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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. Stream Services, Harvest Labour Services and National Harvest Labour Information Service
4. Other Services
5. Information and Information Management
6. Deed Administration

There are five Annexures:

- A. Transition
- B. Employment Services Standards
- C. Fees and Reimbursements
- D. New Enterprise Incentive Scheme
- E. Definitions

There is one Schedule, which contains all the contract 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.

Providers of Stream Services can purchase NEIS Services for a Participant from NEIS Panel Members. The NEIS Services are set out at Part 1 of Annexure D.

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CHAPTER 1 - INTRODUCTION

1. Definitions

1.1 In this Deed, unless the contrary intention appears, all capitalised terms have the meaning given to them in the Definitions in Annexure 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:

- (a) Chapter 3 (Stream Services, Harvest Labour Services and National Harvest Labour Information Service); and
- (b) 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 The Objective for the delivery of the Stream Services is to help Stream Participants to obtain employment related skills and to secure sustainable employment.
- 8.2 The Objectives for the delivery of Harvest Labour Services are:
- (a) to engage effectively with Harvest Employers to meet their unmet Harvest labour demands;
 - (b) to mobilise Harvest Workers into Harvest Areas to meet Harvest labour demands; and
 - (c) to promote Harvest Labour Services to Harvest Employers and prospective Harvest Workers.
- 8.3 The Objective for the delivery of the National Harvest Labour Information Service is to provide timely and accurate Harvest Information about the harvest industry to all interested parties.
- 8.4 Reserved

9. Location

9.1 Where contracted to do so under this Deed, the Provider must deliver:

- (a) Stream Services and Drought Force Only Services:
 - (i) in all of, and only in, the ESAs
 - (ii) subject to clause 9.2, at all of, and only at, the Sites; and
 - (iii) in accordance with the ESA Business Share, specified in Items 6.2, 6.6 and 6.5 of the Schedule;
- (b) Harvest Labour Services in all of, and only in, the Harvest Areas and at the Sites specified in Items 7.2 and 7.4 of the Schedule; and
- (c) Reserved,

unless otherwise directed by DEEWR.

9.2 The Provider may nominate specific Sites within an ESA from which it will provide particular Stream Services.

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 Except for NHLIS Services, the Provider must ensure that its Sites are open for the provision of the Services on the Business Days and at the times specified in Items 6.7, 6.8, 7.5 and 7.6 of the Schedule unless otherwise notified by DEEWR.

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 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 in which the Participant will have regular or unsupervised contact with Children, the elderly, or other classes of vulnerable people, and for which it would be considered prudent by a reasonable person that a criminal records check be conducted,
- the Provider must arrange for criminal records checks to be carried out to establish whether the Participant has any relevant records of convictions for crimes and if the Participant has any relevant records of convictions for crimes, the Provider must not arrange for the Participant to participate in that activity, unless the records of convictions for crimes are not relevant to the activity. The Provider is not required to arrange for criminal records checks to be conducted for a Participant starting in Employment, unless there is a statutory requirement for the Provider to do so.
- 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 Employment Pathway Fund for the cost of arranging criminal records checks in accordance with clause 12.1 for Fully Eligible Participants or Drought Force Only Participants.

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 Except for Harvest Labour Services and National Harvest Labour Information Service, 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 Except in relation to the NHLIS, 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

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- (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;

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- (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 Depending on the Services that the Provider is contracted to provide, payments under this Deed consist of:

- (a) Fees specified in Section 3L - Fees; and
- (b) Reimbursements and Advance EPF Payments specified in Section 3G – Employment Pathway Fund; and
- (c) Reserved.

19.2 Subject to sufficient funds being available and compliance by the Provider with this Deed to DEEWR's satisfaction, and depending on the Services that the Provider is contracted to provide under this Deed, DEEWR will pay to the Provider, Fees, Reimbursements and Advance EPF Payments at the times and in the manner specified in this Deed to the account(s) specified in Item 5 of the Schedule.

19.3 Depending on the Services that the Provider is contracted to provide under this Deed, the Provider may claim any Fees, Reimbursements or Advance EPF Payments properly due to the Provider during the Service Period and any Extended Service Periods.

19.4 It is a precondition of the Provider's entitlement to be paid any Fees, Reimbursements and Advance EPF Payments, that it:

- (a) has, at the time it makes a claim for a payment, sufficient Documentary Evidence to prove that the Provider has delivered the relevant Services in accordance with, or otherwise has relevantly complied with, this Deed;
- (b) has a valid ABN;
- (c) immediately notifies 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, Reimbursements or Advance EPF Payments 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, Reimbursements or Advance EPF Payments;
- (b) decide not to make the payments of Fees, Reimbursements or Advance EPF Payments; or
- (c) recover any payments of Fees, Reimbursements or Advance EPF Payments made by DEEWR as a debt in accordance with clause 24 [Debts and offsetting],

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

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,

Reimbursements or Advance EPF Payments in connection with any situation of the type described in clause 22.2.

23. DEEWR may vary payments, Participants or ESA Business Share

23.1 DEEWR may, at any time, vary the payments under this Deed, the number of Participants receiving Services from the Provider and/or the ESA Business Share, or Harvest Areas, 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 a Harvest Area, 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 If the Provider is contracted to provide Stream Services under this Deed and DEEWR determines that the Provider has obtained a Reimbursement or an Advance EPF Payment from the Employment Pathway Fund of an amount that it is not entitled to, that amount is a debt for the purpose of this clause 24.

24.3 The Provider must pay to 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. Performance reviews

30.1 Throughout the Term of this Deed, DEEWR will monitor, measure and evaluate the Provider's performance against the requirements of this Deed, including the Key Performance Indicators, the Code of Practice and the Service Guarantees for the Services, as relevant.

30.2 For the purposes of clause 30.1, DEEWR may rely on performance data collected from any source, including Customer and Employer feedback.

Key Performance Indicators

30.3 Depending on the Services that the Provider is contracted to provide under this Deed, the Key Performance Indicators are as follows:

- (a) KPI 1: The average time that the Provider takes, compared to the time taken by other employment services providers, to assist relevant Participants into Employment.
 - (i) KPI 1 objective: To prepare relevant Participants through individualised help, training and work experience to successfully achieve suitable placements and Outcomes in Employment.
 - (ii) KPI 1 measurement: DEEWR will assess the Provider's performance based on the average time taken from Registration to the achievement of placements and Outcomes in Employment. If relevant Participants undertake appropriate training, the time spent in training will not count for the purposes of this KPI.
- (b) KPI 2: The proportion of relevant Participants for whom placements and Outcomes are achieved and the proportion of Fully Eligible Participants in Stream 4 for whom Social Outcomes are achieved.
 - (i) KPI 2 objective: To maximise placements, Outcomes and Social Outcomes for relevant Participants.
 - (ii) KPI 2 measurement: DEEWR will assess the Provider's performance through the number of:
 - (A) placements and Outcomes achieved for relevant Participants; and

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- (B) Social Outcomes achieved for Fully Eligible Participants in Stream 4.
- (c) KPI 3: The delivery of quality Services under this Deed, the Service Guarantees and the Code of Practice.
- (i) KPI 3 objective: To maximise the delivery of high quality, individualised employment services.
- (ii) KPI 3 measurement: DEEWR will assess the Provider's performance under the Deed, the Service Guarantees and the Code of Practice through various measures including feedback from Employers and Participants. DEEWR will also take account of whether the Provider is part of an accredited system of quality assurance or adopts a business excellence framework.

Other factors in performance assessment

30.4 When assessing the Provider's performance, DEEWR may also take into account other factors including but not limited to:

- (a) the Provider's performance in connecting Participants to appropriate skills opportunities;
- (b) the Provider's performance in assisting particular disadvantaged client groups such as Indigenous Australians, parents and people with disabilities;
- (c) the Provider's performance in relation to the building of linkages with Employers to understand and meet the skills needs of the local labour market;
- (d) the Provider's performance in developing and monitoring Employment Pathway Plans;
- (e) the efficiency and effectiveness of the use by the Provider of the Employment Pathway Fund;
- (f) the proportion of Outcomes in which a Fully Eligible Participant undertakes an employment related activity which give rise to Outcome Fees, but that do not result in ongoing Employment after the completion of either the 13 Week Period or 26 Week Period;
- (g) the Provider's performance against any performance indicators;
- (h) timely servicing of Participants;
- (i) the number and value of any invalid claims made by the Provider;
- (j) the Provider's compliance with this Deed; and
- (k) any other information in DEEWR's possession, including Provider feedback.

Six monthly performance assessments

30.5 Every six months during the Term of this Deed, DEEWR:

- (a) will review the Provider's performance in each Employment Service Area and at each Site where the Provider delivers Services; and
- (b) may subsequently provide feedback to the Provider on DEEWR's assessment of its performance, including if DEEWR considers that the Provider's performance is such that it is likely to be in scope for an adjustment of its ESA Business Share under clause 30.6.

One formal performance assessment and business reallocation

30.6 DEEWR will undertake a formal performance assessment of the Provider approximately mid-way through the Term of this Deed, following which DEEWR may, in accordance with clause 31, adjust the ESA Business Share of the Provider depending on the Provider's assessed performance.

31. Action following mid-term performance assessment

31.1 If, at the completion of the formal performance assessment in clause 30.6, DEEWR considers the performance of the Provider at the Employment Service Area level warrants it, DEEWR may, with the agreement of the Provider, increase the Provider's ESA Business Share for a period of time specified by DEEWR.

31.2 Without limiting DEEWR's rights under this Deed, under statute, at law or in equity, if, at the completion of the formal performance assessment in clause 30.6, DEEWR considers that the performance of the Provider at the Employment Service Area level is less than satisfactory, DEEWR may, at its absolute discretion, decrease the Provider's ESA Business Share for a period of time specified by DEEWR.

Performance Ratings

31.3 Despite any other provision of this Deed, if, at the completion of the formal performance assessment in clause 30.6, the Provider's Performance Rating:

(a) for an ESA is:

- (i) in the lowest two ratings bands; or
- (ii) two ratings bands or more lower than any other employment services provider's rating in that ESA; or

(b) for a Site is:

- (i) in the lowest two ratings bands; or
- (ii) two ratings bands or more lower than any other employment services provider's rating for a particular site in that ESA,

DEEWR may, at its absolute discretion, decrease the Provider's ESA Business Share in that ESA accordingly.

31.4 DEEWR may, at its absolute discretion, publish the Provider's Performance Ratings.

Reductions in ESA Business Share

31.5 References in this clause 31 to decreasing the Provider's ESA Business Share in an ESA include decreasing the ESA Business Share in the ESA to zero.

31.6 If, in accordance with this clause 31, DEEWR decreases the Provider's ESA Business Share in an ESA to zero, DEEWR may Notify the Provider that the Provider must discontinue providing the Services in the ESA from the date specified by DEEWR.

31.7 If DEEWR Notifies the Provider to discontinue providing Services in accordance with clause 31.6, the Provider must discontinue providing the Services in the ESA in accordance with the Notice and provide DEEWR with the assistance and cooperation in clauses 114.5 and 114.6 to ensure that Fully Eligible Participants affected by the discontinuation of the Provider's Services in that ESA are transferred to other employment services providers as specified by DEEWR.

31.8 For the avoidance of doubt, any decrease of ESA Business Share under this clause 31 is not a reduction of scope or termination for which compensation is payable.

Good faith and proportionality

31.9 DEEWR will exercise its rights under this clause 31 reasonably and in good faith, taking into account the relevant performance.

Variation

31.10 If DEEWR takes any action under this clause 31:

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

Notice

31.11 If DEEWR takes any action under this clause 31, DEEWR will Notify the Provider of:

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

31.12 This clause 31 is without prejudice to any other right which the Commonwealth has or which may accrue to the Commonwealth.

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 first Referral to, or on Direct Registration, or otherwise on 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;

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- (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 – STREAM SERVICES, HARVEST LABOUR SERVICES AND NATIONAL HARVEST LABOUR INFORMATION SERVICE

Section 3A – Application

36. Stream Services

36.1 Subject to clause 38 [Transition in], the Provider must provide Stream Services to all Stream Participants:

- (a) who are Referred to, or who Directly Register with, the Provider;
- (b) within the Stream or Work Experience Phase identified:
 - (i) for Stream 1 (Limited) Participants:
 - (A) in their Referral;
 - (B) through their Direct Registration process in accordance with clause 40 [Direct Registration of Stream Participants without a Referral]; or
 - (C) on DEEWR's IT Systems when a Fully Eligible Participant who is Registered with the Provider is automatically converted by DEEWR's IT Systems to a Stream 1 (Limited) Participant; and
 - (ii) for Fully Eligible Participants, in the most recent of:
 - (A) their Assessment;
 - (B) their Direct Registration process under clause 40 [Direct Registration of Stream Participants without a Referral], if relevant;
 - (C) any Change of Circumstances Reassessment; or
 - (D) any Stream Services Review;
- (c) for the relevant Period of Service.

37. ESA Specialist Client Groups

37.1 If an ESA Specialist Client Group is identified in relation to a particular Site in Item 6.3 of the Schedule, the Provider must also provide Stream Services:

- (a) to any Stream Participant who is:
 - (i) a member of the relevant ESA Specialist Client Group; and
 - (ii) Directly Registered with, or Referred to, the Provider;
- (b) in accordance with clause 36.1 and this Deed, including any Guidelines; and
- (c) in a manner which is designed to address, and is sensitive to, the special needs of that Stream Participant.

Section 3B – Allocation of Stream Participants to the Provider

38. Transition in

Transitioned Participants

38.1 If directed by Centrelink, by a JCA Provider or by DEEWR, the Provider must provide Stream Services to a Transitioned Participant in accordance with Annexure A, subject to any directions given by Centrelink or DEEWR and any Guidelines issued by DEEWR.

Special Cohort Transitioned Participants

38.2 The Provider must, in accordance with any Guidelines, provide Stream Services to each Special Cohort Transitioned Participant for a period of 13 weeks as if the Special Cohort Transitioned Participant was a Fully Eligible Participant allocated to Stream 1 and was in the second period of 13 weeks from the start of the Payment Period.

38.3 If the circumstances of a Special Cohort Transitioned Participant change while receiving the Services specified in clause 38.2, such that the Special Cohort Transitioned Participant may be eligible to receive

Stream Services as a Fully Eligible Participant, the Provider must arrange for a Change of Circumstances Reassessment as if the Special Cohort Transitioned Participant was a Fully Eligible Participant. If the Change of Circumstances Reassessment indicates that the Special Cohort Transitioned Participant is eligible as a Fully Eligible Participant, the Special Cohort Transitioned Participant must be moved into Stream 1, or a higher Stream if the Change of Circumstances Reassessment so indicates, in accordance with any Guidelines.

- 38.4 Unless a Special Cohort Transitioned Participant is moved into Stream Services in accordance with clause 38.3, the Provider must cease providing any Services to the Special Cohort Transitioned Participant once the period of 13 weeks specified in clause 38.2 expires.

Note: The Provider may Directly Register a Special Cohort Transitioned Participant as a Stream 1 (Limited) Participant after the period of 13 weeks specified in clause 38.2 expires, if the former Special Cohort Transitioned Participant is eligible as a Stream 1 (Limited) Participant.

- 38.5 Subject to this Deed, the Provider may claim, in accordance with the requirements specified in any Guidelines, a Special Cohort Transitioned Participant Service Fee.

39. Referrals

- 39.1 The Provider must only accept Referrals of Stream Participants made:

- (a) through DEEWR's IT Systems; or
- (b) directly by a JCA Provider.

- 39.2 DEEWR's IT Systems will alert the Provider to Referrals by recording an Appointment for Stream Participants in the Provider's Electronic Diary.

- 39.3 Subject to clauses 18 [Business level expectations], 84 [DEEWR may reduce the number of Referrals to the Provider] and 114 [Transition out], DEEWR's IT Systems will allow a flow of Referrals to the Provider within a 30 per cent tolerance of the Provider's ESA Business Share within each ESA.

Note: DEEWR does not guarantee the level or type of Stream Participants that will be Referred to the Provider. The flow of Stream Participants to the Provider will be affected by (a) the flow of Stream Participants registering with Centrelink in each ESA; (b) the sum of the Provider's business levels at each Site within an ESA; and (c) Participant choice.

40. Direct Registration of Stream Participants without a Referral

Stream 1 (Limited) Participants

- 40.1 If a Stream 1 (Limited) Participant presents to the Provider without a Referral, the Provider must, in accordance with this Deed, Directly Register and provide Stream Services to the Stream 1 (Limited) Participant:

- (a) immediately, if
 - (i) there is no previous Initial Interview recorded on DEEWR's IT Systems for the Stream 1 (Limited) Participant; or
 - (ii) the Stream 1 (Limited) Participant has transferred to the Provider for any of the reasons specified in clause 77.1 (b); or
- (b) only after 26 weeks or more have elapsed since the Provider or any other employment services provider last completed an Initial Interview with the Stream 1 (Limited) Participant, in all other circumstances.

Note: Stream 1 (Limited) Participants receive, subject to clause 48.8, only the Stream Services specified in clauses 52 and 55.

40.2 The Provider must immediately refer a Stream 1 (Limited) Participant who is Directly Registered to Centrelink for an Assessment if it appears to the Provider that the Stream 1 (Limited) Participant may be eligible to receive Income Support Payments.

Vulnerable Youth

40.3 Where a Vulnerable Youth presents to the Provider without a Referral, the Provider must:

- (a) immediately Directly Register the Vulnerable Youth;
- (b) immediately conduct an Initial Interview and Commence the Vulnerable Youth in Stream 4;
- (c) immediately provide, or refer the Vulnerable Youth to, relevant crisis assistance, if the Vulnerable Youth presents in crisis; and
- (d) within four weeks of the Direct Registration refer the Vulnerable Youth to Centrelink:
 - (i) to determine the Vulnerable Youth's eligibility for Income Support Payments, regardless of whether the Provider expects the Vulnerable Youth to be eligible for Income Support Payments; and
 - (ii) to conduct an Assessment of the Vulnerable Youth.

40.4 If the Assessment referred to in clause 40.3(d)(ii) determines that a Vulnerable Youth who has been Commenced is eligible for Services under Stream 4, the Provider must continue providing Services under Stream 4 to the Vulnerable Youth for the remainder of the Period of Service.

40.5 If the Assessment referred to in clause 40.3(d)(ii) determines that a Vulnerable Youth who has been Commenced is not eligible for Services under Stream 4, the Provider must:

- (a) immediately move the Vulnerable Youth into the Stream identified in the Assessment and provide Services to the Vulnerable Youth under that Stream; or
- (b) if the Assessment recommends that the Vulnerable Youth should be referred to Disability Employment Services, continue to provide Services to the Vulnerable Youth under Stream 4 until the Vulnerable Youth starts receiving services from Disability Employment Services.

40.6 Notwithstanding any other clause in this Deed, when a Vulnerable Youth is moved into a Stream other than Stream 4 in accordance with clause 40.5(a), the Payment Period and Period of Service in relation to that Vulnerable Youth are deemed to continue as if the Vulnerable Youth had Commenced in that Stream.

40.7 When a Vulnerable Youth is moved into a Stream other than Stream 4 in accordance with clause 40.5(a), the Provider:

- (a) must:
 - (i) explain the Stream Services that the Provider will provide; and
 - (ii) record the movement of the Vulnerable Youth in DEEWR's IT Systems in accordance with any Guidelines; and
- (b) may update the Employment Pathway Plan, if appropriate.

Note: A Vulnerable Youth who is moved into Stream 1, 2 or 3 in accordance with clause 40.5(a), does not receive an Initial Interview for a New Stream.

40.8 Where a Vulnerable Youth is moved into another Stream in accordance with clause 40.5(a), the initial provision of Services in Stream 4 will not prevent the future provision of Services under Stream 4 for that Vulnerable Youth.

Vulnerable Youth (Student)

- 40.9 Where a Vulnerable Youth (Student) presents to the Provider without a Referral and the Provider must attempt to refer the Vulnerable Youth (Student) to Local Youth Services and if no such services are available for the Vulnerable Youth (Student), the Provider must:
- (a) immediately Directly Register the Vulnerable Youth (Student);
 - (b) immediately conduct an Initial Interview and Commence the Vulnerable Youth (Student) in Stream 4;
 - (c) immediately provide, or refer the Vulnerable Youth (Student) to, relevant crisis assistance; and
 - (d) within four weeks of the Direct Registration refer the Vulnerable Youth (Student) to Centrelink:
 - (i) to determine his or her eligibility for Income Support Payments, regardless of whether the Provider expects the Vulnerable Youth (Student) to be eligible for Income Support Payments; and
 - (ii) to conduct an Assessment of the Vulnerable Youth (Student).
- 40.10 If the Assessment referred to in clause 40.9(d)(ii) determines that a Vulnerable Youth (Student) who has been Commenced is eligible for Services under Stream 4, the Provider must continue providing Services under Stream 4 to the Vulnerable Youth (Student) for the remainder of the Period of Service.
- 40.11 If the Assessment referred to in clause 40.9(d)(ii) determines that the Vulnerable Youth (Student) is not eligible for Services under Stream 4, the Provider must immediately Exit the Vulnerable Youth (Student).
- 40.12 Where a Vulnerable Youth (Student) is Exited in accordance with clause 40.11, the initial provision of Services in Stream 4 will not prevent the future provision of Services under Stream 4 for that Vulnerable Youth (Student).

Volunteers (Non-activity Tested)

- 40.13 The Provider may Directly Register a Volunteer (Non-activity Tested) who is:
- (a) in receipt of Disability Support Pension or Parenting Payment;
 - (b) participating in CDEP and receiving a CDEP Wage; or
 - (c) a prisoner licensed for day or partial release to engage in paid work.
- 40.14 Where a Volunteer (Non-activity Tested) under clause 40.13 presents to the Provider without a Referral, the Provider must:
- (a) if the Volunteer (Non-activity Tested) elects to receive Services as a Stream 1 (Limited) Participant:
 - (i) immediately Directly Register him or her; and
 - (ii) immediately Commence him or her in Stream 1 (Limited) Services; or
 - (b) if the Volunteer (Non-activity Tested) elects to receive Services as a Fully Eligible Participant:
 - (i) immediately complete the JSCI for him or her;
 - (ii) immediately refer him or her to a JCA Provider for a JCA, if required; and
 - (iii) subject to the outcome of the JSCI and the JCA (if required), Commence him or her in the relevant Stream.

41. Change of Circumstances Reassessment

41.1 The Provider must arrange for a Change of Circumstances Reassessment to be conducted for Fully Eligible Participants:

- (a) in Streams 1, 2 or 3:
 - (i) by Centrelink or the Provider, using a JSCI; or
 - (ii) a JCA Provider, using a JCA, if appropriate; or
- (b) in Stream 4, by a JCA Provider using a JCA,

if, at any time:

- (c) their individual circumstances change; or
- (d) they disclose information,

such that their original Assessment, or the result of their last Stream Services Review, is affected.

41.2 If a Change of Circumstances Reassessment indicates that a Fully Eligible Participant:

- (a) should have no change of Stream Services, the Provider must continue providing the Stream Services provided to the Fully Eligible Participant prior to the Change of Circumstances Reassessment; or
- (b) should be in a higher Stream, the Provider must immediately Commence the Fully Eligible Participant in the relevant Stream and provide Stream Services to the Fully Eligible Participant accordingly.

41.3 The Provider must not provide Stream Services to a Fully Eligible Participant in a Stream which is lower in order than the Stream in which a Fully Eligible Participant was prior to a Change of Circumstances Reassessment.

42. Stream Services Review

General

42.1 Subject to this clause, and taking into account each Fully Eligible Participant's individual circumstances and the activities he or she is participating in at the relevant time, the Provider must arrange for a Stream Services Review to be conducted for each Fully Eligible Participant:

- (a) in Stream 1 - after completion of not less than 48 weeks of his or her current Period of Service;
- (b) subject to clause 42.1(c), in Streams 2 or 3 - at approximately 52 weeks of his or her current Period of Service; and
- (c) who has moved from Stream 2 (pre-Work Experience Phase) directly into Stream 3 - at approximately 78 weeks of his or her Periods of Service across the two Streams (which may equate to approximately six, nine or 12 months in Stream 3),

by Centrelink, using a JSCI; by a JCA Provider, using a JCA, if appropriate; or by the Provider, using a JSCI, where the Fully Eligible Participant does not have a Centrelink Customer Reference Number; and

- (d) in Stream 4, at approximately 52 weeks of his or her current Period of Service:
 - (i) by a JCA Provider, using a JCA; or
 - (ii) by the Provider where the Fully Eligible Participant is already participating in Employment, Education or Training.

42.2 A Stream Services Review must determine whether a Fully Eligible Participant:

- (a) in Streams 1, 2 or 3:

-
- (i) requires Stream Services under a higher Stream;
 - (ii) subject to clause 42.7, should move into the Work Experience Phase; or
 - (iii) should be referred to a JCA Provider to test eligibility for Stream 4, Disability Employment Services or Business Services; or
- (b) in Stream 4, would benefit from additional assistance of up to 26 weeks in Stream 4, before moving into the Work Experience Phase.

42.3 The Provider must not provide Stream Services to a Fully Eligible Participant in a Stream that is lower in order than the Stream in which a Fully Eligible Participant was prior to a Stream Services Review.

42.4 The Provider must inform Stream Participants, in accordance with any Guidelines, of how they can appeal the result of a Stream Services Review.

Streams 1, 2 and 3

- 42.5 If a Stream Services Review indicates that a Fully Eligible Participant in Streams 1, 2 or 3:
- (a) should have no change of Stream Services, the Provider must immediately move the Fully Eligible Participant into the Work Experience Phase of the Stream that he or she was in prior to the Stream Services Review; or
 - (b) should be in a higher Stream, the Provider must immediately Commence the Fully Eligible Participant in the relevant higher Stream and provide Stream Services to him or her accordingly.

Stream 4

42.6 For Fully Eligible Participants who have completed 78 weeks in Stream 4, the Provider must Commence each Fully Eligible Participant into the Work Experience Phase, without conducting a Stream Services Review, as appropriate to the Fully Eligible Participant's individual circumstances.

Work Experience Phase

42.7 If a period of Training or Education being undertaken by a Fully Eligible Participant continues beyond either approximately 52 weeks or the completion of 78 weeks of his or her current Period of Service, as relevant to the Stream he or she is in, the Provider may move the Fully Eligible Participant into the Work Experience Phase of his or her Stream, if this is recommended in a Stream Services Review or the Fully Eligible Participant is the subject of clause 42.6.

43. Relocation of Stream Participant or Drought Force Only Participant

- 43.1 If a Stream Participant or a Drought Force Only Participant moves to a new location, and:
- (a) at the time of the move, he or she was receiving Services from the Provider; and
 - (b) his or her new location is not within a reasonable distance of a Site of the Provider,

Centrelink or DEEWR may transfer the Stream Participant or the Drought Force Only Participant to another employment services provider, and the Provider must facilitate and cooperate with the transfer.

43.2 If a Stream Participant or Drought Force Only Participant moves to a new location and the Stream Participant's or Drought Force Only Participant's new location is within a reasonable distance of a Site of the Provider, the Provider must continue to provide Services to the Stream Participant or Drought Force Only Participant at no additional cost to DEEWR.

Note: If a Stream Participant or Drought Force Only Participant is transferred in accordance with clause 43.1, clause 60.12 describes how adjustments are made to the amounts of EPF credited to both the losing and gaining employment services providers.

44. Relationship failure and transfer by agreement

- 44.1 The Provider or DEEWR may transfer a Fully Eligible Participant or Drought Force Only Participant from the Provider to another employment services provider, in accordance with any Guidelines, if, at any time:
- (a) the Provider and the Fully Eligible Participant or Drought Force Only Participant are unable to achieve or maintain a reasonable and constructive servicing relationship, as determined by DEEWR; or
 - (b) the Provider, the Participant, DEEWR, and another employment services provider agree to the Fully Eligible Participant or Drought Force Only Participant transferring to the other employment services provider.
- 44.2 DEEWR may, at its absolute discretion, transfer a Fully Eligible Participant or Drought Force Only Participant from the Provider to another employment services provider if, at any time:
- (a) the Fully Eligible Participant or Drought Force Only Participant asks DEEWR to effect the transfer;
 - (b) the Fully Eligible Participant or Drought Force Only Participant demonstrates to DEEWR's satisfaction that he or she will receive better services that could enhance his or her employment prospects from the other employment services provider; and
 - (c) DEEWR agrees to the proposed transfer.

Note: If a Fully Eligible Participant or Drought Force Only Participant is transferred in accordance with clause 44, clause 60.13 describes how adjustments are made to the amounts of EPF credited to both the losing and gaining employment services providers.

- 44.3 If a Fully Eligible Participant is transferred by DEEWR or Centrelink to the Provider for any reason, the Provider must:
- (a) at the initial contact with the Fully Eligible Participant:
 - (i) explain the Stream Services that the Provider will provide;
 - (ii) review and update his or her Employment Pathway Plan, in accordance with clause 57.4; and
 - (b) provide Stream Services to the Fully Eligible Participant in accordance with his or her Employment Pathway Plan.

Note 1: When a transfer is recorded by the relevant original employment services provider, Centrelink or DEEWR, the Fully Eligible Participant is automatically Suspended by DEEWR's IT Systems. The Fully Eligible Participant's Payment Period and Period of Services will resume when the Fully Eligible Participant begins being serviced following the initial Contact with the Provider.

Note 2: While an initial appointment session type in the Provider's Electronic Diary will be used for Fully Eligible Participants transferring to the Provider, the Provider does not have to conduct an Initial Interview. Following the initial contact with these Fully Eligible Participants, the Provider will have available to it pro-rata Service Fees pursuant to clause 76.5.

Section 3C – Participant Suspension and Exit from Stream Services

45. Effect of Suspensions

45.1 When a Stream Participant is Suspended, the:

- (a) current Period of Service; and
- (b) Payment Period (if still current),

for the Stream Participant are halted and recommence at the end of the Suspension.

46. Suspensions

Exemption from Activity Test Requirements

46.1 If Centrelink notifies the Provider that it has Exempted an Activity Tested Participant from his or her Activity Test Requirements, the Activity Tested Participant is Suspended from the day on which Centrelink so notifies the Provider until:

- (a) Centrelink notifies the Provider that the Exemption has reached its end date; or
- (b) the Provider identifies, or is notified by Centrelink, that the Activity Tested Participant has volunteered to participate in additional activities.

46.2 If an Activity Tested Participant is Exempted in accordance with clause 46.1, but the Provider identifies, or is notified by Centrelink, that the Activity Tested Participant has decided to volunteer to participate in additional activities:

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

Fully Eligible Participants who are fully meeting their part-time Activity Test Requirements

46.3 If Centrelink notifies the Provider that a Fully Eligible Participant who has part-time Activity Test Requirements is fully meeting these requirements, the Fully Eligible Participant is Suspended from the date on which Centrelink so notifies the Provider until the day on which the Suspension is lifted as a result of the Provider identifying, or being notified by Centrelink, that the Fully Eligible Participant has:

- (a) ceased to fully meet his or her Activity Test Requirements;
- (b) volunteered to participate in additional activities; or
- (c) Exited in accordance with clause 48.

46.4 If the Provider identifies, or is notified by Centrelink, that a Fully Eligible Participant who is Suspended under clause 46.3 has ceased to fully meet his or her Activity Test Requirements:

- (a) the Provider must:
 - (i) amend the Fully Eligible Participant's Employment Pathway Plan as appropriate; and

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- (ii) provide Stream Services to the Fully Eligible Participant, in accordance with his or her updated Employment Pathway Plan and his or her current Stream; and
 - (b) the Fully Eligible Participant's Payment Period and current Period of Service resume from the date that the Provider or Centrelink records on DEEWR's IT Systems that the Fully Eligible Participant has ceased to fully meet his or her Activity Test Requirements.

46.5 If the Provider identifies, or is notified by Centrelink, that a Fully Eligible Participant who is Suspended under clause 46.3 has decided to volunteer to participate in additional activities,

- (a) the Provider must:
 - (i) agree with the Fully Eligible Participant on what voluntary activities he or she will participate in;
 - (ii) amend the Fully Eligible Participant's Employment Pathway Plan as appropriate;
 - (iii) record on DEEWR's IT Systems that the Fully Eligible Participant is participating as a Volunteer (Activity Tested); and
 - (iv) provide Stream Services to the Fully Eligible Participant, in accordance with his or her updated Employment Pathway Plan and his or her current Stream for the period of the agreed voluntary activity; and
- (b) the Fully Eligible Participant's Payment Period and current Period of Service resume from the date that the Provider records on DEEWR's IT Systems that the Fully Eligible Participant is participating as a Volunteer (Activity Tested).

46.6 If the Provider identifies, or is notified by Centrelink, that a Volunteer (Activity Tested) under clause 46.5 has ceased to fully meet his or her Activity Test Requirements, the Provider must amend the Fully Eligible Participant's Employment Pathway Plan to remove reference to the voluntary activities and to change the Activity Test Requirements activities, if required; and record on DEEWR's IT Systems that the Fully Eligible Participant is participating as an Activity Tested Participant, and not as a Volunteer (Activity Tested).

Fully Eligible Participants with a reduced capacity of less than 15 hours per week

46.7 The following Fully Eligible Participants are Suspended:

- (a) Fully Eligible Participants with a temporary reduced work capacity of less than 15 hours per week; and
- (b) PCW Participants with a current and/or future work capacity of less than 15 hours per week,

for the period specified in their JCA as recorded in DEEWR's IT Systems.

46.8 If the Provider identifies, or is notified by Centrelink, that a Fully Eligible Participant who is Suspended under clause 46.7 has decided to volunteer to participate in additional activities:

- (a) the Provider must:
 - (i) agree with the Fully Eligible Participant on what voluntary activities he or she will participate in;
 - (ii) amend the Fully Eligible Participant's Employment Pathway Plan accordingly;
 - (iii) record on DEEWR's IT Systems that the Fully Eligible Participant is participating as a Volunteer (Activity Tested); and
 - (iv) provide Stream Services to the Fully Eligible Participant, in accordance with his or her updated Employment Pathway Plan and in his or her current Stream for the period of the agreed voluntary activity; and

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- (b) the Fully Eligible Participant's Payment Period and current Period of Service resume from the date that the Provider records on DEEWR's IT Systems that he or she is participating as a Volunteer (Activity Tested).

Volunteers (Activity Tested)

46.9 If the Provider identifies, or is notified by Centrelink, that a Volunteer (Activity Tested) has experienced a situation that affects his or her ability to participate in voluntary activities for a specified period of time:

- (a) the Provider must immediately record on DEEWR's IT Systems that the Activity Tested Participant, is no longer participating as a Volunteer (Activity Tested) and the Suspension period resumes; and
- (b) the Activity Tested Participant is Suspended until the Suspension is lifted as a result of:
- (i) the Suspension reaching its end date as notified by Centrelink;
 - (ii) the Provider identifying, or being notified by Centrelink, that the Activity Tested Participant wishes to resume participating in voluntary activities; or
 - (iii) the Activity Tested Participant Exits in accordance with clause 48.

46.10 If an Activity Tested Participant, who is Suspended pursuant to clause 46.9, advises the Provider that he or she wishes to resume participating in voluntary activities:

- (a) the Provider must:
- (i) record on DEEWR's IT Systems that the Activity Tested Participant is again participating as a Volunteer (Activity Tested); and
 - (ii) resume provision of Stream Services to the Activity Tested Participant as a Volunteer (Activity Tested) in accordance with his or her Employment Pathway Plan and current Stream for the period of the agreed voluntary activity; and
- (b) the Activity Tested Participant's Payment Period and current Period of Service resume from the date on which the Provider records on DEEWR's IT Systems that the Activity Tested Participant has resumed voluntary activities.

Volunteers (Non-activity Tested)

46.11 If the Provider identifies, or is notified by Centrelink, that a Volunteer (Non-activity Tested) has experienced a situation that affects his or her ability to participate in voluntary activities for a specified period of time, the Provider must Suspend the Volunteer (Non-activity Tested), for a period of up to 13 weeks, or for multiple periods up to 13 weeks at a time, as appropriate, by recording the Suspension and the reasons for the Suspension on DEEWR's IT Systems.

46.12 Following any period of Suspension specified in clause 46.11, a Volunteer (Non-activity Tested) must be serviced by the Provider in his or her current Stream for the remaining period of his or her current Period of Service.

47. Effect of Exits

47.1 Subject to clause 48.3, when a Stream Participant is Exited in accordance with this Section 3C, the:

- (a) current Period of Service;
- (b) Payment Period (if still current); and
- (c) Period of Unemployment,

for the Fully Eligible Participant end.

48. Exits

48.1 A Stream Participant is Exited when:

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

48.2 Where an event under clause 48.1 occurs, the Provider may cease providing Services to a Stream Participant unless clause 48.3 applies.

48.3 Where an Exit occurs for a Fully Eligible Participant, but the Fully Eligible Participant:

- (a) returns to the Services less than 13 Consecutive Weeks after the date of the Exit; or
- (b) in the case of a Provisional Exit, decides to volunteer and is identified by Centrelink or the Provider as a Volunteer (Activity Tested),

the Fully Eligible Participant's Period of Service, Payment Period (if still current) and Period of Unemployment continue from the date of the event in clause 48.3(a) or (b), and the Provider must, as soon as it becomes aware of a matter in clause 48.3(a) or (b):

- (c) resume providing Stream Services to the Fully Eligible Participant; and
- (d) record the resumption of Stream Services on DEEWR's IT Systems, in accordance with any Guidelines.

48.4 Where an Exit occurs and the Fully Eligible Participant subsequently returns to the Services at 13 Consecutive Weeks or more after the date of the Exit, the Fully Eligible Participant begins a new:

- (a) Period of Service;
- (b) Payment Period; and
- (c) Period of Unemployment.

Note: Clause 48.4 does not preclude the Fully Eligible Participant from returning to the Provider.

Volunteers (Activity Tested)

48.5 If a Volunteer (Activity Tested):

- (a) ceases to participate in voluntary activities;
- (b) no longer wishes to participate in voluntary activities; and
- (c) the Provider has confirmed that the Volunteer (Activity Tested) is:
 - (i) either fully meeting his or her Activity Test Requirements or is the subject of an Exemption; and
 - (ii) the Volunteer (Activity Tested) is eligible for a Provider Exit in accordance with any Guidelines,

the Provider may perform a Provider Exit for the Volunteer (Activity Tested).

Volunteers (Non-activity Tested)

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- 48.6 If a Volunteer (Non-activity Tested) advises the Provider that they do not wish to continue to participate in voluntary activities, the Provider must perform a Provider Exit for the Volunteer (Non-Activity Tested).
- 48.7 If a Volunteer (Non-activity Tested) routinely fails to attend activities or appointments with the Provider, and has not already advised the Provider that he or she no longer wishes to participate in voluntary activities, the Provider must attempt to contact the Volunteer (Non-Activity Tested) on at least two occasions at two different times within two consecutive Business Days, and:
- (a) if the Provider is advised by the Volunteer (Non-activity Tested) that he or she does not wish to continue to participate, the Provider must immediately perform a Provider Exit for the Volunteer (Non-activity Tested); or
 - (b) if the Provider is unable to contact the Volunteer (Non-activity Tested), the Provider may immediately perform a Provider Exit for the Volunteer (Non-activity Tested).

Stream 1 (Limited) Participants

- 48.8 An Effective Exit occurs for Stream 1 (Limited) Participants after the end of 13 weeks from their Commencement, except in the case of a Stream 1 (Limited) Participant who is automatically converted on DEEWR's IT Systems from a Fully Eligible Participant to a Stream 1 (Limited) Participant, in which case the Effective Exit occurs after the end of 13 weeks from the day on which the automatic conversion took place, and, subject to clause 55.6 [Jobsearch Facilities], the Provider is no longer required to provide Services to the Stream 1 (Limited) Participants from the time of the Effective Exit.

49. Other Suspensions and Exits

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

Section 3D – Basic Stream Services

50. Appointments with Stream Participants

General

- 50.1 Unless otherwise agreed with DEEWR, the Provider must ensure that the Provider's Electronic Diary has, at all times, capacity to receive an Appointment for a Stream Participant, within the next two Business Days, for the purposes of:
- (a) conducting an Initial Interview;
 - (b) Re-engagement (including for the purpose of Reconnection); or
 - (c) conducting a Contact with the Stream Participant following a Change of Circumstance Reassessment or a Stream Services Review.

- 50.2 Where:

- (a) a Stream Participant Directly Registers with the Provider; or
- (b) the Provider or Stream Participant needs to reschedule an Appointment,

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

Conducting Appointments

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

Recording Appointment Results

- 50.4 Where a Stream Participant has attended an Appointment, the Provider must record a result for the Appointment in the Electronic Diary on the same day of the Appointment or, where this is not possible, as soon as possible thereafter, in accordance with any Guidelines.
- 50.5 Where a Stream Participant has not attended an Appointment, the Provider must attempt to contact the Stream Participant as required under clause 58.1, and then record the result of the Appointment in the Electronic Diary as soon as possible thereafter, in accordance with any Guidelines

51. Contact services

Minimum number of contacts

- 51.1 The Provider must provide each Stream Participant with at least the minimum number of Contacts specified in Table 1 below.

Table 1 - Minimum Contacts

Stream	Minimum Contacts	Timeframe
Stream 1 (Limited)	Initial Interview	On Commencement
Stream 1	Initial Interview	On Commencement
	Skills Assessment	Before the end of 17 weeks of their Period of Service
	Arrangement of Intensive Activity	Before the end of 17 weeks of their Period of Service
	Contacts	Monthly, from and including, the fourth month of their Period of Service
Streams 2 to 4	Initial Interview	On Commencement
	Contacts	Monthly
	Initial Interview for a New Stream	On Commencement in a new Stream
Work Experience Phase	First Work Experience Contact	On movement into the Work Experience Phase
	Contacts	Bimonthly

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

- 51.2 In addition to the requirements in clause 51.1, the Provider must:
- (a) provide each Stream Participant with the number of Contacts required to ensure successful completion of any activity being undertaken by the Stream Participant pursuant to his or her Employment Pathway Plan; and
 - (b) tailor the Contacts to meet the circumstances of the individual Stream Participant.
- 51.3 DEEWR may require the Provider, by Notice, to increase the frequency of Contacts beyond that specified in Table 1:
- (a) where the Provider has failed to meet the minimum requirements in Table 1; or

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- (b) for any other reason specified by DEEWR.

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

- (a) identification and recording of any relevant changes in DEEWR's IT Systems;
- (b) identification of, and referral to, any relevant Training, work experience or other Interventions;
- (c) a discussion regarding a Fully Eligible Participant's job search activities (if this is included as a requirement in his or her Employment Pathway Plan) since his or her last Contact;
- (d) assistance in identifying appropriate job vacancies;
- (e) a review of a Fully Eligible Participant's progress towards overcoming identified Vocational Barriers and Non-vocational Barriers to employment; and
- (f) a review and update of a Fully Eligible Participant's Employment Pathway Plan, as relevant; and
- (g) any other matters specified in relation to Contacts under any Guidelines.

Mode of Contact

51.5 Where the Provider is required to provide a Contact as specified in Table 1, the Contact must be face to face, except where there are Exceptional Circumstances.

52. Initial Contacts

Initial Interviews for Stream Participants

52.1 During an Initial Interview for Stream Participants, the Provider must:

- (a) confirm the Stream Participant's identity;
- (b) explain the Stream Services that the Provider will provide;
- (c) for Activity Tested Participants, explain their rights and obligations under the Social Security Law and the consequences of not meeting their obligations; and
- (d) where necessary to allow the Stream Participant to understand the Initial Interview, provide access to an interpreter in accordance with any Guidelines.

52.2 In addition to the requirements set out in clause 52.1, during an Initial Interview for Stream 1 (Limited) Participants and Fully Eligible Participants in Stream 1, the Provider:

- (a) must explain the use of Jobsearch Facilities and where those facilities are available;
- (b) must provide an initial list of appropriate job vacancies;
- (c) must provide advice about the best ways to look for and find work and discuss local employment opportunities;
- (d) must provide information about skill shortage areas and access to the Productivity Places Program;
- (e) must assist these Participants to prepare a résumé and load the completed résumé onto DEEWR's IT Systems in accordance with any Guidelines; and
- (f) may choose to complete résumé summary fields in DEEWR's IT Systems in accordance with any Guidelines.

52.3 The Provider must, for a Fully Eligible Participant in Stream 2, Stream 3 or Stream 4:

- (a) either during the Initial Interview, or at such other times as deemed appropriate by the Provider based on individual need, undertake the tasks at clause 52.2(a) to (d); and

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- (b) during the Initial Interview, prepare an Employment Pathway Plan with each Fully Eligible Participant, which includes any Interventions required at that point.

52.4 After an Initial Interview, the Provider must record completion of the Initial Interview in DEEWR's IT Systems in accordance with any Guidelines.

52.5 During the first 13 weeks of the Period of Service for Fully Eligible Participants in Streams 2 or 3, and during the first 52 weeks of the Period of Service for a Fully Eligible Participant in Stream 4, the Provider:

- (a) must also assist the Fully Eligible Participant to prepare a résumé and load the completed résumé onto DEEWR's IT Systems in accordance with any Guidelines; and
- (b) may choose to complete résumé summary fields in DEEWR's IT Systems in accordance with any Guidelines.

52.6 If a Fully Eligible Participant is automatically converted on DEEWR's IT Systems from a Fully Eligible Participant to a Stream 1 (Limited) Participant, the Provider is not required to undertake an Initial Interview for the Stream 1 (Limited) Participant.

Initial Interviews for a New Stream

52.7 During an Initial Interview for a New Stream, the Provider:

- (a) must explain to the Stream Participant the Stream Services that the Provider will provide; and
- (b) may update the Employment Pathway Plan, if appropriate.

52.8 After an Initial Interview for a New Stream, the Provider must record completion of the Initial Interview for a New Stream in DEEWR's IT Systems in accordance with any Guidelines.

First Work Experience Contact

52.9 The Provider must, during a Fully Eligible Participant's First Work Experience Contact:

- (a) provide the Fully Eligible Participant with information and material on Work Experience Activity opportunities;
- (b) review and update the Fully Eligible Participant's Employment Pathway Plan, as relevant; and
- (c) for Activity Tested Participants, explain their rights and obligations under the Social Security Law and the consequences of not meeting their obligations.

52.10 During a First Work Experience Contact for Transitioned Participants who are allocated directly into the Work Experience Phase, the Provider:

- (a) must
 - (i) confirm the Transitioned Participant's identity;
 - (ii) explain the Stream Services that the Provider will provide;
 - (iii) for Activity Tested Participants, explain their rights and obligations under the Social Security Law and the consequences of not meeting their obligations;
 - (iv) where necessary to allow the Transitioned Participant to understand the First Work Experience Contact, provide access to an interpreter in accordance with any Guidelines;
 - (v) explain the use of Jobsearch Facilities and where those facilities are available;
 - (vi) provide an initial list of appropriate job vacancies;

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- (vii) provide advice about the best ways to look for and find work and discuss local employment opportunities;
 - (viii) provide information about skill shortage areas and access to the Productivity Places Program;
 - (ix) assist the Transitioned Participants to prepare a résumé and load the completed résumé onto DEEWR's IT Systems in accordance with any Guidelines; and
 - (x) prepare an Employment Pathway Plan with each Transitioned Participant, which includes any Interventions required at that point; and
- (b) may choose to complete résumé summary fields in DEEWR's IT Systems in accordance with any Guidelines.

52.11 After a First Work Experience Contact, the Provider must record the completion of the First Work Experience Contact in DEEWR's IT Systems in accordance with any Guidelines.

53. Skills Assessment

53.1 The Provider must conduct a Skills Assessment for a Fully Eligible Participant in Stream 1 before the end of 17 weeks of his or her Period of Service.

53.2 The Provider may conduct a Skills Assessment for a Fully Eligible Participant in Stream 2, Stream 3 or Stream 4, at any time during his or her Period of Service, as the Provider thinks necessary.

53.3 The Skills Assessment should identify:

- (a) the Fully Eligible Participant's pathway towards employment, including appropriate Interventions, Intensive Activities, Training, Education and Work Experience Activities; and
- (b) Vocational Barriers including gaps in his or her skills, where relevant.

53.4 A Skills Assessment may include:

- (a) the Fully Eligible Participant's job readiness, current employment skills and experience, including an assessment of his or her existing skill-set and aptitude for various types of work;
- (b) the future skill needs of the Fully Eligible Participant;
- (c) the Fully Eligible Participant's current educational achievements, skills and experience in direct relation with local labour market, including areas of skill shortage;
- (d) the Fully Eligible Participant's job search experience, résumé and any written applications; and
- (e) Training or other Interventions needed to help the Fully Eligible Participant obtain sustainable employment.

53.5 The Provider must:

- (a) amend each Fully Eligible Participant's Employment Pathway Plan to specify the outcomes of his or her Skills Assessment; and
- (b) record the Skills Assessment in DEEWR's IT Systems.

54. Intensive Activities

54.1 The Provider must arrange a fortnight of Intensive Activities for Fully Eligible Participants in Stream 1, before the end of 17 weeks of their Period of Service, in accordance with Table 2 below and this clause 54.

Table 2 - Hours of participation in Intensive Activities required for different groups of Fully Eligible Participants in Stream 1

Fully Eligible Participant Group	Specified Hours per week in Intensive Activities	Change to hours for Fully Eligible Participants in other activities specified in their EPP or in paid work
Activity Tested Participants with full time Activity Test Requirements	30 hours per week	Specified required hours per week for Intensive Activities will be reduced on a one for one basis for each hour spent participating in other activities specified in his or her Employment Pathway Plan or paid work
Principal Carers with part time Activity Test Requirements	15 hours per week	
PCW Participants with 23 to 29 hours capacity per week	15 hours per week	
PCW Participants with 15 to 22 hours capacity per week	15 hours per week	
Volunteers (Non-activity Tested) Volunteers (Activity tested) who are PCW Participants with less than 15 hours capacity per week	No specified weekly requirement	The Provider must tailor participation in Intensive Activities as agreed with the Fully Eligible Participant to fit in with other activities specified in his or her EPP or paid work.

Note: Fully Eligible Participants with part time participation requirements may choose to participate in an Intensive Activity for additional hours in the fortnight. However, the number of hours above their specified hours per week in Table 2 are not compulsory.

- 54.2 For the purposes of clause 54.1, the Provider must, in accordance with any Guidelines and through conducting a Skills Assessment, determine what Intensive Activities will be likely to result in ongoing sustainable employment for the Fully Eligible Participant.
- 54.3 If a Fully Eligible Participant in Stream 1 experiences a temporary change in circumstances that affects his or her ability to participate in Stream Services, but which does not result in an Exemption, the Provider may extend the fortnight period of participation in Intensive Activities in accordance with any Guidelines.
- 54.4 As long as the activity or combination of activities meet the required hours of participation for a Fully Eligible Participant in Stream 1, Intensive Activities may include any one or more of the following:
- (a) skills training;
 - (b) activities intended to address Vocational Barriers and Non-vocational Barriers;
 - (c) work experience, Work for the Dole activities or Green Corps activities;
 - (d) work in a social or community enterprise;
 - (e) participation in the Commonwealth’s Language, Literacy and Numeracy Program or Adult Migrant English Program (where the Fully Eligible Participant has registered, and is eligible, for AMEP); or
 - (f) training in job search techniques.
- 54.5 The Provider must negotiate and agree with a Fully Eligible Participant in Stream 1 on an appropriate Intensive Activity for the Fully Eligible Participant to undertake, and:

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- (a) amend the Fully Eligible Participant's Employment Pathway Plan to include the relevant Intensive Activity;
 - (b) arrange for the relevant Intensive Activity to occur;
 - (c) record the relevant Intensive Activity in DEEWR's IT Systems; and
 - (d) ensure that the Intensive Activity is completed by the Fully Eligible Participant.

54.6 The Provider must:

- (a) allow a Principal Carer to defer his or her Intensive Activity until after a school holiday period, if the Principal Carer so chooses; and
- (b) otherwise arrange Intensive Activities to accommodate the caring responsibilities of a Principal Carer.

55. Jobsearch Facilities

55.1 The Provider must:

- (a) make Jobsearch Facilities available to Participants, for the purpose of enabling Participants to:
 - (i) search for work;
 - (ii) investigate work related matters, other providers of employment related services, and training options;
 - (iii) create, maintain and update online résumés;
- (b) advise Participants of the availability and location of Jobsearch Facilities including Jobsearch Facilities located at Centrelink offices;
- (c) provide Participants with guidance, training and assistance in the use of Jobsearch Facilities;
- (d) provide Participants with reasonable access to Jobsearch Facilities at its Sites during business hours; and
- (e) advise Participants about other computers in the local area which are available for no charge (e.g. local library).

55.2 On the Deed Commencement Date, the Provider must have installed the minimum number of Jobsearch Facilities as specified in any Guidelines, unless DEEWR has agreed otherwise.

55.3 At all times throughout the Term of this Deed, the Provider must:

- (a) as may reasonably be required by DEEWR:
 - (i) comply with any directions from DEEWR concerning the location, maintenance and operation of Jobsearch Facilities; and
 - (ii) install additional Jobsearch Facilities;
- (b) ensure Jobsearch Facilities are kept secure, protected, clean, well maintained, and fully operational (unless prevented by circumstances beyond the Provider's control);
- (c) put in place reasonable measures to prevent:
 - (i) vandalism to Jobsearch Facilities; and
 - (ii) Jobsearch Facilities from being defaced with graffiti, posters, advertising and promotional material; and
- (d) ensure that, consistent with any Guidelines or instructions from DEEWR, Participants are prevented from accessing web sites that contain inappropriate material, including but not limited to, gambling web sites, web sites that contain pornography, and sites that are not

relevant for the purposes of paragraph 55.1(a).

55.4 Subject to the Provider's compliance with the terms and conditions of this Deed, DEEWR will, after the Deed Commencement Date, and then after 1 July of each successive year, make payment of \$3000 for each Jobsearch Facility that the Provider is required to install, and has installed, in accordance with any Guidelines.

55.5 The minimum number of Jobsearch Facilities that the Provider must install at its Sites, is determined by the number of Stream Participants Registered with the Provider at each Site on 1 July in any year, in accordance with any Guidelines.

55.6 The Provider must continue to provide Stream 1 (Limited) Participants with reasonable access to Jobsearch Facilities after they have had an Effective Exit in accordance with clause 48.8 and whether or not they are currently Registered.

56. Engagement with other services in the community

56.1 In providing Stream Services, the Provider must work cooperatively with other programs and services provided by DEEWR, relevant local government, private and community services and stakeholders including:

- (a) Innovation Fund Project providers;
- (b) Employer Brokers;
- (c) training organisations;
- (d) education institutions;
- (e) Employers;
- (f) community welfare organisations and local community services, including SAAP and other homeless services, AMEP, CDEP, IEP, health and mental health services; and
- (g) other providers of government services, including Commonwealth, state, territory and local government providers.

Section 3E – Employment Pathway Plans

Information about Employment Pathway Plans

The Employment Pathway Plan (EPP) underpins the provision of services to a Fully Eligible Participant. The EPP, which will be recorded on DEEWR's IT Systems, is the key record which will set out an individualised pathway to employment for each Fully Eligible Participant.

Each EPP will be tailored to the needs of the individual Fully Eligible Participant, will outline the agreed activities to be undertaken to gain sustainable employment, and will include elements such as:

- (a) the frequency of contact between the Provider and Fully Eligible Participant;
- (b) the timing and details of vocational and non-vocational activities that Providers and Fully Eligible Participants will undertake with the objective of the Fully Eligible Participant gaining employment, such as education, training, intensive activities, counselling and work experience; and
- (c) details of the Fully Eligible Participant's obligations, including participation in Work Experience Activities and job search requirements.

For Activity Tested Participants, in addition to mandatory requirements, the EPP can also include voluntary activities.

For all other Fully Eligible Participants, the EPP will contain only voluntary activities.

Providers will need to update the EPP regularly throughout the Fully Eligible Participant's Period of Service. Both the Provider and Fully Eligible Participant should retain a copy of the signed EPP.

57. General requirements for an Employment Pathway Plan

- 57.1 The Provider must ensure that, at all times, each Fully Eligible Participant has a current Employment Pathway Plan.
- 57.2 If, on the first Contact, a Fully Eligible Participant does not have an Employment Pathway Plan, the Provider must arrange for a Delegate to enter into an Employment Pathway Plan with the Fully Eligible Participant.
- 57.3 The Provider must ensure that a Delegate reviews, and, if appropriate, amends the terms of each existing Employment Pathway Plan :
- (a) if a Fully Eligible Participant is in Stream 1, after completion of the first 13 weeks of his or her Period of Service, but before the end of the 17 weeks of his or her Period of Service;
 - (b) if a Fully Eligible Participant is in Streams 2, 3 or 4, at the Initial Interview, unless clause 57.2 applies;
 - (c) as required by clause 46 [Suspensions];
 - (d) when a Fully Eligible Participant moves into the Work Experience Phase;
 - (e) when a Skills Assessment or a Comprehensive Compliance Assessment is conducted;
 - (f) when a Vulnerable Youth is moved into Streams 1, 2 or 3 in accordance with clause 40.5(a);
 - (g) when the relevant Activity Test Requirements activities in an Activity Tested Participant's Employment Pathway Plan are completed or expire;
 - (h) if a Fully Eligible Participant's circumstances change such that the Employment Pathway Plan becomes out of date; and
 - (i) as otherwise required by DEEWR.
- 57.4 The Provider should ensure that a Delegate further reviews, and, if appropriate, amends each existing Employment Pathway Plan:
- (a) when a Contact occurs; and
 - (b) following the failure of an Activity Tested Participant to fully comply with his or her Activity Test Requirements.

Contents of an Employment Pathway Plan

- 57.5 The Employment Pathway Plan for an Activity Tested Participant must:
- (a) contain terms with which the Activity Tested Participant must comply in order to satisfy his or her Activity Test Requirements; and
 - (b) be amended to include details of additional voluntary activities, if he or she is:
 - (i) fully meeting his or her Activity Test Requirements; and
 - (ii) volunteers to participate in additional activities.
- 57.6 If a Fully Eligible Participant is not an Activity Tested Participant, the Employment Pathway Plan will contain terms that are voluntary.
- 57.7 Each Employment Pathway Plan must:

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- (a) be in a form approved by DEEWR;
 - (b) contain terms that are specifically tailored to address the Fully Eligible Participant's level of disadvantage, individual needs, barriers to employment and Partial Capacity to Work, having regard to the particular Stream Services the Fully Eligible Participant is receiving;
 - (c) specify:
 - (i) when each activity specified in the Employment Pathway Plan will start and finish; and
 - (ii) the assistance the Fully Eligible Participant will receive during the Fully Eligible Participant's current Period of Service;
 - (d) draw from a mix of vocational and non-vocational activities that the Fully Eligible Participant is to undertake during the Fully Eligible Participant's current Period of Service, with a particular focus on developing the skills the Fully Eligible Participant needs to improve his or her chances of obtaining sustainable employment or self-employment; and
 - (e) specify the frequency of contact that the Fully Eligible Participant must have with the Provider during the Fully Eligible Participant's current Period of Service.

57.8 The Provider must provide the Fully Eligible Participant with the assistance, and arrange and monitor the activities, specified in the Employment Pathway Plan.

57.9 The relevant Delegate must perform the following functions, and must comply with Guidelines, if any, in relation to:

- (a) notifying the Fully Eligible Participant of the:
 - (i) requirement to enter into an Employment Pathway Plan; and
 - (ii) place and time at which an Employment Pathway Plan is to be completed;
- (b) providing the Fully Eligible Participant with information about his or her rights and obligations, including Work Experience Activities and job search requirements;
- (c) entering into an Employment Pathway Plan;
- (d) the terms to be included in each Employment Pathway Plan;
- (e) printing and signing an Employment Pathway Plan, which is then provided to the Fully Eligible Participant;
- (f) taking steps to ensure the Fully Eligible Participant complies with the terms of his or her Employment Pathway Plan;
- (g) reviewing and amending an existing Employment Pathway Plan;
- (h) cancelling or suspending an Employment Pathway Plan;
- (i) creating and maintaining documentation in relation to an Employment Pathway Plan;
- (j) entering information into DEEWR's IT Systems; and
- (k) undertaking any other matter that is required concerning the process of entering into, and implementing, an Employment Pathway Plan.

57.10 In relation to Activity Tested Participants, the Provider must ensure that the relevant Delegates:

- (a) are aware of, fully understand, and receive training on the powers and functions that have been delegated to them under the Social Security Law in relation to the preparation and approval of Employment Pathway Plans;
- (b) comply with any Guidelines on:

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- (i) submitting Participation Reports to Centrelink or alternatively, taking other action as set out in any Guidelines;
 - (ii) providing additional information to Centrelink as required;
 - (iii) organising Re-engagements (including Reconnections); and
- (c) comply with the Social Security Law.

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

Section 3F – Participation Reporting

58. Failure and Reporting

58.1 If an Activity Tested Participant:

- (a) refuses to accept a suitable job;
- (b) voluntarily leaves a suitable job;
- (c) is dismissed from a suitable job due to misconduct; or
- (d) fails to:
 - (i) attend at the place and time arranged for the negotiation of his or her Employment Pathway Plan;
 - (ii) respond to correspondence about the negotiation of his or her Employment Pathway Plan;
 - (iii) enter into an Employment Pathway Plan;
 - (iv) agree to the reasonable terms, or any reasonable variation, of his or her Employment Pathway Plan as proposed in negotiation between a Delegate and the Activity Tested Participant or as directed by Centrelink;
 - (v) comply with the terms of his or her Employment Pathway Plan;
 - (vi) respond to a notification of an appointment by, or other requirement of, the Provider, including in relation to his or her Employment Pathway Plan;
 - (vii) attend an Appointment, other than for a Reconnection;
 - (viii) otherwise attend appointments, including in relation to his or her Employment Pathway Plan, without making alternative arrangements with the Provider;
 - (ix) attend a job interview, or behave appropriately during a job interview (with the clear intention of not being offered the job); or
 - (x) otherwise conduct himself or herself appropriately while completing an activity or program specified in his or her Employment Pathway Plan,

the Provider must, if the failure has not yet been discussed with the Activity Tested Participant, attempt to contact the Activity Tested Participant at least twice within two Business Days of the Provider becoming aware of the failure, to ascertain whether he or she had a Reasonable Excuse for the failure.

58.2 If the Provider:

- (a) is not able to contact the Activity Tested Participant, after at least one attempt on each of two consecutive Business Days; or
- (b) after contact has been made, finds that the Activity Tested Participant does not have a Reasonable Excuse for an event referred to in clause 58.1(a) to (d),

and the relevant event is:

- (c) an event under clauses 58.1(a), (b), (c); or
- (d) an event under clause 58.1(d), and the Provider reasonably believes both that:
 - (i) compliance action is the best means of securing the Activity Tested Participant's compliance; and
 - (ii) compliance action would not be counter productive to the Activity Tested Participant obtaining employment,

the Provider must, within two Business Days of the event:

- (e) document any information relevant to the event in a Participation Report, including any relevant participation history;
- (f) submit the Participation Report to Centrelink; and
- (g) supply Centrelink with:
 - (i) documentary evidence of the relevant event;
 - (ii) relevant information on the Activity Tested Participant's individual circumstances;
 - (iii) any relevant reason(s) given by the Activity Tested Participant for the event(s); and
 - (iv) details of the Provider's contact(s) or attempt(s) to contact the Activity Tested Participant.

58.3 Where an Activity Tested Participant has, in the Provider's opinion:

- (a) persistently and deliberately failed to comply with any of the requirements listed in clause 58.1; or
- (b) developed other barriers that are preventing compliance with any of the requirements listed in clause 58.1,

the Provider may request on DEEWR's IT Systems that a Comprehensive Compliance Assessment be undertaken by Centrelink of the Activity Tested Participant's participation.

59. Compliance Activities

59.1 The Provider must, where directed by Centrelink to do so, and in accordance with any Guidelines:

- (a) arrange for an Activity Tested Participant to participate in Compliance Activities, as directed by Centrelink;
- (b) amend the Activity Tested Participant's Employment Pathway Plan accordingly;
- (c) monitor the Activity Tested Participant's participation in the Compliance Activities; and
- (d) notify Centrelink (in accordance with any Guidelines) if the Activity Tested Participant does not attend the Compliance Activities.

Section 3G – Employment Pathway Fund

Information about the Employment Pathway Fund

The level of assistance provided to a Fully Eligible Participant through the Employment Pathway Fund, is expected to reflect the Fully Eligible Participant's level of disadvantage and be tailored to his or her individual circumstances. For example, it is expected that a Fully Eligible Participant receiving assistance in Stream 4 would usually receive greater assistance under the Employment Pathway Fund than a Fully Eligible Participant in Stream 2.

60. Employment Pathway Fund – General

Use of the Employment Pathway Fund

60.1 The Provider must, having regard to:

- (a) the level of disadvantage and individual needs of each:
 - (i) Fully Eligible Participant; or
 - (ii) Drought Force Only Participant; and
- (b) the principles set out at clause 60.4,
use the Employment Pathway Fund:
- (c) in the case of a Fully Eligible Participant:
 - (i) to address his or her Vocational Barriers and Non-vocational Barriers to Employment;
or
 - (ii) to purchase or provide NEIS Services in accordance with clause 72 [New Enterprise Incentive Scheme]; or
- (d) in the case of a Drought Force Only Participant, only in the manner prescribed in clause 85.5; or
- (e) as otherwise specified throughout this Deed.

60.2 The Provider may:

- (a) be Reimbursed for; and/or
- (b) in the case of Group-based Work Experience Activities, receive an Advance EPF Payment towards,

the costs incurred by the Provider in relation to clause 60.1 (c), (d) and (e), provided each claim for Reimbursement or Advance EPF Payment meets the requirements of this clause 60.

60.3 The Provider may only seek Reimbursements or Advance EPF Payments in accordance with clause 60.2 where:

- (a) in the case of a Fully Eligible Participant, such use of the Employment Pathway Fund is intended :
 - (i) to contribute to the Fully Eligible Participant obtaining Employment; or
 - (ii) to provide or purchase the items specified in clauses 72.5, 72.6 and 72.8;
- (b) in the case of a Drought Force Only Participant, the requirements of clause 85.5 have been met;
- (c) the Provider has complied with all of the requirements of this clause 60 and all such purchases are in accordance with any Guidelines;
- (d) the sum of payments made in accordance with clause 60.2 in respect of each Site does not exceed the total amount credited to the Employment Pathway Fund at that Site at any time; and
- (e) the Provider does not enter into commitments in anticipation of future Employment Pathway Fund credits, with the effect of preventing or hindering the delivery of assistance under this clause 60 to existing, and future, Fully Eligible Participants and Drought Force Only Participants.

60.4 The Provider must ensure that all purchases made using the Employment Pathway Fund:

- (a) are commensurate with the needs of the Fully Eligible Participant or Drought Force Only Participant (principle 1);
- (b) comply with any occupational health and safety laws, that may apply (principle 2);
- (c) provide value for money (principle 3); and
- (d) are capable of withstanding public scrutiny, and will not bring the Services into disrepute

(principle 4).

- 60.5 Subject to any contrary stipulation in this Deed, including any Guidelines, the Provider will not be reimbursed from the Employment Pathway Fund for the purchase of, or payment for:
- (a) services, products or assistance provided to Stream 1 (Limited) Participants;
 - (b) any of the following items:
 - (i) costs and overheads:
 - (A) associated with the provision of the Services under this Deed; or
 - (B) of administering the Employment Pathway Fund;
 - (ii) gifts, cash, and incentives to Participants or Employers; or
 - (iii) wage subsidies:
 - (A) that exceed 100% of an employee's wage; or
 - (B) for Employment in Own Organisation, another employment services provider, or a Related Entity; or
 - (c) any other items specified in any Guidelines as being:
 - (i) contrary to the requirements of this Deed, in particular clauses 60.1, 60.3 or 60.4; or
 - (ii) otherwise prohibited for the purposes of this clause 60.5.
- 60.6 Notwithstanding clause 60.5(b)(i)(A), the Provider may be reimbursed from the Employment Pathway Fund for:
- (a) additional Contacts provided to a Fully Eligible Participant if the Provider has already provided:
 - (i) six Contacts in any 13 week period during the Period of Service in a Stream Service (not including the first 13 weeks in Stream 1); or
 - (ii) two Contacts in any 13 week period of the Work Experience Phase; and
 - (b) the costs of delivering post placement support, mentoring, and reverse marketing, in the amounts specified in any Guidelines.
- 60.7 Notwithstanding clause 60.5(b)(i)(A), the Provider may be reimbursed from the Employment Pathway Fund for the Provider's costs in delivering Services on an Outreach basis, but only where DEEWR has provided its prior approval.

How amounts are credited to the Employment Pathway Fund

- 60.8 Subject to clauses 60.10 to 60.13, the Employment Pathway Fund will be credited in accordance with Table 4 of Annexure C.
- 60.9 The Provider will receive a credit into the Employment Pathway Fund only once during the life of this Deed, in respect of any one Drought Force Only Participant.
- 60.10 For each Transitioned Participant, the Employment Pathway Fund will be credited with a lump sum amount as specified in Table 1 at Annexure A, and then will be credited with any other amounts that may fall due at a future date in accordance with Table 4 of Annexure C.
- 60.11 Amounts are credited to the Employment Pathway Fund, according to whether the relevant Fully Eligible Participant resides within a Remote ESA, or within an ESA that is not a Remote ESA.

Note: See clause 82.2 for more information on residing in a Remote ESA.

60.12 Where a Fully Eligible Participant or Drought Force Only Participant transfers in accordance with clause 43 [Relocation of Stream Participant or Drought Force Only Participant]:

- (a) from the Provider to another employment services provider, any amounts credited to the Employment Pathway Fund prior to that transfer, remain with the Provider, but may be transferred to the other employment services provider, by agreement with the Provider; or
- (b) to the Provider from another employment services provider, in addition to any amount transferred by agreement with the former employment services provider, the Provider will be credited with any amounts that may fall due at a future date in accordance with Table 4 of Annexure C, including a once only credit where, following the transfer, a Drought Force Only Participant Commences a new Drought Force activity with the Provider.

60.13 Where a Fully Eligible Participant or Drought Force Only Participant transfers from, or to, the Provider:

- (a) in accordance with clause 44 [Relationship failure and transfer by agreement]; or
- (b) because there is a Site closure,

the amount credited to the Employment Pathway Fund of both the Provider and the other employment services provider may be adjusted by DEEWR, on a pro rata basis, which shall be calculated with reference to the amount of time that the Fully Eligible Participant or Drought Force Only Participant had, prior to the transfer, spent in the relevant Stream Service or Drought Force Only Activity, and if the transfer is to the Provider, the Provider will then be credited with any other amounts that may fall due at a later date in accordance with Table 4 of Annexure C.

Other matters relating to the Employment Pathway Fund

60.14 DEEWR may, at any time, determine that amounts within the Employment Pathway Fund are to be quarantined for particular purposes, and where such amounts have been so quarantined, the Provider must not seek Reimbursement or an Advance EPF Payment for a purpose other than that for which the amounts have been quarantined.

60.15 Subject to clause 60.16, the Provider may:

- (a) transfer amounts credited to the Employment Pathway Fund at a Site to another Site in the same ESA; and
- (b) if approved by DEEWR, transfer amounts credited to the Employment Pathway Fund at a Site in an ESA to a Site in another ESA.

60.16 DEEWR may, at any time, do any of the following:

- (a) increase or reduce the amounts credited to the Employment Pathway Fund;
- (b) impose limits upon the Provider's access to the Employment Pathway Fund; or
- (c) place limits on the Provider's ability to transfer amounts credited to the Employment Pathway Fund between its Sites.

60.17 If in DEEWR's view, the Provider has claimed Reimbursement or an Advance EPF Payment, or proposes to claim Reimbursement or an Advance EPF Payment, from the Employment Pathway Fund in a manner which is inconsistent with this clause 60, DEEWR may, in its absolute discretion, take any of the actions described in clause 60.16.

60.18 The Provider must do all things necessary to ensure all payments that it makes to third parties (including Subcontractors) in accordance with this clause, are correctly made and properly authorised and that the Provider maintains proper and diligent control over the incurring of all liabilities.

60.19 As the Employment Pathway Fund is a nominal account, the Provider must not represent amounts:

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- (a) in the Employment Pathway Fund; or
 - (b) Advance EPF Payments not acquitted in accordance with clause 60.23,
- in its accounts.

Advance EPF Payments

60.20 If the Provider has decided to run a Group-based Work Experience Activity, the Provider may:

- (a) seek Reimbursement for the costs of running the Group-based Work Experience Activity in accordance with clauses 60.3 and 60.5; and/or
- (b) subject to any Guidelines, for the purpose of paying Group Activity Overhead Costs only, seek a once only Advance EPF Payment for any one Group-based Work Experience Activity in accordance with clause 60.21:
 - (i) of up to \$20,000, without seeking DEEWR's prior approval; or
 - (ii) in excess of \$20,000, only after DEEWR has granted approval.

60.21 If the Provider decides to seek an Advance EPF Payment, the Provider must, in the following order:

- (a) create a Work Experience Budget on DEEWR's IT Systems for that Group-based Work Experience Activity, in accordance with any Guidelines;
- (b) enter the total cost on DEEWR's IT Systems in accordance with any Guidelines;
- (c) at the completion of the Group-based Work Experience Activity, acquit the total of all Advance EPF Payments for the Group-based Work Experience Activity, in accordance with clause 60.23; and
- (d) return to DEEWR any part of the Advance EPF Payments not spent in accordance with the Work Experience Budget.

60.22 The Provider must only spend the Advance EPF Payments for Group Activity Overhead Costs, in accordance with the Work Experience Budget.

60.23 The Provider must submit an Acquittal Report in the form specified at clause 60.24, within 40 Business Days of completion, or cessation, of the relevant Group-Based Work Experience Activity.

60.24 For the purposes of clause 60.23, the Acquittal Report must include (but is not limited to), a statement from a properly authorised representative of the Provider showing the actual expenditure of Advance EPF Payments against the Work Experience Budget, and clearly identifying any unexpended Advance EPF Payments.

60.25 If, at any time during the Term of this Deed, DEEWR determines, at its absolute discretion, that an amount of Advance EPF Payment:

- (a) has not been spent or legally committed for expenditure in accordance with this Deed;
 - (b) has not been acquitted in accordance with this Deed; or
 - (c) is unexpended after the completion of a Group-based Work Experience Activity,
- the relevant amount of the Advance EPF Payment becomes a debt owed to DEEWR in accordance with clause 24 [Debts and offsetting].

Assets purchased through the Employment Pathway Fund

60.26 Except for Assets owned by a third party, the Provider owns any Asset acquired using the Employment Pathway Fund, subject to any contrary written direction by DEEWR.

60.27 The Provider must, after acquiring an Asset:

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

60.28 Throughout the Term of this Deed, the Provider must:

- (a) not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 60, without DEEWR's prior written approval;
- (b) hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- (c) maintain all Assets in good working order;
- (d) maintain all appropriate insurances for all Assets to their full replacement cost;
- (e) if required by law, maintain registration and licensing of all Assets;
- (f) be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets;
- (g) maintain, during the Term of this Deed, an assets register which records for each Asset:
 - (i) the date of its creation or acquisition;
 - (ii) its purchase price, as relevant;
 - (iii) its description;
 - (iv) its location; and
- (h) as and when requested by DEEWR, provide copies of its assets register to DEEWR.

60.29 The Provider must develop an assets disposal plan for the continued use or Disposal of each Asset listed in the assets register required under clause 60.28(g) consistent with any Guidelines.

60.30 At the Completion Date, the Provider must Dispose of each Asset in accordance with the assets disposal plan required under clause 60.29 with the effect that neither the Provider, nor a Related Entity, obtains any material or commercial benefit from the Disposal or subsequent use of that Asset.

60.31 Subject to any contrary written direction from DEEWR, if any Assets are lost, damaged or destroyed, the Provider must promptly reinstate the Asset at its cost, including from the proceeds of the relevant insurance, and this clause 60 continues to apply to the reinstated Asset.

60.32 DEEWR may at any time appoint an auditor (to be paid for by DEEWR) to conduct an audit of any of the following:

- (a) the Provider's use of Advance EPF Payments;
- (b) one or more Group-based Work Experience Activities; or
- (c) the Provider's assets register [clause 60.28(g)] and assets disposal plan [clause 60.29],

and the Provider must assist the auditor to conduct the audit, including by providing access in accordance with clause 98 [Access to premises and records].

61. Employment Pathway Fund Reimbursement

61.1 DEEWR will pay the Provider from the Employment Pathway Fund an amount equal to:

- (a) costs properly incurred in accordance with clause 60.2, less any Input Tax Credits that the Provider is entitled to in respect of the payment of those costs; and

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- (b) GST payable by the Provider on Taxable Supplies made by the Provider under clause 60 [Employment Pathway Fund – General],

provided that each claim for payment:

- (c) complies with the preconditions set out in clause 19.4; and
- (d) complies with any additional procedural, administrative or systems requirements concerning the processing, timing and method of making claims for payment, that DEEWR may reasonably require; and
- (e) is rendered to DEEWR within 60 days, or other such time specified by DEEWR, of the relevant purchase having been made by the Provider.

61.2 For the purpose of clause 19.4(a), where a Provider claims payment from the Employment Pathway Fund of an amount of \$300 or less for any one item, a Tax Invoice from the supplier of the item, shall be sufficient Documentary Evidence of the purchase of that item.

Section 3H – Work Experience Phase and Work Experience Activities

62. Work Experience Phase

62.1 The Provider must ensure that Fully Eligible Participants in the Work Experience Phase are placed into Work Experience Activities which are tailored to suit their individual requirements and capacity.

62.2 If a Fully Eligible Participant with a Work Experience Activity Term does not choose and begin undertaking a Work Experience Activity within six weeks of his or her Work Experience Commencement, the Provider must ensure that within eight weeks from the Fully Eligible Participant's Work Experience Commencement, the Fully Eligible Participant starts:

- (a) a Work for the Dole activity, a Full-Time Work for the Dole activity or a Green Corps activity, if the Fully Eligible Participant is eligible to do so; or
- (b) another Work Experience Activity, if the Fully Eligible Participant is not eligible to undertake a Work for the Dole activity, a Full-Time Work for the Dole activity or a Green Corps activity.

63. Work Experience Activities

63.1 This clause and clauses 64 to 71, apply to all relevant Work Experience Activities, whether undertaken in the Work Experience Phase of a Stream or otherwise.

63.2 The Provider may:

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

Work Experience Activities only for Fully Eligible Participants.

63.3 Subject to any Guidelines, Work Experience Activities may include but are not limited to the following types of activities:

- (a) Group-based Work Experience Activities and individual activities, including Work for the Dole activities, Full-Time Work for the Dole activities, Green Corps activities, Drought Force activities, Voluntary Work activities and Unpaid Work Experience Placement activities;
- (b) self-employment;
- (c) education/training;
- (d) employment or training programs administered by the Commonwealth, including DEEWR, or provided by a state or territory government (including by state or territory government

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- providers), as advised by DEEWR from time to time;
- (e) part-time or casual paid employment;
 - (f) programs/services which address Non-vocational Barriers; and
 - (g) other activities as notified by DEEWR from time to time.
- 63.4 The Provider must ensure that all Work Experience Activities comply with the requirements set out in any Guidelines.
- 63.5 All Work Experience Activities must be focused on at least one of the following as their ultimate outcome:
- (a) skills in demand in the local labour market, leading to sustainable employment; or
 - (b) addressing Non-vocational Barriers; or
 - (c) genuine work-like experiences and/or training.
- 63.6 All Work Experience Activities must provide at least one, and if possible more than one, of the following:
- (a) experience in an existing workplace;
 - (b) an opportunity to be part of a team and/or be mentored;
 - (c) Employment;
 - (d) natural environment or cultural heritage benefit;
 - (e) community benefit; and
 - (f) a benefit to the Fully Eligible Participant, such as addressing Non-vocational Barriers.
- 63.7 The Provider must ensure that it provides a diverse range of Work Experience Activities so that Fully Eligible Participants, including those with special needs, such as parents and people with disability, are catered for.
- 63.8 The Provider must generate sufficient Work Experience Activities, including Work for the Dole activities and Green Corps activities, to ensure that Fully Eligible Participants are able to meet their Work Experience Activity Term.
- 63.9 The Provider must ensure a geographic distribution of Work Experience Activities across an ESA that reflects the location and distribution of Fully Eligible Participants across the ESA. If DEEWR considers that there is not an appropriate geographic distribution of Work Experience Activities, DEEWR may direct that Work Experience Activities are varied, or that new Work Experience Activities are approved in appropriate locations.
- 63.10 DEEWR may, at any time and at its absolute discretion, give a written direction to the Provider in relation to a Work Experience Activity, a proposed Work Experience Activity or a type of Work Experience Activity, including a direction that:
- (a) an activity may not be undertaken, or continue, as a Work Experience Activity;
 - (b) a Work Experience Activity be varied;
 - (c) a Work Experience Activity be managed directly by the Provider, rather than a Subcontractor, including a Work Experience Activity Host Organisation;
 - (d) the Provider must provide, broker or purchase a proposed Work Experience Activity; or
 - (e) the Provider must not provide, broker or purchase a Work Experience Activity or type of Work Experience Activity.
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- 63.11 If DEEWR gives a direction to the Provider in relation to a Work Experience Activity, a proposed Work Experience Activity or a type of Work Experience Activity, the Provider must:
- (a) immediately take any action required by the direction; and
 - (b) continue to perform the Services in accordance with the direction.
- 63.12 The Provider must only place Fully Eligible Participants in Work Experience Activities as allowed by law. If the law does not allow a Fully Eligible Participant to be placed in a particular Work Experience Activity, the Provider must ensure that alternative Work Experience Activities are made available to that Fully Eligible Participant.
- 63.13 Subject to any Guidelines, Fully Eligible Participants may undertake Work Experience Activities concurrently or sequentially.
- 63.14 The Provider must complete all forms and screens in relation to Work Experience Activities on DEEWR's IT Systems, or as required by Centrelink or DEEWR, including in relation to the start and end dates of activities, within the timeframes specified in any Guidelines.
- 64. Work for the Dole, Full-Time Work for the Dole, Green Corps, Drought Force, Voluntary Work and Unpaid Work Experience Placement activities**
- 64.1 The Provider must consider each proposal for a Work for the Dole activity, a Full-Time Work for the Dole activity, a Green Corps activity, a Drought Force activity, a Voluntary Work activity and an Unpaid Work Experience Placement activity from a potential Work Experience Host Organisation, and provide justification for the non-acceptance of a proposal to DEEWR upon request.
- 64.2 Notwithstanding clause 106.5 of this Deed, any Subcontractor providing Services directly in relation to a Work for the Dole activity, a Full-Time Work for the Dole activity, a Green Corps activity, a Drought Force activity, a Voluntary Work activity or an Unpaid Work Experience Placement activity which otherwise meets the requirements of this Deed and any Guidelines is deemed to be an approved Subcontractor for the purposes of clause 106.3(a) in relation to those Services.
- 64.3 Notwithstanding clause 106.5 of this Deed, any Work Experience Host Organisation which would require approval in accordance with clause 106.3(a) but which otherwise meets the requirements of this Deed and any Guidelines, is deemed to be an approved Subcontractor for the purposes of clause 106.3(a) in relation to its role as a Work Experience Host Organisation.
- 64.4 The Provider may accept In-kind Contributions in relation to any Work for the Dole activity, Full-Time Work for the Dole activity, Green Corps activity, Drought Force activity, Voluntary Work activity or Unpaid Work Experience Placement activity, in accordance with any Guidelines.
- 64.5 Subject to clause 64.4, the Provider must not demand or accept any payment from a Work Experience Host Organisation in relation to a Work for the Dole activity, a Full-Time Work for the Dole activity, a Green Corps activity, a Drought Force activity, a Voluntary Work activity or an Unpaid Work Experience Placement activity.
- 64.6 Unless otherwise specified in any Guidelines, the Provider must not use Work for the Dole activities, Full-Time Work for the Dole activities, Green Corps activities, Drought Force activities, Voluntary Work activities or Unpaid Work Experience Placement activities to acquire any benefit or gain, or to fund any operations, activities or infrastructure of the Provider which would otherwise have been acquired or in place had the activity not commenced.
- 64.7 At the commencement of a Work for the Dole activity, a Full-Time Work for the Dole activity, a Green Corps activity, a Drought Force activity, a Voluntary Work activity or an Unpaid Work Experience Placement activity, and throughout the activity, the Provider must satisfy itself that there is a safe system of work in place, including that the Work Experience Host Organisation is complying with:
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- (a) relevant occupational health and safety requirements, as if the Fully Eligible Participant is an employee in the relevant industry in which the Work for the Dole activity, Full-Time Work for the Dole activity, Green Corps activity, Drought Force activity, Voluntary Work activity or Unpaid Work Experience Placement activity occurs; and
 - (b) relevant statutory workers' compensation requirements.

64.8 The Provider must:

- (a) undertake a risk assessment for each Work for the Dole activity, Full-Time Work for the Dole activity, Green Corps activity, Drought Force activity, Voluntary Work activity and Unpaid Work Experience Placement activity, which:
 - (i) identifies the risks associated with the activity, and the methods to be used to mitigate those risks;
 - (ii) specifies what occupational health and safety and/or first aid training will be provided to Fully Eligible Participants;
 - (iii) specifies any safety equipment or clothing required by Fully Eligible Participants assigned to that activity;
 - (iv) specifies any monitoring requirements;
 - (v) is reviewed if the Provider undertakes any monitoring visit of the activity, or is advised of any new information that would affect the risk assessment; and
 - (vi) complies with any Guidelines; and
- (b) retain Records of the risk assessment referred to in clause 64.8(a) and any action taken in accordance with the risk assessment, and provide the relevant Records to DEEWR upon request.

64.9 The Provider must ensure that it undertakes any action identified in the risk assessment for an activity and that relevant occupational health and safety and/or first aid training is provided before the Fully Eligible Participant commences the activity to which the risk assessment relates.

64.10 The Provider must ensure that Fully Eligible Participants are provided with all things necessary for their Work for the Dole activities, Full-Time Work for the Dole activities, Green Corps activities, Drought Force activities, Voluntary Work activities and Unpaid Work Experience Placement activities, including materials, equipment, special clothing, on-site services (such as toilets and catering facilities), supervision and training.

64.11 The Provider must notify DEEWR as soon as possible, and at the latest within 24 hours, of any incident involving a Work for the Dole activity, a Full-Time Work for the Dole activity, a Green Corps activity, a Drought Force activity, a Voluntary Work activity and an Unpaid Work Experience Placement activity, including:

- (a) any accident, injury or death occurring during, or as a result of, the specified activities, including in relation to a Fully Eligible Participant or a member of the public; and
- (b) any incident that may negatively impact upon DEEWR or bring the activities into disrepute,

whether the Work for the Dole activity, Full-Time Work for the Dole activity, Green Corps activity, Drought Force activity, Voluntary Work activity and Unpaid Work Experience Placement activity was run by the Provider or a Subcontractor, including a Work Experience Host Organisation.

64.12 Where an incident referred to in clause 64.11 is an accident, or involves injury or death, irrespective of whether the injured party makes a claim at the time of the incident, the Provider must also, as soon as possible, and at the latest within 24 hours:

- (a) notify DEEWR's insurance broker as specified in any Guidelines;

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

64.13 The Provider must comply with any instructions issued by DEEWR or DEEWR's insurance broker in relation to insurance purchased by DEEWR for Fully Eligible Participants.

64.14 The Provider must ensure that Fully Eligible Participants undertaking Work for the Dole activities, Full-Time Work for the Dole activities, Green Corps activities, Drought Force activities, Voluntary Work activities or Unpaid Work Experience Placement activities are adequately and appropriately supervised at all times, including maintaining a high level of supervision with regard to the health, welfare and safety of Fully Eligible Participants while undertaking Work for the Dole, Full-Time Work for the Dole, Green Corps, Drought Force, Voluntary Work or Unpaid Work Experience Placement activities.

64.15 The Provider must ensure that there is a greater level of supervision if the Work for the Dole activity, Full-Time Work for the Dole activity, Green Corps activity, Drought Force activity, Voluntary Work activity or Unpaid Work Experience Placement activity involves direct contact between the Fully Eligible Participants and Children, the elderly or other classes of vulnerable people.

64.16 The Provider must ensure that all relevant Personnel and Supervisors:

- (a) are fit and proper persons to be involved in Work for the Dole activities, Full-Time Work for the Dole activities, Green Corps activities, Drought Force activities, Voluntary Work activities and Unpaid Work Experience Placement activities;
- (b) have a high level of skill/knowledge, training and/or experience in:
 - (i) the part of each Work for the Dole activity, Full-Time Work for the Dole activity, Green Corps activity, Drought Force activity, Voluntary Work activity and Unpaid Work Experience Placement activity in which they are engaged; and
 - (ii) working with, training and supervising persons in such activities; and
- (c) have had criminal records checks as specified in this Deed and any Guidelines and have met any additional statutory requirements (including under state and territory law), prior to being given responsibility for the supervision of Fully Eligible Participants.

64.17 Whenever Fully Eligible Participants (while they are undertaking a Work for the Dole activity, a Full-Time Work for the Dole activity, a Green Corps activity, a Drought Force activity, a Voluntary Work activity or an Unpaid Work Experience Placement activity) have direct contact with Children, the elderly or other classes of vulnerable people, the Provider must ensure that an appropriate person employed by the Work Experience Host Organisation is present at the location where the relevant Work for the Dole activity, Full-Time Work for the Dole activity, Green Corps activity, Drought Force activity, Voluntary Work activity and Unpaid Work Experience Placement activity takes place.

64.18 In relation to a proposed Work for the Dole activity, Full-Time Work for the Dole activity, Green Corps activity, Drought Force activity, Voluntary Work activity or Unpaid Work Experience Placement activity with a residential or overnight accommodation component, the Provider:

- (a) must not provide, broker or purchase such an activity, without DEEWR's prior written approval; and
- (b) must provide adequate out-of-hours supervision, if such an activity is approved by DEEWR.

64.19 In relation to any Work for the Dole activity, Full-Time Work for the Dole activity, Green Corps activity, Drought Force activity, Voluntary Work activity or Unpaid Work Experience Placement activity, the

Provider must manage the behaviour of Fully Eligible Participants and implement strategies to address potential and actual misbehaviour in accordance with any Guidelines.

- 64.20 Notwithstanding clause 106.5 of this Deed all Supervisors on Work for the Dole activities, Full-Time Work for the Dole activities, Green Corps activities, Drought Force activities, Voluntary Work activities and Unpaid Work Experience Placement activities, who otherwise meet the requirements of this Deed and any Guidelines, and who are not otherwise employees of the Provider, are deemed to be approved Subcontractors for the purposes of clause 106.3(a) of this Deed.
- 64.21 DEEWR may give Notice, on reasonable grounds related to the performance of the Work for the Dole activities, Full-Time Work for the Dole activities, Green Corps activities, Drought Force activities, Voluntary Work activities or Unpaid Work Experience Placement activities, requiring the Provider to remove Supervisors from work on the Work for the Dole activities, Full-Time Work for the Dole activities, Green Corps activities, Drought Force activities, Voluntary Work activities and Unpaid Work Experience Placement activities. The Provider must, at its own cost, promptly arrange for the removal of such Supervisors from work on the Work for the Dole activities, Full-Time Work for the Dole activities, Green Corps activities, Drought Force activities, Voluntary Work activities and Unpaid Work Experience Placement activities and their replacement with Supervisors acceptable to DEEWR.
- 64.22 The Provider must ensure that Supervisor(s) are required to notify the Provider of the non-attendance of Fully Eligible Participants on all Work for the Dole activities, Full-Time Work for the Dole activities, Green Corps activities, Drought Force activities, Voluntary Work activities and Unpaid Work Experience Placement activities.
- 64.23 The Provider must ensure that each Fully Eligible Participant and Work Experience Host Organisation are aware that, to the extent allowed by law, the Fully Eligible Participant, the Work Experience Host Organisation, the Provider or DEEWR may terminate any Work for the Dole activity, Full-Time Work for the Dole activity, Green Corps activity, Drought Force activity, Voluntary Work activity or Unpaid Work Experience Placement activity at any time.
- 64.24 The Provider must ensure that, to the extent allowed by law and unless otherwise expressly agreed by the parties, there is no intention or understanding on the part of a Work Experience Host Organisation or a Fully Eligible Participant that any Work for the Dole activity, Full-Time Work for the Dole activity, Green Corps activity, Drought Force activity, Voluntary Work activity or Unpaid Work Experience Placement activity itself will create legal relations between the Fully Eligible Participant and:
- (a) DEEWR;
 - (b) the Provider; or
 - (c) the Work Experience Host Organisation.
- 65. Work for the Dole, Full-Time Work for the Dole, Green Corps, Drought Force and Voluntary Work activities**
- 65.1 Subject to clause 65.2, the Provider must not provide, broker or purchase a Work for the Dole activity, a Full-Time Work for the Dole activity, a Green Corps activity, a Drought Force activity or a Voluntary Work activity if:
- (a) the activity involves working exclusively on private property, unless it is a Drought Force activity;
 - (b) the activity requires Fully Eligible Participants to enter private homes or grounds;
 - (c) the activity requires Fully Eligible Participants to undertake physical or hands-on personal care;
 - (d) the activity or any part of the activity competes with established businesses;
 - (e) any part of the activity fulfils a function that is part of a commercial contract or enterprise;
 - (f) the activity already receives funding under a Commonwealth, state, territory or local

government program;

- (g) the activity fulfils a function which would normally be undertaken by the Provider under this Deed, or any other contract or arrangement between the Provider and DEEWR;
- (h) the activity or any part of the activity is undertaken for a for-profit organisation or on a for-profit basis, unless it is a Drought Force activity;
- (i) the activity results in a benefit to any Work Experience Activity Host Organisation or Related Entity of the Provider that is conducting a business or delivering a service or product on a for-profit basis, unless it is a Drought Force activity; or
- (j) some or all of the work would have been undertaken by a paid worker if the activity had not taken place.

65.2 The Provider may provide, broker or purchase a Work for the Dole activity, a Full-Time Work for the Dole activity, a Green Corps activity, a Drought Force activity or a Voluntary Work activity which it would not otherwise be permitted to do under clause 65.1, if:

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

66. Work for the Dole, Full-Time Work for the Dole and Green Corps and Drought Force activities

66.1 Where a Fully Eligible Participant is to participate in a Work for the Dole activity, a Full-Time Work for the Dole activity, a Green Corps activity or a Drought Force activity, the Provider should, where appropriate and available, offer structured training to the Fully Eligible Participant as part of the activity.

Note: The Fully Eligible Participant's Work Experience Activity Term may be reduced where the Fully Eligible Participant undertakes accredited structured training. Where the structured training is non-accredited, the Work Experience Activity Term is not reduced, but the training component counts towards satisfaction of the Work Experience Activity Term.

66.2 The Provider must ensure that Records of attendance are kept for all Fully Eligible Participants when they are undertaking a Work for the Dole activity, Full-Time Work for the Dole activity, Green Corps activity or Drought Force activity, and that these Records are provided to DEEWR as specified in any Guidelines and upon request.

67. Work for the Dole, Full-Time Work for the Dole and Green Corps activities

67.1 Unless otherwise agreed by DEEWR in writing, the Provider must submit an end of activity Report to DEEWR's satisfaction within 40 Business Days of the end of each Work for the Dole activity, Full-Time Work for the Dole activity and Green Corps activity, in a form specified by DEEWR in any Guidelines and including for each activity:

- (a) the location of the activity;
- (b) the details of any Work Experience Host Organisations;
- (c) a short statement of activity achievements, including community participation and benefit and, in the case of Green Corps activities, the Environmental Outputs;
- (d) a short statement as to whether the activity met the expected outputs as provided in the activity proposal (and, if not, why this was the case) and any unavoidable circumstances affecting activity outputs, including those specified in clauses 63.5 and 63.6;
- (e) details of any training provided to Fully Eligible Participants as part of the activity;

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- (f) details of any incidents or accidents involving Fully Eligible Participants;
 - (g) any publicity undertaken in relation to the activity; and
 - (h) costings of the activity.

67.2 The Provider must ensure that, within each 52 week period from the Deed Commencement Date, at least 25 per cent of Work for the Dole activities, Full-Time Work for the Dole activities and Green Corps activities in each ESA are hosted by a Work Experience Host Organisation which is *not* the Provider or a Related Entity.

67.3 If required by DEEWR, and in accordance with any Guidelines, the Provider must in relation to all Work for the Dole activities, Full-Time Work for the Dole activities or Green Corps activities:

- (a) advise DEEWR prior to any promotional event and liaise with the Account Manager regarding the details of the event if the responsible Minister, the Minister's representative or any DEEWR Employee intends to attend;
- (b) ensure that at each activity location there is prominently displayed, for the full duration of the activity, signage which indicates that the activity has been funded by the Australian Government as a Work for the Dole or Green Corps activity (as applicable); and
- (c) ensure that, if the result of an activity is a permanent structure, renovation or improvement to the environment, there is a permanent recognition (such as a plaque) which indicates that the Work for the Dole or Green Corps activity has been funded by the Australian Government.

67.4 If required, the Provider must provide transport for all Fully Eligible Participants in Work for the Dole activities, Full-Time Work for the Dole activities or Green Corps activities to and from the activity from a central pick-up point. Providers must ensure that such vehicles are safe, roadworthy, appropriately insured and meet the requirements set out in any Guidelines.

68. Green Corps activities

68.1 At least 80 per cent of the time on a Green Corps activity must be spent on Environmental Tasks.

68.2 The Provider must ensure that all Green Corps activities meet at least one of the Environmental Criteria under the following categories:

- (a) natural environment;
- (b) water;
- (c) community;
- (d) climate change; or
- (e) cultural heritage.

68.3 The Provider must report any Environmental Outputs for each Green Corps activity in the relevant end of activity Report required by clause 67.1.

69. Drought Force activities

69.1 If the lease or land holder of a property on which a Drought Force activity is taking place is performing the role of Supervisor, the Provider must not use the Employment Pathway Fund to pay for that Supervisor.

69.2 The Provider must ensure that, for the duration of a Drought Force activity, there is public liability insurance, written on an occurrence basis, with a limit of indemnity of at least \$10 million in respect of any one occurrence, which covers the liability of the lease or land holder of the land, including to Fully Eligible Participants, on which the Drought Force activity will take place.

69.3 Where a Provider cannot ensure that there is public liability insurance in accordance with clause 69.2, the Provider must not provide, broker or purchase the Drought Force activity without DEEWR's prior written approval.

70. Voluntary Work activities

70.1 The Provider must ensure that any Work Experience Host Organisations for Voluntary Work activities are approved by DEEWR, in accordance with the process advised by DEEWR, before a Fully Eligible Participant starts in the Voluntary Work activity.

70.2 The Provider must ensure that Voluntary Work activities meet the criteria specified by DEEWR in any Guidelines.

71. Unpaid Work Experience Placement activities

71.1 Unpaid Work Experience Placement activities:

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

71.2 Subject to clause 71.3, the Provider must not provide, broker or purchase an Unpaid Work Experience Placement activity if:

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

71.3 The Provider may provide, broker or purchase an Unpaid Work Experience Placement activity which it would not otherwise be permitted to do under clause 71.2, if:

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

71.4 Where the Provider places a Fully Eligible Participant into an Unpaid Work Experience Placement activity with a Work Experience Host Organisation, prior to starting that Unpaid Work Experience Placement activity, the Provider must ensure that:

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

have signed the Unpaid Work Experience Placement activity documentation in the form required by DEEWR.

Section 31 – New Enterprise Incentive Scheme Services

72. New Enterprise Incentive Scheme

Purchase of NEIS Services

72.1 Where the Provider and a Fully Eligible Participant have agreed that the Fully Eligible Participant should receive NEIS Services, and where it has been determined that the Fully Eligible Participant is Eligible for NEIS Services, the Provider must:

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- (a) subject to clause 72.3, purchase NEIS Services from a NEIS Panel Member in respect of the Fully Eligible Participant; or
 - (b) where the Provider is a NEIS Panel Member, provide NEIS Services in respect of the Fully Eligible Participant.

Note: For the avoidance of doubt, where NEIS Services are delivered by the Provider, the delivery of NEIS Services must be done in accordance with the relevant obligations set out in chapters 1, 2, 5 and 6.

72.2 NEIS Services must only be purchased from a NEIS Panel Member, or be delivered by the Provider where it is a NEIS Panel Member, if the NEIS Panel Member or the Provider (as relevant) is delivering NEIS Panel Member Services in the ESA in which the Fully Eligible Participant proposes to conduct his or her NEIS Business.

72.3 When purchasing NEIS Services from a NEIS Panel Member, the Provider must:

- (a) purchase the NEIS Services in accordance with the requirements set out at clauses 106.6 to 106.10 and clauses 106.12 to 106.15 of this Deed as if the NEIS Panel Member was an approved Subcontractor;
- (b) in any contract with a NEIS Panel Member for the purchase of NEIS Services, reserve a right of termination to take account of DEEWR's right to remove NEIS Panel Members from the NEIS Panel; and
- (c) terminate the contract with a NEIS Panel Member for NEIS Services, where DEEWR has removed the NEIS Panel Member from the NEIS Panel and DEEWR so directs.

72.4 The Provider must ensure that NEIS Services are delivered in accordance with the terms set out at Part 1 of Annexure D.

72.5 Unless clause 72.6 applies, the Provider must not seek to claim a Reimbursement for the purchase of NEIS Services from the Employment Pathway Fund of more than:

- (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 a Remote ESA.

Note: See clause 82.2 in relation to whether a Fully Eligible Participant is in a Remote ESA

72.6 The Provider may be Reimbursed for the purchase of NEIS Services from the Employment Pathway Fund for amounts exceeding those in clause 72.5 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.

Determining Eligibility for NEIS Services

72.7 When assessing whether a Fully Eligible Participant is Eligible for NEIS Services, the Provider must:

- (a) seek advice from the NEIS Panel Member as to whether the Fully Eligible Participant is Eligible to receive NEIS Services, if the Provider is not itself a NEIS Panel Member;
- (b) advise the Fully Eligible Participant that it is expected that after receiving NEIS Training, he or she will participate in NEIS Services; and
- (c) if agreed that the Fully Eligible Participant is to receive NEIS Training, amend the Fully Eligible

Participant's Employment Pathway Plan to reflect the condition set out at clause 72.7(b).

Criminal records checks - reimbursement from the EPF

- 72.8 The Provider may seek Reimbursement from the Employment Pathway Fund for the costs of criminal record checks arranged by:
- (a) itself in accordance with clause 12; or
 - (b) a NEIS Panel Member, where the criminal record check complies with the requirements set out in clause 12,
- prior to a Prospective Participant starting a NEIS Business.

Recovery

- 72.9 Where a NEIS Participant is overpaid NEIS Allowance or NEIS Rental Assistance as a result of a breach by the Provider of clause 72.4, 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 breach. 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].

Section 3J – Harvest Labour Services

73. Harvest Labour Services

- 73.1 The Provider must provide Harvest Labour Services in accordance with this clause 73 and any Guidelines.
- 73.2 Except for this clause 73 and clause 80, no clauses in Chapter 3 of this Deed apply to the delivery of Harvest Labour Services.

Harvest Placement Services

- 73.3 The Provider must, in accordance with any Guidelines, provide a Harvest Placement Service, in the Harvest Areas during the Harvest Period, which involves supplying the labour necessary to meet the Harvest Work requirements of Harvest Employers by:
- (a) obtaining Harvest Vacancies from Harvest Employers;
 - (b) lodging each Harvest Vacancy on DEEWR's IT Systems as soon as possible after the Provider receives the Harvest Vacancy;
 - (c) maintaining up to date information on the Harvest Vacancies lodged on DEEWR's IT Systems;
 - (d) subject to clause 73.4, referring Harvest Workers to Harvest Vacancies from Harvest Employers;
 - (e) confirming with Harvest Employers the achievement of each Harvest Placement;
 - (f) within 28 days of the achievement of a Harvest Placement, recording that Harvest Placement on DEEWR's IT Systems;
 - (g) in accordance with clauses 19 and 20, obtaining and retaining Documentary Evidence of the delivery of the Harvest Placement Service;
 - (h) removing Harvest Vacancies from DEEWR's IT Systems within 24 hours of the Provider being notified that those vacancies are no longer available to Harvest Workers; and
 - (i) providing any other Harvest related services, as directed by DEEWR.

- 73.4 The Provider must only refer Harvest Workers:

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- (a) who are suitable for the Harvest Employer's requirements; and
 - (b) to Harvest Employers who have a safe system of work implemented.

73.5 For the purposes of clause 73.4, where a primary producer has engaged contractors for the provision of Harvest Work, 'Harvest Employer' means both the primary producer and the contractors engaged by the primary producer for the provision of Harvest Work.

73.6 Where in DEEWR's opinion the start or finish date for a Harvest Period should be changed due to reasons beyond the Provider's control, DEEWR may, in its absolute discretion, by Notice, vary each of those dates.

Other Harvest Labour Services

73.7 The Provider must provide Other Harvest Labour Services during the Term of this Deed by:

- (a) maintaining a presence in the Harvest Areas to ensure ongoing liaison with Harvest Employers and timely delivery of the Harvest Labour Services;
- (b) occupying and maintaining at each Site, suitable premises for the delivery of the Harvest Labour Services;
- (c) liaising with Harvest Employers for the purpose of determining how to assist Harvest Employers with their Harvest Work requirements throughout the Harvest Period;
- (d) promoting and marketing Harvest Placement Services within, and outside the Harvest Area;
- (e) subject to clause 73.8, mobilising Harvest Workers from locations outside the Harvest Area for the purpose of ensuring that there is a sufficient and timely supply of Harvest Workers available to meet the Harvest Work requirements of Harvest Employers when Harvest Work commences;
- (f) providing information to Harvest Workers and prospective Harvest Workers about:
 - (i) accommodation in, and transport to, Harvest Areas; and
 - (ii) the conditions of employment for Harvest Workers;
- (g) providing information to Harvest Employers on any labour shortages, and liaising with Harvest Employers for the purpose of developing strategies to overcome labour shortages;
- (h) providing accurate and timely information to the National Harvest Labour Information Service and the Harvest Trail Website, as requested by the provider of the National Harvest Labour Information Service; and
- (i) any other Harvest related services, as directed by DEEWR.

73.8 The Provider must not mobilise into the Harvest Area more Harvest Workers than are reasonably necessary to meet the labour requirements of Harvest Employers.

Reports

73.9 In accordance with clause 27 [General reporting], the Provider must provide DEEWR with:

- (a) quarterly Reports within 15 Business Days of the following dates for each Financial Year of this Deed:
 - (i) 31 March;
 - (ii) 30 September; and
 - (iii) 31 December, and
- (b) final Reports within 15 Business Days of 30 June for each year of the Term of this Deed.

73.10 Reports provided to DEEWR in accordance with clause 73.9 must include the following information:

- (a) for quarterly Reports, information regarding:
 - (i) provision of marketing and promotional activities, including steps taken to attract Harvest Workers including those Income Support Payment;
 - (ii) liaisons with Harvest Employers and their representative organisations;
 - (iii) methods used to canvass Harvest Vacancies;
 - (iv) flow of information to and from the National Harvest Labour Information Service;
 - (v) other issues and concerns arising out of the Harvest Work; and
- (b) for final Reports:
 - (i) a review and analysis of the Harvest;
 - (ii) Harvest Vacancy lodgement details;
 - (iii) Harvest Placement details;
 - (iv) Harvest Employer feedback; and
 - (v) issues of concern.

Section 3K – National Harvest Labour Information Service

74. National Harvest Labour Information Service

74.1 The Provider must provide the National Harvest Labour Information Service for the Term of this Deed in accordance with this clause 74 and any Guidelines.

74.2 Except for this clause 74 and clause 81, no clauses in Chapter 3 of this Deed apply to the delivery of the National Harvest Labour Information Service.

National Harvest Labour Information Service

74.3 The Provider must provide the National Harvest Labour Information Service, which consists of:

- (a) the Harvest Trail Website;
- (b) the National Harvest Telephone Information Service; and
- (c) the National Harvest Guide.

Harvest Trail Website

74.4 The Provider must:

- (a) gather Australia-wide Harvest Information from the Relevant Harvest Bodies;
- (b) actively identify any likely Harvest Work labour shortages; and
- (c) promptly advise DEEWR of any such shortages.

74.5 The information gathered in accordance with clause 74.4 must, in accordance with any Guidelines, be collated and prepared to be placed on the Harvest Trail Website.

74.6 The information collated and prepared in accordance with clause 74.5 must be submitted to DEEWR for lodgement on the Harvest Trail Website by 1 August 2009, and thereafter, at least monthly for the Term of this Deed.

74.7 The Provider must submit to DEEWR, a list of web addresses for websites as links for the Harvest Trail Website which are up to date, relevant, and contain no advertising material that will bring the Services

into disrepute. Any updates to this list must be submitted to DEEWR at least once every 6 months from the Deed Commencement Date for the Term of this Deed.

74.8 The Provider must ensure that:

- (a) information provided by providers of Harvest Labour Services is submitted to DEEWR for lodgement on the Harvest Trail Website as soon as possible, and, in any case, within 12 hours of receipt, after the Provider receives the information; and
- (b) where information is no longer current, notice to DEEWR to remove the relevant information is submitted within 24 hours of the Provider becoming aware that the information is no longer current.

74.9 The Provider must market and promote the Harvest Trail Website to the Relevant Harvest Bodies.

National Harvest Telephone Information Service

74.10 The Provider must provide a National Harvest Telephone Information Service line that:

- (a) has the number 1800 062 332;
- (b) is extensively publicised to Relevant Harvest Bodies;
- (c) operates at least between the hours of 8:00 am and 8:00 pm on each Business Day in each Australian state and territory for the Term of this Deed;
- (d) operates for extended hours when unforeseen circumstances arise or where required by DEEWR;
- (e) is staffed by fully trained operators;
- (f) provides specific information related to Harvest, Harvest Work and related matters;
- (g) ensures that if an operator is unable to answer a question during the initial call, the enquirer is telephoned back with the requested information as soon as practicable;
- (h) refers callers to other appropriate bodies, where required; and
- (i) has at least 6 telephone lines.

National Harvest Guide

74.11 The Provider must:

- (a) subject to this clause 74.11, produce and publish a comprehensive National Harvest Guide in accordance with any Guidelines;
- (b) submit the draft National Harvest Guide to DEEWR for comment and approval prior to its publication;
- (c) produce sufficient hard copies of the National Harvest Guide for distribution in accordance with paragraph (g);
- (d) make the National Harvest Guide available electronically and on the Harvest Trail Website;
- (e) update the electronic copy at least once a month during the Term of this Deed;
- (f) ensure that the National Harvest Guide contains Harvest Information for each Harvest Area;
- (g) distribute the National Harvest Guide free of charge through:
 - (i) employment service providers;
 - (ii) Harvest Area industry groups;
 - (iii) Centrelink;

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- (iv) relevant educational institutions;
 - (v) caravan parks;
 - (vi) backpacker hostels;
 - (vii) local government information centres;
 - (viii) tourist bureaus; and
 - (ix) other relevant bodies;
- (h) include in the National Harvest Guide, the following statements:
- (i) “This publication has been produced with the financial assistance of the Commonwealth Department of Education, Employment and Workplace Relations”, and
 - (ii) “The Department of Education, Employment and Workplace Relations does not accept any responsibility for the contents of this publication and any actions taken in reliance on its contents”.

Reports

74.12 In accordance with clause 27 [General reporting], the Provider must provide DEEWR with:

- (a) quarterly Reports within 15 Business Days of the following dates for each Financial Year of the Deed:
 - (i) 31 March;
 - (ii) 30 September; and
 - (iii) 31 December; and
- (b) final Reports within 15 Business Days of 30 June for each year that this Deed is in operation.

74.13 Reports provided to DEEWR in accordance with clause 74.12 must, at a minimum, include the following information:

- (a) for quarterly Reports:
 - (i) details of maintenance of the Harvest Trail Website, including the:
 - (A) number of Harvest Vacancies advertised on the Harvest Trail Website;
 - (B) number of Harvest Vacancies filled;
 - (C) gathering of Harvest Information;
 - (D) provision of marketing and promotional activities about Harvest Labour Services; and
 - (E) verification activities undertaken in relation to the Harvest Information published on the Harvest Trail Website;
 - (ii) details of the administration of the National Harvest Telephone Information Service, including the:
 - (A) number of calls received on the National Harvest Telephone information Service line;
 - (B) percentage of calls where the Provider was able to provide the caller with the requested information;
 - (C) percentage of abandoned calls;
 - (D) average time it took to answer the calls;

- (E) average call duration of calls;
 - (F) the number of queries the Provider was unable to answer;
 - (G) the number of calls referred to providers of Harvest Labour Services;
 - (H) the number of calls referred to other bodies;
 - (I) number of complaints received; and
 - (J) how issues of concern raised by the Account Manager were resolved;
- (iii) details of drafting, publication and distribution of the National Harvest Guide, including the:
- (A) method of distribution; and
 - (B) the numbers distributed to each location; and
- (iv) any other information as required by DEEWR.
- (b) for final Reports:
- (i) the information required in the quarterly Report; and
 - (ii) any other information as required by DEEWR.

Section 3L – Fees

Information about Fees

The Fees DEEWR will pay the Provider consist of:

- (a) Service Fees;
- (b) Stream 1 (Limited) Participant Fees;
- (c) Placement Fees;
- (d) Outcome Fees, the Remote Education Commencement Outcome Fee and the Remote Educational Achievement Outcome Fee;
- (e) Harvest Placement Fees and Harvest Service Fees; and
- (f) Fees for National Harvest Labour Information Service.

The amounts of the Fees for items (a), (c) and (d) are set out in tables in Annexure C to this Deed. The amount of the Fees for item (b) is set out in clause 77.1. The amounts of the Fees for items (e) and (f) are specified in Items 7.13 and 8.1 of the Schedule.

75. General

75.1 Without limiting DEEWR's rights to take action under clause 110 [Remedies for breach], and subject to clause 75.2, if DEEWR pays the Provider any Fee, and if DEEWR then determines that, in the case of:

- (a) an Outcome Fee;
- (b) a Service Fee;
- (c) a Placement Fee;
- (d) a Harvest Placement Fee or Harvest Service Fee;
- (e) a NHLIS Fee; or
- (f) any other Fee,

as relevant to the Services which the Provider is contracted to provide under this Deed, the requirements which must be satisfied to qualify for payment of that Fee have not been met, DEEWR

may recover all of the Fees paid for the relevant Service, or for other Services for which a Fee is payable, and the amount of the Fees is a debt due to DEEWR in accordance with clause 24 [Debts and offsetting].

75.2 DEEWR will not recover a Service Fee under clause 75.1(b) if the Provider is paid a Service Fee in relation to a Fully Eligible Participant in accordance with clauses 76.1 to 76.4, only because the Fully Eligible Participant:

- (a) Exits;
- (b) moves to another Stream as a result of a Change in Circumstances Reassessment or Stream Services Review;
- (c) transfers to another employment services provider for any reason; or
- (d) is Suspended,

during the particular 13 week time period specified in column 1 of Table 2 in Annexure C in relation to which the Service Fee was paid.

75.3 The Provider acknowledges that if:

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

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

- (c) the Outcome Fee payable under this Deed in relation to the employment, education or training related activity; and
- (d) the fee, if any, paid by the Provider to the provider of the Complementary Service.

76. Service Fees

76.1 Subject to this Deed and clauses 76.2 to 76.4, DEEWR will pay the Provider a Service Fee in relation to a Fully Eligible Participant in the amount specified in Table 2 of Annexure C:

- (a) in column 3 [Service Fees – Remote ESAs], for Remote ESAs only; and
- (b) in column 2 [Service Fees], for all other ESAs,

which corresponds to the 13 week time period specified in column 1 [Stream and time in Payment Period] which applies to the Fully Eligible Participant, under whichever of:

- (c) Stream 1, 2, 3 or 4; or
- (d) the Work Experience Phase,

applies to the Fully Eligible Participant.

76.2 DEEWR will post and update on DEEWR's IT Systems from time to time a list of Fully Eligible Participants:

- (a) in relation to whom the Provider is entitled to claim payment of Service Fees in accordance with clause 76.1; and
- (b) taking account of all relevant current information about the Fully Eligible Participants recorded in DEEWR's IT Systems from time to time.

76.3 The Provider may submit a claim for payment of a Service Fee, in accordance with clause 76.1, in relation to a Fully Eligible Participant either:

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- (a) immediately after the Provider has conducted the:
 - (i) Initial Interview in accordance with clauses 52.1 to 52.4;
 - (ii) Initial Interview for a New Stream in accordance with clauses 52.6 and 52.7; or
 - (iii) First Work Experience Contact in accordance with clauses 52.8 to 52.10,and the Fully Eligible Participant has been Commenced in the applicable Stream or moved into the Work Experience Phase, whichever is applicable; or
 - (b) on or after the day on which the Fully Eligible Participant's name is first posted on the list referred to in clause 76.2, provided that at the time the Provider submits the claim for payment, the Fully Eligible Participant's name is still posted on the list,

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

76.4 The Provider must make a claim for payment of Service Fees in relation to a Fully Eligible Participant in accordance with clause 76.3 not later than 28 days after the day on which the requirements of:

- (a) clause 76.3(a); or
- (b) clause 76.3(b),

as applicable, are satisfied.

76.5 If a person who is a Fully Eligible Participant with another employment services provider, transfers to the Provider for any reason, DEEWR will pay the Provider a pro-rata amount of the Service Fees payable in accordance with clauses 76.1 to 76.4 for the Fully Eligible Participant for the 13 week period in column 1 of Table 2 in Annexure C in which the date of the transfer occurs. The pro-rata amount will be calculated based on the period of time from the date of the transfer to the end of the 13 week period in column 1 of Table 2 in Annexure C in which the date of transfer occurs.

76.6 DEEWR will also pay the Provider a once only Service Fee in the amount of \$231, or \$393 for a Fully Eligible Participant in a Remote ESA, when a Fully Eligible Participant starts a Full-Time Work for the Dole activity for the first time in a Work Experience Phase as specified in any Guidelines, provided that:

- (a) the Full-Time Work for the Dole activity starts after the Fully Eligible Participant's Work Experience Commencement; and
- (b) the Provider has complied with any requirements for claiming the payment as specified in any Guidelines.

77. Stream 1 (Limited) Participant Fees

77.1 Subject to this Deed, the Provider may claim a Stream 1 (Limited) Participant Fee of \$63, or \$107 if the Stream 1 (Limited) Participant is in a Remote ESA:

- (a) if the Provider has completed an Initial Interview with a Stream 1 (Limited) Participant in accordance with clauses 52.1, 52.2 and 52.4; and
- (b) again, if 26 weeks have elapsed since the Provider or any other employment services provider last completed an Initial Interview with the Stream 1 (Limited) Participant unless:
 - (i) there is no previous Initial Interview recorded on DEEWR's IT Systems for the Stream 1 (Limited) Participant; or
 - (ii) the Stream 1 (Limited) Participant has transferred from another employment services provider to the Provider for either of the following reasons:

(A) the Stream 1 (Limited) Participant has moved to a new location which is not within a reasonable distance of a Site of the other employment services provider; or

(B) the Stream 1 (Limited) Participant has demonstrated to DEEWR's satisfaction that he or she will receive better services, which could enhance his or her employment prospects, from the Provider, has asked DEEWR to effect the transfer and DEEWR, at its absolute discretion, has agreed to the transfer.

77.2 DEEWR will post and update on DEEWR's IT Systems from time to time a list of Stream 1 (Limited) Participants in relation to whom the Provider is entitled to claim payment of a Stream 1 (Limited) Participant Fee in accordance with clause 77.1.

77.3 The Provider may submit a claim for payment of a Stream 1 (Limited) Participant Fee in accordance with clause 77.1 in relation to a Stream 1 (Limited) Participant on or after the day on which the Stream 1 (Limited) Participant's name is first posted on the list referred to in clause 77.2, provided that at the time the Provider submits the claim for payment the Stream 1 (Limited) Participant's name is still posted on the list, and DEEWR will pay the Stream 1 (Limited) Participant Fee to the Provider after the completion of the fortnight, the start and end of which is determined by DEEWR at its absolute discretion, in which the Provider submits the claim for payment.

77.4 The Provider must make a claim for payment of a Stream 1 (Limited) Participant Fee in relation to a Stream 1 (Limited) Participant in accordance with clause 77.1 not later than 28 days after the day on which the Stream 1 (Limited) Participant's name is first posted to a list in accordance with clause 77.2.

77.5 No Stream 1 (Limited) Participant Fee is payable in relation to a Stream 1 (Limited) Participant who is automatically converted on DEEWR's IT Systems from a Fully Eligible Participant to a Stream 1 (Limited) Participant.

77.6 No other Fee is payable for Stream 1 (Limited) Participants.

78. Placement Fees and Vacancy Management

78.1 The Provider must canvass:

- (a) Employers for Vacancies; and
- (b) Host Organisations for Assignments.

Lodgement

78.2 The Provider must lodge every Vacancy or Assignment it obtains under clause 78.1 on DEEWR's IT Systems within one Business Day of their being obtained unless:

- (a) DEEWR's IT Systems are not operational, in which case the Vacancy or Assignment must be lodged on the next Business Day that DEEWR's IT Systems are operational; or
- (b) the Provider has travelled to a remote location to obtain the Vacancy and does not have access to DEEWR's IT Systems, in which case the Vacancy or Assignment must be lodged on the next Business Day that the Provider has access to DEEWR's IT Systems.

78.3 The Provider must ensure that each Vacancy or Assignment lodged on DEEWR's IT Systems:

- (a) is complete and up to date at all times;
- (b) complies with conditions of use specified in any Guidelines; and
- (c) is closed on DEEWR's IT Systems within 24 hours of:
 - (i) the placement by the Provider of an Eligible Placement Participant in that Vacancy or Assignment;

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- (ii) the Provider becoming aware that the Vacancy or Assignment is no longer vacant;
 - (iii) the Provider becoming aware that the Employer no longer requires the Vacancy or Assignment to be on DEEWR's IT Systems; or
 - (iv) the Provider being told by DEEWR to remove the Vacancy or Assignment.

Referral

- 78.4 The Provider must identify suitable Participants for Vacancies and Assignments and refer those Participants to the relevant Employer or Host Organisation.
- 78.5 Where the referral under clause 78.4 leads to the Placement of an Eligible Placement Participant and the Eligible Placement Participant achieves the Placement Hours in that Placement, the Provider may claim a Placement Fee as specified in Table 3 of Annexure C if the Provider:
- (a) within 28 calendar days of the Placement Start Date, confirms with the Employer or Host Organisation that the Participant has started in the Vacancy or Assignment and records details of the confirmation and the Placement Start Date in DEEWR's IT Systems;
 - (b) within 28 calendar days of the Placement Fee Date, verifies with the Employer or Host Organisation that the Eligible Placement Participant has achieved the relevant Placement Hours in the Placement and records details of the verification and the Placement Fee Date in DEEWR's IT Systems; and
 - (c) renders a Tax Invoice in DEEWR's IT Systems and DEEWR accepts the Tax Invoice.
- 78.6 The Provider must not claim:
- (a) a Placement Fee:
 - (i) before the Placement Fee Date;
 - (ii) where the Placement Hours were achieved in a Non-Payable Placement;
 - (iii) where the Placement Start Date is prior to the Eligible Placement Participant Commencing in a Stream; or
 - (iv) for the fifth or any subsequent Placement of the same Eligible Placement Participant by the Provider within a 52 week period from the first Placement Fee Date for which a Placement Fee has been claimed; or
 - (b) more than one Placement Fee for each Vacancy or Assignment.
- 78.7 If the Provider is contracted to provide Harvest Labour Services and Stream Services, the Provider must not claim both a Harvest Placement Fee and a Placement Fee for the same Placement. Where the Provider would be eligible for both a Harvest Placement Fee and a Placement Fee for the placement of an Eligible Placement Participant into a Placement, the Provider must elect which Fee to claim.
- 78.8 Where the Provider places an Eligible Placement Participant in an Assignment with a Host Organisation, a Placement Fee will be payable where:
- (a) the Placement Hours are met in one Assignment; or
 - (b) the Eligible Placement Participant has been placed in multiple Assignments, the Placement Hours have been satisfied and:
 - (i) the work undertaken in each of the Assignments is the same or similar, as set out in any Guidelines;
 - (ii) each of the hours counted towards the Placement Hours were undertaken within 10 Consecutive Working Days from the Placement Start Date of the first Assignment;

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- (iii) Placement Fees have not previously been claimed for the Assignment and the Assignment has not previously been counted towards the Placement Hours for a different Placement Fee;
 - (iv) the Provider has Documentary Evidence of the dates of and hours achieved in each Assignment; and
 - (v) any other requirements set out in any Guidelines have been met.

79. Outcome Fees

79.1 Subject to this Deed, DEEWR will pay the Provider the applicable Outcome Fee in Table 1 of Annexure C:

- (a) in relation to each Fully Eligible Participant who has satisfied an Outcome;
- (b) when the Fully Eligible Participant has satisfied:
 - (i) the 13 Week Period for the Outcome; and
 - (ii) the 26 Week Period for the Outcome,

provided that the Anchor Date for the Outcome:

- (c) is entered on DEEWR's IT Systems in accordance with any Guidelines;
- (d) occurs after:
 - (i) Commencement (for Fully Eligible Participants in Streams 2, 3 and 4); or
 - (ii) Commencement and completion of not less than 52 weeks in Stream 1 (for Fully Eligible Participants in Stream 1);
- (e) the Provider has rendered a Tax Invoice for the Outcome Fee to DEEWR within 28 days of the end of the relevant 13 Week Period or 26 Week Period; and
- (f) DEEWR accepts the Tax Invoice.

79.2 For the purpose of clause 79.1, Transitioned Participants, allocated under clause 38 [Transition in] and Table 1 in Annexure A directly to the Work Experience Phase, are deemed to be in Stream 3 or Stream 4, respectively, in accordance with Table 1 and Note 3 in Annexure A.

79.3 The amount of the Outcome Fee payable to the Provider by DEEWR under clause 79.1 is determined by:

- (a) the Fully Eligible Participant's Period of Unemployment;
- (b) the Stream that the Fully Eligible Participant was in on the Anchor Date for the Outcome (except for Transitioned Participants allocated under clause 38 [Transition in] and Table 1 in Annexure A directly to the Work Experience Phase, who are deemed to be in either Stream 3 or Stream 4, respectively, in accordance with Table 1 and Note 3 in Annexure A for the purposes of this clause);
- (c) whether the relevant Outcome was Provider Brokered or Provider Assisted;
- (d) whether the Fully Eligible Participant has satisfied the requirements for a Full Outcome or a Pathway Outcome; and
- (e) whether the Fully Eligible Participant qualifies for a Bonus,

as set out in Table 1 of Annexure C.

79.4 The Provider must not claim an Outcome Fee under clause 79.1:

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

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- (b) in relation to a Non-Payable Outcome; or
 - (c) for a 26 Week Period for a Pathway Outcome which satisfies either paragraph (g) or (h) in the definition of Pathway Outcome in Annexure E.

79.5 The Provider must not claim:

- (a) an Outcome Fee which is Provider Brokered, unless all the requirements of the definition of Provider Brokered in Annexure E are satisfied; or
- (b) a Bonus, unless all the requirements of the definition of Bonus in Annexure E are satisfied.

Additional Outcome Fees payable for Remote ESAs

79.6 If a Fully Eligible Participant in a Remote ESA satisfies the requirements for a Remote Foundation Skills Outcome, after the need to undertake the Remote Foundation Skills Outcome has been identified and recorded in the Fully Eligible Participant's Employment Pathway Plan, the Provider may claim an Outcome Fee in accordance with clauses 79.1, 79.2 and 79.3 on the basis that the Fully Eligible Participant is deemed to have satisfied the requirements of a Pathway Outcome.

79.7 If a Fully Eligible Participant in a Remote ESA satisfies the requirements for a Remote Education Commencement Outcome, the Provider may claim the Remote Education Commencement Outcome Fee specified in Table 1A in Annexure C.

79.8 If a Fully Eligible Participant in a Remote ESA satisfies the requirements for a Remote Educational Achievement Outcome, the Provider may claim the Remote Educational Achievement Outcome Fee specified in Table 1A in Annexure C.

79.9 In clauses 79.6, 79.7 and 79.8, 'a Fully Eligible Participant in a Remote ESA' means that the Fully Eligible Participant's Permanent Address is in:

- (a) a Remote ESA, but not in an Excised Non-remote Area; or
- (b) an Excised Remote Area.

80. Harvest Labour Services - Fees

80.1 Subject to this Deed, the Provider may claim payment of:

- (a) Harvest Placement Fees; and
- (b) Harvest Service Fees.

Harvest Placement Fees

80.2 The amount of the Harvest Placement Fee that the Provider may claim in respect of each Harvest Placement is set out in Item 7.13 of the Schedule.

80.3 Subject to clauses 80.4 to 80.6, the Provider may claim payment of Harvest Placement Fees during the Harvest Period provided that each Harvest Placement is recorded on DEEWR's IT Systems.

80.4 Subject to clause 80.5, the Provider may claim no more than one Harvest Placement Fee for a Harvest Worker who is placed:

- (a) with the same Harvest Employer;
- (b) in the same Harvest Area; and
- (c) during the same Harvest Period.

80.5 If the Harvest Period is for a period of 52 weeks, the Provider may claim up to two Harvest Placement Fees for a Harvest Worker who is placed more than once with the same Harvest Employer in the same Harvest Area and in the same Harvest Period, provided that the two Harvest Placements for which Harvest Placement Fees are claimed are at least 26 weeks apart.

80.6 The Provider must not claim more than two Harvest Placement Fees in any seven day period, for a Harvest Worker who is placed with different Harvest Employers during that same Harvest Period.

Harvest Service Fees

80.7 The amount of the Harvest Service Fee that the Provider may claim in respect of Other Harvest Labour Services is set out in Item 7.13 of the Schedule.

80.8 The first payment of the Harvest Service Fee may be claimed by the Provider on the Deed Commencement Date. The second and subsequent payments of the Harvest Service Fee may be claimed after the completion of each consecutive 13 week period immediately following the Deed Commencement Date.

80.9 DEEWR will pay the Harvest Service Fees claimed in accordance with clause 80.7, provided DEEWR has received either a quarterly Report or a final Report (as appropriate) to DEEWR's satisfaction, pursuant to clause 73.9.

81. National Harvest Labour Information Service - Fees

81.1 Subject to this Deed, the Provider may claim payment of Fees for the provision of NHLIS as set out in Item 8.1 of the Schedule, provided DEEWR has received either a quarterly Report or a final Report (as appropriate) to DEEWR's satisfaction, pursuant to clause 74.12.

Section 3M – Remote ESAs, Excised Non-remote Areas and Excised Remote Areas

Information about Excised Remote Areas and Excised Non-Remote Areas

One ESA and a small number of Remote ESAs have been identified as containing areas which are treated differently to the rest of the ESA or Remote ESAs. These areas are known as:

- (a) Excised Remote Areas - which is a part of an ESA that is treated as if it was part of a Remote ESA; and
- (b) Excised Non-Remote Areas - which is part of a Remote ESA that is treated as if it was not part of a Remote ESA.

See the definitions of Excised Remote Area and Excised Non-remote Area in Annexure E, respectively, for a list of these areas.

82. Remote ESAs, Excised Non-remote Areas and Excised Remote Areas

82.1 If the Provider provides Services in:

- (a) a Remote ESA, other than solely in an Excised Non-remote Area; or
- (b) an Excised Remote Area,

it must work with CDEP and IEP providers, Employers, community services and other relevant stakeholders to:

- (c) maximise local employment in existing jobs;
- (d) develop a local workforce;
- (e) tailor strategies to reflect the opportunities in each community;
- (f) support capacity building of Indigenous organisations to achieve better outcomes for Indigenous Participants; and

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- (g) work with Commonwealth, state and territory government agencies on Indigenous employment strategies.

82.2 If the Provider is contracted to provide Stream Services under this Deed, a Fee, Reimbursement or Advance EPF Payment is payable in relation to a particular Participant in the amounts specified in this Deed as being for 'Remote ESAs', only if the Participant's Permanent Address is in:

- (a) a Remote ESA, but not in an Excised Non-remote Area; or
- (b) an Excised Remote Area.

Note: If a Participant whose Permanent Address is in a Remote ESA, but not in an Excised Non-remote Area, or is in an Excised Remote Area moves temporarily to another location to undertake activities in accordance with the Participant's Employment Pathway Plan while being supported by his or her Provider, the Provider is still entitled to claim Fees and Reimbursements in relation to that Participant in the amounts specified in this Deed as being for 'Remote ESAs'

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 – DEEWR May Reduce Referrals

84. DEEWR may reduce the number of Referrals to the Provider

84.1 Unless otherwise provided for in this Deed, if there is any form of procurement process after the Deed Commencement Date, for the delivery of one or more of the Streams or any other employment services, and the Provider:

- (a) does not submit a response to this process;
- (b) refuses an offer to provide further services;
- (c) is not successful in obtaining a further contract;
- (d) is successful in obtaining a subsequent contract from any future procurement process, but the subsequent contract:
 - (i) does not require the Provider to provide the Services, or services similar to the Services, at any, or all, of the Sites, at which it is contracted to deliver Services under this Deed; or
 - (ii) assigns a reduced ESA Business Share in relation to the ESAs, or a reduced number of Referrals in relation to the Sites, for which the Provider is contracted to deliver Services under this Deed; or
- (e) a combination of (d)(i) and (ii) applies,

DEEWR may in its absolute discretion cease or reduce the number of Referrals of Stream Participants to the Provider from the date of the announcement of the allocation of contracts or business to new employment services providers, or earlier if both Parties agree.

CHAPTER 4 – OTHER SERVICES

Section 4A – Drought Force Only Services

85. Drought Force Only Services

85.1 The Provider must Directly Register Drought Force Only Participants who present to it.

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- 85.2 When the Provider Directly Registers a Drought Force Only Participant, the Provider must:
- (a) broker Drought Force activities for that Drought Force Only Participant; and
 - (b) place that Drought Force Only Participant into Drought Force activities.
- 85.3 Clauses 62 to 66 and clause 69 [Drought Force activities] apply to Drought Force Only Services, as if the Drought Force Only Participant is a Fully Eligible Participant undertaking a Work Experience Activity.
- 85.4 Subject to this Deed, upon the first Commencement of a Drought Force Only Participant, DEEWR will pay the Provider a Drought Force Only Service Fee in accordance with Table 2A in Annexure C.
- 85.5 The Provider will be Reimbursed from the Employment Pathway Fund for the cost of products and services purchased for the Drought Force Only Participant, provided that:
- (a) such purchases are for the purpose of enabling the Drought Force activity to be conducted, and that purpose is consistent with any Guidelines; and
 - (b) the Provider otherwise complies with Section 3G – Employment Pathway Fund.

Section 4B – Reserved

86. Reserved

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;

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- (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;

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- (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:

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- (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:

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- (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

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- (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) for every motor vehicle used in the performance of this Deed, insurance for not less than \$20 million for any occurrence which covers:
 - (i) third party property damage arising from the use of any plant or vehicles (registered or unregistered) used in respect of the performance of this Deed (including transporting Participants); and
 - (ii) the bodily injury, disease or illness (including mental illness) or death of, any person arising from the use of any unregistered plant or vehicles used in or in connection with the performance of the Services pursuant to this Deed (including transporting Participants);
 - (d) compulsory third party motor vehicle insurance for all registrable vehicles used in the performance of this Deed (including transporting of Participants in the Provider's or the Provider's employees vehicles);
 - (e) professional indemnity insurance or errors and omissions insurance, to be maintained during the Term of this Deed and for at least seven years following the Completion Date:
 - (i) that covers the liability of the Provider at general law 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) products liability insurance written on an occurrence basis with a limit of indemnity of at least \$10 million in respect of each and every occurrence and in the aggregate for all claims arising during any one 12 month policy period, to be maintained for the Term of this Deed, which covers:
 - (i) the Provider's liability and the liability of its Personnel and agents (including to 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, 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 in clause 100.1(b));

arising out of or in connection with any products installed, repaired, serviced, sold, supplied or distributed in the performance of the Services, or in connection with, this Deed; and

- (g) personal accident insurance coverage for an amount of not less than \$250,000 per claim that covers Participants while:
 - (i) on the Provider's premises;

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- (ii) undertaking employment services activities, but not including undertaking a Work for the Dole activity, Full-Time Work for the Dole activity, Drought Force activity, Green Corps activity, Unpaid Work Experience Placement activity or Voluntary Work activity; and
 - (iii) travelling by the most direct route between:
 - (A) the Provider's premises and the Participant's home or Centrelink following Referral;
 - (B) the Provider's premises and job interviews; and
 - (C) the Participant's home and job interviews, following referral by the Provider.
 - (h) where the Provider will use an aircraft or marine vessel for the purposes of performing this Deed and the aircraft or marine vessel is owned or chartered by the Provider, marine liability and/or aircraft liability insurance, as is appropriate, covering the liability of the Provider, its Personnel and agents (including to DEEWR, Participants and passengers) in respect of liability for third party personal injury or death or loss of or damage to third party property (including cargo) with a limit of indemnity of at least \$20 million for each occurrence unless such liability is insured under the insurance effected in compliance with clause 100.1(a).

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

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- 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 Items 6.13 and 7.12 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, each Party will nominate a

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- 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], 30 [Performance reviews], 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) Referrals in respect of some or all of the Services, including at some or all Sites;
 - (ii) any payment under this Deed in whole or in part; or
 - (iii) access to the Employment Pathway Fund;
- (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. Liquidated damages

111.1 Notwithstanding any other rights available to DEEWR under this Deed, under statute, at law, or in equity, if, after the Deed Commencement Date, the Provider:

- (a) ceases to deliver Services at a Site, or notifies DEEWR that it is not willing or able to deliver the Services at a Site, and the Provider has not either:
 - (i) obtained the consent of DEEWR for the cessation of the Services at the Site (such consent must not be unreasonably withheld by DEEWR); or
 - (ii) secured an alternative employment services provider, acceptable to DEEWR, to provide the Services at the relevant Site from the date on which the Provider ceases, or will cease, to deliver the Services; or
- (b) submits in excess of 500 invalid claims under this Deed, as determined by DEEWR, which are identified in any one Compliance Review,

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

- (c) where clause 111.1(a) applies, \$25,000 per select tender and \$50,000 per open tender, used to secure an alternative employment services provider acceptable to DEEWR; and
- (d) where clause 111.1(b) applies, \$1,000, and a further \$1,000 for each 100 invalid claims, in excess of the first 500 invalid claims, identified per Compliance Review.

111.2 For the avoidance of doubt:

- (a) clause 111.1(a) does not apply where DEEWR reallocates business at the relevant Site(s) without going to tender; and
- (b) clause 111.1(b) does not apply where the Provider self identifies invalid claims through its internal compliance practices and Notifies DEEWR of those invalid claims.

111.3 Where clause 111.1(a) or (b) applies, the Parties agree that all relevant loss and damage will, having regard to the governmental and non-commercial nature of the Services and their significance to the Commonwealth's provision of employment services, be impossible, complex or expensive to quantify accurately in financial terms, and therefore the Parties agree that the Liquidated Damages are a reasonable and genuine pre-estimate of the loss incurred by the Commonwealth in relation to:

- (a) in the case of clause 111.1(a), identifying, selecting and entering into contractual relations with a

alternative employment services provider to provide services at the relevant Site(s), and transferring Participants, records, monies and relevant materials to the alternative employment services provider; and

- (b) in the case of clause 111.1(b), administrative costs in processing and resolving invalid claims.

111.4 For the avoidance of doubt, the Liquidated Damages will become a debt due to the Commonwealth for the purposes of clause 24 [Debts and offsetting], if and when the Commonwealth Notifies the Provider that it elects to recover the Liquidated Damages as a debt under clause 24 [Debts and offsetting].

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.

Advance EPF Payments

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

- (a) DEEWR will only be liable to make payments of Advance EPF Payments to the extent that those monies have been legally committed by the Provider before receipt of the notice of termination;
- (b) the Provider will be required to acquit the Advance EPF Payments in accordance with clause 60 [Employment Pathway Fund – General];
- (c) DEEWR will be entitled to recover from the Provider any Advance EPF Payments paid before receipt of the notice of termination which:
 - (i) have not been legally committed for expenditure by the Provider in accordance with this Deed and payable as a current liability before receipt of the notice of termination;
 - or

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- (ii) have not, in DEEWR's opinion, been spent by the Provider in accordance with this Deed; and
 - (d) the Provider must, if requested by DEEWR, provide within five Business Days details of all Advance EPF Payments referred to in paragraphs (a) and (c)(i) above.

112.5 For the purposes of clause 112.4(a) and (c)(i), DEEWR may require written evidence that the Advance EPF Payments have been legally committed.

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) the expected number of Referrals of Stream Participants during the Transition Period, if this is to be different from under this Deed; 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) in accordance with clauses 43 and 44 of this Deed; 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 Except in relation to the NHLIS, the Provider must produce and implement an Indigenous Employment Strategy, a copy of which must be made available to DEEWR on request.

116. Service Level Agreements and other agreements

116.1 The Provider must work in partnership with:

- (a) CDEP providers (in locations where CDEP providers exist);
- (b) IEP providers;
- (c) Employers; and
- (d) community service organisations,

to maximise employment of Indigenous Australians in local jobs.

116.2 The Provider must enter into a Service Level Agreement with the local CDEP provider(s) in locations where they are both operating, a copy of which must be made available to DEEWR on request. The Provider must have the Service Level Agreement(s) in place by 31 July 2009.

116.3 The Provider may enter into agreements with IEP providers in locations where they are both operating for the purpose of maximising employment outcomes for Indigenous Australians in relation to specific IEP projects.

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 – TRANSITION

Notwithstanding clause 2.1(e), all Notes in this Annexure A form part of this Deed and are legally binding on both Parties.

Table 1 - Allocation of Transitioned Participants to Streams or Work Experience Phase¹

Participant characteristic prior to transition – time periods refer to length of time from registration with Centrelink	Entry point into Stream Services	Indicative Payment Period before Participant moves into the Work Experience Phase	Indicative timing of entry into the relevant Stream Services from 1 July 2009	Employment Pathway Fund Credit	Employment Pathway Fund Credit – Remote ESAs only ²
Highly Disadvantaged Job Seekers previously in Job Network (including former Green Corps and former Work for the Dole participants)					
Less than or equal to 12 months	Stream 3	12 months	Immediate	\$550	\$935
From 12 months and one day to 24 months	Stream 3	12 months	After 6 months	\$550	\$935
From 24 months and one day (30%) ³	Stream 3	6 months	After 6 months	\$550	\$935
From 24 months and one day (70%) ³	Directly into the Work Experience Phase, deemed to be in Stream 3 ⁴	N/A ⁴	Immediate	\$750	\$1275
Non Highly Disadvantaged Job Seekers previously in Job Network (including former Green Corps and former Work for the Dole participants)					
Less than or equal to 12 months	Stream 1	12 months	Immediate	\$11	\$19
From 12 months and one day to 15 months	Stream 2	12 months	Immediate	\$550	\$935

From 15 months and one day to 18 months	Stream 2	12 months	After 3 months	\$550	\$935
From 18 months and one day to 24 months	Stream 2	6 months	After 6 months	\$550	\$935
24 months and one day or more (30%) ³	Stream 3	6 months	After 6 months	\$550	\$935
24 months and one day or more (70%) ³	Directly into the Work Experience Phase, deemed to be in Stream 3 ⁴	N/A ⁴	Immediate	\$750	\$1275
Notwithstanding the above categories of Job Seekers, any Job Seekers previously in Job Network (including former Green Corps and former Work for the Dole participants) who are identified by Centrelink as a 'redundant worker'					
Any length of time	Stream 2	12 months	Immediate	\$550	\$935
Former Personal Support Programme participants					
Less than or equal to 12 months	Stream 4	Up to 18 months	Immediate	\$1100	\$1870
12 months and one day or more ⁵	Stream 2	12 months	Immediate	\$550	\$935
12 months and one day or more ⁵	Stream 3	12 months	Immediate	\$550	\$935
12 months and one day or more ⁵	Directly into the Work Experience Phase, deemed to be in Stream 4 ⁴	N/A ⁴	Immediate	\$750	\$1275
Waitlist	Stream 4	Up to 18 months	Over the first year	\$1100	\$1870
Participants on PSP suspensions ⁶	Stream 4	Up to 18 months	Over the first 6 months	\$1100	\$1870

Former Job Placement, Employment & Training Programme participants					
Current participants	Stream 4	Up to 18 months	Immediate	\$1100	\$1870

Note 1: DEEWR does not guarantee and makes no representation that a particular number of, or any, former participants in a particular category in this Table 1 will be allocated to the Provider, nor that if any former participants are allocated to the Provider the numbers of those former participants will be distributed to Streams in the proportions specified in categories to which Notes 2 and 4 to this Table 1 refer. Providers should note that the numbers of former participants available to be allocated to a particular Provider will depend on a number of factors including but not limited to the numbers and characteristics of former participants in particular ESAs and parts of ESAs, participant choice, and the Provider's ESA Business Share.

Note 2: For the avoidance of doubt, Remote ESA has the meaning in clause 82 for the purposes of this Table.

Note 3: DEEWR will determine the criteria by which these former participants will be allocated to Stream 3 or directly into the Work Experience Phase respectively, and may direct the Provider accordingly. The allocation of these former participants to the Provider may be affected by factors such as the number of these former participants in a particular ESA and Participant choice.

Note 4: Transitioned Participants who were previously in Job Network, or who were former Personal Support Programme Participants, and who are allocated directly into the Work Experience Phase continue to receive Services in accordance with the Work Experience Phase for Stream 3 or Stream 4, respectively, until an Effective Exit or a Provider Exit occurs.

Note 5: Allocation of former Personal Support Programme participants in receipt of 12 months or more of services to Streams will be based on duration of assistance, Job Seeker Classification Instrument outcomes, and duration of unemployment, where applicable.

Note 6: PSP participants temporarily on a short term break.

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 – FEES AND REIMBURSEMENTS

Notwithstanding clause 2.1(e), all Notes in this Annexure C are legally binding on both Parties.

OUTCOME FEES

Table 1 – Outcome Fees

Interpretation

‘PO(PB)’ means Pathway Outcome (Provider Brokered)

‘PO(PA)’ means Pathway Outcome (Provider Assisted)

‘POB(PB)’ means Pathway Outcome Bonus (Provider Brokered)

‘POB(PA)’ means Pathway Outcome Bonus (Provider Assisted)

‘FO(PB)’ means Full Outcome (Provider Brokered)

‘FO(PA)’ means Full Outcome (Provider Assisted)

‘FOB(PB)’ means Full Outcome Bonus (Provider Brokered)

‘FOB(PA)’ means Full Outcome Bonus (Provider Assisted)

In accordance with clause 79.1(b), an Outcome Fee is payable on completion of the 13 Week Period and at the completion of the 26 Week Period, if all the relevant requirements for an Outcome and payment of the Outcome Fee are satisfied.

In accordance with clause 79.4(c), only a 13 Week Period Outcome Fee is payable in relation to a Pathway Outcome which satisfies the requirements of paragraph (g) or (h) of the definition of Pathway Outcome in Annexure F.

In accordance with clause 79.6, if a Fully Eligible Participant in a Remote ESA satisfies the requirements for a Remote Foundation Skills Outcome, the Provider may claim an Outcome Fee on the basis that the Fully Eligible Participant is deemed to have satisfied the requirements of a Pathway Outcome.

Stream 1

Period of Unemployment	PO(PB) Fee	PO(PA) Fee	POB(PB) Fee plus PO(PB) Fee	POB(PA) Fee plus PO(PA) Fee	FO(PB) Fee	FO(PA) Fee	FOB(PB) Fee plus FO(PB) Fee	FOB(PA) Fee plus FO(PA) Fee
0 days to 12 months after Commencement in Stream 1 ¹	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
12 months and 1 day after Commencement in Stream 1 to 60 months	\$376	\$252	\$451	\$302	\$854	\$572	\$1025	\$686

Stream 2

Period of Unemployment	PO(PB) Fee	PO(PA) Fee	POB(PB) Fee plus PO(PB) Fee	POB(PA) Fee plus PO(PA) Fee	FO(PB) Fee	FO(PA) Fee	FOB(PB) Fee plus FO(PB) Fee	FOB(PA) Fee plus FO(PA) Fee
0 to 12 months	\$550	\$446	\$660	\$535	\$1008	\$675	\$1210	\$810

12 months and one day to 60 months	\$550	\$446	\$660	\$535	\$1400	\$938	\$1680	\$1126
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Stream 3

Period of Unemployment	PO(PB) Fee	PO(PA) Fee	POB(PB) Fee plus PO(PB) Fee	POB(PA) Fee plus PO(PA) Fee	FO(PB) Fee	FO(PA) Fee	FOB(PB) Fee plus FO(PB) Fee	FOB(PA) Fee plus FO(PA) Fee
0 to 12 months	\$550	\$446	\$660	\$535	\$1750	\$1418	\$2100	\$1702
12 months and one day to 60 months	\$550	\$446	\$660	\$535	\$2500	\$2025	\$3000	\$2430
60 months and one day or more	\$1100	\$891	\$1320	\$1069	\$3300	\$2673	\$3960	\$3208

Stream 4

Period of Unemployment	PO(PB) Fee	PO(PA) Fee	POB(PB) Fee plus PO(PB) Fee	POB(PA) Fee plus PO(PA) Fee	FO(PB) Fee	FO(PA) Fee	FOB(PB) Fee plus FO(PB) Fee	FOB(PA) Fee plus FO(PA) Fee
0 to 12 months	\$1100	\$891	\$1320	\$1069	\$1750	\$1418	\$2100	\$1702
12 months and one day to 60 months	\$1100	\$891	\$1320	\$1069	\$2500	\$2025	\$3000	\$2430
60 months and one day or more	\$1100	\$891	\$1320	\$1069	\$3300	\$2673	\$3960	\$3208

Table 1A – Additional Fees for Remote ESAs

Education activity	Additional Fee	Fee amount
Remote Education Commencement Outcome	Remote Education Commencement Outcome Fee	\$500
Remote Educational Achievement Outcome	Remote Educational Achievement Outcome Fee	\$1500

SERVICE FEES

Table 2 – Services Fees – Streams 1, 2, 3, and 4 and Work Experience Phase

(1) Stream and time in Payment Period	(2) Service Fees	(3) Service Fees – Remote ESAs only
Stream 1		
First 13 weeks	\$63	\$107
Second 13 weeks	\$528	\$898
Third 13 weeks	\$94	\$160
Fourth 13 weeks	\$96	\$163
Maximum for Stream 1	\$781	\$1328
Stream 2		
First 13 weeks	\$271	\$461
Second 13 weeks	\$208	\$354
Third 13 weeks	\$202	\$343
Fourth 13 weeks	\$204	\$347
Maximum for Stream 2	\$885	\$1505
Stream 3		
First 13 weeks	\$332	\$564
Second 13 weeks	\$264	\$449
Third 13 weeks	\$257	\$437
Fourth 13 weeks	\$267	\$454
Maximum for Stream 3	\$1120	\$1904
Stream 4		
First 13 weeks	\$587	\$998
Second 13 weeks	\$512	\$870
Third 13 weeks	\$409	\$695
Fourth 13 weeks	\$411	\$699
Fifth 13 weeks	\$402	\$683

Sixth 13 weeks	\$415	\$706
Maximum for Stream 4	\$2736	\$4651
Work Experience Phase ^{1,3}		
First 13 weeks ²	\$456	\$775
Second 13 weeks	\$66	\$112
Third 13 weeks	\$133	\$226
Fourth 13 weeks	\$67	\$114

Note 1: After the fourth 13 Week Period in the Work Experience Phase, Service Fees continue to be paid on a cyclical basis for each alternate thirteen week period as follows: first additional 13 Week Period \$133 (\$226 for Remote ESAs), second additional 13 Week Period \$67 (\$114 for Remote ESAs) until the Fully Eligible Participant Exits.

Note 2: Includes the amount of \$330 (\$561 for Remote ESAs), payable once only during a Work Experience Phase upon Work Experience Commencement by a Fully Eligible Participant.

Note 3: An additional Fee of \$231 (\$393 for Remote ESAs) is payable, in accordance with clause 76.6, once only during a Work Experience Phase when a Fully Eligible Participant starts a Full-Time Work for the Dole activity for the first time, as specified in any Guidelines.

Table 2A – Drought Force Only Services Fee

Services	Payable	Service Fee
Drought Force Only Services	Payable only once per Drought Force Only Participant, on the Commencement of a Drought Force Only Participant	\$330

PLACEMENT FEES**Table 3 - Placement Fees**

Services	Placement Hours	Placement Fees
Stream 1 (post Skills Assessment)	Where an Eligible Placement Participant who is also a Partial Capacity to Work Participant completes between 15 to 49 hours of paid work in a Placement within 10 Consecutive Working Days	\$385
	Where an Eligible Placement Participant completes a minimum of 50 hours of paid work in a Placement within 10 Consecutive Working Days	\$440
Stream 2 to 4 and Work Experience Phase	Where an Eligible Placement Participant completes between 15 to 49 hours of paid work in a Placement within 10 Consecutive Working Days	\$385
	Where an Eligible Placement Participant completes a minimum of 50 hours of paid work in a Placement within 10 Consecutive Working Days	\$550

EMPLOYMENT PATHWAY FUND

Table 4 - Employment Pathway Fund Credits

Type of Service	Participant Details	Credit	Credit – Remote ESAs only	When credited
Stream 1	All Fully Eligible Participants	\$11	\$19	At payment of second 13 Weeks Service Fee
Stream 2	All Fully Eligible Participants	\$550	\$935	On Commencement
Stream 3	All Fully Eligible Participants	\$1100	\$1870	On Commencement
Stream 4	All Fully Eligible Participants	\$1100	\$1870	On Commencement
	Additional amount credited for Fully Eligible Participants that Centrelink has indicated require interpreter assistance	\$1000	\$1700	Upon Centrelink notification
	If, following the first 52 weeks of Stream 4, a Stream Services Review states that the Fully Eligible Participant would benefit from a further 26 weeks of Stream 4 assistance	\$550	\$935	After the recommendation has been made
Work Experience Phase	All Fully Eligible Participants	\$500	\$850	On Work Experience Commencement
	Additional amount credited for the participation of a Fully Eligible Participant in a Full-Time Work for the Dole activity, payable once only during a Work Experience Phase as specified in any Guidelines	\$350	\$595	As advised by DEEWR
Drought Force Only Services	A once only credit made during the Term of this Deed, for each Drought Force Only Participant	\$500	\$500	On Commencement

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

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- 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 that 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 year 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, 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 – RESERVED

- 9. Reserved**
- 10. Reserved**

ANNEXURE E – DEFINITIONS

‘10 Consecutive Working Days’ commences on the Placement Start Date and consists of the next 10 days during which the Employer is open for business.

‘13 Week Period’ means a period of:

- (a) 13 Consecutive Weeks from the Anchor Date for an employment related activity which satisfies the requirements for an Outcome; or
- (b) one Semester starting on the Anchor Date for an education or training related activity which satisfies the requirements for an Outcome,

and which period does not overlap with any other 13 Week Period.

‘26 Week Period’ means a period of:

- (a) 13 Consecutive Weeks for an employment related activity which satisfies the requirements for an Outcome; or
- (b) one Semester for an education or training related activity which satisfies the requirements for an Outcome,

and which period:

- (c) immediately follows the completion of a 13 Week Period; and
- (d) does not overlap with any other 13 Week Period or 26 Week Period.

‘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.

‘Acquittal Report’ means a report in accordance with clauses 60.23 and 60.24.

‘Activity Test Requirements’ means the activity test or participation requirements that a Fully Eligible Participant must meet in order to receive an Income Support Payment.

‘Activity Tested Participant’ means a Fully Eligible Participant with Activity Test Requirements.

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

‘Advance EPF Payment’ means an amount of money paid to the Provider in accordance with clause 60.20, for the purpose of meeting Group Activity Overhead Costs.

‘AMEP’ means the Adult Migrant English Program administered by the Commonwealth Department of Immigration and Citizenship.

‘Anchor Date’ means:

- (a) the first day of the Semester on which a Fully Eligible Participant starts an education or training related activity which, when completed, satisfies an Outcome and which day is recorded on DEEWR’s IT Systems in accordance with clause 79.1(c); or
- (b) the day recorded on DEEWR’s IT Systems in accordance with clause 79.1(c), not later than 28 days, or any other period specified in any Guidelines, after the day on which a Fully Eligible

Participant started an employment related activity which, when completed, satisfies an Outcome.

'Annexure' means any annexure to this Deed.

'Appointment' means a time for a meeting between the Provider and a Stream Participant in accordance with clause 50 [Appointments with Stream Participants].

'Assessment' means a formal assessment of a Fully Eligible Participant's level of disadvantage by either Centrelink or a Provider, using a JSCI, or by a JCA Provider, through a JCA, and includes specification of the Stream under which Services will be provided to the Fully Eligible Participant.

'Asset' means any item of tangible property, purchased, leased, created or otherwise brought into existence either wholly or in part with the use of the Employment Pathway Fund, which has a value equal to or greater than \$1000, but does not include property provided for the exclusive and personal use of a Fully Eligible Participant or a Drought Force Only Participant.

'Assignment' means a work opportunity, where a Participant's services are provided to a Host Organisation following the placement of that Participant into Employment with a labour hire organisation or a group training organisation that is not:

- (a) a position involving nudity or in the sex industry, including retail positions;
- (b) volunteer work, work experience or unpaid work;
- (c) a position in contravention of Commonwealth, state or territory legislation or which involves terms and conditions of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws;
- (d) a position for which the wage is directly paid by a CDEP scheme;
- (e) a position in a training course;
- (f) a placement in a program funded by the Commonwealth or by a state or territory government, such as Community Jobs Programs, and as advised by DEEWR from time to time;
- (g) in another country, regardless of whether the salary is paid in Australian Dollars or by an Australian company; or
- (h) a position that DEEWR has advised, from time to time is not acceptable.

'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).

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

'Bimonthly' means every second month.

'Bonus' means an additional Fee that is payable to the Provider if the Fully Eligible Participant achieves:

- (a) a Full Outcome; or
- (b) a Pathway Outcome,

by undertaking:

-
- (c) an apprenticeship in a Skills In Demand Occupation in accordance with the requirements set out in the Guidelines; or
 - (d) paid employment which is Directly Related Employment and the Provider has recorded on DEEWR's IT Systems any information required to be recorded, as specified in any Guidelines.

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

'Business 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).

'CDEP Participant' means a Fully Eligible Participant who is participating in a Community Development Employment Project.

'CDEP Wage' means a wage paid by a Community Development Employment Project to its CDEP Participants.

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

'Centrelink Customer Reference Number' is a number allocated by Centrelink to Participants who are registered with it and is recorded within Centrelink's relevant database.

'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

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- set out in paragraph (a) above in relation to either that Corporation or its corporate trustee;
- (c) in relation to a partnership:
- (i) the sale or winding up or dissolution of the business by the partners;
 - (ii) the change in any of the partners; or
 - (iii) the retirement, death, removal or resignation of any of the partners;
- (d) in relation to an Exempt Public Authority, a change in relation to any of the following:
- (i) the composition of the board of Directors;
 - (ii) ownership of any shareholding in any share capital; or
 - (iii) the enabling legislation so far as it affects Control, if any;
- (e) in relation to a Tendering Group:
- (i) any change in the membership of the Tendering Group;
 - (ii) a change of the lead member of the Tendering Group, if the Tendering Group has appointed a lead member for the purposes of this Deed; or
 - (iii) a Change in Control as defined in paragraphs (a) to (d) above in any member of the Tendering Group.

‘Change of Circumstances Reassessment’ means a reassessment of the level of disadvantage which is conducted for Fully Eligible Participants:

- (a) in Streams 1 to 3, by Centrelink or the Provider using a JSCI, or a JCA Provider through a JCA, where appropriate; or
- (b) in Stream 4, by a JCA Provider through a JCA,

and includes specification of the Stream Services which will be provided to the Fully Eligible Participant.

‘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.

‘Commence’ or **‘Commencement’** means:

- (a) for Stream Participants in Stream 1, the time at which the Provider has recorded the completion of the Initial Interview and uploaded a completed résumé on DEEWR’s IT Systems;
- (b) for Fully Eligible Participants in Streams 2 to 4, the time at which the Provider has recorded either the completion of the Initial Interview (which includes entering into, or updating, an Employment Pathway Plan, as relevant) or the completion of an Initial Interview for a New Stream, whichever is relevant, on DEEWR’s IT Systems; and
- (c) for Drought Force Only Participants, when they commence on a Drought Force activity.

‘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.

‘Community Development Employment Projects’ or **‘CDEP’** means the Community Development Employment Projects program administered by FaHCSIA.

‘Community Jobs Programs’ or **‘CJP’** means:

- (a) the Community Job Plan-Work Placements program administered by the Queensland Department of Employment and Industrial Relations; or
- (b) the Workforce Participation Partnerships program administered by the Victorian Department of Innovation, Industry and Regional Development.

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

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

‘Complementary Service’ means an employment or training program administered by the Commonwealth, including DEEWR, or provided by a state or territory government (including by state or territory government funded providers), as advised by DEEWR from time to time, which the Provider may access to provide additional specialised assistance to a Fully Eligible Participant, or about which the Provider may provide information to a Stream 1 (Limited) Participant to help them access such specialised assistance.

‘Completion Date’ means either:

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

‘Compliance Activities’ means Intensive Activities of 200 hours over eight weeks at 50 hours per fortnight, generally with some participation required every Business Day, or as otherwise directed by Centrelink.

‘Compliance Review’ means a review of claims for payment submitted by the Provider undertaken by DEEWR from time to time.

‘Comprehensive Compliance Assessment’ means an assessment conducted by Centrelink to determine whether:

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- (a) a penalty should be applied to an Activity Tested Participant who wilfully and persistently fails to meet their obligations under their Employment Pathway Plan; or
 - (b) the Activity Tested Participant requires additional assistance in order to comply.

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

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

‘Consecutive Weeks’ means a continuous period of weeks broken only by one or more Permissible Breaks.

‘Constitution’ means (depending on the context):

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

‘Contact’ means a contact between the Provider and a Fully Eligible Participant in accordance with clause 51 [Contact services].

‘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.

‘Contact Request’ means an electronic request sent by the Provider through DEEWR’s IT Systems to Centrelink, seeking Centrelink’s assistance in establishing contact with a Participant who has failed to meet any one or more of his or her Activity Test Requirements. Note: This is an alternative to compliance action.

‘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:

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- (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.

'Delegate' means a person engaged by the Provider who is a Delegate of the Secretary under the Social Security Law, and in all other cases, means the Provider.

'Direct Registration' or **'Directly Register'** means Registration by the Provider of a Stream 1 (Limited) Participant, Vulnerable Youth, Vulnerable Youth (Student), Volunteer (Non-activity Tested) or Drought Force Only Participant, who does not have a Referral, in accordance with clause 40 [Direct Registration of Stream Participants without a Referral], or clause 85 [Drought Force Only Services] (for Drought Force Only Participants) in accordance with any Guidelines.

'Directly Related Employment' means an employment activity where the employment activity is undertaken and is preceded by a Qualifying Training Course which is in a field of study related to the employment activity as specified in any Guidelines.

'Director' means any of the following:

- (a) a person appointed to the position of a director or alternate director, and acting in that capacity, of a body corporate within the meaning of the *Corporations Act 2001* (Cth) regardless of the name given to their position;

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- (b) a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
 - (c) a member of the committee of an organisation incorporated pursuant to state or territory laws relating to the incorporation of associations;
 - (d) a person who would be a director of the body corporate under paragraph (a) above if the body corporate were a body corporate within the meaning of the *Corporations Act 2001* (Cth);
 - (e) a person who acts in the position of a director of a body corporate;
 - (f) a person whose instructions or wishes the directors of a body corporate are accustomed to acting upon, and not simply because of the person's professional capacity or business relationship with the directors or the body corporate; and
 - (g) a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate.

'Disability Employment Services' means the disability employment network (DEN) and vocational rehabilitation services (VRS) administered by DEEWR and the supported employment assistance administered by FaHCSIA, or their successors.

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

'Dispose' or **'Disposal'** means to sell, license, lease or sublease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts.

'Documentary Evidence' means those Records of the Provider, 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 activity' means work experience activities that help individual farms and farming communities that have been severely affected by drought and operate primarily on private land which has been declared as drought affected by the Australian Government (currently these areas are listed on the following website: www.daff.gov.au).

'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 Service Fee' means the Fees payable in accordance with clause 85.4 and Annexure C.

'Drought Force Only Services' means those Services provided to Drought Force Only Participants as described in clause 85 [Drought Force Only Services].

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

'Education' means any education activity unless otherwise advised by DEEWR.

'Effective Exit' means the automatic removal of:

- (a) a Stream 1 (Limited) Participant from DEEWR's IT Systems in accordance with clause 48.8; and
- (b) a Fully Eligible Participant from DEEWR's IT Systems as being eligible for the full range of Services when the Fully Eligible Participant:
 - (i) stops receiving an Income Support Payment;
 - (ii) is not on an Income Support Payment and turns 21 years of age;

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- (iii) is commenced in Disability Employment Services or equivalent;
 - (iv) achieves the assessed level of restricted work hours in employment which is a Full Outcome;
 - (v) who is in receipt of a Parenting Payment or Carer Payment achieves the chosen reduced working hours which is a Full Outcome;
 - (vi) who does not have Activity Test Requirements, or who has part-time Activity Test Requirements, achieves a Full Outcome;
 - (vii) becomes a NEIS Participant; or
 - (viii) participates in an activity or an event that occurs in relation to the Fully Eligible Participant that DEEWR may advise the Provider from time to time as being an Effective Exit.

‘Eight Week Non Payment Period’ means an eight week period during which Income Support Payments are not paid to a Participant as a result of serious failures to comply with his or her Activity Test Requirements that call into question the Participant's eligibility for Income Support Payments i.e. where a Participant refuses to accept a suitable job offer; accepts a suitable job offer but fails to commence the job; or, following a Comprehensive Compliance Assessment, is found to have no barriers to participation and to have been persistently and wilfully non-compliant with his or her Activity Test Requirements.

‘Electronic Diary’ means the DEEWR system used for Referrals, for making and managing a Stream Participant's Appointments and for referrals by the Provider to other relevant service providers.

‘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;

‘Eligible Placement Participant’ means a Fully Eligible Participant who:

- (a) has an Employment Pathway Plan;
- (b) is not a Stream 1 (Limited) Participant; or
- (c) if in Stream 1, prior to the Placement Date:
 - (i) has a current Period of Service of at least three months;
 - (ii) has a completed Skills Assessment; and
 - (iii) has an Employment Pathway Plan that includes an Intensive Activity.

‘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.

‘Employer Broker’ means an entity that is appointed by DEEWR to the Employer Broker Panel.

‘Employer Broker Panel’ means a panel of entities appointed by DEEWR to develop proposals for Employer Broker activities and to perform those activities if contracted by DEEWR to do so.

‘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 Pathway Fund’ means a flexible pool of funds held by DEEWR, which is nominally credited to the Provider at the Site level, in accordance with clauses 60.8 to 60.13.

‘Employment Pathway Plan’ means the Employment Pathway Plan described in clause 57 [General requirements for an Employment Pathway Plan], and which includes a Parenting Payment Activity Agreement, Youth Allowance Activity Agreement or a Newstart Activity Agreement under the *Social Security Act 1991* (Cth) or, if the *Social Security Act 1991* (Cth) is amended, any other such agreements.

‘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.

‘Environmental Criteria’ means the various criteria as set out in any Guidelines which fall under the categories specified in clause 68.2.

‘Environmental Outputs’ means the environmentally focussed products or achievements of a Green Corps activity.

‘Environmental Tasks’ means tasks on a Green Corps activity which contribute to the achievement of Environmental Outputs as approved by DEEWR, such as removing weeds, planting trees, propagating seeds, or constructing boardwalks.

‘ESA Business Share’ means the proportion of Fully Eligible Participants for each ESA specified in Item 6.5 of the Schedule.

‘ESA Coverage’ means an area which a Provider agrees to service within a specific ESA.

‘ESA Specialist Client Group’ means any of the following classes of Stream Participant, subject to any specifications about the membership of these classes contained in any Guidelines:

- (a) Indigenous Australians;
- (b) persons from culturally and linguistically diverse backgrounds, including migrants, refugees and persons suffering from the effects of trauma or torture;
- (c) young people and youth at risk, including homeless youth;
- (d) persons with a disability, but excluding persons receiving Disability Employment Services;
- (e) persons with drug or alcohol problems;
- (f) persons who are homeless or at risk of becoming homeless;
- (g) ex-offenders; or
- (h) any other group of persons specified in Item 6.3 of the Schedule.

‘Exceptional Circumstances’ means circumstances beyond the control of the Provider and/or a Stream Participant and includes:

- (a) where the Stream Participant resides in:
- (i) a Remote ESA where there is no Outreach service (agreed to by DEEWR);
 - (ii) an area which is affected by extreme weather conditions (agreed to by DEEWR);
 - (iii) an area affected by a natural disaster; or
 - (iv) an area affected by public transport strikes;
- (b) when a Stream Participant is participating in full-time Training or Education and their participation in those activities restricts their availability to participate in Contacts; or
- (c) other circumstances advised by DEEWR from time to time.

‘**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).

‘Exemption’ means circumstances recorded by Centrelink, resulting in an exemption by Centrelink of a Stream Participant’s Activity Test Requirements for a specified period of time.

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

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

the Deed Material.

‘Exit’ means an exit of a Fully Eligible Participant from Stream Services in accordance with clause 48.1.

‘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.

‘First Work Experience Contact’ means the first Contact during the Work Experience Phase in accordance with clauses 52.8 to 52.10.

‘Full Outcome’ means for the duration of a 13 Week Period or a 26 Week Period:

- (a) a Fully Eligible Participant who is in receipt of a Newstart Allowance or a Youth Allowance (other) remains each fortnight in employment or Unsubsidised Self-Employment that generates sufficient income to have caused the Fully Eligible Participant’s Basic Rate of Newstart Allowance or Youth Allowance (other) to cease; or
- (b) a Fully Eligible Participant who is in receipt of a Newstart Allowance or a Youth Allowance (other) remains each week in:
 - (i) a full-time apprenticeship or traineeship; or
 - (ii) an apprenticeship or traineeship which is not full-time, but which generates sufficient income to have caused the Fully Eligible Participant’s Basic Rate of Newstart Allowance or Youth Allowance (other) to cease;
- (c) a Fully Eligible Participant who has been identified and recorded on DEEWR’s IT Systems by Centrelink or another party identified by DEEWR as a parent or as having a disability receiving Newstart Allowance, Youth Allowance (other) or Parenting Payment (Partnered or Single) with part-time participation requirements remains each week in employment or Unsubsidised Self-Employment or an apprenticeship or a traineeship for at least 30 hours each fortnight;
- (d) a Fully Eligible Participant who is not in receipt of a Newstart Allowance or a Youth Allowance (other) remains each week in employment or Unsubsidised Self-Employment or an apprenticeship or a traineeship of at least 20 hours or more each week;
- (e) a Fully Eligible Participant who has been identified and recorded on DEEWR’s IT Systems as having a disability and a Partial Capacity to Work, remains in employment or Unsubsidised Self-Employment or an apprenticeship or a traineeship that equals or exceeds the minimum number of hours per week in the range as assessed by Centrelink or a JCA Provider, but is not less than eight hours of work each week;
- (f) a Fully Eligible Participant who is in receipt of a Parenting Payment (Partnered or Single) without participation requirements or Carer Payment and who chooses to work reduced hours due to caring responsibilities (this choice being recorded on DEEWR’s IT Systems by Centrelink or another party identified by DEEWR) remains in employment or Unsubsidised Self-Employment or an apprenticeship or a traineeship for at least 30 hours each fortnight;
- (g) a Fully Eligible Participant who has not completed year 12 or equivalent and who is either 15 to 20 years of age or is an Indigenous Australian and completes one Semester of a single qualification course of two or more Semesters duration:
 - (i) transfers to Youth Allowance (Student), Abstudy or Austudy or where the Fully Eligible Participant does not transfer to Youth Allowance (Student), Abstudy or Austudy, meets the requirements of a Qualifying Education Course;
 - (ii) on a part-time basis (as defined by the training institution) during which the Fully Eligible Participant also gains employment (or Unsubsidised Self-Employment or an apprenticeship or a traineeship) sufficient to reduce the Fully Eligible Participant’s Basic Rate of a Newstart Allowance or a Youth Allowance (other) by an average of at least 60 per cent over the Semester; or
 - (iii) on a part-time basis (as defined by the training institution) during which a Fully Eligible Participant who is not in receipt of a Newstart Allowance or a Youth Allowance (other) gains employment (or Unsubsidised Self-Employment or an apprenticeship or a traineeship) for an average of at least 15 hours each week averaged over the Semester; or
- (h) where a Fully Eligible Participant who is a CDEP Fully Eligible Participant remains each week in employment or Unsubsidised Self-Employment or an apprenticeship or a traineeship of at least 20 hours or more each week which is not funded by the Fully Eligible Participant’s CDEP Wage;

or

- (i) where the requirements of an Upgrade are met; or
- (j) any other event that DEEWR may notify the Provider from time to time as being a Full Outcome.

'Full-Time' means:

- (a) for a Site, Monday to Friday from 9am- 5pm daily on Business Days, or as otherwise agreed with DEEWR; and
- (b) for NEIS, the number of hours as a minimum, as set out in any Guidelines, a NEIS Participant must work in their NEIS Business.

'Full-Time Study' means:

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

'Full-Time Work for the Dole activity' means a more intensive Work for the Dole activity with an hourly requirement as specified by DEEWR in any Guidelines.

'Fully Eligible Participant' means a person, who is identified by Centrelink, DEEWR, the Provider or a JCA Provider on DEEWR's IT System as fully eligible for all Stream Services, and includes a Vulnerable Youth, a Vulnerable Youth (Student) for Services under Stream 4 only and a Transitioned Participant but excludes a Stream 1 (Limited) Participant and Drought Force Only Participant.

'Green Corps activity' means a work experience activity with a specific environmental focus.

'Group Activity Overhead Costs' means the costs directly associated with the establishment and running of a Group-based Work Experience Activity, including (but not limited to):

- (a) the costs of supervisors, capital equipment, transportation of Fully Eligible Participants, rent and associated infrastructure, activity materials, training;
- (b) insurance (limited only to the additional costs of insurance where the nature of a Group-based Work Experience Activity means that it is not covered by DEEWR funded insurance, or insurance the Provider is required to obtain in accordance with clause 100 [Insurance], being insurance only for the period of the Group-based Work Experience Activity); and
- (c) any other item as specified by DEEWR;

but does not include the costs of items provided to individual Fully Eligible Participants.

'Group-based Work Experience Activity' means a Work Experience Activity which has more than one Fully Eligible 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.

'Harvest' includes:

- (a) the crop that ripens or is gathered in a season;

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- (b) the amount or measure of the crop gathered in a season;
 - (c) the time or season of such gathering; and
 - (d) the result or consequence of an activity referred to in (a) to (c) of this definition.

‘Harvest Area’ means the area in which the Provider must provide Harvest Labour Services, as set out in Item 7.2 of the Schedule.

‘Harvest Employers’ means Employers who are primary producers within the Harvest Area, their representative organisations, and the contractors that primary producers have engaged for the supply or provision of Harvest Work.

‘Harvest Information’ means information about the Harvest, Harvest Work and Harvest Vacancies, including information regarding:

- (a) accommodation that prospective Harvest Workers can get;
- (b) possible means of transportation to Harvest Work jobs;
- (c) conditions of employment and pay rates relating to Harvest Work;
- (d) relevant legislative requirements relating to hiring or employing Harvest Workers;
- (e) relevant legislative requirements relating to the provision of Harvest Work;
- (f) the NHLIS Harvest Areas;
- (g) available work in NHLIS Harvest Areas;
- (h) the type of clothing recommended for undertaking Harvest Work;
- (i) physical requirements for Harvest Work;
- (j) the weather conditions in NHLIS Harvest Areas;
- (k) wages for Harvest Work;
- (l) contact details for organisations hiring Harvest Workers; and
- (m) any other information the Provider or DEEWR considers relevant.

‘Harvest Labour Services’ or **‘HLS’** means the Services specified in clause 73 and includes both Other Harvest Labour Services and Harvest Placement Services.

‘Harvest Period’ means the time periods of that name set out in Item 7.10 of the Schedule.

‘Harvest Placement’ means the placement of a Harvest Worker into a Harvest Vacancy in accordance with clause 73.5(d).

‘Harvest Placement Fee’ means the Fee the Provider may claim in accordance with clause 80.

‘Harvest Placement Service’ means those Services described in clauses 73.5 to 73.8.

‘Harvest Service Fee’ means those fees the Provider may claim in accordance with clause 80.

‘Harvest Trail Website’ means the website hosted by DEEWR available at www.harvesttrail.gov.au.

‘Harvest Vacancy’ means a vacancy that:

- (a) involves Harvest Work;
- (b) takes place during the Harvest Period;

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- (c) does not contravene Commonwealth, state or territory legislation;
 - (d) provides terms and conditions of employment which are consistent with the relevant workplace relations laws, or any instrument made under such laws, and occupational health and safety laws, or any instrument made under such laws; and
 - (e) is as otherwise described in any Guidelines.

‘Harvest Work’ means work that includes, but is not limited to:

- (a) harvesting, cleaning and packing fruit and vegetables;
- (b) harvesting cereals and other crops;
- (c) pruning and trimming vines and fruit trees;
- (d) thinning and trimming flowers;
- (e) chipping and weeding;
- (f) operating harvesting equipment; and
- (g) other like activities.

‘Harvest Worker’ means a person who is not prohibited by law from working in Australia.

‘Host Organisation’ means the organisation to which an Eligible Placement Participant’s services are provided after being placed into employment with a labour hire organisation or a group training organisation.

‘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 Program’ or **‘IEP’** means the program administered by DEEWR which provides a range of tools to achieve employment and economic development for Indigenous Australians.

‘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.

‘Initial Interview’ means an initial meeting between the Provider and a Stream Participant in accordance with clause clauses 52.1 to 52.4.

‘Initial Interview for a New Stream’ means an initial meeting between the Provider and a Fully Eligible Participant when the Fully Eligible Participant has moved into a higher Stream due to a change in level of disadvantage as determined by a JSCI or a JCA, and in accordance with clauses 52.6 and 52.7;

‘In-kind Contributions’ means non-financial resources (valued at cost) which are provided to and used by the Provider for the purposes of one or more Work Experience Activity.

‘Innovation Fund Project’ means a project of that name for which a Provider may be funded by DEEWR.

‘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.

‘Intensive Activity’ means an activity of that description in accordance with clause 54.

‘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.

‘Intervention’ means a specialist service provided by a private sector or community entity or an employment or training program administered by the Commonwealth or by a state or territory government (including by state or territory government funded providers) that the Provider may pay for using the Employment Pathways Fund, or otherwise access, to provide specialised assistance to Fully Eligible Participants to address Vocational Barriers and Non-vocational Barriers and includes foundational skills development assistance, Training, mentoring and NEIS Services.

‘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.

‘Job Seeker Classification Instrument’ or **‘JSCI’** means the tool used by Centrelink to measure a Fully Eligible Participant’s relative level of disadvantage based on the expected difficulty in finding the Fully Eligible Participant employment because of the Fully Eligible Participant’s personal circumstances and labour market skills.

‘Jobsearch Facilities’ means personal computers or similar devices with broadband internet connectivity, printers and other sundry equipment, which accord with specifications notified by DEEWR from time to time. **‘Jobsearch Facility’** has a corresponding meaning.

‘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.

‘Liquidated Damages’ means the amount that DEEWR may recover from a Provider in accordance with clause 111 [Liquidated damages].

‘Local Youth Service’ means an appropriate local youth support service, such as the youth pathways program administered by DEEWR and the reconnect program administered by FaHCSIA.

‘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).

‘National Harvest Guide’ means the document of that name specified in clause 74 [National Harvest Labour Information Service].

‘National Harvest Labour Information Service’ or **‘NHLIS’** means the Services of that name specified in clause 74 [National Harvest Labour Information Service].

‘National Harvest Telephone Information Service’ means the Services of that name specified in clause 74 [National Harvest Labour Information Service].

‘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 Contract 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 of that name provided by NEIS Panel Members.

‘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 described in clause 72 and Part 1 of Annexure D of this Deed, 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.

‘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).

‘NHLIS Harvest Area’ means the areas where Harvest Labour Services are being provided by employment services providers, as advised by DEEWR from time to time.

‘Non-Payable Outcome’ means placement of a Fully Eligible Participant into any:

- (a) position funded directly by a CDEP Fully Eligible Participant’s CDEP Wage;
- (b) employment in the sex industry, including retail positions;
- (c) employment involving nudity;
- (d) volunteer work;
- (e) work experience;
- (f) unpaid work;
- (g) training course not eligible for Austudy, Abstudy, or Youth Allowance(Student);
- (h) training course duplicating, or having significant components similar to, employment services, such as training for work preparation or job search skills;
- (i) job that involves taking up employment in another country, regardless of whether the salary is paid in Australian Dollars or by an Australian company;
- (j) jobs involving illegal activity;
- (k) discriminatory jobs;
- (l) Pre-Existing education or training related activity, unless the Fully Eligible Participant is a Vulnerable Youth(Student) ;
- (m) Pre-Existing employment related activity, unless the requirements for an Upgrade in relation to that employment related activity are satisfied;
- (n) program, including a Work Trial program, funded by the Australian Government, or a state or territory government, including a Complementary Service
- (o) non-ongoing employment or a Work Trial where:
 - (i) the Fully Eligible Participant’s wages are subsidised by the Provider; and
 - (ii) the Provider seeks reimbursement from the Employment Pathway Fund.
- (p) Recurring employment;

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- (q) an education or training course in relation to which the Provider has already received an Outcome Fee for both a 13 Week Period and a 26 Week Period for that Fully Eligible Participant in the same Period of Unemployment;
 - (r) employment in the same or a similar position vacated in the previous 14 days by a Fully Eligible Participant who attracted an Outcome Fee;
 - (s) employment that contravenes Commonwealth, state or territory legislation or provides terms and conditions of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws; or
 - (t) situation that DEEWR may Notify, from time to time.

Note: in this definition of Non-Payable Outcome, the term 'work experience' refers to an unpaid short term placement of a person in a workplace to enable the person to observe and learn in an actual work setting. It does not refer to the term 'Work Experience Activity' as defined in this Deed.

'Non-Payable Placement' is a position:

- (a) where the Eligible Placement Participant has found their own employment in that position;
- (b) that would lead to employment involving nudity or in the sex industry, including retail positions;
- (c) for volunteer work, for work experience or unpaid work;
- (d) for placement in Work Experience Activities;
- (e) where the Eligible Placement Participant enters into a NEIS Participant Agreement and starts to operate his or her NEIS Business;
- (f) that contravenes Commonwealth, state or territory legislation or provides terms and conditions of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws;
- (g) within Own Organisation;
- (h) for which the wage is directly paid by a Community Development Employment Projects scheme;
- (i) that pays commission as either the entire remuneration or part of the remuneration;
- (j) where the type of work is inappropriate for the Eligible Placement Participant's Job Capacity Assessment or Partial Capacity to Work;
- (k) for a school-based traineeship and/or apprenticeships;
- (l) in a training course;
- (m) for Self-Employment Opportunities;
- (n) for placements in programs funded by the Commonwealth or by a State or Territory government, such as Community Jobs Programs, and as advised by DEEWR from time to time;
- (o) that involves taking up employment in another country, regardless of whether the salary is paid in Australian Dollars or by an Australian company;
- (p) for employment that the Eligible Placement Participant had commenced before Commencing in a Stream;
- (q) for non-ongoing employment or a Work Trial where the Eligible Placement Participant's wages are subsidised by the Provider and the Provider seeks reimbursement from the Employment Pathway Fund;
- (r) for which the Provider has already claimed a Placement Fee;
- (s) where the Eligible Placement Participant would have responsibility for the:

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- (i) establishment, interpretation and implementation of policy in economic, social, technical, legal and other areas; and
 - (ii) management and direction of functional units, often through other managers, to deliver the financial and broader organisational objectives of the employer;
- (t) within the Provider's own Subcontractor (or the part of the Subcontractor) that delivers Services under this Deed; and
- (u) that DEEWR may Notify, from time to time.

'Non-vocational Barriers' means the range of barriers that can prevent a person from obtaining and sustaining employment or education or from undertaking further skills development, including but not limited to homelessness, mental illness, drug or alcohol addiction, sexual abuse or violence and physical or mental abuse.

'No Show, No Pay Failure' means a situation where a Participant fails to participate in an activity; engages in misconduct while in an activity; fails to attend a job interview without a Reasonable Excuse or intentionally behaves in a manner during a job interview that results in an offer of employment not being made. Note: A Participant may lose one day of Income Support Payments for each day on which they commit a No Show No Pay failure.

'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.

'Other Harvest Labour Services' means those Services described in subclause 73.9.

'Outcome' means:

- (a) a Pathway Outcome; or
- (b) a Full Outcome.

'Outcome Fee' means the Fees set out in Table 1 in Annexure C.

'Outreach' means, for a Site, a regular presence other than Part-Time or Full-Time - for example, on a monthly, seasonal or 'as the need arises' basis.

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

'Parenting Payment' has the meaning given to 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.

'Partial Capacity to Work' has the meaning of 'partial capacity to work' as defined in the *Social Security Act 1991* (Cth).

‘Partial Capacity to Work Participant’ or ‘PCW Participant’ means a Fully Eligible Participant who has a ‘partial capacity to work’ as defined in the *Social Security Act 1991* (Cth).

‘Participant’ means a Stream Participant, a Harvest Worker 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.

‘Participation Report’ means an electronic report sent by the Provider through DEEWR’s IT System to Centrelink detailing a Participant’s act or acts of potential non-compliance with his or her Activity Test Requirements.

‘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.

‘Pathway Outcome’ means for the duration of a 13 Week Period or a 26 Week Period:

- (a) a Fully Eligible Participant who is in receipt of Newstart Allowance or Youth Allowance (other) gains employment or Unsubsidised Self-Employment or an apprenticeship or a traineeship that generates sufficient income to reduce the Fully Eligible Participant’s Basic Rate of Newstart Allowance or Youth Allowance (other) by an average of at least 60 per cent; or
- (b) a Fully Eligible Participant who is in receipt of Newstart Allowance, Youth Allowance (other) or Parenting Payment (Partnered or Single) with part time participation requirements and who is identified and recorded on DEEWR’s IT Systems prior to the Fully Eligible Participant commencing employment as a parent or as having a disability gains employment or Unsubsidised Self-Employment or an apprenticeship or a traineeship for an average of 10 or more hours per week;
- (c) a Fully Eligible Participant who is not in receipt of Newstart Allowance or Youth Allowance gains employment or Unsubsidised Self-Employment or an apprenticeship or a traineeship for an average of 15 or more hours per week, which does not lead to a Full Outcome Fee;
- (d) a Fully Eligible Participant who has been identified and recorded on DEEWR’s IT Systems prior to their commencing employment as having a disability and a Partial Capacity to Work, gains employment or Unsubsidised Self-Employment or an apprenticeship or a traineeship that is on average at least 70 per cent of the minimum number of hours per week in the range as assessed by Centrelink, but is not less than an average of 8 hours of work per week;
- (e) a Fully Eligible Participant who is in receipt of a Parenting Payment (Partnered or Single) without participation requirements or Carer Payment and who chooses to work reduced hours due to caring responsibilities (this choice being recorded on DEEWR’s IT Systems prior to their commencing employment) gains employment or Unsubsidised Self-Employment or an apprenticeship or a traineeship that is an average of 10 hours or more per week;
- (f) a Fully Eligible Participant who is a CDEP Participant gains employment or Unsubsidised Self-Employment or an apprenticeship or a traineeship of an average of 15 hours or more per week which is not funded by the Fully Eligible Participant’s CDEP Wage;
- (g) a Fully Eligible Participant who is aged 21 years or more:
 - (i) transfers to Youth Allowance (Student), Abstudy or Austudy, and completes one Semester of a single qualification course of two or more Semesters in duration; or

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- (ii) does not transfer to Youth Allowance (Student), Abstudy or Austudy, but completes one Semester of a single qualification course of two or more Semesters in duration and meets the requirements of a Qualifying Education Course;
 - (h) a Fully Eligible Participant who is aged between 15 and 20 years and who has completed year 12 or equivalent:
 - (i) transfers to Youth Allowance (Student), Abstudy or Austudy, and completes one Semester of a single qualification course of two or more Semesters in duration; or
 - (ii) does not transfer to Youth Allowance (Student), Abstudy or Austudy, but completes one Semester of a single qualification course of two or more Semesters in duration and meets the requirements of a Qualifying Education Course; or
 - (i) a Fully Eligible Participant who has executed a NEIS Participant Agreement and is receiving NEIS Assistance; or
 - (j) any other event that DEEWR may notify the Provider from time to time as being a Pathway Outcome.

'Payment Period' means the period during which the Provider is entitled to be paid Service Fees and:

- (a) starts on the day on which a Fully Eligible Participant Commences; and
- (b) subject to any Suspension, and paragraphs (c) and (d) below, runs continuously, including throughout the Work Experience Phase, until the Fully Eligible Participant Exits.
- (c) During the period of time before the Fully Eligible Participant moves into the Work Experience Phase for the first time, the Payment Period runs continuously only for the following periods:
 - (i) for Transitioned Participants who are Fully Eligible Participants – for the period specified in the third column [Indicative Payment Period before Participant moves into the Work Experience Phase] in Table 1 in Annexure A; and
 - (ii) for all other Fully Eligible Participants in Streams 1 to 4 – for a maximum of 12 months, except where a Change of Circumstances Reassessment or Stream Services Review:
 - (A) provides for Services to be provided in Stream 2 or 3 for a Fully Eligible Participant in Stream 1 – in which case the maximum is 12 months in Stream 1 and 12 months in Stream 2 or 3, as the case may be;
 - (B) provides for Services to be provided in Stream 3 for a Fully Eligible Participant who moves from Stream 2 (pre-Work Experience Phase) directly into Stream 3 – in which case the maximum is 18 months in Streams 2 and 3 combined, regardless of how that maximum period of time is distributed between time in Stream 2 and time in Stream 3;
 - (C) provides for Services to be provided in Stream 4 for a Fully Eligible Participant in Streams 1 to 3 – in which case the maximum is 12 months in Stream 1, 2 or 3, as the case may be, and 18 months in Stream 4; or
 - (D) provides for Services to be extended for a further six months for a Fully Eligible Participants in Stream 4 – in which case the maximum is 18 months.
- (d) If, during the Work Experience Phase, a Change of Circumstances Reassessment indicates that the Fully Eligible Participant should be in a higher Stream, then during the time before the Fully Eligible Participant moves into the Work Experience Phase of the higher Stream, the Payment Period runs continuously only from the day the Fully Eligible Participant Commences in the higher Stream to a maximum of 12 months in the higher Stream, except where a further Change of Circumstances Reassessment or Stream Services Review provides for any of the circumstances specified in (c)(ii)(A) to (D), in which case the period runs for up to the maximum period of time specified in whichever of (c)(ii)(A) to (D) applies.

'Performance Rating' means the relative measure of performance of the Provider against KPI1 and KPI2 as calculated by DEEWR and as referred to in clause 31.

'Period of Service' means a period:

- (a) which begins on Commencement of a Fully Eligible Participant in a Stream;
- (b) which ends when the Fully Eligible Participant is either Exited or moved into another Stream;
and
- (c) during which the Provider must provide Stream Services to the Fully Eligible Participant.

'Period of Unemployment' means the period which:

- (a) commences on the date on which a Stream Participant registers with Centrelink or directly with the Provider as unemployed; and
- (b) concludes in accordance with clause 47.1.

'Permanent Address' means the address specified in accordance with any Guidelines.

'Permissible Break' means a period of time during which a Fully Eligible Participant has a break in employment caused by a situation which is outside the control of the Fully Eligible Participant or the Provider and which satisfies the requirements specified in any Guidelines.

'Personal Information' has the same meaning as under section 6 of the Privacy Act which currently 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.

'Placement' means the placement of an Eligible Placement Participant by the Provider into a Vacancy or Assignment that is not a Non Payable Placement.

'Placement Fee' means the Fee payable to a Provider for an Eligible Placement Participant completing the Placement Hours in a Placement, and is specified at Table 3 in Annexure C.

'Placement Fee Date' is the date on which the Provider may become entitled to a Placement Fee and is:

- (a) the date that the Eligible Placement Participant completes the Placement Hours required; and
- (b) no more than 10 Consecutive Working Days after the Placement Start Date for that Eligible Placement Participant.

'Placement Hours' is the number of hours of paid employment that the Eligible Placement Participant is required to complete in a Placement and:

- (a) for Fully Eligible Participants, is 50 hours in no more than 10 Consecutive Working Days;
- (b) for Partial Capacity to Work Participants in Stream 1, is between 15 and 49 hours in no more than 10 Consecutive Working Days, whereby the amount of hours worked is not inappropriate for that Partial Capacity to Work Participant; and
- (c) for Fully Eligible Participants in Streams 2-4 and the Work Experience Phase, is between 15 and

49 hours in more than 10 Consecutive Working Days.

'Placement Start Date' is:

- (a) the date on which the Eligible Placement Participant first commences in a Placement; and
- (b) the first day of the 10 Consecutive Working Days in which the Placement Hours may be achieved.

'Pre-Existing' means an activity which a Fully Eligible Participant started before Commencing in Streams 2, 3 or 4, or before moving into the Work Experience Phase in Stream 1.

'Principal Carer' has the meaning given to the term 'principal carer' in the *Social Security Act 1991* (Cth).

'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.

'Productivity Places Program' means the Commonwealth program to provide training places for people who are unemployed or marginally attached to the labour market to assist them to develop skills in areas of labour market shortage.

'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 Assisted' means that the Fully Eligible Participant started in an employment, education or training related activity which, when completed, satisfies the requirements for an Outcome but the requirements for Provider Brokered have not been met.

'Provider Brokered' means that the Fully Eligible Participant started in an employment, education or training related activity which, when completed, satisfies the requirements for an Outcome and:

- (a) the Provider first screened, matched, referred and placed the Fully Eligible Participant in a Vacancy or Assignment on DEEWR's IT Systems and recorded the filling of the Vacancy or the Assignment on DEEWR's IT Systems in accordance with any Guidelines; or
- (b) the Provider first screened, matched, and referred and placed the Fully Eligible Participant to in an education or training related activity and recorded the activity in the Fully Eligible Participant's Employment Pathway Plan; or
- (c) the Provider screened, matched, referred and placed the Fully Eligible Participant in unpaid work experience with an Employer and recorded the activity in the Fully Eligible Participant's EPP, and the Fully Eligible Participant obtains Employment with that Employer either during the unpaid work experience or not later than one month after the unpaid work experience ceased.

'Provider Exit' means the manual exiting of a Fully Eligible Participant from the Stream Services by the Provider, through its recording the exit and the relevant reasons on DEEWR's IT Systems, in accordance

with this Deed including any Guidelines.

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

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

the Deed Records.

‘Provisional Exit’ means the provisional exiting of a Fully Eligible Participant from Stream Services by the Provider recording the exit and the relevant reasons on DEEWR's IT Systems, in accordance with this Deed, and:

- (a) applies where the Fully Eligible Participant has a placement which is anticipated by the Provider to result in their achieving a Full Outcome;
- (b) commences on the relevant Anchor Date;
- (c) becomes an Effective Exit when the Fully Eligible Participant:
 - (i) achieves a Full Outcome; or
 - (ii) otherwise meets the requirements for an Effective Exit; and
- (d) is cancelled if:
 - (i) the Fully Eligible Participant's placement ends;
 - (ii) the Provider otherwise no longer anticipates that the placement will lead to a Full Outcome; or
 - (iii) the Fully Eligible Participant chooses to volunteer to participate in additional activities.

‘Qualifying Education Course’ means a single qualification course that is:

- (a) approved for Austudy or Youth Allowance (Student) or Abstudy purposes;
- (b) normally of two or more Semesters in duration within a 12 month period; and
- (c) Full-Time Study.

‘Qualifying Training Course’ means a training course specified in the Guidelines from time to time which the Fully Eligible Participant has completed after the start of his or her current Period of Unemployment and which:

- (a) results in the attainment of a qualification not less than Certificate II level;
- (b) may have commenced although must not have been completed before the start of the Fully Eligible Participant's current Period of Unemployment;
- (c) must have commenced before the Anchor Date for any Directly Related Employment and must have been completed before or during the 13 Week Period relating to the Directly Related Employment; and
- (d) must not have been completed more than 12 months before the Anchor Date for any Directly Related Employment.

‘Reasonable Excuse’ means any factor that might have made it unreasonable to expect a Participant to comply with his or her Activity Test Requirements, including both Participant's immediate circumstances (such as lack of transport on a particular day) and broader factors, such as any ongoing barriers to participation that the Participant may have. Note: Under the Social Security Law, a

Participant cannot be taken to have failed to meet his or her Activity Test Requirements if he or she had a Reasonable Excuse for the failure.

'Reconnection' means a form of Re-engagement, that follows Centrelink's decision to apply a connection failure to a Participant's record, whereby the Participant is given a requirement to reconnect with the Provider and, if he or she fails to attend the relevant Appointment without a Reasonable Excuse, he or she will lose Income Support Payments from the date of the Appointment until the date he or she reconnects with the Provider.

'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.

'Recurring' means an employment activity for which the Provider has already received an Outcome Fee for both a 13 Week Period and a 26 Week Period for that Fully Eligible Participant in the same Period of Unemployment, for the same employment position, and with the same employer.

'Re-engagement' means the process by which Centrelink re-engages a Participant with employment services or refers the Participant to a more appropriate program for assessment following an incident (or incidents) of non-compliance with his or her Activity Test Requirements, a period of Exemption or the completion of an approved activity.

'Referral' or **'Referred'** means a referral of a person to the Provider by Centrelink, DEEWR, a JCA Provider or another employment services provider.

'Register', 'Registration' or **'Registered'** means the act of registering the creation or activation of a Stream Participant's record on DEEWR's IT Systems.

'Reimbursement' means any amounts payable by DEEWR under this Deed from the Employment Pathway Fund specified to be a reimbursement, and **'Reimbursed'** has an equivalent meaning where the context admits.

'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.

‘Relevant Harvest Bodies’ includes the following:

- (a) national and state farmer and grower organisations;
- (b) local economic and development organisations;
- (c) tourist and accommodation operators that operate in or near the NHLIS Harvest Areas;
- (d) transport company officials;
- (e) providers of Harvest Labour Services under the Employment Services Contract 2009 to 2012;
- (f) growers’ associations;
- (g) employers of Harvest Workers;
- (h) relevant Commonwealth, state , territory and local government bodies; and
- (i) any other parties that the Provider or DEEWR considers relevant.

‘Remote Educational Achievement Outcome’ means that a Fully Eligible Participant in a Remote ESA:

- (a) successfully completes a Certificate II level course or higher;
- (b) satisfactorily attends one semester of primary or secondary school or an education program as specified in any Guidelines;
- (c) satisfactorily attends 12 months of primary or secondary school as specified in any Guidelines; or
- (d) any other event that DEEWR may notify the Provider from time to time as being a Remote Educational Achievement Outcome.

‘Remote Educational Achievement Outcome Fee’ means the Fee of that name as set out in Table 1A in Annexure C.

‘Remote Education Commencement Outcome’ means:

- (a) that a Fully Eligible Participant in a Remote ESA
 - (i) commences in a Certificate I level course or higher; or
 - (ii) re-enrols in primary school or secondary school; or
- (b) any other event that DEEWR may notify the Provider from time to time as being a Remote Educational Commencement Outcome.

‘Remote Education Commencement Outcome Fee’ means the Fee of that name as set out in Table 1A in Annexure C.

‘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

'Remote Foundation Skills Outcome' means that a Fully Eligible Participant completes the Language Literacy and Numeracy Programme or other literacy and numeracy program specified in any Guidelines.

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

'SAAP' means the Supported Accommodation Assistance Program that assists homeless people and women and children escaping domestic violence and that is governed by the *Supported Accommodation Assistance Act 1994* (Cth).

'Schedule' means the schedule to this Deed.

'Secretary' means the Secretary of DEEWR.

'Semester' means a semester (or equivalent) as defined by a training institution, where the semester (or equivalent) is 16 weeks in duration but not shorter than 13 weeks and is within at least one half of a 12 month period of Full-Time Study.

'Serious Non-vocational Barrier' means, for a Vulnerable Youth and Vulnerable Youth (Student), a Non-vocational Barrier that requires immediate intervention with a view to stabilising the circumstances of the Vulnerable Youth or Vulnerable Youth (Student).

'Service Fees' means the Fees set out in Table 2 in Annexure C.

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

'Service Level Agreement' means an agreement between an employment services provider and a CDEP provider that sets out how they will work together to maximise Indigenous employment outcomes as part of their ongoing servicing of their local area.

'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.

'Site' means the one or more physical locations in the case of:

- (a) Stream Services, in an ESA; or
- (b) Harvest Labour Services, in a Harvest Area,

specified in Items 6.6 and 7.4 of the Schedule.

'Site Frequency' means the days, times or basis on which Sites are open for the provision of the Services as specified in Items 6.7 and 7.5 of the Schedule.

'Skills Assessment' means an assessment by the Provider, in accordance with clause 53, to determine what work/educational skills and experience a Stream Participant currently possesses and to identify and develop strategies for the Stream Participant to obtain sustainable employment.

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

'Skills In Demand Area' means a geographical area of that name advised by DEEWR, or as specified in the Guidelines.

'Skills In Demand Occupation' means an occupation in a particular Skills In Demand Area advised by DEEWR, or as specified in the Guidelines.

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

'Social Outcome' means a measure of the progress of a Fully Eligible Participant in Stream 4 towards work readiness, as assessed by a JCA Provider after 12 months in their Period of Service.

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

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

'Special Cohort Transitioned Participant' means a person who was, on 30 June 2009, receiving, or was entitled to receive, services under Part B of the Employment Services Contract 2006 to 2009 and was identified as:

- (a) an Aged Pension Job Seeker participating in the Employment Services for Age Pensioners specified in clauses 3.9A to 3.9M of Part B of that contract;
- (b) an Eligible Job Seeker and is identified by DEEWR as a Special Cohort Transitioned Participant; or
- (c) any other category of job seeker under Part B of that contract and is identified by DEEWR as a Special Cohort Transitioned Participant.

'Special Cohort Transitioned Participant Service Fee' means the Fee of that name as specified in any Guidelines.

'Stream' means Services under Streams 1 to 4.

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

'Stream 1' means the grouping of Services, for Stream Participants considered to be 'work ready', specified as Stream 1 and includes a Work Experience Phase.

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

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- (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 1 (Limited) Participant Fee' means the Fee of that name specified in clause 77.1.

'Stream 2' means the grouping of Services specified as Stream 2 and includes a Work Experience Phase.

'Stream 3' means those Services specified as Stream 3 and includes a Work Experience Phase.

'Stream 4' means those Services specified as Stream 4 and includes a Work Experience Phase.

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

'Stream Services Provider' means a contracted provider of services under the Employment Services Contract 2009-2012, that has contracted the NEIS Panel Member for the provision of NEIS Services.

'Stream Services Review' means a reassessment of the level of disadvantage of a Fully Eligible Participant, in accordance with clause 42, which includes specification of the Stream Services that will be provided to the Fully Eligible Participant.

'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.

'Supervisor' means a person who has the responsibility for supervising Fully Eligible Participants on a Work for the Dole, Full-Time Work for the Dole, Green Corps, Drought Force, Voluntary Work and Unpaid Work Experience Placement activity.

'Suspend' or **'Suspended'** means the act of imposing a Suspension.

'Suspension' means a period of time of that name, as recorded by either the Provider (in accordance with this Deed) or Centrelink on DEEWR's IT System, during which Service Fees will not be triggered for payment and the requirement to provide Stream Services to a Fully Eligible Participant is suspended.

'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.

‘Training’ means any training activity unless otherwise advised by DEEWR.

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

‘Transitioned Participant’ means a person who was, on 30 June 2009, receiving, or was entitled to receive, services under the:

- (a) Employment Services Contract 2006 to 2009;
- (b) Employment Services Funding Deed 2006 to 2009; or
- (c) Remote Services Deed 2006 to 2009,

but excludes:

- (d) a person receiving or entitled to receive services under Part F of the Employment Services Contract 2006 to 2009;
- (e) a person receiving or entitled to receive services under Part B of the Employment Services Funding Deed 2006 to 2009 or Part C of the Remote Services Deed 2006 to 2009;
- (f) a person who is a NEIS Participant under Part C of the Employment Services Contract 2006 to 2009 or Part F of the Remote Services Deed 2006 to 2009;
- (g) a person receiving or entitled to receive services under Part D of the Employment Services Contract 2006 to 2009;
- (h) a person described as a JSSO Job Seeker in, and who is receiving or entitled to receive services under, Part B of the Employment Services Contract 2006 to 2009 or Part D of the Remote Services Deed 2006 to 2009; or
- (i) a Special Cohort Transitioned Participant.

‘Unpaid Work Experience Placement activity’ means a short-term unpaid work experience placement that allows a Fully Eligible Participant to gain vocational skills.

‘Unsubsidised Self-Employment’ means self-employment where a Fully Eligible Participant does not receive a personal income subsidy of any kind.

‘Upgrade’ means a change, as specified in any Guidelines, in a Fully Eligible Participant’s employment related activity and the change:

- (a) occurs after the Fully Eligible Participant Commences;
- (b) occurs as a direct result of services provided by Provider; and
- (c) is permanent and results in:
 - (i) the employment related activity satisfying the requirements for a Full Outcome in paragraphs (a) to (f) and (h), but not paragraph (g), in the definition of Full Outcome; and
 - (ii) an Effective Exit.

‘Vacancy’ means any vacant position for paid employment with an Employer that is not:

- (a) a position involving nudity or in the sex industry, including retail positions;

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- (b) for volunteer work, for work experience or unpaid work;
 - (c) a position in contravention of Commonwealth, state or territory legislation or which involves terms and conditions of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws;
 - (d) a position for which the wage is directly paid by a Community Development Employment Projects scheme;
 - (e) a position in a training course;
 - (f) a placement in a program funded by the Commonwealth or by a state or territory government, such as Community Jobs Programs, and as advised by DEEWR from time to time;
 - (g) in another country, regardless of whether the salary is paid in Australian dollars or by an Australian company; or
 - (h) a position that DEEWR has advised, from time to time, as not acceptable.

‘Vocational Barrier’ means a lack of appropriate training, skills or qualifications for employment.

‘Voluntary Work activity’ means an activity which meets the criteria specified by DEEWR and which is undertaken in a Work Experience Host Organisation which has been approved for the purposes of Voluntary Work activities.

‘Volunteer (Activity Tested)’ means a Fully Eligible Participant who:

- (a) is subject to an Exemption;
- (b) has part-time Activity Test Requirements, who is fully meeting his or her Activity Test Requirements;
- (c) has a temporary reduced work capacity of less than 15 hours per week, as determined by a JCA, for the period determined by a JCA;
- (d) is a PCW Participant with a current or future work capacity of less than 15 hours per week;
- (e) is a Fully Eligible Participant who is aged 55 years or over and is satisfying his or her Activity Test Requirements; or
- (f) any other Fully Eligible Participant advised by DEEWR,

who volunteers to participate in additional activities.

‘Volunteer (Non-activity Tested)’ means a Fully Eligible Participant who does not have Activity Test Requirements.

‘Vulnerable Youth’ means a person who:

- (a) is aged 15 to 20 years;
- (b) is not Employed for more than 15 hours per week;
- (c) is not in receipt of Income Support Payments;
- (d) has at least one Serious Non-vocational Barrier; and
- (e) has a legal right to work in Australia.

‘Vulnerable Youth (Student)’ means a person who:

- (a) is aged 15 to 20 years;
- (b) is in Full-Time Study;

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- (c) presents in crisis;
 - (d) has at least one Serious Non-vocational Barrier; and
 - (e) has a legal right to work in Australia.

‘Work Experience Activities’ has the meaning set out in clause 63 and any Guidelines, and includes a Work for the Dole activity, a Full-Time Work for the Dole activity, a Green Corps activity, a Drought Force activity, a Voluntary Work activity and an Unpaid Work Experience Placement activity.

‘Work Experience Activity Term’ means the number of hours which, and timeframe over which, a Fully Eligible Participant must undertake Work Experience Activities within each 12 month period during the Work Experience Phase as advised by DEEWR.

‘Work Experience Budget’ means the Work Experience Budget described in paragraph 60.21(a).

‘Work Experience Commencement’ means the time at which the Provider has recorded the completion of the First Work Experience Contact on DEEWR’s IT Systems.

‘Work Experience Host Organisation’ means an organisation at which some or all of a Work for the Dole, Full-Time Work for the Dole, Green Corps, Drought Force, Voluntary Work and Unpaid Work Experience Placement activity takes place, including the Provider where the Provider is fulfilling the role of a Work Experience Host Organisation.

‘Work Experience Phase’ means the period when Fully Eligible Participants in Streams 1-4 are required to undertake Work Experience Activities and when the Provider is eligible for the Work Experience Phase Service Fees.

‘Work for the Dole activity’ means a work experience activity undertaken in a not-for-profit organisation which can include a training component that may reduce a Fully Eligible Participant’s Work Experience Activity Term.

‘Work Trial’ means a short period of paid employment on a trial or probation basis.

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