



## Career Transition Assistance

### Panel Deed 2019-2022

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#### **PARTIES**

Name	<b>Commonwealth of Australia</b> as represented by the <b>Department of Jobs and Small Business</b> ABN 54 201 218 474
Address	GPO Box 9880, Canberra ACT, 2601
Deed name	<b>The Department</b>
Name	<b>[Career Transition Assistance Provider]</b> [ABN/ACN/ARBN]
Address	[Business Address of CTA Provider]
Deed name	<b>CTA Provider</b>

## **BACKGROUND**

- A.** The Department has entered into the *jobactive Deed 2015-2020 (jobactive Deed)* with Employment Providers. From 1 July 2019, it will be a requirement of the jobactive Deed that Employment Providers in all Employment Regions must consider referring eligible job seekers to participate in CTA to one or more CTA Providers on the Department's CTA Panel.
- B.** The CTA Provider applied to become a member of the CTA Panel in one or more Employment Regions through the Tender it submitted in response to the Request for Tender – Career Transition Assistance (CTA) 2019-2021 (**RFT**).
- C.** Having been evaluated as meeting the conditions for participation and representing value for money in one or more Employment Regions, the Department appoints the CTA Provider to the CTA Panel in the relevant Employment Regions on the terms set out in this Deed.
- D.** The CTA Provider acknowledges that the CTA Panel will be administered in accordance with this Deed and agrees to comply with its terms and conditions.

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## **1. Term**

- 1.1 This Deed commences on the Deed Commencement Date and, unless terminated earlier, will terminate on the Completion Date.
- 1.2 The Service Period commences on the Deed Commencement Date and ends at midnight on 30 June 2022.
- 1.3 The Department may, at its sole option, offer the CTA Provider an extension of the Term of this Deed:
- (a) for one or more Extended Service Periods; 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 CTA Provider not less than 20 Business Days prior to the end of the Service Period or any Extended Service Period, as relevant.
- 1.4 Subject to clause 1.3, if the CTA 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.
- 1.5 For the avoidance of doubt, any extension offered by the Department under clause 1.3 may, at the Department's sole option, relate to this Deed in its entirety or to an individual Employment Region or Employment Regions (if relevant).

## **2. Appointment to the CTA Panel**

- 2.1 The CTA Provider acknowledges that its Tender has been accepted by the Department on the basis of the claims made by the CTA Provider in its Tender.
- 2.2 By entering into this Deed:
- (a) the Department appoints the CTA Provider to the CTA Panel in relation to the Employment Regions; and
  - (b) the CTA Provider agrees:
    - (i) subject to clause 3.2, to deliver the Services in the Employment Regions for the Service Period and any Extended Service Periods;
    - (ii) that the Schedules, Annexures, Conditions of Offer, Particulars and Guidelines form part of this Deed; and
    - (iii) any action, direction, advice or Notice that may be taken or given by the Department under this Deed, may be taken or given from time to time and at the Department's absolute discretion.
- 2.3 The CTA Provider warrants the veracity of the information (including any claims) provided to the Department:
- (a) in its Tender; and
  - (b) subsequently in accordance with the terms and conditions of this Deed,

and acknowledges that the Department specifically relies on this information in connection to the CTA Provider's ongoing inclusion on the CTA Panel.

- 2.4 Notwithstanding and without limiting any other provision of this Deed, the Department may remove the CTA Provider from the CTA Panel by terminating this Deed either in its entirety or in relation to individual Employment Regions, in accordance with clause 49.9, if it is found that the CTA Provider has provided false or misleading information to the Department.

### 3. Standing offer to deliver the Services

- 3.1 The CTA Provider acknowledges that it is one of a number of CTA Providers on the CTA Panel for the Employment Regions to which Employment Providers may Refer Participants to undertake CTA in those Employment Regions.
- 3.2 The CTA Provider acknowledges and agrees that:
- (a) the Department provides no guarantee of:
    - (i) the volume or type of business the CTA Provider will receive, including the number of Referrals;
    - (ii) the numbers of Participants for any Services under this Deed;
    - (iii) the numbers of Participants for any Employment Region in relation to any Services under this Deed; or
    - (iv) the accuracy of market and other information provided in the request for tender for this Deed;
  - (b) an Employment Provider is not obliged to Refer any Participant, or any number of Participants, to the CTA Provider;
  - (c) an Employment Provider may at any time purchase CTA in the Employment Regions from another CTA Provider on the CTA Panel for those Employment Regions;
  - (d) unless the CTA Provider is the same legal entity as the relevant Employment Provider, the CTA Provider must ensure it has a written agreement with the Employment Provider in relation to the delivery of a CTA Course by the CTA Provider to one or more Participants Referred by the Employment Provider (**CTA Agreement**). Each CTA Agreement must include:
    - (i) a right of termination in the event that:
      - (A) the CTA Provider ceases to be included on the CTA Panel for one or more Employment Regions; or
      - (B) the scope of the CTA Provider's participation on the CTA Panel is reduced and the CTA Agreement relates to aspects of the participation from which the CTA Provider has been removed;
    - (ii) an obligation for the CTA Provider to deliver CTA in the Employment Regions to Participants on Referral from the Employment Provider, to the standards specified in Schedule 2;

- (iii) confirmation that all Referrals from Employment Providers must occur by Accessing the Department’s IT Systems;
- (iv) confirmation that the CTA Provider will conduct the Services by Accessing the Department’s IT Systems provided by the Department for that purpose;
- (v) terms to the effect that:
  - (A) the following standard flat fees are payable to the CTA Provider by the Department out of the Employment Provider’s Employment Fund (General Account) to the CTA Provider in respect of each Participant to whom the CTA Provider delivers a CTA Course:

	<b>Non-regional Employment Region (GST Inclusive)</b>	<b>Regional Employment Region (GST Inclusive)</b>
CTA Course	\$1,800.00	\$2,250.00

- (B) the fees are payable by the Department out of the Employment Provider’s Employment Fund (General Account) to the CTA Provider upon satisfaction of all of the following conditions:
  - a. the CTA Provider has completed an Initial Meeting with the Participant;
  - b. the CTA Provider has not assessed the Participant as unsuitable for, or not likely to benefit from participating in, the CTA Course;
  - c. the CTA Provider gives to the Department a Tax Invoice for any Taxable Supply; and
  - d. the CTA Provider has recorded the matters in paragraphs 3.2(d)(v)(i)(B)a., 3.2(d)(v)3.2(d)(v)(B)b. and 3.2(d)(v)3.2(d)(v)(B)c. by Accessing the Department’s IT Systems;
- (vi) such other obligations as are necessary to ensure that the CTA Provider satisfies its obligations to the Department under this Deed regarding the delivery of the Services, including in relation to maintaining Documentary Evidence; and
- (vii) such other terms as specified by the Department in any Guidelines;
- (e) if the CTA Agreement includes a right for the CTA Provider to subcontract the delivery of any part of a CTA Course, the CTA Agreement must also

include restrictions equivalent to those contained in clause 41 of this Deed;

- (f) it must not charge an amount which is more than the applicable standard flat fee referred to in clause 3.2(d)(v)(A) for delivering a CTA Course; and
- (g) without limiting the operation of clause 22, other than the standard flat fee referred to in clause 3.2(d)(v)(d)(v)(A) above payable by the Department, all costs of participating in the CTA Panel must be met by the CTA Provider.

3.3 If the Department determines, at its absolute discretion, that the CTA Provider has failed to deliver any part of the Services in accordance with this Deed or any Guidelines, the CTA Provider must:

- (a) rectify the relevant breach in accordance with any Notice from the Department; and
- (b) not impose, or seek to impose, any additional cost or charge on the Department or the relevant Employment Provider in relation to such rectification.

3.4 If the CTA Provider fails to comply with clause 3.3 to the Department's complete satisfaction within 10 Business Days of receiving a relevant Notice, or within such other period specified by the Department, the Department may terminate this Deed in accordance with clause 49.9.

#### **4. Payments**

4.1 Subject to clause 5.2 and performance by the CTA Provider of its obligations under this Deed to the Department's satisfaction, the fee set out in clause 4.2 will be paid to the CTA Provider by the Department in respect of each Participant to whom the CTA Provider delivers a CTA Course, out of the Employment Fund (General Account), providing:

- (a) the CTA Provider has completed an Initial Meeting with the Participant;
- (b) the CTA Provider has not assessed the Participant as unsuitable for, or not likely to benefit from participating in, the CTA Course;
- (c) the CTA Provider gives to the Department a Tax Invoice for any Taxable Supply; and
- (d) the CTA Provider has recorded the matters in clauses 4.1(a), 4.1(b) and 4.1(c) by Accessing the Department's IT Systems including by uploading any Tax Invoice or any Documentary Evidence required by the Guidelines.

4.2 The fee payable by the Department to the CTA Provider out of the relevant Referring Employment Provider's Employment Fund (General Account) is:



	<b>Non-regional Employment Region (GST Inclusive)</b>	<b>Regional Employment Region (GST Inclusive)</b>
CTA Course	\$1,800.00	\$2,250.00

- 4.3 Subject to clause 4.1, the fee will be paid by the Department to the CTA Provider's bank account specified in item 3 of Schedule 1.
- 4.4 The CTA Provider must not claim or accept a payment from the Department if the requirements in clause 4.1 have not been fully and properly met.

**Exclusions**

- 4.5 The Department is not responsible for the payment of any money in excess of the payments set out in this Deed.
- 4.6 For the avoidance of doubt, the Department is not required to make any superannuation contributions in connection with this Deed.
- 4.7 Unless otherwise agreed in writing with the Department, the CTA 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.

**Taxes, duties and government charges**

- 4.8 Unless expressly stated to the contrary, all dollar amounts in this Deed are inclusive of GST.
- 4.9 If a payment is not in relation to a Taxable Supply, the CTA Provider must only claim or accept an amount exclusive of GST.
- 4.10 The CTA Provider must not claim or accept from the Department any amount for which it can claim an Input Tax Credit.
- 4.11 Where any debt is repaid, including by offset under clause 9.4, an Adjustment Note must be provided to the Department if required by the GST Act.
- 4.12 Subject to clauses 4.8 to 4.11, all taxes, duties and government charges imposed in Australia or overseas in connection with this Deed must be borne by the CTA Provider.

**5. Documentary Evidence and payment**

- 5.1 The CTA Provider must ensure that:
- (a) all information it provides to the Department, in any form and by any means, including all Documentary Evidence, is true, complete and accurate 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 5.1(a); and
  - (c) any data entered into the Department's IT Systems is consistent with any associated Documentary Evidence held by the CTA Provider.
- 5.2 It is a precondition of the CTA Provider's entitlement to be paid in respect of each Participant to whom the CTA Provider delivers a CTA Course that the CTA 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 CTA Provider is entitled to the payment of that fee under this Deed and under the relevant CTA Agreement.
- 5.3 Subject to any Guidelines, the CTA Provider must retain the Documentary Evidence specified in clause 5.2 for such period as required under clause 29.10.
- 5.4 The CTA Provider must submit Documentary Evidence to the Department within five Business Days of any request by the Department to do so.
- 5.5 The CTA Provider must submit the Documentary Evidence specified in clause 5.2 to the Department, in accordance with any Guidelines, at the time of making the relevant claim for payment, and through the Department's IT Systems.
- 5.6 If:
  - (a) the CTA Provider does not comply with a request by the Department under clause 5.5, including if the Documentary Evidence is not true, complete and accurate;
  - (b) the Department has already paid the CTA Provider the relevant payment; and
  - (c) an extension of time has not been requested and agreed to by the Department,then:
  - (d) the CTA Provider will be taken not to have delivered the relevant Services in accordance with this Deed and not be entitled to the relevant payment; and
  - (e) the Department may, at its absolute discretion, recover the relevant payment from the CTA Provider as a debt in accordance with clause 9, without prejudice to any other rights that the Department may have under this Deed or the law.
- 5.7 The Department may contact Participants or any other relevant parties to verify Documentary Evidence provided by a CTA Provider.

## **6. Employment Fund**

- 6.1 Subject to this clause 6, the CTA Provider may seek payment from the Employment Fund only in accordance with clause 4 and any Guidelines.

- 6.2 If, in the Department's view, the CTA Provider has claimed payment from the Employment Fund (General Account) in a manner which is inconsistent with clause 4 and any Guidelines, the Department may, in addition to any other action available under this Deed, terminate this Deed in accordance with clause 49.9.

## **7. Overpayment and double payment**

### **Overpayment**

- 7.1 If, at any time, the Department determines that an overpayment by the Department to the CTA Provider has occurred for any reason, 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 CTA Provider, with the recoverable amounts being determined by the Department at its absolute discretion, as a debt in accordance with this clause 7, without prejudice to any other rights that the Department may have under this Deed or the law.

### **Double payment**

- 7.2 Subject to any Guidelines and any express written agreement with the Department to the contrary, the CTA 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 CTA Provider to provide evidence, in a form acceptable to the Department, which proves that the CTA Provider is not so entitled.
- 7.3 For the purposes of clause 7.2, if the Department determines, in its absolute discretion, that the CTA 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 9.
- 7.4 Regardless of any action the Department may take under clause 7.3, 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 7.3.

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

- 8.1 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; and/or
  - (b) Employment Regions of the CTA Provider,
- for all or part of the Term of this Deed, either:
- (c) based upon the Department's assessment of projected changes to labour market conditions in an Employment Region (including past and/or future projected Participant demand); or
  - (d) acting reasonably, for any other reason as determined by the Department at its absolute discretion,
- by providing Notice to the CTA Provider.

8.2 If the Department exercises its rights under clause 8.1:

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

## **9. Debts and offsetting**

- 9.1 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 CTA Provider without further proof of the debt being necessary.
- 9.2 Unless otherwise agreed in writing by the Department, the CTA Provider must pay to the Department any debt due to the Commonwealth from the CTA Provider within 30 calendar days of receipt of a Notice from the Department requiring payment.
- 9.3 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.
- 9.4 Without limiting the Department's rights under this Deed or the law, if the CTA 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 future payments that may become due to the CTA Provider under this Deed.
- 9.5 The Department will Notify the CTA Provider if it exercises its rights under clause 9.4 within 10 Business Days after having exercised those rights.
- 9.6 Notwithstanding any action taken by the Department under clause 9.4, the CTA Provider must continue to perform its obligations under this Deed, unless the Department agrees otherwise in writing.

## **10. Fraud**

- 10.1 The CTA 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.
- 10.2 The CTA 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.
- 10.3 If, after investigation, the Department determines that the CTA 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 48.2; or
  - (b) terminate this Deed under clause 49, by providing Notice to the CTA Provider.

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

## **11. Expertise, capacity and capability**

- 11.1 The CTA Provider warrants that for the Term of this Deed it has the expertise, capacity and capability to provide CTA and meet the Conditions for Ongoing Participation.

## **12. Administration of Deed**

- 12.1 The CTA Provider acknowledges and agrees that the Department will administer the CTA Panel in accordance with this Deed.
- 12.2 The CTA Provider acknowledges and agrees that the CTA Provider's details and information, including any updates to such details and information, will be disclosed on the Department's IT Systems.
- 12.3 The CTA Provider further acknowledges and agrees that the Department may:
  - (a) terminate or reduce the scope of the Deed on provision of Notice in accordance with clause 49; and
  - (b) at any time, collect and use information about the CTA Provider's performance in the provision of the Services for the purpose of assessing the CTA Provider's compliance with its obligations under this Deed.

## **13. Notification of change and Suspension**

- 13.1 The CTA Provider must Notify the Department:
  - (a) if there is a change to the information provided as part of its Tender; or
  - (b) if the CTA Provider no longer has, or has a diminished, expertise, capacity or capability to:
    - (i) deliver the Services; or
    - (ii) meet one or more Conditions for Ongoing Participation,

within 10 Business Days of becoming aware thereof.

- 13.2 If the CTA Provider fails to comply with clause 13.1, the Department may, at its absolute discretion, immediately terminate this Deed, either entirely or in respect of one or more Employment Regions, or reduce the scope of the CTA Provider's participation, in accordance with clause 49.
- 13.3 The Department may reassess the CTA Provider's ability to satisfy the Conditions for Ongoing Participation:
  - (a) after any Notification under clause 13.1; or
  - (b) after any other event occurs, or information comes to the attention of the Department, which the Department considers may impact on the CTA Provider's ability to meet the Conditions for Ongoing Participation.
- 13.4 The Department will Notify the CTA Provider within 90 calendar days after the Department's decision to reassess its ability to satisfy the Conditions for Ongoing Participation.
- 13.5 If the Department reassesses the CTA Provider's ability to satisfy the Conditions for Ongoing Participation, the Department may Suspend the CTA Provider from the CTA Panel, either entirely or in respect of one or more Employment Regions, by Notice.
- 13.6 If the Department Suspends the CTA Provider from the CTA Panel under clause 13.5, the CTA Provider must comply with all of its obligations under this Deed, including clause 47, unless the Department agrees otherwise in writing.
- 13.7 For the avoidance of doubt, any Suspension of the CTA Provider under clause 13.5 does not amount to a reduction of scope or termination for which compensation is payable.

#### **14. Conditions for Ongoing Participation**

- 14.1 The CTA Provider agrees that in order to continue to be included on the CTA Panel in relation to the Employment Regions, it must meet the following Conditions for Ongoing Participation:
  - (a) deliver the Services to a high professional standard, in line with all relevant professional codes of conduct, any Guidelines, and so as to achieve optimum performance when measured against the Key Performance Indicators;
  - (b) ensure that the delivery of the Services is monitored by a CTA Coordinator for quality assurance purposes;
  - (c) ensure that its Personnel are appropriately qualified and experienced prior to delivering the Services;
  - (d) provide assistance and information, as requested by the Department from time to time in relation to its delivery of the Services;
  - (e) attend and/or undertake all training and information sessions, as directed by the Department;

- (f) comply with the ongoing obligations specified in clauses 17 and 29; and
- (g) unless specified otherwise in any Guidelines, comply with all requirements in the Department's External Security Policy - for Contracted Service Providers and Users available at [IT Security Policy \(https://docs.jobs.gov.au/documents/it-security-policy\)](https://docs.jobs.gov.au/documents/it-security-policy) as amended from time to time by the Department.

14.2 Notwithstanding any other provision of this Deed, the Department may remove the CTA Provider from the CTA Panel, either entirely or in respect of one or more Employment Regions and terminate this Deed in accordance with clause 49.9, if the CTA Provider fails to comply with any Conditions of Ongoing Participation.

14.3 The Department may change the Conditions for Ongoing Participation from time to time, at its absolute discretion, and will Notify the CTA Provider of any such change.

14.4 Any Notice given by the Department under clause 14.3 is a variation of clause 14.1, and is binding on the Parties on and from the date the Notice is received by the CTA Providers.

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

15.1 Subject to clause 15.2, the Department and the CTA Provider agree to conduct themselves in accordance with the Joint Charter of Deed Management.

15.2 Clause 15.1 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.

## **16. Liaison and directions**

16.1 The CTA 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 CTA Provider or the Department should it become publicly known.

Note: 'other person' referred to in clause 16.1(a) includes, for example, an auditor appointed by the Department.

16.2 Without limiting 16.1(b), the Department may, at any time and at its absolute discretion, give a written direction by way of a Notice to the CTA Provider in relation to the Services or the location at which they are delivered, including a direction that:

- (a) a CTA Course may not be undertaken, or continue;
- (b) a CTA Course, including its content, be varied;

- (c) a CTA Course be managed directly by the CTA Provider, rather than a Subcontractor or an Employer hosting an Outbound Employer Visit who is not a Subcontractor;
  - (d) the CTA Provider must provide, broker, purchase or arrange a CTA Course for Participants;
  - (e) the CTA Provider must not provide, broker, purchase or arrange a CTA Course for Participants; or
  - (f) the CTA Provider must deliver the Services from or at another location in the Employment Region.
- 16.3 If the Department gives a direction under this clause 16, where relevant, the Deed is deemed to be varied accordingly, and the CTA Provider must provide all of its obligations under the Deed as varied.
- 16.4 The Department and the CTA 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 these positions.
- 16.5 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.
- 16.6 The CTA Provider must ensure that it has, and Notifies to the Department, a valid electronic mail address for receipt of all communications with the Department.

## **17. General CTA Provider obligations**

- 17.1 The CTA Provider must deliver each CTA Course in accordance with Schedule 2.
- 17.2 The CTA Provider must take all reasonable steps to minimise delay or the negative impact of any matter(s) that affects the CTA Provider's ability to meet its obligations under this Deed.
- 17.3 Employment Providers will Refer potential Participants to the CTA Provider through the Department's IT Systems. If the Department Notifies the CTA Provider, or specifies in any Guidelines or otherwise, that the CTA Provider must not accept a Referral, the CTA Provider must:
- (a) not accept the Referral or allow the relevant Participant to commence in CTA; and
  - (b) immediately inform the relevant Employment Provider that it cannot accept the Referral.
- 17.4 The CTA Provider must develop strong and sustainable working relationships with Employment Providers, Employers, and industry groups in their Employment Region(s) to:
- (a) ensure the successful implementation of CTA;



- (b) help Participants to commence and complete CTA;
- (c) plan ahead to manage incoming Referrals and requirements for group-sessions;
- (d) prepare Participants for employment and work experience placements on completion of CTA, and help meet the needs of Employers and host organisations; and
- (e) conduct Warm Handover Meetings in accordance with Schedule 2.

17.5 The CTA Provider must ensure that:

- (a) any premises from which it delivers a CTA Course:
  - (i) has appropriate facilities for use by the Participants, including access to clean drinking water and toilets;
  - (ii) is accessible to people with a disability;
  - (iii) uses appropriate badging and signs with the name of CTA, and/or the CTA Course, in accordance with any Guidelines; and
  - (iv) is presented in a manner that upholds and maintains the good reputation of CTA to the satisfaction of the Department; and
- (b) it takes all reasonable steps to avoid acts or omissions which the CTA Provider could reasonably foresee would be likely to cause injury to Participants or any other persons at the premises referred to in clause 17.5(a).

17.6 The CTA 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.

17.7 The CTA Provider must:

- (a) not engage in, and must ensure that its Personnel, Subcontractors, Third Party IT Providers and agents do not engage in any practice that manipulates or impacts, as relevant, any aspect of the Services including any:
  - (i) Record, including any Documentary Evidence;
  - (ii) payment or payment-related process;
  - (iii) Participant or Employer; or
  - (iv) monitoring of the Services by the Department,
 with the effect of improperly, as determined by the Department, maximising payments to, or otherwise obtaining a benefit for, the CTA 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 CTA 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.

17.8 The CTA 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, or to an Authorised Officer of the Department as specified on the Department’s website, [The Public Interest Disclosure Act 2013](https://www.jobs.gov.au/public-interest-disclosure-act-2013) (<https://www.jobs.gov.au/public-interest-disclosure-act-2013>)
- (d) and where a disclosure of “disclosable conduct” is made to a supervisor, 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 CTA Provider’s right to enter into public debate regarding policies of the Australian Government, its agencies, employees, servants or agents.

## 18. Checks and reasonable care

18.1 Before any Personnel or Supervisor is involved in the Services, the CTA 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.

18.2 The CTA Provider must not allow any Participant, Personnel, CTA Coordinator or a potential Supervisor to participate in the Services:

- (a) contrary to any relevant legislation or any Guidelines; 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 CTA Provider has put in place reasonable measures to remove or substantially reduce that risk.

## **19. CTA Provider's Personnel**

- 19.1 The Department may Notify the CTA Provider, on reasonable grounds related to the performance of the Services or risk to the Services or the Commonwealth, that it must:
- (a) cease using one or more Personnel;
  - (b) cease using one or more Personnel to perform the role of a CTA Coordinator; or
  - (c) remove Personnel from involvement in the delivery of the Services.
- 19.2 If the Department Notifies the CTA Provider in accordance with clause 19.1 that it must cease using one or more Personnel or remove Personnel from involvement in the delivery of the Services, the CTA 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.
- 19.3 For the purposes of clause 19.2, if the CTA Provider is unable to provide replacement Personnel who are acceptable to the Department, the Department may terminate this Deed under clause 49.9.
- 19.4 The CTA Provider must provide for, and ensure that its Personnel participate in, any training as directed by the Department.

## **20. Performance assessments**

- 20.1 During each Performance Period, the Department will monitor, measure and evaluate the CTA Provider's performance against the requirements of this Deed, including, without limitation, the Key Performance Indicators, the Joint Charter of Deed Management and any representations in the CTA Provider's Tender and the Service Guarantee.
- 20.2 For the purposes of the activities referred to in clause 20.1, the CTA Provider agrees:
- (a) the CTA Provider's Personnel and Subcontractors may be interviewed by the Department or an independent evaluator nominated by the Department;
  - (b) it will give the Department or the Department's evaluator access to its premises and Material in accordance with clause 32; and
  - (c) it will fully cooperate with the Department in relation to all such activities.
- 20.3 Without limiting clause 20.2, for the purposes of clause 20.1, the Department may rely on data collected from any source, including, without limitation, feedback from Participants, Employers and intelligence from the Department's Employment Services Tip off Line.

- 20.4 After the end of each Performance Period, and at such other times as the Department determines, the Department may:
- (a) review the CTA Provider's performance in each Employment Region in which the CTA Provider delivers the Services; and
  - (b) subsequently provide feedback to the CTA Provider on the Department's assessment of its performance.
- 20.5 This clause 20 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 CTA Provider, arising out of the monitoring, measuring, evaluating or reviewing of the CTA Provider's performance under this clause 20, or otherwise.
- 20.6 The CTA Provider agrees that the Department may publish information the Department holds concerning the CTA Provider's performance of the Services.

## **21. Program Assurance Activities**

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

## **22. Costs**

- 22.1 Subject to the provisions of this Deed, the CTA 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 CTA Provider's obligations under this Deed, notwithstanding any other matter or arrangement, including any Subcontracting arrangements.
- 22.2 The CTA Provider must not impose any costs on job seekers to participate in CTA.
- 22.3 For the avoidance of doubt, the Department is not liable or responsible for any loss, damage, cost or expense incurred by the CTA Provider in connection with its inclusion on the CTA Panel or provision of CTA, including and without limitation:
- (a) in the event that:
    - (i) the CTA Provider is Suspended from the CTA Panel in relation to one or more Employment Regions;
    - (ii) the CTA Provider's scope of participation on the CTA Panel is reduced (including, for the avoidance of doubt, in relation to an Employment Region); or
    - (iii) the Conditions for Ongoing Participation change;
  - (b) in connection with compliance with requirements to satisfy the Conditions for Ongoing Participation including attending or undertaking all training as directed by the Department; and
  - (c) in connection with the provision of the Services including the provision of any other information or assistance requested by the Department in

accordance with clause 14.1(d) or the removal of a CTA Coordinator or other Personnel as requested by the Department under clause 19.1.

## 23. Sample reviews

- 23.1 Without prejudice to any other rights of the Department under this Deed or at law (including the right to engage in any other form of sampling activity):
- (a) the Department may:
    - (i) evaluate how the CTA Provider has claimed payments, by reviewing and investigating only a sample of claims for payments (**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 CTA 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,
    - (iii) as determined by the Department, then the CTA Provider is, subject to clause 23.3, taken to have invalidly claimed all payments, or that proportion of all payments, as relevant to the Sample Review, for the period of the Sample Review (**Deemed Invalid Claims**).
- 23.2 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 CTA Provider:
- (a) exercise its rights under clause 9 in respect of some or all of those claims;
  - (b) exercise any remedies specified in clause 48; or
  - (c) exercise any of its rights under clause 49.9.

### Sampling methodology

- 23.3 For the purposes of clause 23.1, 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 Australian Inc. that the methodology:
- (a) is, or will give results that are, statistically valid for the purpose of demonstrating that matters covered by this clause 23; 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 23.1(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.

- 23.4 The Department must disclose the methodology used in a Sample Review to the CTA Provider before exercising the Department's rights under clause 23.2.

## **24. Indigenous Procurement Policy**

- 24.1 The CTA Provider must use reasonable endeavours to increase its:
- (a) purchasing from Indigenous Enterprises; and
  - (b) employment of Indigenous persons, in the delivery of the Services.
- 24.2 For the purposes of clause 24.1(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 CTA 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, available at [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)).

- 24.3 The CTA Provider must:
- (a) if requested by the Department, develop an Indigenous employment strategy which is designed to attract, develop, and retain Indigenous persons as employees within the CTA Provider's own organisation;
  - (b) implement and maintain that strategy for the Term of this Deed; and
  - (c) provide a copy of this strategy to the Department on request.

## **25. Security**

- 25.1 The CTA Provider must comply, and ensure that its Subcontractors comply, with the Department's Security Policies.

## **26. Information Technology**

### **General**

- 26.1 The CTA Provider must conduct the Services by Accessing the Department's IT Systems provided by the Department for that purpose.
- 26.2 The Department may require that data relating to specific transactions must only be stored on the Department's IT Systems, and the CTA Provider must comply, and ensure that all Subcontractors and Third Party IT Providers comply, with any such requirement.
- 26.3 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 CTA Provider must comply with any such requirement.

- 26.4 The CTA Provider is responsible for all costs of meeting its obligations under this clause 26.

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

- 26.5 The CTA 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 26.

#### **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 CTA Provider or any Subcontractor directly or indirectly 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.

- 26.6 The CTA Provider must:
- (a) advise the Department by email to [securitycompliancesupport@jobs.gov.au](mailto:securitycompliancesupport@jobs.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 any External IT System used 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;
  - (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) is built and accredited in accordance with the requirements of the ESAF;
    - (iv) does not introduce or permit the introduction of Harmful Code into the Department's IT Systems;
    - (v) has secure logons 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;

- (vii) that mimics question or input fields in the Department's IT Systems, has synchronous communications for such fields with the Department's IT Systems; and
- (viii) 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).

26.7 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;
- (b) will provide reasonable information about those changes to the CTA Provider; and

the CTA 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 CTA Provider arising from such changes.

**Provider IT System accreditation**

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

26.8 Subject to the requirements of the ESAF, the CTA 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.

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

26.10 For the purposes of clause 26.8(b), the CTA Provider must, and must ensure that its Subcontractors, obtain reaccreditation of all Provider IT Systems in accordance with the requirements of the ESAF.

26.11 Unless otherwise expressly set out in this clause 26, accreditation and reaccreditation under this clause 26 must be awarded by the Department.



- 26.12 If the CTA Provider or any Subcontractor does not obtain accreditation or reaccreditation within the timeframes specified in the ESAF or this clause 26, the CTA Provider must immediately cease using, and ensure that any relevant Subcontractor ceases using, the relevant Provider IT System.
- 26.13 If the ESAF requires that any Personnel or Subcontractors of the CTA Provider must complete specific personnel vetting requirements for the purposes of accreditation or reaccreditation:
- (a) the CTA 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 Provider and used by the CTA Provider or any Subcontractor directly or indirectly 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 Provider.

- 26.14 The CTA 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 Provider, until such Third Party IT Provider has met the relevant requirements of the ESAF and has:
    - (i) for any Third Party IT Provider that provides or uses a Third Party Employment System, entered into a Third Party IT Provider Deed with the Department, and only grant such Access in accordance with the terms of the relevant Third Party IT Provider Deed and any Guidelines; and
    - (ii) for any Third Party IT Provider that provides or uses a Third Party Supplementary IT System, been assessed and accredited by the CTA 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 Provider 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 CTA 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 Provider that provides or uses a Third Party Employment System:

- (i) provide that the Third Party IT Provider may only subcontract its obligations under that contract to another entity that has entered into a Third Party IT Provider 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 Provider Deed;
- (d) on receipt of any advice from the Department that it has terminated a relevant Third Party IT Provider Deed, terminate the CTA Provider's contract with the relevant Third Party IT Provider and, at its own cost, promptly cease using the Third Party IT Provider;
- (e) impose the obligations set out in this clause 26 on any Subcontractor Accessing electronic Records relating to the Services; and
- (f) advise the Department by email to [securitycompliancesupport@jobs.gov.au](mailto:securitycompliancesupport@jobs.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 Providers comply, with those terms and conditions.

#### **Technical advice**

26.15 The CTA 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 CTA 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 CTA Provider's readiness to deploy system upgrades to the Department's IT Systems; and
- (c) where the IT Contact changes, advise the Department accordingly.

#### **Security**

26.16 The CTA Provider must comply, and ensure that its Subcontractors and Third Party IT Providers comply, with the Department's Security Policies and the Cybersafety Policy, as relevant.

- 26.17 The CTA 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.
- 26.18 The CTA 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.
- 26.19 Where the Department considers that the CTA Provider may be in breach of this clause 26, or there is a risk of such a breach, the Department may, at its absolute discretion, immediately suspend Access, or require the CTA 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 Provider;
  - (d) the CTA Provider; or
  - (e) any External IT System,
- by providing Notice to the CTA Provider.
- 26.20 Where the Department determines that the CTA Provider is in breach of, or has previously breached, this clause 26, 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 Provider, External IT System or the CTA Provider;
  - (b) applying bandwidth throttling measures in respect of all Access to the Department's IT Systems for any Personnel, Subcontractor, Third Party IT Provider, External IT System or the CTA Provider;
  - (c) requiring the CTA Provider to obtain new logon IDs for any Personnel, Subcontractor or Third Party IT Provider and, if so required, the CTA Provider must promptly obtain such new logons; or
  - (d) requiring the CTA Provider to prepare and implement an IT security plan to the Department's satisfaction and, if so required, the CTA Provider must do so within the timeframe required by the Department.
- 26.21 Any action taken by the Department under clauses 26.19 to 26.20 does not limit any other rights the Department has under this Deed, including pursuant to clause 48.2, or under the law.
- 26.22 If the Department gives Notice to the CTA Provider that Access to the Department's IT Systems is terminated for any particular Personnel, Subcontractor or Third Party IT Provider, the CTA 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**

26.23 For the purposes of clauses 26.24 to 26.27:

**'Clients'** means persons who may use the CTA 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 CTA Provider, the CTA 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 CTA Provider's staff regarding the risks of, and protection from, inappropriate or harmful on-line content.

26.24 The Cybersafety Policy is that where an organisation is funded by the Commonwealth 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.

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

26.26 If the Department gives the CTA Provider Notice requiring it, the CTA Provider must provide the Department, within 10 Business Days of receiving the Notice, with evidence satisfactory to the Department that the CTA Provider has complied with the requirements of this Cybersafety Policy.

26.27 The CTA Provider agrees to include its obligations in relation to this Cybersafety Policy in all Subcontracts it enters into in relation to the Services.

## **27. Personal and Protected Information**

27.1 This clause 27 applies only where the CTA Provider deals with Personal Information for the purpose of performing its obligations under this Deed or assisting Employment Providers to provide services to the Department under their respective jobactive Deeds.

27.2 In this clause 27, the terms 'agency', 'APP Code', 'contracted service provider', 'eligible data breach', 'organisation' 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.

27.3 The CTA Provider acknowledges that it is a contracted service provider and agrees in respect of the conduct of any services under CTA Agreements with Employment Providers or 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 complying with its obligations under any CTA Agreements with Employment Providers or this Deed;
- (b) except where this clause 27 expressly requires the CTA 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 inquires 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 CTA 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 any contracts with Employment Providers or 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 CTA 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 27;
- (i) not to transfer relevant Personal Information outside 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 CTA Provider suspends or terminates Personnel:
  - (i) to remove any access that the Personnel has to any relevant Personal Information; and

- (ii) to require that the Personnel returns to the CTA Provider or the Department any relevant Personal Information held in the Personnel's possession; and
- (l) to ensure that any of its Personnel who are required to deal with relevant Personal Information:
  - (i) are made aware of their obligations in this clause 27, including to undertake in writing to observe the APPs (or a registered APP code, where applicable); and
  - (ii) where required by the Department, undertake in writing to observe the APPs (or a registered APP code, where applicable).

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

- (a) of a breach or possible breach of any of the obligations contained, or referred to, in this clause 27 by any Personnel or Subcontractor;
- (b) that an eligible data breach in relation to Personal Information received, created or held by the CTA Provider in the course of conducting the Services has or may have occurred;
- (c) that a disclosure of Personal Information may be required by law; or
- (d) of an approach to the CTA Provider by the Australian Information Commissioner or by an individual claiming that their privacy has been interfered with.

27.5 The CTA 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).

**Notifiable data breaches**

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

- (a) carry out an assessment in accordance with the requirements of 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.

## **28. Confidential Information**

- 28.1 Subject to this clause 28, the Parties must not, without each other's prior written approval, disclose any of each other's Confidential Information to a third party.
- 28.2 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.
- 28.3 The obligations on the Parties under this clause 28 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 by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - (d) is authorised or required by law or the rules of a stock exchange to be disclosed; or
  - (e) is in the public domain otherwise than due to a breach of this clause 28.
- 28.4 Nothing in this clause 28 limits the obligations of the CTA Provider under clause 27 [Personal and Protected Information] or clause 32 [Access to premises and Material].

## **29. Records the CTA Provider must keep**

- 29.1 The CTA Provider must create and maintain true, complete and accurate Records of the conduct of the Services, in accordance with any Records Management Instructions, under:
- (a) the CTA Agreements; and
  - (b) this Deed,
- including any Material specified in any Guidelines.
- 29.2 Notwithstanding this clause 29, if the Department considers it appropriate, the Department may, at its absolute discretion, impose special conditions in relation to Records management, and the CTA Provider must comply with those special conditions as directed by the Department.
- 29.3 Without limiting clause 29.1 or clause 5, the CTA Provider must collect and maintain the following Documentary Evidence:
- (a) evidence of a Participant's completion of the CTA Course undertaken by the Participant, as described in Schedule 2;
  - (b) a copy of the Career Pathway Assessment completed for each Participant;

- (c) a copy of the Career Pathway Plan and Résumé, completed for each Participant who completes a CTA Course;
  - (d) a copy of the Privacy Notification and Consent Form completed for each Participant;
  - (e) a copy of the Participant feedback register for each Employment Region containing the information set out at clause 64.5; and
  - (f) sufficient Documentary Evidence to demonstrate that the CTA Provider is entitled to any payment it makes a claim for, or accepts, in respect of each Participant to whom the CTA Provider delivers a CTA Course.
- 29.4 When requested by the Department, the CTA Provider must provide the Records, including relevant Records maintained by a Subcontractor or a Third Party IT Provider, to the Department or the Department's nominee, or must upload the Records to the Department's IT Systems, within the timeframe required by the Department or as specified in any Guidelines.
- 29.5 Without limiting clauses 29.1, 29.2 or 29.4 or clause 5, the following Documentary Evidence held by the CTA Provider must be uploaded to the Department's IT Systems:
- (a) a copy of the Career Pathway Assessment completed for each Participant;
  - (b) a copy of the Career Pathway Plan and Résumé, completed for each Participant who completes a CTA Course; and
  - (c) any other Documentary Evidence as specified in the Guidelines to be uploaded to the Department's IT Systems.
- 29.6 The CTA Provider must store all Records created or maintained under clause 29.1, in accordance with the Department's Security Policies, any Guidelines issued by the Department and if relevant, its Privacy Act obligations.
- 29.7 The CTA Provider must maintain an up to date list of the Records held by it and make this list available to the Department on request.
- 29.8 Subject to clauses 27 [Personal and Protected Information] and 32 [Access to premises and Material], the CTA Provider must ensure that copying of, use of, and access to Records containing Personal Information or Sensitive Information is restricted to Personnel directly assisting the CTA Provider with the provision of the Services.
- 29.9 Subject to clause 27 [Personal and Protected Information], the CTA Provider must 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 created or maintained under clause 29.1:
- (a) outside Australia; or
  - (b) to any person, entity or organisation other than to an Employment Provider or the Department.



- 29.10 Subject to clause 27 [Personal and Protected Information], all Records created or maintained under clause 29.1 must be retained by the CTA Provider for a period of no less than seven years after the creation of the Record, unless otherwise specified in any Guidelines or as directed by the Department.
- 29.11 At the Completion Date or early termination of this Deed, the CTA Provider must manage all Records created or maintained under clause 29.1 in accordance with any Guidelines or as otherwise directed by the Department.
- 29.12 The CTA Provider must:
- (a) not destroy or otherwise dispose of Records created or maintained under clause 29.1, except in accordance with clause 29.10 and any Guidelines 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.

### **30. Access by Participants to Records held by the CTA Provider**

- 30.1 Subject to this clause 30, the CTA Provider must allow Participants 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 30.3.
- 30.2 The CTA Provider must, in providing access to the requested Records in accordance with clause 30.1:
- (a) ensure that the relevant Participant requesting the access in clause 30.1 provides proof of identity before access is given to the 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.
- 30.3 Where a Participant 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 individual, or where it is clear that the individual 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 to the Department for consideration and the CTA Provider must comply with any direction given by the Department in relation to the provision, or refusal, of access to Records held by it to the relevant Participant.

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

31.1 In this clause 31, 'document' has the same meaning as in the *Freedom of Information Act 1982* (Cth).

31.2 The CTA Provider agrees that:

- (a) where the Department has received a request for access to a document created by, or in the possession of, the CTA Provider, any Subcontractor or any Third Party IT Provider, the Department may, at any time by Notice, require the CTA Provider to provide the document to the Department and the CTA Provider must, at no cost to the Department, promptly comply with the Notice;
- (b) the CTA 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 CTA Provider must include provisions in any Subcontract or contract with a Third Party IT Provider, relating to the performance of this Deed that will enable the CTA Provider to comply with its obligations under this clause 31.

### **32. Access to premises and Material**

32.1 The CTA Provider agrees to:

- (a) give any Department Employee or Department nominee access to the CTA Provider's premises and any premises at which the CTA Provider is conducting or has conducted the Services; and
- (b) permit those persons to inspect and take copies of any Material relevant to the:
  - (i) conduct of the Services; or
  - (ii) the performance of this Deed.

32.2 The rights of the Department referred to in clause 32.1 are subject to the:

- (a) provision of reasonable prior notice to the CTA Provider;
- (b) CTA Provider's reasonable security procedures; and
- (c) if appropriate, the execution of a deed of confidentiality by the persons to whom access is given.

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).

### **33. General reporting**

33.1 Without limiting clause 14.1(d), the CTA 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;
  - (ii) the performance of Personnel undertaking the role of CTA Coordinator, including Reports outlining any actions undertaken by any CTA Coordinator in accordance with clause 14.1(b) to actively monitor the delivery of CTA Courses for quality assurance purposes; and
  - (iii) the financial status of the CTA Provider; and
- (b) a suitably qualified, informed and authorised representative at any meeting arranged by the Department, in order to discuss and accurately answer questions relating to the Reports referred to in clause 33.1(a) or otherwise required under this Deed.
- 33.2 The CTA Provider must also provide any other Reports that the Department may reasonably require, within the timeframes requested by the Department.
- 33.3 The CTA 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 CTA Provider must submit a revised Report to the Department's satisfaction within 10 Business Days of the Department giving Notice to the CTA Provider to do so.

#### **34. Financial statements and guarantees**

- 34.1 Subject to clause 34.3, the CTA 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.
- 34.2 If the CTA Provider is a Group Respondent or a partnership, then the CTA Provider must provide one copy of the consolidated audited financial statements for the Group Respondent or partnership, if available, and individual annual audited financial statements for each member of the Group Respondent.
- 34.3 If required by the Department, the CTA 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.

### **35. Indemnity**

35.1 The CTA 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 the CTA Provider, a Subcontractor or an Employer in connection with this Deed or a CTA Agreement, 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 CTA Provider of this Deed or a CTA Agreement or a failure to meet an undertaking given under this Deed;
- (e) any publication of the information referred to in clauses 20.6, 43.3 or 43.4, where the published information was provided by the CTA 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.

35.2 The liability of the CTA Provider to indemnify the Department under this clause 35 will be reduced proportionately to the extent that fault on the Department's part contributed to the relevant cost, loss, damage, expense, or liability.

35.3 The Department's right to be indemnified under this clause 35 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.

35.4 In this clause 35, 'fault' means any negligent or unlawful act or omission or wilful misconduct, including fraud.

### **36. Intellectual Property**

#### **Use of Commonwealth Material**

36.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in the Department.

36.2 Subject to clause 36.3, the Department grants (or will procure) a royalty-free, revocable, non-exclusive licence for the CTA Provider to use, copy, and

reproduce the Commonwealth Material within Australia for the Term of this Deed and the purposes of this Deed.

- 36.3 The CTA 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) available at <https://www.pmc.gov.au/government/commonwealth-coat-arms>.

#### **Ownership and licensing of Intellectual Property Rights in Deed Material and Existing Material**

- 36.4 Subject to clause 36.7, and without affecting the position between the CTA Provider and a third party, the ownership of Intellectual Property Rights in the Deed Material vests in the CTA Provider.
- 36.5 Clause 36.4 does not affect the ownership of Intellectual Property Rights in:
- (a) any Commonwealth Material incorporated into Deed Material; or
  - (b) any Existing Material.
- 36.6 The CTA Provider will grant (or will procure for) the Department a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit the Deed Material for any Commonwealth purpose.
- 36.7 The CTA Provider 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 sub-licence) to use, reproduce, adapt, modify, perform, distribute, and communicate the Intellectual Property Rights in the Existing Material, with the exception of commercial off-the-shelf software, for any Commonwealth purpose.
- 36.8 If the CTA Provider becomes aware that the Department will require a licence for commercial off-the-shelf software in order to exercise its rights under the licences granted under this clause 36, the CTA Provider must Notify the Department immediately and provide the Department with all the necessary details to obtain a licence over such software including the name, version and manufacturer of the software.
- 36.9 The CTA Provider agrees that the licences granted in clauses 36.6 and 36.7 include a right for the Department to licence the Deed Material and Existing Material to the public under a [CCBY Licence](http://creativecommons.org/licenses/by/3.0/au/deed.en) (see <http://creativecommons.org/licenses/by/3.0/au/deed.en>).
- 36.10 The CTA Provider must, on the Department's request, create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 36.
- 36.11 The CTA Provider warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Deed Material in the manner provided for in this clause 36.

36.12 If requested by the Department, the CTA Provider must provide to the Department a copy of the Deed Material in the form requested by the Department.

### **37. Insurance**

37.1 Subject to this clause 37 and unless the Department otherwise agrees in writing, the CTA 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 37.1(b)(i)(A) and the professional indemnity insurance or errors and omissions insurance at clause 37.1(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 CTA 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 57; and
- (ii) the vicarious liability of the Department in respect of the acts or omissions of the CTA 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 CTA 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 37.1(b)),

arising out of, or in connection with, the CTA 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 CTA 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 37.1(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; and
- (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 CTA Provider's, or the CTA 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 CTA Provider at general law and additionally as assumed under the terms of clause 57 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 CTA Provider, its Personnel, representatives or agents; and
  - (ii) unintentional breaches of Intellectual Property Rights;
- (e) if the provision of the Services involves the provision of a product – products liability insurance with a limit of indemnity of at least \$10 million in respect of each and every occurrence, which covers:
  - (i) the CTA 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 57; and

- (ii) the vicarious liability of the Department in respect of the acts or omissions of the CTA 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 CTA 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 37.1(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; and

- (f) if the CTA 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 CTA Provider, marine liability and/or aircraft liability insurance, as is appropriate, covering the liability of the CTA 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 37.1(a).

Note: The Department has in place personal accident insurance that covers Participants in employment assistance programs who are undertaking activities including CTA.

- 37.2 The CTA Provider must also effect and maintain, or cause to be effected and maintained, any other insurance policies required to adequately cover the CTA Provider's business risk that a similar CTA Provider, acting reasonably, would acquire, and any other insurance cover required by law.
- 37.3 Unless otherwise agreed by the Department in writing, all insurances required under this clause 37 (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.
- 37.4 Each of the insurances required by this clause 37 (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 37);



- (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.

37.5 In relation to the insurances specified in this clause 37, the CTA 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.

37.6 The CTA 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 CTA 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 CTA Provider which would be insured under the insurance referred to in clause 37.1(d)); or
- (b) receives a notice of cancellation in respect of any of the insurances that the CTA Provider is obliged to effect and maintain.

37.7 The CTA 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 37, 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**

37.8 Subject to clause 37.9, the CTA Provider must obtain written independent professional advice that the insurances obtained by it and any Subcontractors pursuant to this clause 37 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.

- 37.9 Where the advice referred to in clause 37.8 relates to insurances obtained by a Subcontractor, the written independent professional advice in relation to that insurance may be obtained by either the CTA Provider or the Subcontractor.
- 37.10 Clause 37.8 does not apply to statutory workers compensation insurance or compulsory third party motor vehicle insurance.
- 37.11 The CTA 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.
- 37.12 In relation to each insurance policy relied upon by the CTA Provider in compliance with the CTA Provider's obligations to effect and maintain, or cause to be effected and maintained, insurance as required by this Deed, the CTA 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 37.8, at any time that the Department requests.

Note: Clause 37.12 allows the Department to request information relating to the insurances of any Subcontractor of the CTA Provider.

- 37.13 The CTA 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**

- 37.14 The CTA 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.
- 37.15 For the avoidance of doubt, the provisions of this clause 37 are not to be read so as to reduce a Party's liability under any other provision of this Deed, and compliance by the CTA Provider with the provisions of this clause 37 does not limit its liability under any other provision of this Deed.

### **38. Group Respondents**

- 38.1 If the CTA Provider is a Group Respondent, the CTA Provider:
- (a) agrees that its members are as specified in item 4 of Schedule 1;

- (b) warrants that each of its members have given their authority to the member named in the Particulars as 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 CTA Provider complying with any direction from the Department in relation to the change.

### **39. Corporate governance**

39.1 The CTA Provider must provide a copy of its Constitution to the Department upon request.

39.2 The CTA 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 obligation to comply with the CTA 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**

39.3 Unless otherwise agreed by the Department in writing at its absolute discretion, the CTA 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 CTA Provider.

39.4 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 39.3(a) to 39.3(f) while employed or engaged by the CTA Provider, or elected as an officer of the CTA Provider, in a role in:

- (a) its management or financial administration, the CTA Provider will be in breach of clause 39.3, if the CTA 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 CTA Provider must Notify the Department on becoming aware that the person falls or has been discovered as falling within any of clauses 39.3(a) to 39.3(f) and take any action in respect of that person, that is Notified by the Department.

Note: For the avoidance of doubt, clause 39.4(b) will also apply where a person is transferred in accordance with 39.4(a)(i), to a role in the performance of the Services.

## **40. External administration**

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

- (a) any notice requiring the CTA Provider to show cause why the CTA Provider should not come under any form of external administration referred to in clause 40.1(b);

- (b) any record of a decision of the CTA Provider, notice or orders that the CTA 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 CTA Provider's winding up;
  - (e) any decisions and orders of any court or tribunal made against the CTA Provider, or involving the CTA Provider, including an order for the CTA 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 CTA Provider's winding up; or
  - (g) being an individual, any notice that the CTA Provider has become bankrupt or has entered into a scheme of arrangement with his or her creditors.
- 40.2 The CTA Provider must, immediately upon the event happening, give Notice to the Department and to any Employment Provider with which it has a CTA Agreement that the CTA Provider:
- (a) has decided to place itself, or has otherwise come under, any one of the forms of external administration, referred to in clause 40.1(b); or
  - (b) is ceasing to carry on business.

#### **41. Subcontracting**

- 41.1 The CTA 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.
- 41.2 In giving approval under clause 41.1, the Department may impose such terms and conditions as the Department thinks fit and the CTA Provider must comply with any such terms and conditions.

- 41.3 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.
- 41.4 The CTA Provider must ensure that any arrangement it enters into with a Subcontractor is in writing.
- 41.5 The CTA 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.
- 41.6 The CTA Provider must ensure that every Subcontractor is aware of all terms and conditions of this Deed relevant to the Subcontractor's part in the performance of this Deed or the CTA Provider's provision of the Services under CTA Agreements.
- 41.7 The CTA Provider must pay its Subcontractors in accordance with the terms of the relevant Subcontract.
- 41.8 The CTA Provider must, in any Subcontract, reserve a right of termination to take account of the Department's right of termination under clause 49 and the Department's right of revocation of approval of a Subcontractor under clause 41.10, and the CTA 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.
- 41.9 The CTA Provider must, in any Subcontract, bind the Subcontractor, with respect to the Department, to all relevant terms and conditions of this Deed including clauses 25.1 [Security], 27 [Personal and Protected Information], 28 [Confidential Information], 29 [Records the CTA Provider must keep], 32 [Access to premises and Material], 37 [Insurance], 51 [Negation of employment, partnership and agency], and 58 [Compliance with laws and government policies].
- 41.10 The Department may revoke its approval of a Subcontractor on any reasonable ground by giving Notice to the CTA Provider and, on receipt of the Notice, the CTA 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.
- 41.11 The CTA 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).
- 41.12 The Department may publicly disclose the names of any Subcontractors engaged to perform any of the CTA Provider's obligations under this Deed.
- 41.13 The CTA Provider must inform all Subcontractors that their participation in performing any of the CTA Provider's obligations under this Deed may be publicly disclosed.
- 41.14 If the CTA Provider does not comply with this clause 41, the Department may:

- (a) take action under clause 48.2; or
- (b) terminate this Deed under clause 49.9.

## **42. Gap filling and additional Services**

42.1 The Department and the CTA Provider may agree to:

- (a) the provision of additional services by the CTA Provider, on the same or similar terms as specified in this Deed, at the times requested by the Department for the purposes of filling gaps identified by the Department in CTA or in the CTA Panel in relation to an Employment Region; and
- (b) the provision of other employment services or employment related services by the CTA Provider to the Department, including applicable terms and conditions.

## **43. Acknowledgement and promotion**

43.1 The CTA 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 CTA 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 CTA Provider has received from the Commonwealth, in the manner consistent with any Guidelines;
- (b) deliver to the Department (at the Department's request and at the CTA Provider's own cost) copies of all promotional, publicity and advertising materials that the CTA Provider has developed for the purposes of this Deed; and
- (c) ensure that any promotional, publicity or advertising materials provided to the Department in accordance with clause 43.1(b) comply with the [Web Content Accessibility Guidelines](https://www.w3.org/WAI/intro/wcag) available at: (<https://www.w3.org/WAI/intro/wcag>).

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

43.3 The Department may, by any means, publicise and report on the Services and on the awarding of this Deed to the CTA Provider, including the name of the CTA Provider, the amounts of fees paid, or expected to be paid, to the CTA Provider, and a description of the Services.

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

#### **44. Assignment and novation**

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

#### **45. Change in Control**

- 45.1 The CTA Provider must not, without the Department's prior written consent, cause or permit to occur a Change in Control of:
  - (a) the CTA Provider; or
  - (b) any Material Subcontractor.
- 45.2 The Department may, at its absolute discretion, grant, or refuse to grant its consent to a Change in Control of the CTA Provider or any Material Subcontractor. If the Department grants its consent, the Department may do so on such conditions as the Department sees fit.
- 45.3 The CTA 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) Group Respondent membership, if relevant,of the CTA Provider or any Material Subcontractor, including the dates of any changes to those matters.
- 45.4 If the CTA Provider does not:
  - (a) obtain the Department's consent to a Change in Control as required by clause 45.1; or
  - (b) provide the Department with any information required by the Department in accordance with clause 45.3,the Department may do either or both of the following:
  - (c) take action under clause 48.2; or
  - (d) terminate this Deed under clause 49.9.

#### **46. Dispute resolution**



- 46.1 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 46 has made a reasonable assessment that the rights and obligations of the Parties in respect of a matter subject to this clause 46, are genuinely in dispute; and
  - (b) cooperate fully with any process instigated in accordance with this clause 46, in order to achieve a prompt and efficient resolution of any dispute.

**Informal resolution**

- 46.2 Subject to clause 46.5, the Parties agree that any dispute arising in relation to this Deed will be dealt with, in the first instance, through the process in the Joint Charter of Deed Management.

**Formal resolution**

- 46.3 Subject to clause 46.5, if any dispute arising in relation to this Deed cannot be resolved using this process in clause 46.2, 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 46.3(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 46.3(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 46.3(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 46.3(d) or 46.3(e); or
    - (ii) the dispute is not resolve within 20 Business Days of referring the dispute to an independent third person pursuant to clause 46.3(e), either Party may commence legal proceedings.

**Costs and application of this clause**

- 46.4 Each Party will bear its own costs of complying with this clause 46, and the Parties must bear equally the cost of any independent third person engaged under clauses 46.3(d) and 46.3(e).
- 46.5 This clause 46 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 5, 7, 9, 10, 19, 20, 23, 26, 30, 32, 39, 41, 47, 48 or 49;
  - (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 territory, is investigating a breach, or suspected breach, of the law by the CTA Provider.
- 46.6 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.

#### **47. Suspension**

- 47.1 Without limiting the Department's rights under clause 13.5, this Deed or at law, the Department may, in addition to taking any other action available to it under clause 48, and prior to taking action under clause 49.9, take action under clauses 48.2(a) and 48.2(b), if the Department is of the opinion that:
- (a) the CTA Provider may be in breach of its obligations under this Deed, and while the Department investigates the matter;
  - (b) the CTA Provider's performance of any of its obligations under this Deed is less than satisfactory to the Department;
  - (c) the CTA Provider has outstanding or unacquitted money under any arrangement, whether contractual or statutory, with the Commonwealth; or
  - (d) the CTA Provider may be engaged in fraudulent activity, and while the Department investigates the matter.
- 47.2 Notwithstanding any action taken by the Department as contemplated in clause 47.1, the CTA Provider must continue to perform its obligations under this Deed, unless the Department agrees otherwise in writing.
- 47.3 If the Department Suspends the CTA Provider under this Deed, either entirely or in respect of one or more Employment Regions, the CTA Provider must:
- (a) immediately cease delivering the Services, either entirely or in the relevant Employment Region, as the case may be, until Notified otherwise by the Department;
  - (b) not accept any new Referrals, and not enter into any new CTA Agreement or any extension of an existing CTA Agreement with any Employment Provider, either at all or in the relevant Employment

Regions, as the case may be, for the period commencing on the date of the Notice of Suspension until the earlier of:

- (i) the date on which the Department Notifies the CTA Provider that the Suspension has been lifted; or
  - (ii) the date on which the Department exercises its rights under clause 49.9; and
- (c) Notify any Employment Provider with which it has a CTA Agreement in any Employment Regions in respect of which the CTA Provider has been Suspended, within 10 Business Days of the CTA Provider being Notified that it is Suspended.

#### **48. Remedies**

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

- (a) the CTA 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 CTA Provider fails to fulfil, or is breach of, any of its obligations under this Deed that are not capable of being rectified, as determined by the Department;
- (c) the CTA 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 to Department to terminate this Deed in whole or in part under clause 49; or
- (e) this Deed otherwise provides for the Department to exercise rights under clause 48.2,

the Department may, at its absolute discretion and by providing Notice to the CTA Provider, immediately exercise one or more of the remedies set out in clause 48.2.

48.2 The remedies that the Department may exercise are:

- (a) Suspending the CTA Provider from providing any Services under this Deed, either entirely or in respect of one or more Employment Regions;
- (b) suspending any or all of the following, unless otherwise Notified by the Department:
  - (i) any payment under this Deed, in whole or in part; and/or
  - (ii) Access to all or part of the Department's IT Systems for the CTA Provider, any Personnel, Subcontractor, Third Party IT Provider, External IT System or any other person;

- (c) terminating, or requiring the cessation of all Access to the Department's IT Systems for any particular Personnel, Subcontractor, Third Party IT Provider, External IT System or any other person;
- (d) requiring the CTA Provider to obtain new logon IDs for any Personnel, Subcontractor, Third Party IT Provider and/or other person, and if so required, the CTA Provider must promptly obtain such new logons;
- (e) imposing special conditions on:
  - (i) the claiming or making of payments; and/or
  - (ii) the management of Records,
  - (iii) as the Department thinks fit, and the CTA Provider must comply with any such special conditions;
- (f) reducing or not paying specific payments that would otherwise have been payable;
- (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 CTA Provider;
- (i) reducing the scope of this Deed (including, for the avoidance of doubt, with respect to individual Employment Regions); and
- (j) taking any other action set out in this Deed.

48.3 If the Department takes any action under this clause 48:

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

48.4 For the avoidance of doubt, any reduction or suspension of payments or reduction of the scope of this Deed, or any Suspension, under this clause 48, does not amount to a reduction of scope or termination for which compensation is payable.

## **49. Termination and reduction**

### **Termination or reduction for convenience by the Department**

49.1 The Department may, at any time by Notice to the CTA Provider:

- (a) terminate this Deed in whole or in part; or
- (b) reduce the scope of any part, or all of this Deed,

including, for the avoidance of doubt, in respect of one or more Employment Regions, without prejudice to the rights, liabilities, or obligations of either Party accruing before the date on which the termination or reduction takes effect.

- 49.2 If this Deed is terminated in whole or part or reduced in scope under clause 49.1, the Department is only liable for:
- (a) payment of fees as set out in clause 49.3; and
  - (b) subject to clauses 49.5, 49.6 and 49.7, any reasonable, unavoidable costs actually incurred by the CTA Provider and directly attributable to the termination, in whole or in part, or a reduction in scope of this Deed.
- 49.3 Where the Department terminates this Deed in whole or in part or reduces the scope of this Deed, under clause 49.1, the Department will only be liable to make payments which are properly due to the CTA Provider before the date on which the termination or reduction in scope takes effect.
- 49.4 Upon receipt of a Notice under this clause 49, the CTA 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 do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the Notice;
  - (d) continue work on any part of the Services not affected by the Notice; and
  - (e) Notify any Employment Provider with which it has a CTA Agreement that relates to aspects of the CTA Panel or the Services affected by the Notice.
- 49.5 The Department's liability to pay any costs under or in relation to this clause 49 is subject to the CTA Provider's:
- (a) strict compliance with this clause 49; and
  - (b) substantiation of any amounts claimed under clause 49.3.
- 49.6 The Department will not be liable:
- (a) to pay costs for loss of prospective profits attributable to a termination or reduction in scope under this clause 49;
  - (b) for loss of any benefits that would have been conferred on the CTA Provider had a termination or a reduction in scope made under this clause 49 not occurred; or
  - (c) for any amounts that would, in aggregate, exceed the maximum amount of fees 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 49.
- 49.7 In addition, in relation to a reduction in scope under this clause 49, the Department will not be liable to pay the CTA Provider, and the CTA Provider agrees that its reasonable costs do not include:
- (a) any amounts owed by the CTA Provider under any contract of employment or to any of its Subcontractors; and

- (b) payment of any liabilities arising from commitments the CTA 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.

49.8 If the Department terminates, or reduces the scope of, this Deed under this clause 49:

- (a) the Department's actions will not constitute a breach of this Deed; and
- (b) the Parties agree that the amounts payable to the CTA Provider under this clause 49, represent a reasonable pre-estimate of any loss that may be incurred by the CTA Provider.

#### **Termination for Default by the Department**

49.9 The Department may terminate this Deed in whole or in part (including, for the avoidance of doubt, in respect of one or more Employment Regions) by giving Notice to the CTA Provider if any of the following events or matters arise:

- (a) the CTA Provider breaches a warranty provided for in clause 11;
- (b) the CTA Provider is found to have provided false or misleading information to the Department in respect to any aspect of its participation on the CTA Panel;
- (c) the CTA Provider is, in the Department's opinion, no longer able to satisfy one or more Conditions for Ongoing Participation;
- (d) the CTA Provider, in the Department's opinion, no longer has adequate expertise, capacity or capability to provide CTA Courses;
- (e) the CTA 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);
- (f) the CTA Provider is in breach of any of its obligations under this Deed that are capable of being rectified, and does not rectify the omission or breach within 10 Business Days, or such other period specified by the Department, of receiving a Notice from the Department to do so;
- (g) the CTA Provider fails to comply with a statutory demand, within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (h) to the extent permitted by law, any event referred to in clause 40 occurs, other than an event under clause 40.1(c);
- (i) the Department becomes aware of any information which indicates that, prior to entering into this Deed, the CTA Provider has, including in any Tender:
  - (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, and

the 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;

- (j) notice is served on the CTA Provider or proceedings are taken to cancel its incorporation or cancel its registration or to dissolve the CTA Provider as a legal entity; or

Note: for the avoidance of doubt, clause 49.9(f) does not apply where a CTA Provider has transferred its incorporation or registration in accordance with the legislation under which it is incorporated or registered.

- (k) the Department becomes expressly entitled to terminate this Deed under any other provision of this Deed.

- 49.10 Clause 49.9 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 CTA 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.

#### **Termination or reduction by the CTA Provider**

- 49.11 The CTA Provider may:

- (a) terminate this Deed; or
- (b) reduce the scope of its participation on the CTA Panel, on provision of 30 calendar days' Notice to the Department.

- 49.12 If the CTA Provider provides a Notice to the Department under clause 49.11, it must Notify, within five Business Days of the date of the Notice:

- (a) any Employment Provider with which it has a CTA Agreement (if the Notice is provided under clause 49.11(a)); or
- (b) any Employment Provider with which it has a CTA Agreement that relates to aspects of the CTA Panel affected by the reduced participation (if the Notice is provided under clause 49.11(b)).

#### **Effect of termination and reduction**

- 49.13 Where this Deed has been terminated in accordance with this clause 49, the CTA Provider must not accept or action any new Referrals, or enter into a new CTA Agreement or an extension of an existing CTA Agreement with an Employment Provider to deliver CTA, after the date of termination.

- 49.14 Where the scope of the CTA Provider's participation on the CTA Panel is reduced, the CTA Provider must not accept or action any new Referrals, or enter into a new CTA Agreement or an extension of an existing CTA Agreement with an Employment Provider to deliver CTA, after the date of reduction, if the Referral or CTA Agreement relates to aspects of the participation from which the CTA Provider has been removed.

Note: If clause 49.13 or clause 49.14 applies, a CTA Provider that is the same legal entity as a Referring Employment Provider will be prohibited from accepting or actioning any new Referrals from itself in the relevant circumstances set out in that clause.

- 49.15 Upon Notice of termination of this Deed:
- (a) the Department will promptly remove the CTA Provider from the CTA Panel for all relevant Employment Regions;
  - (b) subject to clause 29.12, the CTA Provider must destroy or otherwise dispose of any Material or Records as directed by the Department; and
  - (c) the CTA Provider must immediately Notify any Employment Provider with which it has a CTA Agreement.
- 49.16 Upon Notice of reduction in scope, the Department will promptly modify the CTA Provider's participation on the CTA Panel including in relation to the relevant Employment Regions, in accordance with the Notice.

## **50. Survival**

- 50.1 The termination or expiry of this Deed for any reason does not extinguish or otherwise affect the operation of clauses 5, 9, 20, 24, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 46, 48, 50, 52, 55 and 57 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.
- 50.2 Clause 32 of this Deed survives for seven years from the expiry or earlier termination of this Deed.

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

- 51.1 The CTA Provider, its Personnel, partners, agents, Subcontractors and Third Party IT Providers are not, by virtue of this Deed or any Subcontract, or for any purpose, deemed to be Department Employees, partners, or agents or otherwise able to bind or represent the Commonwealth.
- 51.2 Subject to this Deed, the CTA Provider must not represent itself, and must ensure that its Personnel, partners, agents, Subcontractors and Third Party IT Providers do not represent themselves, as being Department Employees, partners, or agents or as otherwise able to bind or represent the Commonwealth.

## **52. Waiver**

- 52.1 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.
- 52.2 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.
- 52.3 Waiver of any provision of, or right under, this Deed:
- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
  - (b) is effective only to the extent set out in the written waiver.



52.4 In this clause 52, 'rights' means rights provided by this Deed, under statute, at law or in equity.

### **53. Severance**

53.1 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.

### **54. Entire agreement**

54.1 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.

### **55. Variation of Deed**

55.1 Except for action the Department is expressly authorised to take elsewhere in this Deed, and except as provided in clause 8 and 14.4, no variation of this Deed is binding unless it is agreed in writing and signed by the Parties.

### **56. Applicable law and jurisdiction**

56.1 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.

56.2 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.

### **57. Liability of the CTA Provider to the Department**

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

57.1 To the extent permitted by law, where:

- (a) more than one Party is a signatory to this Deed as CTA Provider – each of those Parties;
- (b) the CTA Provider is a partnership – each partner; or
- (c) the CTA Provider is a Group Respondent – each member of the Group Respondent,

is jointly and severally liable for:

- (d) the performance of all of the obligations of the CTA Provider under this Deed; and
- (e) all losses caused by any Subcontractor engaged for the purpose of this Deed.

#### **Proportionate liability**

57.2 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 56, this clause 57.2 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 56 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.

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

- 58.1 The CTA Provider must, in carrying out its obligations under this Deed, comply with:
  - (a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, state, territory or local authority, including relevant WHS Laws and industrial relations legislation and any legislation relating to the licensing of employment agents; and
  - (b) any Commonwealth policies Notified by the Department to the CTA Provider in writing, referred to or made available by the Department to the CTA Provider (including by reference to an internet site), including any listed in this Deed.
- 58.2 The CTA 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.
- 58.3 Clauses 58.4 to 58.5 apply only to the extent that the CTA Provider is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012 (Cth)* ('the WGE Act').
- 58.4 The CTA Provider must:
  - (a) Notify the Department as soon as practicable if the CTA 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 CTA Provider by the Commonwealth Workplace Gender Equality Agency within 18 months from the Deed Commencement Date, and following this, annually, to the Department.
- 58.5 Compliance with the WGE Act does not relieve the CTA Provider from its responsibility to comply with its other obligations under this Deed.

## **59. Work health and safety**

- 59.1 The CTA 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 work 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 CTA Provider is required by the WHS Act to report a Notifiable Incident to the Regulator arising out of the Services:
  - (i) at the same time, or as soon as is possible in the circumstances, give Notice of such incident, and a copy of any written notice provided to the Regulator, to the Department; and
  - (ii) provide to the Department, within such time as the Department specifies, a Report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future;
- (e) within 24 hours of becoming aware of such circumstances, inform the Department of the full details of:
  - (i) any suspected or actual contravention of the WHS Laws relating to the Services;
  - (ii) any workplace entry by a WHS Entry Permit Holder, or an inspector appointed under the WHS Act, to any place where the Services are being performed or undertaken;
  - (iii) any proceedings against the CTA Provider, or any decision or request by the Regulator given to the CTA 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 CTA Provider being informed of any such cessation or direction; and
- (f) provide the Department with copies of all notices and correspondence issued to the CTA Provider by any person under the WHS Laws, within 24 hours of receiving any such notice or correspondence.

59.2 The CTA 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 CTA Provider's work health and safety performance, arising out of, or in respect of, the Services.

## **60. Incidents**

60.1 The CTA Provider must Notify the Department and the relevant Employment Provider as soon as possible, and within 24 hours of any incident involving the

Services, including, but not limited to, any incident occurring during an Inbound Employer Visit or Outbound Employer Visit, including:

- (a) any accident, injury or death occurring during, or as a result of, the Services, including in relation to a Participant or a member of the public;
- (b) any incident which relates to a work, health and safety issue; and
- (c) any incident that may negatively impact upon the Department or bring the Services into disrepute.

60.2 Where an incident referred to in clause 60.1 is an accident, or involves injury or death, the CTA Provider must also, as soon as possible, and within 24 hours:

- (a) Notify the Department's insurance broker as specified in any Guidelines;
- (b) submit an incident report to the Department's insurance broker (in the form required by the Department's insurance broker as specified in any Guidelines) giving full details of the accident, injury or death; and
- (c) provide a copy of the incident report to the Account Manager.

60.3 The CTA Provider must cooperate fully with the Department, the relevant Employment Provider, and the Department's insurance broker if required, in relation to any incident Notified by the CTA Provider in accordance with clause 60.1 including, without limitation, by providing any information about the incident sought by the Department, the relevant Employment Provider or the Department's insurance broker.

60.4 The CTA 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.

## **61. Supervision of Participants**

61.1 The CTA Provider must, in accordance with any Guidelines:

- (a) ensure that it, or where relevant each Employer, provides adequate and appropriate Supervision for Participants engaged in the Services, so as to ensure that relevant Participants are undertaking appropriate tasks and operating in a healthy and safe environment;
- (b) where the Participants are Vulnerable People, or Vulnerable People are otherwise present during the provision of the Services, ensure that the Supervision provided is continuous over the entire duration of the relevant Services;
- (c) where the Participants are not Vulnerable People, or Vulnerable People are not otherwise present during the provision of the Services, make an assessment of whether or not the Supervision provided should be continuous, having regard to:
  - (i) the nature of the activities to be undertaken by the Participants;
  - (ii) the potential Participants;
  - (iii) any risks identified in the relevant risk assessment (if relevant); and

- (iv) the risks of the Participants not being continuously Supervised; and
  - (d) record, or require the relevant Employer to record, the relevant Supervisor's attendance and provide copies of those Records to the Department on request.
- 61.2 The CTA Provider must ensure that all relevant Personnel and Supervisors:
- (a) are fit and proper persons to be involved in the Services, including the Outbound Employer Visits;
  - (b) have an appropriate level of skill/knowledge, training and/or experience in:
    - (i) the part of the Services or each Outbound Employer Visit in which they are engaged; and
    - (ii) working with, training and supervising persons in such activities; and
  - (c) have had checks as specified in clause 18 and have met any additional statutory requirements (including under state and territory law), prior to being given responsibility for the Supervision of Participants.
- 61.3 The Department may give Notice, on reasonable grounds related to the performance of the Services, including the Outbound Employer Visits, requiring the CTA Provider to remove, or ensure the removal of, a Supervisor, whether engaged by the CTA Provider or engaged by an Employer, from work on the Services, including the Outbound Employer Visits.
- 61.4 Where the Department gives Notice under clause 61.3, the CTA Provider must, at its own cost, promptly arrange for the removal of such a Supervisor from work on the Services, including an Outbound Employer Visit, and their replacement with one or more Supervisors acceptable to the Department.
- 61.5 The CTA Provider must ensure that each Supervisor, whether engaged by the CTA Provider or engaged by an Employer hosting an Outbound Employer Visit, is required to notify the CTA Provider:
- (a) of a Participant's non-attendance in relation to their participation in the Services, including non-attendance at all relevant Outbound Employer Visits; and
  - (b) of any other non-compliance by a Participant in relation to their participation in the Services,
- as soon as practicable, but no later than at the end of the relevant Business Day.
- 61.6 All Supervisors who:
- (a) are contracted by the CTA Provider to provide Supervision of Participants; and
  - (b) are not employees of the CTA Provider,
- are deemed to be approved Subcontractors for the purposes of clause 41.1.

## **62. Conflict of interest**

- 62.1 The CTA 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.
- 62.2 The CTA Provider must not, during the Term of this Deed, enter into any arrangement, scheme or contract, however described, which may cause a Conflict in the performance of its obligations under this Deed.
- 62.3 If, during the Term of this Deed, a Conflict arises, or is likely to arise, including as determined and Notified by the Department, the CTA Provider must:
- (a) immediately Notify the Department of the Conflict and the steps that the CTA 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.
- 62.4 If the CTA Provider:
- (a) fails to Notify the Department in accordance with clause 62.3(a); or
  - (b) is unable or unwilling to resolve or deal with the Conflict as reasonably required by the Department,
- the Department may immediately terminate this Deed under clause 49.9.

## **63. Notices**

- 63.1 A Party giving Notice or Notifying under this Deed must do so in writing or by email, addressed to the Account Manager or 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; and
  - (b) by email, the Notice must be sent to the email address of the Account Manager or Contact Person, as relevant.
- 63.2 A Notice given in accordance with clause 63.1 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.
- 63.3 A Notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be received on the next Business Day in that place.

- 63.4 For the purposes of this clause 63, the Account Manager's and the Contact Person's address details are as specified in items 1 and 2 of Schedule 1 respectively.

#### **64. Participant feedback process and Participant feedback register**

- 64.1 The CTA Provider must establish and publicise to its Participants the existence and details of a Participant feedback process which will deal with feedback, including complaints lodged by Participants, about its conduct of the Services. The process must:
- (a) be consistent with this clause 64, the Joint Charter of Deed Management, any representation made by the CTA Provider in its Tender, for the Services, and the Service Guarantee; and
  - (b) clearly indicate that Participants may also make a complaint directly to the Department using the Department's National Customer Service Line.
- 64.2 If a Participant is dissatisfied with the results of the Participant feedback process, the CTA Provider must refer the Participant to the Department's National Customer Service Line for further investigation of the matter.
- 64.3 Upon request, the CTA Provider must give to the Department and Participants copies and details of the process it has established to manage Participant feedback.
- 64.4 The CTA Provider must:
- (a) explain the Participant feedback process to each Participant at their Initial Meeting with the CTA Provider;
  - (b) ensure that all complaints it receives are investigated by an appropriately senior staff member of the CTA Provider;
  - (c) effectively and promptly communicate the outcome of any investigation and any action the CTA 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 Participant has chosen to utilise other legislative or other complaints mechanisms.
- 64.5 The CTA Provider must keep:
- (a) a Participant feedback register for each Employment Region, which includes the following information:

- (i) details of all Participant feedback received directly by the CTA Provider, and the outcome of any investigation where relevant;
  - (ii) details of all Participant feedback referred to the CTA 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 Participant feedback register), the location at which CTA is delivered and the Employment Region to which the complaint relates, as relevant, and the date of the complaint and the Participant(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.

## 65. Service Guarantee

65.1 The CTA Provider must:

- (a) conduct the Services at or above the minimum standards in the Service Guarantee and in accordance with all representations made by the CTA Provider with regards to the Services, as specified in its Tender; and
- (b) prominently display the Service Guarantee in its offices and all locations at which the CTA Provider is delivering CTA Courses, and make these available to Participants, potential Participants and Employers.

## 66. Definitions

66.1 In this Deed, unless the contrary intention appears, all capitalised terms have the meaning given to them in clause 66.1. All other words have their natural and ordinary meaning.

66.2 In this Deed:

**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 1, who has authority to receive and sign Notices and written communications for the Department under this Deed.

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

**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).



**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.

**Career Pathway Assessment** means the assessment described in item 7.7(a) of Schedule 2.

**Career Pathway Plan** means a plan which outlines the steps the Participant will need to take to pursue employment opportunities based on their transferable skills and the local labour market.

**Career Transition Assistance** or **CTA** means the component of the Australian Government's Mature Age Employment Package intended to provide mature age job seekers with targeted assistance to assess their current skills, explore suitable occupations, research local labour markets and refresh or build on their IT skills. During the Term of this Deed, CTA is open to all job seekers aged 45 years and over and who are registered with an Employment Provider within an Employment Region. For the purposes of the jobactive Deed, CTA will be an approved Activity and job seekers who have an Annual Activity Requirement (AAR) will fully meet their AAR for the duration of their participation in CTA.

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

**Child or Children** means a person, or persons, under the age of 18 years.

**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 an Employment Provider or the CTA 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 an Employment Provider or the CTA Provider for the purposes of this Deed, and includes Records which are copied or derived from Records so provided.

**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.

**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.

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

**Conditions for Ongoing Participation** means the conditions set out in clause 14 of this Deed.

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

**Conflict** refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through the CTA Provider engaging in any activity or obtaining any interest that may interfere with or restrict the CTA Provider in delivering CTA and in complying with its obligations under this Deed.

**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 meeting between the CTA Provider and a Participant, as described in item 6 of Schedule 2

**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 CTA 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).

**CTA Agreement** means a contract between the CTA Provider and an Employment Provider under which the CTA Provider will deliver CTA Courses to Participants Referred by the Employment Provider, incorporating those terms specified in clause 3.2(d).

**CTA Coordinator** means a person who:

- (a) holds a recognised qualification in professional career development; or

- (b) holds membership of an association that is a member of Career Industry Council of Australia; and
- (c) is able to fulfil the role of a Facilitator, as needed.

**CTA Course** means a course delivered by the CTA Provider that provides Participants with Career Transition Assistance as described in Schedule 2.

**CTA Panel** means the panel of CTA Providers established in accordance with the RFT, who may be engaged by Employment Providers to deliver CTA Courses in the relevant Employment Regions under a CTA Agreement.

**CTA Provider** means the services provider contracted under this Deed and includes, as relevant, its Personnel, successors and assignees, and any constituent entities of the Party's organisation.

**Cybersafety Policy** means the Commonwealth policy of that name as specified at clauses 26.23 to 26.27.

**Deed** means this document, as varied or extended by the Parties from time to time in accordance with this Deed, and includes other documents incorporated by reference.

**Deed Commencement Date** means the latter of 1 July 2019 and the date on which this Deed is signed by the last Party to do so.

**Deed Material** means all Material:

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

**Department** means the Commonwealth Department of Jobs and Small 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 CTA Provider as being a Department Employee; and
- (b) any person authorised by law to undertake acts on behalf of the Department.

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

**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 *Department's External Security Policy - for Contracted Service Providers and Users* and any other security policies Notified by the Department from time to time.

**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.

**Documentary Evidence** means those Records of the CTA 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 CTA

Provider as required under this Deed and any CTA Agreement and/or that the CTA Provider is entitled to be paid.

**Employer** means an entity that has the legal capacity to enter into a contract of employment with a Participant but does not include the CTA Provider.

**Employment Fund** means funding available for the General Account.

**Employment Provider** means any entity contracted by the Commonwealth to provide Employment Provider Services under the jobactive Deed.

**Employment Region** means a geographical area:

- (a) identified and displayed at [lmip.gov.au](http://lmip.gov.au), as varied by the Department at the Department's absolute discretion; and
- (b) that the CTA Provider is contracted to service under this Deed, as specified in item 6 of Schedule 1.

**Employment Services Tip off Line** means a telephone and email service, developed primarily for current and former employees of 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 Deed that 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*.

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

**Exit** means an exit of a Participant from the Services in accordance with item 4.5 of Schedule 2, and '**Exited**' has an equivalent meaning..

**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.

**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 CTA Provider or any Subcontractor directly or indirectly 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.

**Facilitator** means a person who delivers a CTA Course to Participants.

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

**General Account** means a flexible pool of funds which is part of the Employment Fund and held by the Department, and which is nominally credited to the Employment Provider.

**Group Respondent** means a group of two or more entities, however constituted, other than a partnership, which have entered into an arrangement for the purposes of jointly delivering Services under this Deed as specified in item 4 of Schedule 1, and which may have appointed a lead member of the group with authority to act on behalf of all members of the group for the purposes of this Deed, as specified in the Particulars..

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

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

**Guidelines** refers to the Guidelines, if any, as described in this Deed and issued by the Department, as amended by the Department.

**Harmful Code** means any software or code that is designed to infiltrate a computer, system, network or other infrastructure without an end user's informed consent, such as an attack of any sort including: distributed denial of service, malware, virus, trojans, worms, spam, phishing e-mail, backdoors, botspyware, adware, diallers, toolkits, keyloggers, clickjackers, web bug, exploits, cracking tools, and hacking tools.

**Inbound Employer Visit** means a visit by an Employer to the CTA Provider's premises for the purpose of providing Participants with an insight into the tasks and duties of a particular occupation or industry.

**Indigenous** means a person who:

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

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

**Initial Meeting** means a meeting between the CTA Provider and Participant in accordance with item 3 of Schedule 2.

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

**Intellectual Property Rights** includes:

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

**Interest** means interest calculated at a rate determined by the Department that will be no higher than the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points.

**jobactive Deed 2015-2020 or jobactive Deed** means the deed of that name entered into between the Department and an Employment Provider, as amended from time to time.

**Joint Charter of Deed Management** means the charter at Annexure A which embodies the commitment by the Department and CTA Providers to work cooperatively to achieve shared goals and outcomes in the delivery of CTA.

**Key Performance Indicators** means the key performance indicators described in Schedule 3.



**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 CTA Provider subcontracted to perform a substantial part (as determined by the Department) of the Services.

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

**National Customer Service Line** means a free call telephone service which puts Participants and CTA Providers in contact with a Department Customer Service Officer, and is 1800 805 260, or such other number as Notified by the Department from time to time.

**Non-regional Employment Region** means a location identified on the Department's IT Systems as not attracting a regional loading.

**Notice** means a written notice in accordance with clause 63; and '**Notify**', '**Notified**' and '**Notification**' have the same meaning.

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

**Outbound Employer Visit** means a visit by Participants to an Employer's premises, arranged by the CTA Provider, for the purpose of providing those Participants with an insight into the tasks and duties of a particular occupation or industry.

**Participant** means a job seeker who has been referred to the CTA Provider to undertake CTA.

**Particulars** means the document of that name by which the Parties execute this Deed.

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

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

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

**Personnel** means any natural person who is an officer, employee, volunteer or professional advisor of the CTA Provider or of any of its Subcontractors.

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

**Privacy Notification and Consent Form** means the form or forms of that name as issued by the Department.

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

**Program Assurance Strategy** means the strategy developed by the Department to monitor the implementation and effectiveness of the CTA.

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

**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 Auditor Records.

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

**Referral** means the referral of a person by an Employment Provider to a CTA Provider to undertake CTA, as recorded in the Department's IT System (and 'Refer' and 'Referred' have the corresponding meaning).

**Regional Employment Region** means a location identified on the Department's IT Systems as attracting a regional loading.

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

**Related Entity** means a related body corporate as defined in the *Corporations Act 2001* (Cth).

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

**Résumé** means a one to two-page document that lists the Participant's work experience, education and skills and that is prepared in a form suitable for submission to an Employer.

**RFT** means the Department's Request for Tender (RFT) CTA 2019-2021 seeking tenders from potential suppliers to be included on the CTA Panel.

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

- (a) for ensuring the CTA 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.

Sensitive Information has the meaning given to the term 'sensitive information' in the Privacy Act.

**Services** means the services that the CTA Provider is contracted to perform and provide under this Deed and includes delivery of CTA Courses in accordance with this Deed and any agreement with an Employment Provider in relation to the delivery of a CTA Course.

**Service Guarantee** means a set of minimum service standards for CTA Providers, in accordance with clause 65 and as specified in Annexure B.

**Service Period** means, subject to any contrary stipulation in this Deed, the period of that name specified in clause 1.2.

**Subcontract** means a contract between the CTA Provider and a Subcontractor in relation to the performance of the CTA Provider's obligations under this Deed or a CTA Agreement.

**Subcontractor** means an entity, including a Related Entity of the CTA Provider, that is contracted or otherwise engaged by the CTA Provider in relation to the performance of the CTA Provider's obligations under this Deed.

**Supervision** means the action or process of directly monitoring and managing Participants participating in CTA Courses or in any Outbound Employer Visit.

**Supervisor** means a person who is engaged or employed by the CTA Provider or by an Employer hosting an Outbound Employer Visit and provides Supervision of Participants engaged in CTA or in any Outbound Employer Visit.

**Suspension** means the suspension of the CTA Provider by the Department from delivering the Services as a member of the CTA Panel, either entirely or in respect of one or more Employment Regions, in accordance with clauses 13.5, 47 or 48, and '**Suspend**' and '**Suspended**' have an equivalent meaning.

**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.

**Tender** means the tender submitted by the CTA Provider to the Department in response to the RFT.

**Term of this Deed** refers to the period described in clause 1.1.

**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 Provider and used by the CTA Provider or any Subcontractor directly or indirectly 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 Provider** means an entity contracted by the CTA Provider to provide information technology systems or services to the CTA 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 Provider's organisation. A '**Third Party IT Provider**' includes a cloud services provider, an infrastructure as a service provider, a software as a service provider, a platform as a service provider, an applications management provider, and also any provider of infrastructure (including servers and network hardware) used for the purpose of Accessing or storing Records.

**Third Party IT Provider Deed** means an agreement between a Third Party IT Provider 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.

**Vulnerable People** means Children and people who are elderly, disabled or otherwise vulnerable.

**Warm Handover Meeting** means an in person meeting between the CTA Provider, a Participant and the Participant's Employment Provider in accordance with item 5 of Schedule 2.

**WHS Act** means the *Work Health and Safety Act 2011* (Cth) and any corresponding WHS law within the meaning of section 4 of the WHS Act.

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

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

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

**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.

## **67. Interpretation**

67.1 Unless the contrary intention appears:

- (a) words in the singular include the plural and vice versa;
- (b) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (c) a reference to an entity includes an association of legal persons, however constituted, governed by deed, an incorporated body, an unincorporated association, a partnership and/or a trust;
- (d) clause headings, notes, words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
- (e) all references to dollars are to Australian dollars;
- (f) a reference to any legislation or legislative provision includes any statutory modification, substitution, re-enactment, or successor of that legislation or legislative provision;
- (g) an 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 a schedule (or an attachment) is a reference to a schedule (or an attachment) to this Deed, including as amended or replaced from time to time by agreement in writing between the Parties;
- (i) a reference to an internet site includes those sites as amended from time to time;
- (j) a reference to Guidelines is a reference to those Guidelines as advised and amended by the Department from time to time;

- (k) 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;
- (l) a reference to writing is a reference to any visible representation of words, figures or symbols;
- (m) the CTA Provider must perform all obligations in this Deed in accordance with any Guidelines, even if a particular clause does not expressly refer to any Guidelines; and
- (n) Guidelines may be varied by the Department at any time and the at the Department's absolute discretion.

67.2 If there is any conflict or inconsistency between any part of:

- (a) the terms and conditions of this Deed, including any Condition of Offer;
- (b) the Schedules;
- (c) the Particulars;
- (d) the Guidelines; and
- (e) Annexure A [Joint Charter of Deed Management] and Annexure B [Service Guarantee],

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

67.3 The word 'Reserved' indicates that a particular clause is not applicable to the Services.

# Annexure A      Joint Charter of Deed Management



## Employment Services Joint Charter of Deed Management

The Department of Jobs and Small 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 providers' 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 and industry stakeholders
- 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.

## Annexure B Service Guarantee



### Career Transition Assistance Service Guarantee

This CTA Services Guarantee reflects the Australian Government's expectations of CTA Providers. It sets out the assistance and services each Participant can expect to receive, as well as the requirements Participants need to meet to benefit from the program. The Australian Government is committed to creating better opportunities for mature age people to secure employment.

#### What you can expect from your CTA Provider

Your provider will:

- work with you to develop your tailored Career Pathway Plan
- help you to identify and articulate transferable skills
- work with you to better target job searches to local industries and available jobs
- work with you to apply for jobs online
- identify your strengths and any challenges you face to increase your job readiness
- provide services to help you improve your job readiness
- provide tailored career assistance, to help you prepare a résumé and write job applications
- 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:

- treat staff and other Participants at your provider fairly, with respect and in a culturally sensitive way
- make every effort to attend
- do everything you are required or have agreed to do
- notify your provider of any changes in your circumstances, e.g. if your address or telephone number changes

### **If you cannot attend**

- let your provider know as soon as possible prior to the event if you are unable to attend
- give your provider a reason to support your inability to attend

### **Your personal information is confidential**

Your personal information is protected by law, including the *Privacy Act 1988*. Your provider will only tell service providers things about you that relate to your participation in Career Transition Assistance and related activities and services.

Your provider may also share information with the Department of Jobs and Small Business and the Department of Human Services. Your provider will check with you first before sharing personal information about you with any other government agency.

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

The Department of Jobs and Small Business's Privacy Policy contains more information about how the department will manage any of your personal information, including access to, or correct of, your personal information and how you can make a complaint related to your personal information. A copy of the department's [Privacy Policy](#) can be found at <https://www.jobs.gov.au/privacy> or by requesting a copy from the department via email at [privacy@jobs.gov.au](mailto:privacy@jobs.gov.au).

### **Compliments, suggestions or complaints**

Your views about the assistance you receive are important. The Department of Jobs and Small 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 Jobs and Small Business's National Customer Service Line on 1800 805 260 (free call from land lines) or email [nationalcustomerserviceline@jobs.gov.au](mailto:nationalcustomerserviceline@jobs.gov.au).

If you have suggestions to improve the assistance from your provider or would like to make a compliment about the help you have received, please let staff at your provider know or call the National Customer Service Line.

If you have any concerns about your income support payments, you should contact the Department of Human Services. Contact details for the [Department of Human Services](#) can be found at [www.humanservices.gov.au](http://www.humanservices.gov.au).

## **Schedule 1 Deed and Business Details**

*[Attached separately]*

## **Schedule 2 Statement of Requirements**

### **1. General requirements**

- 1.1 The CTA Provider must conduct the Services by Accessing the Department's IT Systems provided by the Department for that purpose.
- 1.2 The CTA Provider must ensure that each CTA Course is actively monitored by a CTA Coordinator for quality assurance purposes, including by:
  - (a) regularly reviewing the content of the CTA Courses delivered by the CTA Provider, to ensure it is compliant with this Schedule 2, this includes initial sign off of CTA Course content;
  - (b) monitoring the quality of program delivery, including effectiveness of Facilitators and digital equipment;
  - (c) monitoring the quality of the Career Pathway Assessment and Career Pathway Plan; and
  - (d) managing Facilitator staffing.
- 1.3 Each CTA Course must be delivered face-to-face and with a maximum ratio of one Facilitator to no more than 15 Participants, unless otherwise agreed in writing by the Department.
- 1.4 The CTA Provider must offer and provide CTA Courses that can be undertaken by Participants with full-time participation requirements and Participants with part-time or other reduced participation requirements.
- 1.5 The CTA Provider must create CTA Courses in the Department's IT Systems, and do so in accordance with any Guidelines.

### **2. Referral**

- 2.1 Upon receipt of a Referral, the CTA Provider must, by no later than the end of the next Business Day:
  - (a) arrange an Initial Meeting between the CTA Provider and the Participant to occur within five Business Days of the date of the Referral; and
  - (b) notify the Employment Provider of the date, time and location for the Initial Meeting.

### **3. Initial Meeting**

- 3.1 The CTA Provider must not allow a Participant to commence in a CTA Course until an Initial Meeting has occurred.
- 3.2 After the Initial Meeting, the CTA Provider must record each Participant's commencement in a CTA Course in the Department's IT Systems, and do so in accordance with any Guidelines.
- 3.3 The CTA Provider must ensure that, during the Initial Meeting, a Career Pathway Assessment is completed for the Participant in accordance with item 7.7(a) of this Schedule 2.

- 3.4 If, during the Initial Meeting, the CTA Provider assesses that the Participant is not suitable for, or not likely to benefit from participating in, the CTA Course, the CTA Provider must, by no later than the end of that Business Day, notify the Participant's Employment Provider that it has not accepted the Participant into the CTA Course.
- 3.5 If the Participant fails to attend the Initial Meeting, the CTA Provider must, on the same Business Day, advise the Employment Provider of the Participant's non-attendance, noting any reasons or statements provided by the Participant in relation to the non-attendance.

#### **4. Participant attendance**

- 4.1 The CTA Provider must record each Participant's attendance at a CTA Course in the Department's IT Systems and do so in accordance with this Deed, including any Guidelines, or as otherwise directed by the Department.
- 4.2 The CTA Provider must not require or allow a Participant to participate in a CTA Course for more than 25 hours per week in total.
- 4.3 If a Participant's Employment Provider has notified the CTA Provider that the Participant has a reduced capacity for participation, the CTA Provider must not require the Participant to participate in the relevant CTA Course for more than the maximum number of hours per week notified by the Participant's Employment Provider.
- 4.4 If a Participant fails to attend a CTA Course on a day that the Participant was scheduled to attend:
  - (a) the CTA Provider must attempt to contact the Participant in order to ascertain the Participant's reasons for non-attendance; and
  - (b) if, by the end of the fifth Business Day after the Participant failed to attend:
    - (i) the CTA Provider has not been able to make contact with the Participant; or
    - (ii) the CTA Provider has made contact with the Participant and the Participant informs the CTA Provider that they cannot, or no longer wish to, participate in the relevant CTA Course,the CTA Provider must notify the Participant's Employment Provider that the Participant has failed to attend, including, if item 4.4(b)(ii) of this Schedule 2 applies, any reasons provided by the Participant.
- 4.5 A Participant is Exited when:
  - (a) the Participant voluntarily withdraws from the CTA Course;
  - (b) the CTA Provider withdraws the Participant from the CTA Course because:
    - (i) the Participant starts employment and does not wish to complete the CTA Course;

- (ii) the Participant fails to attend the CTA Course for five Business Days;
  - (iii) the Participant is displaying violent, threatening, aggressive or otherwise inappropriate behaviour; or
  - (iv) of any other reason specified in any Guidelines; or
- (c) the Participant is withdrawn from the CTA Course by the Participant's Employment Provider.

4.6 Without limiting item 4.4 of this Schedule 2, where a Participant is Exited under item 4.5(a) or item 4.5(b) of this Schedule 2, the CTA Provider must:

- (a) Notify the Participant's Employment Provider that the Participant has Exited, on the same Business Day that the Participant Exits; and
- (b) take any other action as specified in the Guidelines.

Note: Exits will be recorded by the Employment Provider in the Department's IT Systems.

## **5. Warm Handover Meeting**

5.1 The CTA Provider must arrange a Warm Handover Meeting between the CTA Provider, the Participant and the Participant's Employment Provider which must occur, in person, within five Business Days of the Participant's completion of a CTA Course.

5.2 The CTA Provider must, during the Warm Handover Meeting:

- (a) discuss with the Participant and the Employment Provider the Participant's next steps for pursuing employment opportunities or work experience opportunities;
- (b) offer the Participant two future Contacts with the CTA Provider to occur within three months of the date that the Participant completed the CTA Course;
- (c) provide a written record to the Participant of the agreed date(s) for the future Contacts;
- (d) give the Participant an opportunity to complete a feedback form, in accordance with any content and format requirements specified by the Department in any Guidelines; and
- (e) provide the Employment Provider with a copy of the Participant's Career Pathway Plan.

## **6. Ongoing support - Contacts**

6.1 The CTA Provider must ensure that it provides ongoing support to each Participant who completes a CTA Course by providing Contacts with the Participant in accordance with any Guidelines and the Participant's Career Pathway Plan.

6.2 The Contacts can be one-on-one between the Participant and the CTA Provider or in a group setting between the CTA Provider and a number of Participants.

## **7. Requirements for each CTA Course**

- 7.1 Subject to item 7.2 of this Schedule 2, the CTA Provider must not commence a Participant in a CTA Course unless the Participant has been Referred to the CTA Course in the Department's IT Systems..
- 7.2 The CTA Provider must not commence a Participant in a CTA Course if that Participant has been Exited under item 4.5 of this Schedule 2.
- 7.3 The CTA Provider must record each CTA Course in the Department's IT Systems and do so in accordance with any Guidelines.
- 7.4 The first day of each CTA Course is the date the Initial Meeting was completed. Each CTA Course:
- (a) must be delivered to each Participant for at least 75 hours in total, with a minimum of 50 of those hours delivered in a small group setting; and
  - (b) must be delivered over a period of eight weeks.
- 7.5 Each CTA Course must deliver training and coaching which is designed to help Participants, as mature age job seekers, to become more competitive in their local labour market.
- 7.6 Each CTA Course must:
- (a) be delivered in an interactive and collaborative manner by a Facilitator and encourage Participants to share their own expertise and support each other throughout the different components of the CTA Course;
  - (b) be delivered to each Participant in accordance with their Career Pathway Assessment; and
  - (c) include one-on-one sessions with each Participant as required to meet the individual needs of, or any particular training required by, the Participant.
- 7.7 The content of each CTA Course must include the following core components which must be delivered to all Participants participating in the CTA Course:
- (a) **Complete a Career Pathway Assessment** – Each Career Pathway Assessment must:
    - (i) document the Participant's life stage and employment and other goals;
    - (ii) identify the Participant's training needs, recent experience and expectations;
    - (iii) identify the Participant's main barriers to securing employment;
    - (iv) assess the Participant's confidence and capability in using digital technology, and identify key areas in which the Participant requires assistance; and
    - (v) outline how the CTA Course will be delivered in a way that addresses the Participant's individual needs.



- (b) **Develop Goals and Motivations** – The CTA Provider must provide opportunities for exploring Participants’ goals and motivations, and managing Participants’ expectations for a change in career or lifestyle. This component must introduce wellbeing and resilience strategies to help Participants cope with potential knock-backs and to build confidence in applying for jobs.
- (c) **Understand the Local Job Market and Identify Suitable Opportunities** – This component must explore job opportunities and identify regional requirements and industry needs in the local region. This component must include details of how the local market has changed over time and will continue to change in the future. Participants must be supported to identify suitable occupations in local and regional growth industries where employment opportunities are likely to be available.
- (d) **Explore and Translate Transferable Skills** – This component must support Participants to identify and articulate their skills and experience and how these relate to the current job market. This component must include a discussion of pathways for re-skilling and further training, and potentially formal recognition of prior learning or new relevant qualifications, as appropriate for each Participant.
- (e) **Improve and Tailor Résumés** – This component must involve reviewing, improving and tailoring appropriate Résumés for a range of different jobs for each Participant. Advice must be provided to each Participant on what to include, how to display content and what the Participant needs to consider when uploading a Résumé online. A key part of this component is ensuring that the Participant has the skills to create, edit and send their Résumé using IT platforms. The Participant must also learn how and when to tailor their Résumé for a specific job. A copy of each Participant’s Résumé must be uploaded into their jobsearch account and be made available to the Participant for future use and editing. The CTA Provider must provide a copy of the Résumé to the Participant and the Participant’s Employment Provider at or before the Warm Handover Meeting.
- (f) **Navigate the Job Application Process** – The CTA Provider must assist Participants to gain an understanding of different job application processes and how to manage their expectations in relation to receiving responses and feedback. This component must look at how the application process has changed over time and the relative competitiveness of applying for a position, particularly online. The CTA Provider must enable Participants to practice applying for jobs through different websites and help them understand the implications of having an online presence.
- (g) **Practise and Enhance Interview Skills** – This component must provide guidance to Participants on how to prepare for job interviews across a range of different Employers and industries. This component must

address what Employers expect from a potential employee, with a focus on what can be expected at a job interview and how a mature age person can best sell themselves during an interview.

- (h) **Functional Digital Literacy** - This component must:
- (i) focus on increasing Participants' knowledge and confidence in using everyday digital equipment to support job application processes and technology in the workplace, including in the office environment;
  - (ii) build Participants' skills to confidently navigate different types of media devices such as smartphones, tablets, apps and desktop computers; and be able to use these to support job application processes;
  - (iii) adopt an action-learning style guiding Participants to share expertise and support each other;
  - (iv) primarily be delivered in a group based setting; and
  - (v) include one-on-one sessions between the Participant and the CTA Provider to meet the individual needs of the Participants; and
- include the following content:
- (vi) getting online and using general search tools, including via social media websites;
  - (vii) applying for jobs online, including how to use the jobactive website and add attachments and complete forms on that website;
  - (viii) responding to online employment advertisements through employment-oriented and social networking platforms;
  - (ix) navigating smartphones and tablets;
  - (x) basic desktop computer publishing;
  - (xi) setting up (if required) and using an email account to apply for jobs;
  - (xii) setting up and using a MyGov account and jobactive apps; and
  - (xiii) editing and uploading a Résumé and a response to selection criteria through online platforms.
- (i) The CTA Provider must provide each Participant with access to current information technology and media devices and equipment, including desktop computers and wireless, portable computer devices such as smartphones and tablets, for the purposes of delivering the training described in this item 7.7(h) of this Schedule 2.
- (j) **Experience Different Industries** – For this component, the CTA Provider must:
- (i) ensure that each Participant has the opportunity to participate in at least one Outbound Employer Visit or Inbound Employer Visit, so

that the Participant can get a 'feel' for a particular industry or industries;

- (ii) ensure that during each Outbound Employer Visit and Inbound Employer Visit, the relevant Employer:
  - (A) discusses pathways into their occupation or industry;
  - (B) provides Participants with an insight into the tasks and duties of the relevant occupation or industry; and
  - (C) highlights the Employer's expectations in relation to the employment of mature age employees;
- (iii) assist Participants to identify their interest in, and suitability for, particular jobs in the relevant occupation or industry; and
- (iv) identify appropriate work experience options for each Participant, for consideration by the Participant's Employment Provider.
- (k) **Prepare A Career Pathway Plan** – The CTA Provider must develop, for each Participant, a clear plan of action outlining the steps the Participant will need to take to pursue employment and/or training opportunities based on the Participant's transferable skills and the local labour market. The Career Pathway Plan must include, at a minimum:
  - (i) details of the Participant's employment goals and motivation;
  - (ii) details of occupations and industries suitable for the Participant to apply for in their local labour market;
  - (iii) a summary of the Participant's transferable skills, identified strengths and experience relevant to these industries or jobs;
  - (iv) work experience and/or training options for the Participant;
  - (v) details of future Contacts; and
  - (vi) a self-marketing plan with practical steps that the Participant can take to market themselves to potential Employers.

7.8 The CTA Provider must provide a copy of the Career Pathway Plan to the Participant at or before the Warm Handover Meeting.

7.9 The CTA Provider should use innovation and local knowledge to tailor the core components described in item 7.7 of this Schedule 2 to suit the particular needs of each Participant.

## **8. Additional requirements for Outbound Employer Visits**

8.1 The Department may, at any time, give a direction to the CTA Provider in relation to an Outbound Employer Visit, including a direction that the Outbound Employer Visit:

- (a) be discontinued and/or not occur; or
- (b) not occur within a specific timeframe,

and if the CTA Provider receives such a direction, the CTA Provider must:

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

### **Checks on Participants, Personnel and Supervisors**

8.2 If an Outbound Employer Visit involves close proximity with Vulnerable People (including, without limitation, Participants who are Vulnerable People), the CTA Provider must:

- (a) work with the relevant Employment Provider to ensure that relevant checks are conducted on all Participants; and
- (b) ensure that relevant checks are conducted on all Personnel and Supervisors who will be involved in the Outbound Employer Visit in accordance with clause 18.

8.3 The CTA Provider must not allow a Participant, Personnel or a Supervisor to be involved in an Outbound Employer Visit:

- (a) if any relevant legislation or Guidelines provide or mean that the Participant, Personnel or Supervisor 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 Outbound Employer Visit; or
  - (ii) there is otherwise a reasonably foreseeable risk that the person may cause loss or harm to other persons involved in the Outbound Employer Visit,

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

### **Transport**

8.4 If transporting Participants to or from an Outbound Employer Visit, the CTA Provider must do so in accordance with any Guidelines.

### **Work health and safety**

8.5 Prior to the commencement of, and throughout, any Outbound Employer Visit, the CTA Provider must, in accordance with any Guidelines, satisfy itself that that there is a safe system of work in place, in accordance with applicable WHS Laws.

8.6 Prior to the commencement of any Outbound Employer Visit, the CTA Provider must, in accordance with any Guidelines, undertake a risk assessment that includes an assessment of:

- (a) the risks in relation to the activities to be undertaken by Participants during the Outbound Employer Visit; and
- (b) the risks for each individual Participant, having regard to the Participant's potential participation in the Outbound Employer Visit and their health and safety, and taking into consideration any circumstances and work restrictions relevant to the Participant.

8.7 Prior to the commencement of any Outbound Employer Visit and at all times during the Outbound Employer Visit, the CTA Provider must, in accordance with any Guidelines:

- (a) examine the relevant risk assessment to ensure that the Outbound Employer Visit is appropriate for the Participant, with regard to their health and safety, taking into consideration any relevant circumstances and work restrictions;
- (b) identify any training, including work health and safety training, that will be required to ensure that each Participant can participate in the Outbound Employer Visit safely, and ensure that training of sufficient length and quality is provided to all Participants by the relevant Employer at the commencement of the Outbound Employer Visit as required;
- (c) ensure that appropriate facilities (such as toilets and access to drinking water) will be available to all Participants for the duration of the Outbound Employer Visit;
- (d) identify, if any, specific equipment, clothing or materials which are required for Participants to participate safely in the relevant activities, and ensure that such specific equipment, clothing or materials will be provided to Participants;
- (e) ensure that any required actions, identified in the relevant risk assessment, have been undertaken;
- (f) undertake ongoing work health and safety monitoring of the Outbound Employer Visit;
- (g) confirm with the Employer hosting the Outbound Employer Visit whether:
  - (i) there have been any changes in relation to the relevant Outbound Employer Visit, including work, health and safety issues, since the date of the relevant risk assessment; and
  - (ii) the Employer is satisfied that it has sufficient and current insurances which insure any risk identified in the relevant risk assessment and any risk otherwise arising in relation to the relevant Outbound Employer Visit;
- (h) if:

- (i) any required actions, identified in the relevant risk assessment, have not been undertaken, ensure that all such actions are undertaken; and
- (ii) there have been changes as specified at item 8.7(g)(i) of this Schedule 2 and/or the CTA Provider identifies significant changes as part of their ongoing monitoring of the Outbound Employer Visit, immediately review and update, as necessary, the relevant risk assessment and take all appropriate action, or ensure that all appropriate action is taken, to address any such changes; and
- (i) ensure that each Participant being considered for participation in the Outbound Employer Visit has been advised of the process for reporting any work health and safety issues regarding the Outbound Employer Visit.

8.8 The CTA Provider must, in accordance with any Guidelines:

- (a) retain Records of the risk assessment referred to in items 8.6 and 8.7 of this Schedule 2 and any action taken in accordance with the risk assessment, and provide the relevant Records to the Department upon request; and
- (b) ensure that each Employer hosting an Outbound Employer Visit is notified that it must immediately advise the CTA Provider of any proposed or actual changes to the tasks being undertaken by Participants involved in the Outbound Employer Visit or the circumstances in which those tasks are being undertaken.

8.9 If the CTA Provider does not itself employ a Competent Person relevant to meeting the obligations at items 8.5 to 8.8 of this Schedule 2, it must engage a relevant Competent Person, as required, for this purpose.

**Other matters relating to Outbound Employer Visits**

8.10 The CTA Provider must:

- (a) for each Outbound Employer Visit, ensure that each Participant, Employer and any Supervisor are aware that the Employer, the CTA Provider or the Department may terminate the Outbound Employer Visit at any time; and
- (b) ensure that each Participant is aware of the process to lodge a complaint or voice safety concerns about any Outbound Employer Visits.

8.11 The CTA 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 Employer or a Participant that any Outbound Employer Visit itself will create legal relations between the Participant and:

- (a) the Commonwealth;
- (b) the CTA Provider; or

(c) the Employer.

## Schedule 3 Key Performance Indicators

### CTA Provider Key Performance Indicators

The KPIs are:

**KPI 1 Effectiveness**—this indicator will focus on the effectiveness of Services that are provided and may include:

- Increase in Participants' resilience and confidence;
- Increase in Participants' digital literacy; and
- The extent to which the CTA Provider has developed and used links with industry and local Employers to deliver Inbound Employer Visits and/or Outbound Employer Visits.

**KPI 2 Efficiency**—this indicator will focus on the efficiency of Services that are provided and may include:

- Participants that are commenced within five Business Days of being Referred;
- Upload to the Department's IT Systems of a Career Pathway Assessment for each Participant;
- Recording Participants' completion of the program and/or reasons for Exit; and
- Upload to the Department's IT Systems of a Career Pathway Plan, for each Participant that completes CTA.

**KPI 3 Satisfaction and Quality**—this indicator will focus on the quality of the Services that are provided and may include:

- Participants' satisfaction;
- Career Pathway Plans and Résumés tailored to individual needs and circumstances; and
- Quality of Services, including against the Service Guarantee, as assessed by the Department.