



Australian Government

Department of Social Services

**Disability Employment
Services Grant Agreement
Effective 1 July 2018**

[Direction 15 – 17 February 2024]

Reader's Guide to this Agreement

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

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

There are five Chapters:

1. Introduction
2. Basic Conditions
3. Information and Information Management
4. Agreement Administration
5. Disability Employment Services – Disability Management Service and Disability Employment Services – Employment Support Service

There are three Annexures:

- A. Definitions
- B. Disability Employment Services – Fees
- C. Code of Practice and Service Guarantee

There is one Schedule:

Schedule – Agreement and Business Details

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

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

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CHAPTER 1 INTRODUCTION

1. Definitions

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

2. Interpretation

2.1 Unless the contrary intention appears:

- (a) the Definitions apply to the whole of this Agreement, including any Guidelines;
- (b) words in the singular include the plural and vice versa;
- (c) words importing a gender include all genders;
- (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 Agreement;
- (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 Agreement is not to be interpreted against a Party just because that Party prepared the provision;
- (k) a reference to an internet site includes those sites as amended from time to time;
- (l) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (m) a reference to writing is a reference to any visible representation of words, figures or symbols; and
- (n) the words "including", "for example" and words of similar expression are not words of limitation.

2.2 Subject to clause 2.3, any Guidelines do not expand or add essential terms to this Agreement.

2.3 Guidelines form part of this Agreement and the Provider must perform all obligations in this Agreement in accordance with any Guidelines.

2.4 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 Agreement.

3. Precedence

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

- (a) clauses 0 to 161 of this document;
- (b) the Annexures;
- (c) the Schedule; or
- (d) any Guidelines,

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

CHAPTER 2 BASIC CONDITIONS

Section 2A Agreement length

4. Term of this Agreement

- 4.1 This Agreement takes effect from the Agreement Commencement Date and, unless terminated earlier, continues for the duration of the Initial Agreement Term.

5. Extension of this Agreement

- 5.1 The Department may, at its sole option, offer the Provider an extension of the Initial Agreement Term for one or more periods up to an additional maximum of 10 years by giving Notice to the Provider not less than 60 Business Days prior to the end of the then current Agreement Term.
- 5.2 Subject to clause 62 [Transition out], if the Provider accepts the Department's offer to extend the Agreement Term, the Agreement Term will be so extended and all terms and conditions of this Agreement continue to apply, unless otherwise agreed in writing between the Parties.

6. Department review of the DES Panel

- 6.1 The Department has established a panel of Providers for the provision of Program Services (**DES Panel**).
- 6.2 A DES Panel refresh may be undertaken in the Department's absolute discretion, but no more than once in any 12 month period during the Agreement Term.
- 6.3 A DES Panel refresh may result in one or more of the following:
- (a) adding a new Program Service or a new component of an existing Program Service to a Provider's then current scope of Services;
 - (b) adding an ESA to a Provider's then current scope of Services; or
 - (c) adding additional Providers.
- 6.4 A refresh to add new services or Providers will be undertaken by the Department through an open grant application process. Existing Providers and new suppliers can apply. All responses to invitations to add Providers to an existing Program Service will be evaluated in accordance with the same or substantively equivalent assessment process to the process used in establishing the DES Panel.
- 6.5 Where a Provider does not apply to participate in a DES Panel refresh, the Services offered by that Provider will remain unchanged for the purposes of the DES Panel refresh.
- 6.6 Any variations to the Services resulting from a DES Panel refresh will be limited to the extent that those changes affect the Schedule and must comply with clause 73.
- 6.7 The Department's rights under this clause 6 do not limit the Department's rights under clause 153 [Gap filling].

7. Survival

- 7.1 The operation of clauses 26 [Debts and offsetting], 29 [General reporting], 31 [Evaluation activities], 36 [General], 37 [Access and Security], 38 [Ownership of intellectual property], 39 [Licensing of Intellectual Property Rights], 40 [Ownership of Agreement Material and Commonwealth Material], 41 [Personal and Protected Information], 42 [Confidential Information], 44 [Records the Provider must keep], 45 [Access by Participants and Employers to Records held by the Provider], 48 [Indemnity], 49 [Insurance], 57 [Dispute Resolution], 59 [Remedies for breach], 65 [Acknowledgement and promotion], and 74 [Applicable law and jurisdiction] in this Agreement 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 Agreement.
- 7.2 Clause 47 of this Agreement [Access to premises and records] survives for seven years from the expiry or earlier termination of this Agreement.

Section 2B Some basic rules about Services

8. General Requirements

- 8.1 The Provider must provide the Services as specified in Chapter 5 (Disability Employment Services – Disability Management Service and Disability Employment Services – Employment Support Service).
- 8.2 The Provider must carry out the Services:
- (a) efficiently, effectively and ethically;
 - (b) in accordance with this Agreement and where relevant and not inconsistent with the Agreement;
 - (c) in a manner which meets the Objectives;
 - (d) so as to achieve an optimum performance when measured against the KPIs; and
 - (e) to the Department's satisfaction.
- 8.3 Without limiting the Department's rights under this Agreement or at law, if the Provider becomes aware that it is unable to satisfy or has otherwise failed to comply with the requirements of the Agreement, the Provider must Notify the Department immediately of:
- (a) the details of the requirements which it is unable to satisfy or failed to comply with; and
 - (b) any other information that the Department requests.

9. Additional Services

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

10. Engagement with other services in the community

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

- (a) Employment Service Providers;
- (b) Australian Disability Enterprises;
- (c) training organisations;
- (d) education institutions;
- (e) Employers;
- (f) community welfare organisations and local community services, including SAAP and other homeless services, AMEP, health and mental health services; and
- (g) other providers of government services, including Commonwealth, state, territory and local government providers.

11. Objectives

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

12. Location

12.1 The Provider must ensure that:

- (a) any location from which Services are provided is:
 - (i) accessible to people with disability; and
 - (ii) presented in a manner that upholds and maintains the good reputation of the Services, as determined by the Department; and
- (b) it takes all reasonable steps to avoid acts or omissions which the Provider could reasonably foresee would be likely to cause injury to Participants or any other persons at the locations referred to in clause 12.1(a).

13. Timing

13.1 The Provider must deliver the Services:

- (a) from the Service Start Date; and
- (b) for the duration of the Agreement Term, unless otherwise notified by the Department in accordance with this Agreement.

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

- 13.3 The Provider must ensure that its Site(s) are established and fully operational in the suburb(s) specified in the Schedule by no later than 31 July 2018.
- 13.4 If the Provider fails to establish a Site as required by clause 13.3, the Department may take action under clause 59 [Remedies for breach].

14. Directions

- 14.1 The Department may issue a written direction to Providers in relation to the Services (a '**Direction**'), including to give effect to:
- (a) any change in Government policy that has, or has the potential to have, without limitation, an impact on the scope of the Services or the manner in which the Services are to be performed; or
 - (b) any adjustment to the Fees (including under clause 143 [Adjustment of Fees]).
- 14.2 The Provider must perform the Services (or any other obligation under this Agreement) in accordance with and within any timeframe specified in any Direction given from time to time.
- 14.3 To avoid doubt, a Direction may effect a variation to this Agreement as relevant to the scope and performance of the Services. Any other variation to the terms and conditions of this Agreement will be given effect in accordance with clause 73.

15. Provider's conduct

- 15.1 The Provider must, in relation to this Agreement, at all times, act:
- (a) in good faith towards the Department and Customers; and
 - (b) in a manner that maintains the good reputation of the Services.
- 15.2 The Provider must not engage in, and must ensure that its Personnel, Subcontractors, Third Party IT Providers and agents do not engage in, any practice that:
- (a) dishonestly; or
 - (b) improperly, as determined by the Department, manipulates Records, Outcomes or the Services with the effect of maximising payments to, or otherwise obtaining a benefit for, the Provider or any other person.
- 15.3 If, after investigation, the Department determines that the Provider has been engaged in activity described in clause 15.2, the Department may:
- (a) take action under clause 59 [Remedies for breach]; or
 - (b) immediately terminate this Agreement under clause 61 [Termination for default],
- by providing Notice to the Provider.

- 15.4 The Provider must advise its officers and employees:
- (a) that they are Commonwealth public officials for the purposes of section 142.2 of the *Criminal Code Act 1995* (Cth);
 - (b) that acting with the intention of dishonestly obtaining a benefit for any person is punishable by penalties including imprisonment;
 - (c) disclosures of disclosable conduct under the *Public Interest Disclosure Act 2013* (Cth) can be made directly to their supervisors within the Provider, or to an authorised officer of the Department, and where a disclosure of disclosable conduct is made to a supervisor within the Provider, the supervisor is required under section 60A of the *Public Interest Disclosure Act 2013* (Cth) to pass information about the conduct to an authorised officer of the Department; and
 - (d) that suspicions or evidence of incorrect claims or acceptance of payments or any other activities that may be a breach of the Agreement may be reported to the Department through the Employment Services Tip Off Line.
- 15.5 For the avoidance of doubt, no right or obligation arising from this Agreement 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.

16. Criminal records checks and other measures

Participants and criminal records checks

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

the Provider must arrange for criminal records checks to be carried out to establish whether the Participant has any relevant records of convictions for crimes and if the Participant has any relevant records of convictions for crimes, the Provider must not arrange for the Participant to participate in that activity, unless the records of convictions for crimes are not relevant to the activity. The Provider is not required to

arrange for criminal records checks to be conducted for a Participant starting in Employment, unless there is a statutory requirement for the Provider to do so.

- 16.2 The Provider must obtain each Participant's written permission prior to obtaining the checks described in clause 16.1.
- 16.3 For the purposes of clause 16.2, 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 16.1; 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.

- 16.4 If a Participant is not a Child, and has failed to provide permission for a check to be conducted in accordance with clause 16.2, the Provider must not arrange for the Participant to participate in the activity as described in clause 16.1.

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

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

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

- 16.6 The Provider must meet its own expenses for the cost of all checks conducted in accordance with clause 16.1 and 16.5.

General provisions concerning persons at risk of harm

- 16.7 Notwithstanding clauses 16.1 to 16.6, the Provider must not arrange for:
- (a) a Participant, or any other person, to be involved in an activity under this Agreement; 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.

16.8 Without limiting the generality of clause 16.7, there may be a reasonably foreseeable risk that a Participant, or other person, may cause loss or harm to others where:

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

16.9 In addition to this clause 16, the Provider must comply with any Guidelines that the Department may issue concerning the matters set out in this clause.

Other background checks

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

17. Provider's responsibility

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

- (a) Subcontracting of the Services;
- (b) any obligation that a Subcontractor comply with the Department's requirements in relation to using the Department's IT Systems in performing Services under its Subcontract;
- (c) access rights specified in, or any action taken under, clause 47 [Access to premises and records];
- (d) involvement by the Department in the performance of the Services; or
- (e) payment made to the Provider on account of the Services.

18. Liaison and compliance

18.1 The Provider must:

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

- 18.2 The Department and the Provider may respectively nominate, from time to time, a Relationship Manager and a Contact Person.
- 18.3 The day to day management of, and communication under, this Agreement:
- (a) is to be handled by the Relationship Manager and the Contact Person or their delegates; and
 - (b) may be undertaken by the Relationship Manager and the Contact Person or their delegates by means of electronic mail.
- 18.4 The Provider must ensure that it has a valid electronic mail address for the Contact Person, and any other relevant Personnel, so as to facilitate the day to day management of the Services and communication between it and the Department.
- 18.5 The Provider must provide all reasonable assistance to the Commonwealth in relation to the Social Security Appeals Process including ensuring the availability of its Personnel, agents and Subcontractors to appear at hearings (including appeals to any court) and to provide witness or other statements as required by the Department.
- 18.6 The Provider must notify Services Australia, in a manner consistent with any Guidelines, of any change in the circumstances of a Participant within five Business Days of becoming aware of the change in circumstances.
- 18.7 The Provider must respond within five Business Days to any requests for information by Services Australia or the Department about any change in circumstances referred to in clause 18.6.

19. Minimising delay

- 19.1 The Provider must take all reasonable steps to minimise delay in meeting its obligations under this Agreement.
- 19.2 If the Provider becomes aware that it will be delayed in meeting its obligations under this Agreement, or receives a Notice from the Department in relation to a delay, the Provider must immediately Notify the Department of:
- (a) the cause and nature of the delay; and
 - (b) the steps the Provider will take to limit the delay.
- 19.3 The Provider must comply with the steps it Notifies to the Department in accordance with clause 19.2(b), subject to any additional requirements which the Department may Notify to the Provider.
- 19.4 If:
- (a) the Provider does not Notify the Department of any delay in accordance with clause 19.2 or fails to comply with clause 19.3; or
 - (b) the Department determines that the delay Notified places the Services in jeopardy,
- the Department may, at the Department's absolute discretion:
- (c) take action under clause 59 [Remedies for breach];

- (d) terminate this Agreement under clause 61 [Termination for default]; or
- (e) take such other steps as are available under law or in equity.

19.5 Except where, and to the extent that, clause 19.3 applies, the Provider must comply with the timeframe for meeting its obligations as set out in this Agreement.

20. Business level expectations

20.1 The Department provides no guarantee of:

- (a) the volume or type of business the Provider will receive;
- (b) the numbers of Participants for any Services under this Agreement;
- (c) the numbers of Participants for any ESA in relation to any Services under this Agreement; or
- (d) the market and other information provided in the relevant grant application process.

Section 2C Some basic rules about financial matters

21. General

21.1 Depending on the Services that the Provider is contracted to provide, payments under or pursuant to, this Agreement consist of Fees, Funds, Reimbursements, Wage Subsidies and Ancillary Payments specified in Sections 5F and 5N.

21.2 Subject to sufficient funds being available and compliance by the Provider with this Agreement to the Department's satisfaction, and depending on the Services that the Provider is contracted to provide under this Agreement, the Department will pay to the Provider, the Fees, Funds, Reimbursements, Wage Subsidies and Ancillary Payments at the times and in the manner specified in this Agreement to the account(s) specified in the Schedule.

21.3 Depending on the Services that the Provider is contracted to provide under this Agreement, the Provider may claim any Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments properly due to the Provider during the Agreement Term.

21.4 It is a precondition of the Provider's entitlement to be paid any Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments that it:

- (a) has, at the time it makes a claim for a payment, sufficient Documentary Evidence to prove that the Provider has delivered the relevant Services in accordance with, or otherwise has relevantly complied with, this Agreement;
- (b) has a valid ABN;
- (c) immediately notifies the Department if it ceases to have a valid ABN;
- (d) correctly quotes its ABN on all documentation provided to the Department;
- (e) supplies proof of its GST registration, if requested by the Department;
- (f) immediately notifies the Department of any changes to its GST status; and

- (g) submits Tax Invoices to the Department for payment.

22. Evidence to support claims for payment

- 22.1 The Provider must retain sufficient Documentary Evidence to prove its claim for payment under this Agreement for such period as is required under clause 44.8.
- 22.2 The Provider must, at the time it makes a claim for a payment, upload to the Department's IT Systems the Documentary Evidence referred to in clause 22.1 as required by any Guidelines, to the Department's satisfaction.
- 22.3 The Provider must, if requested by the Department, within 10 Business Days of the Department's request, provide to the Department any other Documentary Evidence referred to in clause 22.1 that was not uploaded to the Department's IT Systems in accordance with clause 22.2, to the Department's satisfaction.
- 22.4 If:
 - (a) the Provider does not comply with clause 22.2 or 22.3;
 - (b) the Department has already paid the Provider in relation to the claim for payment; and
 - (c) an extension of time has not been requested and agreed to by the Department,then:
 - (d) the Provider will be taken not to have delivered the relevant Services in accordance with this Agreement; and
 - (e) the Department may recover the relevant payment amount from the Provider as a debt in accordance with clause 26 [Debts and offsetting], without prejudice to any other rights that the Department may have under this Agreement, under statute, at law or in equity.
- 22.5 The Department may contact Employers or Participants or any other relevant parties to verify Documentary Evidence provided by a Provider. Nothing in this Agreement restricts the Department from making enquiries to the extent permitted by law with any person or organisation in order to validate any claims made by a Provider. These enquiries may involve the use of data matching techniques to compare data held by government agencies to identify discrepancies.

23. Exclusions

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

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

Superannuation

- 23.2 The Department is not required to make any superannuation contributions in connection with this Agreement.

No charge to Participants

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

24. Overpayment

General

- 24.1 If, at any time, the Department determines that an overpayment by the Department has occurred, for any reason, including where a Tax Invoice is found to have been incorrectly rendered after payment, or a payment has been made in error, then the Department may, at its absolute discretion and without prejudice to any other rights that the Department may have under this Agreement or the law, recover some or all of the relevant payment amounts from the Provider, as a debt in accordance with clause 26 [Debts and offsetting].

Double payments

- 24.2 The Provider warrants that neither it, nor any Related Entities, are entitled to payment from the Department, other Commonwealth sources or state, territory or local government bodies for providing services that are the same as, or similar to, the services as provided under this Agreement, and the Department may require the Provider to provide evidence, in a form acceptable to the Department, which proves that the Provider is not so entitled.
- 24.3 For the purposes of clause 24.2, if the Department determines, in its absolute discretion, that the Provider, or any Related Entity, is entitled to payment from the Department, other Commonwealth sources or state, territory or local government bodies for providing the same or similar services as provided under this Agreement, the Department may:
- (a) make the relevant payment;
 - (b) decide not to make the relevant payment; or
 - (c) recover any relevant payment made by the Department as a debt in accordance with clause 26 [Debts and offsetting].
- 24.4 Regardless of any action the Department may take under clause 24.3, the Department may, at any time, issue Guidelines setting out the circumstances in which the Department will or will not make a payment in connection with any situation of the type described in clause 24.3.

25. The Department may vary payments or Participants

- 25.1 The Department may, at any time, vary the payments under this Agreement or the number of Participants receiving Services from the Provider for all or part of the Agreement Term by written Notice:
- (a) based on the Department's assessment of projected changes to labour market conditions in an ESA or LMR (including past and/or future projected Participant demand); or

- (b) acting reasonably, for any other reason as determined by the Department in its absolute discretion.

25.2 If the Department exercises its rights under clause 25.1 the Provider must continue to perform all of its obligations under this Agreement, as varied by the Department, unless the Department agrees otherwise in writing.

26. Debts and offsetting

Debts

26.1 Any amount owed to the Department, or deemed to be a debt to the Department under this Agreement, including any Interest, will, without prejudice to any other rights available to the Department under this Agreement, under statute, at law or in equity, be recoverable by the Department, at its absolute discretion, as a debt due to the Commonwealth from the Provider without further proof of the debt being necessary.

26.2 If the Department determines that the Provider has obtained a Reimbursement from the Employment Assistance Fund, for a Wage Subsidy or any type of reimbursement of an amount that it is not entitled to, that amount is a debt for the purpose of this clause 26.

26.3 The Provider must pay to the Department any debt due to the Commonwealth from the Provider within 30 calendar days of receipt of a Notice from the Department requiring payment, or the due date for the payment, whichever is the earlier.

Interest

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

Offsetting

26.5 Without limiting the Department's rights under this Agreement, 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 Agreement, or under any other arrangement with the Department or the Commonwealth, the Department may offset or deduct an amount equal to that debt owed, or outstanding or unacquitted money, against any other payments due to the Provider under this Agreement.

26.6 The Department will Notify the Provider if it exercises its rights under clause 26.5 within 10 Business Days after having exercised those rights.

26.7 Notwithstanding any action taken by the Department under clause 26.5, the Provider must continue to perform its obligations under this Agreement, unless the Department agrees otherwise in writing.

27. Taxes, duties and government charges

Amounts inclusive of GST

- 27.1 Unless expressly stated to the contrary, all dollar amounts in this Agreement are inclusive of GST.
- 27.2 If a claim for payment of Fees is not in relation to a Taxable Supply, the Provider must only claim an amount exclusive of GST and the Department will only pay the GST exclusive amount under this Agreement.
- 27.3 The Provider must give to the Department a Tax Invoice for any Taxable Supply before any Fees are payable to the Provider as consideration for the Taxable Supply.
- 27.4 The Provider must not claim from the Department any amount for which it can claim an Input Tax Credit.
- 27.5 Where any debt is repaid, including by offset under clause 26.5, an Adjustment Note must be provided to the Department if required by the GST Act.

General taxes

- 27.6 Subject to this clause 27, all taxes, duties and government charges imposed in Australia or overseas in connection with this Agreement must be borne by the Provider.

28. Fraud

- 28.1 The Provider must ensure that its Personnel, Subcontractors and agents do not engage in fraudulent activity.
- 28.2 The Provider must take all reasonable steps to prevent fraud upon the Commonwealth, including the implementation of an appropriate fraud control plan, a copy of which must be provided to the Department on request.
- 28.3 If, after investigation, the Department determines that the Provider has been engaged in fraudulent activity, the Department may:
- (a) take action under clause 59 [Remedies for breach]; or
 - (b) immediately terminate this Agreement under clause 61 [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

29. General reporting

Provider's obligation to provide Reports

- 29.1 Without limiting any other provisions of this Agreement, the Provider must provide as required by the Department from time to time:
- (a) specific Reports on:
 - (i) the Services, including the progress of the Services under this Agreement and against any performance criteria; and
 - (ii) the financial status of the Provider; and
 - (b) a suitably qualified, informed and authorised representative at any meeting arranged by the Department in order to discuss and accurately answer questions relating to the Reports referred to at clause 29.1(a).

Other Reports

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

Form and content of Reports

- 29.3 It is a condition of this Agreement 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.

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

Failure to provide satisfactory Reports

- 29.5 If the Provider is more than 20 Business Days overdue in providing its Reports to the Department, or a Report fails to satisfy the Department, the Department may:
- (a) take action under clause 59 [Remedies for breach]; or
 - (b) immediately terminate this Agreement under clause 61 [Termination for default] by providing Notice to the Provider.

Connections for Quality

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

30. Financial statements and guarantees

- 30.1 Subject to clause 30.3, the Provider must, for the Agreement Term, provide to the Department its financial statements:
- (a) within 20 Business Days of its annual general meeting or where no annual general meeting is held, within 20 Business Days after the compilation of the financial statements; and
 - (b) no later than 120 Business Days after the end of its financial year.

- 30.2 If requested by the Department, the Provider must also provide to the Department financial statements for any Subcontractor, within the timeframe required by the Department, acting reasonably.

Financial statements

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

- 30.4 For the purposes of this clause 30, where audited financial statements are created for the Provider, they must be provided to the Department.

Financial undertaking and performance guarantee

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

- 30.6 The financial undertaking and performance guarantee provided in accordance with clause 30.5 must remain in place until the Department Notifies the Provider that it is no longer required.

- 30.7 The financial undertaking and performance guarantee provided under clause 30.5 will be exercisable by the Department for either or both of the following, to the extent required:

- (a) to obtain compensation for the costs, losses, damages and expenses suffered by the Department if the Provider fails to perform any or all of its obligations under this Agreement, including on the termination of this Agreement in accordance with clause 61 [Termination for default]; or
- (b) to recover any debts owed by the Provider under or in connection with this Agreement in accordance with clause 26 [Debts and offsetting].

- 30.8 Without limiting any of the Department's other rights under this Agreement or otherwise, if the Provider fails to provide or maintain the financial undertaking and performance guarantee required by clause 30.5, the Department may withhold all or part of any payment under this Agreement until the Provider meets those obligations.

- 30.9 If the Department exercises any or all of its rights under the financial undertaking and performance guarantee provided under clause 30.5, the Department will not be

liable for, and the Provider releases the Department from liability for, any resultant loss or damage to the Provider.

- 30.10 The Department's rights to recover from the Provider the balance of any costs, losses, damages and expenses suffered by the Department after exercise of the financial undertaking and performance guarantee provided under clause 30.5 will not be limited by the Department's exercise of the security.

Section 2E Evaluation Activities

31. Evaluation activities

Cooperation in evaluation activities

- 31.1 The Provider agrees:
- (a) that evaluation activities may be undertaken by the Department for the purposes of evaluating the Services, including the Provider's performance;
 - (b) that all evaluation activities will be conducted in a mutually cooperative manner, and may include:
 - (i) the Department monitoring, measuring and evaluating the delivery of the Services by the Provider;
 - (ii) the Provider's Personnel and Subcontractors being interviewed by the Department or an independent evaluator nominated by the Department; and
 - (iii) the Provider giving the Department or the Department's evaluator access to its premises and Records in accordance with clause 47 [Access to premises and records];
 - (c) to assist the Department or the Department's evaluator in carrying out all evaluation activities that the Department requires to be undertaken, including a review and final evaluation of the Services; and
 - (d) to fully cooperate and participate in any other general research, monitoring or evaluation activities undertaken by the Department, or on behalf of the Department.

Section 2F Customer and Provider feedback

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 The Provider's Customer feedback process must:
- (a) be consistent with this Agreement, any Guidelines, and where relevant, the Code of Practice and the Service Guarantee; and

- (b) clearly indicate that Customers may also make a Complaint directly to the Department using the National Customer Service Line or the Complaints Resolution and Referral Service.

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

34. Customer Feedback Register

34.1 The Provider must keep a Customer Feedback Register which includes, at a minimum, the information specified in the Guidelines.

34.2 Upon request, the Provider must give to the Department a copy of its Customer Feedback Register.

35. Provider feedback

35.1 If the Provider wishes to provide feedback other than in relation to a dispute dealt with under clause 57 [Dispute Resolution], the Provider must, in the first instance, provide feedback to the Relationship Manager.

35.2 The Relationship Manager will consider all feedback received and respond as appropriate.

If the Provider is not satisfied with the Relationship Manager's response to the Provider's feedback, the Provider may request the Relationship Manager to refer the matter to an appropriate senior Department officer. The Relationship Manager must then refer the matter to an appropriate senior Department officer for consideration and response as appropriate.

CHAPTER 3 INFORMATION AND INFORMATION MANAGEMENT

Section 3A Information Technology

36. General

Use

- 36.1 If required by the Department, the Provider must conduct the Services using the Department's IT Systems.
- 36.2 If any Personnel require disability access to the Department's IT Systems, the Provider must install suitable accessibility software to allow such access.

Training

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

Accuracy and Completeness

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

Costs

- 36.6 The Provider is responsible for all costs of meeting its obligations under this clause 36 and 37.

37. Access and security

Access to Systems

- 37.1 The Provider must provide information technology systems to Access and use the Department's IT Systems and to carry out its other obligations under this Agreement that meet the requirements set out in this clause 37.

Third Party Systems

- 37.2 The Provider must:
- (a) advise the Department of any Third Party System that the Provider proposes to interface with the Department's IT Systems and if the Department imposes any terms and conditions in respect of such use, comply with those terms and conditions;
 - (b) ensure that any Third Party System it uses:

- (i) meets the minimum requirements of the Department for entry to the Department's IT Systems, and for record keeping and program assurance purposes, as advised by the Department;
 - (ii) does not negatively impact the performance, availability or data integrity of the Department's IT Systems;
 - (iii) is built and assessed to meet the accreditation requirements of the Department of Employment and Workplace Relations;
 - (iv) does not introduce or permit the introduction of Harmful Code into the Department's IT Systems;
 - (v) has secure logons for each operator such that each operator's logon is identifiable to the Department and entries are traceable, and have date and time stamps;
 - (vi) does not default answers to questions or input fields where the Department's IT Systems has no default setting; and
- (c) ensure that Records held in any Third Party System relating to the Services can be, and are, provided on request, to the Department and in an unadulterated form, i.e. with no amendment to the Records.

37.3 The Department:

- (a) may make changes to the Department's IT Systems at any time, notwithstanding that such changes may affect the functioning of a Third Party System; and
- (b) will provide reasonable information about those changes to the Provider; and

the Provider:

- (c) must, notwithstanding any such change, at its sole cost, ensure that all Third Party Systems operate in a manner that is consistent with the Department's IT System at all times; and
- (d) agrees that the Department is not responsible for any loss, costs or legal liability of the Provider arising from such changes.

System accreditation

37.4 Subject to the Statement of Applicability ('SOA'), the Provider must, and must ensure that its Subcontractors:

- (a) obtain accreditation for any Third Party System in accordance with the requirements and timeframes set out in the SOA and bear any costs associated with doing so; and
- (b) maintain such accreditation for the duration of the Agreement Term.

37.5 Where the Provider modifies a Third Party System, it must ensure that any necessary reaccreditation activities are completed as required by the SOA.

37.6 For the purposes of clause 37.4(b), the Provider must obtain reaccreditation of all Third Party Systems as required by the SOA.

- 37.7 If the Provider does not obtain accreditation or reaccreditation within the timeframes specified in the SOA, the Provider must immediately cease using the associated Third Party Systems.
- 37.8 The Provider must:
- (a) keep Records of accreditation and reaccreditation awarded under this clause 37; and
 - (b) when requested by the Department, provide those Records to the Department within the timeframe required by the Department.
- 37.9 If the SOA requires that any Personnel or Subcontractors of the Provider must obtain security clearances for the purposes of accreditation or reaccreditation:
- (a) the Provider must ensure that its relevant Personnel or Subcontractors obtain the required security clearances, and bear any costs associated with doing so; and
 - (b) the Department will sponsor such clearances as required by the SOA.

Third Party IT Providers

- 37.10 The Provider must:
- (a) not give access to electronic Records, or any derivative thereof, to a Third Party IT Provider who has not entered into a Third Party IT Provider Deed with the Department of Employment and Workplace Relations, and only grant such access in accordance with the terms of the relevant Third Party IT Provider Deed and any Guidelines;
 - (b) in any contract with a Third Party IT Provider:
 - (i) provide that the Third Party IT Provider may only subcontract its obligations under that contract to another Third Party IT Provider who has entered into a Third Party IT Provider Deed with the Department; and
 - (ii) reserve a right of termination to take account of the Department's right of termination in the relevant Third Party IT Provider Deed;
 - (c) on receipt of any advice from the Department that it has terminated a relevant Third Party IT Provider Deed, terminate the Provider's contract with the Third Party IT Provider and, at its own cost, promptly cease using the Third Party IT Provider; and
 - (d) impose the obligations set out in this clause 37.10 on any Subcontractor Accessing electronic Records relating to the Services.

Technical advice

- 37.11 The Provider must:
- (a) nominate Personnel to receive technical advice from the Department or the Department of Employment and Workplace Relations on the Department's IT Systems, and to provide advice to the Department or the Department of

Employment and Workplace Relations on technical issues arising from the deployment of the Department's IT Systems ('IT Contact');

- (b) ensure that the IT Contact:
 - (i) disseminates technical advice to any Subcontractor and Personnel of the Provider in order to minimise disruption to the Services; and
 - (ii) provides advice, as requested by the Department:
 - (A) to assist in the resolution of the Department's IT Systems technical issues; and
 - (B) in relation to the Provider's readiness to deploy system upgrades to the Department's IT Systems; and
- (c) where that IT Contact changes, advise the Department accordingly.

Security

- 37.12 The Provider must comply, and ensure that its Subcontractors and Third Party IT Providers comply, with the Department's Security Policies and the Commonwealth's Cybersafety Policy, as relevant.
- 37.13 The Provider must ensure that a Security Contact is appointed at all times during the Agreement Term and that at all times the Department has up to date contact details for the current Security Contact.
- 37.14 The Provider must (through its Security Contact) report all breaches of IT security to the Employment Systems Help Desk including where any Personnel or any Subcontractor suspect that a breach may have occurred or that a person may be planning to breach IT security and their resolution.
- 37.15 Where the Department considers that the Provider may be in breach of this clause 37, or there is a risk of such a breach, the Department may, at its absolute discretion, immediately suspend access to the Department's IT Systems for any one or more of the following:
 - (a) any Personnel;
 - (b) any Subcontractor;
 - (c) any Third Party IT Provider;
 - (d) the Provider; or
 - (e) any Third Party System,by providing Notice to the Provider.
- 37.16 Where the Department determines that the Provider is in breach of, or has previously breached, this clause 37, the Department may immediately take action including any one or more of the following:
 - (a) suspending or terminating access to the Department's IT Systems for any Personnel, Subcontractor, Third Party IT Provider, or the Provider;

- (b) applying bandwidth throttling measures in respect of all access to the Department's IT Systems for any Personnel, Subcontractor, Third Party IT Provider, Third Party System or the Provider;
 - (c) requiring the Provider to obtain new logon IDs for any Personnel or Subcontractor or Third Party IT Provider and if so, the Provider must promptly obtain such new logons; or
 - (d) requiring the Provider to prepare and implement an IT security plan to the Department's satisfaction, and if so, the Provider must do so within the timeframe required by the Department.
- 37.17 Any action taken by the Department under clauses 37.15 and 37.16 does not limit any other rights the Department has under this Agreement, including pursuant to clause 59.2, or under the law.
- 37.18 If the Department gives Notice to the Provider that access to the Department's IT Systems is revoked for particular Personnel or Subcontractors or Third Party IT Provider, the Provider must immediately take all actions necessary to terminate that Access and promptly confirm with the Department that it has complied with the Department's requirements.

Cybersafety Policy

- 37.19 For the purposes of clauses 37.19 to 37.23:
- (a) '**Clients**' means persons who may use the Provider's computers and/ or other digital technology that is supported through public funding provided pursuant to this Agreement and includes the Provider, the Provider's staff and the public, whether they be adult or children.
 - (b) '**Reasonable Steps**' means having in place strategies to minimise and manage risks of exposure to inappropriate or harmful on-line content by users of computers, and particularly children, and may include having a policy in place regarding appropriate use and protection for Clients, installation of filters, audits and provision of information or training to the Provider's staff regarding the risks of, and protection from, inappropriate or harmful on-line content.
- 37.20 The Commonwealth's Cybersafety Policy is that where an organisation is funded by the Commonwealth to carry out the Services using computers and/or other digital technology, the safety of Clients when using those computers and/or other digital technology must be assured.
- 37.21 The Provider must take Reasonable Steps to protect its Clients' cybersafety.
- 37.22 If the Department gives the Provider Notice requiring it, the Provider must provide the Department, within 10 Business Days of receiving the Notice, with evidence satisfactory to the Department that the Provider has complied with the requirements of this Cybersafety Policy.
- 37.23 The Provider agrees to include its obligations in relation to this Cybersafety Policy in all Subcontracts it enters into in relation to Services.

Section 3B Property rights

38. Ownership of intellectual property

38.1 Unless otherwise set out in the Records Management Instructions, and subject to this clause 38 as between the Department and the Provider (but without affecting the position between the Provider and a third party), the ownership of:

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

vests at all times in the Department.

Dealing with Intellectual Property Rights

38.2 The Provider warrants that it:

- (a) is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in Agreement Material and the Existing Material in accordance with this clause 38; and
- (b) has obtained valid written consents from all owners of Intellectual Property Rights in, and all authors (including Subcontractors) involved in, creating Agreement Material and Existing Material so that the Department's use of that Material in accordance with this clause 38 will not infringe:
 - (i) the Intellectual Property Rights of any third party; or
 - (ii) any author's Moral Rights.

38.3 The Provider must:

- (a) if requested by the Department to do so, bring into existence, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 38;
- (b) not deal with the Intellectual Property Rights in the Agreement Material, except as expressly provided for in this Agreement; and
- (c) deliver all Agreement Material to the Department on the termination or expiry of the Agreement, unless otherwise Notified by the Department.

38.4 For the purposes of clause 38 '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.

39. Licensing of Intellectual Property Rights

Licence of Commonwealth Material and Agreement Material

39.1 The Department grants the Provider for the duration of the Agreement Term, a licence to use, copy and reproduce:

- (a) Commonwealth Material; and

(b) Agreement Material,

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

39.2 The licence in clause 39.1 is revocable on 10 Business Days' Notice by the Department.

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

Licence of Existing Material

39.4 This clause 39 does not affect the ownership of any Intellectual Property Rights in any Existing Material. The Provider, however, grants to the Department or must arrange for the grant to the Department of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Existing Material for any purpose as required by the Department.

Commonwealth Coat of Arms

39.5 The Provider must not use the Commonwealth Coat of Arms for the purposes of this Agreement, except as authorised in accordance with the *Use of the Commonwealth Coat of Arms General Guidelines* available at <https://www.pmc.gov.au/sites/default/files/resource/download/commonwealth-coat-of-arms-information-and-guidelines.pdf>

40. Ownership of Agreement Material and Commonwealth Material

40.1 Unless otherwise set out in the Records Management Instructions, as between the Department and the Provider (but without affecting the position between the Provider and a third party) ownership of the physical Material constituting:

(a) Commonwealth Material; and

(b) Agreement Material,

vests at all times in the Department.

Section 3C Control of information

41. Personal and Protected Information

Application of this clause

41.1 This clause 41 applies only where the Provider deals with Personal Information for the purpose of conducting the Services under this Agreement.

Privacy definitions

- 41.2 In this clause 41, the terms 'agency', 'APP code', 'contracted service provider', 'eligible data breach', 'organisation', 'sensitive information', and 'Australian Privacy Principle' (APP) have the same meaning as they have in section 6 of the Privacy Act, and 'subcontract' and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.

Privacy obligation

- 41.3 The Provider acknowledges that it is a contracted service provider and agrees in respect to the conduct of the Services under this Agreement:
- (a) to use or disclose Personal Information, including sensitive information, obtained in the course of conducting the Services, only for the purposes of this Agreement or where otherwise permitted under the Privacy Act;
 - (b) except where this clause expressly requires the Provider to comply with an APP that applies only to an organisation, to carry out and discharge the obligations contained in the APPs as if it were an agency;
 - (c) not to do any act or engage in any practice that if done or engaged in by an agency or, where relevant, an organisation, would be a breach of an APP;
 - (d) to notify individuals whose Personal Information it holds, that:
 - (i) complaints about its acts or practices may be investigated by the Information Commissioner who has power to award compensation against the Provider in appropriate circumstances; and
 - (ii) their Personal Information may be disclosed and passed on to the Department and to other persons in relation to providing the Services;
 - (e) unless expressly authorised or required under this Agreement, not engage in any practice that would breach any registered APP code that is applicable to the Provider;
 - (f) to comply with any request under section 95C of the Privacy Act;
 - (g) to comply with any directions, guidelines, determinations, rules or recommendations of the Information Commissioner to the extent that they are consistent with the requirements of this clause 41;
 - (h) not to transfer Personal Information outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Department;
 - (i) to its name being published in reports by the Information Commissioner;
 - (j) if the Provider suspends or terminates Personnel:
 - (i) to remove any access that the Personnel have to any Personal Information; and
 - (ii) to require that the Personnel return to the Provider or the Department any Personal Information held in the Personnel's possession;

- (iii) it must remind the Personnel of their relevant obligations under this Agreement; and
- (k) to ensure that any of its Personnel who are required to deal with Personal Information for the purposes of this Agreement:
 - (i) are made aware of their obligations in this clause 41 including to undertake in writing to observe the APPs (or a registered APP code, where applicable); and
 - (ii) where required by the Department, undertake in writing to observe the APPs (or a registered APP code where applicable).

Notification to the Department

- 41.4 The Provider must immediately Notify the Department if it becomes aware:
- (a) of an actual or suspected eligible data breach, by any Personnel or Subcontractor;
 - (b) of an actual or suspected breach of any of the obligations contained in, or referred to in, this clause 41 by any Personnel or Subcontractor;
 - (c) that a disclosure of Personal Information may be required by law; or
 - (d) of an approach to the Provider by the Information Commissioner or by a person claiming that their privacy has been interfered with.

Protected Information

- 41.5 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).

42. Confidential Information

- 42.1 Subject to this clause 42 and clause 44.6 the Parties must not, without each other's prior written approval, disclose any of each other's Confidential Information to a third party.
- 42.2 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.
- 42.3 The obligations on the Parties under this clause 42 will not be breached if information:
- (a) is shared by the Department within the Department's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
 - (b) is disclosed by the Department to the responsible Minister;
 - (c) is disclosed by the Department, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (d) is authorised or required by law to be disclosed; or
 - (e) is in the public domain otherwise than due to a breach of this clause 42.

- 42.4 Nothing in this clause 42 limits the obligations of the Provider under clause 41 [Personal and Protected Information] or clause 47 [Access to premises and records].

43. Release of information on Provider's performance

- 43.1 The Provider agrees that the Department may publish information the Department holds concerning its performance as the provider of Services under this Agreement.

Section 3D Records management

44. Records the Provider must keep

General

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

Financial Accounts and Records

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

Storage

- 44.4 The Provider must store all Records created under clause 44.1 in accordance with the Records Management Instructions and the Department's Security Policies, and where appropriate, its Privacy Act obligations.

Control

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

Access

- 44.6 Subject to clauses 41 [Personal and Protected Information] and 47 [Access to premises and records], the Provider must ensure that copying of, use of, and access to, Participant Services Records, is restricted to Personnel directly assisting the Provider with the provision of Services to a Participant or to any Third Party IT Provider.

Transfer

- 44.7 Subject to clause 41 [Personal and Protected Information] and where relevant clause 62 [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 44.1 to any person, entity or organisation other than to the Department, without the written approval of the Department; and
 - (b) where transferring Records created under clause 44.1, only transfer the Records in accordance with the Records Management Instructions or as otherwise directed by the Department.

Retention

- 44.8 Subject to clause 41 [Personal and Protected Information], all Records created in accordance with clause 44.1 must be retained by the Provider for a period of no less than seven years after the creation of the Record, unless:
- (a) the Provider has successfully uploaded the Record into the Department's IT Systems in accordance with clause 22.2; or
 - (b) otherwise specified in the Records Management Instructions.
- 44.9 On the expiry or termination of the Agreement, the Provider must manage all Records created in accordance with clause 44.1 in accordance with the Records Management Instructions or as otherwise directed by the Department.

Destruction

- 44.10 The Provider must:
- (a) not destroy or otherwise dispose of Records created in accordance with clause 44.1, except in accordance with the relevant Records Management Instructions, or as directed by the Department; and
 - (b) provide a list to the Department of any Records that have been destroyed, as directed by the Department.

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

- 45.1 Subject to this clause 45, 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.

- 45.2 The Provider must, in providing access to the requested Records in accordance with clause 45.1:
- (a) ensure that the relevant Participant or Employer requesting the access in clause 45.1 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.
- 45.3 Requests for access to Records that the Provider has determined could be refused under Commonwealth legislation as specified in clause 45.1 including access to Records containing information falling within the following categories:
- (a) records also containing information about another person;
 - (b) medical/psychiatric records (other than those actually supplied by the Participant or Employer, or where it is clear that the Participant has a copy or has previously sighted a copy of the records);
 - (c) psychological records; and
 - (d) information provided by other third parties,
- must be directed to the Department for consideration.
- 45.4 The Provider must comply with any direction given by the Department in relation to the provision, or refusal, of access to Records held by the Provider to a Participant or Employer.

46. Access to documents

- 46.1 In this clause 46, 'document' has the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 46.2 The Provider agrees that:
- (a) where the Department has received a request for access to a document created by, or in the possession of, the Provider or any Subcontractor or any Third Party IT Provider, the Department may at any time by Notice require the Provider to provide the document to the Department and the Provider must, at no additional cost to the Department, promptly comply with the Notice;
 - (b) the Provider must assist the Department in respect of the Department's obligations under the *Freedom of Information Act 1982* (Cth), as required by the Department; and
 - (c) the Provider must include in any Subcontract or contract with a Third Party IT Provider provisions that will enable the Provider to comply with its obligations under this clause 46.

47. Access to premises and records

General access rights

- 47.1 The Provider must at all reasonable times give or arrange for any Department Employee:
- (a) unfettered access to:
 - (i) its Sites or premises and those of any Subcontractor or Third Party IT Provider;
 - (ii) Third Party Systems;
 - (iii) all Material, including that relevant to determining the Provider's:
 - (A) financial viability; and
 - (B) compliance with relevant work, health and safety and industrial relations legislation;
 - (iv) its Personnel, Subcontractors and Third Party IT Providers; and
 - (b) reasonable assistance to:
 - (i) inspect its Sites or premises and those of any Subcontractor or Third Party IT Provider;
 - (ii) inspect the performance of Services;
 - (iii) locate, inspect, copy and remove, all Material including data stored on the Provider's information technology system or those of any Subcontractor or Third Party IT Provider.

Limitation on access rights

- 47.2 Subject to clause 47.3 the rights referred to in clause 47.1 are subject to:
- (a) the provision of reasonable prior notice to the Provider; and
 - (b) the Provider's reasonable security procedures.

Investigation of breaches and fraud

- 47.3 If a matter is being investigated that, in the opinion of the Department, may involve:
- (a) an actual or apprehended breach of the law;
 - (b) a breach of the Agreement; or
 - (c) suspected fraud,

clause 47.2 does not apply, and Department Employees may remove and retain Material and original Records that are relevant to the investigation, including items stored on an electronic medium, provided that they return a copy of all relevant Records to the Provider, or the relevant Material and original Records, within a reasonable period of time.

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

CHAPTER 4 Agreement ADMINISTRATION

Section 4A Indemnity and insurance

48. Indemnity

General indemnity

48.1 The Provider must indemnify (and keep indemnified) the Department against any:

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

arising from or in connection with:

- (d) any act or omission by the Provider in connection with this Agreement, 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 Agreement;
- (f) any publication of the information referred to in clause 43 [Release of information on Provider's performance], clause 66 [the Department's right to publicise the Services] or clause 67 [the Department's right to publicise best practice], where the published information was provided by the Provider to the Department;
- (g) any breach by the Provider of clause 41 [Personal and Protected Information]; or
- (h) the use by the Department of the Agreement Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights in Agreement Material or Existing Material.

Reduction of scope

48.2 The liability of the Provider to indemnify the Department under this clause 48 will be reduced proportionately to the extent that fault on the Department's part contributed to the relevant cost, loss, damage, expense, or liability.

Preservation of other rights

48.3 The Department's right to be indemnified under this clause 48 is in addition to any other right, power, or remedy provided by law, but the Department will not be entitled to be compensated in excess of the amount of the relevant cost, loss, damage, expense or liability.

Meaning of fault

- 48.4 In this clause 48, 'fault' means any negligent or unlawful act or omission or wilful misconduct, including fraud.

49. Insurance

Obligation to have and maintain insurance

- 49.1 The Provider must have and maintain for the Agreement Term (and in the case of professional indemnity or errors and omissions insurance for a period of seven years following the expiry or termination of this Agreement), valid, enforceable and appropriate types and amounts of insurance for the Services that the Provider performs, including the following types and corresponding amounts:

- (a) public liability: \$10 million per occurrence;
- (b) professional indemnity or errors and omissions: \$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; and
- (c) workers' compensation as required by law.

Evidence of insurance

- 49.2 The Provider must:
- (a) within 10 Business Days of 1 July each year or at any other time that the Department requests the same, provide to the Department an insurance declaration form, in the form required by the Department; and
 - (b) as requested by the Department, provide such documentary evidence as required by the Department certifying that it has the insurance as required by this clause 49.

Assistance to the Department

- 49.3 The Provider must:
- (a) give full, true and particular information, in respect of any proposal for a policy of insurance (including any policy issued pursuant to any self-insurance scheme of the Commonwealth) to be effected by the Department, of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or the payments of all or any benefits under a policy; and
 - (b) provide all reasonable assistance to the Department, in order to facilitate the Commonwealth making a claim under any insurance policy or self-insurance scheme effected for the Commonwealth's benefit.
- 49.4 For the avoidance of doubt, the provisions of this clause 49 are not to be read so as to reduce a Party's liability under any other provision of this Agreement, and compliance by the Provider with the provisions of this clause 49 does not limit its liability under any other provision of this Agreement.

Subcontractors

- 49.5 The Provider must ensure that all Subcontractors retained by it to perform work in connection with this Agreement are covered by insurance of the types specified in this clause 49, as is appropriate given the nature of the work to be performed by each such Subcontractor.

50. Liability

- 50.1 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 Agreement, 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 74 [Applicable law and jurisdiction], this clause 50.1 applies to all and any rights, obligations and liabilities under, or in connection with, this Agreement, whether such rights, obligations or liabilities arise in the State of New South Wales or elsewhere in Australia.

51. Special rules about trustees

Trustee's warranties

- 51.1 If the Provider acts as trustee for a trust (the '**Trust**') in relation to this Agreement, the Provider warrants to the Department that:
- (a) the Provider is the only trustee of the Trust;
 - (b) the Provider has not been removed from, or ceased to act, or resigned or retired from the office of trustee of the Trust, nor has any decision or action been taken or proposed in respect of the removal, resignation or retirement of the Provider as trustee of the Trust, or to appoint an additional trustee of the Trust;
 - (c) the Provider is not in default under the Trust deed;
 - (d) the Provider has power under the Trust deed to enter into and observe the Provider's obligations under this Agreement;
 - (e) the Provider has entered in this Agreement in its capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust;
 - (f) the Provider has a right, and will at all times have a right, to be fully indemnified out of the assets of the Trust in respect of the obligations incurred by it under this Agreement;
 - (g) the assets of the Trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Provider has a right to be indemnified out of the trust fund; and
 - (h) to the extent that the assets of the Trust are insufficient to satisfy any right of indemnity, the Provider holds professional indemnity insurance as required by clause 49 of this Agreement.

Provider's indemnity as trustee

- 51.2 The Provider indemnifies the Department against any liability or loss arising from, and any expenses (including, without limitation, legal costs and expenses on a full indemnity basis) incurred in connection with the following situations:
- (a) where a warranty made by the Provider under this clause 51 is found to be incorrect or misleading when made or taken to be made; and/or
 - (b) the Provider ceases to be the trustee of the Trust or any step is taken to appoint another trustee of the Trust.

Section 4B Changes in persons delivering Services

52. Corporate governance

Change in Constitution, structure, management or operations

- 52.1 The Provider must promptly inform the Department whenever there is a change in its Constitution, structure, management or operations that could reasonably be expected to have an adverse effect on the Provider's ability to comply with its obligations under this Agreement.
- 52.2 The Provider must provide a copy of its Constitution to the Department upon request.

Personnel

- 52.3 Unless otherwise agreed by the Department in writing at its absolute discretion, the Provider must not employ, engage or elect any person who would have a role in its management, financial administration or, if Notified by the Department, performance of the Services, if:
- (a) the person is an undischarged bankrupt either in or outside of Australia;
 - (b) there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy;
 - (c) the person has suffered final judgment for a debt and the judgment has not been satisfied;
 - (d) subject to Part VIIC of the *Crimes Act 1914* (Cth), the person has been 'convicted' within the meaning of paragraph 85ZM(1) of that Act of an offence under the *Crimes Act 1914* (Cth), or any offence relating to fraud, unless there is clear evidence that:
 - (i) that conviction is regarded as spent under paragraph 85ZM(2) (taking into consideration the application of Division 4 of Part VIIC);
 - (ii) the person was granted a free and absolute pardon because the person was wrongly convicted of the offence; or
 - (iii) the person's conviction for the offence has been quashed;
 - (e) the person is or was a Director or a person who occupied an influential position in the management or financial administration of an organisation that had failed to comply with the terms of any agreement with the

Commonwealth, and where that failure gave the Commonwealth the right to terminate the agreement; or

- (f) the person is otherwise prohibited from being a member or Director or employee or responsible officer of the organisation of the Provider.

52.4 Unless otherwise agreed by the Department in writing at its absolute discretion, where a person falls, or is discovered as falling, within any of clauses 52.3(a) to (f) while employed or engaged by the Provider, or elected as an officer of the Provider, in a role in:

- (a) its management or financial administration, the Provider will be in breach of clause 52.3, if the Provider does not:
 - (i) transfer the person to a position that does not have a role in its management or financial administration; or
 - (ii) terminate the employment or engagement of the person or remove the person from office,

as the case may be, and immediately Notify the Department of its action; or

- (b) the performance of the Services, the Provider must Notify the Department on becoming aware that the person falls or has been discovered as falling within any of clauses 52.3(a) to (f), and take any action in respect of that person, that is Notified by the Department.

Note: For the avoidance of doubt, clause 52.4(b) will also apply where a person is transferred in accordance with clause 52.4(a)(i), to a role in the performance of the Services.

52.5 If the Provider advises the Department that it considers termination action under clause 52.4(b) would be a breach of a statutory provision binding on the Provider, the Department will take the Provider's view into account in deciding what action to take as a result of the breach of clause 52.3.

Change in Control of the Provider or a Material Subcontractor

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

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

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

52.8 The Provider must, within five Business Days of receiving a written request from the Department, provide such information and supporting evidence as the Department requests in relation to the Change in Control event of the Provider or any Material Subcontractor.

52.9 If the Provider does not:

- (a) obtain the Department's consent to a Change in Control as required by clause 52.6; or
- (b) provide the Department with any information required by the Department in accordance with clause 52.8,

the Department may do either or both of the following:

- (c) take action under clause 59 [Remedies for breach]; or
- (d) immediately terminate this Agreement without the need to provide Notice to the Provider and clauses 61.2 and 61.4 apply, as if the Agreement was terminated under clause 61 [Termination for default].

Change in management

52.10 The Provider must:

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

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

53. Provider's Personnel

Removal of Personnel

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

Provision of replacement Personnel

53.2 For the purposes of clause 53.1, if the Provider is unable to provide replacement Personnel who are acceptable to the Department, the Department may terminate this Agreement under clause 61 [Termination for default].

Training

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

54. External administration

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

- (a) any notice requiring the Provider to show cause why the Provider should not come under any form of external administration referred to in clause 54.1(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.

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

- (a) has decided to place itself, or has otherwise come under, any one of the forms of external administration, referred to in clause 54.1(b); or
- (b) is ceasing to carry on business.

55. Subcontracting

Application and Interpretation

55.1 Subject to this clause 55, the Provider may enter into a Subcontract with another entity for the purposes of providing the Program Services under this Agreement.

55.2 In clause 55.1, '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

- 55.3 The Provider must not, without the Department's prior written approval:
- (a) enter into a Subcontract for the performance of any of its obligations under this Agreement;
 - (b) terminate a Subcontractor who has been approved by the Department; or
 - (c) replace an approved Subcontractor with another Subcontractor.

55.4 In giving approval under clause 55.3, the Department may impose such terms and conditions as the Department thinks fit.

55.5 The Subcontractors that the Department has approved at the Agreement Commencement Date are identified in the Schedule.

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

Liability

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

Obligations and payment of Subcontractors

55.8 The Provider acknowledges and agrees that the Department may publicly disclose the names of any Subcontractors engaged by the Provider in connection with the Services and the Provider will provide such details of Subcontractors as the Department may require. The Provider will inform any such Subcontractor accordingly.

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

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

Suitability of Subcontractor

55.11 Despite any approval given by the Department under this clause 55, 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 Agreement.

Revocation of approval

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

Terms of Subcontracts

- 55.13 The Provider must, in any Subcontract, reserve a right of termination to take account of the Department's right of termination under clauses 60 [Termination with costs] and 61 [Termination for default] and the Department's right of revocation of approval of a Subcontractor under clause 55.12, and the Provider must, where appropriate, make use of that right in the Subcontract in the event of a termination, or revocation of approval of the Subcontractor, by the Department.
- 55.14 The Provider must, in any Subcontract, bind the Subcontractor, with respect to the Department, to all relevant terms and conditions of this Agreement including clauses:
- (a) 41 [Personal and Protected Information];
 - (b) 42 [Confidential Information];
 - (c) 44.8 [Retention (of records)];
 - (d) 47 [Access to premises and records];
 - (e) 49 [Insurance];
 - (f) 69 [Negation of employment, partnership and agency]; and
 - (g) 75 [Compliance with laws and government policies].

Workplace gender equality

- 55.15 The Provider must not enter into a Subcontract under this Agreement with a Subcontractor that is non-compliant with the *Workplace Gender Equality Act 2012* (Cth).
- 55.16 If the Provider does not comply with this clause 55 the Department may:
- (a) take action under clause 59 [Remedies for breach]; or
 - (b) immediately terminate this Agreement under clause 61 [Termination for default] by providing Notice to the Provider.

56. Assignment and novation

Assignment of Rights

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

Novation

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

Section 4C Resolving Problems

57. Dispute Resolution

- 57.1 Each Party agrees that it will:
- (a) only seek to rely on this clause in good faith, and only where the Party seeking to rely on this clause has made a reasonable assessment that the

rights and obligations of the Parties in respect of a matter subject to this clause 57, are genuinely in dispute; and

- (b) cooperate fully with any process instigated in accordance with this clause 57, in order to achieve a prompt and efficient resolution of any dispute.

Informal resolution

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

57.3 If any dispute arising in relation to this Agreement cannot be resolved using the process in clause 57.2, the Parties will use the following process:

- (a) the Party claiming that there is a dispute will give the other Party a Notice setting out the nature of the dispute;
- (b) within five Business Days of receipt of the Notice under clause 57.3(a), each Party will nominate a representative who has not been previously involved in the dispute;
- (c) the Parties' representatives will try to settle the dispute by direct negotiation between them;
- (d) if the dispute is not resolved within 10 Business Days of the date on which the last Party to do so nominates a representative under clause 57.3(b), the Party claiming that there is a dispute will refer the dispute to an independent third person, as agreed between the Parties, with power to mediate and recommend some form of non-binding resolution;
- (e) if the dispute is not resolved within 10 Business Days of the date on which the dispute was referred to an independent third person in accordance with clause 57.3(d), the Party claiming that there is a dispute will refer the dispute to an independent third person, as agreed between the Parties, with power to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution; and
- (f) if:
 - (i) agreement on an independent third person cannot be reached under clauses 57.3(d) or (e); or
 - (ii) the dispute is not resolved within 20 Business Days of referring the dispute to an independent third person pursuant to clause 57.3(e),either Party may commence legal proceedings.

Costs

57.4 Each Party will bear its own costs of complying with this clause 57, and the Parties must bear equally the cost of any independent third person engaged under clause 57.3(d) and 57.3(e).

Application of this clause

57.5 This clause 57 does not apply to the following circumstances:

- (a) either Party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken, or purportedly taken, by the Department under clause 19 [Minimising delay], clause 21 [General], clause 22 [Evidence to support claims for payment], clause 26 [Debts and offsetting], clause 45 [Access by Participants and Employers to Records held by the Provider], clause 47 [Access to premises and records], 52 [Corporate governance], 55 [Subcontracting], 59 [Remedies for breach], 60 [Termination with costs], 61 [Termination for default], clause 89 [Service Guarantee], clause 90 [Code of Practice] or clause 155 [Performance assessments];
- (c) the Department is conducting its own breach of contract or fraud investigation; or
- (d) an authority of the Commonwealth, or of a state or a territory is investigating a breach, or suspected breach, of the law by the Provider.

Performance of obligations

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

58. Provider Suspension

58.1 Without limiting the Department's rights under this Agreement, under statute, at law or in equity, if the Department is of the opinion that:

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

the Department may, in addition to taking any other action under clause 59 [Remedies for breach], and prior to taking action under clause 61 [Termination for default], take action under clause 59.2(a).

58.2 The Department will Notify the Provider if it exercises its rights under clause 58.1 within 10 Business Days after having exercised those rights.

58.3 Notwithstanding any action taken by the Department under clause 58.1, the Provider must continue to perform its obligations under this Agreement, unless the Department agrees otherwise in writing.

59. Remedies for breach

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

- (a) the Provider fails to rectify a breach, or pattern of breaches, of this Agreement to the Department's satisfaction within 10 Business Days of receiving a Notice from the Department to do so, or within such other period specified by the Department;
- (b) the Provider fails to fulfil, or is in breach of, any of its obligations under this Agreement that are not capable of being rectified, as determined by the Department; or
- (c) an event has occurred which would entitle the Department to terminate the Agreement in whole or in part under clause 61 [Termination for default],

the Department may, by providing Notice to the Provider, immediately exercise one or more of the remedies set out in clause 59.2.

Options

59.2 The remedies that the Department may exercise are:

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

Good faith and proportionality

59.3 The Department will exercise its rights under this clause 59 reasonably and in good faith, taking into account the relevant breach.

Variation

59.4 If the Department takes any action under this clause 59:

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

No compensation

59.5 For the avoidance of doubt, any reduction of Participant referrals, Fees, Funds, Reimbursements, Wage Subsidies, Ancillary Payments or the scope of this Agreement under this clause 59 does not amount to a reduction of scope or termination for which compensation is payable.

Notice

59.6 If the Department takes any action under this clause 59, the Department will Notify the Provider:

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

60. Termination with costs

Termination or reduction in scope

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

60.2 If this Agreement is terminated in whole or in part or reduced in scope under clause 60.1, the Department is only liable for:

- (a) payment of Fees as set out in clause 60.3; and
- (b) subject to clauses 60.5, 60.6, 60.7 and 60.8, any reasonable, unavoidable costs actually incurred by the Provider and directly attributable to the termination, in whole or in part, or a reduction in scope of this Agreement.

Fees, Funds, Reimbursements, Wage Subsidies and Ancillary Payments

60.3 Where, under clause 60.1 the Department terminates this Agreement, in whole or in part, or reduces the scope of this Agreement:

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

Provider's obligations

- 60.4 Upon receipt of a Notice of termination or reduction in scope under this clause 60, the Provider must:
- (a) cease or reduce the performance of this Agreement in accordance with the Notice;
 - (b) immediately return to the Department any Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments in accordance with clause 60.3(c);
 - (c) immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the Notice; and
 - (d) continue work on any part of the Services not affected by the Notice.

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

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

Limit on compensation

- 60.6 The Department's liability to pay any compensation under or in relation to this clause 60 is subject to the Provider's:
- (a) strict compliance with this clause 60; and
 - (b) substantiation of any amounts claimed under clause 60.3.

- 60.7 The Department will not be liable:
- (a) to pay compensation for loss of prospective profits attributable to a termination or reduction in scope under this clause 60;
 - (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 60 not occurred; or
 - (c) for any amounts that would, in aggregate, exceed the maximum Fees, Funds, Reimbursements, Wage Subsidies or Ancillary Payments that would have been payable by the Department under this Agreement in respect of the relevant Services, but for a termination or a reduction in scope made under this clause 60.

- 60.8 In addition, in relation to a reduction in scope under this clause 60, the Department will not be liable to pay the Provider, and the Provider agrees that its reasonable costs do not include:
- (a) any amounts owed by the Provider under any contract of employment or to any of its Subcontractors; and

- (b) payment of any liabilities arising from commitments the Provider has made in relation to the conduct of the Services beyond the end of the Financial Year in which the reduction in scope takes place.

60.9 If the Department terminates, or reduces the scope of, this Agreement under this clause 60:

- (a) the Department's actions will not constitute a breach of this Agreement; and
- (b) the Parties agree that the amounts payable to the Provider under this clause 60 represent a reasonable pre-estimate of any loss that may be incurred by the Provider.

61. Termination for default

Defaults

61.1 The Department may, if any of the following events occur, immediately terminate this Agreement, 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 Agreement that are not capable of being rectified (as determined by the Department);
- (b) the Provider is in breach of any of its obligations under this Agreement that are capable of being rectified, and does not rectify the omission or breach, or pattern of omissions or breaches, within 10 Business Days, or such other period specified by the Department, of receiving a Notice from the Department to do so;
- (c) the Provider fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (d) any event referred to in clause 54 [External administration] occurs, other than an event under clause 54.1(c);
- (e) the Department is otherwise satisfied that the Provider is unable to pay all of its debts as and when they become due and payable;
- (f) the Department is satisfied that, prior to entering into this Agreement, the Provider:
 - (i) has engaged in misleading or deceptive conduct;
 - (ii) has made a statement that is incorrect or incomplete; or
 - (iii) has omitted to provide information to the Department,that may have affected the Department's decision to enter into this Agreement, or any action taken by the Department under this Agreement;
- (g) notice is served on the Provider or proceedings are taken to cancel its incorporation or cancel its registration or to dissolve the Provider as a legal entity; or

Note: For the avoidance of doubt, clause 61.1(g) does not apply where a Provider has transferred its incorporation or registration in accordance with the legislation under which it is incorporated or registered.

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

Parties' rights and obligations on termination

61.2 Where the Department terminates this Agreement in whole or in part under clause 61.1:

- (a) the Department is liable to pay Fees, Funds, Reimbursements, Wage Subsidies and Ancillary Payments and entitled to recover Fees, Funds, Reimbursements, Wage Subsidies and Ancillary Payments as set out in clause 60.3; and
- (b) clauses 60.4 and 60.5 apply as if the Agreement were terminated in accordance with clause 60.1.

Good faith and proportionality

61.3 The Department will exercise its rights under this clause 61 reasonably and in good faith, taking into account the relevant breach or other event.

Preservation of other rights

61.4 Clause 61.1 does not limit or exclude any of the Department's other rights, including the right to recover any other amounts from the Provider on termination of this Agreement, the right to reduce payments due on termination on the basis of breach or poor performance, or any rights of offset.

Section 4D Other matters

62. Transition out

Transition Period

- 62.1 The Department may Notify the Provider in accordance with clause 62.2 that the Department is deeming a Transition Period.
- 62.2 The Department must Notify the Provider of the Transition Period not less than 60 Business Days before the Transition Period is to start.
- 62.3 The Transition Period must start not more than six months before the end of the then current Agreement Term.
- 62.4 If the Department Notifies the Provider under clause 62.1:
- (a) the Department must specify the start and end date of the Transition Period in the Notice; and
 - (b) the Provider must continue to provide during the Transition Period all Program Services which it is required to provide under this Agreement, unless the Department Notifies the Provider otherwise in the Notice which may specify any one or more of the following matters:
 - (i) whether all, or only some, of the Program Services under this Agreement are to be provided and, if only some, which Program Services are to be provided; and
 - (ii) whether any provisions of this Agreement will not apply to the provision of Program Services during the Transition Period, and if so, which provisions will not apply.
- 62.5 A Notice issued under clause 62.1 may include notice that:
- (a) the Department will cease Referrals to the Provider;
 - (b) the Provider must cease Direct Registrations; and
 - (c) the Provider must transfer Participants to another Program Provider, or other employment services provider.

Provider's obligation to assist and cooperate with the Department

- 62.6 The Provider must, if directed by the Department, provide sufficient assistance and cooperation to any person nominated by the Department to enable services to continue to be provided to a Participant who is transferred to another Program Provider or employment services provider:
- (a) on the termination of this Agreement in whole or in part;
 - (b) on the expiry of this Agreement;
 - (c) in accordance with clauses 132 [Participant Initiated Transfer], 133 [Relocation of Participant], 134 [Relationship failure, transfer by agreement and transfers by the Department] and 62.5 of this Agreement; or
 - (d) at any time for any other reason.

62.7 The sufficient assistance and cooperation the Provider must provide under clause 62.6 will include, as a minimum, complying with the Department's directions in relation to:

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

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

63. Disability Employment and Indigenous Employment Strategy

Disability Employment Strategy

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

Indigenous Employment Strategy

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

64. Indigenous Procurement Policy

64.1 The Provider must use its reasonable endeavours to increase its:

- (a) purchasing from Indigenous Enterprises; and
- (b) employment of Indigenous Australians,

in the delivery of the Services.

64.2 For the purposes of clause 64.1, purchases from Indigenous Enterprises may be in the form of engagement of an Indigenous Enterprise as a subcontractor, and use of Indigenous suppliers in the Provider's supply chain.

Note: The Indigenous Procurement Policy is the Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (for further information, see the Indigenous Procurement Policy, available at <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>).

65. Acknowledgement and promotion

65.1 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 Agreement:

- (a) comply with any promotion and style guidelines issued by the Department from time to time;
- (b) use badging and signage;
- (c) acknowledge the financial and other support the Provider has received from the Commonwealth; and

(d) deliver to the Department (at the Department's request and at the Provider's own cost) copies of all promotional, publicity and advertising Materials the Provider has developed for the purposes of this Agreement, in accordance with any Guidelines.

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

66. The Department's right to publicise the Services

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

67. The Department's right to publicise best practice

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

68. Conflict of interest

Warranty of no Conflict

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

Conflict that may arise

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

Dealing with Conflict

68.3 If, during the Agreement Term, a Conflict arises, or is likely to arise, the Provider must:

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

Failure to deal with Conflict

68.4 If the Provider:

- (a) fails to Notify the Department in accordance with this clause 68; or
- (b) is unable or unwilling to resolve or deal with the Conflict as reasonably required by the Department,

the Department may terminate this Agreement under clause 61 [Termination for default].

69. Negation of employment, partnership and agency

Status

- 69.1 Except where it is expressly provided in this Agreement, the Provider, its Personnel, partners, agents, Subcontractors and Third Party IT Providers are not, by virtue of this Agreement or any Subcontract, or for any purpose, deemed to be, the Department's employees, partners, agents, Subcontractors or otherwise able to bind or represent the Commonwealth.

Representatives

- 69.2 Subject to this Agreement, the Provider must not represent itself, and must ensure that its Personnel, partners, agents, Subcontractors and Third Party IT Providers do not represent themselves, as being the Department's employees, partners, agents or Subcontractors or as otherwise able to bind or represent the Commonwealth.

70. Waiver

Exercise of rights

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

Partial exercise of rights

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

Means of waiver

- 70.3 Waiver of any provision of, or right under, this Agreement:
- (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

- 70.4 In this clause 70, 'rights' means rights provided by this Agreement, under statute, at law or in equity.

71. Severance

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

72. Entire agreement

- 72.1 This Agreement 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 Agreement.

73. Variation of Agreement

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

74. Applicable law and jurisdiction

Applicable Law

- 74.1 This Agreement 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

- 74.2 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 Agreement.

75. Compliance with laws and government policies

Compliance with laws and policies

- 75.1 The Provider must, in carrying out its obligations under this Agreement, comply with:

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

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

No unlawful discrimination

- 75.3 Without limiting clause 75.1, the Provider must provide Services that are free of sexual harassment and any form of unlawful discrimination.

Workplace gender equality

- 75.4 Clauses 75.4(a) to (d) apply only to the extent that the Provider is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).

- (a) Without limiting clause 75.1, the Provider must comply with its obligations, if any, under the WGE Act.
- (b) If the Provider becomes non-compliant with the WGE Act during the Agreement Term, the Provider must notify the Relationship Manager.

- (c) The Provider must provide a current letter of compliance to the Relationship Manager annually and by no later than each anniversary of the Agreement Commencement Date.
- (d) Compliance with the WGE Act does not relieve the Provider of its responsibility to comply with its other obligations under this Agreement.

Work Health and Safety legislation

75.5 The Provider must at all times:

- (a) ensure that the Services are carried out in a safe manner;
- (b) comply with the WHS Laws;
- (c) comply with any reasonable instruction from the Department relating to work health and safety;
- (d) immediately comply with directions on health and safety issued by any person having authority under the WHS Laws to do so;
- (e) communicate, consult and coordinate with the Department in relation to health and safety matters arising from the Services (including meeting with the Department as required by the Department);
- (f) communicate any issue or concern that the Provider has regarding work health and safety matters, as soon as practicable, with the Department;
- (g) when requested by the Department, provide evidence of the Provider's ongoing compliance of the WHS Laws;
- (h) if the Provider is required by the WHS Act to report a Notifiable Incident to the Regulator arising out of the Services:
 - (i) at the same time, or as soon as is possible in the circumstances, give Notice of such an incident, and a copy of any written notice provided to the Regulator, to the Department; and
 - (ii) provide to the Department, within such time as the Department specifies, a Report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future;
- (i) inform the Department of the full details of:
 - (i) any suspected contravention of the WHS Laws relating to the Services, within 24 hours of becoming aware of any such suspected contravention;
 - (ii) any cessation or direction to cease work relating to the Services, due to unsafe work, immediately upon the Provider being informed of any such cessation or direction;
 - (iii) any workplace entry by a WHS Entry Permit Holder, or an Inspector, to any place where the Services are being performed or undertaken, within 24 hours of becoming aware of any such workplace entry; and

- (iv) any proceedings against the Provider, or any decision or request by the Regulator given to the Provider, under the WHS Laws, within 24 hours of becoming aware of any such proceedings, decision or request; and
- (j) provide the Department with copies of all notices and correspondence issued to the Provider by any person under the WHS Laws, within 24 hours of receiving any such notice or correspondence.

75.6 If the Provider is required by the WHS Laws to:

- (a) prepare, submit, supply or obtain any document, including a WHS management plan, a risk assessment, a safe work method statement, a work method statement, an emergency plan, safety data sheets, a notice to the Regulator, or a register (together 'WHS Safety Documents'), or review any existing WHS Safety Documents;
- (b) obtain or sight any licence, permit, or authorisation (together 'WHS Licences'); or
- (c) display or install any sign, or barrier,

specific to the Services, the Provider must:

- (d) prepare or obtain any such WHS Safety Documents or WHS Licences tailored to the Services and in compliance with the WHS Laws;
- (e) provide the Department with a copy of any such WHS Safety Documents or WHS Licences with sufficient time for the Department to review the same and consult as the Department considers appropriate, including with the Provider, regarding the same; and
- (f) display or install any such sign or barrier,

before commencing any, or undertaking further, Services.

75.7 The Department may monitor the Provider's compliance with the WHS Laws, including:

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

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

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

76. Use of interpreters

Use of interpreters

76.1 The Provider must, when carrying out the Services, provide an interpreter, in accordance with any Guidelines, to facilitate communication between the Provider

and Participants wherever necessary, including where a Participant requires assistance:

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

76.2 The Provider must provide access to interpreter services fairly and without discrimination, based on a proper assessment of a Participant's needs.

76.3 Where a Participant requests the use of an interpreter and the Provider refuses to provide one, the Provider must record the reason for the Provider's decision.

Staff training

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

Record keeping

76.5 The Provider must keep Records of the use of interpreters in accordance with any Guidelines.

77. Notices

Giving of Notice

77.1 A Party giving Notice or Notifying under this Agreement must do so in writing or by email, addressed to the Relationship Manager or the Contact Person, as relevant, and if:

- (a) in writing, the Notice must be hand delivered or sent by pre-paid post to the street address;
- (b) by email, the Notice must be sent to the email address of, the Relationship Manager or the Contact Person, as relevant.

Receipt of Notice

77.2 A Notice given in accordance with clause 77.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, five Business Days after the date of posting, unless it has been received earlier; and
- (c) if sent by email, upon actual receipt by the addressee.

77.3 For the purposes of this clause 77, the Relationship Manager's and the Contact Person's address details are as specified in Items 1 and 2 of the Schedule.

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

Information about Program Services

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

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

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

Participants, other than Work Assist Participants, may receive Employment Assistance, Extended Employment Assistance, Post Placement Support and Ongoing Support (prior to achieving a 52-week Outcome) for the following periods:

- (a) Employment Assistance – for up to 18 months;
- (b) Extended Employment Assistance – for up to six months (if assessed as requiring it by an Employment Services Assessment (ESAt) or, in some limited circumstances, by the Provider);
- (c) Post Placement Support – while progressing towards an Outcome (unless the Participant is in Ongoing Support while working towards as Outcome); and
- (d) Ongoing Support – where eligible and if tracking towards a 52-week Outcome.

Together these phases make up a Period of Service, unless the Participant reaches 52 Consecutive Weeks in Employment from the Anchor Date, or is Exited.

Work Assist Participants may receive Work Assist Services. For Work Assist Participants the Period of Service is the period from Commencement of the Work Assist Participant until he or she is Exited or starts to receive Ongoing Support.

After a 26-week Employment Outcome or Work Assist Outcome, Participants who are assessed as requiring it may receive Ongoing Support. Participants who achieve a 52-week Outcome can access Ongoing Support, provided they meet the eligibility requirements. Achievement of an Education Outcome does not qualify a Participant for Ongoing Support.

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

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

Section 5A Objectives

78. Objectives

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

Section 5B Statutory Conditions

79. Statutory Conditions

- 79.1 Notwithstanding any other provision of this Agreement, the Parties agree that:
- (a) the Provider must, as is relevant, provide the Program Services in accordance with the Act, the Disability Services Guidelines, and the National Standards for Disability Services; and
 - (b) this Agreement must be read subject to the Act.
- 79.2 The Parties agree that payment of any Fees by the Department to:
- (a) the Disability Employment Services – Disability Management Service Provider in relation to Disability Employment Services – Disability Management Service Participants, are made pursuant to an arrangement under section 20(1) of the Act; and
 - (b) the Disability Employment Services – Employment Support Service Provider in relation to Disability Employment Services – Employment Support Service Participants, are made by way of a grant under section 12AD of the Act.
- 79.3 Without limiting the generality of clauses 79.1 and 79.2, the Provider must:
- (a) have a current Certificate of Compliance on the Agreement Commencement Date; or
 - (b) obtain a Certificate of Compliance for the provision of those Services no later than 12 months from the Agreement Commencement Date,

and maintain that certification during the Agreement Term.

- 79.4 If the Provider breaches clause 79.3, that breach may be treated by the Department as a breach of an essential term of this Agreement which is not capable of remedy.

Contribution towards Certificate of Compliance costs

- 79.5 The Provider must pay the costs associated with obtaining and maintaining a Certificate of Compliance.
- 79.6 The Department will make a Reimbursement payment to the Provider up to an amount determined by the Department, at its discretion, in accordance with this clause and any Guidelines, as a contribution towards the certification and surveillance costs associated with the Certificate of Compliance.
- 79.7 Subject to clause 79.9, the Department will make a certification payment in accordance with clause 79.6 once the Department has received evidence of the Certificate of Compliance from the relevant Certification Body. This payment will only be made once in a three year period.
- 79.8 Subject to clause 79.9, the Department will make a surveillance payment in accordance with clause 79.6 once the Department has received a completed surveillance audit report to maintain a Certificate of Compliance from the relevant Certification Body. This payment may be made annually.
- 79.9 The Department will not make a Reimbursement payment to the Provider in relation to a Certificate of Compliance:
- (a) under clause 79.8, if it has made a certification payment under clause 79.7 within the previous 12 months; or
 - (b) under clauses 79.7 or 79.8, if it has previously made a payment in relation to the relevant certification and surveillance costs pursuant to any other agreement with the Commonwealth.

Section 5C Application

80. Provision of Program Services

- 80.1 Subject to clause 81 [Specialist Service Providers] and clause 88 [Transition in], the Provider must provide the Program Services to all Participants who are Referred to, or who Directly Register with, the Provider:
- (a) in accordance with this Agreement and any Guidelines;
 - (b) where the Participant has a Current Assessment, subject to clauses 120 [Change of Circumstances Reassessment during Period of Service], 127 [Changing the Level of Ongoing Support for Disability Employment Services – Employment Support Service Participants] and clause 129 [Change of Circumstances Reassessment during Ongoing Support], in accordance with that Assessment; and
 - (c) for the relevant Period of Service and any period of Ongoing Support.

81. Specialist Service Providers

- 81.1 If a Provider is identified as a Specialist Service Provider in relation to a particular Site or ESA in the Schedule, the Provider must provide Program Services at that Site or in that ESA:
- (a) to a Participant who is:
 - (i) a member of the relevant Specialist Service Group; and
 - (ii) Referred to, or Directly Registered with, the Provider;
 - (b) in accordance with this Agreement and any Guidelines;
 - (c) where the Participant has a Current Assessment, subject to clauses 120 [Change of Circumstances Reassessment during Period of Service], 127 [Changing the Level of Ongoing Support for Disability Employment Services – Employment Support Service Participants] and 129 [Change of Circumstances Reassessment during Ongoing Support], in accordance with that Assessment;
 - (d) in a manner which is designed to address, and is sensitive to, the special needs of that Participant; and
 - (e) for the relevant Period of Service and any period of Ongoing Support.
- 81.2 Unless otherwise Notified by the Department and subject to clause 81.3, a Specialist Service Provider:
- (a) must not provide Program Services to a Participant who is not a member of the relevant Specialist Service Group; and
 - (b) must direct a Participant:
 - (i) who is not a member of the relevant Specialist Service Group; and
 - (ii) who is Referred to or who attempts to Directly Register with the Provider,
- to Services Australia, Services Australia Assessment Services or to another Program Provider, in accordance with any Guidelines.
- 81.3 If a Specialist Service Provider is also a Generalist Service Provider at a Site or in an ESA, the Provider must also provide Program Services to Participants who are not members of the relevant Specialist Service Group, in accordance with clause 80.1.

82. Program Services Location

- 82.1 The Provider must deliver the Program Services:
- (a) in all of the ESAs; and
 - (b) subject to this clause 82.1 and clauses 83.2 and 83.3, at all of, and only at, the Sites,
- as specified in the Schedule, unless otherwise directed by the Department.
- 82.2 Unless another ESA Coverage is specified in the Schedule, the Provider must provide Program Services to the whole of each ESA specified in the Schedule.

- 82.3 The Provider may:
- (a) Directly Register a Participant in accordance with clauses 87.1 to 87.4 (inclusive) of this Agreement; and
 - (b) Provide Program Services specified in the Schedule to that Participant.
- 82.4 The Provider must only provide Program Services at a Site, unless otherwise specified in any Guidelines.

83. Identification of Program Services delivered at each Site

- 83.1 For each Site at which the Provider delivers Program Services, the Provider must identify on the Department's IT Systems:
- (a) whether the Provider is delivering Program Services at that Site as a:
 - (i) Generalist Service Provider; and/or
 - (ii) Specialist Service Provider; and
 - (b) whether the Provider is delivering:
 - (i) Disability Employment Services – Disability Management Service; and/or
 - (ii) Disability Employment Services – Employment Support Service,at that Site, and such identification on the Department's IT Systems must be consistent with the Schedule, unless clause 83.2 applies or the Provider is otherwise directed by the Department to deliver Services at a site not specified in the Schedule.
- 83.2 Where a Provider requests to deliver Services at a site not specified in the Schedule and the Department gives written approval for the provision of Services at that site, the Provider may deliver Services at that site notwithstanding that the relevant site is not specified in the Schedule, provided that the Provider complies with clause 83.1 in respect of that site.
- 83.3 For the avoidance of doubt, the Provider must not provide Program Services at any Site, (including a site approved by the Department in accordance with clause 83.2), that is not identified on the Department's IT Systems in accordance with clause 83.1, unless specified in any Guidelines, or otherwise directed by the Department.

84. Maximum Caseloads

- 84.1 The Provider must nominate its Maximum Caseload (which may be "unlimited") for each Site through the grant application process.
- 84.2 The Provider may vary its Maximum Caseload for a Site throughout the Agreement Term, but must not decrease its Maximum Caseload without agreement from the Department.
- 84.3 Providers must accept a Referral or Direct Registration of a Participant who wishes to receive Program Services from the Provider, unless:
- (a) the Provider has exceeded its Maximum Caseload for that Site and is unable to offer available appointments in excess of its Maximum Caseload; or

- (b) the Provider is a Specialist Service Provider and the Participant is not part of the relevant Specialist Service Group.

84.4 If:

- (a) the Provider does not comply with its obligations under clause 84.3; or
- (b) the Provider is not servicing its Maximum Caseload at a particular Site and does not have available appointments,

the Department may:

- (c) contact the Provider to discuss the circumstances of the non-compliance; and
- (d) take action under clause 59 [Remedies for breach].

Section 5D Allocation of Participants to the Provider

85. Referrals

- 85.1 Other than as provided in clause 87, the Provider must only accept Referrals of Participants made through the Department's IT Systems.
- 85.2 The Department's IT Systems will alert the Provider to Referrals by recording an Appointment for Participants in the Electronic Calendar.
- 85.3 On receipt of a Referral, the Provider must immediately confirm whether the Participant meets the eligibility requirements for a Disability Employment Services – Disability Management Service Participant or Disability Employment Services – Employment Support Service Participant in accordance with the Guidelines and, if the Participant does not meet the eligibility requirements for a Disability Employment Services – Disability Management Service Participant or Disability Employment Services – Employment Support Service Participant, the Provider must dispute the Current Assessment in accordance with clause 86 [Disputed Assessments].

Note: The Department does not guarantee the level or type of Participants that will be Referred to the Provider. The flow of Participants to the Provider will be affected by (a) the flow of Participants registering with Services Australia in each ESA; (b) the result of ESATs or Job Capacity Assessments (JCA); and (c) Participant choice, including the number of Direct Registrations.

86. Disputed Assessments

- 86.1 A Provider may dispute a Current Assessment:
 - (a) in accordance with clause 85.3 or clause 92;
 - (b) within 28 calendar days, or as otherwise specified in any Guidelines, of an Assessment conducted by Services Australia Assessment Services under clause 117.1 or 120.1, if the Provider considers that the Current Assessment does not specify the most appropriate Program Services for the Participant; or

- (c) within 28 calendar days, or as otherwise specified in any Guidelines, of an Assessment conducted by an Ongoing Support Assessor under section 5J [Ongoing Support], if the Provider considers that the Current Assessment does not specify the most appropriate Program Services for the Participant.
- 86.2 If the Provider disputes a Current Assessment, the Provider must contact Services Australia Assessment Services or the relevant Ongoing Support Assessor who conducted the Participant's Current Assessment, in accordance with any Guidelines, to discuss the reasons why the Current Assessment is not appropriate.
- 86.3 Where Services Australia Assessment Services or the Ongoing Support Assessor agrees that the Participant's previous Current Assessment is inappropriate, Services Australia Assessment Services or the Ongoing Support Assessor will take appropriate action in relation to the Participant and, unless Services Australia Assessment Services or the Ongoing Support Assessor Exits the Participant or provides a new Current Assessment of the Participant under which the Provider must provide Program Services to the Participant, the Provider must perform a Provider Exit of the Participant.
- Note: Appropriate action may include providing a new Current Assessment or Exiting the Participant.*
- 86.4 Where Services Australia Assessment Services or the Ongoing Support Assessor does not agree that the Participant's Current Assessment is inappropriate, the Provider must provide Program Services to the Participant in accordance with that Current Assessment (but subject to clauses 120 [Change of Circumstances Reassessment during Period of Service] and 129 [Change of Circumstances Reassessment during Ongoing Support]).
- 86.5 If a Current Assessment is in dispute prior to the Participant's Commencement, for the avoidance of doubt, no Fees are payable with respect to the Participant until the Participant is Commenced.
- 86.6 Where any Fees have been paid to a Provider in relation to the period during which a Current Assessment is in dispute, such Fees paid may be recoverable by the Department.

87. Direct Registration of Participants without a Referral

- 87.1 Subject to clauses 87.2, 87.3 and 87.4, if a Participant presents to the Provider without a Referral, the Provider must immediately:
- (a) confirm that the Participant:
 - (i) is not currently Registered with another Program Provider or Employment Service Provider, as identified on the Department's IT Systems; and
 - (ii) meets the eligibility requirements for a Disability Employment Services – Disability Management Service Participant or Disability Employment Services – Employment Support Service Participant in accordance with the Guidelines,
- and, if this is confirmed;

- (b) Directly Register the Participant; and
- (c) confirm that the Participant has a Valid ESAt or JCA in accordance with the Guidelines; and
- (d) if the Participant has a Valid ESAt or JCA:
 - (i) conduct an Initial Interview with the Participant;
 - (ii) Commence the Participant:
 - (A) as a Disability Employment Services – Disability Management Service Participant, if the Valid ESAt or JCA recommends that the Participant receive Disability Employment Services – Disability Management Service; or
 - (B) as a Disability Employment Services – Employment Support Service Participant, if the Valid ESAt or JCA recommends that the Participant receive Disability Employment Services – Employment Support Service; and
 - (iii) provide the Program Services to the Participant; or
- (e) if the Participant does not have a Valid ESAt or JCA, in accordance with any Guidelines:
 - (i) immediately refer the Participant to Services Australia Assessment Services for an Assessment; and
 - (ii) if the Participant is Referred back to the Provider by the Services Australia Assessment Services, provide the Program Services to the Participant.

Special Class Client

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

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

Eligible School Leaver

- 87.3 If an Eligible School Leaver presents to the Provider without a Referral, the Provider must:
- (a) confirm that the Eligible School Leaver:
 - (i) is not currently Registered with another Program Provider, as identified on the Department's IT Systems; and
 - (ii) meets the eligibility requirements for an Eligible School Leaver in accordance with the Guidelines,
- and, if this is confirmed:
- (b) immediately Directly Register the Eligible School Leaver;
 - (c) immediately conduct an Initial Interview and Commence the Eligible School Leaver as a Participant; and
 - (d) provide the Program Services to the Eligible School Leaver.

Work Assist Participant

- 87.4 If a Work Assist Participant presents to the Provider without a Referral, the Provider must:
- (a) confirm that the Work Assist Participant:
 - (i) is not currently Registered with another Program Provider, as identified on the Department's IT Systems; and
 - (ii) meets the eligibility requirements for a Work Assist Participant in accordance with the Guidelines,
- and, if this is confirmed:
- (b) immediately Directly Register the Work Assist Participant;
 - (c) immediately conduct an Initial Interview with the Work Assist Participant and Commence the Work Assist Participant in either Disability Employment Services – Disability Management Service or Disability Employment Services – Employment Support Service; and
 - (d) provide the Program Services to the Work Assist Participant.

General

- 87.5 The Provider must retain and provide to the Department upon request, documentary evidence of the eligibility of all Directly Registered Participants, in accordance with any Guidelines.

Note: The Funding Level for a Directly Registered Participant (with the exception of Work Assist Participants) will be determined by the Department's IT Systems using the 2018 Funding Level Tool.

88. Transition in

- 88.1 If directed by the Department, the Provider must provide Program Services to a Transferred Participant who transfers from another Program Provider to the Provider in accordance with this Agreement and any Guidelines.
- 88.2 For the purposes of clause 88.1, the Provider must assist, facilitate and cooperate with the Transferred Participant and the other Program Provider, including complying with any specific transition arrangements required by the Department, if advised to the Provider by the Department, prior to the transfer of the Transferred Participant, in order to enable services to continue to be provided to the Transferred Participant.
- 88.3 On commencement of Program Services pursuant to clause 88.1, a Transferred Participant is deemed to be a Participant, and not a Transferred Participant, for the purposes of this Agreement.

Section 5E Some basic rules about Program Services

89. Service Guarantee

- 89.1 The Provider must conduct the Program Services at or above the minimum standards in the Service Guarantee set out in Annexure C2.
- 89.2 The Provider must prominently display in its offices and all Sites, and make available to potential Participants and Employers, promotional Material made available by the Department about the Service Guarantee.

90. Code of Practice

Compliance with the Code of Practice

- 90.1 The Provider must:
- (a) comply with the Code of Practice set out in Annexure C1;
 - (b) provide a copy of the Code of Practice to all Participants; and
 - (c) explain the Code of Practice to all Participants.
- 90.2 The Provider must prominently display in its offices and all Sites and make available to potential Participants and Employers, promotional Material made available by the Department about the Code of Practice.

Breach of the Code of Practice

- 90.3 A breach of the Code of Practice occurs, but is not limited to, when the Provider:
- (a) fails to deliver Program 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 32 [Customer feedback process]; or

- (ii) where relevant, actively taken steps to ensure that the Complaint does not re-occur.

Section 5F Program Services

91. Appointments with Participants

General

91.1 Subject to the Provider's Maximum Caseload and unless otherwise agreed with the Department, the Provider must ensure that the Electronic Calendar has, at all times, capacity to receive an Appointment for a Participant within the next two Business Days, for the purposes of:

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

91.2 Where:

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

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

Conducting Appointments

91.3 Where a Participant has an Appointment with the Provider, the Provider must, in accordance with this Agreement and any Guidelines, meet with the Participant on the date and at the time of the Appointment as recorded in the Electronic Calendar.

91.4 Reserved.

Recording Engagements in the Electronic Calendar

91.5 Clause 91.6 applies to any:

- (a) Participant (Mutual Obligation); or
- (b) other Participant as specified in any Guidelines.

91.6 The Provider must, in accordance with the requirements of the Department's IT Systems and any Guidelines, record in each Participant's Electronic Calendar details of all:

- (a) Mutual Obligation Requirements; and
- (b) other:
 - (i) Contacts;

- (ii) Activities;
- (iii) job interviews;
- (iv) Employment, if the hours are regular and can reasonably be scheduled by the Provider;
- (v) Education and Training;
- (vi) drug and/or alcohol treatment;
- (vii) workshops, Training and other activities delivered by the Provider to the Participant; and
- (viii) third party appointments,

in which the Participant is engaged to participate in relation to the Program Services.

Note: The Provider must also monitor and record each Participant (Mutual Obligation)'s participation against their Mutual Obligation Requirements, and respond to any non-compliance by a Participant with their Mutual Obligation Requirements, in accordance with Section 5H Targeted Compliance Framework and activities.

91.7 When recording an Engagement, the Provider must also:

- (a) notify the Participant, in the manner required by the Department's IT Systems, of:
 - (i) the dates and times recorded by the Provider for the Engagement; and
 - (ii) if it is the first time that the Participant will participate in an Engagement of that kind, the evidence required (if any) to confirm their participation in the Engagement; and
- (b) if the Engagement forms a part of a Participant (Mutual Obligation)'s Mutual Obligation Requirements:
 - (i) notify the Participant, in the manner required by the Department's IT Systems, of whether the Engagement is:
 - (A) compulsory; or
 - (B) a Reconnection Requirement; and
 - (ii) ensure that the Participant understands how to meet the Mutual Obligation Requirement and the consequences for failing to meet the Mutual Obligation Requirement.

Confirming Personal Events

91.8 Where a Participant has recorded a Personal Event, the Provider must, in accordance with any Guidelines, consider the Personal Event in light of the Participant's personal circumstances, and confirm the Personal Event in the Participant's Electronic Calendar where the Provider considers that it is appropriate to do so.

Engagements conflicting with Personal Events

- 91.9 Where the Provider is considering recording an Engagement in the Participant's Electronic Calendar and the Engagement is scheduled to occur at a Personal Event Time, the Provider must, in accordance with any Guidelines:
- (a) if the Engagement is not a Mutual Obligation Requirement, record the Engagement so that it is not scheduled to occur at the Personal Event Time, and instead record the Engagement so that it is scheduled to occur at a more appropriate time; or
 - (b) if the Engagement is a Mutual Obligation Requirement:
 - (i) advise the Participant that, even though the Participant has recorded a Personal Event, the Provider may still record the Mutual Obligation Requirement so that it is scheduled to occur at the Personal Event Time;
 - (ii) discuss with the Participant whether it is appropriate to so record the Mutual Obligation Requirement, including whether the Participant has sufficient notice, and is able, to make other arrangements for the Personal Event;
 - (iii) record the Mutual Obligation Requirement so that it is scheduled to occur at the Personal Event Time if the Provider assesses that it is appropriate to do so, and record the Provider's reasons for this assessment; and
 - (iv) manage the conflicting events in the Electronic Calendar.

92. Initial Interview

Initial Interviews for Participants

- 92.1 During an Initial Interview for a Participant, the Provider must, in accordance with any Guidelines:
- (a) confirm the Participant's identity;
 - (b) explain the Program Services that the Provider will provide, including the relevant Service Guarantee and the Code of Practice;
 - (c) for Participants (Mutual Obligation), explain their rights and obligations under the Social Security Law and the consequences of not meeting their obligations;
 - (d) prepare and approve a Job Plan with the Participant, which includes any Interventions required at that point;
 - (e) where necessary to allow the Participant to understand the Initial Interview, provide access to an interpreter;
 - (f) for a Disability Support Pension Recipient (Compulsory Requirements), explain their rights and obligations, including their participation in a Program of Support requirement; and

- (g) for other Disability Support Pension Recipients, as identified in the Department's IT system, explain their participation in a Program of Support requirement.

92.2 Except in relation to a Work Assist Participant, in addition to the requirements set out in clause 92.1, either during the Initial Interview and/or at such other times as deemed appropriate by the Provider based on individual need, the Provider must provide:

- (a) an initial list of appropriate job vacancies;
- (b) advice about the best ways to look for and find work and about local employment opportunities; and
- (c) information about Skills Shortage areas.

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

Résumé preparation

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

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

Initial Interviews for a New Program

92.5 During an Initial Interview for a New Program, the Provider:

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

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

93. Contact services

Minimum number of contacts

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

Table 1 Minimum Contacts

Participant	Minimum Contacts
All Participants (excluding Work Assist Participants)	Initial Interview
	Six Contacts over each period of three months for Participants receiving Employment Assistance and Extended Employment Assistance
	Regular Contacts, as deemed appropriate by the Provider, for Participants receiving Post Placement Support
	Initial Interview for a New Program when a Participant moves from Disability Employment Services – Disability Management Service to Disability Employment Services – Employment Support Service or vice versa
	As required, for Participants receiving Flexible Ongoing Support
Work Assist Participants	Initial Interview
	Regular Contacts, as deemed appropriate by the Provider, during the Period of Service
Disability Employment Services – Employment Support Service Participants only (applicable to Disability Employment Services – Employment Support Service Providers only)	Six Contacts over each period of three months for Participants receiving Moderate Ongoing Support
	Twelve Contacts over each period of three months for Participants receiving High Ongoing Support
Participant (Mutual Obligation)	Capability Interviews
	Any Contact that is a Reconnection Requirement
	Any other Contact required in accordance with Section 5H

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

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

93.2 In addition to the requirements in clause 93.1, the Provider must:

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

- 93.3 The Department may require the Provider, by Notice, to increase the frequency of Contacts beyond that specified in Table 1:
- (a) where the Provider has failed to meet the minimum requirements in Table 1;
or
 - (b) for any other reason specified by the Department.
- 93.4 Issues to be covered in Contacts must be appropriate to the circumstances of individual Participants and may include:
- (a) identification and recording of any relevant changes in the Department's IT Systems, including any changes to the circumstances of the Participant;
 - (b) identification of, and referral to, any relevant Training, work experience or other Interventions;
 - (c) a discussion regarding a Participant's job search activities (if this is included as a requirement in his or her Job Plan) since his or her last Contact;
 - (d) assistance in identifying appropriate job vacancies;
 - (e) a review of a Participant's progress towards overcoming identified Vocational Barriers and Non-vocational Barriers to employment;
 - (f) a review and update of a Participant's Job Plan, as relevant;
 - (g) any specific issues for Participants who are in Employment or Post Placement Support; and
 - (h) any other matters specified in relation to Contacts under any Guidelines.

Mode of Contact

- 93.5 The Provider must conduct:
- (a) the Initial Interview;
 - (b) the Initial Interview for a New Program;
 - (c) the first Contact following Re-engagement; and
 - (d) the first Contact following a Change in Circumstances Reassessment or a Program Review,
- face to face with the Participant, except:
- (e) where the Participant resides in:
 - (i) an area which is currently affected by extreme weather conditions, as agreed with the Department;
 - (ii) an area currently affected by natural disaster;
 - (iii) an area currently affected by public transport strikes;
 - (f) when a Participant is participating in:
 - (i) full-time Training or Education; or
 - (ii) another external activity in accordance with his or her Job Plan; and

their participation in those activities restricts their availability to participate in Contacts, as described in any Guidelines; or

(g) in other circumstances as advised by the Department from time to time.

- 93.6 With the exception of the circumstances described in clause 93.5, Contacts may be conducted by alternative mode, as agreed by the Participant and the Provider, and as specified in any Guidelines.
- 93.7 The Provider must record the mode for each Contact (including the Initial Interview and the Initial Interview for a New Program) in the Department's IT Systems.
- 93.8 Notwithstanding clause 93.6, the Provider must offer, and if requested by the Participant, conduct face to face Contacts.

94. Skills Assessment

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

Early School Leavers

- 94.5 If a person who has been assessed as being an Early School Leaver advises the Provider that they have attained a year 12 or equivalent qualification, the Provider must:
- (a) request the person to provide evidence of that qualification to the Provider;

- (b) retain Records of this request and a copy of any evidence provided by the person, in accordance with clause 44 [Records the Provider must keep]; and
- (c) if requested by the Department, provide a copy of the Record to the Department or Services Australia, in accordance with any Guidelines.

95. Assistance for Participants

95.1 The Provider must provide assistance for Participants during their Period of Service and any period of Ongoing Support and Work Based Personal Assistance Only, which is designed to:

- (a) develop the skills the Participant needs to improve his or her capacity to find, gain or remain in sustainable employment or self-employment; and
- (b) allow Participants to address identified Vocational Barriers and Non-vocational Barriers,

and that assistance must be in accordance with this Agreement and any Guidelines.

95.2 The Provider must provide assistance for Participants in a flexible way which takes into account:

- (a) the results of any Assessments or evaluations;
- (b) whether the Participant is a Disability Employment Services – Disability Management Service Participant or a Disability Employment Services – Employment Support Service Participant and, where relevant, the Funding Level of the Participant;
- (c) whether the Participant is in receipt of Employment Assistance, Extended Employment Assistance, Post Placement Support, Ongoing Support or Work Based Personal Assistance Only;
- (d) whether the Participant is a Work Assist Participant;
- (e) the individual circumstances of the Participant; and
- (f) any Guidelines.

95.3 Subject to clause 95.4, the types of assistance which may be provided for Participants include:

- (a) providing, purchasing or assisting Participants to access:
 - (i) functional capacity evaluations, physical assessments or other assessments to determine a person's limits or abilities;
 - (ii) Interventions such as physiotherapy, occupational therapy, pain management or psychological counselling;
 - (iii) Training, work hardening or physical conditioning programs;
 - (iv) support on whole of life issues that impact on a Participant's Employment;
 - (v) information on how Vacancies will be sourced, including an outline of how the Provider will canvass and approach Employers regarding Vacancies;

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

Note: The Provider is not entitled to claim reimbursement under this clause 95.3.

- 95.4 A Provider may, in the course of supporting a Participant to gain or remain in sustainable Employment, pay to the Employer a subsidy or payment of any kind which is additional to a Wage Subsidy, provided that the subsidy or payment:
- (a) is paid by the Provider from its own funds;
 - (b) does not make up the whole of a Participant's wage in relation to the Employment;
 - (c) does not, in combination with the Wage Subsidy, equate to or exceed the whole of a Participant's wage in relation to the Employment;
 - (d) is not paid for a period that is greater than three months in duration after the 26-Week Outcome is achieved by a Participant; and
 - (e) is paid otherwise in accordance with any Guidelines.

Note: The Provider is not entitled to claim reimbursement under this clause 95.4.

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

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

such Program Services being mutually exclusive.

Work Based Personal Assistance

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

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

- (a) cease providing Work Based Personal Assistance or Work Based Personal Assistance Only to that Participant, and in the case of a Work Based Personal Assistance Only Participant, Exit that Participant in accordance with clause 139.14(c); and
- (b) in all cases, provide sufficient assistance and cooperation to the National Disability Insurance Agency, or any other persons nominated by the Department, to facilitate the provision of similar services to the NDIS Participant.

96. Reserved

97. Reserved

98. National Work Experience Program Placements

National Work Experience Program Placements

98.1 Subject to clause 98.2 and clause 98.3, the Provider may:

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

National Work Experience Program Placements for Participants who are eligible to participate in and elect to participate in the National Work Experience Program.

98.2 National Work Experience Program Placements:

- (a) must not have the effect of displacing or replacing paid workers or reducing the amount of paid work available to workers;
- (b) must only be provided, brokered or purchased by the Provider if the Provider is satisfied that, for each National Work Experience Program Placement, there is a likelihood that the relevant Participant will obtain paid employment with the relevant Activity Host Organisation following the National Work Experience Program Placement, and the Provider has made an assessment of the likely length of that employment; and
- (c) must meet the requirements set out in any Guidelines.

Restrictions on NWEF Activities

98.3 The Provider must ensure that each National Work Experience Program Placement does not exceed a maximum of four weeks duration with a maximum of 25 hours participation per week.

Note: where the Provider has assessed, for the purpose of clause 98.2(b) that the likely length of a subsequent paid employment opportunity is for less than six months, the placement should be for less than the maximum of four weeks (e.g. less than two weeks).

98.4 Subject to clause 98.5, the Provider must not provide, broker or purchase a National Work Experience Program Placement if some or all of the work would have been undertaken by a paid worker if the National Work Experience Program Placement activity had not taken place.

98.5 The Provider may provide, broker or purchase a National Work Experience Program Placement which it would not otherwise be permitted to do under clause 98.4, if:

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

NWEF documentation

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

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

have signed the National Work Experience Program Placement documentation in the form required by the Department.

Ceasing NWEF Activities

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

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

Payment of NWEH Host Payments

98.9 Subject to clause 98.10, the Provider must not demand or accept any payment from an Activity Host Organisation in relation to a National Work Experience Program Placement.

98.9A The Provider must only pay the NWEH Host Payment to an Activity Host Organisation with respect to an National Work Experience Program Placement for a Participant if the Provider has first, in accordance with any Guidelines:

- (a) confirmed that:
 - (i) the Participant is eligible to participate in the National Work Experience Program Placement;
 - (ii) the relevant position meets the requirements of an National Work Experience Program Placement as specified in this Agreement, including any Guidelines;
 - (iii) the Activity Host Organisation satisfies the eligibility requirements to host, and to receive an NWEH Host Payment for, a National Work Experience Program Placement, as specified in this Agreement, including any Guidelines; and
 - (iv) the Participant has commenced in the relevant National Work Experience Program Placement; and
- (b) entered into an Activity Host Organisation Agreement in relation to the National Work Experience Program Placement with the relevant Participant and the Activity Host Organisation.

98.9B Subject to any contrary provision specified in any Guidelines, the Provider must ensure that each payment of an NWEH Host Payment is paid:

- (c) from the Provider's own funds;
- (d) to the relevant Activity Host Organisation;
- (e) only once for each Participant;
- (f) within five calendar days of the expected start date of the National Work Experience Program Placement, unless otherwise agreed with the relevant Activity Host Organisation; and
- (g) otherwise in accordance with any Guidelines.

Reimbursement

98.9C Once the Provider has properly paid a NWEH Host Payment in accordance with clauses 98.9A and 98.9B, the Provider may submit a claim for Reimbursement in the Department's IT Systems for no more than the same amount as the NWEH Host

Payment paid to the relevant Activity Host Organisation, in accordance with the requirements specified in any Guidelines.

98.9D The Department will Reimburse the Provider for each NWEH Host Payment that is paid in accordance with this Agreement and claimed in accordance with clause 98.9C.

98.9E Each claim for Reimbursement under clause 98.9C must be submitted by the Provider to the Department no later than 56 calendar days after the end of the relevant National Work Experience Program Placement.

No legal relationships between parties

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

- (a) the Department;
- (b) the Provider; or
- (c) the Activity Host Organisation.

99. PaTH Internships

99.1 Subject to this Agreement, including any Guidelines, the Provider may arrange (but not provide, purchase or broker) a PaTH Internship for a Participant who is eligible to participate in, and elects to participate in, a PaTH Internship.

99.2 The Provider must ensure that each PaTH Internship that it arranges:

- (a) is for a duration of no less than four weeks and no more than 12 weeks; and
- (b) involves participation by the relevant Participant of between 30 and 50 hours per fortnight.

99.3 Where the Provider places a Participant into a PaTH Internship, the Provider must, prior to the Participant starting that PaTH Internship, and in accordance with any Guidelines, ensure that:

- (a) the Provider has conducted and finalised a risk assessment, and taken necessary actions to mitigate identified risks;
- (b) the Provider creates the relevant PaTH Internship Agreement in the Department's IT Systems;
- (c) the Participant, the Activity Host Organisation and the Provider have signed the relevant PaTH Internship Agreement; and
- (d) the Provider has updated the Participant's Job Plan to include details of the PaTH Internship.

99.4 The Provider must promote, deal with enquiries, manage and report on PaTH Internships, in accordance with any Guidelines.

99.5 If the Provider becomes aware that any Activity Host Organisation has breached a PaTH Internship Agreement, the Provider must immediately Notify the Department and provide information about the relevant breach as required by the Department.

Payment of PaTH Internship Amounts

99.6 The Provider must only pay the PaTH Internship Amount to an Activity Host Organisation with respect to a PaTH Internship for a Participant if the Provider has first, in accordance with any Guidelines:

- (a) confirmed that:
 - (i) the Participant is eligible to participate in the PaTH Internship;
 - (ii) the relevant position meets the requirements of a PaTH Internship as specified in this Agreement, including any Guidelines;
 - (iii) the Activity Host Organisation satisfies the eligibility requirements to host, and to receive a PaTH Internship Amount for, a PaTH Internship, as specified in this Agreement, including any Guidelines; and
 - (iv) the Participant has commenced in the relevant PaTH Internship; and
- (b) entered into a PaTH Internship Agreement in relation to the PaTH Internship with the relevant Participant and the Activity Host Organisation.

99.7 Subject to any contrary provision specified in any Guidelines, the Provider must ensure that each payment of a PaTH Internship Amount is paid:

- (a) from the Provider's own funds;
- (b) to the relevant Activity Host Organisation;
- (c) to an Activity Host Organisation only once for each Participant;
- (d) within five Business Days of the Participant commencing the PaTH Internship, unless otherwise agreed with the Activity Host Organisation; and
- (e) otherwise in accordance with any Guidelines.

Reimbursement

99.8 Once the Provider has properly paid a PaTH Internship Amount in accordance with clauses 99.6 and 99.7, the Provider may submit a claim for Reimbursement in the Department's IT Systems for no more than the same amount as the PaTH Internship Amount, in accordance with the requirements specified in any Guidelines.

99.9 The Department will Reimburse the Provider for each PaTH Internship Amount that is paid in accordance with this Agreement and claimed by the Provider in accordance with clause 99.8.

99.10 Each claim for Reimbursement under clause 99.8 must be submitted by the Provider to the Department no later than 56 days after the end of the relevant PaTH Internship Period.

PaTH Internship Outcome Fee

99.11 Once the Participant completes:

- (a) a PaTH Internship that is of four weeks duration; or

- (b) the initial four weeks of a PaTH Internship with a duration of longer than four weeks,

in accordance with the requirements of this clause 99 and any Guidelines, the Provider may, within 56 days of the completion date for (a) or (b) above recorded in the Department's IT Systems, submit a claim for a PaTH Internship Outcome Fee in the Department's IT Systems.

Transferred Participants

99.12 If a Participant transfers from the Provider to another Program Provider and is, on the date of the transfer, the subject of a PaTH Internship Agreement:

- (a) the Provider must:
 - (i) end the then current PaTH Internship Agreement; and
 - (ii) liaise with the relevant Activity Host Organisation, Program Provider and Participant in relation to continuing the PaTH Internship; and
- (b) the other Program Provider:
 - (i) must use its best endeavours to enter into a new a PaTH Internship Agreement for the benefit of the Participant for the remainder of the PaTH Internship Period; and
 - (ii) advise the Department if it is unable to enter into a PaTH Internship Agreement as contemplated in clause 99.12(b)(i).

No legal relationships between parties

99.13 The Provider must ensure that, to the extent allowable by law and unless otherwise expressly agreed by the Parties, there is no intention or understanding on the part of the Activity Host Organisation or the Participant that the PaTH Internship itself will create legal relations between the Participant and:

- (a) the Commonwealth;
- (b) the Provider; or
- (c) the Activity Host Organisation.

99.14 Without limiting clause 99.13, the Provider must ensure that, to the extent allowed by law and unless otherwise expressly agreed by the Parties, a PaTH Internship itself will not result in the Participant being an employee of the relevant Activity Host Organisation.

100. Safety and supervision

100.1 Prior to the commencement of a Specified Activity, and throughout the Specified Activity, the Provider must satisfy itself that there is a safe system of work in place, including that the relevant Activity Host Organisation is complying with:

- (a) work health and safety requirements relevant to the jurisdiction in which the Specified Activity occurs; and
- (b) relevant statutory workers' compensation requirements.

- 100.2 The Provider must:
- (a) prior to the commencement of a Participant in any Specified Activity undertake a risk assessment in accordance with the Guidelines and undertake any action identified in the risk assessment;
 - (b) <removed>
 - (c) retain Records of each risk assessment referred to in clause 100.2(a) and any action taken in accordance with the risk assessment, and provide the relevant Records to the Department upon request;
 - (d) ensure that in respect of any Specified Activity, each Activity Host Organisation is obliged to immediately advise the Provider of any proposed or actual changes to the tasks being undertaken by a Participant in respect of the Specified Activity or the circumstances in which those tasks are being undertaken; and
 - (e) <removed>.
- 100.3 If the Provider does not itself employ a Competent Person relevant to meeting the obligations in clauses 100.1 and 100.2, it must engage a relevant Competent Person, as required, for this purpose.
- 100.4 Prior to the commencement of a Participant in a Specified Activity, and at all times during each Specified Activity, the Provider must, in accordance with any Guidelines:
- (a) examine the relevant risk assessment to ensure that the Specified Activity is appropriate for the Participant being considered for placement, with regard to their health and safety, taking into consideration any relevant circumstances including the Participants' disability, injury or health condition and work restrictions and having regard, among other things, to the risk assessments undertaken by the Provider or the Employment Service Provider in accordance with clause 100.2;
 - (b) ensure that any required actions, identified in the relevant risk assessment, have been undertaken;
 - (c) identify any training, including work health and safety training, that will be required to ensure that the Participant can participate in the activities safely, and ensure that training of sufficient length and quality is provided to all Participants by the Activity Host Organisation at the commencement and for the duration of the Specified Activities;
 - (d) ensure that appropriate facilities (such as toilets and access to drinking water) are available to all Participants for the duration of the Specified Activities;
 - (e) identify if any specific equipment, clothing or materials are required for Participants to participate safely in the relevant activities, and ensure that such materials are provided to Participants;
 - (f) ensure that the Participant being considered for placement in the Specified Activity has been advised of the process for reporting any work health and safety issues regarding the Specified Activities; and

(g) purchase or fund additional insurance for the Specified Activity if required.

100.5 The Provider must ensure that:

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

100.6 The Provider must ensure that Specified Activity supervisors are required to notify the Provider of the non-attendance of Participants on all Specified Activities.

Incidents

100.7 The Provider must notify the Department as soon as possible, and at the latest within 24 hours, of any incident relating to any Specified Activity, including:

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

100.8 Where the incident referred to in clause 100.7 is an accident, or involves injury or death, irrespective of whether the injured party makes a claim at the time of the incident, the Provider must also, as soon as possible, and at the latest within 24 hours:

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

100.9 The Provider must comply with any instructions issued by the Department, the Department of Employment and Workplace Relations or the Department of Employment and Workplace Relations' insurance broker, and any Guidelines, in relation to insurance purchased by the Department of Employment and Workplace Relations for Participants.

Removal of a supervisor

- 100.10 The Department may give Notice, on reasonable grounds related to the performance of PaTH Internships and National Work Experience Program Placements, requiring the Provider to arrange for the removal of a supervisor, whether engaged by the Provider or engaged by an Activity Host Organisation, from work on the Activities.
- 100.11 Where the Department gives Notice under clause 100.10, the Provider must, at its own cost, promptly arrange for the removal of such a supervisor from work on the affected Activities and their replacement with one or more supervisors acceptable to the Department.

101. Wage Subsidy and Employment Assistance Fund

Wage Subsidy

- 101.1 The Provider may pay a Wage Subsidy to an Employer with respect to a Participant (other than a Work Assist Participant), where the Participant is eligible for the Wage Subsidy, in accordance with any Guidelines.
- 101.2 If the Provider pays a Wage Subsidy in accordance with clause 101.1, the Provider must:
- (a) ensure that the payment is in accordance with any Guidelines, including any limitations on payments;
 - (b) arrange for payment, from its own funds, of the Wage Subsidy to the Employer for that Participant; and
 - (c) submit a claim for Reimbursement of the Wage Subsidy through the Department's IT Systems.
- 101.3 The Provider must not pay a Wage Subsidy to the Provider's Own Organisation or a Related Entity, unless where specified in any Guidelines.
- 101.4 The Department will Reimburse the Wage Subsidy to the Provider in accordance with, and subject to, the requirements for payment under the Guidelines.

Transferred Wage Subsidy Participants

- 101.5 If the Department directs the Provider to provide Services to a Transferred Wage Subsidy Participant, the Provider must do so in accordance with clause 101.6, notwithstanding that the Transferred Wage Subsidy Participant may have been Exited.
- 101.6 The Provider must, in relation to a Transferred Wage Subsidy Participant referred to in clause 101.5:
- (a) immediately contact the Transferred Wage Subsidy Participant's Employer and use the Provider's best endeavours to enter into an agreement with the Employer:
 - (i) in relation to the relevant Wage Subsidy;
 - (ii) for the period advised by the Department; and
 - (iii) in accordance with any Guidelines; and

- (b) comply with clauses 101.1 to 101.3, and any direction by the Department, with regard to the relevant Wage Subsidy.

Employment Assistance Fund

- 101.7 The Provider may apply for assistance, or assist or act on behalf of an Employer to apply for assistance, under the Employment Assistance Fund with respect to a Participant.
- 101.8 If the Provider makes an application for assistance in accordance with clause 101.7, the Provider must, in accordance with the Employment Assistance Fund Guidelines:
 - (a) submit the application to the JobAccess Provider;
 - (b) upon notification from the JobAccess Provider that the application has been approved, arrange for the purchase, from its own funds, of the Approved Assistance for the Participant who is the subject of the application; and
 - (c) submit a claim for Reimbursement of the Approved Assistance Amount through the Department's IT Systems.
- 101.9 The Department will Reimburse Approved Assistance Amounts to the Provider in accordance with, and subject to, the requirements for payment under the Employment Assistance Fund Guidelines.

Monitoring by the Department

- 101.10 Without limiting any other rights which the Department might have, the Department will monitor:
 - (a) in relation to a Wage Subsidy, the Provider's payment and claims for Reimbursement of amounts paid; and
 - (b) in relation to the Employment Assistance Fund, the Provider's claims for Reimbursement of Approved Assistance Amounts,
 - (c) in accordance with this Agreement and any Guidelines.
- 101.11 In particular, the Department will monitor the Provider's use and Reimbursement of Approved Assistance Amounts under the Employment Assistance Fund where services, activities, facilities or products have been purchased from the Provider's Own Organisation or a Related Entity.

Note: In accordance with clause 101.3, the Provider must not pay a Wage Subsidy to the Provider's Own Organisation or a Related Entity.

- 101.12 The Provider acknowledges and agrees that:
 - (a) an unethical manner for the purposes of clause 8.2(a) of this Agreement includes any practice that:
 - (i) involves inappropriately:
 - (A) paying a Wage Subsidy; or
 - (B) applying for an amount under the Employment Assistance Fund; or
 - (ii) misuses or misappropriates:

- (A) a Wage Subsidy; or
 - (B) an Approved Assistance Amount under the Employment Assistance Fund; and
 - (b) the practices described in clause 101.12(a) may result in the Department taking action under clause 59 [Remedies for breach].
- 101.13 The Provider must do all things necessary to ensure that:
- (a) all payments to third parties with monies:
 - (i) paid for a Wage Subsidy; or
 - (ii) approved for expenditure under the Employment Assistance Fund, are authorised and made in accordance with this Agreement and any Guidelines, including the Employment Assistance Fund Guidelines; and
 - (b) it maintains proper and diligent control over the incurring of all liabilities.

102. Restart Program

- 102.1 The Provider must promote, deal with enquiries, manage and report on the Restart Program, in accordance with any Guidelines.
- 102.2 Subject to any contrary provision specified in any Guidelines, the Provider must only pay a Restart Payment to a Restart Employer with respect to a Restart Participant if the Provider has, for each restart Period, first:
- (a) confirmed that:
 - (i) the Participant is a Restart Participant; and
 - (ii) the relevant Employment position is a Restart Placement;
 - (b) entered into a Restart Agreement with the relevant Restart Employer;
 - (c) received from the relevant Restart Employer, Documentary Evidence of the Restart Participant's Employment for each Relevant Period; and
 - (d) confirmed that the Restart Employer is compliant with the Restart Agreement,
 - (e) and done so in accordance with any Guidelines.
- 102.3 Subject to any contrary provision specified in any Guidelines, the Provider must ensure that each Restart Payment is:
- (a) paid in full from the Provider's own funds;
 - (b) paid to the relevant Restart Employer only once for each Restart Participant;
 - (c) paid for the relevant Restart Period and in the instalment amount as specified in any Guidelines; and
 - (d) otherwise in accordance with any Guidelines.

Reimbursement

- 102.4 Once the Provider has properly paid a Restart Payment in accordance with this clause 102.2 and 102.3, the Provider may submit a claim for Reimbursement through

the Department's IT Systems, but must only do so in accordance with this clause 102 and any Guidelines.

- 102.5 The Department will Reimburse the Provider for each Restart Payment that is made in accordance with this Agreement and properly claimed by the Provider under this clause 102.

Transferred Restart Participants

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

- 102.7 The Provider must, in relation to a Restart Participant referred to in clause 102.9:

- (a) immediately contact the Transferred Restart Participant's Employer and use the Provider's best endeavours to enter into a Restart Agreement with the Restart Participant's Employer for a period advised by the Department; and
- (b) comply with this clause 102 and any direction by the Department in relation to the Transferred Restart Participant.

Monitoring by the Department

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

- 102.9 The Provider acknowledges and agrees that:

- (a) an unethical manner for the purposes of clause 8.2(a) of this Agreement includes any practice that:
 - (i) involves inappropriately paying a Restart Payment;
 - (ii) misuses or misappropriates a Restart Payment; and
- (b) the practices described in clause 102.9(a) may result in the Department taking the action set out in clause 59 [Remedies for breach].

- 102.10 The Provider must do all things necessary to ensure that:

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

103. Reserved

104. Supported Wage System

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

105. National Disability Recruitment Coordinator

- 105.1 The Provider must work cooperatively with the National Disability Recruitment Coordinator in order to:
- (a) refer Participants (excluding Work Assist Participants) to Vacancies identified by the National Disability Recruitment Coordinator; and
 - (b) identify and match the employment needs of the Participants (excluding Work Assist Participants).

Section 5G Job Plans

Information about Job Plans

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

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

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

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

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

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

106. General requirements for a Job Plan

- 106.1 The Provider must ensure that, at all times, each Participant (excluding Work Based Personal Assistance Only Participants) has a current Job Plan.
- 106.2 The Provider must ensure the relevant Delegate complies with the Social Security Law and the rules set out in any Guidelines when entering into or updating a Job Plan.
- 106.3 The Provider must provide the Participant with the assistance, and arrange and monitor the activities, specified in the Job Plan.

Entering into a Job Plan

- 106.4 If, on the first Contact, a Participant does not have a Job Plan, the Provider must arrange for a Delegate to enter into a Job Plan with the Participant and explain the Job Plan to the Participant.

- 106.5 Without limiting the other requirements of this clause 106, the Delegate may require a Disability Support Pension Recipient (Compulsory Requirements) to enter into another Job Plan instead of the existing Job Plan.
- 106.6 The Provider must ensure that a Delegate reviews, and, if appropriate, amends the Participant's existing Job Plan and explains the amended Job Plan to the Participant:
- (a) at the Initial Interview;
 - (b) as required by clause 137 [Suspensions];
 - (c) when a Skills Assessment or a Comprehensive Compliance Assessment is conducted;
 - (d) after an Assessment;
 - (e) when the relevant Mutual Obligation Requirements activities in a Participant (Mutual Obligation)'s Job Plan are completed or expire;
 - (f) if a Participant's circumstances change such that the Job Plan becomes out of date, including where activities have been completed or expire;
 - (g) when the relevant Disability Support Pension Recipient (Compulsory Requirements) activities in the Disability Support Pension Recipient's (Compulsory Requirements) Job Plan are completed or expire; and
 - (h) as otherwise required by the Department.
- 106.7 The Provider should ensure that a Delegate further reviews, and, if appropriate, amends the Participant's existing Job Plan and explains the amended Job Plan to the Participant, when a Contact occurs.

Contents of a Job Plan

- 106.8 The Provider must ensure that the Job Plan for a Participant (Mutual Obligation):
- (a) contains the terms with which the Participant (Mutual Obligation) must comply in order to satisfy his or her Mutual Obligation Requirements, including:
 - (i) the Participant's Job Search Requirements; and
 - (ii) the Participant's personal responsibility for self-reporting participation against their Mutual Obligation Requirements, unless the Provider has assessed that the Participant is not capable of self-reporting in accordance with clause 108.1(a);
 - (b) is amended to include details of additional voluntary activities, if he or she is:
 - (i) subject to an Exemption or fully meeting his or her Mutual Obligation Requirements; and
 - (ii) volunteers to participate in additional activities; and
 - (c) is updated, within the timeframe specified in any Guidelines, when any event occurs that results in the need to change the Participant's Mutual Obligation Requirements or servicing (including to take into account the outcome of any Capability Interview or Capability Assessment).

- 106.9 The Provider must ensure that the Job Plan for a Disability Support Pension Recipient (Compulsory Requirements):
- (a) contains at least one or more terms with which the Disability Support Pension Recipient (Compulsory Requirements) must comply in order to satisfy his or her compulsory requirements; and
 - (b) is amended to include details of additional voluntary activities, if her or she is:
 - (i) subject to an Exemption or fully meeting his or her compulsory requirements; and
 - (ii) volunteers to participate in additional activities.
- 106.10 If a Participant is not a Participant (Mutual Obligation) or Disability Support Pension Recipient (Compulsory Requirements), the Provider must ensure that the Job Plan contains one or more terms that are voluntary.
- 106.11 Each Job Plan must:
- (a) be in a form approved by the Department;
 - (b) contain terms that are specifically tailored to address the Participant's level of disadvantage, individual needs, barriers to employment and Partial Capacity to Work, having regard to the particular Program Services the Participant is receiving;
 - (c) specify:
 - (i) when each activity specified in the Job Plan will start and finish; and
 - (ii) the assistance the Participant will receive during the Participant's Period of Service and during any period of Ongoing Support;
 - (d) draw from a mix of vocational and non-vocational activities that the Participant is to undertake during the Participant's Period of Service or, if relevant, while the Participant is receiving Ongoing Support, with a particular focus on developing the skills the Participant needs to improve his or her chances of obtaining or maintaining sustainable Employment or self-employment; and
 - (e) specify the frequency of contact that the Participant must have with the Provider during the Participant's Period of Service or while the Participant is receiving Ongoing Support, as relevant.
- 106.12 The Provider must provide the Participant with the assistance, and arrange and monitor the activities, specified in the Job Plan.
- 106.13 The relevant Delegate must perform the following functions, and must comply with Guidelines, if any, in relation to:
- (a) notifying the Participant of the:
 - (i) requirement to enter into a Job Plan; and
 - (ii) place and time at which a Job Plan is to be completed;

- (b) providing the Participant with information about his or her rights and obligations, including Job Search Requirements;
- (c) entering into a Job Plan;
- (d) the terms to be included in each Job Plan;
- (e) where a paper copy of a Job Plan is used:
 - (i) printing and physically signing the Job Plan;
 - (ii) providing a copy of that Job Plan to the Participant; and
 - (iii) retaining a copy of the signed Job Plan; and
- (f) where an electronic copy of a Job Plan is used, submitting the Job Plan on the Department's IT Systems for acceptance by the Participant;
- (g) taking steps to ensure the Participant complies with the terms of his or her Job Plan;
- (h) reviewing and amending an existing Job Plan;
- (i) cancelling or suspending a Job Plan;
- (j) creating and maintaining documentation in relation to a Job Plan;
- (k) entering information into the Department's IT Systems; and
- (l) undertaking any other matter that is required concerning the process of entering into, and implementing, a Job Plan.

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

- 106.14 Wherever in this Agreement 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 5H Compliance and the Targeted Compliance Framework

Reader's guide

Providers must actively monitor and manage Mutual Obligation Requirements for each Participant (Mutual Obligation) and compulsory requirements for each Disability Support Pension Recipient (Compulsory Requirements), to assist the Participant to meet their obligation to actively look for work while in receipt of an Income Support Payment.

Under the targeted compliance framework, a Participant (Mutual Obligation)'s Income Support Payment may be suspended, reduced and/or cancelled if the Participant commits a:

- Mutual Obligation Failure (ie, fails to comply with obligations such as attending appointments, undertaking activities, or taking action to gain employment);
- Work Refusal Failure (ie, refuses to accept an offer of suitable employment); or
- Unemployment Failure (ie, becomes unemployed because of a voluntary act (except a reasonable act) or misconduct).

For a Mutual Obligation Failure or a Work Refusal Failure, the Participant (Mutual Obligation)'s Income Support Payment will be suspended until a Reconnection Requirement is met. The Income Support Payment may then be back paid. Additionally, if the Participant (Mutual Obligation):

- does not meet their Reconnection Requirement within 4 weeks, Services Australia will usually cancel the Participant's Income Support Payment;
- does not have a Valid Reason for a Mutual Obligation Failure, the Participant will also accrue a Demerit;
- has persistently committed Mutual Obligation Failures (determined largely by the accrual of Demerits) and does not have a Reasonable Excuse, Services Australia will also reduce their Income Support Payment (by either 50% or 100% for a period) or cancel their Income Support Payment; and
- does not have a Reasonable Excuse for a Work Refusal Failure, Services Australia will also cancel their Income Support Payment.

No Income Support Payments may be paid to the Participant (Mutual Obligation) for 4 weeks if an Income Support Payment is cancelled where the participant has committed a Work Refusal Failure or persistently committed Mutual Obligation Failures.

For an Unemployment Failure, no Income Support Payment may be paid to the Participant (Mutual Obligation) for either 4 or 6 weeks, depending on whether a RATTUAJ Payment has been made to help the person take up the employment concerned.

Disability Support Pension Recipients (Compulsory Requirements) are required to undertake mandatory activities in their Job Plan, but are not subject to the targeted compliance framework. Providers can raise a participation report for Disability Support Pension Recipients (Compulsory Requirements) who do not meet a compulsory requirement contained in their Job Plan, where the Provider does not consider that the Participant has a reasonable excuse for the participation failure. Services Australia will consider raised reports, and may impose financial sanctions.

107. Mutual Obligation Requirements

107.1 For each Participant (Mutual Obligation), the Provider must:

- (a) ensure that the Participant understands:
 - (i) their Mutual Obligation Requirements;

- (ii) their personal responsibility to self-report participation against their Mutual Obligation Requirements (unless the Participant is assessed as not being capable of self-reporting under clause 108.1(a));
 - (iii) the circumstances in which a Mutual Obligation Failure, Work Refusal Failure, Unemployment Failure and failure to meet a Reconnection Requirement can occur, including where the Participant does not communicate an Acceptable Reason prior to failing to meet a Mutual Obligation Requirement; and
 - (iv) the consequences for the Participant's Income Support Payment if the Participant persistently commits Mutual Obligation Failures without a Reasonable Excuse, commits a Work Refusal Failure without a Reasonable Excuse, commits an Unemployment Failure or fails to meet a Reconnection Requirement;
- (b) assess the Participant's capability to take personal responsibility for self-reporting in accordance with clause 108.1;
 - (c) actively monitor and record each Participant (Mutual Obligation)'s participation against their Mutual Obligation Requirements in accordance with clause 108 and clause 110;
 - (d) respond to any non-compliance by a Participant with their Mutual Obligation Requirements in accordance with clause 112; and
 - (e) confirm, at least once every six months following the Commencement of each Participant (Mutual Obligation), that all relevant contact details are accurately reflected in the Department's IT Systems, including the Participant (Mutual Obligation)'s phone number(s), email address and postal address.

108. Personal Responsibility and Monitoring

108.1 The Provider must:

- (a) when entering into a Job Plan, assess the Participant (Mutual Obligation)'s capability to take personal responsibility for self-reporting participation against the Mutual Obligation Requirements in their Job Plan, in accordance with any Guidelines, and record the result of this assessment in the Department's IT Systems;
- (b) actively monitor the Participant (Mutual Obligation)'s compliance with the Mutual Obligation Requirements in their Job Plan, including as specified in:
 - (i) clause 108.2 for Mutual Obligation Requirements other than Job Search Requirements; and
 - (ii) clause 110 for Job Search requirements; and
- (c) actively monitor the participation of Disability Support Pension Recipients (Compulsory Requirements), including their attendance at Appointments, entering into a current Job Plan and participation in Activities, as specified in any Guidelines.

- 108.2 For each Participant (Mutual Obligation), the Provider must:
- (a) if the Provider assesses that the Participant is capable of self-reporting, confirm the Participant's self-reporting of; or
 - (b) if the Provider assesses that the Participant is not capable of self-reporting, record for the Participant,
- participation against each of the Mutual Obligation Requirements scheduled in their Electronic Calendar:
- (c) no later than close of business on the day that the Engagement is scheduled to occur in the Participant's Electronic Calendar; or
 - (d) as otherwise specified in any Guidelines.

109. Active Management of Mutual Obligation Requirements

- 109.1 If the Provider is satisfied that a Participant (Mutual Obligation) has an Acceptable Reason for being unable to comply with a Mutual Obligation Requirement on the date or at the time the Mutual Obligation Requirement is scheduled to occur in their Electronic Calendar, the Provider must reschedule or remove the Mutual Obligation Requirement from the Electronic Calendar in accordance with any Guidelines.

Note: A Participant (Mutual Obligation) will not commit a Mutual Obligation Failure if the relevant Mutual Obligation Requirement is rescheduled or removed by the Provider in accordance with clause 109.

110. Job Search Requirements

- 110.1 The Provider must ensure that a Delegate:
- (a) specifies the Job Search Requirement for each Participant (Mutual Obligation) in their Job Plan; and
 - (b) ensures that the Job Search Requirement is appropriately recorded in the Participant (Mutual Obligation)'s Job Plan at all times during their Period of Service.
- 110.2 The Provider must ensure that each Participant (Mutual Obligation) is aware at all times:
- (a) of their current Job Search Requirement;
 - (b) that they must report details of their Job Searches through the Workforce Australia website, or directly to the Provider and the frequency of such provision; and
 - (c) how they can record their Job Searches for the purposes of clause 110.2(b).
- 110.3 The Provider must determine, as specified in any Guidelines, whether each Participant (Mutual Obligation)'s or Disability Support Pension Recipient (Compulsory Requirements)'s Job Search efforts satisfactorily meet their Job Search Requirement for each Job Search Period by:

- (a) if the Participant does not report details of their Job Searches through the Workforce Australia website, recording:
 - (i) in the Department's IT Systems; and
 - (ii) no later than close of business on the same day that each Job Search is reported,
 the number of Job Searches reported by the Participant directly to the Provider; and
- (b) reviewing and confirming the quality of the Job Search effort reported by the Participant (whether through the Workforce Australia website or directly to the Provider) no later than five Business Days after the end of each Job Search Period.

Note 1: the Department's IT Systems will identify if the number of Job Searches reported (whether through the Workforce Australia website or directly to the Provider) meets the Participant's Job Search Requirement for each Job Search Period.

Note 2: Clause 111 will apply if the number or quality of Job Search efforts reported by a Participant fails to satisfy their Job Search Requirement for a Job Search Period.

111. Compliance Action - Mutual Obligation Failures

Same Business Day response to Mutual Obligation Failures

- 111.1 Subject to clause 111.2, if the Provider becomes aware that a Participant (Mutual Obligation) has apparently committed a Mutual Obligation Failure, the Provider must:
- (a) attempt to contact the Participant on the same Business Day on which the Provider becomes aware of the apparent Mutual Obligation Failure; and
 - (b) if:
 - (i) there is contact between the Provider and the Participant on that day, comply with clause 111.3 immediately during that contact; or
 - (ii) clause 111.1(b)(i) does not apply, comply with clause 111.5.

Note: Details of failure to comply with the Mutual Obligation Requirements are outlined in the Guidelines.

- 111.2 Where a Mutual Obligation Failure has occurred because:
- (a) the Participant has failed to self-report the required number of Job Searches by the end of a Job Search Period, then:
 - (i) clause 111.1 does not apply;
 - (ii) if the Participant's Reconnection Requirement is a Capability Interview or a Capability Assessment, the Provider must impose a Reconnection Requirement and schedule a date and time for the Reconnection Requirement to occur within the timeframe specified in any Guidelines;
 - (iii) if the Participant does not have SMS or e-mail details recorded in the Department's IT Systems for automated notification, the Provider must

send the notice prepared by the Department's IT Systems in response to the Mutual Obligation Failure to the Participant's postal address; and

- (iv) if the Participant later contacts the Provider to discuss the Mutual Obligation Failure, the Provider must comply with clause 111.6 immediately during that contact; or
- (b) the Participant refused to enter into a Job Plan, then:
 - (i) clause 111.1 does not apply; and
 - (ii) the Provider must immediately comply with clause 111.5.

Note: Clause 111.2(a) only applies in relation to the number of Job Searches. Clause 114.1 applies if the Participant self-reports the required number of Job Searches but the quality of the Participant's Job Search effort is not adequate.

Successful same Business Day contact

111.3 For the purposes of clause 111.1(b)(i), the Provider must:

- (a) discuss the circumstances of the apparent Mutual Obligation Failure; and
- (b) if the Provider considers that a Mutual Obligation Failure has been committed, comply with clause 111.4.

111.4 For the purposes of clause 111.3, the Provider must:

- (a) discuss the Participant's reasons for the Mutual Obligation Failure and assess if the Participant has a Valid Reason;
- (b) impose a Reconnection Requirement;
- (c) schedule a date and time for the Reconnection Requirement to occur within the timeframe specified in any Guidelines;
- (d) advise the Participant:
 - (i) of the action taken by the Provider under clauses 111.4(b), (c) and (f);
 - (ii) that their Income Support Payment will, as a minimum, remain suspended until they comply with their Reconnection Requirement;
 - (iii) of the effect of not complying with the Reconnection Requirement; and
 - (iv) if the Participant is identified as being in the penalty zone on the Department's IT Systems, that the Mutual Obligation Failure will be automatically referred to Services Australia;
- (e) record the details and outcomes required in the Department's IT Systems for each matter specified in this clause 111.4; and
- (f) take any other action specified in any Guidelines, including (where relevant):
 - (i) suspending the Participant's Income Support Payment; and
 - (ii) confirming a Demerit.

Unsuccessful or unrequired same Business Day contact

- 111.5 For the purposes of clause 111.1(b)(ii) and 111.2(b)(ii), the Provider must:
- (a) immediately:
 - (i) impose a Reconnection Requirement;
 - (ii) if the Participant does not have SMS or e-mail details recorded in the Department's IT Systems for automated notification, send the notice prepared by the Department's IT Systems in response to the Mutual Obligation Failure to the Participant's postal address;
 - (iii) record the details and outcomes required in the Department's IT Systems for each matter specified in this clause 111.5; and
 - (iv) take any other action specified in any Guidelines, including (where relevant), suspending the Participant's Income Support Payment; and
 - (b) if the Participant later contacts the Provider to discuss the Mutual Obligation Failure, comply with clause 111.6 immediately during that contact.
- 111.6 For the purposes of clause 111.5(b), the Provider must:
- (a) discuss the circumstances of the apparent Mutual Obligation Failure and, if the Provider considers that a Mutual Obligation Failure has been committed:
 - (i) discuss the Participant's reasons for the Mutual Obligation Failure and assess if the Participant has a Valid Reason;
 - (ii) schedule a date and time for the Reconnection Requirement to occur within the timeframe specified in any Guidelines; and
 - (iii) advise the Participant of the action taken by the Provider under clause 111.6(a)(ii);
 - (b) record the details and outcomes required in the Department's IT Systems for each matter specified in this clause 111.6; and
 - (c) take any other action specified in any Guidelines (including confirming or removing a Demerit where relevant).

Capability Interview

- 111.7 The Provider must conduct a Capability Interview in accordance with clauses 111.8 and 111.9 if a Participant (Mutual Obligation):
- (a) incurs, in any 6 Active Months:
 - (i) three or more confirmed Demerits; or
 - (ii) a confirmed Demerit for failing to attend a job interview, failing to behave appropriately at a job interview or failing to act on a Job Referral; and
 - (b) has not been found incapable of meeting their Mutual Obligation Requirements during a Capability Interview or a Capability Assessment conducted within the preceding '60 days', where '60 days' is calculated as specified in any Guidelines.

- 111.8 During each Capability Interview, the Provider must:
- (a) ensure the Participant understands the purpose and potential outcomes of the Capability Interview;
 - (b) review the Participant's JSCI and:
 - (i) confirm that the JSCI accurately reflects their current circumstances; or
 - (ii) if the Participant's JSI does not accurately reflect their current circumstances, conduct a Change of Circumstances Reassessment;
 - (c) using the Capability Management Tool, identify and consider all known personal circumstances against the Participant's Mutual Obligation Requirements;
 - (d) assess if the Participant's Mutual Obligation Requirements are appropriate to their circumstances and update the Participant's Job Plan if required; and
 - (e) record the details and outcomes required in the Department's IT Systems for each matter specified in this clause 111.8.

111.9 Each Capability Interview must be:

- (a) conducted within two Business Days of the Participant incurring the Demerits referred to in clause 111.7(a); and
- (b) face to face,
except in allowable circumstances as specified in any Guidelines.

Capability Assessment

111.10 Where Services Australia has conducted a Capability Assessment for a Participant (Mutual Obligation), the Provider must:

- (a) review the outcome of the Capability Assessment and consider actioning any recommendations arising from the outcome; and
- (b) if the Capability Assessment found that the Participant is not capable of meeting the Mutual Obligation Requirements in their Job Plan, ensure that a Delegate updates the Participant's Job Plan within the timeframe and as specified in the findings of the Capability Assessment and any Guidelines.

Removing Demerits

111.11 Where a Participant (Mutual Obligation) has incurred a Demerit for a Mutual Obligation Failure and the Provider subsequently becomes aware that:

- (a) the Mutual Obligation Failure relates to a Mutual Obligation Requirement that the Provider or Services Australia considers was not appropriate to the Participant's circumstances at the time;
- (b) the Mutual Obligation Failure was:
 - (i) caused or substantially contributed to by previously undisclosed circumstances that the Participant is now seeking treatment for; and

- (ii) the Provider is satisfied that a Valid Reason would have existed for the Mutual Obligation Failure had the relevant circumstances been disclosed at the time;
- (c) the Mutual Obligation Failure occurred because the Participant failed to self-report the required number of Job Searches by the end of a Job Search Period or failed to enter into a Job Plan, and the Provider is satisfied that the Participant had a Valid Reason for the Mutual Obligation Failure; or
- (d) the Mutual Obligation Failure or Demerit was recorded in error,

the Provider must remove the Demerit, change the related Reconnection Requirement (if required), and record the reasons for removal on the Department's IT Systems, within one Business Day of becoming aware of the relevant matter, in accordance with any Guidelines.

111.12 Where requested by a Participant (Mutual Obligation), the Department or Services Australia, the Provider must consider if clause 111.11 applies to a Demerit, and remove the Demerit if it does.

112. Compliance Action – Work Refusal Failures

112.1 Reserved.

112.2 If the Provider becomes aware that a Participant (Mutual Obligation) has apparently committed a Work Refusal Failure, the Provider must:

- (a) attempt to contact the Participant on the same Business Day on which the Provider becomes aware of the apparent Work Refusal Failure; and
- (b) if:
 - (i) there is contact between the Provider and the Participant on that day, comply with clause 112.3 immediately during that contact; or
 - (ii) clause 112.2(b)(i) does not apply, comply with clause 112.5.

112.3 For the purposes of clause 112.2(b)(i), the Provider must:

- (a) discuss the circumstances of the apparent Work Refusal Failure (including any reason why the employment offered may not be suitable for the Participant); and
- (b) if the Provider considers that a Work Refusal Failure has been committed, comply with clause 112.4.

112.4 For the purposes of clause 112.3(b), the Provider must:

- (a) discuss the Participant's reasons for the Work Refusal Failure and assess if the Participant has a Valid Reason;
- (b) create a Work Refusal Failure report and record the details and outcomes required in the Department's IT Systems; and
- (c) take any other action specified in any Guidelines.

112.5 For the purposes of clause 112.2(b)(ii), the Provider must:

- (a) no later than 10 Business Days after the Provider becomes aware of the apparent Work Refusal Failure:
 - (i) create a Work Refusal Failure report and record the details and outcomes required in the Department's IT Systems; and
 - (ii) if the Participant does not have SMS or e-mail details recorded in the Department's IT Systems for automated notification, send the notice prepared by the Department's IT Systems in response to the Work Refusal Failure report to the Participant's postal address;
- (b) take any other action specified in any Guidelines; and
- (c) if the Participant contacts the Provider to discuss the apparent Work Refusal Failure, comply with clause 112.6 immediately during that contact.

Note: when the Provider creates a Work Refusal Failure report, the Participant's Income Support Payment will be suspended and a Reconnection Requirement set to make contact with the Provider. If the Participant does not contact the Provider within 4 weeks, the Participant's Income Support Payment will be cancelled.

112.6 For the purposes of clause 112.5(c), the Provider must:

- (a) discuss the circumstances of the apparent Work Refusal Failure (including any reason why the employment offered may not be suitable for the Participant);
- (b) if the Provider considers that a Work Refusal Failure has been committed, discuss the Participant's reasons for the Work Refusal Failure and assess if the Participant has a Valid Reason;
- (c) update the Work Refusal Failure report (including by closing the report if the Provider considers that no Work Refusal Failure has been committed) and record the details and outcomes required in the Department's IT Systems; and
- (d) take any other action specified in any Guidelines.

112A. Compliance Action – Unemployment Failures

112A.1 If the Provider becomes aware that a Participant (Mutual Obligation) has become unemployed apparently as:

- (a) a direct or indirect result of a voluntary act of the Participant; or
- (b) a result of the Participant's misconduct as an employee,

the Provider must:

- (c) attempt to contact the Participant on the same Business Day on which the Provider becomes aware of the unemployment; and
- (d) if:
 - (i) there is contact between the Provider and the Participant on that day, comply with clause 112A.2 immediately during that contact; or
 - (ii) clause 112A.1(d)(i) does not apply, comply with clause 112A.3.

- 112A.2 For the purposes of clause 112A.1(d)(i), the Provider must:
- (a) discuss the circumstances of the Participant becoming unemployed (including the Participant's reasons);
 - (b) if the Provider considers it likely that the Participant became unemployed for a reason specified at clause 112A.1(a) or (b), create an Unemployment Failure report and record the details and outcomes required in the Department's IT Systems; and
 - (c) take any other action specified in any Guidelines.
- 112A.3 For the purposes of clause 112A.1(d)(ii), the Provider must:
- (a) immediately create an Appointment to occur within 20 Business Days after the Provider becomes aware of the apparent Unemployment Failure, if an Appointment is not already scheduled to occur within that time;
 - (b) no later than 20 Business Days after the Provider becomes aware of the apparent Unemployment Failure, create an Unemployment Failure report and record the details and outcomes required in the Department's IT Systems;
 - (c) take any other action specified in any Guidelines; and
 - (d) during the next Contact, or if the Participant contacts the Provider to discuss the apparent Unemployment Failure, comply with clause 112A.4 immediately during that contact.
- 112A.4 For the purposes of clause 112A.3(d), the Provider must:
- (a) discuss the circumstances of the apparent Unemployment Failure (including the Participant's reasons);
 - (b) update the Unemployment Failure report (including by closing the report if the Provider considers that the Participant did not become unemployed for a reason specified at clause 112A.1(a) or (b) and record the details and outcomes required in the Department's IT Systems; and
 - (c) take any other action specified in any Guidelines.

113. Non-compliance action for Disability Support Pension Recipients (Compulsory Requirements)

113.1 Where the Provider becomes aware that any Disability Support Pension Recipient (Compulsory Requirements) has failed to comply with one or more of their Mutual Obligation Requirements by failing to:

- (a) attend an Appointment;
- (b) enter into a current Job Plan; or
- (c) appropriately participate in any Activities as specified in any Guidelines,

the Provider must attempt to contact the Disability Support Pension Recipient (Compulsory Requirements) on the same Business Day that they become aware of the failure to comply.

- 113.2 If the Provider has been able to make contact with the Disability Support Pension Recipient (Compulsory Requirements), it must, within ten Business Days of becoming aware of the failure to comply referred to in clause 113.1 and in accordance with any Guidelines:
- (a) determine whether the failure to comply should be reported to Services Australia;
 - (b) if the Provider determines that the failure to comply should be reported to Services Australia, document any information relevant to the failure to comply in the Department's IT Systems and report the failure to comply to Services Australia via the Department's IT Systems; and
 - (c) if the Provider determines that the failure to comply should not be reported to Services Australia, use its best endeavours to ensure that the Disability Support Pension Recipient (Compulsory Requirements) complies with their Compulsory Requirements at the next available opportunity.
- 113.3 If the Provider has not been able to make contact with the Disability Support Pension Recipient (Compulsory Requirements), it must, within ten Business Days of becoming aware of the failure to comply referred to in clause 113.1:
- (a) determine whether any action should be taken under arrangements in relation to the failure to comply as specified in any Guidelines; and
 - (b) if the Provider determines that such action should be taken, document any information relevant to the failure to comply in the Department's IT Systems and report the failure to comply to Services Australia via the Department's IT Systems.

114. Delegate obligations

- 114.1 The Provider must ensure that Delegates:
- (a) are aware of, fully understand, and receive training on, the powers and functions that have been delegated to them under the Social Security Law including in relation to:
 - (i) preparation, approval and variation of Job Plans, including specifying Mutual Obligation Requirements in Job Plans;
 - (ii) setting the date, time and manner of participation (including by recording Engagements in the Electronic Calendar) for the requirements specified in a Participant (Mutual Obligation)'s Job Plan;
 - (iii) identifying Mutual Obligation Failures and Work Refusal Failures;
 - (iv) determining suspension of a Participant's Income Support Payment following a Mutual Obligation Failure or Work Refusal Failure, imposing Reconnection Requirements and giving appropriate notice of those requirements and the effect of not complying with them;
 - (b) have, prior to taking action under this Section 5H in relation to any Participant (Mutual Obligation), successfully completed all mandatory

targeted compliance framework training identified in the online Learning Centre; and

- (c) comply with the Social Security Law.

115. Reserved

116. Reserved

Section 5I Review and Reassessment

117. Program Review

- 117.1 Subject to this clause 117 and any Guidelines, after a Participant (excluding a Work Assist Participant) has received approximately 78 weeks of Employment Assistance, the Provider must either:
- (a) provide Extended Employment Assistance; or
 - (b) arrange for a New ESAt for the Participant, and complete a Program Summary in relation to the Participant.
- 117.2 The Provider may only provide Extended Employment Assistance under clause 117.1(a) if:
- (a) the Participant is in Employment; or
 - (b) the Participant is undertaking significant Education or Training, determined in accordance with any Guidelines; and
 - (c) the Provider considers that providing Extended Employment Assistance to the Participant is likely to result in an Employment Outcome.
- 117.3 If a New ESAt under clause 117.1:
- (a) recommends that the Participant continue receiving Program Services, then the Provider must provide Extended Employment Assistance;
 - (b) recommends that the Participant receive services that are not offered by the Provider, including services offered by another Program Provider, then the Provider must assist the Participant to be transferred to that other Program Provider in accordance with clause 135; or
 - (c) recommends that the Participant does not receive Extended Employment Assistance, then the Provider must perform a Provider Exit of the Participant.
- 117.4 The Provider must inform Participants, in accordance with any Guidelines, of how they can appeal the result of a Program Review under this clause 117.

118. Work Assist Participants

- 118.1 The Provider must continue to provide Work Assist Services to a Work Assist Participant until:
- (a) that Participant completes a Work Assist Outcome, in which case the Provider must:

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

Note 1: If an OSA determines under clause 118.1(a) that a Work Assist Participant requires Ongoing Support, the provisions of this Agreement then apply on the basis that the Participant is no longer a Work Assist Participant.

Note 2: During Work Assist Services the Provider may claim a maximum of two Work Assist Service Fees as set out in Annexure B.

119. Change of Funding Level

- 119.1 The Provider may request a review of the Participant's Funding Level, in accordance with any Guidelines.

120. Change of Circumstances Reassessment during Period of Service

- 120.1 If during a Participant's (excluding a Work Assist Participant's) Period of Service:

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

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

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

- 120.2 If a Change of Circumstances Reassessment under clause 120.1 indicates that a Participant should have no change of Program Services, the Provider must continue providing the Program Services provided to the Participant prior to the Change of Circumstances Reassessment.
- 120.3 If a Change of Circumstances Reassessment under clause 120.1 indicates that a Participant should receive Program Services under a different Program, the Provider must:
 - (a) provide the Program Services in accordance with the Change of Circumstances Reassessment; or

- (b) where the Provider is not contracted to provide the Program Services recommended in the Change of Circumstances Reassessment in the ESA in which the Provider is providing Program Services to the Participant, arrange for the Participant to be transferred in accordance with clause 135 and any Guidelines.

Note: Clause 139.13 provides that a Participant must be Exited where an ESA or JCA recommends that Program Services are no longer appropriate.

Section 5J Ongoing Support

Information about Ongoing Support

Ongoing Support may be provided to Participants who have achieved a 26-week Employment Outcome or Work Assist Outcome to assist them to maintain their Employment. It is not available to Participants who have achieved an Education Outcome.

Initially, the Program Provider will assess the Participant's need for Ongoing Support (except in the case of Work Assist Participants), and this assessment must be verified by an Ongoing Support Assessment (OSA). If the OSA determines that the Participant does not require Ongoing Support, the Provider will move the Participant into Post Placement Support.

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

A Participant must work, on average, a minimum of at least 8 hours per week to maintain eligibility to receive Ongoing Support. The method for calculating the 8 hour average is described in the Guidelines. Provided that the Participant satisfies the minimum weekly work hours requirement, a Participant may continue to receive Ongoing Support, subject to an OSA being conducted every 52 weeks, or where applicable every 78 weeks, until they move into Work Based Personal Assistance Only or Exit.

There are three types of Ongoing Support:

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

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

If at any time the Program Provider considers that the Participant no longer requires Ongoing Support to retain their Employment the Provider may, if the Participant is working toward a 52-week Outcome, move the Participant into Post Placement Support or where the Participant is a Work Based Personal Assistance Only Participant, move the Participant into Work Based Personal Assistance Only, or, if the Provider does not move the Participant into Work Based Personal Assistance Only, the Provider must Exit the Participant.

121. Entry into Ongoing Support

- 121.1 During the 52-week Period, the Provider must assess the Participant in accordance with any Guidelines to determine whether the Participant:
- (a) requires Flexible Ongoing Support (for Disability Employment Services – Disability Management Service Participants or Disability Employment Services – Employment Support Service Participants);
 - (b) requires Moderate Ongoing Support (for Disability Employment Services – Employment Support Service Participants only);
 - (c) requires High Ongoing Support (for Disability Employment Services – Employment Support Service Participants only); or
 - (d) does not require Ongoing Support.
- 121.2 If the Provider determines that the Participant requires Ongoing Support, the Provider must arrange an OSA to verify the Provider's determination of the Participant's Ongoing Support needs pursuant to clause 121.1 as soon as possible.
- 121.3 If the Participant has an Anchor Date on or after 1 July 2018:
- (a) for Flexible Ongoing Support, the Provider will be entitled to claim Ongoing Support Fees for Instances of Flexible Ongoing Support delivered in the first four weeks of Ongoing Support. The Provider will not be permitted to claim Ongoing Support Fees for Instances of Flexible Ongoing Support delivered in any subsequent period of Ongoing Support until the first OSA has been performed and the Participant's need for Ongoing Support has been confirmed.
 - (b) for Moderate and High Ongoing Support, the Provider will be entitled to claim Ongoing Support Fees for the first four weeks of Ongoing Support provided that the Provider has delivered the minimum number of Contacts within that first four week period. The Provider will not be permitted to claim Ongoing Support Fees for any subsequent period of Ongoing Support until the first OSA has been performed and the Participant's need for Ongoing Support has been confirmed.
 - (c) If the first OSA confirms:
 - (i) the Participant's need for Ongoing Support, the Provider will be entitled to claim Ongoing Support Fees when they fall due, in accordance with any Guidelines; or
 - (ii) the Participant does not require Ongoing Support, the Provider will only be entitled to claim for the first four weeks of Ongoing Support in accordance with clause 121.3(a) or (b), as relevant.
- 121.4 If the Provider considers that a Participant who has achieved a Work Assist Outcome requires Ongoing Support, the Provider must arrange for an Ongoing Support Assessment of the Participant's need for Ongoing Support and only provide Ongoing Support to the Participant if the Participant is assessed as requiring it.

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

- 121.5 The assessment of:
- (a) the Provider under clause 121.1; or
 - (b) the Ongoing Support Assessor under clause 121.2,
- is the Participant's Current Assessment until any further Assessment is undertaken.
- 121.6 The Provider must perform a Provider Exit of the Participant if:
- (a) the Provider under clause 121.1 or 121.2; or
 - (b) the Ongoing Support Assessor under clause 121.2,
- considers that the Participant does not require Ongoing Support and the Participant subsequently achieves a 52-week Outcome.
- 121.7 Achievement of an Education Outcome does not qualify a Participant for Ongoing Support.

122. Participant eligibility to receive Ongoing Support

- 122.1 Subject to clause 122.2:
- (a) a Participant must work, on average, at least 8 work hours per week to maintain his or her entitlement to receive Ongoing Support; and
 - (b) if a Participant does not work, on average, at least 8 work hours per week, in accordance with any Guidelines, the Provider must Exit the Participant from Ongoing Support in accordance with clause 139.11.
- 122.2 Participants receiving Ongoing Support as at the Agreement Commencement Date are not be required to comply with the requirements of clause 122.1.
- 122.3 To avoid doubt, Participants that have commenced Program Services prior to the Agreement Commencement Date but transition to Ongoing Support following the Agreement Commencement Date, are required to comply with the requirements of clause 122.1.

123. Obligation to provide Ongoing Support

- 123.1 Subject to clause 127 [Changing the Level of Ongoing Support for Disability Employment Services – Employment Support Service Participants] and clause 122 [Participant eligibility to receive Ongoing Support], the Provider must provide the Participant with Ongoing Support in accordance with the Participant's Current Assessment and any Guidelines until the Participant is moved into Work Based Personal Assistance Only or Exited.

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

- 124.1 If at any time the Provider considers, in accordance with any Guidelines, that a Disability Employment Services – Disability Management Service Participant requires Moderate Ongoing Support or High Ongoing Support, the Provider must arrange a

Change of Circumstances Reassessment in accordance with clause 129 [Change of Circumstances Reassessment during Ongoing Support].

125. Provider Exit from Ongoing Support

- 125.1 The Provider must perform a Provider Exit of a Participant in Ongoing Support in accordance with clauses 139.11 and 139.12.

126. Reviews of Ongoing Support

General

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

- (a) it has been 52 weeks since the Anchor Date of a 26-week Employment Outcome and the Participant has an Anchor Date on or before 30 June 2018;
- (b) it has been 52 weeks since the Participant's most recent OSA or Change of Circumstances Reassessment; or
- (c) the Participant has received:
 - (i) two or more consecutive OSAs; or
 - (ii) a Change of Circumstances Reassessment and then one or more consecutive OSAs; and
 - (iii) each of those Assessments has recommended that the Participant continue to receive the same level of Ongoing Support, and it has been 78 weeks since their most recent OSA,

unless otherwise approved by the Department in writing.

- 126.2 Where a Participant receives an OSA in accordance with:
- (a) clause 126.1(a), the OSA applies for a period of 52 weeks from the date of the Assessment, or until a further Assessment is undertaken, whichever is the earlier; and
 - (b) clause 126.1(c), the OSA applies for a period of 78 weeks from the date of the Assessment, or until a further Assessment is undertaken, whichever is the earlier.

Flexible Ongoing Support

- 126.3 A Provider may only provide a maximum of six Instances of Flexible Ongoing Support to a Participant in any 26 calendar week period.
- 126.4 If at any time an OSA recommends that a Disability Employment Services – Disability Management Service Participant receive Moderate Ongoing Support or High Ongoing Support, then the OSA shall be considered a Change of Circumstances Reassessment, and the provisions of clause 129 [Change of Circumstances Reassessment during Ongoing Support] apply.

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

- 127.1 Subject to clause 127.2, the Disability Employment Services – Employment Support Service Provider:
- (a) may lower the Level of Ongoing Support provided to a Disability Employment Services – Employment Support Service Participant at any time; but
 - (b) must not increase the Level of Ongoing Support provided to a Disability Employment Services – Employment Support Service Participant above the level specified in the Current Assessment except as recommended by a Change of Circumstances Reassessment arranged in accordance with clause 129 [Change of Circumstances Reassessment during Ongoing Support].
- 127.2 The Disability Employment Services – Employment Support Service Provider may change the Level of Ongoing Support provided to a Disability Employment Services – Employment Support Service Participant before the first OSA is finalised.
- 127.3 The Disability Employment Services – Employment Support Service Provider may only change the Level of Ongoing Support provided to a Disability Employment Services – Employment Support Service Participant under this clause 127 after considering the Participant’s circumstances and support requirements and in accordance with any Guidelines.

Note: Clause 127.2 applies only to Disability Employment Services – Employment Support Service Participants who enter Ongoing Support after completing a 26-week Employment Outcome and not to Disability Employment Services – Employment Support Service Participants who enter Ongoing Support after completing a Work Assist Outcome.

128. Updating the Department’s IT Systems

- 128.1 The Provider must ensure that any decision made by the Provider under clauses 121 [Entry into Ongoing Support], 125 [Provider Exit from Ongoing Support] and 127 [Changing the Level of Ongoing Support for Disability Employment Services – Employment Support Service Participants], and the reasons for making the decision, are immediately recorded on the Department’s IT Systems.

129. Change of Circumstances Reassessment during Ongoing Support

General

- 129.1 If during Ongoing Support:
- (a) a Participant’s individual circumstances change; or
 - (b) the Participant discloses information,
- such that the Program Services recommended in the Participant’s Current Assessment are no longer appropriate, the Provider:
- (c) must, if permitted under clause 127 [Changing the Level of Ongoing Support for Disability Employment Services – Employment Support Service Participants], provide the more appropriate Program Services;

- (d) must arrange for a Change of Circumstances Reassessment for the Participant to be conducted by an Ongoing Support Assessor; or
- (e) if the Participant no longer requires Ongoing Support:
 - (i) move the Participant into Post Placement Support, where the Participant is progressing towards a 52-week Outcome;
 - (ii) may, where the Participant is a Work Based Personal Assistance Only Participant, move the Participant into Work Based Personal Assistance Only; or
 - (iii) must, if the Provider does not move the Participant into Work Based Personal Assistance Only, and the Participant has already achieved a 52-week Outcome, perform a Provider Exit of the Participant.

129.2 If a Change of Circumstances Reassessment under clause 129.1 indicates that a Participant should not change Program Services, the Provider must continue providing the Program Services provided to the Participant prior to the Change of Circumstances Reassessment.

129.3 If a Change of Circumstances Reassessment under clause 129.1 indicates that a Disability Employment Services – Disability Management Service Participant should receive Disability Employment Services – Employment Support Service (or vice versa) the Provider must:

- (a) provide the Program Services in accordance with the Change of Circumstances Reassessment; or
- (b) where the Provider is not contracted to provide the Program Services recommended in the Change of Circumstances Reassessment in the ESA in which the Provider is providing Program Services to the Participant, arrange for the Participant to be transferred in accordance with clause 135.

130. General rules about Assessments conducted by Ongoing Support Assessors

Restrictions on providing OSAs to Program Provider's Participants

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

130.2 If the Provider breaches clause 130.1, that breach may be treated by the Department as a breach of an essential term of this Agreement which is not capable of remedy.

Note: Clause 68 [Conflict of interest] of the Agreement also includes provisions relating to the prohibition and management of conflicts.

Program Provider to provide assistance to Ongoing Support Assessor

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

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

Section 5K Work Based Personal Assistance Only

131. Work Based Personal Assistance Only

- 131.1 Subject to clauses 101.7 and 101.8 and any Guidelines, if a Participant is a Work Based Personal Assistance Only Participant, the Provider may provide the Participant with Work Based Personal Assistance Only, but must not provide the Participant with any other Program Services.

Section 5L Participant Relocation and Transfer

132. Participant initiated transfer

- 132.1 A Participant may transfer to a new Provider, for any reason, up to five times in a Period of Service.
- 132.2 Clause 132.1 does not limit the Participant's rights to transfer to another Provider as described in clauses 133 and 134.

133. Relocation of Participant

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

Services Australia or the Department may, if requested by the Participant, transfer the Participant to another Program Provider, and the Relinquishing Provider must facilitate and cooperate with the transfer, in accordance with any Guidelines.

- 133.2 If a Participant moves to a new location and the Participant's new location is within a reasonable distance of a Site of the Provider where the Provider can provide the Participant with the same Program Services that the Participant was receiving, the Provider must continue to provide Program Services to the Participant at no additional cost to the Department.

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

- 134.1 The Provider or the Department may transfer a Participant from the Provider to another Program Provider, in accordance with any Guidelines, if, at any time:
- (a) the Provider and the Participant are unable to achieve or maintain a reasonable and constructive service relationship, as determined by the Department; or
 - (b) the Provider, the Participant, the Department, and the other Program Provider agree to the Participant transferring to the other Program Provider.
- 134.2 The Department may, at its absolute discretion, transfer a Participant from the Provider to another Program Provider if, at any time:
- (a) the Participant asks the Department to effect the transfer;

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

134.3 If a Participant requires:

- (a) Program Services that are not offered by the Provider; or
- (b) other services not covered by Chapter 5 of this Grant Agreement,

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

135. Provider obligations on transfer

135.1 If a Participant is transferred by another Program Provider, the Department or Services Australia, to the Provider in accordance with clauses 132, 133 or 134, the Provider must, as the 'Gaining Provider':

- (a) record the reason for the transfer in the Department's IT System;
- (b) immediately facilitate and cooperate with the transfer so as to enable Program Services to continue to be provided to the Participant;
- (c) at the initial Contact with the Participant:
 - (i) explain the Program Services that the Provider will provide;
 - (ii) review and update his or her Job Plan, in accordance with clause 106 [General requirements for a Job Plan]; and
- (d) provide Program Services to the Participant in accordance with his or her Job Plan.

135.2 For the purposes of clause 135.1, the Gaining Provider will be required to facilitate and cooperate with the transfer which will include, as a minimum, complying with the Department's directions in relation to:

- (a) the transfer of Agreement Material and Commonwealth Material; and
- (b) the redirection of Participants,

from another Program Provider to the Gaining Provider.

Section 5M Participant Suspension and Exit from Program Services

136. Effect of Suspensions

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

137. Suspensions

Exemption from Mutual Obligation Requirements

- 137.1 If Services Australia notifies the Provider that it has Exempted a Participant (Mutual Obligation) from his or her Mutual Obligation Requirements, the Participant (Mutual Obligation) is Suspended from the day on which Services Australia so notifies the Provider until:
- (a) Services Australia notifies the Provider that the Exemption has reached its end date; or
 - (b) the Provider identifies, or is notified by Services Australia, that the Participant (Mutual Obligation) has volunteered to participate in additional activities.
- 137.2 If a Participant (Mutual Obligation) is Suspended in accordance with clause 137.1, but the Provider identifies, or is notified by Services Australia, that the Participant (Mutual Obligation) has decided to volunteer to participate in additional activities:
- (a) the Provider must:
 - (i) agree with the Participant (Mutual Obligation) on what voluntary activities he or she has volunteered to participate in; and
 - (ii) amend the Participant (Mutual Obligation)'s Job Plan as appropriate; and
 - (iii) record on the Department's IT Systems that the Participant (Mutual Obligation) is participating as a Volunteer (Mutual Obligation); and
 - (iv) provide Program Services to the Participant (Mutual Obligation), in accordance with his or her updated Job Plan, for the period of the agreed voluntary activity, taking into account the reason for the Exemption; and
 - (b) the Participant (Mutual Obligation)'s Period of Service resumes from the date that the Provider records on the Department's IT Systems that the Participant (Mutual Obligation) is participating as a Volunteer (Mutual Obligation).

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

- 137.3 If Services Australia notifies the Provider that a Participant who has part-time Mutual Obligation Requirements is fully meeting these requirements, the Participant is Suspended from the date on which Services Australia so notifies the Provider until the day on which the Suspension is lifted as a result of the Provider identifying, or being notified by Services Australia, that the Participant has:
- (a) ceased to fully meet his or her Mutual Obligation Requirements;
 - (b) volunteered to participate in additional activities; or
 - (c) Exited in accordance with clause 139 [Exits].

- 137.4 If the Provider identifies, or is notified by Services Australia, that a Participant who is Suspended under clause 137.3 has ceased to fully meet his or her Mutual Obligation Requirements:
- (a) the Provider must:
 - (i) amend the Participant's Job Plan as appropriate; and
 - (ii) provide Program Services to the Participant, in accordance with his or her updated Job Plan; and
 - (b) the Participant's Period of Service resumes from the date that the Provider or Services Australia records on the Department's IT Systems that the Participant has ceased to fully meet his or her Mutual Obligation Requirements.
- 137.5 If the Provider identifies, or is notified by Services Australia, that a Participant who is Suspended under clause 137.3 has decided to volunteer to participate in additional activities:
- (a) the Provider must:
 - (i) agree with the Participant on what voluntary activities he or she will participate in;
 - (ii) amend the Participant's Job Plan as appropriate;
 - (iii) record on the Department's IT Systems that the Participant is participating as a Volunteer (Mutual Obligation); and
 - (iv) provide Program Services to the Participant, in accordance with his or her updated Job Plan for the period of the agreed voluntary activity; and
 - (b) the Participant's Period of Service resumes from the date that the Provider records on the Department's IT Systems that the Participant is participating as a Volunteer (Mutual Obligation).
- 137.6 If the Provider identifies, or is notified by Services Australia, that a Volunteer (Mutual Obligation) under clause 137.3 has ceased to fully meet his or her Mutual Obligation Requirements, the Provider must amend the Participant's Job Plan to remove reference to the voluntary activities and to change the Mutual Obligation Requirements activities, if required, and record on the Department's IT Systems that the Participant is participating as a Participant (Mutual Obligation), and not as a Volunteer (Mutual Obligation).

Participants with a reduced capacity

- 137.7 With the exception of Participants in Post Placement Support or Ongoing Support, the following Participants (Mutual Obligation) are Suspended:
- (a) Participants with a temporary reduced work capacity of less than 15 hours per week; and
 - (b) PCW Participants with a current and future work capacity of less than 15 hours per week,

for the period specified in their ESAt or JCA as recorded in the Department's IT Systems.

- 137.8 If the Provider identifies, or is notified by Services Australia, that a Participant who is Suspended under clause 137.7 has decided to volunteer to participate in additional activities, and:
- (a) the Participant has a temporary reduced work capacity of between eight and 14 hours per week inclusive or a Partial Capacity to Work of less than 15 hours per week; or
 - (b) the Participant:
 - (i) is a Work Assist Participant or a Special Class Client; or
 - (ii) has a temporary reduced work capacity of less than eight hours per week and the Provider agrees with the Participant volunteering in accordance with any Guidelines,
- the Provider must:
- (c) agree with the Participant on what voluntary activities he or she will participate in;
 - (d) amend the Participant's Job Plan accordingly;
 - (e) record on the Department's IT Systems that the Participant is participating as a Volunteer (Mutual Obligation);
 - (f) provide Program Services to the Participant, in accordance with his or her updated Job Plan for the period of the agreed voluntary activity; and
 - (g) the Participant's Period of Service resumes from the date that the Provider records on the Department's IT Systems that he or she is participating as a Volunteer (Mutual Obligation).
- 137.9 A Volunteer (Non-mutual Obligation) Participant with a temporary reduced work capacity of less than eight hours per week may continue to participate in Program Services:
- (a) if the Participant is a Work Assist Participant or a Special Class Client; or
 - (b) if the Participant is not a Work Assist or Special Class Client, with the agreement of the Provider, and in accordance with any Guidelines.
- 137.10 For the purposes of clause 137.9(b), if the Provider does not agree to the Participant continuing to participate in Program Services, the Provider must Suspend the Participant.
- Volunteers (Mutual Obligation)*
- 137.11 If the Provider identifies, or is notified by Services Australia, that a Volunteer (Mutual Obligation) has experienced a situation that affects his or her ability to participate in voluntary activities for a specified period of time:
- (a) the Provider must immediately record on the Department's IT Systems that the Participant (Mutual Obligation) is no longer participating as a Volunteer (Mutual Obligation) and the Suspension period resumes; and

- (b) the Participant (Mutual Obligation) is Suspended until the Suspension is lifted as a result of:
 - (i) the Suspension reaching its end date as notified by Services Australia;
 - (ii) the Provider identifying, or being notified by Services Australia, that the Participant (Mutual Obligation) wishes to resume participating in voluntary activities; or
 - (iii) the Participant (Mutual Obligation) Exits in accordance with clause 139 [Exits].

137.12 If a Participant (Mutual Obligation), who is Suspended pursuant to clause 137.11, advises the Provider that he or she wishes to resume participating in voluntary activities:

- (a) the Provider must:
 - (i) record on the Department's IT Systems that the Participant (Mutual Obligation) is again participating as a Volunteer (Mutual Obligation); and
 - (ii) resume provision of Program Services to the Participant (Mutual Obligation) as a Volunteer (Mutual Obligation) in accordance with his or her Job Plan for the period of the agreed voluntary activity; and
- (b) the Participant (Mutual Obligation)'s Period of Service resumes from the date on which the Provider records on the Department's IT Systems that the Participant (Mutual Obligation) has resumed voluntary activities.

Volunteers (Non-mutual Obligation)

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

137.14 If a Volunteer (Non-mutual Obligation) routinely fails to attend activities or Appointments with the Provider, and has not already advised the Provider that he or she no longer wishes to participate in voluntary activities, immediately after the Provider becomes aware of the non-attendance, the Provider must attempt to contact the Volunteer (Non-mutual Obligation) at least once on each of two consecutive Business Days, and:

- (a) if the Provider is advised by the Volunteer (Non-mutual Obligation) that he or she does not wish to continue to participate, the Provider must immediately perform a Provider Exit for the Volunteer (Non-mutual Obligation); or
- (b) if the Provider is unable to contact the Volunteer (Non-mutual Obligation), the Provider may perform a Provider Exit of the Volunteer (Non-mutual Obligation) or, if not, must immediately Suspend the Volunteer (Non-mutual Obligation) in accordance with clause 137.13, and continue to make

reasonable attempts to contact the Volunteer (Non-mutual Obligation) until the Provider successfully contacts the Volunteer (Non-mutual Obligation), in accordance with the Guidelines.

- 137.15 Following any period of Suspension specified in clause 137.13 or 137.14(b), a Volunteer (Non-mutual Obligation) must be serviced by the Provider for the remaining period of his or her current Period of Service.

138. Effect of Exits

- 138.1 Subject to clauses 140.3 and 101.5, when a Participant is Exited in accordance with this Section 5M [Participant Suspension and Exit from Program Services], the Period of Service for the Participant ends.

139. Exits

- 139.1 A Participant is Exited when:
- (a) an Effective Exit occurs;
 - (b) a Provider Exit occurs; or
 - (c) any other event that the Department may advise the Provider of from time to time occurs.
- 139.2 Where an event under clause 139.1 occurs, the Provider must cease providing Program Services to a Participant unless clause 139.3 or clause 101.5 applies.
- 139.3 Subject to clause 139.4, where an Exit occurs for a Participant, but the Participant returns to the Program Services less than 13 Consecutive Weeks after the date of the Exit, the Participant's previous Period of Service is deemed to continue from the date of the return and the Provider must, as soon as it becomes aware of the return:
- (a) resume providing Program Services to the Participant; and
 - (b) record the resumption of Program Services on the Department's IT Systems, in accordance with any Guidelines.
- 139.4 Unless the Participant is returning as a Work Assist Participant, where an Exit occurs and the Participant subsequently returns to the Program Services, the Participant must have a Valid ESAt or JCA, except where:
- (a) the Exit occurred while the Participant was receiving Ongoing Support or Work Based Personal Assistance Only;
 - (b) the Participant Exited as an Independent Worker;
 - (c) the Participant Exited in accordance with clause 117.3(c);
 - (d) the Participant achieved a 26-week Employment Outcome, following which the Participant ceased Employment and Exited; or
 - (e) the Exit was an Exit referred to in items (c) or (e) of the definition of Effective Exit,

in which case the Participant must receive a New ESAt and, subject to that ESAt, begin a new Period of Service.

139.5 Where an Exit occurs and the Participant subsequently returns to the Program Services at 13 Consecutive Weeks or more after the date of the Exit, the Participant must have a Valid ESAt or JCA and, subject to that ESAt or JCA, begin a new Period of Service, unless the Participant is returning as a Work Assist Participant (in which case the Participant does not require a Valid ESAt or JCA).

Note: Clause 139.5 does not preclude the Participant from returning to the Provider.

139.6 If Services Australia notifies the Provider that a Participant (Mutual Obligation):

- (a) stops receiving Income Support Payments; or
- (b) commences Education or Training that changes their income support status to Austudy, Abstudy or Youth Allowance (Student); and
- (c) the Participant advises the Provider that they do not wish to receive Program Services,

the Provider must, subject to clause 139.7, perform a Provider Exit for the Participant.

139.7 If a Participant (Mutual Obligation) advises the Provider that they wish to continue to receive Program Services, the Provider must update the Participant's record on the Department's IT System, and specify that the Participant is a Volunteer (Non-mutual Obligation).

Volunteers (Mutual Obligation)

139.8 If a Volunteer (Mutual Obligation):

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

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

Volunteers (Non-mutual Obligation)

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

Participants with a reduced capacity

139.10 Other than the cohorts of Participants specified in any Guidelines, the Provider must perform a Provider Exit for all Participants with a future work capacity of less than eight hours per week.

Ongoing Support

- 139.11 The Provider must perform a Provider Exit of a Participant receiving Ongoing Support if:
- (a) the Provider considers that a Participant no longer requires Ongoing Support (if the Participant has an Anchor Date on or before 30 June 2018);
 - (b) the Provider considers that a Participant that has achieved a 52-week Outcome no longer requires Ongoing Support and the Participant has an Anchor Date on or after 1 July 2018;
 - (c) the Participant fails to work, on average, at least 8 work hours per week and the Provider considers that there are no reasonable prospects of the Participant increasing their work hours;
 - (d) an Ongoing Support Assessor recommends that a Participant that has achieved a 52-week Outcome no longer requires Ongoing Support; or
 - (e) the Participant ceases to be in Employment, Unsubsidised Self-Employment, Traineeship or Apprenticeship (excluding any time during a Voluntary Change in Employment), in accordance with any Guidelines.

- 139.12 If a Participant receiving Moderate Ongoing Support or High Ongoing Support is Suspended for more than 12 months, the Provider must perform a Provider Exit of the Participant.

Note: A Participant who is Exited may again commence or resume Program Services, if specified in this Agreement or any Guidelines.

Program Services no longer appropriate

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

Note: A Participant who is Exited may again commence or resume Program Services, if specified in this Agreement or any Guidelines.

Work Based Personal Assistance Only

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

Program Summaries

- 139.15 The Provider must complete a Program Summary on the Department's IT Systems for each Participant within the following timeframes:
- (a) within 20 Business Days after the Exit where:
 - (i) Services Australia Exits the Participant for any reason; or
 - (ii) the Participant is transferred to another Program Provider or to Australian Disability Enterprises; or
 - (b) within five Business Days after an Exit for any other reason.

Disability Employment Services – Disability Management Service Participant Exit notifications

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

140. Other Suspensions and Exits

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

- 140.1 Where:
- (a) a Participant has received 78 weeks of Employment Assistance; and
 - (b) the Participant requires a Program Review under clause 117.1; and
 - (c) the Program Review is delayed beyond the end of the 78th week,
- the Provider must, in accordance with any Guidelines, Suspend the Participant until the Program Review is completed unless otherwise agreed in writing by the Department.
- 140.2 The Participant's Period of Service, if any, will resume in accordance with any such recommendation in the Program Review, and with clause 117 [Program Review].
- 140.3 Participants may be otherwise Suspended or Exited, as relevant, in accordance with any Guidelines.

Information about access to records after Exit

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

Section 5N Fees and Ancillary Payments

Information about Fees

The Fees the Department will pay the Provider consist of:

- (a) Service Fees;
- (b) Outcome Fees;
- (c) Flexible Ongoing Support Fees, Moderate Ongoing Support Fees and High Ongoing Support Fees;
- (d) Work Assist Service Fees and Work Assist Outcome Fees; and
- (e) Work Based Personal Assistance Fees.

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

141. General

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

141.2 Without limiting the Department's rights to take action under clause 59 [Remedies for breach], and subject to clause 141.3, if the Department pays the Provider any Fee, and if the Department then determines that, in the case of:

- (a) a Service Fee;
- (b) an Outcome Fee;
- (c) a Flexible Ongoing Support Fee, a Moderate Ongoing Support Fee and a High Ongoing Support Fee;
- (d) a Work Assist Service Fee and a Work Assist Outcome Fee;
- (e) a Work Based Personal Assistance Fee; or
- (f) any other Fee,

the requirements which must be satisfied to qualify for payment of that Fee have not been met, the Department may, taking into account the extent and nature of the failure, at its absolute discretion and without limitation of any of the Department's rights under this Agreement or at law, recover some or all of the Fees paid for the relevant Service, or for other Services for which a Fee is payable, and the amount of the Fees is a debt due to the Department in accordance with clause 26 [Debts and offsetting].

141.3 The Department will not recover a Service Fee or a Work Assist Service Fee under clause 141.2 if a:

- (a) Service Fee is paid in relation to a Participant in accordance with clause 146 [Service Fees]; or
- (b) Work Assist Service Fee is paid in accordance with clauses 149.2 to 149.8,

if the only reason that the Provider has not met the requirements for the Fee is that:

- (c) the Participant Exits;
- (d) the Participant is Suspended; or
- (e) the Provider enters an Anchor Date into the Department's IT System for the Participant,

during the 13 week period to which the Service Fee or Work Assist Service Fee relates.

141.4 The Provider acknowledges that if:

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

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

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

141.5 The Provider must:

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

142. Reserved

143. Adjustment of Fees

143.1 The Department will adjust the Fees:

- (a) on 1 July 2019 and annually thereafter during the Agreement Term, to reflect changes to inflation during the preceding Financial Year. The applicable inflation index will be determined by the Department in its absolute discretion; and
- (b) at any time during the Agreement Term at the Department's discretion, to reflect the impact of any recalibration of the 2018 Funding Level Tool that assigns Participants into Funding Levels and Fees associated with those Funding Levels, which occurs to reflect changes in likelihoods of obtaining employment. The recalibration exercise is not intended to increase or reduce

program outlays and will take into account, without limitation, industry performance and labour market factors as determined by the Department in its absolute discretion.

- 143.2 The adjusted Fees will be given effect by the Department issuing a Direction to Providers that includes an updated Annexure B [Disability Employment Services - Fees] to replace the then current Annexure B and will set out the adjusted Fees applicable to the relevant Financial Year.

144. Advance payment of Fees

- 144.1 The Department may, in its sole discretion, from time to time Notify the Provider that the Provider may claim an advance payment of Fees, the amount of Fees that may be claimed, and any related conditions.
- 144.2 Subject to this Agreement, if the Provider claims an advance payment of Fees in accordance with a Notification by the Department under clause 144.1, and any other requirements Notified to the Provider by the Department prior to the claim, the Department will pay the Provider the amount of the advance payment of Fees specified in the relevant Notification(s).

Offsetting of advance payments of Fees

- 144.3 On and from the date on which the Department pays an advance payment of Fees under this clause 144, the Department may, in such amounts and at such times as it determines, offset all valid claims, made by the Provider under this Agreement for all payments of Fees, Funds, Reimbursements, Wage Subsidies and Ancillary Payments, against the advance payment of Fees, until the total of the offset valid claims for payment equals the total amount of the advance payment of Fees.
- 144.4 If on the expiry or termination of this Agreement the total amount of all advance payments of Fees paid under this clause 144 have not been offset under clause 144.3, the difference between:
- (a) the total amount of the advance payments of Fees; and
 - (b) the total amount of the offset valid claims for payment,
- is an overpayment for the purposes of clause 24.1.

145. Funding Levels for Participants

- 145.1 Where specified in this Agreement, Fees in relation to a Participant (excluding a Work Assist Participant) will be payable at the following Funding Levels:
- (a) DMS Funding Level 1;
 - (b) DMS Funding Level 2;
 - (c) DMS Funding Level 3;
 - (d) DMS Funding Level 4;
 - (e) DMS Funding Level 5;
 - (f) ESS Funding Level 1;
 - (g) ESS Funding Level 2;

- (h) ESS Funding Level 3;
- (i) ESS Funding Level 4; or
- (j) ESS Funding Level 5.

Note: The Funding Level for a Participant will be determined by the Department using the 2018 Funding Level Tool.

Eligible School Leaver Directly Registered

- 145.2 If a Provider Commences an Eligible School Leaver in accordance with clause 87 [Direct Registration of Participants without a Referral], the Participant will be deemed to have an employment benchmark of 8 hours and the Funding Level for that Participant will be determined by the Department's IT Systems using the 2018 Funding Level Tool, or by reference to any Guidelines.

146. Service Fees

- 146.1 A Service Fee will be payable in relation to the period where a Participant receives Employment Assistance or Extended Employment Assistance.
- 146.2 Subject to this Agreement, including clauses 146.3 to 146.5, the Department will pay the Provider a Service Fee in relation to a Participant in the amount specified in Annexure B, which corresponds to the 13 week period specified in Annexure B as applicable to the Participant.
- 146.3 In relation to a Participant, the Department will pay a Provider:
- (a) a maximum of six Service Fees for the period a Participant is in Employment Assistance; and
 - (b) a maximum of two Service Fees for the period a Participant is in Extended Employment Assistance.
- 146.4 The Department will post and update on the Department's IT Systems from time to time a list of Participants:
- (a) in relation to whom the Provider is entitled to claim payment of Service Fees in accordance with clause 146.2; and
 - (b) taking account of all relevant current information about the Participants recorded in the Department's IT Systems from time to time.
- 146.5 The Provider must comply with any Guidelines in relation to the payment of Service Fees.
- Note: The Department has implemented a process of automated payment of Service Fees which does not require the submission of claims by the Provider.*
- 146.6 If a person who was a Participant with another Program Provider transfers to the Provider for any reason, the Department will:
- (a) pay the Gaining Provider a pro-rata amount of the Service Fee that is payable in accordance with clause 146.2 for the Participant for the 13 week period in which the date of the transfer occurs. The pro-rata amount payable will be calculated based on the period of time from the date of the initial Contact with the Transferred Participant by the Gaining Provider in the Department's

IT Systems to the end of the 13 week period in which the date of transfer occurs; and

- (b) deduct from the Relinquishing Provider a pro-rata amount of the Service Fee that has been paid to the Provider in accordance with clause 146.2 for the Transferred Participant for the 13 week period in which the date of the transfer occurs. The pro-rata amount to be deducted will be:
 - (i) calculated based on the period of time remaining in the 13 week period applicable to the Transferred Participant from:
 - (A) the date of the transfer of the Transferred Participant in the Department's IT Systems; or
 - (B) if the Transferred Participant was Suspended at the date of the transfer of the Transferred Participant in the Department's IT Systems, the date that the Suspension commenced; and
 - (ii) offset against the next instalment (and if required, each subsequent instalment) of Fees payable by the Department to the Provider until the amount has been fully repaid.

146.7 If a person who was a Participant Exits during Employment Assistance or Extended Employment Assistance, the Department will deduct from the Provider a pro-rata amount of the Service Fee that has been paid to the Provider in accordance with clause 146.2. The pro-rata amount to be deducted will be:

- (a) calculated based on the period of time remaining in the 13 week period applicable to the Participant from:
 - (i) the date of the Participant's Exit in the Department's IT Systems; or
 - (ii) if the Participant was Suspended at the date of the Exit in the Department's IT Systems, the date that the Suspension commenced; and
- (b) offset against the next instalment (and if required, each subsequent instalment) of Fees payable by the Department to the Provider until the amount has been fully repaid.

147. Outcome Fees

147.1 Subject to this Agreement and clauses 147.2 to 147.9, the Department will pay the Provider the applicable Outcome Fee specified in Annexure B in relation to each Participant who has satisfied the requirements for a Four-week Outcome, Full Outcome, a Pathway Outcome or a Bonus during a Period of Service:

- (a) provided that the Employment Placement Start Date and/or Anchor Date for the Outcome:
 - (i) is entered on the Department's IT Systems in accordance with this Agreement and any Guidelines; and
 - (ii) occurs after Commencement,

and

- (b) the Provider has adhered to any requirements for claiming an Outcome Fee as specified in any Guidelines.
- 147.2 The amount of the Outcome Fee payable to the Provider by the Department under clause 147.1 is determined by:
 - (a) whether the Participant was a Disability Employment Services – Disability Management Service Participant or Disability Employment Services – Employment Support Service Participant on the Employment Placement Start Date and/or Anchor Date for the Outcome; and
 - (b) whether the Participant has satisfied the requirements for a Four-week Outcome, Full Outcome, a Pathway Outcome or a Bonus.
- 147.3 The Provider must not claim an Outcome Fee under clause 147.1:
 - (a) on a pro rata basis in relation to an Outcome;
 - (b) in relation to a Non-Payable Outcome (except as specified in any Guidelines);
 - (c) for a 26-week Period for a Pathway Outcome which satisfies either paragraph (b) or (d) in the definition of Pathway Outcome; or
 - (d) for a Pathway Outcome in relation to a Participant who, upon Commencement, is working at a level that would meet the requirements of paragraphs (a)(i) or (ii) of the definition of Pathway Outcome:
 - (i) and the Participant remains at that same level in the same Pre-Existing employment related activity, in accordance with any Guidelines; or
 - (ii) in other circumstances, as specified in any Guidelines;
 - (e) for a 52-week Period for a Full Outcome which satisfies paragraphs (c), (e), (f), (g) or (h) in the definition of Full Outcome; or
 - (f) for a 52-week Period for a Pathway Outcome which satisfies paragraphs (b) or (d) in the definition of Pathway Outcome.
- 147.4 The Provider must not claim:
 - (a) a 26-week Pathway Outcome Fee or a 26-week Full Outcome Fee in relation to a Participant during a Period of Service unless a 13-week Pathway Outcome Fee or a 13-week Full Outcome Fee has been paid in relation to that Participant during that same Period of Service; or
 - (b) a 52-week Outcome Fee in relation to a Participant during a Period of Service unless a 26-week Pathway Outcome Fee or a 26-week Full Outcome Fee has been paid in relation to that Participant during the same Period of Service.
- 147.5 The Provider may claim:
 - (a) up to a maximum of four Four-week Outcome Fees;
 - (b) subject to clause 147.6, one 13-week Pathway Outcome Fee or 13-week Full Outcome Fee;
 - (c) one 26-week Pathway Outcome Fee or 26-week Full Outcome Fee; and
 - (d) one 52-week Employment Outcome Fee,

for the same Participant, during a Period of Service.

- 147.6 The Provider may claim an additional 13-week Pathway Outcome for the same Participant during the same Period of Service if that Participant achieves a 13-week Pathway Outcome pursuant to paragraph (d) of the definition of a Pathway Outcome.
- 147.7 Reserved
- 147.8 Reserved.
- 147.9 Reserved:

148. Ongoing Support Fees

Flexible Ongoing Support Fees

- 148.1 A Flexible Ongoing Support Fee will be payable in relation to an Instance of Flexible Ongoing Support.
- 148.2 Subject to this Agreement, including clause 126.3 and clauses 148.3 to 148.6, the Department will pay the Provider a Flexible Ongoing Support Fee in relation to a Participant in the amount specified in Annexure B as applicable to the Participant.
- 148.3 The Provider may claim a Flexible Ongoing Support Fee in relation to a Participant by the Provider submitting a claim in the Department's IT Systems.
- 148.4 The Provider must only claim a Flexible Ongoing Support Fee for Instances of Flexible Ongoing Support provided for a Participant in accordance with this Agreement and any Guidelines.
- 148.5 For the purposes of clause 22 [Evidence to support claims for payment], Documentary Evidence to support a claim for payment of a Flexible Ongoing Support Fee includes any invoices relating to Instances of Flexible Ongoing Support.
- 148.6 Subject to this Agreement, including clause 126.3 and clauses 148.1 to 148.5, if a Participant who is receiving Flexible Ongoing Support transfers from another Program Provider to the Provider for any reason, the Department will pay the Gaining Provider a Flexible Ongoing Support Fee for Instances of Flexible Ongoing Support provided to the Participant from the date of transfer, irrespective of any Flexible Ongoing Support Fees paid to the Relinquishing Provider in relation to the Participant, prior to the date of transfer.

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

- 148.7 A Moderate Ongoing Support Fee will be payable in relation to the period where a Disability Employment Services – Employment Support Service Participant receives Moderate Ongoing Support.
- 148.8 Subject to this Agreement, including clauses 148.9 to 148.15, the Department will pay the Disability Employment Services – Employment Support Service Provider a Moderate Ongoing Support Fee in relation to a Disability Employment Services – Employment Support Service Participant for each four-week period (excluding any time during a Voluntary Change in Employment), in the amount which applies to the

Disability Employment Services – Employment Support Service Participant, as specified in Annexure B.

- 148.9 Subject to clauses 148.7 to 148.15, the first Moderate Ongoing Support Fee for a Disability Employment Services – Employment Support Service Participant will be payable four weeks (excluding any time during a Voluntary Change in Employment) after commencement in Moderate Ongoing Support.
- 148.10 The Department will post and update on the Department’s IT Systems from time to time a list of Disability Employment Services – Employment Support Service Participants:
- (a) in relation to whom the Disability Employment Services – Employment Support Service Provider is entitled to claim payment of a Moderate Ongoing Support Fee in accordance with clause 148.8; and
 - (b) taking account of all relevant current information about the Disability Employment Services – Employment Support Service Participants recorded in the Department’s IT Systems from time to time.
- 148.11 The Disability Employment Services – Employment Support Service Provider may submit a claim for payment of a Moderate Ongoing Support Fee, in accordance with clause 148.8, in relation to a Disability Employment Services – Employment Support Service Participant on or after the day on which the Disability Employment Services – Employment Support Service Participant’s name is first posted on the list referred to in clause 148.10, provided that at the time the Disability Employment Services – Employment Support Service Provider submits the claim for payment, the Disability Employment Services – Employment Support Service Participant’s name is still posted on the list.
- 148.12 Subject to clauses 148.7 to 148.15, and if the Department agrees, the Disability Employment Services – Employment Support Service Provider may claim a Moderate Ongoing Support Fee quarterly, and the quarterly amount payable will be calculated in accordance with clause 148.8.
- 148.13 Where a Moderate Ongoing Support Fee is claimed quarterly, clause 148.9 is to be read as if the first Moderate Ongoing Support Fee will be payable 13 weeks after the Disability Employment Services – Employment Support Service Participant's commencement in Moderate Ongoing Support.
- 148.14 If a Disability Employment Services – Employment Support Service Participant who is receiving Moderate Ongoing Support transfers from another Program Provider to the Disability Employment Services – Employment Support Service Provider for any reason, the Department will pay both the Relinquishing Provider and the Gaining Disability Employment Services – Employment Support Service Provider a pro-rata amount of the Moderate Ongoing Support Fee payable in accordance with clauses 148.7 to 148.11 for the four-week Period in which the date of transfer occurs.
- 148.15 The pro-rata amount of the Moderate Support Fee payable in accordance with clause 148.14 will be calculated:
- (a) for the Relinquishing Provider, based on the period of time from the commencement of the four-week period in which the date of the transfer

occurs to the date of the transfer recorded on the Department's IT Systems;
and

- (b) for the Gaining Disability Employment Services – Employment Support Service Provider, based on the period of time from the date of the initial Contact with the Disability Employment Services – Employment Support Service Participant by the receiving Disability Employment Services – Employment Support Service Provider to the end of the four-week period in which the date of transfer occurs.

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

- 148.16 A High Ongoing Support Fee will be payable in relation to the period where a Disability Employment Services – Employment Support Service Participant receives High Ongoing Support.
- 148.17 Subject to this Agreement, including clauses 148.18 to 148.24, the Department will pay the Disability Employment Services – Employment Support Service Provider a High Ongoing Support Fee in relation to a Disability Employment Services – Employment Support Service Participant for each four-week period (excluding any time during a Voluntary Change in Employment), in the amount which applies to the Disability Employment Services – Employment Support Service Participant, as specified in Annexure B.
- 148.18 Subject to clauses 148.16 to 148.24, the first High Ongoing Support Fee for a Disability Employment Services – Employment Support Service Participant will be payable four weeks (excluding any time during a Voluntary Change in Employment) after commencement in High Ongoing Support.
- 148.19 The Department will post and update on the Department's IT Systems from time to time a list of Disability Employment Services – Employment Support Service Participants:
 - (a) in relation to whom the Disability Employment Services – Employment Support Service Provider is entitled to claim payment of a High Ongoing Support Fee in accordance with clause 148.17; and
 - (b) taking account of all relevant current information about the Disability Employment Services – Employment Support Service Participants recorded in the Department's IT Systems from time to time.
- 148.20 The Disability Employment Services – Employment Support Service Provider may submit a claim for payment of a High Ongoing Support Fee, in accordance with clause 148.17, in relation to a Disability Employment Services – Employment Support Service Participant on or after the day on which the Disability Employment Services – Employment Support Service Participant's name is first posted on the list referred to in clause 148.19, provided that at the time the Provider submits the claim for payment, the Disability Employment Services – Employment Support Service Participant's name is still posted on the list.

- 148.21 Subject to clauses 148.16 to 148.24, and if the Department agrees, the Provider may claim a High Ongoing Support Fee quarterly, and the quarterly amount payable will be calculated in accordance with clause 148.17.
- 148.22 Where a High Ongoing Support Fee is claimed quarterly, clause 148.18 is to be read as if the first High Ongoing Support Fee will be payable 13 weeks after commencement of High Ongoing Support.
- 148.23 If a Disability Employment Services – Employment Support Service Participant who is receiving High Ongoing Support transfers from another Program Provider to the Disability Employment Services – Employment Support Service Provider for any reason, the Department will pay both the Relinquishing Provider and the Gaining Disability Employment Services – Employment Support Service Provider a pro-rata amount of the High Ongoing Support Fee payable in accordance with clauses 148.16 to 148.20 for the four-week period in which the date of transfer occurs.
- 148.24 The pro-rata amount payable in accordance with clause 148.23 will be calculated:
- (a) for the Relinquishing Provider, based on the period of time from the commencement of the four-week period in which the date of the transfer occurs to the date of the transfer recorded on the Department’s IT Systems; and
 - (b) for the Gaining Disability Employment Services – Employment Support Service Provider, based on the period of time from the date of the initial Contact with the Participant by the Gaining Disability Employment Services – Employment Support Service Provider to the end of the four-week period in which the date of transfer occurs.

Fees for Changes to the Levels of Ongoing Support

- 148.25 Where the Level of Ongoing Support for a Disability Employment Services – Employment Support Service Participant is changed in accordance with clause 127 [Changing the Level of Ongoing Support for Disability Employment Services – Employment Support Service Participants], the Department will pay the Provider:
- (a) where applicable, in relation to an instance of Flexible Ongoing Support, a Flexible Ongoing Support Fee in accordance with clauses 148.1 and 148.2; and/or
 - (b) where applicable, a pro-rata amount of the:
 - (i) Moderate Ongoing Support Fee in accordance with clauses 148.7 to 148.13; and/or
 - (ii) High Ongoing Support Fee in accordance with clauses 148.16 to 148.22,for the four-week period in which the date of change occurs.
- 148.26 The pro-rata amount of the Moderate Ongoing Support Fee and High Ongoing Support Fee payable in accordance with clause 148.25(b) will be calculated based on the period of time the Disability Employment Services – Employment Support Service Participant received the relevant Level of Ongoing Support during the four-week Period, as recorded on the Department’s IT Systems.
- 148.27 The Provider must not:

- (a) claim a Flexible Ongoing Support Fee, a Moderate Ongoing Support Fee or a High Ongoing Support Fee for any period of Ongoing Support in respect of a Participant for any period during which that Participant is in Employment that meets the definition of a Non-Payable Outcome; and
- (b) for the purpose of clause 148.27(a) a Non-Payable Outcome does not include Recurring employment.

149. Work Assist Fees

Fees payable in relation to a Work Assist Participant

149.1 For the avoidance of doubt, and subject to clauses 149.2 to 149.8 and clause 150 [Work Based Personal Assistance Fees for Disability Employment Services – Employment Support Service Providers], in relation to a Work Assist Participant, the Fees payable by the Department to the Provider are limited to:

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

Note: There are no Ongoing Support Fees payable for Work Assist Participants because if these Participants are assessed as requiring Ongoing Support by an OSA under clause 121.2, they are no longer classified or referred to as a Work Assist Participant.

Work Assist Service Fees

149.2 Subject to this Agreement and clauses 149.3 to 149.7, the Department will pay the Provider a Work Assist Service Fee in relation to a Work Assist Participant for each of the first two 13 week periods that the Participant is receiving Work Assist Services, in the amount specified in Annexure B which applies to the Work Assist Participant.

149.3 The Department will post and update on the Department’s IT Systems from time to time a list of Work Assist Participants:

- (a) in relation to whom the Provider is entitled to claim payment of Work Assist Service Fees in accordance with clauses 149.1 and 149.2; and
- (b) taking account of all relevant current information about the Work Assist Participants recorded in the Department’s IT Systems from time to time.

149.4 The Provider may claim a Work Assist Service Fee in relation to a Work Assist Participant:

- (a) immediately after the Work Assist Participant has been Commenced; or
- (b) on or after the day on which the Work Assist Participant's name is first posted on the list referred to in clause 149.3, provided that at the time the Provider submits the claim for payment, the Work Assist Participant's name is still posted on the list,
- (c) and the Department will pay the Work Assist Service Fee to the Provider after the completion of the fortnight, the start and end of which is

determined by the Department at its absolute discretion, in which the Provider submits the claim for payment.

- 149.5 The Provider must make a claim for payment of a Work Assist Service Fee in the Department's IT Systems in relation to a Work Assist Participant in accordance with clause 149.4 not later than 28 calendar days after the day on which the requirements of:
- (a) clause 149.4(a); or
 - (b) clause 149.4(b),
- as applicable, are satisfied.
- 149.6 If a Work Assist Participant who is receiving Work Assist Services transfers from another Program Provider to the Provider for any reason, the Department will:
- (a) pay the Gaining Provider a pro-rata amount of the Work Assist Service Fee payable in accordance with clauses 149.1 to 149.5 for the 13-week Period in which the date of transfer occurs; and
 - (b) deduct from the Relinquishing Provider a pro-rata amount of the Work Assist Service Fee that has been paid to the Provider in accordance with clause 149.2 for the Participant for the 13-week Period in which the date of the transfer occurs. The pro-rata amount to be deducted will be:
 - (i) calculated based on the period of time remaining in the 13 week period applicable to the Transferred Participant from:
 - (A) the date of the transfer of the Transferred Participant in the Department's IT Systems; or
 - (B) if the Transferred Participant was Suspended at the date of the transfer of the Transferred Participant in the Department's IT Systems, the date that the Suspension commenced; and
 - (ii) offset against the next instalment (and if required, each subsequent instalment) of Fees payable by the Department to the Provider until the amount has been fully repaid.

- 149.7 The pro-rata amount payable in accordance with clause 149.6 will be calculated based on the period of time from the date of Commencement of the Work Assist Participant by the Provider to the end of the 13-week Period in which the date of transfer occurs.

Work Assist Outcome Fees

- 149.8 Subject to this Agreement, and clause 149.9, the Department will pay the Provider a Work Assist Outcome Fee in the amount specified in column 2 [Fee amount] in Annexure B which applies to the Work Assist Participant, if the Work Assist Participant achieves a Work Assist Outcome, and provided that the Anchor Date for the Work Assist Outcome:
- (a) is entered on the Department's IT Systems in accordance with this Agreement and any Guidelines;
 - (b) occurs after Commencement,

and:

- (c) the Provider has submitted a claim in the Department's IT System for the Work Assist Outcome Fee to the Department within 56 calendar days of the Work Assist Participant achieving the Work Assist Outcome.

149.9 The Provider must not claim a Work Assist Outcome Fee under clause 149.8:

- (a) on a pro rata basis in relation to a Work Assist Outcome;
- (b) for a Work Assist Outcome which is achieved after a Work Assist Participant has transferred to another Program Provider; or
- (c) in respect of a Non-Payable Outcome.

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

Reader's guide

Work Based Personal Assistance has transitioned to the NDIS. Providers can deliver Work Based Personal Assistance only to Participants who:

- received Work Based Personal Assistance from their current Provider prior to 1 July 2019, and
- have tested their eligibility for support under the NDIS and been found ineligible for that support.

Clause 150 applies only to Participants who meet these requirements for continuity of support. Providers may not deliver Work Based Personal Assistance to any other Participants.

150.1 Subject to this Agreement, including clauses 150.2 to 150.7, and in accordance with any Guidelines, the Department will pay the Disability Employment Services – Employment Support Service Provider a Work Based Personal Assistance Fee in relation to a Disability Employment Services – Employment Support Service Participant, monthly in arrears, at a standard hourly rate in the amount specified in Annexure B for Work Based Personal Assistance:

- (a) provided directly by the Disability Employment Services – Employment Support Service Provider; or
- (b) purchased by the Disability Employment Services – Employment Support Service Provider,

as applicable to the Disability Employment Services – Employment Support Service Participant.

150.2 Work Based Personal Assistance Fees are payable from:

- (a) the date of Commencement of the Disability Employment Services – Employment Support Service Participant, if the Participant is already in Employment, Unsubsidised Self-Employment, an Apprenticeship or Traineeship; or
- (b) the date on which a Disability Employment Services – Employment Support Service Participant starts Employment, Unsubsidised Self-Employment, an Apprenticeship or Traineeship,

and will continue to be payable while the relevant Participant is in Employment, Unsubsidised Self-Employment, an Apprenticeship or Traineeship in accordance with any Guidelines, and is receiving Work Based Personal Assistance in the workplace.

- 150.3 The Disability Employment Services – Employment Support Service Provider is entitled to claim a Work Based Personal Assistance Fee for personal assistance purchased for, or provided to, a Disability Employment Services – Employment Support Service Participant, if the Disability Employment Services – Employment Support Service Provider:
- (a) provides or purchases Work Based Personal Assistance in accordance with any Guidelines; and
 - (b) completes a Work Based Personal Assistance requirements form, or the form specified by the Department from time to time.
- 150.4 The Disability Employment Services – Employment Support Service Provider may only claim a Work Based Personal Assistance Fee for Work Based Personal Assistance actually provided or purchased by the Disability Employment Services – Employment Support Service Provider for a Disability Employment Services – Employment Support Service Participant for a maximum of 10 hours per week per Disability Employment Services – Employment Support Service Participant.
- 150.5 The Disability Employment Services – Employment Support Service Provider may claim a Work Based Personal Assistance Fee in relation to a Disability Employment Services – Employment Support Service Participant if the Disability Employment Services – Employment Support Service Provider retains sufficient Documentary Evidence to support a claim for a Work Based Personal Assistance Fee, in accordance with any Guidelines, and submits a claim in the Department's IT Systems.
- 150.6 For the purposes of clause 22 [Evidence to support claims for payment], Documentary Evidence to support a claim for payment of Work Based Personal Assistance includes any invoices relating to Work Based Personal Assistance provided or purchased for a Disability Employment Services – Employment Support Service Participant.
- 150.7 References to a Disability Employment Services – Employment Support Service Participant in this clause 150 include a Work Based Personal Assistance Only Participant.

151. Ancillary Payments

- 151.1 The Department may pay the Provider Ancillary Payments at the Department's absolute discretion.

152. Moderate Intellectual Disability Payment

- 152.1 Subject to this Agreement and in accordance with this clause and any Guidelines, the Department will pay the Provider a Moderate Intellectual Disability Payment in relation to each Moderate Intellectual Disability Participant.
- 152.2 Moderate Intellectual Disability Payment is payable by the Department:

- (a) in the amount specified in Annexure B, as applicable to the Moderate Intellectual Disability Participant;
- (b) for:
 - (i) up to four Four-week Outcomes during the Period of Service, where the Moderate Intellectual Disability Participant works a minimum of 45 hours of paid Employment, over a Four-week Period for that Moderate Intellectual Disability Participant; and
 - (ii) a Full Outcome, where, for the duration of a 13-week Period or a 26-week Period, or 52-week Period the Moderate Intellectual Disability Participant works a minimum of 195 hours in 13 Consecutive Weeks (for the 13-week Period) or 390 hours in 26 Consecutive Weeks (for the 26-week Period or 52-week Period); and
- (c) where, in each instance, the Moderate Intellectual Disability Participant also meets the requirements for payment of an Outcome Fee under the definition of a Four-week Outcome or under paragraph (b)(i), (ii) or (iii) of the definition of Full Outcome, in accordance with clause 146.7 [Outcome Fees], respectively.

152.3 The Provider must submit a claim for payment of a Moderate Intellectual Disability Payment in accordance with any Guidelines.

Section 50 Gap Filling

153. Gap filling

- 153.1 If the Department identifies a gap in the provision of Program Services during the Agreement Term, the Department may, with the agreement of the Provider, require the Provider to provide additional Program Services, on the same terms as specified in this Agreement at the times requested by the Department.
- 153.2 The Department may, without limitation, require the Provider to fill a gap in the provision of Program Services by:
- (a) delivering Services in a particular ESA;
 - (b) delivering Services in one or more ESAs through modified service delivery modes;
 - (c) delivering Services in one or more ESA(s) as a condition of delivering Services in another ESA or ESAs; or
 - (d) expanding their delivery locations in order to provide greater coverage within an ESA.
- 153.3 Any changes to this Agreement (including the Schedule) for the purpose of this clause 153 will be given effect in accordance with clause 73.1.

Section 5P The Department may cease Referrals

154. The Department may cease Referrals to the Provider

- 154.1 Unless otherwise provided for in this Agreement, if after the Agreement Commencement Date, there is any form of process for the delivery of part or all of the Program Services or any other disability employment services, and the Provider:
- (a) does not submit a response to that process;
 - (b) refuses an offer to provide further services;
 - (c) is not successful in obtaining a further contract; or
 - (d) is successful in obtaining a subsequent contract from any future selection process, but the subsequent contract does not require the Provider to provide the Program Services, or services similar to the Program Services, at any, or all, of the Sites, at which it is contracted to deliver Program Services under this Agreement,

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

Section 5Q Assessment and management of Program Service Provider's performance

155. Performance assessments

- 155.1 The Department will monitor, measure and evaluate the Provider's performance in accordance with clause 31 [Evaluation Activities] and this clause 155 [Performance assessments].

Key Performance Indicators

- 155.2 The Key Performance Indicators are as follows:
- (a) KPI 1: Efficiency: aim is to minimise the average time taken by Providers to achieve Employment Outcomes for their Participants (no direct performance measure).
 - (b) KPI 2: Effectiveness: aim is to maximise the number of Outcomes achieved by Participants, as well as the number of Participants maintained in employment where assistance is required.
 - (i) KPI 2 measurement: This is measured by the proportions of relevant Participants for whom 13, 26 and 52 Week Outcomes are achieved and the proportion of Disability Employment Services – Employment Support Services Participants who are receiving Ongoing Support who remain in Employment. The Department will assess the Provider's performance, in accordance with any relevant Guidelines or other Star Ratings documents, through the number of:
 - (A) 13, 26 and 52 Week Full and Pathway Outcomes achieved for relevant Participants; and

- (B) Disability Employment Services – Employment Support Service Participants who remain in Ongoing Support or Exit Ongoing Support as Independent Workers.
- (c) KPI 3: Quality: aim is to maximise the delivery of high quality, individualised Program Services.
 - (i) KPI 3 measurement: Quality will be assessed against the requirements of this Agreement, the Service Guarantee and the Code of Practice through various measures including feedback from Employers and Participants. Providers are required to be certified against the National Standards for Disability Services under the Act.

155.3 The Star Ratings system will measure the relative success of Providers against KPI 2 in achieving Outcomes for Participants taking part in Program Services.

Other factors in performance assessment

155.4 When assessing the Provider’s performance, the Department may also take into account other factors including:

- (a) the Provider’s performance in connecting Participants to appropriate skills opportunities;
- (b) the Provider's performance in assisting particular disadvantaged client groups, such as Aboriginal and Torres Strait Islander peoples;
- (c) the Provider’s performance in relation to the building of linkages with Employers to understand and meet the skills needs of the local labour market;
- (d) the Provider’s performance in developing and monitoring Job Plans;
- (e) the proportion of Outcomes in which a Participant undertakes an employment related activity which give rise to Outcome Fees, but that do not result in ongoing Employment after the completion of either the Four-week Period, 13-week Period or 26-week Period;
- (f) the Provider’s performance against any performance indicators;
- (g) the timely servicing of Participants;
- (h) the number and value of any invalid claims made by the Provider;
- (i) the Provider’s compliance with this Agreement; and
- (j) any other information in the Department’s possession, including Provider feedback.

Informal performance assessments

155.5 Every six months during the Agreement Term, the Department:

- (a) will review the Provider’s performance in each Employment Service Area and at each Site where the Provider delivers Program Services; and
- (b) may subsequently provide feedback to the Provider on the Department’s assessment of its performance.

Formal performance assessments

- 155.6 During the Agreement Term, the Department will undertake formal performance assessments of the Provider at such times as the Department determines, following which the Department may, without limitation of any of the Department's rights under this Agreement or at law, take action in accordance with clause 156 [Action following formal performance assessment], depending on the Provider's assessed performance.

Note: Providers are advised that the Department may also take performance into account in any funding decisions after the Agreement Commencement Date, including without limitation any decision to extend this Agreement.

156. Action following formal performance assessment

Performance Ratings

- 156.1 Despite any other provision of this Agreement, if at the completion of a formal performance assessment under clause 155.6, the Provider's Performance Rating in an ESA for any type of Program Service (including any specialist Services) is:
- (a) in the lowest two ratings bands; or
 - (b) two ratings bands or more lower than any other Program Provider's rating in the ESA,

the Department may, at its absolute discretion, and without limitation of any of the Department's rights under this Agreement or at law:

- (c) Notify the Provider that the Provider must discontinue providing the relevant Program Services in that ESA; and
 - (d) cease all Referrals to the Provider in that ESA for the relevant Program Services from the date of the Notice.
- 156.2 If the Department Notifies the Provider to discontinue providing Program Services in accordance with clause 156.1 in an ESA, the Provider must discontinue providing the Program Services in that ESA in accordance with the Notice and provide the Department with the assistance and cooperation in clauses 62.6 and 62.7 to ensure that Participants affected by the discontinuation of the Provider's Program Services in that ESA are transferred to other Program Providers as specified by the Department.

- 156.3 The Department may, at its absolute discretion, publish the Provider's Performance Ratings.

- 156.4 For the avoidance of doubt, any action taken by the Department under this clause 156 is not a reduction of scope or termination for which compensation is payable.

Good faith and proportionality

- 156.5 The Department will exercise its rights under this clause 156 reasonably and in good faith, taking into account the relevant performance.

- 156.6 Prior to taking action following a formal performance assessment, the Department will consider any mitigating circumstances relating to the Provider's Performance

Ratings. The Provider's Performance assessment may be amended at the Department's discretion, based on the information provided by the Provider in relation to the mitigating circumstances and taking into account any performance guidelines. Failure to provide, or inability to secure, adequate resources to perform the Services will not be considered a mitigating circumstance.

Variation

- 156.7 If the Department takes any action under this clause 156:
- (a) where relevant, this Agreement will be deemed to be varied accordingly; and
 - (b) the Provider is not relieved of any of its obligations under this Agreement as varied.

Notice

- 156.8 If the Department takes any action under this clause 156, the Department will Notify the Provider of:
- (a) the reasons for the action;
 - (b) the duration of the action; and
 - (c) any corresponding variation to this Agreement.
- 156.9 This clause 156 is without prejudice to any other right which the Commonwealth has or which may accrue to the Commonwealth.

Section 5R Other Program Services matters

157. Service Level Agreements and other agreements

- 157.1 The Provider must work in conjunction with:
- (a) other employment service providers and programs assisting Aboriginal and Torres Strait Islander peoples;
 - (b) Employers; and
 - (c) community service organisations,
- to maximise employment of Aboriginal and Torres Strait Islander peoples in local jobs.

158. Complaints Resolution and Referral Service

- 158.1 In addition to the requirements under clauses 32 [Customer feedback process] to 34 [Customer feedback register], the Provider must actively assist with the CRRS to resolve Complaints, including by:
- (a) providing any information relevant to the Complaint (including the Provider's Customer feedback process and information from the Customer Feedback Register) to the CRRS;
 - (b) allowing the CRRS to access the Provider's Sites to inspect relevant Records; and

- (c) not preventing Participants or persons engaged or employed by the Provider from being interviewed by the CRRS.

159. Liquidated damages

159.1 Notwithstanding any other rights available to the Department under this Agreement, under statute, at law, or in equity, if, after the Agreement Commencement Date, the Provider:

- (a) ceases to deliver Services at a Site, or notifies the Department that it is not willing or able to deliver the Services at a Site, and the Provider has not either:
 - (i) obtained the consent of the Department for the cessation of the Services at the Site (such consent must not be unreasonably withheld by the Department); or
 - (ii) secured an alternative Program Provider, acceptable to the Department, to provide the Services at the relevant Site from the date on which the Provider ceases, or will cease, to deliver the Services; or
- (b) submits in excess of 100 invalid claims under this Agreement, as determined by the Department, which are identified in any 12 month period, the Provider must, if required by the Department, pay Liquidated Damages to the Department in the amount of:
 - (c) where clause 159.1(a) applies, \$25,000 per limited approach to market and \$50,000 per open approach to market, used to secure an alternative Program Provider acceptable to the Department; and
 - (d) where clause 159.1(b) applies, \$5,000, and a further \$5,000 for each 100 invalid claims, in excess of the first 100 invalid claims, identified in that same 12 month period.

159.2 For the avoidance of doubt, clause 159.1(b) does not apply where the Provider self identifies invalid claims through its internal compliance practices and Notifies the Department of those invalid claims.

159.3 Where clause 159.1(a) or 159.1(b) applies, the Parties agree that all relevant loss and damage will, having regard to the governmental and non-commercial nature of the Services and their significance to the Commonwealth's provision of Program 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 159.1(a), identifying, selecting and entering into contractual relations with an alternative Program Provider to provide services at the relevant Site(s), and transferring Participants, records, monies and relevant materials to the alternative Program Provider; and
- (b) in the case of clause 159.1(b), administrative costs in processing and resolving invalid claims.

- 159.4 For the avoidance of doubt, the Liquidated Damages will become a debt due to the Commonwealth for the purposes of clause 26 [Debts and offsetting], if and when the Commonwealth Notifies the Provider that it elects to recover the Liquidated Damages as a debt under clause 26 [Debts and offsetting].

Section 5S Self-Employment Assistance

160. Self-Employment Assistance

- 160.1 Where the Provider and a Participant who has been identified as eligible for Self-Employment Assistance on the Department's IT Systems have agreed that it may be appropriate for the Participant to receive Self-Employment Assistance, the Provider must:
- (a) advise the Participant of the matters which they must satisfy before they can receive Self-Employment Assistance, as specified in any Guidelines or any guidelines issued by the Department of Employment and Workplace Relations;
 - (b) identify prospective Self-Employment Assistance Providers in the location in which the Participant proposes to undertake Self-Employment Assistance and:
 - (i) where the relevant location is within an ESA in which the Provider is a Self-Employment Assistance Provider, the Provider may choose to provide the relevant Self-Employment Assistance Services itself or, subject to clause 160.1(c), assist the Participant to contact another Self-Employment Assistance Provider in the relevant ESA; or
 - (ii) where the relevant location is not within an ESA in which the Provider is a Self-Employment Assistance Provider, subject to clause 160.1(c), refer or assist the Participant to contact a Self-Employment Assistance Provider in that location;
 - (c) if the Participant has expressed an interest in participating in an Exploring Self-Employment Workshop, use reasonable endeavours to refer the Participant to a Self-Employment Assistance Provider who is an Exploring Self-Employment Workshop Provider with an available Exploring Self-Employment Workshop placement;
 - (d) where the Participant is assessed as eligible for Self-Employment Assistance by the relevant Self-Employment Assistance Provider, comply with any record keeping requirements specified in any Guidelines; and
 - (e) where a Self-Employment Assistance Provider:
 - (i) assesses a Participant as not eligible for Self-Employment Assistance; or
 - (ii) ends the Self-Employment Assistance because the Participant has:
 - (A) completed the relevant parts of Self-Employment Assistance; or
 - (B) failed to participate appropriately, or otherwise required exit from Self-Employment Assistance and advises the Provider,

immediately:

- (iii) update the Participant's Job Plan, and
- (iv) provide the Participant with alternative Services in accordance with this Agreement.

160.2 Not used.

160.3 Not used.

Section 5T Relocation Assistance to Take Up a Job (RATTUAJ)

161. Relocation Assistance to Take Up a Job (RATTUAJ)

- 161.1 Subject to this clause 161 and any Guidelines, the Provider may pay one or more RATTUAJ Payments to, or on behalf of, a RATTUAJ Participant, up to the amounts specified in Annexure B.
- 161.2 The Provider may only pay a RATTUAJ Payment where the Provider has first, in accordance with any Guidelines:
- (a) correctly confirmed that:
 - (i) the person in relation to whom the payment is to be made, is a RATTUAJ Participant;
 - (ii) the relevant Employment position is a RATTUAJ Placement; and
 - (iii) the proposed address to which the RATTUAJ Participant is relocating is eligible for a RATTUAJ Payment at the amount of the proposed payment;
 - (b) received from the relevant RATTUAJ Participant, Documentary Evidence to support their entitlement to a RATTUAJ Payment at the amount of the proposed payment; and
 - (c) entered into a RATTUAJ Agreement with the RATTUAJ Participant.
- 161.3 The Provider must end each RATTUAJ Agreement in the circumstances and in the manner specified in any Guidelines.
- 161.4 The Provider must ensure that each RATTUAJ Payment is paid in full from the Provider's own funds, and otherwise paid in accordance with the requirements specified in any Guidelines.
- Reimbursement*
- 161.5 Once the Provider has properly paid a RATTUAJ Payment in accordance with this clause 161, the Provider:
- (a) may submit a claim for Reimbursement through the Department's IT Systems for no more than the same amount as that RATTUAJ Payment; and
 - (b) must submit any such claim for Reimbursement in accordance with the requirements specified in any Guidelines.

161.6 The Department will Reimburse the Provider for each RATTUAJ Payment that is made in accordance with this Agreement and properly claimed by the Provider under clause 161.5.

Transferred RATTUAJ Participants

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

161.8 The Provider must, in relation to a RATTUAJ Participant referred to in clause 161.7:

- (a) immediately contact the Transferred RATTUAJ Participant and use the Provider's best endeavours to enter into a RATTUAJ Agreement with the Transferred RATTUAJ Participant for a period as advised by the Department; and
- (b) comply with this clause 161 and any direction by the Department in relation to the Transferred RATTUAJ Participant.

ANNEXURE A DEFINITIONS

'13-week Education Outcome' means:

- (a) a Full Outcome for a 13-week Period as specified in paragraphs (c)(i), (e) and (g) of the definition of Full Outcome; or
- (b) a Pathway Outcome for a 13-week Period as specified in paragraph (b) of the definition of Pathway Outcome.

'13-week Employment Outcome' means:

- (a) a Full Outcome for a 13-week Period as specified in paragraphs (a), (b), (c)(ii), (f) and (h) of the definition of Full Outcome; or
- (b) a Pathway Outcome for a 13-week Period as specified in paragraphs (a) and (d) of the definition of Pathway Outcome.

'13-week Outcome' means a Full Outcome or Pathway Outcome for a 13-week Period.

'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,

'2018 Funding Level Tool' means the system by which the Funding Level for a Participant is calculated on the Department's IT Systems.

'26-week Education Outcome' means:

- (a) a Full Outcome for a 26-week Period as specified in paragraphs (c)(i), (e), (f), (g) and (h) of the definition of Full Outcome; or

(b) a Pathway Outcome for a 26-week Period as specified in paragraph (b) of the definition of Pathway Outcome.

'26-week Employment Outcome' means:

(a) a Full Outcome for a 13-week Period as specified in paragraphs (a), (b), (c)(ii), (f) and (h) of the definition of Full Outcome; or

(b) a Pathway Outcome for a 13-week Period as specified in paragraph (a) of the definition of Pathway Outcome.

'26-week Outcome' means a Full Outcome or Pathway Outcome for a 26-week Period.

'26-week Period' means a period of:

(a) 26 Consecutive Weeks for an employment related activity which satisfies the requirements for an Outcome; or

(b) two Semesters for an education or training related activity which satisfies the requirements for an Outcome,

and which commences at the start of the 13-week Period; and

(c) does not otherwise overlap with any other 13-week Period or 26-week Period.

'52-week Employment Outcome' means:

(a) a Full Outcome for a 52-week Period as specified in paragraphs (a) and (b) of the definition of Full Outcome; or

(b) a Pathway Outcome for a 52-week Period as specified in paragraph (a) of the definition of Pathway Outcome.

'52-week Outcome' means a Full Outcome or Pathway Outcome for a 52-week Period.

'52-week Period' means a period of 26 Consecutive Weeks for an employment related activity which satisfies the requirements for an Outcome and which period:

(a) immediately follows the completion of a 26-week Period; and

(b) does not overlap with any other 13-week Period, 26-week Period or 52-week Period.

'52-week Sustainability Indicator' means a Participant that is in Employment 52 calendar weeks after the Anchor Date, as determined by the Department.

'6 Active Months' has the meaning given to it, in its decapitalised form, in an instrument made under section 42AR of *the Social Security (Administration) Act 1999* (Cth) dealing with Mutual Obligation Failures.

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

'Aboriginal or Torres Strait Islander person' means:

(a) a person who is identified as such on the Department's IT Systems; or

(b) a person who:

(i) is of Aboriginal and/or Torres Strait Islander descent;

(ii) identifies as an Aboriginal and/or Torres Strait Islander person; and

(iii) is accepted as such in the community in which the person lives or has lived.

'Aboriginal and Torres Strait Islander peoples' has an equivalent meaning where reference is to more than one person.

'Abstudy' has the meaning given to the term 'ABSTUDY' under the ABSTUDY Scheme administered by the Department.

'Acceptable Reason' means that a Participant (Mutual Obligation):

- (a) has notified the Provider, before the start time scheduled for a Mutual Obligation Requirement, that the Participant is unable to satisfy the Mutual Obligation Requirement; and
- (b) the Provider is satisfied that the Participant has a Valid Reason for being unable to satisfy the Mutual Obligation Requirement.

'Access' includes access or facilitation of access (whether directly or indirectly), traverse, view, use, or interface with, Records or the Department's IT Systems.

'Act' means the *Disability Services Act 1986* (Cth).

'Activity' means an activity approved by the Department and specified in clause 98, 99 or 100 and any other activity approved by the Department and specified in any Guidelines.

'Activity Host Organisation' means an organisation that hosts an Activity.

'Activity Host Organisation Agreement' means a written and signed agreement between the Provider and an Activity Host Organisation in relation to the provision of Activities, in accordance with any Guidelines.

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

'Agreement' means this document, which is in the form of a deed, as varied or extended by the Parties from time to time in accordance with this Agreement, and includes all Annexures, the Schedule and other documents incorporated by reference, including any Guidelines, but excluding any attachments.

'Agreement Commencement Date' means the later of:

- (a) 1 July 2018; or
- (b) the date on which this Agreement is signed by the Department.

'Agreement Material' means all Material:

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

'Agreement Records' means all Records:

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

'Agreement Term' means the Initial Agreement Term plus any extension agreed in accordance with clause 5 [Extension of this Agreement].

'AMEP' means the Adult Migrant English Program administered by the Commonwealth Department of Education (or such other government agency or department administering that program from time to time).

'Anchor Date' means:

- (a) the first day of the Semester on which a Participant starts an education or training related activity which, when completed, satisfies an Outcome and which day is recorded on the Department's IT Systems in accordance with this Agreement; or
- (b) the day recorded on the Department's IT Systems in accordance with this Agreement, and any Guidelines, on which:
 - (i) a Participant started an Employment Outcome; or
 - (ii) a Work Assist Participant started a Work Assist Outcome.

'Ancillary Payment' means a payment, in addition to the Fees, which the Department may at its discretion pay the Provider subject to the Provider satisfying the conditions of any Guidelines relating to the Ancillary Payment.

'Annexure' means any annexure to this Agreement.

'Appointment' means a date and time for a Contact recorded in the Electronic Calendar.

'Apprenticeship' means a course combining formal and on the job training and paid work undertaken by a Participant (a trainee or an apprentice):

- (a) under an industrial instrument, which must:
 - (i) be covered by a registered validated training agreement (through the relevant training authority in the state or territory);
 - (ii) involve paid work and structured training; and
 - (iii) lead to a nationally recognised qualification; or
- (b) as described in any Guidelines.

'Approved Assistance' means the assistance for which the Approved Assistance Amount may be expended.

'Approved Assistance Amount' means the amount approved by the JobAccess Provider for expenditure under the Employment Assistance Fund.

'Assessment' means a formal assessment of a Participant's level of disadvantage by:

- (a) a Provider, for the purpose of clauses 117 [Program Review] and 121 [Entry into Ongoing Support], and including the specification of the Program Services for which a Special Class Client, Eligible School Leaver or Work Assist Participant is eligible;
- (b) Services Australia Assessment Services, through an ESAt or JCA; or
- (c) an Ongoing Support Assessor, through an OSA,

and includes specification of the Program Services for which the Participant is eligible.

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

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

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

'Australian Government Skills for Education and Employment Program' means the program of that name (or as changed from time to time) that aims to improve Participants' language, literacy and/or numeracy skills, to enable them to participate more effectively in training or in the labour force.

'Austudy' has the meaning given to the term 'austudy payment' by the *Social Security Act 1991* (Cth).

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

'Bonus' means an additional Fee that is payable to the Provider once in each 13-week Period and 26-week Period if the Participant achieves:

(a) a Full Outcome; or

(b) a Pathway Outcome,

by undertaking:

(c) an Apprenticeship in accordance with the requirements set out in any Guidelines; or

(d) paid Employment which is Directly Related Employment and the Provider has recorded on the Department's IT Systems any information required to be recorded, as specified in any Guidelines.

'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.

'Capability Assessment' means an assessment by Services Australia to ensure that the Mutual Obligation Requirements specified in the Participant's Job Plan are appropriate to their circumstances and the Participant is capable of meeting them.

'Capability Interview' means a contact between a Program Provider and a Participant to ensure that the Mutual Obligation Requirements specified in the Participant's Job Plan are appropriate to their circumstances and the Participant is capable of meeting them.

'Capability Management Tool' means the tool used by Providers to review a Participant's barriers and vulnerability indicators, and to recommend interventions and services.

'Capital City' means an Australian capital city, with boundaries as specified in any Guidelines.

'Certificate of Compliance' means a certificate issued by a Certification Body in accordance with the Act which certifies the Provider's compliance with the National Standards for Disability Services.

'Certification Body' has the meaning given in the Guidelines.

'Change in Control' means:

(a) subject to paragraph (b) below, in relation to a Corporation, a change in any of the following:

(i) Control of more than one half of the voting rights attaching to shares in the Corporation, whether due to one or a series of transactions occurring together or on different occasions;

(ii) Control of more than one half of the issued share capital of the Corporation, whether due to one or a series of transactions occurring together or on different occasions, excluding any part of the issued share capital which carries no right to participate beyond receipt of an amount in the distribution of either profit or capital; or

(iii) Control of more than one half of the voting rights attaching to membership of the Corporation, where the Corporation does not have any shareholders;

- (b) in relation to a Corporation which is owned or controlled by a trustee company, any change as set out in paragraph (a) above in relation to either that Corporation or its corporate trustee;
- (c) in relation to a partnership:
 - (i) the sale or winding up or dissolution of the business by the partners;
 - (ii) the change in any of the partners; or
 - (iii) the retirement, death, removal or resignation of any of the partners; or
- (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.

‘Change of Circumstances Reassessment’ means a formal reassessment of the level of disadvantage of a Participant which is conducted in accordance with clause 120 [Change of Circumstances Reassessment during Period of Service] and clause 129 [Change of Circumstances Reassessment during Ongoing Support]:

- (a) by Services Australia Assessment Services through an ESAt; or
- (b) by an Ongoing Support Assessor through an OSA,

and includes specification of the Program Services for which the Participant is eligible.

‘Charter of Contract Management’ means the charter which embodies the commitment by the Department to work cooperatively with Program Providers in achieving shared goals and outcomes in the delivery of the Services.

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

‘Claims Processing Training’ means the online training provided by the Department for Providers in relation to the processing of claims for payment.

‘Code of Practice’ means the Employment Services Code of Practice at Annexure C1.

‘Combination of Education and Employment Outcome’ means a Full Outcome as specified in paragraphs (c)(ii), (f) and (h) of the definition of Full Outcome.

‘Commence’ or **‘Commencement’** means the date on which all of the following requirements have been met:

- (a) the Provider has recorded the completion of the Initial Interview on the Department’s IT Systems;
- (b) the Provider has approved the Participant’s Job Plan; and
- (c) the Provider has met any other requirements specified in the Guidelines.

‘Commonwealth’ means the Commonwealth of Australia and includes officers, delegates, employees and agents of the Commonwealth of Australia.

‘Commonwealth Coat of Arms’ means the Commonwealth Coat of Arms as set out at https://www.pmc.gov.au/sites/default/files/publications/Commonwealth_Coat_of_Arms_Information_and_Guidelines.pdf.

‘Commonwealth Cybersafety Policy’ means the policy set out in clauses 37.19 to 37.23 inclusive.

‘Commonwealth Material’ means any Material provided by the Department to the Provider for the purposes of this Agreement and Material which is copied or derived from Material so provided, and includes Commonwealth Records.

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

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

- (a) the Community Job Plan-Work Placements program administered by the Queensland Department of Education, Training and Employment (or such other government agency or department administering that program from time to time); or
- (b) the Workforce Participation Partnerships program administered by the Victorian Department of State Development, Business and Innovation (or such other government agency or department administering that program from time to time).

‘Community Support Project’ means an activity which may occur on private property and which contributes to recovery efforts following a disaster event in local communities, or an activity for nationally significant projects at a local level, as specified in any Guidelines or advised by the Department.

‘Competent Person’ means a person who has acquired through training, qualification or experience the knowledge and skills to carry out specific work health and safety tasks, and as otherwise specified in any Guidelines.

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

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

‘Complaints Resolution and Referral Service’ or **‘CRRS’** means a service by that name available to Participants and potential Participants, available directly or through the National Customer Service Line.

‘Complementary Service’ means an employment or training program:

- (a) administered by the Commonwealth, including the Department, (but not including Disability Employment Services – Disability Management Service or Disability Employment Services – Employment Support Service provided under this Agreement); or
- (b) provided by a state or territory government (including by state or territory government funded providers),

as advised by the Department from time to time, which the Provider may access to provide additional or alternative specialised assistance to a Participant.

‘Compliance Activities’ means an activity or combination of activities which a Participant may undertake at the Participant’s assessed work capacity and in accordance with any Guidelines, which may include any one or more of the following:

- (a) skills training;
- (b) activities intended to address Vocational Barriers and Non-vocational Barriers;
- (c) work experience activities;
- (d) work in a social or community enterprise;

(e) participation in the Australian Government Skills for Education and Employment Program or AMEP (where the Participant has registered, and is eligible, for AMEP); or

(f) training in job search techniques.

'Compliance Review' means a review of claims for payment submitted by the Provider undertaken by the Department from time to time.

'Comprehensive Compliance Assessment' means an assessment conducted by Services Australia to determine whether:

(a) a penalty should be applied to a Participant (Mutual Obligation) who wilfully and persistently fails to meet their obligations under their Job Plan; or

(b) the Participant (Mutual Obligation) requires additional assistance in order to comply.

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

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

'Connections for Quality Indicator' means an indicator, specified as such in any Guidelines, that demonstrates linkages to wrap around servicing, engagement with Employers and services offered to Participants, particularly those with multiple disadvantages.

'Consecutive Weeks' means a continuous period of weeks broken only by:

(a) one or more Permissible Breaks; or

(b) one or more Voluntary Changes in Employment.

'Constitution' means (depending on the context):

(c) a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution; or

(d) in relation to any other kind of body:

(i) the body's charter, rules or memorandum; or

(ii) any instrument or law constituting or defining the constitution of the body or governing the activities of the body or its members.

'Contact' means a contact between the Provider and a Participant in accordance with clause 93 [Contact services].

'Contact Person' means the person specified in the Schedule who has authority to receive and sign Notices and written communications for the Provider under this Agreement and accept any request or direction in relation to the Services.

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

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

'Current Assessment' means at any time, the Assessment, whether completed by Services Australia Assessment Services through an ESA or a JCA, or by an Ongoing Support Assessor through an OSA, that specifies the Program Services for which the Participant is eligible at that time.

Note: If an OSA is the Current Assessment, it will not invalidate the most recent ESAt or JCA.

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

'Customer Feedback Register' means the list of Customer feedback kept by each Provider, and includes, for the purposes of Chapter 5, the list kept for each Site.

'Cybersafety Policy' means the Commonwealth policy of that name as specified at clauses 37.19 to 37.23.

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

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

'Demerit' has the meaning given to it, in its decapitalised form, in an instrument made under section 42AR of the *Social Security (Administration) Act 1999* (Cth) dealing with Mutual Obligation Failures.

'Department' means the Commonwealth Department of Social Services or such other agency or department as may administer this Agreement on behalf of the Commonwealth from time to time and, where the context so admits, includes the Commonwealth's relevant officers, delegates, employees and agents.

'Department Employee' means an employee of the Commonwealth working for the Department of Social Services and:

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

'Department's IT Systems' means the IT computer system accessible by a Provider, through which information is exchanged between the Provider, Subcontractors, Services Australia, Services Australia Assessment Services, Ongoing Support Assessors and the Department in relation to the Services.

'Department of Employment and Workplace Relations' means the Commonwealth Department of Employment and Workplace Relations and, where the context so admits, includes the Commonwealth's relevant officers, delegates, employees and agents.

'Department's Security Policies' means policies relating to the use and security of the Department's IT Systems and Records, and includes the policy by the name of the *Security Policy for External Service Providers and Users* and any other security policies Notified by the Department from time to time. Relevant policies are available on the Department's IT Systems through the following path: Provider Portal > DES > Provider Operations > IT Security & Access, or at such other location as advised by the Department from time to time.

'Dependent Child' means a person who meets the eligibility requirements for a dependent child of a RATTUJ Participant as specified in any Guidelines, and **'Dependent Children'** has an equivalent meaning.

'DES Panel' has the meaning given in clause 6.1.

'Direct Registration' or **'Directly Register'** means Registration by the Provider of a Participant or NEIS Prospective Participant, who does not have a Referral, in accordance with clause 87 and any Guidelines.

'Direction' has the meaning given in clause 14.1.

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

'Director' means any of the following:

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

'Disability Employment Services' means Disability Employment Services – Disability Management Service, Disability Employment Services – Employment Support Service, JobAccess Services and NDRC Services delivered in accordance with the Disability Employment Services Grant Agreement; and the assessment services delivered pursuant to the National Panel of Assessors.

'Disability Employment Services – Disability Management Service' means the Disability Employment Services program by that name administered by the Department.

'Disability Employment Services – Employment Support Service' means the Disability Employment Services program by that name administered by the Department.

'Disability Employment Services – Disability Management Service Participant' means a person who meets the eligibility requirements for a Disability Employment Services – Disability Management Service Participant, in accordance with any Guidelines.

'Disability Employment Services – Employment Support Service Participant' means a person who meets the eligibility requirements for a Disability Employment Services – Employment Support Service Participant, in accordance with any Guidelines.

'Disability Employment Strategy' means a strategy implemented by the Provider designed to attract, develop and maintain employees with disability within the Provider's own organisation.

'Disability Services Guidelines' means the *Disability Services (Rehabilitation Services) Guidelines 2007* (Cth) for Providers providing Disability Employment Services – Disability Management Service and the *Disability Services (Administration of Part II of the Act) Guidelines 2013* (Cth) for Providers providing Disability Employment Services – Employment Support Service, made under section 5(1) of the Act.

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

'Disability Support Pension Recipient (Compulsory Requirements)' means a Participant who is in receipt of the Disability Support Pension, and has compulsory requirements.

'Documentary Evidence' means those Records of the Provider, as specified in this Agreement including any Guidelines, which evidence that Services were provided by the Provider for each claim

for payment made under this Agreement, or which otherwise support a claim for payment by the Provider.

'Early School Leaver' means a person who falls within the meaning given to the term 'early school leaver' by the *Social Security Act 1991* (Cth) and who has early school leaver participation requirements under the Social Security Law.

'Education' means any education activity unless otherwise advised by the Department.

'Education Placement' means placement in Education that would, or could, lead to an Education Outcome.

'Education Outcome' means the Outcomes specified in paragraph (b) of the definition of Pathway Outcome and paragraphs (c)(i), (e) and (g) of the definition of Full Outcome.

'Effective Exit' means the automatic removal of a Participant from the Department's IT Systems as being eligible for Program Services when the Participant:

- (a) is commenced in employment services or equivalent other than Program Services;
- (b) is commenced in Australian Disability Enterprises prior to midnight on 31 December 2015;
- (c) for a 26-week Period, satisfies paragraphs (c)(i), (e) or (g) in the definition of Full Outcome;
- (d) in Ongoing Support has not received any Ongoing Support for 52 weeks from the date of the last Ongoing Support Assessment;
- (e) has completed his or her Extended Employment Assistance but has not achieved an Outcome; or
- (f) participates in an activity or an event that occurs in relation to the Participant that the Department may advise the Provider from time to time as being an Effective Exit.

'Electronic Calendar' means the electronic calendar in the Department's IT Systems used by the Provider for managing, and/or setting dates and times for:

- (a) Referrals;
- (b) Engagements; and
- (c) referrals by the Provider to other relevant service providers.

'Eligible School Leaver' means a Participant cohort described as an Eligible School Leaver in any Guidelines and a Participant who Directly Registers with the Provider and who is seeking to transition from:

- (a) secondary school to post school employment; or
- (b) an Australian state or territory government disability transition to work program to employment;

and has evidence that they:

- (c) attract additional educational funding due to their disability; or
- (d) are receiving Disability Support Pension,

in accordance with any Guidelines.

'Employer' means an entity that has the legal capacity to enter into a contract of employment with a Participant.

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

‘Employment Assistance’ means the Program Services a Participant (other than a Work Assist Participant) receives from Commencement until the Program Review, Ongoing Support or Exit, whichever occurs first but does not include any time that the Participant is receiving Post Placement Support or is Suspended.

‘Employment Assistance Fund’ or **‘EAF’** means the Australian Government’s initiative which provides financial assistance for the costs of work related modifications and the work equipment for people with disability.

‘Employment Benchmark’ means the number of hours, on average, that a Participant (other than a Work Assist Participant) must work each week to achieve a Full Outcome, as identified on the Department’s IT Systems.

‘Employment Outcome’ means the Outcomes specified in:

- (a) paragraphs (a) and (d) of the definition of Pathway Outcome; and
- (b) paragraphs (a), (b), (c)(ii), (f) and (h) of the definition of Full Outcome.

‘Employment Placement’ means Employment for a Participant in a Vacancy.

‘Employment Placement Start Date’ means the day that the Participant commenced in an Employment Placement, as recorded on the Department’s IT Systems.

‘Employment Service Area’ or **‘ESA’** means a geographical area, within a Labour Market Region, identified and displayed at <https://data.gov.au> as varied by the Department from time to time at the Department’s absolute discretion.

‘Employment Services Assessment’ or **‘ESAt’** means an assessment of a Participant’s barriers to employment and work capacity conducted by Services Australia Assessment Services.

‘Employment Service Provider’ means a provider under any employment services deed with the Department of Employment and Workplace Relations.

‘Employment Services Tip Off Line’ means the telephone (1300 874 536) and email service (estipoff@employment.gov.au), developed primarily for current and former employees or Providers who suspect, or have evidence of incorrect claims or acceptance of payments, or any other activities that may be a breach of the Agreement, and which allows those persons to report their concerns to the Department.

‘Employment Systems Help Desk’ means the Department of Employment and Workplace Relations’ centralised point of IT support for Program Providers in relation to the Department’s IT Systems, including the Employment Services System and Employment and Community Services Network.

‘Engagement’ means an engagement that is recorded in the Electronic Calendar in accordance with clause 91.6.

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

‘ESAt’ see **Employment Services Assessment**.

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

‘Exemption’ means circumstances recorded by Services Australia, resulting in an exemption by Services Australia of a Participant’s Mutual Obligation Requirements for a specified period of time.

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

- (a) incorporated in;

- (b) supplied with, or as part of; or
 - (c) required to be supplied with, or as part of,
- the Agreement Material.

'Exit' means an exit of a Participant from Program Services in accordance with clause 139 [Exits].

'Exploring Self-Employment Workshop' means workshops that help Participants undertaking Self-Employment Assistance to learn about small business, help them generate and validate a business idea, and decide whether self-employment is a good fit for them.

'Extended Employment Assistance' means the Program Services a Participant (other than a Work Assist Participant) may receive for a period of up to 26 weeks after Employment Assistance, which period ends when the Participant starts Ongoing Support, or Exits, whichever occurs first.

'Fees' means any amounts payable by the Department under this Agreement specified to be Fees, and any amounts not expressly identified as a Reimbursement, Wage Subsidy or an Ancillary Payment.

'Financial Quarter' means any one of the following:

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

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

'Flexible Ongoing Support' is a Level of Ongoing Support and means the provision of Program Services to a Disability Employment Services – Disability Management Service Participant or a Disability Employment Services – Employment Support Service Participant to maintain that Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with any Guidelines.

'Flexible Ongoing Support Fee' means the Fee payable in accordance with clause 148.2 and Annexure B.

'Four-week Outcome' means for the duration of the Four-week Period the Participant remains each week in Employment or an Apprenticeship or a Traineeship and, after Commencement:

- (a) works a minimum of 24 hours in 4 Consecutive Weeks where that Participant has an 8 Hour Employment Benchmark;
- (b) works a minimum of 45 hours in 4 Consecutive Weeks where that Participant has a 15 Hour Employment Benchmark;
- (c) works a minimum of 69 hours in 4 Consecutive Weeks where that Participant has a 23 Hour Employment Benchmark; or
- (d) works a minimum of 90 hours in 4 Consecutive Weeks where that Participant has a 30 Hour Employment Benchmark.

'Four-week Outcome Fee' means the Outcome Fee payable for a Participant achieving a Four-week Outcome.

'Four-week Period' means a period of 4 Consecutive Weeks for an employment related activity which satisfies the requirements for an Outcome and commences on the Employment Placement Start Date.

‘Full Outcome’ means for the duration of a 13-week Period, a 26-week Period or a 52-week Period:

- (a) a Participant remains each fortnight in Employment or Unsubsidised Self-Employment or an Apprenticeship or Traineeship that generates sufficient income to have caused the Participant’s Basic Rate of any Income Support Payment to cease; or
- (b) a Participant remains each week in Employment or Unsubsidised Self-Employment or an Apprenticeship or a Traineeship and, after the Anchor Date:
 - (i) on average, works a minimum of 104 hours in 13 Consecutive Weeks (for the 13-week Period) or 208 hours in 26 Consecutive Weeks (for the 26-week Period or 52-week Period) where that Participant has an 8 Hour Employment Benchmark;
 - (ii) on average, works a minimum of 195 hours in 13 Consecutive Weeks (for the 13-week Period) or 390 hours in 26 Consecutive Weeks (for the 26-week Period or the 52-week Period) where that Participant has a 15 Hour Employment Benchmark;
 - (iii) on average, works a minimum of 299 hours in 13 Consecutive Weeks (for the 13-week Period) or 598 hours in 26 Consecutive Weeks (for the 26-week Period or the 52-week Period) where that Participant has a 23 Hour Employment Benchmark; or
 - (iv) on average, works a minimum of 390 hours in 13 Consecutive Weeks (for the 13-week Period) or 780 hours in 26 Consecutive Weeks (for the 26-week Period or the 52-week Period) where that Participant has a 30 Hour Employment Benchmark;
- (c) a Participant who is a Disability Support Pension Recipient (Compulsory Requirements) or who has not completed year 12 or equivalent and passes one Semester of a single qualification course of two or more Semesters duration that is at the Certificate III level or above:
 - (i) transfers to Youth Allowance (Student), Abstudy or Austudy or where the Participant does not transfer to Youth Allowance (Student), Abstudy or Austudy, meets the requirements of a Qualifying Education Course; or
 - (ii) on a part-time basis (as defined by the training institution) during which time a Participant remains each week in Employment (or Unsubsidised Self-Employment or an Apprenticeship or a Traineeship):
 - (A) for an average of at least 8 hours each week averaged over the Semester; or
 - (B) that would satisfy items (a)(i) or (a)(ii) of the definition of Pathway Outcome; whichever is the greater; or
- (d) any other event that the Department may notify the Provider from time to time as being a Full Outcome;
- (e) a Participant who is in receipt of Parenting Payment, Newstart Allowance, Youth Allowance (other) or Special Benefit and who is identified and recorded on the Department’s IT Systems as a Principal Carer with part-time participation requirements passes one Semester of a course that satisfies the requirements of paragraphs (a) and (b) of the definition of Qualifying Education Course and is at the Certificate III level or above and undertakes study of not less than 30 hours in each fortnight (counting any contact and any non-contact hours of study);
- (f) a Participant who is in receipt of Parenting Payment, Newstart Allowance, Youth Allowance (other) or Special Benefit and who is identified and recorded on the Department’s IT Systems as a Principal Carer with part-time participation requirements:
 - (i) passes one Semester of a course that satisfies the requirements of paragraphs (a) and (b) of the definition of Qualifying Education Course and is at the Certificate III level or above; and
 - (ii) undertakes paid Employment of at least 20 hours in each fortnight, and

- (iii) the total amount of time spent by the Participant in paid Employment and study (counting any contact and any non-contact hours of study) is not less than 30 hours in each fortnight;
- (g) a Participant who is recorded on the Department's IT Systems as a Principal Carer and is in receipt of Parenting Payment without participation requirements passes one Semester of a course that satisfies the requirements of paragraphs (a) and (b) of the definition of Qualifying Education Course and is at the Certificate III level or above, undertakes study of not less than 30 hours in each fortnight (counting any contact and any non-contact hours of study);
- (h) a Participant who is recorded on the Department's IT Systems as a Principal Carer and is in receipt of Parenting Payment without participation requirements:
 - (i) passes one Semester of a course that satisfies the requirements of paragraphs (a) and (b) of the definition of Qualifying Education Course and is at the Certificate III level or above;
 - (ii) undertakes paid Employment of at least 20 hours in each fortnight, and
 - (iii) the total amount of time spent by the Participant in paid Employment and study (counting any contact and any non-contact hours of study) is not less than 30 hours in each fortnight.

'Full-Time' means, for a Site, Monday to Friday from 9am-5pm daily on Business Days, or as otherwise agreed with the Department.

'Full-Time Study' means:

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

'Funds' or **'Funding'** means any amounts (in cash or kind) payable by the Department under this Agreement specified to be Funds or Funding, including any amounts not expressly identified as Fees, Reimbursements, Wage Subsidies or Ancillary Payments.

'Funding Level' means the funding level for a Participant as determined using the 2018 Funding Level Tool.

'Gaining Provider' means the Provider receiving a Participant on its caseload, where the Participant transfers from a different Provider.

'Generalist Service Provider' means, in relation to a Disability Employment Services – Disability Management Service Participant, a Program Provider who provides Program Services to all types of Disability Employment Services – Disability Management Service Participants and, in relation to a Disability Employment Services – Employment Support Service Participant, means a Program Provider who provides Program Services to all types of Disability Employment Services – Employment Support Service Participants.

Note: A Generalist Service Provider may also be a Specialist Service Provider in the same ESA if specified in the Schedule.

'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 Agreement that apply to the provision of Disability Employment Services, as amended from time to time by the Department.

'Harmful Code' means any software or code that is designed to infiltrate a computer, system, network or other infrastructure without an end user's informed consent, such as malware, virus, trojans, worms, spam, phishing email, backdoors, botspyware, adware, diallers, toolkits, keyloggers, highjackers, web bug, exploits, cracking tools, and hacking tools.

'High Ongoing Support' is a Level of Ongoing Support and means the provision of Program Services to a Disability Employment Services – Employment Support Service Participant to maintain that Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with any Guidelines.

'High Ongoing Support Fee' means the Fee payable in accordance with clause 148.17 and in Annexure B.

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

'Independent Worker' means a Participant who is assessed as not requiring Ongoing Support, in accordance with any Guidelines.

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

'Indigenous Enterprise' means an organisation that is 50 per cent or more Indigenous owned that is operating a business.

'Information Commissioner' means the person appointed under section 14 of the *Australian Information Commissioner Act 2010* (Cth) as the Australian Information Commissioner.

'Initial Agreement Term' means from the Agreement Commencement Date until 30 June 2023.

'Initial Interview' means an initial meeting between the Provider and a Participant in accordance with clause 92 [Initial Interview].

'Initial Interview for a New Program' means an initial meeting between the Provider and a Participant when the Participant has moved from Disability Employment Services – Disability Management Service to Disability Employment Services – Employment Support Service (or vice versa) in accordance with a JCA or OSA, as described in clause 92 [Initial Interview].

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

'Inspector' means a person appointed as such under the WHS Act.

'Instance' means the provision of Program Services to a Participant receiving Flexible Ongoing Support, in accordance with any Guidelines.

'Intellectual Property Rights' includes:

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

but does not include:

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

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

'Intervention' means a specialist service provided by a private sector or community entity or an employment or training program administered by the Commonwealth or by a state or territory government (including by state or territory government funded providers) that the Provider may provide, pay for, or otherwise access, to provide specialised assistance to Participants to address Vocational Barriers and Non-vocational Barriers.

Note: The Department will only reimburse Program Providers for Interventions if this Agreement specifically provides that reimbursement is available under the EAF.

'JCA' see **Job Capacity Assessment**.

'JobAccess' or **'JobAccess Services'** means the services of that name administered by the Department.

'JobAccess Provider' means the entity contracted by the Department to deliver JobAccess Services.

'Job Capacity Assessment' or **'JCA'** means an assessment conducted by Services Australia Assessment Services to determine eligibility for the Disability Support Pension and includes assessment of barriers to employment and work capacity.

'Job Plan' means the Job Plan under the *Social Security Act 1991* (Cth) and as described in clause 106 [General requirements for a Job Plan], or, if the *Social Security Act 1991* (Cth) is amended, any other such agreements.

'Job Referral' means a job opportunity that the Provider requests the Participant to act on.

'Job Search' means an instance of active contact with a potential Employer to apply for a job, and includes a contact by phone or in person, by submitting a written application, or by attending a job interview.

Note: Relevant job vacancies do not need to have been publically advertised to count as a Job Search. However, looking for job vacancies in newspapers or online does not count as a Job Search unless actual contact is made with the relevant potential Employer.

'Job Search Period' means, unless otherwise specified in any Guidelines, the first month and each successive month thereafter, of a Participant (Mutual Obligation) or Disability Support Pension Recipient's (Compulsory Requirements) Period of Unemployment.

'Job Search Requirement' means the number of Job Searches that a Participant (Mutual Obligation) or a Disability Support Pension Recipient (Compulsory Requirements) must complete as specified in any Guidelines and which must be specified in the Participant's Job Plan in accordance with clause 110.

'Job Seeker ID' means the unique identification number for a Participant recorded in the Department's IT Systems.

'Key Performance Indicators' or **'KPIs'** means the performance indicators specified in this Agreement or as Notified to the Provider by the Department 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 <http://lmip.gov.au/>, or as notified by the Department from time to time.

'Learning Centre' means the range of online training products to assist Providers to understand the required policies and system functions to perform their day to day tasks in relation to the Services.

'Level of Ongoing Support' means Flexible Ongoing Support, Moderate Ongoing Support or High Ongoing Support.

'Liquidated Damages' means the amount that the Department may recover from a Provider in accordance with clause 159 [Liquidated damages].

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

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

'Maximum Caseload' means the maximum number of Participants nominated by the Provider for each Site for which it is able to provide Services at any one time, excluding Suspended Participants.

'Minister' has the same meaning as in the Act.

'Moderate Intellectual Disability Participant' means a Disability Employment Services - Employment Support Service Participant who meets the eligibility requirements of a Moderate Intellectual Disability Participant, in accordance with any Guidelines.

'Moderate Intellectual Disability Payment' means the Fee payable in accordance with clause 152 and Annexure B.

'Moderate Ongoing Support' is a Level of Ongoing Support and means the provision of Program Services to a Disability Employment Services – Employment Support Service Participant to maintain that Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with any Guidelines.

'Moderate Ongoing Support Fee' means the Fee payable in accordance with clause 148.8 and Annexure B.

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

'Mutual Obligation Failure' means where a Participant fails to comply with obligations such as attending appointments, undertaking activities, or taking action to gain employment.

'Mutual Obligation Requirements' means the activity test, participation requirements or other requirements that a Participant must meet in order to receive an Income Support Payment, including a requirement that, if not complied with, would be a:

- (a) Mutual Obligation Failure;
 - (b) Work Refusal Failure;
 - (c) Unemployment Failure; or
 - (d) failure to meet a Reconnection Requirement,
- under the Social Security Law.

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

'National Disability Insurance Agency' means the agency that is established by the *National Disability Insurance Scheme Act 2013* as the National Disability Insurance Scheme Launch Transition Agency.

'National Disability Recruitment Coordinator', 'NDRC' or 'NDRC Provider' means the provider contracted by the Department to provide National Disability Recruitment Coordinator Services.

'National Panel of Assessors' or 'the Panel' means the panel of assessors that provide the SWS assessment services, the OSA assessment services, the WMS assessment services or other assessment-related services established by the Department.

‘National Standards for Disability Services’ means the disability employment standards and rehabilitation program standards determined under sections 5A(1)(b) and 5A(1)(c) of the Act respectively.

‘National Work Experience Program’ or **‘NWEF’** means the Commonwealth program of that name, administered by the Department of Employment and Workplace Relations, which aims to provide eligible Participants as specified in any Guidelines with opportunities to enhance their vocational skills and experience in a work-like environment.

‘National Work Experience Program Placement’ or **‘NWEF Placement’** means a short-term unpaid work experience placement that meets the eligibility requirements for a National Work Experience Program Placement, as specified under clause 98 and any Guidelines.

‘NDIS’ means the national disability insurance scheme that is established under the *National Disability Insurance Scheme Act 2013* (Cth).

‘NDIS Participant’ means a Disability Employment Services – Employment Support Service Participant who is eligible to receive services under NDIS and who is identified on the Department’s IT Systems as being a NDIS Participant.

‘NDRC Services’ means the Services provided by the National Disability Recruitment Coordinator.

‘New ESAt/JCA’ means:

- (a) an ESAt conducted as part of a Program Review;
- (b) an ESAt or JCA conducted after a Program Review but before the Participant Exits; or
- (c) an ESAt or JCA conducted after an Exit where the Participant seeks to return to Program Services after Exiting.

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

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

- (a) employment in the sex industry or involving nudity, including retail positions;
- (b) volunteer work, work experience or unpaid work;
- (c) job that involves taking up employment in another country, regardless of whether the salary is paid in Australian Dollars or by an Australian company;
- (d) job involving illegal activity;
- (e) position involving income or funds from gambling deemed to be inappropriate by the Department;
- (f) discriminatory job;
- (g) except in relation to wage rates, 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;
- (h) in relation to wage rates, position sourced by the Provider where the wage rate is not at least equivalent to:
 - (i) the minimum rate prescribed in any modern award that covers or applies to the position; or
 - (ii) if no modern award covers or applies to the position, the national minimum wage;
- (i) a program funded by the Australian Government, or a state or territory government, including a Work Trial program, the Community Jobs Program or a Complementary Service, unless otherwise specified in any Guidelines;

- (j) non-ongoing employment or a Work Trial, as specified in any Guidelines;
- (k) Recurring employment, unless otherwise specified in any Guidelines;
- (l) employment that pays a commission as either the entire remuneration or part of the remuneration, except where the commission being paid to the Participant is in addition to an amount which is paid to the Participant in accordance with any applicable Commonwealth, state or territory legislation and any applicable modern award or a national minimum wage order;
- (m) employment in the same or a similar position vacated in the previous 14 calendar days by a Participant who has already claimed an Outcome Fee;
- (n) position that is contrived employment, as specified in any Guidelines;
- (o) position that is not Open Employment, as specified in any Guidelines;
- (p) employment within the Provider's Own Organisation or a Related Entity, unless otherwise specified in any Guidelines, or unless the Participant is so employed for:
 - (i) at least 13 Consecutive Weeks from the Anchor Date for a 13-week Period;
 - (ii) at least 26 Consecutive Weeks from the Anchor Date for a 26-week Period; or
 - (iii) at least 52 Consecutive Weeks from the Anchor Date for a 52-week Period, in accordance with any Guidelines;
- (q) position where the type of work is inappropriate for the Participant based on their ESA or JCA or because they only have a Partial Capacity to Work;
- (r) training course not eligible for Austudy, Abstudy, or Youth Allowance (Student);
- (s) training course duplicating, or having significant components similar to, employment services, such as training for work preparation or job search skills;
- (t) Pre-Existing education or training related activity;
- (u) Qualifying Education Course for which the Provider has already received an Outcome Fee for a 26-week Period for that Participant in a previous Period of Service;
- (v) Qualifying Education Course where the Participant is an Eligible School Leaver, unless the Participant has left school and any other requirements as specified in any Guidelines in respect of that Participant have been met;
- (w) other position that the Department may Notify from time to time.

In relation to 13-week Outcome, 26-week Outcome and 52-week Outcome only, a Non-Payable Outcome also includes a placement of the Participant into any:

- (x) Pre-Existing employment related activity, unless that Participant, at Commencement, was working in that Pre-Existing employment related activity for less hours per week on average than their Employment Benchmark.

In relation to a Four-week Outcome only, a Non-Payable Outcome also includes a placement of the Participant into any:

- (y) position within a Subcontractor (or the part of a Subcontractor that is involved in the delivery of Services), or within any entity that a Subcontractor subcontracts to assist in providing the Services under this Agreement, or which is otherwise engaged to provide the Services;
- (z) NEIS Participant Agreement;
 - (aa) Pre-Existing employment related activity;
 - (bb) school-based Traineeship and/or Apprenticeship;

- (cc) training course, Education Placement or Education related activity; or
- (dd) self-employment opportunity.

Note: In this definition of Non-Payable Outcome, the term 'work experience' refers to a paid or unpaid short term placement of a person in a workplace to enable the person to observe and learn in an actual work setting.

'Non-vocational Barriers' means the range of barriers that can prevent a person from obtaining and sustaining employment or education or from undertaking further skills development, other than Vocational Barriers.

'Notice' means a written notice in accordance with clause 77 [Notices]; and **'Notify'**, **'Notified'** and **'Notification'** have the same meaning.

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

'NWEF Host Payment' means the amount specified in Annexure B, unless otherwise specified in any Guidelines.

'Objectives' means the objectives of the Services as described in this Agreement.

'Observational Work Experience' means voluntary, short-term, unpaid, observational work experience placements arranged by a Provider as a Specified Activity.

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

'Ongoing Support' means the Program Services a Participant may receive while they are in Employment, Unsubsidised Self-Employment, an Apprenticeship or a Traineeship after a 26-week Employment Outcome or Work Assist Outcome and until they move into Work Based Personal Assistance Only or Exit and is provided in the form of a Level of Ongoing Support.

'Ongoing Support Assessment' or **'OSA'** means an Assessment by an Ongoing Support Assessor as to a Participant's need for Ongoing Support.

'Ongoing Support Assessor' means a person, organisation or Commonwealth agency, contracted by the Commonwealth to conduct an OSA.

'Open Employment' means Employment where an employee with a disability is engaged in the mainstream workforce, alongside employees without disability and any requirements provided in any Guidelines have been met.

'Outcome' means:

- (a) a Work Assist Outcome;
- (b) a Four-week Outcome;
- (c) a Pathway Outcome; or
- (d) a Full Outcome.

'Outcome Fee' means the Fee payable in accordance with:

- (a) clause 147 [Outcome Fees]; and
- (b) Annexure B,

and includes a Four-week Outcome, Pathway Outcome Fee, a Full Outcome Fee and a Bonus Fee.

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

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

‘Parenting Payment’ has the meaning given to ‘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 the Department.

‘Partial Capacity to Work’ has the meaning given to the term ‘partial capacity to work’ by the *Social Security Act 1991* (Cth).

‘Partial Capacity to Work Participant’ or **‘PCW Participant’** means a Participant who has a Partial Capacity to Work.

‘Participant’ means a Disability Employment Services – Disability Management Service Participant or a Disability Employment Services – Employment Support Service Participant, as the context requires.

‘Participant (Mutual Obligation)’ means a Participant with Mutual Obligation Requirements and any other Participant as specified in any Guidelines, but excluding a Disability Support Pension Recipient (Compulsory Requirements).

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

‘Participation Report’ means an electronic report sent by the Provider through the Department’s IT Systems to Services Australia detailing a Participant’s act or acts of potential non-compliance with his or her Mutual Obligation Requirements, as specified in any Guidelines.

‘Party’ means a party to this Agreement.

‘PaTH Internship’ means a short-term unpaid work experience placement that meets the eligibility requirements of a PaTH Internship as specified in any Guidelines.

‘PaTH Internship Agreement’ means a written and signed agreement between the Provider, an Activity Host Organisation and a Participant in relation to a PaTH Internship, in accordance with any Guidelines.

‘PaTH Internship Amount’ means the amount specified in Annexure B, unless otherwise specified in any Guidelines.

‘PaTH Internship Outcome Fee’ means the amount specified in Annexure B, unless otherwise specified in any Guidelines.

‘PaTH Internship Period’ means a period, of no less than 4 weeks and no more than 12 weeks, that is specified in the relevant PaTH Internship Agreement as being the duration of the PaTH Internship.

‘PaTH Internship Start Date’ means the date on which the Participant commences in the relevant PaTH Internship.

‘Pathway Outcome’ means for the duration of a 13-week Period or a 26-week Period or a 52-week Period:

- (a) a Participant remains each week in Employment or Unsubsidised Self-Employment or an Apprenticeship or a Traineeship and, after the Anchor Date:
 - (i) works for a minimum of 10 hours and less than 15 hours per week on average in 13 Consecutive Weeks (for the 13-week Period) or 26 Consecutive Weeks (for the 26-week Period or 52-week Period), where that Participant has a 15 hour Employment Benchmark; or

- (ii) works for a minimum of 15 hours and less than 23 hours per week on average in 13 Consecutive Weeks (for the 13-week Period) or 26 Consecutive Weeks (for the 26-week Period or 52-week Period), where that Participant has a 23 Hour Employment Benchmark; or
- (iii) works for a minimum of 20 hours and less than 30 hours per week on average in 13 Consecutive Weeks (for the 13-week Period) or 26 Consecutive Weeks (for the 26-week Period or 52-week Period), where that Participant has a 30 hour Employment Benchmark;
- (b) a Participant who:
 - (i) transfers to Youth Allowance (Student), Abstudy or Austudy, and passes 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 passes one Semester of a single qualification course of two or more Semesters in duration and meets the requirements of a Qualifying Education Course;
- (c) any other event that the Department may notify the Provider from time to time as being a Pathway Outcome; or
- (d) a Participant that previously achieved a 13-week Pathway Outcome under paragraph (b) of the definition of a Pathway Outcome, in that same Period of Service, remains each week in Employment or Unsubsidised Self-Employment or an Apprenticeship or a Traineeship and, after the Anchor Date:
 - (i) works for a minimum of 8 hours per week on average in 13 Consecutive Weeks (for the 13-week Period), where the Participant has a 8 hour Employment Benchmark; or
 - (ii) works for a minimum of 10 hours per week on average in 13 Consecutive Weeks (for the 13-week Period), where the Participant has a 15 hour Employment Benchmark; or
 - (iii) works for a minimum of 15 hours per week on average in 13 Consecutive Weeks (for the 13-week Period), where that Participant has a 23 Hour Employment Benchmark; or
 - (iv) works for a minimum of 20 hours per week on average in 13 Consecutive Weeks (for the 13-week Period), where that Participant has a 30 hour Employment Benchmark.

'Performance Rating' means the relative measure of performance of the Provider against KPI 1 and KPI 2 as calculated by the Department.

'Period of Service' means a period which begins on Commencement and ends when the Participant reaches 52 Consecutive Weeks in Employment from the Anchor Date or is Exited, whichever happens earlier.

'Period of Unemployment' means the period which commences on the date on which a Participant registers with Services Australia or directly with the Provider as unemployed, in accordance with any Guidelines.

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

'Permissible Break' means where a Participant:

- (a) involuntarily ceases Employment or has a break from their Employment due to a reason outside of the Participant's or Provider's control, which satisfies the requirements specified in any Guidelines; and
- (b) subsequently commences in alternative Employment or returns to the same employer; and
- (c) the relevant break or breaks do not exceed:
 - (i) 28 calendar days in total in a:
 - A. 13-week Period;

- B. every 13 weeks of the 26-week Period; or
 - C. every 13 weeks of the 52-week Period; or
- (ii) any other period specified by the Department, including in any Guidelines.

'Personal Event' means a Participant's personal event that has been recorded in their Electronic Calendar.

'Personal Event Time' means the time that a Personal Event, that the Provider has confirmed in accordance with clause 91.8, is scheduled to occur.

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

'Personnel' means:

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

'Placement' means:

- (a) an Education Placement; or
- (b) an Employment Placement.

'Post Placement Support' means the Program Services a Participant (other than a Work Assist Participant) receives, in relation to an Outcome, for the period from the Anchor Date and while the Participant is working towards an Outcome, unless the Participant is in Ongoing Support.

'Pre-Existing' means an activity which a Participant started before Commencing in Program Services.

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

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

'Program Provider' means a Provider of Disability Employment Services – Employment Support Service or Disability Employment Services – Disability Management Service under Chapter 5 of this Agreement, as the context requires, and **'Disability Employment Services – Disability Management Service Provider'** and **'Disability Employment Services – Employment Support Service Provider'** have a corresponding meaning.

'Program of Support' means a program that is designed to help people prepare for, find or maintain work, and is funded wholly or partly by the Commonwealth to determine if a person is eligible for the Disability Support Pension under the Social Security Law, on the basis of a continuing inability to work.

'Program Review' means the review conducted in accordance with clause 117 [Program Review].

'Program Services' means Disability Employment Services – Disability Management Service and/or Disability Employment Services – Employment Support Service as the context requires.

'Program Summary' means a Report including the following information:

- (a) the reason for the Exit;
- (b) details of the Program Services provided to or purchased for the Participant;
- (c) details of any barriers to future employment or the maintenance of current employment for the Participant; and
- (d) any comments or other issues.

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

‘Provider’ means the party that has entered into this Agreement with the Department, and includes its Personnel, Subcontractors, successors and assigns.

‘Provider Appointment Report’ means an electronic report sent by the Provider, through the Department’s IT systems, recommending that a financial penalty be investigated and applied to a Participant (Mutual Obligation) for non-attendance at an Appointment, where the Provider has assessed the Participant (Mutual Obligation) as failing to attend an Appointment without a Valid Reason or Reasonable Excuse.

‘Provider Exit’ means the manual exiting of a Participant from the Program Services by the Program Provider, through its recording the exit and the relevant reasons on the Department’s IT Systems, in accordance with this Agreement including any Guidelines.

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

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

‘Provider Sourced Voluntary Work’ means an unpaid work experience placement arranged by the Provider in a not-for-profit community Activity Host Organisation as a Specified Activity.

‘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, unless specified in any Guidelines; and
- (c) Full-Time Study.

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

- (a) results in the attainment of a qualification not less than Certificate II level;
- (b) may have commenced although must not have been completed before the start of the Participant’s current Period of Unemployment;
- (c) must have commenced before the Anchor Date for any Directly Related Employment and must have been completed before or during the 26-week Period relating to the Directly Related Employment; and
- (d) must not have been completed more than 12 months before the Anchor Date for any Directly Related Employment.

‘Reasonable Excuse’ has the meaning given to the term ‘reasonable excuse’ in the Social Security Law.

Note: Under the Social Security law, a Participant cannot be taken to have failed to meet his or her Mutual Obligation Requirements if he or she has a Reasonable Excuse for the failure.

‘Reconnection Requirement’ has the meaning given to it, in its decapitalised form, in the *Social Security (Administration) Act 1999* (Cth).

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

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

'Recurring' means an employment activity for which the Provider has already received an Outcome Fee for a 13-week Period and/or a 26-week Period, or a Work Assist Outcome Fee for that Participant in a previous Period of Service, for the same employment position, and with the same employer.

'Re-engagement' means the process by which a Participant reconnects with Program Services following an incident (or incidents) of non-compliance with his or her Mutual Obligation Requirements or compulsory requirements, a period of Exemption or the completion of an approved activity.

'Re-engagement Appointment' means an Appointment for the purposes of Re-engagement of a Participant following an incident (or incidents) of non-compliance with his or her Mutual Obligation Requirements or compulsory 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 Services Australia, the Department, or Services Australia Assessment Services.

'Regional Area' means any area that is not a Capital City.

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

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

'Reimbursement' means any amounts payable by the Department under this Agreement as a reimbursement, or such other payments that may from time to time be Notified by the Department to be a reimbursement.

Note: Reimbursements include Wage Subsidies, Restart Payments, Relocation Assistance to Take up a Job Payments, payments in relation to Certificate of Compliance certification and surveillance costs and reimbursement available under the EAF.

'Related Entity' means:

- (a) those parts of the Provider other than Own Organisation;
- (b) 'entities connected with a corporation' as defined in section 64B of the *Corporations Act 2001* (Cth) with the word 'Provider' substituted for every occurrence of the word 'corporation' in that section;
- (c) an entity that:
 - (i) can control, or materially influence, the Provider's activities or internal affairs;
 - (ii) has the capacity to determine, or materially influence, the outcome of the Provider's financial and operating policies; or
 - (iii) is financially interested in the Provider's success or failure or apparent success or failure;
- (d) if the Provider is a company, an entity that:
 - (i) is a holding company of the Provider;
 - (ii) is a subsidiary of the Provider;
 - (iii) is a subsidiary of a holding company of the Provider;

- (iv) has one or more directors who are also directors of the Provider; or
- (v) without limiting clauses (d)(i) to (iv) of this definition, controls the Provider; or
- (e) an entity, where a familial or spousal relationship between the principals, owners, directors, officers or other like persons exists between that entity and the principals, owners, directors, officers or like persons of the Provider.

'Relationship Manager' means the person for the time being holding, occupying or performing the duties of the position specified in the Schedule, who has authority to receive and sign Notices and written communications for the Department under this Agreement.

'Relinquishing Provider' means the Provider that was providing Services to a Participant prior to his or her transfer to a different Provider.

'Relocation Assistance to Take Up a Job Agreement' or **'RATTUAJ Agreement'** means a written agreement, entered into between a Provider and a RATTUAJ Participant in relation to a RATTUAJ Payment, in a form as specified in any Guidelines.

'Relocation Assistance to Take Up a Job Participant' or **'RATTUAJ Participant'** means a Participant who meets the eligibility requirements for a RATTUAJ Participant, as specified in any Guidelines.

'Relocation Assistance to Take Up a Job Payment' or **'RATTUAJ Payment'** means a payment to assist a RATTUAJ Participant to prepare to relocate, to move and/or to settle into a new location, in accordance with any Guidelines.

'Relocation Assistance to Take Up a Job Placement' or **'RATTUAJ Placement'** means an Employment position that meets the eligibility requirements for a RATTUAJ Placement, as specified in any Guidelines.

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

'Restart Agreement' means an agreement for the purposes of the Restart Program substantially in a form as specified by the Department.

'Restart Employer' means an Employer who meets the eligibility requirements for a Restart Employer as specified in any Guidelines.

'Restart Participant' means a Participant who meets the eligibility requirements for a Restart Participant, as specified in any Guidelines.

'Restart Payment' means a payment under the Restart Program in accordance with any Guidelines.

'Restart Placement' means an Employment position which meets the eligibility requirements for a Restart Placement, as specified in any Guidelines.

'Restart Program' means the Commonwealth program of that name which provides incentives for the employment of mature age Participants.

'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 Agreement.

'Secretary' means the Secretary of the Department.

‘Security Contact’ means one or more Personnel with responsibility:

- (a) for ensuring the Provider’s compliance with the Department’s Security Policies;
- (b) to use the online identity and access management tool to manage system access; and
- (c) to communicate with the Department in relation to IT security related matters.

‘Self-Employment Allowance’ means an allowance payable by the Department of Employment and Workplace Relations to a Participant while undertaking Small Business Coaching in accordance with the Self-Employment Assistance Agreement.

‘Self-Employment Assistance’ means the assistance received by a Participant undertaking Self-Employment Assistance in accordance with the Workforce Australia Deed 2022 – 2027 and any guidelines issued by the Department of Employment and Workplace Relations, including, where applicable, the payment of Self-Employment Allowance and small business start-up costs, Small Business Training, Small Business Coaching, Exploring Self-Employment Workshops, development of a business plan, business advice sessions and business health check.

‘Self-Employment Assistance Provider’ means any entity that is contracted by the Commonwealth to provide Self-Employment Assistance under the Workforce Australia Deed 2022 – 2027.

‘Self-Employment Assistance Services’ means the services to be provided by the Self-Employment Assistance Provider to assist Participants undertaking Self-Employment Assistance in establishing and running viable new small businesses in accordance with any guidelines or written instructions that the Department of Employment and Workplace Relations may issue to the Self-Employment Assistance Provider from time to time.

‘Semester’ means a semester (or equivalent) as defined by an education or training institution, where the semester (or equivalent) is normally 26 weeks in duration but not shorter than 13 weeks and is within at least one half of a 12 month period of Full-Time Study.

‘Serious Failure Penalty’ means the suspension of Income Support Payments for an eight week period applied by Services Australia, when a Participant (Mutual Obligation) has been found, following investigation by Services Australia, to:

- (a) have refused to accept or commence a suitable job without having a Reasonable Excuse; or
- (b) be persistently non-compliant (as determined through a Comprehensive Compliance Assessment).

‘Service Fee’ means a Fee payable in accordance with clause 146 [Service Fees] and Annexure B, which is paid for the provision of all Services except those Services expressly related to:

- (a) Outcomes;
- (b) Employment Placements;
- (c) Ongoing Support;
- (d) Work Assist;
- (e) Work Based Personal Assistance; and
- (f) Self-Employment Assistance.

‘Service Guarantee’ means the set of minimum service standards of that name specified for Disability Employment Services – Disability Management Service and Disability Employment Services – Employment Support Service at Annexure C2.

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

'Services' means the services that the Provider is contracted to perform and provide under this Agreement.

'Services Australia' means the Services Australia agency and, where the context so admits, includes the agency's relevant officers, delegates, employees and agents.

'Services Australia Assessment Services' means Assessment services provided by Services Australia.

'Services Contract' means a legally enforceable agreement for the purchase of services in the form of time, effort and expertise, pursuant to agreed terms and conditions, on a buyer and supplier basis.

'Site' means one or more physical locations in an ESA as specified in the Schedule.

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

'Skills Assessment' means an assessment by the Provider, in accordance with clause 94 [Skills Assessment], to determine what work/educational skills and experience a Participant currently possesses and to identify and develop strategies for the Participant to obtain sustainable employment.

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

'Small Business Coaching' means up to 12 months of business mentoring and support for Participants undertaking Self-Employment Assistance and may include for eligible Participants, a Self-Employment Allowance for up to 39 weeks and/or rental assistance for up to 26 weeks.

'Small Business Training' means free accredited small business training of up to Certificate IV qualification available to Participants undertaking Self-Employment Assistance.

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

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

'Special Benefit' has the meaning given to the term 'special benefit' by the *Social Security Act 1991* (Cth).

'Special Class Client' means a Disability Employment Services – Disability Management Service Participant who meets the eligibility requirements of a class of persons determined by the Department to be a Special Class Client, in accordance with any Guidelines.

'Specialist Service Group' means a group of Participants with specialist needs, as identified in any Guidelines.

'Specialist Service Provider' means a Program Provider who is identified as a Specialist Service Provider in the Schedule.

'Specified Activity' means a National Work Experience Program Placement, Observational Work Experience Placement, PaTH Internship, Provider Sourced Voluntary Work and any other Activity specified as such in any Guidelines.

'Star Rating' means the relative measure of performance of the Provider for Program Services, assessed by the Department at its absolute discretion.

'Statement of Applicability' or **'SOA'** means the document of that name that specifies the accreditation requirements for Third Party Systems, issued by the Department of Employment and Workplace Relations.

‘Subcontract’ means an agreement entered into by the Provider by which some or all of the Services are conducted by another entity, and **‘Subcontract’** and **‘Subcontracting’** refer to the act of entering into any such an agreement.

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

‘Supported Wage System’ or **‘SWS’** means the Australian Government program that makes provision for eligible people with disability to access a productivity based wage assessment.

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

‘Suspension’ means a period of time of that name, as recorded by either the Provider (in accordance with this Agreement) or Services Australia on the Department’s IT System, which is not counted as time for the purposes of calculating or accruing any entitlement to Fees and the requirement to provide Program Services to a 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.

‘Third Party IT Provider’ means an entity contracted by the Provider to provide information technology systems to the Provider that are designed for the purposes of providing the Services.

‘Third Party IT Provider Deed’ means an agreement between a Third Party IT Provider and the Department of Employment and Workplace Relations in the terms and form as advised by the Department.

‘Third Party System’ means any information technology system, other than the system(s) provided by Department of Employment and Workplace Relations, that is used by the Provider or any Subcontractor in the provision of the Services. To avoid doubt, a Third Party System includes an information technology system that is located on the Provider's premises or hosted externally by a third party.

‘Traineeship’ has the same meaning as Apprenticeship.

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

‘Transferred Participant’ means a Participant who is identified in the Department’s IT Systems as a transferred Participant.

‘Transferred Relocation Assistance to Take Up a Job Participant’ or **‘Transferred RATTUAJ Participant’** means a RATTUAJ Participant who has been previously serviced by an employment services provider other than the Provider.

‘Transferred Restart Participant’ means a Restart Participant who has been previously serviced by an employment services provider other than the Provider.

‘Transferred Wage Subsidy Participant’ means a Participant who is the subject of a Wage Subsidy which was negotiated with the relevant Employer by a Program Provider other than the Provider.

‘Transition Period’ means the period, if any, Notified by the Department to the Provider in accordance with clause 62 [Transition out].

‘Unemployment Failure’ means where a Participant becomes unemployed because of a voluntary act (except a reasonable act) or misconduct.

‘Unsubsidised Self-Employment’ means self-employment as specified in any Guidelines.

‘Vacancy’ means any position for paid employment with an Employer that is not a Non-Payable Outcome.

'Valid ESAt' means an ESAt that was conducted within the last two years where the Participant has not had a significant change of circumstances which would make the ESAt invalid, in accordance with any Guidelines.

'Valid JCA' means a JCA that was conducted within the last two years where the Participant has not had a significant change of circumstances which would make the JCA invalid, in accordance with any Guidelines.

'Valid Reason' means a valid reason as specified in any Guidelines.

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

'Voluntary Change in Employment' means where a Participant in either Post Placement Support or Ongoing Support voluntarily ceases Employment and subsequently commences in alternative Employment in accordance with any Guidelines, and the alternative Employment commences within:

- (a) seven calendar days of ceasing Employment; or
- (b) a longer period from the date of ceasing Employment, where this is in accordance with any Guidelines.

'Volunteer (Mutual Obligation)' means a Participant who is not a Disability Support Pension Recipient (Compulsory Requirements) and:

- (a) is subject to an Exemption;
- (b) has part-time Mutual Obligation Requirements and is satisfying his or her Mutual Obligation Requirements;
- (c) has a temporary reduced work capacity of less than 15 hours per week, as determined by an ESAt or JCA, for the period determined by an ESAt or JCA.
- (d) is a PCW Participant with a current or future work capacity of less than 15 hours per week;
- (e) is aged 55 years or over and is satisfying his or her Mutual Obligation Requirements; or
- (f) is advised by the Department to be a Volunteer (Mutual Obligation),

and who volunteers to participate in additional activities.

'Volunteer (Non-mutual Obligation)' means a Participant who does not have Mutual Obligation Requirements.

'Wage Subsidy' means a wage subsidy:

- (a) paid under the Wage Subsidy Scheme; or
- (b) paid under a scheme that offers Commonwealth financial assistance through wage subsidies to employers who employ eligible workers with disability,

and **'Wage Subsidies'** has an equivalent meaning, where reference is to more than one Wage Subsidy.

'Wage Subsidy Scheme' means the Commonwealth Scheme of that name that offers financial assistance through wage subsidies to employers who employ eligible workers with disability.

'WHS Act' means the *Work Health and Safety Act 2011* (Cth) and any 'corresponding WHS law' as defined in section 4 of the *Work Health and Safety Act 2011* (Cth).

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

'WHS Laws' means the WHS Act and WHS Regulations.

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

‘Workforce Australia Deed 2022 – 2027’ means the deed of that name entered into between a provider and the Department of Employment and Workplace Relations for the provision of employment services.

‘Work Assist Outcome’ means for the duration of a period of 26 Consecutive Weeks from the Anchor Date, a Work Assist Participant remains in Active Employment. For the purposes of this definition, Active Employment means that the Work Assist Participant is engaged in work:

- (a) for their normal number of hours per week as recorded by the Provider on the Department’s IT Systems when the Work Assist Participant Commenced; or
- (b) for less than their normal number of hours per week which, in accordance with any Guidelines, is appropriate for the Work Assist Participant due to their special circumstances; and
- (c) has not changed Employer,

in accordance with any Guidelines.

‘Work Assist Outcome Fee’ means the Fee payable in accordance with clause 149.8 and Annexure B.

‘Work Assist Participant’ means a Participant who meets the eligibility requirements for a Work Assist Participant in accordance with any Guidelines.

‘Work Assist Service Fee’ means the Fee payable in accordance with clause 149.2 and Annexure B.

‘Work Assist Services’ means the Program Services a Work Assist Participant receives from Commencement until the Participant is Exited or achieves a Work Assist Outcome.

‘Work Based Personal Assistance’ means, in accordance with any Guidelines, additional regular personal support in Employment, Unsubsidised Self-Employment, Apprenticeships and Traineeships:

- (a) required by a Disability Employment Services – Employment Support Service Participant due to their physical or neurological disability or medical condition;
- (b) purchased, or provided directly, by a Provider; and
- (c) provided in the workplace.

‘Work Based Personal Assistance Fee’ means the Fee payable in accordance with clause 150 [Work Based Personal Assistance Fees for Disability Employment Services – Employment Support Service Providers] and Annexure B.

‘Work Based Personal Assistance Only’ means the Work Based Personal Assistance which a Work Based Personal Assistance Only Participant may receive after any period of Ongoing Support, in accordance with any Guidelines.

‘Work Based Personal Assistance Only Participant’ means a Disability Employment Services – Employment Support Service Participant who:

- (a) meets the eligibility requirements for Work Based Personal Assistance Only in accordance with any Guidelines; and
- (b) is therefore entitled to receive Work Based Personal Assistance Only and no other Program Services.

‘Work Refusal Failure’ means where a Participant refuses or fails to accept an offer of suitable employment.

‘Workplace Modifications’ or **‘WMS’** means the Australian Government assistance for modifying a workplace or purchasing special services or equipment for eligible employees with disability.

‘Workshop’ means an ‘Exploring Being My Own Boss’ workshop or any other workshop specified by the Department of Employment and Workplace Relations to be a Workshop.

‘Workshop Provider’ means a NEIS Provider that is contracted by the Department of Employment and Workplace Relations to deliver Workshops (including the Provider where relevant).

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

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

‘Youth Allowance (Student)’ has the meaning given to the term ‘youth allowance’ by the *Social Security Act 1991* (Cth), as it applies to students who are undertaking full-time study within the meaning of that Act.

ANNEXURE B DISABILITY EMPLOYMENT SERVICES – Fees

ANNEXURE B1 DISABILITY EMPLOYMENT SERVICES FEE SCHEDULE - 1 JULY 2018 ONWARDS

Table 1: DES-ESS and DES-DMS Fees

New fee schedule –Indexation inclusive

	DMS FY 2023/24					ESS FY 2023/24				
	DMS 1	DMS 2	DMS 3	DMS 4	DMS 5	ESS 1	ESS 2	ESS 3	ESS 4	ESS 5
SERVICE FEES										
1 st & 2 nd Quarterly Service Fees	\$1,358.81	\$1,358.81	\$1,358.81	\$1,358.81	\$1,358.81	\$788.37	\$788.37	\$788.37	\$1,654.14	\$1,654.14
3 rd , 4 th , 5 th , 6 th , 7 th & 8 th Quarterly Service Fee	\$679.99	\$679.99	\$679.99	\$679.99	\$679.99	\$788.37	\$788.37	\$788.37	\$1,654.14	\$1,654.14
OUTCOME FEES (4 WEEKS)										
Full Outcome – 4 Weeks	\$783.83	\$1,030.65	\$1,248.27	\$1,484.27	\$1,938.97	\$837.95	\$1,162.75	\$1,418.24	\$1,683.48	\$2,259.44
Moderate Intellectual Disability Payment – 4 Weeks	N/A	N/A	N/A	N/A	N/A	\$2,512.77	\$2,512.77	\$2,512.77	\$2,512.77	\$2,512.77
OUTCOME FEES (13 WEEKS)										
Full Outcome – 13 Weeks	\$1,248.27	\$2,163.08	\$3,171.02	\$4,486.4	\$7,653.08	\$1,484.27	\$2,852.72	\$4,248.23	\$5,992.32	\$10,789.44

	DMS FY 2023/24					ESS FY 2023/24				
	DMS 1	DMS 2	DMS 3	DMS 4	DMS 5	ESS 1	ESS 2	ESS 3	ESS 4	ESS 5
Full Outcome (Education) – 13 Weeks	\$1,248.27	\$2,163.08	\$3,171.02	\$4,486.40	\$4,486.40	\$1,484.27	\$2,852.72	\$4,248.23	\$5,992.32	\$5,992.32
Pathway Outcome – 13 Weeks	\$412.47	\$713.45	\$1,046.90	\$1,479.95	\$2,525.76	\$489.35	\$940.81	\$1,402.00	\$1,977.96	\$3,560.76
Pathway Outcome (Education) – 13 Weeks	\$412.47	\$713.45	\$1,046.90	\$1,479.95	\$1,479.95	\$489.35	\$940.81	\$1,402.00	\$1,977.96	\$1,977.96
Moderate Intellectual Disability Payment – 13 Weeks	N/A	N/A	N/A	N/A	N/A	\$7,886.06	\$7,886.06	\$7,886.06	\$7,886.06	\$7,886.06
Full Bonus Outcome – 13 Weeks	\$249.66	\$432.61	\$634.21	\$897.27	\$1,530.62	\$296.85	\$570.54	\$849.65	\$1,198.47	\$2,157.89
Pathway Bonus Outcome – 13 Weeks	\$82.50	\$142.70	\$209.38	\$295.99	\$505.15	\$97.87	\$188.16	\$280.41	\$395.60	\$712.15
OUTCOME FEES (26 WEEKS)										
Full Outcome – 26 Weeks	\$1,932.49	\$3,347.47	\$4,910.77	\$6,946.11	\$11,850.40	\$2,297.32	\$4,412.77	\$6,571.53	\$9,272.68	\$16,692.98
Full Outcome (Education) – 26 Weeks	\$1,932.49	\$3,347.47	\$4,910.77	\$6,946.11	\$6,946.11	\$2,297.32	\$4,412.77	\$6,571.53	\$9,272.68	\$9,272.68
Pathway Outcome – 26 Weeks	\$638.75	\$1,105.35	\$1,620.69	\$2,292.99	\$3,910.45	\$757.85	\$1,456.12	\$2,168.49	\$3,059.49	\$5,509.48
Moderate Intellectual Disability Payment – 26 Weeks	N/A	N/A	N/A	N/A	N/A	\$16,006.71	\$16,006.71	\$16,006.71	\$16,006.71	\$16,006.71
Full Bonus Outcome – 26 Weeks	\$386.51	\$669.49	\$982.15	\$1,389.21	\$2,370.08	\$459.46	\$882.55	\$1,314.31	\$1854.53	\$3338.60
Pathway Bonus Outcome – 26 Weeks	\$127.75	\$221.07	\$324.14	\$458.59	\$782.09	\$151.57	\$291.22	\$433.70	\$611.89	\$1,101.89

	DMS FY 2023/24					ESS FY 2023/24				
	DMS 1	DMS 2	DMS 3	DMS 4	DMS 5	ESS 1	ESS 2	ESS 3	ESS 4	ESS 5
OUTCOME FEES (52 WEEKS)										
Full Outcome – 52 Weeks	\$429.81	\$744.84	\$1,092.36	\$1,543.81	\$2632.94	\$511.00	\$979.78	\$1,460.46	\$2,060.22	\$3,710.15
Pathway Outcome – 52 Weeks	\$141.82	\$245.75	\$359.42	\$509.91	\$869.35	\$167.81	\$323.70	\$482.84	\$679.89	\$1,224.45
Moderate Intellectual Disability Payment	N/A	N/A	N/A	N/A	N/A	\$2,910.52	\$2,910.52	\$2,910.52	\$2,910.52	\$2,910.52
ONGOING SUPPORT FEES										
Flexible Ongoing Support (initial)	\$476.36	\$476.36	\$476.36	\$476.36	\$476.36	\$476.36	\$476.36	\$476.36	\$476.36	\$476.36
Moderate Ongoing Support (initial)	N/A	N/A	N/A	N/A	N/A	\$439.72	\$439.72	\$439.72	\$439.72	\$439.72
High Ongoing Support (initial)	N/A	N/A	N/A	N/A	N/A	\$1,099.28	\$1,099.28	\$1,099.28	\$1,099.28	\$1,099.28
Flexible Ongoing Support (per instance)	\$476.36	\$476.36	\$476.36	\$476.36	\$476.36	\$476.36	\$476.36	\$476.36	\$476.36	\$476.36
Moderate Ongoing Support (Quarterly)	N/A	N/A	N/A	N/A	N/A	\$1,429.07	\$1,429.07	\$1,429.07	\$1,429.07	\$1,429.07
High Ongoing Support (Quarterly)	N/A	N/A	N/A	N/A	N/A	\$3,572.66	\$3,572.66	\$3,572.66	\$3,572.66	\$3,572.66
Moderate Ongoing Support (Monthly)	N/A	N/A	N/A	N/A	N/A	\$439.72	\$439.72	\$439.72	\$439.72	\$439.72
High Ongoing Support (Monthly)	N/A	N/A	N/A	N/A	N/A	\$1,099.28	\$1,099.28	\$1,099.28	\$1,099.28	\$1,099.28
WORK ASSIST FEES										
Work Assist Service Fee (Quarterly)	\$1,429.07	\$1,429.07	\$1,429.07	\$1,429.07	\$1,429.07	\$1,429.07	\$1,429.07	\$1,429.07	\$1,429.07	\$1,429.07
Work Assist Outcome Fee	\$3,096.31	\$3,096.31	\$3,096.31	\$3,096.31	\$3,096.31	\$3,096.31	\$3,096.31	\$3,096.31	\$3,096.31	\$3,096.31

Notes:

- All amounts are shown in dollars and cents.
 - Outcome amounts refer to Employment Outcomes unless stated otherwise.
 - Moderate Intellectual Disability Payments are paid in addition to the relevant Full Outcome payment, and apply only where the Participant worked in a job of at least 15 hours per week and achieved a Full Outcome. They are not available for Pathway Outcomes or for Full Outcomes relating to Education Outcomes.
 - Bonus Outcomes are paid in addition to the relevant 13 and 26-week Outcome Fees where a Participant is placed into a traineeship or apprenticeship; or achieves an Employment Outcome related to a Qualifying Training Course.
 - DES-DMS Level 5 and DES-ESS Level 5 Participants are paid at the respective DMS/ESS Level 4 rate for Full and Pathway Education Outcomes.
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**ANNEXURE B2 - PART A - DISABILITY EMPLOYMENT SERVICES -
DISABILITY MANAGEMENT SERVICE FEES - PRE 1 JULY 2018**

RESERVED

**ANNEXURE B2 - PART B - DISABILITY EMPLOYMENT SERVICES -
EMPLOYMENT SUPPORT SERVICE FEES - PRE 1 JULY 2018**

RESERVED

ANNEXURE B3 - RATTUAJ AND PATH INTERNSHIP FEES

New fee schedule –Indexation inclusive

Payment description	Payment amount
PaTH Internship Amount	No Longer Applicable
PaTH Internship Outcome Fee	No Longer Applicable
RATTUAJ Payments	\$3000, where the RATTUAJ Participant is relocating to a Capital City.
	\$6000, where the RATTUAJ Participant is relocating to a Regional Area.
	An additional \$3000, where the RATTUAJ Participant is relocating to a Capital City or a Regional Area with one or more Dependent Children
NWEP Host Payment	No Longer Applicable

ANNEXURE C CODE OF PRACTICE AND SERVICE GUARANTEE

ANNEXURE C1 DISABILITY EMPLOYMENT SERVICES CODE OF PRACTICE

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

We commit to working with our clients, employees, sub-contractors, and other providers to deliver quality employment services by:

- Ensuring staff have the skills and experience they need to provide quality and culturally sensitive services to job seekers¹, 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, that might bring Disability Employment Services into disrepute
- Sensitively managing any information collected

We commit to helping each job seeker find their pathway into employment by:

- Meeting the Service Guarantees
- Tailoring assistance to the job seekers' personal circumstances, skills, abilities and aspirations
- Using available Government funding appropriately to support job seekers
- Treating every job seeker fairly and with respect
- Providing a fair and accessible feedback process

We commit to assisting employers meet their skill and labour shortage needs by:

- Working with employers to identify job and industry specific training needs and how they can be met
- Referring the most appropriately qualified and experienced job seekers available
- Providing a timely response to employer inquiries

The Australian Government will support Disability Employment Services providers in achieving these standards by:

- Evaluating and sharing best practice to enable continuous improvement in the delivery of DES
- Providing a customer service line, free call 1800 805 260, for job seekers to raise any concerns or problems they have with their provider

¹ The term 'Job seekers' also refers to participants as may be applicable.

- Also providing a Complaints Resolution and Referral Service, free call 1800 880 052, an independent complaints resolution services for people using Australian Government funded disability employment and advocacy services.
- Providing an Employer Hotline, on free call 13 17 15, for businesses to access providers.

ANNEXURE C2 SERVICE GUARANTEE

DISABILITY EMPLOYMENT SERVICES – YOUR SERVICE GUARANTEE

As your Disability Employment Services Provider:

- We will clearly explain to you what services you can receive, what we will do for you, and what you have to do, including how often we will meet.
- We will provide help for you to find and keep a job including contacting employers directly on your behalf about suitable jobs. This includes giving you ongoing support once you get a job, if you need it.
- We will treat you fairly and with respect, in line with the National Standards for Disability Services.
- We will be sensitive to your individual needs when helping you, including any impact that your disability, injury or health condition might have on your ability to find and keep a job. This could also include any parenting or caring responsibilities you might have.
- We will deliver services that are culturally appropriate.

What help can I expect?

We will work with you to agree on a plan with assistance and activities to help you find and keep a job. This is called your Job Plan.

We will work with you to help you deal with any issues that might be making it hard for you to look for work. Some of the ways we might do this include:

- looking at what work you have done before, and what work is available in your area
- looking at what skills and education you have and what skills and education might help you get work
- working with prospective employers to match your skills to their needs
- providing you with help which may include training, work experience or services to help you overcome any issues that are making it difficult for you to find and keep a job
- helping you to be ready for a job
- helping you to access other support services you may need
- helping you to write a résumé
- providing you with advice on the best ways to look for work
- providing you with information about computer and internet facilities relevant to helping you to find and keep a job, including access to the employment services website (jobsearch.gov.au) and the JobAccess website (jobaccess.gov.au)
- providing you with access to an interpreter if you need one
- checking that work is suitable for your condition or injury.

Once you have a job, we will continue to support you and will develop a plan with you to help you keep your job. This may include:

- support to help you settle into your job
- on-the-job training
- information, support and training for your employer and/or co-workers
- help to resolve any problems you may have at work
- ongoing support appropriate to your needs, which may include meeting with you regularly, or giving you more intensive support when you need it.

Depending on your circumstances, we can also help you and your employer access a range of other support services which may include:

- modifications for your work area
- help to purchase specialised technology
- financial help for other services, available through a fund called the Employment Assistance Fund
- access to extra help if you are at risk of losing your job.

For Aboriginal and Torres Strait Islander Peoples

We will deliver services and engage with Aboriginal and Torres Strait Islander participants in a way that acknowledges and respects these cultures.

We will ensure that staff are appropriately trained and that this organisation is committed to getting the best employment opportunities for Aboriginal and Torres Strait Islander participants.

What are my responsibilities?

If you can't do an activity listed in your Job Plan, or can't attend an appointment that has been arranged for you, contact us as soon as possible. If you do so we may make another time for you to attend your activity or appointment. If you don't contact us beforehand when you are able to do so, your income support payment may be suspended even if you have a good reason for not being able to attend. Your payments may also be reduced or cancelled if you do not attend several appointments or activities without a good reason.

To make sure you get the right support, you should let us know if something in your life changes, like your health, your parenting responsibilities, whether you're doing voluntary or paid work or undertaking education, or if you experience a personal crisis.

What if I receive Newstart Allowance, Youth Allowance or Parenting Payment (with participation requirements)?

If you are receiving support from Services Australia through Newstart Allowance, Youth Allowance or Parenting Payment (with participation requirements), there are some extra things that you will have to do. If you want to keep receiving income support, you need to:

- make every effort to get a job, and accept any suitable job you are offered
- do your best at every job interview
- do everything that you have agreed to do in your Job Plan. This includes going to all appointments.

What happens to the information I tell you?

We will collect information about you for the purpose of providing disability employment related services to you. We will keep all information about you in accordance with the *Privacy Act 1988* (Cth).

If you ask, we will usually be able to show you the information we hold about you. If you have any concerns about the way in which information about you is being managed, you can discuss your concerns with us. Complaints about acts or practices in relation to the use and disclosure of your personal information can also be investigated by the Information Commissioner.

More information about the *Privacy Act 1988* (Cth) and the powers of the Information Commissioner can be found on the Office of the Australian Information Commissioner's website at www.oaic.gov.au.

National Standards for Disability Services

The National Standards for Disability Services set out the quality of services we will deliver to you. We will let you know about these standards, and they can also be found online at

<https://www.dss.gov.au/our-responsibilities/disability-and-carers/standards-and-quality-assurance/national-standards-for-disability-services>

All Disability Employment Services Program Providers have been assessed by independent auditors as meeting the National Standards for Disability Services.

Connections for Quality

Choosing a provider to help you find work is an important decision.

To assist you, information about providers in your local area can be found through Connections for Quality on the employment services website at www.jobsearch.gov.au or the JobAccess website (jobaccess.gov.au). When you are looking for a provider, Connections for Quality information about the services they provide is available on each Provider Site Detail page. This information will answer your questions about who will work with you and how they will help you find employment.

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

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

If you feel you can't talk to us about your concerns, or you are still not happy, you can access the National Customer Service Line on 1800 805 260 (free call from land lines).

If you think that a Provider is not complying with the National Standards for Disability Services, you can also call the Complaints Resolution and Referral Service on 1800 880 052 (free call from land lines), or on the

TTY number: 1800 301 130 (free call from land lines).

The National Relay Service: 1800 555 677 (free call from land lines),

Fax 02 9318 1372.

Disability Employment Services Agreement
Schedule: Agreement and Business Details