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Disability Employment Services Deed Effective 1 July 2015

Reader's Guide to this Deed

In this Deed, related clauses are collected together into 'Chapters', which are subdivided into 'Sections' where appropriate.

Note that references in this Deed to Disability Employment Services means the comprehensive suite of Disability Employment Services – Disability Management Service, Disability Employment Services – Employment Support Service, JobAccess Services and NDRC Services, and the services provided by the National Panel of Assessors. References simply to Provider means the provider delivering the Services in the context of the relevant Chapter of this Deed. The term Programme Services refers to Disability Employment Services – Disability Management Service and/or Disability Employment Services – Employment Support Service only, and Programme Provider refers to a Provider Services and/or Disability Employment Services – Employment Support Service.

There are seven Chapters:

1. Introduction
2. Basic Conditions
3. Information and Information Management
4. Deed Administration
5. Disability Employment Services – Disability Management Service and Disability Employment Services – Employment Support Service
6. Reserved
7. Reserved

There are six Annexures:

- A. Definitions
- B. Fees Disability Employment Services – Disability Management Service and Disability Employment Services – Employment Support Service
- C. Code of Practice and Service Guarantee
- D. Reserved
- E. Non-disclosure Deed
- F. Reserved

There is one Schedule:

Schedule – Deed and Business Details

There are various information boxes (like this one) and notes at various points in this Deed. Except where expressly stated to the contrary, none of these form part of this Deed for legal purposes. They are intended to make this Deed easier to understand and read. Where the term "reserved" is used, this means the relevant clause will not apply to the specified service.

This Deed sets out the terms that will apply if a Programme Provider is appointed to deliver Programme Services. The Programme Services are set out in Chapter 5.

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CHAPTER 1 INTRODUCTION

1. Definitions

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

2. Interpretation

2.1 Unless the contrary intention appears:

- (a) the Definitions apply to the whole of this Deed, including any Guidelines;
- (b) words in the singular include the plural and vice versa;
- (c) words importing a gender include the other gender;
- (d) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (e) the chapter headings, section headings, clause headings and subheadings within clauses, notes and information boxes are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
- (f) all references to dollars are to Australian dollars;
- (g) a reference to any legislation or legislative provision is to that legislation or legislative provision as in force from time to time;
- (h) a reference to a clause is to a clause of this Deed;
- (i) a reference to an Item is to an Item in the Schedule;
- (j) 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;
- (k) a reference to an internet site includes those sites as amended from time to time;
- (l) 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;
- (m) a reference to writing is a reference to any visible representation of words, figures or symbols; and
- (n) a reference to 'Employment Services Funding Deed 2006-2009' means that deed 'as extended'.

2.2 Subject to clause 2.2A, any Guidelines do not expand or add essential terms to this Deed.

2.2A Guidelines form part of this Deed and the Provider must perform all obligations in this Deed in accordance with any Guidelines.

2.3 References to different Services are to be read on an 'as applicable' basis i.e. taking into account whether or not the Provider is contracted to provide a particular service under this Deed (see Particulars).

2.4 The word 'Reserved' indicates that a particular clause is not applicable to the Services that the Provider is contracted to provide under this Deed.

3. Precedence

3.1 Unless the contrary intention appears, if there is any conflict or inconsistency between any part of:

- (a) this document;
- (b) the Particulars;
- (c) the Annexures;
- (d) the Schedule; or
- (e) any Guidelines,

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

CHAPTER 2 BASIC CONDITIONS

Section 2A Deed length

4. Term of this Deed

4.1 This Deed takes effect from the Deed Commencement Date and, unless terminated earlier, expires on the Completion Date.

5. Extension of this Deed

5.1 Subject to clause 5.3, the Department may, at its sole option, offer the Provider an extension of the Term of this Deed for one or more Extended Service Periods up to an additional maximum of:

(a) for Disability Employment Services – Disability Management Service, six years; and

(b) for Disability Employment Services – Employment Support Service, five years,

by giving Notice to the Provider not less than 60 Business Days prior to the end of the Service Period or any Extended Service Period, as relevant.

5.2 Subject to clause 59 [Transition out], if the Provider accepts the Department's offer to extend the Term of this Deed, the Term of the Deed will be so extended and all terms and conditions of this Deed continue to apply, unless otherwise agreed in writing between the Parties.

5.3 This clause 5 does not apply to a Provider that has entered into this Deed with a Deed Commencement Date of 2 March 2015 or later.

6. Survival

6.1 The operation of clauses 24 [Debts and offsetting], 27 [General reporting], 29 [Evaluation activities], 34 [General], 35 [Access and Security], 36 [Ownership of intellectual property], 37 [Licensing of Intellectual Property Rights], 38 [Ownership of Deed Material and Commonwealth Material], 39 [Personal and Protected Information], 40 [Confidential Information], 42 [Records the Provider must keep], 43 [Access by Participants and Employers to Records held by the Provider], 45 [Indemnity], 46 [Insurance], 54 [Dispute Resolution], 56 [Remedies for breach], 62 [Acknowledgement and promotion], and 71 [Applicable law and jurisdiction] in 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, survive the expiry or earlier termination of this Deed.

6.2 Clause 44 of this Deed [Access to premises and records] survives for seven years from the expiry or earlier termination of this Deed.

Section 2B Some basic rules about Services

7. General Requirements

7.1 The Provider must provide the Services as specified in:

(a) Chapter 5 Disability Employment Services – Disability Management Service and Disability Employment Services – Employment Support Service;

(b) Reserved; and

(c) Reserved.

7.2 The Provider must carry out the Services:

- (a) efficiently, effectively and ethically;
- (b) in accordance with this Deed and where relevant and not inconsistent with the Deed:
 - (i) in the case of a Disability Employment Services – Disability Management Service Provider, in accordance with the undertakings given in its tender response to the Request for Tender for the Disability Employment Services – Disability Management Service 2010-2012 and if applicable, in accordance with the undertakings given in its tender response to the Request for Tender for the Disability Employment Services – Disability Management Service 2015-2018; and
 - (ii) in the case of a Disability Employment Services – Employment Support Service Provider, in accordance with the undertakings given in its response to the invitation to treat process for Disability Employment Services – Employment Support Service in 2009 and, the undertakings given in its response to the Request for Tender for the Disability Employment Services – Employment Support Service 2013-2018;
- (c) in a manner which meets the Objectives;
- (d) so as to achieve an optimum performance when measured against the KPIs; and
- (e) to the Department’s satisfaction.

7.3 Without limiting the Department’s rights under this Deed or at law, if the Provider becomes aware that it is unable to satisfy or has otherwise failed to comply with the requirements of the Deed or the undertakings it has given in accordance with clause 7.2(b) of the Deed, the Provider must Notify the Department immediately of:

- (a) the details of the requirements and undertakings which it is unable to satisfy or failed to comply with; and
- (b) any other information that the Department requests.

8. Additional Services

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

9. Engagement with other services in the community

9.1 In providing Services, the Provider must work cooperatively with, where appropriate, other programs and services provided by the Department, relevant Commonwealth, state, territory and local government, private and community services and stakeholders including:

- (a) Employment Service Providers;
- (b) Reserved;
- (c) Reserved;
- (d) Australian Disability Enterprises;
- (e) training organisations;

- (f) education institutions;
- (g) Employers;
- (h) community welfare organisations and local community services, including SAAP and other homeless services, AMEP, IEP, health and mental health services;
- (i) Reserved;
- (j) Government Action Leaders; and
- (k) other providers of government services, including Commonwealth, state, territory and local government providers.

10. Objectives

10.1 The Objective for the delivery of Disability Employment Services is to improve the nation's productive capacity by employment participation of people with disability, thereby fostering social inclusion. The specific objectives for each service are specified in the relevant chapter for that service.

11. Location

11.1 The Provider must ensure that:

- (a) any location from which Services are provided is:
 - (i) accessible to people with disability; and
 - (ii) presented in a manner that upholds and maintains the good reputation of the Services, as determined by the Department; and
- (b) it takes all reasonable steps to avoid acts or omissions which the Provider could reasonably foresee would be likely to cause injury to Participants or any other persons at the locations referred to in clause 11.1(a).

12. Timing

12.1 The Provider must deliver the Services:

- (a) from the Service Start Date; and
- (b) during the Service Period and any Extended Service Periods.

12.2 The Provider must ensure that its Sites are open for the provision of the Services on the Business Days and at the times specified in the Schedule unless otherwise notified by the Department.

13. Provider's conduct

13.1 The Provider must, in relation to this Deed, at all times, act:

- (a) in good faith towards the Department and Customers; and
- (b) in a manner that maintains the good reputation of the Services.

13.2 The Provider must not engage in, and must ensure that its Personnel, Subcontractors and agents do not engage in, any practice that:

- (a) dishonestly; or

(b) improperly, as determined by the Department, manipulates Records, Outcomes or the Services with the effect of maximising payments to, or otherwise obtaining a benefit for, the Provider or any other person.

13.3 The Provider must advise its officers and employees:

- (a) that they are Commonwealth public officials for the purposes of section 142.2 of the *Criminal Code Act 1995* (Cth);
- (b) that acting with the intention of dishonestly obtaining a benefit for any person is punishable by penalties including imprisonment;
- (c) disclosures of wrongful conduct under the *Public Interest Disclosure Act 2013* (Cth) can be made directly to their supervisors within the Provider, or to an authorised officer of the Department, and where a disclosure of relevant conduct is made to a supervisor within the Provider, the supervisor is required by law to pass information about the conduct to an authorised officer of the Department; and
- (d) that suspicions or evidence of incorrect claims or acceptance of payments or any other activities that may be a breach of the Deed may be reported to the Department through the Employment Services Tip Off Line.

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

14. Criminal records checks and other measures

Participants and criminal records checks

14.1 Before arranging for a Participant to participate in an activity under this Deed which is:

- (a) one where legislation requires a criminal records check to be conducted;
- (b) subject to industry accreditation requirements, industry standards, or a legal requirement that the activity can only be carried out by people who have not been convicted of particular crimes;
- (c) specified by the Department as requiring a criminal records check; or
- (d) otherwise an activity in which the Participant will have regular or unsupervised contact with Children, the elderly, or other classes of vulnerable people, and for which it would be considered prudent by a reasonable person that a criminal records check be conducted,

the Provider must arrange for criminal records checks to be carried out to establish whether the Participant has any relevant records of convictions for crimes and if the Participant has any relevant records of convictions for crimes, the Provider must not arrange for the Participant to participate in that activity, unless the records of convictions for crimes are not relevant to the activity. The Provider is not required to arrange for criminal records checks to be conducted for a Participant starting in Employment, unless there is a statutory requirement for the Provider to do so.

14.2 The Provider must obtain each Participant's written permission prior to obtaining the checks described in clause 14.1.

- 14.3 For the purposes of clause 14.2 if a Participant is a Child, and is unable to obtain parental or guardian permission, the Provider must decide either:
- (a) not to arrange for the Participant to participate in an activity as described in clause 14.1; or
 - (b) if the Participant is to participate in such an activity, to put in place measures to ensure:
 - (i) compliance with the law; and
 - (ii) that no other person is put at undue risk of injury or mistreatment.

- 14.4 If a Participant is not a Child, and has failed to provide permission for a check to be conducted in accordance with clause 14.2, the Provider must not arrange for the Participant to participate in the activity as described in clause 14.1.

Persons other than Participants who may be required to undergo criminal records checks

- 14.5 Before any person who is not a Participant is engaged in an activity under this Deed which is:
- (a) one where legislation requires a criminal records check to be conducted;
 - (b) subject to industry accreditation requirements, industry standards, or a legal requirement that the activity can only be carried out by people who have not been convicted of particular crimes;
 - (c) specified by the Department as requiring a criminal records check; or
 - (d) otherwise an activity which will involve regular or unsupervised contact with Children, the elderly, or other classes of vulnerable people, and for which it would be considered prudent by a reasonable person that a criminal records check be conducted,

the Provider must arrange for criminal records checks to be carried out to establish whether the person has any relevant records of convictions for crimes, and if the person has any relevant records of convictions for crimes, the Provider must ensure that the person is not engaged in that activity.

- 14.6 The Provider must meet its own expenses for the cost of all checks conducted in accordance with clause 14.1 and 14.5.

General provisions concerning persons at risk of harm

- 14.7 Notwithstanding clauses 14.1 to 14.6, the Provider must not arrange for:
- (a) a Participant, or any other person, to be involved in an activity under this Deed; or
 - (b) a Participant to be placed into Employment,
- where there is a reasonably foreseeable risk that the Participant, or other person, may cause loss or harm to any person, unless the Provider has put in place reasonable measures designed to ameliorate that risk, and where a Participant is placed into Employment, these measures may include, with the Participant's permission, advising the Employer about the Participant's records of convictions for crimes.
- 14.8 Without limiting the generality of clause 14.7, there may be a reasonably foreseeable risk that a Participant, or other person, may cause loss or harm to others where:
- (a) the Participant, or other person, has a history of criminal antecedents, and those antecedents are a relevant consideration when assessing the risk of loss or harm; or

- (b) it is otherwise reasonable to expect that the Provider ought to be aware that the Participant, or other person, may cause loss or harm to others.

14.9 In addition to this clause 14, the Provider must comply with any Guidelines that the Department may issue concerning the matters set out in this clause.

Other background checks

14.10 The Provider must arrange for other background checks, in accordance with any Guidelines, to be carried out as required by the Department from time to time.

15. Provider's responsibility

15.1 The Provider is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Deed, notwithstanding any other matter or arrangement, including:

- (a) Subcontracting of the Services;
- (b) any obligation that a Subcontractor comply with the Department's requirements in relation to using the Department's IT Systems in performing Services under its Subcontract;
- (c) access rights specified in, or any action taken under, clause 44 [Access to premises and records];
- (d) involvement by the Department in the performance of the Services; or
- (e) payment made to the Provider on account of the Services.

16. Liaison and compliance

16.1 The Provider must:

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

16.2 The Department and the Provider may respectively nominate, from time to time, an Account Manager and a Contact Person.

16.3 The day to day management of, and communication under, this Deed:

- (a) is to be handled by the Account Manager and the Contact Person or their delegates; and
- (b) may be undertaken by the Account Manager and the Contact Person or their delegates by means of electronic mail.

16.4 The Provider must ensure that it has a valid electronic mail address for the Contact Person, and any other relevant Personnel, so as to facilitate the day to day management of the Services and communication between it and the Department.

- 16.5 The Provider must provide all reasonable assistance to the Commonwealth in relation to the Social Security Appeals Process including ensuring the availability of its Personnel, agents and Subcontractors to appear at hearings (including appeals to any court) and to provide witness or other statements as required by the Department.
- 16.6 The Provider must notify DHS, in a manner consistent with any Guidelines, of any change in the circumstances of a Participant within five Business Days of becoming aware of the change in circumstances.
- 16.7 The Provider must respond within five Business Days to any requests for information by DHS or the Department about any change in circumstances referred to in clause 16.6.

17. Minimising delay

- 17.1 The Provider must take all reasonable steps to minimise delay in meeting its obligations under this Deed.
- 17.2 If the Provider becomes aware that it will be delayed in meeting its obligations under this Deed, or receives a Notice from the Department in relation to a delay, the Provider must immediately Notify the Department of:
- (a) the cause and nature of the delay; and
 - (b) the steps the Provider will take to limit the delay.
- 17.3 The Provider must comply with the steps it Notifies to the Department in accordance with clause 17.2(b), subject to any additional requirements which the Department may Notify to the Provider.
- 17.4 If:
- (a) the Provider does not Notify the Department of any delay in accordance with clause 17.2 or fails to comply with clause 17.3; or
 - (b) the Department determines that the delay Notified places the Services in jeopardy, the Department may, at the Department's absolute discretion:
 - (c) take action under clause 56 [Remedies for breach];
 - (d) terminate this Deed under clause 58 [Termination for default]; or
 - (e) take such other steps as are available under law or in equity.
- 17.5 Except where, and to the extent that, clause 17.3 applies, the Provider must comply with the timeframe for meeting its obligations as set out in this Deed.

18. Business level expectations

- 18.1 The Department provides no guarantee of:
- (a) the volume or type of business the Provider will receive;
 - (b) the numbers of Participants for any Services under this Deed;
 - (c) the numbers of Participants for any ESA in relation to any Services under this Deed; or
 - (d) the market and other information provided in the relevant request for tender or invitation to treat process.

Section 2C Some basic rules about financial matters

19. General

- 19.1 Depending on the Services that the Provider is contracted to provide, payments under or pursuant to, this Deed consist of Fees, Funds, Reimbursements, Wage Subsidies and Ancillary Payments specified in Sections 5F and 5M.
- 19.2 Subject to sufficient funds being available and compliance by the Provider with this Deed to the Department's satisfaction, and depending on the Services that the Provider is contracted to provide under this Deed, the Department will pay to the Provider, the Fees, Funds, Reimbursements, Wage Subsidies and Ancillary Payments at the times and in the manner specified in this Deed to the account(s) specified in the Schedule.
- 19.3 Depending on the Services that the Provider is contracted to provide under this Deed, the Provider may claim any Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments properly due to the Provider during the Service Period and any Extended Service Periods.
- 19.4 It is a precondition of the Provider's entitlement to be paid any Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments that it:
- (a) has, at the time it makes a claim for a payment, sufficient Documentary Evidence to prove that the Provider has delivered the relevant Services in accordance with, or otherwise has relevantly complied with, this Deed;
 - (b) has a valid ABN;
 - (c) immediately notifies the Department if it ceases to have a valid ABN;
 - (d) correctly quotes its ABN on all documentation provided to the Department;
 - (e) supplies proof of its GST registration, if requested by the Department;
 - (f) immediately notifies the Department of any changes to its GST status; and
 - (g) submits Tax Invoices to the Department for payment.

20. Evidence to support claims for payment

- 20.1 The Provider must retain sufficient Documentary Evidence to prove its claim for payment under this Deed for such period as is required under clause 42.8.
- 20.2 The Provider must, if requested by the Department, within 10 Business Days of the Department's request, provide the Documentary Evidence referred to in clause 20.1 to the Department and to the Department's satisfaction.
- 20.3 If:
- (a) the Provider does not comply with a request by the Department under clause 20.2;
 - (b) the Department has already paid the Provider in relation to the claim for payment; and
 - (c) an extension of time has not been requested and agreed to by the Department,
- then:
- (d) the Provider will be taken not to have delivered the relevant Services in accordance with this Deed; and

- (e) the Department may recover the relevant payment amount from the Provider as a debt in accordance with clause 24 [Debts and offsetting], without prejudice to any other rights that the Department may have under this Deed, under statute, at law or in equity.

20.4 The Department may contact Employers or Participants or any other relevant parties to verify Documentary Evidence provided by a Provider. Nothing in this Deed restricts the Department from making enquiries to the extent permitted by law with any person or organisation in order to validate any claims made by a Provider. These enquiries may involve the use of data matching techniques to compare data held by government agencies to identify discrepancies.

21. Exclusions

No additional Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments

21.1 The Department is not responsible for the payment of any money in excess of the Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments set out in this Deed.

Superannuation

21.2 The Department is not required to make any superannuation contributions in connection with this Deed.

No double payments

21.3 The Provider acknowledges that it is not 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, unless otherwise specified in the Guidelines; and the Department may require the Provider to provide evidence, in a form acceptable to the Department, which proves that the Provider is not so entitled.

No charge to Participants

21.4 Unless otherwise agreed in writing with the Department, the Provider must not demand or receive any payment or any other consideration either directly or indirectly from any Participant for, or in connection with, the Services.

22. Overpayment

General

22.1 If, at any time, an overpayment by the Department occurs, including where a Tax Invoice is found to have been incorrectly rendered after payment, or a payment has been made in error, then this amount is a debt owed to the Department in accordance with clause 24 [Debts and offsetting].

Double payments

22.2 For the purposes of clause 21.3, if the Department determines, in its absolute discretion, that the Provider 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:

- (a) make the payments of Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments;
- (b) decide not to make the payments of Fees, Funding, Reimbursements, Wage Subsidies or Ancillary Payments; or

- (c) recover any payments of Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments made by the Department as a debt in accordance with clause 24 [Debts and offsetting],

as relevant to the Services that the Provider is contracted to provide under this Deed.

23. The Department may vary payments, Participants or ESA Business Share

- 23.1 The Department may, at any time, vary the payments under this Deed, the number of Participants receiving Services from the Provider and/or the ESA Business Share or any other business levels of the Provider for all or part of the Term of this Deed by written Notice:
 - (a) based on the Department's assessment of projected changes to labour market conditions in an ESA or LMR (including past and/or future projected Participant demand); or
 - (b) acting reasonably, for any other reason as determined by the Department in its absolute discretion.
- 23.2 If the Department exercises its rights under clause 23.1 the Provider must continue to perform all of its obligations under this Deed, as varied by the Department, unless the Department agrees otherwise in writing.

24. Debts and offsetting

Debts

- 24.1 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, under statute, at law or in equity, be recoverable by the Department, at its absolute discretion, as a debt due to the Commonwealth from the Provider without further proof of the debt being necessary.
- 24.2 If the Department determines that the Provider has obtained a Reimbursement from the Employment Assistance Fund, for a Wage Subsidy or any type of reimbursement of an amount that it is not entitled to, that amount is a debt for the purpose of this clause 24.
- 24.3 The Provider must pay to the Department any debt due to the Commonwealth from the Provider within 30 calendar days of receipt of a Notice from the Department requiring payment, or the due date for the payment, whichever is the earlier.

Interest

- 24.4 Subject to contrary stipulation, 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, or the due date for the payment, whichever is the earlier, until the amount is paid in full.

Offsetting

- 24.5 Without limiting the Department's rights under this Deed, under statute, at law or in equity, if the Provider:
 - (a) owes the Commonwealth any debt; or
 - (b) 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 other payments due to the Provider under this Deed.

- 24.6 The Department will Notify the Provider if it exercises its rights under clause 24.5 within 10 Business Days after having exercised those rights.
- 24.7 Notwithstanding any action taken by the Department under clause 24.5, the Provider must continue to perform its obligations under this Deed, unless the Department agrees otherwise in writing.

25. Taxes, duties and government charges

Amounts inclusive of GST

- 25.1 Unless expressly stated to the contrary, all dollar amounts in this Deed are inclusive of GST.
- 25.2 If a claim for payment of Fees is not in relation to a Taxable Supply, the Provider must only claim an amount exclusive of GST and the Department will only pay the GST exclusive amount under this Deed.
- 25.3 The Provider must give to the Department a Tax Invoice for any Taxable Supply before any Fees are payable to the Provider as consideration for the Taxable Supply.
- 25.4 The Provider must not claim from the Department any amount for which it can claim an Input Tax Credit.
- 25.5 Where any debt is repaid, including by offset under clause 24.5, an Adjustment Note must be provided to the Department if required by the GST Act.

General taxes

- 25.6 Subject to this clause 25, all taxes, duties and government charges imposed in Australia or overseas in connection with this Deed must be borne by the Provider.

26. Fraud

- 26.1 The Provider must not and must ensure that its Personnel, Subcontractors and agents do not, engage in fraudulent activity.
- 26.2 The Provider must take all reasonable steps to prevent fraud upon the Commonwealth, including the implementation of an appropriate fraud control plan, a copy of which must be provided to the Department on request.
- 26.3 If, after investigation, the Department determines that the Provider has been engaged in fraudulent activity, the Department may:
- (a) take action under clause 56 [Remedies for breach]; or
 - (b) immediately terminate this Deed under clause 58 [Termination for default],
- by providing Notice to the Provider.

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

Section 2D Reports

27. General reporting

Provider's obligation to provide Reports

27.1 Without limiting any other provisions of this Deed, the Provider must provide as required by the Department from time to time:

- (a) specific Reports on:
 - (i) the Services, including but not limited to, the progress of the Services under this Deed and against any performance criteria; and
 - (ii) the financial status of the Provider; and
- (b) a suitably qualified, informed and authorised representative at any meeting arranged by the Department in order to discuss and accurately answer questions relating to the Reports referred to at clause 27.1(a).

Other Reports

27.2 The Provider must also provide any other Reports that may reasonably be required by the Department.

Form and content of Reports

27.3 It is a condition of this Deed that all Reports must be true and correct.

Note: The Provider should note that under section 137.1 of the Criminal Code Act 1995 (Cth), giving false or misleading information is a serious offence punishable by penalties including imprisonment.

27.4 The Provider must provide its Reports in accordance with the following requirements:

- (a) all Reports must be in the English language;
- (b) all Reports must be in a form acceptable to the Department; and
- (c) if, in the Department's opinion, either the form or the content of a Report is not satisfactory, the Provider must submit a revised Report to the Department's satisfaction within 20 Business Days of Notice to the Provider from the Department.

Failure to provide satisfactory Reports

27.5 If the Provider is more than 20 Business Days overdue in providing its Reports to the Department, or a Report fails to satisfy the Department, the Department may:

- (a) take action under clause 56 [Remedies for breach]; or
- (b) immediately terminate this Deed under clause 58 [Termination for default] by providing Notice to the Provider.

Connections for Quality

27.6 The Provider must report publicly against Connections for Quality Indicators in accordance with any Guidelines.

28. Financial statements and guarantees

28.1 Subject to clause 28.3, the Provider must, for the Term of this Deed, provide to the Department its 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.

28.2 If the Provider is a Tendering Group or a partnership, then the Provider must provide one copy of the consolidated financial statements for the Tendering Group or partnership, if available, and individual annual financial statements for each member of the Tendering Group.

Financial statements

28.3 If required by the Department, the Provider must provide to the Department financial statements in a form, with the content and at a frequency, as directed by the Department.

28.4 For the purposes of this clause 28, where audited financial statements are created for the Provider, they must be provided to the Department.

Financial undertaking and performance guarantee

28.5 If required by the Department, the Provider must provide to the Department within 20 Business Days of the relevant direction by the Department, a financial undertaking and performance guarantee in a form and in terms satisfactory to the Department.

28.6 The financial undertaking and performance guarantee provided in accordance with clause 28.5 must remain in place until the Department Notifies the Provider that it is no longer required.

28.7 The financial undertaking and performance guarantee provided under clause 28.5 will be exercisable by the Department for either or both of the following, to the extent required:

- (a) to obtain compensation for the costs, losses, damages and expenses suffered by the Department if the Provider fails to perform any or all of its obligations under this Deed, including on the termination of this Deed in accordance with clause 58 [Termination for default]; or
- (b) to recover any debts due to the Provider under or in connection with this Deed in accordance with clause 24 [Debts and offsetting].

28.8 Without limiting any of the Department's other rights under this Deed or otherwise, if the Provider fails to provide or maintain the financial undertaking and performance guarantee required by clause 28.5, the Department may withhold all or part of any payment under this Deed until the Provider meets those obligations.

28.9 If the Department exercises any or all of its rights under the financial undertaking and performance guarantee provided under clause 28.5, the Department will not be liable for, and the Provider releases the Department from liability for, any resultant loss or damage to the Provider.

28.10 The Department's rights to recover from the Provider the balance of any costs, losses, damages and expenses suffered by the Department after exercise of the financial undertaking and performance guarantee provided under clause 28.5 will not be limited by the Department's exercise of the security.

Section 2E Evaluation Activities

29. Evaluation activities

Cooperation in evaluation activities

29.1 The Provider agrees:

- (a) that evaluation activities may be undertaken by the Department for the purposes of evaluating the Services, including the Provider's performance;
- (b) that all evaluation activities will be conducted in a mutually cooperative manner, and may include, but are not limited to:
 - (i) the Department monitoring, measuring and evaluating the delivery of the Services by the Provider;
 - (ii) the Provider's Personnel being interviewed by the Department or an independent evaluator nominated by the Department; and
 - (iii) the Provider giving the Department or the Department's evaluator access to its premises and Records in accordance with clause 44 [Access to premises and records];
- (c) to assist the Department or the Department's evaluator in carrying out all evaluation activities that the Department requires to be undertaken, including a review and final evaluation of the Services; and
- (d) to fully cooperate and participate in any other general research, monitoring or evaluation activities undertaken by the Department, or on behalf of the Department.

Section 2F Customer and Provider feedback

30. Customer feedback process

30.1 The Provider must establish and publicise to its Customers the existence and details of a Customer feedback process which will deal with feedback, including Complaints lodged by Customers, about its conduct of the Services.

30.2 If a Customer is dissatisfied with the results of the Customer feedback process, the Provider must refer the Customer to the National Customer Service Line for further investigation of the matter. Customers of Disability Employment Services – Disability Management Service and Disability Employment Services – Employment Support Service Providers may access the Complaints Resolution and Referral Service, either directly, or through the National Customer Service Line.

30.3 The Provider's Customer feedback process must:

- (a) be consistent with this Deed, any Guidelines, and where relevant, the Code of Practice and the Service Guarantee; and
- (b) clearly indicate that Customers may also make a Complaint directly to the Department using the National Customer Service Line or the Complaints Resolution and Referral Service if a Customer of a Disability Employment Services – Disability Management Service or Disability Employment Services – Employment Support Service Provider.

30.4 Upon request, the Provider must give to the Department details of the process it has established to manage Customer feedback.

31. Dealing with Customer feedback

31.1 The Provider must:

- (a) explain the Customer feedback process to Customers on initial contact, including potential Participants upon first Referral to, or on Direct Registration with, the Provider, and to Customers or Participants at any time upon request;
- (b) make copies of the Customer feedback process available to Participants or other Customers upon request;
- (c) ensure that all Complaints it receives are investigated by an appropriately senior staff member;
- (d) ensure that all other feedback received by it is dealt with appropriately;
- (e) effectively communicate the outcome of any investigation and any action the Provider proposes to take about a Complaint to the complainant and, if requested by the Department, to the Department;
- (f) when approached by the Department, actively assist:
 - (i) the Department in its investigation of the matter;
 - (ii) in negotiating a resolution to a Complaint; and
 - (iii) other authorities in negotiating a resolution to a Complaint, where the relevant Customer has chosen to utilise other legislative complaints mechanisms; and
- (g) not withhold Services from a complainant or discriminate against a complainant because of a Complaint.

32. Customer Feedback Register

32.1 The Provider must keep a Customer Feedback Register which includes, but is not limited to, the following information:

- (a) details of all Customer feedback received directly by the Provider, and the outcome of any investigation where relevant;
- (b) details of all Customer feedback referred to the Provider by, or through, the Department; and
- (c) in relation to Complaints, details of:
 - (i) the names of the Customers (if known);
 - (ii) if relevant, the names of the Personnel about whom the Complaint refers;
 - (iii) the name of the staff member handling the Complaint;
 - (iv) if relevant, the Site to which the Complaint relates;
 - (v) the date of the Complaint;
 - (vi) the nature of the Complaint;
 - (vii) whether the Complaint was referred to the Provider by the Department;
 - (viii) key contacts with the complainant and the action taken, including dates;
 - (ix) the outcome of the investigation;

- (x) the date of finalisation of the response to the Complaint;
- (xi) any follow-up action required;
- (xii) if a complainant has been referred to the National Customer Service Line or the Complaints Resolution and Referral Service, including the date; and
- (xiii) any changes to the delivery of the Services or procedures, or other actions, resulting from the Complaint.

33. Provider feedback

- 33.1 If the Provider wishes to provide feedback other than in relation to a dispute dealt with under clause 54 [Dispute Resolution], the Provider must, in the first instance, provide feedback to the Account Manager.
- 33.2 The Account Manager will consider all feedback received and respond as appropriate.
- 33.3 If the Provider is not satisfied with the Account Manager's response to the Provider's feedback, the Provider may request the Account Manager to refer the matter to an appropriate senior Department officer. The Account Manager must then refer the matter to an appropriate senior Department officer for consideration and response as appropriate.

CHAPTER 3 INFORMATION AND INFORMATION MANAGEMENT

Section 3A Information Technology

34. General

Use

- 34.1 If required by the Department, the Provider must conduct the Services using the Department's IT Systems provided by the Department for that purpose.
- 34.2 If any Personnel require disability access to the Department's IT Systems, the Provider must install suitable accessibility software to allow such access.

Training

- 34.3 The Department may provide training in the use of the Department's IT Systems, by computer-assisted learning packages or otherwise.
- 34.4 Where specified by the Department, Personnel must not access or use the Department's IT Systems until they have successfully completed the relevant training.

Accuracy and Completeness

- 34.5 The Provider must ensure that:
- (a) a Participant's details are recorded on the Department's IT Systems as required by the Department; and
 - (b) all data entered on the Department's IT Systems is true, accurate and complete.

Costs

- 34.6 The Provider is responsible for all costs of meeting its obligations under this clause 34.

35. Access and security

Access to Systems

- 35.1 The Provider must provide information technology systems to access and use the Department's IT Systems and to carry out its other obligations under this Deed that meet the requirements set out in this clause 35.
- 35.2 Subject to clause 35.4, for the purposes of clause 35.1, the Provider must use:
- (a) Microsoft Windows 7 or 8 (32-bit or 64-bit versions Home Premium, Professional, Enterprise and Ultimate); or
 - (b) Terminal Services on Microsoft Windows Server 2003 and Windows Servers 2008 (typically using Citrix).
- 35.3 Reserved.
- 35.4 If the Provider proposes that an alternative operating system can deliver the same level of security controls and functionality, the Provider must request approval from the Department to use the alternative operating system. If the Department gives its approval, the Department may impose such terms and conditions as the Department thinks fit.

- 35.5 The Provider must:
- (a) advise the Department of any proposed use of Third Party Systems to interface with the Department's IT Systems;
 - (b) where the Department imposes any terms and conditions in respect of the use of these interfaces, comply with those terms and conditions as advised by the Department;
 - (c) ensure that any Third Party System it uses:
 - (i) meets the minimum requirements of the Department for entry to the Department's IT Systems, and for record keeping and programme assurance purposes, as advised by the Department; and
 - (ii) has secure logons for each operator such that each operator's logon is identifiable to the Department and entries are traceable, and have date and time stamps; and
 - (d) ensure that Records held in any Third Party System relating to the Services can be, and are, provided on request, to the Department and in an unadulterated form, i.e with no amendment to the Records.

- 35.6 The Provider must:
- (a) nominate Personnel to receive technical advice from the Department or the Department of Employment on the Department's IT Systems, and to provide advice to the Department or the Department of Employment on technical issues arising from the deployment of the Department's IT Systems ('IT Contact');
 - (b) ensure that the IT Contact:
 - (i) disseminates technical advice to Personnel of the Provider and Subcontractors as appropriate, in order to minimise disruption to Services; and
 - (ii) provides advice, as requested by the Department:
 - (A) to assist in resolution of the Department's IT Systems technical issues; and
 - (B) in relation to the Provider's readiness to deploy system upgrades to the Department's IT Systems; and
 - (c) where that IT Contact changes, advise the Department accordingly.

Security

- 35.7 The Provider must comply, and ensure that its Subcontractors and Third Party IT Providers comply, with the Department's Security Policies and the Commonwealth's Cybersafety Policy, as relevant.
- 35.8 The Provider must ensure that a Security Contact is appointed at all times during the Term of this Deed and that at all times the Department has up to date contact details for the current Security Contact.
- 35.9 Subject to clause 42, and until such time as the Department advises that a Third Party IT Provider Deed is required in accordance with clause 35.9A, where the Provider gives access to electronic Records, or any derivative thereof, to third parties, including, but not limited to:
- (a) third-party hosting entities; or
 - (b) outsourced information technology service providers,

the Provider must ensure that a non-disclosure deed, in the form specified at Annexure E to this Deed, is signed by each relevant third party prior to that third party being granted any such access and only grant such access in accordance with the Department's Security Policies, the Commonwealth Cybersafety Policy and any Guidelines.

35.9A The Provider must:

- (a) not give access to electronic Records, or any derivative thereof, to a Third Party IT Provider who has not, by the date specified by the Department, entered into a Third Party IT Provider Deed with the Department of Employment, and only grant such access in accordance with the terms of that agreement and any Guidelines;
- (b) in any contract with a Third Party IT Provider, reserve a right of termination to take account of the Department of Employment's right of termination in the relevant Third Party IT Provider Deed; and
- (c) on receipt of any advice from the Department that the Department of Employment has terminated a relevant Third Party IT Provider Deed, terminate the Provider's contract with the Third Party IT Provider and, at its own cost, promptly cease using the Third Party IT Provider.

Detection and reporting of breaches

35.10 The Provider must (through its Security Contact) report all breaches of IT security to the Employment Systems Help Desk including where Personnel suspect that a breach may have occurred or that a person may be planning to breach IT security and their resolution.

Note: The Department and the Department of Employment monitors all use of the Department's IT Systems and through this, or other means may detect a breach, potential breach or planned breach of IT security.

35.11 Reserved.

35.12 Where the Department considers that the Provider may be in breach of this Deed, or there is a risk of such a breach, the Department may, at its absolute discretion, immediately suspend access to the Department's IT Systems for any one or more of the following:

- (a) any Personnel;
- (b) any Subcontractor; or
- (c) any Third Party IT Provider; or
- (d) the Provider,

by providing Notice to the Provider.

35.13 Where the Department determines that the Provider is in breach of, or has previously breached, this Deed, the Department may immediately take action including any one or more of the following:

- (a) suspending or terminating access to the Department's IT Systems for any Personnel, Subcontractor, Third Party IT Provider, or the Provider;
- (b) requiring the Provider to obtain new logon IDs for any Personnel or Subcontractor or Third Party IT Provider and if so, the Provider must promptly obtain such new logons; or

- (c) requiring the Provider to prepare and implement an IT security plan to the Department's satisfaction, and if so, the Provider must do so within the timeframe required by the Department.
- 35.14 Any action taken by the Department under clauses 35.12 to 35.13 does not limit any other rights the Department has under this Deed, including pursuant to clause 56.2, or under the law.
- 35.15 If the Department gives Notice to the Provider that access to the Department's IT Systems is revoked for particular Personnel or Subcontractors or Third Party IT Provider, the Provider must immediately take all actions necessary to terminate that access.

Cybersafety Policy

- 35.16 For the purposes of this Cybersafety Policy:
- (a) '**Clients**' means persons who may use the Provider's computers and/ or other digital technology that is supported through public funding provided pursuant to this Deed and includes but is not limited to the Provider, the Provider's staff and the public, whether they be adult or children.
 - (b) '**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, and particularly children, and may include but is not limited to having a policy in place regarding appropriate use and protection for Clients, installation of filters, audits and provision of information or training to the Provider's staff regarding the risks of, and protection from, inappropriate or harmful on-line content.
- 35.17 The Commonwealth's 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.
- 35.18 The Provider must take Reasonable Steps to protect its Clients' cybersafety.
- 35.19 If the Department gives the Provider Notice requiring it, the Provider must provide the Department, within 10 Business Days of receiving the Notice, with evidence satisfactory to the Department that the Provider has complied with the requirements of this Cybersafety Policy.
- 35.20 The Provider agrees to include its obligations in relation to this Cybersafety Policy in all Subcontracts it enters into in relation to Services.

Section 3B Property rights

36. Ownership of intellectual property

- 36.1 Unless otherwise set out in the Records Management Instructions, and subject to this clause 36 as between the Department and the Provider (but without affecting the position between the Provider and a third party), the ownership of:
- (a) Commonwealth Material; and
 - (b) Deed Material,
- vests at all times in the Department.

Dealing with Intellectual Property Rights

- 36.2 The Provider warrants that it:

- (a) is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in Deed Material and the Existing Material in accordance with this clause 36; and
- (b) has obtained valid written consents from all owners of Intellectual Property Rights in, and all authors (including Subcontractors) involved in, creating Deed Material and Existing Material so that the Department's use of that Material in accordance with this clause 36 will not infringe:
 - (i) the Intellectual Property Rights of any third party; or
 - (ii) any author's Moral Rights.

36.3 The Provider must:

- (a) if requested by the Department to do so, bring into existence, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 36;
- (b) not deal with the Intellectual Property Rights in the Deed Material, except as expressly provided for in this Deed; and
- (c) deliver all Deed Material to the Department at the Completion Date, unless otherwise Notified by the Department.

36.4 For the purposes of clause 36 'infringe' includes unauthorised acts that would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), and section 25 of the *Circuits Layout Act 1989* (Cth), constitute an infringement.

37. Licensing of Intellectual Property Rights

Licence of Commonwealth Material and Deed Material

37.1 The Department grants the Provider a licence to use, copy and reproduce:

- (a) Commonwealth Material; and
- (b) Deed Material,

but only for the purposes of this Deed and in accordance with any conditions or restrictions Notified by the Department to the Provider.

37.2 The licence in clause 37.1 is revocable on 10 Business Days Notice by the Department, and expires on the Completion Date.

37.3 If the Department, in the Records Management Instructions, specifies that Intellectual Property Rights in some Deed Material vests in the Provider, the Provider grants the Department a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Deed Material for any purpose as required by the Department.

Licence of Existing Material

37.4 This clause 37 does not affect the ownership of any Intellectual Property Rights in any Existing Material. The Provider, however, grants to the Department or must arrange for the grant to the Department of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Existing Material for any purpose as required by the Department.

Commonwealth Coat of Arms

- 37.5 The Provider must not use the Commonwealth Coat of Arms for the purposes of this Deed, except as authorised in accordance with the *Use of the Commonwealth Coat of Arms General Guidelines* available at www.dpmc.gov.au/guidelines/docs/CCoA_guidelines.pdf.

38. Ownership of Deed Material and Commonwealth Material

- 38.1 Unless otherwise set out in the Records Management Instructions, as between the Department and the Provider (but without affecting the position between the Provider and a third party) ownership of the physical Material constituting:
- (a) Commonwealth Material; and
 - (b) Deed Material,
- vests at all times in the Department.

Section 3C Control of information

39. Personal and Protected Information

Application of this clause

- 39.1 This clause 39 applies only where the Provider deals with Personal Information for the purpose of conducting the Services under this Deed.

Privacy definitions

- 39.2 In this clause 39, the terms 'agency', 'APP code', 'contracted service provider', '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.

Privacy obligation

- 39.3 The Provider acknowledges that it is a contracted service provider and agrees in respect to the conduct of the Services under this Deed:
- (a) to use or disclose Personal Information obtained in the course of conducting the Services, only for the purposes of this Deed;
 - (b) except where this clause expressly requires the Provider to comply with an APP that applies only to an organisation, to carry out and discharge the obligations contained in the APPs as if it were an agency;
 - (c) not to do any act or engage in any practice that if done or engaged in by an agency or, where relevant, an organisation, would be a breach of an APP;
 - (d) to notify individuals whose Personal Information it holds, that:
 - (i) complaints about its acts or practices may be investigated by the Information Commissioner who has power to award compensation against the Provider in appropriate circumstances; and
 - (ii) their Personal Information may be disclosed and passed on to the Department and to other persons in relation to providing the Services;

- (e) unless expressly authorised or required under this Deed, not engage in any practice that would breach:
 - (i) section 16F of the Privacy Act (direct marketing);
 - (ii) APP 7 (direct marketing);
 - (iii) APP 9 (adoption, use or disclosure of government related identifiers); or
 - (iv) any registered APP code that is applicable to the Provider;
- (f) to comply with any request under section 95C of the Privacy Act;
- (g) to comply with any directions, guidelines, determinations, rules or recommendations of the Information Commissioner to the extent that they are consistent with the requirements of this clause 39;
- (h) not to transfer Personal Information outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Department;
- (i) to its name being published in reports by the Information Commissioner;
- (j) if the Provider suspends or terminates Personnel:
 - (i) to remove any access that the Personnel have to any Personal Information; and
 - (ii) to require that the Personnel return to the Provider or the Department any Personal Information held in the Personnel's possession; and
- (k) to ensure that any of its Personnel who are required to deal with Personal Information for the purposes of this Deed:
 - (i) are made aware of their obligations in this clause 39 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).

Notification to the Department

- 39.4 The Provider must immediately Notify the Department if it becomes aware:
- (a) of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 39 by any Personnel or Subcontractor;
 - (b) that a disclosure of Personal Information may be required by law; or
 - (c) of an approach to the Provider by the Information Commissioner or by a person claiming that their privacy has been interfered with.

Protected Information

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

40. Confidential Information

- 40.1 Subject to this clause 40 and clause 42.6 the Parties must not, without each other's prior written approval, disclose any of each other's Confidential Information to a third party.

- 40.2 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.
- 40.3 The obligations on the Parties under this clause 40 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;
 - (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 to be disclosed; or
 - (e) is in the public domain otherwise than due to a breach of this clause 40.
- 40.4 Nothing in this clause 40 limits the obligations of the Provider under clause 39 [Personal and Protected Information] or clause 44 [Access to premises and records].
- 41. Release of information on Provider's performance**
- 41.1 The Provider agrees that the Department may publish information the Department holds concerning its performance as the provider of Services under this Deed.

Section 3D Records management

42. Records the Provider must keep

General

- 42.1 The Provider must create and maintain full and accurate Records of the conduct of the Services, including, where relevant, Participant Services Records and the Customer Feedback Register and any other Material as set out in the Records Management Instructions.
- 42.2 When requested by the Department, the Provider must provide the Records, including relevant Records maintained by a Third Party IT Provider, to the Department within the timeframe required by the Department.

Financial Accounts and Records

- 42.3 The Provider must keep financial accounts and Records of its transactions and affairs regarding payments that it receives from the Department under this Deed:
- (a) in accordance with Australian Equivalents to International Financial Reporting Standards; and
 - (b) such that:
 - (i) all payments made by the Department are clearly and separately identified; and
 - (ii) an auditor or other person may examine them at any time and thereby ascertain the Provider's financial position.

Storage

- 42.4 The Provider must store all Records created under clause 42.1 in accordance with the Records Management Instructions and the Department's Security Policies, and where appropriate, its Privacy Act obligations.

Control

- 42.5 The Provider must maintain an up to date list of the Records held by the Provider, as listed in the Records Management Instructions, and make this list available to the Department on request.

Access

- 42.6 Subject to clauses 39 [Personal and Protected Information] and 44 [Access to premises and records], the Provider must ensure that copying of, use of, and access to, Participant Services Records, is restricted to Personnel directly assisting the Provider with the provision of Services to a Participant or to any Third Party IT Provider.

Transfer

- 42.7 Subject to clause 39 [Personal and Protected Information] and where relevant clause 59 [Transition out], the Provider must:
- (a) not transfer, or be a party to an arrangement for the transfer of custody of the Records created under clause 42.1 to any person, entity or organisation other than to the Department, without the written approval of the Department; and
 - (b) where transferring Records created under clause 42.1, only transfer the Records in accordance with the Records Management Instructions or as otherwise directed by the Department.

Retention

- 42.8 Subject to clause 39 [Personal and Protected Information], all Records created in accordance with clause 42.1 must be retained by the Provider for a period of no less than seven years after the creation of the Record, unless otherwise specified in the Records Management Instructions.
- 42.9 At the Completion Date, the Provider must manage all Records created in accordance with clause 42.1 in accordance with the Records Management Instructions or as otherwise directed by the Department.

Destruction

- 42.10 The Provider must:
- (a) not destroy or otherwise dispose of Records created in accordance with clause 42.1, except in accordance with the relevant Records Management Instructions, or as directed by the Department; and
 - (b) provide a list to the Department of any Records that have been destroyed, as directed by the Department.

43. Access by Participants and Employers to Records held by the Provider

- 43.1 Subject to this clause 43, the Provider must allow Participants and Employers who are individuals to access Records that contain their own Personal Information, and provide them with copies of such Records if they require, except to the extent that Commonwealth legislation would, if the Records were in the possession of the Commonwealth, require or authorise the refusal of such access by the Commonwealth.
- 43.2 The Provider must, in providing access to the requested Records in accordance with clause 43.1:

- (a) ensure that the relevant Participant or Employer requesting the access in clause 43.1 provides proof of identity before access is given to the requested Records; and
- (b) notate the relevant files with details of the Records to which access was provided, the name of the person granted access and the date and time of such access.

43.3 Requests for access to Records that the Provider has determined could be refused under Commonwealth legislation as specified in clause 43.1 including, but not limited to, access to Records containing information falling within the following categories:

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

must be directed to the Department for consideration.

43.4 The Provider must comply with any direction given by the Department in relation to the provision, or refusal, of access to Records held by the Provider to a Participant or Employer.

43A Access to documents

43A.1 In this clause 43A, 'document' has the same meaning as in the *Freedom of Information Act 1982* (Cth).

43A.2 The Provider agrees that:

- (a) where the Department has received a request for access to a document created by, or in the possession of, the Provider or any Subcontractor or any Third Party IT Provider, the Department may at any time by Notice require the Provider to provide the document to the Department and the Provider must, at no additional cost to the Department, promptly comply with the Notice;
- (b) the Provider must assist the Department in respect of the Department's obligations under the *Freedom of Information Act 1982* (Cth), as required by the Department; and
- (c) the Provider must include in any Subcontract or contract with a Third Party IT Provider provisions that will enable the Provider to comply with its obligations under this clause 43A.

44. Access to premises and records

General access rights

44.1 The Provider must at all reasonable times give any Department Employee:

- (a) reasonable access to:
 - (i) its premises and Sites;
 - (ii) its information technology systems;
 - (iii) all Material, including that relevant to determining the Provider's:
 - (A) financial viability; and

- (B) compliance with relevant work, health and safety and industrial relations legislation; and
- (iv) its Personnel; and
- (b) reasonable assistance to:
 - (i) inspect its Sites or premises;
 - (ii) inspect the performance of Services; and
 - (iii) locate, inspect, copy and remove, all Material including data stored on the Provider's information technology systems.

Limitation on access rights

44.2 Subject to clause 44.3 the rights referred to in clause 44.1 are subject to:

- (a) the provision of reasonable prior notice to the Provider; and
- (b) the Provider's reasonable security procedures.

Investigation of Breaches and Fraud

44.3 If a matter is being investigated that, in the opinion of the Department, may involve:

- (a) an actual or apprehended breach of the law;
- (b) a breach of the Deed; or
- (c) suspected fraud,

clause 44.2 does not apply, and Department Employees may remove and retain Material and original Records that are relevant to the investigation, including items stored on an electronic medium, provided that they return a copy of all relevant Records to the Provider, or the relevant Material and original Records, within a reasonable period of time.

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

CHAPTER 4 DEED ADMINISTRATION

Section 4A Indemnity and insurance

45. Indemnity

General indemnity

- 45.1 The Provider must indemnify (and keep indemnified) the Department against any:
- (a) loss, cost or liability incurred by the Department;
 - (b) loss of or damage to the Department's property; or
 - (c) 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:
- (d) any act or omission by the Provider in connection with this Deed, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;
 - (e) any breach by the Provider of this Deed;
 - (f) any publication of the information referred to in clause 41 [Release of information on Provider's performance], clause 63 [the Department's right to publicise the Services] or clause 64 [the Department's right to publicise best practice], where the published information was provided by the Provider to the Department;
 - (g) any breach by the Provider of clause 39 [Personal and Protected Information]; or
 - (h) 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.

Reduction of scope

- 45.2 The liability of the Provider to indemnify the Department under this clause 45 will be reduced proportionately to the extent that fault on the Department's part contributed to the relevant cost, loss, damage, expense, or liability.

Preservation of other rights

- 45.3 The Department's right to be indemnified under this clause 45 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 cost, loss, damage, expense or liability.

Meaning of fault

- 45.4 In this clause 45, 'fault' means any negligent or unlawful act or omission or wilful misconduct, including fraud.

46. Insurance

Required Insurances

46.1 Subject to this clause 46, the Provider must, for as long as any obligations to perform Services remain in connection with this Deed, effect and maintain or cause to be effected and maintained, the following insurances:

- (a) public liability insurance written on an occurrence basis, with a limit of indemnity of at least \$10 million in respect of each and every occurrence, which covers:
 - (i) the Provider's liability and the liability of its Personnel and agents (including to the Department and to the Participants) at general law and additionally as or assumed under the terms of clause 47 [Liability of Provider to the Department]; and
 - (ii) the vicarious liability of the Department in respect of the acts or omissions of the Provider, its Personnel and agents;

in respect of:

- (iii) loss of, or damage to, or loss of use of any real or personal property (including property of the Department in the care, custody or control of the Provider); and
- (iv) the bodily injury, disease or illness (including mental illness) or death of, any person (other than a liability insured under the insurance referred to at clause 46.1(b)),

arising out of, or in connection with, the Provider's performance of this Deed;

- (b) insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged in work by the Provider under this Deed:
 - (i) giving rise to a claim:
 - (A) under any statute relating to workers' or accident compensation; and
 - (B) where common law claims by such workers are permissible outside of the statutory scheme referred to at clause 46.1(b)(i)(A) for employer's liability at common law with a limit of indemnity of not less than \$50 million for any one event;
 - (ii) in each Australian state or territory where the Provider's employees normally reside or where their contract of employment was made, or 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 every motor vehicle used in the performance of this Deed, insurance for not less than \$20 million for any occurrence which covers:
 - (i) 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

- (ii) 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);
- (d) compulsory third party motor vehicle insurance for all registrable vehicles used in the performance of this Deed (including transporting of Participants in the Provider's or the Provider's employees' vehicles);
- (e) 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:
 - (i) that covers the liability of the Provider at general law and additionally as or assumed under the terms of clause 47 [Liability of Provider to the Department] arising from a negligent 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 judgment by the Provider, its Personnel, Subcontractors, consultants or agents;
 - (ii) extending to include cover for unintentional breaches of Intellectual Property Rights; and
 - (iii) 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;
- (f) personal accident insurance coverage providing a sliding scale of benefits (in conformance with current insurance market practice for such policies) with the maximum benefit being not less than \$250,000 per claim that covers Participants while:
 - (i) on the Provider's premises;
 - (ii) undertaking Programme Services activities, but not including undertaking Unpaid Work Experience Placement activities, or any other activity specified in any Guidelines; and

Note: The Department will purchase personal accident insurance (the amount and form of which is at the Department's absolute discretion) that covers Participants undertaking activities excluded by subparagraph 46.1(f)(ii).

- (iii) travelling by the most direct route between:
 - (A) the Provider's premises and the Participant's home or DHS following Referral;
 - (B) the Provider's premises and job interviews;
 - (C) the Participant's home and job interviews, following referral by the Provider;
 - (D) the Provider's premises and a DHS Assessment Services premises;
 - (E) the Provider's premises and an Ongoing Support Assessor's premises;
 - (F) the Participant's home and a DHS Assessment Services premises; and
 - (G) the Participant's home and an Ongoing Support Assessor's premises; and

(g) products liability insurance written on an occurrence basis with a limit of indemnity of at least \$10 million in respect of each and every occurrence and in the aggregate for all claims arising during any one 12 month policy period, to be maintained for the Term of this Deed, which covers:

- (i) the Provider's liability and the liability of its Personnel and agents (including to the Department and to the Participants) at general law and additionally as or assumed under the terms of clause 47; and
- (ii) the vicarious liability of the Department in respect of the acts or omissions of the Provider, its Personnel and agents;

in respect of:

- (iii) loss of, damage to, or loss of use of any real or personal property (including property of the Department in the care, custody or control of the Provider); and
- (iv) the bodily injury, disease or illness (including mental illness) or death of, any person (other than a liability insured under the insurance referred to in clause 46.1(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

- (h) where the Provider will use an aircraft or marine vessel for the purposes of performing this Deed and the aircraft or marine vessel is owned or chartered by the Provider, marine liability and/or aircraft liability insurance, as is appropriate, covering the liability of the Provider, its Personnel 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 for each occurrence unless such liability is insured under the insurance effected in compliance with clause 46.1(a).

Provider's Insurance Obligations

46.2 All insurances required under this clause 46 (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 which, at the time the insurance policy was obtained, had a financial security rating, unless otherwise agreed by the Department, of "A-" or better from Standard and Poors or the equivalent ratings with another reputable rating agency.

Note: Clause 46.2 does not prevent the Provider from renewing an insurance policy with an insurer whose financial security rating has changed since the policy was first purchased.

46.3 Each of the insurances required by this clause 46 (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 46);

- (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.

46.3A Clauses 46.3(a), (c) and (e) do not apply to any personal accident insurance required by this clause 46.

46.4 In relation to the insurances specified in this clause 46 the Provider must:

- (a) give full, true and particular information to the insurer of all matters and things, the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
- (b) punctually pay all premiums due;
- (c) comply with and abide by all the terms and conditions of the policies;
- (d) not do anything that would entitle the insurers to void, cancel or reduce their liability in respect of any claim;
- (e) not cancel, materially vary or allow any of the insurances to expire without the Department's prior written consent, such consent not to be unreasonably withheld;
- (f) reinstate a policy if it lapses; and
- (g) do everything reasonably required to claim and to collect or recover monies due under any policy.

46.5 The Provider must Notify the Department immediately when it:

- (a) becomes aware of any actual, threatened or likely claim under any of the insurances which the Provider is obliged to effect and maintain, that could materially reduce the available limits or involve the Department (other than a claim by the Department against the Provider which would be insured under the insurance referred to in clause 46.1(e)); or
- (b) receives a notice of cancellation in respect of any of the insurances that the Provider is obliged to effect and maintain.

46.6 The Provider must ensure that all Subcontractors retained by it to perform work in connection with this Deed are covered by insurance of the types specified in this clause 46, 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

- 46.7 The Provider must obtain written independent professional advice that the insurance obtained by it and any Subcontractors 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.
- 46.7A Where the advice referred to in clause 46.7 relates to insurances obtained by a Subcontractor, the written independent professional advice in relation to that insurance may be obtained by either the Provider or the Subcontractor.
- 46.7B Clause 46.7 does not apply to statutory workers compensation insurance or compulsory third party motor vehicle insurance.
- 46.8 The Provider must, within 10 Business Days of 1 July each year or at any other time that the Department requests the same, provide to the Department an insurance declaration form, in the form required by the Department.
- 46.9 In relation to each insurance policy relied upon by the Provider in compliance with the Provider's obligations to effect and maintain, or cause to be effected and maintained, insurance as required by this Deed, the Provider must provide to the Department:
- (a) a full copy of the insurance policy;
 - (b) a certificate of currency; and
 - (c) a copy of the independent professional advice required by clause 46.7, at any time that the Department requests the same.

Note: Clause 46.9 allows the Department to request information relating to the insurance of any Subcontractor of the Provider.

Assistance to the Department

- 46.10 The Provider must:
- (a) give full, true and particular information, in respect of any proposal for a policy of insurance (including any policy issued pursuant to any self insurance scheme of the Commonwealth) to be effected by the Department, of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or the payments of all or any benefits under a policy; and
 - (b) provide all reasonable assistance to the Department, in order to facilitate the Commonwealth making a claim under any insurance policy or self insurance scheme effected for the Commonwealth's benefit.
- 46.11 For the avoidance of doubt, the provisions of this clause 46 are not to be read so as to reduce a Party's liability under any other provision of this Deed, and compliance by the Provider with the provisions of this clause 46 does not limit its liability under any other provision of this Deed.

47. Liability of Provider to the Department

Joint and several liability

- 47.1 To the extent permitted by law, where:

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

Proportionate liability

47.2 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 71 [Applicable law and jurisdiction], this clause 47.2 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.

47.3 The Parties agree that, in addition to clause 47.2, to the extent permitted by law:

- (a) the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising in, or connected with, the State of New South Wales;
- (b) the operation of Part 9A of the *Civil Liability Act 2002* (Tas) is excluded in relation to all and any rights, obligations and liabilities arising in, or connected with, the State of Tasmania;
- (c) the operation of Part 1F of the *Civil Liability Act 2002* (WA) is excluded in relation to all and any rights, obligations and liabilities arising in, or connected with, the State of Western Australia; and
- (d) the operation of Part 1F of the *Civil Liability Act 2002* (WA) (CI) and the operation of Part 1F of the *Civil Liability Act 2002* (WA) (CKI) are excluded in relation to all and any rights, obligations and liabilities arising in, or connected with, the Territory of Christmas Island and the Territory of the Cocos (Keeling) Islands, respectively,

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.

48. Special rules about Tendering Groups

48.1 If the Provider is a Tendering Group, the Provider warrants that each of its members have given their authority to the member named in this Deed as the Tendering Group's lead member to negotiate, bind and act on that member's behalf in relation to this Deed and any variations thereto.

48A. Special rules about trustees

Trustee's warranties

48A.1 If the Provider acts as trustee for a trust (the 'Trust') in relation to this Deed, the Provider warrants to the Department that:

- (a) the Provider is the only trustee of the Trust;
- (b) the Provider has not been removed from, or ceased to act, or resigned or retired from the office of trustee of the Trust, nor has any decision or action been taken or proposed in respect of the removal, resignation or retirement of the Provider as trustee of the Trust, or to appoint an additional trustee of the Trust;
- (c) the Provider is not in default under the Trust deed;
- (d) the Provider has power under the Trust deed to enter into and observe the Provider's obligations under this Deed;
- (e) the Provider has entered in this Deed in its capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust;
- (f) the Provider has a right, and will at all times have a right, to be fully indemnified out of the assets of the Trust in respect of the obligations incurred by it under this Deed;
- (g) the assets of the Trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Provider has a right to be indemnified out of the trust fund; and
- (h) to the extent that the assets of the Trust are insufficient to satisfy any right of indemnity, the Provider holds professional indemnity insurance as required by clause 46 of this Deed.

Provider's indemnity as trustee

48A.2 The Provider indemnifies the Department against any liability or loss arising from, and any expenses (including, without limitation, legal costs and expenses on a full indemnity basis) incurred in connection with the following situations:

- (a) where a warranty made by the Provider under this clause 48A is found to be incorrect or misleading when made or taken to be made; and/or
- (b) the Provider ceases to be the trustee of the Trust or any step is taken to appoint another trustee of the Trust.

Section 4B Changes in persons delivering Services

49. Corporate governance

Constitution

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

49.2 The Provider must inform the Department whenever there is a change in its Constitution, structure, management or operations that could reasonably be expected to have an adverse effect on its ability to comply with the Provider's obligations under this Deed.

Personnel

- 49.3 Unless otherwise agreed by the Department in writing at its absolute discretion, the Provider must not employ, engage or elect any person who would have a role in its management, financial administration or, if Notified by the Department, performance of the Services, if:
- (a) the person is an undischarged bankrupt either in or outside of Australia;
 - (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 of an offence within the meaning of section 85ZM(1) of that Act, unless:
 - (i) that 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;
 - (e) the person is or was a Director or a person who occupied an influential position in the management or financial administration of an organisation that had failed to comply with the terms of any agreement with the Commonwealth, and where that failure gave the Commonwealth the right to terminate the agreement; or
 - (f) the person is otherwise prohibited from being a member or Director or employee or responsible officer of the organisation of the Provider.
- 49.4 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 49.3(a) to 49.3(f) while employed or engaged by the Provider, or elected as an officer of the Provider, in a role in:
- (a) its management or financial administration, the Provider will be in breach of clause 49.3, if the Provider does not:
 - (i) transfer the person to a position that does not have a role in its management or financial administration; or
 - (ii) terminate the employment or engagement of the person or remove the person from office,as the case may be, and immediately Notify the Department of its action; or
 - (b) the performance of the Services, the Provider must Notify the Department on becoming aware that the person falls or has been discovered as falling within any of clauses 49.3(a) to 49.3(f), and take any action in respect of that person, that is Notified by the Department.

Note: For the avoidance of doubt, clause 49.4(b) will also apply where a person is transferred in accordance with clause 49.4(a)(i), to a role in the performance of the Services.

- 49.5 If the Provider advises the Department that it considers termination action under clause 49.4(b) would be a breach of a statutory provision binding on the Provider, the Department will take the Provider's view into account in deciding what action to take as a result of the breach of clause 49.3.

Change in Control of the Provider or a Material Subcontractor

- 49.6 The Provider must not, without the Department's prior written consent, cause or permit to occur a Change in Control of:
- (a) the Provider; or
 - (b) any Material Subcontractor.
- 49.7 The Department may, at its absolute discretion, grant, or refuse to grant its consent to a Change in Control of the Provider or any Material Subcontractor. If the Department grants its consent, the Department may do so on such conditions as the Department sees fit.
- 49.8 The Provider must, within five Business Days of receiving a written request from the Department, provide such information and supporting evidence as the Department may request in relation to the:
- (a) shareholdings;
 - (b) issued shares;
 - (c) board of Directors;
 - (d) board of management;
 - (e) executive;
 - (f) voting rights;
 - (g) partnership composition, if relevant; and
 - (h) Tendering Group membership, if relevant,
- of the Provider or any Material Subcontractor, including the dates of any changes to those matters.
- 49.9 If the Provider does not:
- (a) obtain the Department's consent to a Change in Control as required by clause 49.6; or
 - (b) provide the Department with any information required by the Department in accordance with clause 49.8,
- the Department may do either or both of the following:
- (c) take action under clause 56 [Remedies for breach]; or
 - (d) immediately terminate this Deed without the need to provide Notice to the Provider and clauses 58.2 and 58.4 apply, as if the Deed was terminated under clause 58 [Termination for default].

Change in management

- 49.10 The Provider must:

- (a) inform the Department in writing within five Business Days of any changes 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.

50. Provider's Personnel

Removal of Personnel

- 50.1 The Department may give Notice, on reasonable grounds related to the performance of the Services, requiring the Provider to remove Personnel from work on the Services. The Provider must, at its own cost, promptly arrange for the removal of such Personnel from work on the Services and their replacement with Personnel acceptable to the Department.

Provision of replacement Personnel

- 50.2 For the purposes of clause 50.1, if the Provider is unable to provide replacement Personnel who are acceptable to the Department, the Department may terminate this Deed under clause 58 [Termination for default].

Training

- 50.3 The Provider must provide for, and ensure that its Personnel participate in, any training as directed by the Department from time to time.

51. External administration

- 51.1 Without limiting any other provisions of this Deed, the Provider must provide the Department, immediately upon receipt or generation by the Provider, a copy of:
- (a) any notice requiring the Provider to show cause why the Provider should not come under any form of external administration referred to in clause 51.1(b);
 - (b) any record of a decision of the Provider, notice or orders that the Provider has, or will, come under one of the forms of external administration referred to in:
 - (i) Chapter 5 of the *Corporations Act 2001* (Cth);
 - (ii) the equivalent provisions in the incorporated associations legislation of the Australian states and territories; or
 - (iii) Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
 - (c) any statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
 - (d) any proceedings initiated with a view to obtaining an order for the Provider's winding up;
 - (e) any decisions and orders of any court or tribunal made against the Provider, or involving the Provider, including an order for the Provider's winding up;

- (f) any notice that a shareholder, member or Director is convening a meeting for the purpose of considering or passing any resolution for the Provider's winding up; and
- (g) being an individual, any notice that the Provider has become bankrupt or has entered into a scheme of arrangement with his or her creditors.

51.2 The Provider must, immediately upon the event happening, give Notice to the Department that the Provider:

- (a) has decided to place itself, or has otherwise come under, any one of the forms of external administration, referred to in clause 51.1(b); or
- (b) is ceasing to carry on business.

52. Subcontracting

Application and Interpretation

52.1 Subject to this clause 52, the Provider may enter into a Subcontract with another entity for the purposes of providing the Programme Services under this Deed.

52.2 In clause 52.1, 'entity' includes:

- (a) an association of legal persons, however constituted, governed by deed;
- (b) an incorporated body;
- (c) an unincorporated association;
- (d) a partnership; and
- (e) a trust.

Approval of Subcontracting

52.3 The Provider must not, without the Department's prior written approval:

- (a) enter into a Subcontract for the performance of any of its obligations under this Deed;
- (b) terminate a Subcontractor who has been approved by the Department; or
- (c) replace an approved Subcontractor with another Subcontractor.

52.4 In giving approval under clause 52.3, the Department may impose such terms and conditions as the Department thinks fit.

52.5 The Subcontractors that the Department has approved at the Deed Commencement Date are identified in the Schedule.

52.6 The Provider must ensure that any arrangement it enters into with a Subcontractor is in writing.

Liability

52.7 The Provider is liable to the Department for all losses caused under, or in connection with, this Deed by the acts or omissions of any Subcontractor, engaged by it for the purposes of this Deed, whether or not the relevant entity is a current Subcontractor.

Obligations and payment of Subcontractors

- 52.8 The Provider acknowledges and agrees that the Department may publicly disclose the names of any Subcontractors engaged by the Provider in connection with the Services and the Provider will provide such details of Subcontractors as the Department may require. The Provider will inform any such Subcontractor accordingly.
- 52.9 The Provider must ensure that every Subcontractor is aware of all terms and conditions of this Deed relevant to the Subcontractor's part in the provision of the Services.
- 52.10 The Provider must pay its Subcontractors in accordance with the terms of the relevant Subcontract.

Suitability of Subcontractor

- 52.11 Despite any approval given by the Department under this clause 52, the Provider is responsible for ensuring the suitability of a Subcontractor for the work proposed to be carried out and for ensuring that the Subcontractor's work meets the requirements of this Deed.

Revocation of approval

- 52.12 The Department may revoke its approval of a Subcontractor on any reasonable ground by giving Notice to the Provider, and, on receipt of the Notice, the Provider must, at its own cost, promptly cease using that Subcontractor and arrange for its replacement by Personnel or another Subcontractor acceptable to, and approved by, the Department.

Terms of Subcontracts

- 52.13 The Provider must, in any Subcontract, reserve a right of termination to take account of the Department's right of termination under clauses 57 [Termination with costs] and 58 [Termination for default] and the Department's right of revocation of approval of a Subcontractor under clause 52.12, and the Provider must, where appropriate, make use of that right in the Subcontract in the event of a termination, or revocation of approval of the Subcontractor, by the Department.
- 52.14 The Provider must, in any Subcontract, bind the Subcontractor, with respect to the Department, to all relevant terms and conditions of this Deed including, but not limited to, clauses:
- (a) 39 [Personal and Protected Information];
 - (b) 40 [Confidential Information];
 - (c) 42.8 [Retention (of records)];
 - (d) 44 [Access to premises and records];
 - (e) 46 [Insurance];
 - (f) 66 [Negation of employment, partnership and agency]; and
 - (g) 72 [Compliance with laws and government policies].

Workplace gender equality

- 52.15 The Provider must not enter into a Subcontract under this Deed with a Subcontractor that is non-compliant with the *Workplace Gender Equality Act 2012* (Cth).
- 52.16 If the Provider does not comply with this clause 52 the Department may:
- (a) take action under clause 56 [Remedies for breach]; or

- (b) immediately terminate this Deed under clause 58 [Termination for default] by providing Notice to the Provider.

53. Assignment and novation

Assignment of Rights

- 53.1 The Provider must not assign any of its rights under this Deed without the Department's prior written approval.

Novation

- 53.2 The Provider must not enter into an arrangement that will require the novation of this Deed, without the Department's prior written approval.

Section 4C Resolving Problems

54. Dispute Resolution

- 54.1A Each Party agrees that it will:

- (a) only seek to rely on this clause in good faith, and only where the Party seeking to rely on this clause has made a reasonable assessment that the rights and obligations of the Parties in respect of a matter subject to this clause 54, are genuinely in dispute; and
- (b) cooperate fully with any process instigated in accordance with this clause 54, in order to achieve a prompt and efficient resolution of any dispute.

Informal resolution

- 54.1 The Parties agree that any dispute arising in relation to this Deed will be dealt with, in the first instance, through the process outlined in the Charter of Contract Management.

- 54.2 If any dispute arising in relation to this Deed cannot be resolved using the process in clause 54.1, 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 54.2(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 54.2(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 54.2(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 54.2(d) or (e); or
 - (ii) the dispute is not resolved within 20 Business Days of referring the dispute to an independent third person pursuant to clause 54.2(e),either Party may commence legal proceedings.

Costs

- 54.3 Each Party will bear its own costs of complying with this clause 54, and the Parties must bear equally the cost of any independent third person engaged under clause 54.2(d) and 54.2(e).

Application of this clause

- 54.4 This clause 54 does not apply to the following circumstances:
- (a) either Party commences legal proceedings for urgent interlocutory relief;
 - (b) action is taken, or purportedly taken, by the Department under clause 17 [Minimising delay], clause 19 [General], clause 20 [Evidence to support claims for payments], clause 24 [Debts and offsetting], clause 43 [Access by Participants and Employers to Records held by the Provider], clause 44 [Access to premises and records], 49 [Corporate governance], 52 [Subcontracting], 56 [Remedies for breach], 57 [Termination with costs], 58 [Termination for default], clause 85 [Service Guarantee], clause 86 [Code of Practice] or clause 133 [Performance assessments];
 - (c) the Department is conducting its own breach of contract or fraud investigation; or
 - (d) an authority of the Commonwealth, or of a state or a territory is investigating a breach, or suspected breach, of the law by the Provider.

Performance of obligations

- 54.5 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.

55. Provider Suspension

- 55.1 Without limiting the Department's rights under this Deed, under statute, at law or in equity, if the Department is of the opinion that:
- (a) the Provider may be in breach of its obligations under this Deed, and while the Department investigates the matter;
 - (b) the Provider's performance of any of its obligations under this Deed, including achievement against the Key Performance Indicators, is less than satisfactory to the Department;
 - (c) the Provider has outstanding or unacquitted money under any arrangement, whether contractual or statutory, with the Commonwealth; or
 - (d) the Provider may be engaged in fraudulent activity, and while the Department investigates the matter,

the Department may, in addition to taking any other action under clause 56 [Remedies for breach], and prior to taking action under clause 58 [Termination for default], take action under clause 56.2(a).

55.2 The Department will Notify the Provider if it exercises its rights under clause 55.1 within 10 Business Days after having exercised those rights.

55.3 Notwithstanding any action taken by the Department under clause 55.1, the Provider must continue to perform its obligations under this Deed, unless the Department agrees otherwise in writing.

56. Remedies for breach

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

- (a) the Provider fails to rectify a breach, or pattern of breaches, of this Deed to the Department's satisfaction within 10 Business Days of receiving a Notice from the Department to do so, or within such other period specified by the Department;
- (b) the Provider fails to fulfil, or is in breach of, any of its obligations under this Deed that are not capable of being rectified, as determined by the Department; or
- (c) an event has occurred which would entitle the Department to terminate the Deed in whole or in part under clause 58 [Termination for default],

the Department may, by providing Notice to the Provider, immediately exercise one or more of the remedies set out in clause 56.2.

Options

56.2 The remedies that the Department may exercise are:

- (a) suspending any or all of the following:
 - (i) Referrals in respect of some or all of the Services, including at some or all Sites; or
 - (ii) any payment under this Deed, in whole or in part;
- (b) imposing additional conditions on the payment of Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments or use of the Employment Assistance Fund;
- (c) reducing or not paying specific payments that would otherwise have been payable in respect of the relevant obligation;
- (d) reducing the total amount of Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments, permanently or temporarily;
- (e) where the Department has already paid Fees, Wage Subsidies, NEIS Payments or Reimbursements, recovering, at the Department's absolute discretion, but taking into account the extent and nature of the breach, some or all of the Fees, Wage Subsidies or Reimbursements, as a debt;
- (f) imposing additional financial or performance reporting requirements on the Provider;
- (g) reducing Participant numbers, the Provider's share of available places and/or the business levels of the Provider, permanently or temporarily;
- (h) reducing the scope of this Deed; and
- (i) taking any other action set out in this Deed.

Good faith and proportionality

- 56.3 The Department will exercise its rights under this clause 56 reasonably and in good faith, taking into account the relevant breach.

Variation

- 56.4 If the Department takes any action under this clause 56:
- (a) where relevant, this Deed will be deemed to be varied accordingly; and
 - (b) the Provider is not relieved of any of its obligations under this Deed.

No compensation

- 56.5 For the avoidance of doubt, any reduction of Participant numbers, business levels, Fees, Funds, Reimbursements, Wage Subsidies, Ancillary Payments or the scope of this Deed under this clause 56 does not amount to a reduction of scope or termination for which compensation is payable.

Notice

- 56.6 If the Department takes any action under this clause 56, the Department will Notify the Provider:
- (a) the reasons for the action;
 - (b) the duration of the action; and
 - (c) any corresponding variation to this Deed.

57. Termination with costs

Termination or reduction in scope

- 57.1 The Department may, at any time by Notice to the Provider, terminate this Deed, in whole or in part, or reduce the scope of any part, or all of this Deed, without prejudice to the rights, liabilities, or obligations of either Party accruing before the date on which the termination or reduction takes effect.
- 57.2 If this Deed is terminated in whole or in part or reduced in scope under clause 57.1, the Department is only liable for:
- (a) payment of Fees as set out in clause 57.3; and
 - (b) subject to clauses 57.5, 57.6, 57.7 and 57.8, any reasonable, unavoidable costs actually incurred by the Provider and directly attributable to the termination, in whole or in part, or a reduction in scope of this Deed.

Fees, Funds, Reimbursements, Wage Subsidies and Ancillary Payments

- 57.3 Where, under clause 57.1 the Department terminates this Deed, in whole or in part, or reduces the scope of this Deed:
- (a) the Department will only be liable to pay Fees which are properly due to the Provider before the date on which the termination or reduction in scope takes effect;
 - (b) any payments that would have been payments in advance will abate according to the extent that they relate to the conduct of the Services after the date on which the termination or reduction in scope takes effect; and

- (c) the Department will be entitled to recover from the Provider any Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments paid in advance that relate to the conduct of the Services after the date on which the termination or reduction in scope takes effect.

Provider's obligations

57.4 Upon receipt of a Notice of termination or reduction in scope under this clause 57, the Provider must:

- (a) cease or reduce the performance of this Deed in accordance with the Notice;
- (b) immediately return to the Department any Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments in accordance with clause 57.3(c);
- (c) immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the Notice; and
- (d) continue work on any part of the Services not affected by the Notice.

Abatement of the Fees, Funds, Reimbursements Wage Subsidies and Ancillary Payments

57.5 If there is a reduction in scope of this Deed, the Department's liability to pay any part of the Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments will, unless otherwise agreed, abate proportionately to the reduction in the obligations under this Deed.

Limit on compensation

57.6 The Department's liability to pay any compensation under or in relation to this clause 57 is subject to the Provider's:

- (a) strict compliance with this clause 57; and
- (b) substantiation of any amounts claimed under clause 57.3.

57.7 The Department will not be liable:

- (a) to pay compensation for loss of prospective profits attributable to a termination or reduction in scope under this clause 57;
- (b) for loss of any benefits that would have been conferred on the Provider had a termination or a reduction in scope made under this clause 57 not occurred; or
- (c) for any amounts that would, in aggregate, exceed the maximum Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments that would have been payable by the Department under this Deed in respect of the relevant Services, but for a termination or a reduction in scope made under this clause 57.

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

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

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

- (a) the Department's actions will not constitute a breach of this Deed; and
- (b) the Parties agree that the amounts payable to the Provider under this clause 57 represent a reasonable pre-estimate of any loss that may be incurred by the Provider.

58. Termination for default

Defaults

58.1 The Department may, if any of the following events occur, immediately terminate this Deed, in whole or in part, by giving Notice to the Provider:

- (a) the Provider fails to fulfil, or is in breach of, any of its obligations under this Deed that are not capable of being rectified (as determined by the Department);
- (b) the Provider is in breach of any of its obligations under this Deed that are capable of being rectified, and does not rectify the omission or breach, or pattern of omissions or breaches, within 10 Business Days, or such other period specified by the Department, of receiving a Notice from the Department to do so;
- (c) the Provider fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (d) any event referred to in clause 51 [External administration] occurs, other than an event under clause 51.1(c);
- (e) the Department is otherwise satisfied that the Provider is unable to pay all of its debts as and when they become due and payable;
- (f) the Department is satisfied that, prior to entering into this Deed, the Provider:
 - (i) has engaged in misleading or deceptive conduct;
 - (ii) has made a statement that is incorrect or incomplete; or
 - (iii) has omitted to provide information to the Department, that may have affected the Department's decision to enter into this Deed, or any action taken by the Department under this Deed;
- (g) notice is served on the Provider or proceedings are taken to cancel its incorporation or cancel its registration or to dissolve the Provider as a legal entity; or

Note: For the avoidance of doubt, clause 58.1(g) does not apply where a Provider has transferred its incorporation or registration in accordance with the legislation under which it is incorporated or registered.

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

Parties' rights and obligations on termination

58.2 Where the Department terminates this Deed in whole or in part under clause 58.1:

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

Good faith and proportionality

- 58.3 The Department will exercise its rights under this clause 58 reasonably and in good faith, taking into account the relevant breach or other event.

Preservation of other rights

- 58.4 Clause 58.1 does not limit or exclude any of the Department's other rights, including the right to recover any other amounts from the Provider on termination of this Deed, the right to reduce payments due on termination on the basis of breach or poor performance, or any rights of offset.

Section 4D Other matters

59. Transition out

Transition Period

- 59.1 The Department may Notify the Provider in accordance with clause 59.2 that the Department is deeming a Transition Period.
- 59.2 The Department must Notify the Provider of the Transition Period not less than 60 Business Days before the Transition Period is to start.
- 59.3 The Transition Period must:
- (a) start not more than six months before the Completion Date; and
 - (b) end on the Completion Date.
- 59.4 If the Department Notifies the Provider under clause 59.1:
- (a) the Department must specify the start and end date of the Transition Period in the Notice; and
 - (b) the Provider must continue to provide during the Transition Period all Programme Services which it is required to provide under this Deed, unless the Department Notifies the Provider otherwise in the Notice which may specify, but is not limited to specifying, any one or more of the following matters:
 - (i) whether all, or only some, of the Programme Services under this Deed are to be provided and, if only some, which Programme Services are to be provided;
 - (ii) the expected number of Referrals of Participants or ESA Business Share during the Transition Period, if this is to be different from the number of Referrals or ESA Business Share otherwise applicable during this Deed; and
 - (iii) whether any provisions of this Deed will not apply to the provision of Programme Services during the Transition Period, and if so, which provisions will not apply.
- 59.5 A Notice issued under clause 59.1 may include without limitation notice that:
- (a) the Department will reduce or cease Referrals to the Provider;
 - (b) the Provider must reduce or cease Direct Registrations; and
 - (c) the Provider must transfer Participants to another Programme Provider, or other employment services provider.

Provider's obligation to assist and cooperate with the Department

- 59.6 The Provider must, if directed by the Department, provide sufficient assistance and cooperation to any person nominated by the Department to enable services to continue to be provided to a Participant who is transferred to another Programme Provider or employment services provider:
- (a) on the termination of this Deed in whole or in part before the Completion Date;
 - (b) at the Completion Date;
 - (c) in accordance with clauses 112 [Relocation of Participant], 113 [Relationship failure, transfer by agreement and transfers by the Department] and 59.5 of this Deed; or

(d) at any time for any other reason.

59.7 The sufficient assistance and cooperation the Provider must provide under clause 59.6 will include, as a minimum, complying with the Department's directions in relation to:

(a) the transfer of Deed Material and Commonwealth Material in the Provider's possession or control; and

(b) the redirection of Participants,

to any person nominated by the Department, or to the Department.

60. Disability Employment and Indigenous Employment Strategy

Disability Employment Strategy

60.1 The Provider must produce and implement a Disability Employment Strategy, a copy of which must be made available to the Department on request.

Indigenous Employment Strategy

60.2 The Provider must produce and implement an Indigenous Employment Strategy, a copy of which must be made available to the Department on request.

61. Indigenous Opportunities Policy

61.1 The Provider must use reasonable endeavours to increase:

(a) its employment of Indigenous Australians; and

(b) use of Indigenous suppliers in its supply chain,

in delivering the Services.

61A. Relocation Assistance to Take Up a Job (RATUJ)

61A.1 Subject to this clause 61A and any Guidelines, the Provider may pay one or more RATUJ Payments to, or on behalf of, a RATUJ Participant, up to a total of:

(a) \$3000, where the RATUJ Participant is relocating to a Capital City;

(b) \$6000, where the RATUJ Participant is relocating to a Regional Area; and

(c) an additional \$3000, where the RATUJ Participant is relocating to a Capital City or a Regional Area with one or more Dependent Children.

61A.2 The Provider may only pay a RATUJ Payment where the Provider has first, in accordance with any Guidelines:

(a) correctly confirmed that:

(i) the person in relation to whom the payment is to be made, is a RATUJ Participant;

(ii) the relevant Employment position is a RATUJ Placement; and

(iii) the proposed address to which the RATUJ Participant is relocating is eligible for a RATUJ Payment at the amount of the proposed payment;

(b) received from the relevant RATUJ Participant, Documentary Evidence to support their entitlement to a RATUJ Payment at the amount of the proposed payment; and

(c) entered into a RATUJ Agreement with the RATUJ Participant.

- 61A.3 The Provider must end each RATUJ Agreement in the circumstances and in the manner specified in any Guidelines.
- 61A.4 The Provider must ensure that each RATUJ Payment is paid in full from the Provider's own funds, and otherwise paid in accordance with the requirements specified in any Guidelines.

Reimbursement

- 61A.5 Once the Provider has properly paid a RATUJ Payment in accordance with this clause 61A, the Provider:
- (a) may submit a claim for Reimbursement through the Department's IT Systems for no more than the same amount as that RATUJ Payment; and
 - (b) must submit any such claim for Reimbursement in accordance with the requirements specified in any Guidelines.
- 61A.6 The Department will Reimburse the Provider for each RATUJ Payment that is made in accordance with this Deed and properly claimed by the Provider under clause 61A.5.

Transferred RATUJ Participants

- 61A.7 If the Department directs the Provider to provide Services to a Transferred RATUJ Participant, the Provider must do so, as if the person is an eligible Participant and as appropriate to their needs, notwithstanding that the Transferred RATUJ Participant has been Exited as a result of their RATUJ Placement.
- 61A.8 The Provider must, in relation to a RATUJ Participant referred to in clause 61A.7:
- (a) immediately contact the Transferred RATUJ Participant and use the Provider's best endeavours to enter into a RATUJ Agreement with the Transferred RATUJ Participant for a period as advised by the Department; and
 - (b) comply with this clause 61A and any direction by the Department in relation to the Transferred RATUJ Participant.

62. Acknowledgement and promotion

- 62.1 The Provider must, in all publications, and in all promotional, publicity and advertising Materials or activities of any type undertaken by, or on behalf of, the Provider relating to the Services or this Deed:
- (a) comply with any promotion and style guidelines issued by the Department from time to time;
 - (b) use badging and signage;
 - (c) acknowledge the financial and other support the Provider has received from the Commonwealth; and
 - (d) deliver to the Department (at the Department's request and at the Provider's own cost) copies of all promotional, publicity and advertising Materials the Provider has developed for the purposes of this Deed,
- in accordance with any Guidelines.

62.2 The Provider must market and promote Disability Employment Services as required by the Department, and deal with enquiries relating to its provision of Disability Employment Services, in accordance with any Guidelines.

63. The Department's right to publicise the Services

63.1 The Department may, by any means, publicise and report on the Services and on the awarding of this Deed to the Provider, including the name of the Provider, the amounts of Fees, Funding, Reimbursements, Wage Subsidies and Ancillary Payments given to the Provider, and a brief description of the Services.

64. The Department's right to publicise best practice

64.1 Where the Department identifies best practice on the part of the Provider, the Department may disseminate advice of such best practice to other Providers.

65. Conflict of interest

Warranty of no Conflict

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

Conflict that may arise

65.2 The Provider must not during 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.

Dealing with Conflict

65.3 If, during the Term of this Deed, a Conflict arises, or is likely to arise, the Provider must:

- (a) immediately Notify the Department of the Conflict and the steps that the Provider proposes to take to resolve or otherwise deal with the Conflict;
- (b) make full disclosure to the Department of all relevant information relating to the Conflict; and
- (c) take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.

Failure to deal with Conflict

65.4 If the Provider:

- (a) fails to Notify the Department in accordance with this clause 65; or
- (b) is unable or unwilling to resolve or deal with the Conflict as reasonably required by the Department,

the Department may terminate this Deed under clause 58 [Termination for default].

66. Negation of employment, partnership and agency

Status

66.1 Except where it is expressly provided in this Deed, the Provider, its Personnel, partners, agents and Subcontractors are not, by virtue of this Deed or any Subcontract, or for any purpose, deemed to be, Department employees, partners, agents or subcontractors or otherwise able to bind or represent the Commonwealth.

Representatives

66.2 Subject to this Deed, the Provider must not represent itself, and must ensure that its Personnel, partners, agents and Subcontractors do not represent themselves, as being Department employees, partners, agents or subcontractors or as otherwise able to bind or represent the Commonwealth.

67. Waiver

Exercise of rights

67.1 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.

Partial exercise of rights

67.2 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.

Means of waiver

67.3 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.

Meaning of rights

67.4 In this clause 67, 'rights' means rights provided by this Deed, under statute, at law or in equity.

68. Severance

68.1 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.

69. Entire agreement

69.1 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.

70. Variation of Deed

70.1 Except for action the Department is expressly authorised to take elsewhere in this Deed, no variation of this Deed is binding unless it is agreed in writing and signed by the Parties.

71. Applicable law and jurisdiction

Applicable Law

- 71.1 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.

Jurisdiction

- 71.2 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.

72. Compliance with laws and government policies

Compliance with laws and policies

- 72.1 The 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 work, health and safety 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 Provider in writing, referred to or made available by the Department to the Provider (including by reference to an internet site), including any listed in this Deed.

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

No unlawful discrimination

- 72.3 Without limiting clause 72.1, the Provider must provide Services that are free of sexual harassment and any form of unlawful discrimination.

Workplace gender equality

- 72.4 Clauses 72.4(a) to (d) apply only to the extent that the Provider is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).

- (a) Without limiting clause 72.1, the Provider must comply with its obligations, if any, under the WGE Act.
- (b) If the Provider becomes non-compliant with the WGE Act during the Term of this Deed, the Provider must notify the Account Manager.
- (c) The Provider must provide a current letter of compliance to the Account Manager annually and by no later than each anniversary of the Deed Commencement Date.
- (d) Compliance with the WGE Act does not relieve the Provider of its responsibility to comply with its other obligations under this Deed.

- 72.5 Reserved.

- 72.6 Reserved.

- 72.7 Reserved.

Work Health and Safety legislation

72.8 The Provider must at all times:

- (a) ensure that the Services are carried out in a safe manner;
- (b) comply with the WHS Laws;
- (c) be aware of, understand and comply with the Department's work health and safety policy and procedures that are in any way applicable to this Deed or the performance of the Services under this Deed;
- (d) comply with any reasonable instruction from the Department relating to work health and safety;
- (e) immediately comply with directions on health and safety issued by any person having authority under the WHS Laws to do so;
- (f) communicate, consult and coordinate with the Department in relation to health and safety matters arising from the Services (including meeting with the Department as required by the Department);
- (g) communicate any issue or concern that the Provider has regarding work health and safety matters, as soon as practicable, with the Department;
- (h) when requested by the Department, provide evidence of the Provider's ongoing compliance of the WHS Laws;
- (i) if the Provider is required by the WHS Act to report a Notifiable Incident to the Regulator arising out of the Services:
 - (i) at the same time, or as soon as is possible in the circumstances, give Notice of such an 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;
- (j) inform the Department of the full details of:
 - (i) any suspected contravention of the WHS Laws relating to the Services, within 24 hours of becoming aware of any such suspected contravention;
 - (ii) any cessation or direction to cease work relating to the Services, due to unsafe work, immediately upon the Provider being informed of any such cessation or direction;
 - (iii) any workplace entry by a WHS Entry Permit Holder, or an Inspector, to any place where the Services are being performed or undertaken, within 24 hours of becoming aware of any such workplace entry; and
 - (iv) any proceedings against the Provider, or any decision or request by the Regulator given to the Provider, under the WHS Laws, within 24 hours of becoming aware of any such proceedings, decision or request; and
- (k) provide the Department with copies of all notices and correspondence issued to the Provider by any person under the WHS Laws, within 24 hours of receiving any such notice or correspondence.

- 72.9 If the Provider is required by the WHS Laws to:
- (a) prepare, submit, supply or obtain any document, including but not limited to a WHS management plan, a risk assessment, a safe work method statement, a work method statement, an emergency plan, safety data sheets, a notice to the Regulator, or a register (together 'WHS Safety Documents'), or review any existing WHS Safety Documents;
 - (b) obtain or sight any licence, permit, or authorisation (together WHS Licences); or
 - (c) display or install any sign, or barrier;
- specific to the Services, the Provider must:
- (d) prepare or obtain any such WHS Safety Documents or WHS Licences tailored to the Services and in compliance with the WHS Laws;
 - (e) provide the Department with a copy of any such WHS Safety Documents or WHS Licences with sufficient time for the Department to review the same and consult as the Department considers appropriate, including with the Provider, regarding the same; and
 - (f) display or install any such sign or barrier,
- before commencing any, or undertaking further, Services.

72.10 The Department may monitor the Provider's compliance with the WHS Laws, including but not limited to:

- (a) conducting audits of the Provider's work health and safety performance; and
- (b) requiring the Provider to provide the Department with whatever documents or other information the Department reasonably requires relating to work health and safety matters.

72.11 The Provider must cooperate with any investigation undertaken by the Department concerning any Notifiable Incident, or breach or alleged breach of the WHS Laws, arising out of or in respect of the Services.

72.12 Where there is any inconsistency or ambiguity between this clause and the WHS Laws, the WHS Laws will prevail.

72A Use of interpreters

Use of interpreters

72A.1 The Provider must, when carrying out the Services, provide an interpreter, in accordance with any Guidelines, to facilitate communication between the Provider and Participants wherever necessary, including where a Participant requires assistance:

- (a) to communicate comfortably and effectively with the Provider, on account of language or hearing barriers;
- (b) to understand complex information of a technical or legal nature;
- (c) during stressful or emotional situations where their command of English may decrease temporarily; or
- (d) at group forums or public consultations, where Participants do not speak or understand English, or have a hearing impairment.

- 72A.2 The Provider must provide access to interpreter services fairly and without discrimination, based on a proper assessment of a Participant's needs.
- 72A.3 Where a Participant requests the use of an interpreter and the Provider refuses to provide one, the Provider must record the reason for the Provider's decision.

Staff training

- 72A.4 The Provider must ensure that those of its Personnel who, when providing Services, engage with Participants who may require interpreter services, have received training in the use of interpreters in accordance with the training requirements specified in any Guidelines or as otherwise advised by the Department.

Record Keeping

- 72A.5 The Provider must keep Records of the use of interpreters in accordance with any Guidelines.

73. Notices

Giving of Notice

- 73.1 A Party giving Notice or Notifying under this Deed must do so in writing, by facsimile transmission or by email, addressed to the Account Manager or the Contact Person, as relevant, and if:
- (a) in writing, the Notice must be hand delivered or sent by pre-paid post to the street address;
 - (b) by facsimile transmission, the Notice must be sent to the facsimile number; and
 - (c) by email, the Notice must be sent to the email address of, the Account Manager or the Contact Person, as relevant.

Receipt of Notice

- 73.2 A Notice given in accordance with clause 73.1 is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, 5 Business Days after the date of posting, unless it has been received earlier;
 - (c) if sent by facsimile transmission, upon receipt by the sender of a facsimile confirmation receipt; and
 - (d) if sent by email, upon actual receipt by the addressee.
- 73.3 For the purposes of this clause 73, the Account Manager's and the Contact Person's address details are as specified in Items 1 and 2 of the Schedule.

CHAPTER 5 DISABILITY EMPLOYMENT SERVICES – DISABILITY MANAGEMENT SERVICE AND DISABILITY EMPLOYMENT SERVICES – EMPLOYMENT SUPPORT SERVICE

Information about Programme Services

If a Participant is Referred to, Directly Registered with, transferred or transitioned to a Provider in accordance with this Deed, the Provider must provide Programme Services to the Participant. The term Programme Services refers to Disability Employment Services – Disability Management Service and/or Disability Employment Services – Employment Support Service, as applicable to the Provider and the Participant. Providers are contracted to provide Disability Employment Services – Disability Management Service, Disability Employment Services – Employment Support Service or both, in specified Employment Service Areas. Programme Provider refers to a Provider of Disability Employment Services – Disability Management Service, and/or Disability Employment Services – Employment Support Service. References simply to Provider means the provider delivering the Services in the relevant context in which it appears.

The Participant will be in either Disability Employment Services – Disability Management Service or Disability Employment Services – Employment Support Service, depending on their level of need and their eligibility for Programme Services. This Chapter includes mechanisms for a Participant to move flexibly between Disability Employment Services – Disability Management Service and Disability Employment Services – Employment Support Service if their needs change significantly, and to transfer to another Provider if their Provider does not provide the alternative Programme Services that the Participant requires.

There are different eligibility requirements for Disability Employment Services – Disability Management Service Participants and Disability Employment Services – Employment Support Service Participants, including Special Class Clients, Eligible School Leavers and Job in Jeopardy Participants, however, unless specified, the term Participant in this Chapter applies to all Disability Employment Services – Disability Management Service Participants and Disability Employment Services – Employment Support Service Participants. Participants may move between Disability Employment Services – Disability Management Service and Disability Employment Services – Employment Support Service, subject to the requirements of this Deed.

Participants, other than Job in Jeopardy Participants, may receive Employment Assistance, Extended Employment Assistance and Post Placement Support for the following periods:

- (a) Employment Assistance – for up to 18 months;
- (b) Extended Employment Assistance – for up to six months (if assessed as requiring it by an ESAt or, in some limited circumstances, by the Provider); and
- (c) Post Placement Support – while progressing towards an Outcome.

Together these periods are referred to as the Period of Service.

Job in Jeopardy Participants may receive Job in Jeopardy Assistance. For Job in Jeopardy Participants the Period of Service is the period from Commencement of the Job in Jeopardy Participant until he or she is Exited or starts to receive Ongoing Support.

After a 26 Week Employment Outcome or Job in Jeopardy Outcome, Participants who are assessed as requiring it may receive Ongoing Support. Ongoing Support is not available to Participants who achieve an Education Outcome.

The types of assistance the Provider will provide to Participants during the Period of Service and Ongoing Support will depend on the circumstances and requirements of the individual.

Work Based Personal Assistance Only Participants may continue to receive Work Based Personal Assistance after a period of Ongoing Support.

Section 5A Objectives

74. Objectives

74.1 The objective of the Programme Services is to help individuals with disability, injury or health condition to secure and maintain sustainable employment in the open labour market. The Programme Services will increase the focus on the needs of the most disadvantaged job seekers and will achieve greater social inclusion. The Programme Services will boost employment participation and the productive capacity of the workforce, address Skills Shortage areas and better meet the needs of employers.

Section 5B Statutory Conditions

75. Statutory Conditions

75.1 Notwithstanding any other provision of this Deed, the Parties agree that:

- (a) the Provider must, as is relevant, provide the Programme Services in accordance with the Act, the Disability Services Guidelines, and the National Standards for Disability Services; and
- (b) this Deed must be read subject to the Act.

75.2 The Parties agree that payment of any Fees by the Department to:

- (a) the Disability Employment Services – Disability Management Service Provider in relation to Disability Employment Services – Disability Management Service Participants, are made pursuant to an arrangement under section 20(1) of the Act; and
- (b) the Disability Employment Services – Employment Support Service Provider in relation to Disability Employment Services – Employment Support Service Participants, are made by way of a grant under section 12AD of the Act.

75.3 Without limiting the generality of clauses 75.1 and 75.2, the Provider must:

- (a) have a current Certificate of Compliance on the Deed Commencement Date; or
- (b) where the Disability Employment Services – Disability Management Service Provider is providing Disability Employment Services – Disability Management Service, obtain a Certificate of Compliance for the provision of those Services no later than 12 months from the Deed Commencement Date; or
- (c) where the Disability Employment Services – Employment Support Service Provider is providing Disability Employment Services – Employment Support Service, obtain a Certificate of Compliance for the provision of those Services no later than the date determined by the Minister pursuant to section 12AD(2)(b)(ii) of the Act,

and maintain that certification during the Service Period.

Note: If a Provider provides both Disability Employment Services – Disability Management Service and Disability Employment Services – Employment Support Service, the Provider must obtain their Certificate of Compliance by the earlier of the two dates referred to in clauses 75.3(b) and 75.3(c).

75.4 If the Provider breaches clause 75.3, that breach may be treated by the Department as a breach of an essential term of this Deed which is not capable of remedy.

Contribution towards Certificate of Compliance costs

75.5 The Provider must pay the costs associated with obtaining and maintaining a Certificate of Compliance.

75.6 The Department will make a Reimbursement payment to the Provider up to the relevant amount specified in Annexure B3 and in accordance with this clause and any Guidelines, as a contribution towards the certification and surveillance costs associated with the Certificate of Compliance.

75.7 Subject to clause 75.9, the Department will make a certification payment (column 2 of Table 1 in Annexure B3) in accordance with clause 75.6 and Annexure B3 once the Department has received evidence of the Certificate of Compliance from the relevant Certification Body. This payment will only be made once in a three year period.

75.8 Subject to clause 75.9, the Department will make a surveillance payment (column 3 of Table 1 in Annexure B3) in accordance with clause 75.6 and Annexure B3 once the Department has received a completed surveillance audit report to maintain a Certificate of Compliance from the relevant Certification Body. This payment may be made annually.

75.9 The Department will not make a Reimbursement payment to the Provider in relation to a Certificate of Compliance:

- (a) under clause 75.8, if it has made a certification payment under clause 75.7 within the previous 12 months; or
- (b) under clauses 75.7 or 75.8, if it has previously made a payment in relation to the relevant certification and surveillance costs pursuant to any other agreement with the Commonwealth.

76. Section 23 recoveries

76.1 Where a Disability Employment Services – Disability Management Service Participant receives Compensation, the Disability Employment Services – Disability Management Service Provider must, as directed by the Department, assist the Commonwealth with the recovery of the Cost of a rehabilitation programme provided to the Disability Employment Services – Disability Management Service Participant, in accordance with any Guidelines.

Section 5C Application

77. Provision of Programme Services

77.1 Subject to clause 78 [Specialist Service Providers] and clause 84 [Transition in], the Provider must provide the Programme Services to all Participants who are Referred to, or who Directly Register with, the Provider:

- (a) in accordance with this Deed and any Guidelines;

- (b) where the Participant has a Current Assessment, subject to clauses 102 [Change of Circumstances Reassessment during Period of Service], 108 [Changing the Level of Ongoing Support for Disability Employment Services – Employment Support Service Participants] and clause 110 [Change of Circumstances Reassessment during Ongoing Support], in accordance with that Assessment; and
- (c) for the relevant Period of Service and any period of Ongoing Support.

78. Specialist Service Providers

78.1 If a Provider is identified as a Specialist Service Provider in relation to a particular Site or ESA in the Schedule, the Provider must provide Programme Services at that Site or in that ESA:

- (a) to a Participant who is:
 - (i) a member of the relevant Specialist Service Group; and
 - (ii) Referred to, or Directly Registered with, the Provider;
- (b) in accordance with this Deed and any Guidelines;
- (c) where the Participant has a Current Assessment, subject to clauses 102 [Change of Circumstances Reassessment during Period of Service], 108 [Changing the Level of Ongoing Support for Disability Employment Services – Employment Support Service Participants] and 110 [Change of Circumstances Reassessment during Ongoing Support], in accordance with that Assessment;
- (d) in a manner which is designed to address, and is sensitive to, the special needs of that Participant; and
- (e) for the relevant Period of Service and any period of Ongoing Support.

78.2 Unless otherwise Notified by the Department and subject to clause 78.3, a Specialist Service Provider:

- (a) must not provide Programme Services to a Participant who is not a member of the relevant Specialist Service Group; and
- (b) must direct a Participant:
 - (i) who is not a member of the relevant Specialist Service Group; and
 - (ii) who is Referred to or who attempts to Directly Register with the Provider,

to DHS, DHS Assessment Services or to another Programme Provider, in accordance with any Guidelines.

78.3 If a Specialist Service Provider is also a Generalist Service Provider at a Site or in an ESA, the Provider must also provide Programme Services to Participants who are not members of the relevant Specialist Service Group, in accordance with clause 77.1.

79. Programme Services Location

79.1 The Provider must deliver the Programme Services:

- (a) in all of the ESAs;
- (b) subject to this clause 79 and clauses 80.1A and 80.2, at all of, and only at, the Sites; and
- (c) subject to clause 84 [Transition in], in accordance with the ESA Business Share,

as specified in the Schedule, unless otherwise directed by the Department.

- 79.2 Unless another ESA Coverage is specified in the Schedule, the Provider must provide Programme Services to the whole of each ESA specified in the Schedule.
- 79.3 Subject to this clause 79.3 and clause 79.4, the Provider must not provide Programme Services to a Participant whose Permanent Address is located outside an ESA specified in the Schedule unless:
- (a) the Provider is providing Post Placement Support or Ongoing Support to a Participant, who, after obtaining employment, has moved to a new Permanent Address in a new ESA;
 - (b) in exceptional circumstances, the Participant is Referred to the Provider by DHS Assessment Services or DHS; or
 - (c) the arrangement is approved in writing at the Department's discretion and is in accordance with any Guidelines.
- 79.4 Where clauses 79.3(a), 79.3(b) or 79.3(c) apply, the Provider must only provide Programme Services at a Site, unless otherwise specified in any Guidelines.

80. Identification of Programme Services delivered at each Site

- 80.1 For each Site at which the Provider delivers Programme Services, the Provider must identify on the Department's IT Systems:
- (a) whether the Provider is delivering Programme Services at that Site as a:
 - (i) Generalist Service Provider; and/or
 - (ii) Specialist Service Provider; and
 - (b) whether the Provider is delivering:
 - (i) Disability Employment Services – Disability Management Service; and/or
 - (ii) Disability Employment Services – Employment Support Service,at that Site,

and such identification on the Department's IT Systems must be consistent with the Schedule, unless clause 80.1A applies or the Provider is otherwise directed by the Department to deliver Services at a site not specified in the Schedule.

- 80.1A Where a Provider requests to deliver Services at a site not specified in the Schedule and the Department gives written approval for the provision of Services at that site, the Provider may deliver Services at that site notwithstanding that the relevant site is not specified in the Schedule, provided that the Provider complies with clauses 80.1(a) and (b) in respect of that site.
- 80.2 For the avoidance of doubt, the Provider must not provide Programme Services at any Site, (including a site approved by the Department in accordance with clause 80.1A), that is not identified on the Department's IT Systems in accordance with clause 80.1, unless specified in any Guidelines, or otherwise directed by the Department.

Section 5D Allocation of Participants to the Provider

81. Referrals

- 81.1 The Provider must only accept Referrals of Participants made through the Department's IT Systems.
- 81.2 The Department's IT Systems will alert the Provider to Referrals by recording an Appointment for Participants in the Provider's Electronic Diary.
- 81.3 On receipt of a Referral, the Provider must immediately confirm whether the Participant meets the eligibility requirements for a Disability Employment Services – Disability Management Service Participant or Disability Employment Services – Employment Support Service Participant in accordance with the Guidelines and, if the Participant does not meet the eligibility requirements for a Disability Employment Services – Disability Management Service Participant or Disability Employment Services – Employment Support Service Participant, the Provider must dispute the Current Assessment in accordance with clause 82 [Disputed Assessments].
- 81.4 Subject to clauses 18 [Business level expectations], 59 [Transition out], 84 [Transition in] and 132 [the Department may reduce the number of Referrals to the Provider], the Department's IT Systems will allow a flow of Referrals to the Provider within a 30 per cent tolerance of the Provider's ESA Business Share within each ESA.

Note: The Department does not guarantee the level or type of Participants that will be Referred to the Provider. The flow of Participants to the Provider will be affected by (a) the flow of Participants registering with DHS in each ESA; (b) the result of ESATs or JCAs; (c) the Provider's business levels within an ESA; and (d) Participant choice, including the number of Direct Registrations.

82. Disputed Assessments

- 82.1 A Provider may dispute a Current Assessment:
- (a) in accordance with clauses 81.2 or 88 [Initial Contacts];
 - (b) within 28 calendar days, or as otherwise specified in any Guidelines, of an Assessment conducted by DHS Assessment Services under clause 99.1 or 102.1, if the Provider considers that the Current Assessment does not specify the most appropriate Programme Services for the Participant; or within 28 calendar days, or as otherwise specified in any Guidelines, of an Assessment conducted by an Ongoing Support Assessor under section 5J [Ongoing Support], if the Provider considers that the Current Assessment does not specify the most appropriate Programme Services for the Participant.
- 82.2 If the Provider disputes a Current Assessment, the Provider must contact DHS Assessment Services or the relevant Ongoing Support Assessor who conducted the Participant's Current Assessment, in accordance with any Guidelines, to discuss the reasons why the Current Assessment is not appropriate.

82.3 Where DHS Assessment Services or the Ongoing Support Assessor agrees that the Participant's previous Current Assessment is inappropriate, DHS Assessment Services or the Ongoing Support Assessor will take appropriate action in relation to the Participant and, unless DHS Assessment Services or the Ongoing Support Assessor Exits the Participant or provides a new Current Assessment of the Participant under which the Provider must provide Programme Services to the Participant, the Provider must perform a Provider Exit of the Participant.

Note: Appropriate action may include providing a new Current Assessment or Exiting the Participant.

82.4 Where DHS Assessment Services or the Ongoing Support Assessor does not agree that the Participant's Current Assessment is inappropriate, the Provider must provide Programme Services to the Participant in accordance with that Current Assessment (but subject to clauses 102 [Change of Circumstances Reassessment during Period of Service] and 110 [Change of Circumstances Reassessment during Ongoing Support]).

82.5 If a Current Assessment is in dispute prior to the Participant's Commencement, for the avoidance of doubt, no Fees are payable with respect to the Participant until the Participant is Commenced.

82.6 Where any Fees have been paid to a Provider in relation to the period during which a Current Assessment is in dispute, such Fees paid may be recoverable by the Department.

83. Direct Registration of Participants without a Referral

83.1 Subject to clauses 83.3, 83.4 and 83.5, if a Participant presents to the Provider without a Referral, the Provider must immediately:

- (a) confirm that the Participant:
 - (i) is not currently Registered with another Programme Provider or Employment Service Provider, as identified on the Department's IT Systems; and
 - (ii) meets the eligibility requirements for a Disability Employment Services – Disability Management Service Participant or Disability Employment Services – Employment Support Service Participant in accordance with the Guidelines,and, if this is confirmed;
- (b) Directly Register the Participant; and
- (c) confirm that the Participant has a Valid ESAt or JCA in accordance with the Guidelines; and
- (d) if the Participant has a Valid ESAt or JCA:
 - (i) conduct an Initial Interview with the Participant;
 - (ii) Commence the Participant:
 - (A) as a Disability Employment Services – Disability Management Service Participant, if the Valid ESAt or JCA recommends that the Participant receive Disability Employment Services – Disability Management Service; or
 - (B) as a Disability Employment Services – Employment Support Service Participant, if the Valid ESAt or JCA recommends that the Participant receive Disability Employment Services – Employment Support Service; and
 - (iii) provide the Programme Services to the Participant; or

- (e) if the Participant does not have a Valid ESAt or JCA, in accordance with any Guidelines:
 - (i) immediately refer the Participant to DHS Assessment Services for an Assessment; and
 - (ii) if the Participant is Referred back to the Provider by the DHS Assessment Services, provide the Programme Services to the Participant.

83.2 Reserved.

Special Class Client

83.3 If a Special Class Client presents to the Disability Employment Services – Disability Management Service Provider without a Referral, the Disability Employment Services – Disability Management Service Provider must:

- (a) confirm that the Special Class Client:
 - (i) is not currently Registered with another Programme Provider, as identified on the Department’s IT Systems; and
 - (ii) meets the eligibility requirements for a Special Class Client, in accordance with the Guidelines,and, if this is confirmed;
- (b) immediately Directly Register the Special Class Client;
- (c) immediately conduct an Initial Interview and Commence the Special Class Client as a Disability Employment Services – Disability Management Service Participant; and
- (d) provide the Programme Services to the Special Class Client.

Eligible School Leaver

83.4 If an Eligible School Leaver presents to the Provider without a Referral, the Provider must:

- (a) confirm that the Eligible School Leaver:
 - (i) is not currently Registered with another Programme Provider, as identified on the Department’s IT Systems; and
 - (ii) meets the eligibility requirements for an Eligible School Leaver in accordance with the Guidelines,
 - (iii) and, if this is confirmed;
- (b) immediately Directly Register the Eligible School Leaver;
- (c) immediately conduct an Initial Interview and Commence the Eligible School Leaver as a Participant; and
- (d) provide the Programme Services to the Eligible School Leaver.

Job in Jeopardy Participant

83.5 If a Job in Jeopardy Participant presents to the Provider without a Referral, the Provider must:

- (a) confirm that the Job in Jeopardy Participant:
 - (i) is not currently Registered with another Programme Provider, as identified on the Department’s IT Systems; and

- (ii) meets the eligibility requirements for a Job in Jeopardy Participant in accordance with the Guidelines,
- and, if this is confirmed;
- (b) immediately Directly Register the Job in Jeopardy Participant;
 - (c) immediately conduct an Initial Interview with the Job in Jeopardy Participant and Commence the Job in Jeopardy Participant in either Disability Employment Services – Disability Management Service or Disability Employment Services – Employment Support Service; and
 - (d) provide the Programme Services to the Job in Jeopardy Participant.

General

- 83.6 The Provider must retain and provide to the Department upon request, documentary evidence of the eligibility of all Directly Registered Participants, in accordance with any Guidelines.
- 83.7 No Participant who is Directly Registered with a Provider will be counted for the purposes of assessing the flow of Referrals to that Provider in accordance with clause 81.4.

Note: The Funding Level for a Disability Employment Services – Employment Support Service Participant will be determined by the Department’s IT Systems using the Funding Level Tool.

84. Transition in

- 84.1 If directed by the Department, the Provider must provide Programme Services to a Transferred Participant who transfers from another Programme Provider to the Provider as a result of:
- (a) a reduction in business under; or
 - (b) expiration of,
- the other Programme Provider’s Disability Employment Services Deed with the Department, in accordance with this Deed and any Guidelines.
- 84.2 For the purposes of clause 84.1, the Provider must assist, facilitate and cooperate with the Transferred Participant and the other Programme Provider, including complying with any specific transition arrangements required by the Department, if advised to the Provider by the Department, prior to the transfer of the Transferred Participant, in order to enable services to continue to be provided to the Transferred Participant.
- 84.3 On commencement of Programme Services pursuant to clause 84.1, a Transferred Participant is deemed to be a Participant, and not a Transferred Participant, for the purposes of this Deed.
- 84.4 The Department may specify in any Guidelines whether Transferred Participants are deemed to be Referred or Directly Registered, and what effect this may have on the Referral of Participants under clause 81.4 of this Deed.

Section 5E Some basic rules about Programme Services

85. Service Guarantee

- 85.1 The Provider must conduct the Programme Services at or above the minimum standards in the Service Guarantee set out in Annexure C2.

85.2 The Provider must prominently display in its offices and all Sites, and make available to potential Participants and Employers, promotional Material made available by the Department about the Service Guarantee.

86. Code of Practice

Compliance with the Code of Practice

86.1 The Provider must:

- (a) comply with the Code of Practice set out in Annexure C1;
- (b) provide a copy of the Code of Practice to all Participants; and
- (c) explain the Code of Practice to all Participants.

86.2 The Provider must prominently display in its offices and all Sites and make available to potential Participants and Employers, promotional Material made available by the Department about the Code of Practice.

Breach of the Code of Practice

86.3 A breach of the Code of Practice occurs, but is not limited to, when the Provider:

- (a) fails to deliver Programme Services in the manner specified in the Code of Practice; or
- (b) is the subject of a serious Complaint, or a series of similar Complaints in relation to the Code of Practice, which the Provider has not:
 - (i) actively taken steps to resolve in accordance with clause 30 [Customer feedback process]; or
 - (ii) where relevant, actively taken steps to ensure that the Complaint does not re-occur.

Section 5F Programme Services

87. Appointments with Participants

General

87.1 Unless otherwise agreed with the Department, the Provider must ensure that the Provider's Electronic Diary has, at all times, capacity to receive an Appointment for a Participant within the next two Business Days, for the purposes of:

- (a) conducting an Initial Interview;
- (b) Re-engagement; or
- (c) conducting a Contact with the Participant following a Change of Circumstances Reassessment.

87.2 Where:

- (a) a Special Class Client, Eligible School Leaver or Job in Jeopardy Participant Directly Registers with the Provider;
- (b) a Participant has had a Change of Circumstances Reassessment or a Programme Review, and an Appointment for the purpose of conducting a Contact with the Participant is not already scheduled; or
- (c) the Provider or Participant needs to reschedule an Appointment,

the Provider must make an Appointment with the Participant at the next available opportunity.

Conducting Appointments

- 87.3 Where a Participant has an Appointment with the Provider, the Provider must, in accordance with this Deed and any Guidelines, meet with the Participant on the date of the Appointment as recorded in the Provider's Electronic Diary.

Recording Appointment results

- 87.4 Where a Participant has attended an Appointment, the Provider must record a result for the Appointment in the Electronic Diary on the same day of the Appointment or, where this is not possible, as soon as possible thereafter, in accordance with any Guidelines.
- 87.5 Reserved.
- 87.5A Reserved.

88. Initial Contacts

Initial Interviews for Participants

- 88.1 During an Initial Interview for a Participant, the Provider must, in accordance with any Guidelines:
- (a) confirm the Participant's identity;
 - (b) explain the Programme Services that the Provider will provide, including the relevant Service Guarantee and the Code of Practice;
 - (c) for Participant (Mutual Obligation)s, explain their rights and obligations under the Social Security Law and the consequences of not meeting their obligations;
 - (d) prepare and approve a Job Plan with the Participant, which includes any Interventions required at that point;
 - (e) if the Provider is a Disability Employment Services – Disability Management Service Provider - in relation to Disability Employment Services – Disability Management Service Participants, ask whether the Disability Employment Services – Disability Management Service Participant's disability, injury or health condition is the subject of a possible Compensation claim and, if it is, supply the Disability Employment Services – Disability Management Service Participant with information about the possible recovery of rehabilitation programme Costs pursuant to section 23 of the Act;
 - (f) where necessary to allow the Participant to understand the Initial Interview, provide access to an interpreter; and
 - (g) for a Disability Support Pension Recipient (Compulsory Requirements), explain their rights and obligations.
- 88.2 Except in relation to a Job in Jeopardy Participant, in addition to the requirements set out in clause 88.1, either during the Initial Interview and/or at such other times as deemed appropriate by the Provider based on individual need, the Provider must provide:
- (a) an initial list of appropriate job vacancies;
 - (b) advice about the best ways to look for and find work and about local employment opportunities; and

(c) information about Skills Shortage areas.

88.3 After an Initial Interview, the Provider must record completion of the Initial Interview in the Department’s IT Systems in accordance with any Guidelines.

Résumé preparation

88.4 Either during the Initial Interview and/or at such other times as deemed appropriate by the Provider based on individual need, the Provider:

- (a) must assist the Participant (excluding Job in Jeopardy Participants) to prepare a résumé and load the completed résumé onto the Department’s IT Systems in accordance with any Guidelines; and
- (b) may choose to complete the résumé summary fields in the Department’s IT Systems in accordance with any Guidelines.

Initial Interviews for a New Programme

88.5 During an Initial Interview for a New Programme, the Provider:

- (a) must explain to the Participant the Programme Services that the Provider will provide and any other matters specified in any Guidelines; and
- (b) may update the Participant’s Job Plan, if appropriate.

88.6 After an Initial Interview for a New Programme, the Provider must record completion of the Initial Interview for a New Programme in the Department’s IT Systems in accordance with any Guidelines.

89. Contact services

Minimum number of contacts

89.1 The Provider must provide each Participant with at least the minimum number of Contacts specified in Table 1 below, in accordance with any Guidelines.

Table 1 Minimum Contacts

Participant	Minimum Contacts
All Participants (excluding Job in Jeopardy Participants)	Initial Interview on Commencement
	Six Contacts over each period of three months for Participants receiving Employment Assistance and Extended Employment Assistance
	Regular Contacts, as deemed appropriate by the Provider, for Participants receiving Post Placement Support
	Initial Interview for a New Programme when a Participant moves from Disability Employment Services – Disability Management Service to Disability Employment Services – Employment Support Service or vice versa
	As required, for Participants receiving Flexible Ongoing Support
Job in Jeopardy Participants	Initial Interview on Commencement

Participant	Minimum Contacts
	Regular Contacts, as deemed appropriate by the Provider, during the Period of Service
Disability Employment Services – Employment Support Service Participants only (applicable to Disability Employment Services – Employment Support Service Providers only)	Six Contacts over each period of three months for Participants receiving Moderate Ongoing Support
	Twelve Contacts over each period of three months for Participants receiving High Ongoing Support

Note 1: The timing and duration of Contacts is not specified but will depend on the individual circumstances of each Participant, as determined by the Programme Provider.

Note 2: There is no minimum number of Contacts specified for Participants who are receiving Flexible Ongoing Support.

89.2 In addition to the requirements in clause 89.1, the Provider must:

- (a) provide each Participant with the number of Contacts required to ensure successful completion of any activity being undertaken by the Participant pursuant to his or her Job Plan; and
- (b) tailor the Contacts to meet the circumstances of the individual Participant.

89.3 The Department may require the Provider, by Notice, to increase the frequency of Contacts beyond that specified in Table 1:

- (a) where the Provider has failed to meet the minimum requirements in Table 1; or
- (b) for any other reason specified by the Department.

89.4 Issues to be covered in Contacts must be appropriate to the circumstances of individual Participants and may include:

- (a) identification and recording of any relevant changes in the Department’s IT Systems, including any changes to the circumstances of the Participant;
- (b) identification of, and referral to, any relevant Training, work experience or other Interventions;
- (c) a discussion regarding a Participant’s job search activities (if this is included as a requirement in his or her Job Plan) since his or her last Contact;
- (d) assistance in identifying appropriate job vacancies;
- (e) a review of a Participant’s progress towards overcoming identified Vocational Barriers and Non-vocational Barriers to employment;
- (f) a review and update of a Participant’s Job Plan, as relevant;
- (g) any specific issues for Participants who are in Employment or Post Placement Support; and
- (h) any other matters specified in relation to Contacts under any Guidelines.

Mode of Contact

- 89.5 Where the Provider is required to provide a Contact as specified in Table 1 the Contact must be face to face, except:
- (a) where the Participant resides in:
 - (i) an area which is currently affected by extreme weather conditions, as agreed with the Department;
 - (ii) an area currently affected by natural disaster;
 - (iii) an area currently affected by public transport strikes;
 - (b) when a Participant is participating in:
 - (i) full-time Training or Education; or
 - (ii) another external activity in accordance with his or her Job Plan; andtheir participation in those activities restricts their availability to participate in Contacts, as described in any Guidelines; or
 - (c) in other circumstances as advised by the Department from time to time.

89A Reserved

90. Skills Assessment

- 90.1 The Provider may conduct a Skills Assessment for a Participant while they are receiving Employment Assistance or Extended Employment Assistance, as the Provider thinks necessary.
- 90.2 The Skills Assessment should identify:
- (a) the Participant's pathway towards employment, including appropriate Interventions, Training, Education and work experience activities; and
 - (b) Vocational Barriers, including gaps in his or her skills, where relevant.
- 90.3 A Skills Assessment may include:
- (a) the Participant's job readiness, current employment skills and experience, including an assessment of his or her existing skill-set and aptitude for various types of work;
 - (b) the future skill needs of the Participant;
 - (c) the Participant's current educational achievements, skills and experience in direct relation to the local labour market, including areas of skill shortage;
 - (d) the Participant's job search experience, résumé and any written applications; and
 - (e) Training or other Interventions needed to help the Participant obtain sustainable employment.
- 90.4 The Provider must:
- (a) where relevant, amend each Participant's Job Plan to specify the outcomes of his or her Skills Assessment; and
 - (b) record the Skills Assessment in the Department's IT Systems.

Early School Leavers

- 90.5 If a person who has been assessed as being an Early School Leaver advises the Provider that they have attained a Year 12 or equivalent qualification, the Provider must:
- (a) request the person to provide evidence of that qualification to the Provider;
 - (b) retain Records of this request and a copy of any evidence provided by the person, in accordance with clause 42 [Records the Provider must keep]; and
 - (c) if requested by the Department, provide a copy of the Record to the Department or DHS, in accordance with any Guidelines.

91. Assistance for Participants

- 91.1 The Provider must provide assistance for Participants during their Period of Service and any period of Ongoing Support and Work Based Personal Assistance Only, which is designed to:
- (a) develop the skills the Participant needs to improve his or her capacity to find, gain or remain in sustainable employment or self-employment; and
 - (b) allow Participants to address identified Vocational Barriers and Non-vocational Barriers, and that assistance must be in accordance with this Deed and any Guidelines.
- 91.2 The Provider must provide assistance for Participants in a flexible way which takes into account:
- (a) the results of any Assessments or evaluations;
 - (b) whether the Participant is a Disability Employment Services – Disability Management Service Participant or a Disability Employment Services – Employment Support Service Participant and, where relevant, the Funding Level of the Participant;
 - (c) whether the Participant is in receipt of Employment Assistance, Extended Employment Assistance, Post Placement Support, Ongoing Support or Work Based Personal Assistance Only;
 - (d) whether the Participant is a Job in Jeopardy Participant;
 - (e) the individual circumstances of the Participant; and
 - (f) any Guidelines.
- 91.3 The types of assistance which may be provided for Participants include:
- (a) providing, purchasing or assisting Participants to access:
 - (i) functional capacity evaluations, physical assessments or other assessments to determine a person's limits or abilities;
 - (ii) Interventions such as physiotherapy, occupational therapy, pain management or psychological counselling;
 - (iii) Training, work hardening or physical conditioning programs;
 - (iv) support on whole of life issues that impact on a Participant's Employment;
 - (v) information on how Vacancies will be sourced, including an outline of how the Provider will canvass and approach Employers regarding Vacancies;
 - (vi) job search assistance, including:

- (A) advice on the availability, location and use of job search facilities in the local area which are available for no charge;
 - (B) advice on career options;
 - (C) employment preparation assistance; and
 - (D) sourcing paid or unpaid work experience opportunities and/or Work Trials;
- (b) referring suitable Participants to Vacancies;
 - (c) identifying the needs of local Employers and developing skills and Training activities for Participants which match those needs;
 - (d) assisting Employers with job design;
 - (e) canvassing and approaching Employers for Vacancies for the Participant and actively participating in local area Employer networks and forums;
 - (f) undertaking activities to promote and market the abilities of Participants to Employers;
 - (g) providing assistance, Training and information for Employers and staff to support Participants in the workplace;
 - (h) providing information to Employers and assisting Employers to access and arrange Employer incentives, such as through the Wage Subsidy Scheme and the Supported Wage System;
 - (i) workplace assessments and modifications, including through Work Based Personal Assistance, Work Based Personal Assistance Only and liaison with the JobAccess Provider; and
 - (j) providing tailored ongoing support to assist Participants to maintain their Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship once in Ongoing Support.

Note: The Provider is not entitled to claim reimbursement under this clause.

91.4 The Provider may only provide a Participant with one of the following Programme Services at any one time:

- (a) Employment Assistance;
- (b) Extended Employment Assistance;
- (c) Post Placement Support;
- (d) Ongoing Support;
- (e) Job in Jeopardy Assistance; or
- (f) Work Based Personal Assistance Only,

such Programme Services being mutually exclusive.

Work Based Personal Assistance

91.5 Subject to any Guidelines, a Provider must not provide Work Based Personal Assistance or Work Based Personal Assistance Only to a NDIS Launch Participant.

91.6 If, at any time, a Disability Employment Services – Employment Support Service Participant or a Work Based Personal Assistance Only Participant becomes a NDIS Launch Participant, the Provider must:

- (a) immediately cease providing Work Based Personal Assistance or Work Based Personal Assistance Only to that Participant, and in the case of a Work Based Personal Assistance Only Participant, Exit that Participant in accordance with clause 117.14(c); and
- (b) in all cases, provide sufficient assistance and cooperation to the National Disability Insurance Agency, or any other persons nominated by the Department, to facilitate the provision of similar services to the NDIS Launch Participant.

92. Unpaid Work Experience Placements

Unpaid Work Experience Placement Activities

92.1 The Provider may:

- (a) provide;
- (b) broker; or
- (c) purchase,

Unpaid Work Experience Placement Activities for Participants.

Note: The Provider is not entitled to claim reimbursement under this clause.

92.2 Unpaid Work Experience Placement Activities:

- (a) must not have the effect of displacing or replacing paid workers or reducing the amount of paid work available to workers; and
- (b) must meet the requirements set out in any Guidelines.

Restrictions on UWEP Activities

92.3 Subject to clause 92.4, the Provider must not provide, broker or purchase an Unpaid Work Experience Placement Activity if:

- (a) the Unpaid Work Experience Placement Activity already receives funding under a Commonwealth, state, territory or local government programme;
- (b) the Unpaid Work Experience Placement Activity fulfils a function which would normally be undertaken by the Provider under this Deed, or any other contract or arrangement between the Provider and the Department; or
- (c) some or all of the work would have been undertaken by a paid worker if the Unpaid Work Experience Placement Activity had not taken place.

Note: Commonwealth funding is not provided for Participants placed in Work for the Dole. Providers may broker or purchase Work for the Dole as a form of Unpaid Work Experience Placement Activity if the placement meets all of the requirements in this Deed and any Guidelines.

92.4 The Provider may provide, broker or purchase an Unpaid Work Experience Placement Activity which it would not otherwise be permitted to do under clause 92.3, if:

- (a) the Department gives its written permission; or
- (b) such action is permitted in any Guidelines; and
- (c) the Provider complies with any conditions set out by the Department when providing its written permission or in any Guidelines.

UWEP documentation

92.5 Where the Provider places a Participant into an Unpaid Work Experience Placement Activity with an Unpaid Work Experience Placement Host Organisation, prior to the commencement of that Unpaid Work Experience Placement Activity, the Provider must ensure that:

- (a) the Participant; and
- (b) the Unpaid Work Experience Placement Host Organisation, have signed the Unpaid Work Experience Placement Activity documentation in the form required by the Department.

Safety and supervision of UWEP Activities

92.6 At the start of an Unpaid Work Experience Placement Activity, and throughout the Unpaid Work Experience Placement Activity, the Provider must satisfy itself that there is a safe system of work in place for the Unpaid Work Experience Placement Activity, including that the Unpaid Work Experience Placement Host Organisation is complying with:

- (a) relevant work health and safety requirements, as though the Participant is an employee in the relevant industry in which the Unpaid Work Experience Placement Activity occurs; and
- (b) relevant statutory workers' compensation requirements.

92.7 The Provider must undertake a risk assessment for each Unpaid Work Experience Placement Activity as described in the Guidelines, and must undertake any action identified in the risk assessment.

92.8 The Provider must ensure that:

- (a) Participants undertaking any Unpaid Work Experience Placement Activity are adequately and appropriately supervised at all times;
- (b) all Personnel and supervisors involved in Unpaid Work Experience Activities:
 - (i) are fit and proper persons to be involved in that role;
 - (ii) have had national criminal history record checks as specified in this Deed, any Guidelines and as required by law; and
 - (iii) have a high level of skill/knowledge and/or experience in working with, training and supervising persons in work experience placements; and
- (c) an appropriate person employed by the Unpaid Work Experience Placement Host Organisation is present at any Unpaid Work Experience Placement Activity location when the Unpaid Work Experience Placement Activity involves direct contact between Participants and Children or other classes of vulnerable people.

92.9 The Provider must ensure that Unpaid Work Experience Placement Activity supervisors are required to notify the Provider of the non-attendance of Participants on all Unpaid Work Experience Placement Activities.

Incidents involving a UWEP Activity

92.10 The Provider must notify the Department as soon as possible, and at the latest within 24 hours, of any incident involving an Unpaid Work Experience Placement Activity, including:

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

- (b) any incident that may negatively impact upon the Disability Employment Services or bring the activities into disrepute.

92.11 Where the incident referred to in clause 92.10 is an accident, or involves injury or death, irrespective of whether the injured party makes a claim at the time of the incident, the Provider must also, as soon as possible, and at the latest 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; and
- (c) provide a copy of the incident report to the Account Manager.

Ceasing UWEP Activities

92.12 The Department may, at any time and at its absolute discretion, give a written direction to the Provider to cease or vary an Unpaid Work Experience Placement Activity, and the Provider must immediately take any action required by the direction.

92.13 The Provider must ensure that both the Participant and Unpaid Work Experience Placement Host Organisation are aware that, to the extent allowable by law, the Participant, the Unpaid Work Experience Placement Host Organisation, the Provider or the Department may terminate the Unpaid Work Experience Placement Activity at any time.

No payments for UWEP Activities

92.14 Subject to clause 92.15, the Provider must not demand or accept any payment from an Unpaid Work Experience Placement Host Organisation in relation to an Unpaid Work Experience Placement Activity.

92.15 The Provider may accept In-kind Contributions in relation to an Unpaid Work Experience Placement Activity, in accordance with any Guidelines.

No legal relationships between parties

92.16 The Provider must ensure that, to the extent allowable by law and unless otherwise expressly agreed by the parties, there is no intention or understanding on the part of the Unpaid Work Experience Placement Host Organisation or the Participant that the Unpaid Work Experience Placement Activity itself will create legal relations between the Participant and:

- (a) the Department;
- (b) the Provider; or
- (c) the Unpaid Work Experience Placement Host Organisation.

93. Wage Subsidy and Employment Assistance Fund

Wage Subsidy

93.1 The Provider may pay a Wage Subsidy to an Employer with respect to a Participant (other than a Job in Jeopardy Participant), where the Participant is eligible for the Wage Subsidy, in accordance with any Guidelines.

93.2 If the Provider pays a Wage Subsidy in accordance with clause 93.1, the Provider must:

- (a) ensure that the payment is in accordance with any Guidelines, including any limitations on payments;
- (b) arrange for payment, from its own funds, of the Wage Subsidy to the Employer for that Participant; and
- (c) submit a claim for Reimbursement of the Wage Subsidy through the Department's IT Systems.

93.3 The Provider must not pay a Wage Subsidy to the Provider's Own Organisation or a Related Entity, unless where specified in any Guidelines.

93.4 The Department will Reimburse the Wage Subsidy to the Provider in accordance with, and subject to, the requirements for payment under the Guidelines.

Transferred Wage Subsidy Participants

93.4A If the Department directs the Provider to provide Services to a Transferred Wage Subsidy Participant, the Provider must do so in accordance with clause 93.4B, notwithstanding that the Transferred Wage Subsidy Participant may have been Exited.

93.4B The Provider must, in relation to a Transferred Wage Subsidy Participant referred to in clause 93.4A:

- (a) immediately contact the Transferred Wage Subsidy Participant's Employer and use the Provider's best endeavours to enter into an agreement with the Employer:
 - (i) in relation to the relevant Wage Subsidy;
 - (ii) for the period advised by the Department; and
 - (iii) in accordance with any Guidelines; and
- (b) comply with clauses 93.1 to 93.3, and any direction by the Department, with regard to the relevant Wage Subsidy.

Employment Assistance Fund

93.5 The Provider may apply for assistance, or assist or act on behalf of an Employer to apply for assistance, under the Employment Assistance Fund with respect to a Participant.

93.6 If the Provider makes an application for assistance in accordance with clause 93.5, the Provider must, in accordance with the Employment Assistance Fund Guidelines:

- (a) submit the application to the JobAccess Provider;
- (b) upon notification from the JobAccess Provider that the application has been approved, arrange for the purchase, from its own funds, of the Approved Assistance for the Participant who is the subject of the application; and
- (c) submit a claim for Reimbursement of the Approved Assistance Amount through the Department's IT Systems.

93.7 The Department will Reimburse Approved Assistance Amounts to the Provider in accordance with, and subject to, the requirements for payment under the Employment Assistance Fund Guidelines.

Monitoring by the Department

- 93.8 Without limiting any other rights which the Department might have, the Department will monitor:
- (a) in relation to a Wage Subsidy, the Provider's payment and claims for Reimbursement of amounts paid; and
 - (b) in relation to the Employment Assistance Fund, the Provider's claims for Reimbursement of Approved Assistance Amounts,
- in accordance with this Deed and any Guidelines.
- 93.9 In particular, the Department will monitor the Provider's use and Reimbursement of Approved Assistance Amounts under the Employment Assistance Fund where services, activities, facilities or products have been purchased from the Provider's Own Organisation or a Related Entity.
- Note: In accordance with clause 93.3, the Provider must not pay a Wage Subsidy to the Provider's Own Organisation or a Related Entity.*
- 93.10 The Provider acknowledges and agrees that:
- (a) an unethical manner for the purposes of clause 7.2(a) of this Deed includes any practice that:
 - (i) involves inappropriately:
 - (A) paying a Wage Subsidy; or
 - (B) applying for an amount under the Employment Assistance Fund; or
 - (ii) misuses or misappropriates:
 - (A) a Wage Subsidy; or
 - (B) an Approved Assistance Amount under the Employment Assistance Fund; and
 - (b) the practices described in clause 93.10(a) may result in the Department taking the action set out in clause 56 [Remedies for breach] of this Deed.
- 93.11 The Provider must do all things necessary to ensure that:
- (a) all payments to third parties with monies:
 - (i) paid for a Wage Subsidy; or
 - (ii) approved for expenditure under the Employment Assistance Fund,are authorised and made in accordance with this Deed and any Guidelines, including the Employment Assistance Fund Guidelines; and
 - (b) it maintains proper and diligent control over the incurring of all liabilities.

93A Restart Programme

- 93A.1 The Provider must market and promote the Restart Programme to potential Restart Employers.
- 93A.2 Subject to this clause 93A and any Guidelines, the Provider may pay a Restart Payment to a Restart Employer in relation to a Restart Participant, where the Restart Participant has been employed by the Restart Employer in a Restart Placement, for at least 15 hours per week for:
- (a) a period of six months;

- (b) a period of 12 months;
- (c) a period of 18 months; or
- (d) a period of 24 months,

from the start of the relevant Restart Placement, as relevant, in amounts as specified in any Guidelines.

93A.3 The Provider may only pay a Restart Payment to a Restart Employer in accordance with clause 93A.2 where the Provider has first, in accordance with any Guidelines:

- (a) correctly confirmed that:
 - (i) the Participant, in relation to whom the payment is to be made, is a Restart Participant; and
 - (ii) the relevant Employment position is a Restart Placement;
- (b) entered into a Restart Agreement with the Restart Employer within 28 days of the Restart Participant commencing in a Restart Placement; and
- (c) received from the relevant Restart Employer, Documentary Evidence to support their entitlement to a Restart Payment.

93A.4 The Provider must not pay a Restart Payment to the Provider's Own Organisation or a Related Entity, unless where specified in any Guidelines.

93A.5 The Provider must ensure that each Restart Payment is:

- (a) paid in full from the Provider's own funds;
- (b) paid to a Restart Employer only once for each Restart Participant; and
- (c) otherwise paid in accordance with the requirements specified in any Guidelines.

93A.6 The Provider must: to a Restart Employer that it will pay any future Restart Payment; and

- (d) provide any information regarding Restart Payments, as required by the Department.

Reimbursement

93A.7 Once the Provider has properly paid a Restart Payment in accordance with this clause 93A, the Provider:

- (a) may submit a claim for Reimbursement, for no more than the same amount as that Restart Payment, through the Department's IT Systems; and
- (b) must submit any claim for Reimbursement in accordance with the requirements specified in any Guidelines.

93A.8 The Department will Reimburse the Provider for each Restart Payment that is made in accordance with this Deed and properly claimed by the Provider under this clause.

Transferred Restart Participants

93A.9 If the Department directs the Provider to provide Services to a Transferred Restart Participant, the Provider must do so, as if the person is an eligible Participant and as appropriate to their needs, notwithstanding that the Transferred Restart Participant has been Exited as a result of their Restart Placement.

93A.10 The Provider must, in relation to a Restart Participant referred to in clause 93A.9:

- (a) immediately contact the Transferred Restart Participant's Employer and use the Provider's best endeavours to enter into a Restart Agreement with the Restart Participant's Employer for a period advised by the Department; and
- (b) comply with this clause 93A and any direction by the Department in relation to the Transferred Restart Participant.

Monitoring by the Department

93A.11 Without limiting any other rights which the Department might have, the Department will monitor in relation to a Restart Payment, the Provider's payment and claims for Reimbursement of amounts paid in accordance with this Deed and any Guidelines.

Note: In accordance with clause 93A.4, the Provider must not pay a Restart Payment to the Provider's Own Organisation or a Related Entity.

93A.12 The Provider acknowledges and agrees that:

- (a) an unethical manner for the purposes of clause 7.2(a) of this Deed includes any practice that:
 - (i) involves inappropriately paying a Restart Payment;
 - (ii) misuses or misappropriates a Restart Payment; and
- (b) the practices described in clause 93A.12(a) may result in the Department taking the action set out in clause 56 [Remedies for breach] of this Deed.

93A.13 The Provider must do all things necessary to ensure that:

- (a) all payments to third parties with monies paid for a Restart Payment are authorised and made in accordance with this Deed and any Guidelines, and
- (b) it maintains proper and diligent control over the incurring of all liabilities.

93B Tasmanian Jobs Programme

Tasmanian Jobs Programme Incentive Payments

93B.1 Subject to this clause 93B and any Guidelines, the Provider may only pay a Tasmanian Jobs Programme Incentive Payment to a Tasmanian Jobs Programme Employer with respect to a Participant where the Provider has first, in accordance with any Guidelines:

- (a) correctly confirmed that the Participant is an eligible Tasmanian Jobs Programme Participant;
- (b) entered into a Tasmanian Jobs Programme Agreement with the relevant Tasmanian Jobs Programme Employer;

- (c) received from the relevant Tasmanian Jobs Programme Employer, Documentary Evidence of the Tasmanian Jobs Programme Participant's Employment for 26 weeks from the start of the relevant Tasmanian Jobs Programme Placement, or such other period as agreed with the Department in writing.

93B.2 The Provider must ensure that each Tasmanian Jobs Programme Incentive Payment is:

- (a) paid from the Provider's own funds;
- (b) paid to a Tasmanian Jobs Programme Employer only once for each Tasmanian Jobs Programme Participant; and
- (c) otherwise paid in accordance with the requirements specified in any Guidelines.

93B.3 The Provider must not pay a Tasmanian Jobs Programme Incentive Payment to a Related Entity, unless where specified in any Guidelines.

Reimbursement

93B.4 Once the Provider has properly paid a Tasmanian Jobs Programme Incentive Payment in accordance with this clause 93B, the Provider:

- (a) may submit a claim for Reimbursement, for no more than the same amount as the Tasmanian Jobs Programme Incentive Payment, through the Department's IT Systems; and
- (b) must submit any such claim for Reimbursement in accordance with the requirements specified in any Guidelines.

93B.5 The Department will Reimburse the Provider for each Tasmanian Jobs Programme Incentive Payment that is made in accordance with this Deed and properly claimed by the Provider under clause 93B.4.

Transferred Tasmanian Jobs Programme Participants

93B.6 If the Department directs the Provider to provide Services to a Transferred Tasmanian Jobs Programme Participant, the Provider must do so, as if the person is an eligible Participant and as appropriate to their needs, notwithstanding that the Transferred Tasmanian Programme Participant has been Exited as a result of their Tasmanian Jobs Programme Placement.

93B.7 The Provider must, in relation to a Transferred Tasmanian Jobs Programme Participant referred to in clause 93B.6:

- (a) immediately contact the Transferred Tasmanian Jobs Programme Participant's Employer and use the Provider's best endeavours to enter into a Tasmanian Jobs Programme Agreement with the Tasmanian Jobs Programme Participant's Employer for a period as advised by the Department; and
- (b) comply with this clause 93B and any direction by the Department in relation to the Transferred Tasmanian Jobs Programme Participant.

Monitoring by the Department

93B.8 Without limiting any other rights which the Department might have, the Department will monitor, in relation to a Tasmanian Jobs Programme Incentive Payment, the Provider's payment and claims for Reimbursement of amounts paid in accordance with this Deed and any Guidelines.

Note: In accordance with clause 93B.3, the Provider must not pay a Tasmanian Jobs Programme Incentive Payment to a Related Entity.

93B.9 The Provider acknowledges and agrees that:

- (a) an unethical manner for the purposes of clause 7.2(a) of this Deed includes any practice that:
 - (i) involves inappropriately paying a Tasmanian Jobs Programme Incentive Payment; or
 - (ii) misuses or misappropriates a Tasmanian Jobs Programme Incentive Payment; and
- (b) the practices described in clause 93B.9(a) may result in the Department taking the action set out in clause 56 [Remedies for breach] of this Deed.

93B.10 The Provider must do all things necessary to ensure that:

- (c) all payments to third parties with monies paid for a Tasmanian Jobs Programme Incentive Payment are authorised and made in accordance with this Deed and any Guidelines; and
- (d) it maintains proper and diligent control over the incurring of all liabilities.

94. Supported Wage System

94.1 The Provider may assist or act on behalf of an Employer to make an online application to the Department or JobAccess in respect of the Supported Wage System, in accordance with the requirements at www.jobaccess.gov.au and any Guidelines.

95. National Disability Recruitment Coordinator

95.1 The Provider must work cooperatively with the National Disability Recruitment Coordinator in order to:

- (a) refer Participants (excluding Job in Jeopardy Participants) to Vacancies identified by the National Disability Recruitment Coordinator; and
- (b) identify and match the employment needs of the Participants (excluding Job in Jeopardy Participants).

Section 5G Job Plans

Information about Job Plans

The Job Plan underpins the provision of Services to a Participant. The Job Plan will be recorded on the Department's IT Systems and sets out an individualised pathway to sustainable Employment for each Participant.

Each Job Plan will be tailored to the needs of the individual Participant, will outline the agreed activities to be undertaken to gain or maintain sustainable Employment, and will include elements such as:

- (a) the frequency of contact between the Provider and Participant;
- (b) the timing and details of vocational and non-vocational activities that Providers and Participants will undertake with the objective of the Participant gaining or maintaining employment, such as Education, Training, counselling and work experience; and
- (c) details of the Participant's obligations, including participation in Activities and Job Search Requirements.

For Participants (Mutual Obligation) and Disability Support Pension Recipients (Compulsory Requirements), in addition to mandatory requirements, the Job Plan can also include voluntary activities.

For all other Participants, the Job Plan will contain only voluntary activities.

Providers will need to update the Job Plan regularly throughout the Participant's Period of Service and while the Participant is in Ongoing Support. The Provider must retain a copy of the signed Job Plan.

96. General requirements for a Job Plan

96.1 The Provider must ensure that, at all times, each Participant (excluding Work Based Personal Assistance Only Participants) has a current Job Plan.

96.1A If, on the first Contact, a Participant does not have a Job Plan, the Provider must arrange for a Delegate to enter into a Job Plan with the Participant.

96.1B Without limiting the other requirements of this clause 96, the Delegate may require a Disability Support Pension Recipient (Compulsory Requirements) to enter into another Job Plan instead of the existing Job Plan.

96.2 The Provider must ensure that a Delegate reviews, and, if appropriate, amends the Participant's existing Job Plan:

- (a) at the Initial Interview;
- (b) as required by clause 115 [Suspensions];
- (c) when a Skills Assessment or a Comprehensive Compliance Assessment is conducted;
- (d) after an Assessment;
- (e) when the relevant Mutual Obligation Requirements activities in a Participant (Mutual Obligation)'s Job Plan are completed or expire;
- (f) if a Participant's circumstances change such that the Job Plan becomes out of date, including where activities have been completed or expire;

- (g) when the relevant Disability Support Pension Recipient (Compulsory Requirements) activities in the Disability Support Pension Recipient's (Compulsory Requirements) Job Plan are completed or expire; and
 - (h) as otherwise required by the Department.
- 96.3 The Provider should ensure that a Delegate further reviews, and, if appropriate, amends the Participant's existing Job Plan:
- (a) when a Contact occurs; and
 - (b) following the failure of a Participant (Mutual Obligation) to fully comply with his or her Mutual Obligation Requirements.
- Contents of a Job Plan*
- 96.4 The Job Plan for a Participant (Mutual Obligation) must:
- (a) contain terms with which the Participant (Mutual Obligation) must comply in order to satisfy his or her Mutual Obligation Requirements; and
 - (b) be amended to include details of additional voluntary activities, if he or she is:
 - (i) fully meeting his or her Mutual Obligation Requirements; and
 - (ii) volunteers to participate in additional activities.
- 96.4A The Job Plan for a Disability Support Pension Recipient (Compulsory Requirements) must:
- (a) contain at least one or more terms with which the Disability Support Pension Recipient (Compulsory Requirements) must comply in order to satisfy his or her compulsory requirements; and
 - (b) be amended to include details of additional voluntary activities, if her or she is:
 - (i) fully meeting his or her compulsory requirements; and
 - (ii) volunteers to participate in additional activities.
- 96.5 If a Participant is not a Participant (Mutual Obligation) or Disability Support Pension Recipient (Compulsory Requirements), the Job Plan will contain terms that are voluntary.
- 96.6 Each Job Plan must:
- (a) be in a form approved by the Department;
 - (b) contain terms that are specifically tailored to address the Participant's level of disadvantage, individual needs, barriers to employment and Partial Capacity to Work, having regard to the particular Programme Services the Participant is receiving;
 - (c) specify:
 - (i) when each activity specified in the Job Plan will start and finish; and
 - (ii) the assistance the Participant will receive during the Participant's Period of Service and during any period of Ongoing Support;

- (d) draw from a mix of vocational and non-vocational activities that the Participant is to undertake during the Participant's Period of Service or, if relevant, while the Participant is receiving Ongoing Support, with a particular focus on developing the skills the Participant needs to improve his or her chances of obtaining or maintaining sustainable Employment or self-employment; and
 - (e) specify the frequency of contact that the Participant must have with the Provider during the Participant's Period of Service or while the Participant is receiving Ongoing Support, as relevant.
- 96.7 The Provider must provide the Participant with the assistance, and arrange and monitor the activities, specified in the Job Plan.
- 96.8 The relevant Delegate must perform the following functions, and must comply with Guidelines, if any, in relation to:
- (a) notifying the Participant of the:
 - (i) requirement to enter into a Job Plan; and
 - (ii) place and time at which a Job Plan is to be completed;
 - (b) providing the Participant with information about his or her rights and obligations, including Job Search Requirements;
 - (c) entering into a Job Plan;
 - (d) the terms to be included in each Job Plan;
 - (e) where a paper copy of a Job Plan is used:
 - (i) printing and physically signing the Job Plan;
 - (ii) providing a copy of that Job Plan to the Participant; and
 - (iii) retaining a copy of the signed Job Plan; and
 - (ea) where an electronic copy of a Job Plan is used, submitting the Job Plan on the Department's IT Systems for acceptance by the Participant;
 - (f) taking steps to ensure the Participant complies with the terms of his or her Job Plan;
 - (g) reviewing and amending an existing Job Plan;
 - (h) cancelling or suspending a Job Plan;
 - (i) creating and maintaining documentation in relation to a Job Plan;
 - (j) entering information into the Department's IT Systems; and
 - (k) undertaking any other matter that is required concerning the process of entering into, and implementing, a Job Plan.

Note: Where the Job Plan is accepted online by a Participant, the Department's IT Systems will automatically retain a copy of the Job Plan.

- 96.9 Reserved.
- 96.10 Wherever in this Deed an obligation is imposed upon a Delegate under Social Security Law or otherwise, the Provider must ensure that the Delegate complies with the obligation.

Job Search Requirements

Note: The circumstances in which a Job Search Requirement applies are detailed in the Guidelines.

- 96.11 The Provider must ensure that a Delegate:
- (a) specifies the Job Search Requirement for each Participant (Mutual Obligation) in their Job Plan; and
 - (b) ensures that the Job Search Requirement is appropriately recorded in the Participant's (Mutual Obligation) Job Plan at all times during their Period of Service.
- 96.12 The Provider must ensure that each Participant (Mutual Obligation) is aware at all times:
- (a) of their current Job Search Requirement;
 - (b) that they must record and provide details of their Job Searches directly to the Provider and the frequency of such provision, and do so as specified in any Guidelines; and
 - (c) of how they can record their Job Search for the purposes of clause 96.12(b).
- 96.13 During each month of the Term of this Deed, the Provider must:
- (a) actively monitor and determine whether each Participant (Mutual Obligation) has appropriately met their Job Search Requirement during each Job Search Period;
 - (b) to the extent that a Participant (Mutual Obligation) does not use Australian JobSearch to record their Job Searches, obtain from the Participant (Mutual Obligation) all Records required to document each Job Search in accordance with any Guidelines, retain those Records in accordance with this Deed and provide them to the Department on request; and
 - (c) use its best endeavours to ensure that each Participant (Mutual Obligation) meets their Job Search Requirement.

Section 5H Non-compliance monitoring and action

96A Monitoring

96A.1 The Provider must:

- (a) regularly and actively monitor the compliance of Participants (Mutual Obligation) with their Mutual Obligation Requirements, including their attendance at Appointments, entering into a current Job Plan, undertaking Job Searches and any other compulsory activity included in their Job Plan and as notified to them;
- (b) monitor the participation of Disability Support Pension Recipients (Compulsory Requirements), including their attendance at Appointments, entering into a current Job Plan and participation in Activities, as specified in any Guidelines; and
- (c) where the Provider determines that:
 - (i) a Participant (Mutual Obligation) has failed to comply with their Mutual Obligation Requirements; or
 - (ii) a Disability Support Pension Recipient (Compulsory Requirements) has not attended an Appointment, entered into a current Job Plan or appropriately participated in any Activities, as specified in any Guidelines,

promptly take action in accordance with this Deed, including this Section 5H.

97. Non-compliance action for Mutual Obligation Requirements

97.1 Where a Participant (Mutual Obligation) has not attended an Appointment (including a Re-engagement Appointment), or has failed to attend, or participate appropriately in a compulsory activity included in their Job Plan or a job interview with a prospective Employer, the Provider must, on the same Business Day on which the Provider becomes aware of the event, and in accordance with any Guidelines:

- (a) confirm that no prior contact has been made by the Participant (Mutual Obligation) with the Provider that evidences that the Participant (Mutual Obligation) had a Valid Reason for not complying;
- (b) if there is no such Valid Reason evident, as soon as possible on the same Business Day, attempt to contact the Participant (Mutual Obligation) to assess if they had a Reasonable Excuse for not complying; and
- (c) record this in the Department's IT Systems.

Note 1: The principal difference between a Valid Reason and a Reasonable Excuse is that Valid Reason is operative prior to the event (i.e. if a Participant (Mutual Obligation) contacts to say they cannot meet their Mutual Obligation Requirements before failing to do so), whereas Reasonable Excuse is operative after the event (i.e. when a Participant (Mutual Obligation) has failed to meet their Mutual Obligation Requirements and has not advised that they cannot meet the requirements prior to the event occurring) – see the relevant definitions.

Note 2: Details of non-compliance with the Mutual Obligation Requirements are outlined in the Guidelines.

97.2 If the Provider assesses that the relevant Participant (Mutual Obligation) had a Valid Reason or a Reasonable Excuse for not complying, the Provider must, in accordance with any Guidelines:

- (a) record the determination in the Department's IT Systems; and
- (b) use its best endeavours to ensure the Participant (Mutual Obligation) complies with their Mutual Obligation Requirements at the next available opportunity.

97.3 If the Provider:

- (a) has, on the same Business Day, made contact with the Participant (Mutual Obligation), and assesses that the Participant (Mutual Obligation) does not have a Valid Reason or Reasonable Excuse for not complying; or
- (b) has not been able to make contact with the Participant (Mutual Obligation) on the same Business Day on which the Provider becomes aware of the event,

the Provider must, in accordance with any Guidelines, comply with clauses 97.4 and 97.5 below.

Non-attendance at Appointments

97.4 In relation to non-attendance at an Appointment (including a Re-engagement Appointment) by a Participant (Mutual Obligation), the Provider must, on the same Business Day of becoming aware of the event, determine whether any action should be taken under the job seeker compliance framework in relation to the event in accordance with any Guidelines.

- 97.5 If the Provider determines that the action specified in clause 97.4 should be taken, the Provider must document any information relevant to the event in the Department's IT Systems; and
- (a) if clause 97.3(a) applies:
 - (i) submit a Non-Attendance Report or Provider Appointment Report, as relevant, to DHS via the Department's IT Systems on the same Business Day as the Appointment was scheduled to occur; and
 - (ii) unless otherwise specified in any Guidelines, in consultation with the Participant (Mutual Obligation), book a Re-engagement Appointment for the Participant (Mutual Obligation) to occur within the next two Business Days and advise the Participant (Mutual Obligation) of the Appointment; and
 - (b) if clause 97.3(b) applies:
 - (i) submit a Non-Attendance Report to DHS via the Department's IT System on the same Business Day that the Appointment was scheduled to occur;
 - (ii) on making contact with the Participant (Mutual Obligation), assess whether they have a Reasonable Excuse for not complying;
 - (iii) if the Provider assesses that the Participant (Mutual Obligation) did not have a Reasonable Excuse, determine whether any further action should be taken under the job seeker compliance framework in relation to the event; and
 - (iv) if the Provider determines that such action should be taken:
 - (A) document any information relevant to the event in the Department's IT Systems and submit a Provider Appointment Report to DHS via the Department's IT Systems on the same Business Day; and
 - (B) unless otherwise specified in any Guidelines, in consultation with the Participant (Mutual Obligation), book a Re-engagement Appointment for the Participant (Mutual Obligation) to occur within the next two Business Days and advise the Participant (Mutual Obligation) of the Appointment; and
 - (v) if the Provider determines that such action should not be taken, unless otherwise specified in any Guidelines, in consultation with the Participant (Mutual Obligation), book a Re-engagement Appointment for the Participant (Mutual Obligation) to occur in the next two Business Days and advise the Participant (Mutual Obligation) of the Appointment.
- 97.6 Where the Provider has, in accordance with this Section 5H, reported non-compliance of a Participant (Mutual Obligation) relating to Appointments (including Re-engagement Appointments) to DHS, the Provider must ensure that the Participant (Mutual Obligation) has, in accordance with any Guidelines, an adequate opportunity to book another Appointment with the Provider.

Failure to attend, or participate appropriately in compulsory activities included in a Job Plan or at a job interview with a prospective Employer

- 97.7 In relation to a failure by a Participant (Mutual Obligation) to attend, or participate appropriately in, a compulsory activity included in their Job Plan or a job interview with a prospective Employer, the Provider must, on the same Business Day of becoming aware of the event, determine whether any action should be taken under the job seeker compliance framework in relation to the event in accordance with any Guidelines.
- 97.8 If the Provider determines that action as specified in clause 97.7 should be taken, the Provider must on the same Business Day of becoming aware of the event, document any information relevant to the event in the Department's IT Systems and regardless of whether clause 97.3(a) or 97.3(b) applies, report the non-compliance to DHS via the Department's IT Systems.
- 97.9 If the Provider determines that action referred to in clause 97.7 should not be taken, the Provider must, in accordance with any Guidelines:
- (a) record the determination; and
 - (b) use its best endeavours to ensure that the Participant (Mutual Obligation) complies with their Mutual Obligation Requirements at the next available opportunity.

Non-compliance with Job Search Requirements

- 97.10 The Provider must, in accordance with any Guidelines:
- (a) within ten Business Days of the end of each Job Search Period, determine whether each Participant (Mutual Obligation) has appropriately met their Job Search Requirement for that Job Search Period;
 - (b) if the Provider determines that the relevant Job Search Requirement has been appropriately met, the Provider must continue to monitor the Participant's (Mutual Obligation) compliance with their Job Search Requirement in accordance with clause 96.13, and use its best endeavours to ensure that the Participant (Mutual Obligation) meets their Job Search Requirement;
 - (c) if the Provider determines that the relevant Job Search Requirement has not been appropriately met, it must, on the same Business Day, determine whether any action should be taken under the job seeker compliance framework in relation to the event;
 - (d) if the Provider determines that such action should be taken as specified in clause 97.10(c), on the same Business Day:
 - (i) document that the Participant (Mutual Obligation) has not satisfactorily met their Job Search Requirement and submit any information relevant to the event in the Department's IT Systems; and
 - (ii) report the non-compliance to DHS via the Department's IT Systems; and
 - (e) if the Provider determines that such action should not be taken, on the same Business Day:
 - (i) record its determination in the Department's IT Systems;
 - (ii) continue to monitor the Participant's (Mutual Obligation) compliance with their Job Search Requirement in accordance with clause 96.13; and

- (iii) use its best endeavours to ensure that the Participant (Mutual Obligation) meets their Job Search Requirement.

Non-compliance with all other Mutual Obligation Requirements

- 97.11 Where the Provider determines that a Participant (Mutual Obligation) has not met one or more of their relevant Mutual Obligation Requirements, other than their Job Search Requirement and those requirements specified in clause 97.1, the Provider must:
- (a) on the same Business Day on which the Provider becomes aware of the event, and in accordance with any Guidelines, attempt to contact the Participant (Mutual Obligation) to assess if they have a Reasonable Excuse for not complying; and
 - (b) record the contact attempt(s) in the Department's IT Systems.
- 97.12 Where the Provider has, on the same Business Day, made contact with the Participant (Mutual Obligation) and assessed that the Participant (Mutual Obligation) does not have a Reasonable Excuse for not complying, it must, in accordance with any Guidelines:
- (a) determine whether any action should be taken under the job seeker compliance framework in relation to the event; and
 - (b) if the Provider determines that such action should be taken, on the same Business Day of becoming aware of the event, document any information relevant to the event in the Department's IT Systems and report the non-compliance to DHS via the Department's IT Systems.
- 97.13 Where the Provider has not been able to make contact with the Participant (Mutual Obligation) on the same Business Day on which the Provider becomes aware of the event, it must:
- (a) determine whether any action should be taken under the job seeker compliance framework in relation to the event; and
 - (b) if the Provider determines that such action should be taken, on the same Business Day of becoming aware of the event, document any information relevant to the event in the Department's IT Systems and report the non-compliance to DHS via the Department's IT Systems.
- 97.14 The Provider may request that a Comprehensive Compliance Assessment be undertaken by DHS on the Department's IT Systems, but must only do so in accordance with the Guidelines.

98. Compliance Activities

- 98.1 The Provider must, where directed by DHS to do so, and in accordance with any Guidelines:
- (a) arrange for a Participant (Mutual Obligation) to participate in Compliance Activities, as directed by DHS;
 - (b) amend the Activity Tested Participant's Job Plan accordingly;
 - (c) monitor the Activity Tested Participant's participation in the Compliance Activities; and
 - (d) notify DHS via the Department's IT Systems if the Participant (Mutual Obligation) does not attend the Compliance Activities as required.

98A Non-compliance action for Disability Support Pension Recipients (Compulsory Requirements)

- 98A.1 Where a Disability Support Pension Recipient (Compulsory Requirements) has not attended an Appointment, entered into a current Job Plan or appropriately participated in any compulsory Activities as specified in any Guidelines, the Provider must attempt to contact the Disability Support Pension Recipient (Compulsory Requirements) on the same Business Day that they become aware of the non-compliance.
- 98A.2 If the Provider has been able to make contact with the Disability Support Pension Recipient (Compulsory Requirements), it must, within ten Business Days of becoming aware of the non-compliance and in accordance with any Guidelines:
- (a) determine whether the non-compliance should be reported to DHS;
 - (b) if the Provider determines that such action should be taken, document any information relevant to the event in the Department's IT Systems and report the non-compliance to DHS via the Department's IT Systems; and
 - (c) if the Provider determines that no such action should be taken, use its best endeavours to ensure that the Disability Support Pension Recipient (Compulsory Requirements) complies with their compulsory requirements at the next available opportunity.
- 98A.3 If the Provider has not been able to make contact with the Disability Support Pension Recipient (Compulsory Requirements), it must, within ten Business Days of becoming aware of the non-compliance:
- (a) determine whether any action should be taken under the compliance arrangements for Disability Support Pension Recipients (Compulsory Requirements) contained in any Guidelines;
 - (b) if the Provider determines that such action should be taken, document any information relevant to the event in the Department's IT Systems and report the non-compliance to DHS via the Department's IT Systems; and
 - (c) without limiting the obligations in clause 98A.3, use its best endeavours to continue attempting to contact the Disability Support Pension Recipient (Compulsory Requirements) in accordance with any Guidelines.

98B Delegate obligations

- 98B.1 In relation to each Participant (Mutual Obligation) and Disability Support Pension Recipient (Compulsory Requirements), the Provider must ensure that Delegates:
- (a) are aware of, fully understand, and receive training on, the powers and functions that have been delegated to them under the Social Security Law including in relation to:
 - (i) preparation, approval and variation of Job Plans; and
 - (ii) for Participants (Mutual Obligation):
 - (A) specifying Mutual Obligation Requirements in Job Plans; and
 - (B) following the issuance of a Non-Attendance Report or a Provider Appointment Report under clause 97 [Non-compliance for Mutual Obligation Requirements], notifying them of the relevant impact on their Income Support Payments;

- (b) have, prior to taking action under the job seeker compliance framework in relation to any Participant (Mutual Obligation), successfully completed job seeker compliance framework training via the online Learning Centre; and
- (c) for the purposes of clause 98B.1(b), confirm, at least once every six months following the Commencement of the relevant Participant (Mutual Obligation), that all relevant contact details are accurately reflected in the Department's IT Systems, including the Participant's (Mutual Obligation) phone number(s), email address and postal address; and
- (d) comply with the Social Security Law.

98C Issuing and recording notification

98C.1 Where:

- (a) a Participant (Mutual Obligation) or Disability Support Pension Recipient (Compulsory Requirements) must meet a certain requirement to receive Income Support Payments; and
- (b) the full details of the requirement (for example, the time, date and location that the requirement is to be undertaken) are not specified in their Job Plan; and
- (c) they have not otherwise been notified of the full details of that requirement,

the Provider must, in accordance with any Guidelines:

- (d) notify them of the full details of that requirement; and
- (e) where the Department's IT Systems are not used to generate the notice provided to the Participant (Mutual Obligation) or Disability Support Pension Recipient (Compulsory Requirements) under clause 98C.1(d), document the details of the relevant notice in the Department's IT Systems, retain Records of the notice and provide those Records to the Department on request.

Note: A Participant (Mutual Obligation) Job Search Requirement in the Job Plan is considered to be sufficient notice of their Job Search Requirement.

Section 51 Review and Reassessment

99. Programme Review

99.1 Subject to this clause 99 and any Guidelines, after a Participant (excluding a Job in Jeopardy Participant) has received approximately 78 weeks of Employment Assistance, the Provider must either:

- (a) provide Extended Employment Assistance; or
- (b) arrange for a New ESAt/JCA for the Participant, and complete a Programme Summary in relation to the Participant.

99.2 The Provider may only provide Extended Employment Assistance under clause 99.1(a) if:

- (a) the Participant is in Employment; or
- (b) the Participant is undertaking significant Education or Training, determined in accordance with any Guidelines; and

- (c) the Provider considers that providing Extended Employment Assistance to the Participant is likely to result in an Employment Outcome.

99.3 If a New ESAt/JCA under clause 99.1:

- (a) recommends that the Participant continue receiving Programme Services, then the Provider must provide Extended Employment Assistance;
- (b) recommends that the Participant receive services that are not offered by the Provider, including services offered by another Programme Provider, then the Provider must assist the Participant to be transferred to that other Programme Provider in accordance with clause 113.3; or
- (c) recommends that the Participant does not receive Extended Employment Assistance, then the Provider must perform a Provider Exit of the Participant.

99.4 The Provider must inform Participants, in accordance with any Guidelines, of how they can appeal the result of a Programme Review under this clause 99.

100. Job in Jeopardy Participants

100.1 The Provider must continue to provide Job in Jeopardy Assistance to a Job in Jeopardy Participant until:

- (a) that Participant completes a Job in Jeopardy Outcome, in which case the Provider must:
 - (i) Exit the Participant; or
 - (ii) arrange an OSA to determine whether the Participant requires Ongoing Support;
- (b) that Participant has received Programme Services for 52 weeks but has not completed a Job in Jeopardy Outcome, in which case, taking into account the Participant's individual circumstances and the activities he or she is participating in at the relevant time, the Provider may perform a Provider Exit of the Participant, in accordance with any Guidelines;
- (c) that Participant ceases Employment with the Employer in the job which was in jeopardy, in which case the Provider must Exit the Participant; or
- (d) the Department allows the Provider to Exit the Participant prior to the events referred to in paragraphs (a) to (c) above.

Note 1: If an OSA determines under clause 100.1(a) that a Job in Jeopardy Participant requires Ongoing Support, the provisions of this Deed then apply on the basis that the Participant is no longer a Job in Jeopardy Participant.

Note 2: During Job in Jeopardy Assistance the Provider may claim a maximum of two Job in Jeopardy Service Fees as set out in Table 6 of Annexures B1 and B2.

101. Change of Funding Level for Disability Employment Services – Employment Support Service Providers

101.1 The Disability Employment Services – Employment Support Service Provider may request a review of the Funding Level, in accordance with any Guidelines.

102. Change of Circumstances Reassessment during Period of Service

102.1 If during a Participant's (excluding Job in Jeopardy Participants) Period of Service:

(a) a Participant's individual circumstances change; or

(b) the Participant discloses information,

such that the Programme Services recommended in the Participant's Current Assessment are no longer appropriate, the Provider must arrange for a Change of Circumstances Reassessment for the Participant to be conducted by DHS Assessment Services.

Note: The Programme Services recommended in a Participant's Current Assessment may no longer be appropriate because, for example, the Participant no longer requires Programme Services or should be receiving different Programme Services.

102.2 If a Change of Circumstances Reassessment under clause 102.1 indicates that a Participant should have no change of Programme Services, the Provider must continue providing the Programme Services provided to the Participant prior to the Change of Circumstances Reassessment.

102.3 If a Change of Circumstances Reassessment under clause 102.1 indicates that a Participant should receive Programme Services under a different Programme, the Provider must:

(a) provide the Programme Services in accordance with the Change of Circumstances Reassessment; or

(b) where the Provider is not contracted to provide the Programme Services recommended in the Change of Circumstances Reassessment in the ESA in which the Provider is providing Programme Services to the Participant, arrange for the Participant to be transferred in accordance with clause 113.3.

Note: Clause 117.13 provides that a Participant must be Exited where an ESA or JCA recommends that Programme Services are no longer appropriate.

Section 5J Ongoing Support

Information about Ongoing Support

Ongoing Support may be provided to Participants who have achieved a 26 Week Employment Outcome or Job in Jeopardy Outcome to assist them to maintain their Employment. It is not available to Participants who have achieved an Education Outcome.

Initially, the Programme Provider will assess the Participant's need for Ongoing Support (except in the case of Job in Jeopardy Participants), and must provide Ongoing Support, if needed, on the basis of that assessment until the Participant has reached 52 weeks from the relevant Anchor Date. At that point, further Ongoing Support is only available following an OSA of the Participant's need for further Ongoing Support.

In the case of Job in Jeopardy Participants, if the Programme Provider considers that a Participant requires Ongoing Support after the Job in Jeopardy Outcome, an Ongoing Support Assessor must assess the Participant's need for Ongoing Support. If the Participant then enters Ongoing Support, they are no longer classified as a Job in Jeopardy Participant.

A Participant may continue to receive Ongoing Support, subject to an OSA being conducted every 52 weeks, or where applicable every 78 weeks, until they move into Work Based Personal Assistance Only or Exit.

There are three types of Ongoing Support:

(a) Flexible Ongoing Support (to Disability Employment Services – Disability Management Service Participants or Disability Employment Services – Employment Support Service Participants);

- (b) Moderate Ongoing Support (to Disability Employment Services – Employment Support Service Participants only); and
- (c) High Ongoing Support (to Disability Employment Services – Employment Support Service Participants only).

The types of assistance the Programme Provider will provide to Participants during Ongoing Support will depend on the circumstances and requirements of individual Participants.

If at any time the Programme Provider considers that the Participant no longer requires Ongoing Support to retain their Employment the Provider may, where the Participant is a Work Based Personal Assistance Only Participant, move the Participant into Work Based Personal Assistance Only, or, if the Provider does not move the Participant into Work Based Personal Assistance Only, the Provider must Exit the Participant.

103. Entry into Ongoing Support

103.1 If a Participant achieves a 26 Week Employment Outcome, the Provider must assess the Participant in accordance with any Guidelines to determine whether the Participant:

- (a) requires Flexible Ongoing Support (for Disability Employment Services – Disability Management Service Participants or Disability Employment Services – Employment Support Service Participants);
- (b) requires Moderate Ongoing Support (for Disability Employment Services – Employment Support Service Participants only);
- (c) requires High Ongoing Support (for Disability Employment Services – Employment Support Service Participants only); or
- (d) does not require Ongoing Support.

103.2 If the Provider considers that a Participant who has achieved a Job in Jeopardy Outcome requires Ongoing Support, the Provider must arrange for an Ongoing Support Assessment of the Participant’s need for Ongoing Support and only provide Ongoing Support to the Participant if the Participant is assessed as requiring it.

Note: If a Job in Jeopardy Participant is assessed as requiring Ongoing Support, they are no longer classified or referred to as a Job in Jeopardy Participant.

103.3 The assessment of:

- (a) the Provider under clause 103.1; or
- (b) the Ongoing Support Assessor under clause 103.2,

is the Participant’s Current Assessment until any further Assessment is undertaken.

103.4 The Provider must perform a Provider Exit of the Participant if:

- (a) the Provider under clause 103.1 or 103.2; or
- (b) the Ongoing Support Assessor under clause 103.2,

considers that the Participant does not require Ongoing Support.

103.5 For the avoidance of doubt, Ongoing Support is not available following the achievement of an Education Outcome.

104. Obligation to provide Ongoing Support

104.1 Subject to clause 108 [Changing the Level of Ongoing Support for Disability Employment Services – Employment Support Service Participants] the Provider must provide the Participant with Ongoing Support in accordance with the Participant’s Current Assessment and any Guidelines until the Participant is moved into Work Based Personal Assistance Only or Exited.

105. Limitations on Disability Employment Services – Disability Management Service Ongoing Support

105.1 If at any time the Provider considers, in accordance with any Guidelines, that a Disability Employment Services – Disability Management Service Participant requires Moderate Ongoing Support or High Ongoing Support, the Provider must arrange a Change of Circumstances Reassessment in accordance with clause 110 [Change of Circumstances Reassessment during Ongoing Support].

106. Provider Exit from Ongoing Support

106.1 The Provider must perform a Provider Exit of a Participant in Ongoing Support in accordance with clauses 117.11 and 117.12.

107. Reviews of Ongoing Support

General

107.1 A Participant must receive an OSA before they are provided further Ongoing Support if:

- (a) it has been 52 weeks since the Anchor Date of a 26 week Employment Outcome;
- (b) it has been 52 weeks since the Participant’s most recent OSA or Change of Circumstances Reassessment; or
- (c) the Participant has received:
 - (i) two or more consecutive OSAs; or
 - (ii) a Change of Circumstances Reassessment and then one or more consecutive OSAs; and
 - (iii) each of those Assessments has recommended that the Participant continue to receive the same level of Ongoing Support, and it has been 78 weeks since their most recent OSA,

unless otherwise approved by the Department in writing.

107.2 Where a Participant receives an OSA in accordance with:

- (a) clause 107.1(a) or (b), the OSA applies for a period of 52 weeks from the date of the Assessment, or until a further Assessment is undertaken, whichever is the earlier; and
- (b) clause 107.1(c), the OSA applies for a period of 78 weeks from the date of the Assessment, or until a further Assessment is undertaken, whichever is the earlier.

Flexible Ongoing Support

107.3 A Provider may only provide a maximum of six Instances of Flexible Ongoing Support to a Participant in any 26 calendar week period.

107.4 If at any time an OSA recommends that a Disability Employment Services – Disability Management Service Participant receive Moderate Ongoing Support or High Ongoing Support, then the OSA shall be considered a Change of Circumstances Reassessment, and the provisions of clause 110 [Change of Circumstances Reassessment during Ongoing Support] apply.

108. Changing the Level of Ongoing Support for Disability Employment Services – Employment Support Service Participants

108.1 Subject to clause 108.2, the Disability Employment Services – Employment Support Service Provider:

- (a) may lower the Level of Ongoing Support provided to a Disability Employment Services – Employment Support Service Participant at any time; but
- (b) must not increase the Level of Ongoing Support provided to a Disability Employment Services – Employment Support Service Participant above the level specified in the Current Assessment except as recommended by a Change of Circumstances Reassessment arranged in accordance with clause 110 [Change of Circumstances Reassessment during Ongoing Support].

108.2 The Disability Employment Services – Employment Support Service Provider may change the Level of Ongoing Support provided to a Disability Employment Services – Employment Support Service Participant at any time up to 52 weeks after the Anchor Date for the Participant’s 26 Week Employment Outcome.

108.3 The Disability Employment Services – Employment Support Service Provider may only change the Level of Ongoing Support provided to a Disability Employment Services – Employment Support Service Participant under this clause 108 after considering the Participant’s circumstances and support requirements and in accordance with any Guidelines.

Note: Clause 108.2 applies only to Disability Employment Services – Employment Support Service Participants who enter Ongoing Support after completing a 26 Week Employment Outcome and not to Disability Employment Services – Employment Support Service Participants who enter Ongoing Support after completing a Job in Jeopardy Outcome.

109. Updating the Department’s IT Systems

109.1 The Provider must ensure that any decision made by the Provider under clauses 103 [Entry into Ongoing Support], 106 [Provider Exit from Ongoing Support] and 108 [Changing the Level of Ongoing Support for Disability Employment Services – Employment Support Service Participants], and the reasons for making the decision, are immediately recorded on the Department’s IT Systems.

110. Change of Circumstances Reassessment during Ongoing Support

General

110.1 If during Ongoing Support:

- (a) a Participant’s individual circumstances change; or
- (b) the Participant discloses information,

such that the Programme Services recommended in the Participant’s Current Assessment are no longer appropriate, the Provider:

- (c) must, if permitted under clause 108 [Changing the Level of Ongoing Support for Disability Employment Services – Employment Support Service Participants], provide the more appropriate Programme Services;
- (d) must arrange for a Change of Circumstances Reassessment for the Participant to be conducted by an Ongoing Support Assessor; or
- (e) if the Participant no longer requires Ongoing Support:
 - (i) may, where the Participant is a Work Based Personal Assistance Only Participant, move the Participant into Work Based Personal Assistance Only; or
 - (ii) must, if the Provider does not move the Participant into Work Based Personal Assistance Only, perform a Provider Exit of the Participant.

110.2 If a Change of Circumstances Reassessment under clause 110.1 indicates that a Participant should not change Programme Services, the Provider must continue providing the Programme Services provided to the Participant prior to the Change of Circumstances Reassessment.

110.3 If a Change of Circumstances Reassessment under clause 110.1 indicates that a Disability Employment Services – Disability Management Service Participant should receive Disability Employment Services – Employment Support Service (or vice versa) the Provider must:

- (a) provide the Programme Services in accordance with the Change of Circumstances Reassessment; or
- (b) where the Provider is not contracted to provide the Programme Services recommended in the Change of Circumstances Reassessment in the ESA in which the Provider is providing Programme Services to the Participant, arrange for the Participant to be transferred in accordance with clause 113.3.

111. General rules about Assessments conducted by Ongoing Support Assessors

Restrictions on providing OSAs to Programme Provider's Participants

111.1 The Provider must not conduct an OSA or Change of Circumstances Reassessment for a Participant where the Provider or a Related Entity is providing Programme Services to that Participant.

111.2 If the Provider breaches clause 111.1, that breach may be treated by the Department as a breach of an essential term of this Deed which is not capable of remedy.

Note: Clause 65 [Conflict of interest] of the Deed also includes provisions relating to the prohibition and management of conflicts.

Programme Provider to provide assistance to Ongoing Support Assessor

111.3 If reasonably requested by an Ongoing Support Assessor, the Provider must provide all necessary documentation and assistance to the Ongoing Support Assessor to assist the conduct of an OSA or Change of Circumstances Reassessment.

111.4 The Department may, at any time, arrange for an OSA of a Participant, in which case that OSA becomes the Current Assessment.

Section 5JA Work Based Personal Assistance Only

111A. Work Based Personal Assistance Only

111A.1 Subject to clauses 91.5 and 91.6 and any Guidelines, if a Participant is a Work Based Personal Assistance Only Participant, the Provider may provide the Participant with Work Based Personal Assistance Only, but must not provide the Participant with any other Programme Services.

Section 5K Participant Relocation and Transfer

112. Relocation of Participant

112.1 If a Participant moves to a new location, and:

- (a) at the time of the move, he or she was receiving Programme Services from the Provider; and
- (b) his or her new location is not within a reasonable distance of a Site of the Provider at which the Participant can receive the same Programme Services that they received at the time of the move,

DHS or the Department may transfer the Participant to another Programme Provider, and the relinquishing Provider must facilitate and cooperate with the transfer, in accordance with any Guidelines.

112.2 If a Participant moves to a new location and the Participant's new location is within a reasonable distance of a Site of the Provider where the Provider can provide the Participant with the same Programme Services that the Participant was receiving, the Provider must continue to provide Programme Services to the Participant at no additional cost to the Department and without regard to, or effect on, the Provider's ESA Business Share in relation to the Site.

113. Relationship failure, transfer by agreement and transfers by the Department

113.1 The Provider or the Department may transfer a Participant from the Provider to another Programme Provider, in accordance with any Guidelines, if, at any time:

- (a) the Provider and the Participant are unable to achieve or maintain a reasonable and constructive service relationship, as determined by the Department; or
- (b) the Provider, the Participant, the Department, and the other Programme Provider agree to the Participant transferring to the other Programme Provider.

113.2 The Department may, at its absolute discretion, transfer a Participant from the Provider to another Programme Provider if, at any time:

- (a) the Participant asks the Department to effect the transfer;
- (b) the Participant demonstrates to the Department's satisfaction that he or she will receive better services from the other Programme Provider that could enhance his or her employment prospects; and
- (c) the Department agrees to the proposed transfer.

113.3 If a Participant requires:

- (a) Programme Services that are not offered by the Provider; or

(b) other services not covered by Chapter 5 of this Deed,

then the Department may, at its absolute discretion, transfer the Participant from the Provider to another Programme Provider, or to a provider of other services, and the Provider must facilitate and cooperate with the transfer.

113.4 If a Participant is transferred by another Programme Provider, the Department or DHS, to the Provider for any reason, the receiving Provider must:

(a) immediately facilitate and cooperate with the transfer so as to enable services to continue to be provided to the Participant;

(b) at the initial Contact with the Participant:

(i) explain the Programme Services that the Provider will provide;

(ii) review and update his or her Job Plan, in accordance with clause 96 [General requirements for a Job Plan]; and

(c) provide Programme Services to the Participant in accordance with his or her Job Plan.

113.5 For the purposes of clause 113.4, the receiving Provider will be required to facilitate and cooperate with the transfer which will include, as a minimum, complying with the Department's directions in relation to:

(a) the transfer of Deed Material and Commonwealth Material; and

(b) the redirection of Participants,

from another Programme Provider to the Provider.

Section 5L Participant Suspension and Exit from Programme Services

114. Effect of Suspensions

114.1 When a Participant is Suspended, the Period of Service or Ongoing Support, as the case may be, for the Participant is halted and recommences, subject to this Deed, at the end of the Suspension.

115. Suspensions

Exemption from Mutual Obligation Requirements

115.1 If DHS notifies the Provider that it has Exempted a Participant (Mutual Obligation) from his or her Mutual Obligation Requirements, the Participant (Mutual Obligation) is Suspended from the day on which DHS so notifies the Provider until:

(a) DHS notifies the Provider that the Exemption has reached its end date; or

(b) the Provider identifies, or is notified by DHS, that the Participant (Mutual Obligation) has volunteered to participate in additional activities.

115.2 If a Participant (Mutual Obligation) is Suspended in accordance with clause 115.1, but the Provider identifies, or is notified by DHS, that the Participant (Mutual Obligation) has decided to volunteer to participate in additional activities:

(a) the Provider must:

- (i) agree with the Participant (Mutual Obligation) on what voluntary activities he or she will participate in; and
 - (ii) amend the Activity Tested Participant's Job Plan as appropriate; and
 - (iii) record on the Department's IT Systems that the Participant (Mutual Obligation) is participating as a Volunteer (Mutual Obligation); and
 - (iv) provide Programme Services to the Participant (Mutual Obligation), in accordance with his or her updated Job Plan, for the period of the agreed voluntary activity, taking into account the reason for the Exemption; and
- (b) the Activity Tested Participant's Period of Service resumes from the date that the Provider records on the Department's IT Systems that the Participant (Mutual Obligation) is participating as a Volunteer (Mutual Obligation).

Participants who are fully meeting their part-time Mutual Obligation Requirements

- 115.3 If DHS notifies the Provider that a Participant who has part-time Mutual Obligation Requirements is fully meeting these requirements, the Participant is Suspended from the date on which DHS so notifies the Provider until the day on which the Suspension is lifted as a result of the Provider identifying, or being notified by DHS, that the Participant has:
- (a) ceased to fully meet his or her Mutual Obligation Requirements;
 - (b) volunteered to participate in additional activities; or
 - (c) Exited in accordance with clause 117 [Exits].
- 115.4 If the Provider identifies, or is notified by DHS, that a Participant who is Suspended under clause 115.3 has ceased to fully meet his or her Mutual Obligation Requirements:
- (a) the Provider must:
 - (i) amend the Participant's Job Plan as appropriate; and
 - (ii) provide Programme Services to the Participant, in accordance with his or her updated Job Plan; and
 - (b) the Participant's Period of Service resumes from the date that the Provider or DHS records on the Department's IT Systems that the Participant has ceased to fully meet his or her Mutual Obligation Requirements.
- 115.5 If the Provider identifies, or is notified by DHS, that a Participant who is Suspended under clause 115.3 has decided to volunteer to participate in additional activities:
- (a) the Provider must:
 - (i) agree with the Participant on what voluntary activities he or she will participate in;
 - (ii) amend the Participant's Job Plan as appropriate;
 - (iii) record on the Department's IT Systems that the Participant is participating as a Volunteer (Mutual Obligation); and
 - (iv) provide Programme Services to the Participant, in accordance with his or her updated Job Plan for the period of the agreed voluntary activity; and

- (b) the Participant's Period of Service resumes from the date that the Provider records on the Department's IT Systems that the Participant is participating as a Volunteer (Mutual Obligation).

115.6 If the Provider identifies, or is notified by DHS, that a Volunteer (Mutual Obligation) under clause 115.3 has ceased to fully meet his or her Mutual Obligation Requirements, the Provider must amend the Participant's Job Plan to remove reference to the voluntary activities and to change the Mutual Obligation Requirements activities, if required, and record on the Department's IT Systems that the Participant is participating as a Participant (Mutual Obligation), and not as a Volunteer (Mutual Obligation).

Participants with a reduced capacity

115.7 With the exception of Participants in Post Placement Support or Ongoing Support, the following Participants (Mutual Obligation) are Suspended:

- (a) Participants with a temporary reduced work capacity of less than 15 hours per week; and
- (b) PCW Participants with a current and future work capacity of less than 15 hours per week, for the period specified in their ESAt or JCA as recorded in the Department's IT Systems.

115.8 If the Provider identifies, or is notified by DHS, that a Participant who is Suspended under clause 115.7 has decided to volunteer to participate in additional activities, and:

- (a) the Participant has a temporary reduced work capacity of between eight and 14 hours per week inclusive or a Partial Capacity to Work of less than 15 hours per week; or
- (b) the Participant:
 - (i) is a Job in Jeopardy Participant or a Special Class Client; or
 - (ii) has a temporary reduced work capacity of less than eight hours per week and the Provider agrees with the Participant volunteering in accordance with any Guidelines,

the Provider must:

- (c) agree with the Participant on what voluntary activities he or she will participate in;
- (d) amend the Participant's Job Plan accordingly;
- (e) record on the Department's IT Systems that the Participant is participating as a Volunteer (Mutual Obligation);
- (f) provide Programme Services to the Participant, in accordance with his or her updated Job Plan for the period of the agreed voluntary activity; and

the Participant's Period of Service resumes from the date that the Provider records on the Department's IT Systems that he or she is participating as a Volunteer (Mutual Obligation).

115.9 A Volunteer (Non-mutual Obligation) Participant with a temporary reduced work capacity of less than eight hours per week may continue to participate in Programme Services:

- (a) if the Participant is a Job in Jeopardy Participant or a Special Class Client; or
- (b) if the Participant is not a Job in Jeopardy or Special Class Client, with the agreement of the Provider, and in accordance with any Guidelines.

115.10 For the purposes of clause 115.9(b), if the Provider does not agree to the Participant continuing to participate in Programme Services, the Provider must Suspend the Participant.

Volunteers (Activity Tested)

- 115.11 If the Provider identifies, or is notified by DHS, that a Volunteer (Mutual Obligation) has experienced a situation that affects his or her ability to participate in voluntary activities for a specified period of time:
- (a) the Provider must immediately record on the Department's IT Systems that the Participant (Mutual Obligation) is no longer participating as a Volunteer (Mutual Obligation) and the Suspension period resumes; and
 - (b) the Participant (Mutual Obligation) is Suspended until the Suspension is lifted as a result of:
 - (i) the Suspension reaching its end date as notified by DHS;
 - (ii) the Provider identifying, or being notified by DHS, that the Participant (Mutual Obligation) wishes to resume participating in voluntary activities; or
 - (iii) the Participant (Mutual Obligation) Exits in accordance with clause 117 [Exits].
- 115.12 If a Participant (Mutual Obligation), who is Suspended pursuant to clause 115.11, advises the Provider that he or she wishes to resume participating in voluntary activities:
- (a) the Provider must:
 - (i) record on the Department's IT Systems that the Participant (Mutual Obligation) is again participating as a Volunteer (Mutual Obligation); and
 - (ii) resume provision of Programme Services to the Participant (Mutual Obligation) as a Volunteer (Mutual Obligation) in accordance with his or her Job Plan for the period of the agreed voluntary activity; and
 - (b) the Activity Tested Participant's Period of Service resumes from the date on which the Provider records on the Department's IT Systems that the Participant (Mutual Obligation) has resumed voluntary activities.

Volunteers (Non-activity Tested)

- 115.13 If the Provider identifies, or is notified by DHS, that a Volunteer (Non-mutual Obligation) has experienced a situation that affects his or her ability to participate in voluntary activities for a specified period of time, the Provider must Suspend the Volunteer (Non-mutual Obligation), for a period of up to 13 weeks, or for multiple periods up to 13 weeks at a time, as appropriate, by recording the Suspension and the reasons for the Suspension on the Department's IT Systems.
- 115.14 If a Volunteer (Non-mutual Obligation) routinely fails to attend activities or Appointments with the Provider, and has not already advised the Provider that he or she no longer wishes to participate in voluntary activities, immediately after the Provider becomes aware of the non-attendance, the Provider must attempt to contact the Volunteer (Non-mutual Obligation) at least once on each of two consecutive Business Days, and:
- (a) if the Provider is advised by the Volunteer (Non-mutual Obligation) that he or she does not wish to continue to participate, the Provider must immediately perform a Provider Exit for the Volunteer (Non-mutual Obligation); or

- (b) if the Provider is unable to contact the Volunteer (Non-mutual Obligation), the Provider may perform a Provider Exit of the Volunteer (Non-mutual Obligation) or, if not, must immediately Suspend the Volunteer (Non-mutual Obligation) in accordance with clause 115.13, and continue to make reasonable attempts to contact the Volunteer (Non-mutual Obligation) until the Provider successfully contacts the Volunteer (Non-mutual Obligation), in accordance with the Guidelines.

115.15 Following any period of Suspension specified in clause 115.13 or 115.14(b), a Volunteer (Non-mutual Obligation) must be serviced by the Provider for the remaining period of his or her current Period of Service.

DES Participants participating in the Green Army Programme

115.16 If the Provider is notified that a Participant is participating in the Green Army Programme, the Participant is Suspended on the Department's IT Systems from the date on which DHS so notifies the Provider until the date on which the Provider is notified by DHS that the Participant has ceased participating in the Green Army Programme.

115.17 If the Provider is notified by DHS that a Participant who is Suspended under clause 115.16 has ceased participating in the Green Army Programme:

- (a) the Provider must:
 - (i) amend the Participant's Job Plan as appropriate; and
 - (ii) immediately provide Programme Services to the Participant, in accordance with his or her updated Job Plan; and
- (b) the Participant's current Period of Service resumes from the date that DHS records on the Department's IT Systems that the Participant has ceased to participate in the Green Army Programme.

116. Effect of Exits

116.1 Subject to clauses 117.3 and 93.4A, when a Participant is Exited in accordance with this Section 5L [Participant Suspension and Exit from Programme Services], the Period of Service for the Participant ends.

117. Exits

117.1 A Participant is Exited when:

- (a) an Effective Exit occurs;
- (b) a Provider Exit occurs; or
- (c) any other event that the Department may advise the Provider of from time to time occurs.

117.2 Where an event under clause 117.1 occurs, the Provider must cease providing Programme Services to a Participant unless clause 117.3 or clause 93.4A applies.

117.3 Subject to clause 117.4, where an Exit occurs for a Participant, but the Participant returns to the Programme Services less than 13 Consecutive Weeks after the date of the Exit, the Participant's previous Period of Service is deemed to continue from the date of the return and the Provider must, as soon as it becomes aware of the return:

- (a) resume providing Programme Services to the Participant; and

- (b) record the resumption of Programme Services on the Department's IT Systems, in accordance with any Guidelines.
- 117.4 Unless the Participant is returning as a Job in Jeopardy Participant, where an Exit occurs and the Participant subsequently returns to the Programme Services, the Participant must have a Valid ESAt or JCA, except where:
- (a) the Exit occurred while the Participant was receiving Ongoing Support or Work Based Personal Assistance Only;
 - (b) the Participant Exited as an Independent Worker;
 - (c) the Participant Exited in accordance with clause 99.3(c); or
 - (d) the Exit was an Exit referred to in items (b) or (d) of the Definition of Effective Exit, in which case the Participant must receive a New ESAt and, subject to that ESAt, begin a new Period of Service.
- 117.5 Where an Exit occurs and the Participant subsequently returns to the Programme Services at 13 Consecutive Weeks or more after the date of the Exit, the Participant must have a Valid ESAt or JCA and, subject to that ESAt or JCA, begin a new Period of Service, unless the Participant is returning as a Job in Jeopardy Participant (in which case the Participant does not require a Valid ESAt or JCA).
- Note: Clause 117.5 does not preclude the Participant from returning to the Provider.*
- 117.6 If DHS notifies the Provider that a Participant (Mutual Obligation):
- (a) stops receiving Income Support Payments; or
 - (b) commences Education or Training that changes their income support status to Austudy, Abstudy or Youth Allowance (Student); and
 - (c) the Participant advises the Provider that they do not wish to receive Programme Services, the Provider must, subject to clause 117.7, perform a Provider Exit for the Participant.
- 117.7 If a Participant (Mutual Obligation) advises the Provider that they wish to continue to receive Programme Services, the Provider must update the Participant's record on the Department's IT System, and specify that the Participant is a Volunteer (Non-mutual Obligation).
- Volunteers (Activity Tested)*
- 117.8 If a Volunteer (Mutual Obligation):
- (a) ceases to participate in voluntary activities;
 - (b) no longer wishes to participate in voluntary activities; and
 - (c) the Provider has confirmed that the Volunteer (Mutual Obligation) is:
 - (i) either fully meeting his or her Mutual Obligation Requirements or is the subject of an Exemption; and

- (ii) the Volunteer (Mutual Obligation) is eligible for a Provider Exit in accordance with any Guidelines,

the Provider may perform a Provider Exit for the Volunteer (Mutual Obligation).

Volunteers (Non-activity Tested)

- 117.9 If a Volunteer (Non-mutual Obligation) advises the Provider that they do not wish to continue to participate in voluntary activities, the Provider must perform a Provider Exit for the Volunteer (Non-mutual Obligation).

Participants with a reduced capacity

- 117.10 Except for Job in Jeopardy Participants, Special Class Clients or any other Participants specified in any Guidelines, the Provider must perform a Provider Exit for all Participants with a future work capacity of less than eight hours per week.

Ongoing Support

- 117.11 The Provider must perform a Provider Exit of a Participant receiving Ongoing Support if:
- (a) the Provider considers that a Participant no longer requires Ongoing Support;
 - (b) an Ongoing Support Assessor recommends that a Participant no longer requires Ongoing Support; or
 - (c) the Participant ceases to be in Employment, Unsubsidised Self-Employment, Traineeship or Apprenticeship, (excluding any time during a Change in Employment), in accordance with any Guidelines, the Provider must perform a Provider Exit of the Participant.
- 117.12 If a Participant receiving Moderate Ongoing Support or High Ongoing Support is Suspended for more than 12 months, the Provider must perform a Provider Exit of the Participant.

Note: A Participant who is Exited may again Commence or resume Programme Services, if specified in this Deed or any Guidelines.

Programme Services no longer appropriate

- 117.13 If an OSA ESAt or JCA recommends that Programme Services are no longer an appropriate service for a Participant, the Provider must perform a Provider Exit of the Participant.

Note: A Participant who is Exited may again Commence or resume Programme Services, if specified in this Deed or any Guidelines.

Work Based Personal Assistance Only

- 117.14 The Provider must perform a Provider Exit of a Work Based Personal Assistance Only Participant if:
- (a) the Provider considers that the Work Based Personal Assistance Only Participant no longer requires Work Based Personal Assistance Only; or
 - (b) the Work Based Personal Assistance Only Participant ceases to be in Employment, Unsubsidised Self-Employment, Traineeship or Apprenticeship (excluding any time during a Change in Employment); or
 - (c) the Work Based Personal Assistance Only Participant becomes a NDIS Launch Participant or otherwise fails to meet the eligibility requirements for a Work Based Personal Assistance Only Participant,
- and must do so in accordance with any Guidelines.

Programme Summaries

117.15 The Provider must complete a Programme Summary on the Department's IT Systems for each Participant within the following timeframes:

- (a) within 20 Business Days after the Exit where:
 - (i) DHS Exits the Participant for any reason; or
 - (ii) the Participant is transferred to another Programme Provider or to Australian Disability Enterprises; or
- (b) within five Business Days after an Exit for any other reason.

Disability Employment Services – Disability Management Service Participant Exit notifications

117.16 Where a Disability Employment Services – Disability Management Service Participant is Exited for any reason, the Disability Employment Services – Disability Management Service Provider must provide the Disability Employment Services – Disability Management Service Participant with an Exit notification within 14 calendar days of the Exit, in accordance with the Guidelines.

118. Other Suspensions and Exits

Participants whose Programme Review is delayed beyond 78 weeks – Manual Suspension

118.1 Where:

- (a) a Participant has received 78 weeks of Employment Assistance; and
- (b) the Participant requires a Programme Review under clause 99.1; and
- (c) the Programme Review is delayed beyond the end of the 78th week,

the Provider must, in accordance with any Guidelines, Suspend the Participant until the Programme Review is completed unless otherwise agreed in writing by the Department.

118.2 The Participant's Period of Service, if any, will resume in accordance with any such recommendation in the Programme Review, and with clause 99 [Programme Review].

118.3 Participants may be otherwise Suspended or Exited, as relevant, in accordance with any Guidelines.

Information about access to records after Exit

Providers should note that the Department's IT Systems will automatically notify DHS when a Participant Exits for any reason. Providers will only be granted access to the Participant's records in the Department's IT Systems for 28 calendar days from the date of the Participant's Exit.

Section 5M Fees and Ancillary Payments

Information about Fees

The Fees the Department will pay the Provider consist of:

- (a) Service Fees;
- (b) Job Placement Fees;
- (c) Outcome Fees;
- (d) Reserved;
- (e) Flexible Ongoing Support Fees, Moderate Ongoing Support Fees and High Ongoing Support Fees;
- (f) Job in Jeopardy Service Fees and Job in Jeopardy Outcome Fees;
- (g) Existing High Cost Worker Fees; and
- (h) Work Based Personal Assistance Fees.

The amounts of the Fees for items (a) to (h) are set out in tables in Annexures B1 and B2 to this Deed.

119. General

119.1 A Provider will only be entitled to receive a Fee from the Department where the requirements for payment of that Fee have been met in accordance with this Deed and any Guidelines.

119.2 Without limiting the Department's rights to take action under clause 56 [Remedies for breach], and subject to clause 119.3, if the Department pays the Provider any Fee, and if the Department then determines that, in the case of:

- (a) a Service Fee;
- (b) a Job Placement Fee;
- (c) an Outcome Fee;
- (d) Reserved;
- (e) a Flexible Ongoing Support Fee, a Moderate Ongoing Support Fee and a High Ongoing Support Fee;
- (f) a Job in Jeopardy Service Fee and a Job in Jeopardy Outcome Fee;
- (g) an Existing High Cost Worker Fee;
- (h) a Work Based Personal Assistance Fee; or
- (i) any other Fee,

the requirements which must be satisfied to qualify for payment of that Fee have not been met, the Department may, taking into account the extent and nature of the failure, at its absolute discretion and without limitation of any of the Department's rights under this Deed or at law, recover some or all of the Fees paid for the relevant Service, or for other Services for which a Fee is payable, and the amount of the Fees is a debt due to the Department in accordance with clause 24 [Debts and offsetting].

119.3 The Department will not recover a Service Fee or a Job in Jeopardy Service Fee under clause 119.2 if a

- (a) Service Fee is paid in relation to a Participant in accordance with clause 121 [Service Fees];
or
- (b) Job in Jeopardy Service Fee is paid in accordance with clauses 126.2 to 126.7,
if the only reason that the Provider has not met the requirements for the Fee is that:
 - (c) the Participant Exits;
 - (d) subject to clause 121.9, transfers to another Programme Provider for any reason;
 - (e) the Participant is Suspended; or
 - (f) the Provider enters an Anchor Date into the Department's IT System for the Participant,
during the 13 week time period to which the Service Fee or Job in Jeopardy Service Fee relates.

119.4 The Provider acknowledges that if:

- (a) a Participant moves from a Complementary Service into an employment, education or training related activity that satisfies the requirements for an Outcome; and
- (b) the service provided under the Complementary Service provides the same or a similar service to a Service provided under this Deed,

the Provider may only claim an amount equal to the difference between:

- (c) the Outcome Fee, plus any Moderate Intellectual Disability Loading on this Fee, payable under this Deed in relation to the employment, education or training activity;
- (d) the fee, if any, payable to the relevant Complementary Services provider in relation to the same employment, education or training related activity under any contract with the Commonwealth, or any state or territory government.

119.5 The Provider must:

- (a) ensure that any of its Personnel that are required to submit claims for payment, have successfully completed Claims Processing Training prior to submission of any claim for payment to the Department by them; and
- (b) when requested by the Department, provide evidence that the relevant Personnel have successfully completed Claims Processing Training.

119A Advance Payment of Fees

119A.1 The Department may, in its sole discretion, from time to time Notify the Provider that the Provider may claim an advance payment of Fees, the amount of Fees that may be claimed, and any related conditions.

119A.2 Subject to this Deed, if the Provider claims an advance payment of Fees in accordance with a Notification by the Department under clause 119A.1, and any other requirements Notified to the Provider by the Department prior to the claim, the Department will pay the Provider the amount of the advance payment of Fees specified in the relevant Notification(s).

Offsetting of advance payments of Fees

- 119A.3 On and from the date on which the Department pays an advance payment of Fees under this clause 119A, the Department may, in such amounts and at such times as it determines, offset all valid claims, made by the Provider under this Deed for all payments of Fees, Funds, Reimbursements, Wage Subsidies and Ancillary Payments, against the advance payment of Fees, until the total of the offset valid claims for payment equals the total amount of the advance payment of Fees.
- 119A.4 If on the Completion Date the total amount of all advance payments of Fees paid under this clause 119A have not been offset under clause 119A.3, the difference between:
- (a) the total amount of the advance payments of Fees; and
 - (b) the total amount of the offset valid claims for payment,
- is an overpayment for the purposes of clause 22.1.

120. Funding Levels for Disability Employment Services – Employment Support Service

Disability Employment Services – Employment Support Service Participant

- 120.1 Where specified in this Deed, Fees in relation to a Disability Employment Services – Employment Support Service Participant (excluding a Job in Jeopardy Participant) will be payable at the following Funding Levels:
- (a) Funding Level 1; or
 - (b) Funding Level 2.

Note: The Funding Level for a Disability Employment Services – Employment Support Service Participant will be determined by the Department’s IT Systems using the Funding Level Tool.

Eligible School Leaver Directly Registered

- 120.2 If a Disability Employment Services – Employment Support Service Provider Commences an Eligible School Leaver in Disability Employment Services – Employment Support Service in accordance with clause 83 [Direct Registration of Participants without a Referral], the Disability Employment Services – Employment Support Service Participant will be deemed to be at Funding Level 2, with an Employment Benchmark of eight hours, unless otherwise specified by the Department.

121. Service Fees

- 121.1 A Service Fee will be payable in relation to the period where a Participant receives Employment Assistance or Extended Employment Assistance.
- 121.2 Subject to this Deed, including clauses 121.3 to 121.8, the Department will pay the Provider a Service Fee in relation to a Participant in the amount specified in:
- (a) Table 1 in Annexure B1;
 - (b) Table 1 in Annexure B2; or
 - (c) Table 1A in Annexure B2,
- in column 2 [Fee amount], which corresponds to the 13 week time period specified in column 1 [Time period] as applicable to the Participant.
- 121.3 In relation to a Participant, the Department will pay a Provider:

- (a) a maximum of six Service Fees for the period a Participant is in Employment Assistance; and
 - (b) a maximum of two Service Fees for the period a Participant is in Extended Employment Assistance.
- 121.4 The Department will post and update on the Department's IT Systems from time to time a list of Participants:
- (a) in relation to whom the Provider is entitled to claim payment of Service Fees in accordance with clause 121.2; and
 - (b) taking account of all relevant current information about the Participants recorded in the Department's IT Systems from time to time.
- 121.5 The Provider may submit a claim for payment of a Service Fee in accordance with clause 121.2, in relation to a Participant either:
- (a) immediately after the Participant has been Commenced; or
 - (b) on or after the day on which the Participant's name is first posted on the list referred to in clause 121.4, provided that at the time the Provider submits the claim for payment, the Participant's name is still posted on the list,
- and the Department will pay the Service Fee to the Provider after the completion of the fortnight, the start and end of which is determined by the Department at its absolute discretion, in which the Provider submits the claim for payment.
- 121.6 The Provider must make a claim for payment of a Service Fee in relation to a Participant in accordance with clause 121.5 not later than 28 calendar days after the day on which the requirements of:
- (a) clause 121.5(a); or
 - (b) clause 121.5(b),
- as applicable, are satisfied, and the Provider:
- (c) renders a Tax Invoice in the Department's IT Systems; and
 - (d) the Department accepts the Tax Invoice.
- 121.7 If a person who was a Participant with another Programme Provider transfers to the Provider for any reason, the Department will pay the receiving Provider a pro-rata amount of the Service Fee that is payable in accordance with clauses 121.2 to 121.6 for the Participant for the 13 week period in which the date of the transfer occurs.
- 121.8 The pro-rata amount payable in accordance with clause 121.7 will be calculated based on the period of time from the date of the initial Contact with the Participant by the receiving Provider to the end of the 13 week period in which the date of transfer occurs.
- 121.9 Where a Transferred Participant transfers from the Provider to another Programme Provider because of:
- (a) a reduction of ESA Business Share for the Provider in an ESA;
 - (b) the Provider being notified by the Department that it must discontinue providing Services in an ESA or at a Site;

(c) any of the circumstances specified at clause 132.1(a) to (e); or

(d) any other reason advised by the Department,

the Department will only pay the Provider a pro-rata amount of the Service Fees, payable in accordance with clauses 121.1 to 121.4, for the 13 week period, specified in column 1 [Time period] of Table 1 in Annexure B1 or Tables 1 and 1A in Annexure B2, in which the date of the transfer of the Transferred Participant occurs. The pro-rata amount will be calculated based on the period of time from the commencement of the relevant 13 week period to the date of the transfer.

122. Job Placement Fees

122.1 Subject to this Deed, including clauses 122.2 to 122.4, the Department will pay the Provider a Job Placement Fee in relation to a Participant in the amount specified in column 2 [Fee amount] of:

(a) Table 2 in Annexure B1;

(b) Table 2 in Annexure B2; or

(c) Table 2A in Annexure B2,

as applicable to the Participant.

122.2 Subject to clauses 122.3 to 122.4, where a Participant starts in a Job Placement and:

(a) the Participant achieves the Job Placement Hours in that Job Placement; and

(b) there is a reasonable expectation that the Job Placement will continue for a minimum of 13 Consecutive Weeks,

the Provider may claim a Job Placement Fee for that Participant in accordance with clause 122.1.

Note: The intention is that the Provider cannot claim a Job Placement Fee for a Job Placement where there is no reasonable expectation that the Job Placement will lead to 13 Consecutive Weeks' Employment.

122.3 A Provider may claim a Job Placement Fee for a Participant if the Provider:

(a) within 28 calendar days of the Job Placement Start Date, provides confirmation in accordance with any Guideline requirements that the Participant has started in the Job Placement and records details of the confirmation and the Job Placement Start Date in the Department's IT Systems;

(b) within 28 calendar days of the Job Placement Fee Date, verifies with the Employer that the Participant has achieved the relevant Job Placement Hours in the Job Placement and records details of the verification and the Job Placement Fee Date in the Department's IT Systems; and

(c) renders a Tax Invoice in the Department's IT Systems and the Department accepts the Tax Invoice.

122.4 The Provider must not claim:

(a) a Job Placement Fee:

(i) before the Job Placement Fee Date;

- (ii) where the Job Placement Hours were achieved in a Non-Payable Placement;
- (iii) where the Job Placement Start Date is prior to the Participant Commencing; or
- (iv) where the Job Placement Hours achieved are less than 8 hours;
- (b) more than one Job Placement Fee for each Job Placement;
- (c) more than one Job Placement Fee for each Participant during a Period of Service, for a Job Placement where the Participant is performing substantially the same duties with the same Employer; and
- (d) more than four Job Placement Fees for each Participant during a Period of Service.

123. Outcome Fees

123.1 Subject to this Deed and clauses 123.2 to 123.5, the Department will pay the Provider the applicable Outcome Fee specified in:

- (a) Table 3 in Annexure B1;
- (b) Table 3 in Annexure B2; or
- (c) Table 3A in Annexure B2,

in relation to each Participant who has satisfied the requirements for a Full Outcome, a Pathway Outcome or a Bonus during a Period of Service;

- (d) when the Participant has satisfied:
 - (i) the 13 Week Period for the Outcome; and
 - (ii) the 26 Week Period for the Outcome,

provided that the Anchor Date for the Outcome:

- (e) is entered on the Department's IT Systems in accordance with this Deed and any Guidelines; and
 - (f) occurs after Commencement,
- and
- (g) the Provider has rendered a Tax Invoice for the Outcome Fee to the Department within 56 calendar days of the end of the relevant 13 Week Period or 26 Week Period; and
 - (h) the Department accepts the Tax Invoice.

123.2 The amount of the Outcome Fee payable to the Provider by the Department under clause 123.1 is determined by:

- (a) whether the Participant was a Disability Employment Services – Disability Management Service Participant or Disability Employment Services – Employment Support Service Participant on the Anchor Date for the Outcome;
- (b) if the Participant was a Disability Employment Services – Employment Support Service Participant, whether, as at the Anchor Date, the Provider was entitled to claim payment at Funding Level 1 or Funding Level 2 in relation to that Disability Employment Services – Employment Support Service Participant; and

- (c) whether the Participant has satisfied the requirements for a Full Outcome, a Pathway Outcome or a Bonus.

123.3 The Provider must not claim an Outcome Fee under clause 123.1:

- (a) on a pro rata basis in relation to an Outcome;
- (b) in relation to a Non-Payable Outcome;
- (c) for a 26 Week Period for a Pathway Outcome which satisfies either paragraph (b) or (c) in the Definition of Pathway Outcome; or
- (d) for a Pathway Outcome in relation to a Participant who, upon Commencement, is working at a level that would meet the requirements of paragraphs (a)(i) or (ii) of the Definition of Pathway Outcome:
 - (i) and the Participant remains at that same level in the same Pre-Existing employment related activity, in accordance with any Guidelines; or
 - (ii) in other circumstances, as specified in any Guidelines.

123.4 The Provider must not claim a 26 week Pathway Outcome Fee or a 26 week Full Outcome Fee in relation to a Participant during a Period of Service unless a 13 week Pathway Outcome Fee or a 13 week Full Outcome Fee has been paid in relation to that Participant during that same Period of Service.

123.5 The Provider may claim only one:

- (a) 13 week Pathway Outcome Fee or 13 week Full Outcome Fee; and
 - (b) 26 week Pathway Outcome Fee or 26 week Full Outcome Fee,
- for the same Participant, during a Period of Service.

124. Reserved

125. Ongoing Support Fees

Flexible Ongoing Support Fees

125.1 A Flexible Ongoing Support Fee will be payable in relation to an Instance of Flexible Ongoing Support.

125.2 Subject to this Deed, including clause 107.3 and clauses 125.3 to 125.6, the Department will pay the Provider a Flexible Ongoing Support Fee in relation to a Participant in the amount specified in:

- (a) Table 5 in Annexure B1; or
- (b) Table 5 in Annexure B2,

in column 2 [Fee amount], as applicable to the Participant.

125.3 The Provider may claim a Flexible Ongoing Support Fee in relation to a Participant if the Provider:

- (a) renders a Tax Invoice in the Department's IT Systems; and
- (b) the Department accepts the Tax Invoice.

- 125.4 The Provider must only claim a Flexible Ongoing Support Fee for Instances of Flexible Ongoing Support provided for a Participant in accordance with this Deed and any Guidelines.
- 125.5 For the purposes of clause 20 [Evidence to support claims for payment], Documentary Evidence to support a claim for payment of a Flexible Ongoing Support Fee includes any invoices relating to Instances of Flexible Ongoing Support.
- 125.6 Subject to this Deed, including clause 107.3 and clauses 125.1 to 125.5, if a Participant who is receiving Flexible Ongoing Support transfers from another Programme Provider to the Provider for any reason, the Department will pay the receiving Provider a Flexible Ongoing Support Fee for Instances of Flexible Ongoing Support provided to the Participant from the date of transfer, irrespective of any Flexible Ongoing Support Fees paid to the relinquishing Provider in relation to the Participant, prior to the date of transfer.

Moderate Ongoing Support Fees for Disability Employment Services – Employment Support Service

- 125.7 A Moderate Ongoing Support Fee will be payable in relation to the period where a Disability Employment Services – Employment Support Service Participant receives Moderate Ongoing Support.
- 125.8 Subject to this Deed, including clauses 125.9 to 125.15, the Department will pay the Disability Employment Services – Employment Support Service Provider a Moderate Ongoing Support Fee in relation to a Disability Employment Services – Employment Support Service Participant for each 13 week time period (excluding any time during a Change in Employment), in the amount which applies to the Disability Employment Services – Employment Support Service Participant, as specified in Table 5A in Annexure B2, in column 2 [Fee amount].
- 125.9 Subject to clauses 125.7 to 125.15, the first Moderate Ongoing Support Fee for a Disability Employment Services – Employment Support Service Participant will be payable 13 weeks (excluding any time during a Change in Employment) after commencement in Moderate Ongoing Support.
- 125.10 The Department will post and update on the Department’s IT Systems from time to time a list of Disability Employment Services – Employment Support Service Participants:
- (a) in relation to whom the Disability Employment Services – Employment Support Service Provider is entitled to claim payment of a Moderate Ongoing Support Fee in accordance with clause 125.8; and
 - (b) taking account of all relevant current information about the Disability Employment Services – Employment Support Service Participants recorded in the Department’s IT Systems from time to time.
- 125.11 The Disability Employment Services – Employment Support Service Provider may submit a claim for payment of a Moderate Ongoing Support Fee, in accordance with clause 125.8, in relation to a Disability Employment Services – Employment Support Service Participant on or after the day on which the Disability Employment Services – Employment Support Service Participant’s name is first posted on the list referred to in clause 125.10, provided that at the time the Disability Employment Services – Employment Support Service Provider submits the claim for payment, the Disability Employment Services – Employment Support Service Participant’s name is still posted on the list.

- 125.12 Subject to clauses 125.7 to 125.15, and if the Department agrees, the Disability Employment Services – Employment Support Service Provider may claim a Moderate Ongoing Support Fee monthly, and the monthly amount payable will be calculated as a proportion of the Moderate Ongoing Support Fee payable in accordance with clause 125.8.
- 125.13 Where a Moderate Ongoing Support Fee is claimed monthly, clause 125.9 is to be read as if the first Moderate Ongoing Support Fee will be payable one month after the Disability Employment Services – Employment Support Service Participant's commencement in Moderate Ongoing Support.
- 125.14 If a Disability Employment Services – Employment Support Service Participant who is receiving Moderate Ongoing Support transfers from another Programme Provider to the Disability Employment Services – Employment Support Service Provider for any reason, the Department will pay both the relinquishing Provider and the receiving Disability Employment Services – Employment Support Service Provider a pro-rata amount of the Moderate Ongoing Support Fee payable in accordance with clauses 125.7 to 125.11 for the 13 Week Period in which the date of transfer occurs.
- 125.15 The pro-rata amount of the Moderate Support Fee payable in accordance with clause 125.14 will be calculated:
- (a) for the relinquishing Provider, based on the period of time from the commencement of the 13 Week Period in which the date of the transfer occurs to the date of the transfer recorded on the Department's IT Systems; and
 - (b) for the receiving Disability Employment Services – Employment Support Service Provider, based on the period of time from the date of the initial Contact with the Disability Employment Services – Employment Support Service Participant by the receiving Disability Employment Services – Employment Support Service Provider to the end of the 13 Week Period in which the date of transfer occurs.

High Ongoing Support Fees for Disability Employment Services – Employment Support Service

- 125.16 A High Ongoing Support Fee will be payable in relation to the period where a Disability Employment Services – Employment Support Service Participant receives High Ongoing Support.
- 125.17 Subject to this Deed, including clauses 125.18 to 125.24, the Department will pay the Disability Employment Services – Employment Support Service Provider a High Ongoing Support Fee in relation to a Disability Employment Services – Employment Support Service Participant for each 13 week time period (excluding any time during a Change in Employment), in the amount which applies to the Disability Employment Services – Employment Support Service Participant, as specified in Table 5B of Annexure B2 , in column 2 [Fee amount].
- 125.18 Subject to clauses 125.16 to 125.24, the first High Ongoing Support Fee for a Disability Employment Services – Employment Support Service Participant will be payable 13 weeks (excluding any time during a Change in Employment) after commencement in High Ongoing Support.
- 125.19 The Department will post and update on the Department's IT Systems from time to time a list of Disability Employment Services – Employment Support Service Participants:
- (a) in relation to whom the Disability Employment Services – Employment Support Service Provider is entitled to claim payment of a High Ongoing Support Fee in accordance with clause 125.17; and

- (b) taking account of all relevant current information about the Disability Employment Services – Employment Support Service Participants recorded in the Department’s IT Systems from time to time.

125.20 The Disability Employment Services – Employment Support Service Provider may submit a claim for payment of a High Ongoing Support Fee, in accordance with clause 125.17, in relation to a Disability Employment Services – Employment Support Service Participant on or after the day on which the Disability Employment Services – Employment Support Service Participant’s name is first posted on the list referred to in clause 125.19, provided that at the time the Provider submits the claim for payment, the Disability Employment Services – Employment Support Service Participant’s name is still posted on the list.

125.21 Subject to clauses 125.16 to 125.24, and if the Department agrees, the Provider may claim a High Ongoing Support Fee monthly, and the monthly amount payable will be calculated as a proportion of the High Ongoing Support Fee payable in accordance with clause 125.17.

125.22 Where a High Ongoing Support Fee is claimed monthly, clause 125.18 is to be read as if the first High Ongoing Support Fee will be payable one month after commencement of High Ongoing Support.

125.23 If a Disability Employment Services – Employment Support Service Participant who is receiving High Ongoing Support transfers from another Programme Provider to the Disability Employment Services – Employment Support Service Provider for any reason, the Department will pay both the relinquishing Provider and the receiving Disability Employment Services – Employment Support Service Provider a pro-rata amount of the High Ongoing Support Fee payable in accordance with clauses 125.16 to 125.20 for the 13 Week Period in which the date of transfer occurs.

125.24 The pro-rata amount payable in accordance with clause 125.23 will be calculated:

- (a) for the relinquishing Provider, based on the period of time from the commencement of the 13 Week Period in which the date of the transfer occurs to the date of the transfer recorded on the Department’s IT Systems; and
- (b) for the receiving Disability Employment Services – Employment Support Service Provider, based on the period of time from the date of the initial Contact with the Participant by the receiving Disability Employment Services – Employment Support Service Provider to the end of the 13 Week Period in which the date of transfer occurs.

Fees for Changes to the Levels of Ongoing Support

125.25 Where the Level of Ongoing Support for a Disability Employment Services – Employment Support Service Participant is changed in accordance with clause 108 [Changing the Level of Ongoing Support for Disability Employment Services – Employment Support Service Participants], the Department will pay the Provider:

- (a) where applicable, in relation to an instance of Flexible Ongoing Support, a Flexible Ongoing Support Fee in accordance with clauses 125.1 and 125.2; and/or
- (b) where applicable, a pro-rata amount of the:
 - (i) Moderate Ongoing Support Fee in accordance with clauses 125.7 to 125.13; and/or
 - (ii) High Ongoing Support Fee in accordance with clauses 125.16 to 125.22,

for the 13 Week Period in which the date of change occurs.

125.26 The pro-rata amount of the Moderate Ongoing Support Fee and High Ongoing Support Fee payable in accordance with clause 125.25(b) will be calculated based on the period of time the Disability Employment Services – Employment Support Service Participant received the relevant Level of Ongoing Support during the 13 Week Period, as recorded on the Department’s IT Systems.

125.27 The Provider must not:

- (a) claim a Flexible Ongoing Support Fee, a Moderate Ongoing Support Fee or a High Ongoing Support Fee for any period of Ongoing Support in respect of a Participant for any period during which that Participant is in Employment that meets the definition of a Non-Payable Outcome; and
- (b) for the purpose of clause 125.27(a) a Non-Payable Outcome does not include Recurring employment.

126. Job in Jeopardy Fees

Fees payable in relation to a Job in Jeopardy Participant

126.1 For the avoidance of doubt, and subject to clauses 126.2 to 126.9 and clause 128 [Work Based Personal Assistance Fees for Disability Employment Services – Employment Support Service Providers], in relation to a Job in Jeopardy Participant, the Fees payable by the Department to the Provider are limited to:

- (a) Job in Jeopardy Service Fees;
- (b) Job in Jeopardy Outcome Fees; and
- (c) Work Based Personal Assistance Fees.

Note: There are no Ongoing Support Fees payable for Job in Jeopardy Participants because if these Participants are assessed as requiring Ongoing Support by an OSA under clause 103.2, they are no longer classified or referred to as a Job in Jeopardy Participant.

Job in Jeopardy Service Fees

126.2 Subject to this Deed and clauses 126.3 to 126.7, the Department will pay the Provider a Job in Jeopardy Service Fee in relation to a Job in Jeopardy Participant for each of the first two 13 week time periods that the Participant is receiving Job in Jeopardy Assistance, in the amount specified in:

- (a) Table 6 of Annexure B1; or
- (b) Table 6 of Annexure B2,

in column 2 [Fee amount], which applies to the Job in Jeopardy Participant.

126.3 The Department will post and update on the Department’s IT Systems from time to time a list of Job in Jeopardy Participants:

- (a) in relation to whom the Provider is entitled to claim payment of Job in Jeopardy Service Fees in accordance with clauses 126.1 and 126.2; and
- (b) taking account of all relevant current information about the Job in Jeopardy Participants recorded in the Department’s IT Systems from time to time.

126.4 The Provider may claim a Job in Jeopardy Service Fee in relation to a Job in Jeopardy Participant:

- (a) immediately after the Job in Jeopardy Participant has been Commenced; or
- (b) on or after the day on which the Job in Jeopardy Participant's name is first posted on the list referred to in clause 126.3, provided that at the time the Provider submits the claim for payment, the Job in Jeopardy Participant's name is still posted on the list,

and the Department will pay the Job in Jeopardy Service Fee to the Provider after the completion of the fortnight, the start and end of which is determined by the Department at its absolute discretion, in which the Provider submits the claim for payment.

126.5 The Provider must make a claim for payment of a Job in Jeopardy Service Fee in relation to a Job in Jeopardy Participant in accordance with clause 126.4 not later than 28 calendar days after the day on which the requirements of:

- (a) clause 126.4(a); or
- (b) clause 126.4(a),

as applicable, are satisfied, and the Provider:

- (c) renders a Tax Invoice in the Department's IT Systems; and
- (d) the Department accepts the Tax Invoice.

126.6 If a Job in Jeopardy Participant who is receiving Job in Jeopardy Assistance transfers from another Programme Provider to the Provider for any reason, the Department will pay the Provider a pro-rata amount of the Job in Jeopardy Service Fee payable in accordance with clauses 126.1 to 126.5 for the 13 Week Period in which the date of transfer occurs.

126.7 The pro-rata amount payable in accordance with clause 126.6 will be calculated based on the period of time from the date of the initial Contact with the Job in Jeopardy Participant by the Provider to the end of the 13 Week Period in which the date of transfer occurs.

Job in Jeopardy Outcome Fees

126.8 Subject to this Deed, and clause 126.9, the Department will pay the Provider a Job in Jeopardy Outcome Fee in the amount specified in column 2 [Fee amount] in:

- (a) Table 7 of Annexure B1; or
- (b) Table 7 of Annexure B2,

which applies to the Job in Jeopardy Participant, if the Job in Jeopardy Participant achieves a Job in Jeopardy Outcome, and provided that the Anchor Date for the Job in Jeopardy Outcome:

- (c) is entered on the Department's IT Systems in accordance with this Deed and any Guidelines;
- (d) occurs after Commencement,

and:

- (e) the Provider has rendered a Tax Invoice for the Job in Jeopardy Outcome Fee to the Department within 56 calendar days of the Job in Jeopardy Participant achieving the Job in Jeopardy Outcome; and
- (f) the Department accepts the Tax Invoice.

126.9 The Provider must not claim a Job in Jeopardy Outcome Fee under clause 126.8:

- (a) on a pro rata basis in relation to a Job in Jeopardy Outcome;

- (b) for a Job in Jeopardy Outcome which is achieved after a Job in Jeopardy Participant has transferred to another Programme Provider; or
- (c) in respect of a Job in Jeopardy Participant that is a Job in Jeopardy Non-Payable Outcome.

127. Existing High Cost Worker Fees for Disability Employment Services – Employment Support Service Providers

- 127.1 Subject to this Deed, including clauses 127.2 to 127.4, the Department will pay the Disability Employment Services – Employment Support Service Provider an Existing High Cost Worker Fee in relation to an Existing High Cost Worker.
- 127.2 An Existing High Cost Worker Fee is payable if the Disability Employment Services – Employment Support Service Provider is entitled to claim High Ongoing Support Fees in accordance with clauses 125.16 to 125.24, in relation to the Existing High Cost Worker.
- 127.3 The amount of the Existing High Cost Worker Fee payable for the relevant 13 week time period will be the direct cost incurred by the Disability Employment Services – Employment Support Service Provider in providing support to an Existing High Cost Worker, in accordance with any Guidelines, less the combined total of:
- (a) the amount specified in Table 5B of Annexure B2 in column 2 [Fee amount], which corresponds to the High Ongoing Support Fee which applies to the Existing High Cost Worker for that 13 week time period; and
 - (b) any Work Based Personal Assistance Fees payable in relation to the relevant Disability Employment Services – Employment Support Service Participant during that 13 week time period when the Disability Employment Services – Employment Support Service Participant is receiving High Ongoing Support in accordance with this Deed and any Guidelines.
- 127.4 The Disability Employment Services – Employment Support Service Provider may claim an Existing High Cost Worker Fee in relation to a Disability Employment Services – Employment Support Service Participant if the Disability Employment Services – Employment Support Service Provider:
- (a) provides the Department with sufficient Documentary Evidence to support a claim for an Existing High Cost Worker Fee, in accordance with any Guidelines;
 - (b) renders a Tax Invoice in the Department’s IT Systems; and
 - (c) the Department accepts the Tax Invoice.

128. Work Based Personal Assistance Fees for Disability Employment Services – Employment Support Service Providers

- 128.1 Subject to this Deed, including clauses 128.2 to 128.7, and in accordance with any Guidelines, the Department will pay the Disability Employment Services – Employment Support Service Provider a Work Based Personal Assistance Fee in relation to a Disability Employment Services – Employment Support Service Participant, monthly in arrears, at a standard hourly rate in the amount specified in column 2 [Fee amount] in Table 8 of Annexure B2 for Work Based Personal Assistance:
- (a) provided directly by the Disability Employment Services – Employment Support Service Provider; or

- (b) purchased by the Disability Employment Services – Employment Support Service Provider, as applicable to the Disability Employment Services – Employment Support Service Participant.
- 128.2 Work Based Personal Assistance Fees are payable from:
- (a) the date of Commencement of the Disability Employment Services – Employment Support Service Participant, if the Participant is already in Employment, Unsubsidised Self-Employment, an Apprenticeship or Traineeship; or
 - (b) the date on which a Disability Employment Services – Employment Support Service Participant starts Employment, Unsubsidised Self-Employment, an Apprenticeship or Traineeship,
- and will continue to be payable while the relevant Participant is in Employment, Unsubsidised Self-Employment, an Apprenticeship or Traineeship in accordance with any Guidelines, and is receiving Work Based Personal Assistance in the workplace.
- 128.3 The Disability Employment Services – Employment Support Service Provider is entitled to claim a Work Based Personal Assistance Fee for personal assistance purchased for, or provided to, a Disability Employment Services – Employment Support Service Participant, if the Disability Employment Services – Employment Support Service Provider:
- (a) provides or purchases Work Based Personal Assistance in accordance with any Guidelines; and
 - (b) completes a Work Based Personal Assistance requirements form, or the form specified by the Department from time to time.
- 128.4 The Disability Employment Services – Employment Support Service Provider may only claim a Work Based Personal Assistance Fee for Work Based Personal Assistance actually provided or purchased by the Disability Employment Services – Employment Support Service Provider for a Disability Employment Services – Employment Support Service Participant for a maximum of 10 hours per week per Disability Employment Services – Employment Support Service Participant.
- 128.5 The Disability Employment Services – Employment Support Service Provider may claim a Work Based Personal Assistance Fee in relation to a Disability Employment Services – Employment Support Service Participant if the Disability Employment Services – Employment Support Service Provider:
- (a) retains sufficient Documentary Evidence to support a claim for a Work Based Personal Assistance Fee, in accordance with any Guidelines;
 - (b) renders a Tax Invoice in the Department’s IT Systems; and
 - (c) the Department accepts the Tax Invoice.
- 128.6 For the purposes of clause 20 [Evidence to support claims for payment], Documentary Evidence to support a claim for payment of Work Based Personal Assistance includes any invoices relating to Work Based Personal Assistance provided or purchased for a Disability Employment Services – Employment Support Service Participant.
- 128.7 References to a Disability Employment Services – Employment Support Service Participant in this clause 128 include a Work Based Personal Assistance Only Participant.

129. Ancillary Payments

129.1 The Department may pay the Provider Ancillary Payments at the Department's absolute discretion.

129A Moderate Intellectual Disability Loading

129A.1 Subject to this Deed and in accordance with this clause and any Guidelines, the Department will pay the Provider a Moderate Intellectual Disability Loading in relation to each Moderate Intellectual Disability Participant.

129A.2 Moderate Intellectual Disability Loading is payable by the Department:

- (a) in the amount specified:
 - (i) Reserved;
 - (ii) in column 3 of Table 2 or column 3 of Table 2A for Job Placement Fees; and
 - (iii) in column 3 of Table 3 or column 3 of Table 3A for Outcome Fees;
 - (iv) in Annexure B2, as applicable to the Moderate Intellectual Disability Participant;
- (b) for:
 - (i) Reserved;
 - (ii) up to four Job Placements during the Period of Service, where the Moderate Intellectual Disability Participant works a minimum of 15 hours of paid Employment, over no more than 10 Consecutive Working Days after each Job Placement Start Date for that Moderate Intellectual Disability Participant; and
 - (iii) a Full Outcome, where, for the duration of a 13 Week Period or a 26 Week Period, the Moderate Intellectual Disability Participant works a minimum of 195 hours in 13 Consecutive Weeks or 390 hours in 26 Consecutive Weeks; and
- (c) where, in each instance, the Moderate Intellectual Disability Participant also meets the requirements for payment of:
 - (i) Reserved;
 - (ii) a Job Placement Fee, in accordance with clause 122 [Job Placement Fees]; or
 - (iii) a Full Outcome Fee under paragraph (b)(i), (ii) or (iii) of the definition of Full Outcome, in accordance with clause 123 [Outcome Fees],

respectively.

129A.3 The Provider must submit a claim for payment of a Moderate Intellectual Disability Loading in accordance with any Guidelines.

Section 5N Reserved

130. Reserved.

Section 5O Gap Filling

131. Gap filling

131.1 For the purposes of filling gaps in Programme Services, the Department may, with the agreement of the Provider, require the Provider to provide additional Programme Services, on the same terms as specified in this Deed at the times requested by the Department.

Section 5P The Department may reduce Referrals

132. The Department may reduce the number of Referrals to the Provider

132.1 Unless otherwise provided for in this Deed, if there is any form of procurement process after the Deed Commencement Date, for the delivery of part or all of the Programme Services or any other disability employment services, and the Provider:

- (a) does not submit a response to that process;
- (b) refuses an offer to provide further services;
- (c) is not successful in obtaining a further contract;
- (d) is successful in obtaining a subsequent contract from any future procurement process, but the subsequent contract:
 - (i) does not require the Provider to provide the Programme Services, or services similar to the Programme Services, at any, or all, of the Sites, at which it is contracted to deliver Programme Services under this Deed; or
 - (ii) assigns a reduced ESA Business Share in relation to the ESAs, or a reduced number of Referrals in relation to the Sites, for which the Provider is contracted to deliver Programme Services under this Deed; or
- (e) a combination of (d)(i) and (ii) applies,

The Department may in its absolute discretion cease or reduce the number of Referrals of Participants to the Provider from the date of the announcement of the allocation of contracts or business to new providers of disability employment or similar services, or earlier if both Parties agree.

Section 5Q Assessment and management of Programme Service Provider's performance

133. Performance assessments

133.1 The Department will monitor, measure and evaluate the Provider's performance in accordance with clause 29 [Evaluation Activities] and this clause 133 [Performance assessments].

Key Performance Indicators

133.2 The Key Performance Indicators are as follows:

- (a) KPI 1: There is no direct performance measure(s) for this indicator.

- (i) KPI 1 objective: To minimise the average time taken by Providers to achieve employment outcomes for their Participants.
- (ii) KPI 1 measurement: Efficiency is implicitly captured by the existing effectiveness (KPI 2) performance measures and the regression methodology.
- (b) KPI 2: The proportions of relevant Participants for whom Job Placements, Outcomes and 52 Week Sustainability Indicators are achieved and the proportion of Participants who are receiving Ongoing Support who remain in Employment.
 - (i) KPI 2 objective: To maximise Job Placements, Outcomes, 52 Week Sustainability Indicators and the maintenance of Employment for relevant Participants.
 - (ii) KPI 2 measurement: the Department will assess the Provider's performance, in accordance with any relevant Guidelines, through the number of:
 - (A) Job Placements and Outcomes achieved for relevant Participants;
 - (B) 52 Week Sustainability Indicators achieved for relevant Participants; and
 - (C) Participants who remain in Ongoing Support or Exit Ongoing Support as Independent Workers.
- (c) KPI 3: The delivery of quality Services under this Deed, the Service Guarantee and the Code of Practice.
 - (i) KPI 3 objective: To maximise the delivery of high quality, individualised Employment Services.
 - (ii) KPI 3 measurement: Conformity with the National Standards for Disability Services under the Act. The Department will assess the Provider's performance under this Deed, the Service Guarantee and the Code of Practice through various measures including feedback from Employers and Participants. The Department will also take account of whether the Provider is part of an accredited system of quality assurance or adopts a business excellence framework.

Other factors in performance assessment

133.3 When assessing the Provider's performance, the Department may also take into account other factors including but not limited to:

- (a) the Provider's performance in connecting Participants to appropriate skills opportunities;
- (b) the Provider's performance in assisting particular disadvantaged client groups, such as Aboriginal and Torres Strait Islander peoples;
- (c) the Provider's performance in relation to the building of linkages with Employers to understand and meet the skills needs of the local labour market;
- (d) the Provider's performance in developing and monitoring Job Plans;
- (e) the proportion of Outcomes in which a Participant undertakes an employment related activity which give rise to Outcome Fees, but that do not result in ongoing Employment after the completion of either the 13 Week Period or 26 Week Period;
- (f) the Provider's performance against any performance indicators;
- (g) the timely servicing of Participants;

- (h) the number and value of any invalid claims made by the Provider;
- (i) the Provider's compliance with this Deed; and
- (j) any other information in the Department's possession, including Provider feedback.

Informal performance assessments

133.4 Every six months during the Term of this Deed, the Department:

- (a) will review the Provider's performance in each Employment Service Area and at each Site where the Provider delivers Programme Services; and
- (b) may subsequently provide feedback to the Provider on the Department's assessment of its performance, including if the Department considers that the Provider's performance is such that it is likely to be in scope for an adjustment of its ESA Business Share under clause 133.5 or 133.6.

Formal performance assessments and business reallocation

133.5 The Department will undertake formal performance assessments of the Provider:

- (a) for Disability Employment Services – Disability Management Service, at such times as the Department determines; and
- (b) for Disability Employment Services – Employment Support Service:
 - (i) on or about 1 April 2015 and 1 October 2016; and
 - (ii) at such other times as the Department determines,

following which the Department may, without limitation of any of the Department's rights under this Deed or at law, take action in accordance with clause 134 [Action following formal performance assessment], depending on the Provider's assessed performance.

133.6 For the avoidance of doubt, if the Department and the Provider agree to Extended Service Periods under clause 5.1 of this Deed, clause 133.5 applies to each Extended Service Period as if the Extended Service Period were a separate Term of this Deed.

Note: Providers are advised that the Department may also take performance into account in any purchasing decisions after the Deed Commencement Date, including without limitation any decision to extend this Deed.

134. Action following formal performance assessment

134.1 If, at the completion of a formal performance assessment under clause 133.5 or 133.6, the Department considers the performance of the Provider at the Employment Service Area level warrants it, the Department may, with the agreement of the Provider, increase the Provider's ESA Business Share for a period of time specified by the Department.

134.2 Without limiting the Department's rights under this Deed, under statute, at law or in equity, if, at the completion of a formal performance assessment under clause 133.5 or 133.6, the Department considers that the performance of the Provider at the Employment Service Area level is less than satisfactory, the Department may, at its absolute discretion, immediately take action in accordance with this clause 134.

Performance Ratings

- 134.3 Despite any other provision of this Deed, if at the completion of a formal performance assessment under clause 133.5 or 133.6, the Provider's Performance Rating:
- (a) for an ESA is:
 - (i) in the lowest two ratings bands; or
 - (ii) two ratings bands or more lower than any other Programme Provider's rating in the ESA; or
 - (b) for a Site is:
 - (i) in the lowest two ratings bands; or
 - (ii) two ratings bands or more lower than any other Programme Provider's rating for a particular Site in that ESA,

the Department may, at its absolute discretion, and without limitation of any of the Department's rights under this Deed or at law:

- (c) for an ESA referred to at clause 134.3(a), decrease the Provider's ESA Business Share in that ESA; and
- (d) for a Site referred to at clause 134.3(b):
 - (i) Notify the Provider that the Provider must discontinue providing the Services at the Site; and
 - (ii) cease all Referrals to that Site from the date of the Notice,

and if the Department takes the action in clause 134.3(d)(i), the Provider must immediately discontinue providing the Services at the Site in accordance with the relevant Notice and provide the Department with the assistance and cooperation in clauses 59.2 and 59.6 to ensure that Participants affected by the discontinuation of the Provider's Services at that Site are transferred to other Programme Providers or another Site of the Provider as directed by the Department.

- 134.4 The Department may, at its absolute discretion, publish the Provider's Performance Ratings.

Reductions in ESA Business Share

- 134.5 References in this clause 134 to decreasing the Provider's ESA Business Share in an ESA include decreasing the ESA Business Share in the ESA to zero.
- 134.6 If, in accordance with this clause 134, the Department decreases the Provider's ESA Business Share in an ESA to zero, the Department may Notify the Provider that the Provider must discontinue providing the Programme Services in the ESA from the date specified by the Department.
- 134.7 If the Department Notifies the Provider to discontinue providing Programme Services in accordance with clause 134.6, the Provider must discontinue providing the Programme Services in the ESA in accordance with the Notice and provide the Department with the assistance and cooperation in clauses 59.6 and 59.7 to ensure that Participants affected by the discontinuation of the Provider's Programme Services in that ESA are transferred to other Programme Providers as specified by the Department.

134.8 For the avoidance of doubt, any decrease of ESA Business Share under this clause 134 is not a reduction of scope or termination for which compensation is payable.

Good faith and proportionality

134.9 The Department will exercise its rights under this clause 134 reasonably and in good faith, taking into account the relevant performance.

Variation

134.10 If the Department takes any action under this clause 134:

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

Notice

134.11 If the Department takes any action under this clause 134, the Department will Notify the Provider of:

- (a) the reasons for the action;
- (b) the duration of the action; and
- (c) any corresponding variation to this Deed.

134.12 This clause 134 is without prejudice to any other right which the Commonwealth has or which may accrue to the Commonwealth.

Section 5R Other Programme Services matters

135. Service Level Agreements and other agreements

135.1 The Provider must work in conjunction with:

- (a) reserved;
- (b) IEP providers;
- (c) Employers; and
- (d) community service organisations,
- (e) to maximise employment of Aboriginal and Torres Strait Islander peoples in local jobs.

135.2 Reserved.

135.3 The Provider may enter into agreements with IEP providers in locations where they are both operating for the purpose of maximising employment outcomes for Aboriginal and Torres Strait Islander peoples in relation to specific IEP projects.

136. Complaints Resolution and Referral Service

136.1 In addition to the requirements under clauses 30 [Customer feedback process] to 32 [Customer feedback register], the Provider must actively assist with the CRRS to resolve Complaints, including by:

- (a) providing any information relevant to the Complaint (including the Provider's Customer feedback process and information from the Customer Feedback Register) to the CRRS;
- (b) allowing the CRRS to access the Provider's Sites to inspect relevant Records; and

- (c) not preventing Participants or persons engaged or employed by the Provider from being interviewed by the CRRS.

137. Liquidated damages

137.1 Notwithstanding any other rights available to the Department under this Deed, under statute, at law, or in equity, if, after the Deed Commencement Date, the Provider:

- (a) ceases to deliver Services at a Site, or notifies the Department that it is not willing or able to deliver the Services at a Site, and the Provider has not either:
 - (i) obtained the consent of the Department for the cessation of the Services at the Site (such consent must not be unreasonably withheld by the Department); or
 - (ii) secured an alternative Programme Provider, acceptable to the Department, to provide the Services at the relevant Site from the date on which the Provider ceases, or will cease, to deliver the Services; or
- (b) submits in excess of 100 invalid claims under this Deed, as determined by the Department, which are identified in any one Compliance Review,

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

- (c) where clause 137.1(a) applies, \$25,000 per select tender and \$50,000 per open tender, used to secure an alternative Programme Provider acceptable to the Department; and
- (d) where clause 137.1(b) applies, \$5,000, and a further \$5,000 for each 100 invalid claims, in excess of the first 100 invalid claims, identified per Compliance Review.

137.2 For the avoidance of doubt:

- (a) clause 137.1(a) does not apply where the Department reallocates business at the relevant Site(s) without going to tender; and
- (b) clause 137.1(b) does not apply where the Provider self identifies invalid claims through its internal compliance practices and Notifies the Department of those invalid claims.

137.3 Where clause 137.1(a) or 137.1(b) applies, the Parties agree that all relevant loss and damage will, having regard to the governmental and non-commercial nature of the Services and their significance to the Commonwealth's provision of Programme Services, be impossible, complex or expensive to quantify accurately in financial terms, and therefore the Parties agree that the Liquidated Damages are a reasonable and genuine pre-estimate of the loss incurred by the Commonwealth in relation to:

- (a) in the case of clause 137.1(a), identifying, selecting and entering into contractual relations with an alternative Programme Provider to provide services at the relevant Site(s), and transferring Participants, records, monies and relevant materials to the alternative Programme Provider; and
- (b) in the case of clause 137.1(b), administrative costs in processing and resolving invalid claims.

137.4 For the avoidance of doubt, the Liquidated Damages will become a debt due to the Commonwealth for the purposes of clause 24 [Debts and offsetting], if and when the Commonwealth Notifies the Provider that it elects to recover the Liquidated Damages as a debt under clause 24 [Debts and offsetting].

Section 5S New Enterprise Incentive Scheme

137A. New Enterprise Incentive Scheme

137A.1 Where the Provider and a Participant who has been identified as eligible for NEIS on the Department's IT Systems have agreed that it may be appropriate for the Participant to receive NEIS Services, the Provider must:

- (a) advise the Participant of the matters which they must satisfy before they can receive NEIS Services, as specified in any Guidelines or any guidelines issued by the Department of Employment;
- (b) subject to clause 137A.2, refer the Participant to a NEIS Provider in the ESA in which the Participant proposes to conduct his or her NEIS Business;
- (c) where the Participant is assessed as NEIS Eligible by the relevant NEIS Provider, comply with any record keeping requirements specified in any Guidelines; and
- (d) where the Participant is assessed by the relevant NEIS Provider as:
 - (i) not being NEIS Eligible;
 - (ii) being NEIS Eligible, but not having a NEIS Business Plan that meets the NEIS Business Eligibility Criteria; or
 - (iii) continuously failing to attend NEIS Training and therefore no longer able to participate in NEIS Training,

and is referred back to the Provider, immediately provide the Participant with alternative Services in accordance with this Deed.

137A.2 Where the Provider is a NEIS Provider in the ESA in which the Participant proposes to conduct his or her NEIS Business, the Provider may choose to provide the relevant NEIS Services itself or refer the Participant to another NEIS Provider in the relevant ESA in accordance with clause 137A.1(b).

CHAPTER 6 RESERVED

CHAPTER 7 RESERVED

ANNEXURE A DEFINITIONS

'10 Consecutive Working Days' means a period which:

- (a) commences on the Job Placement Start Date; and
- (b) consists of the Job Placement Start Date and the Participant's next 9 days of paid Employment within the 13 calendar days immediately following the Job Placement Start Date.

'13 Week Period' means a period of:

- (a) 13 Consecutive Weeks from the Anchor Date for an employment related activity which satisfies the requirements for an Outcome; or
- (b) one Semester starting on the Anchor Date for an education or training related activity which satisfies the requirements for an Outcome,

and which period does not overlap with any other 13 Week Period.

'26 Week Period' means a period of:

- (a) 13 Consecutive Weeks for an employment related activity which satisfies the requirements for an Outcome; or
- (b) one Semester for an education or training related activity which satisfies the requirements for an Outcome,

and which period:

- (c) immediately follows the completion of a 13 Week Period; and
- (d) does not overlap with any other 13 Week Period or 26 Week Period.

'26 Week Employment Outcome' means:

- (a) a Full Outcome for a 26 Week Period as specified in paragraphs (a), (b) and (c) (ii) of the definition of Full Outcome; or
- (b) a Pathway Outcome for a 26 Week Period as specified in paragraph (a) of the definition of Pathway Outcome.

'52 Week Sustainability Indicator' means a Participant that is in Employment 52 calendar weeks after Anchor, as determined by the Department.

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

'Aboriginal or Torres Strait Islander person' means 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, and

'Aboriginal and Torres Strait Islander peoples' has an equivalent meaning where reference is to more than one person.

'Abstudy' has the meaning given to the term 'ABSTUDY' under the ABSTUDY Scheme administered by the Department.

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

'Act' means the *Disability Services Act 1986* (Cth).

'Activity' means an activity approved by the Department and specified in any Guidelines.

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

'AMEP' means the Adult Migrant English Programme administered by the Commonwealth Department of Industry (or such other government agency or department administering that programme from time to time).

'Anchor Date' means:

- (a) the first day of the Semester on which a Participant starts an education or training related activity which, when completed, satisfies an Outcome and which day is recorded on the Department's IT Systems in accordance with this Deed; or
- (b) the day recorded on the Department's IT Systems in accordance with this Deed, and any Guidelines, on which:
 - (i) a Participant started an Employment Outcome; or
 - (ii) a Job in Jeopardy Participant started a Job in Jeopardy Outcome.

'Ancillary Payment' means a payment, in addition to the Fees, which the Department may at its discretion pay the Provider subject to the Provider satisfying the conditions of any Guidelines relating to the Ancillary Payment.

'Annexure' means any annexure to this Deed.

'Appointment' means a time for a meeting between the Provider and a Participant in accordance with clause 87 [Appointments with Participants].

'Apprenticeship' means a course combining formal and on the job training and paid work undertaken by a Participant (a trainee or an apprentice):

- (a) under an industrial instrument, which must:
 - (i) be covered by a registered validated training agreement (through the relevant training authority in the state or territory);
 - (ii) involve paid work and structured training; and
 - (iii) lead to a nationally recognised qualification; or
- (b) as described in any Guidelines.

'Approved Assistance' means the assistance for which the Approved Assistance Amount may be expended.

'Approved Assistance Amount' means the amount approved by the JobAccess Provider for expenditure under the Employment Assistance Fund.

'Assessment' means a formal assessment of a Participant's level of disadvantage by:

- (a) a Provider, for the purpose of clauses 99 [Programme Review] and 103 [Entry into Ongoing Support], and including the specification of the Programme Services for which a Special Class Client, Eligible School Leaver or Job in Jeopardy Participant is eligible;
- (b) DHS Assessment Services, through an ESAt or JCA; or
- (c) an Ongoing Support Assessor, through an OSA,

and includes specification of the Programme Services for which the Participant is eligible.

'Auditor-General' means the office established under the *Auditor-General Act 1997* (Cth) and includes any other entity that may, from time to time, perform the functions of that office.

'Australian Disability Enterprises' means a Department funded network of business service outlets across Australia which provide supported employment assistance to people with moderate to severe disability who need substantial ongoing support to maintain their employment.

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

'Australian Government Skills for Education and Employment Programme' means the programme of that name (or as changed from time to time) that aims to improve Participants' language, literacy and/or numeracy skills, to enable them to participate more effectively in training or in the labour force.

'Australian JobSearch' means the Australian JobSearch database that is owned and maintained by the Department of Employment, and accessible via the internet.

'Austudy' has the meaning given to the term 'austudy payment' by the *Social Security Act 1991* (Cth).

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

'Bonus' means an additional Fee that is payable to the Provider once in each 13 Week Period and 26 Week Period if the Participant achieves:

(a) a Full Outcome; or

(b) a Pathway Outcome,

by undertaking:

(c) an Apprenticeship in accordance with the requirements set out in any Guidelines; or

(d) paid Employment which is Directly Related Employment and the Provider has recorded on the Department's IT Systems any information required to be recorded, as specified in any Guidelines.

'Break in Employment' means where a Participant:

(a) loses their Employment as a result of redundancy or other job loss circumstances as specified by the Department in any Guidelines; and

(b) subsequently commences in alternative Employment,

and the relevant break or breaks (if applicable) do not exceed 20 Business Days in total in a:

(c) 13 Week Period; or

(d) 26 Week Period.

'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.

'Capital City' means an Australian capital city, with boundaries as specified in any Guidelines.

'Certificate of Compliance' means a certificate issued by a Certification Body in accordance with the Act which certifies the Provider's compliance with the National Standards for Disability Services.

'Certification Body' has the meaning given in the Guidelines.

'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) the change in any of the partners; or
 - (iii) the retirement, death, removal or resignation of any of the partners;
- (d) in relation to an Exempt Public Authority, a change in relation to any of the following:
 - (i) the composition of the board of Directors;
 - (ii) ownership of any shareholding in any share capital; or
 - (iii) the enabling legislation so far as it affects Control, if any;
- (e) in relation to a Tendering Group:
 - (i) any change in the membership of the Tendering Group;
 - (ii) a change of the lead member of the Tendering Group, if the Tendering Group has appointed a lead member for the purposes of this Deed; or
 - (iii) a Change in Control as defined in paragraphs (a) to (d) above in any member of the Tendering Group.

'Change in Employment' means where a Participant in either Post Placement Support or Ongoing Support voluntarily ceases Employment and subsequently commences in alternative Employment in accordance with any Guidelines, and the alternative Employment commences within:

- (a) five Business Days of ceasing Employment; or
- (b) a longer period from the date of ceasing Employment, where this is in accordance with any Guidelines.

'Change of Circumstances Reassessment' means a formal reassessment of the level of disadvantage of a Participant which is conducted in accordance with clause 102 [Change of Circumstances Reassessment during Period of Service] and clause 110 [Change of Circumstances Reassessment during Ongoing Support]:

- (a) by DHS Assessment Services through an ESAt; or
- (b) by an Ongoing Support Assessor through an OSA,

and includes specification of the Programme Services for which the Participant is eligible.

'Charter of Contract Management' means the charter which embodies the commitment by the Department to work cooperatively with Programme Providers in achieving shared goals and outcomes in the delivery of the Services.

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

'Claims Processing Training' means the online training provided by the Department for Providers in relation to the processing of claims for payment.

'Code of Practice' means the Employment Services Code of Practice at Annexure C1.

'Commence' or **'Commencement'** means the time at which the Provider has recorded the completion of the Initial Interview on the Department's IT Systems.

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

'Commonwealth Coat of Arms' means the Commonwealth Coat of Arms as set out at *It's an Honour – Commonwealth Coat of Arms* available at www.itsanhonour.gov.au/coat-arms/index.cfm.

'Commonwealth Cybersafety Policy' means the policy set out in clauses 35.16 to 35.20 inclusive.

'Commonwealth Material' means any Material provided by the Department to the Provider for the purposes of this Deed and Material which is copied or derived from Material so provided, and includes Commonwealth Records.

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

'Community Jobs Programmes' or **'CJP'** means:

- (a) the Community Job Plan-Work Placements programme administered by the Queensland Department of Education, Training and Employment (or such other government agency or department administering that programme from time to time); or
- (b) the Workforce Participation Partnerships programme administered by the Victorian Department of State Development, Business and Innovation (or such other government agency or department administering that programme from time to time).

'Compensation' has the same meaning as in section 23 of the Act.

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

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

'Complaints Resolution and Referral Service' or **'CRRS'** means a service by that name available to Participants and potential Participants, available directly or through the National Customer Service Line.

'Complementary Service' means an employment or training programme:

- (a) administered by the Commonwealth, including the Department, (but not including Disability Employment Services – Disability Management Service or Disability Employment Services – Employment Support Service provided under this Deed); or
- (b) provided by a state or territory government (including by state or territory government funded providers),

as advised by the Department from time to time, which the Provider may access to provide additional or alternative specialised assistance to a Participant.

'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.

'Compliance Activities' means an activity or combination of activities which a Participant may undertake at the Participant's assessed work capacity and in accordance with any Guidelines, which may include any one or more of the following:

- (a) skills training;
- (b) activities intended to address Vocational Barriers and Non-vocational Barriers;
- (c) work experience activities;
- (d) work in a social or community enterprise;
- (e) participation in the Australian Government Skills for Education and Employment Programme or AMEP (where the Participant has registered, and is eligible, for AMEP); or
- (f) training in job search techniques.

'Compliance Review' means a review of claims for payment submitted by the Provider undertaken by the Department from time to time.

'Comprehensive Compliance Assessment' means an assessment conducted by DHS to determine whether:

- (a) a penalty should be applied to a Participant (Mutual Obligation) who wilfully and persistently fails to meet their obligations under their Job Plan; or
- (b) the Participant (Mutual Obligation) requires additional assistance in order to comply.

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

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

'Connections for Quality Indicator' means an indicator, specified as such in any Guidelines, that demonstrates linkages to wrap around servicing, engagement with Employers and services offered to Participants, particularly those with multiple disadvantages.

'Consecutive Weeks' means a continuous period of weeks broken only by:

- (a) one or more Permissible Breaks;
- (b) one or more Changes in Employment; or
- (c) one or more Break in Employment.

'Constitution' means (depending on the context):

- (a) a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution; or

(b) in relation to any other kind of body:

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

'Contact' means a contact between the Provider and a Participant in accordance with clause 89 [Contact services].

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

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

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

'Cost' has the same meaning as in section 23 of the Act.

'Current Assessment' means at any time, the Assessment, whether completed by DHS Assessment Services through an ESAt or a JCA, or by an Ongoing Support Assessor through an OSA, that specifies the Programme Services for which the Participant is eligible at that time.

Note: If an OSA is the Current Assessment, it will not invalidate the most recent ESAt or JCA.

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

'Customer Feedback Register' means the list of Customer feedback kept by each Provider, and includes, for the purposes of Chapter 5, the list kept for each Site.

'Cybersafety Policy' means the Commonwealth policy of that name as specified at clauses 35.16 to 35.20.

'Deed' means this document, as varied or extended by the Parties from time to time in accordance with this Deed, and includes the Particulars, all Annexures, the Schedule and other documents incorporated by reference, including any Guidelines, but excluding any attachments.

'Deed Commencement Date' means the later of:

- (a) 1 July 2012;
- (b) for Providers that enter into this Deed as a result of the Request for Tender for the Disability Employment Services – Disability Management Services 2015-2018, 2 March 2015; or
- (c) the date on which this Deed is signed by the Department.

'Deed Material' means all Material:

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

(d) includes all Reports.

'Definitions' means the list of definitions in this Annexure A.

'Delegate' means a person engaged by the Provider who is a Delegate of the Secretary under the Social Security Law, and in all other cases, means the Provider.

'Department' means the Commonwealth Department of Social Services 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 of Social Services and:

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

'Department's IT Systems' means the IT computer system accessible by a Provider, through which information is exchanged between the Provider, Subcontractors, DHS, DHS Assessment Services, Ongoing Support Assessors and the Department in relation to the Services.

'Department of Employment' means the Commonwealth Department of Employment and, where the context so admits, includes the Commonwealth's relevant officers, delegates, employees and agents.

'Department of Human Services' or **'DHS'** means the Commonwealth Department of Human Services and, where the context so admits, includes the Commonwealth's relevant officers, delegates, employees and agents.

'Department's Security Policies' means policies relating to the use and security of the Department's IT Systems and Records, and includes the policy by the name of the *Department of Employment Security Policy for External Service Providers and Users* and any other security policies Notified by the Department from time to time. Relevant policies are available on the Department's IT Systems through the following path: Provider Portal > Employment Provider Services > Provider Operations > IT Security & Access, or at such other location as advised by the Department from time to time.

'Dependent Child' means a person who meets the eligibility requirements for a dependent child of a RATUJ Participant as specified in any Guidelines, and **'Dependent Children'** has an equivalent meaning.

'DHS Assessment Services' means Assessment services provided by the Department of Human Services.

'Direct Registration' or **'Directly Register'** means Registration by the Provider of a Participant, who does not have a Referral, in accordance with clause 83 [Direct Registration of Participants without a Referral] and any Guidelines.

'Directly Related Employment' means an employment activity where the employment activity is undertaken and is preceded by a Qualifying Training Course which is in a field of study that is directly related to the employment activity as specified in any Guidelines.

'Director' means any of the following:

- (a) a person appointed to the position of a director or alternate director, and acting in that capacity, of a body corporate within the meaning of the *Corporations Act 2001* (Cth) regardless of the name given to their position;
- (b) a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (c) a member of the committee of an organisation incorporated pursuant to state or territory laws relating to the incorporation of associations;

- (d) a person who would be a director of the body corporate under paragraph (a) above if the body corporate were a body corporate within the meaning of the *Corporations Act 2001* (Cth);
- (e) a person who acts in the position of a director of a body corporate;
- (f) a person whose instructions or wishes the directors of a body corporate are accustomed to acting upon, and not simply because of the person's professional capacity or business relationship with the directors or the body corporate; and
- (g) a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate.

'Disability Employment Services' means Disability Employment Services – Disability Management Service, Disability Employment Services – Employment Support Service, JobAccess Services and NDRC Services delivered in accordance with the Disability Employment Services Deed; and the assessment services delivered in accordance with the Disability Employment National Panel of Assessors Deed of Standing Offer.

'Disability Employment Services – Disability Management Service' means the Disability Employment Services programme by that name administered by the Department.

'Disability Employment Services – Employment Support Service' means the Disability Employment Services programme by that name administered by the Department.

'Disability Employment Services – Disability Management Service Participant' means a person who meets the eligibility requirements for a Disability Employment Services – Disability Management Service Participant, in accordance with any Guidelines.

'Disability Employment Services – Employment Support Service Participant' means a person who meets the eligibility requirements for a Disability Employment Services – Employment Support Service Participant, in accordance with any Guidelines.

'Disability Employment Strategy' means a strategy implemented by the Provider designed to attract, develop and maintain employees with disability within the Provider's own organisation.

'Disability Maintenance Instrument' or **'DMI'** has the same meaning as in Part B of the Employment Services Funding Deed 2006-2009.

'Disability Pre-employment Instrument' or **'DPI'** has the same meaning as in Part B of the Employment Services Funding Deed 2006-2009.

'Disability Services Guidelines' means the *Disability Services (Rehabilitation Services) Guidelines 2007* (Cth) for Providers providing Disability Employment Services – Disability Management Service and the *Disability Services (Administration of Part II of the Act) Guidelines 2013* (Cth) for Providers providing Disability Employment Services – Employment Support Service, made under section 5(1) of the Act.

'Disability Support Pension' has the meaning given to that term by the *Social Security Act 1991* (Cth).

'Disability Support Pension Recipient (Compulsory Requirements)' means a Participant who is in receipt of the Disability Support Pension, and has compulsory requirements.

'Documentary Evidence' means those Records of the Provider, as specified in this Deed including any Guidelines, which evidence that Services were provided by the Provider for each claim for payment made under this Deed, or which otherwise support a claim for payment by the Provider.

'Early School Leaver' means a person who falls within the meaning given to the term 'early school leaver' by the *Social Security Act 1991* (Cth) and who has early school leaver participation requirements under the Social Security Law.

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

‘Education Placement’ means placement in Education that would, or could, lead to an Education Outcome.

‘Education Outcome’ means the Outcomes specified in paragraphs (b) and (c) of the Definition of Pathway Outcome and paragraphs (c)(i), (e) and (g) of the Definition of Full Outcome.

‘Effective Exit’ means the automatic removal of a Participant from the Department’s IT Systems as being eligible for Programme Services when the Participant:

- (a) is commenced in employment services or equivalent other than Programme Services;
- (aa) is commenced in Australian Disability Enterprises prior to midnight on 31 December 2015;
- (b) for a 26 Week Period, satisfies paragraphs (c)(i), (e) and (g) in the definition of Full Outcome;
- (c) in Ongoing Support has not received any Ongoing Support:
 - (i) between a 26 Week Employment Outcome and 52 weeks from the Anchor Date for that 26 Week Employment Outcome; or
 - (ii) for 52 weeks from the date of the last Ongoing Support Assessment;
- (d) has completed his or her Extended Employment Assistance but has not achieved an Outcome; or
- (e) participates in an activity or an event that occurs in relation to the Participant that the Department may advise the Provider from time to time as being an Effective Exit.

‘Electronic Diary’ means the component of the Department’s IT Systems used for Referrals, for making and managing a Participant’s Appointments and for referrals by the Provider to other relevant service providers.

‘Eligible School Leaver’ means a Participant who Directly Registers with the Provider and who is seeking to transition from:

- (a) secondary school to post school employment; or
- (b) an Australian state or territory government disability transition to work programme to employment; and has evidence that they:
- (c) attract additional educational funding due to their disability; or
- (d) are receiving Disability Support Pension,

in accordance with any Guidelines.

‘Eligible Worker (Capped)’ has the same meaning as in Part B of the Employment Services Funding Deed 2006-2009.

‘Employer’ means an entity that has the legal capacity to enter into a contract of employment with a Participant.

‘Employment’ or **‘Employed’** means the status of a person who is in paid work that is Open Employment, as specified in any Guidelines, under a contract of employment or who is otherwise deemed to be an employee under relevant Australian legislation.

‘Employment Assistance’ means the Programme Services a Participant (other than a Job in Jeopardy Participant) receives from Commencement until the Programme Review, Ongoing Support or Exit, whichever occurs first but does not include any time that the Participant is receiving Post Placement Support or is Suspended.

‘Employment Assistance Fund’ or **‘EAF’** means the Australian Government’s initiative which provides financial assistance for the costs of work related modifications and the work equipment for people with disability.

'Employment Benchmark' means the number of hours, on average, that a Participant (other than a Job in Jeopardy Participant) must work each week to achieve a Full Outcome, as identified on the Department's IT Systems.

'Employment Outcome' means the Outcomes specified in:

- (a) paragraph (a) of the definition of Pathway Outcome; and
- (b) paragraphs (a), (b), (c)(ii), (f) and (h) of the definition of Full Outcome.

'Employment Service Area' or **'ESA'** means a geographical area, within a Labour Market Region, identified and displayed at <http://lmip.gov.au/default.aspx> as varied by the Department from time to time at the Department's absolute discretion.

'Employment Service Provider' means a provider under any employment services deed with the Department of Employment.

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

'Employment Services Tip Off Line' means the telephone (1300 874 536) and email service (estipoffs@employment.gov.au), developed primarily for current and former employees or 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, and which allows those persons to report their concerns to the Department.

'Employment Systems Help Desk' means the Department of Employment's centralised point of IT support for Programme Providers in relation to the Department's IT Systems, including the Employment Services System and Employment and Community Services Network.

'ESA Business Share' means, in relation to a Programme Service, the proportion of all Participants referred within an ESA who may be Referred to the Provider, as specified in the Schedule.

Note: A Provider may have more than one ESA Business Share in an ESA depending on the Services provided in that ESA, for example, whether the Provider is a Generalist Service Provider and/or Specialist Service Provider, providing Disability Employment Services – Disability Management Service and/or Disability Employment Services – Employment Support Service.

'ESA Coverage' means an area which a Provider agrees to service within a specific ESA.

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

'Exemption' means circumstances recorded by DHS, resulting in an exemption by DHS of a Participant's Mutual Obligation Requirements for a specified period of time.

'Existing High Cost Worker' means a person who:

- (a) on 28 February 2010:
 - (i) was an Eligible Worker (Capped) under Part B of the Employment Services Funding Deed 2006-2009; and
 - (ii) in relation to that Eligible Worker (Capped), the provider of services under Part B of the Employment Services Funding Deed 2006-2009 was entitled to claim an Existing High Cost Worker Fee,

and

- (b) as at 1 March 2010, transitions directly to that same provider as a Funding Level 2 Disability Employment Services – Employment Support Service Participant under this Deed.

'Existing High Cost Worker Fee' means the Fee payable in accordance with clause 127 [Existing High Cost Worker Fees for Disability Employment Services – Employment Support Service Providers] and any Guidelines.

'Existing Material' means all Material, except Commonwealth Material, in existence prior to the Deed Commencement Date:

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

'Exit' means an exit of a Participant from Programme Services in accordance with clause 117 [Exits].

'Extended Employment Assistance' means the Programme Services a Participant (other than a Job in Jeopardy Participant) may receive for a period of up to 26 weeks after Employment Assistance, which period ends when the Participant starts Ongoing Support, or Exits, whichever occurs first.

'Extended Service Periods' means one or more periods of time from the end of the Service Period.

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

'Financial Quarter' means any one of the following:

- (a) 1 July to 30 September;
- (b) 1 October to 31 December;
- (c) 1 January to 31 March; or
- (d) 1 April to 30 June.

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

'Flexible Ongoing Support' is a Level of Ongoing Support and means the provision of Programme Services to a Disability Employment Services – Disability Management Service Participant or a Disability Employment Services – Employment Support Service Participant to maintain that Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with any Guidelines.

'Flexible Ongoing Support Fee' means the Fee payable in accordance with clause 125.2 and Table 5 in Annexure B1 and Table 5 in Annexure B2.

'Full Outcome' means for the duration of a 13 Week Period or a 26 Week Period:

- (a) a Participant remains each fortnight in Employment or Unsubsidised Self-Employment or an Apprenticeship or Traineeship that generates sufficient income to have caused the Participant's Basic Rate of any Income Support Payment to cease; or
- (b) a Participant remains each week in Employment or Unsubsidised Self-Employment or an Apprenticeship or a Traineeship and, after Commencement:
 - (i) works a minimum of 104 hours in 13 Consecutive Weeks or 208 hours in 26 Consecutive Weeks where that Participant has an 8 Hour Employment Benchmark;
 - (ii) works a minimum of 195 hours in 13 Consecutive Weeks or 390 hours in 26 Consecutive Weeks where that Participant has a 15 Hour Employment Benchmark;
 - (iii) from 1 January 2016, works a minimum of 299 hours in 13 Consecutive Weeks or 598 hours in 26 Consecutive Weeks where that Participant has a 23 Hour Employment Benchmark; or

- (iv) works a minimum of 390 hours in 13 Consecutive Weeks or 780 hours in 26 Consecutive Weeks where that Participant has a 30 Hour Employment Benchmark;
- (c) a Participant who has not completed year 12 or equivalent and who is either 15 to 21 years of age or is an Aboriginal and Torres Strait Islander person and completes one Semester of a single qualification course of two or more Semesters duration:
 - (i) transfers to Youth Allowance (Student), Abstudy or Austudy or where the Participant does not transfer to Youth Allowance (Student), Abstudy or Austudy, meets the requirements of a Qualifying Education Course; or
 - (ii) on a part-time basis (as defined by the training institution) during which time a Participant remains each week in Employment (or Unsubsidised Self-Employment or an Apprenticeship or a Traineeship):
 - (A) for an average of at least 8 hours each week averaged over the Semester; or
 - (B) that would satisfy items (a)(i) or (a)(ii) of the definition of Pathway Outcome;
 whichever is the greater; or
- (d) any other event that the Department may notify the Provider from time to time as being a Full Outcome;
- (e) a Participant who is in receipt of Parenting Payment, Newstart Allowance, Youth Allowance (other) or Special Benefit and who is identified and recorded on the Department's IT Systems as a Principal Carer with part-time participation requirements completes one Semester of a course that satisfies the requirements of paragraphs (a) and (b) of the definition of Qualifying Education Course and undertakes study of not less than 30 hours in each fortnight (counting any contact and any non-contact hours of study);
- (f) a Participant who is in receipt of Parenting Payment, Newstart Allowance, Youth Allowance (other) or Special Benefit and who is identified and recorded on the Department's IT Systems as a Principal Carer with part-time participation requirements:
 - (i) completes one Semester of a course that satisfies the requirements of paragraphs (a) and (b) of the definition of Qualifying Education Course; and
 - (ii) undertakes paid Employment of at least 20 hours in each fortnight, and the total amount of time spent by the Participant in paid Employment and study (counting any contact and any non-contact hours of study) is not less than 30 hours in each fortnight;
- (g) a Participant who is recorded on the Department's IT Systems as a Principal Carer and is in receipt of Parenting Payment without participation requirements completes one Semester of a course that satisfies the requirements of paragraphs (a) and (b) of the definition of Qualifying Education Course and undertakes study of not less than 30 hours in each fortnight (counting any contact and any non-contact hours of study);
- (h) a Participant who is recorded on the Department's IT Systems as a Principal Carer and is in receipt of Parenting Payment without participation requirements:
 - (i) completes one Semester of a course that satisfies the requirements of paragraphs (a) and (b) of the definition of Qualifying Education Course; and
 - (ii) undertakes paid Employment of at least 20 hours in each fortnight, and the total amount of time spent by the Participant in paid Employment and study (counting any contact and any non-contact hours of study) is not less than 30 hours in each fortnight.

'Full-Time' means:

- (a) for a Site, Monday to Friday from 9am-5pm daily on Business Days, or as otherwise agreed with the Department; and
- (b) for NEIS, the number of hours as a minimum, as set out in any Guidelines, a NEIS Participant must work in their NEIS Business.

'Full-Time Study' means:

- (a) a university course that, for the purposes of the Higher Education Contribution Scheme, represents a standard student load for the equivalent of a full-time student;
- (b) a course that is at least 15 class contact hours a week; or
- (c) a course determined as being full-time by the relevant educational institution and which meets the requirements of any Guidelines.

'Funds' or **'Funding'** means any amounts (in cash or kind) payable by the Department under this Deed specified to be Funds or Funding, including any amounts not expressly identified as Fees, Reimbursements, Wage Subsidies or Ancillary Payments.

'Funding Level' means the funding level for a Disability Employment Services – Employment Support Service Participant as determined using the Funding Level Tool.

'Funding Level Tool' means the system by which the Funding Level for a Participant is calculated on the Department's IT Systems.

'Generalist Service Provider' means, in relation to a Disability Employment Services – Disability Management Service Participant, a Programme Provider who provides Programme Services to all types of Disability Employment Services – Disability Management Service Participants and, in relation to a Disability Employment Services – Employment Support Service Participant, means a Programme Provider who provides Programme Services to all types of Disability Employment Services – Employment Support Service Participants.

Note: A Generalist Service Provider may also be a Specialist Service Provider in the same ESA if specified in the Schedule.

'Green Army Programme' means the Commonwealth Green Army Programme, administered by the Department of Environment or such other agency as may administer this programme on behalf of the Commonwealth from time to time.

'Government Action Leader' means a government action leader, in any of the ten local government areas identified as disadvantaged under the Building Australia's Future Workforce package, who has been appointed to that position by the Commonwealth Department of Human Services.

'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 that apply to the provision of Disability Employment Services, as amended from time to time by the Department.

'High Ongoing Support' is a Level of Ongoing Support and means the provision of Programme Services to a Disability Employment Services – Employment Support Service Participant to maintain that Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with any Guidelines.

'High Ongoing Support Fee' means the Fee payable in accordance with clause 125.17 and Table 5B in Annexure B2.

'Income Support Payment' has the meaning given to the term 'income support payment' in the *Social Security Act 1991* (Cth).

'Independent Worker' means a Participant who is assessed as not requiring Ongoing Support, in accordance with any Guidelines.

'Indigenous Employment Programme' or **'IEP'** means the programme administered by the Department of the Prime Minister and Cabinet which provides a range of tools to achieve employment and economic development for Aboriginal and Torres Strait Islander peoples.

'Indigenous Employment Strategy' means a strategy implemented by the Provider designed to attract, develop and retain Aboriginal and Torres Strait Islander employees within the Provider's own organisation.

'Information Commissioner' means the person appointed under section 14 of the *Australian Information Commissioner Act 2010* (Cth) as the Australian Information Commissioner.

'Initial Interview' means an initial meeting between the Provider and a Participant in accordance with clause 88 [Initial Contacts].

'Initial Interview for a New Programme' means an initial meeting between the Provider and a Participant when the Participant has moved from Disability Employment Services – Disability Management Service to Disability Employment Services – Employment Support Service (or vice versa) in accordance with a JCA or OSA, as described in clause 88 [Initial Contacts].

'In-kind Contributions' means non-financial resources (valued at cost) which are provided to and used by the Provider for the purposes of one or more Unpaid Work Experience Placement Activity.

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

'Inspector' means a person appointed as such under the WHS Act.

'Instance' means the provision of Programme Services to a Participant receiving Flexible Ongoing Support, in accordance with any Guidelines.

'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.

‘Intervention’ means a specialist service provided by a private sector or community entity or an employment or training programme administered by the Commonwealth or by a state or territory government (including by state or territory government funded providers) that the Provider may provide, pay for, or otherwise access, to provide specialised assistance to Participants to address Vocational Barriers and Non-vocational Barriers.

Note: The Department will only reimburse Programme Providers for Interventions if this Deed specifically provides that reimbursement is available under the EAF.

‘JobAccess’ or **‘JobAccess Services’** means the services of that name administered by the Department.

‘JobAccess Provider’ means the entity contracted by the Department to deliver JobAccess Services.

‘jobactive Deed 2015 – 2020’ means the deed of that name entered into between a provider and the Department of Employment for the provision of employment services.

‘Job Capacity Assessment’ or **‘JCA’** means an assessment conducted by DHS Assessment Services to determine eligibility for the Disability Support Pension and includes assessment of barriers to employment and work capacity.

Note: Prior to 1 July 2011, Job Capacity Assessments included assessments for the purposes of employment services referral and Disability Support Pension eligibility. From 1 July 2011, these purposes are split between ESATs and JCAs respectively.

‘Job in Jeopardy Assistance’ means the Programme Services a Job in Jeopardy Participant receives from Commencement until the Participant is Exited or achieves a Job in Jeopardy Outcome.

‘Job in Jeopardy Non-Payable Outcome’ means where a Job in Jeopardy Participant is employed in:

- (a) reserved;
- (b) the sex industry, including retail positions;
- (c) employment involving nudity;
- (d) a job that involves taking up employment in another country, regardless of whether the salary is paid in Australia Dollars or by an Australian company;
- (e) a job involving illegal activity;
- (f) a discriminatory job;
- (g) a programme, including a Work Trial programme funded by the Australian Government, or a state or territory government, including a Complementary Service, unless otherwise specified in any Guidelines;
- (h) non-ongoing employment or a Work Trial, as specified in any Guidelines;
- (i) Recurring employment, unless otherwise specified in any Guidelines;
- (j) employment that contravenes Commonwealth, state or territory legislation or provides terms and conditions of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws;
- (k) employment that pays a commission as either the entire remuneration or part of the remuneration, except where the commission being paid to the Participant is in addition to an amount which is paid to the Participant in accordance with any applicable Commonwealth, state or territory legislation and any applicable modern award or a national minimum wage order;
- (l) a position that is contrived employment, as specified in any Guidelines;
- (m) a position that is not Open Employment as specified in any Guidelines;

- (n) employment within the Provider's Own Organisation or a Related Entity, unless otherwise specified in any Guidelines; or
- (o) any other position that the Department may Notify from time to time.

'Job in Jeopardy Outcome' means for the duration of a period of 26 Consecutive Weeks from the Anchor Date, a Job in Jeopardy Participant remains in Active Employment. For the purposes of this Definition, Active Employment means that the Job in Jeopardy Participant is engaged in work:

- (a) for their normal number of hours per week as recorded by the Provider on the Department's IT Systems when the Job in Jeopardy Participant Commenced; or
- (b) for less than their normal number of hours per week which, in accordance with any Guidelines, is appropriate for the Job in Jeopardy Participant due to their special circumstances; and
- (c) has not changed Employer,

in accordance with any Guidelines.

'Job in Jeopardy Outcome Fee' means the Fee payable in accordance with clause 126.8 and Table 7 in Annexure B1 and Table 7 in Annexure B2.

'Job in Jeopardy Participant' means a Participant who meets the eligibility requirements for a Job in Jeopardy Participant in accordance with any Guidelines.

'Job in Jeopardy Service Fee' means the Fee payable in accordance with clause 126.2 and Table 6 in Annexure B1 and Table 6 in Annexure B2.

'Job Placement' means Employment for a Participant in a Vacancy that is not a Non-Payable Placement.

'Job Placement Fee' means the Fee payable to a Provider for a Participant who completes the Job Placement Hours in a Job Placement, in accordance with clause 122 [Job Placement Fees] and Table 2 in Annexure B1 and Tables 2 and 2A in Annexure B2.

'Job Placement Fee Date' is the date on which the Provider may become entitled to a Job Placement Fee and is:

- (a) the date that the Participant completes the Job Placement Hours required; and
- (b) no more than 10 Consecutive Working Days after the Job Placement Start Date for that Participant.

'Job Placement Hours' means the minimum number of hours of paid Employment, over no more than 10 Consecutive Working Days, that the Participant is required to complete in a Job Placement to meet their Employment Benchmark.

'Job Placement Start Date' is:

- (a) any day on or after the Participant first commences in a Job Placement, as recorded on the Department's IT Systems; and
- (b) the first day of the 10 Consecutive Working Days in which the Job Placement Hours may be achieved.

'Job Plan' means the Job Plan under the *Social Security Act 1991* (Cth) and as described in clause 96 [General requirements for a Job Plan], or, if the *Social Security Act 1991* (Cth) is amended, any other such agreements.

'Job Search' means an instance of active contact with a potential Employer to apply for a job, and includes a contact by phone or in person, by submitting a written application, or by attending a job interview.

Note: Relevant job vacancies do not need to have been publically advertised to count as a Job Search. However, looking for job vacancies in newspapers or online does not count as a Job Search unless actual contact is made with the relevant potential Employer.

'Job Search Period' means, unless otherwise specified in any Guidelines, the first month and each successive month thereafter, of a Participant (Mutual Obligation) or Disability Support Pension Recipient's (Compulsory Requirements) Period of Unemployment.

'Job Search Requirement' means the number of Job Searches that a Participant (Mutual Obligation) or a Disability Support Pension Recipient (Compulsory Requirements) must complete as specified in any Guidelines.

'Key Performance Indicators' or **'KPIs'** means the performance indicators specified in this Deed or as Notified to the Provider by the Department from time to time.

'Labour Market Region' means one of 17 geographical areas, each containing a number of ESAs, as set out at <http://lmip.gov.au/>, or as notified by the Department from time to time.

'Learning Centre' means the range of online training products to assist Providers to understand the required policies and system functions to perform their day to day tasks in relation to the Services.

'Level of Ongoing Support' means Flexible Ongoing Support, Moderate Ongoing Support or High Ongoing Support.

'Liquidated Damages' means the amount that the Department may recover from a Provider in accordance with clause 137 [Liquidated damages].

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

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

'Minister' has the same meaning as in the Act.

'Moderate Intellectual Disability Participant' means a Disability Employment Services - Employment Support Service Participant who meets the eligibility requirements of a Moderate Intellectual Disability Participant, in accordance with any Guidelines.

'Moderate Intellectual Disability Loading' means the Fee payable in accordance with clause 129A and Tables 2, 2A, 3 and 3A in Annexure B2.

'Moderate Ongoing Support' is a Level of Ongoing Support and means the provision of Programme Services to a Disability Employment Services – Employment Support Service Participant to maintain that Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with any Guidelines.

'Moderate Ongoing Support Fee' means the Fee payable in accordance with clause 125.8 and Table 5A in Annexure B2.

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

'Mutual Obligation Requirements' means the activity test or participation requirements that a Participant (Mutual Obligation) must meet in order to receive an Income Support Payment in accordance with any Guidelines.

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

'National Disability Insurance Agency' means the agency that is established by the *National Disability Insurance Scheme Act 2013* as the National Disability Insurance Scheme Launch Transition Agency.

‘National Disability Recruitment Coordinator’, ‘NDRC’ or ‘NDRC Provider’ means the provider contracted by the Department to provide National Disability Recruitment Coordinator Services.

‘National Panel of Assessors’ or ‘the Panel’ means the panel of assessors that provide the SWS assessment services, the OSA assessment services, the WMS assessment services or other assessment-related services established in accordance with the Disability Employment National Panel of Assessors Deed of Standing Offer.

‘National Standards for Disability Services’ means the disability employment standards and rehabilitation programme standards determined under sections 5A(1)(b) and 5A(1)(c) of the Act respectively.

‘NDIS’ means the national disability insurance scheme that is established under the *National Disability Insurance Scheme Act 2013* (Cth).

‘NDIS Launch Participant’ means a Disability Employment Services – Employment Support Service Participant who is eligible to receive services under NDIS and who is identified on the Department’s IT Systems as being a NDIS Launch Participant.

‘NDRC Services’ means the Services provided by the National Disability Recruitment Coordinator.

‘NEIS Allowance’ means an allowance payable by the Department of Employment to a NEIS Participant in accordance with the NEIS Participant Agreement.

‘NEIS Assistance’ means the assistance received by a NEIS Participant in accordance with the jobactive Deed 2015 – 2020 and any guidelines issued by the Department of Employment:

- (a) including, where applicable, the payment of NEIS Allowance and NEIS Rental Assistance, NEIS Business Mentoring, monthly contact, business advice and counselling; and
- (b) for a period of 52 weeks (or as otherwise extended or reduced by the Department of Employment) commencing on the date on which the NEIS Participant Agreement is approved by the Department of Employment, but excluding any period during which the NEIS Participant Agreement is suspended by the Department of Employment.

‘NEIS Business’ means the NEIS Participant’s business, the details of which are set out in the schedule to the NEIS Participant Agreement, and which is to be operated in accordance with the NEIS Business Plan.

‘NEIS Business Eligibility Criteria’ means the criteria specified in any guidelines issued by the Department of Employment against which a proposed NEIS Business is assessed to determine if it meets the eligibility requirements for a NEIS Business.

‘NEIS Business Idea’ means the idea of a Participant for a self-employment business.

‘NEIS Business Mentoring’ means mentoring support provided by a NEIS Provider to a NEIS Participant and includes assistance and advice about organisational, financial and marketing issues to help the NEIS Participant to develop their business, and other requirements specified in any guidelines issued by the Department of Employment.

‘NEIS Business Mentoring Report’ means a Report that provides, in accordance with the Guidelines, a description of the delivery of NEIS Business Mentoring.

‘NEIS Business Plan’ means a plan that sets out, at a minimum, how a NEIS Prospective Participant’s NEIS Business is intended to operate and, where approved, how a NEIS Participant’s NEIS Business will operate, the business insurance required, and a forecast of the cash flow each Financial Quarter.

‘NEIS Eligible’ means a Participant that meets the eligibility requirements for NEIS in accordance with any guidelines issued by the Department of Employment.

‘NEIS Participant’ means a person who is a party to a current NEIS Participant Agreement and who is in receipt of NEIS Assistance.

‘NEIS Participant Agreement’ means the agreement, in the form prescribed by the Department of Employment:

- (a) entered into between an eligible NEIS Prospective Participant and the Department of Employment; and
- (b) for a period of 52 weeks (or as otherwise extended or reduced by the Department of Employment), commencing on the date on which the relevant NEIS Participant Agreement is approved by the Department of Employment, but excluding any period during which the NEIS Participant Agreement is suspended by the Department of Employment.

‘NEIS Prospective Participant’ means a Participant who:

- (a) has been assessed as NEIS Eligible; and
- (b) has not yet executed a NEIS Participant Agreement.

‘NEIS Provider’ means any entity that is contracted by the Commonwealth to provide NEIS Services under Part C of the jobactive Deed 2015 — 2020.

‘NEIS Rental Assistance’ means rental assistance payable by the Department to a NEIS Participant in accordance with the NEIS Participant Agreement.

‘NEIS Services’ means the services to be provided by the NEIS Provider to assist NEIS Participants in establishing and running viable new small businesses in accordance with any guidelines or written instructions that the Department of Employment may issue to the NEIS Provider from time to time.

‘NEIS Training’ means Certificate IV in Small Business Management or Certificate III in Micro Business Operations or as otherwise advised by the Department of Employment from time to time, and which must be undertaken in a face to face setting, unless otherwise specified in any guidelines issued by the Department of Employment.

‘New Enterprise Incentive Scheme’ or **‘NEIS’** means the Commonwealth New Enterprise Incentive Scheme, administered by the Department of Employment or such other agency as may administer this programme on behalf of the Commonwealth from time to time.

‘New ESAt/JCA’ means:

- (a) an ESAt conducted as part of a Programme Review;
- (b) an ESAt or JCA conducted after a Programme Review but before the Participant Exits; or
- (c) an ESAt or JCA conducted after an Exit where the Participant seeks to return to Programme Services after Exiting.

‘Newstart Allowance’ has the meaning given to the term ‘newstart allowance’ by the *Social Security Act 1991* (Cth).

‘Non-attendance Report’ means an electronic report sent by the Provider, through the Department’s IT Systems, to DHS notifying of a Participant’s (Mutual Obligation) failure to attend an Appointment with a Valid Reason or Reasonable Excuse.

‘Non-Payable Outcome’ means placement of a Participant into any:

- (a) reserved;
- (b) employment in the sex industry, including retail positions;
- (c) employment involving nudity;
- (d) volunteer work;
- (e) work experience;
- (f) unpaid work;

- (g) training course not eligible for Austudy, Abstudy, or Youth Allowance (Student);
- (h) training course duplicating, or having significant components similar to, employment services, such as training for work preparation or job search skills;
- (i) job that involves taking up employment in another country, regardless of whether the salary is paid in Australian Dollars or by an Australian company;
- (j) job involving illegal activity;
- (k) discriminatory job;
- (l) Pre-Existing education or training related activity;
- (m) Pre-Existing employment related activity, unless that Participant, at Commencement, was working in that Pre-Existing employment related activity for less hours per week on average than their Employment Benchmark;
- (n) programme, including a Work Trial programme, funded by the Australian Government, or a state or territory government, including a Complementary Service, unless otherwise specified in any Guidelines;
- (o) non-ongoing employment or a Work Trial, as specified in any Guidelines;
- (p) Recurring employment;
- (q) employment in the same or a similar position vacated in the previous 14 calendar days by a Participant who attracted an Outcome Fee;
- (r) employment that contravenes Commonwealth, state or territory legislation or provides terms and conditions of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws;
- (s) employment that pays a commission as either the entire remuneration or part of the remuneration, except where the commission being paid to the Participant is in addition to an amount which is paid to the Participant in accordance with any applicable Commonwealth, state or territory legislation and any applicable modern award or a national minimum wage order;
- (t) position that is contrived employment, as specified in any Guidelines;
- (u) position that is not Open Employment as specified in any Guidelines;
- (v) employment within the Provider's Own Organisation or a Related Entity, unless the Participant is so employed for:
 - (i) at least 13 Consecutive Weeks from the Anchor Date for a 13 Week Period; and
 - (ii) at least 26 Consecutive Weeks from the Anchor Date for a 26 Week Period,
 in accordance with any Guidelines;
- (w) Qualifying Education Course for which the Provider has already received an Outcome Fee for a 26 Week Period for that Participant in a previous Period of Service;
- (x) Qualifying Education Course where the Participant is an Eligible School Leaver, unless the Participant has left school and any other requirements as specified in any Guidelines in respect of that Participant have been met;
- (y) type of work is inappropriate for the Participant based on their ESAt or JCA or because they only have a Partial Capacity to Work; or
- (z) situation that the Department may Notify from time to time.

Note: In this definition of Non-Payable Outcome, the term 'work experience' refers to a paid or unpaid short term placement of a person in a workplace to enable the person to observe and learn in an actual work setting.

'Non-Payable Placement' is a position:

- (a) that would lead to employment involving nudity or in the sex industry, including retail positions;
- (b) for volunteer work, for work experience or unpaid work;
- (c) where the Participant enters into a NEIS Participant Agreement;
- (d) that contravenes Commonwealth, state or territory legislation or provides terms and conditions of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws;
- (e) within the Provider's Own Organisation;
- (f) reserved;
- (g) that pays commission as either the entire remuneration or part of the remuneration, except where any commission being paid to the Participant is in addition to the amount being paid to the Participant in accordance with any applicable Commonwealth, state, or territory legislation and any applicable modern award or a national minimum wage order;
- (h) where the type of work is inappropriate for the Participant based on their ESA or JCA or because they only have a Partial Capacity to Work;
- (i) for a school-based Traineeship and/or Apprenticeships;
- (j) in a training course, Education Placement or Education related activity;
- (k) for self-employment opportunities;
- (l) in a programme funded by the Commonwealth, or by a state or territory government, including the Community Jobs Programme, and as advised by the Department from time to time;
- (m) that involves taking up employment in another country, regardless of whether the salary is paid in Australian dollars or by an Australian company;
- (n) for Pre-Existing employment related activity;
- (o) in non-ongoing employment or a Work Trial, as specified in any Guidelines;
- (p) for which the Provider has already claimed a Job Placement Fee for that Participant;
- (q) within a Subcontractor (or the part of a Subcontractor that is involved in the delivery of Services), or within any entity that a Subcontractor subcontracts to assist in providing the Services under this Deed, or which is otherwise engaged to provide the Services;
- (r) that is contrived employment as specified in any Guidelines;
- (s) that is not in Open Employment, including as is specified in any Guidelines;
- (t) involving illegal activity;
- (u) that is discriminatory;
- (v) that is Recurring Employment;
- (w) in the same or a similar position vacated in the previous 14 calendar days by a Participant who attracted a Job Placement Fee; or
- (x) that the Department may Notify from time to time.

'Non-vocational Barriers' means the range of barriers that can prevent a person from obtaining and sustaining employment or education or from undertaking further skills development, other than Vocational Barriers.

'Notice' means a written notice in accordance with clause 73 [Notices]; and **'Notify'**, **'Notified'** and **'Notification'** have the same meaning.

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

'Objectives' means the objectives of the Services as described in this Deed.

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

'Ongoing Support' means the Programme Services a Participant may receive while they are in Employment, Unsubsidised Self-Employment, an Apprenticeship or a Traineeship after a 26 Week Employment Outcome or Job in Jeopardy Outcome and until they move into Work Based Personal Assistance Only or Exit and is provided in the form of a Level of Ongoing Support.

'Ongoing Support Assessment' or **'OSA'** means an Assessment by an Ongoing Support Assessor as to a Participant's need for Ongoing Support.

'Ongoing Support Assessor' means a person, organisation or Commonwealth agency, contracted by the Commonwealth to conduct an OSA.

'Open Employment' means Employment where an employee with a disability is engaged in the mainstream workforce, alongside employees without disability and any requirements provided in any Guidelines have been met.

'Outcome' means:

- (a) a Job in Jeopardy Outcome;
- (b) a Pathway Outcome; or
- (c) a Full Outcome.

'Outcome Fee' means the Fee payable in accordance with:

- (a) clause 123 [Outcome Fees]; and
- (b) Table 3 in Annexure B1 and Tables 3 and 3A in Annexure B2,

and includes a Pathway Outcome Fee, a Full Outcome Fee and a Bonus Fee.

'Outreach' means, for a Site, a regular presence other than Part-Time or Full-Time - for example, on a monthly, seasonal or 'as the need arises' basis.

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

'Parenting Payment' has the meaning given to 'parenting payment' by *the Social Security Act 1991* (Cth).

'Part B of the Employment Services Funding Deed 2006-2009' means Part B, Specific Conditions for Disability Employment Network, of the Employment Services Funding Deed 2006-2009.

'Part-Time' means, for a Site, set weekly hours on Business Days with hours of operation less than Full-Time as agreed with the Department.

'Partial Capacity to Work' has the meaning given to the term 'partial capacity to work' by the *Social Security Act 1991* (Cth).

'Partial Capacity to Work Participant' or **'PCW Participant'** means a Participant who has a Partial Capacity to Work.

'Participant' means a Disability Employment Services – Disability Management Service Participant or a Disability Employment Services – Employment Support Service Participant, as the context requires.

'Participant (Mutual Obligation)' means a Participant with Mutual Obligation Requirements and any other Participant as specified in any Guidelines, but excluding a Disability Support Pension Recipient (Compulsory Requirements).

'Participant Services Records' means Deed Records (including documents associated with the Customer Feedback Register) about a Participant, that are directly created for the purposes of providing Services.

'Participation Report' means an electronic report sent by the Provider through the Department's IT Systems to DHS detailing a Participant's act or acts of potential non-compliance with his or her Mutual Obligation Requirements, as specified in any Guidelines.

'Particulars' means the document of that name in which the Parties execute this Deed.

'Party' means a party to this Deed.

'Pathway Outcome' means for the duration of a 13 Week Period or a 26 Week Period:

- (a) a Participant remains each week in Employment or Unsubsidised Self-Employment or an Apprenticeship or a Traineeship and, after Commencement:
 - (i) works for a minimum of 10 hours and less than 15 hours per week on average in 13 or 26 Consecutive Weeks, where that Participant has a 15 hour Employment Benchmark; or
 - (ii) from 1 January 2016, works for a minimum of 15 hours and less than 23 hours per week on average in 13 or 26 Consecutive Weeks, where that Participant has a 23 Hour Employment Benchmark; or
 - (iii) works for a minimum of 20 hours and less than 30 hours per week on average in 13 or 26 Consecutive Weeks, where that Participant has a 30 hour Employment Benchmark;
- (b) a Participant who is aged 22 years or more:
 - (i) transfers to Youth Allowance (Student), Abstudy or Austudy, and completes one Semester of a single qualification course of two or more Semesters in duration; or
 - (ii) does not transfer to Youth Allowance (Student), Abstudy or Austudy, but completes one Semester of a single qualification course of two or more Semesters in duration and meets the requirements of a Qualifying Education Course;
- (c) a Participant who is aged between 15 and 21 years and who has completed year 12 or equivalent:
 - (i) transfers to Youth Allowance (Student), Abstudy or Austudy, and completes one Semester of a single qualification course of two or more Semesters in duration; or
 - (ii) does not transfer to Youth Allowance (Student), Abstudy or Austudy, but completes one Semester of a single qualification course of two or more Semesters in duration and meets the requirements of a Qualifying Education Course; or
- (d) Reserved;
- (e) any other event that the Department may notify the Provider from time to time as being a Pathway Outcome.

'Performance Rating' means the relative measure of performance of the Provider against KPI 1 and KPI 2 as calculated by the Department.

'Period of Service' means a period which begins on Commencement of a Participant and which ends when the Participant begins Ongoing Support or is Exited, whichever happens earlier, during which the Provider must provide Programme Services to the Participant, but does not include any time that the Participant is Suspended.

'Period of Unemployment' means the period of unemployment which commences on the date identified in the Department's IT Systems, in accordance with any Guidelines.

'Permanent Address' means the address specified in accordance with any Guidelines.

'Permissible Break' means a period of time during which a Participant has a break in Employment caused by a situation which is outside the control of the Participant or the Provider and which satisfies the requirements specified in any Guidelines.

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

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

'Personnel' means:

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

'Placement' means:

- (a) an Education Placement; or
- (b) a Job Placement.

'Post Placement Support' means the Programme Services a Participant (other than a Job in Jeopardy Participant) receives, in relation to an Outcome, for the period from the Anchor Date and while the Participant is working towards an Outcome.

'Pre-Existing' means an activity which a Participant started before Commencing in Programme Services.

'Principal Carer' has the meaning given to the term 'principal carer' by the *Social Security Act 1991* (Cth).

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

'Programme Provider' means a Provider of Disability Employment Services – Employment Support Service or Disability Employment Services – Disability Management Service under Chapter 5 of this Deed, as the context requires, and **'Disability Employment Services – Disability Management Service Provider'** and **'Disability Employment Services – Employment Support Service Provider'** have a corresponding meaning.

'Programme Review' means the review conducted in accordance with clause 99 [Programme Review].

'Programme Services' means Disability Employment Services – Disability Management Service and/or Disability Employment Services – Employment Support Service as the context requires.

'Programme Summary' means a Report including the following information:

- (a) the reason for the Exit;
- (b) details of the Programme Services provided to or purchased for the Participant;
- (c) details of any barriers to future employment or the maintenance of current employment for the Participant; and
- (d) any comments or other issues.

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

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

'Provider Appointment Report' means an electronic report sent by the Provider, through the Department's IT systems, recommending that a financial penalty be investigated and applied to a Participant (Mutual Obligation) for non-attendance at an Appointment, where the Provider has assessed the Participant (Mutual Obligation) as failing to attend an Appointment without a Valid Reason or Reasonable Excuse.

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

'Provider Records' means all Records, except Commonwealth Records, in existence prior to the Deed Commencement Date:

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

'Qualifying Education Course' means a single qualification course that is:

- (a) approved for Austudy or Youth Allowance (Student) or Abstudy purposes;
- (b) normally of two or more Semesters in duration within a 12 month period; and
- (c) Full-Time Study.

'Qualifying Training Course' means a training course specified in the Guidelines from time to time which the Participant has completed after the start of his or her current Period of Unemployment and which:

- (a) results in the attainment of a qualification not less than Certificate 2 level;
- (b) may have commenced although must not have been completed before the start of the Participant's current Period of Unemployment;
- (c) must have commenced before the Anchor Date for any Directly Related Employment and must have been completed before or during the 26 Week Period relating to the Directly Related Employment; and
- (d) must not have been completed more than 12 months before the Anchor Date for any Directly Related Employment.

'Reasonable Excuse' has the meaning given to the term 'reasonable excuse' in the Social Security Law.

Note: Under the Social Security law, a Participant cannot be taken to have failed to meet his or her Mutual Obligation Requirements if he or she has a Reasonable Excuse for the failure.

'Records' means documents, information and data stored by any means and all copies and extracts of the same, and includes Deed Records, Commonwealth Records and Provider Records.

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

'Recurring' means an employment activity for which the Provider has already received an Outcome Fee for a 13 Week Period and/or a 26 Week Period, or a Job in Jeopardy Outcome Fee for that Participant in a previous Period of Service, for the same employment position, and with the same employer.

'Re-engagement' means the process by which DHS re-engages a Participant with Programme Services or refers the Participant to a more appropriate programme for assessment following an incident (or incidents) of non-compliance with his or her Mutual Obligation Requirements, a period of Exemption or the completion of an approved activity.

'Re-engagement Appointment' means an Appointment for the purposes of Re-engagement that a Provider books when contact is made with a Participant (Mutual Obligation) following non-attendance at an Appointment where the Provider has made an assessment that the Participant (Mutual Obligation) did not have a Valid Reason or Reasonable Excuse and has reported the non-attendance to DHS through a Non-Attendance Report or Provider Appointment Report.

'Referral' or **'Referred'** means a referral of a person to the Provider by DHS, the Department, or DHS Assessment Services.

'Regional Area' means any area that is not a Capital City.

'Register', **'Registration'** or **'Registered'** means the act of registering the creation or activation of a Participant's record on the Department's IT Systems.

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

'Reimbursement' means any amounts payable by the Department under this Deed as a reimbursement, or such other payments that may from time to time be Notified by the Department to be a reimbursement.

Note: Reimbursements include Wage Subsidies, Tasmanian Jobs Programme Incentive Payments, Restart Payments, Relocation Assistance to Take up a Job Payments, payments in relation to Certificate of Compliance certification and surveillance costs and reimbursement available under the EAF.

'Related Entity' means:

- (a) those parts of the Provider other than Own Organisation;
- (b) 'entities connected with a corporation' as defined in section 64B of the *Corporations Act 2001* (Cth) with the word 'Provider' substituted for every occurrence of the word 'corporation' in that section;
- (c) an entity that:
 - (i) can control, or materially influence, the Provider's activities or internal affairs;
 - (ii) has the capacity to determine, or materially influence, the outcome of the Provider's financial and operating policies; or
 - (iii) is financially interested in the Provider's success or failure or apparent success or failure;
- (d) if the Provider is a company, an entity that:
 - (i) is a holding company of the Provider;
 - (ii) is a subsidiary of the Provider;
 - (iii) is a subsidiary of a holding company of the Provider;
 - (iv) has one or more directors who are also directors of the Provider; or
 - (v) without limiting clauses (d)(i) to (iv) of this definition, controls the Provider; or
- (e) an entity, where a familial or spousal relationship between the principals, owners, directors, officers or other like persons exists between that entity and the principals, owners, directors, officers or like persons of the Provider.

'Relocation Assistance to Take Up a Job Agreement' or **'RATUJ Agreement'** means a written agreement, entered into between a Provider and a RATUJ Participant in relation to a RATUJ Payment, in a form as specified in any Guidelines.

'Relocation Assistance to Take Up a Job Participant' or **'RATUJ Participant'** means a Participant who meets the eligibility requirements for a RATUJ Participant, as specified in any Guidelines.

'Relocation Assistance to Take Up a Job Payment' or **'RATUJ Payment'** means a payment to assist a RATUJ Participant to prepare to relocate, to move and/or to settle into a new location, in accordance with any Guidelines.

'Relocation Assistance to Take Up a Job Placement' or **'RATUJ Placement'** means an Employment position that meets the eligibility requirements for a RATUJ Placement, as specified in any Guidelines.

'Remote Jobs and Communities Programme' means the Commonwealth programme of that name, or such other name as advised by the Department of the Prime Minister and Cabinet from time to time.

'Remote Jobs and Communities Programme Activities' means those activities provided under the Remote Jobs and Communities Programme Funding Agreement.

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

'Restart Agreement' means an agreement for the purposes of the Restart Programme substantially in a form as specified by the Department.

'Restart Employer' means an Employer who meets the eligibility requirements for a Restart Employer as specified in any Guidelines.

'Restart Participant' means a Participant who meets the eligibility requirements for a Restart Participant, as specified in any Guidelines.

'Restart Payment' means a payment under the Restart Programme in accordance with any Guidelines.

'Restart Placement' means an Employment position which meets the eligibility requirements for a Restart Placement, as specified in any Guidelines.

'Restart Programme' means the Commonwealth programme of that name which provides incentives for the employment of mature age Participants.

'SAAP' means the Supported Accommodation Assistance Programme that assists homeless people and women and children escaping domestic violence and that is governed by the *Supported Accommodation Assistance Act 1994* (Cth).

'Schedule' means the schedule to this Deed.

'Secretary' means the Secretary of the Department.

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

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

'Semester' means a semester (or equivalent) as defined by an education or training institution, where the semester (or equivalent) is normally 26 weeks in duration but not shorter than 13 weeks and is within at least one half of a 12 month period of Full-Time Study.

'Serious Failure Penalty' means the suspension of Income Support Payments for an eight week period applied by the Department of Human Services, when a Participant (Mutual Obligation) has been found, following investigation by the Department of Human Services, to:

- (a) have refused to accept or commence a suitable job without having a Reasonable Excuse; or
- (b) be persistently non-compliant (as determined through a Comprehensive Compliance Assessment).

‘Service Fee’ means a Fee payable in accordance with clause 121 [Service Fees] and Table 1 in Annexure B1 and Tables 1 and 1A in Annexure B2, which is paid for the provision of all Services except those Services expressly related to:

- (a) Outcomes;
- (b) Job Placements;
- (c) Ongoing Support;
- (d) Jobs in Jeopardy;
- (e) Existing High Cost Worker;
- (f) Work Based Personal Assistance; and
- (g) NEIS.

‘Service Guarantee’ means the set of minimum service standards of that name specified for Disability Employment Services – Disability Management Service and Disability Employment Services – Employment Support Service at Annexure C2.

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

‘Service Start Date’ means the date of that name specified in the Schedule.

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

‘Services Contract’ means a legally enforceable agreement for the purchase of services in the form of time, effort and expertise, pursuant to agreed terms and conditions, on a buyer and supplier basis.

‘Site’ means one or more physical locations in an ESA as specified in the Schedule.

‘Site Frequency’ means the days, times or basis on which Sites are open for the provision of the Services as specified in the Schedule.

‘Skills Assessment’ means an assessment by the Provider, in accordance with clause 90 [Skills Assessment], to determine what work/educational skills and experience a Participant currently possesses and to identify and develop strategies for the Participant to obtain sustainable employment.

‘Skills Shortage’ means any skills shortage area as provided for by Skills Australia or as otherwise advised by the Department.

‘Social Security Appeals Process’ means reviews and appeals of decisions made under the *Social Security Act 1991* (Cth) or *Social Security (Administration) Act 1999* (Cth).

‘Social Security Law’ means the *Social Security Act 1991* (Cth), the *Social Security (Administration) Act 1999* (Cth), and includes all relevant subordinate legislation, as amended from time to time.

‘Special Benefit’ has the meaning given to the term ‘special benefit’ by the *Social Security Act 1991* (Cth).

‘Special Class Client’ means a Disability Employment Services – Disability Management Service Participant who meets the eligibility requirements of a class of persons determined by the Department to be a Special Class Client, in accordance with any Guidelines.

‘Specialist Service Group’ means a group of Participants with specialist needs, as identified in any Guidelines.

‘Specialist Service Provider’ means a Programme Provider who is identified as a Specialist Service Provider in the Schedule.

'Subcontract' means an agreement entered into by the Provider by which some or all of the Services are conducted by another entity, and **'Subcontract'** and **'Subcontracting'** refer to the act of entering into any such an agreement.

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

'Supported Wage System' or **'SWS'** means the Australian Government programme that makes provision for eligible people with disability to access a productivity based wage assessment.

'Suspend' or **'Suspended'** means the act of imposing a Suspension.

'Suspension' means a period of time of that name, as recorded by either the Provider (in accordance with this Deed) or DHS on the Department's IT System, which is not counted as time for the purposes of calculating or accruing any entitlement to Fees and the requirement to provide Programme Services to a Participant is suspended.

'Tasmanian Jobs Programme' means the Commonwealth programme of that name which provides incentives for the employment of Participants.

'Tasmanian Jobs Programme Agreement' means a written agreement, entered into between a Provider and a Tasmanian Jobs Programme Employer in relation to a Tasmanian Jobs Programme Incentive Payment, in such a form as is specified in any Guidelines.

'Tasmanian Jobs Programme Employer' means an Employer:

- (a) who is eligible to participate in the Tasmanian Jobs Programme in accordance with any Guidelines;
- (b) who has entered into a Tasmanian Jobs Programme Agreement with the Provider; and
- (c) who employs a Tasmanian Jobs Programme Participant; or
- (d) as otherwise advised by the Department.

'Tasmanian Jobs Programme Incentive Payment' means an incentive payment of \$3,250 (GST inclusive) that is payable in accordance with clause 93A.

'Tasmanian Jobs Programme Participant' means a Participant who is eligible to participate in the Tasmanian Jobs Programme in accordance with any Guidelines.

'Tasmanian Jobs Programme Placement' means a position that meets criteria as specified in any Guidelines.

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

'Taxable Supply' has the meaning given in section 195-1 of the GST Act.

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

'Term of this Deed' refers to the period described in clause 4.1.

'Third Party IT Provider' means an entity contracted by the Provider to provide information technology services to the Provider for the purposes of providing the Services, whether or not the entity is a Subcontractor, and includes a third-party hosting entity and an outsourced information technology service provider.

'Third Party IT Provider Deed' means an agreement between a Third Party IT Provider and the Department of Employment in the terms and form as advised by the Department.

'Third Party System' means the information technology system of a Third Party IT Provider.

'Traineeship' has the same meaning as Apprenticeship.

'Training' means any training activity unless otherwise advised by the Department.

'Transferred Participant' means a Participant who is identified in the Department's IT Systems as a transferred Participant, including a 2012/13 transferred Participant or a 2014/15 transferred Participant.

'Transferred Relocation Assistance to Take Up a Job Participant' or **'Transferred RATUJ Participant'** means a RATUJ Participant who has been previously serviced by an employment services provider other than the Provider.

'Transferred Restart Participant' means a Restart Participant who has been previously serviced by an employment services provider other than the Provider.

'Transferred Tasmanian Jobs Programme Participant' means a Tasmanian Jobs Programme Participant who has been previously serviced by an employment services provider other than the Provider.

'Transferred Wage Subsidy Participant' means a Participant who is the subject of a Wage Subsidy which was negotiated with the relevant Employer by a Programme Provider other than the Provider.

'Transition Period' means the period, if any, Notified by the Department to the Provider in accordance with clause 59 [Transition out].

'Unpaid Work Experience Placement Activities' or **'UWEP Activities'** means a short-term unpaid work experience placement that allows a Participant to gain vocational skills.

'Unpaid Work Experience Placement Host Organisation' means an organisation at which some or all of an Unpaid Work Experience Placement Activity takes place, including the Provider where the Provider is fulfilling the role of an Unpaid Work Experience Placement Host Organisation.

'Unsubsidised Self-Employment' means self-employment as specified in any Guidelines.

'Vacancy' means any vacant position for paid employment with an Employer that is not:

- (a) a position involving nudity or in the sex industry, including retail positions;
- (b) for volunteer work, for work experience or unpaid work;
- (c) a position in contravention of Commonwealth, state or territory legislation or which involves terms and conditions of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws;
- (d) reserved;
- (e) a position in a training course;
- (f) a placement in a programme funded by the Commonwealth or by a state or territory government, such as Community Jobs Programs, and as advised by the Department from time to time;
- (g) in another country, regardless of whether the salary is paid in Australian dollars or by an Australian company; or
- (h) a position that the Department has advised, from time to time, as not acceptable.

'Valid ESAt' means an ESAt that was conducted within the last two years where the Participant has not had a significant change of circumstances which would make the ESAt invalid, in accordance with any Guidelines.

'Valid JCA' means a JCA that was conducted within the last two years where the Participant has not had a significant change of circumstances which would make the JCA invalid, in accordance with any Guidelines.

'Valid Reason' means a valid and acceptable reason in accordance with any Guidelines.

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

'Volunteer (Mutual Obligation)' means a Participant who is not a Disability Support Pension Recipient (Compulsory Requirements) and:

- (a) is subject to an Exemption;
 - (b) has part-time Mutual Obligation Requirements and is satisfying his or her Mutual Obligation Requirements;
 - (c) has a temporary reduced work capacity of less than 15 hours per week, as determined by an ESAt or JCA, for the period determined by an ESAt or JCA.
 - (d) is a PCW Participant with a current or future work capacity of less than 15 hours per week;
 - (e) is aged 55 years or over and is satisfying his or her Mutual Obligation Requirements; or
 - (f) is advised by the Department to be a Volunteer (Mutual Obligation),
- and who volunteers to participate in additional activities.

'Volunteer (Non-mutual Obligation)' means a Participant who does not have Mutual Obligation Requirements.

'Wage Subsidy' means a wage subsidy:

- (a) paid under the Wage Subsidy Scheme; or
- (b) paid under a scheme that offers Commonwealth financial assistance through wage subsidies to employers who employ eligible workers with disability,

and **'Wage Subsidies'** has an equivalent meaning, where reference is to more than one Wage Subsidy.

'Wage Subsidy Scheme' means the Commonwealth Scheme of that name that offers financial assistance through wage subsidies to employers who employ eligible workers with disability.

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

'WHS Laws' means the WHS Act and WHS Regulations.

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

'Work Based Personal Assistance' means, in accordance with any Guidelines, additional regular personal support in Employment, Unsubsidised Self-Employment, Apprenticeships and Traineeships:

- (a) required by a Disability Employment Services – Employment Support Service Participant due to their physical or neurological disability or medical condition;
- (b) purchased, or provided directly, by a Provider; and
- (c) provided in the workplace.

'Work Based Personal Assistance Fee' means the Fee payable in accordance with clause 128 [Work Based Personal Assistance Fees for Disability Employment Services – Employment Support Service Providers] and Table 8 in Annexure B2.

'Work Based Personal Assistance Only' means the Work Based Personal Assistance which a Work Based Personal Assistance Only Participant may receive after any period of Ongoing Support, in accordance with any Guidelines.

'Work Based Personal Assistance Only Participant' means a Disability Employment Services – Employment Support Service Participant who:

- (a) meets the eligibility requirements for Work Based Personal Assistance Only in accordance with any Guidelines; and

(b) is therefore entitled to receive Work Based Personal Assistance Only and no other Programme Services.

'Work for the Dole' means the Commonwealth programme of that name designed to help job seekers gain the skills, experience and confidence that they need to move to work as soon as possible, while at the same time, making a positive contribution to their local community.

'Workplace Modifications' or **'WMS'** means the Australian Government assistance for modifying a workplace or purchasing special services or equipment for eligible employees with disability.

'Work Trial' means a short period of paid employment on a trial or probation basis.

'Youth Allowance' has the meaning given to the term 'youth allowance' by the *Social Security Act 1991* (Cth).

'Youth Allowance (Student)' has the meaning given to the term 'youth allowance' by the *Social Security Act 1991* (Cth), as it applies to students who are undertaking full-time study within the meaning of that Act.

ANNEXURE B DISABILITY EMPLOYMENT SERVICES – FEES

ANNEXURE B1 DISABILITY EMPLOYMENT SERVICES – DISABILITY MANAGEMENT SERVICE FEES

Notwithstanding clause 2.1(e), all Notes in this Annexure B1 are legally binding on both Parties.

SERVICE FEES

Table 1 Service Fees – Disability Employment Services – Disability Management Service

(1) Time period	(2) Fee amount
First and second 13 weeks in Employment Assistance	\$1,595
Third to sixth 13 weeks in Employment Assistance	\$715
First and second 13 weeks in Extended Employment Assistance	\$715

JOB PLACEMENT FEES

Table 2 Job Placement Fees – Disability Employment Services – Disability Management Service

(1) Fee type	(2) Fee amount
Job Placement Fee	\$770 per Job Placement

OUTCOME FEES

Table 3 Outcome Fees – Disability Employment Services – Disability Management Service

Period	Full Outcome Fee amount	Full Outcome Bonus Fee amount (20% bonus)	Pathway Outcome Fee amount	Pathway Outcome Bonus Fee amount (20% bonus)
13 Week Period	\$2,860	\$572	\$945	\$189
26 Week Period	\$4,400	\$880	\$1,450	\$290

Table 4 RESERVED

ONGOING SUPPORT FEES

Table 5 Flexible Ongoing Support Fees – Disability Employment Services – Disability Management Service

(1) Fee type	(2) Fee amount
Flexible Ongoing Support Fee	\$440 per Instance of Flexible Ongoing Support

JOB IN JEOPARDY FEES

Table 6 Job in Jeopardy Service Fees – Disability Employment Services – Disability Management Service

(1) Time period	(2) Fee amount
First and second 13 weeks	\$1,320

Table 7 Job in Jeopardy Outcome Fees – Disability Employment Services – Disability Management Service

(1) Fee type	(2) Fee amount
Job in Jeopardy Outcome Fee	\$2,860

Note: Transferred Participants are treated the same way as any other Participants who transfer to or from the Provider.

ANNEXURE B2 DISABILITY EMPLOYMENT SERVICES – EMPLOYMENT SUPPORT SERVICE FEES

Notwithstanding clause 2.1(e), all Notes in this Annexure B2 are legally binding on both Parties.

SERVICE FEES

Table 1 Service Fees – Disability Employment Services – Employment Support Service

Disability Employment Services – Employment Support Service - Funding Level 1

(1) Time period	(2) Fee amount
First and second 13 weeks in Employment Assistance	\$890
Third to sixth 13 weeks in Employment Assistance	\$890
First and second 13 weeks in Extended Employment Assistance	\$890

Table 1A Service Fees – Disability Employment Services – Employment Support Service

Disability Employment Services – Employment Support Service - Funding Level 2

(1) Time period	(2) Fee amount
First and second 13 weeks in Employment Assistance	\$1,900
Third to sixth 13 weeks in Employment Assistance	\$1,900
First and second 13 weeks in Extended Employment Assistance	\$1,900

JOB PLACEMENT FEES

Table 2 Job Placement Fees – Disability Employment Services – Employment Support Service

Disability Employment Services – Employment Support Service - Funding Level 1

(1) Fee type	(2) Fee amount	(3) Moderate Intellectual Disability Loading
Job Placement Fee	\$770 per Job Placement	\$677.60 per Job Placement

Table 2A Job Placement Fees – Disability Employment Services – Employment Support Service

Disability Employment Services – Employment Support Service - Funding Level 2

(1) Fee type	(2) Fee amount	(3) Moderate Intellectual Disability Loading
Job Placement Fee	\$1,540 per Job Placement	\$1355.20 per Job Placement

OUTCOME FEES

Table 3 Outcome Fees – Disability Employment Services – Employment Support Service

(1) Period	(2) Full Outcome Fee amount	(3) Moderate Intellectual Disability Loading	(4) Full Outcome Bonus Fee amount (20% bonus)	(5) Pathway Outcome Fee amount	Pathway Outcome Bonus Fee amount (20% bonus)
13 Week Period	\$2,860	\$2516.80	\$572	\$945	\$189
26 Week Period	\$4,400	\$3872	\$880	\$1,450	\$290

Disability Employment Services – Employment Support Service - Funding Level 1

Table 3A Outcome Fees – Disability Employment Services – Employment Support Service

(1) Period	(2) Full Outcome Fee amount	(3) Moderate Intellectual Disability Loading	(4) Full Outcome Bonus Fee amount (20% bonus)	(5) Pathway Outcome Fee amount	Pathway Outcome Bonus Fee amount (20% bonus)
13 Week Period	\$5,500	\$4840	\$1,100	\$1,815	\$363
26 Week Period	\$7,700	\$6776	\$1,540	\$2,540	\$508

Disability Employment Services – Employment Support Service - Funding Level 2

Table 4 RESERVED

ONGOING SUPPORT FEES

Table 5 Flexible Ongoing Support Fees – Disability Employment Services – Employment Support Service

(1) Fee type	(2) Fee amount
Flexible Ongoing Support Fee	\$440 per Instance of Flexible Ongoing Support

Table 5A Moderate Ongoing Support Fees – Disability Employment Services – Employment Support Service

(1) Time period	(2) Fee amount
First and subsequent 13 weeks	\$1,320

Table 5B High Ongoing Support Fees – Disability Employment Services – Employment Support Service

(1) Time period	(2) Fee amount
First and subsequent 13 weeks	\$3,300

JOB IN JEOPARDY FEES

Table 6 Job in Jeopardy Service Fees – Disability Employment Services – Employment Support Service

(1) Time period	(2) Fee amount
First and second 13 weeks	\$1,320

Table 7 Job in Jeopardy Outcome Fees – Disability Employment Services – Employment Support Service

(1) Fee Type	(2) Fee amount
Job in Jeopardy Outcome Fee	\$2,860

WORK BASED PERSONAL ASSISTANCE FEES

Table 8 Work Based Personal Assistance Fees – Disability Employment Services – Employment Support Service

(1) Work Based Personal Assistance	(2) Fee amount
Hours provided directly by Provider	\$35 per hour
Hours purchased by Provider	\$45 per hour

ANNEXURE B3 DISABILITY EMPLOYMENT SERVICES – COSTS FOR CERTIFICATION WITH THE NATIONAL STANDARDS FOR DISABILITY SERVICES

The amount payable to the Provider is based on the number of sample Sites within the Provider's organisation to be audited by the Certification Body.

Table 1 – Reimbursement payments for certification and surveillance costs associated with obtaining and maintaining a Certificate of Compliance

Total number of Sites within Provider to be audited (including head office)	Certification payment (excluding GST)	Surveillance payment (excluding GST)
1	\$7,500	\$3,750
2	\$9,000	\$4,750
3-5	\$10,500	\$5,750
6-10	\$12,000	\$6,750
11-17	\$13,500	\$7,750
18-26	\$15,000	\$8,750
28-36	\$16,500	\$9,750
38	\$18,000	\$10,750
50-63	\$19,500	\$11,750
70	\$21,000	\$12,750
102-109	\$24,000	\$14,750
176	\$28,500	\$17,750

ANNEXURE C CODE OF PRACTICE AND SERVICE GUARANTEE

ANNEXURE C1 EMPLOYMENT SERVICES CODE OF PRACTICE

Organisations contracted to deliver Australian Government funded employment services have agreed and are committed to observe the Employment Services Code of Practice. This Code of Practice sets out the principles and standards that underpin the delivery of employment services and other services to increase employment outcomes and participation in economic activities in Australia especially for disadvantaged client groups.

We commit to working with our clients, employees, sub-contractors, and other providers to deliver quality employment services by:

- Ensuring staff have the skills and experience they need to provide quality and culturally sensitive services to job seekers employers and local communities
- Working in collaborative partnerships with stakeholders and communities to identify needs and how they can be met
- Behaving ethically and acting with honesty, due care and diligence
- Being open and accountable
- Avoiding any practice or activity which a provider could reasonably foresee could bring employment services into disrepute
- Sensitively managing any information collected.

We commit to helping each job seeker find their pathway into employment by:

- Meeting the Service Guarantees
- Tailoring assistance to the job seekers' personal circumstances, skills, abilities and aspirations
- Using available Government funding appropriately to support job seekers
- Treating every job seeker fairly and with respect
- Providing a fair and accessible feedback process.

We commit to assisting employers meet their skill and labour shortage needs by:

- Working with employers to identify job and industry specific training needs and how they can be met
- Referring the most appropriately qualified and experienced job seekers available
- Providing a timely response to employer inquiries.

The Australian Government will support employment services providers in achieving these standards by:

- Evaluating and sharing best practice to enable continuous improvement in the delivery of employment services
- Providing a customer service line on free call 1800 805 260 for job seekers who can not resolve any concerns or problems they have with their provider. Participants of Disability Employment Services can also contact the free Complaints Resolution and Referral Service on 1800 880 052
- Providing an employer hotline on free call 13 17 15 for businesses to access providers.

ANNEXURE C2 SERVICE GUARANTEE

DISABILITY EMPLOYMENT SERVICES – YOUR SERVICE GUARANTEE

As your Disability Employment Services Provider:

- We will clearly explain to you what services you can receive, what we will do for you, and what you have to do, including how often we will meet.
- We will provide help for you to find and keep a job. This includes giving you ongoing support once you get a job, if you need it.
- We will treat you fairly and with respect, in line with the National Standards for Disability Services.
- We will be sensitive to your individual needs when helping you, including any impact that your disability, injury or health condition might have on your ability to find and keep a job. This could also include any parenting or caring responsibilities you might have.
- We will deliver services that are culturally appropriate.

What help can I expect?

We will work with you to agree on a plan with assistance and activities to help you find and keep a job. This is called your Job Plan.

We will work with you to help you deal with any issues that might be making it hard for you to look for work. Some of the ways we might do this include:

- looking at what work you have done before, and what work is available in your area
- looking at what skills and education you have and what skills and education might help you get work
- working with prospective employers to match your skills to their needs
- providing you with help which may include training, work experience or services to help you overcome any issues that are making it difficult for you to find and keep a job
- helping you to be ready for a job
- helping you to access other support services you may need
- helping you to write a résumé
- providing you with advice on the best ways to look for work
- providing you with information about computer and internet facilities relevant to helping you to find and keep a job, including access to Australian Jobsearch (jobsearch.gov.au)
- providing you with access to an interpreter if you need one
- checking that work is suitable for your condition or injury.

Once you have a job, we will continue to support you and will develop a plan with you to help you keep your job. This may include:

- support to help you settle into your job
- on-the-job training
- information, support and training for your employer and/or co-workers
- help to resolve any problems you may have at work
- ongoing support appropriate to your needs, which may include meeting with you regularly, or giving you more intensive support when you need it.

Depending on your circumstances, we can also help you and your employer access a range of other support services which may include:

- modifications for your work area
- help to purchase specialised technology
- financial help for other services, available through a fund called the Employment Assistance Fund
- access to extra help if you are at risk of losing your job.

For Aboriginal and Torres Strait Islander Peoples

We will deliver services and engage with Aboriginal and Torres Strait Islander participants in a way that acknowledges and respects these cultures.

We will ensure that staff are appropriately trained and that this organisation is committed to getting the best employment opportunities for Aboriginal and Torres Strait Islander participants.

What are my responsibilities?

If you can't do an activity listed in your Job Plan, or can't attend an appointment that has been arranged for you, contact us as soon as possible. If you do so we may make another time for you to attend your activity or appointment. If you don't contact us beforehand when you are able to do so, your income support payment may be reduced, or stopped, even if you have a good reason for not being able to attend.

To make sure you get the right support, you should let us know if something in your life changes, like your health, your parenting responsibilities, whether you're doing voluntary or paid work or undertaking education, or if you experience a personal crisis.

If you are entitled to compensation or damages from someone for your disability, injury or illness, you should let us know.

What if I receive Newstart Allowance, Youth Allowance or Parenting Payment (with participation requirements)?

If you are receiving support from DHS through Newstart Allowance, Youth Allowance or Parenting Payment (with participation requirements), there are some extra things that you will have to do. If you want to keep receiving income support, you need to:

- make every effort to get a job, and accept any suitable job you are offered
- do your best at every job interview
- do everything that you have agreed to do in your Job Plan. This includes going to all appointments.

What happens to the information I tell you?

We will collect information about you for the purpose of providing disability employment related services to you. We will keep all information about you in accordance with the *Privacy Act 1988* (Cth).

If you ask, we will usually be able to show you the information we hold about you. If you have any concerns about the way in which information about you is being managed, you can discuss your

concerns with us. Complaints about acts or practices in relation to the use and disclosure of your personal information can also be investigated by the Information Commissioner.

More information about the *Privacy Act 1988* (Cth) and the powers of the Information Commissioner can be found on the Office of the Australian Information Commissioner's website at www.oaic.gov.au.

National Standards for Disability Services

The National Standards for Disability Services set out the quality of services we will deliver to you. We will let you know about these standards, and they can also be found online at

www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance

All Disability Employment Services Programme Providers have been assessed by independent auditors as meeting the National Standards for Disability Services.

Connections for Quality

Choosing a provider to help you find work is an important decision.

To assist you, information about providers in your local area can be found through Connections for Quality on the Australian JobSearch website at www.jobsearch.gov.au. When you are looking for a provider, Connections for Quality information about the services they provide is available on each Provider Site Detail page. This information will answer your questions about who will work with you and how they will help you find employment.

What can I do if I'm not happy with the service I receive?

If you think you aren't receiving the right help, you should first try to talk to us. We will provide a feedback process which is fair and we will try to resolve your concerns.

If you feel you can't talk to us about your concerns, or you are still not happy, you can access the Complaints Resolution and Referral Service by calling the National Customer Service Line on 1800 805 260 (free call from land lines).

You can also call the Complaints Resolution and Referral Service directly on 1800 880 052 (free call from land lines), or on the

TTY number: 1800 301 130 (free call from land lines).

The National Relay Service: 1800 555 677 (free call from land lines),

Fax 02 9318 1372.

ANNEXURE C3 RESERVED

ANNEXURE C4 RESERVED

ANNEXURE D RESERVED

ANNEXURE E NON-DISCLOSURE DEED

DEED POLL as to CONFIDENTIALITY & PRIVACY

I,

Full name in block letters

of:

Full residential address

employed by:

Name of organisation/company/agency

being a person who is authorised to represent and bind the above named organisation/company /agency (**'the Recipient'**), agree on behalf of the Recipient for the benefit of the [insert the name of the Provider] (**'the Provider'**), in connection with any services performed by the Recipient for the Provider (**'the Works'**) as follows:

1. For the purpose of the Works, the Recipient will receive and have access to information which:
 - (a) is identified as confidential;
 - (b) the Recipient knows or ought to know is confidential;
 - (c) is by its nature confidential; or
 - (d) is Personal Information,collectively, **'Confidential Information'**.

For the purpose of this clause, **'Personal Information'** means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
 - (b) whether the information or opinion is recorded in a material form or not.
2. Subject to clause 3 of this deed, the Recipient must:
 - (a) at all times treat as confidential and must not disclose to any person any Confidential Information;
 - (b) at all times keep all Confidential Information securely stored in accordance with any directions by the Provider;
 - (c) deliver up to the Provider all Confidential Information in its possession or control, as directed by the Provider; and
 - (d) not:
 - (i) copy or duplicate or reproduce in any manner whatsoever, or evolve translations of or extractions from, any portion of the Confidential Information; or
 - (ii) modify, create or recreate by any means in whole or in part any aspect or version of the Confidential Information or cause or permit any other person to do any of the foregoing.

ANNEXURE F RESERVED

EXECUTED AS A DEED by the Parties

SIGNED SEALED AND DELIVERED for and on behalf of:

THE COMMONWEALTH OF AUSTRALIA,

as represented by the Department of Social Services (ABN 36 342 015 855)

(Printed name)

(Signature)

(Position)

in the presence of

(Printed name)

(Signature)

Date

[Select one of the following execution clauses. Where the Provider is a company with multiple directors or a director and a company secretary, select the first execution block below, otherwise, select the second option.]

EXECUTED by [*insert name and ABN of Provider*] in accordance with section 127 of the *Corporations Act 2001* (Cth):

(Printed name of Director)

(Printed name of Director / Company Secretary (please delete as applicable))

(Signature of Director)

(Signature of Director / Company Secretary (please delete as applicable))

Date

SIGNED SEALED AND DELIVERED for and on behalf of **[insert name and ABN of Provider]** by:

(Insert name of signatory)

(Signature)

(Insert signatory's work title)

On:

(Insert date)

The signatory warrants that he/she has the authority to bind **[insert name of Provider]**.

In the presence of

(Signature of witness)

(Insert name and occupation of witness)

Disability Employment Services Deed
Schedule: Deed and Business Details

Item 1 Account Manager (Clause 73.3)

Account Manager Account Manager
Address PO Box Address

Managing Office Contact Phone Number: xxx

Item 2 Contact Person (Clause 73.3)

Contact xxx
Position xxx
Telephone xxx Mobile xxx
Fax xxx Email xxx

Item 3 Service Start Date (Clause 12.1)

xxx

Item 4 Service Period (Clause 12.1)

xxx

Disability Employment Services Deed
Schedule: Deed and Business Details

Item 5 **Account Details for Payment (Clause 19.2)**

Bank BSB Number	Bank Account Number	Bank Account Name
XXX	XXX	XXX

Bank Name	Bank Branch
XXX	XXX

Disability Employment Services Deed
Schedule: Deed and Business Details

Item 6 Disability Management Service

Item 6.1 Labour Market Region Services

The Labour Market Region is: **xxx**

6.2	6.3	6.4	6.5	6.6	6.7	6.8	6.9	6.10
Employment Service Area(s) (clauses 79.1, 79.2, 79.3 and Annexure A)	ESA Specialist Service Group (clause 78.1, Annexure A)	ESA Coverage (clause 79.2, Annexure A)	ESA Business Share (%) (clause 79.1, Annexure A)	Site(s) (clause 12.2, Annexure A)	Site Frequency of service and days of operation (clause 12.2, Annexure A)	Site Hours of service (clause 12.2, Annexure A)	Tendering Group	Sub-Contractor(s)

Disability Employment Services Deed
Schedule: Deed and Business Details

Item 6.11 Tendering Group Members

xxx

Item 6.12 Subcontractors (clause 52.5)

xxx

Item 7 Reserved