.

The Australian Government is transforming employment services to deliver better outcomes and service to job seekers. The transformed employment services ensure that people who need assistance to find work have the right service options that support them to find a job and deliver more flexibility to meet mutual obligation requirements.

#### What you can expect from your provider

Your provider will:

- deliver individually tailored case management that helps to build your job readiness, including identifying your strengths and any challenges
- work with you to develop your Job Plan. This sets out the services you will receive and the minimum requirements you need to meet while you are on activity tested income support
- assist you to search for a job and refer you to suitable jobs
- provide access to and support you to use self-help job search facilities and online information and tools
- match you to activities to help you prepare for work, for example training, education or work experience
- reassess your needs if your circumstances change
- connect you with other services to help build your job readiness
- help you with wage subsidies or relocation assistance (where appropriate)
- assist you to report job search and other mutual obligation requirements using online services

- keep in contact with you and your employer once you have started a job
- treat you fairly and with respect in a culturally sensitive way.

#### What is expected of you

There are some things you need to do, including:

- do everything you have agreed to do in your Job Plan
- accept any suitable job
- make every effort to get and keep a job. This includes working with your provider to improve your job readiness
- meet your mutual obligation requirements—such as taking part in activities to build your job readiness—as outlined in your Job Plan
- contact your provider as soon as possible if you are unable to attend an appointment or do an activity
- notify your provider of any changes in your circumstances.

If you fail to do any of the above it could affect your income support payments.

## **Your personal information is confidential**

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

Your provider may also share information with other government agencies if they need to, to make sure you are getting the right level of support. These agencies may contact your employer to check that the information they have is correct.

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

## **Compliments, suggestions or complaints**

Your views about the service you receive are important. The Department of Employment, Skills, Small and Family Business and your provider value any feedback you may have.

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

If you feel you can't talk to your provider, or you are still not happy, you can contact the Department of Employment, Skills, Small and Family Business's National Customer Service Line on 1800 805 260 (free call from land lines) or email [nationalcustomerservice@employment.gov.au](mailto:nationalcustomerservice@employment.gov.au).

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

If you have any concerns about your income support payments, you should contact [DHS \(https://www.humanservices.gov.au/\)](https://www.humanservices.gov.au/).