



Australian Government



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Deed Variation History: This document shows variations from the original Deed, which commenced on the Deed Commencement Date. A variation history is provided at the end of this document.

Employability Skills Training Services

Panel Deed 2017-2020

between

The Commonwealth of Australia

and

<insert name of other Party> <ABN>

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SECTION 1 – EMPLOYABILITY SKILLS TRAINING SERVICE

PART A – GENERAL EMPLOYABILITY SKILLS TRAINING SERVICES

1. Employability Skills Training Services

- 1.1 The Provider must:
- (a) subject to clause 1.2, enable all Prospective Participants who are Referred to the Provider to Commence in a Course;
 - (b) provide the Services to Participants in accordance with this Section 1 and any Guidelines; and
 - (c) work with jobactive providers, Host Organisations, and Employers and their representative organisations, in its Employment Region(s), in accordance with any Guidelines, so as to ensure the successful implementation of Employability Skills Training.
- 1.2 The Provider must not allow a Prospective Participant to Commence in a Course where:
- (a) the Prospective Participant has been Referred by the Provider's Own Organisation or a Related Entity; or
 - (b) the Department Notifies the Provider, or specifies in any Guidelines or otherwise, that the Provider must not allow the Prospective Participant to Commence in a Course.
- 1.3 Where a Prospective Participant is Referred to the Provider in the circumstances described in clause 1.2(a) or clause 1.2(b), the Provider must immediately inform the relevant jobactive provider that it cannot accept the Referral.
- 1.4 The Department may monitor the Referral and Exit data for a Course, including (without limitation) for the purpose of ensuring that the Services are being delivered in accordance with this Deed and any Guidelines.

2. Service Delivery Plan

Approval of Service Delivery Plan

- 2.1 The Provider must develop and submit a draft service delivery plan for the Department's approval in a manner and within the timeframe specified by the Department.
- 2.2 The Department may, in its absolute discretion:
- (a) approve the draft service delivery plan as the Service Delivery Plan; or
 - (b) direct the Provider to:
 - (i) amend the draft service delivery plan; and
 - (ii) resubmit the draft service delivery plan to the Department for its approval, in the manner and within the timeframe specified by the Department, and the Provider must comply with any such direction.
- 2.3 The Parties agree that on Notification by the Department of its approval of the draft service delivery plan, the draft service delivery plan becomes the Service Delivery Plan.

- 2.4 The Department may immediately exercise its rights under clause 67 if the Provider fails to comply with clause 2.1 or clause 2.2(b).

Conduct of the Services

- 2.5 The Provider must:
- (a) not deliver any Course prior to the approval by the Department of the draft service delivery plan as the Service Delivery Plan;
 - (b) provide the Services in accordance with all representations made by the Provider with regards to the Services, as specified in the Service Delivery Plan and the Provider's Response; and
 - (c) ensure that a copy of the Service Delivery Plan is available to jobactive providers, Prospective Participants, Participants and, if requested, Employers in the relevant Employment Region(s).
- 2.6 The Provider must not make changes to the Service Delivery Plan without the prior written agreement of the Department.

3. Supervision of Participants

- 3.1 The Provider must, in accordance with any Guidelines:
- (a) ensure that Participants engaged in a Course or in any Industry Awareness Experience receive Supervision;
 - (b) without limiting clause 3.1(a), ensure that where Children or Vulnerable People are Participants or are otherwise present at a Course or an Industry Awareness Experience, a Supervisor is present to provide Supervision continuously over the entire duration of the relevant Course or Industry Awareness Experience; and
 - (c) where an Industry Awareness Experience does not involve Vulnerable People or Children (including Participants who are Children), make an assessment of whether or not the Industry Awareness Experience should be continuously Supervised, having regard to:
 - (i) the nature of the activities to be undertaken during the Industry Awareness Experience;
 - (ii) the potential Participants;
 - (iii) any risks identified in the relevant risk assessment; and
 - (iv) the risks of the Industry Awareness Experience not being Supervised.
- 3.2 Where continuous Supervision is required under clause 3.1(b), or assessed by the Provider as being required under clause 3.1(c), the Provider must:
- (a) ensure that the Provider or the relevant Host Organisation provides adequate and appropriate Supervision for the Course and/or the Industry Awareness Experience, so as to ensure that relevant Participants are undertaking appropriate tasks and operating in a healthy and safe environment; and
 - (b) record, or require the Host Organisation to record, the relevant Supervisor's attendance at the Course and/or the Industry Awareness Experience, and provide copies of those Records to the Department on request.

4. Performance indicators

- 4.1 The Department will assess the Provider's performance under this Deed in accordance with the KPIs, and any other factors relevant to performance, as specified in any Guidelines.

5. Industry Awareness Experiences

- 5.1 The Department may at any time give a direction to the Provider in relation to an Industry Awareness Experience, including a direction that the Industry Awareness Experience:
- (a) be discontinued and cease to be used in the future;
 - (b) be used within a specific timeframe; or
 - (c) be used differently, within a specific timeframe,
- and if the Provider receives such a direction, the Provider must:
- (d) immediately take any action required by the direction; and
 - (e) otherwise continue to perform the Services in accordance with this Deed.

Transport

- 5.2 If transporting Participants to or from an Industry Awareness Experience, the Provider must do so in accordance with any Guidelines.

Relevant Checks on Participants, Personnel and Supervisors

- 5.3 The Provider must work with the relevant jobactive provider to ensure that relevant checks are conducted on all Participants, and all relevant Personnel and Supervisors in accordance with clause 24, whenever a Course or Industry Awareness Experience involves close proximity with Vulnerable People or Children (including, without limitation, Participants who are Children or Vulnerable People).
- 5.4 The Provider must not allow a Participant to be involved in an Industry Awareness Experience:
- (a) if any relevant legislation or Guidelines provide or mean that the Participant must not be allowed to be so involved or placed; or
 - (b) if:
 - (i) a relevant check shows that they have been convicted of a crime and a reasonable person would consider that the conviction means that the person would pose a risk to other persons involved in the Industry Awareness Experience; or
 - (ii) there is otherwise a reasonably foreseeable risk that the person may cause loss or harm to other persons involved in the Industry Awareness Experience, unless the Provider has put in place reasonable measures to remove or substantially reduce that risk.

Work health and safety

- 5.5 Prior to the commencement of, and throughout, any Industry Awareness Experience, the Provider must, in accordance with any Guidelines, satisfy itself that there is a safe system of work in place, in accordance with applicable WHS Laws.

- 5.6 Prior to the commencement of any Industry Awareness Experience, the Provider must, in accordance with any Guidelines:
- (a) undertake a risk assessment that includes an assessment of:
 - (i) the risks in relation to the activities to be undertaken by Participants during the Industry Awareness Experience; and
 - (ii) the risks for each individual Participant, having regard to the Participant's potential participation in the Industry Awareness Experience and their health and safety, and taking into consideration any circumstances and work restrictions relevant to the Participant;
 - (b) identify any training, including work health and safety training, that will be required to ensure that each Participant can participate in the Industry Awareness Experience safely, and ensure that training of sufficient length and quality is provided to all Participants by the Host Organisation at the commencement of the Industry Awareness Experience as required;
 - (c) ensure that appropriate facilities (such as toilets and access to drinking water) will be available to all Participants for the duration of the Industry Awareness Experience;
 - (d) identify if any specific equipment, clothing or materials are required for Participants to participate safely in the relevant activities, and ensure that such specific equipment, clothing or materials will be provided to Participants;
 - (e) ensure that any required actions, identified in the relevant risk assessment, have been undertaken; and
 - (f) ensure that the Participant being considered for placement in the Industry Awareness Experience has been advised of the process for reporting any work health and safety issues regarding the Industry Awareness Experience.
- 5.7 The Provider must, in accordance with any Guidelines:
- (a) retain Records of the risk assessment referred to in clause 5.6(a) and any action taken in accordance with the risk assessment, and provide the relevant Records to the Department upon request;
 - (b) ensure that each Host Organisation is notified that it must immediately advise the Provider of any proposed or actual changes to the tasks being undertaken by Participants involved in an Industry Awareness Experience or the circumstances in which those tasks are being undertaken;
 - (c) confirm with the relevant Host Organisation whether:
 - (i) any required actions, identified in the relevant risk assessment, have been undertaken;
 - (ii) there have been any significant changes in relation to the relevant Industry Awareness Experience, including work, health and safety issues, since the date of the relevant risk assessment; and
 - (iii) the Host Organisation is satisfied that it has sufficient and current insurances which insure any risk identified in the relevant risk assessment and any risk otherwise arising in relation to the relevant Industry Awareness Experience;

- (d) if:
 - (i) any required actions, identified in the relevant risk assessment, have not been undertaken, ensure that all such actions are undertaken; and
 - (ii) there have been changes as specified at clause 5.7(c)(ii), review and revise the relevant risk assessment and take all appropriate action, or ensure that all appropriate action is taken, to address any such changes,

before any Participant undertakes an Industry Awareness Experience, and at all relevant times thereafter; and

- (e) if the Provider is advised by the relevant Host Organisation or Participant during the course of the Industry Awareness Experience that there have been significant changes in relation to the relevant Industry Awareness Experience, immediately review and revise the relevant risk assessment and take all appropriate action, or ensure that all appropriate action is taken, to address any such changes.

5.8 If the Provider does not itself employ a Competent Person relevant to meeting the obligations at clauses 5.5 to 5.7, it must engage a relevant Competent Person, as required, for this purpose.

Supervision of Participants during Industry Awareness Experiences

5.9 The Provider must ensure that all relevant Personnel and Supervisors for Industry Awareness Experiences:

- (a) are fit and proper persons to be involved in the Industry Awareness Experience;
- (b) have an appropriate level of skill/knowledge, training and/or experience in:
 - (i) the part of each Industry Awareness Experience in which they are engaged; and
 - (ii) working with, training and supervising persons in such Industry Awareness Experiences; and
- (c) have had checks as specified in clause 24.1 and have met any additional statutory requirements (including under state and territory law), prior to being given responsibility for the Supervision of Participants.

5.10 The Department may give Notice, on reasonable grounds related to the performance of Industry Awareness Experiences, requiring the Provider to remove, or ensure the removal of, a Supervisor from work on the Industry Awareness Experience.

5.11 Where the Department gives Notice under clause 5.10, the Provider must, at its own cost, promptly arrange for the removal of such a Supervisor from work on the Industry Awareness Experience and their replacement with one or more Supervisors acceptable to the Department.

5.12 The Provider must ensure that each Supervisor, whether engaged by the Provider or engaged by a Host Organisation, is required to notify the Provider of a Participant's non-attendance at all relevant Hosted Industry Awareness Experiences, or any other non-compliance with the Industry Awareness Experience, as soon as practicable, but no later than at the end of the relevant Business Day.

5.13 All Supervisors who:

- (a) are contracted by the Provider to provide Supervision for Industry Awareness Experiences; and
- (b) are not employees of the Provider,
are deemed to be approved Subcontractors for the purposes of clause 63.1(a).

Other matters relating to Industry Awareness Experiences

- 5.14 The Provider must:
- (a) for each Hosted Industry Awareness Experience, ensure that each Participant, Host Organisation and any Supervisor are aware that the Host Organisation, the Provider or the Department may terminate a Hosted Industry Awareness Experience at any time; and
 - (b) ensure that each Participant is aware of the process to lodge a complaint or voice safety concerns about any Industry Awareness Experience.
- 5.15 The Provider must ensure that, to the extent allowed by law and unless otherwise expressly agreed by the Parties, there is no intention or understanding on the part of a Host Organisation or a Participant that any Industry Awareness Experience itself will create legal relations between the Participant and:
- (a) the Commonwealth;
 - (b) the Provider; or
 - (c) where relevant, the Host Organisation.

6. Incidents

- 6.1 The Provider must Notify the Department and the relevant jobactive provider as soon as possible, and on the same day, of any incident involving the Services, including any incident occurring during an Industry Awareness Experience, such as:
- (a) any accident, injury or death occurring during, or as a result of, the Hosted Industry Awareness Experience, 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 Department or bring the Services into disrepute.
- 6.2 The Provider must cooperate fully with the Department, the relevant jobactive provider or the Department's insurance broker as the case may be in relation to any incident Notified by the Provider in accordance with clause 6.1 including, without limitation, by providing information about the incident sought by the Department, the relevant jobactive provider or the Department's insurance broker.

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

PART B – SPECIFIC EMPLOYABILITY SKILLS TRAINING SERVICES

7. Course content

- 7.1 The Provider must fully develop the content for all Courses in accordance with Schedule 1 (as relevant), its Response and the Service Delivery Plan.
- 7.2 If requested by the Department, the Provider must submit to the Department within 3 Business Days an outline of the content developed by the Provider for the Course(s) specified by the Department.
- 7.3 The Provider must, throughout the Service Period or any Extended Service Period:
 - (a) regularly monitor and review the effectiveness of each Course, including the extent to which each Course is achieving the Objective; and
 - (b) continuously seek to improve the content for each Course, having regard to the Objective and taking into account any feedback received from Employers.
- 7.4 The Provider must Notify the Department prior to making any significant changes to the content for a Course.
- 7.5 The Department may at any time give a direction to the Provider to make changes to the content for one or more Courses, and if the Provider receives such a direction, the Provider must:
 - (a) immediately take any action required by the direction; and
 - (b) otherwise continue to perform the Services in accordance with this Deed.

8. Type of Courses to be delivered

- 8.1 Unless otherwise directed by the Department and subject to this Deed, the Provider must provide the following Courses:
 - (a) if specified in item 8.3 of Schedule 1, Training Block 1 Courses; and
 - (b) if specified in item 8.3 of Schedule 1, Training Block 2 Courses,and do so only in accordance with this Deed, including Schedule 1 (as relevant), the Service Delivery Plan and its Response.
- 8.2 The Provider must deliver the Courses referred to in clause 8.1 in the context of the industry specialisation specified in items 8.4 and 8.5 (as relevant) of Schedule 1 and the Response.

Note: EST Providers are contracted as either a Generalist or a Specialist in each Employment Region (see item 8.4 of Schedule 1) and where they are contracted as a Specialist, the particular relevant industries are specified at item 8.5 of Schedule 1.

9. Course Commencement and duration

- 9.1 Unless directed in writing by the Department, the Provider must not:
 - (a) commence a Course unless the number of Prospective Participants who have been Referred to the Course, as recorded on the Department's IT Systems but not including any Prospective Participant that has been Exited under clause 1.2 or otherwise, is at least the Minimum Participant Number; and

- (b) at any time, allow the number of Participants undertaking a Course to exceed the Maximum Participant Number.
- 9.2 Subject to clause 9.3, the Provider must ensure that each Course:
 - (a) is delivered to Participants for 25 hours per week over three consecutive weeks; and
 - (b) does not exceed 75 hours in duration
- 9.3 If directed to do so by the Department, the Provider must make a Course available to be undertaken for 15 hours per week over five consecutive weeks.
- 9.4 The Provider must record each Course in the Department's IT Systems and do so in accordance with any Guidelines.

10. Mode of delivery

- 10.1 The Provider must ensure that each Course is delivered:
 - (a) face-to-face, unless the Department has agreed in writing that the Provider may deliver the Course, or one or more parts of the Course, through an online medium;
 - (b) in a group setting, except for any Industry Awareness Experience which may be undertaken by a single Participant; and
 - (c) in accordance with any Guidelines.

11. Industry Awareness Experiences

- 11.1 The Provider must, if specified in the Service Delivery Plan for a Training Block 1 Course, arrange for Participants in that Training Block 1 Course to undertake an Industry Awareness Experience, either individually or in a group setting, in accordance with any Guidelines.
- 11.2 The Provider must arrange for each Participant in a Training Block 2 Course to undertake an Industry Awareness Experience, either individually or in a group setting, in accordance with any Guidelines.

12. Participant Commencements

- 12.1 A Prospective Participant who is Referred to a Course may only Commence in that Course within the first three days of the Course.
- 12.2 The Provider must record in the Department's IT Systems, each Participant's Commencement in a Course, and do so in accordance with this Deed, including any Guidelines.

13. Course Completion

- 13.1 A Course will only be Completed when the Provider has:
 - (a) delivered the Course in accordance with this Deed, including any Guidelines;
 - (b) recorded the attendance of Participants at the Course in accordance with clause 15.1; and
 - (c) satisfied any other requirements for a Completion specified in any Guidelines.

14. Exits

14.1 A Participant is Exited when:

- (a) the Participant voluntarily withdraws from the Course;
- (b) the Provider withdraws the Participant from the Course because:
 - (i) the Participant starts employment;
 - (ii) the Participant's attendance at the Course is unsatisfactory;
 - (iii) the Provider considers that the Participant is facing Non-vocational Barriers that need to be addressed prior to the Participant participating or continuing in Employability Skills Training Services;
 - (iv) the Participant is displaying violent, threatening, aggressive or otherwise inappropriate behaviour; or
 - (v) of any other reason specified in any Guidelines; or
- (c) the Participant is withdrawn from the Course by the Participant's jobactive provider.

14.2 Where a Participant is Exited under clause 14.1(a) or 14.1(b), the Provider must:

- (a) Notify the Participant's jobactive provider that the Participant has Exited, on the same Business Day that the Participant Exits; and
- (b) take any other action as specified in the Guidelines.

Note: Exits will be recorded by the jobactive provider in the Department's IT Systems.

15. Monitoring and recording attendance

15.1 The Provider must, in accordance with any Guidelines:

- (a) regularly and actively monitor the participation of each Participant;
- (b) record the attendance of each Participant in the Department's IT Systems;
- (c) notify the Participant's jobactive provider within one Business Day where a Participant fails to attend the relevant Course on a particular day; and
- (d) provide Records of each Participant's attendance to the Department or to the Participant's jobactive provider on request.

16. Payments

16.1 In this clause 16, a **Commencement Payment** and **Completion Payment** means an amount equivalent to 50% of the Fee specified in item 8.6 of Schedule 1 for that Course in the relevant Employment Region (or part thereof).

Commencement Payments

16.2 Subject to the terms of this Deed, the Department will pay the Provider, in relation to a Course, a Commencement Payment for:

- (a) each Participant who Commences in the Course; or
- (b) where fewer than the Minimum Participant Number Commence, the Minimum Participant Number.

- 16.3 The Provider is not entitled to an additional Commencement Payment under clause 16.2 where, under clause 14.2(b), a Participant Exits a Course and any jobactive provider replaces that Participant with another Participant in accordance with any Guidelines.

Completion Payments

- 16.4 Subject to the terms of this Deed, the Department will pay the Provider, in relation to a Course, a Completion Payment for each Participant who Commenced in the Course provided that:
- (a) an Assessment has been conducted for that Participant;
 - (b) the Provider has provided a copy of the Assessment to:
 - (i) the Participant and the Participant's jobactive provider; and
 - (ii) the Department, but only if requested; and
 - (c) the Provider has fully satisfied the requirements in this Deed including, without limitation, clause 13.1 of this Deed, and the requirements in any Guidelines, for a Completion.
- 16.5 The Provider is not entitled to an additional Completion Payment under clause 16.4 where, under clause 14.2(b), a Participant Exits a Course and any jobactive provider replaces that Participant with another Participant in accordance with any Guidelines.

SECTION 2 - GENERAL TERMS AND CONDITIONS

PART A – INTERPRETATION AND BASIC CONDITIONS

17. Definitions and interpretation

- 17.1 In this Deed, unless the contrary intention appears, all capitalised terms have the meaning given to them in the Glossary.
- 17.2 Unless the contrary intention appears:
- (a) the definitions in the Glossary apply to the whole of this Deed;
 - (b) words in the singular include the plural and vice versa;
 - (c) a reference to a person includes a partnership and a body whether corporate or otherwise;
 - (d) a reference to an entity includes an association of legal persons, however constituted, governed by deed, an incorporated body, an unincorporated association, a partnership and/or a trust;
 - (e) a reference to any legislation or legislative provision is to that legislation or legislative provision as in force from time to time;
 - (f) 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 provisions of this Deed;
 - (g) any uncertainty or ambiguity in the meaning of a provision of this Deed is not to be interpreted against a Party just because that Party prepared the provision;
 - (h) a reference to an internet site or webpage includes those sites or pages as amended from time to time;
 - (i) a reference to a Guideline, form or other document is to that Guideline, form or other document as revised or reissued from time to time; and
 - (j) 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.
- 17.3 The Provider agrees that:
- (a) Conditions of Offer form part of this Deed;
 - (b) Particulars form part of this Deed;
 - (c) Guidelines form part of this Deed;
 - (d) Guidelines may be varied by the Department at any time; and
 - (e) any action, direction, advice or Notice that may be taken or given by the Department under this Deed, may be taken or given from time to time and at the Department's absolute discretion.
- 17.4 If there is any conflict or inconsistency between any part of:
- (a) the Sections of this Deed, including any Condition of Offer;

- (b) the Schedules, except Schedule 3 [Joint Charter of Deed Management];
- (c) the Particulars;
- (d) the Guidelines; and
- (e) Schedule 3 [Joint Charter of Deed Management],

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

18. Term of this Deed

- 18.1 This Deed takes effect from the Deed Commencement Date and, unless terminated earlier, expires on the Completion Date.
- 18.2 The Department may, at its sole option, offer the Provider an extension of the Term of this Deed:
- (a) for one or more Extended Service Periods; and
 - (b) if the Department determines, on the basis of additional or varied terms and conditions,
- by giving Notice to the Provider not less than 20 Business Days before the end of the Service Period or any Extended Service Period, as relevant.

19. Survival

- 19.1 The termination or expiry of this Deed for any reason does not extinguish or otherwise affect the operation of clauses 31, 36, 39, 41, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 65, 67, 69 and 77 of this Deed, and any other provisions that are expressly specified as surviving, or by implication from their nature are intended to continue.
- 19.2 Clause 54 of this Deed survives for seven years from the expiry or earlier termination of this Deed.

20. General requirements

- 20.1 The Provider must carry out the Services:
- (a) in accordance with:
 - (i) this Deed, including any Guidelines, even if a particular clause does not expressly refer to any Guidelines;
 - (ii) any representation or undertaking made by the Provider in its Response, unless otherwise agreed with the Department; and
 - (iii) the Standards for Registered Training Organisations (RTOs) 2015;
 - (b) in a manner which meets the Objective; and
 - (c) so as to achieve optimum performance when measured against the KPIs.
- 20.2 if the Provider becomes aware that:
- (a) it is unable to satisfy or has otherwise failed to comply with any of the requirements in this Deed or the representations or undertakings made in its Response;

- (b) it provided information in its Response which is misleading or deceptive, or otherwise incorrect or inaccurate; or
- (c) it failed to provide information in its Response which may have affected the Department's decision to enter into this Deed or otherwise take action under this Deed,

it must immediately Notify the Department of the same and provide all relevant details in relation to the situation, and any other information requested by the Department.

- 20.3 The Provider must take all reasonable steps to mitigate the impact of any matter(s) that affects the Provider's ability to meet its obligations under this Deed.

21. Location and timing of the Services

21.1 Subject to this Deed, the Provider must deliver the Services from the Service Start Date until the end of the Service Period and any Extended Service Periods.

21.2 The Provider must ensure that:

- (a) any location from which Services are provided is:
 - (i) accessible to people with a disability; and
 - (ii) presented in a manner that 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 could reasonably foreseeably be likely to cause injury to Participants or any other persons at the locations from which the Services are provided.

22. Provider's conduct

22.1 The Provider must, at all times, act in good faith towards the Department and Participants, and in a manner that maintains the good reputation of the Services.

22.2 The Provider must:

- (a) not engage in, and must ensure that its Personnel, Subcontractors, Third Party IT Providers and agents do not engage in, any practice that manipulates or impacts, as relevant, any aspect of the Services including any:
 - (i) Record, including any Documentary Evidence;
 - (ii) Learning Outcome or Completion;
 - (iii) Payment or Payment-related process;
 - (iv) Participant or Host Organisation; or
 - (v) monitoring of the Services by the Department,

with the effect of improperly, as determined by the Department, maximising payments to, or otherwise obtaining a benefit for, the Provider or any other person; and

- (b) without limitation to any rights of the Department under this Deed or at law, where an improper practice is identified by the Provider, immediately:
 - (i) take all action necessary to appropriately remedy the practice; and

- (ii) Notify the Department of the practice identified and the remedial action taken and provide all information in relation to the situation as required by the Department.

22.3 The Provider must advise its officers and employees that:

- (a) they are Commonwealth public officials for the purposes of section 142.2 of the *Criminal Code Act 1995* (Cth);
- (b) acting with the intention of dishonestly obtaining a benefit for any person is punishable by penalties including imprisonment; and
- (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 as specified on the Department’s website at <http://employment.gov.au/public-interest-disclosure-act-2013>, 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.

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

23. Information provided to the Department

23.1 Subject to clause 30.4, the Provider must ensure that:

- (a) all information it provides to the Department, including all Documentary Evidence, is true, accurate and complete at the time of its provision to the Department;
- (b) it diligently, and in accordance with any Guidelines, takes all necessary steps to verify the truth, completeness and accuracy of any information referred to in clause 23.1(a); and
- (c) any data entered into the Department’s IT Systems is consistent with any associated Documentary Evidence held by the Provider.

23.2 Subject to clause 31.1, the Provider must submit Documentary Evidence to the Department within five Business Days of any request by the Department to do so.

24. Checks and reasonable care

Personnel and Supervisors

24.1 Before any Personnel or Supervisor is involved in the Services, the Provider must arrange and pay for all checks, and comply with any other conditions in relation to the person’s involvement, as specified in:

- (a) any relevant legislation, and in particular, any Working with Children Laws, in effect in the jurisdiction(s) in which the Services are conducted; and
- (b) any Guidelines.

24.2 The Provider must not allow any Personnel or a potential Supervisor to participate in the Services, including any Industry Awareness Experience:

- (a) contrary to any relevant legislation or any Guidelines; or

- (b) if:
 - (i) a relevant check shows that they have been convicted of a crime and a reasonable person would consider that the conviction means that the person would pose a risk to other persons involved in the Services; or
 - (ii) there is otherwise a reasonably foreseeable risk that the person may cause loss or harm to any other person,

unless the Provider has put in place reasonable measures to remove or substantially reduce that risk.

25. Provider's responsibility

- 25.1 Subject to this Deed, the Provider is responsible for the performance of the Services, for ensuring compliance with the requirements of this Deed, and for all costs of meeting the Provider's obligations under this Deed.

26. Joint Charter of Deed Management

- 26.1 Subject to clause 26.2, the Department and the Provider agree to conduct themselves in accordance with the Joint Charter of Deed Management.
- 26.2 Clause 26.1 does not limit the right of either Party to take action or exercise rights available to it under this Deed.

27. Liaison and directions

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

Note: 'other person' referred to in clause 27.1(a) includes, for example, an auditor appointed by the Department.

- 27.2 The Department and the Provider must respectively nominate an Account Manager and a Contact Person for the Term of this Deed, and Notify of any change to the details of persons occupying those positions.
- 27.3 The day to day management of, and communication under, this Deed:
- (a) is to be handled by the Account Manager and the Contact Person or their delegates; and
 - (b) may be undertaken by the Account Manager and the Contact Person or their delegates by means of electronic mail.
- 27.4 The Provider must ensure that it Notifies the Department, of its valid electronic mail address for receipt of all communications with the Department.

27.5 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 or tribunal) and to provide witness or other statements as required by the Department.

28. Business level expectations

28.1 The Provider acknowledges that it is one of a number of EST Providers on the EST Provider Panel selected to provide Employability Skills Training Services and that the Department provides no guarantee of the:

- (a) volume or type of business the Provider will receive, including the number of Referrals;
- (b) numbers of Participants for any Services under this Deed;
- (c) numbers of Participants for any Employment Region, or any part of an Employment Region, in relation to any Services under this Deed; or
- (d) accuracy of market and other information provided in the Request for Proposal.

29. Gap filling and additional Services

29.1 The Department and the Provider may agree to:

- (a) the provision of additional services by the Provider, on the same terms as specified in this Deed, at the times requested by the Department for the purposes of filling gaps identified by the Department in Employability Skills Training Services; and
- (b) the provision of other employment services or employment related services by the Provider to the Department, including applicable terms and conditions.

PART B – SOME BASIC RULES ABOUT FINANCIAL MATTERS

30. General

30.1 Subject to sufficient funds being validly appropriated for Youth Employment Package – Youth Jobs PaTH (Prepare -Trial – Hire) and the Provider’s compliance with this Deed to the Department’s satisfaction, the Department will make Payments to the Provider, at the times and in the manner specified in this Deed, to the account(s) specified in item 5 of Schedule 1.

30.2 The Provider must not claim or accept a Payment from the Department if the requirements for that payment under this Deed have not been fully and properly met.

30.3 Where the Department determines that the Provider is in breach of clause 30.2, the Department may recover some or all of the relevant Payment from the Provider, with the recoverable amount being determined by the Department at its absolute discretion, as a debt in accordance with clause 36, without prejudice to any other rights that the Department may have under this Deed or the law.

30.4 It is a precondition of the Provider’s entitlement to be paid a Payment that the Provider has, at the time it makes a claim for or accepts the Payment, true, complete and accurate Documentary Evidence sufficient to prove that the Provider is entitled to the Payment under this Deed.

30.5 Further conditions precedent to a Provider’s entitlement to be paid a Payment are that it:

- (a) has a valid ABN;
 - (b) immediately Notifies the Department if it ceases to have a valid ABN;
 - (c) correctly quotes its ABN on all documentation provided to the Department, where relevant;
 - (d) supplies proof of its GST registration, if requested by the Department;
 - (e) immediately Notifies the Department of any changes to its GST status; and
 - (f) submits Tax Invoices to the Department for payment, unless otherwise advised by the Department.
- 30.6 Without limiting the Department's rights under this Deed or at law, if the Provider identifies that it has claimed, or accepted, a Payment:
- (a) in breach of this Deed; or
 - (b) without having fully met the requirements for that Payment under this Deed, it must immediately Notify the Department of the same and provide all information in relation to the situation as required by the Department.
- 30.7 Despite any other provision of this Deed, the Department is not required to make any Payment to the Provider earlier than within 20 Business Days after the receipt of the relevant Tax Invoice.

31. Evidence to support entitlement to Payments

- 31.1 Subject to any Guidelines, the Provider must retain the Documentary Evidence specified at clause 30.4 for such period as is required under clause 51.9.
- 31.2 The Provider must submit the Documentary Evidence referred to in clause 31.1 to the Department:
- (a) if required by any Guidelines, at the time of making the relevant claim for a Payment, and through the Department's IT Systems; and
 - (b) otherwise, within five Business Days of any request by the Department to do so.
- 31.3 If:
- (a) the Provider does not comply with a request by the Department under clause 31.2, or if the Documentary Evidence provided is not true, complete and accurate;
 - (b) the Department has already paid the Provider the relevant Payment; and
 - (c) an extension of time has not been requested and agreed to by the Department,
- then:
- (d) the Provider will be taken not to have delivered the relevant Services in accordance with this Deed and not to be entitled to the relevant Payment; and
 - (e) the Department may recover the relevant Payment from the Provider as a debt in accordance with clause 36, without prejudice to any other rights that the Department may have under this Deed or the law.

- 31.4 The Department may contact Employers, Participants, Host Organisations, jobactive providers or any other relevant parties to verify Documentary Evidence provided by a Provider.

32. Exclusions

- 32.1 The Department is not responsible for the payment of any money in excess of the Payments set out in this Deed.
- 32.2 The Department is not required to make any superannuation contributions in connection with this Deed.
- 32.3 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.

33. Ancillary Payments

- 33.1 The Department may pay the Provider Ancillary Payments on such terms and conditions as the Department determines, including as specified in any Guidelines.

34. Overpayment and double payment

Overpayment

- 34.1 If, at any time, the Department determines that an overpayment by the Department has occurred for any reason, or a payment has been made in error, then the Department may recover some or all of the relevant payment amounts from the Provider, with the recoverable amount being determined by the Department at its absolute discretion, as a debt in accordance with clause 36, without prejudice to any other rights that the Department may have under this Deed or the law.

Double payment

- 34.2 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, and agrees the Department may require the Provider to provide evidence of this in a form acceptable to the Department.
- 34.3 If the Department determines that the Provider, or any Related Entity, is entitled to payment as described in clause 34.2, 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 36.
- 34.4 In addition to clause 34.3, the Department may, at any time, issue Guidelines setting out the circumstances in which the Department will or will not make Payments in connection with any situation of the type described in clause 34.2.

35. The Department may vary certain terms

- 35.1 Without prejudice to any other rights that the Department may have under this Deed or the law, the Department may, at any time, vary:
- (a) Payments under this Deed;
 - (b) Employment Regions of the Provider; and/or
 - (c) the Courses to be delivered by the Provider,
- for all or part of the Term of this Deed:
- (d) based on the Department's assessment of:
 - (i) projected changes to labour market conditions in an Employment Region (including past and/or future projected Participant demand); or
 - (ii) the extent to which Employability Skills Training is meeting the Objective; or
 - (e) acting reasonably, for any other reason as determined by the Department, by providing Notice to the Provider.
- 35.2 If the Department exercises its rights under clause 35.1:
- (a) where relevant, this Deed is deemed to be varied accordingly; and
 - (b) the Provider must perform all of its obligations under this Deed as varied.

36. Debts and offsetting

- 36.1 The Department may, without prejudicing any other rights available to the Department under this Deed or the law, recover any amount owed to the Department, or deemed to be a debt to the Department under this Deed, including any Interest, as a debt due to the Commonwealth from the Provider without further proof of the debt being necessary.
- 36.2 Unless otherwise agreed in writing by the Department, 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.
- 36.3 Unless the Department agrees otherwise in writing, where any debt is owed to the Commonwealth under this Deed, Interest accrues on that debt if it is not repaid within 30 calendar days of receipt of a Notice under clause 36.2, until the amount is paid in full.
- 36.4 Without limiting the Department's rights under this Deed or the law, if the Provider owes the Commonwealth any debt or has outstanding or unacquitted money, under this Deed, or under any other arrangement with the Department or the Commonwealth, the Department may offset or deduct an amount equal to that debt owed, or outstanding or unacquitted money, against any Payments due to the Provider under this Deed.
- 36.5 The Department will Notify the Provider if it exercises its rights under clause 36.4 within 10 Business Days after having exercised those rights.
- 36.6 Notwithstanding any action taken by the Department under clause 36.4, the Provider must continue to perform its obligations under this Deed, unless the Department agrees otherwise in writing.

37. Taxes, duties and government charges

- 37.1 All dollar amounts in this Deed are inclusive of GST unless expressly stated otherwise.
- 37.2 If a Payment is not in relation to a Taxable Supply, the Provider must only claim or accept an amount exclusive of GST.
- 37.3 The Provider must give to the Department a Tax Invoice for any Taxable Supply before any Payments are made to the Provider as consideration for the Taxable Supply.
- 37.4 The Provider must not claim or accept from the Department any amount for which it can claim an Input Tax Credit.
- 37.5 Where any debt is repaid, including by offset under clause 36.4, an Adjustment Note must be provided to the Department if required by the GST Act.
- 37.6 Subject to this clause 37, all taxes, duties and government charges imposed in Australia or overseas in connection with this Deed must be borne by the Provider.

38. Fraud

- 38.1 The Provider must not engage in, and must ensure that its Personnel, Subcontractors and agents do not engage in, fraudulent activity in relation to this Deed.
- 38.2 The Provider must take all reasonable steps to prevent fraud upon the Commonwealth, including by implementing an appropriate fraud control plan, a copy of which must be provided to the Department on request.
- 38.3 If, after investigation, the Department determines that the Provider has been engaged in fraudulent activity, the Department may, without limiting any other rights available to the Department:
 - (a) take action under clause 67.2; or
 - (b) terminate this Deed under clause 71,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.

PART C – REPORTING AND EVALUATION OF THE SERVICES

39. General reporting

- 39.1 Without limiting any other provisions of this Deed, the Provider must provide, as required by the Department:
 - (a) specific Reports on:
 - (i) the Services, including on the results of internal and external audits of Payment claims and claim processes, action taken to address performance issues raised by the Department, and training provided to Personnel and Subcontractors; 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 39.1(a) or otherwise required under this Deed.
- 39.2 The Provider must also provide any other Reports that the Department may reasonably require, within the timeframes requested by the Department.
- 39.3 The Provider must provide:
- (a) all Reports in a form acceptable to the Department; and
 - (b) 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 ten Business Days of the Department giving Notice to the Provider to do so.

40. Financial statements and guarantees

- 40.1 Subject to clause 40.3, the Provider must provide to the Department audited 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.
- 40.2 If the Provider is a Tendering Group or a partnership, then the Provider must provide one copy of the consolidated audited financial statements for the Tendering Group or partnership, if available, and individual annual audited financial statements for each member of the Tendering Group.
- 40.3 If required by the Department, the Provider must provide to the Department:
- (a) any other financial statements, in a form, with the content and at a frequency, as directed by the Department; and
 - (b) within 20 Business Days of the relevant direction by the Department, a financial guarantee in a form and in terms satisfactory to the Department.

41. Evaluation and Programme Assurance Activities

- 41.1 The Provider agrees that:
- (a) the Department may conduct Programme Assurance Activities;
 - (b) the Department may evaluate the Services, including the Provider's performance and delivery of the Services, which may include, but is not limited to:
 - (i) Employers, the Provider's Personnel and Subcontractors, jobactive providers, Host Organisations and Participants being interviewed by the Department or an independent evaluator nominated by the Department; and
 - (ii) the Provider giving the Department or the Department's evaluator access to its premises and Records in accordance with clause 54; and
 - (c) it will fully cooperate with the Department in relation to all such activities.

42. Performance assessments

- 42.1 Without limiting clause 41, during each Performance Period, the Department will monitor, measure and evaluate the Provider's performance against the requirements of this Deed, including, without limitation, and as relevant, the KPIs, the Joint Charter of Deed Management, the Service Delivery Plans, and any representations in the Response.
- 42.2 For the purposes of clause 42.1, the Department may rely on data collected from any source, including, without limitation, feedback from Participants, Employers and jobactive providers, Host Organisations and intelligence from the Department's Employment Services Tip off Line and National Customer Service Line.
- 42.3 After the end of each Performance Period, and at such other times as the Department determines, the Department may provide feedback to the Provider on the Department's assessment of its performance in each location and Employment Region (or relevant part of an Employment Region), where the Provider delivers Services.
- 42.4 This clause 42 does not in any way limit the rights of the Department under this Deed or at law, including rights to take remedial action against the Provider, arising out of the monitoring, measuring or evaluating of the Provider's performance under this clause 42, or otherwise.
- 42.5 The Provider agrees that the Department may publish information the Department holds concerning the Provider's performance of the Services.
- 42.6 The Provider agrees to fully cooperate with the Department in relation to all activities undertaken by the Department under this clause.

43. Sample reviews

- 43.1 Without prejudice to any other rights of the Department under this Deed or the law:
- (a) the Department may:
- (i) evaluate how the Provider has claimed Payments, by reviewing and investigating a sample of claims for Payments generally, or of Payments of a particular type or class ('**Sample Review**'); and
 - (ii) for the purposes of a Sample Review, take into account data collected from any source without limitation; and
- (b) if the results of a Sample Review show that the Provider has, in relation to all or a proportion of the claims for Payments included in a Sample Review, made claims for Payments:
- (i) in breach of this Deed; or
 - (ii) in circumstances where it was not entitled to claim the Payments,
- as determined by the Department, then the Provider is, subject to clause 43.3, taken to have invalidly claimed all Payments, or that proportion of all Payments, as relevant:
- (iii) generally; or
 - (iv) of the relevant type or class of Payments,
- as relevant to the Sample Review, for the period of the Sample Review ('**Deemed Invalid Claims**').

- 43.2 In relation to Deemed Invalid Claims, the Department may, without limiting its other remedies under this Deed or the law, do any one or more of the following by providing Notice to the Provider:
- (a) exercise its rights under clause 30.3 in respect of some or all of those claims;
 - (b) exercise any remedies specified in clause 67.2;
 - (c) recover any amounts under clause 69.1(b) in respect of those claims; or
 - (d) exercise any of its rights under clause 71.

Sampling methodology

- 43.3 For the purposes of clause 43.1, the Department may use any statistical methodology to undertake a Sample Review, provided that the Department has been advised by a statistician who is a Fellow of the Actuaries Institute of Australia or is accredited by the Statistical Society of Australia Inc. that the methodology:
- (a) is, or will give results that are, statistically valid for the purpose of demonstrating the matters covered by this clause 43; and
 - (b) will provide at least a 95% confidence level that the proportion and/or value of invalid claims identified in the Sample Review can be extrapolated under clause 43.1(b) to that proportion and/or value of Payments generally or of the relevant type or class of Payments as relevant to the Sample Review, for the period of the Sample Review.
- 43.4 The Department must disclose the methodology used in a Sample Review to the Provider before exercising the Department's rights under clause 43.2.

44. Customer feedback process and Customer feedback register

- 44.1 Without limiting clause 82.1, the Provider agrees to comply with the Standards for Registered Training Organisations (RTOs) 2015 in delivering the Services, including in relation to the handling of complaints.
- 44.2 The Provider must clearly indicate to Customers that they may make a Complaint directly to the Department using the Department's National Customer Service Line.
- 44.3 Upon request, the Provider must give to the Department and Customers copies and details of the process it has established to manage Customer feedback.
- 44.4 The Provider must actively assist:
- (a) the Department in its investigation of any Complaint, including providing a detailed response to issues Notified by the Department, within the timeframe required by the Department;
 - (b) in negotiating a resolution to any Complaint; and
- other authorities in negotiating a resolution to any Complaint, where the Customer has used other complaints mechanisms.

PART D – INFORMATION MANAGEMENT

45. General

- 45.1 The Provider must conduct the Services by Accessing the Department's IT Systems provided by the Department for that purpose.
- 45.2 The Department may require that data relating to specific transactions must only be stored on the Department's IT Systems, and the Provider must comply, and ensure that all Subcontractors comply, with any such requirements.
- 45.3 The Department may require that Personnel and Subcontractors must not Access the Department's IT Systems until they have successfully completed training provided by the Department in the use of the Department's IT Systems, and the Provider must comply with any such requirement.
- 45.4 The Provider is responsible for all costs of meeting its obligations under this clause 45.

46. Access and security

- 46.1 The Provider must provide information technology systems, to Access the Department's IT Systems and to carry out its other obligations under this Deed, that meet the requirements set out in this clause 46.

Third Party Systems

Note: A 'Third Party System' includes an information technology system used by the Provider or any Subcontractor to provide any Services or to Access the Department's IT Systems.

- 46.2 The Provider must:
 - (a) advise the Department of any proposed use of any Third Party System to Access the Department's IT Systems, and comply, and ensure that all relevant Subcontractors comply, with any terms and conditions imposed by the Department in respect of such Access;
 - (b) ensure that any Third Party System used:
 - (i) meets any minimum requirements Notified by the Department for Access to the Department's IT Systems and for record keeping and programme assurance purposes;
 - (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 requirements of the Australian Government Australian Signals Directorate (ASD) Information Security Manual (ISM);
 - (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 uniquely identifiable to the Department and entries are traceable, and have date and time stamps; and

- (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 relating to the Services held in any Third Party System can be, and are, provided on request, to the Department without amendment to the Records.
- 46.3 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 are 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

Note: A 'Provider IT System' includes an information technology system used by the Provider or any Subcontractor to provide any Services or to Access the Department's IT Systems.

- 46.4 Subject to the relevant Statement of Applicability ('SOA'), within 36 months from the Deed Commencement Date, the Provider must and must ensure that its Subcontractors:
- (a) obtain accreditation for any Provider IT 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 until the Completion Date.
- 46.5 Where the Provider or any Subcontractor modifies a Provider IT System, the Provider must ensure that any necessary reaccreditation activities are completed as required by the SOA.
- 46.6 For the purposes of clause 46.4(b), the Provider must, and must ensure that its subcontractors, obtain reaccreditation of all Provider IT Systems in accordance with the SOA at least once every three years.
- 46.7 Accreditation and reaccreditation under this clause 46 for the relevant SOA must be awarded by a qualified Information Security Registered Assessors Programme Assessor, or other qualified assessor as agreed to by the Department in writing.
- 46.8 The Provider must Notify the Department immediately upon it, or any of its Subcontractors, obtaining relevant accreditation or reaccreditation and, if relevant, its failure to do so within the timeframes specified in this clause 46.
- 46.9 If the Provider or any Subcontractor does not obtain accreditation or reaccreditation within the timeframes specified in the SOA or this clause 46, the Provider must immediately cease using, and ensure that any relevant Subcontractor ceases using, the relevant Provider IT System.
- 46.10 The Provider must:
- (a) keep Records of accreditation and reaccreditation obtained under this clause 46; and
 - (b) when requested by the Department, provide those Records to the Department within the timeframe required by the Department.

46.11 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 and 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

46.12 The Provider must:

- (a) not give Access to electronic Records relating to the Services, or any derivative thereof, to any Third Party IT Provider who has not entered into a Third Party IT Provider Deed with the Department, 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 any Third Party IT Provider that provides or uses a Third Party System:
 - (i) provide that the Third Party IT Provider may only subcontract its obligations under that contract to another entity that 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 46.12 on any Subcontractor Accessing electronic Records relating to the Services.

Technical advice

46.13 The Provider must:

- (a) nominate Personnel to receive technical advice from the Department on the Department's IT Systems, and to provide advice to the Department on technical issues arising from Accessing 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;
 - (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 the IT Contact changes, advise the Department accordingly.

Security

46.14 The Provider must:

- (a) 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; and
 - (b) ensure that a Security Contact is appointed at all times during the Term of this Deed, and that, at all times, the Department has up to date contact details for the current Security Contact.
- 46.15 The Provider must (through its Security Contact) promptly 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.
- 46.16 Where the Department considers that the Provider may be in breach of this clause 46, or there is a risk of such a breach, the Department may immediately suspend Access, or require the Provider to cease all 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.
- 46.17 Where the Department determines that the Provider is in breach of, or has breached, this clause 46, the Department may take any action it considers necessary including any one or more of the following:
 - (a) suspending, terminating, or requiring the cessation of all Access to the Department's IT Systems for any Personnel, Subcontractor, Third Party IT Provider, Third Party System 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, Subcontractor or Third Party IT Provider and if so required, 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 required, the Provider must do so within the timeframe required by the Department.
- 46.18 Any action taken by the Department under clauses 46.16 to 46.17 does not limit any other rights the Department has under this Deed, including pursuant to clause 67.2, or under the law.

- 46.19 If the Department gives Notice to the Provider that Access to the Department's IT Systems is terminated for any particular Personnel, Subcontractor or Third Party IT Provider, the Provider must immediately take all actions necessary to terminate that Access and promptly confirm to the Department that it has complied with the Department's requirements.

Cybersafety Policy

- 46.20 For the purposes of clauses 46.20 to 46.24:

'Clients' means persons who may use the Provider's computers and/or other digital technology that is supported through public funding provided pursuant to this Deed, and includes but is not limited to, the Provider, the Provider's staff and the public, whether they be adult or Children.

'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, particularly Children, and may include, but is not limited to, having a policy in place regarding appropriate use and protection for Clients, installation of filters, audits and provision of information or training to the Provider's staff regarding the risks of, and protection from, inappropriate or harmful on-line content.

- 46.21 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.
- 46.22 The Provider must take Reasonable Steps to protect its Clients' cybersafety.
- 46.23 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.
- 46.24 The Provider agrees to include its obligations in relation to this Cybersafety Policy in all Subcontracts it enters into in relation to the Services.

47. Use of Commonwealth Material

- 47.1 Ownership of all Commonwealth Material, including Intellectual Property rights in that Material, remains vested at all times in the Department.
- 47.2 Subject to clause 47.3, the Department grants (or will procure) a royalty-free, non-exclusive licence for the Provider to use, copy, and reproduce the Commonwealth Material for the purposes of this Deed.
- 47.3 The Provider must not use the Commonwealth Coat of Arms for the purposes of this Deed or otherwise, except as authorised in accordance with the Use of the Commonwealth Coat of Arms General Guidelines available at http://www.dpmc.gov.au/sites/default/files/publications/Commonwealth_Coat_of_Arms_Information_and_Guidelines.pdf

48. Ownership and licensing of Intellectual Property Rights in Deed Material and Existing Material

- 48.1 Subject to clause 48.4, and without affecting the position between the Provider and a third party, the ownership of Intellectual Property Rights in the Deed Material vest in the Provider.

- 48.2 Clause 48.1 does not affect the ownership of Intellectual Property Rights in:
- (a) any Commonwealth Material incorporated into Deed Material; or
 - (b) any Existing Material.
- 48.3 The Provider will grant (or will procure for) the Department a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, communicate and exploit the Deed Material for any Commonwealth purpose.
- 48.4 The Provider grants to the Department (or must arrange for the grant to the Department of) a permanent, irrevocable, free, worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt, modify, perform, distribute, and communicate the Intellectual Property rights in the Existing Material, with the exception of commercial off-the-shelf software, for any Commonwealth purpose.
- 48.5 If the Provider becomes aware that the Department will require a licence for commercial off-the-shelf software in order to exercise its rights under the licences granted under this clause 48, the Provider must Notify the Department immediately and provide the Department with all the necessary details to obtain a licence over such software including the name, version and manufacturer of the software.
- 48.6 The Provider agrees that the licences granted in clauses 48.3 and 48.4 includes a right for the Department to licence the Deed Material and Existing Material to the public under a CCBY Licence [see <http://creativecommons.org/licenses/by/3.0/au/deed.en>].
- 48.7 The Provider must, on the Department's request, create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 48.
- 48.8 The Provider warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Deed Material in the manner provided for in this clause 48.
- 48.9 If requested by the Department, the Provider must provide to the Department a copy of the Deed Material in the form requested by the Department.

49. Personal and Protected Information

- 49.1 Clauses 49.1 to 49.3 apply only where the Provider deals with Personal Information for the purpose of conducting the Services under this Deed, and the terms 'agency', 'APP Code', 'contracted service provider', '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.
- 49.2 The Provider acknowledges that it is a contracted service provider and agrees, in respect of the conduct of the Services under this Deed:
- (a) to use or disclose Personal Information, including sensitive information, obtained in the course of conducting the Services ('**relevant Personal Information**'), only for the purposes of this Deed 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 Privacy Commissioner who has power to award compensation against the Provider in appropriate circumstances; and
 - (ii) their Personal Information may be disclosed and passed on to the Department and to other persons in relation to providing the Services;
- (e) unless expressly authorised or required under this Deed, not engage in any act or practice that would breach:
 - (i) APP 7 (direct marketing);
 - (ii) APP 9 (adoption, use or disclosure of government related identifiers); or
 - (iii) 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 Privacy Commissioner to the extent that they are consistent with the requirements of this clause 49;
- (h) not to transfer relevant Personal Information outside of 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 Privacy Commissioner;
- (j) if the Provider suspends or terminates Personnel:
 - (i) to remove any access that the Personnel have to any relevant Personal Information;
 - (ii) to require that the Personnel return to the Provider or the Department any relevant Personal Information held in the Personnel's possession; and
 - (iii) it must remind the Personnel of their relevant obligations under this Deed; and
- (k) to ensure that any of its Personnel who are required to deal with relevant Personal Information:
 - (i) where required by the Department, undertake in writing to comply with the APPs (or a registered APP code, where applicable); and
 - (ii) are made aware of their obligations in this clause 49, including to undertake in writing to comply with the APPs (or a registered APP code, where applicable).

49.3 The Provider must immediately Notify the Department if it becomes aware:

- (a) of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 49 by any Personnel or Subcontractor;
- (b) that a disclosure of Personal Information may be required by law; or
- (c) of an approach to the Provider by the Privacy Commissioner or by a person claiming that their privacy has been interfered with.

Protected Information

- 49.4 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).

50. Confidential Information

- 50.1 Subject to this clause 50, the Parties must not, without each other's prior written approval, disclose any of each other's Confidential Information.
- 50.2 A Party may impose conditions on its approval, and the other Party agrees to comply with the conditions.
- 50.3 The obligations under this clause 50 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 or the Minister's staff;
 - (c) is disclosed by the Department, in response to a request or direction 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 50.
- 50.4 Nothing in this clause 50 limits the obligations of the Provider under clauses 49 or 54.

51. Records the Provider must keep

- 51.1 The Provider must create and maintain true, complete and accurate Records of the conduct of the Services, in accordance with the Records Management Instructions.
- 51.2 Notwithstanding this clause 51, if the Department considers it appropriate, the Department may impose conditions in relation to Records management, and the Provider must comply with those conditions.
- 51.3 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

- 51.4 The Provider must keep financial accounts and Records of its transactions and affairs regarding Payments that it receives from the Department under this Deed:
- (a) in accordance with Australian Equivalents to International Financial Reporting Standards maintained by the Australian Accounting Standards Board created by section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth); and
 - (b) such that:
 - (i) all Payments made by the Department are clearly and separately identified from each other and from other money of the Provider; and

- (ii) an auditor or other person may examine them at any time and thereby ascertain the Provider's financial position.

Storage

- 51.5 The Provider must store all Records created or maintained under clause 51.1, in accordance with the Records Management Instructions and the Department's Security Policies, and where relevant, its Privacy Act obligations.

Recording

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

Access

- 51.7 Subject to clauses 49 and 54, 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, any Subcontractor or any Third Party IT Provider.

Transfer

- 51.8 Subject to clause 49.2(h), the Provider must:
- (a) not, without the prior written approval of the Department, transfer, or be a party to an arrangement for the transfer of, custody of the Records created or maintained under clause 51.1, outside of Australia or to any person, entity or organisation other than to the Department; and
 - (b) where transferring Records created or maintained under clause 51.1, only transfer the Records in accordance with the Records Management Instructions or as otherwise directed by the Department.

Retention

- 51.9 Subject to clause 49, all Records created or maintained under clause 51.1 must be retained by the Provider for a period of seven years after the creation of the Record, unless otherwise specified in the Records Management Instructions or advised by the Department.
- 51.10 At the Completion Date, the Provider must manage all Records created or maintained under clause 51.1 in accordance with the Records Management Instructions or as otherwise directed by the Department.

Destruction

- 51.11 The Provider must:
- (a) not destroy or otherwise dispose of Records created or maintained under clause 51.1, except in accordance with the relevant Records Management Instructions, or as otherwise directed by the Department; and
 - (b) provide a list to the Department of any Records that have been destroyed, as directed by the Department.

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

- 52.1 Subject to this clause 52, 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. The Provider must, in providing access to the requested Records:
- (a) ensure that the relevant Participant or Employer 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.
- 52.2 Where a Participant or an Employer requests access to Records containing information about another person or containing information provided by other third parties, the request must be directed by the Provider to the Department for consideration. The Provider must then comply with any direction given by the Department in relation to the provision, or refusal, of access to those Records.

53. Access to documents for the purposes of the *Freedom of Information Act 1982* (Cth)

- 53.1 In this clause 53, 'document' has the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 53.2 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, 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 53.

54. Access to premises and Records

- 54.1 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 claims for Payment, determining the Provider's financial viability, and compliance with relevant work, health and safety and industrial relations legislation; and
 - (iv) its Personnel, Subcontractors and Third Party IT Providers; and

- (b) all assistance, as required by the relevant Department Employee, to:
 - (i) inspect its Sites or premises and those of any Subcontractor or Third Party IT Provider;
 - (ii) inspect the performance of Services; and
 - (iii) locate, inspect, copy and remove, all Material including data stored on the Provider's information technology systems or those of any Subcontractor or Third Party IT Provider.

54.2 Subject to clause 54.3, the obligations in clause 54.1 are subject to the provision of reasonable prior notice to the Provider and compliance with the Provider's reasonable security procedures.

54.3 If:

- (a) a matter is being investigated that, in the opinion of the Department, may involve:
 - (i) an actual or apprehended breach of the law;
 - (ii) a breach of this Deed; or
 - (iii) suspected fraud; or
- (b) the Department is otherwise conducting Programme Assurance Activities in relation to the Provider,

clause 54.2 does not apply, and Department Employees may remove and retain any Material that the Department determines is relevant, provided that the Department returns a copy of all such Material to the Provider 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).

PART E – DEED ADMINISTRATION

55. Indemnity

55.1 The Provider indemnifies the Department against any:

- (a) loss, cost or liability incurred by the Department; and
- (b) 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:

- (c) any act or omission by:
 - (i) the Provider;
 - (ii) a Subcontractor (whether or not the relevant entity is a current Subcontractor);
or
 - (iii) a Host Organisation other than as a Subcontractor,

in connection with this Deed, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;

- (d) any breach by the Provider of this Deed or failure to meet an undertaking given under this Deed;
 - (e) any publication of the information referred to in clauses 42.5 or 74, where the published information was provided by the Provider to the Department; or
 - (f) the use by the Department of the Deed Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights in Deed Material or Existing Material.
- 55.2 The liability of the Provider to indemnify the Department under this clause 55 will be reduced proportionately to the extent that fault on the Department's part contributed to the relevant cost, loss, damage, expense, or liability.
- 55.3 The Department's right to be indemnified under this clause 55 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 loss, damage, expense or liability.

Meaning of fault

- 55.4 In this clause 55, 'fault' means any negligent or unlawful act or omission or wilful misconduct, including fraud.

56. Insurance

56.1 Subject to this clause 56 and unless the Department otherwise agrees in writing, the Provider must, for the Term of this Deed, effect and maintain or cause to be effected and maintained, the following insurances. Except for the statutory workers compensation insurance referred to at clause 58.1(b) and the professional indemnity insurance or errors and omissions insurance at clause 56.1(d), all of the following insurances must be written on an occurrence basis:

- (a) public liability insurance with a limit of indemnity of at least \$10 million in respect of each and every occurrence, which covers:
 - (i) the Provider's liability and the liability of its Personnel, representatives and agents (including to the Department and to the Participants) at general law and additionally as assumed under the terms of clause 57; and
 - (ii) the vicarious liability of the Department in respect of the acts or omissions of the Provider, its Personnel, representatives and agents;

in respect of:

- (iii) loss of, or damage to, or loss of use of any real or personal property (including property of the Department in the care, custody or control of the Provider); and
- (iv) the bodily injury, disease or illness (including mental illness) or death of any person (other than a liability insured under the insurance referred to at clause 56.1(b)),

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

- (b) insurance which insures any injury, damage, expense, loss or liability suffered or incurred by any person engaged in work by the Provider under this Deed:
 - (i) giving rise to a claim:
 - (A) under any statute relating to workers' compensation; and
 - (B) where common law claims by such workers are permissible outside of the statutory scheme referred to at clause 56.1(b)(i)(A), for employer's liability at common law with a limit of indemnity of at least \$50 million in respect of each and every occurrence;
 - (ii) in each Australian state or territory where the Services are performed or delivered; and
 - (iii) where possible under the relevant law or scheme governing workers compensation insurance and in respect of all employers' liability policies, extending to indemnify the Department for its liability as principal in relation to any such claim;
- (c) for any motor vehicle used in the performance of this Deed:
 - (i) insurance with a limit of indemnity of at least \$20 million in respect of each and every occurrence which covers:
 - (A) third party property damage arising from the use of any plant or vehicles (registered or unregistered) used in respect of the performance of this Deed (including transporting Participants); and
 - (B) the bodily injury, disease or illness (including mental illness) or death of, any person arising from the use of any unregistered plant or vehicles used in or in connection with the performance of the Services pursuant to this Deed (including transporting Participants);
 - (ii) compulsory third party motor vehicle insurance for all registrable vehicles used in the performance of this Deed (including transporting Participants in the Provider's or the Provider's employees' vehicles);
- (d) for any Services provided in a professional capacity – professional indemnity insurance or errors and omissions insurance is to be maintained during the Term of this Deed and for at least seven years following the Completion Date with a limit of indemnity of at least \$5 million in respect of each claim and in the aggregate for all claims in any one 12 month policy period with one right of reinstatement which covers the liability of the Provider at general law and additionally as assumed under the terms of clause 57 arising from:
 - (i) a breach of duty owed in a professional capacity in connection with the performance of this Deed or, where errors and omissions insurance is effected, arising from an error or omission in judgement by the Provider, its Personnel, representatives or agents; and
 - (ii) unintentional breaches of Intellectual Property Rights;
- (e) if the provision of the Services involves the provision of a product – products liability insurance with a limit of indemnity of at least \$10 million in respect of each and every occurrence, which covers:

- (i) the Provider's liability and the liability of its Personnel, representatives and agents (including to the Department and to the Participants) at general law and additionally as assumed under the terms of clause 57; and
- (ii) the vicarious liability of the Department in respect of the acts or omissions of the Provider, its Personnel, representatives and agents;

in respect of:

- (iii) loss of, damage to, or loss of use of any real, personal or intangible property (including property of the Department in the care, custody or control of the Provider, and including the Department's IT Systems); and
- (iv) the bodily injury, disease or illness (including mental illness) or death of, any person (other than a liability insured under the insurance referred to in clause 56.1(b)),

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

(f) Not Used.

Note: The Department has purchased personal accident insurance, and public and products liability insurance that covers Participants who are undertaking particular approved activities, in employment assistance programmes including Employability Skills Training. The Provider should refer to the Insurance Readers Guide and insurance policies on the Provider Portal for further details.

- (g) if the Provider will use an aircraft or marine vessel for the purposes of performing this Deed and the aircraft or marine vessel is owned or chartered by the Provider, marine liability and/or aircraft liability insurance, as is appropriate, covering the liability of the Provider, its Personnel, representatives and agents (including to the Department, Participants and passengers) in respect of liability for third party personal injury or death or loss of or damage to third party property (including cargo) with a limit of indemnity of at least \$20 million in respect of each and every occurrence unless such liability is otherwise insured under the insurance effected in compliance with clause 56.1(a).

- 56.2 The Provider must also effect and maintain, or cause to be effected and maintained, any other insurance policies required to adequately cover the Provider's business risk that a similar EST Provider, acting reasonably, would acquire, and any other insurance cover required by law.
- 56.3 Unless otherwise agreed by the Department in writing, all insurances required under this clause 56 (other than statutory workers compensation insurance and compulsory third party motor vehicle insurance) must be obtained from an insurer authorised by the Australian Prudential Regulation Authority.
- 56.4 Each of the insurances required by this clause 56 (other than statutory workers compensation insurance and compulsory third party motor vehicle insurance) that insures more than one person, must include:
 - (a) a cross-liability clause, whereby the insurer agrees that the policy shall be construed as if a separate policy has been issued to each insured person (but not so as to increase the overall limit of liability) (this clause does not apply to any professional indemnity or errors and omissions insurance required by this clause 56);

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

56.5 **Not Used.**

56.6 In relation to the insurances specified in this clause 56, the Provider must abide by the terms and conditions of any relevant policy, and do everything reasonably required to claim and to collect or recover monies due under any policy.

56.7 The Provider must Notify the Department immediately when it:

- (a) becomes aware of any actual, threatened or likely claim under any of the insurances which the Provider is obliged to effect and maintain, that could materially reduce the available limits or involve the Department (other than a claim by the Department against the Provider which would be insured under the insurance referred to in clause 56.1(d)); or
- (b) receives a notice of cancellation in respect of any of the insurances that the Provider is obliged to effect and maintain.

56.8 The Provider must ensure that all Subcontractors retained by it to perform work in connection with this Deed are covered by insurance of the types specified in this clause 56, as is appropriate (including as to limits of indemnity) given the nature of the work to be performed by each such Subcontractor.

Evidence of insurance

56.9 Subject to clause 56.10, the Provider must obtain written independent professional advice that the insurances obtained by it and any Subcontractors pursuant to this clause 56 meets the requirements of this Deed:

- (a) before commencing the performance of any Services and in any event within 20 Business Days of the Deed Commencement Date; and
- (b) within 10 Business Days of the date of renewal of each of the insurances required under this Deed.

56.10 Where the advice referred to in clause 56.9 relates to insurances obtained by a Subcontractor, the written independent professional advice in relation to that insurance may be obtained by either the Provider or the Subcontractor.

- 56.11 Clause 56.9 does not apply to statutory workers compensation insurance or compulsory third party motor vehicle insurance.
- 56.12 The Provider must, within 10 Business Days of 1 July each year, or at any other time that the Department requests, provide to the Department an insurance declaration form, in the form required by the Department.
- 56.13 In relation to each insurance policy relied upon by the Provider in compliance with the Provider's obligations to effect and maintain, or cause to be effected and maintained, insurance as required by this Deed, the Provider must provide to the Department:
- (a) a full copy of the insurance policy;
 - (b) a certificate of currency; and
 - (c) a copy of the independent professional advice required by clause 56.9,
- at any time that the Department requests.

Note: Clause 56.13 allows the Department to request information relating to the insurances of any Subcontractor of the Provider.

- 56.14 The Provider must not change, during the term of any policy, its insurer(s) unless the Department is satisfied that the change will not reduce or terminate any cover that exists prior to the proposed change and has agreed in writing to the change.

Assistance to the Department

- 56.15 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.
- 56.16 For the avoidance of doubt, the provisions of this clause 56 are not to be read so as to reduce or limit a Party's liability under any other provision of this Deed.

57. Liability of the Provider to the Department

Joint and several liability

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

Proportionate liability

- 57.2 The Parties agree that, to the extent permitted by law:
- (a) the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under, or in connection with, this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract, a claim in tort or otherwise; and
 - (b) in accordance with clause 81, this clause 57.2 applies to all and any rights, obligations and liabilities under, or in connection with, this Deed whether such rights, obligations or liabilities arise in the state of New South Wales or elsewhere in Australia.

Note: Clause 81 provides that this Deed is to be construed in accordance with, and any other matter related to it is to be governed by, the laws of the State of New South Wales.

58. Special rules about Tendering Groups

- 58.1 If the Provider is a Tendering Group, the Provider:
- (a) agrees that its members are as specified in the Particulars and at item 6 of Schedule 1;
 - (b) warrants that each of its members have given their authority to the member named in the Particulars as the Tendering Group's lead member to negotiate, bind and act on that member's behalf in relation to this Deed and any variations thereto; and
 - (c) must not change its membership without the Department agreeing in writing, and the Provider complying with any direction from the Department in relation to the change.

59. Corporate governance

- 59.1 The Provider must provide a copy of its Constitution to the Department upon request.
- 59.2 The Provider must:
- (a) inform the Department in writing within five Business Days of any change:
 - (i) in its Constitution, structure, management or operations that could reasonably be expected to have an adverse effect on its ability to comply with the Provider's obligations under this Deed; and
 - (ii) to the membership of its board of Directors, board of management or executive during the Term of this Deed; and
 - (b) obtain a completed credentials information form (as supplied by the Department) from any Director, or member of its board of management or executive, and supply it to the Department, if the Department requests it, within 10 Business Days of the Department's request.

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

Personnel

- 59.3 Unless otherwise agreed by the Department in writing, 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, the performance of the Services, if:
- (a) the person is an undischarged bankrupt;

- (b) there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy;
- (c) the person has suffered final judgment for a debt and the judgment has not been satisfied;
- (d) subject to Part VIIC of the *Crimes Act 1914* (Cth), the person has been convicted of an offence within the meaning of paragraph 85ZM(1) of that Act, or any other offence relating to fraud, unless there is clear evidence that:
 - (i) the 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,

in accordance with any relevant law;

- (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.

59.4 Unless otherwise agreed by the Department in writing, where a person falls, or is discovered as falling, within any of clauses 59.3(a) to 59.3(f) while employed or engaged by the Provider, or elected as an officer of the Provider, in a role in:

- (a) its management or financial administration, the Provider will be in breach of clause 59.3, 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 59.3(a) to 59.3(f), and take any action in respect of that person, that is Notified by the Department.

Note: For the avoidance of doubt, clause 59.4(b) will also apply where a person is transferred in accordance with clause 59.4(a)(i), to a role in the performance of the Services.

Change in Control of the Provider or a Material Subcontractor

59.5 The Provider must not, without the Department's prior written consent, cause or permit to occur a Change in Control of the Provider, or where it has the ability to do so, cause or permit a Change in Control of any Material Subcontractor.

- 59.6 The Department may 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.
- 59.7 The Provider must, within five Business Days of receiving a written request from the Department, provide such information and supporting evidence as the Department may request in relation to the shareholdings, issued shares, board of Directors, board of management, executive, voting rights, partnership composition (if relevant) or Tendering Group membership (if relevant) of the Provider or any Material Subcontractor, including the dates of any changes to those matters.
- 59.8 If the Provider does not:
- (a) obtain the Department's consent to a Change in Control as required by clause 59.5; or
 - (b) provide the Department with any information required by the Department under clause 59.7,

the Department may do either or both of the following:

- (c) take action under clause 67.2; or
- (d) terminate this Deed under clause 71.

60. Maintaining registration as a Registered Training Organisation

- 60.1 The Provider must maintain, during the Term of this Deed, its registration as a Registered Training Organisation and provide the Department with evidence of that registration upon request.
- 60.2 The Provider must Notify the Department promptly upon becoming aware of any circumstances that may lead to the Provider's registration as a Registered Training Organisation lapsing or being revoked at any time during the Term of this Deed.

61. Provider's Personnel

- 61.1 The Department may give Notice, on reasonable grounds related to the performance of the Services or risk to the Services or the Commonwealth, requiring the Provider to remove Personnel from work on the Services. The Provider must, at its own cost, promptly arrange for the removal of such Personnel from work on the Services and their replacement with Personnel acceptable to the Department.
- 61.2 For the purposes of clause 61.1, if the Provider is unable to provide replacement Personnel who are acceptable to the Department, the Department may terminate this Deed under clause 71.
- 61.3 The Provider must provide for, and ensure that its Personnel participate in, any training as directed by the Department.

62. External administration

- 62.1 Without limiting any other provisions of this Deed, the Provider must provide the Department, immediately upon receipt or generation by the Provider, a copy of:
- (a) any notice requiring the Provider to show cause why the Provider should not come under any form of external administration referred to in clause 62.1(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; or
 - (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.
- 62.2 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 62.1(b); or
 - (b) is ceasing to carry on business.

63. Subcontracting

- 63.1 The Provider must not, without the Department's prior written approval:
- (a) enter into a Subcontract for the performance of any of its obligations under this Deed;
 - (b) terminate a Subcontractor who has been approved by the Department; or
 - (c) replace an approved Subcontractor with another Subcontractor.
- 63.2 In giving approval under clause 63.1, the Department may impose such terms and conditions as the Department thinks fit and the Provider must comply with any such terms and conditions.
- 63.3 The Subcontractors that the Department has approved at the Deed Commencement Date, and any terms and conditions on that approval, are identified in item 7 of Schedule 1.
- 63.4 The Provider must ensure that any arrangement it enters into with a Subcontractor is in writing.
- 63.5 The Provider is liable to the Department for all losses caused under, or in connection with, this Deed by the acts or omissions of any Subcontractor whether or not the relevant entity is a current Subcontractor.
- 63.6 The Provider must ensure that every Subcontractor is aware of all terms and conditions of this Deed relevant to the Subcontractor's part in the provision of the Services.

- 63.7 The Provider must pay its Subcontractors in accordance with the terms of the relevant Subcontract.
- 63.8 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.
- 63.9 The Provider must, in any Subcontract:
- (a) reserve a right of termination to take account of the Department's right of termination under clauses 70 and 71 and the Department's right of revocation of approval of a Subcontractor under clause 63.8, 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; and
 - (b) bind the Subcontractor, with respect to the Department, to all relevant terms and conditions of this Deed including clauses 49, 50, 51, 54, 56, 76, and 82.
- 63.10 The Provider must not enter into a Subcontract under this Deed with a Subcontractor named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
- 63.11 The Department may publically disclose the names of any Subcontractors engaged to perform any of the Provider's obligations under this Deed and the Provider must inform all such Subcontractors that their names may be publically disclosed.
- 63.12 If the Provider does not comply with this clause 63, the Department may:
- (a) take action under clause 67.2; or
 - (b) terminate this Deed under clause 71.

64. Assignment and novation

- 64.1 The Provider must not assign any of its rights under this Deed without the Department's prior written approval.
- 64.2 The Provider must not enter into an arrangement that will require the novation of this Deed, without the Department's prior written approval.

65. Dispute resolution

- 65.1 Each Party agrees that:
- (a) subject to clause 65.4, any dispute arising in relation to this Deed will be dealt with, in the first instance, through the process outlined in the Joint Charter of Deed Management;
 - (b) they will 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 65, are genuinely in dispute; and
 - (c) they will cooperate fully with any process instigated in accordance with this clause, in order to achieve a prompt and efficient resolution of any dispute.

Formal resolution

- 65.2 Subject to clause 65.4, if any dispute arising in relation to this Deed cannot be resolved using the process outlined in the Joint Charter of Deed Management, 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 that Notice, 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, 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, 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 65.2(d) or 65.2(e); or
 - (ii) the dispute is not resolved within 20 Business Days of referring the dispute to an independent third person pursuant to clause 65.2(e),either Party may commence legal proceedings.

Costs and application of this clause

- 65.3 Each Party will bear its own costs of complying with this clause 65, and the Parties must bear equally the cost of any independent third person engaged under clauses 65.2(d) and 65.2(e).
- 65.4 This clause 65 does not apply to the following circumstances:
- (a) either Party commences legal proceedings for urgent interlocutory relief;
 - (b) where action is taken, or purportedly taken, by the Department under clauses 30, 31, 34, 35, 36, 38, 42, 43, 46, 52, 54, 59, 61, 63, 66, 67, 68, 69, 70 or 71;
 - (c) where the Department is conducting its own breach of contract or fraud investigation or taking consequential action; or
 - (d) where 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.
- 65.5 Despite the existence of a dispute, both Parties must (unless requested in writing by the other Party not to do so) continue to perform their obligations under this Deed.

66. Provider suspension

- 66.1 Without limiting the Department's rights under this Deed or at law, the Department may take action under clause 67.2(a), in addition to taking any other action available under clause 67, and prior to taking action under clause 71, if the Department is of the opinion that:
- (a) the Provider may be in breach of its obligations under this Deed, and while the Department investigates the matter;
 - (b) the Provider's performance of any of its obligations under this Deed, including achievement against the KPIs is not satisfactory;
 - (c) the Provider has outstanding or unacquitted money under any arrangement, whether contractual or statutory, with the Commonwealth; or
 - (d) the Provider may be engaged in fraudulent activity, and while the Department investigates the matter.
- 66.2 Notwithstanding any action taken by the Department under clause 66.1, the Provider must continue to perform its obligations under this Deed, unless the Department agrees otherwise in writing.

67. Remedies

- 67.1 Without limiting any other rights available to the Department under this Deed or at law, if:
- (a) the Provider fails to rectify a breach, or pattern of breaches, of this Deed, as determined and specified by the Department, to the Department's satisfaction, within 10 Business Days of receiving a Notice from the Department to do so, or such other period specified by the Department;
 - (b) the Provider fails to fulfil, or is in breach of, any of its obligations under this Deed that are not capable of being rectified, as determined by the Department;
 - (c) the Provider's performance of any of its obligations under this Deed is less than satisfactory to the Department;
 - (d) an event has occurred which would entitle the Department to terminate the Deed in whole or in part under clause 71; or
 - (e) this Deed otherwise provides for the Department to exercise rights under clause 67.2, the Department may, by providing Notice to the Provider, immediately exercise one or more of the remedies set out in clause 67.2.
- 67.2 The remedies that the Department may exercise are:
- (a) suspending any or all of the following, until otherwise Notified by the Department:
 - (i) one or more Courses being delivered by the Provider, including at some or all Sites;
 - (ii) Referrals in respect of some or all of the Services, including at some or all Sites;
 - (iii) any Payment under this Deed, in whole or in part;
 - (iv) access to all or part of the Department's IT Systems for the Provider, any Personnel, Subcontractor, Third Party IT Provider, Third Party System and/or other person;

- (b) terminating, or requiring the cessation of all access to the Department's IT Systems for any particular Personnel, Subcontractor, Third Party IT Provider, Third Party System or any other person;
- (c) requiring the Provider to obtain new logon IDs for any Personnel, Subcontractor, or Third Party IT Provider and/or other person, and if so required, the Provider must promptly obtain such new logons;
- (d) imposing special conditions on:
 - (i) the claiming or making of Payments; and/or
 - (ii) the management of Records,

as the Department thinks fit, and the Provider must comply with any such special conditions;

- (e) requiring the Provider to cease delivering the Services at one or more Sites;
- (f) reducing or not paying specific Payments that would otherwise have been payable in respect of a relevant obligation;
- (g) reducing the total amount of any Payments, permanently or temporarily;
- (h) where the Department has already made Payments, recovering, but taking into account the extent and nature of the breach, some or all of those Payments, as a debt;
- (i) imposing additional financial or performance reporting requirements on the Provider;
- (j) reducing the scope of this Deed; and
- (k) taking any other action set out in this Deed.

67.3 If the Department takes any action under this clause 67:

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

67.4 For the avoidance of doubt, any reduction of Payments or the scope of this Deed under this clause 67 does not amount to a reduction of scope or termination for which compensation is payable.

68. Performance under past Commonwealth agreements

68.1 Where the Provider was engaged to deliver services under the Employment Services Deed 2012-2015, the jobactive Deed or any other employment services or employment related services agreements in operation within seven years prior to 1 April 2017 between the Provider and the Commonwealth ('a **past Commonwealth agreement**') and the Department determines that the Provider:

- (a) has failed to fulfil, or was in breach of, any of its obligations under a past Commonwealth agreement; or
- (b) without limiting clause 68.1(a), claimed payment(s) under a past Commonwealth agreement and the requirements under the past Commonwealth agreement to be entitled to, or to qualify for the payment(s) were not fully or properly satisfied by the Provider,

the Department may by Notice to the Provider:

- (c) exercise one or more of the remedies set out in clause 67.2 of this Deed; or
- (d) terminate this Deed, if the failure, breach, or conduct under clause 68.1(a) or (b) permitted the Commonwealth to terminate the relevant past Commonwealth agreement.

68.2 A termination of this Deed under clause 68.1(d) entitles the Department to claim damages from, and exercise any other rights against, the Provider as a result of that termination, including Liquidated Damages under clause 69, as if the termination was for a breach of an essential term of the Deed at law.

68.3 Any action taken by the Department under this clause 68 does not in any way limit any rights of the Department under a past Commonwealth agreement, under this Deed (including, but not limited to, rights in relation to debts and offsetting under clause 36) or at law.

69. Liquidated damages

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

- (a) ceases to deliver Services in an Employment Region, or Notifies the Department that it is not willing or able to deliver the Services in an Employment Region, and the Provider has not either:
 - (i) obtained the consent of the Department for the cessation of the Services in the Employment Region (such consent must not be unreasonably withheld by the Department); or
 - (ii) secured an alternative EST Provider, acceptable to the Department, to provide the Services in the relevant Employment Region from the date on which the Provider ceases, or will cease, to deliver the Services; or
- (b) has made invalid claims for Payments as specified in this clause at any time in a Financial Year,

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

- (c) where clause 69.1(a) applies, \$25,000 per prequalified tender, and \$50,000 per open tender, used to secure an alternative EST Provider acceptable to the Department; and
- (d) where clause 69.1(b) applies:
 - (i) \$3,000, where the Department identifies that the Provider has made 100 to 149 invalid claims in a Financial Year;
 - (ii) \$6,250, where the Department identifies that the Provider has made 150 to 199 invalid claims in a Financial Year;
 - (iii) \$9,750, where the Department identifies that the Provider has made 200 to 249 invalid claims in a Financial Year; and
 - (iv) where the Department identifies that the Provider has made 250 or more invalid claims in a Financial Year, \$13,500 plus an additional \$3,750 for every 50 invalid claims in excess of 250 invalid claims.

Note 1: for the purposes of clause 69.1(b) and (d), and by way of example, the total amount payable for 350 invalid claims made in a Financial Year would be \$21,000.

Note 2: for the purposes of clause 69.1(b) and (d), the amount of Liquidated Damages that the Department may require the Provider to pay at a particular time will depend on whether the number of invalid claims are identified by the Department at one time, or at various times throughout the relevant Financial Year. For example, if the Department identifies that the Provider has made 100 invalid claims during the first three months of a Financial Year and requires the Provider to pay Liquidated Damages in the amount of \$3,000, and later determines that the Provider has made a further 100 invalid claims in the relevant Financial Year, the Department may only require the Provider to pay the difference between the amounts specified at clauses 69.1(d)(iii) and 69.1(d)(i), namely \$6,750 (that is, the Provider would be liable to pay \$9,750 to the Department for that Financial Year in total).

- 69.2 Where clause 69.1(a) or (b) applies, the Parties agree that all relevant loss and damage will, having regard to the governmental and non-commercial nature of the Services and their significance to the Commonwealth's provision of employment services, be impossible, complex or expensive to quantify accurately in financial terms, and therefore the Parties agree that the Liquidated Damages are a reasonable and genuine pre-estimate of the loss incurred by the Commonwealth in relation to:
- (a) in the case of clause 69.1(a), identifying, selecting and entering into contractual relations with an alternative EST Provider to provide services in the relevant Employment Region, and transferring Participants, records, monies and relevant materials to the alternative EST Provider; and
 - (b) in the case of clause 69.1(b), the administrative costs in processing and resolving invalid claims for Payments.
- 69.3 For the avoidance of doubt:
- (a) clause 69.1(a) does not apply where the Department reallocates business at the relevant Site(s) without going to tender;
 - (b) clause 69.1(b) does not apply where the Provider self identifies invalid claims for Payments through its internal compliance practices and Notifies the Department of those invalid claims; and
 - (c) the Department may recover the amount of Liquidated Damages from the Provider as a debt for the purposes of clause 36, if and when the Commonwealth Notifies the Provider that it elects to recover the Liquidated Damages as a debt under clause 36.

70. Termination or reduction in scope with costs

- 70.1 The Department may, at any time by Notice to the Provider, terminate this Deed in whole or in part, or reduce the scope of any part, or all of this Deed, without prejudice to the rights, liabilities, or obligations of either Party accruing before the date on which the termination or reduction takes effect.
- 70.2 If this Deed is terminated in whole or part or reduced in scope under this clause 70.1, the Department is only liable for:
- (a) payment of Fees as set out in clause 70.3; and

- (b) subject to clauses 70.5, 70.6, 70.7 and 70.8, any reasonable, unavoidable costs actually incurred by the Provider and directly attributable to the termination, in whole or in part, or a reduction in scope of this Deed.

Payments

- 70.3 Where the Department terminates or reduces the scope of this Deed under clause 70.1:
- (a) the Department will only be liable to make Payments 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 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

- 70.4 Upon receipt of a Notice of termination or reduction in scope under this clause 70, the Provider must:
- (a) cease or reduce the performance of this Deed in accordance with the Notice;
 - (b) not legally commit any further monies;
 - (c) immediately return to the Department any Payments in accordance with clause 70.3(c);
 - (d) immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the Notice; and
 - (e) continue work on any part of the Services not affected by the Notice.

Abatement of the Payments

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

Limit on compensation

- 70.6 The Department's liability to pay any compensation under or in relation to this clause 70 is subject to the Provider's:
- (a) strict compliance with this clause 70; and
 - (b) substantiation of any amounts claimed under clause 70.3.
- 70.7 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 70;
 - (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 70 not occurred; or
 - (c) for any amounts that would, in aggregate, exceed the maximum Payments that would have been payable by the Department under this Deed in respect of the relevant Services, but for a termination or a reduction in scope made under this clause 70.

- 70.8 In addition, in relation to a reduction in scope under this clause 70, 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.
- 70.9 If the Department terminates, or reduces the scope of, this Deed under this clause 70:
- (a) the Department's actions will not constitute a breach of this Deed; and
 - (b) the Parties agree that the amounts payable to the Provider under this clause 70, represent a reasonable pre-estimate of any loss that may be incurred by the Provider.

71. Termination for default

- 71.1 The Department may terminate this Deed in whole or in part, by giving Notice to the Provider, if any of the following events or matters arise:
- (a) the Provider fails to fulfil, or is in breach of, any of its obligations under this Deed that are not capable of being rectified (as determined by the Department);
 - (b) the Provider is in breach of any of its obligations under this Deed that are capable of being rectified, and fails to rectify the breach, or pattern of 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 62 occurs, other than an event under clause 62.1(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 becomes aware of any information which indicates that, prior to entering into this Deed, the Provider has, including in its Response:
 - (i) engaged in misleading or deceptive conduct;
 - (ii) made a statement that is incorrect or incomplete; or
 - (iii) omitted to provide information to the Department, andthe Department is satisfied that such information may have affected the Department's decision to enter into this Deed or any action taken by the Department under this Deed;
 - (g) notice is served on the Provider or proceedings are taken to cancel its incorporation or cancel its registration or to dissolve the Provider as a legal entity; or

Note: For the avoidance of doubt, clause 71.1(g) does not apply where a Provider has transferred its incorporation or registration in accordance with the legislation under which it is incorporated or registered.

- (h) the Department becomes expressly entitled to terminate this Deed under any other provision of this Deed (excluding clause 70) including under any other provision of this Deed which gives the Department the right to terminate under this clause 71.
- 71.2 Subject to clause 71.3, where the Department terminates this Deed in whole or in part under clause 71.1:
- (a) the Department is liable to pay Payments and entitled to recover Payments as set out in clause 70.3; and
 - (b) clause 70.4 applies as if the Deed were terminated in accordance with clause 70.1.
- 71.3 Clause 71.1 does not limit or exclude any of the Department's other rights under this Deed or at law, including the right to recover any other amounts from the Provider on termination of this Deed, the right to reduce (including to zero) payments due on termination on the basis of breach or poor performance, or any rights of offset.

72. Aboriginal or Torres Strait Islander persons

- 72.1 The Provider must use reasonable endeavours to increase its:
- (a) purchasing from Indigenous Enterprises; and
 - (b) employment of Aboriginal or Torres Strait Islander persons, in the delivery of the Services.
- 72.2 For the purposes of clause 72.1(a) and clause 72.3(a)(ii), purchases from Indigenous Enterprises may be in the form of engagement of an Indigenous Enterprise as a Subcontractor, and/or use of Indigenous Enterprises 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.pmc.gov.au/sites/default/files/publications/factsheet_ipp_overview_1.pdf).*
- 72.3 The Provider must:
- (a) by the Service Start Date, develop an indigenous employment and engagement strategy which:
 - (i) is designed to attract, develop, and retain Aboriginal or Torres Strait Islander persons as employees within the Provider's Own Organisation; and
 - (ii) specifies how the Provider will endeavour to increase its purchasing from Indigenous Enterprises;
 - (b) implement and maintain that strategy for the Term of this Deed; and
 - (c) provide a copy of this strategy to the Department on request.

73. Acknowledgement and promotion

- 73.1 The Provider must, in all publications, and in all promotional, publicity and advertising Materials or activities of any type undertaken by, or on behalf of, the Provider relating to the Services or this Deed:
- (a) comply with any promotion and style guidelines issued by the Department;

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

73.2 The Provider must market and promote the Services, as required by the Department, and deal with enquiries relating to the Provider's provision of the Services, in accordance with any Guidelines.

74. The Department's right to publicise the Services and best practice

74.1 The Department may, by any means, publicise and report on the Services and on the awarding of this Deed to the Provider, including the name of the Provider, the amounts of Fees paid, or expected to be paid to the Provider, and a description of the Services.

74.2 The Department may, at any time, provide to jobactive providers in the Provider's Employment Region(s) any information recorded on the Department's IT Systems regarding the number and details of Participants serviced by the Provider.

74.3 Where the Department identifies best practice on the part of the Provider, the Department may disseminate advice of such best practice to any other person, including other EST Providers.

75. Conflict of interest

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

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

75.3 If, during the Term of this Deed, a Conflict arises, or is likely to arise, including as determined and Notified by the Department, 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 deal with the Conflict.

75.4 The Department may terminate this Deed under clause 71 if the Provider:

- (a) fails to take action in accordance with this clause 75; and/or
- (b) is unable or unwilling to resolve or deal with the Conflict as reasonably required by the Department.

76. Negation of employment, partnership and agency

76.1 The Provider, its Personnel, agents, Subcontractors and Third Party IT Providers are not, by virtue of this Deed or any Subcontract, or for any purpose, deemed to be Department Employees, agents or subcontractors or otherwise able to bind or represent the Commonwealth, and the Provider must not represent itself, and must ensure that its Personnel, agents, Subcontractors and Third Party IT Providers do not represent themselves, as such.

77. Waiver

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

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

77.3 Waiver of any provision of, or right under, this Deed or at law must be in writing signed by the Party entitled to the benefit of that provision or right and is effective only to the extent set out in the written waiver.

78. Severance

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

79. Entire agreement

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

80. Variation of Deed

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

81. Applicable law and jurisdiction

81.1 This Deed is to be construed in accordance with the laws of the State of New South Wales.

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

82. Compliance with laws and government policies

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

- (a) all relevant laws and requirements of any Commonwealth, state, territory or local authority, including the WHS Laws and the *Workplace Gender Equality Act 2012* (Cth); and
- (b) any Commonwealth policies Notified by the Department in writing, referred to, or made available by, the Department to the Provider (including by reference to an internet site), including any listed in this Deed.

- 82.2 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.

Workplace Gender Equality Act 2012 (Cth)

- 82.3 Clauses 82.4 to 82.5 apply only to the extent that the Provider is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012 (Cth)* ('**WGE Act**').
- 82.4 The Provider must:
- (a) Notify the Department as soon as practicable if the Provider becomes non-compliant with the WGE Act during the Term of this Deed; and
 - (b) provide a current letter of compliance issued to the Provider by the Commonwealth Workplace Gender Equality Agency within 18 months from the Deed Commencement Date, and following this, annually, to the Department.
- 82.5 Compliance with the WGE Act does not relieve the Provider from its responsibility to comply with its other obligations under this Deed.

Work health and safety

- 82.6 The Provider must at all times:
- (a) ensure that the Services are carried out in a safe manner;
 - (b) comply with any reasonable instruction from the Department relating to work health and safety and any directions issued by any person having authority under the WHS Laws to do so;
 - (c) communicate, consult and coordinate with the Department in relation to work health and safety matters arising from the Services (including meeting with the Department as required by the Department and communicating any issues or concerns, or any specific requirements applying to the Services under or arising from the WHS Laws, as soon as practicable);
 - (d) 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 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;
 - (e) within 24 hours of becoming aware of such circumstances, inform the Department of the full details of:
 - (i) any suspected or actual contravention of the WHS Laws relating to the Services;
 - (ii) any workplace entry by a WHS Entry Permit Holder, or an inspector appointed under the WHS Act, to any place where the Services are being performed or undertaken; and

- (iii) any proceedings against the Provider, or any decision or request by the Regulator given to the Provider, under the WHS Laws; and
- (iv) 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; and
- (f) 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.

82.7 The Provider must cooperate with any investigation undertaken by the Department concerning any Notifiable Incident, or breach or alleged breach of the WHS Laws, or any audit of the Provider's work health and safety performance, arising out of, or in respect of, the Services.

83. Use of interpreters

83.1 The Provider must accommodate the attendance of any interpreter arranged by a jobactive provider to facilitate communication between the Provider and the Participant during a Course.

Note: jobactive providers are responsible for arranging and paying for an interpreter where they determine that a Participant requires this facility in order to participate in a Course.

84. Notices

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

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

84.2 A Notice given in accordance with clause 84.1 is taken to be received:

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

84.3 For the purposes of this clause 84, the Account Manager's and the Contact Person's address details are as specified in items 1 and 2 of Schedule 1.

SECTION 3 – GLOSSARY

ABN	has the same meaning as it has in section 41 of the <i>A New Tax System (Australian Business Number) Act 1999</i> (Cth).
Aboriginal or Torres Strait Islander person	means a person who: <ul style="list-style-type: none"> (a) is identified as such by the Referring jobactive provider; or (b) is of Aboriginal and/or Torres Strait Islander descent; (c) identifies as an Aboriginal and/or Torres Strait Islander person; and (d) is accepted as such in the community in which the person lives or has lived.
Access	includes access or facilitate access (whether directly or indirectly), traverse, view, use or interface.
Account Manager	means the person for the time being holding, occupying or performing the duties of the position specified in item 1 of Schedule 1, who has authority to receive and sign Notices and written communications for the Department under this Deed.
Adjustment Note	has the meaning given in section 195-1 of the GST Act.
Ancillary Payment	means a payment which the Department may pay the Provider subject to the Provider satisfying any applicable terms and conditions relating to the Ancillary Payment, including those specified in any Guidelines, where relevant.
Assessment	means an assessment conducted by the Provider for a Participant in relation to a Course against the Learning Outcomes as relevant to that Course: <ul style="list-style-type: none"> (a) at the end of that Course; (b) as specified in the Service Delivery Plan for that Course; and (c) in accordance with any Guidelines.
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 <i>Australian Securities and Investments Commission Act 2001</i> (Cth).
Authorised Officer	means a person who is an ‘authorised officer’ as defined under the <i>Public Interest Disclosure Act 2013</i> (Cth).
Business Day	means in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place.

<p>Change in Control</p>	<p>means:</p> <p>(a) subject to paragraph (b) below, in relation to a Corporation, a change in any of the following:</p> <p>(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;</p> <p>(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</p> <p>(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;</p> <p>(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;</p> <p>(c) in relation to a partnership:</p> <p>(i) the sale or winding up or dissolution of the business by the partners;</p> <p>(ii) a change in any of the partners; or</p> <p>(iii) the retirement, death, removal or resignation of any of the partners;</p> <p>(d) in relation to an Exempt Public Authority, a change in relation to any of the following:</p> <p>(i) the composition of the board of Directors;</p> <p>(ii) ownership of any shareholding in any share capital; or</p> <p>(iii) the enabling legislation so far as it affects Control, if any;</p> <p>(e) in relation to a Tendering Group:</p> <p>(i) any change in the membership of the Tendering Group;</p> <p>(ii) a change of the lead member of the Tendering Group, if the Tendering Group has appointed a lead member for the purposes of this Deed; or</p> <p>(iii) a Change in Control as defined in paragraphs (a) to (d) above in any member of the Tendering Group.</p>
<p>Child and Children</p>	<p>means a person, or persons, under the age of 18 years.</p>

Commence or Commencement	means the first day of attendance of a Participant in a Course.
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.dpmc.gov.au/resource-centre/government/commonwealth-coat-arms-information-and-guidelines
Commonwealth Material	means any Material provided by the Department to the Provider for the purposes of this Deed and Material which is copied or derived from Material so provided, and includes Commonwealth Records.
Commonwealth Records	means any Records provided by the Department to the Provider for the purposes of this Deed, and includes Records which are copied or derived from Records so provided.
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: <ul style="list-style-type: none"> (a) a request by a Participant, Prospective 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.
Completed and Completion	means, in relation to a Course, that the Provider has satisfied the requirements in clause 13.1 of this Deed.
Completion Date	means either: <ul style="list-style-type: none"> (a) the day after the latest of the following: <ul style="list-style-type: none"> (i) the Service Period end date; or (ii) the latest Extended Service Period end date; or (b) if this Deed is terminated before any of the days specified in paragraph (a), the day after the day on which this Deed is terminated.
Condition of Offer	means a condition placed by the Department on its offer of this Deed to the Provider.

Confidential Information	means all information that the Parties agree to treat as confidential by Notice to each other after the Deed Commencement Date; or that the Parties know, or ought reasonably to know, is confidential to each other.
Conflict	refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through the Provider engaging in any activity or obtaining any interest that may interfere with or restrict the Provider in performing the Services to the Department fairly and independently.
Constitution	means (depending on the context): (a) a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution; or (b) in relation to any other kind of entity: (i) the entity's charter, rules or memorandum; or (ii) any instrument or law constituting or defining the constitution of the entity or governing the activities of the entity or its members.
Contact Person	means the person specified in item 2 of Schedule 1 who has authority to receive and sign Notices and written communications for the Provider under this Deed and accept any request or direction in relation to the Services.
Control	has the meaning given to that term in section 50AA of the <i>Corporations Act 2001</i> (Cth).
Corporation	has the meaning given to that term in section 57A of the <i>Corporations Act 2001</i> (Cth).
Course	means a Training Block 1 Course or a Training Block 2 Course.
Customer	includes a Participant, potential Participant, Prospective Participant, Employer, Host Organisation, jobactive provider and any other user of the Services.
Cybersafety Policy	means the Commonwealth policy of that name as specified at clauses 46.20 to 46.24.
Deed	means this document, as varied or extended by the Parties from time to time in accordance with this Deed, and includes any Conditions of Offer, the Schedules, the Particulars, any Guidelines and any documents incorporated by reference.
Deed Commencement Date	means the later of 1 April 2017, or the date on which this Deed is signed by the last Party to do so.

Deed Material	<p>means all Material:</p> <ul style="list-style-type: none"> (a) developed or created or required to be developed or created as part of or for the purpose of performing this Deed; (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a) above; or (c) copied or derived from Material referred to in paragraphs (a) or (b); and <p>includes all Deed Records.</p>
Deed Records	<p>means all Records:</p> <ul style="list-style-type: none"> (a) developed or created or required to be developed or created as part of or for the purpose of performing this Deed; (b) incorporated in, supplied or required to be supplied along with the Records referred to in paragraph (a) above; or (c) copied or derived from Records referred to in paragraphs (a) or (b); and <p>includes all Reports.</p>
Department	<p>means the Commonwealth Department of Employment or such other agency or department as may administer this Deed on behalf of the Commonwealth from time to time, and where the context so admits, includes the Commonwealth's relevant officers, delegates, employees and agents.</p>
Department Employee	<p>means an employee of the Commonwealth working for the Department and:</p> <ul style="list-style-type: none"> (a) any person Notified by the Department to the Provider as being a Department Employee; and (b) any person authorised by law to undertake acts on behalf of the Department.
Department's IT Systems'	<p>means the Department's IT computer system accessible by a Provider, delivered as web-browser applications optimised for Internet Explorer 11, and through which information is exchanged between the Provider, Subcontractors, DHS and the Department in relation to the Services.</p>
Department's Security Policies	<p>means policies relating to the use and security of the Department's IT Systems and Records, and includes the policy by the name of the Department's External Security Policy - For Contracted Service Providers and Users and any other security policies Notified by the Department. Relevant policies are available on the Department's IT Systems through the following path: Provider Portal > Provider Operations > IT Security & Access, or at such other location as advised by the Department.</p>
DHS	<p>means the Department of Human Services and includes its officers, delegates, employees, contractors and agents.</p>

Director	<p>means any of the following:</p> <ul style="list-style-type: none"> (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 <i>Corporations Act 2001</i> (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 <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (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 <i>Corporations Act 2001</i> (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.
Documentary Evidence	<p>means those Records of the Provider, including any Records held in a Third Party System, as specified in this Deed including in any Guidelines, which evidence that Services were provided by the Provider as required under this Deed and/or that the Provider is entitled to a Payment.</p>
Employability Skills Training	<p>means the Commonwealth initiative of that name (or such other name as advised by the Department), administered by the Department.</p>
Employability Skills Training Services	<p>means the Services described in Section 1 of this Deed.</p>
Employer	<p>means an entity that has the legal capacity to enter into a contract of employment with a Participant or Prospective Participant.</p>
Employment or Employed	<p>means the status of a person who is in paid work under a contract of employment or who is otherwise deemed to be an employee under relevant Australian legislation.</p>

Employment Region	means a geographical area: (a) identified and displayed at Appendix E of the Request for Proposal, as varied by the Department; and (b) that the Provider is contracted to service, either in whole or in part, under this Deed, as specified in item 8.1 of Schedule 1.
Employment Services Tip off Line	means a telephone and email service, developed primarily for current and former employees of employment services providers and EST Providers which allows those persons to report to the Department where they suspect, or have evidence of incorrect claims or acceptance of Payments, or any other activities that may be a breach of the Deed that the provider has signed with the Department.
Employment Systems Help Desk	means the Department's centralised point of IT support for employment service providers and EST Providers in relation to the Department's IT Systems, including the Employment Services System and Employment and Community Services Network.
EST Provider	means an organisation on the EST Provider Panel that is contracted by the Department to deliver Employability Skills Training Services under the <i>Employability Skills Training Services Panel Deed 2017-2020</i> .
EST Provider Panel	means the panel of pre-approved Registered Training Organisations known as the ' <i>Employability Skills Training Services Panel</i> ' under which EST Providers may be engaged by jobactive providers to deliver Employability Skills Training Services to their job seekers.
Exempt Public Authority	has the meaning given to that term in section 9 of <i>the Corporations Act 2001</i> (Cth).
Existing Material	means all Material, except Commonwealth Material, in existence prior to the Deed Commencement Date: (a) incorporated in; (b) supplied with, or as part of; or (c) required to be supplied with, or as part of, the Deed Material.
Exit	means an exit of a Participant from the Services in accordance with clause 14 and ' Exited ' has an equivalent meaning.
Extended Service Periods	means one or more periods of time from the end of the Service Period
Fees	means any amounts payable by the Department under this Deed specified to be Fees and any amounts not expressly identified as an Ancillary Payment.

Financial Year	means a period from 1 July in one year to 30 June in the following year.
Generalist	means an EST Provider who is contracted by the Department to deliver Employability Skills Training Services in the context of a mix of industries and occupations that address the needs of a broad range of employers.
Glossary	means the glossary in Section 3.
GST	has the meaning as given in section 195-1 of the GST Act.
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Guidelines	refers to the guidelines, if any, as described in this Deed and issued by the Department, as amended 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 an attack of any sort including distributed denial of service, malware, virus, trojans, worms, spam, phishing e-mail, backdoors, botspyware, adware, diallers, toolkits, keyloggers, clickjackers, web bug, exploits, cracking tools, and hacking tools.
Host Organisation	means an organisation, other than the Provider, that hosts an Industry Awareness Experience.
Hosted Industry Awareness Experience	means an Industry Awareness Experience that is hosted by a Host Organisation.
Indigenous Enterprise	means an organisation that is 50 per cent or more owned by Aboriginal or Torres Strait Islander persons and is operating as a business.
Industry Awareness Experience	means an activity that involves Participants for the purpose of exposing them to a work-like environment and includes a Hosted Activity Industry Awareness Experience.
Input Tax Credit	has the meaning given in section 195-1 of the GST Act.

Intellectual Property Rights	<p>includes:</p> <ul style="list-style-type: none"> (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, <p>but does not include:</p> <ul style="list-style-type: none"> (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.
jobactive	means the Commonwealth programme of that name (or such other name as advised by the Department from time to time), administered by the Department.
jobactive Deed	means the jobactive Deed 2015-2020.
jobactive provider	means any entity contracted to the Commonwealth to provide employment provider services under the jobactive Deed.
Joint Charter of Deed Management	means the charter at Schedule 3 which embodies the commitment by the Department and EST Providers to work cooperatively to achieve shared goals and outcomes in the delivery of employment services.
KPIs	means the key performance indicators specified in the Guidelines.
Learning Outcomes	means, in respect of a Course, the specifications of knowledge and skills expected to be attained by a Participant as a result of their participation in the Course, as specified in the Service Delivery Plan.
Liquidated Damages	means the amount that the Department may recover from a Provider in accordance with clause 69.
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 Participant Number	means 20 Participants.
Minimum Participant Number	means: (a) for a Course delivered in a Non-regional Location, 10 Participants; and (b) for a Course delivered in a Regional Location, 8 Participants, or any other number of Participants specified in any Guidelines or Notified by the Department.
Moral Rights	has the meaning given to the term 'moral rights' by the <i>Copyright Act 1968</i> (Cth).
National Customer Service Line	means a free call telephone service which puts Customers in contact with a Department Customer Service Officer, and is 1800 805 260, or such other number as Notified by the Department.
Non-regional Location	means a location identified in the table set out in Appendix E of the Request for Proposal as having no regional loading.
Non-vocational Barriers	means the range of barriers that can prevent a person from obtaining and sustaining employment or education or from undertaking further skills development, including literacy, numeracy and language barriers, homelessness, mental illness, drug or alcohol addiction, sexual abuse or violence and physical or mental abuse.
Notice	means a written notice in accordance with clause 84 and 'Notify' has an equivalent meaning.
Notifiable Incident	has the meaning given in the WHS Act.
Objective	means the objective specified at Recital C in the Particulars.
Own Organisation	means the Provider or that part of the Provider that delivers Services under this Deed.
Partial Capacity Participant	means a Prospective Participant identified by the Referring jobactive provider as having the capacity to undertake a Course on a part-time basis.
Participant	means a person who has been Referred to, and Commenced in, a Course.

Participant Services Records	means Deed Records (including documents associated with the Customer feedback register) about a Participant, that are directly created for the purposes of providing Services.
Particulars	means the document of that name by which the Parties execute this Deed.
Party	means a party to this Deed.
Payments	means the Fees and Ancillary Payments payable under this Deed.
Performance Period	means each consecutive six month period during the Term of this Deed, unless otherwise advised by the Department.
Personal Information	has the same meaning as under section 6 of the Privacy Act which currently is information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not.
Personnel	means: (a) in relation to the Provider, any natural person who is an officer, employee, volunteer or professional advisor of the Provider; and (b) in relation to any other entity, any natural person who is an officer, employee, volunteer or professional advisor of the entity.
Privacy Act	refers to the <i>Privacy Act 1988</i> (Cth).
Privacy Commissioner	means the person appointed to the position of that name and responsible for the administration of the <i>Privacy Act</i> under relevant legislation.
Programme Assurance Activities	refers to activities that may be conducted at any time, to assist the Department in determining whether the Provider is meeting its obligations under the Deed, including any Guidelines.
Prospective Participant	means a person who is Referred to the Provider to undertake Employability Skills Training Services but not yet Commenced.
Protected Information	has the same meaning as under section 23 of the <i>Social Security Act 1991</i> .

Provider	means the Registered Training Organisation contracted under this Deed, and includes its Personnel, successors and assigns, and any constituent entities of the Provider's organisation, and includes reference to a Tendering Group contracted under this Deed, where applicable.
Provider Records	means all Records, except Commonwealth Records, in existence prior to the Deed Commencement Date: (a) incorporated in; (b) supplied with, or as part of; or (c) required to be supplied with, or as part of, the Deed Records.
Provider IT System	means an information technology system used by the Provider or any Subcontractor to provide any Services or to Access the Department's IT Systems.
Records	means documents, information and data stored by any means and all copies and extracts of the same, and includes Deed Records, Commonwealth Records and Provider Records.
Records Management Instructions	means any Guidelines provided by the Department in relation to the management, retention and disposal of Records.
Referral or Referred	means a referral of a person to the Provider by a jobactive provider to undertake Employability Skills Training Services, as recorded in the Department's IT Systems.
Regional Location	means a location identified in the table set out in Appendix E of the Request for Proposal as having a regional loading.
Registered Training Organisation	means a registered training organisation registered by either: (a) the Australian Skills Quality Authority (Commonwealth); or (b) the Registration and Qualifications Authority (Victoria); or (c) the Training Accreditation Council (Western Australia), as recorded on the national register of registered training organisations contained at training.gov.au.
Regulator	means the person who is the regulator within the meaning of the WHS Act.

Related Entity	<p>means:</p> <ul style="list-style-type: none"> (a) those parts of the Provider other than Own Organisation; (b) ‘entities connected with a corporation’ as defined in section 64B of the <i>Corporations Act 2001</i> (Cth) with the word ‘Provider’ substituted for every occurrence of the word ‘corporation’ in that section; (c) an entity that: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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.
Report	means Deed Material that is provided to the Department for the purposes of reporting on the Services.
Request for Proposal	means Request for Proposal for Youth Jobs PaTH – Employability Skills Training Panel 2017-2020.
Response	means the tender submitted by the Provider to the Department in response to the Request for Proposal.
Schedule	means a schedule to this Deed.

Security Contact	means one or more Personnel with responsibility: <ul style="list-style-type: none"> (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.
Service Delivery Plan	means a statement of representations made by the Provider to the Department in regards to the Services it will deliver, as specified in Schedule 2.
Service Period	means, subject to any contrary stipulation in this Deed, the period of that name specified in item 4 of Schedule 1.
Service Start Date	means the date of that name specified in item 3 of Schedule 1.
Services	means the services that the Provider is contracted to perform and provide under this Deed.
Sites	means the one or more physical locations from which the Provider delivers the Services.
Social Security Appeals Process	means reviews and appeals of decisions made under the <i>Social Security Act 1991</i> (Cth) or <i>Social Security (Administration) Act 1999</i> (Cth).
Specialist	means an EST Provider who is contracted by the Department to deliver Employability Skills Training Services in the context of a particular industry’s or industries work environment (e.g. retail, hospitality, construction).
Standards for Registered Training Organisations (RTOs) 2015	means the legislative instrument of that name made under subsections 185(1) and 186(1) of the <i>National Vocational Education and Training Regulator Act 2011</i> (Cth).
Statement of Applicability or SOA	means the document of that name that specifies the accreditation requirements for Provider IT Systems, issued by the Department.
Subcontract	means any arrangement entered into by the Provider by which some or all of the Services under this Deed are provided by another entity.
Subcontractor	means any party which has entered into a Subcontract with the Provider, including a Material Subcontractor.

Supervisor	means a person who is engaged or employed by the Provider or by the Host Organisation (where relevant) and provides Supervision of Participants engaged in a Course or in any Industry Awareness Experience.
Supervision	means the action or process of directly monitoring and managing Participants participating in a Course or in any Industry Awareness Experience.
Tax Invoice	has the meaning given in section 195-1 of the GST Act.
Taxable Supply	has the meaning given in section 195-1 of the GST Act.
Tendering Group	means a group of two or more entities, however constituted, other than a partnership, which have entered into an arrangement for the purposes of jointly delivering the Services, and which may have appointed a lead member of the group with authority to act on behalf of all members of the group for the purposes of this Deed, as specified in the Particulars and item 6 of Schedule 1.
Term of this Deed	refers to the period described in clause 18.1.
Third Party IT Provider	means an entity contracted by the Provider to provide information technology services to the Provider for the purposes of providing the Services, whether or not the entity is a Subcontractor, and includes as relevant, its Personnel, successors and assigns, and any constituent entities of the Third Party IT Provider's organisation. To avoid doubt, a Third Party IT Provider includes a cloud services provider, an infrastructure as a service provider, a software as a service provider, a platform as a service provider, an applications management provider, and also any provider of infrastructure (including servers and network hardware) used for the purpose of Accessing or storing Records.
Third Party IT Provider Deed	means an agreement between a Third Party IT Provider and the Department in the terms and form as specified at http://www.employment.gov.au/employment-services-procurement-information .
Third Party System	means: <ul style="list-style-type: none"> (a) a Provider IT System; or (b) an information technology system of a Third Party IT Provider used by the Provider or any Subcontractor to provide any Services or to Access the Department's IT Systems.
Training Block 1 Course	means the Course(s) specified in item 8.3 of Schedule 1 and as described in the Service Delivery Plan.

Training Block 2 Course	means the Course(s) specified in item 8.3 of Schedule 1 and as described in the Service Delivery Plan.
Vulnerable People	means people who are elderly, disabled or otherwise vulnerable.
WHS Act	means the <i>Work Health and Safety Act 2011</i> (Cth) and any corresponding WHS law within the meaning of section 4 of the WHS Act.
WHS Entry Permit Holder	has the same meaning as that given in the WHS Act.
WHS Laws	means the WHS Act, the regulations made under the WHS Act, and all relevant state and territory work, health and safety legislation.
Working with Children Laws	means the: <ul style="list-style-type: none"> (a) <i>Child Protection (Working with Children) Act 2012</i> (NSW); (b) <i>Working with Children (Risk Management and Screening) Act 2000</i> (Qld); (c) <i>Working with Children (Criminal Record Checking) Act 2004</i> (WA); (d) <i>Working with Children Act 2005</i> (Vic); (e) <i>Children’s Protection Act 1993</i> (SA); (f) <i>Working with Vulnerable People (Background Checking) Act 2011</i> (ACT); (g) <i>Care and Protection of Children Act 2007</i> (NT); (h) <i>Registration to Work with Vulnerable People Act 2013</i> (Tas); and (i) any other legislation that provides for the checking and clearance of people who work with Children.
Youth Employment Package – Youth Jobs PaTH (Prepare-Trial-Hire)	means the Australian Government programme of that name, administered by the Department, announced in the 2016-2017 Budget. The programme includes Employability Skills Training, PaTH Internships and Youth Bonus Wage Subsidy.
Youth Jobs PaTH Internship	means a voluntary internship placement of 4 to 12 weeks duration undertaken by a job seeker under the Youth Jobs PaTH administered by the Department.

SCHEDULE 1 – DEED AND BUSINESS DETAILS

<See separate document>

SCHEDULE 2 – SERVICE DELIVERY PLAN

<See separate document>

SCHEDULE 3 – JOINT CHARTER OF DEED MANAGEMENT



Australian Government
Department of Employment

Employment Services Joint Charter of Deed Management

The Department of Employment and providers delivering services under the *jobactive Deed 2015–2020*, the *jobactive Deed 2015–2020 - Work for the Dole Coordinator*, the *jobactive Deed (Norfolk Island) 2016-2018*, the *Transition to Work Deed 2016-2020* and the *Employability Skills Training Services Panel Deed 2017 - 2020* agree to conduct themselves in accordance with this Joint Charter of Deed Management.

This joint charter is observed by the Department, jobactive providers, Work for the Dole Coordinators, Transition to Work Providers, the National Harvest Labour Information Service and providers of the New Enterprise Incentive Scheme, Harvest Labour Services and EST Providers.

A joint approach for stronger employment services

The Employment Services Joint Charter reflects our commitment to work together to ensure that employment services meet the needs of job seekers, employers, communities and the Australian Government.

Together, we are committed to maintaining the reputation and integrity of employment services, strengthening the employment services industry and working together to make sure services are managed and delivered effectively and provide value for money.

Our commitments

***What providers can expect
from the
Department:***

***What the Department can
expect from providers:***

Respect and support	Respect
Openness and transparency	Collaboration
Integrity and accountability	
Continuous improvement	

What providers can expect from the Department

1 Respect and support

The Department will:

- respect providers' role, experience and expertise
- treat each provider with courtesy and consideration
- meet regularly with providers
- adhere to agreed communication protocols with providers
- respond to providers' queries, generally within 10 business days
- work with providers to resolve complaints, disputes or problems, and consider the perspective of all parties—including employers and job seekers—when developing resolutions
- support providers to implement programme changes effectively
- maintain the National Customer Service Line
- maintain the Employer Hotline to facilitate connections between employers and providers.

2 Openness and transparency

The Department will:

- be transparent in our business dealings
- maintain honest and open communication
- provide consistent, accurate and timely advice
- maintain feedback mechanisms to support formal and informal feedback from providers
- consult providers wherever possible, generally through industry representatives—including on contract variations
- provide reasonable notice for providers to implement new or amended guidelines.

3 Integrity and accountability

The Department will:

- observe the Australian Public Service (APS) Code of Conduct and APS Values
 - adhere to the Commonwealth Procurement Rules, including on principles of probity and ethical and fair dealings
 - act honestly and in the best interests of the Government, the employment services industry, job seekers and the community
 - be accountable for our decisions and actions
 - support providers to comply with their deed requirements by:
 - streamlining and simplifying guidelines
 - providing timely feedback from contract monitoring and programme assurance activities
- treat providers' information confidentially (subject to relevant deed provisions) exercise its rights under the Deed in good faith.

4 Continuous improvement

The Department will:

- work with the industry to promote better practice and innovation
- regularly review provider performance and deliver balanced and consistent feedback
- work with providers to help them meet the needs of employers and industry
- work with providers to reduce the administrative burden of managing and complying with deeds
- continually develop its contract management capability to make sure providers receive high quality support.

What the Department can expect from Providers

1 Respect

- Providers will: respect the Department's role, experience and expertise
- treat job seekers, the Department, other providers, Work for the Dole host organisations and industry stakeholders with courtesy and consideration
- respond to queries appropriately.

2 Collaboration

- develop and maintain effective relationships with the Department, employers, other providers, Work for the Dole host organisations and industry stakeholders
- work with the Department to resolve complaints, disputes or problems, using the following informal dispute resolution process in the first instance (except for matters that are excluded under the relevant deeds):
 1. The provider initially discusses any issues or problems directly with a contract or account manager.
 2. If the dispute, complaint or problem can't be resolved, the provider requests that it be raised with the relevant state manager.
 3. If this process does not resolve the issue, the National Contract Manager will attempt to facilitate a resolution.
 4. Any dispute or problem that cannot be resolved through this informal resolution process will be managed through the formal procedures set out in the relevant deed.

3 Integrity and accountability

Providers will:

- maintain high standards of professional conduct
- recognise and act on the Government's employment services policies
- implement programme changes in a timely way
- maintain effective governance and control frameworks to provide assurance of the quality of services and compliance with relevant deeds
- act in accordance with the law and avoid any practice or activity which could bring employment services or the Department into disrepute
- manage feedback fairly, ethically and confidentially (subject to relevant deed provisions)
- make sure staff deliver accurate and consistent advice and information to job seekers, employers, Work for the Dole host organisations and other stakeholders
- actively identify and manage risks.

4 Continuous Improvement

Providers will:

- work to increase job outcomes for job seekers

- further develop service strategies that increase job outcomes for Indigenous job seekers
- develop tailored and effective services that meet employers' needs
- regularly review performance and work to address performance management issues
- encourage and foster innovative approaches and better practice
- support efforts to streamline activities without compromising the integrity of employment services
- maintain and strengthen the capability of staff.

DEED VARIATION HISTORY

Clause	Variation, effective date
Section 1 – Employability Skills Training Service	
2.2(a)	GDV 1, 1 July 2017
2.5(a)	GDV 1, 1 July 2017
5.15, (a)	GDV 1, 1 July 2017
13(c), (d)	GDV 1, 1 July 2017
Section 2 – General Terms and ConditionsNot	
30.3	GDV 1, 1 July 2017
30.4	GDV 1, 1 July 2017
34.1	GDV 1, 1 July 2017
35.1(b)	GDV 1, 1 July 2017
46.6	GDV 1, 1 July 2017
46.8	GDV 1, 1 July 2017
46.9	GDV 1, 1 July 2017
56.1(f)	GDV 1, 1 July 2017
56.5	GDV 1, 1 July 2017
82.6(c)	GDV 1, 1 July 2017
82.6(e)(i)	GDV 1, 1 July 2017
Section 3 - Glossary	
‘Harmful Code’	GDV 1, 1 July 2017
‘Maxiumum Participant Number’	GDV 1, 1 July 2017
‘Objective’	GDV 1, 1 July 2017