



Australian Government
Department of Human Services

Job Capacity Assessment Services Deed 2006

PROVIDER NAME

ABN *****

Parties

Commonwealth of Australia (Commonwealth) acting through and represented by the Department of Human Services ABN 90 794 605 008 (**DHS**).

(**Provider**).

Background

- A This Contract is comprised of:
- (a) these conditions;
 - (b) the Schedule;
 - (c) the Annexes to the Schedule; and
 - (d) documents incorporated by reference, including the Service Provider Guidelines and the Code of Practice.
- B The Provider has fully informed itself on all aspects of the work required to be performed and has offered to provide the Services specified in this Contract.
- C DHS agrees to engage the Provider to provide the Services upon the terms and conditions of this Contract.
- D This Contract will be in force from the Date of this Contract to 30 June 2008.

[Note: If the Provider is a Consortium all members of the Consortium must have executed a deed in favour of the Commonwealth appointing a lead member to execute the Contract on behalf of the Consortium, and otherwise act for members of the Consortium.]

Execution and date

Executed as a deed by **the Commonwealth of Australia** by:

.....
Printed Name

.....
Signature

.....
Position

in the presence of:

.....
Printed Name

.....
Signature

Date:

Executed as a deed by **PROVIDER NAME** by:

.....
Printed Name

.....
Signature

.....
Position

.....
Position

.....
Signature

.....
Signature

in the presence of:

.....
Printed Name

.....
Signature

Date:

Date:

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PART A GENERAL CONDITIONS

1 INTERPRETATION AND PRECEDENCE

1.1 In this Contract, unless the contrary intention appears:

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

'**Account Manager**' means the person for the time being holding, occupying or performing the duties of the office of DHS as specified in the Schedule, who has authority to receive and sign notices and written communications for DHS under this Contract;

'**Activity Agreement**' means an agreement developed between the Client and Centrelink or the Client and the Provider. For those Clients who are on Newstart Allowance or Youth Allowance, the activity agreement commits them to meet their activity test obligations under the *Social Security Act 1991* (Cth). The activity agreement sets out the activities the Client will undertake in the foreseeable future to improve their prospects and find sustainable employment. It also sets out the assistance and opportunities being provided to the Client to help them prepare for work and the requirements for the Client to take up that assistance.

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

'**Allied Health Professional**' means a qualified health professional and includes, without limitation, rehabilitation consultant and social workers;

'**Annex**' or **Annexures**' means the Annexures attached to this Contract;

'**Assessment**' means the job capacity assessment the Provider is to undertake for each Client in accordance with this Contract and the Service Provider Guidelines and **Assess** has a corresponding meaning;

'**Assessment Report**' means the written report the Provider must deliver in relation to a Client who has been Assessed, to DHS and Centrelink or an ESP as appropriate;

'**Assessment Report Format**' means the form at Annex 4 to the Schedule;

'**Auditor-General**' means the person appointed in accordance with the *Auditor-General Act 1997* (Cth) or a properly appointed delegate;

'**Australian Auditing Standards**' refers to the standards of that name maintained by the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth);

'**Australian Equivalent of International Financial Reporting Standards**' or '**AEIFRS**' refers to the standards of that name maintained by the AASB Accounting

Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth);

'Business Day' means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place;

'Case Documentation' means all documents provided to the Provider from Centrelink, ESPs or the Client for the purpose of the Provider undertaking an Assessment;

'Centrelink' means the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997* (Cth);

'Change in Control' means:

- (a) subject to paragraph (b), in relation to a Corporation, a change in any of the following:
 - i the composition or the voting power of the board of directors;
 - ii control of more than one half of the voting power attaching to shares in the Corporation, whether due to one or a series of transactions occurring together or on different occasions; or
 - iii control of more than one half of the issued share capital of the Corporation (either beneficially or otherwise), 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;
- (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 12 month period of any of the partners; or
 - iii the retirement, death, removal or resignation in any 12 month period of any of the partners;
- (d) in relation to an Exempt Public Authority, a change in relation to any of the following:
 - i controlling the composition or the voting power 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 Consortium:
- i any change in the membership of the Consortium;
 - ii a change of the lead member of the Consortium; or
 - iii a Change in Control as defined in paragraphs (a) to (d) above in any member of the Consortium.

For the purposes of this definition, control has the meaning set out in section 50AA of the *Corporations Act 2001* (Cth) and voting power has the meaning given in section 610 of the *Corporations Act 2001* (Cth).

'Client' means any *person* who is referred to undergo an Assessment by the Provider under this Contract;

'Code of Practice' means the code of practice for the Provider as published from time to time by DHS in relation to the Programme;

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

'Commonwealth Material' means any Material provided by the Commonwealth to the Provider for the purposes of this Contract and Material, which is copied or derived from Material so provided, including, but not limited to Material in which Intellectual Property Rights are owned or licensed by the Commonwealth;

'Complaint' means any expression of dissatisfaction by a Client or a potential Client 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 Client or potential Client for Services, unless it is a second or further request;
- (b) 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;

'Complaint Procedure' means the procedure referred to in clause 5 for complaints, which applies to all Services under this Contract;

'Complaints Register' means the list of Complaints received against the Provider for each Site;

'Completion Date' means 30 June 2008, or the date of expiry of any extension period under clause 2.2;

'Confidential Information' means any information or data including Personal Information, whether or not in a material form, which is confidential to a party,

including confidential information acquired, collected or developed for the purpose of this Programme or developed during the currency of this Contract, except that which is in the public domain otherwise than as a result of a breach of this Contract;

'**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 it in providing the Services to DHS fairly and independently;

'**Consortium**' means two or more entities who have entered into an arrangement for the purposes of jointly delivering the Services, and who have appointed a lead member of the consortium with authority to act on behalf of all members of the consortium;

'**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 Person**' means the person specified in the Schedule for the Services who has authority to receive and sign notices and written communications for the Provider under this Contract and accept any request or direction in relation to the Services;

'**Contract**' means this deed and includes the Schedule and Annexures, and any other documents attached or incorporated by reference, including the Service Provider Guidelines;

'**Contract Material**' means all Material:

- (a) brought into existence for the purpose of performing the Services;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied or derived from Material referred to in paragraphs (a) or (b);

'**Contract Period**' means the term of this Contract, commencing on the Date of this Contract and ending on the Completion Date;

'**Control**' includes, where the context permits, 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);

'Date of Referral' means the day a booking is made in EA3000 for an Assessment of a Client;

'Date of this Contract' means the date written on the first page of this Contract, and if no date or more than one date is written there, then the date on which this Contract is signed by the last Party;

'DEWR' means the Commonwealth Department of Employment and Workplace Relations;

'DHS' means the Commonwealth Department of Human Services or such other agency or Department as may administer this Contract on behalf of the Commonwealth and, where the context so admits, includes the relevant Commonwealth's officers, delegates, employees and agents;

'DHS' Confidential Information' means all information that:

- (a) is identified in the Schedule;
- (b) DHS identifies, by notice in writing to the Provider after the Date of this Contract, as confidential information for the purposes of this Contract; or
- (c) the Provider knows or ought reasonably know is confidential;

'DHS Customer Service Line' means a local call telephone service which puts Clients and the Provider in contact with a DHS Customer Service Officer and is 1300 136 526, or such other number as notified by DHS from time to time;

'DHS Employees' includes:

- (a) any person authorised by DHS; and
- (b) any person authorised by law to undertake acts on behalf of DHS,

but does not include the Provider or the Provider's Personnel;

'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 Incorporated Aboriginal Association under the *Aboriginal Councils and Associations Act 1976* (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) 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 Support Pension**' has the meaning given to that term by the *Social Security Act 1991* (Cth);

'**EA3000**' means the DEWR secure internet based information technology system used to receive referrals, complete or update the JCSI, submit reports and claim payments;

'**Electronic Communication**' has the same meaning as it has in section 5 of the *Electronic Transactions Act 1999* (Cth);

'**Employment Service Area**' or '**ESA**' means a geographical area within a Labour Market Region, defined by postcode, as set out in Annex 2 to the Schedule;

'**Employment Services Provider**' or '**ESP**' means a provider of various employment and related services to the Commonwealth for the benefit of the Client but does not include Centrelink;

'**Exempt Public Authority**' has the meaning given to that term in section 9 of the *Corporations Act 2001*;

'**Existing Material**' means all Material, except Commonwealth Material, in existence prior to the Date of this Contract:

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

the Contract Material;

'**Fees**' means any amounts specified in Annex 3 to the Schedule to be Fees (including fees for Services, loading for defined Services and reimbursable expenses) and includes JSCI Fees. 'Fees' includes any pool funds referred to in clause 13 of Part 1 of the Schedule;

'**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);

'Incident' includes public discourse or the reasonable prospect of discourse and media coverage that might bring the Programme into disrepute;

'Intellectual Property Rights' includes:

- (a) all copyright (including rights in relation to phonograms and broadcasts);
- (b) all rights in relation to inventions, 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 rights of performers; or
- (f) rights in relation to confidential information;

'Interest' means interest calculated at an interest rate equal to the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points, on a daily compounding basis;

'Job Network' means the national network of private and community organisations dedicated to helping job seekers find and keep a job;

'Job Seeker Classification Instrument' or **'JSCI'** means a questionnaire used to objectively measure a Client's relative labour market disadvantage and determines the Client's level of access to employment assistance through the Job Network. The JSCI identifies Clients who, because of their personal circumstances, are likely to become long term unemployed. These Clients are classified as 'highly disadvantaged' and are eligible for immediate access to the highest level of employment assistance available through the Job Network;

'JSCI Fees' means the fees payable by DEWR to the Provider for JSCI Services;

'JSCI Services' means the Services described in the Schedule Part 2 Section B;

'JSCI Programme' means the programme of administering the JSCI;

'Key Performance Indicators' or **'KPI's'** means the indicators so described and set out in the Annex 1 to the Schedule Part 2 Section A (SOR for Services) and Annex 1 to the Schedule Part 2 Section B (SOR for JSCI Services) or as notified to the Provider by DHS from time to time;

'Labour Market Region' or **'LMR'** means one of 19 geographical areas, each containing a number of ESA's as set out in Annex 2 to the Schedule;

'Material' includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;

'Material Subcontractor' means any of the Provider's subcontractors subcontracted to perform a substantial part of the Services;

'Moral Rights' includes the following rights of an author of copyright Material created under the *Copyright Act 1968* (Cth):

- (a) the right of attribution of authorship;
- (b) the right of integrity of authorship;
- (c) the right not to have authorship falsely attributed;

'Newstart Allowance' has the meaning given to that term by the *Social Security Act 1991* (Cth);

'Parenting Payment' has the meaning given to that term by the *Social Security Act 1991* (Cth);

'Party' means a party to this Contract;

'Performance Period' means each six-monthly period commencing from the Date of this Contract;

'Performance Review' means the review carried out by DHS following each Performance Period, at which the Provider's performance for that Performance Period is reviewed;

'Personal Information' has the same meaning as under section 6 of the Privacy Act which currently is information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

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

'Privacy Commissioner' means the Office of the Privacy Commissioner established under the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office;

'Programme' means the Commonwealth's Job Capacity Assessment programme administered by DHS;

'Provider' means the person named on the first page of this Contract and includes, where the context so admits, its employees, agents and subcontractors;

'Provider Personnel' means the personnel engaged by the Provider to perform the Services, and who are specified in the Schedule;

'Provider's Confidential Information' means information DHS agrees to treat as confidential:

- (a) that is identified in the Schedule; or
- (b) by providing notice in writing to the Provider after the Date of this Contract;

'Qualified Accountant' means a person who is an appropriately qualified member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants;

'Records' includes documents, information and data stored by any means and all copies and extracts of the same;

'Records Rules' means the agreed rules relating to keeping of Records which apply to all Services, as stipulated in Annex 5 to the Schedule (if any);

'Remote' means those ESAs identified as remote in the Service Provider Guidelines;

'Report' means Contract Material that is provided to DHS for the purposes of reporting on the Services, including the use of the funds;

'Schedule' means the Schedule attached to this Contract;

'Service' means the service or each of the services, as set out in the Schedule, which the Provider is required to provide in accordance with this Contract including the JSCI Services;

'Service Provider Guidelines' means the document known as 'Job Capacity Assessment Service Provider Guidelines' as they exist from time to time, provided by DHS for performance of Services as referred to in the Schedule, and which are incorporated in the Contract;

'Service Start Date' in relation to a Service, means the date on which that Service commences as set out in the Schedule;

'Site' means the one or more physical locations specified in the relevant Schedule or approved in writing by DHS, at which the Provider must conduct the Services in relation to this Contract;

'Statement of Requirement' or **'SOR'** means the statement of requirement contained in the Schedule;

'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;

'Very Remote' means those ESAs identified as very remote in the Service Provider Guidelines; and

'Youth Allowance' has the meaning given to that term by the *Social Security Act 1991* (Cth).

Rules of interpretation

- 1.2 In this Part A (General Conditions), and applicable Parts, certain words and phrases have defined meanings. These words are indicated by having their first letters capitalised. All other words have their natural and ordinary meaning.
- 1.3 Unless the contrary intention appears, the definitions set out in clause 1 of this Contract apply to the whole of the Contract and the Schedule.
- 1.4 The Schedule, Annexes, any attachments and any documents incorporated by reference (including the Service Provider Guidelines and the Code of Practice) form part of this Contract.
- 1.5 In this Contract, unless the contrary intention appears:
- 1.5.1 words in the singular include the plural and vice versa;
 - 1.5.2 words importing a gender include the other gender;
 - 1.5.3 a reference to a person includes a partnership and a body whether corporate or otherwise;
 - 1.5.4 clause headings or words in bold italic format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
 - 1.5.5 all references to clauses are to clauses in this Contract;
 - 1.5.6 all references to dollars are to Australian dollars;
 - 1.5.7 a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
 - 1.5.8 a reference to an Item is to an Item in the Schedule;
 - 1.5.9 an uncertainty or ambiguity in the meaning of a provision of this Contract will not be interpreted against a Party just because that Party prepared the provision;
 - 1.5.10 a reference to an internet site includes those sites as amended from time to time; and
 - 1.5.11 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.

Precedence

- 1.6 Unless the contrary intention appears, if there is any conflict or inconsistency between any part of:
- 1.6.1 the terms and conditions of this Contract;

- 1.6.2 the Schedule;
- 1.6.3 the Annexes;
- 1.6.4 any other attachments;
- 1.6.5 documents incorporated by reference, including the Service Provider Guidelines and Code of Practice,

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

2 TERM OF THIS CONTRACT

Duration of Term

- 2.1 This Contract commences on the Date of this Contract and, unless terminated earlier, it expires on the Completion Date.
- 2.2 DHS may, at its sole option, extend this Contract in relation to one or more of the Services for [up to 4 periods of 12 months each], by providing written notice to the Provider not less than 20 Business Days prior to the expiration of the Completion Date. If DHS decides to extend this Contract, it may negotiate with the Provider, in relation to each period for which this Contract is extended, the Fees DHS will pay and the scope of the Services the Provider is to perform for the period of the extension.

Survival

- 2.3 The operation of clauses 5 [Complaint Procedure], 7 [Payment of Fees], 8 [Repayments and Offsetting], 10 [Financial Records], 11 [Reporting], 17 [Intellectual Property], 18 [Commonwealth Material], 19 [Release of Information on the Provider's Performance], 20 [Confidential Information], 21 [Personal Information], 25 [Indemnity], 26 [Insurance], 29 [Dispute Resolution], 35 [Acknowledgement and Promotion], 42 [Applicable Law and Jurisdiction] and any other provisions specified in the Schedule as surviving, survive the expiration or termination of this Contract.
- 2.4 Clause 24 [Access to Premises and Records] applies during this Contract and for 7 years from the end of this Contract.

3 CONDUCTING THE SERVICES

- 3.1 The Provider must, and at all times must be available to, carry out the Services:
 - 3.1.1 at the times and in the manner specified this Contract diligently, effectively and to a high professional standard; and
 - 3.1.2 to comply with the Key Performance Indicators.
- 3.2 The Provider acknowledges and agrees that:

- 3.2.1 neither DHS nor DEWR make any representation about the volume of Services that the Provider may be required to perform under this Contract; and
 - 3.2.2 the Commonwealth provides no guarantee that any Services will be referred or sought under this Contract.
- 3.3 The Contract includes:
- 3.3.1 these terms and conditions;
 - 3.3.2 the Schedule;
 - 3.3.3 the Annexes attached to the Schedule; and
 - 3.3.4 the Service Provider Guidelines and the Code of Practice.
- 3.4 Without limiting clause 3.1, the Provider must:
- 3.4.1 fully cooperate by participating in any general research, monitoring or evaluation programmes undertaken by DHS, or on behalf of DHS, in relation to the delivery of the Services;
 - 3.4.2 comply with the conditions set out in the Schedule;
 - 3.4.3 comply with the terms and conditions of this Contract;
 - 3.4.4 at all times act ethically and in good faith towards DHS in the performance of this Contract to maintain the reputation of the Services and the Commonwealth, acknowledging that an unethical manner constitutes any practice that manipulates outcomes, the performance model or Services to maximise payments to the Provider.
- 3.5 The Provider must not engage in any conduct or make any statement to Clients which would bring the Programme into disrepute.
- 3.6 The Provider acknowledges that DEWR will assist DHS in administering the JSCI Programme and is the representative of DHS in relation to the payment of Fees (including JSCI Fees).

4 SERVICE PROVIDER GUIDELINES

- 4.1 The Provider must conduct the Services at or above the minimum standards set by this Contract and the Service Provider Guidelines for the Programme.
- 4.2 The Provider must prominently display in the Provider's offices and Sites and make available to Clients, promotional Material made available by DHS on the Programme and the Service Provider Guidelines.
- 4.3 Where, in DHS' view, the Provider has not conducted the Services in accordance with the Service Provider Guidelines, DHS may:

- 4.3.1 require the Provider, by providing notice in writing, to remedy the breach within a period of time specified by DHS; and/or
- 4.3.2 take action as permitted in the KPIs.
- 4.4 If, following a notification given under clause 4.3, the Provider fails to remedy the breach within the period of time specified by DHS, DHS may, at its sole discretion:
 - 4.4.1 take action under clause 31 [Remedies]; or
 - 4.4.2 immediately terminate this Contract in accordance with clause 33 [Termination for Default].

5 COMPLAINT PROCEDURE

The Complaint process

- 5.1 The Provider must establish and publicise to Clients, Centrelink and ESPs, the existence and details of a Complaint Procedure which will deal with Complaints lodged by Clients or ESPs about the Provider's conduct of the Services. The Complaint Procedure must comply with all requirements specified in relation to it in the SOR.

6 PROVIDER PERSONNEL

Use of Specified Personnel

- 6.1 The Provider must ensure that the Provider Personnel listed in the Schedule, if any, are used to conduct Services and that those persons do so in accordance with the terms of this Contract.

Replacement of the Provider's Personnel

- 6.2 Where the Provider's Personnel are unable to undertake work in respect of the Services, the Provider must notify DHS immediately. The Provider must, if notified by DHS, provide replacement personnel acceptable to DHS without additional payment and at the earliest opportunity, or within any time period specified in DHS' notice.

Removal of the Provider's Personnel

- 6.3 DHS may give notice requiring the Provider to remove personnel (including the Provider's Personnel) from work on the Services. The Provider must, at the Provider's own cost, immediately arrange for the removal of the personnel from work on the Services and their replacement with personnel acceptable to DHS in the timeframe specified in DHS' notice.

Provision of Specified Personnel

- 6.4 If the Provider is unable to provide acceptable replacement personnel who are acceptable to DHS, DHS may terminate this Contract under clause 33 [Termination for Default].

7 PAYMENT OF FEES

Making of Payment

- 7.1 Subject to the Provider's compliance with its obligations under this Contract, DEWR will, on DHS' behalf, pay the Provider the Fees as specified in Annex 3 to the Schedule.
- 7.2 The Provider must submit Tax Invoices to DEWR through EA3000 for payment in the manner set out in the Schedule.
- 7.3 The Provider must retain sufficient documentary evidence to support any Tax Invoice.
- 7.4 Without limiting DHS' rights under this Contract, under statute, at law or in equity, if the Provider:
- 7.4.1 has not performed its obligations under this Contract to DHS' satisfaction; or
 - 7.4.2 has outstanding or unacquitted money under any arrangement with DHS,
DHS or DEWR may:
 - 7.4.3 withhold or suspend any payment in whole or in part under this Contract;
 - 7.4.4 reduce the amount of Fees or not pay the Fees that would otherwise have been payable in respect of the relevant obligation; or
 - 7.4.5 where DEWR has already paid Fees under this Contract, DHS or DEWR may:
 - (a) recover the equivalent amount as a debt; or
 - (b) offset the equivalent payments in accordance with clause 8.5.
- 7.5 Notwithstanding any action taken by DHS or DEWR under clause 7.4, the Provider must continue to perform any obligations under this Contract, unless DHS agrees otherwise in writing.

Overpayment

- 7.6 If at any time, an overpayment occurs, including where a Tax Invoice is found to have been incorrectly rendered after payment, then this amount is a debt owed to DHS, which must be repaid to DHS.

No Additional Payments

- 7.7 Neither DHS nor DEWR is responsible for the provision of any additional money in excess of the Fees set out in Annex 3 to the Schedule.

No Double Payments

- 7.8 DHS will not make a payment for the provision of Services for a Client where the Provider is entitled to a payment for the provision of the same or a similar service from

DHS or another Commonwealth, State, Territory or local government body for the same Client.

Fraud

- 7.9 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 made available to DHS on request.
- 7.10 If DHS determines that the Provider may be engaged in fraudulent activity DHS may, on providing the Provider with notice of its determination:
- 7.10.1 immediately suspend referral of Clients in respect of some or all Services at some or all Sites; and
 - 7.10.2 immediately suspend payments to the Provider,
while DHS investigates the matter.
- 7.11 If DHS determines that the Provider has been engaged in fraudulent activity, DHS may:
- 7.11.1 require the Provider to refund some or all of the payments made by DHS;
and
 - 7.11.2 immediately terminate this Contract under clause 33 [Termination for Default].
- 7.12 The Provider acknowledges that under the *Criminal Code Act 1995* (Cth), offences involving fraudulent conduct against the Commonwealth are punishable by imprisonment.

No Charges to Clients

- 7.13 Unless otherwise expressly agreed in writing by DHS, the Provider must not demand or receive any fee or any other consideration either directly or indirectly from any Client for, or in connection with, the Services.

DHS may vary payments and Clients

- 7.14 DHS may vary the payments of Fees under this Contract, the number of Clients allocated to the Provider and/or the Services for all or part of the Contract Period at any time by written notice, based on DHS' assessment of past and/or future projected Client demand, or any other reason as determined by DHS in its absolute discretion.

8 REPAYMENTS AND OFFSETTING

Repayment and Interest

- 8.1 Any amount owed to DHS under this Contract, including any Interest will, without prejudice to any other rights available to DHS under this Contract, under statute, at law or in equity, be recoverable by DHS, or by DEWR on DHS' behalf, as a debt due to DHS by the Provider without further proof of the debt by DHS being necessary.

- 8.2 Subject to contrary stipulation, where any debt is owed to DHS, Interest accrues on that debt if it is not repaid within 10 Business Days of receipt of a notice requiring payment from DHS, or from DEWR on DHS' behalf, or the due date for the payment, whichever is the earlier, until the amount is paid in full.
- 8.3 In respect of any obligation the Provider may have under this Contract to pay DHS Interest, the Provider agrees that the Interest represents a reasonable pre-estimate of the loss incurred by DHS.
- 8.4 Where any debt is repaid, including by offset under clause 8.5, an Adjustment Note must be provided to DEWR, on behalf of DHS, if required by the GST Act.

Offsetting

- 8.5 If the Provider owes DHS any payment or debt under this Contract, DHS, or DEWR on DHS' behalf, may, without limitation, offset or deduct an amount equal to that payment or debt against any other payments due to the Provider:
- 8.5.1 under this Contract; or
 - 8.5.2 under any other agreement or arrangement between the Provider and the Commonwealth.

9 TAXES, DUTIES AND GOVERNMENT CHARGES

Amounts inclusive of GST

- 9.1 Unless expressly stated to the contrary, all dollar amounts in this Contract are inclusive of GST.

General Taxes

- 9.2 Subject to this clause 9, all taxes, duties and government charges imposed in Australia or overseas in connection with this Contract must be borne by the Provider.

Provider's Tax Invoices

- 9.3 If the Provider fails to provide a valid ABN with its Tax Invoice, DEWR may, on DHS' behalf, without limiting any of its other rights, withhold 48.5% of the amount claimed under that Tax Invoice.
- 9.4 If one Party is required to reimburse or pay to another Party an amount calculated by reference to a cost, expense or an amount paid or incurred by that Party (the 'reimbursement amount'):
- 9.4.1 the reimbursement amount will be reduced by an amount equal to the value of any input tax credits to which the Party being reimbursed is entitled in respect of that cost, expense or amount; and
 - 9.4.2 after making the adjustment under clause 9.4.1, where the payment of the reimbursement attracts GST, the reimbursement amount will be increased by the rate of the GST.

- 9.5 Notwithstanding any other provisions of this Contract, if the Services, or part of the Services, are not, or cease to be, a Taxable Supply, any amounts that would be payable under this Contract in respect of those Services will be reduced by an amount equivalent to the GST that would otherwise have been applicable in respect of those Services if they were a Taxable Supply.
- 9.6 The Provider must immediately give DHS notice if the Services, or part of the Services, are not, or cease to be, a Taxable Supply.
- 9.7 For a Taxable Supply made by DHS to the Provider under or in connection with this Contract:
- 9.7.1 the Provider will, in addition to any amounts otherwise due to DHS in relation to the Taxable Supplies, pay DHS the amount equal to the amount of GST which is payable by the Commonwealth in respect of that Taxable Supply; and
- 9.7.2 DHS will issue the Provider with a Tax Invoice in accordance with the GST Act in relation to the Taxable Supply.

10 FINANCIAL RECORDS

Accounts and Records

- 10.1 The Provider must keep, in accordance with Australian Equivalent of International Financial Reporting Standards, proper accounts and records of its transactions and affairs in relation to any money that it receives from DHS or DEWR under this Contract.
- 10.2 All payments made by DHS or DEWR under this Contract must be clearly and separately identified in the Provider's accounts.
- 10.3 The Provider must keep its financial accounts and records in such a way as to enable an auditor or other person to examine them at any time and thereby to ascertain its financial position.

Annual Financial Statements

- 10.4 The Provider must provide to DHS its audited financial statements within 1 month of its annual general meeting or within 1 month after the compilation of the financial statements where no annual general meeting is held, and no later than 6 months after the end of the Provider's financial year, or at any other time requested by DHS, acting reasonably. If the Provider is a consortium of legal entities or a partnership, then the Provider must provide 1 copy of the consolidated financial statements for the consortium or partnership, if available, and individual annual financial statements for each entity. Audited financial statements should be provided where available.
- 10.5 DHS may take action under clause 31 [Remedies] or elect to terminate this Contract in accordance with clause 33 [Termination for Default], if the Provider is more than 1 month overdue in providing its financial statements to DHS.

11 REPORTING

11.1 Without limiting any other provisions of this Contract, upon DHS' request the Provider must provide:

11.1.1 DHS with Reports on the Services, including without limitation, the progress of the Services against any Milestones or performance criteria, at the times and in the format (including but not limited to Reports that are entered on a DHS information system), as specified in the Schedule or as reasonably required by DHS from time to time; and

11.1.2 a suitably qualified, informed and authorised representative at any meeting arranged by DHS in order to discuss and accurately answer questions relating to the performance of the Services under this Contract.

The Provider should note that under the Criminal Code Act 1995 (Cth) section 137.1, giving false or misleading information is a serious offence.

12 INFORMATION TECHNOLOGY

12.1 If required by DHS, the Provider must deliver the Services using the information systems provided by DEWR for that purpose or other systems as directed.

12.2 The Provider must ensure that a Client's details are accurately and completely recorded on information systems and that all data entered on DEWR's information systems is true, accurate and complete and complies with all DEWR's requirements notified to the Provider.

12.3 DHS may provide DEWR's training in the use of DHS' information systems, by computer-assisted learning packages or otherwise. Where specified by DHS, the Provider's staff and subcontractors will not access or use particular DHS information systems until they have successfully completed the relevant training.

12.4 The Provider must provide information systems that are adequate and appropriate to access and use DEWR's information systems and to carry out the Provider's other obligations under this Contract.

12.5 The Provider is responsible for all costs of meeting its obligations under this clause 12, including:

12.5.1 purchase of any hardware, software or other equipment;

12.5.2 telecommunications and internet service provider charges (including cost of calls to DHS' information technology help desk); and

12.5.3 costs of completing training programmes and packages provided by DHS.

13 DELAY

Obligation to minimise

- 13.1 The Provider must take all reasonable steps to minimise delay in completion of the Services.

Action on delay

- 13.2 If the Provider does not notify DHS of any such delay in its monthly Status Reports (see Part 1 of the Schedule), DHS may at DHS' sole discretion:
- 13.2.1 notify the Provider of a period of extension to complete the Services and vary this Contract accordingly;
 - 13.2.2 take action under clause 31 [Remedies];
 - 13.2.3 terminate this Contract under clause 33 [Termination for Default]; or
 - 13.2.4 take such other steps as are available under this Contract, under statute, at law or in equity.
- 13.3 Unless DHS takes action under clause 13.2, the Provider must comply with the time frame for progressing and completing the Services as set out in this Contract.

14 LIAISON AND COMPLIANCE

- 14.1 The Provider must:
- 14.1.1 liaise with and provide information to DHS as reasonably requested by DHS;
 - 14.1.2 liaise with Centrelink, DEWR and ESPs as reasonably directed; and
 - 14.1.3 comply with all of DHS' reasonable requests, directions or monitoring requirements.
- 14.2 DHS and the Provider may respectively nominate, from time to time, an Account Manager and a Contact Person.
- 14.3 The day to day management of this Contract will be handled by the Account Manager and the Contact Person.

15 EVALUATION ACTIVITIES

Cooperate in evaluation activities

- 15.1 The Provider agrees that:
- 15.1.1 evaluation activity may be undertaken by DHS for the purposes of evaluating the Services;

- 15.1.2 all evaluation activities will be conducted in a mutually cooperative manner, and may include, but are not limited to:
- (a) DHS monitoring, measuring and evaluating the Provider's delivery of the Services;
 - (b) DHS accessing all records created by or held by the Provider in connection with the Services;
 - (c) the Provider being interviewed by DHS or an independent evaluator nominated by DHS; and
 - (d) the Provider giving DHS or DHS' evaluator access to the Provider's premises and records in accordance with clause 24 [Access to Premises and Records]; and
- 15.1.3 the Provider will assist DHS or DHS' evaluator in carrying out these and any other evaluation activities which DHS requires to be undertaken, including a review and final evaluation of the Services.

16 PERFORMANCE MANAGEMENT

- 16.1 DHS will monitor, measure and evaluate the Provider's performance against the requirements of this Contract, including the Key Performance Indicators, the Complaint Procedure and the Service Provider Guidelines, on the basis of performance data collected from various sources, including:
- 16.1.1 management information and other information obtained from DEWR, Centrelink and DHS systems;
 - 16.1.2 the DHS quality assurance system;
 - 16.1.3 client satisfaction surveys of Clients;
 - 16.1.4 surveys of the Provider and other providers; and
 - 16.1.5 post-programme monitoring surveys.
- 16.2 DHS will formally assess the Provider's performance in accordance with clause 16.1 at Performance Reviews which will occur after each Performance Period has elapsed.
- 16.3 The Provider must:
- 16.3.1 provide all reasonable assistance required by DHS or DEWR, when acting on behalf of DHS;
 - 16.3.2 respond to all DHS' reasonable requests; and
 - 16.3.3 provide any information DHS requires,

- in relation to conducting Performance Reviews and any final evaluation of the Services.
- 16.4 Where, following a Performance Review, DHS considers that the performance of the Provider warrants it, DHS may:
- 16.4.1 with the agreement of the Provider, increase Client numbers; or
 - 16.4.2 decrease Client numbers,
- for all or any part or parts of the remaining Contract Period; and/or
- 16.4.3 take any other relevant action set out in the Schedule or in Annex 1 to the Schedule.
- 16.5 Where DHS determines that the Provider's performance is less than satisfactory, DHS may notify the Provider in writing that a failure to improve its performance to DHS' satisfaction within a period of time specified by DHS, will allow DHS to take the action specified in clause 16.6.
- 16.6 If, following a notification given under clause 16.5, DHS determines that the Provider's performance has not improved to DHS' satisfaction within the period of time specified in the notice, DHS may:
- 16.6.1 take action under clause 31 [Remedies]; or
 - 16.6.2 immediately terminate this Contract under clause 33 [Termination for Default].
- 16.7 The rights given to DHS under this clause 16 are in addition to, and do not take away from, any legal rights that DHS may otherwise have.

17 INTELLECTUAL PROPERTY

Ownership

- 17.1 Subject to this clause 17, as between DHS and the Provider (but without affecting the position between the Provider and a third party) ownership of and Intellectual Property Rights in all Contract Material vests immediately upon its creation in the Commonwealth.
- 17.2 DHS grants the Provider a licence to use, copy and reproduce the Contract Material but only for the purposes of this Contract and in accordance with any conditions or restrictions specified in the Schedule or as notified by DHS to the Provider.
- 17.3 The licence in clause 17.2 is revocable on 10 Business Days' notice by DHS, and expires:
- 17.3.1 on the Completion Date for the Service to which the Contract Material relates; or

17.3.2 on termination of the Part of the Contract to which the Contract Material relates,

whichever is the earlier.

Licence of Existing Material

17.4 This clause 17 does not affect the ownership of any Intellectual Property Rights in any Existing Material that is specified in the Schedule. The Provider, however, grants to DHS and DEWR or must arrange for the grant to DHS and DEWR of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Intellectual Property Rights in Existing Material for any Commonwealth purpose.

Dealing with Intellectual Property Rights

17.5 The Provider warrants that:

17.5.1 it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Contract Material and the Existing Material in accordance with this clause 17;

17.5.2 it has obtained valid written consents from all authors (including approved subcontractors) involved in creating the Contract Material and Existing Material so that DHS' use of that Material in accordance with this clause 17 will not infringe:

- (a) the Intellectual Property Rights of any third party; or
- (b) any author's Moral Rights.

17.6 The Provider must :

17.6.1 if requested by DHS 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 17;

17.6.2 not deal with the Intellectual Property Rights in the Contract Material, except as expressly provided for in this Contract; and

17.6.3 deliver all Contract Material to DHS at the Completion Date, unless otherwise specified in the Schedule, the Record Rules or by DHS.

17.7 This clause 17 does not apply to any Commonwealth Material incorporated in the Contract Material.

17.8 For the purposes of clause 17.5, "infringe" includes unauthorised acts which 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.

18 COMMONWEALTH MATERIAL

Ownership

- 18.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in the Commonwealth but the Commonwealth grants the Provider a licence to use, copy and reproduce that Commonwealth Material only for the purposes of this Contract and in accordance with any conditions or restrictions specified in the Schedule or as notified by DHS to the Provider.
- 18.2 The licence in clause 18.1 is revocable on 10 Business Days' notice by DHS, and expires:
- 18.2.1 at the Completion Date for the Service to which the Commonwealth Material relates; or
 - 18.2.2 on termination of the Part of the Contract to which the Commonwealth Material relates,
- whichever is the earlier.

Maintain Commonwealth Material

- 18.3 The Provider must keep safely and maintain Commonwealth Material which the Provider has been given for the purposes of this Contract.

Possession of Commonwealth Material

- 18.4 The Provider must return to DHS all Commonwealth Material in the Provider's possession or under the Provider's control at the Completion Date, unless:
- 18.4.1 the Schedule specifies otherwise; or
 - 18.4.2 DHS otherwise notifies the Provider.

19 RELEASE OF INFORMATION ON THE PROVIDER'S PERFORMANCE

- 19.1 The Provider agrees that DHS may publish information it holds concerning the Provider's performance as a provider of Services under this Contract.
- 19.2 The Provider must not publish any statement or make any media release about the Programme without the prior written approval of DHS.

20 CONFIDENTIAL INFORMATION

- 20.1 Subject to clause 20.12 and to Annex 6:
- 20.1.1 the Provider must not, without DHS' prior written approval, disclose any of DHS' Confidential Information to a third party; and

20.1.2 DHS must not, without the Provider's prior written approval, disclose any of the Provider's Confidential Information to a third party,

each party must keep all Confidential Information absolutely confidential and each party warrants to the other that it will not communicate, publish or release, or permit the communication, publication or release of any Confidential Information.

20.2 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.

Warranty by employees and agents of the Provider

20.3 The Provider must:

20.3.1 procure from each person employed or engaged by it in relation to this Contract a warranty that is consistent with the Provider's obligations under clause 20.1, in effect, that the person will not communicate, publish or release Confidential Information, before giving them access to any Confidential Information; and

20.3.2 on being informed, or otherwise becoming aware, of any breach or anticipated breach of any warranty referred to in paragraph (a), take such action as may be necessary to enforce that compliance, including all reasonable actions directed by DHS, and irrevocably authorises and permits DHS to enforce the warranty in the event that the Provider fails to do so adequately.

20.4 DHS may, at any time, request in writing that the warranty required by clause 20.3 be given in the form of an executed deed in favour of DHS in a form required by DHS. If DHS so requests, then the Provider must deliver a copy of the warranty to the Account Manager.

Warranty by others

20.5 The Provider must ensure that anyone it employs to perform the Services completes a confidentiality deed if requested by DHS before having access to any Confidential Information.

20.6 Where in the conduct of, or for the purposes of, the Programme the Provider desires to engage the services of a person who is not an employee or agent, and if necessary for the purposes of that engagement to disclose Information, no such disclosure may be made unless:

20.6.1 the other person warrants to DHS that it will maintain the confidentiality of the Confidential Information in like terms to that required by clause 20.1;

20.6.2 except as expressly excluded by DHS in writing, the other person executes and delivers to the Account Manager a similar undertaking to that set out in clause 20.3 and Annex 6; and

20.6.3 the consent in writing of the Account Manager is first obtained.

Surrender of materials

- 20.7 The Provider must return to DHS or destroy all copies of DHS' Confidential Information at the end of the Contract Period.
- 20.8 Subject to clause 20.9, on or before the end of the Contract Period, the Provider must:
- 20.8.1 deliver to DHS all Confidential Information and other material received from or through DHS including without limiting the generality thereof, reports, papers, technical information, plans, charts, drawings, calculations, tables, graphs, schedules, notes, computer programs, computer tapes and discs, computer data bases, reference books and other texts; and
 - 20.8.2 delete and render irrecoverable any form of electronic or optical record of the final report or any draft or copy thereof, or any other information or program that was created, collected or otherwise received in the course of carrying out the Programme including installed software provided by DHS.
- 20.9 If the Account Manager gives the Provider written permission to retain certain specific Confidential Information held in electronic or written form, the Provider need not comply with the provisions of clause 20.7 in respect of the relevant Materials.

Security of Materials

- 20.10 The Provider must keep all Confidential Information secure.
- 20.11 The Provider is responsible for and must take all reasonable measure to ensure the security of the Confidential Information for so long as that Confidential Information is within its control, and in doing so must ensure that the Confidential Information is protected at all times from access, use or misuse, damage or destruction, by any person not authorised by this Contract to have access to it.

Permitted disclosure

- 20.12 The obligations on the Parties under this clause 20 will not be breached if information:
- 20.12.1 is disclosed by DHS to the responsible Minister;
 - 20.12.2 is disclosed by DHS, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - 20.12.3 is authorised or required by law to be disclosed; or
 - 20.12.4 is in the public domain otherwise than due to a breach of this clause 20.
- 20.13 Nothing in this clause 20 limits the Provider's obligations under clause 21 [Personal Information] or clause 24 [Access to Premises and Records].

21 PERSONAL INFORMATION

Application of this clause

- 21.1 This clause 21 applies only where the Provider deals with Personal Information when, and for the purpose of, conducting the Services under this Contract.

Privacy definitions

- 21.2 In this clause 21, the terms 'agency', 'Approved Privacy Code' (APC), 'contracted service provider', 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and 'subcontract' and other grammatical forms of that word has the meaning given in section 95B(4) of the Privacy Act.

Privacy obligation

- 21.3 The Provider agrees to be treated as a contracted service provider and agrees in respect to the conduct of the Services under this Contract:
- 21.3.1 to use or disclose Personal Information obtained in the course of conducting the Services under this Contract, only for the purposes of this Contract;
 - 21.3.2 not to do any act or engage in any practice which if done or engaged in by an agency would be a breach of an IPP contained in section 14 of the Privacy Act;
 - 21.3.3 that it is bound by the NPPs due to its status as a contracted service provider;
 - 21.3.4 to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act;
 - 21.3.5 to notify individuals whose Personal Information the Provider or the subcontractor holds, as the case may be, of the complaints mechanism outlined in the Privacy Act that may apply to the Provider, including that complaints about its acts or practices may be investigated by the Privacy Commissioner who has power to award compensation against the Provider in appropriate circumstances;
 - 21.3.6 not to use or disclose Personal Information or engage in an act or practice that would breach:
 - (a) section 16F of the Privacy Act (that the Personal Information the Provider collects under this Contract will not be used for direct marketing),
 - (b) a National Privacy Principle (NPP) – in particular:
 - A NPP 7 (identifiers) – obligation not to adopt Commonwealth government identifiers, including a Centrelink or job seeker identifier;

- B NPP 8 (anonymity) – allows individuals interacting with the Provider to remain anonymous in certain circumstances;
- C NPP 9 (transborder data flows) without obtaining DHS' prior written consent; and
- D NPP 10 (collection of sensitive information) – if the Provider is required to collect health or other sensitive information, the Provider is to obtain the individual's consent to do so,

(c) or an Approved Privacy Code (APC),

where that section, NPP or APC is applicable to the Provider, unless:

(d) in the case of an NPP or an APC - where the act or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under the Deed, and the activity or practice is inconsistent with the NPP or APC;

- 21.3.7 to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding on a Party in accordance with section 95C of the Privacy Act;
- 21.3.8 to immediately notify DHS if it becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 21, whether by it or any subcontractor;
- 21.3.9 to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause 21;
- 21.3.10 if requested by DHS, at the end of the Contract Period, to return all Records containing Personal Information to DHS, or to delete or destroy those Records in the presence of a person authorised by DHS;
- 21.3.11 to its name being published in reports by the Privacy Commissioner;
- 21.3.12 if the Provider suspends or terminates an employee:
 - (a) to remove any access that employee has to any Personal Information; and
 - (b) to require that the employee return to the Provider or DHS any Personal Information held in the employee's possession; and
- 21.3.13 to ensure that any of its employees, agents, officers or volunteers who are required to deal with Personal Information for the purposes of this Contract are made aware of its obligations set out in this clause 21, including but not limited to:

- (a) that they are under a legal obligation not to access, use, disclose or retain Personal information except in performing their duties of employment or engagement (as applicable); and
- (b) are informed that failure to comply with that obligation may be a criminal offence and may also require the Provider to take disciplinary action against them.

Subcontractor obligations

21.4 The Provider agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract imposes on the subcontractor and the Provider makes the subcontractor aware of, the same obligations as it has under this clause, including the requirement in relation to subcontracts under this clause 21.4.

Notification to DHS

21.5 The Provider must immediately notify DHS if it becomes aware:

21.5.1 of a breach of its obligations under this clause 21;

21.5.2 that a disclosure of Personal Information may be required by law; or

21.5.3 of an approach to it by the Privacy Commissioner or by a person to whom any Personal Information relates.

Survival

21.6 This clause 21 survives the termination or expiration of this Contract.

Note: The Provider should note that the Commonwealth Privacy Commissioner will have jurisdiction to investigate a complaint in connection with the Service provided under this Contract even after the contract has expired or been terminated.

22 RECORDS

Keeping Records

22.1 The Provider must create and maintain full and accurate accounts and Records of the conduct of the Services including, without limitation the Provider's:

22.1.1 receipt and use of the Fees; and

22.1.2 progress against other matters listed in the Schedule.

22.2 The Provider must comply with all the requirements set out in Annex 5 in relation to Records.

Retention of Records

- 22.3 Records and accounts created and maintained under clause 22.1 must be retained by the Provider for a period of no less than 7 years after the Completion Date, unless otherwise specified in the Schedule or by DHS.

23 ACCESS BY CLIENTS TO RECORDS HELD BY THE PROVIDER

- 23.1 Subject to this clause 23, the Provider must allow Clients access to documents that contain the Client's own Personal Information, except to the extent that Commonwealth legislation requires or authorises the refusal of such access.

- 23.2 The Provider must:

23.2.1 ensure that the Client requesting the information provides appropriate proof of identity and a written request to the Provider for a copy before access is given to the requested documents; and

23.2.2 notate the relevant files with details of the documents to which access was provided, the name of the person granted access and the date and time of such access.

- 23.3 Requests for access to documents that the Provider has determined to refuse in accordance with Commonwealth legislation requiring or authoring such refusal of access, including but not limited to access to information falling within the following categories:

23.3.1 information about another person, not a Client;

23.3.2 medical/psychiatric records (other than those actually supplied by the Client);

23.3.3 psychological records; and

23.3.4 information provided by other third parties,

must be directed to DHS for consideration under the provisions of the *Freedom of Information Act 1982*.(Cth).

- 23.4 The Provider must comply with any direction given by DHS in relation to access pursuant to a decision under the *Freedom of Information Act 1982* (Cth).

24 ACCESS TO PREMISES AND RECORDS

General access rights

- 24.1 The Provider must, at all reasonable times, give the Auditor-General, the Privacy Commissioner, the Account Manager, a member of DHS' Job Capacity Assessment Division or any successor unit within DHS and any DHS Employee authorised for this purpose on production of photo identification:

24.1.1 reasonable access to:

- (a) accounts, Records and Material in the Provider's possession or control;
- (b) the Provider's Sites;
- (c) the Provider's premises and the Provider Personnel;
- (d) the Provider's subcontractors' premises and employees; and
- (e) the Provider's information systems; and

24.1.2 reasonable assistance to:

- (a) access all information, documentation and data, including the Provider's accounts, Records and copies of documentation computer discs or other forms of electronic data in any medium required by DHS at the Provider's registered office or (with DHS' consent) the Provider's principal place of business, Site or other place;
- (b) make available the Provider's employees, officers, volunteers, subcontractors and agents to provide access to the information referred to in paragraph (i) above;
- (c) inspect Sites or premises;
- (d) inspect the performance of the Services;
- (e) access the Provider's information systems; and
- (f) to locate, inspect and copy accounts, Records and Material and to remove those copies,

relevant to the Services or this Contract.

Limitation on access rights

24.2 The rights referred to in clause 24.1 are subject to:

24.2.1 the provision of reasonable prior notice to the Provider; and

24.2.2 the Provider's reasonable security procedures.

24.3 If a matter is being investigated which, in the opinion of DHS may involve an actual or apprehended breach of the law or suspected fraud, clause 24.2 does not apply.

Rights in subcontracts

24.4 The Provider must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause allowing those permitted to have access as specified in this clause 24.

No reduction in the Provider's responsibilities

24.5 The requirement for access specified in this clause 24 does not in any way reduce the Provider's responsibility to perform its obligations under this Contract.

Note: Providers should also note:

- i that the Commonwealth Auditor-General is given the power, by the Auditor-General Act 1997, to obtain information from Parties with whom DHS contracts; and*
- ii when investigating complaints against DHS, it is open to the Ombudsman, under section 9 of the Ombudsman Act 1976, to make enquiries of any person whom the Ombudsman believes is able to assist with the investigation.*

25 INDEMNITY

General indemnity

25.1 The Provider must indemnify (and keep indemnified) the Commonwealth against any:

25.1.1 cost or liability incurred by DHS;

25.1.2 loss of or damage to DHS' property; or

25.1.3 loss or expense incurred by DHS in dealing with any claim against DHS, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by DHS, arising from or in connection with:

- (a) any act or omission by the Provider where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;
- (b) any breach of this Contract by the Provider or any of its employees, agents, or subcontractors;
- (c) any publication of the information referred to in clause 19 [Release of Information on the Provider's Performance], where the published information was provided by the Provider to DHS;
- (d) any breach by the Provider of clause 21 [Personal Information] or
- (e) the use by DHS of the Contract Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights and Moral Rights in Contract Material or Existing Material.

Reduction of scope

- 25.2 The Provider's liability to indemnify the Commonwealth under this clause 25 will be reduced proportionately to the extent that fault on DHS' part contributed to the relevant cost, loss, damage, expense, or liability.

Preservation of other rights

- 25.3 The Commonwealth's right to be indemnified under this clause 25 is in addition to any other right, power, or remedy provided by law, but the Commonwealth will not be entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.

Meaning of fault

- 25.4 In this clause 25, 'fault' means any negligent or unlawful act or omission or wilful misconduct, including fraud.

26 INSURANCE

Obligation to insure

- 26.1 The Provider must, for as long as any obligations remain in connection with this Contract, have and maintain, and must require all of its subcontractors to maintain, insurance as specified in the Schedule.
- 26.2 All insurance under this Contract is to be taken out with an insurer recognised by the Australian Prudential Regulation Authority or regulated by a State/Territory Auditor-General.

Evidence of insurance

- 26.3 Whenever requested, the Provider must provide DHS, within 10 Business Days of the request, with copies of the insurance policies referred to in clause 26.1 and certificates of currency of those policies.

Warranty as to adequacy

- 26.4 The Provider warrants that it has obtained independent professional advice as to the adequacy of the insurance effected pursuant to this clause 26.

27 SUBCONTRACTING

Approval of subcontracting

- 27.1 The Provider must not, without DHS' prior written approval, subcontract the performance of any the Provider's obligations under this Contract. In giving approval to the Provider, DHS may impose terms and conditions as DHS thinks fit.

- 27.2 Any subcontractor who the Provider proposes to replace an approved subcontractor with must also be approved by DHS under this clause 27.
- 27.3 The subcontractors which DHS has approved at the Date of this Contract, and any terms and conditions relating to their use, are identified in the Schedule.
- 27.4 Without limiting clause 27, the appointment of an agent by the Provider will be deemed to be a subcontract for which approval is required.
- 27.5 Notwithstanding any other conditions on the approval of subcontractors, DHS may develop a template subcontract for use in a particular class of subcontracts, and may direct that the Provider use that template.

Responsibility for obligations

- 27.6 The Provider is fully responsible for the performance of the Provider's obligations under this Contract, even though the Provider may have subcontracted any of them.
- 27.7 The Provider must ensure that subcontractors are aware of all terms and conditions of this Contract relevant to the subcontractor's part in the provision of the Services.
- 27.8 The Provider must pay its subcontractors in accordance with the terms of the relevant subcontract.

Suitability of subcontractor

- 27.9 Despite any approval given by DHS under clause 27, 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 Contract.

Revocation of approval

- 27.10 DHS may revoke its approval of a subcontractor on any reasonable ground by giving written notice to the Provider.
- 27.11 On receipt of the notice, the Provider must, at its own cost, promptly cease using that subcontractor and arrange their replacement with personnel or another subcontractor acceptable to DHS.

Liability under revoked approval

- 27.12 If DHS revokes its approval of a subcontractor, the Provider remains liable under this Contract for the past acts or omissions of its subcontractors as if they were current subcontractors.

Terms of subcontracts

- 27.13 The Provider must, in any subcontract with a subcontractor, reserve a right of termination to take account of DHS' right of termination under clauses 31 [Remedies], 32 [Termination with Costs] and 33 [Termination for Default] and DHS' right of revocation of approval under clause 27.10, and the Provider must, where appropriate, make use of that right in the event of a termination or revocation by DHS.

- 27.14 The Provider must, in any subcontract with a subcontractor, bind the subcontractor to all relevant terms and conditions of this Contract including but not limited to:
- 27.14.1 clause 20 [Confidential of Information];
 - 27.14.2 clause 21 [Personal Information];
 - 27.14.3 clause 24 [Access to Premises and Records];
 - 27.14.4 clause 26 [Insurance];
 - 27.14.5 clause 39 [Negation of Employment, Partnership and Agency]; and
 - 27.14.6 clause 44 [Compliance with Laws and Government Policies].

Equal Opportunity

- 27.15 The Provider must not enter into a subcontract under this Contract with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).
- 27.16 DHS may:
- 27.16.1 take action under clause 31 [Remedies]; or
 - 27.16.2 immediately terminate this Contract in accordance with clause 33 [Termination for Default],
- if the Provider does not comply with this clause 27.

28 CORPORATE GOVERNANCE

Constitution

- 28.1 The Provider must provide a copy of its Constitution to DHS upon notification by DHS.
- 28.2 The Provider must inform DHS, in writing in accordance with clause 43 [Notices] within 10 Business Days whenever there is a change in the Provider's Constitution, structure, management or operations which could reasonably be expected to have an adverse effect on the Provider's ability to comply with the Provider's obligations under this Contract.
- 28.3 The Provider must not employ, engage or elect any person who would have a role in the Provider's management, financial administration or the conduct of the Services if:
- 28.3.1 the person is an undischarged bankrupt;
 - 28.3.2 there is in operation a composition, contract of arrangement or contract of assignment with the person's creditors under the law relating to bankruptcy;

- 28.3.3 the person has suffered final judgment for a debt and the judgment has not been satisfied;
- 28.3.4 subject to Part VIIC of the *Crimes Act 1914* (Cth), the person:
- (a) has been convicted of an offence within the meaning of paragraph 85ZM (1) of that Act unless:
 - A that conviction is regarded as spent under paragraph 85ZM (2) (taking into consideration the application of Division 4 of Part VIIC);
 - B the person was granted a free and absolute pardon because the person was wrongly convicted of the offence;
 - C the person's conviction for the offence has been quashed;
or
 - (b) is or was a Director or occupied an influential position in the management or financial administration of an organisation that had failed to comply with funding requirements of the Australian Government; or
- 28.3.5 the person is otherwise prohibited from being a member or Director or employee or responsible officer of the Provider's organisation under the relevant local government legislation.
- 28.4 Where a person falls or is discovered as falling within any of clauses 28.3.1 to 28.3.5 while employed or engaged by the Provider, or is elected as an officer of the Provider, the Provider will be in breach of clause 28.3 if the Provider does not:
- 28.4.1 transfer the person to a position which does not have a role in the Provider's management, financial administration or performance of the Services; or
 - 28.4.2 terminate the employment or engagement of the person or remove the person from office,
- as the case may be, and immediately notify DHS of the Provider's action.
- 28.5 If the Provider advises DHS that it considers such termination action would be a breach of a statutory provision binding on the Provider, DHS will take the Provider's view into account in deciding what action to take as a result of the breach of this clause 28.
- 28.6 If the Provider is registered under the *Corporations Act 2001* (Cth), and:
- 28.6.1 applies to come under, receives a notice requiring it to show cause why it should not come under, receives a notice or an application from any other person for it to come under; or has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth); or

28.6.2 an order has been made for the purpose of placing it under external administration,

the Provider must inform DHS in writing within 5 Business Days of the date of the making or receipt of such a notice or application or the making of such an order.

Change in Control Without DHS' Consent

28.7 The Provider must not, without DHS' prior written consent, cause or permit to occur a Change in Control of:

28.7.1 the Provider;

28.7.2 if the Provider is a Consortium, the Consortium, or any member of the Consortium; or

28.7.3 any Material Subcontractor.

28.8 In relation to clause 28.7, DHS may, in its absolute discretion, grant or refuse to grant consent. If DHS grants its consent under clause 28.7, DHS may attach such conditions on the consent as DHS sees fit.

28.9 If a Change in Control occurs without prior notification to DHS, the Provider must notify DHS in writing within 10 Business Days.

28.10 The Provider must, within 5 Business Days of receiving a written request from DHS, provide such information and supporting evidence as DHS may request in relation to the:

28.10.1 shareholdings;

28.10.2 issued shares;

28.10.3 board of Directors;

28.10.4 board of management;

28.10.5 executive;

28.10.6 voting rights;

28.10.7 partnership composition, if relevant; and

28.10.8 consortium membership, if relevant,

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

28.11 If the Provider does not obtain DHS' consent as required by clause 28.7, notify DHS as required under clause 28.9, or provide DHS with the information as required by clause 28.10, DHS may exercise its remedies options under clause 31 [Remedies] or

immediately terminate this Contract under clause 33 [Termination for Default] by providing written notice to the Provider.

Change in composition of Consortium or partnership

- 28.12 If the Provider is a Consortium or partnership:
- 28.12.1 the Provider must not make any changes to the membership of the Consortium or partnership without DHS' prior written consent;
 - 28.12.2 DHS may, in its absolute discretion, grant or refuse to grant consent, and such conditions on the consent as DHS sees fit;
 - 28.12.3 If, notwithstanding paragraph (a) above, the membership of a Consortium or partnership changes without prior notification to DHS, the Provider must notify DHS in writing within 10 Business Days, and respond within 5 Business Days to any requests by DHS for further information in relation to the change.
- 28.13 If the Provider breaches clause 28.12, DHS may exercise its remedies options under clause 31 [Remedies] or immediately terminate this Contract under clause 33 [Termination for Default] by providing written notice to the Provider.

29 DISPUTE RESOLUTION

Informal resolution

- 29.1 The Parties agree that any dispute arising during the course of this Contract will be dealt with as follows:
- 29.1.1 the Party claiming that there is a dispute will give the other Party a notice setting out the nature of the dispute;
 - 29.1.2 within 5 Business Days each Party will nominate a representative not having any prior involvement in the dispute;
 - 29.1.3 the representatives will try to settle the dispute by direct negotiation between them;
 - 29.1.4 failing settlement within a further 10 Business Days, the Parties may agree to refer the dispute to an independent third person with power:
 - (a) to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution; or
 - (b) to mediate and recommend some form of non-binding resolution;
 - 29.1.5 the Parties will cooperate fully with any process instigated under clause 29.1.4 in order to achieve a speedy resolution; and

- 29.1.6 if a resolution is not reached within a further 20 Business Days, either Party may commence legal proceedings.

Costs

- 29.2 Each Party will bear their own costs of complying with this clause 29, and the Parties must bear equally the cost of any third person engaged under clause 29.1.4.

Application of this clause

- 29.3 This clause 29 does not apply to the following circumstances:
- 29.3.1 either Party commences legal proceedings for urgent interlocutory relief;
 - 29.3.2 action is taken by DHS under or purportedly under clauses 7 [Payment of Fees], 13 [Delay], 8 [Repayments and Offsetting], 22 [Records], 24 [Access to Premises and Records], 31 [Remedies], 32 [Termination with Costs] or 33 [Termination for Default];
 - 29.3.3 where DHS is conducting its own fraud investigation; or
 - 29.3.4 an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by the Provider.

Performance of obligations

- 29.4 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 Contract.

30 NO GUARANTEES BY DHS

- 30.1 The Provider acknowledges that DHS:
- 30.1.1 provides no guarantee that DHS will ensure any particular quantity of Services is allocated to the Provider under the Programme;
 - 30.1.2 provides no guarantee of the market and other information provided in the Request for Tender;
 - 30.1.3 reserves the right not to refer, nor cause any third party to refer, any particular quantity of Clients for Assessment;
 - 30.1.4 reserves the right to request similar services to the Services for DHS from other service providers; and
 - 30.1.5 reserves the right to directly provide the Services.

31 REMEDIES

- 31.1 Notwithstanding any other rights available to DHS under this Contract:

- 31.1.1 if the Provider fails to rectify a breach of this Contract within a reasonable period of time as determined by DHS;
- 31.1.2 following notification under clause 16.5 [Performance Management], DHS determines that the Provider's performance has not improved to DHS' satisfaction within the period of time specified in the notice; or
- 31.1.3 further to clause 31.1, if an event has occurred which would entitle DHS to terminate the Contract in whole or in part under clause 33 [Termination for Default],

DHS may, by providing written notice to the Provider, immediately exercise one or more of the remedies set out in clause 31.2.

31.2 The remedies DHS may exercise include:

- 31.2.1 suspending referrals of Clients to the Provider at some or all of the Provider's Sites;
- 31.2.2 imposing additional financial or performance reporting requirements on the Provider;
- 31.2.3 decreasing the size of Fees paid to the Provider;
- 31.2.4 withholding payments until such time as the Provider's performance has improved, or until the breach is rectified, to DHS' satisfaction;
- 31.2.5 reducing Fees permanently or temporarily, for all or any part of the remaining period of this Contract;
- 31.2.6 reducing Client numbers, and/or the Provider's share of business levels;
- 31.2.7 reducing the scope of the Services;
- 31.2.8 requiring repayment of part or all of the Fees paid to the Provider; or
- 31.2.9 taking any other action set out in the Schedule.

31.3 If DHS takes any action under clause 31.2, where relevant, this Contract will be deemed to be varied accordingly.

31.4 If DHS takes any action under this clause, DHS will notify the Provider in writing of:

- 31.4.1 the reason(s) for the action;
- 31.4.2 the duration of the action; and
- 31.4.3 any corresponding adjustment to the Fees under this Contract.

31.5 Subject to any notice received under clause 31.4, the Provider must continue to perform any of its obligations under this Contract and must continue to provide the Services set out in the Schedule and SOR.

32 TERMINATION WITH COSTS

Termination or reduction in scope

- 32.1 DHS may, at any time by written notice to the Provider, terminate this Contract in whole or in part or reduce the scope of the Services without prejudice to the rights, liabilities, or obligations of either Party accruing prior to the date of termination or reduction.
- 32.2 The Parties agree this clause 32 may be used to reduce the quantity of the Services under this Contract.
- 32.3 If this Contract is terminated or reduced in scope under this clause 32, DHS is only liable for:
- 32.3.1 payment of Fees as set out in clause 32.4 below; and
 - 32.3.2 subject to clauses 32.8, 32.9, 32.10, and 32.11, any reasonable, unavoidable costs actually incurred by the Provider and directly attributable to the termination or partial termination of this Contract.
- 32.4 Where DHS terminates or reduces the scope of this Contract under clause 32.1:
- 32.4.1 DHS will only be liable to pay Fees that are in DHS' opinion, properly due to the Provider prior to the effective date of the termination;
 - 32.4.2 any payments that would have been payments in advance will abate according to the extent that they relate to the conduct of the Service after the effective date of the termination; and
 - 32.4.3 DHS will be entitled to recover from the Provider any Fees paid in advance that relate to the conduct of the Service after the effective date of the termination.
- 32.5 Where DHS terminates or reduces the scope of this Contract under clause 32.1:
- 32.5.1 DHS will only be liable to make payments to the extent that those monies have been legally committed by the Provider prior to receipt of the notice of termination;
 - 32.5.2 DHS will be entitled to recover from the Provider any Fees paid prior to receipt of the notice of termination which:
 - (a) have not been legally committed for expenditure by the Provider prior to receipt of the notice of termination; or
 - (b) have not, in DHS' opinion, been spent by the Provider in accordance with this Contract; and
 - 32.5.3 the Provider must, if requested by DHS, provide within 5 Business Days details of:

- (a) all Fees legally committed for expenditure but not yet expended prior to the receipt of the notice of termination; and
- (b) all Fees held by the Provider which were not legally committed or expended prior to the receipt of the notice of termination.

32.6 For the purposes of clause 32.5:

32.6.1 Fees are taken to be legally committed prior to receipt of the notice of termination only if they have been legally committed for expenditure by the Provider in accordance with this Contract and are payable by the Provider as a current liability by the date the notice of termination is deemed to be received in accordance with clause 43 [Notices]; and

32.6.2 DHS may require written evidence that the Fees have been so committed.

Provider's obligations

32.7 Upon receipt of a notice of termination or reduction in scope the Provider must:

32.7.1 cease or reduce the performance of its obligations under this Contract in accordance with the notice;

32.7.2 immediately return to DEWR, on behalf of DHS, any Fees in accordance with clause 32.5.2 or deal with any such Fees as DHS, or DEWR on behalf of DHS, may direct;

32.7.3 immediately return to DEWR, on behalf of DHS, any Fees in accordance with clause 32.4.3;

32.7.4 immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the notice; and

32.7.5 continue work on any part of the Services not affected by the notice.

Abatement of the Fees

32.8 If there is a reduction in scope of the obligations under this Contract, DHS' liability to pay any part of the Fees will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Contract.

Limit on Compensation

32.9 DHS' liability to pay any compensation under or in relation to this clause 32 is subject to the Provider's:

32.9.1 strict compliance with this clause 32; and

32.9.2 substantiation of any amounts claimed under clauses 32.4.3 and 32.5.2.

32.10 DHS will not be liable:

- 32.10.1 to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 32;
 - 32.10.2 for loss of any benefits that would have been conferred on the Provider had the termination or reduction not occurred; or
 - 32.10.3 for any amounts which would, in aggregate, exceed the maximum Fees that would have been payable by DHS under this Contract in respect of the relevant Service, but for termination or reduction in scope under this clause 32.
- 32.11 In addition, for a reduction in scope, DHS will not be liable to pay the Provider, and the Provider agrees that the Provider's reasonable costs do not include:
- 32.11.1 any amounts owed by the Provider under any contract of employment or to any subcontractors; and
 - 32.11.2 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.
- 32.12 If DHS terminates or reduces the scope of this Contract under this clause 32:
- 32.12.1 DHS's actions will not constitute a breach of this Contract; and
 - 32.12.2 the costs available to the Provider under this clause 32, represent a reasonable pre-estimate of the loss incurred by the Provider.

33 TERMINATION FOR DEFAULT

Defaults

- 33.1 DHS may, in the case of any one or more of the events below, immediately terminate this Contract in whole or in part (including terminating the Services under one or more Parts), by giving written notice to the Provider, if:
- 33.1.1 the Provider fails to fulfil, or is in breach of any of the Provider's obligations under this Contract which are capable of being remedied, and does not rectify the omission or breach within 10 Business Days of receiving a notice from DHS to do so;
 - 33.1.2 the Provider is unable to pay all its debts as and when they become due and payable or the Provider fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
 - 33.1.3 proceedings are initiated with a view to obtaining an order for the Provider's winding up or any shareholder, member or Director convenes a meeting for the purpose of considering or passing any resolution for the Provider's winding up;

- 33.1.4 the Provider has applied to come under, received a notice requiring the Provider to show cause why the Provider should not come under, or have otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in Incorporated Associations legislation of the States and Territories or Parts IV and V of the *Aboriginal Councils and Associations Act 1976* (Cth), or an order has been made for the purpose of placing the Provider under external administration;
- 33.1.5 being an individual, the Provider becomes bankrupt or enters into a scheme of arrangement with creditors;
- 33.1.6 in relation to this Contract, the Provider breaches any law of the Commonwealth, or of a State or Territory;
- 33.1.7 the Provider ceases to carry on business;
- 33.1.8 DHS is satisfied that, prior to entering into this Contract, the Provider:
- (a) has engaged in misleading or deceptive conduct;
 - (b) has made a statement that is incorrect or incomplete; or
 - (c) has omitted to provide information to DHS,
- that may have affected the original decision to enter into this Contract or action taken by DHS under this Contract; or
- 33.1.9 notice is served on the Provider or proceedings are taken to cancel its incorporation or registration or to dissolve the Provider as a legal entity.

Parties rights and obligations on termination

- 33.2 Where DHS terminates this Contract in whole or in part under clause 33.1:
- 33.2.1 DHS is liable to pay Fees and entitled to recover Fees as set out in clause 32.4 above;
- 33.2.2 clauses 32.5 and 32.6 apply to DHS' liability to pay and entitlement to recover funds; and
- 33.2.3 clauses 32.7 and 32.8 apply as if this Contract were terminated in accordance with clause 33.1.

Preservation of other rights

- 33.3 Clause 33.1 does not limit or exclude any of DHS' other rights, including the right to recover any other amounts from the Provider on termination of this Contract, including the right to reduce payments due on termination on the basis of breach or poor performance, and any rights of offset.

34 TRANSITION OUT

Assistance and Cooperation

- 34.1 The Provider must provide sufficient assistance and cooperation to ensure an orderly and efficient transition of the Services to another provider, if:
- 34.1.1 this Contract is terminated in whole or in part before the Completion Date;
 - 34.1.2 at the Completion Date, the Provider is not successful in obtaining a subsequent services contract;
 - 34.1.3 at the Completion Date, the Provider is successful in obtaining a subsequent services contract, but the subsequent services contract does not require the Provider to provide a Service it provides under this Contract; or
 - 34.1.4 the Provider does not submit a tender for a further services contract.
- 34.2 The sufficient assistance and cooperation the Provider must provide under clause 34.1 will include as a minimum:
- 34.2.1 the transfer of:
 - (a) Records, including Personal Information;
 - (b) Contract Material; and
 - (c) Commonwealth Material; and
 - 34.2.2 redirection of Clients,

to any alternative service provider nominated by DHS, or to DHS, as directed by DHS.
- 34.3 The Provider agrees to provide full assistance to DHS to enable the Services to be provided by an alternative service provider nominated by DHS for a period of three (3) months prior to the Completion Date and for a further period of six (6) months subsequent to the Completion Date.
- 34.4 If there is any form of procurement process after execution of this Contract for the delivery of the Services and the Provider:
- 34.4.1 is not successful in obtaining a further services contract; or
 - 34.4.2 the Provider does not submit a tender or submission for a further services contract, or refuses an offer to provide further services,
- the referral of Clients may cease from the date of the announcement of successful new providers, or earlier if both Parties agree.

35 ACKNOWLEDGEMENT AND PROMOTION

- 35.1 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 Contract in any way:
- 35.1.1 comply with any promotion and style guidelines contained in the Schedule or issued by DHS from time to time;
 - 35.1.2 use badging and signage provided by or approved by DHS; and
 - 35.1.3 acknowledge the financial and other support the Provider has received from the Commonwealth, in the manner, if not set out in the Schedule, approved by DHS prior to the Provider's use.
- 35.2 DHS may publicise and report on the Services. DHS may do this by, amongst other means, including in media releases, general announcements about the Services and, in annual reports, the Provider's name, the amounts of Fees paid to the Provider, and a brief description of the Services.

36 CONFLICT OF INTEREST

Warranty of no Conflict

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

Conflict that may arise

- 36.2 Subject to clause 36.1, during the Contract Period, the Provider must not enter into any arrangement, scheme or contract, however described, which may cause a Conflict in the performance of the Provider's obligations under this Contract.

Dealing with Conflict

- 36.3 If, during the Contract Period, a Conflict arises, or is likely to arise, the Provider must:
- 36.3.1 immediately notify DHS in writing of that Conflict and of the steps the Provider proposes to take to resolve or otherwise deal with the Conflict;
 - 36.3.2 make full disclosure to DHS of all relevant information relating to the Conflict; and
 - 36.3.3 take such steps as DHS may reasonably require to resolve or otherwise deal with that Conflict.

Failure to deal with Conflict

- 36.4 If the Provider:

- 36.4.1 fails to notify DHS in accordance with clause 36.3.1; or
- 36.4.2 is unable or unwilling to resolve or deal with the Conflict as reasonably required by DHS,

DHS may terminate this Contract under clause 33 [Termination for Default].

37 ASSIGNMENT AND NOVATION

- 37.1 The Provider must not assign its rights under this Contract without prior written approval from DHS.
- 37.2 The Provider must not negotiate with any other person to enter into an arrangement requiring novation of this Contract, without DHS' prior written approval.

38 JOINT AND SEVERAL LIABILITY

- 38.1 If more than one Party is a signatory to this Contract as the Provider, each of those Parties will be jointly and severally liable for the performance of all of the Provider's obligations under this Contract.
- 38.2 If the Provider is a Consortium, each of the consortium is jointly and severally liable to the Commonwealth in relation to this Contract

39 NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 39.1 The Provider, the Provider's employees, partners, officers, volunteers, agents or subcontractors will not, by virtue of this Contract, be, or for any purpose be deemed to be, DHS' employees, partners, agents or subcontractors or as otherwise able to bind or represent DHS.
- 39.2 The Provider must not represent itself, and must ensure that its employees, partners, officers, volunteers, agents and subcontractors do not represent themselves, as being DHS' employees, partners, officers, volunteers, agents or subcontractors or as otherwise able to bind or represent DHS.

40 WAIVER

- 40.1 If either Party does not exercise (or delays in exercising) any rights, that failure or delay does not operate as a waiver of those rights.
- 40.2 A single or partial exercise by either Party of any of its rights does not prevent the further exercise of any right.
- 40.3 Waiver of any provision of, or right under, this Contract:

40.3.1 must be in writing signed by the Party entitled to the benefit of that provision or right; and

40.3.2 is effective only to the extent set out in the written waiver.

40.4 In this clause 40, 'rights' means rights or remedies provided by this Contract, under statute, at law or in equity.

41 ENTIRE CONTRACT, VARIATION AND SEVERANCE

41.1 This Contract 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 Contract.

41.2 Except for action DHS is expressly authorised to take elsewhere in this Contract, no variation of this Contract is binding unless it is agreed in writing and signed by both Parties.

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

42 APPLICABLE LAW AND JURISDICTION

42.1 This Contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

42.2 Both Parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect to any dispute under this Contract.

43 NOTICES

Giving of notice

43.1 A Party giving notice or notifying under this Contract must do so in writing or by electronic mail or by facsimile transmission, and:

43.1.1 if in writing, the notice must be:

- (a) addressed to the Account Manager or the Contact Person; and
- (b) hand delivered or sent by pre-paid post to their respective street addresses;

43.1.2 if by facsimile transmission, the notice must be sent to the facsimile number of the Account Manager or the Contact Person, as appropriate; and

43.1.3 if by electronic mail, the notice must be sent to the email address of the Account Manager or the Contact Person as appropriate.

- 43.2 For the purposes of clause 43, the Account Manager's and the Contact Person's address details are as specified in the Schedule.

Receipt of notice

- 43.3 A notice given in accordance with clause 43.1 is taken to be received:
- 43.3.1 if hand delivered, on delivery;
 - 43.3.2 if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier; and
 - 43.3.3 if sent by facsimile or electronic mail, at the time that would be the time of receipt for an Electronic Communication if a notice was being given under a law of the Commonwealth.

44 COMPLIANCE WITH LAWS AND GOVERNMENT POLICIES

- 44.1 In carrying out the Provider's obligations under this Contract, the Provider must comply with:
- 44.1.1 all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority; and
 - 44.1.2 any of DHS' policies notified by DHS to the Provider in writing, referred to or made available by DHS to the Provider (including by reference to an internet site), including any listed in the Schedule.
- 44.2 The Provider must, when using DHS' premises or facilities, comply with all reasonable directions and procedures relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by DHS or as might reasonably be inferred from the use to which the premises or facilities are being put.

SCHEDULE - PART 1 – DETAILS TO BE SPECIFIED FROM CONTRACT CLAUSES

Clause 1.1 Definitions

Account Manager (clause 1.1) DHS

Account Manager

Name:	Alex Dolan
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Contact Person (clause 1.1) Provider

Contact Person

Name:	
Postal Address:	
Street Address:	
Email Address:	
Telephone/ Facsimile:	

Confidential Information:

DHS Confidential Information: [list]

Service Provider Guidelines

Annex 2 - Fees Structure

Provider Confidential Information [list]

Service Start Date:

1 July 2006

Sites(s) [specify Sites from which the Provider is to perform the Services]

Contract Material (clause 17.2) [specify any conditions or restrictions on the Provider's use, copying or reproduction of the Contract Material]

Existing Material (clause 17.4) [specify any Existing Material of the Provider at Service Start Date]

Contract Material (clause 17.6) [specify any delivery, transfer or disposal requirements]

Commonwealth Material (clause 18.1) [specify any conditions or restrictions on the Provider's use, copying or reproduction of Commonwealth Material]

Any use by the Provider of DHS's name, statements of endorsement of the Provider's Services or the Commonwealth Crest, must have prior approval in writing.

Possession and Return of Commonwealth Material (clause 18.4) [specify if the Provider is NOT required to return Commonwealth Material at the Completion Date]

Provider Personnel (clause 1.1 and clause 6.1) [specify names and positions and contact details of the Provider Personnel]

Reports (clause 11.1) [specify all Reports required from the Provider and what they are to cover]

Key Programme Reports

The Provider must, within one month from the Date of this Contract, provide to DHS for approval, a comprehensive and detailed package of Key Programme Documents which must include:

the Provider's proposed approach to strategic management of the Services, including but not limited to:

- i the Provider's strategic plan to deliver Services in accordance with this Contract; and
- ii the Provider's operational plan detailing the Providers approach to the implementation and ongoing management of the Services.

the Provider's proposed risk management plan including but not limited to:

- i an analysis of the risks and contingencies relating to the Services that may arise during the Contract Period;
- ii procedures that are in place to manage any such contingencies; and
- iii procedures to manage and mitigate any such risks and contingencies (including possible Incidents).

the Provider's proposed operations and procedures manual including but not limited to:

- i a copy of the Service Provider Guidelines;
- ii details of each aspect of the Services, including the Assessment process;

- iii the role and responsibilities of the Provider and its Personnel;
- iv disciplinary procedures for Provider Personnel;
- v Provider Personnel contact details and qualifications in each ESA;
- vi Clear and comprehensive instructions to assist the Provider Personnel to complete Assessments;
- vii instructions for providing the reporting information required by DHS.

The Provider must ensure that the Key Programme Documents comply with this Contract.

Status Report

A Report that details progress against Key Performance Indicators and the application of the continuous improvement principles.

Due Date: 2 weeks after the end of each month during the Contract Period or as negotiated with DHS.

Administration Costs Financial Report

A Report detailing the expenditure of Fees for the previous six months.

Due Date: 6 monthly or as negotiated with DHS.

Acquittal Reports

The Provider must include in its Acquittal Reports a statement that:

- (a) the Fees provided under this Contract have been expended in accordance with this Contract; and
- (b) that the KPIs have been achieved, and where they have not been achieved, an explanation as to the failure to achieve them.

Additional Reports

DHS may, from time to time, require the Provider to prepare and submit other written reports at no additional cost to DHS. The nature and content of these reports will be notified to the Provider by DHS in writing.

Retention of Records (clause 22.3) [specify if the Provider is NOT required to retain Records for 7 years]

Insurance (clause 26.1) [specify insurances to be maintained by the Provider].

As required by clause 26 of this Contract, the Provider must have, and maintain for the Contract Period, at least the following insurance cover with regard to its conduct of the Services:

- (a) workers compensation insurance as required in the relevant State/Territory worker's compensation legislation in which the Services are conducted;

- (b) public liability for not less than \$20 million against claims by any third parties for injuries to persons and/or damage to property incurred as a result of the Services;
- (c) all insurance required by the Provider by law.

Subcontractors (clause 27.3) [specify names of subcontractors and Services they will perform].

DHS' Promotion and Style Guidelines (clause 35.1 (a)) [specify any guidelines for when the Provider promotes the Services or the JCA Programme].

Acknowledgement of Commonwealth Support (clause 35.1 (c)) [specify any statement to be noted on any Provider publications about DHS' financial or other support of the Services or the Programme].

SCHEDULE - PART 2 – STATEMENT OF REQUIREMENT

SECTION A - JCA Services (not including JSCI Services)

[Note: Terms capitalised in this SOR have the meanings as specified in the Contract.]

1 INTRODUCTION

- 1.1 Under the current system people seeking income support must undergo a range of assessments including:
 - 1.1.1 Medical and work capacity assessments provided as part of the Australians Working Together Better Assessment and Early Intervention measure;
 - 1.1.2 Job Seeker Classification Instrument (JSCI) supplementary assessment (JSAs) completed as part of the JSCI process; and
 - 1.1.3 Disability Employment Indicator (DEI) assessment used when people volunteer for disability employment assistance.
- 1.2 From 1 July 2006, the new assessment process described in this SOR will replace the existing assessment processes (Assessments). The focus will be on providing timely and comprehensive Assessments, and, where relevant, direct referral of a Client to the most appropriate assistance pathway towards employment.
- 1.3 Clients will come from the following groups of job seekers and payment claimants:
 - 1.3.1 job seekers who face a range of employment barriers and whose circumstances, via the Job Seeker Classification Instrument, trigger a requirement for a Job Capacity Assessment;
 - 1.3.2 Disability Support Pension (DSP) claimants;
 - 1.3.3 DSP recipients whose qualification is being reviewed;
 - 1.3.4 Newstart (NSA)/ Youth Allowance (YA) recipients lodging medical certificates and seeking exemption from activity testing requirements;
 - 1.3.5 Parenting Payment recipients or claimants lodging medical certificates seeking exemption from activity testing requirements;
 - 1.3.6 Very Long Term Unemployed (job seekers who have completed their second period of intensive support) and Mature Age (over 45 years of age) job seekers lodging medical certificates seeking exemption from activity testing requirements or who may need to have their work capacity assessed;
 - 1.3.7 Voluntary job seekers who may be income support recipients seeking employment but who have no activity test requirement to do so; and

- 1.3.8 Other groups requiring an assessment of their work capacity or medical impairment for the purposes of income support or activity test decisions.
- 1.4 The aim is to provide an efficient and seamless process for the Client. The Assessments are required to be of high quality, and to direct the most intensive Assessment activities towards those people whose barriers to work are the most complex. Generally, an Assessment will be valid for two years, unless there is a significant change to a Client's circumstances.
- 1.5 A Job Capacity Account will provide funding for the Provider to purchase short duration intervention services to improve the range of options available to address participation barriers for Clients otherwise assessed as ready for obtaining assistance from the Job Network with a view to entering the work force. This will enable those with disabilities, illness or injuries, to realise their assessed work capacity sooner. Authority to authorise services to be reimbursed from the Job Capacity Account will be limited to the Provider.
- 1.6 The Provider will be held accountable for its Assessments, with DHS closely scrutinising performance to ensure the Assessment process complies with this SOR and the Contract. In addition, KPIs supported by measurement and auditing procedures, will provide DHS and the community with assurance that the Provider is conducting appropriate and consistent assessments and timely referrals of Clients to the most appropriate employment, vocational or rehabilitation service.

JOB CAPACITY ASSESSMENT

2 OBJECTIVES

- 2.1 The objectives of the Services are to:
- 2.1.1 provide a comprehensive Assessment of a Client's barrier to participation in work and the interventions and assistance needed to help improve their current and future work capacity;
 - 2.1.2 engage Clients in participation activities through a positive 'work first' focus;
 - 2.1.3 where required, make specific recommendations regarding work capacity and impairment (including referencing the Impairment Tables) to help inform Centrelink's decisions about income support qualification;
 - 2.1.4 make specific recommendations to help inform decisions about a job seeker's activity test requirements;
 - 2.1.5 provide a comprehensive Assessment report to inform the nature of employment or pre-vocational services required to assist the Provider to tailor a program best suited to the Client's needs; and
 - 2.1.6 arrange rapid referral of people to the most appropriate form of assistance.
- 2.2 The Provider must, in the provision of the Services, implement the above objectives.

3 COMMONWEALTH REQUIREMENTS

- 3.1 The Provider should pay particular regard to the following legislation that is relevant to the Services:
- 3.1.1 *Archives Act 1983;*
 - 3.1.2 *Crimes Act 1914;*
 - 3.1.3 *Auditor-General Act 1997;*
 - 3.1.4 *Criminal Code Act 1995;*
 - 3.1.5 *Disability Discrimination Act 1992;*
 - 3.1.6 *Equal Opportunity for Women in the Workplace Act 1999;*
 - 3.1.7 *Freedom of Information Act 1982;*
 - 3.1.8 *Privacy Act 1988 including the Privacy Amendment (Private Sector) Act 2000;*
 - 3.1.9 *Racial Discrimination Act 1975;*
 - 3.1.10 *Sex Discrimination Act 1984;* and
 - 3.1.11 Applicable State and Territory legislation including that relating to registration or licence requirements and security of medical records.
- 3.2 The Provider will have contractual obligations to comply with some provisions of Commonwealth legislation e.g. Information Privacy Principles. The Provider may also have independent obligations arising at law to comply with the National Privacy Principles. Assessors should also, where relevant, comply with the requirements of their professional registration body.
- 3.3 The Provider must comply with applicable legislation operating in the State or Territory in which it has been contracted to provide the Services. The Provider must ensure that it understands and takes the necessary steps to comply with all obligations imposed on it by all legislation regulating its operations. DHS will not provide advice on legislation that may affect the operations of the Provider.
- 3.4 The Provider should seek its own professional advice on obligations imposed by legislation, and any other obligations that may be imposed by any other law. DHS does not and will not provide legal advice to the Provider. It is essential that the Provider understands how the law will affect its obligations for delivery of Services and the premises from which they deliver such Services.
- 3.5 The Provider should also seek its own professional advice on the potential application of any legislation that comes into effect after the Date of this Contract.

- 3.6 Copies of Commonwealth Acts are available from Ausinfo shops (formerly Commonwealth Government bookshops) throughout Australia. Legislation is also available on line at <http://www.law.gov.au/> .

4 KEY PARTICIPANTS – ROLES AND RESPONSIBILITIES

- 4.1 The following parties are key stakeholders in the Programme. Their roles and responsibilities are set out below.

Department of Human Services (DHS)

- 4.2 DHS was established in October 2004 to improve the delivery of social and health-related services to the Australian people. It supports the Minister for Human Services in ensuring that these services are delivered in an efficient and timely way. DHS is small and strategic. It directs, coordinates and brokers improvements to service delivery.
- 4.3 The Australian Government announced the new measures as part of 2005-06 budget 'Welfare to Work'. DHS has been given the responsibility to oversight the implementation of Job Capacity Assessments and the Job Capacity Account.
- 4.4 DHS will purchase Services on behalf of the Commonwealth and will be responsible for ongoing Contract management and administration. DHS will continually monitor, evaluate and promote performance improvement in Services to achieve the Government's objectives. Accordingly, DHS will monitor the individual Provider for performance and quality of Service delivery and compliance with the Code of Practice, the Service Provider Guidelines and Contract requirements.

Department of Employment and Workplace Relations (DEWR)

- 4.5 DEWR purchases employment services on behalf of the Commonwealth and is responsible for implementation of the Government's Welfare to Work initiatives. DHS will work closely with DEWR to ensure that Services are provided in a way that complements the overall Welfare to Work programme. DEWR will administer payment of Fees and receipt of Tax Invoices from the Provider through EA3000 on behalf of DHS.
- 4.6 DEWR will provide the systems infrastructure that supports the JCA process including EA3000, the system that underpins the electronic diary and reporting functionality, expected to be utilised by the Provider. EA3000 is also used by the Provider to update or complete the JSCIs, and to claim payment of Fees. DEWR is responsible for automatic payment of Fees to the Provider.

Commonwealth Services Delivery Agency (Centrelink)

- 4.7 Centrelink is the gateway for most people seeking access to Commonwealth funded services and as such will be a primary source of referrals to the Provider.
- 4.8 From 1 July 2006 Centrelink will refer Clients to the Provider for Assessments. Centrelink will also directly provide some services.
- 4.9 Where Centrelink refers Clients to the Provider, it is proposed that Centrelink will:

- 4.9.1 deal with initial inquiries on income support payments, including the issue of claim packs;
 - 4.9.2 undertake an initial application of the JSCI, appraisal of claims and activity test exemption applications with claimants and job seekers requiring Assessment prior to being referred to the Provider;
 - 4.9.3 check for previous assessments and their useability;
 - 4.9.4 provide Clients with information about the purpose of the Assessment and their requirement to attend;
 - 4.9.5 advise Clients of their right of appeal pending outcomes of income support decisions by Centrelink staff; and
 - 4.9.6 complete an electronic diary booking for referrals to the Provider.
- 4.10 When the Assessment has been completed and the Assessment report provided to Centrelink, Centrelink will consider the report in making decisions about income support and activity requirements.

Employment and related service providers ('ESPs')

- 4.11 This is a generic term used in this SOR to refer to the provider of the following services:
- 4.11.1 Community Work Coordinators;
 - 4.11.2 Disability Open Employment Services;
 - 4.11.3 Green Corps projects;
 - 4.11.4 Harvest Labour Services;
 - 4.11.5 Job network Services;
 - 4.11.6 New Enterprise Incentive Scheme;
 - 4.11.7 Personal Support Programme;
 - 4.11.8 Voluntary Work Initiative;
 - 4.11.9 CRS Australia; and/or
 - 4.11.10 JPET (Job Placement, Employment and Training programme).
- 4.12 ESPs will refer Clients to the Provider in accordance with referral guidelines agreed between DHS and DEWR. When referring Clients to the Provider ESPs will:
- 4.12.1 check for previous assessments and their useability;
 - 4.12.2 in the case of Job Network members, complete the JSCI as part of the direct registration process;

- 4.12.3 provide Clients with information about the purpose of the Assessment and their requirement to attend;
- 4.12.4 complete an electronic diary booking with the Provider.

Job Capacity Account Service Providers

- 4.13 These are organisations that provide short term pre-vocational intervention services to Clients who have been referred to them by a JCA Provider.

Complementary and Training Providers and Programmes

- 4.14 These are the provider of programmes that may assist Clients to return to work. Details of acceptable complementary and training programmes will be provided in the Service Provider Guidelines.
- 4.15 Other programmes may be identified from time to time.

5 JCA SERVICES

Pre-assessment services

- 5.1 Most referrals to the Provider will come from Centrelink, however ESPs may refer job seekers who have experienced a significant change in circumstances and require an Assessment or volunteers who directly register with them for employment services. The Service Provider Guidelines will provide further detail.
- 5.2 The Provider must provide the following Pre-assessment Services:
 - 5.2.1 Make available appointments in the electronic diary in EA3000 to permit referring organisations to book Assessment appointments with the Provider. Appointments will generally be booked on a first available appointment basis.
 - 5.2.2 Once an Assessment appointment has been booked it is anticipated that the Provider will have access to information about the Client via the EA3000 system. The volume of information provided with the referral will vary depending on the Client's individual circumstances. See section below on Material to be Provided with Referrals.
 - 5.2.3 Prepare for the Assessment interview. This will involve reading the case documents and/or accessing EA3000 to obtain background history about the Client and ensuring that suitable arrangements are in place for the Assessment interview eg an interpreter or other assistance arranged.
 - 5.2.4 Access to the Medical Information File Envelopes (MIFE). This will involve liaison with Centrelink to arrange for collection of the file, for safe storage and internal tracking of the file within the Provider's organisation and, returning the file to Centrelink within 10 working days from the date Centrelink advises that the file is available for collection. The cost of obtaining, storing and returning files lies with the Provider.

- 5.2.5 Neither the Client nor the Provider is to change appointment times, unless this is unavoidable. The Provider must only change an appointment time if absolutely necessary. The Provider must re-book the appointment at a time convenient to the Client, but this must be no later than two working days from the initial appointment date, if the Client is able to be contacted by telephone on the first attempt.
- 5.2.6 If a Client does not attend an appointment, the Provider must make two contact attempts. If the Client is not contactable by telephone, the Provider must contact them in writing (using standard letters approved by DHS). The Provider must re-book the appointment at a time convenient to the Client within two working days of when the contact call to re-schedule occurs.
- 5.2.7 If the Client does not attend a second appointment, the Provider must advise the referring organisation via the electronic diary, and immediately return any case documents to the referring organisation. No Fee is payable to the Provider under these circumstances. DHS has taken into account the potential numbers of 'did not attend' cases and has built this into the associated structure costs that have been used to develop the Fee Annexure at Annex 4 to the Schedule.
- 5.3 The Provider's Sites must be accessible to the broad range of Clients that will be referred. The Provider should make its own arrangements for premises and should not assume that space will be made available at Government premises including Centrelink.

Material To Be Provided With Referrals

- 5.4 The information supplied to the Provider will vary depending upon the reason for referral. DSP Clients are required to provide Centrelink with a range of documentation which will include a treating doctor's report and modules from the payment claim form in which the claimant provides information about their disability or medical condition. They may have previous assessment reports eg. medical, work capacity or capacity for participation reports (completed by Centrelink psychologists). Some Clients may also provide specialist's reports.
- 5.5 People whose DSP is being reviewed have a Review Form completed by their treating doctor. They may have the range of reports noted for DSP claimants above.
- 5.6 NSA/YA job seekers lodging medical certificates may have one medical certificate available or may have multiple medical certificates. If they previously claimed DSP and were rejected they may have the same documentation available as DSP claimants.
- 5.7 NSA/YA recipients, who are exempt from the activity test because of an incapacity and are being reviewed, will have the NSA/YA Review Form completed, which is a self assessment of the impact of their condition/s on their capacity for employment. They may also have a medical certificate or certificates. If they have previously claimed DSP they may have the same documentation as DSP claimants.
- 5.8 Clients who have been flagged through the JSCI/JSA process may not have any of the above documentation.

- 5.9 Where the Provider has access to EA3000 it will be able to view relevant system based information on the Client including their current JSCI record. This may include a history of previous assessments and some information from those assessments, the Client's programme referral history and outcomes and possibly their medical certificate lodgement history.

Assessment Services

- 5.10 The Provider is required to provide the following Assessment Services:
- 5.10.1 Job Capacity Assessment of Clients;
 - 5.10.2 facilitate chaperone/advocate/nominee and/or arrange interpreter services for Clients, as required;
 - 5.10.3 complete the online system coding, relevant JSCI records, reporting and referral process requirements for each Assessment;
 - 5.10.4 electronic transfer of Assessment report information and to use the electronic diary booking functionality provided by DEWR; and
 - 5.10.5 provide the relevant Assessment information by an alternate secure means where the ESP cannot access the information electronically.
- 5.11 The Provider must explain to each Client:
- 5.11.1 the reason for the Assessment;
 - 5.11.2 the purposes for which the information they provide will be used;
 - 5.11.3 the limits of any confidentiality issues in relation to privacy legislation; and
 - 5.11.4 how the Client's personal information will be used and obtained and obtain the client's written confirmation that they have been advised how their personal information will be used, i.e. that the Assessment information will be provided to Centrelink, an ESP and/or other services to which they are referred.
- 5.12 An Assessment must include:
- 5.12.1 identification of key barriers affecting the Client's ability to work;
 - 5.12.2 an assessment of the current capacity for work and potential capacity for work, both with and without interventions, within the next two years;
 - 5.12.3 an assessment of the Client's current work capacity in hour bandwidths (<8, 8-14, 15-22, 23-29, 30+) per week;
 - 5.12.4 an assessment of the Client's future work capacity in hour bandwidths (<8, 8-14, 15-22, 23-29, 30+) per week;
 - 5.12.5 referral to interventions that may help the Client improve their ability to work

- 5.12.6 prioritisation of assistance types appropriate for the Client; and
 - 5.12.7 where the Client is already participating in appropriate assistance and further referrals are not appropriate, identification of a timeframe for on-referrals once this assistance is completed.
- 5.13 In addition, for DSP claimants and reviews, the Assessment must include:
- 5.13.1 an Assessment of the impact of the Client's medical conditions on work capacity; and
 - 5.13.2 an opinion about the appropriate rating under the Impairment Tables for permanent medical conditions.
- 5.14 The Provider must ensure that Assessment recommendations are capable of providing the best possible information base for Centrelink and ESPs in developing Activity Agreements. Activity Agreements set out the activities the Client will undertake in the foreseeable future to improve their prospects and find sustainable employment. They also set out the assistance and opportunities being provided to the Client to help them prepare for work and the requirement for the Client to accept that assistance.
- 5.15 While the Provider may discuss its recommendations with the Client (and refer them to other services), the Provider has no authority to, and must not, indicate to the Client, the likely outcome of the Assessment as it applies to income support or the seeking of an exemption from the activity test.

Undiagnosed conditions

- 5.16 Where a Client presents with, or the Provider suspects, an undiagnosed or untreated condition/s, the Provider must indicate this in their Assessment Report to Centrelink or the ESP. Further information on how to deal with suspected undiagnosed conditions is included in the Service Provider Guidelines.

Consultation with treating doctors/health professionals

- 5.17 The Provider may need to consult with treating doctors and other health professionals in order to clarify information provided in reports by these professionals and/or their own findings. The Provider may also need to discuss suspected undiagnosed conditions with treating doctors. These tasks must be performed on an as required basis. No additional fee or reimbursement is payable for this task.
- 5.18 Where a treating doctor or other health professional is unable or unwilling to provide the necessary information, this should be noted in the Assessment Report and the Assessment completed to the best of the Provider's ability.

Specialist referrals

- 5.19 It is expected that input from specialists (for example, specialist psychological or specialist medical input) will be required for a small number of Clients in exceptional circumstances.
- 5.20 The Provider may seek a report from a Specialist (who must be independent from the Client's treating doctor or Specialist) only where:

- 5.20.1 such input is necessary to assess a medical condition that may specifically impact on the Client's work capacity and/or may attract a medical impairment rating for DSP; and
 - 5.20.2 the input being sought is essential for the Provider to complete the Assessment and cannot be obtained from another source.
- 5.21 DHS will closely audit claims by the Provider for Specialist services based on historical data including the number, cost and range of Specialist referrals from existing medical and work capacity assessments. It is expected that the Provider will be required to arrange Specialist services for less than 2% of Clients. Further information is included in the Service Provider Guidelines.

Interpreter and chaperone/advocate/nominee Services

- 5.22 Interpreter requirements will be identified by Centrelink or the ESP prior to making the referral to the Provider. The Provider must arrange for a professional interpreter to be present at the Assessment if recommended by the referring organisation.
- 5.23 The use of family members or friends of the Client being assessed or other unqualified interpreters is not acceptable. The Provider must ensure that Interpreter services used are accredited to National Accreditation Authority for Translators and Interpreters (NAATI) standards.
- 5.24 The Provider must ensure the provision of interpreter Services:
- 5.24.1 in accordance with the AUSIT Code of Ethics;
 - 5.24.2 in a prompt and cost-effective manner,
- and that they are provided at a high professional standard of skill, care and due diligence.
- 5.25 Some Clients may wish to have a chaperone, advocate or nominee (as currently defined see: [http://www.centrelink.gov.au/internet/internet.nsf/filestores/rt008_0307/\\$file/rt008_0307_en.rtf](http://www.centrelink.gov.au/internet/internet.nsf/filestores/rt008_0307/$file/rt008_0307_en.rtf)) accompany them to an Assessment. The Provider must ensure that chaperones, advocates or nominees are accommodated appropriately.

Assessments in Remote Areas

- 5.26 An additional Fee will be paid to the Provider in circumstances where the Client resides in a postcode that is classified as Remote or Very Remote.

Referrals

- 5.27 The aim of an Assessment is early connection of the Client with the most appropriate form of assistance where a Client is assessed as capable of work. The Service Provider Guidelines will provide a hierarchy of employment related referral options to guide the Provider in referral determinations. The Provider must comply with that framework for referral in their Assessment Reports.

- 5.28 Direct referral to an appropriate ESP or to Centrelink must be completed through an electronic diary booking system, where this is available. For ESPs that cannot accept electronic referrals, the Provider must provide its report by an alternate secure means. The Provider must facilitate the Client's engagement with the agency it has referred him or her to.
- 5.29 Where a Client has been referred by Centrelink to the Provider for an Assessment, the Provider must, and subject to any contrary stipulations described in Service Provider Guidelines, refer the Client to an ESP in accordance with any Service Provider Guidelines regarding client choice as developed from time to time, being an ESP that:
- 5.29.1 the Client has chosen; or
 - 5.29.2 if the Client has declined to make such a choice, is an ESP selected for the Client by the Provider in EA3000; and
 - 5.29.3 is an ESP that, in accordance with the Service Provider Guidelines, is deemed to provide the most appropriate form of assistance to the Client.
- 5.30 For the purpose of assisting a Client to make a choice in accordance with clause 5.29 of this Schedule Part 2 Section B, the Provider must not materially influence the Client's choice, but may provide the Client with factual information about the various types of assistance that may be provided by the full range of ESPs that are located within reasonable commuting distance of the Client's home.
- 5.31 The Provider must not accept any monies, or any other form of gratuities from ESPs, nor enter into any arrangements with ESPs, where such arrangements, or the acceptance of monies and gratuities, will cause the Provider to influence the choice of ESP made by Clients.

Report Format

- 5.32 The Assessment Report will include the following information:
- 5.32.1 Client details;
 - 5.32.2 Type of assessment;
 - 5.32.3 Documents supplied;
 - 5.32.4 Details from treating doctor report (where applicable);
 - 5.32.5 Assessment details including additional information disclosed by client and obtained from other sources;
 - 5.32.6 Barriers to work;
 - 5.32.7 Appropriate interventions (prioritised);
 - 5.32.8 Recommended Assistance;
 - 5.32.9 Capacity for work recommendations;

- 5.32.10 Conditions that impact on work capacity and impairment rating (where applicable);
 - 5.32.11 Any additional relevant information; and
 - 5.32.12 Assessor details.
- 5.33 It is expected that the above information will form the basis of the electronic Assessment Report Format. Some of the information will be provided at the time of referral to the Provider and some will be completed during or post the Assessment interview.
- 5.34 The Provider must ensure that the completed Assessment Report:
- 5.34.1 provides a basis for Centrelink income test and activity testing decision making or determination of appropriate assistance provided by an ESP;
 - 5.34.2 is internally consistent (e.g. no conflict is to exist between the Impairment Ratings and work ability assessments without proper justification) and facilitates the decision-making process;
 - 5.34.3 is comprehensible to a non-medical person;
 - 5.34.4 is free of inappropriate language and comment; and
 - 5.34.5 includes a response to all questions and information requirements on the Assessment Report Format.
- 5.35 Once the Assessment Report has been completed on the electronic system, the report will go to Centrelink for the purpose of decision making and relevant parts of the report will be provided to the ESP that the Client has been referred to. The Provider will need to make alternate arrangements to provide Assessment Reports to Job Capacity Account Providers and to ESPs that cannot accept electronic referrals, by an alternate secure means.

Security of Information

- 5.36 The Provider must comply with the following security requirements:
- 5.36.1 keep and maintain information and documentation relating to the Services in a secure and confidential manner in accordance with the Information Privacy Principles (IPPs) which are set out in Section 14 of the Privacy Act;
 - 5.36.2 comply with the National Privacy Principles (NPPs) or an approved privacy code when handling personal information;
 - 5.36.3 manage the collection, delivery and return of Case Documentation from Centrelink or the ESP. No additional fee is payable for this;
 - 5.36.4 implement a secure tracking system for personal information and the movement of Case Documentation whilst under the Provider's control to ensure confidentiality is maintained. The system must include a monitoring

process for identifying the location of Case Documentation at any one time. Further information on the secure and confidential handling of documentation is provided in the Service Provider Guidelines;

- 5.36.5 manage the secure distribution of data to relevant Provider Personnel on a need-to-know basis only; and
 - 5.36.6 any other security requirements notified by DHS from time to time.
- 5.37 The Provider must ensure that any information accessed by the Provider's personnel, including interpreters, is retained by the Provider and is protected at all times from:
- 5.37.1 unauthorised access, alteration, disclosure or use;
 - 5.37.2 use by a third party (except where authorised) ; and
 - 5.37.3 misuse, damage or destruction by any person.

Post Assessment

- 5.38 The Provider must provide an advisory Service including, but not necessarily limited to the provision of:
- 5.38.1 advice or clarification about the Assessment Report for Centrelink and ESPs; and
 - 5.38.2 information to assist in the administration by Centrelink of appeals of income support decisions and activity test requirements.

Inappropriate referrals

- 5.39 If an ESP considers a referral is inappropriate they must raise this with the Provider within 28 days of the commencement of the Client's initial contact with the ESP. The Provider must provide advice or clarification of the reasons for the referral. If, after discussing the concerns with the Provider, the ESP still considers the referral to be inappropriate, the Provider must follow the process for inappropriate referrals in the Service Provider Guidelines.

Corrections and reviews

- 5.40 The Provider must, if requested by DHS or Centrelink, correct, review and/or update a completed Assessment, including if:
- 5.40.1 the content of the original Assessment Report is not, in Centrelink's opinion, suitable for Centrelink to use in making a decision about income support payments;
 - 5.40.2 the original Assessment Report does not provide sufficient information for an ESP to tailor an appropriate programme for assistance for the Client or
 - 5.40.3 the original Assessment Report contains deficiencies and/or internal inconsistencies that prevent Centrelink or ESPs from making accurate

decisions about income support eligibility, activity test requirements or programmes of assistance.

- 5.41 In the above situations, the original Provider must promptly perform these tasks and no additional Fee will be payable.

Currency of Assessment

- 5.42 The Assessment remains current for two years unless the Client experiences a significant change of circumstances that impacts on their work capacity.

6 REASSESSMENTS

- 6.1 Clients may need to be reassessed where they have experienced a significant change in circumstances that impacts on their work capacity. Requests for reassessment will be supported by clearly identified reasons for the request.

7 APPEALS

- 7.1 Assessment Reports will be used by Centrelink in its decision making process. Clients can appeal any Centrelink decision. The review and appeals system consists of internal and external review mechanisms. Customers seeking a review of a decision should begin with the original decision maker, progressing to the next level only when a satisfactory solution cannot be found. The levels of review and appeal, in increasing order, are:

7.1.1 internal review:

- (a) original decision maker,
- (b) Authorised Review Officer,

7.1.2 external appeal:

- (a) Social Security Appeals Tribunal,
- (b) Administrative Appeals Tribunal,
- (c) Federal Court, and
- (d) High Court.

- 7.2 The Provider may be asked to review or to clarify information in their Assessment Report, or to provide evidence in support of appeal processes. The Provider must promptly comply with any such request. No additional Fees are payable for this task.

8 COMPLAINTS

- 8.1 The Provider will establish and will publicise the existence of a Complaints process which will deal with Complaints lodged by Clients and ESPs about the Provider's Services.
- 8.2 The Provider will keep a list of Complaints received for each Site where Services are provided, to be held at that Site, ('the Complaints Register').
- 8.3 The Complaints Register must include, but is not limited to, the following information:
 - 8.3.1 details of all Complaints received directly by the Provider;
 - 8.3.2 details of all Complaints referred to the Provider.
- 8.4 Each record in the Complaints Register should include:
 - 8.4.1 details of the parties to the Complaint
 - 8.4.2 the date of the Complaint;
 - 8.4.3 the nature of the Complaint (selected from a brief list of classifications as set out in the Service Provider Guidelines);
 - 8.4.4 whether the Complaint was referred from DHS or some other entity;
 - 8.4.5 details of key contacts with the complainant and the action taken, including dates;
 - 8.4.6 outcome of the action taken;
 - 8.4.7 date of resolution of the Complaint;
 - 8.4.8 any follow-up action required; and
 - 8.4.9 any changes to Services or procedures, or other actions, resulting from the Complaint.
- 8.5 The Provider will allow DHS to have access to the Complaints Register and other relevant Material and will retain the Complaints Register and supporting Material for seven (7) years.
- 8.6 The Provider must, where a Client or an ESP is not satisfied with the results of the Complaints process, refer the Client or ESP to DHS for further investigation of the Complaint and must assist DHS in the investigation of the Complaint.
- 8.7 Upon request, the Provider will give to DHS details of the process it has established to manage Complaints.

9 TIMELINESS

- 9.1 Assessments must be completed within 10 Business Days from the Date of Referral to the Provider, except in areas defined as Remote or Very Remote. Where access to the Centrelink file is required, the 10 Business Days does not start until the date the Provider is advised that the file is available. Different standards may apply in Remote or Very Remote areas as described in the Service Provider Guidelines.
- 9.2 Assessment reports must be completed and provided to an ESP before the Client's appointment. It is expected that around 80 percent of Client appointments with ESPs will be made within 3 Business Days of the Assessment, subject to the availability of appointments and except in areas defined as Remote or Very Remote. Different standards may apply in Remote or Very Remote areas as described in the Service Provider Guidelines.

10 LIAISON

- 10.1 It is expected that the Provider will be available for regular formal and informal consultations with DHS and other stakeholders during the post implementation period. This may include meeting with the DHS audit team as part of the DHS' quality assurance (QA) or performance monitoring process.

11 QUALIFICATIONS OF PERSONNEL

- 11.1 Assessments may require input from a range of qualified Allied Health Professionals and other professionals. It is expected that the Provider will have access to a range of relevant expertise, including people with backgrounds in:
- 11.1.1 assessments of people, including those who have a disability;
 - 11.1.2 experience with conducting work capacity assessments for people from a variety of backgrounds both those with disabilities and those who have other disadvantages in finding and maintaining employment; and
 - 11.1.3 referral and connection of people to appropriate services both employment related and to assist in overcoming barriers,
- and Allied Health Professionals.
- 11.2 The Provider must be able to access the range of expertise required for a comprehensive Assessment.
- 11.3 Work Related Impairment Tables and incapacity assessments must be completed by an Allied Health Professional operating within their area of professional expertise.
- 11.4 All Allied Health Professionals must be registered (or eligible to register) with their board or other appropriate professional associations as required by state and territory legislation. Appropriate supervision protocols in line with professional guidelines are to

apply at all times and adherence to the standards of training, practice and ethical principles of professional conduct endorsed by their professional bodies is required.

12 ACCESS TO DEWR'S COMPUTER SYSTEM (EA3000)

- 12.1 It is expected that the EA3000 system will provide electronic diary and reporting functionality for the Provider. Full details of the system and appropriate training will be provided to the Provider.

13 THE JOB CAPACITY ACCOUNT

- 13.1 The Provider will have access to a pool of funds to purchase short term intervention services for Clients who they have assessed as otherwise ready for the Job Network. These interventions must be targeted to getting the Client successfully into the Job Network.
- 13.2 Job Capacity Account Services must meet the following criteria:
- 13.2.1 Services purchased must withstand scrutiny and must not bring the Australian Government into disrepute;
 - 13.2.2 Services must be job first focused, meet the individual Client's needs and be directly related to moving the Client into the Job Network;
 - 13.2.3 Services must represent value for money for the Australian Government and taxpayer, and payment rates should be fair and in accordance with industry standards;
 - 13.2.4 the mix of Services purchased should reflect the range of interventions needed across the eligible Client base; and
 - 13.2.5 Services purchased must meet requirements established by DHS and outlined in the Service Provider Guidelines.
- 13.3 Payment by DEWR (on behalf of DHS) of funds for the purpose of this clause is subject to:
- 13.3.1 agreement in writing by the parties of the amount, the uses to which it will be put and acquittal requirements;
 - 13.3.2 provision by the Provider of information and reports as required by DHS or DEWR; and
 - 13.3.3 immediate refund on request of any monies not expended or expended for a purpose not permitted by DEWR or DHS.

Eligibility for Job Capacity Account Services

- 13.4 Clients must be assessed as suitable for referral to the Job Network and as work capable subject to completion of a short term intervention. This is envisaged as a self

contained program that will enable the Client to then move into active participation in the Job Network. Clients must be referred to both the Job Capacity Account provider and the Job Network provider concurrently.

Types of Job Capacity Account Services

13.5 It is envisaged that Job Capacity Account Services may include the following interventions:

13.5.1 Cognitive behaviour therapy

13.5.2 Behaviour management and modification interventions

13.5.3 Pain management programs

13.5.4 Counselling programmes such as motivational interviewing

13.6 Full details will be provided in the Service Provider Guidelines.

14 PERFORMANCE MANAGEMENT

14.1 The DHS performance management strategy in relation to the Provider comprises two elements:

14.1.1 evaluating the effectiveness of the Programme in achieving the Government's objectives; and

14.1.2 monitoring the performance of the individual Provider.

14.2 DHS will gather information on the individual Provider's performance. Information will be collected from a variety of sources including DHS, Centrelink, DEWR, quality assurance reviews and the Provider.

14.3 The performance of the individual Provider will be assessed against KPIs specified in the Schedule.

14.4 Monitoring activities will begin when the Contract is signed.

14.5 Under the Contract, the Provider will be required to supply information to DHS for monitoring, assessment and evaluation purposes. All information gathered may be used by DHS to assess the Provider's performance and compliance. Performance will be assessed both against requirements and where relevant, in comparison with other Providers.

14.6 DHS will provide the Provider with regular reports for the Employment Service Areas (ESAs) served by the Provider. The reports will form part of performance monitoring and reporting.

14.7 DHS will assess the Provider's performance through:

14.7.1 independent audits of Assessment Reports;

- 14.7.2 Client satisfaction surveys (e.g. ESPs and job seekers/DSP claimants);
 - 14.7.3 Provider timeliness and other data;
 - 14.7.4 audits of document tracking to ensure confidentiality is maintained; and
 - 14.7.5 analysis of financial, management and performance information available on DHS, Centrelink and DEWR IT systems.
- 14.8 The Provider is required to provide DHS with reports on an agreed basis on progress and on the achievement of the required performance standards. These reports are to be provided every two months in a format acceptable to DHS, or for such other periods as agreed (see the Contract).
- 14.9 As part of a continuous improvement process, the Provider is also to provide feedback on best practice. The reports are to be provided in a format agreed by DHS and the Provider.
- 14.10 Management Information reports from the Provider are expected within 14 calendar days after the end of the reporting period.
- 14.11 The performance information will be used in helping to decide any future distribution of business allocations to the existing Provider within an ESA. If DHS is not satisfied with the performance of the Provider, it may be decided to reduce or stop the number of referrals for all or part of the remaining Contract period.
- 14.12 DHS may use performance information to extend the Contract of the Provider within an ESA for a further period of up to four years.

15 THE QUALITY ASSURANCE FRAMEWORK

- 15.1 The Quality Assurance Framework represents an overarching framework within which the Provider operate. It assures DHS that a certain level of Service delivery is being met and it outlines for the Provider the standards they need to meet when delivering the Service. The framework also provides a clear and user friendly structure to assist the Provider to engage in continuous quality improvement.
- 15.2 The framework comprises two elements:
- 15.2.1 Foundational quality – the set of Service Provider Guidelines prescribed by DHS with which the Provider is required to comply; and
 - 15.2.2 Continuous improvement – the effort the Provider apply to continuously improve the quality of its Services.

16 KEY PERFORMANCE INDICATORS

- 16.1 Key Performance Indicators (KPIs) are the main measures that will be used to assess the Provider's performance.

- 16.2 The Provider will be expected to maximise performance against the KPIs set for each site or ESA, as appropriate.
- 16.3 The Provider will adhere to the KPIs set out in the Contract.

17 TRAINING

- 17.1 Prior to 1 July 2006, DHS will provide a training package and conduct a training session or sessions for the Provider. This will include information on the nature and purpose of Centrelink payments/services, the role of the Provider in the Assessment process including in informing payment qualification, providing advice for determination of activity test requirements and programmes to which the Provider can refer Clients. The training will also cover the use of the IT systems in place for transfer of information between agencies and the procedures required for the provision of Services.
- 17.2 Providers must arrange for relevant personnel to attend these sessions and for providing further training as required to staff to ensure they are able to undertake the required Services.
- 17.3 Providers must cover the costs of relevant personnel attending the initial training which is expected to take one to two days. The Provider will also be required to cover the cost of the Provider's Personnel attending any further DHS arranged training.
- 17.4 Staff of the Provider who provide the Services must have been trained as provided for in the Service Provider Guidelines.

18 AUDIT

- 18.1 DHS will be implementing an Audit program and the Provider will be required to provide access to premises, documents and other information. The Provider should also be aware that the *Auditor-General Act 1997* (Cth) also provides that the Auditor General or authorised persons may also require access to premises, documents and other information.

ANNEX 1 TO SECTION A OF THE SCHEDULE PART 2 - JCA SERVICES

KEY PERFORMANCE INDICATORS FOR JCA SERVICES

The Commonwealth will assess performance against the KPIs and the Provider must comply with any directions from DHS in relation to and specified for the KPIs.

The 'Consequences of Meeting, Exceeding or Failing to Meet the KPIs' indicated below do not limit DHS' rights under any other provision of this Contract.

KEY PERFORMANCE INDICATOR	DESCRIPTION	MEASURES AND REQUIRED PERFORMANCE STANDARDS	CONSEQUENCES OF MEETING, EXCEEDING OR FAILING TO MEET THE KPIs
KPI 1 Efficiency/ timeliness	Timeliness of Assessments and value for money.	<p>Number and proportion of Assessments completed within the time specified in the Statement of Requirements.</p> <p>Average cost and proportion of total referrals to Job Capacity Account services and Specialist Assessments compared with national averages, ESA averages and expected outcomes specified in the Statement of Requirements.</p>	<p>Substantially exceeding the KPIs is a factor that may be taken into account in future tender processes or if contracts are extended.</p> <p>Performance benchmarks in excess of KPIs will be developed in light of the Providers' experience over the life of the Contract. DHS may, at its discretion, reduce the number or cease referrals to the Provider if the Provider does not meet the required KPIs or may take other action permitted under this Contract.</p>
KPI 2 Effectiveness/ utilisation	To maximise Programme outcomes for Clients.	<p>Number and proportion of referrals to employment and other forms of assistance compared with national and ESA averages.</p> <p>Proportion of completed Assessments by bandwidth hours compared with national and ESA averages.</p> <p>Rates of acceptance and non-acceptance by ESPs of referrals.</p> <p>Percentage of inappropriate referrals/returns for reassessment or service reassessments compared to national and ESA averages.</p> <p>Percentage of inappropriate referrals/returns for reassessment or service</p>	<p>Substantially exceeding the KPIs is a factor that may be taken into account in future tender processes or if contracts are extended.</p> <p>Performance benchmarks in excess of KPIs will be developed in light of the Provider's experience over the life of the Contract. DHS may, at its discretion, reduce the number or cease referrals to the Provider if the Provider does not meet the required KPIs or may take other action permitted under this Contract.</p>

KEY PERFORMANCE INDICATOR	DESCRIPTION	MEASURES AND REQUIRED PERFORMANCE STANDARDS	CONSEQUENCES OF MEETING, EXCEEDING OR FAILING TO MEET THE KPIs
		<p>reassessments after assistance from Job Capacity Account Providers compared to national and ESA averages.</p> <p>Number and proportion of Remote and interpreter loadings compared with national and ESA averages.</p>	
<p>KPI 3</p> <p>Quality</p>	<p>Extent to which the Provider offers a service to Clients that is in accordance with the Statement of Requirements and to which they provide quality Assessments for Centrelink and ESPs to which the Client is referred.</p>	<p>Number and outcome of complaints against the Provider.</p> <p>Number and type of problems identified in QA review.</p> <p>Compliance with contractual obligations.</p>	<p>Substantially exceeding the KPIs is a factor that may be taken into account in future tender processes or if contracts are extended.</p> <p>Performance benchmarks in excess of KPIs will be developed in light of the Provider's experience over the life of the Contract. DHS may, at its discretion, reduce the number or cease referrals to the Provider if the Provider does not meet the required KPIs or may take other action permitted under this Contract.</p>

SCHEDULE - PART 2

SECTION B - SOR for JSCI Services

1 COMPLETION AND UPDATING OF JSCIs

- 1.1 This Section B of Part 2 of the Schedule describes the JSCI Services to be performed by the Provider.
- 1.2 Where Clients are being referred to Job Network through EA3000, the Provider must:
 - 1.2.1 when prompted to do so, complete the JSCI for Clients who do not have a current and active JSCI; or
 - 1.2.2 where Clients have a current and active JSCI, update the JSCI if the relevant Client discloses any pertinent information that directly impacts on their JSCI,
- 1.3 When completing or updating the JSCI, the Provider must use EA3000.
- 1.4 The JSCI Fees payable for the completion or updating of a JSCI are:
 - 1.4.1 \$15 for each completed JSCI; and
 - 1.4.2 \$7 for each updated JSCI.
- 1.5 After the completed or updated JSCI has been submitted on EA3000, the Provider will be prompted to complete the claims screen for payment of the JSCI Fees. The claims screen will automatically generate an electronic Tax Invoice which will activate automatic payment of the JSCI Fees to the Provider. Payment of the JSCI Fees may only be claimed once by the Provider for each JSCI..
- 1.6 DEWR will provide the systems infrastructure that supports the JCA process including EA3000, the system that underpins the electronic diary and reporting functionality, expected to be utilised by the Provider. EA3000 is also to be used by the Provider to update or complete the JSCIs, and to claim payment of the JSCI Fees. DEWR, on behalf of DHS, is responsible for automatic payment of the JSCI Fees to the Provider when due.
- 1.7 The Provider acknowledges that, where Centrelink refers Clients to the Provider, it is proposed that Centrelink will undertake an initial application of the JCSI, appraisal of claims and activity test exemption applications with Clients requiring Assessment prior to being referred to the Provider.
- 1.8 The Provider acknowledges that ESPs will refer Clients to the Provider in accordance with referral guidelines agreed between DHS and DEWR. When referring Clients to the Provider, ESPs will complete the JSCI for Clients, who are also members of the Job Network, as part of the direct registration process.

1.9 Completion of JSCIs must occur concurrently with the completion of an Assessment.

ANNEX 1 TO SECTION B OF THE SCHEDULE PART 2 - JSCI SERVICES

KEY PERFORMANCE INDICATORS FOR JSCI SERVICES

The 'Consequences of Meeting, Exceeding or Failing to Meet the KPIs' indicated below do not limit DHS' rights under any other provision of this Contract.

KEY PERFORMANCE INDICATOR	DESCRIPTION	MEASURES AND REQUIRED PERFORMANCE STANDARDS	CONSEQUENCES OF MEETING, EXCEEDING OR FAILING TO MEET THE KPIs
KPI 1 Efficiency/ timeliness	Timeliness of interventions and value for money.	Number and proportion of JSCIs completed within the time specified in the Statement of Requirements. 100% of Clients referred to a Job Network member by the Provider have a current and active JSCI record.	Substantially exceeding the KPIs is a factor that may be taken into account in future tender processes or if contracts are extended. Performance benchmarks in excess of KPIs will be developed in light of the Provider's experience over the life of the Contract. DHS may, at its discretion, reduce the number or cease referrals to the Provider if the Provider does not meet the required KPIs or may take other action permitted under this Contract.
KPI 2 Effectiveness/ utilisation	To maximise Programme outcomes for Clients.	Percentage of JSCI forms completed as part of the JSCI-initiated Assessment resulting in an appropriate referral. 80% of new JSCI forms completed resulting in an appropriate referral - as measured by a survey of an appropriate sample of Clients.	Substantially exceeding the KPIs is a factor that may be taken into account in future tender processes or if contracts are extended. Performance benchmarks in excess of KPIs will be developed in light of the Provider's experience over the life of the Contract. DHS may, at its discretion, reduce the number or cease referrals to the Provider if the Provider does not meet the required KPIs or may take other action permitted under this Contract.
KPI 3 Quality	Extent to which the Provider offers a service to Clients that is in accordance with the Statement of Requirements.	Number and outcome of complaints against the Provider. Number and type of problems identified in QA review including decisions on the impact of 'personal factors' (as defined in the Service Provider Guidelines). Compliance with contractual obligations.	Substantially exceeding the KPIs is a factor that may be taken into account in future tender processes or if contracts are extended. Performance benchmarks in excess of KPIs will be developed in light of Provider's experience over the life of the Contract. DHS may, at its discretion, reduce the number or cease referrals to the Provider if the Provider does not meet the required KPIs or may take other action permitted under this Contract.

ANNEX 2 – EMPLOYMENT SERVICES AREAS COVERED BY THIS CONTRACT

State	LMR	ESA
***	***	***

ANNEX 3 – FEES STRUCTURE (NEEDS TO BE TAILORED TO INDIVIDUAL PROVIDER REMOTE AND INTERPRETER FEES)

State	ESA	Fees for Assessment	Fees for Assessment when Client has Medical Impairment Rating	Interpreter Loading	Remote Loading
***	***	***	***	***	***

ANNEX 4 – ASSESSMENT REPORT FORMAT

ANNEX 5 – RECORDS RULES

ANNEX 6 – DEED OF CONFIDENTIALITY

THIS DEED is made the day of

Commonwealth of Australia acting through and represented by the Department of Human Services ABN [] (**DHS**)

[Insert name and address of the employee or agent] (Confidant)

RECITALS

- A. DHS and the Confidant are Parties to a Contract providing for the supply of certain Services.
- B. DHS and the Confidant wish to ensure the confidentiality of certain information is maintained.
- C. DHS requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed of Confidentiality) to ensure that DHS Confidential Information is kept confidential.

OPERATIVE PROVISIONS

1 INTERPRETATION

- 1.1 DHS Confidential Information means information:
 - 1.1.2 about DHS or its employees, clients or any aspect of its business or operations including its internal management and structure and contractors or suppliers; or
 - 1.1.3 provided to the Contractor by or on behalf of DHS; or
 - 1.1.4 arising out of the performance of the Contract; or
 - 1.1.5 comprised in or relating to any DHS Commonwealth Material; or
 - 1.1.6 relating to DHS data,which, in any of those cases:
 - 1.1.7 is by its nature confidential;
 - 1.1.8 is designated by DHS as confidential;
 - 1.1.9 the Confidant knows or ought to know is confidential; or
 - 1.1.10 is Personal Information,

but does not include information which:

- 1.1.11 is or becomes public knowledge other than by breach of the Contract or any confidentiality obligation; or
- 1.1.12 has been independently developed or acquired by the Contractor as established by written evidence.

1.2 Contract means the Contract between DHS and the Confidant dated on or about the date of this Deed for the provision of Services.

1.3 Terms used in this Deed have the same meaning as in the Contract, unless it is specified otherwise.

2 NON DISCLOSURE

2.1 The Confidant must not copy, reproduce or disclose any DHS Confidential Information without the prior written consent of DHS, which consent DHS may grant or withhold in its absolute discretion.

3 RESTRICTION ON USE

3.1 The Confidant must use DHS Confidential Information only for the purpose of exercising the rights granted by Confidant under the Deed.

4 SECURITY

4.1 If requested by DHS, the Confidant must cooperate in any security checks DHS wishes to make of the Confidant (including by providing information usually requested in such circumstances).

5 INTELLECTUAL PROPERTY AND MORAL RIGHTS

5.1 The Confidant hereby:

5.1.1 where required by the Contract, assigns to DHS any Intellectual Property Rights in any material developed or created by the Confidant in connection with the Contract from the date of creation of those materials; and

5.1.2 in relation to any Moral Rights:

- (a) to the extent permitted by applicable law, consents to any act or omission that would otherwise infringe any Moral Rights in Moral Rights Material, whether occurring before or after the execution of this Contract; and

(b) to the extent permitted by applicable law outside Australia, waives any Moral Rights in any Moral Rights Material,

for the benefit of DHS, its licensees, successors in title, and anyone authorised by any of them to do acts comprised in the copyright in the Moral Rights Material.

6 DELIVERY UP OF DOCUMENTS

6.1 DHS may, at any time and without notice, demand, either orally or in writing, the delivery to DHS of all documents in the possession or control of the Confidant which contain DHS Commonwealth Material or Confidential Information.

7 CONFLICT OF INTEREST

7.1 The Confidant warrants that no conflict of interest exists or is likely to arise while in receipt of Commonwealth Material or Confidential Information.

7.2 The Confidant warrants that it will not permit any situation to arise or engage in any activity which may result in a conflict of interest with the Confidant's receipt of Commonwealth Material or Confidential Information.

8 SURVIVAL OF OBLIGATIONS

8.1 The obligations in this Deed are perpetual.

9 INDEMNITY

9.1 The Confidant indemnifies the Commonwealth against any claim, loss, liability or expense incurred by the Commonwealth which is caused or contributed to by:

9.1.1 the Confidant's failure to comply with this Deed; or

9.1.2 the act or omission of the Confidant's employees, agents or subcontractors in relation to Commonwealth Material or Confidential Information.

Executed as a Deed by

Executed by **The Commonwealth of Australia** by:

.....
Printed Name

.....
Signature

.....
Position
in the presence of:

.....
Printed Name

.....
Signature

Date:

[Confidant's Name] ABN
by

.....
Printed Name

.....
Printed Name

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Position

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Position

.....
Signature

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Signature

in the presence of:

.....
Printed Name

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Signature

Date:

Date: