

Disclaimer: This document is a sample copy of the *Employment Services Deed 2009-2012*. This copy is provided only for your information and as a guide. If you have entered into a deed with DEEWR, you must rely on the original signed deed and any deed variations you have entered into. You should seek your own legal advice, if required. While DEEWR has exercised reasonable care in publishing this document, DEEWR makes no representation, express or implied, as to the accuracy of the document or the applicability of the document to you or your circumstances. You should note that you may or may not have executed the deed, or any subsequent deed variations to it, in the particular form expressed in this document. DEEWR accepts no liability for any use of this document or any reliance placed on it.

Reader's Guide to this Deed

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

There are six Chapters:

1. Introduction
2. Basic Conditions
3. Reserved (except for Section 3N)
4. Other Services
5. Information and Information Management
6. Deed Administration

There are five Annexures:

- A. Reserved
- B. Employment Services Standards
- C. Reserved
- D. New Enterprise Incentive Scheme
- E. Definitions

There is one Schedule, which contains all the Deed and business details.

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

This Deed sets out the terms that will apply if the Provider is appointed to the NEIS Panel by DEEWR. Stream Services Providers can purchase NEIS Services for a Participant from NEIS Panel Members. The NEIS Services are set out at Part 1 of Annexure D.

© Commonwealth of Australia 2009

This work is copyright. You may display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the *Copyright Act 1968*, all other rights are reserved.

Table of Contents

CHAPTER 1 - INTRODUCTION	1
1. Definitions	1
2. Interpretation	1
3. Precedence	1
CHAPTER 2 – BASIC CONDITIONS	2
Section 2A – Deed length	2
4. Term of this Deed	2
5. Extension of this Deed	2
6. Survival	2
Section 2B – Some basic rules about Services	2
7. General Requirements	2
8. Objectives	2
9. Location	3
10. Timing	3
11. Provider’s conduct	3
12. Criminal records checks and other measures	3
13. Provider’s responsibility	5
14. Service Guarantees	5
15. Code of Practice	5
16. Liaison and compliance	6
17. Minimising delay	7
18. Business level expectations	7
Section 2C – Some basic rules about financial matters	7
19. General	7
20. Evidence to support claims for payment	8
21. Exclusions	8
22. Overpayment	8
23. DEEWR may vary payments or Participants	9
24. Debts and offsetting	9
25. Taxes, duties and government charges	10
26. Fraud	10
Section 2D – Reports	10
27. General reporting	11
28. Financial statements and guarantees	11
Section 2E –Assessment and management of Provider’s performance	12
29. Evaluation activities	12
30. Reserved	12
31. Reserved	12
Section 2F – Customer and Provider feedback	12
32. Customer feedback process	12
33. Dealing with Customer feedback	13
34. Customer Feedback Register	13
35. Provider feedback	13
CHAPTER 3 – RESERVED (EXCEPT FOR SECTION 3N)	14
Section 3A – Reserved	14
36. Reserved	14
37. Reserved	14
Section 3B – Reserved	14
38. Reserved	14
39. Reserved	14
40. Reserved	14
41. Reserved	14

42. Reserved	14
43. Reserved	14
44. Reserved	14
Section 3C – Reserved	14
45. Reserved	14
46. Reserved	14
47. Reserved	14
48. Reserved	14
49. Reserved	14
Section 3D – Reserved	14
50. Reserved	14
51. Reserved	14
52. Reserved	14
53. Reserved	14
54. Reserved	14
55. Reserved	14
56. Reserved	14
Section 3E – Reserved	14
57. Reserved	14
Section 3F – Reserved	14
58. Reserved	14
59. Reserved	14
Section 3G – Reserved	14
60. Reserved	14
61. Reserved	14
Section 3H – Reserved	14
62. Reserved	14
63. Reserved	14
64. Reserved	14
65. Reserved	15
66. Reserved	15
67. Reserved	15
68. Reserved	15
69. Reserved	15
70. Reserved	15
71. Reserved	15
Section 3I – Reserved	15
72. Reserved	15
Section 3J – Reserved	15
73. Reserved	15
Section 3K – Reserved	15
74. Reserved	15
Section 3L – Reserved	15
75. Reserved	15
76. Reserved	15
77. Reserved	15
78. Reserved	15
79. Reserved	15
80. Reserved	15
81. Reserved	15
Section 3M – Reserved	15
82. Reserved	15
Section 3N – Gap Filling	15
83. Gap filling	15

Section 3O – Reserved	15
84. Reserved	15
CHAPTER 4 – OTHER SERVICES	15
Section 4A – Reserved	15
85. Reserved	15
Section 4B – New Enterprise Incentive Scheme Panel Member Services	15
86. NEIS Panel Member Services	15
Section 4C – Additional Services	17
87. Additional Services	17
CHAPTER 5 – INFORMATION AND INFORMATION MANAGEMENT	17
Section 5A – Information Technology	17
88. General	17
89. Access and security	17
Section 5B – Property rights	20
90. Ownership of intellectual property	20
91. Licensing of Intellectual Property Rights	20
92. Ownership of Deed Material and Commonwealth Material	21
Section 5C – Control of information	21
93. Personal and Protected Information	21
94. Confidential Information	22
95. Release of information on Provider’s performance	23
Section 5D – Records management	23
96. Records the Provider must keep	23
97. Access by Participants and Employers to Records held by the Provider	24
98. Access to premises and records	25
CHAPTER 6 – DEED ADMINISTRATION	26
Section 6A – Indemnity and insurance	26
99. Indemnity	26
100. Insurance	26
101. Liability of Provider to DEEWR	29
102. Special rules about Tendering Groups	30
Section 6B – Changes in persons delivering Services	30
103. Corporate governance	30
104. Provider’s Personnel	32
105. External administration	32
106. Subcontracting	33
107. Assignment and novation	35
Section 6C – Resolving Problems	35
108. Dispute Resolution	35
109. Provider Suspension	36
110. Remedies for breach	36
111. Reserved	37
112. Termination with costs	37
113. Termination for default	39
Section 6D – Other matters	40
114. Transition out	40
115. Indigenous Employment Strategy	41
116. Reserved	41
117. Acknowledgement and promotion	41
118. DEEWR’s right to publicise the Services	41
119. DEEWR’s right to publicise best practice	41
120. Conflict of interest	41
121. Negation of employment, partnership and agency	42
122. Waiver	42

123. Severance	43
124. Entire contract	43
125. Variation of Deed	43
126. Applicable law and jurisdiction	43
127. Compliance with laws and government policies	43
128. Notices	43
ANNEXURE A – Reserved	45
ANNEXURE B – EMPLOYMENT SERVICES STANDARDS	46
ANNEXURE C – Reserved	59
ANNEXURE D – NEW ENTERPRISE INCENTIVE SCHEME (NEIS)	60
ANNEXURE E – DEFINITIONS	64

CHAPTER 1 - INTRODUCTION

1. Definitions

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

2. Interpretation

2.1 Unless the contrary intention appears:

- (a) the Definitions apply to the whole of this Deed, including any Guidelines;
- (b) words in the singular include the plural and vice versa;
- (c) words importing a gender include the other gender;
- (d) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (e) the chapter headings, section headings, clause headings and subheadings within clauses, notes and information boxes are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
- (f) all references to dollars are to Australian dollars;
- (g) a reference to any legislation or legislative provision is to that legislation or legislative provision as in force from time to time;
- (h) a reference to a clause is to a clause of this Deed;
- (i) a reference to an Item is to an Item in the Schedule;
- (j) an uncertainty or ambiguity in the meaning of a provision of this Deed is not to be interpreted against a Party just because that Party prepared the provision;
- (k) a reference to an internet site includes those sites as amended from time to time;
- (l) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- (m) a reference to writing is a reference to any visible representation of words, figures or symbols.

2.2 Any Guidelines do not expand or add essential terms to this Deed.

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

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

3. Precedence

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

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

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

CHAPTER 2 – BASIC CONDITIONS

Section 2A – Deed length

4. Term of this Deed

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

5. Extension of this Deed

5.1 DEEWR may, at its sole option, offer the Provider an extension of the Term of this Deed for one or more Extended Service Periods up to an additional maximum of six years, by giving Notice to the Provider not less than 60 Business Days prior to end of the Service Period or any Extended Service Period, as relevant.

5.2 Subject to clause 114 [Transition out], if the Provider accepts DEEWR's offer to extend the Term of this Deed, the Term of the Deed will be so extended and all terms and conditions of this Deed continue to apply, unless otherwise agreed in writing between the Parties.

6. Survival

6.1 The operation of clauses 24 [Debts and offsetting], 27 [General reporting], 29 [Evaluation activities], 88-89 [Information technology], 90 [Ownership of intellectual property], 91 [Licensing of Intellectual Property Rights], 92 [Ownership of Deed Material and Commonwealth Material], 93 [Personal and Protected Information], 94 [Confidential Information], 96 [Records the Provider must keep], 97 [Access by Participants and Employers to Records held by the Provider], 99 [Indemnity], 100 [Insurance], 108 [Dispute resolution], 110 [Remedies for breach], 117 [Acknowledgement and promotion], 126 [Applicable law and jurisdiction] in this Deed and any provisions, other than those aforementioned, that are expressly specified as surviving, or by implication from their nature are intended to continue, survive the expiry or earlier termination of this Deed.

6.2 Clause 98 of this Deed [Access to premises and records] survives for seven years from the expiry or earlier termination of this Deed.

Section 2B – Some basic rules about Services

7. General Requirements

7.1 The Provider must provide the Services as specified in Chapter 4 (Other Services).

7.2 The Provider must carry out the Services:

- (a) efficiently, effectively and ethically;
- (b) in accordance with this Deed and the undertakings given in its tender response to the request for tender for this Deed;
- (c) in a manner which meets the Objectives;
- (d) so as to achieve an optimum performance when measured against the KPIs; and
- (e) to DEEWR's satisfaction.

8. Objectives

8.1 Reserved

8.2 Reserved

8.3 Reserved

8.4 The Objective for the delivery of the New Enterprise Incentive Scheme is to help eligible Participants to gain sustainable employment through establishing and running a new, viable small business.

9. Location

9.1 The Provider must deliver:

- (a) Reserved;
- (b) Reserved; and
- (c) NEIS Panel Member Services in all of, and only in, the ESAs,

specified in Item 9 of the Schedule, unless otherwise directed by DEEWR.

9.2 Reserved.

9.3 The Provider must ensure that:

- (a) any location from which Services are provided is:
 - (i) accessible to people with disability; and
 - (ii) presented in a manner that upholds and maintains the good reputation of the Services, as determined by DEEWR; and
- (b) it takes all reasonable steps to avoid acts or omissions which the Provider could reasonably foresee would be likely to cause injury to Participants or any other persons at the locations referred to in clause 9.3(a).

10. Timing

10.1 The Provider must deliver the Services:

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

10.2 Reserved.

11. Provider's conduct

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

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

11.2 The Provider must not engage in any practice that dishonestly or improperly manipulates Records, Outcomes or the Services with the intention of maximising payments to, or otherwise obtaining a benefit for, the Provider or any other person.

11.3 The Provider must advise its officers and employees:

- (a) that they are Commonwealth public officials for the purposes of section 142.2 of the *Criminal Code Act 1995 (Cth)*; and
- (b) that acting with the intention of dishonestly obtaining a benefit for any person is punishable by penalties including imprisonment.

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

12. Criminal records checks and other measures

Participants and criminal records checks

- 12.1 Before arranging for a Participant to participate in a NEIS Business or other activity under this Deed which is:
- (a) one where legislation requires a criminal records check to be conducted;
 - (b) subject to industry accreditation requirements, industry standards, or a legal requirement that the activity can only be carried out by people who have not been convicted of particular crimes;
 - (c) specified by DEEWR as requiring a criminal records check; or
 - (d) otherwise an activity in which the Participant will have regular or unsupervised contact with Children, the elderly, or other classes of vulnerable people, and for which it would be considered prudent by a reasonable person that a criminal records check be conducted,
- if it has not already been arranged by the Stream Services Provider, the Provider must arrange for criminal records checks to be carried out to establish whether the Participant has any relevant records of convictions for crimes and if the Participant has any relevant records of convictions for crimes, the Provider must not arrange for the Participant to participate in that NEIS Business or other activity under this Deed, unless the records of convictions for crimes are not relevant to the NEIS Business or other activity under this Deed.
- 12.2 The Provider must obtain each Participant's written permission prior to obtaining the checks described in clause 12.1.
- 12.3 For the purposes of clause 12.2, if a Participant is a Child, and is unable to obtain parental or guardian permission, the Provider must decide either:
- (a) not to arrange for the Participant to participate in an activity as described in clause 12.1; or
 - (b) if the Participant is to participate in such an activity, to put in place measures to ensure:
 - (i) compliance with the law; and
 - (ii) that no other person is put at undue risk of injury or mistreatment.
- 12.4 If a Participant is not a Child, and has failed to provide permission for a check to be conducted in accordance with clause 12.2, the Provider must not arrange for the Participant to participate in the activity as described in clause 12.1.
- 12.5 The Provider may only seek reimbursement from the Stream Services Provider for the cost of arranging criminal records checks, where the criminal records check is conducted in accordance with clause 12.1.

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

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

records of convictions for crimes, the Provider must ensure that the person is not engaged in that activity.

- 12.7 The Provider must meet its own expenses for the cost of all checks conducted in accordance with clause 12.6.

General provisions concerning persons at risk of harm

- 12.8 Notwithstanding clauses 12.1 to 12.7, the Provider must not arrange for:

- (a) a Participant, or any other person, to be involved in an activity under this Deed; or
- (b) a Participant to be placed into Employment,

where there is a reasonably foreseeable risk that the Participant, or other person, may cause loss or harm to any person, unless the Provider has put in place reasonable measures designed to ameliorate that risk, and where a Participant is placed into Employment, these measures may include, with the Participant's permission, advising the Employer about the Participant's records of convictions for crimes.

- 12.9 Without limiting the generality, of clause 12.8, there may be a reasonably foreseeable risk that a Participant, or other person, may cause loss or harm to others where:

- (a) the Participant, or other person, has a history of criminal antecedents, and those antecedents are a relevant consideration when assessing the risk of loss or harm; or
- (b) it is otherwise reasonable to expect that the Provider ought to be aware that the Participant, or other person, may cause loss or harm to others.

- 12.10 In addition to this clause 12, the Provider must comply with any Guidelines that DEEWR may issue concerning the matters set out in this clause.

13. Provider's responsibility

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

- (a) Subcontracting of the Services;
- (b) any obligation that a Subcontractor comply with DEEWR requirements in relation to using DEEWR's IT Systems in performing Services under its Subcontract;
- (c) access rights specified in, or any action taken under, clause 98 [Access to premises and records];
- (d) involvement by DEEWR in the performance of the Services; or
- (e) payment made to the Provider on account of the Services.

14. Service Guarantees

- 14.1 The Provider must:

- (a) conduct the Services at or above the minimum standards in the Service Guarantees set out in Annexure B as relevant to the Services being delivered; and
- (b) prominently display in its offices and all Sites, and make available to potential Participants, Participants and Employers, promotional Material made available by DEEWR about the Service Guarantees.

15. Code of Practice

Compliance with the Code of Practice

- 15.1 This clause 15 applies to all Services under this Deed, unless otherwise stated.

15.2 The Provider must:

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

15.3 The Provider must prominently display and make available to potential Participants, Participants and Employers, promotional Material made available by DEEWR about the Code of Practice.

Breach of the Code of Practice

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

- (a) fails to deliver Services in the manner specified in the Code of Practice; or
- (b) is the subject of a serious Complaint, or a series of similar Complaints in relation to the Code of Practice, which the Provider has not:
 - (i) actively taken steps to resolve in accordance with clause 33; or
 - (ii) where relevant, actively taken steps to ensure that the Complaint does not re-occur.

16. Liaison and compliance

16.1 The Provider must:

- (a) liaise with and provide information to DEEWR as reasonably requested by DEEWR; and
- (b) comply with all of DEEWR's reasonable requests and directions.

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

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

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

Note: The relationship between DEEWR and Providers is supported by a Charter of Contract Management. This Charter embodies the commitment by DEEWR to work cooperatively with Providers to achieve shared goals and outcomes in the delivery of employment services.

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

16.5 The Provider must provide all reasonable assistance to the Commonwealth in relation to the Social Security Appeals Process including ensuring the availability of its Personnel, agents and Subcontractors to appear at hearings (including appeals to any court) and to provide witness or other statements as required by DEEWR.

16.6 The Provider must notify Centrelink, in a manner consistent with any Guidelines, of any change in the circumstances of a Fully Eligible Participant within five Business Days of becoming aware of the change in circumstances.

16.7 The Provider must respond within five Business Days to any request for information by Centrelink or DEEWR about any change in circumstances referred to in clause 16.6.

17. Minimising delay

- 17.1 The Provider must take all reasonable steps to minimise delay in meeting its obligations under this Deed.
- 17.2 If the Provider becomes aware that it will be delayed in meeting its obligations under this Deed, or receives a Notice from DEEWR in relation to a delay, the Provider must immediately Notify DEEWR of:
- (a) the cause and nature of the delay; and
 - (b) the steps the Provider will take to limit the delay.
- 17.3 The Provider must comply with the steps it Notifies to DEEWR in accordance with clause 17.2(b), subject to any additional requirements which DEEWR may Notify to the Provider.
- 17.4 If:
- (a) the Provider does not Notify DEEWR of any delay in accordance with clause 17.2 or fails to comply with clause 17.3; or
 - (b) DEEWR determines that the delay Notified places the Services in jeopardy,
- DEEWR may, at DEEWR's absolute discretion:
- (c) take action under clause 110 [Remedies for breach];
 - (d) terminate this Deed under clause 113 [Termination for default]; or
 - (e) take such other steps as are available under law or in equity.
- 17.5 Except where, and to the extent that, clause 17.3 applies, the Provider must comply with the timeframe for meeting its obligations as set out in this Deed.

18. Business level expectations

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

Section 2C – Some basic rules about financial matters

19. General

- 19.1 Payments under this Deed consist of Fees for NEIS Transition Services specified in Section 4B.
- 19.2 Subject to sufficient funds being available and compliance by the Provider with this Deed to DEEWR's satisfaction, DEEWR will pay to the Provider Fees at the times and in the manner specified in this Deed to the account(s) specified in Item 5 of the Schedule.
- 19.3 The Provider may claim any Fees properly due to the Provider during the Service Period and any Extended Service Periods.
- 19.4 It is a precondition of the Provider's entitlement to be paid any Fees that it:
- (a) has, at the time it makes a claim for a payment, sufficient Documentary Evidence to prove that the Provider has delivered the relevant Services in accordance with, or otherwise has relevantly complied with, this Deed;
 - (b) has a valid ABN;

-
- (c) immediately notifies DEEWR if it ceases to have a valid ABN;
 - (d) correctly quotes its ABN on all documentation provided to DEEWR;
 - (e) supplies proof of its GST registration, if requested by DEEWR;
 - (f) immediately notifies DEEWR of any changes to its GST status; and
 - (g) submits Tax Invoices to DEEWR for payment.

20. Evidence to support claims for payment

- 20.1 The Provider must retain sufficient Documentary Evidence to prove its claim for payment under this Deed for such period as is required under subclause 96.8.
- 20.2 The Provider must, if requested by DEEWR, within 10 Business Days of DEEWR's request, provide the Documentary Evidence referred to in clause 20.1 to DEEWR.
- 20.3 If:
- (a) the Provider does not comply with a request by DEEWR under clause 20.2;
 - (b) DEEWR has already paid the Provider in relation to the claim for payment; and
 - (c) an extension of time has not been requested and agreed to by DEEWR,
- then:
- (d) the Provider will be taken not to have delivered the relevant Services in accordance with this Deed; and
 - (e) DEEWR may recover the relevant payment amount from the Provider as a debt in accordance with clause 24 [Debts and offsetting], without prejudice to any other rights that DEEWR may have under this Deed, under statute, at law or in equity.
- 20.4 DEEWR may contact Employers or Participants or any other relevant parties to verify Documentary Evidence provided by a Provider.

21. Exclusions

No additional Fees, Reimbursements or Advance EPF Payments

- 21.1 DEEWR is not responsible for the payment of any money in excess of the Fees set out in this Deed.

Superannuation

- 21.2 DEEWR is not required to make any superannuation contributions in connection with this Deed.

No double payments

- 21.3 The Provider acknowledges it is not entitled to payment from DEEWR, other Commonwealth sources or state, territory or local government bodies for providing the same or similar services as provided under this Deed, and DEEWR may require the Provider to provide evidence, in a form acceptable to DEEWR, which proves that the Provider is not so entitled.

No charge to Participants

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

22. Overpayment

General

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

Double Payments

- 22.2 For the purposes of clause 21.3, if DEEWR determines, in its absolute discretion, that the Provider is entitled to payment from DEEWR, other Commonwealth sources or state, territory or local government bodies for providing the same or similar services as provided under this Deed, DEEWR may:
- (a) make the payments of Fees;
 - (b) decide not to make the payments of Fees; or
 - (c) recover any payments of Fees made by DEEWR as a debt in accordance with clause 24 [Debts and offsetting] .
- 22.3 Regardless of any action DEEWR may take under clause 22.2, DEEWR may at any time issue Guidelines setting out the circumstances in which DEEWR will or will not make the payments of Fees in connection with any situation of the type described in clause 22.2.

23. DEEWR may vary payments or Participants

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

24. Debts and offsetting

Debts

- 24.1 Any amount owed to DEEWR, or deemed to be a debt to DEEWR under this Deed, including any Interest, will, without prejudice to any other rights available to DEEWR under this Deed, under statute, at law or in equity, be recoverable by DEEWR, at its absolute discretion, as a debt due to the Commonwealth from the Provider without further proof of the debt being necessary.
- 24.2 Reserved.
- 24.3 The Provider must pay to DEEWR any debt due to the Commonwealth from the Provider within 30 calendar days of receipt of a Notice from DEEWR requiring payment, or the due date for the payment, whichever is the earlier.

Interest

- 24.4 Subject to contrary stipulation, where any debt is owed to the Commonwealth under this Deed, Interest accrues on that debt if it is not repaid within 30 calendar days of receipt of a Notice from DEEWR requiring payment, or the due date for the payment, whichever is the earlier, until the amount is paid in full.

Offsetting

24.5 Without limiting DEEWR's rights under this Deed, under statute, at law or in equity, if the Provider:

- (a) owes the Commonwealth any debt; or
- (b) has outstanding or unacquitted money,

under this Deed, or under any other arrangement with DEEWR or the Commonwealth, DEEWR may offset or deduct an amount equal to that debt owed, or outstanding or unacquitted money, against any other payments due to the Provider under this Deed.

24.6 DEEWR will Notify the Provider if it exercises its rights under clause 24.5 within 10 Business Days after having exercised those rights.

24.7 Notwithstanding any action taken by DEEWR under clause 24.5, the Provider must continue to perform its obligations under this Deed, unless DEEWR agrees otherwise in writing.

25. Taxes, duties and government charges

Amounts inclusive of GST

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

25.2 If a claim for payment of Fees is not in relation to a Taxable Supply, the Provider must only claim an amount exclusive of GST and DEEWR will only pay the GST exclusive amount under this Deed.

25.3 The Provider must give to DEEWR a Tax Invoice for any Taxable Supply before any Fees are payable to the Provider as consideration for the Taxable Supply.

25.4 The Provider must not claim from DEEWR any amount for which it can claim an Input Tax Credit.

25.5 Where any debt is repaid, including by offset under clause 24.5, an Adjustment Note must be provided to DEEWR if required by the GST Act.

General taxes

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

26. Fraud

26.1 The Provider must not engage in fraudulent activity in relation to this Deed.

26.2 The Provider must take all reasonable steps to prevent fraud upon the Commonwealth, including the implementation of an appropriate fraud control plan, a copy of which must be provided to DEEWR on request.

26.3 If, after investigation, DEEWR determines that the Provider has been engaged in fraudulent activity, DEEWR may:

- (a) take action under clause 110 [Remedies for breach]; or
- (b) immediately terminate this Deed under clause 113 [Termination for default]

by providing Notice to the Provider.

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

Section 2D – Reports

27. General reporting

Provider's obligation to provide Reports

- 27.1 Without limiting any other provisions of this Deed, the Provider must provide as required by DEEWR from time to time:
- (a) specific Reports on:
 - (i) the Services including, but not limited to, the progress of the Services under this Deed and against any performance criteria; and
 - (ii) the financial status of the Provider; and
 - (b) a suitably qualified, informed and authorised representative at any meeting arranged by DEEWR in order to discuss and accurately answer questions relating to the reports referred to at clause 27.1(a).

Other Reports

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

Form and content of Reports

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

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

- 27.4 The Provider must provide its Reports in accordance with the following requirements:
- (a) all Reports must be in the English language;
 - (b) all Reports must be in a form acceptable to DEEWR; and
 - (c) if, in DEEWR's opinion, either the form or the content of a Report is not satisfactory, the Provider must submit a revised Report to DEEWR's satisfaction within 20 Business Days of Notice to the Provider from DEEWR.

Failure to provide satisfactory Reports

- 27.5 If the Provider is more than 20 Business Days overdue in providing its Reports to DEEWR, or a Report fails to satisfy DEEWR, DEEWR may:
- (a) take action under clause 110 [Remedies for breach]; or
 - (b) immediately terminate this Deed under clause 113 [Termination for default] by providing Notice to the Provider.

28. Financial statements and guarantees

- 28.1 Subject to clause 28.3, the Provider must, for the Term of this Deed, provide to DEEWR its financial statements:

- (a) within 20 Business Days of its annual general meeting or where no annual general meeting is held, within 20 Business Days after the compilation of the financial statements; and
- (b) no later than 120 Business Days after the end of its financial year.

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

28.3 If required by DEEWR, the Provider must provide to DEEWR:

- (a) financial statements in a form, with the content and at a frequency, as directed by DEEWR; and
- (b) within 20 Business Days of the relevant direction by DEEWR, a financial guarantee in a form and in terms satisfactory to DEEWR.

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

Section 2E – Assessment and management of Provider’s performance

29. Evaluation activities

Cooperation in evaluation activities

29.1 The Provider agrees:

- (a) that evaluation activities may be undertaken by DEEWR for the purposes of evaluating the Services, including the Provider’s performance;
- (b) that all evaluation activities will be conducted in a mutually cooperative manner, and may include, but are not limited to:
 - (i) DEEWR monitoring, measuring and evaluating the delivery of the Services by the Provider;
 - (ii) the Provider’s Personnel being interviewed by DEEWR or an independent evaluator nominated by DEEWR; and
 - (iii) the Provider giving DEEWR or DEEWR’s evaluator access to its premises and Records in accordance with clause 98 [Access to premises and records];
- (c) to assist DEEWR or DEEWR’s evaluator in carrying out all evaluation activities that DEEWR requires to be undertaken, including a review and final evaluation of the Services; and
- (d) to fully cooperate and participate in any other general research, monitoring or evaluation activities undertaken by DEEWR, or on behalf of DEEWR.

30. Reserved

31. Reserved

Section 2F – Customer and Provider feedback

32. Customer feedback process

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

32.2 If a Customer is dissatisfied with the results of the Customer feedback process, the Provider must refer the Customer to the DEEWR Customer Service Line for further investigation of the matter.

32.3 The Provider’s Customer feedback process must:

- (a) be consistent with this Deed, any Guidelines, and where relevant, the Code of Practice and the Service Guarantees; and
- (b) clearly indicate that Customers may also make a Complaint directly to DEEWR using DEEWR’s Customer Service Line.

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

33. Dealing with Customer feedback

33.1 The Provider must:

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

34. Customer Feedback Register

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

- (a) details of all Customer feedback received directly by the Provider, and the outcome of any investigation where relevant;
- (b) details of all Customer feedback referred to the Provider by, or through, DEEWR; and
- (c) in relation to Complaints, details of:
 - (i) the name(s) of the Customer(s) (if known);
 - (ii) if relevant, the name(s) of the Personnel about whom the Complaint refers;
 - (iii) the name of the staff member handling the Complaint;
 - (iv) the Site to which the Complaint relates;
 - (v) the date of the Complaint;
 - (vi) the nature of the Complaint;
 - (vii) whether the Complaint was referred to the Provider by DEEWR;
 - (viii) key contacts with the complainant and the action taken, including dates;
 - (ix) the outcome of the investigation;
 - (x) the date of finalisation of the response to the Complaint;
 - (xi) any follow-up action required;
 - (xii) if a complainant has been referred to the DEEWR Customer Service Line, including the date; and
 - (xiii) any changes to the delivery of the Services or procedures, or other actions, resulting from the Complaint.

35. Provider feedback

-
- 35.1 If the Provider wishes to provide feedback other than in relation to a dispute dealt with under clause 108, the Provider must, in the first instance, provide feedback to the Account Manager.
- 35.2 The Account Manager will consider all feedback received and respond as appropriate.
- 35.3 If the Provider is not satisfied with the Account Manager's response to the Provider's feedback, the Provider may request the Account Manager to refer the matter to an appropriate senior DEEWR officer. The Account Manager must then refer the matter to an appropriate senior DEEWR officer for consideration and response as appropriate.

CHAPTER 3 – RESERVED (EXCEPT FOR SECTION 3N)

Section 3A – Reserved

36. Reserved
37. Reserved

Section 3B – Reserved

38. Reserved
39. Reserved
40. Reserved
41. Reserved
42. Reserved
43. Reserved
44. Reserved

Section 3C – Reserved

45. Reserved
46. Reserved
47. Reserved
48. Reserved
49. Reserved

Section 3D – Reserved

50. Reserved
51. Reserved
52. Reserved
53. Reserved
54. Reserved
55. Reserved
56. Reserved

Section 3E – Reserved

57. Reserved

Section 3F – Reserved

58. Reserved
59. Reserved

Section 3G – Reserved

60. Reserved
61. Reserved

Section 3H – Reserved

62. Reserved
63. Reserved
64. Reserved

-
65. Reserved
 66. Reserved
 67. Reserved
 68. Reserved
 69. Reserved
 70. Reserved
 71. Reserved

Section 3I – Reserved

72. Reserved

Section 3J – Reserved

73. Reserved

Section 3K – Reserved

74. Reserved

Section 3L – Reserved

75. Reserved
76. Reserved
77. Reserved
78. Reserved
79. Reserved
80. Reserved
81. Reserved

Section 3M – Reserved

82. Reserved

Section 3N – Gap Filling

83. Gap filling

83.1 For the purposes of filling gaps in employment services, DEEWR may, with the agreement of the Provider, require the Provider to provide additional Services, on the same terms as specified in this Deed at the times requested by DEEWR.

Section 3O – Reserved

84. Reserved

CHAPTER 4 – OTHER SERVICES

Section 4A – Reserved

85. Reserved

Section 4B – New Enterprise Incentive Scheme Panel Member Services

86. NEIS Panel Member Services

86.1 The Provider must, when delivering NEIS Services, do so in accordance with this clause 86 and Annexure D.

Delivery of NEIS Services

86.2 Subject to clauses 86.3 and 86.4, the Provider agrees to keep open a standing offer to deliver NEIS Services, in accordance with Part 1 of Annexure D, to Stream Services Providers for a fixed amount of:

- (a) \$1,480 in respect of a Fully Eligible Participant not in a Remote ESA; and
- (b) \$2,516 in respect of a Fully Eligible Participant in an Excised Remote Area or a Remote ESA, but

not in an Excised Non-remote Area.

86.3 The Provider may charge amounts exceeding the amounts in clause 86.2 only:

- (a) in respect of:
 - (i) Fully Eligible Participants in Streams 3 and 4; or
 - (ii) Fully Eligible Participants who are Indigenous Australians; and
- (b) in accordance with any Guidelines.

86.4 The Provider must not charge any fee to Stream Services Providers in respect of NEIS Services for a Fully Eligible Participant unless and until that Fully Eligible Participant becomes eligible for NEIS Assistance.

86.5 Unless otherwise agreed to by DEEWR in writing, the NEIS Panel Member must only deliver NEIS Services to Fully Eligible Participants and NEIS Participants whose proposed business for which it will receive NEIS Assistance is from a business address within an ESA set out in Item 9 of the Schedule.

NEIS Transition Services

86.6 If directed by DEEWR, the Provider must provide NEIS Transition Services in accordance with Part 2 of Annexure D.

Recovery

86.7 Where a NEIS Participant is overpaid NEIS Allowance or NEIS Rental Assistance as a result of the Provider's failure to provide NEIS Services in accordance with Part 1 of Annexure D, the Provider must, if required by DEEWR, pay to DEEWR an amount equal to the amount of the overpayment that is attributable to the Provider's failure. This amount will become a debt due to the Commonwealth for the purposes of clause 24 [Debts and offsetting] if and when the Commonwealth Notifies the Provider that it elects to recover the amount as a debt under clause 24 [Debts and offsetting].

Marketing and Promotion

86.8 The Provider must market and promote NEIS Services as required, and deal with enquiries relating to its provision of NEIS Services.

Termination

86.9 Notwithstanding any other rights DEEWR has under this Deed, DEEWR may, at its discretion, terminate this Deed at any time by Notice. For the avoidance of doubt, any termination under this clause 86.9 does not amount to a reduction of scope or termination for which compensation is payable.

86.10 Where DEEWR terminates this Deed under clause 86.9, the Provider must provide sufficient assistance and cooperation to ensure an orderly and efficient transition of any or all NEIS Services to any person nominated by DEEWR, or to DEEWR, as directed by DEEWR.

86.11 The sufficient assistance and cooperation the Provider must provide under clause 86.10 will include, as a minimum, complying with DEEWR's directions in relation to:

- (a) the transfer of Deed Material and Commonwealth Material in the NEIS Panel Member's possession or control; and
- (b) the redirection of NEIS Participants, Prospective Participants, or persons receiving NEIS Transition Services,

to any entity nominated by DEEWR, or to DEEWR.

Section 4C – Additional Services

87. Additional Services

87.1 DEEWR and the Provider may agree to the provision of other employment services or employment related services by the Provider to DEEWR, including applicable terms and conditions.

CHAPTER 5 – INFORMATION AND INFORMATION MANAGEMENT

Section 5A – Information Technology

88. General

Use

88.1 If required by DEEWR, the Provider must conduct the Services using DEEWR's IT Systems provided by DEEWR for that purpose.

88.2 If any Personnel require disability access to DEEWR's IT Systems, the Provider must install suitable accessibility software to allow such access.

Training

88.3 DEEWR may provide training in the use of DEEWR's IT Systems, by computer-assisted learning packages or otherwise.

88.4 Where specified by DEEWR, Personnel must not access or use particular DEEWR's IT Systems until they have successfully completed the relevant training.

Accuracy and Completeness

88.5 The Provider must ensure that:

- (a) a Participant's details are recorded on DEEWR's IT Systems as required by DEEWR; and
- (b) all data entered on DEEWR's IT Systems is true, accurate and complete.

Costs

88.6 The Provider is responsible for all costs of meeting its obligations under this clause 88.

89. Access and security

Access to Systems

89.1 The Provider must provide information technology systems that are adequate and appropriate to access and use DEEWR's IT Systems and to carry out its other obligations under this Deed.

89.2 Subject to clause 89.4, for the purposes of clause 89.1, the Provider must use:

- (a) Microsoft Windows XP Professional or Microsoft Windows Vista (32 bit only, such as Vista Home premium, Vista Business, Vista Enterprise and Vista Ultimate); or
- (b) Terminal Services on Microsoft Windows Server 2003.

Note: Support for:

- (a) *Microsoft Windows XP Professional is likely to be phased out; and*
- (b) *Microsoft Windows Server 2003 will be phased out,*

during the Term of this Deed

- 89.3 DEEWR will give 180 days Notice before withdrawing support for Microsoft Windows XP or Windows Server 2003.
- 89.4 If the Provider proposes to use an alternative operating system that can deliver the same level of security controls and functionality, the Provider must request approval from DEEWR to use the alternative operating system. If DEEWR gives its approval, DEEWR may impose such terms and conditions as DEEWR thinks fit.
- 89.5 DEEWR may introduce the ability for third party systems to interface with DEEWR's IT Systems. DEEWR may impose such terms and conditions as it thinks fit in respect of the use of these interfaces.
- 89.6 The Provider must:
- (a) nominate Personnel to receive technical advice from DEEWR on DEEWR's IT Systems, and to provide advice to DEEWR on technical issues arising from the deployment of DEEWR's IT Systems ('**IT Contact**');
 - (b) ensure that the IT Contact:
 - (i) disseminates technical advice to Personnel of the Provider and Subcontractors as appropriate, in order to minimise disruption to Services; and
 - (ii) provides advice, as requested by DEEWR:
 - (A) to assist in resolution of DEEWR's IT Systems technical issues; and
 - (B) in relation to the Provider's readiness to deploy system upgrades to DEEWR's IT Systems; and
 - (c) where that IT Contact changes, advise DEEWR accordingly.

Security

- 89.7 The Provider must ensure that:
- (a) appropriate security measures, such as firewall security and virus protection software, are installed and maintained to safeguard its equipment and data integrity;
 - (b) its information technology systems and personal computers that access and use DEEWR's IT Systems are secure and have security controls in the operating system that protect all data on DEEWR's IT Systems from any unauthorised use;
 - (c) it implements functionality such that users are prompted to enter an access control password (or equivalent mechanism) when accessing a workstation with access to DEEWR's IT Systems and that users are prompted to re-enter their password or equivalent after 15 minutes of inactivity; and
 - (d) it prevents unauthorised access to DEEWR's IT Systems by Participants.
- 89.8 DEEWR may introduce forms of authentication technology to DEEWR's IT Systems on 120 Business Days Notice, and the Provider must make use of such technology as required by DEEWR.

Personnel

- 89.9 In relation to any Personnel who have, or who have had, access to DEEWR's IT Systems, the Provider must take all reasonable steps to:
- (a) keep identity records current;
 - (b) put into place appropriate policies and procedures to prevent sharing of user identification and

-
- passwords;
- (c) terminate access to DEEWR's IT Systems immediately on the Personnel ceasing to be engaged in work on the Services;
 - (d) prevent unauthorised access to DEEWR's IT Systems;
 - (e) ensure that relevant persons:
 - (i) sign appropriate security undertakings in relation to DEEWR's IT Systems;
 - (ii) are issued with, and use, their own user identification and password to access DEEWR's IT Systems;
 - (f) nominate security contacts to use the online identity and access management tool to manage system access ('**Security Contacts**');
 - (g) ensure that Security Contacts use DEEWR's online identity and access management tool to:
 - (i) obtain user identification information;
 - (ii) manage access to DEEWR's IT Systems; and
 - (iii) manage the passwords, access roles and profiles including a unique, current, valid electronic mail address for each relevant person; and
 - (h) ensure that where Security Contacts use the online identity and access management tool to do the tasks in clause 89.9(g) above, they provide authorisation in the form of their user identification and their smart token device.

IT Security Policies

89.10 The Provider must comply with all IT Security Policies.

89.11 Where DEEWR considers that the Provider may be in breach of this clause 89 or any IT Security Policies, DEEWR may immediately, by providing Notice, suspend access to DEEWR's IT Systems for any one or more of the following:

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

89.12 Where DEEWR determines that the Provider is in breach of, or has previously breached, this clause 89. or IT Security Policies, DEEWR may immediately take action including, but not limited to, any one or more of the following:

- (a) suspending or terminating access to DEEWR's IT Systems for:
 - (i) any Personnel;
 - (ii) any Subcontractor; or
 - (iii) the Provider;
- (b) require the Provider to obtain new logon IDs for any Personnel or a Subcontractor; or
- (c) require the Provider to prepare and implement an IT security plan to DEEWR's satisfaction.

89.13 DEEWR may, at its absolute discretion, give Notice to the Provider that access to DEEWR's IT Systems is revoked for particular Personnel, and the Provider must immediately take all actions necessary to terminate that access.

89.14 Any action taken by DEEWR under clauses 89.11 and 89.12 does not limit any other rights DEEWR has under this Deed, including the right to exercise one or more of the remedies set out in clause 110.2.

Section 5B – Property rights

90. Ownership of intellectual property

90.1 Unless otherwise set out in the Records Management Instructions, and subject to this clause 90, as between DEEWR and the Provider (but without affecting the position between the Provider and a third party), the ownership of Intellectual Property Rights in:

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

vests at all times in DEEWR.

Dealing with Intellectual Property Rights

90.2 The Provider warrants that it:

- (a) is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in Deed Material and the Existing Material in accordance with this clause 90; and
- (b) has obtained valid written consents from all owners of Intellectual Property Rights in, and all authors (including Subcontractors) involved in creating Deed Material and Existing Material so that DEEWR's use of that Material in accordance with this clause 90 will not infringe:
 - (i) the Intellectual Property Rights of any third party; or
 - (ii) any author's Moral Rights.

90.3 The Provider must:

- (a) if requested by DEEWR 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 90;
- (b) not deal with the Intellectual Property Rights in the Deed Material, except as expressly provided for in this Deed; and
- (c) deliver all Deed Material to DEEWR at the Completion Date, unless otherwise Notified by DEEWR.

90.4 For the purposes of clause 90, 'infringe' includes unauthorised acts that would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), and section 25 of the *Circuits Layout Act 1989* (Cth), constitute an infringement.

91. Licensing of Intellectual Property Rights

Licence of Commonwealth Material and Deed Material

91.1 DEEWR grants the Provider a licence to use, copy and reproduce:

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

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

91.2 The licence in clause 91.1 is revocable on 10 Business Days Notice by DEEWR, and expires on the Completion Date.

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

Licence of Existing Material

91.4 This clause 91 does not affect the ownership of any Intellectual Property Rights in any Existing Material. The Provider, however, grants to DEEWR or must arrange for the grant to DEEWR of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Existing Material for any purpose as required by DEEWR.

92. Ownership of Deed Material and Commonwealth Material

92.1 Unless otherwise set out in the Records Management Instructions, as between DEEWR and the Provider (but without affecting the position between the Provider and a third party) ownership of:

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

vests at all times in DEEWR.

Section 5C – Control of information

93. Personal and Protected Information

Application of this clause

93.1 This clause 93 applies only where the Provider deals with Personal Information for the purpose of conducting the Services under this Deed.

Privacy definitions

93.2 In this clause 93, the terms ‘agency’, ‘approved privacy code’ (APC), ‘contracted service provider’, ‘Information Privacy Principle’ (IPP), and ‘National Privacy Principle’ (NPP) have the same meaning as they have in section 6 of the Privacy Act, and ‘subcontract’ and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.

Privacy obligation

93.3 The Provider acknowledges that it is a contracted service provider and agrees in respect to the conduct of the Services under this Deed:

- (a) to use or disclose Personal Information obtained in the course of conducting the Services, only for the purposes of this Deed;
- (b) to carry out and discharge the obligations contained in the IPPs as if it were an agency;
- (c) not to do any act or engage in any practice that if done or engaged in by an agency, would be a breach of an IPP;
- (d) to notify individuals whose Personal Information it holds, that:
 - (i) 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;
 - (ii) their Personal Information may be disclosed and passed on to DEEWR and to other persons in relation to providing the Services;

-
- (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), NPPs 7 to 10 or an APC where that section, NPPs 7 to 10 or an APC is applicable to the Provider, unless:
 - (i) in the case of section 16F – the use or disclosure is expressly required under this Deed; or
 - (ii) in the case of NPP 7 to 10 or an APC – the act or practice is expressly required under this Deed;
 - (f) to comply with any request under section 95C of the Privacy Act;
 - (g) 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 93;
 - (h) not to transfer Personal Information outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of DEEWR;
 - (i) to its name being published in reports by the Privacy Commissioner;
 - (j) if the Provider suspends or terminates Personnel:
 - (i) to remove any access that the Personnel have to any Personal Information; and
 - (ii) to require that the Personnel return to the Provider or DEEWR any Personal Information held in the Personnel's possession; and
 - (k) to ensure that any of its Personnel who are required to deal with Personal Information for the purposes of this Deed:
 - (i) are made aware of their obligations in this clause 93, including to undertake in writing to observe the IPPs and NPPs 7 to 10 (or an APC, where applicable); and
 - (ii) where required by DEEWR, undertake in writing to observe the IPPs and NPPs 7 to 10 (or an APC where applicable).

Notification to DEEWR

- 93.4 The Provider must immediately Notify DEEWR if it becomes aware:
- (a) of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 93 by any Personnel or Subcontractor;
 - (b) that a disclosure of Personal Information may be required by law; or
 - (c) of an approach to the Provider by the Privacy Commissioner or by a person claiming that their privacy has been interfered with.

Note: Obligations under the IPPs, NPPs 7 to 10 and section 16F of the Privacy Act continue after this Deed has expired or been terminated.

Protected Information

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

94. Confidential Information

- 94.1 Subject to this clause 94 and clause 96.6, the Parties must not, without each other's prior written approval, disclose any of each other's Confidential Information to a third party.

- 94.2 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.

-
- 94.3 The obligations on the Parties under this clause 94 will not be breached if information:
- (a) is shared by DEEWR within DEEWR's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
 - (b) is disclosed by DEEWR to the responsible Minister;
 - (c) is disclosed by DEEWR, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (d) is authorised or required by law to be disclosed; or
 - (e) is in the public domain otherwise than due to a breach of this clause 94.

94.4 Nothing in this clause 94 limits the obligations of the Provider under clause 93 [Personal and Protected Information] or clause 98 [Access to premises and records].

95. Release of information on Provider's performance

95.1 The Provider agrees that DEEWR may publish information DEEWR holds concerning its performance as the provider of Services under this Deed.

Section 5D – Records management

96. Records the Provider must keep

General

96.1 The Provider must create and maintain full and accurate Records of the conduct of the Services, including Participant Services Records and the Customer Feedback Register and any other Material as set out in the Records Management Instructions.

96.2 When requested by DEEWR, the Provider must provide the Records to DEEWR within the timeframe required by DEEWR.

Financial Accounts and Records

96.3 The Provider must keep financial accounts and Records of its transactions and affairs regarding payments that it receives from DEEWR under this Deed:

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

Storage

96.4 The Provider must store all Records created under clause 96.1, in accordance with the Records Management Instructions, and where appropriate, its Privacy Act obligations.

Control

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

Access

96.6 Subject to clauses 93 [Personal and Protected Information] and 98 [Access to premises and records], the Provider must ensure that copying of, use of, and access to, Participant Services Records, is restricted to Personnel directly assisting the Provider with the provision of Services to a Participant.

Transfer

96.7 Subject to clause 93 [Personal and Protected Information] and clause 114 [Transition Out], the Provider must:

- (a) not transfer, or be a party to an arrangement for the transfer of custody of the Records created under clause 96.1 to any person, entity or organisation other than to DEEWR, without the written approval of DEEWR; and
- (b) where transferring Records created under clause 96.1, only transfer the Records in accordance with the Records Management Instructions or as otherwise directed by DEEWR.

Retention

96.8 Subject to clause 93 [Personal and Protected Information], all Records created in accordance with clause 96.1 must be retained by the Provider for a period of no less than seven years after the creation of the Record, unless otherwise specified in the Records Management Instructions.

96.9 At the Completion Date, the Provider must manage all Records created in accordance with clause 96.1 in accordance with the Records Management Instructions or as otherwise directed by DEEWR.

Destruction

96.10 The Provider must:

- (a) not destroy or otherwise dispose of Records created in accordance with clause 96.1, except in accordance with the relevant Records Management Instructions, or as directed by DEEWR; and
- (b) provide a list to DEEWR of any Records that have been destroyed, as directed by DEEWR.

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

97.1 Subject to this clause 97, the Provider must allow Participants and Employers who are individuals to access Records that contain their own Personal Information, and provide them with copies of such Records if they require, except to the extent that Commonwealth legislation would, if the Records were in the possession of the Commonwealth, require or authorise the refusal of such access by the Commonwealth.

97.2 The Provider must:

- (a) ensure that a Participant or Employer requesting the access in clause 97.1 provides proof of identity before access is given to the requested Records; and
- (b) notate the relevant files with details of the Records to which access was provided, the name of the person granted access and the date and time of such access.

97.3 Requests for access to Records that the Provider has determined could be refused under Commonwealth legislation as specified in clause 97.1 including, but are not limited to, access to Records containing information falling within the following categories:

- (a) records also containing information about another person;
- (b) medical/psychiatric records (other than those actually supplied by the Participant or Employer);
- (c) psychological records; and
- (d) information provided by other third parties,

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

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

98. Access to premises and records

General access rights

98.1 As relevant to the Services, the Provider must at all reasonable times give the Auditor-General, the Privacy Commissioner, the Ombudsman, the Account Manager, and any DEEWR Employee (on production of photo identification):

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

Limitation on access rights

98.2 Subject to clause 98.3, the rights referred to in clause 98.1 are subject to:

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

Investigation of Breaches and Fraud

98.3 If a matter is being investigated that, in the opinion of DEEWR, may involve:

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

clause 98.2 does not apply, and DEEWR Employees may remove and retain Material and original Records that are relevant to the investigation, including items stored on an electronic medium, provided that they return a copy of all relevant Records to the Provider, or the relevant Material and original Records, within a reasonable period of time.

Notes:

The Commonwealth Auditor-General is given the power, by the Auditor-General Act 1997 (Cth), to obtain information from Parties with whom DEEWR contracts.

When investigating complaints, it is open to the Ombudsman, under section 9 of the Ombudsman Act 1976 (Cth), to make enquiries of any person whom the Ombudsman believes is able to assist with the investigation.

CHAPTER 6 – DEED ADMINISTRATION

Section 6A – Indemnity and insurance

99. Indemnity

General indemnity

99.1 The Provider must indemnify (and keep indemnified) DEEWR against any:

- (a) loss, cost or liability incurred by DEEWR;
- (b) loss of or damage to DEEWR's property; or
- (c) loss or expense incurred by DEEWR in dealing with any claim against DEEWR, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by DEEWR,

arising from or in connection with:

- (d) any act or omission by the Provider in connection with this Deed, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;
- (e) any breach by the Provider of this Deed;
- (f) any publication of the information referred to in clause 95 [Release of information on Provider's performance], clause 118 [DEEWR's right to publicise the Services] or clause 119 [DEEWR's right to publicise best practice], where the published information was provided by the Provider to DEEWR;
- (g) any breach by the Provider of clause 93 [Personal and Protected Information]; or
- (h) the use by DEEWR of the Deed Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights in Deed Material or Existing Material.

Reduction of scope

99.2 The liability of the Provider to indemnify DEEWR under this clause 99 will be reduced proportionately to the extent that fault on DEEWR's part contributed to the relevant cost, loss, damage, expense, or liability.

Preservation of other rights

99.3 DEEWR's right to be indemnified under this clause 99 is in addition to any other right, power, or remedy provided by law, but DEEWR will not be entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.

Meaning of fault

99.4 In this clause 99, 'fault' means any negligent or unlawful act or omission or wilful misconduct, including fraud.

100. Insurance

Required Insurances

100.1 Subject to this clause 100, the Provider must, for as long as any obligations to perform Services remain in connection with this Deed, effect and maintain or cause to be effected and maintained, the following insurances:

- (a) public liability insurance written on an occurrence basis, with a limit of indemnity of at least \$10 million in respect of each and every occurrence, which covers:
 - (i) the Provider's liability and the liability of its Personnel and agents (including to DEEWR and to the Participants) at general law or assumed under the terms of clause 101; and
 - (ii) the vicarious liability of DEEWR in respect of the acts or omissions of the Provider, its Personnel and agents;

in respect of:

- (iii) loss of, or damage to, or loss of use of any real or personal property (including property of DEEWR in the care, custody or control of the Provider); and
- (iv) the bodily injury, disease or illness (including mental illness) or death of, any person (other than a liability insured under the insurance referred to at clause 101.1(b));

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

- (b) insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged in work by the Provider under this Deed:
 - (i) giving rise to a claim:
 - (A) under any statute relating to workers' or accident compensation; and
 - (B) where common law claims by such workers are permissible outside of the statutory scheme referred to at 93.1(b)(i)(A), for employer's liability at common law with a limit of indemnity of not less than \$50 million for any one event;
 - (ii) in each Australian state or territory where the Provider's employees normally reside or where their contract of employment was made, or where the Services are performed or delivered; and
 - (iii) where possible under the relevant law or scheme governing workers compensation insurance and in respect of all employers' liability policies, extending to indemnify DEEWR for its liability as principal in relation to any such claim;

(c) Reserved

(d) Reserved

(e) professional indemnity insurance or errors and omissions insurance, to be maintained during the Term of this Deed and for at least seven years following the Completion Date:

- (i) that covers the liability of the Provider at general law or assumed under the terms of clause 101 arising from a negligent breach of duty owed in a professional capacity in connection with the performance of this Deed or, where errors and omissions insurance is effected, arising from an error or omission in judgement by the Provider, its Personnel, Subcontractors, consultants or agents;
- (ii) extending to include cover for unintentional breaches of Intellectual Property Rights; and
- (iii) with a limit of indemnity of at least \$5 million in respect of each claim and in the aggregate for all claims in any one 12 month policy period with one right of reinstatement;

(f) Reserved

(g) Reserved

(h) Reserved

100.2 Reserved

Provider's Insurance Obligations

100.3 All insurance required under this clause 100 (other than statutory workers compensation insurance or compulsory third party motor vehicle insurance) must be obtained from an insurer authorised by the Australian Prudential Regulatory Authority with a financial security rating of "A-" or better from Standard and Poors or the equivalent ratings with another reputable rating agency.

100.4 Each of the insurances required by this clause 100 (other than statutory workers compensation insurance and compulsory third party motor vehicle insurance) that insures more than one person, must include:

- (a) a cross-liability clause, whereby the insurer agrees that the policy shall be construed as if a separate policy has been issued to each insured person (but not so as to increase the overall limit of liability) (this clause does not apply to any professional indemnity or errors and omissions insurance required by this clause 100);
- (b) a waiver of subrogation clause, whereby the insurer agrees to waive all rights of subrogation or action that it may have or acquire against any or all of the persons insured (at least to the extent that they are insured under the policy);
- (c) a non-imputation clause, whereby the insurer agrees that any failure by any insured person to observe and fulfil the terms of the policy, or to comply with the terms of the policy, or to comply with that insured person's pre-contractual duty of disclosure does not prejudice the insurance of any other person insured under the policy;
- (d) a severability clause in which the insurer agrees to treat the insurance policy as if a separate policy has been issued to each insured person for the purposes of determining rights to indemnity; and
- (e) a clause whereby notice of a claim given to the insurer by any insured person will be accepted by the insurer as notice of a claim given by all the persons insured under the policy.

100.5 In relation to the insurances specified in this clause 100, the Provider must:

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

100.6 The Provider must Notify DEEWR immediately when it:

-
- (a) becomes aware of any actual, threatened or likely claim under any of the insurances which the Provider is obliged to effect and maintain, that could materially reduce the available limits or involve DEEWR (other than a claim by DEEWR against the Provider which would be insured under the insurance referred to in clause 100.1(e)); or
 - (b) receives a notice of cancellation in respect of any of the insurances that the Provider is obliged to effect and maintain.

100.7 The Provider must ensure that all Subcontractors retained by it to perform work in connection with this Deed are covered by insurance of the types specified in this clause 100, as is appropriate (including as to limits of indemnity) given the nature of the work to be performed by each such Subcontractor.

Evidence of insurance

100.8 The Provider must, before commencing the performance of any Services and in any event within 20 Business Days of the Deed Commencement Date:

- (a) obtain, in writing, independent professional advice that confirms that it has obtained insurance which meets the requirements of this Deed, which advice must state that it can be relied upon by DEEWR;
- (b) provide a copy of the advice referred to in clause 100.8(a) to DEEWR; and
- (c) provide a certificate of currency in respect of each of the insurances required of it and its Subcontractors under this Deed.

100.9 The Provider must, within 10 Business Days of the date of renewal of each of the insurances required under this Deed, provide to DEEWR a copy of a certificate of currency and a letter in the form required by clause 100.8(a) in respect of:

- (a) the insurances required of it under this Deed; and
- (b) the insurances of its Subcontractors, if any.

100.10 The Provider must provide to DEEWR a full copy of each insurance policy relied upon by the Provider in compliance with the Provider's obligations to effect and maintain, or cause to be effected and maintained, insurance as required by this Deed and a certificate of currency for each of the required insurances under this clause 100 at any time that DEEWR requests the same.

Assistance to DEEWR

100.11 The Provider must:

- (a) give full, true and particular information, in respect of any proposal for a policy of insurance (including any policy issued pursuant to any self insurance scheme of the Commonwealth) to be effected by DEEWR, of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or the payments of all or any benefits under a policy; and
- (b) provide all reasonable assistance to DEEWR, in order to facilitate the Commonwealth making a claim under any insurance policy or self insurance scheme effected for the Commonwealth's benefit.

100.12 For the avoidance of doubt, the provisions of this clause 100 are not to be read so as to reduce a Party's liability under any other provision of this Deed, and compliance by the Provider with the provisions of this clause 100 does not limit its liability under any other provision of this Deed.

101. Liability of Provider to DEEWR

Joint and several liability

101.1 To the extent permitted by law, where:

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

is jointly and severally liable for:

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

Proportionate liability

101.2 The Parties agree that, to the extent permitted by law:

- (a) the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under, or in connection with, this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract, a claim in tort or otherwise; and
- (b) in accordance with clause 126 [Applicable law and jurisdiction] this clause 101.2 applies to all and any rights, obligations and liabilities under, or in connection with, this Deed whether such rights, obligations or liabilities arise in the state of New South Wales or elsewhere in Australia.

101.3 The Parties agree that, in addition to clause 101.2, to the extent permitted by law:

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

under, or in connection with, this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract, a claim in tort or otherwise.

102. Special rules about Tendering Groups

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

Section 6B – Changes in persons delivering Services

103. Corporate governance

Constitution

103.1 The Provider must provide a copy of its Constitution to DEEWR upon request.

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

Personnel

103.3 The Provider must not employ, engage or elect any person who would have a role in its management, financial administration or, if Notified by DEEWR, the conduct of the Services, if:

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

103.4 Where a person falls, or is discovered as falling, within any of clauses 103.3(a) to (f) while employed or engaged by the Provider, or is elected as an officer of the Provider, the Provider will be in breach of clause 103.3, if the Provider does not:

- (a) transfer the person to a position that does not have a role in its management, financial administration or performance of the Services; or
- (b) terminate the employment or engagement of the person or remove the person from office,

as the case may be, and immediately Notify DEEWR of its action.

103.5 If the Provider advises DEEWR that it considers termination action under clause 103.4(b) would be a breach of a statutory provision binding on the Provider, DEEWR will take the Provider's view into account in deciding what action to take as a result of the breach of clause 103.3.

Change in Control of the Provider or a Material Subcontractor

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

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

103.7 DEEWR may, at its absolute discretion, grant, or refuse to grant its consent to a Change in Control of the Provider or any Material Subcontractor. If DEEWR grants its consent, DEEWR may do so on such conditions as DEEWR sees fit.

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

- (a) shareholdings;

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

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

103.9 If the Provider does not:

- (a) obtain DEEWR's consent to a Change in Control as required by clause 103.6; or
- (b) provide DEEWR with any information required by DEEWR in accordance with clause 103.8,

DEEWR may do either or both of the following:

- (c) take action under clause 110 [Remedies for breach]; or
- (d) immediately terminate this Deed without the need to provide Notice to the Provider and clauses 113.2 and 113.4 apply, as if the Deed was terminated under clause 113 [Termination for default].

Change in management

103.10 The Provider must:

- (a) inform DEEWR in writing within five Business Days of any changes to the membership of its board of directors, board of management or executive during the Term of this Deed; and
- (b) obtain a completed credentials information form (as supplied by DEEWR) from any Director, or member of its board of management or executive, and supply it to DEEWR, if DEEWR requests it, within 10 Business Days of DEEWR's request.

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

104. Provider's Personnel

Removal of Personnel

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

Provision of Replacement Personnel

104.2 For the purposes of clause 104.1, if the Provider is unable to provide replacement Personnel who are acceptable to DEEWR, DEEWR may terminate this Deed under clause 113 [Termination for default].

105. External administration

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

- (a) any notice requiring the Provider to show cause why the Provider should not come under any

-
- form of external administration referred to in clause 105.1(b);
- (b) any record of a decision of the Provider, notice or orders that the Provider has, or will, come under one of the forms of external administration referred to in:
 - (i) Chapter 5 of the *Corporations Act 2001* (Cth);
 - (ii) the equivalent provisions in the incorporated associations legislation of the Australian states and territories; or
 - (iii) Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
 - (c) any statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
 - (d) any proceedings initiated with a view to obtaining an order for the Provider's winding up;
 - (e) any decisions and orders of any court or tribunal made against the Provider, or involving the Provider, including an order for the Provider's winding up;
 - (f) any notice that a shareholder, member or Director is convening a meeting for the purpose of considering or passing any resolution for the Provider's winding up; and
 - (g) being an individual, any notice that the Provider has become bankrupt or has entered into a scheme of arrangement with his or her creditors.

105.2 The Provider must, immediately upon the event happening, give Notice to DEEWR that the Provider:

- (a) has decided to place itself, or has otherwise come under, any one of the forms of external administration, referred to in subclause 105.1(b); or
- (b) is ceasing to carry on business.

106. Subcontracting

Application and Interpretation

106.1 Without limiting this clause 106, any arrangement entered into by the Provider by which some or all of the Services are provided by another entity will be deemed to be a Subcontract, and the relevant entity is a Subcontractor, for the purposes of this Deed.

106.2 In clause 106.1, 'entity' includes:

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

Approval of Subcontracting

106.3 The Provider must not, without DEEWR's prior written approval:

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

106.4 In giving approval under clause 106.3, DEEWR may impose such terms and conditions as DEEWR thinks fit.

106.5 The Subcontractors that DEEWR has approved at the Deed Commencement Date, and any terms and conditions relating to their use, are identified in Item 6.13 of the Schedule.

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

Liability

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

Obligations and payment of Subcontractors

106.8 The Provider must ensure that every Subcontractor is aware of all terms and conditions of this Deed relevant to the Subcontractor's part in the provision of the Services.

106.9 The Provider must pay its Subcontractors in accordance with the terms of the relevant Subcontract.

Suitability of Subcontractor

106.10 Despite any approval given by DEEWR under this clause 106, the Provider is responsible for ensuring the suitability of a Subcontractor for the work proposed to be carried out and for ensuring that the Subcontractor's work meets the requirements of this Deed.

Revocation of approval

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

Terms of Subcontracts

106.12 The Provider must, in any Subcontract, reserve a right of termination to take account of DEEWR's right of termination under clauses 112 [Termination with costs] and 113 [Termination for default] and DEEWR's right of revocation of approval of a Subcontractor under clause 106.11, and the Provider must, where appropriate, make use of that right in the Subcontract in the event of a termination, or revocation of approval of the Subcontractor, by DEEWR.

106.13 The Provider must, in any Subcontract, bind the Subcontractor, with respect to DEEWR, to all relevant terms and conditions of this Deed including, but not limited to, clauses:

- (a) 93 [Personal and Protected Information];
- (b) 94 [Confidential Information];
- (c) 96.8 [Retention of records];
- (d) 98 [Access to premises and records];
- (e) 100 [Insurance];
- (f) 121 [Negation of employment, partnership and agency]; and
- (g) 127 [Compliance with laws and government policies].

Equal Opportunity

106.14 The Provider must not enter into a Subcontract under this Deed 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*.

106.15 If the Provider does not comply with this clause 106, DEEWR may:

- (a) take action under clause 110 [Remedies for breach]; or
- (b) immediately terminate this Deed under clause 113 [Termination for default] by providing Notice to the Provider.

107. Assignment and novation

Assignment of Rights

107.1 The Provider must not assign any of its rights under this Deed without DEEWR's prior written approval.

Novation

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

Section 6C – Resolving Problems

108. Dispute Resolution

Informal resolution

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

108.2 If any dispute arising in relation to this Deed cannot be resolved using the process in clause 108.1, the Parties will use the following process:

- (a) the Party claiming that there is a dispute will give the other Party a Notice setting out the nature of the dispute;
- (b) within five Business Days of receipt of the Notice under clause 108.2(a), each Party will nominate a representative who has not been previously involved in the dispute;
- (c) the Parties' representatives will try to settle the dispute by direct negotiation between them;
- (d) if the dispute is not resolved within 10 Business Days of the date on which each Party nominated a representative under clause 108.2(b), the Parties may agree to refer the dispute to an independent third person with power:
 - (i) to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution; or
 - (ii) to mediate and recommend some form of non-binding resolution;
- (e) the Parties will cooperate fully with any process instigated under clause 108.2(d), above in order to achieve a speedy resolution; and
- (f) if the dispute is not resolved within 20 Business Days of referring the dispute to an independent third person pursuant to clause 108.2(d), either Party may commence legal proceedings.

Costs

108.3 Each Party will bear its own costs of complying with this clause 108, and the Parties must bear equally the cost of any independent third person engaged under clause 108.2(d).

Application of this clause

108.4 This clause 108 does not apply to the following circumstances:

- (a) either Party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken, or purportedly taken, by DEEWR under clauses 14 [Service Guarantees], 15 [Code of Practice], 17 [Minimising delay], 19 [General], 20 [Evidence to support claims for payment], 24 [Debts and offsetting], 97 [Access by Participants and Employers to Records held by the Provider], 98 [Access to premises and records], 103 [Corporate governance], 106 [Subcontracting], 110 [Remedies for breach], 112 [Termination with costs] or 113 [Termination for default];
- (c) DEEWR is conducting its own breach of contract or fraud investigation; or
- (d) an authority of the Commonwealth, or of a state or a territory is investigating a breach, or suspected breach, of the law by the Provider.

Performance of obligations

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

109. Provider Suspension

109.1 Without limiting DEEWR's rights under this Deed, under statute, at law or in equity, if DEEWR is of the opinion that:

- (a) the Provider may be in breach of its obligations under this Deed, and while DEEWR investigates the matter;
- (b) the Provider's performance of any of its obligations under this Deed, including achievement against the Key Performance Indicators, is less than satisfactory to DEEWR;
- (c) the Provider has outstanding or unacquitted money under any arrangement, whether contractual or statutory, with the Commonwealth; or
- (d) the Provider may be engaged in fraudulent activity, and while DEEWR investigates the matter,

DEEWR may, in addition to taking any other action under clause 110 [Remedies for breach], and prior to taking action under clause 113 [Termination for default], take action under clause 110.2(a).

109.2 DEEWR will Notify the Provider if it exercises its rights under clause 109.1 within 10 Business Days after having exercised those rights.

109.3 Notwithstanding any action taken by DEEWR under clause 109.1, the Provider must continue to perform its obligations under this Deed, unless DEEWR agrees otherwise in writing.

110. Remedies for breach

110.1 Notwithstanding any other rights available to DEEWR under this Deed, if:

- (a) the Provider fails to rectify a breach of this Deed within 10 Business Days of receiving a Notice from DEEWR to do so, or within such other period specified by DEEWR;
- (b) the Provider fails to fulfil, or is in breach of, any of its obligations under this Deed that are not capable of being rectified, as determined by DEEWR; or
- (c) an event has occurred which would entitle DEEWR to terminate the Deed in whole or in part under clause 113 [Termination for default],

DEEWR may, by providing Notice to the Provider, immediately exercise one or more of the remedies set out in clause 110.2.

Options

110.2 The remedies that DEEWR may exercise are:

- (a) suspending any or all of the following:
 - (i) Reserved
 - (ii) any payment under this Deed in whole or in part;
- (b) imposing additional conditions on the payment of Fees or use of the Employment Pathway Fund;
- (c) reducing or not paying specific payments that would otherwise have been payable in respect of the relevant obligation;
- (d) reducing the total amount of Fees or payments from the Employment Pathway Fund, permanently or temporarily;
- (e) where DEEWR has already paid the relevant Fees or amounts from the Employment Pathway Fund under this Deed, recovering the equivalent amount as a debt;
- (f) imposing additional financial or performance reporting requirements on the Provider;
- (g) reducing Participant numbers, the Provider's share of available places and/or the business levels of the Provider, permanently or temporarily;
- (h) reducing the scope of this Deed; and
- (i) taking any other action set out in this Deed.

Good faith and proportionality

110.3 DEEWR will exercise its rights under this clause 110 reasonably and in good faith, taking into account the relevant breach.

Variation

110.4 If DEEWR takes any action under this clause 110:

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

No compensation

110.5 For the avoidance of doubt, any reduction of Participant numbers, business levels, Fees, Advance EPF Payments or the scope of this Deed under this clause 110 does not amount to a reduction of scope or termination for which compensation is payable.

Notice

110.6 If DEEWR takes any action under this clause 110, DEEWR will Notify the Provider:

- (a) the reasons for the action;
- (b) the duration of the action; and
- (c) any corresponding variation to this Deed.

111. Reserved

112. Termination with costs

Termination or reduction in scope

112.1 DEEWR may, at any time by Notice to the Provider, terminate this Deed in whole or in part, or reduce the scope of any part, or all of this Deed, without prejudice to the rights, liabilities, or obligations of either Party accruing before the date on which the termination or reduction takes effect.

112.2 If this Deed is terminated in whole or part or reduced in scope under this clause 112.1, DEEWR is only liable for:

- (a) payment of Fees as set out in clause 112.3;
- (b) subject to clauses 112.7, 112.8, 112.9 and 112.10, any reasonable, unavoidable costs actually incurred by the Provider and directly attributable to the termination, in whole or in part, or a reduction in scope of this Deed.

Fees

112.3 Where, under clause 112.1, DEEWR terminates this Deed in whole or part or reduces the scope of this Deed:

- (a) DEEWR will only be liable to pay Fees which are properly due to the Provider before the date on which the termination or reduction in scope takes effect;
- (b) any payments that would have been payments in advance will abate according to the extent that they relate to the conduct of the Services after the date on which the termination or reduction in scope takes effect; and
- (c) DEEWR will be entitled to recover from the Provider any Fees paid in advance that relate to the conduct of the Services after the date on which the termination or reduction in scope takes effect.

112.4 Reserved

112.5 Reserved

Provider's obligations

112.6 Upon receipt of a Notice of termination or reduction in scope under this clause 112, the Provider must:

- (a) cease or reduce the performance of this Deed in accordance with the Notice;
- (b) immediately return to DEEWR any Fees in accordance with clause 112.3(c);
- (c) immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the Notice; and
- (d) continue work on any part of the Services not affected by the Notice.

Abatement of the Fees

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

Limit on Compensation

112.8 DEEWR's liability to pay any compensation under or in relation to this clause 112 is subject to the Provider's:

- (a) strict compliance with this clause 112; and
- (b) substantiation of any amounts claimed under clause 112.3.

112.9 DEEWR will not be liable:

-
- (a) to pay compensation for loss of prospective profits attributable to a termination or reduction in scope under this clause 112;
 - (b) for loss of any benefits that would have been conferred on the Provider had a termination or a reduction in scope made under this clause 112 not occurred; or
 - (c) for any amounts that would, in aggregate, exceed the maximum Fees that would have been payable by DEEWR under this Deed in respect of the relevant Services, but for a termination or a reduction in scope made under this clause 112.

112.10 In addition, in relation to a reduction in scope under this clause 112, DEEWR will not be liable to pay the Provider, and the Provider agrees that its reasonable costs do not include:

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

112.11 If DEEWR terminates, or reduces the scope of, this Deed under this clause 112:

- (a) DEEWR's actions will not constitute a breach of this Deed; and
- (b) the Parties agree that the amounts payable to the Provider under this clause 112, represent a reasonable pre-estimate of any loss that may be incurred by the Provider.

113. Termination for default

Defaults

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

- (a) the Provider fails to fulfil, or is in breach of, any of its obligations under this Deed that are not capable of being rectified (as determined by DEEWR);
- (b) the Provider is in breach of any of its obligations under this Deed that are capable of being rectified, and does not rectify the omission or breach within 10 Business Days, or such other period specified by DEEWR, of receiving a Notice from DEEWR to do so;
- (c) the Provider fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (d) any event referred to in clause 105 [External administration] occurs, other than an event under clause 105.1(c);
- (e) DEEWR is otherwise satisfied that the Provider is unable to pay all of its debts as and when they become due and payable;
- (f) DEEWR is satisfied that, prior to entering into this Deed, the Provider:
 - (i) has engaged in misleading or deceptive conduct;
 - (ii) has made a statement that is incorrect or incomplete; or
 - (iii) has omitted to provide information to DEEWR,that may have affected DEEWR's decision to enter into this Deed or any action taken by DEEWR under this Deed;
- (g) notice is served on the Provider or proceedings are taken to cancel its incorporation or cancel its registration or to dissolve the Provider as a legal entity; or

Note: For the avoidance of doubt, subclause 113.1(g) does not apply where a Provider has

transferred its incorporation or registration in accordance with the legislation under which it is incorporated or registered.

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

Parties' rights and obligations on termination

113.2 Where DEEWR terminates this Deed in whole or in part under clause 113.1:

- (a) DEEWR is liable to pay Fees and entitled to recover Fees as set out in clause 112.3; and
- (b) clauses 112.4 and 112.5 apply as if the Deed were terminated in accordance with clause 112.1.

Good faith and proportionality

113.3 DEEWR will exercise its rights under this clause 113 reasonably and in good faith, taking into account the relevant breach or other event.

Preservation of other rights

113.4 Subclause 113.1 does not limit or exclude any of DEEWR's other rights, including the right to recover any other amounts from the Provider on termination of this Deed, the right to reduce payments due on termination on the basis of breach or poor performance, or any rights of offset.

Section 6D – Other matters

114. Transition out

Transition Period

114.1 DEEWR may Notify the Provider in accordance with clause 114.2 that DEEWR is deeming a Transition Period.

114.2 DEEWR must Notify the Provider of the Transition Period not less than 60 Business Days before the Transition Period is to start.

114.3 The Transition Period must:

- (a) start not more than six months before the Completion Date; and
- (b) end on the Completion Date.

114.4 If DEEWR Notifies the Provider under clause 114.1:

- (a) DEEWR must specify the start and end date of the Transition Period in the Notice; and
- (b) the Provider must continue to provide during the Transition Period all Services which it is required to provide under this Deed, unless DEEWR Notifies the Provider otherwise in the Notice which may specify, but is not limited to specifying, any one or more of the following matters:
 - (i) whether all, or only some, of the Services under this Deed are to be provided and, if only some, which Services are to be provided;
 - (ii) Reserved; and
 - (iii) whether any provisions of this Deed will not apply to the provision of Services during the Transition Period, and if so, which provisions will not apply.

Provider's obligation to assist and cooperate with DEEWR

114.5 The Provider must, if directed by DEEWR, provide sufficient assistance and cooperation to any person nominated by DEEWR to enable services to continue to be provided to a Participant who is transferred to another employment services provider:

- (a) on the termination of this Deed in whole or in part before the Completion Date;
- (b) at the Completion Date;
- (c) Reserved; or
- (d) at any time for any other reason.

114.6 The sufficient assistance and cooperation the Provider must provide under clause 114.5 will include, as a minimum, complying with DEEWR's directions in relation to:

- (a) the transfer of Deed Material and Commonwealth Material in the Provider's possession or control; and
- (b) the redirection of Participants,

to any person nominated by DEEWR, or to DEEWR.

115. Indigenous Employment Strategy

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

116. Reserved

117. Acknowledgement and promotion

117.1 The Provider must, in all publications, and in all promotional, publicity and advertising Materials or activities of any type undertaken by, or on behalf of, the Provider relating to the Services or this Deed:

- (a) comply with any promotion and style guidelines issued by DEEWR from time to time;
- (b) use badging and signage in accordance with any Guidelines;
- (c) acknowledge the financial and other support the Provider has received from the Commonwealth, in the manner consistent with any Guidelines; and
- (d) deliver to DEEWR (at DEEWR's request and at the Provider's own cost) copies of all promotional, publicity and advertising Materials the Provider has developed for the purposes of this Deed.

118. DEEWR's right to publicise the Services

118.1 DEEWR may, by any means, publicise and report on the Services and on the awarding of this Deed to the Provider, including the name of the Provider, the amounts of Fees given to the Provider, and a brief description of the Services.

119. DEEWR's right to publicise best practice

119.1 Where DEEWR identifies best practice on the part of the Provider, DEEWR may disseminate advice of such best practice to other employment services providers.

120. Conflict of interest

Warranty of no Conflict

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

Conflict that may arise

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

Dealing with Conflict

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

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

Failure to deal with Conflict

120.4 If the Provider:

- (a) fails to Notify DEEWR in accordance with this clause 120; or
- (b) is unable or unwilling to resolve or deal with the Conflict as reasonably required by DEEWR,

DEEWR may terminate this Deed under clause 113 [Termination for default].

121. Negation of employment, partnership and agency

Status

121.1 The Provider, its Personnel, partners, agents and Subcontractors are not, by virtue of this Deed or any Subcontract, or for any purpose, deemed to be, DEEWR employees, partners, agents or subcontractors or otherwise able to bind or represent the Commonwealth.

Representatives

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

122. Waiver

Exercise of rights

122.1 If either Party does not exercise (or delays in exercising) any rights under this Deed, that failure or delay does not operate as a waiver of those rights.

Partial exercise of rights

122.2 A single or partial exercise by either Party of any of its rights under this Deed does not prevent the further exercise of any right.

Means of waiver

122.3 Waiver of any provision of, or right under, this Deed:

- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in the written waiver.

Meaning of rights

122.4 In this clause 122, 'rights' means rights provided by this Deed, under statute, at law or in equity.

123. Severance

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

124. Entire contract

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

125. Variation of Deed

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

126. Applicable law and jurisdiction

Applicable Law

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

Jurisdiction

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

127. Compliance with laws and government policies

Compliance with laws and policies

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

- (a) all relevant statutes, regulations, by-laws and requirements of any Commonwealth, state, territory or local authority, including relevant occupational, health and safety and industrial relations legislation and any legislation relating to the licensing of employment agents; and
- (b) any Commonwealth policies Notified by DEEWR to the Provider in writing, referred to or made available by DEEWR to the Provider (including by reference to an internet site), including any listed in this Deed.

127.2 The Provider must, when using DEEWR's 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 advised by DEEWR or as might reasonably be inferred from the use to which the premises or facilities are being put.

No unlawful discrimination

127.3 Without limiting clause 127.1, the Provider must provide Services that are free of sexual harassment and any form of unlawful discrimination.

128. Notices

Giving of Notice

128.1 A Party giving Notice or Notifying under this Deed must do so in writing or by facsimile transmission only, and if:

- (a) in writing, the Notice must be:
 - (i) addressed to the Account Manager or the Contact Person, as relevant; and

-
- (ii) hand delivered or sent by pre-paid post to their respective street addresses; and
 - (b) by facsimile transmission, the Notice must be sent to the facsimile number of the Account Manager or the Contact Person, as appropriate.

Receipt of Notice

128.2 A Notice given in accordance with clause 128.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, 5 Business Days after the date of posting, unless it has been received earlier; and
- (c) if sent by facsimile transmission, upon receipt by the sender of a facsimile confirmation receipt.

128.3 For the purposes of this clause 128, the Account Manager's and the Contact Person's address details are as specified in Items 1 and 2 of the Schedule.

ANNEXURE A – RESERVED

ANNEXURE B – EMPLOYMENT SERVICES STANDARDS

CODE OF PRACTICE

Organisations contracted to deliver Australian Government funded employment services have agreed and are committed to observe the Employment Services Code of Practice. This Code of Practice sets out the principles and standards that underpin the delivery of employment services and other services to increase employment outcomes and participation in economic activities in Australia especially for disadvantaged client groups.

- 1. We commit to working with our clients, employees, sub-contractors, and other providers to deliver quality employment services by:**
 - Ensuring staff have the skills and experience they need to provide quality and culturally sensitive services to job seekers employers and local communities
 - Working in collaborative partnerships with stakeholders and communities to identify needs and how they can be met
 - Behaving ethically and acting with honesty, due care and diligence
 - Being open and accountable
 - Avoiding any practice or activity which a provider could reasonably foresee could bring employment services into disrepute
 - Sensitively managing any information collected

- 2. We commit to helping each job seeker find their pathway into employment by:**
 - Meeting the Service Guarantees
 - Tailoring assistance to the job seekers' personal circumstances, skills, abilities and aspirations
 - Using available Government funding appropriately to support job seekers
 - Treating every job seeker fairly and with respect
 - Providing a fair and accessible feedback process

- 3. We commit to assisting employers meet their skill and labour shortage needs by:**
 - Working with employers to identify job and industry specific training needs and how they can be met
 - Referring the most appropriately qualified and experienced job seekers available
 - Providing a timely response to employer inquiries

- 4. The Australian Government will support employment services providers in achieving these standards by:**
 - Evaluating and sharing best practice to enable continuous improvement in the delivery of employment services
 - Providing a Customer Service Line on free call 1800 805 260 for job seekers who can not resolve any concerns or problems they have with their provider. Clients of Disability Employment Network and Vocational Rehabilitation Services can also contact the free Complaints Resolution and Referral Service on 1800 880 052
 - Providing an Employer Hotline on free call 13 17 15 for businesses to access providers

SERVICE GUARANTEES

YOUR SERVICE GUARANTEE - EMPLOYMENT SERVICES FOR PEOPLE NOT ON INCOME SUPPORT

This guarantee covers employment services that are available to unemployed people not receiving income support payments such as Newstart Allowance. You should always check your eligibility for income support and employment services with Centrelink. You may be eligible for additional Job Services Australia assistance, for example, if you are a young person who has recently left school.

To ensure you are getting the right support you should let your Provider and Centrelink know if something in your life changes such as health, housing, living arrangements, parenting responsibilities, personal crisis, education, voluntary or paid work.

What help can I expect?

As your Job Services Australia Provider we will treat you fairly and with respect and explain clearly what services you are eligible to receive and what we can do to help you.

At a face-to-face interview, we can help you to prepare a résumé, and provide you with information on job opportunities in your area, including a list of available jobs which might be suited to you. We will also give you advice on what types of jobs need more workers and how you can receive training to skill you for those opportunities through the government funded Productivity Places Program.

To help you look for work you will also have reasonable ongoing access to computer, newspapers and other facilities to help you in your job search, and advice about how to use them to look for work. If you need an interpreter, we can arrange one for you.

If you haven't found work after three months you can renew your registration online which will ensure your résumé will continue to be made available and you can continue to access onsite computer facilities and maintain your résumé.

If you haven't found work after six months, you can approach us for an additional meeting.

What happens to what I tell you?

We have to keep all information confidential. We share the information with government so that they can make sure that you are receiving the appropriate level of support and services from your Provider.

We will only tell employers things about you that are related to job opportunities. We will not tell them anything private or confidential about you unless you want us to.

If you ask, we will show you the information we hold about you.

What can I do if I'm not happy with the service I receive?

If you think you aren't receiving the right help, you should first try to talk to us. We will provide a feedback process which is fair and we will try to resolve your concerns.

If you can't do this, or you are still not happy, you can call the Government's Customer Service Line on 1800 805 260 (free call).

YOUR SERVICE GUARANTEE - STREAM 1 SERVICES

As your Job Services Australia Provider we will:

- Explain clearly what services you are eligible to receive, what we will do for you, and what you have to do, including how often we will meet
- Provide assistance to help you find work
- Treat you fairly and with respect
- Take account of your parenting or caring responsibilities or other recognised limits on your ability to find work

What help can I expect?

In the first three months of Stream 1 services you will receive a face-to-face interview where you will be provided with:

- Assistance preparing a résumé
- Advice on the best ways to look for work
- Information on job opportunities in your area, including a list of available jobs which are suited to you
- Advice on what types of jobs need more workers
- Advice on how you can receive training to skill you for work opportunities through the government funded Productivity Places Program
- Access to an interpreter if you need one

To help you look for work you will also have ongoing access to JobSearch and computer facilities to help your job search.

What if I can't find work?

If you haven't found work after three months your Provider will:

- Conduct a Skills Assessment to:
 - Look at what work you have done before, what you would like to do next, and what work is available in your area
 - Look at what skills and education you have, and what skills and education might help you get work
- Work with you to agree an *Employment Pathway Plan* to help you to get work, by:
 - Setting out what steps to take next
 - Providing you with help that is suited to your circumstances
 - Arranging for you an Intensive Activity that may include training, work experience, or something else that will help you find a job
- Meet with you regularly to help you find and keep a job

Work Experience Activities

If you are still unemployed after 12 months we will look at your circumstances again to decide whether you will move into work experience or whether you need different services. There are a broad range of work experience activities and we will talk about which activities are available in your local area and help you to select an activity that is most suitable for you, such as:

- Work for the Dole or Full-Time Work for the Dole community work activities
- Green Corps environmental activities
- Education or accredited training, for example, the Productivity Places Program
- Participation in non-vocational programs (for example, drug or alcohol rehabilitation, counselling)
Part-time or casual paid employment
- Unpaid work experience
- Voluntary work in the community and not for profit sector
- Drought Force farm-based activities
- Placement in labour market or training and/or skills development programs delivered by other Commonwealth or State Government

We will also continue to meet with you at least every two months while you are undertaking a work experience activity.

What are my responsibilities?

There are some things that you will have to do if you want to keep receiving income support:

- Make every effort to get a job, and accept any suitable job you are offered
- Do your best at every job interview
- Do everything that you have agreed to do in your *Employment Pathway Plan*, this includes going to all appointments

If for any reason you are not able to keep an appointment or if you have missed an appointment, you have to tell your Provider why as soon as you can. You also have to do this if you can't do or haven't done something your *Employment Pathway Plan* says you have to do.

To ensure that you are getting the right support you have to let your Provider and Centrelink know if something in your life changes such as health, housing, living arrangements, parenting responsibilities, personal crisis, education, voluntary or paid work.

What happens to what I tell you?

We will only use the information that you provide us to help you find and keep a job or deal with any problems that might stop you from finding and keeping a job.

We have to keep all information confidential. We share the information with government so that they can make sure that you are receiving the appropriate level of support and services from your Provider.

We will only tell employers things about you that are related to job opportunities. We will not tell them anything private or confidential about you unless you want us to.

If you ask, we will show you the information we hold about you.

What can I do if I'm not happy with the service I receive?

If you think you aren't receiving the right help, you should first try to talk to us.

We will provide a feedback process which is fair and we will try to resolve your concerns.

If you can't do this, or you are still not happy, you can call the Government's Customer Service Line on 1800 805 260 (free call).

YOUR SERVICE GUARANTEE - STREAM 2 SERVICES

As your Job Services Australia Provider we will:

- Explain clearly what we will do for you, and what you have to do, including how often we will meet
- Provide assistance to help you find work
- Treat you fairly and with respect
- Take account of your parenting or caring responsibilities or other recognised limits on your ability to prepare for and find work

What help can I expect?

We will work with you to develop and agree the content and activities in your *Employment Pathway Plan* to help you to get work by:

- Setting out what steps to take next on your pathway to employment including looking at appropriate vocational and non-vocational assistance
- Looking at what work you have done before, what you would like to do next and what work is available in your area
- Looking at what skills and education you have and what skills and education might help you get work
- Providing you with help that is suited to your circumstances and which could include training, work experience or other services that will help you find and keep a job
- Working with you to help you deal with any issues that might be making it hard for you to find or keep work.

We will also help you find and keep a job by providing:

- Assistance preparing a résumé
- Advice on the best ways to look for work
- Information on job opportunities in your area, including a list of available jobs which are suited to you
- Advice on what types of jobs need more workers
- Advice on how you can receive training to skill you for work opportunities through the government funded Productivity Places Program
- Reasonable access to JobSearch and computer facilities and advice about how to use them to look for work
- Access to an interpreter if you need one

We will meet with you regularly to help you find and keep a job

Work Experience Activities

If you are still unemployed after 12 months we will look at your circumstances again to decide whether you will move into work experience or whether you need different services. There are a broad range of work experience activities and we will talk about which activities are available in your local area and help you to select an activity that is most suitable for you, such as:

- Work for the Dole or Full-Time Work for the Dole community work activities
- Green Corps environmental activities
- Education or accredited training, for example, the Productivity Places Program
- Participation in non-vocational programs (for example, drug or alcohol rehabilitation, counselling)

-
- Placement in labour market or training and/or skills development programs delivered by other Commonwealth or State Government
 - Part-time or casual paid employment
 - Unpaid work experience
 - Voluntary work in the community and not for profit sector
 - Drought Force farm-based activities

We will also continue to meet with you at least every two months while you are undertaking a work experience activity.

What are my responsibilities?

There are some things that you will have to do if you want to keep receiving income support:

- Make every effort to get a job, and accept any suitable job you are offered
- Do your best at every job interview
- Do everything that you have agreed to do in your *Employment Pathway Plan*, this includes going to all appointments

If for any reason you are not able to keep an appointment or if you have missed an appointment, you have to tell your Provider why as soon as you can. You also have to do this if you can't do or haven't done something your *Employment Pathway Plan* says you have to do.

To ensure that you are getting the right support you have to let your Provider and Centrelink know if something in your life changes such as health, housing, living arrangements, parenting responsibilities, personal crisis, education, voluntary or paid work.

What happens to what I tell you?

We will only use the information that you provide us to help you find and keep a job or deal with any problems that might stop you from finding and keeping a job.

We have to keep all information confidential. We share the information with government so that they can make sure that you are receiving the appropriate level of support and services from your Provider.

We will only tell employers things about you that are related to job opportunities. We will not tell them anything private or confidential about you unless you want us to.

If you ask, we will show you the information we hold about you.

What can I do if I'm not happy with the service I receive?

If you think you aren't receiving the right help, you should first try to talk to us.

We will provide a feedback process which is fair and we will try to resolve your concerns.

If you can't do this, or you are still not happy, you can call the Government's Customer Service Line on 1800 805 260 (free call).

YOUR SERVICE GUARANTEE - STREAM 3 SERVICES

As your Job Services Australia Provider we will:

- Explain clearly what we will do for you, and what you have to do, including how often we will meet
- Provide assistance to help you find work
- Treat you fairly and with respect
- Take account of your parenting or caring responsibilities or other recognised limits on your ability to prepare for and find work

What help can I expect?

We will work with you to develop and agree the content and activities in your *Employment Pathway Plan* to help you to get work by:

- Setting out what steps to take next on your pathway to employment including looking at appropriate vocational and non-vocational assistance
- Looking at what work you have done before, what you would like to do next and what work is available in your area
- Looking at what skills and education you have and what skills and education might help you get work
- Providing you with help that is suited to your circumstances and which could include training, work experience or other services that will help you find and keep a job
- Working with you to help you deal with any issues that might be making it hard for you to find or keep work. Where it is appropriate, this may include counselling or access to other professional services

We will also help you find and keep a job by providing:

- Assistance preparing a résumé
- Advice on the best ways to look for work
- Information on job opportunities in your area, including a list of available jobs which are suited to you
- Advice on what types of jobs need more workers
- Advice on how you can receive training to skill you for work opportunities through the government funded Productivity Places Program
- Reasonable access to JobSearch and computer facilities and advice about how to use them to look for work
- Access to an interpreter if you need one

We will meet with you regularly to help you find and keep a job

Work Experience Activities

If you are still unemployed after 12 months we will look at your circumstances again to decide whether you will move into work experience or whether you need different services. There are a broad range of work experience activities and we will talk about which activities are available in your local area and help you to select an activity that is most suitable for you, such as:

- Work for the Dole or Full-Time Work for the Dole community work activities
- Green Corps environmental activities
- Education or accredited training, for example, the Productivity Places Program
- Participation in non-vocational programs (for example, drug or alcohol rehabilitation, counselling)
- Part-time or casual paid employment
- Unpaid work experience
- Voluntary work in the community and not for profit sector
- Drought Force farm-based activities
- Placement in labour market or training and/or skills development programs delivered by other Commonwealth or State Government

We will also continue to meet with you at least every two months while you are undertaking a work experience activity.

What are my responsibilities?

There are some things that you will have to do if you want to keep receiving income support:

- Make every effort to get a job, and accept any suitable job you are offered
- Do your best at every job interview
- Do everything that you have agreed to do in your *Employment Pathway Plan*, this includes going to all appointments

If for any reason you are not able to keep an appointment or if you have missed an appointment, you have to tell your Provider why as soon as you can. You also have to do this if you can't do or haven't done something your *Employment Pathway Plan* says you have to do.

To ensure that you are getting the right support you have to let your Provider and Centrelink know if something in your life changes such as health, housing, living arrangements, parenting responsibilities, personal crisis, education, voluntary or paid work.

What happens to what I tell you?

We will only use the information that you provide us to help you find and keep a job or deal with any problems that might stop you from finding and keeping a job.

We have to keep all information confidential. We share the information with government so that they can make sure that you are receiving the appropriate level of support and services from your Provider.

We will only tell employers things about you that are related to job opportunities. We will not tell them anything private or confidential about you unless you want us to.

If you ask, we will show you the information we hold about you.

What can I do if I'm not happy with the service I receive?

If you think you aren't receiving the right help, you should first try to talk to us.

We will provide a feedback process which is fair and we will try to resolve your concerns.

If you can't do this, or you are still not happy, you can call the Government's Customer Service Line on 1800 805 260 (free call).

YOUR SERVICE GUARANTEE - STREAM 4 SERVICES

As your Job Services Australia Provider we will:

- Explain clearly what we will do for you, and what you have to do, including how often we will meet
- Provide assistance to help you find work
- Treat you fairly and with respect
- Take account of your parenting or caring responsibilities or other recognised limits on your ability to prepare for and find work

What help can I expect?

We will work with you to agree on an *Employment Pathway Plan* that will include any vocational and non-vocational assistance that will help you find and keep a job.

We will work with you to help you deal with any issues that might be making it hard for you to look for work. The help we give you might include:

- Undertaking ongoing assessment of your needs
- Providing you with counselling or other professional support
- Referring you and helping you access other support services you need

When you are ready to look for work the help we give you might include:

- Setting out what steps to take next
- Looking at what work you have done before, what you would like to do next and what work is available in your area
- Looking at what skills and education you have and what skills and education might help you get work
- Providing you with help that is suited to your circumstances and which may include training, work experience or other services that will help you find and keep a job

We will also help you find and keep a job by providing:

- Assistance preparing a résumé
- Advice on the best ways to look for work
- Information on job opportunities in your area, including a list of available jobs which are suited to you
- Advice on what types of jobs need more workers
- Advice on how you can receive training to skill you for work opportunities through the government funded Productivity Places Program
- Reasonable access to JobSearch and computers facilities and advice about how to use them to look for work
- Access to an interpreter if you need one

We will continue to meet with you regularly to help you get ready for work or find and keep a job

Work Experience Activities

There are a broad range of work experience activities and we will talk about which activities are available in your local area and help you to select an activity that is most suitable for you, such as:

- Work for the Dole or Full-Time Work for the Dole community work activities
- Green Corps environmental activities
- Education or accredited training, for example, the Productivity Places Program
- Participation in non-vocational programs (for example, drug or alcohol rehabilitation, counselling)
- Part-time or casual paid employment
- Unpaid work experience
- Voluntary work in the community and not for profit sector
- Drought Force farm-based activities
- Placement in labour market or training and/or skills development programs delivered by other Commonwealth or State Government

We will also continue to meet with you at least every two months while you are undertaking a work experience activity.

What are my responsibilities?

There are some things that you will have to do if you want to keep receiving income support:

- Make every effort to get a job, and accept any suitable job you are offered
- Do your best at every job interview
- Do everything that you have agreed to do in your *Employment Pathway Plan*, this includes going to all appointments

If for any reason you are not able to keep an appointment or if you have missed an appointment, you have to tell your Provider why as soon as you can. You also have to do this if you can't do or haven't done something your *Employment Pathway Plan* says you have to do.

To ensure that you are getting the right support you have to let your Provider and Centrelink know if something in your life changes such as health, housing, living arrangements, parenting responsibilities, personal crisis, education, voluntary or paid work.

What happens to what I tell you?

We will only use the information that you provide us to help you find and keep a job or deal with any problems that might stop you from finding and keeping a job.

We have to keep all information confidential. We share the information with government so that they can make sure that you are receiving the appropriate level of support and services from your Provider.

We will only tell employers things about you that are related to job opportunities. We will not tell them anything private or confidential about you unless you want us to.

If you ask, we will show you the information we hold about you.

What can I do if I'm not happy with the service I receive?

If you think you aren't receiving the right help, you should first try to talk to us.

We will provide a feedback process which is fair and we will try to resolve your concerns.

If you can't do this, or you are still not happy, you can call the Government's Customer Service Line on 1800 805 260 (free call).

ANNEXURE C – RESERVED

ANNEXURE D – NEW ENTERPRISE INCENTIVE SCHEME (NEIS)

PART 1 – NEIS SERVICES

1. Interpretation

- 1.1 For the purposes of this Annexure, unless otherwise expressly stated, all capitalised terms have the meaning given to them in the Definitions (see Annexure E). All other words have their natural and ordinary meaning.

2. Eligibility for NEIS

- 2.1 When requested by the Stream Services Provider, the NEIS Panel Member must, in accordance with any Guidelines:
- (a) ensure that each Fully Eligible Participant is Eligible to receive NEIS Services;
 - (b) assess the Fully Eligible Participant's Business Idea to ensure that it meets the Business Eligibility Criteria;
 - (c) advise the Stream Services Provider whether the Fully Eligible Participant should undertake Certificate IV in Small-Business Management or Certificate III in Micro-business Operations; and
 - (d) with the agreement of the Stream Services Provider and the Fully Eligible Participant, arrange for the Fully Eligible Participant to undertake NEIS Training.

3. Review of NEIS Business Plans

- 3.1 The NEIS Panel Member must provide advice and counselling to each Prospective Participant that will assist the Prospective Participant to develop a NEIS Business Plan that satisfies the Business Eligibility Criteria.
- 3.2 The NEIS Panel Member must, in accordance with any Guidelines, assess NEIS Business Plans of Prospective Participants against the Business Eligibility Criteria, and approve or reject each NEIS Business Plan.
- 3.3 Where the NEIS Panel Member decides to reject a NEIS Business Plan in accordance with clause 3.2 of this Annexure, unless otherwise set out in any Guidelines, the NEIS Panel Member must, within ten Business Days of the decision and in accordance with any Guidelines, advise the Prospective Participant in writing:
- (a) of the decision and the reasons for the decision; and
 - (b) of his or her right to have the decision reviewed.
- 3.4 Where a Prospective Participant's NEIS Business Plan is approved, the NEIS Panel Member must:
- (a) advise the Prospective Participant in writing of the approval within five Business Days;
 - (b) explain to the Prospective Participant their obligations while receiving NEIS Assistance;
 - (c) advise the Prospective Participant to carefully read and understand all the terms of his or her NEIS Participant Agreement;
 - (d) ensure that the Prospective Participant signs the NEIS Participant Agreement; and
 - (e) forward the NEIS Participant Agreement to DEEWR for DEEWR's signature.

4. Advising Centrelink

-
- 4.1 The NEIS Panel Member must advise Centrelink and the Stream Services Provider in writing, within five Business Days of a NEIS Participant commencing NEIS Assistance, that the NEIS Participant has commenced NEIS Assistance and whether he or she is receiving NEIS Allowance.

5. NEIS Business Mentoring

- 5.1 In accordance with any Guidelines, the NEIS Panel Member must provide NEIS Business Mentoring to NEIS Participants to assist them in establishing and running viable NEIS Businesses.
- 5.2 NEIS Business Mentoring must include at least five face to face visits by the NEIS Panel Member to each NEIS Participant during the period of his or her NEIS Participant Agreement, at the times and locations set out in any Guidelines.

6. Contacting the NEIS Participant

- 6.1 The NEIS Panel Member must:
- (a) contact each NEIS Participant at least monthly during the period of his or her NEIS Participant Agreement;
 - (b) in the event of a failure to contact a NEIS Participant, promptly investigate the failure; and
 - (c) at each monthly contact, confirm that the NEIS Participant is operating his or her NEIS Business in accordance with the NEIS Business Plan.

7. Evaluation of NEIS Participants' involvement in NEIS

Monitoring NEIS Participants' conduct in relation to NEIS Business Mentoring

- 7.1 The NEIS Panel Member must tell DEEWR in writing of a NEIS Participant's refusal to accept NEIS Business Mentoring, within five Business Days of the occurrence.
- 7.2 The NEIS Panel Member must provide DEEWR with NEIS Business Mentoring Reports as required by DEEWR.

Collection of Financial Information

- 7.3 Subject to clause 7.4 of this Annexure, the NEIS Panel Member must collect, from NEIS Participants, Financial Information relating to each NEIS Business, within ten Business Days after the completion of each Financial Quarter for the first 52 weeks of business operation.
- 7.4 Where a NEIS Business has only been operating for four weeks or less in a Financial Quarter, Financial Information does not need to be collected for that Financial Quarter.
- 7.5 The NEIS Panel Member must advise DEEWR and the Stream Services Provider in writing within five Business Days of any failure by a NEIS Participant to submit his or her Financial Information in accordance with his or her NEIS Participant Agreement.

Collection of NEIS Participants' Income Statements

- 7.6 Subject to clause 7.7 of this Annexure, the NEIS Panel Member must collect, within ten Business Days after the completion of each Financial Quarter for the first 52 weeks of business operation, an Income Statement from each NEIS Participant and determine whether any NEIS Participants have failed the External Income Test.
- 7.7 Where a NEIS Business has been operating for four weeks or less in a Financial Quarter, an Income Statement does not need to be collected for that Financial Quarter.

-
- 7.8 The NEIS Panel Member must advise DEEWR in writing within 5 Business Days:
- (a) of any failure by a NEIS Participant to submit his or her Income Statement in accordance with his or her NEIS Participant Agreement; or
 - (b) when the NEIS Panel Member becomes aware that a NEIS Participant's gross External Income has exceeded the threshold set out in the External Income Test.

Commercial Viability Tests

- 7.9 The NEIS Panel Member must, within 20 Business Days after the completion of the second and third Financial Quarters of the operation of the NEIS Business, complete and submit to DEEWR a written assessment for every NEIS Business stating whether the NEIS Businesses:
- (a) is Commercially Viable; and
 - (b) has cash flow which is 25 per cent or more below the forecast of cash flow per Financial Quarter set out in its respective NEIS Business Plan.

Change in a NEIS Participant's circumstances

- 7.10 Notwithstanding clause 7.9, the NEIS Panel Member must advise DEEWR and the Stream Services Provider in writing, within five Business Days of the NEIS Panel Member becoming aware:
- (a) that a NEIS Business appears not to be Commercially Viable; or
 - (b) of any change in a NEIS Participant's circumstances, including the expiry of business insurance, that may affect:
 - (i) the Commercial Viability or safe operation of a NEIS Business; or
 - (ii) a NEIS Participant's entitlement to NEIS Assistance.
- 7.11 Where the NEIS Panel Member tells DEEWR in writing of a change in circumstances under clause 7.10 of this Annexure, the NEIS Panel Member must, where applicable, and in accordance with any Guidelines, recommend to DEEWR the suspension, recommencement or termination of one or more of:
- (a) the NEIS Participant Agreement;
 - (b) the payment of NEIS Allowance; or
 - (c) the payment of NEIS Rental Assistance.

8. Confidentiality

- 8.1 The NEIS Panel Member must treat the following as confidential commercial information:
- (a) NEIS Business Plans and related Material;
 - (b) any information given to the NEIS Panel Member by NEIS Participants relating to their NEIS Business; and
 - (c) any information collected in connection with the External Income Test.
- 8.2 The NEIS Panel Member must ensure that any arrangement it enters into for the provision of NEIS Services contains requirements as to maintaining the confidentiality of the information set out at clause 8.1 of this Annexure.
- 8.3 Before entering into any arrangement for the provision of NEIS Services, the NEIS Panel Member must execute a deed of confidentiality, between itself and any other person delivering NEIS Services, that requires that person to maintain the confidentiality of the information set out in clause 8.1 of this Annexure.

PART 2 – NEIS TRANSITION SERVICES

9. NEIS Transition Services

- 9.1 If directed by DEEWR, the NEIS Panel Member must, in accordance with this clause 9, provide NEIS Transition Services to persons who were, before or on 30 June 2009, receiving ESC3 NEIS Services under an ESC3 NEIS Participant Agreement.
- 9.2 If directed by DEEWR to deliver NEIS Transition Services, the NEIS Panel Member must arrange for the ESC3 NEIS Participant Agreement to be varied by both signatories to the agreement so that the NEIS Panel Member will be listed as the 'NEIS Provider' under the agreement.

10. Fees for NEIS Transition Services

- 10.1 Subject to clause 10.2, the Fees the NEIS Panel Member may claim for the delivery of NEIS Transition Services are:
- (a) \$205 (including GST) per NEIS Business Mentoring visit; and
 - (b) for each person receiving NEIS Transition Services from the NEIS Panel Member, a fee of:
 - (i) \$780 (including GST) for each person who was receiving services under Part C the Employment Services Contract 2006-2009; or
 - (ii) \$1490 (including GST) for each person who was receiving Part F services under the Remote Services Deed 2006- 2009,following the achievement of an ESC3 Outcome.
- 10.2 The NEIS Panel Member is not entitled to, and must not claim, the Fee set out at clause 10.1(a) for persons to whom the NEIS Panel Member was delivering services under Part C of the Employment Services Contract 2006-2009.

ANNEXURE E – DEFINITIONS

'ABN' has the same meaning as it has in section 41 of the *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 position specified in Item 1 of the Schedule, who has authority to receive and sign Notices and written communications for DEEWR under this Deed.

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

'Annexure' means any annexure to this Deed.

'Auditor-General' means the office established under the *Auditor-General Act 1997* (Cth) and includes any other entity that may, from time to time, perform the functions of that office.

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

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

'Business Eligibility Criteria' means that a proposed NEIS Business:

- (a) is not currently operating on a commercial basis;
- (b) will be independent, capable of withstanding public scrutiny and lawful;
- (c) has been assessed as Commercially Viable by the NEIS Panel Member;
- (d) is not based on the purchase or takeover of an existing business;
- (e) will not compete directly with existing businesses unless it can be demonstrated that there is an unsatisfied demand for the product or service, or the product or service is to be provided in a new way;
- (f) will be established, located and operated solely within Australia; and
- (g) satisfies any other requirements as set out in Guidelines.

'Business Idea' means a Fully Eligible Participant's idea for a self-employment business.

'Business Services' means a FaHCSIA funded network of business service outlets across Australia which provide supported employment assistance to people with moderate to severe disability who need substantial ongoing support to maintain their employment.

'Carer Payment' has the meaning given to the term 'carer payment' by the *Social Security Act 1991* (Cth).

'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) below, in relation to a Corporation, a change in any of the following:

-
- (i) Control of more than one half of the voting rights attaching to shares in the Corporation, whether due to one or a series of transactions occurring together or on different occasions; or
 - (ii) Control of more than one half of the issued share capital of the Corporation, whether due to one or a series of transactions occurring together or on different occasions, excluding any part of the issued share capital which carries no right to participate beyond receipt of an amount in the distribution of either profit or capital;
 - (b) in relation to a Corporation which is owned or controlled by a trustee company, any change as set out in paragraph (a) above in relation to either that Corporation or its corporate trustee;
 - (c) in relation to a partnership:
 - (i) the sale or winding up or dissolution of the business by the partners;
 - (ii) the change in any of the partners; or
 - (iii) the retirement, death, removal or resignation of any of the partners;
 - (d) in relation to an Exempt Public Authority, a change in relation to any of the following:
 - (i) the composition of the board of Directors;
 - (ii) ownership of any shareholding in any share capital; or
 - (iii) the enabling legislation so far as it affects Control, if any;
 - (e) in relation to a Tendering Group:
 - (i) any change in the membership of the Tendering Group;
 - (ii) a change of the lead member of the Tendering Group, if the Tendering Group has appointed a lead member for the purposes of this Deed; or
 - (iii) a Change in Control as defined in paragraphs (a) to (d) above in any member of the Tendering Group.

‘Charter of Contract Management’ means the charter which embodies the commitment by DEEWR to work cooperatively with employment services providers in achieving shared goals and outcomes in the delivery of employment services.

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

‘Code of Practice’ means the code of practice at Annexure B.

‘Commercially Viable’ means that a NEIS Business is likely to provide a net income of least equal to the single, 21 or over, no children rate of Newstart Allowance, or such other rate as advised by DEEWR in writing from time to time, by the end of 52 weeks from commencement on NEIS Assistance for each NEIS Participant in the business, and **‘Commercial Viability’** has an equivalent meaning.

‘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 DEEWR to the Provider for the purposes of this Deed and Material which is copied or derived from Material so provided, and includes Commonwealth Records.

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

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

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

‘Completion Date’ means either:

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

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

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

‘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 Item 2 of the Schedule who has authority to receive and sign Notices and written communications for the Provider under this Deed and accept any request or direction in relation to the Services.

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

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

‘Customer’ includes a Participant, potential Participant, Employer and any other user of the Services.

‘Customer Feedback Register’ means the list of Customer feedback kept by a Provider for each Site.

‘Deed’ means this document, as varied or extended by the Parties from time to time in accordance with this Deed, and includes the Particulars, all Annexures, the Schedule and other documents incorporated by reference, including any Guidelines, but excluding any attachments.

‘Deed Commencement Date’ means the later of:

- (a) 1 July 2009, or

-
- (b) the date on which this Deed is signed by the last Party to do so.

'Deed Material' means all Material:

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

includes all Deed Records.

'Deed Records' means all Records:

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

includes all Reports.

'DEEWR' means the Commonwealth Department of Education, Employment and Workplace Relations or such other agency or department as may administer this Deed on behalf of the Commonwealth from time to time and, where the context so admits, includes the Commonwealth's relevant officers, delegates, employees and agents.

'DEEWR Customer Service Line' means a free call telephone service which puts Participants and Employers in contact with a DEEWR Customer Service Officer in the state or territory where the phone call is made, and is 1800 805 260, or such other number as Notified by DEEWR from time to time.

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

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

'DEEWR's IT Systems' means DEEWR's IT computer system accessible by a Provider, through which information is exchanged between the Provider, Subcontractors, Centrelink, JCA Providers and DEEWR in relation to the Services.

'Definitions' means the list of definitions in this Annexure E.

'Director' means any of the following:

- (a) a person appointed to the position of a director or alternate director, and acting in that capacity, of a body corporate within the meaning of the *Corporations Act 2001* (Cth) regardless of the name given to their position;
- (b) a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (c) a member of the committee of an organisation incorporated pursuant to state or territory laws relating to the incorporation of associations;
- (d) a person who would be a director of the body corporate under paragraph (a) above if the body corporate were a body corporate within the meaning of the *Corporations Act 2001* (Cth);
- (e) a person who acts in the position of a director of a body corporate;

-
- (f) a person whose instructions or wishes the directors of a body corporate are accustomed to acting upon, and not simply because of the person's professional capacity or business relationship with the directors or the body corporate; and
 - (g) a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate.

'Disability Support Pension' has the meaning given to the term 'disability support pension' by the *Social Security Act 1991* (Cth).

'Documentary Evidence' means those Records of the Provider, as specified in this Deed including in any Guidelines, which evidence that Services were provided by the Provider for each claim for payment made under this Deed, or which otherwise support a claim for payment by the Provider.

'Drought Force Only Participant' means a person who is over 21 years and not in receipt of an Income Support Payment and who is eligible for Drought Force Only Services.

'Drought Force Only Services' means those Services provided to Drought Force Only Participants as described in clause 85 [Drought Force Only Services] under the Employment Services Deed 2009 to 2012 of a Stream Services Provider.

'DVA War Widow/er Pension' has the meaning given to that term by the *Social Security Act 1991* (Cth)

'Eligible' means that a Fully Eligible Participant:

- (a) is at least 18 years of age at the time of commencing NEIS Assistance;
- (b) is available to participate in NEIS Training and work Full-Time in the proposed NEIS Business;
- (c) is not an undischarged bankrupt;
- (d) has not received NEIS Assistance for a similar business activity as specified in any Guidelines;
- (e) has not received NEIS Assistance in the previous two years; and
- (f) is one of the following:
 - (i) an Indigenous Australian;
 - (ii) receiving Stream Services under Stream 3 or 4; or
 - (iii) if receiving Stream Services under Stream 1 or 2, is proposing a NEIS Business that is in an area of Skills Shortage, or
- (g) is any other person or persons advised to the Provider by DEEWR in writing from time to time;

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

'Employment' or **'Employed'** means the status of a person who is in paid work under a contract of employment or who is otherwise deemed to be an employee under relevant Australian legislation.

'Employment Service Area' or **'ESA'** means a geographical area, within a Labour Market Region, identified and described at www.workplace.gov.au, and, for the avoidance of doubt, includes a Remote ESA.

'ESC3 NEIS Participant Agreement' means an agreement:

- (a) entered into on or before 30 June 2009; and
- (b) which was executed by DEEWR and an Income Support Payment recipient to receive ESC3 NEIS Services.

‘ESC3 NEIS Services’ means services, to assist Income Support Payment recipients establish and run a new small business, which were delivered by contracted providers under:

- (a) the Employment Services Contract 2006-2009; or
- (b) the Remote Services Deed 2006-2009.

‘ESC3 Outcome’ occurs when DEEWR verifies that a person who received NEIS Transition Services is not in receipt of an Income Support Payment, 13 weeks after cessation of their ESC3 NEIS Participant Agreement, unless:

- (a) the person was previously in receipt of Parenting Payment (Single), Disability Support Pension, Carer Payment or DVA War Widow or Partner Service Pension; or
- (b) the person was not in receipt of an Income Support Payment from Centrelink on commencement of their ESC3 NEIS Participant Agreement,

in which case an ESC3 Outcome occurs if the person is in employment for 20 hours per week or more, 13 weeks after cessation of their ESC3 NEIS Participant Agreement.

‘Excised Non-remote Area’ means a geographical area, within a Remote ESA identified as such in the following table:

State	Remote ESA	Excised Non-remote Area:*
NSW	Far West NSW	Statistical Local Area of Broken Hill (C)
NT	Alice Springs	Urban Centre/Locality of Alice Springs
QLD	Mt Isa	Urban Centre/Locality of Mount Isa
QLD	Western Downs	Statistical Local Areas of Warroo (S), Roma (T), Bungil (S), Taroom (S), Bendemere (S), Murilla (S), Tara (S), Chinchilla (S), Wambo (S) and Dalby (T)
SA	North Country	Statistical Local Area of Port Augusta (C)
SA	North Country	Statistical Local Area of Whyalla (C)
SA	Port Lincoln/Ceduna	Statistical Local Area of Port Lincoln (C)
WA	Goldfields/ Esperance	Statistical Local Area of Kalgoorlie/Boulder (C) Pt A
WA	Goldfields/ Esperance	Urban Centre/Locality of Esperance
WA	Kimberley	Urban Centre/Locality of Broome
WA	Mid West Gascoyne	Statistical Local Areas of Geraldton (C) and Greenough (S) Pt A

*Statistical Local Area and Urban Centre/Locality are terms used and defined by the Australian Bureau of Statistics. See www.abs.gov.au for further information.

‘Excised Remote Area’ means a geographical area, within an ESA identified, as such in the following table:

State	ESA	Excised Remote Area:*
QLD	Townsville	Statistical Local Area of Palm Island (S)

*Statistical Local Area is a term used by the Australian Bureau of Statistics. See www.abs.gov.au for further information.

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

'Existing Material' means all Material, except Commonwealth Material, in existence prior to the Deed Commencement Date:

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

the Deed Material.

'Extended Service Periods' means one or more periods of time from the end of the Service Period.

'External Income' means any gross income that the Australian Taxation Office would regard as income received by a NEIS Participant while he or she is in receipt of NEIS Assistance, and includes, but is not limited to, interest, dividends, rent from investment property, any lump sum compensation payment or earnings from employment outside the NEIS Business, but excludes NEIS Allowance, NEIS Rental Assistance, FaHCSIA pensions, Centrelink allowances/pensions, spouse's income and NEIS Business income.

'External Income Test' is a test based upon the Income Statement of a NEIS Participant's External Income to determine whether the total gross External Income in a Financial Quarter is more than twice the rate of NEIS Allowance for that Financial Quarter.

'FaHCSIA' means the Commonwealth Department of Families, Housing Community Services and Indigenous Affairs or such other government agency or department as may administer or perform the functions of that department from time to time.

'Fees' means any amounts payable by DEEWR under this Deed specified to be Fees, and any amounts not expressly identified as Reimbursement or an Advanced EPF Payment.

'Financial Information' includes, but is not limited to:

- (a) cash inflows and cash outflows for the Financial Quarter;
- (b) NEIS Business Plan projection of cash inflow and cash outflow for the Financial Quarter;
- (c) closing cash balance at the end of the Financial Quarter; and
- (d) balance of debtors and creditors for the Financial Quarter.

'Financial Quarter' means any one of the following:

- (a) 1 July to 30 September;
- (b) 1 October to 31 December;
- (c) 1 January to 31 March; or
- (d) 1 April to 30 June.

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

'Full-Time' means:

- (a) Reserved
- (b) for NEIS, the number of hours as a minimum, as set out in any Guidelines, a NEIS Participant

must work in their NEIS Business.

'Full-Time Study' means:

- (a) a university course that, for the purposes of the Higher Education Contribution Scheme, represents a standard student load for the equivalent of a full-time student;
- (b) a course that is at least 15 class contact hours a week; or
- (c) a course determined as being full-time by the relevant educational institution.

'Fully Eligible Participant' means a person, who is identified by Centrelink, DEEWR, the Provider or a JCA Provider on DEEWR's IT Systems as fully eligible for all Stream Services, but excludes a Stream 1 (Limited) Participant and Drought Force Only Participant.

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

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

'Guidelines' refers to the guidelines, if any, as described in this Deed and issued by DEEWR, as amended from time to time by DEEWR.

'Income Statement' means a correctly completed statement of a NEIS Participant's gross External Income, and any other information specified by DEEWR, in a form approved by DEEWR.

'Income Support Payment' has the meaning given to the term 'income support payment' in the *Social Security Act 1991* (Cth).

'Indigenous Australian' means a person identified as such on DEEWR's IT Systems who is of Aboriginal or Torres Strait Islander descent and who identifies as an Aboriginal or Torres Strait Islander person, and is accepted as such in the community in which the person lives or has lived.

'Indigenous Employment Strategy' means a strategy implemented by the Provider designed to attract, develop and retain Indigenous Australian employees within the Provider's own organisation.

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

'Intellectual Property Rights' includes:

- (a) all copyright (including rights in relation to phonograms and broadcasts);
- (b) all rights in relation to inventions (including patent rights), plant varieties, trademarks (including service marks), designs, circuit layouts; and
- (c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,

but does not include:

- (d) Moral Rights;
- (e) the non-proprietary rights of performers; or
- (f) rights in relation to confidential information.

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

‘IT Security Policy’ and **‘IT Security Policies’** means policies relating to the use and security of DEEWR’s IT System, and includes the policy by the name of DEEWR System Security Policy for External Users and any other policies Notified by DEEWR from time to time.

‘JCA Provider’ means a person, organisation or Commonwealth agency contracted by the Commonwealth Department of Human Services to conduct a JCA.

‘Job Capacity Assessment’ or **‘JCA’** means a holistic assessment of a Fully Eligible Participant’s participation barriers and current work capacity, undertaken by a JCA Provider.

‘Key Performance Indicators’ or **‘KPIs’** means the performance indicators specified in clause 30.3 or as Notified to the Provider by DEEWR from time to time.

‘Labour Market Region’ or **‘LMR’** means one of 17 geographical areas, each containing a number of ESAs, as set out at www.workplace.gov.au.

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

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

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

‘NEIS Allowance’ means an allowance payable by DEEWR to a NEIS Participant in accordance with the NEIS Participant Agreement.

‘NEIS Assistance’ means the assistance received by a NEIS Participant, including, where applicable, the payment of NEIS Allowance, and NEIS Rental Assistance, together with NEIS Business Mentoring, monthly contact and advice and counselling, for a period of 52 weeks (or as otherwise extended or reduced by DEEWR) commencing on a date approved by DEEWR, but excluding any period in which the NEIS Participant Agreement is suspended by DEEWR.

‘NEIS Business’ means the NEIS Participant’s business, the details of which are set out in the schedule to the NEIS Participant Agreement, and which is to be operated in accordance with the NEIS Business Plan.

‘NEIS Business Plan’ means a plan that sets out, at a minimum, how the business will operate, the business insurance to be obtained, and a forecast of the cash flow each Financial Quarter.

‘NEIS Business Mentoring’ includes:

- (a) assistance and advice about organisational, financial and marketing issues to help the NEIS Participant to develop their business,
- (b) advice on specialist business professionals who may be consulted by the NEIS Participants, and
- (c) any other requirements as set out in any Guidelines.

‘NEIS Business Mentoring Report’ means a Report that provides, in accordance with the Guidelines, a description of the delivery of NEIS Business Mentoring;

‘NEIS Panel’ means a panel of NEIS Panel Members from whom contracted providers of services under the Employment Services Deed 2009-2012 may purchase NEIS Services.

‘NEIS Panel Member’ means a provider on the NEIS Panel who provides NEIS Panel Member Services.

‘NEIS Panel Member Services’ means the services specified in clause 86.

‘NEIS Participant’ means a person who is a party to a current NEIS Participant Agreement and who is in receipt of NEIS Assistance.

‘NEIS Participant Agreement’ means the agreement, in the form prescribed by DEEWR, entered into between an eligible Prospective Participant and DEEWR.

‘NEIS Rental Assistance’ means rental assistance payable by DEEWR to a NEIS Participant in accordance with the NEIS Participant Agreement.

‘NEIS Services’ means the Services to be provided in accordance with Part 1 of Annexure D, the purpose of which is to assist NEIS Participants in establishing and running viable new small businesses in accordance with any Guidelines or written instructions that DEEWR may issue to the Provider from time to time.

‘NEIS Training’ means Certificate IV in Small Business Management or Certificate III in Micro Business Operations.

‘NEIS Transition Services’ means NEIS Services which are the same as the outstanding ESC3 NEIS Services set out in a person’s ESC3 NEIS Participant Agreement, and which are to be provided by the NEIS Panel Member in accordance with any Guidelines or written instructions issued by DEEWR and Part 2 of Annexure D.

‘New Enterprise Incentive Scheme’ or **‘NEIS’** means the Services specified at Part 1 of Annexure D.

‘Newstart Allowance’ has the meaning given to the term ‘newstart allowance’ by the *Social Security Act 1991* (Cth).

‘Notice’ means a written notice in accordance with clause 128 [Notices]; and **‘Notify’**, **‘Notified’** and **‘Notification’** have the same meaning.

‘Objectives’ means the objectives of the Services as described in this Deed.

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

‘Own Organisation’ means the Provider or that part of the Provider that delivers Services under this Deed.

‘Parenting Payment’ has the meaning given to the term ‘parenting payment’ by the *Social Security Act 1991* (Cth).

‘Part-Time’ means, for a Site, set weekly hours on Business Days with hours of operation less than Full-Time, as agreed with DEEWR.

‘Participant’ means a Stream Participant, and a Drought Force Only Participant.

‘Participant Services Records’ means Deed Records (including documents associated with the Customer Feedback Register) about a Participant, that are directly created for the purposes of providing Services.

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

‘Partner Service Pension’ has the meaning given to the term ‘partner service pension’ by the *Social Security Act 1991* (Cth).

‘Party’ means a party to this Deed.

‘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.

‘Personnel’ means:

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

‘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.

‘Prospective Participant’ means a Fully Eligible Participant who:

- (a) has been assessed as Eligible; and
 - (b) has not yet executed a NEIS Participant Agreement,
- but excludes a Fully Eligible Participant who has returned to Stream Services from NEIS Services.

‘Protected Information’ has the same meaning as under section 23 of the *Social Security Act 1991*.

‘Provider’ means the employment services provider under this Deed, and includes its Personnel, successors and assigns, and any constituent entities of the Provider’s organisation, and includes reference to a Tendering Group contracted under this Deed, where applicable.

‘Provider Records’ means all Records, except Commonwealth Records, in existence prior to the Deed Commencement Date:

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

the Deed Records.

‘Records’ means documents, information and data stored by any means and all copies and extracts of the same, and includes Deed Records, Commonwealth Records and Provider Records.

‘Records Management Instructions’ means any Guidelines provided by DEEWR from time to time in relation to the management, retention and disposal of Records.

‘Related Entity’ means:

- (a) those parts of the Provider other than Own Organisation;
- (b) ‘entities connected with a corporation’ as defined in section 64B of the *Corporations Act 2001* (Cth) with the word ‘Provider’ substituted for every occurrence of the word ‘corporation’ in that section;

- (c) an entity that:
- (i) can control, or materially influence, the Provider's activities or internal affairs;
 - (ii) has the capacity to determine, or materially influence, the outcome of the Provider's financial and operating policies; or
 - (iii) is financially interested in the Provider's success or failure or apparent success or failure;
- (d) if the Provider is a company, an entity that:
- (i) is a holding company of the Provider;
 - (ii) is a subsidiary of the Provider;
 - (iii) is a subsidiary of a holding company of the Provider;
 - (iv) has one or more directors who are also directors of the Provider; or
 - (v) without limiting clauses (d)(i) to (iv) of this definition, controls the Provider; or
- (e) an entity, where a familial or spousal relationship between the principals, owners, directors, officers or other like persons exists between that entity and the principals, owners, directors, officers or like persons of the Provider.

'Remote ESA' means an ESA identified as such in the following table:

State	Remote ESA
QLD	Far North QLD
QLD	Mt Isa
QLD	Western Downs
NSW	Far West NSW
NSW	Oxley
NT	Alice Springs
NT	Katherine
NT	Tennant Creek
NT	Top End
SA	North Country
SA	Port Lincoln/Ceduna
WA	Goldfields/Esperance
WA	Kimberley
WA	Mid West Gascoyne
WA	Pilbara

'Report' means Deed Material that is provided to DEEWR for the purposes of reporting on the Services.

'Schedule' means the schedule to this Deed.

'Secretary' means the Secretary of DEEWR.

'Service Guarantee' means the set of minimum service standards of that name specified at Annexure B.

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

‘Service Start Date’ means the date of that name specified in Item 3 of the Schedule.

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

‘Skills Australia’ means the body of that name established under the *Skills Australia Act 2008* (Cth).

‘Skills Shortage’ means any skills shortage area as provided for by Skills Australia or as otherwise advised by DEEWR.

‘Social Security Appeals Process’ means reviews and appeals of decisions made under the *Social Security Act 1991* (Cth) or *Social Security (Administration) Act 1999* (Cth).

‘Social Security Law’ means the *Social Security Act 1991* (Cth), the *Social Security (Administration) Act 1999* (Cth), and includes all relevant subordinate legislation, as amended from time to time.

‘Stream 1’ means the grouping of Services, for Stream Participants considered to be ‘work ready’, specified as Stream 1 under the Employment Services Deed 2009-2012 of a Stream Services Provider.

‘Stream 1 (Limited) Participant’ means a person who is not a Fully Eligible Participant and who either:

- (a) is not:
 - (i) undertaking Full-Time Study, unless the purpose for seeking Services from the Provider is to obtain an apprenticeship or traineeship;
 - (ii) Employed for 15 hours or more each week, unless he or she is seeking Services from the Provider for the purpose of obtaining an apprenticeship or traineeship;
 - (iii) an overseas visitor on a working holiday visa;
 - (iv) an overseas student studying in Australia; or
 - (v) prohibited by law from working in Australia; or
- (b) has characteristics which identify the person as being a Stream 1 (Limited) Participant, being characteristics which DEEWR may Notify the Provider, from time to time.

‘Stream 2’ means the grouping of Services specified as Stream 2 under the Employment Services Deed 2009-2012 of a Stream Services Provider.

‘Stream 3’ means those Services specified as Stream 3 under the Employment Services Deed 2009-2012 of a Stream Services Provider.

‘Stream 4’ means those Services specified as Stream 4 under the Employment Services Deed 2009-2012 of a Stream Services Provider.

‘Stream Services’ means Services under Streams 1 to 4, including the Work Experience Phase and the Services provided to Stream 1 (Limited) Participants.

‘Stream Participant’ means a Fully Eligible Participant and a Stream 1 (Limited) Participant.

‘Stream Services Provider’ means a contracted provider of services under the Employment Services Deed 2009-2012, that has contracted or may contract, as the case may be, the NEIS Panel Member for the provision of NEIS Services.

‘Subcontract’ means any of the arrangements specified in clause 106 [Subcontracting], and **‘Subcontract’** and **‘Subcontracting’** refer to the act of entering into any of those arrangements.

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

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

‘Taxable Supply’ has the meaning given in section 195-1 of the GST Act.

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

‘Term of this Deed’ refers to the period described in clause 4.1.

‘Transition Period’ means the period, if any, Notified by DEEWR to the Provider in accordance with clause 114 [Transition out].

‘Work Experience Activities’ has the meaning set out in clause 63 and any Guidelines of the Employment Services Deed 2009-2012 of a Stream Services Provider.

‘Work Experience Phase’ means the period when Fully Eligible Participants in Streams 1-4 are required to undertake Work Experience Activities.

‘Youth Allowance’ has the meaning given to the term ‘youth allowance’ by the *Social Security Act 1991* (Cth).