



Australian Government

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Department of the Prime Minister and Cabinet

## **HEAD AGREEMENT FOR THE COMMUNITY DEVELOPMENT PROGRAM 2019-2022**

between

**the Commonwealth of Australia as represented by the Department of the Prime Minister and Cabinet (ABN 18 108 001 191)**

AND

**[insert Provider name] (ABN [xx])**

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**Version: 01 - March 2019**

***[NOTE TO PROVIDERS: This Head Agreement sets out the terms and conditions that will apply to all Services you provide for the Community Development Program. You will be engaged to provide particular Services when you and the Department agree a Project Schedule (a separate document that will set out specific details about the Services you have been engaged to provide). Once a Project Schedule is signed by both you and the Department, this will create a separate Project Agreement between you and the Department.***

***The terms of the Project Agreement will be:***

- clauses in the body of the Head Agreement;
- clauses in the Annexures to this Head Agreement, which relate to Services, Monies, Reporting, Template forms and the Glossary;
- the details set out in the Project Schedule; and
- the requirements in the Guidance.

***Terms which have a capital letter are defined in ANNEXURE 5 – INTERPRETATION AND GLOSSARY to this Head Agreement).]***

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## 1. Term of Head Agreement

- 1.1 Start Date: The date the Head Agreement is signed by both parties.
- 1.2 End Date: 30 June 2022, unless terminated earlier in accordance with the Head Agreement.
- 1.3 The End Date may be extended by up to a maximum of 36 months after the End Date, by the parties agreeing a variation in accordance with clause 29 (Variation). If the Term of the Head Agreement is extended for a period, the term of each current Project Agreement will also be automatically extended for the same period. All other terms and conditions of the Head Agreement and Project Agreement will continue to apply, unless otherwise agreed in writing by the parties.

## 2. Parties to the Head Agreement

Department	The Commonwealth of Australia as represented by the Department of the Prime Minister and Cabinet
ABN	ABN 18 108 001 191
Registered office	1 National Circuit, Barton ACT 2600
Address for service of Notices	<i>[insert]</i>
Contact officer for the Head Agreement	<i>[list the position of the person who negotiates the first Project Schedule]</i>
Telephone	<i>[insert]</i>
Email	<i>[insert]</i>
Registered for GST?	Yes, and can provide Recipient Created Tax Invoices
	The Commonwealth can change its contact officer and contact details for the Head Agreement by giving Notice to the Provider.

Provider

Full legal name [insert]

Trading or business name [insert]

ABN [insert]

Registered office (physical address) [insert]

Address for service of Notices (if different) [insert]

Contact person for Head Agreement [insert name and position title]

Telephone [insert]

Email of contact person [insert]

The Provider can change its contact officer and contact details for the Head Agreement by giving Notice to the Department.

### 3. Objectives

- 3.1 The Community Development Program is the Australian Government's remote employment and community development service. It supports job seekers in remote Australia to build work-like skills, address employment barriers and contribute to their communities through a range of flexible activities. The Community Development Program is designed around the unique social and labour market conditions found in remote Australia and is an essential part of the Government's agenda for increasing employment and breaking the cycle of welfare dependency in remote Australia.
- 3.2 The overarching object of the Community Development Program is to support services or activities that will have a positive impact on one or more of the Government's priority areas – employment and economic development – to support connecting working age Australians with real and sustainable jobs.
- 3.3 The Community Development Program also assists remote job seekers to prepare for work, move into work, and stay in work as it becomes available. Where work is not available, job seekers will be engaged in day-to-day activity that helps them to contribute to community aspirations. A key principle of the Community Development Program is that it is community-driven and reflects the needs and aspirations of the local community. The Community



Development Program operates differently in each region depending on the needs of jobs seekers, communities and the local labour market.

- 3.4 Further Objectives may be specified in ANNEXURE 1 – SERVICE DESCRIPTIONS.
- 3.5 The Department is committed to working more closely with Aboriginal and Torres Strait Islander Peoples on the key priorities of getting children to school, people to work and making communities safer. The Community Development Program is funded under the Jobs, Land and Economy Program as part of the Indigenous Advancement Strategy. The majority of Eligible Job Seekers are Aboriginal and/or Torres Strait Islander Peoples.
- 3.6 The Provider is committed to achieving results in these key priorities, and will work with the Department and remote communities to do this.

#### **4. How this Head Agreement and the Project Schedules work**

- 4.1 The purpose of the Head Agreement is to create a framework that governs the relationship between the Department and the Provider for the delivery of the Services and the payment of all Monies during the Term.
- 4.2 The Head Agreement sets out the general terms and conditions applying to all Services and Monies. The Annexures to the Head Agreement also apply to all Services and include Service descriptions (ANNEXURE 1 – SERVICE DESCRIPTIONS), details of Monies associated with the provision of the Services (ANNEXURE 2 – MONIES), reporting obligations (ANNEXURE 3 – REPORTING), template documents which must be used (ANNEXURE 4 – TEMPLATES), and the Glossary (ANNEXURE 5 – INTERPRETATION AND GLOSSARY).
- 4.3 A Project Schedule sets out details that apply to the Provider, including the term of the Project Agreement, the categories of Services to be delivered by the Provider, and the applicable types of Monies to be paid by the Department. A Project Schedule may also set out further terms and conditions applicable to the Provider.
- 4.4 If both parties sign a Project Schedule, this will create a Project Agreement.
- 4.5 The Department does not guarantee that during the term of the Head Agreement:
  - (a) any number of Project Schedules will be signed;
  - (b) the Provider will provide any volume of Services; or
  - (c) any volume of Monies will be paid to the Provider.

***[NOTE TO PROVIDERS: The Department intends to offer successful applicants a Project Schedule for their Region, but cannot guarantee any volume of work or payments as a result. In accordance with usual Commonwealth accountability requirements, the Department will only sign a Project Schedule if it has approved the expenditure for payment of the associated Monies.]***

- 4.6 Each Project Agreement is a separate contract between the Department and the Provider.
- 4.7 The terms of a Project Agreement are those set out in:
  - (a) terms and conditions in the body of this Head Agreement;
  - (b) terms and conditions in the Annexures;
  - (c) the relevant Project Schedule;
  - (d) the Guidance; and

- (e) any other attachments to, or documents incorporated by reference into, any of those documents.
- 4.8 If there is any inconsistency between these documents, the document appearing higher in the list in clause 4.7 prevails.
- 4.8 Despite each Project Agreement being a separate contract, if the Head Agreement ends for any reason (including through expiry or termination), each Project Agreement will also automatically end.
- 4.10 The Provider must perform its obligations in accordance with any applicable Guidance, even if a particular clause does not expressly refer to the Guidance.
- 4.11 The Provider is not by virtue of the Head Agreement, or a Project Agreement, the employee, agent or partner of the Department and is not authorised to bind or represent the Department.

## **5. Delivering the Services**

### **General**

- 5.1 The Provider must deliver the Services:
  - (a) in accordance with the terms and conditions of the Project Agreement;
  - (b) in consultation and cooperation with the Department and the communities in the Provider Region; and
  - (c) in a manner that is consistent with the Objectives of the Community Development Program.
- 5.2 The Provider must not:
  - (a) act in a way that brings or may bring the Services into disrepute;
  - (b) act in a way that would be inconsistent with the Australian Government's key priorities of getting children to school, people to work and making communities safer; or
  - (c) engage in any practice that dishonestly or improperly manipulates Records or the Services with the intention of maximising payments to the Provider, or otherwise improperly obtaining a benefit for the Provider or any person.

### **Location of the Services**

- 5.3 The Provider must provide the Services in each Provider Region specified in a Project Schedule and:
  - (a) at all Sites within the Provider Region, including with a permanent presence in at least one Full-Time Site in each Region; and
  - (b) at any other location as required to ensure that the Services are properly conducted across the whole of the Provider Region and for all Eligible Job Seekers in the Provider Region.
- 5.4 The Department may, by Notice and acting reasonably, vary the boundaries of a Provider Region, for all or part of the Term.

### **Service Guarantee**

- 5.5 The Provider must conduct the Services in accordance with the Service Guarantee and must:
  - (a) provide a copy of the Service Guarantee to all Eligible Job Seekers at their Initial Interview; and

- (b) prominently display any promotional material made available by the Department about the Service Guarantee in all offices and Sites, and make such material available to Eligible Job Seekers, Employers and other users of the Services.

**Provider Code of Practice**

- 5.6 The Provider must provide a copy of the Provider Code of Practice to all Eligible Job Seekers, and explain it to them, at their Initial Interview.

**Accessibility**

- 5.7 The Provider must ensure that all Sites are:
  - (a) accessible to people with a disability; and
  - (b) open for the conduct of the Services on the Business Days and at the times specified in the Project Schedule.

### **Use of interpreters**

- 5.8 The Provider, at the Provider's cost, must provide an interpreter to facilitate communication with an Eligible Job Seeker whenever, in the Provider's reasonable opinion, the Eligible Job Seeker may require the assistance of an interpreter due to a language or hearing barrier, or as otherwise reasonably necessary and in accordance with the Guidance.
- 5.8 The Provider must ensure that its personnel are adequately trained to engage with Eligible Job Seekers who require interpreter services, in accordance with the Guidance or as otherwise required by the Department.
- 5.10 The Provider must keep Records of its use of interpreters in accordance with the Guidance, including any instance where a Provider has refused to provide an interpreter to an Eligible Job Seeker and the justification for such refusal. The Department may request, and the Provider must provide, copies of these Records from time to time.

### **Use of IT Systems**

- 5.11 The Provider must:
- (a) conduct the Services using the IT Systems and comply with any directions from the Department in relation to such use;
  - (b) ensure that Provider Personnel do not access the IT Systems until they have successfully completed relevant training as determined by the Department, and only allow access to the IT Systems to Provider Personnel who need to do so in order to provide the Services;
  - (c) promptly Notify the Department of any Material Subcontractor or any third party that the Provider has permitted to access to the IT Systems, if they no longer have a need for that access;
  - (d) nominate an IT Contact and at all times ensure the Department has the name and contact details of the current IT Contact; and
  - (e) take all reasonable steps to:
    - (i) enter and record data on the IT Systems in accordance with any Guidance and Department directions; and
    - (ii) ensure all data entered on the IT Systems is true, accurate and complete and is updated regularly in accordance with the Reporting requirements set out in clause 7 and ANNEXURE 3 – REPORTING.
- 5.12 The Provider must, at its own cost, provide adequate and appropriate information technology systems to enable:
- (a) access and use of the IT Systems;
  - (b) assistive technology required by Provider Personnel to access the IT Systems; and
  - (c) the Provider to meet its obligations under the Project Agreement.

***[NOTE TO PROVIDERS: The IT System is optimised for Internet Explorer 11 as at November 2018. Applicants should ensure that their ICT systems are suitable and enable compliance with this clause.]***

- 5.13 Before the Provider provides access to the IT Systems to any person who is not Provider Personnel for any reason (including providing access to electronic Records in the IT System), the Provider must:

- (a) seek prior written approval from the Department of Jobs and Small Business ('DJSB') in respect of such access;
- (b) procure from that third party a signed non-disclosure deed in the form set out in ANNEXURE 4 – TEMPLATES from each relevant individual prior to granting such access (and provide copies of signed non-disclosure deeds immediately upon request by the Department or DJSB);
- (c) only grant access to the third party in accordance with the Security Policy, the Cybersafety Policy and any applicable Guidance; and
- (d) comply with any other directions given by DJSB or the Department.

5.14 If at any time the IT System is not operational, or is not functioning at the level (or with the functionality) reasonably required for the Provider to provide the Services, the Provider must use any alternative system (whether electronic, manual or paper based) nominated by the Department.

### **Software and Facilities**

5.15 The Department may nominate a facility and/or software for use by the Provider, including for:

- (a) financial reporting;
- (b) accounting for Monies received under a Project Agreement;
- (c) accessing payment data;
- (d) recording program information; or
- (e) any other activity which supports management of the Services,

and the Provider must use that nominated facility and/or software.

### **Security Policy**

5.16 The Provider must:

- (a) comply with the Security Policy;
- (b) nominate a Security Contact and at all times ensure the Department has the name and contact details of the current Security Contact;
- (c) ensure any information technology systems that access and use the IT Systems are secure and have appropriate security controls in place to protect the data on the IT Systems from any unauthorised use; and
- (d) take reasonable steps to:
  - (i) ensure that security measures such as firewall security and virus protection software are installed and maintained to safeguard equipment and data integrity;
  - (ii) prevent the sharing of user identification and passwords by or among Provider Personnel by putting in place appropriate policies and procedures;
  - (iii) terminate any Provider Personnel access to the IT Systems if they are no longer Provider Personnel (including immediately on personnel separation or termination or expiration of their employment or contractual arrangement); and
  - (iv) prevent unauthorised access by any person to the IT Systems.

- 5.17 The Provider must Notify the Department of any actual or suspected breach of the IT Systems immediately upon becoming aware of the actual or suspected breach, including where a person may be planning to breach IT security, and such Notice:
- (a) may propose a course of action to ensure that the breach is remedied quickly and does not occur again; and
  - (b) may include a proposal to temporarily suspend a user's access, counsel and/or discipline a user.
- 5.18 If an actual or suspected breach of the IT Systems involves Personal Information, clauses 20.3 to 20.7 (Mandatory Data Breach Notification) will also apply.
- 5.18 On receipt of a Notice under clause 5.17, the Department may:
- (a) agree to the Provider's proposal to remedy the actual or suspected breach;
  - (b) require the Provider to amend or include additional requirements and conditions in the proposal and to comply with those changes; or
  - (c) require no further action from the Provider in relation to the actual or suspected breach.
- 5.10 If the Department considers that the Provider is, may be or has previously been in breach of this clause 5, or there is a risk of such a breach, the Department may immediately:
- (a) suspend access to the IT Systems for any Provider Personnel;
  - (b) require the Provider to obtain new logon details for any Provider Personnel; and
  - (c) require the Provider to prepare and implement a Department approved IT security remediation plan.
- 5.11 Any action taken by the Department under clause 5.20 does not limit any other rights it has under the Project Agreement or under the law.
- 5.12 The Provider must do all things necessary to give effect to this clause 5, at no additional cost to the Department.

### **Cybersafety Policy**

- 5.13 The Provider must comply with the following Cybersafety Policy:
- (a) In this clause 5.23:
    - (i) **'Clients'** means persons who may use the Provider's computers and/or other digital technology in delivering or receiving the benefit of the Services, including but not limited to the Provider, the Provider Personnel and the public, whether they be adult or Child.
    - (ii) **'Reasonable Steps'** means having in place strategies to minimise and manage risks of exposure to inappropriate or harmful online content by users of computers, and 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 personnel regarding the risks of, and protection from, inappropriate or harmful online content.
  - (b) The Provider must take Reasonable Steps to ensure the cyber safety of Clients when performing its obligations under the Project Agreement.

- (c) The Department may by Notice require the Provider to provide Documentary Evidence demonstrating compliance with this Cybersafety Policy, within 10 Business Days of receiving such Notice.
- (d) The Cybersafety Policy may be amended by the Department by giving the Provider Notice in writing.

### **Personnel**

5.24 The Provider must ensure that Provider Personnel who are assigned to perform the Services are fully trained, competent and skilled, and must advise its Provider Personnel that:

- (a) they may be Commonwealth public officials for the purposes of Division 142 of the Criminal Code, and that Chapter 7 of the Criminal Code provides offences which attract substantial penalties, including for theft of Department property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents; and
- (b) acting with the intention to dishonestly obtain a benefit for any person is punishable by penalties including imprisonment.

***[NOTE TO PROVIDERS: Under section 137.1 of the Criminal Code, giving false or misleading information is a serious offence punishable by penalties, including imprisonment.]***

5.15 The Department may direct the Provider to remove Provider Personnel from a task relating to the Services or a Project Agreement on any reasonable ground, and must give written reasons for the removal. The Provider must, at its own cost, promptly remove the personnel and where applicable, provide replacement personnel acceptable to the Department.

### **Income generating activities**

5.26 The Provider must:

- (a) seek prior written approval from the Department to undertake income generating Activities and comply with any Guidance;
- (b) ensure that Activities support economic development in the Provider Region;
- (c) charge a fair market price for any goods and services generated by the Provider through delivery of the Services; and
- (d) keep Documentary Evidence of all income generating activities and related material (including the Department's approval), and provide such Documentary Evidence to the Department on request.

### **Community engagement**

5.17 The Provider must, within each Provider Region:

- (a) work cooperatively with community stakeholders in delivering the Services, including any community stakeholders as described in the Project Schedule;
- (b) identify programs or initiatives within the community which may help enable the Eligible Job Seekers to fulfil their Job Plans;
- (c) use reasonable endeavours to assist the local community to develop and increase economic opportunities and increase work participation;
- (d) use reasonable endeavours to work with the local community to identify the strategies and resources required to address barriers to employment and participation;

- (e) use reasonable endeavours to help the local community to build strong social foundations that lead to better economic opportunities;
- (f) liaise and work cooperatively with the Community Advisory Board in the Provider Region in relation to the design of community and economic development activities, training opportunities for Eligible Job Seekers, applications submitted (or proposed for submission) to the Department for the Capital Investment Fund, or as otherwise directed by the Department in writing; and
- (g) comply with any relevant Guidance.

### **Eligible Job Seeker Feedback**

- 5.18 The Provider must establish and publicise to Eligible Job Seekers the existence and details of a process to allow Eligible Job Seekers to provide feedback, including complaints, about the conduct of the Services.
- 5.18 The Provider must
- (a) ensure the feedback process is explained to all Eligible Job Seekers on initial Contact with the Provider, and at any other time upon request by an any Eligible Job Seeker;
  - (b) make copies of the feedback process available to Eligible Job Seekers upon request;
  - (c) ensure that all complaints received are investigated by an appropriately senior staff member;
  - (d) ensure that all other feedback received by the Provider is dealt with appropriately;
  - (e) effectively communicate the outcome of any investigation and any action the Provider proposes to take about a complaint to the complainant and, if requested by the Department, to the Department;
  - (f) when approached by the Department, actively assist:
    - (i) the Department in its investigation of the matter;
    - (ii) in negotiating a resolution to a complaint;
    - (iii) other authorities in negotiating a resolution to a complaint, if the relevant Eligible Job Seeker has chosen to use other legislative complaints mechanisms; and
    - (iv) not withhold Services from a complainant or discriminate against a complainant because of a complaint.
- 5.30 If an Eligible Job Seeker is dissatisfied with the results of the feedback process, the Provider must refer the Eligible Job Seeker to the Department's National Customer Service Line for further investigation of the matter.
- 5.31 The Provider must ensure its feedback process:
- (a) is consistent with the Head Agreement, any Guidance, and where relevant, the Code of Practice and the Service Guarantee; and
  - (b) clearly indicates that Eligible Job Seekers may also make a complaint directly to the Employment Services National Customer Service Line.
- 5.32 Upon request by the Department, the Provider must provide details of its feedback process.
- 5.13 The Provider must keep a Feedback Register which includes, but is not limited to, the following information:



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

## 6. Subcontracting

***[Note to Providers: If a person or business is subcontracted by the Provider to perform the Services, then the following subcontracting provisions will apply. Where a Subcontractor performs a substantial or critical part of the Services (such that, without them, it would be impossible for the Provider to meet its obligations under this Head Agreement) that Subcontractor will be a 'Material Subcontractor' for the purposes of the following clauses. All Material Subcontractors must sign a Deed Poll in the form of ANNEXURE 4 – PART A.]***

### General

- 6.1 The Provider must not subcontract any aspect of delivery of the Services, without the Department's prior written approval. Such approval may be withheld, granted, or granted subject to conditions.
- 6.2 Unless otherwise agreed by the Department in writing, in selecting Subcontractors (including Material Subcontractors), the Provider must ensure:
  - (a) the Provider has sought a minimum of three quotes from three different prospective subcontractors in respect of the Services to be subcontracted;
  - (b) value for money is achieved in delivery of the Services;
  - (c) any conflicts of interest are declared and managed in accordance with clause 16 (Conflict of Interest);

- (d) it does not enter into a subcontract 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); and
  - (e) it has informed the Subcontractor that their participation in performing the Services under a Project Agreement may be publicly disclosed by the Department.
- 6.3 Subcontracting all, or any part, of the Provider's obligations under a Project Agreement (including to a Material Subcontractor) will not relieve the Provider of any of its obligations under the Project Agreement, and the Provider will remain fully responsible for delivery of all the Services in accordance with the Project Agreement, and any debts that are incurred in accordance with clauses 9.18 to 9.22 (Debt and interest).
- 6.4 The Department's approval of a Subcontractor (including a Material Subcontractor) does not imply any responsibility on behalf of the Department for ensuring:
- (a) the suitability of the Subcontractor for the work proposed to be carried out; or
  - (b) that the work carried out by the Subcontractor meets the requirements of the Project Agreement.

### **Material Subcontractors**

- 6.5 The Department may approve Services under a Project Agreement being provided by one or more Material Subcontractors.
- 6.6 A Subcontractor will be a Material Subcontractor if, in the Department's reasonable opinion, the Subcontractor:
- (a) performs a significant role in relation to the Services (including having Contact with Eligible Job Seekers);
  - (b) performs Services that the Department considers to be material in nature;
  - (c) undertakes a significant proportion of the Services (including a significant proportion of a Provider Region); or
  - (d) is essential to the Provider being able to provide the Services so as to meet the requirements of the Project Agreement.
- 6.7 Before Services are performed by a Material Subcontractor, the Provider must:
- (a) provide the Department with the following information regarding each proposed Material Subcontractor:
    - (i) legal name, registration number and registration status;
    - (ii) address and contact details;
    - (iii) the scope of the proposed Services to be performed;
    - (iv) the geographical location (including if applicable specific Sites) in which the proposed Services will be performed; and
    - (v) any other information requested by the Department;
  - (b) provide the Department with a Deed Poll, in the form set out in ANNEXURE 4 – TEMPLATES or as otherwise agreed by the Department, which has been signed by the Material Subcontractor; and
  - (c) obtain the Department's prior written approval for the use of the Material Subcontractor. Any entities described as Material Subcontractors in a Project Schedule have been approved by the Department.

- 6.8 Where a Project Agreement requires the Provider to take an action or refrain from taking an action in relation to the Services, the Provider must ensure that a Material Subcontractor takes that action, or refrains from taking that action, so that it at all times complies with the Project Agreement when performing those Services.

#### **Terms and conditions of Material Subcontracts**

- 6.9 The Provider must enter into a Material Subcontract with each Material Subcontractor which contains terms acceptable to the Department. Every Material Subcontract must:
- (a) be in writing and validly executed by both parties;
  - (b) place obligations on the Material Subcontractor in respect of the Services to be provided by it that are equivalent to the Provider's obligations under the Project Agreement, and consistent with the Department's rights under the Project Agreement;
  - (c) include a right for the Provider to provide a copy of the Material Subcontract to the Department, if requested; and
  - (d) without limiting clause 6.9(b), include the following contractual terms:
    - (i) the right for the Provider to terminate the Material Subcontract with immediate effect, and without penalty (to reflect the Department's ability to revoke approval of the Material Subcontractor under clause 6.12 (Removal of a Subcontractor (including a Material Subcontractor)));
    - (ii) an agreement to comply with the requirements of the Head Agreement in relation to the provision of the Services which are the subject of the Material Subcontract;
    - (iii) an acknowledgement that the services provided under the Material Subcontract are ultimately being performed for the benefit of Department;
    - (iv) an obligation for the Material Subcontractor to notify both the Department and the Provider within 7 days of the following occurring:
      - (A) the Material Subcontractor commits a material breach of any law of the Commonwealth, State or Territory or local government;
      - (B) the Material Subcontractor becomes aware that an act or omission of the Material Subcontractor is being investigated by any Commonwealth, State or Territory or local government body; or
      - (C) the Material Subcontractor is unable to pay all its debts as and when they become due and payable.
- 6.10 The Provider must also notify the relevant law enforcement authorities where clause 6.9(d)(iv)(A) applies.
- 6.11 The Provider:
- (a) must promptly provide a copy of the Material Subcontract, and other relevant information about a Material Subcontractor, to the Department upon request;
  - (b) warrants that it has received express permission from the Material Subcontractor to disclose the Material Subcontract to the Department;
  - (c) must ensure the Material Subcontractor is financially viable, and has the necessary skills and appropriate insurance to perform the subcontracted Services;
  - (d) ensure that the Material Subcontractor is informed about all changes, and proposed changes, to the Head Agreement or Project Agreement which may affect the Material Subcontractor's obligations under its Material Subcontract or the Deed Poll;

- (e) must not, without the Department's prior written approval:
  - (i) cease using an approved Material Subcontractor to provide the Services or terminate any Material Subcontract with an approved Material Subcontractor in connection with a Project Agreement; or
  - (ii) change the scope of the Services provided by a Material Subcontractor, or the geographical location for performance of those Services, which have been approved by the Department in relation to an approved Material Subcontractor.

#### **Removal of a Subcontractor (including a Material Subcontractor)**

- 6.12 The Department may, on any reasonable ground, revoke approval of a Subcontractor (including a Material Subcontractor), at any time by giving written Notice to the Provider. The Department will give written reasons for the revocation. The Provider must, at its own cost, ensure the Subcontractor and Subcontractor Personnel cease all further involvement in the delivery of Services and arrange a replacement that is acceptable to the Department within the timeframes reasonably required by the Department.
- 6.13 A failure to comply with the requirements of this clause 6 in relation to a Material Subcontractor or Material Subcontract constitutes an event of default under the relevant Project Agreement, and constitutes an event or circumstance identified for the purposes of clause 24.2 (Termination or reduction in scope – for default).
- 6.14 The rights and remedies of the Department under any Project Agreement against the Provider for any default in the Provider's obligations under the Project Agreement are not affected or in any way diminished by any legal relationship between the Department and any Material Subcontractor, including any legal relationship established by the execution and delivery of the Deed Poll referred to in clause 6.7(b) (Material Subcontractors).

#### **Restructuring of Material Subcontracting arrangements**

- 6.15 If at any time the Department or the Provider considers that it would be more desirable for the provision of the Services to be restructured, so that this Head Agreement and/or a Project Agreement is novated to a Material Subcontractor, and the Provider becomes a Material Subcontractor under that novated Head Agreement and/or Project Agreement, then:
  - (a) that party must Notify the other party;
  - (b) as soon as practical, the parties must meet and consider the proposed arrangements for such a novation and subcontracting arrangement;
  - (c) the Provider must do all things necessary to facilitate the Material Subcontractor (and any other relevant Subcontractors) being a part of those meetings and consideration; and
  - (d) the parties must endeavour to reach agreement on any restructuring, and then promptly document and implement that agreement.
- 6.16 For clarity, the parties undertaking (or failing to undertake) the process in clause 6.15 does not affect any other rights of a party under the Head Agreement or Project Agreement.

## **7. Reporting and Records management**

### **Reporting**

- 7.1 The Provider must provide Reports as described in this clause 7 and ANNEXURE 3 – REPORTING.
- 7.2 The Provider must provide any additional Reports reasonably requested by the Department. Additional Reports must be provided within 10 Business Days of the Provider receiving a request, unless another timeframe is specified by the Department.
- 7.3 All Reports must be true, accurate and complete, in English, and in a form acceptable to the Department.
- 7.4 If the Department Notifies the Provider, in its absolute discretion, that a Report is not satisfactory, the Provider must submit a revised Report within 20 Business Days of receiving such Notice from the Department.
- 7.5 If a Report is more than 20 Business Days overdue or is otherwise not to the Department's satisfaction, the Department may take action under clauses 23.4 and 23.5 (Consequences of breach).
- 7.6 If required by the Department, at no additional cost, the Provider must provide a suitably qualified, informed and authorised representative at any meeting arranged by the Department in order to discuss and accurately answer questions relating to any Reports provided by the Provider to the Department under the Project Agreement.

### **Records management**

- 7.7 The Provider must keep full and accurate Records relating to the conduct of the Services, including Eligible Job Seeker Services Records, the Feedback Register, and any other material as set out in the Guidance.
- 7.8 Unless otherwise directed by the Department, the Provider must record data relevant to the Services in the IT Systems and maintain, store and keep Records in accordance with the Guidance, the Department's security policies, the Archives Act and the Privacy Act.
- 7.9 The Provider must ensure that data entered into the IT Systems is true, accurate and complete at all times during the Term.
- 7.10 The Provider must maintain Records for 7 years after the End Date or longer period if required by law.
- 7.11 The Provider must, and must procure that its Material Subcontractors, keep financial accounts of all transactions regarding the Monies received under a Project Agreement or Material Subcontract:
  - (a) in accordance with Australian equivalents to international financial reporting standards; and
  - (b) such that all Monies paid and held by the Provider are capable of being clearly and separately identified at all times during the Term.
- 7.12 The Provider acknowledges that it, and any Material Subcontractors, may be considered a Commonwealth Service Provider for the purposes of Division 142 of the Criminal Code and the *Ombudsman Act 1976* (Cth), and subject to investigation by the Ombudsman under the *Ombudsman Act 1976* (Cth). The Department will not be liable for any cost of the Provider or

any Material Subcontractor in relation to any such investigation in connection with a Project Agreement.

## **8. Provider performance**

- 8.1 The Provider must:
- (a) comply with the Key Performance Indicators set out in the Project Schedule; and
  - (b) deliver the Services in accordance with this Project Agreement to achieve optimum performance against the Key Performance Indicators.
- 8.2 The Department may, at any time, conduct a Provider Performance Review, which monitors, measures and/or evaluates the Provider's performance against the requirements of the Project Agreement. As part of a Performance Review the Department may consider:
- (a) the Provider's compliance with the Project Agreement;
  - (b) how the Provider is progressing against the Key Performance Indicators;
  - (c) whether the Provider is likely to continue to progress against the Key Performance Indicators;
  - (d) how the Provider identifies and manages risk to give the best chance of achieving the Key Performance Indicators; and
  - (e) any other relevant information.
- 8.3 If the Department carries out a Provider Performance Review, the Department must provide feedback to the Provider.
- 8.4 The Department may, at any time, undertake additional Provider Performance Reviews, or undertake a Compliance Review of the Provider.
- 8.5 The Department must give the Provider reasonable Notice of any Compliance Review, except where the Department holds a reasonable belief that the Provider may have breached the Project Agreement.
- 8.6 For the purposes of this clause 8, the Department may rely on performance and other information collected from any source and take into account the performance of any Material Subcontractor when assessing the Provider's performance under a Project Agreement (including as part of a Provider Performance Review or a Compliance Review).
- 8.7 If the Department considers the Provider's performance is not satisfactory (including because of a failure to meet the Key Performance Indicators, because of issues identified in a Compliance Review, or for any other reason), the Department may, by Notice:
- (a) require the Provider to work with the Department to improve its performance or build capacity, including by addressing governance, financial or service delivery issues, or through relevant training;
  - (b) take action under clause 23.1 (Suspension);
  - (c) take action under clauses 23.2 to 23.9 (Consequences of breach);
  - (d) if the unsatisfactory performance meets the definition of a 'Trigger Event' in clause 25 (Step-in rights), exercise rights under that clause; and/or
  - (e) terminate the Head Agreement and/or any Project Agreement under clause 24.1 (Termination or reduction in scope – for default).

- 8.8 If the Department takes action under clause 8.7(a) it may also develop a plan, or require the Provider to develop a plan, setting out any required actions to address unsatisfactory performance. The Provider must comply with any plan developed under this clause 8.8.
- 8.9 The Department must exercise its rights under clauses 8.2 to 8.8 reasonably and in good faith, taking into account the relevant performance of the Provider.

## 9. Payments and Funding

***[Note to Providers: The Project Schedule will specify the types of Payments and Funding (which are both 'Monies') that the Department must pay the Provider in relation to the Services described in the Project Schedule. The different types of Payments and Funding, and how they are calculated, are described in ANNEXURE 2 – MONIES to this Head Agreement.]***

- 9.1 The Department must pay Monies to the Provider for delivering the Services in accordance with ANNEXURE 2 – MONIES, subject to sufficient funds being available and the Provider complying with the Project Agreement.
- 9.2 The Department is not required to pay the Provider any Monies:
- (a) which are not described in the Project Schedule; or
  - (b) in excess of the amounts for those Monies calculated in accordance with ANNEXURE 2 – MONIES.
- 9.3 Subject to clause 9.23 (Payments to Material Subcontractors), the Department will pay all Monies to the bank account specified in the Project Schedule, at the times and in the manner specified in the Project Agreement.
- 9.4 The Provider must not claim any Monies from the Department where the requirements for the relevant Payment or Funding under the Project Agreement have not been met.
- 9.5 The Provider must not use any Monies, Assets or the Project Agreement as security to obtain, or comply with, any form of loan, credit, payment or other interest, or for the preparation of, or in the course of, any litigation.
- 9.6 Any payment dates specified by the Department are indicative only and time for payment of the Monies is not of the essence.

### **No double payments of Monies**

- 9.7 Unless otherwise specified in the Project Agreement, the Provider must ensure, and must procure that each Material Subcontractor ensures, it is not entitled to and does not receive any payments from the Department, or from any other Commonwealth, State, Territory or local government bodies, for providing activities or services to Eligible Job Seekers which are the same as, or similar to, the Services. The Provider must, if requested by the Department, provide Documentary Evidence to demonstrate compliance with this clause 9.7.
- 9.8 If the Department determines, in its absolute discretion, that the Provider or a Material Subcontractor is entitled to receive a payment (other than Monies) from any Commonwealth, State, Territory or local government body, for providing services or activities to Eligible Job Seekers which are the same as, or similar to, the Services, the Department may:
- (a) pay the Monies to the Provider;
  - (b) decide not to pay the Monies to the Provider; or
  - (c) recover any payments of Monies made by the Department to the Provider as a debt in accordance with clauses 9.18 to 9.22 (Debt and interest); or

- (d) where the entitlement relates to a Material Subcontractor, require the Provider to make, withhold or recover any payment made to the Material Subcontractor under a Material Subcontract.

### **No charge to Eligible Job Seekers or Ineligible CDP Participants**

- 9.8 Unless otherwise agreed in writing by the Department, the Provider must not demand, request or receive any payment or other consideration either directly or indirectly from any Eligible Job Seeker or any Ineligible CDP Participant for, or in connection with, the Services.

### **Evidence to support claims**

- 9.10 The Provider is not entitled to be paid any Monies under the Project Agreement unless it:
- (a) has the ability to provide sufficient Documentary Evidence to prove that it delivered the relevant Services in accordance with the Project Agreement;
  - (b) has a valid ABN;
  - (c) is registered for GST; and
  - (d) has submitted to the Department a properly rendered Tax Invoice for payment of Monies, if required by the Department (a Tax Invoice will be 'properly rendered' if it meets the requirements for an invoice specified in the Guidance).
- 9.11 For the purposes of clause 9.10, the Provider must:
- (a) retain the Documentary Evidence for such period as is required under clause 7.10 (Records Management); and
  - (b) provide the Documentary Evidence within 10 Business Days of receiving a request by the Department.
- 9.12 If the Provider does not comply with a request by the Department under clause 9.11(b), the Department may recover relevant Monies as a debt in accordance with clauses 9.18 to 9.22 (Debt and interest), without prejudice to any other rights the Department may have under the Project Agreement, or at law.
- 9.13 The Department may contact Employers, Eligible Job Seekers and/or any other relevant parties to verify Documentary Evidence or to verify provision of the Services.

### **Management of Funding**

- 9.14 Unless otherwise directed by the Department in writing or provided in the Project Schedule, the Provider must:
- (a) ensure all Funding is:
    - (i) immediately paid to and held in an account in the Provider's name and to which it has legal and beneficial title, and which it solely controls, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on a banking business in Australia; and
    - (ii) not transferred to any other account held by the Provider;
  - (b) ensure that the account is established solely to administer the Funding and separate from any other Provider account;
  - (c) on request from the Department, provide the authorised deposit-taking institution with an authority for the Department to obtain all details relating to any use of the account;



- (d) identify the receipt and expenditure of the Funding separately within accounting Records, so that at all times the Funding is identifiable and ascertainable;
  - (e) acquit the Funding, to the Department's satisfaction, in accordance with the relevant provisions of the Project Agreement and any applicable Guidance; and
  - (f) account for any amount of interest it earns on the Funding and treat that amount as if it were Funding.
- 9.15 The Provider must not use any part of the Funding for any of the following purposes, unless the Provider obtains the Department's prior written approval:
- (a) to make a loan or gift;
  - (b) to pay sitting fees, allowances, travel expenses or similar payments to directors or members of the Provider's organisation or any related entities (including any parent or subsidiary company);
  - (c) to pay commissions, success bonuses or similar benefits to personnel, members or consultants;
  - (d) for overseas travel;
  - (e) to conduct litigation; or
  - (f) to transfer money (including as a payment, reimbursement, gift or loan) to a parent or subsidiary organisation of the Provider.

**Provider not entitled to an amount or amount not spent in accordance with a Project Agreement**

- 9.16 If the Provider becomes aware that it has been paid an amount it is not entitled to, or some or all of a Funding payment has not been spent in accordance with the Project Agreement, the Provider must immediately Notify the Department.
- 9.17 The Department may by Notice require repayment of an amount as a debt, or reduce any other Funding or Payment under that or any other Project Agreement, up to the relevant amount where:
- (a) the Provider is paid an amount it is not entitled to;
  - (b) some or all of a Funding payment has not been spent in accordance with the Project Agreement; or
  - (c) the Department otherwise determines an amount to be a debt in accordance with the Project Agreement.

**Debt and interest**

- 9.18 The Provider agrees to pay each amount owed or payable to the Department, or which the Department is entitled to recover from the Provider under a Project Agreement, including any interest, as a debt due to the Department without any further proof of the debt.
- 9.18 If the Department Notifies the Provider that an amount is to be paid or repaid to it, the Provider must make the payment or repayment within 20 Business Days of receiving the Notice (or other time Notified by the Department), and in accordance with any other payment instructions included in the Notice.
- 9.10 If the payment or repayment as required under clause 9.18 does not occur within 20 Business Days, the Provider agrees to pay interest on the amount outstanding after the due date, until the amount is paid in full.

- 9.21 Interest will be calculated at the general interest charge rate for a day determined under section 8AAD of the *Taxation Administration Act 1953* (Cth), on a daily compounding basis.
- 9.22 The Provider agrees that any obligation to pay interest under clauses 9.20 and 9.21 represents a reasonable pre-estimate of the loss incurred by the Department.

### **Payments to Material Subcontractors**

- 9.13 If the Department determines, in its sole discretion, that it would be necessary or desirable to pay Monies, which are due and payable under a Material Subcontract for the provision of Services, to the relevant Material Subcontractor directly to ensure the continued delivery of the Services, it may do so, and deduct the amount paid to the Material Subcontractor from Monies that would otherwise be payable to the Provider under the Project Agreement. Any such payment made directly to a Material Subcontractor is deemed to be a payment of Monies of an equivalent amount made to the Provider by the Department under clause 9.3 (Payments and Funding) of the Head Agreement.

### **Sampling reviews**

- 9.14 Without prejudice to any other rights of the Department under the Project Agreement or at law (including the right to engage in any other form of sampling activity):
- (a) the Department may:
- (i) evaluate how the Provider has claimed Monies, by reviewing and investigating only a sample of claims for Monies generally, or of Monies of a particular class or type ('**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, as determined by the Department, show that a Provider has, in relation to all or a proportion of the claims for Monies included in a Sample Review, made claims for Payments:
- (i) in breach of the Project Agreement; or
  - (ii) in circumstances where it was not entitled to claim the Payments,
- then the Provider is, subject to clause 9.26, taken to have invalidly claimed all Monies, or that proportion of all Monies as relevant, for the period of the Sample Review ('**Deemed Invalid Claims**').

- 9.15 In relation to Deemed Invalid Claims, the Department may, at its absolute discretion and without limiting its other remedies under the Project Agreement or at law, do any one or more of the following by providing Notice to the Provider:
- (a) exercise any of its rights, or take any of the actions, specified in clauses 8.7(a) to 8.7(e) or 8.8 (Provider Performance); or
  - (b) exercise any rights under clauses 24.10 to 24.12 (Liquidated Damages).

### **Sampling methodology**

- 9.16 For the purposes of clause 9.24, the Department may use a 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. or a similar body that the methodology:

- (a) is, or will give results that are, statistically valid for the purpose of demonstrating the matters covered by clauses 9.24 to 9.27;
- (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 9.24(b) to the proportion and/or value of Monies generally or of the relevant type or class of Monies as relevant to the Sample Review, for the period of the Sample Review.

9.17 The Department must disclose the methodology used in the Sample Review to the Provider before exercising the Department's rights under clause 9.25.

## 10. Assets

**[NOTE TO PROVIDERS: This section should be read in conjunction with the definition of Asset in Annexure 5]**

- 10.1 The Provider must obtain prior written approval from the Department to use Funding to purchase, lease or acquire an Asset. The approval may be conditional and may include requiring the Provider to provide the Department with security over the Asset at the Provider's own cost. Any Assets specified in the Project Schedule are approved for the purpose of this clause (subject to any conditions also set out in the Project Schedule).
- 10.2 The Provider must create and maintain a register of all Assets and provide the register to the Department on request. The register must include for each Asset:
  - (a) a description of the Asset, including the serial number and the location of the Asset;
  - (b) the date of purchase, lease or other acquisition;
  - (c) the purchase, lease or acquisition price;
  - (d) the Adjustable Value of the asset;
  - (e) the amount of any Funding or other Monies used to purchase, lease or otherwise acquire the Asset; and
  - (f) the proceeds of any sale or disposal of the Asset.
- 10.3 Subject to any terms to the contrary in the Project Schedule and any interests the Department may have in any Asset, the Provider is fully responsible for each Asset and bears all risk relating to the Asset and its use.
- 10.4 The Provider must not encumber or Dispose of an Asset without the Department's prior written approval. The approval may be conditional and may require the Provider to repay an amount up to the Adjustable Value of the Asset within 20 Business Days of approval unless otherwise agreed by the Department.
- 10.5 During the term of the applicable Project Agreement, the Provider must:
  - (a) use each Asset in accordance with the Project Agreement and only for the purposes of the Services;
  - (b) protect and maintain all Assets;
  - (c) maintain appropriate insurance for all Assets to their full replacement value, noting the Department's interest in the Asset, and provide satisfactory evidence of this on request from the Department; and
  - (d) maintain registration and licensing of any Asset required by law to be registered or licensed.

- 10.6 The Provider must comply with any Department directions requiring it to deal with Assets in a particular way at the completion of the term of the Project Agreement. This may include selling the Asset and returning the full sale amount to the Department, or transferring the Asset to the Department or its nominee. If an Asset was transferred to the Provider from a Former Provider (either directly or by any other entity) and the Asset is not to be transferred to the Department or its nominee, the Department may require the Provider to pay it an amount which is less than or equal to the value of any Commonwealth grant provided to the Former Provider for its acquisition.
- 10.7 Subject to any contrary written direction from the Department, if an Asset is lost, damaged or destroyed, the Provider must reinstate the Asset at its own cost, including from the proceeds of the insurance, and this clause 10 continues to apply to the reinstated Asset. Any proceeds of the insurance (including any surplus after replacement of the previous Asset) must be promptly Notified to the Department and used and accounted for as Funding under the Project Agreement.
- 10.8 The Provider must:
- (a) develop an assets disposal plan for Department approval within 20 Business Days' of acquiring an Asset;
  - (b) keep such approved assets disposal plan updated in accordance with any Guidance; and
  - (c) provide a copy of the assets disposal plan to the Department upon request.
- 10.8 The assets disposal plan must account for Conflicts of Interest, in the event that an Asset is sold or transferred to an employee, officer, Subcontractor, subsidiary or shareholder of the Provider.
- 10.10 Subject to clause 10.6, at the End Date, the Provider must Dispose of each Asset in accordance with the approved assets disposal plan required under clause 10.8, with the effect that neither the Provider nor any Related Entity obtains any material or commercial benefit from the Disposal or subsequent use of that Asset. Any material or commercial benefit obtained by the Provider or a Related Entity in contravention of this clause 10.10 may be recovered by the Department as a debt.

## **11. Tax and Invoices**

- 11.1 The Provider must pay all taxes, duties and government charges levied in Australia or overseas in connection with the Project Agreement.
- 11.2 Subject to clause 11.3, all dollar amounts and all other consideration for a supply made under the Project Agreement are inclusive of GST, unless stated otherwise.
- 11.3 If a payment of Monies is made to the Provider which is not a Taxable Supply:
- (a) the Provider must promptly Notify the Department when it becomes aware that it is not a Taxable Supply;
  - (b) the amount payable by the Department is exclusive of GST; and
  - (c) the Provider must repay to the Department any amount paid to the Provider for GST, as directed by the Department.
- 11.4 If a payment of Monies is made to the Provider for which the Provider can claim an Input Tax Credit the Provider must promptly:

- (a) tell the Department the amount payable by the Department is reduced by the amount of the Input Tax Credit; and
  - (b) repay to the Department any amount overpaid to the Provider, as directed by the Department.
- 11.5 The Provider acknowledges that it is registered for GST as at the time of entering into this Project Agreement. The Provider must Notify the Department within 10 days if its ABN changes or it ceases to be registered for GST.
- 11.6 The Department acknowledges that it is registered for GST as the time of entering into this Project Agreement and it will notify the Provider if it ceases to be registered for GST.
- 11.7 Subject to clause 11.9, the Department must issue the Provider with a Recipient Created Tax Invoice (**RCTI**) and/or any Adjustment Notes for any Taxable Supplies made by the Provider under the Project Agreement:
- (a) within 28 days of determining the value of the Taxable Supply to which the RCTI relates;
  - (b) within 28 days of the date of the Adjustment Event; and
  - (c) by facsimile, email, pre-paid post or through the IT Systems.
- 11.8 If the Department issues an RCTI, the Provider must not issue a Tax Invoice or Adjustment Note for the Taxable Supply to which the RCTI relates.
- 11.8 The Department may decide that it will not issue the Provider with one or more RCTIs and instead direct the Provider to issue Tax Invoices and/or Adjustment Notes to the Department. In accordance with any such direction, the Provider must:
- (a) submit a Tax Invoice to the Department for any Taxable Supply before any Monies are payable to the Provider as consideration for the Taxable Supply;
  - (b) if an Adjustment Event occurs, issue any Adjustment Notes relating to Taxable Supplies for which the Provider has issued a Tax Invoice, within 28 days of the Adjustment Event;
  - (c) not claim from the Department any amount for which the Provider can claim an Input Tax Credit;
  - (d) where any debt is repaid, including by offset under clause 11.7, provide the Department with an Adjustment Note if required by the GST Act; and
  - (e) ensure Tax Invoices forwarded to the Department are correctly addressed and include the agreement number of the Project Agreement and the Provider's name, ABN and account details for payment by electronic funds transfer.
- 11.10 If the Department issues an RCTI and the amount of GST paid by the Department is ultimately less than the Provider's applicable GST liability, the Department must pay the Provider an additional amount to cover that additional liability.

## **12. Compliance with laws, policies and Guidance**

### **General**

- 12.1 The Provider must comply, and must ensure that any Material Subcontractors comply, with all applicable laws and requirements of the Department, and relevant State, Territory or local government laws and requirements, and maintain all qualifications, permits, registrations and licences required for the lawful delivery of the Services, including but not limited to, those referred to in the Head Agreement and any additional requirements in the Project Schedule.
- 12.2 The Provider must comply with:

- (a) all Commonwealth policies and Guidance expressly referred to in the Project Agreement; and
- (b) any other relevant Commonwealth policies and Guidance Notified to the Provider by the Department from time to time.

#### **Compliance with specified laws**

12.3 The Provider must comply with any obligations it has under the:

- (a) *Workplace Gender Equality Act 2012* (Cth);
- (b) *Competition and Consumer Act 2010* (Cth);
- (c) *Archives Act 1983* (Cth);
- (d) *Fair Work Act 2009* (Cth);
- (e) *Criminal Code Act 1995* (Cth);
- (f) WHS Laws; and
- (g) any other obligations under relevant work health and safety laws when dealing with its employees.

#### **Policies relating to communities**

12.4 The Provider must take all reasonable steps to ensure it complies with any relevant community policies, including any alcohol management plans, in place in each community within a Region.

#### **Services on native title and Aboriginal lands**

12.5 Before undertaking any Services on land subject to native title or a land grant under a statutory land rights scheme for the benefit of Aboriginal or Torres Strait Islander People, or to a native title claim or a land rights grant claim, the Provider must:

- (a) consult with and be satisfied that the native title or land rights holders or claimants understand the nature of the Services and have had an adequate opportunity to comment on the Services, even if there is no legal requirement to obtain their agreement to the Services being conducted; and
- (b) obtain all necessary authorities to undertake the Services, including, where required by law, obtaining access permits or entering into an Indigenous Land Use Agreement.

12.6 If the Provider is not able to obtain the necessary authority referred to in clause 12.5(b), the Provider must immediately Notify the Department in writing and the Department may either:

- (a) negotiate changes to the Services with the Provider to either avoid the need for the relevant authorities to be obtained, or otherwise address the issues preventing the relevant authorities from being obtained; or
- (b) terminate the Head Agreement and/or any Project Agreement in whole or in part under clause 24.1 (Termination or reduction in scope – for default).

12.7 The Department will not be liable to pay the Provider any costs arising from the termination of the Project Agreement under clause 12.6(b).

#### **Work health and safety**

12.8 The Provider must ensure appropriate work health and safety policies and procedures are in place at any premises or facilities used to deliver the Services and must:

- (a) comply with any reasonable work health and safety policy, procedures or instructions Notified by the Department;
- (b) comply with any directions on work health and safety issued by any person having authority under law to do so; and
- (c) provide evidence of compliance with work health and safety laws whenever requested by the Department.

12.8 Where a Notifiable Incident arises in connection with the provision of the Services, the Provider must give to the Department:

- (a) Notice of such incident and a copy of any written notice provided to the Regulator, as soon as possible after the Notifiable Incident has occurred;
- (b) 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, within 10 days;
- (c) the full details of such incident, including:
  - (i) any suspected contravention of the WHS Laws;
  - (ii) any workplace entry by a WHS entry permit holder or an inspector;
  - (iii) any proceedings against the Provider, or any decision or request by the Regulator under the WHS Laws, within 24 hours of becoming aware of such circumstances; and
  - (iv) copies of all notices and correspondence issued to the Provider under the WHS Laws, within 24 hours of receiving any such notice or correspondence.

12.10 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 work health and safety performance, arising in respect of the Services.

### **Working with Vulnerable Persons**

12.11 Before engaging or deploying any person (whether an officer, employee, contractor, Material Subcontractor personnel, volunteer or in any other capacity) in relation to any part of the Services that may involve contact with a Vulnerable Person, the Provider must:

- (a) confirm that no Commonwealth, State or Territory law prohibits the person from being engaged in a capacity where they may have contact with a Vulnerable Person;
- (b) except in relation to TWES Participants for TWES Services, conduct police checks for all Eligible Job Seekers, Ineligible CDP Participants and Provider Personnel engaging in activities involving Vulnerable People in the State and/or Territory where the activities are being conducted; and
- (c) comply with all other legal requirements of the place where the Services are being delivered in relation to engaging or deploying persons in a capacity where they may have contact with Vulnerable Persons, including all necessary Working With Children Checks.

12.12 If a police check or any other check conducted pursuant to clause 12.11 establishes that an individual who is Provider Personnel, an Eligible Job Seeker (but not including TWES Participants for TWES Services), an Ineligible CDP Participant, or any other person deployed in relation to the Services has:

- (a) a serious offence record;

- (b) pending charges for a Serious Offence; or
- (c) is convicted of a serious offence during the Term;

the Provider must not involve, or must cease involving, that person in activities which form part of the Services which involve contact with Vulnerable Persons, unless otherwise directed by the Department and must use its best endeavours to involve the relevant Eligible Job Seekers in suitable alternative activities.

12.13 In relation to all obligations under the Project Agreement, the Provider must:

- (a) ensure that all checks remain current in order to ensure compliance with all legal requirements in accordance with clause 12.11;
- (b) immediately Notify the Department if any person who is prohibited from having contact with a Vulnerable Person is engaged or deployed by the Provider, and has or may have contact with a Vulnerable Person (and comply with clause 12.12 in respect of such a person);
- (c) complete a risk assessment to identify the level of contact with Vulnerable Persons and the level of risk of harm or abuse to Vulnerable Persons;
- (d) develop and apply an appropriate risk management strategy in relation to working with Vulnerable People;
- (e) deliver training and establish a compliance regime in relation to working with Vulnerable People; and
- (f) comply with any additional policies or requirements relating to contact with Vulnerable Persons, police checks and criminal history checks, as required by the Department from time to time.

12.14 The Provider must report to the Department:

- (a) on the Provider's compliance with clauses 12.11 to 12.13 by no later than 31 October each year and in such form as may be specified by the Department; and
- (b) on any other matter relating to the Provider's work with Vulnerable People upon request by the Department.

12.15 If the Provider does not comply with clauses 12.11 to 12.14, the Department may immediately terminate the Head Agreement and/or any Project Agreement under clause 24.1 (Termination or reduction in scope – for default).

### **13. Corporate governance**

#### **General**

13.1 Unless the Department has provided its prior written consent, the Provider must not employ, engage or elect any person to a role in its management, or financial administration, or to conduct 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 section 85ZM(1) of that Act unless:



- (i) that conviction is regarded as spent under section 85ZM(2) (taking into consideration the application of Division 4 of Part VIIC);
    - (ii) the person was granted a free and absolute pardon because the person was wrongly convicted of the offence; or
    - (iii) the person's conviction for the offence has been quashed;
  - (e) the person is or was a director or a person who occupied an influential position in the management or financial administration of an organisation that had failed to comply with the terms of any agreement with the Department and where the failure gave the Department the right to terminate the agreement; or
  - (f) the person is otherwise prohibited from being a member, director, employee or responsible officer of the Provider's organisation.
- 13.2 The Provider must take reasonable steps to satisfy itself that clauses 13.1(a) to 13.1(f) do not apply to anyone it has employed, engaged or elected (or to anyone it intends to employ, engage or elect) to a role in its management, or financial administration, or to conduct the Services. The Provider must provide information to the Department about those steps upon request, together with Documentary Evidence that those steps have been taken.
- 13.3 Where a person who falls, or is discovered as falling, within clause 13.1 is employed, engaged or elected by the Provider in a role in management or financial administration, or to conduct the Services, the Provider must:
- (a) transfer the person to a position that does not have a role in management or financial administration; or
  - (b) terminate the employment or engagement of the person or remove the person from office; and
  - (c) immediately Notify the Department of the action taken.

### **Change of Control**

- 13.4 Subject to clause 13.5, the Provider must Notify the Department at least 15 Business Days prior to any proposed Change of Control of the Provider or any Material Subcontractor.
- 13.5 If a Change of Control occurs as a result of a transfer of shares or other interests listed on a recognised stock exchange, and advance notification to the Department could not have been provided in accordance with clause 13.4, the Provider must provide that Notification within 5 Business Days after the Change of Control, or earlier if practicable.
- 13.6 Any Notification provided to the Department in accordance with clause 13.4 or 13.5 must include the following details:
- (a) the ownership and management arrangements of the Provider or the Material Subcontractor that were in place immediately before the change, or if the change has yet to occur, that are currently in place;
  - (b) the ownership and management arrangements of the Provider or the Material Subcontractor that have been or will be put in place as a consequence of the change or, if the change has yet to occur, that the Provider reasonably expects to be put in place if the change occurs;
  - (c) the impact (if any) that the change has on the Provider's or the Material Subcontractor's ability to meet its obligations under the Project Agreement or relevant Material Subcontract, or if the change has yet to occur, that the Provider reasonably expects to have on that ability;

- (d) the impact that the change has on the Provider's ability to meet its obligations under clause 13.22 (Indigeneity requirements), or if the change has yet to occur, that the Provider reasonably expects to have on its ability to meet those requirements; and
  - (e) the steps the Provider has taken to minimise the impact of the change or prospective change.
- 13.7 If the Provider is a partnership, the Provider must not permit to occur any change to the composition of the partnership, without the prior written consent of the Department, as relevant. Such consent may be withheld, granted or granted subject to conditions.
- 13.8 The Provider must ensure that its chief executive officer and chief financial officer or equivalent officers and board members understand their obligations under the Head Agreement and their duties and responsibilities under any relevant legislation, and that such persons comply with any other accountability and/or governance measures as directed by the Department from time to time.
- 13.9 The Provider must obtain a completed credentials information form (as supplied by the Department) from any director, or member of its or its Material Subcontractor's board of management or executive, and supply it to the Department, if requested, within 10 Business Days of the date of the request. If the Provider becomes aware of a material change to the information provided in a credentials information form, it must inform the Department as soon as possible.
- 13.10 If the Provider (or a Material Subcontractor) does not comply with clauses 13.1 to 13.9 (Corporate governance) the Department may:
- (a) take action under clause 23.1 (Suspension);
  - (b) take action under clauses 23.2 to 23.9 (Consequences of breach); and/or
  - (c) terminate this Head Agreement and/or any Project Agreement under clause 24.1 (Termination or reductions in scope – for default).
- 13.11 If, in the sole opinion of the Department, a Change of Control in relation to the Provider or Material Subcontractor would:
- (a) have, or be likely to have, an undesirable effect on the delivery of the Services, or the ability of the Provider or any Material Subcontractor to perform its obligations under a Project Agreement or Material Subcontract;
  - (b) result in the Provider being unable to meet its obligations under clause 13.22 (Indigenous ownership, representation and employment);
  - (c) otherwise be deemed undesirable by the Department, or likely to bring the Department into disrepute; or
  - (d) where the Provider is a partnership and there is a change to the composition of the partnership without the prior written consent of the Department,
- then the Department may:
- (e) terminate this Head Agreement and/or any Project Agreement, or reduce the scope of Services under any Project Agreement, for default under clause 24.1 (Termination or reduction in scope – for default);
  - (f) exercise its step in rights under clause 25 (Step-in rights); or
  - (g) revoke its approval of the relevant Material Subcontractor under clause 6.12 (Removal of a Subcontractor (including a Material Subcontractor)).

## **Incorporation**

- 13.12 If the Provider is a body corporate it warrants that its constitution is not inconsistent with this Head Agreement or any Project Agreement and must provide a copy of its constitution to the Department upon request.
- 13.13 If the Provider intends to amend its constitution or changes its structure, management or operations in a way that could reasonably be expected to have an adverse effect on its ability to comply with the Project Agreement, the Provider must Notify the Department as soon as possible.
- 13.14 If the Provider alters its constitution, structure, management or operations in a way that the Department considers will affect the Provider's ability to comply with the Project Agreement, the Department may terminate the Head Agreement and/or any Project Agreement immediately under clause 24.1 (Termination or reduction in scope – for default).

## **External administration**

- 13.15 The Provider must give to the Department, immediately upon receipt or generation, a copy of:
- (a) any notice requiring the Provider to show cause why it should not come into any form of external administration referred to in clause 13.15(b).
  - (b) any record of a decision by 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) documentation of proceedings initiated with a view to obtaining an order for the Provider to be wound 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 to be wound up; and
  - (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 to be wound up.
- 13.16 If any of the following events occur, the Provider must immediately give Notice of the event to the Department:
- (a) the Provider has come under any one of the forms of external administration, referred to in clause 13.15;
  - (b) the Provider is ceasing to carry on business;
  - (c) the Provider is no longer willing or able to provide the Services in accordance with the Project Agreement; or
  - (d) the Provider becomes aware that any of the events referred to in clauses 13.15(a) to 13.15(f) have occurred in relation to any Material Subcontractor.

## **Strengthening Organisational Governance**

- 13.13 Clauses 13.18 to 13.21 require the Provider to be, or become, incorporated in certain circumstances.
- 13.18 The incorporation requirement applies if the total value of all Indigenous Grants (except Capital Works Grants) in a financial year equals \$500,000 or more (excluding GST), and the Provider:
- (a) is not a statutory body, or a State, Territory or local government; and
  - (b) has not received an exemption from the incorporation requirements in clauses 13.18 to 13.21 from the Minister for Indigenous Affairs (or the Minister for Indigenous Affairs' delegate).
- 13.19 If the incorporation requirement applies:
- (a) the Provider must be, or become, incorporated in accordance with clause 13.20; and
  - (b) the incorporation must occur within 6 months of the date that the agreement (or variation) is executed resulting in the total value of all Indigenous Grants in a financial year equalling \$500,000 or more (excluding GST).
- 13.10 The Provider must be, or become, incorporated:
- (a) if the Provider is an Indigenous Organisation – under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); or
  - (b) if the Provider is not an Indigenous Organisation – under the *Corporations Act 2001* (Cth).
- 13.11 Once the Provider is, or becomes, incorporated in accordance with clause 13.20, it must remain incorporated for the remainder of the term of all Indigenous Grant Agreements.

### **Indigenous ownership, representation and employment**

- 13.22 The Provider must be:
- (a) at least 50% owned by Indigenous Australians;
  - (b) able to demonstrate equal Indigenous representation and involvement in its management; or
  - (c) able to demonstrate that at least 50% of the persons employed by the Provider are Indigenous, including in positions of authority with the ability to make key decisions regarding the Provider's finances, operations, human resourcing and delivery of the Services;
- at the time of signing each Project Schedule, and during the Term, unless:
- (d) the Minister grants an exemption to this clause 13.22; or
  - (e) as otherwise agreed in writing by the Department.
- 13.23 The Provider must:
- (a) immediately Notify the Department of any change in circumstances that affects, or may affect, its ability to meet the requirements set out in clause 13.22; and
  - (b) provide a Report and/or any other Documentary Evidence detailing compliance with clause 13.22 if required to do so by the Department.
- 13.24 If the Provider does not comply with clauses 13.22 or 13.23, the Department may terminate the Head Agreement and/or any Project Agreement under clause 24.1 (Termination or reduction in scope – for default).

## **14. Indemnity**

- 14.1 The Provider indemnifies the Commonwealth, its officers, employees and contractors against any claim, loss or damage arising in connection with:
- (a) the performance of its obligations under the Project Agreement; and
  - (b) the Commonwealth's permitted use of Services Material or Existing Material.
- 14.2 The Provider's obligation to indemnify the Commonwealth will reduce proportionally to the extent any act or omission involving fault on the part of the Commonwealth contributed to the claim, loss or damage.

## **15. Liability**

### **Joint and several liability**

- 15.1 Where the Provider is a partnership, each partner in the partnership is jointly and severally liable for:
- (a) the performance of all Provider obligations under a Project Agreement; and
  - (b) all losses caused by any Subcontractor (including any Material Subcontractor) engaged for the purpose of any Project Agreement.

## **16. Conflict of Interest**

- 16.1 The Provider must promptly Notify the Department of any Conflict of Interest (actual, potential or perceived and including in relation to any Material Subcontractor) that is relevant to a Project Agreement, and must take appropriate action to resolve or otherwise address the conflict to the Department's satisfaction.
- 16.2 Without prejudice to any other provision of the Project Agreement, the Provider must ensure that each board member, and each member of the Provider's Personnel appointed to a managerial position, signs a Conflict of Interest declaration in a form approved by the Department, prior to performing any Provider obligations under or in connection with the Project Agreement, and the Provider must retain copies of such declarations for the Term.
- 16.3 The Provider must keep an accurate Conflict of Interest register throughout the Term, including the action taken to resolve the Conflict of Interest and the outcome of that action, and provide a copy of the Conflict of Interest register, and any relevant Conflict of Interest declarations, to the Department immediately upon request.
- 16.4 If the Provider does not comply with this clause 16, the Department may terminate the Head Agreement and/or Project Agreement under clause 24.1 (Termination or reduction in scope – for default).

## **17. Fraud**

- 17.1 The Provider must not engage in fraudulent activity in relation to the Project Agreement and must take all reasonable steps to prevent fraud upon the Department.
- 17.2 The Provider must report all suspected fraudulent activity to the Department immediately at the following email addresses: [fraud@pmc.gov.au](mailto:fraud@pmc.gov.au) and [CDPcompliance@pmc.gov.au](mailto:CDPcompliance@pmc.gov.au).
- 17.3 The Provider must implement an appropriate fraud control plan within 30 days of signing the Head Agreement and provide a copy to the Department immediately upon request.

- 17.4 If the Department determines, in its absolute discretion, that the Provider or any Material Subcontractor has engaged in fraudulent activity or conduct, without limiting any rights under the Project Agreement or at law, the Department may:
- (a) take action under clause 23.1 (Suspension);
  - (b) take action under clauses 23.2 to 23.9 (Consequences of breach);
  - (c) take action under clause 25 (Step in rights); or
  - (d) terminate the Head Agreement and/or any Project Agreement immediately in accordance with clause 24.1 (Termination or reduction in scope – for default).

## 18. Insurance

- 18.1 The Provider must, for as long as any Provider obligations remain in connection with this Head Agreement, maintain adequate insurance with an insurance company authorised by the Australian Prudential Regulatory Authority established under the *Australian Prudential Regulatory Authority Act 1988* (Cth). This insurance must include:
- (a) public liability insurance for not less than \$10 million for each claim;
  - (b) worker's compensation insurance as required by law;
  - (c) motor vehicle insurance as required by law for registered vehicles and third property damage motor vehicle with a limit of indemnity of not less than \$20 million for each and every occurrence for all motor vehicles used by the Provider in carrying out the Services;
  - (d) if the Provider is engaged to provide CDP Services, personal accident insurance coverage providing a sliding scale of benefits (in conformance with current insurance market practices for such policies) with a maximum benefit being not less than \$250,000 per claim to cover Eligible Job Seekers and Ineligible CDP Participants while on Provider premises or undertaking any Activity not specified in any Guidance as one that is otherwise covered by the Department's insurance;
  - (e) professional indemnity insurance for not less than \$5 million for each claim, and in the aggregate, for each year;
  - (f) insurance in relation to Assets, as required by clause 10.5(c); and
  - (g) any specific additional insurance requirements specified in the Project Schedule.
- 18.2 The Provider must:
- (a) undertake a risk assessment including fraud risks for each Activity in accordance with the Guidance;
  - (b) regularly review that risk assessment (at least once each year, and promptly after any Notifiable Incident), and update it as required to ensure that it accurately reflects all identified risks and contains appropriate actions and strategies to remove or mitigate those risks to the extent possible;
  - (c) ensure that all Activities are delivered in accordance with the scope of insurance cover outlined in the Department's public liability and personal injury insurance policy (as advised to the Provider) for any Eligible Job Seeker or Ineligible CDP Participant;
  - (d) brief Eligible Job Seekers and Ineligible CDP Participants on emergency procedures and work health and safety requirements before each Activity commences;
  - (e) take all reasonable steps and act in accordance with any Guidance to ensure CDP Participants are fully informed of their rights and obligations in relation to work health

and safety and insurance cover applicable to any incident arising in connection with undertaking any Activity; and

- (f) explain, to any Eligible Job Seeker and Ineligible CDP Participant who is injured during an Activity, their rights and obligations, their level of insurance cover, and the process for making a claim against the Department's or the Provider's insurance policies.

18.3 When requested, the Provider must provide the Department with satisfactory evidence that the Provider has complied with its obligations under this clause 18 within 10 Business Days of receiving the request.

## **19. Intellectual Property Rights**

19.1 The Provider owns the Intellectual Property Rights in Services Material.

19.2 This Head Agreement does not affect ownership of Intellectual Property Rights in Existing Material or Department Material.

19.3 The Provider gives the Department a worldwide, perpetual, non-exclusive, irrevocable, royalty-free and fee-free licence to use, reproduce, publish, adapt and exploit Services Material and any Existing Material provided to the Department, for Department purposes. The Provider also gives the Department the right to sub-licence the Services Material and any Existing Material provided to the Department, to the public under a Creative Commons Attribution (CC BY) licence.

19.4 The Provider warrants that it is or will be entitled to deal with the Intellectual Property Rights in Existing Material and the Services Material in the manner provided for in clauses 19.1 and 19.3.

19.5 The Department gives the Provider a worldwide, non-exclusive, royalty-free licence to use Department Material only for the purposes of the Project Agreement. This licence is revocable on 10 Business Days' Notice by the Department and expires on the Services End Date.

19.6 The Provider must comply with any request of the Department to bring into existence, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 19.

## **20. Privacy, confidentiality and data protection**

### **Privacy**

20.1 The Provider must:

- (a) comply with the Privacy Act at all times during the Term;
- (b) not do anything which, if done by the Department, would be a breach of the requirements of Division 2 of Part III of the Privacy Act;
- (c) comply with any relevant Department privacy policies issued from time to time;
- (d) ensure that no Personal Information is transferred outside of Australia and that Personal Information cannot be accessed from a location outside of Australia, unless the Department has agreed otherwise in writing; and
- (e) comply with the requirements under Division 3 (Confidentiality) of Part 5 of the *Social Security (Administration) Act 1999* (Cth).

20.2 An act done or a practice engaged in by the Provider or a Subcontractor to meet an obligation under the Project Agreement is authorised for the purposes of sections 6A(2) and 6B(2) of the

Privacy Act, but otherwise remains subject to the obligations in the Project Agreement including this clause 20.

### **Eligible Data Breach Notification**

- 20.3 For the purpose of clauses 20.4 to 20.7, “**Eligible Data Breach**” has the meaning given in the Privacy Act.
- 20.4 If the Provider has reasonable grounds to suspect there may have been an event which amounts to an Eligible Data Breach, the Provider must:
- (a) as soon as possible, but within no more than 2 Business Days, Notify the Department;
  - (b) comply with its obligations under the Privacy Act in relation to that event;
  - (c) provide the Department with all information requested by the Department about the event; and
  - (d) if requested, allow the Department to participate in the Provider’s assessment of the event and whether it amounts to an Eligible Data Breach.
- 20.5 If the Provider, after complying with clause 20.4, determines that an Eligible Data Breach has occurred and notification of that Eligible Data Breach is required under the Privacy Act:
- (a) if requested by the Department, the parties must meet to discuss and endeavour to agree who will issue the notification (but if the parties are unable to agree, then the Department will, acting reasonably, decide which party will issue that notification);
  - (b) if the Provider is to issue a notification, then the Provider must:
    - (i) as soon as possible, but within no more than 5 Business Days, provide the Department with a draft of the notification;
    - (ii) make any changes to the draft notification that are reasonably required by the Department; and
    - (iii) issue the notification in accordance with the requirements of the Privacy Act (including any applicable time periods).
  - (c) If the Department is to issue the notification, then the Department must:
    - (i) as soon as possible, but within no more than 10 Business Days, notify the Provider and provide a draft of the notification;
    - (ii) make any changes to the notification that are reasonably required by the Provider for consistency with the Privacy Act; and
    - (iii) issue the notification in accordance with the requirements of the Privacy Act (including any applicable time periods).
- 20.6 The Provider must ensure that:
- (a) the Department is promptly notified of any investigation or other action taken by the Information Commissioner in connection with any actual or suspected Eligible Data Breach, or notification in relation to that matter; and
  - (b) the Department is kept informed in relation to that investigation or other action.
- 20.7 The parties acknowledge and agree that nothing in clauses 20.3 to 20.6 affects their obligations under the Privacy Act or a Project Agreement, unless otherwise agreed in writing by the parties.

### **Confidentiality**



- 20.8 The parties must not disclose each other's Confidential Information without prior written consent of the party whose information is to be disclosed.
- 20.9 A party does not breach clause 20.8 to the extent that the Confidential Information is:
- (a) disclosed by a party to its Personnel solely for the purpose of the Head Agreement or Project Agreement, or to manage, evaluate, or audit any Services;
  - (b) disclosed by the Department to another Commonwealth agency, to the responsible Minister, in response to a request by a House or Committee of the Parliament of the Commonwealth of Australia, or in accordance with other Commonwealth accountability requirements;
  - (c) authorised or required to be disclosed by law or, in the case of the Department, by Commonwealth policy; or
  - (d) in the public domain otherwise than due to a breach of clause 20.8.
- 20.10 Subject to clause 20.11, nothing in the Project Agreement is intended to restrict or prevent the Provider from engaging in public debate on any Commonwealth law, practice or policy and the Provider does not need the Department's prior approval to be involved in such public debate.
- 20.11 The Provider must comply at all times with its obligations under the Project Agreement to not disclose Personal Information or confidential information as defined in the *Not-for-Profit Sector Freedom to Advocate Act 2013* (Cth).

#### **Access to premises and records**

- 20.12 Subject to clause 20.13 and on written request, the Provider agrees to give the Department and/or its authorised representatives access to:
- (a) all premises being used to perform obligations under a Project Agreement; and
  - (b) all Records and other Material relating to a Project Agreement, including allowing copies of these items.
- 20.13 Access under clause 20.12 must be provided within 48 hours of the Provider receiving the request, or any shorter time set out in the request. The Department may require immediate access where there are public health or safety concerns, or in the circumstances listed in clause 20.14.
- 20.14 The Department and/or its authorised representatives may remove and retain any Records and other Material relevant to an investigation involving:
- (a) an actual or suspected breach of the law;
  - (b) a breach of the Project Agreement; or
  - (c) actual or suspected fraud.
- 20.15 This may include removing and retaining Material not related to the Services. The Department must return a copy of that Material within a reasonable period of time.

#### **Freedom of Information requests**

- 20.16 For the purposes of the Department's compliance with the *Freedom of Information Act 1982* (Cth), if:
- (a) the Department receives a request for access to a document relating to the performance of a Project Agreement, which is created by, or in the possession of, the Provider or a Subcontractor; and

(b) the Department gives written Notice to the Provider, the Provider must immediately on receipt of the Notice provide the Department with the document as specified in the Notice, and provide any other assistance and Material required by the Department to comply with the request for access.

**Audits**

- 20.17 The Department (or its nominee) may, at the Department’s expense, conduct an audit of the Provider’s performance where the Provider has, or may have breached the Project Agreement during the Term, or as otherwise Notified by the Department.
- 20.18 The Provider must fully cooperate with any audit by the Department or its nominee, and assist the Department and/or its nominee to conduct any audit, including by providing access in accordance with clauses 20.12 to 20.17 (Access to premises and records, Freedom of Information requests and Audits).

**21. Acknowledgement and publicity**

- 21.1 The Provider must acknowledge the Department’s support in any Material published in connection with the Services, and must use any form of acknowledgment the Department reasonably specifies.
- 21.2 The Provider must not use the Commonwealth Coat of Arms or departmental logos, make any public announcements, or organise or be involved in any media events relating to the Project Agreement, without the Department’s prior written approval.
- 21.3 The Department may publicise and report on the Services and on the Project Agreement, including by:
  - (a) publicising the name of the Provider or any Material Subcontractor and the amount of payments of Monies given to the Provider or Material Subcontractor;
  - (b) disseminating advice about best practice to other providers; or
  - (c) publishing any information concerning the Provider’s performance under the Project Agreement.

**22. Dispute resolution**

- 22.1 The parties must not commence any legal proceedings in respect of any dispute arising under the Project Agreement, until the procedure provided by this clause 22 has been used.
- 22.2 Any dispute between the parties arising during the course of the Project Agreement must initially be dealt with as follows:
  - (a) in the first instance and if relevant, any dispute in relation to the Project Agreement is to be dealt with through the process outlined in any Guidance, after which;
  - (b) the party claiming that there is a dispute will send the other party a written Notice setting out the nature of the dispute;
  - (c) the parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute; and
  - (d) the parties have 10 Business Days from the receipt of the Notice by the other party to reach a resolution or to agree that the dispute is to be submitted to mediation or some other alternative dispute resolution procedure, on such terms as is agreed by the parties.

- 22.3 If there is no resolution of the dispute following the procedures set out in clause 22.2, either party may commence legal proceedings.
- 22.4 This clause 22 does not apply if:
- (a) either party commences legal proceedings for urgent interlocutory relief;
  - (b) the Department takes action pursuant to a right afforded to it under the Project Agreement, including under clauses 23 (Breach of Project Agreement), 24 (Termination) or 25 (Step-in rights); or
  - (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by the Provider.
- 22.5 Both parties must continue to perform their obligations under the Project Agreement despite any dispute, unless requested in writing by the other party not to do so.
- 22.6 Each party must bear its own costs in complying with this clause 22.

### **23. Breach of Project Agreement**

#### **Suspension**

- 23.1 Without limiting any other rights under the Project Agreement, or at law, where:
- (a) the Department is of the opinion that:
    - (i) the Provider may be in breach of its obligations under the Project Agreement;
    - (ii) the Provider has outstanding or unacquitted money under any arrangement, whether contractual or statutory, with the Department;
    - (iii) the Provider may be engaged in fraudulent activity or conduct; or
  - (b) another provision of the Project Agreement allows the Department to take action under this clause 23.1,
- then:
- (a) the Department may suspend (without consent) the whole or any part of the Project Agreement for a period no longer than 20 Business Days (**Suspension Period**), by giving Notice to the Provider, and the Provider must suspend work under the Project Agreement promptly and comply with any directions from the Department in respect of the suspension;
  - (b) the Provider will not be entitled to any compensation for a suspension;
  - (c) during the Suspension Period, the Department may further investigate the matters giving rise to the suspension, and the Department may exercise any other right or remedy in the Project Agreement in relation to those matters; and
  - (d) at the end of the Suspension Period, the Department must either:
    - (i) Notify the Provider that the suspension is lifted, in which case the Provider must recommence provision of the Services in accordance with the Project Agreement; or
    - (ii) consider whether the requirements of clause 23.4 have been satisfied, and take action under clause 23.5.

## Consequences of breach

- 23.2 If the Provider breaches a term or condition of the Project Agreement, and the breach is capable of being remedied, the Department may give the Provider a Notice requiring it to remedy the breach or to provide a remediation plan that is acceptable to the Department.
- 23.3 The Provider must comply with any Notice and any accepted remediation plan under clause 23.2, in the required timeframes and to the Department's reasonable satisfaction.
- 23.4 If:
- (a) the Provider does not comply with clause 23.3; or
  - (b) the Provider breaches a term or condition of the Project Agreement and the breach is incapable of being remedied; or
  - (c) another provision of the Project Agreement allows the Department to take action under this clause 23.4,
- then the Department may exercise one or more of the remedies set out in clause 23.5.
- 23.5 If the requirements of clause 23.4 have been satisfied, the Department may exercise one or more of the following remedies:
- (a) suspending Referrals, Direct Registrations, any Services, or any payment of Monies under the Project Agreement, in whole or in part;
  - (b) withholding, or deferring, in whole or part, any payment of Monies payable under the Project Agreement;
  - (c) reducing or not paying specific payments of Monies that would otherwise have been payable in respect of the relevant obligation or any other payments that would otherwise have been payable to the Provider by the Department;
  - (d) where the Department has already made a payment or payments of Monies under the Project Agreement, recovering, at the Department's absolute discretion, some or all of the payment of Monies as a debt;
  - (e) imposing additional conditions under the Project Agreement, such as financial, performance or reporting obligations;
  - (f) either itself, or through a third party, take control or management of all or part of the Services in accordance with clause 25 (Step in Rights); and/or
  - (g) exercise of termination rights under clauses 24.1 to 24.9 (Termination).
- 23.6 The Department must exercise any rights under clause 23.5 reasonably, taking into account the nature and extent of the relevant breach or other circumstances.
- 23.7 Where the Department takes action under clauses 23.5(a) to 23.5(g), the Provider must provide sufficient assistance and cooperation to enable the Services to continue. This includes complying with any Department directions, including the novation of relevant third party contracts, assignment of leases, licences and consents, or transferring Services Material, to the Department or its nominee.
- 23.8 The Department may determine, at its absolute discretion, that any costs incurred in taking action under clause 23.5 are a debt for the purposes of clause 9.18 (Debt and interest) and require the Provider to pay to the Department the amount of the debt in accordance with that clause.
- 23.8 The Provider must continue to deliver all Services not affected by the exercise of a right under clauses 23.5(a) to 23.5(g), unless otherwise directed by the Department.

## 24. Termination

### Termination or reduction in scope – for default

- 24.1 In certain circumstances, the Department can immediately, by giving Notice:
- (a) terminate the Head Agreement and/or any Project Agreement; or
  - (b) reduce the scope of the Head Agreement and/or Project Agreement;
- with effect on and from the date specified in the Notice.
- 24.2 The circumstances that allow action under clause 24.1 are where the Department reasonably believes that the Provider has:
- (a) breached a term or condition of the Head Agreement and/or Project Agreement and failed to remedy the breach in accordance with clauses 23.2 and 23.3 (Consequences of breach);
  - (b) breached any law;
  - (c) become bankrupt or insolvent, entered into a creditors scheme of arrangement, or come under any form of external administration;
  - (d) become unable to pay its debts as and when they fall due;
  - (e) there is a Change in Control, or a change in any person involved in the management of the Provider, which the Department reasonably believes will negatively affect the Provider's ability to comply with the Head Agreement and/or Project Agreement;
  - (f) provided false or misleading statements, or incorrect information; or
  - (g) another provision in the Head Agreement and/or any Project Agreement allows the Department to terminate under clause 24.1.
- 24.3 Where the Department gives a Notice under clause 24.1 to terminate or reduce scope:
- (a) the Provider must:
    - (i) stop performing obligations in accordance with the Notice and comply with any other reasonable directions in the Notice;
    - (ii) take all reasonable steps to minimise loss resulting from the termination or reduction in scope;
    - (iii) take all reasonable steps to protect Department Material and Services Material; and
    - (iv) continue work on any part of the Services not affected by the Notice;
  - (b) the Department is not liable to make any further Payments or Funding payments in relation to the terminated Head Agreement and/or Project Agreement or reduced scope; and
  - (c) the Department can take action under clause 24.4 in relation to any Funding amount that was not spent in accordance with the Head Agreement and/or Project Agreement, or has not been spent or legally committed as a current liability as at the date the Provider receives the Notice under clause 24.1.
- 24.4 In relation to the amount referred to in clause 24.3(c), the Department may by Notice:
- (a) direct the Provider to spend the amount for a purpose specified by the Department;
  - (b) reduce any other payment under the Head Agreement and/or any Project Agreement, up to the amount or under any other Indigenous Grant Agreement; or

- (c) require the Provider to repay an amount up to the amount, by the date specified in the Notice, in accordance with clause 9.17 (Provider note entitled to an amount or amount not spent in accordance with a Project Agreement).

#### **Termination or reduction in scope – with costs**

- 24.5 Even though the Provider is not in default, the Department may terminate or reduce the scope of the Head Agreement and/or Project Agreement, at any time by Notice. The Department may also reduce amounts payable under the Head Agreement and/or Project Agreement, proportionate to any reduction in scope.
- 24.6 On receipt of Notice under clause 24.5, the Provider must:
- (a) stop performing obligations in accordance with the Notice and comply with any other reasonable directions in the Notice;
  - (b) take all reasonable steps to minimise loss resulting from the termination or reduction in scope;
  - (c) take all reasonable steps to protect Department Material and Services Material; and
  - (d) continue work on any part of the Services not affected by the Notice.
- 24.7 If the Department terminates or reduces scope under clause 24.5, it will only be liable for:
- (a) amounts due to the Provider under the payment provisions of the Head Agreement and/or Project Agreement at the date of the Notice; and
  - (b) reimbursement of the Provider's reasonable unavoidable and substantiated costs incurred as a direct result of the termination or reduction as determined by the Department on a case by case basis and which are not covered by clause 24.7(a).
- 24.8 The Department's liability to pay under clause 24.7 is capped to the amount which, when added to payments already made to the Provider, equals the Department's reasonable estimation of the total amount payable under the Head Agreement and/or any Project Agreement (taking into account any past volume of Services provided and any reduction under clause 24.5).
- 24.8 The Department is not liable for any other amount, including compensation for lost prospective profits or benefits to the Provider.

#### **Liquidated Damages**

- 24.10 Notwithstanding any other rights available under the Project Agreement or at law, the Provider will be liable to pay Liquidated Damages to the Department, in the following circumstances:
- (a) if the Department terminates all or part of any Project Agreement in accordance with clause 24.1 (Termination or reduction in scope – for default);
  - (b) if the Provider otherwise ceases to deliver the Services and has not obtained the Department's consent or secured an alternative Provider acceptable to the Department; or
  - (c) if the Provider has had in excess of 50 invalid payments of Monies made under the Project Agreement (as determined by the Department, but not including any invalid payment which was made solely as a result of a Department error), identified in any one Compliance Review.
- 24.11 The parties agree that the Liquidated Damages specified in this clause 24.11 are a reasonable and genuine pre-estimate of the loss incurred by the Department. The amount of Liquidated Damages the Provider will be liable to pay is:

- (a) where clauses 24.10(a) or 24.10(b) apply, \$25,000 per select grant application process and \$50,000 per open grant application process, used to secure an alternative provider acceptable to the Department; and
- (b) where clause 24.10(c) applies, \$5,000, and a further \$5,000 for each 100 invalid payments, in excess of the first 100 invalid payments, identified per Compliance Review.

24.12 The Liquidated Damages will become a debt due to the Department for the purposes of clause 9.18, if and when the Department Notifies the Provider that it elects to recover the Liquidated Damages as a debt under that clause.

## 25. Step-in rights

25.1 Without prejudice to any other right or remedy which the Department may have under this Head Agreement or a Project Agreement, at any law, if at any time the Department determines in its reasonable opinion there has been one or more of the following '**Trigger Events**':

- (a) that the Provider has breached the Project Agreement and fails to remedy the relevant event within the period specified in a Notice issued under clause 23.2 (Consequences of breach); or
- (b) there has been fraud, gross mismanagement by the Provider, or other event which gives rise to a material risk of a disruption to the provision of the Services under the Project Agreement (including the Provider seeking to terminate the Project Agreement in accordance with its legal rights under the Project Agreement or law, or otherwise repudiating or abandoning the Project Agreement); or
- (c) that it is otherwise necessary or desirable to exercise its step in rights to ensure the continued provision of the Services;

then the Department may, by written notice to the Provider, suspend the obligations of the Provider to provide some or all of the Services under the Project Agreement as specified in the notice (each such notice is a '**Step-In Notice**').

25.2 From the date specified in the Step-In Notice:

- (a) except as directed by the Department, the Provider will cease being responsible for the provision of the Services as specified in the Step In Notice;
- (b) the Department may, acting on its own behalf or through a third party nominee, take control of that part or the whole of the provision of the Services in question as necessary, including any steps to perform the Project Agreement necessary to exercise its step-in-rights under this clause 25 to remedy the Trigger Event;
- (c) the Department's obligation to pay any Monies is suspended to the extent the Provider has ceased to be responsible for the provision of the Services; and
- (d) the Provider will provide all reasonable assistance to the Department or its nominee wherever and however reasonably possible to ensure that the Department is able to take steps permitted under this clause 25, and comply with any direction of the Department to enable the Department to exercise its rights under this clause 25 and manage the Project Agreement, including, without limitation:
  - (i) the grant of a royalty-free licences to the Department or its nominee to:
    - (A) access the relevant part of the Provider's facilities and use the Provider's equipment, furnishings and fittings (but only to the extent necessary for the Department to take the steps permitted under this clause 25); and

- (B) use any documentation and or software or other material or of which the Provider has the necessary ownership or usage rights, needed for the exercise of the Department's rights under this clause 25;
  - (ii) providing the Department or its nominee with access to, and the use of, relevant Provider Personnel at no additional cost; and
  - (iii) ensuring that Department or its nominee is able to assist the Provider to continue to meet the Provider's ongoing contractual or other obligations that relate to the Provider's activities affected by the Step-In Notice, without any liability accruing to the Department or its nominee in respect of those obligations; and
  - (iv) assigning or novating any Material Subcontract to the Department, or its nominee, at the Department's request.
- 25.3 The Department will be entitled to recover reasonable costs from the Provider in exercising its rights under this clause 25, to the extent those costs are in excess of the amount by which any Payments or Funding has been suspended under clause 25.2(c).
- 25.4 The Department may, by written notice (a '**Withdrawal Notice**'), withdraw the Step-In Notice where, in the Department's opinion:
- (a) the circumstances giving rise to the Step In Notice have ceased or are able to be appropriately managed by the Provider; or
  - (b) the Provider will otherwise be able to comply with its obligations under the Project Agreement.
- 25.5 The Provider will, as soon reasonably practicable, and in any event by the date specified in the Withdrawal Notice, recommence performance of any obligations suspended under this clause 25.
- 25.6 Nothing in this clause obliges the Department to exercise its step-in rights, and the exercise of its rights under this clause 25 will not affect any other right of the Department under this Head Agreement or a Project Agreement, including but not limited to any right to terminate the Project Agreement.

## 26. Transition

- 26.1 The Department may deem a Transition Period for any part of, or all of, the Services by reasonable Notice to the Provider before the Transition Period is to start. A Transition Period may be specified in the Project Schedule, or Notified to the Provider at any time during the Term.

***[Note to Providers: A Transition Period can relate to either transition in or transition out of the Head Agreement or a Project Agreement. Any specific details about a transition-in period for new providers will be set out in the Project Schedule, and will be tailored to the individual Provider and their Region.]***

- 26.2 A Notice under clause 26.1 must specify the start and end date of the Transition Period and may specify, but is not limited to specifying, one or more of the following matters:
- (a) whether all, or only some, of the Services are to be provided and, if only some, which Services are to be provided;
  - (b) whether any provisions of the Project Agreement will not apply to the provision of Services during the Transition Period, and if so, which provisions will not apply;
  - (c) whether Services are only to be provided in respect of particular areas or Regions, and/or in respect of particular Eligible Job Seekers; and



- (d) whether there are to be any changes in respect of the payment of Monies during the Transition Period and if so, what changes.
- 26.3 A Notice under clause 26.1 may require the Provider to develop and implement a Department-approved transition plan which:
- (a) sets out the obligations to be performed by each party in connection with the orderly transition of Service delivery from the Provider to the Department or its nominee;
  - (b) provides for the transfer, novation or assignment of Assets and other Material relevant to the continued provision of the Services;
  - (c) provides for the transfer or destruction of any Department Material or the Department's Confidential Information; and
  - (d) provides for Provider Personnel access to the IT Systems to be ended.
- 26.4 During a Transition Period the Provider must comply with the terms of a Notice under clause 26.1 and otherwise continue to provide all the Services which it is required to provide under the Project Agreement.
- 26.5 The Provider must give reasonable assistance and cooperation to the Department, other providers and other interested parties to ensure a smooth transition at the expiry or termination of the Project Agreement. This includes complying with all reasonable directions issued by the Department in relation to the transfer of Material, equipment or Assets to another provider and the redirection of Eligible Job Seekers.

## **27. Survival of clauses**

- 27.1 The following clauses survive termination or expiry of the Project Agreement:
- (a) clauses 5.11 – 5.14 (Use of IT systems), 5.16 – 5.22 (Security Policy), 5.23 (Cybersafety Policy), 8 (Provider Performance), 9.14 – 9.15 (Management of Funding), 9.16 – 9.17 (Provider not entitled to an amount or amount not spent in accordance with a Project Agreement), 9.18 – 9.22 (Debt and interest), 10 (Assets), 13.17 - 13.21 (Strengthening Organisational Governance), 14 (Indemnity), 18 (Insurance), 19 (Intellectual Property Rights), 20 (Privacy, confidentiality and data protection), 21 (Acknowledgment and publicity), 22 (Dispute resolution), 23.2– 23.9 (Consequences of breach), and 34 (Applicable law and jurisdiction); and
  - (b) any other clause in the Project Agreement which expressly or by implication from its nature is meant to survive.
- 27.2 Clause 7 (Reporting and Records Management) and 20.12 (Access to premises and records) apply during the Term and for seven years from the Services End Date.

## **28. Notices**

- 28.1 A party giving Notice under:
- (a) the Head Agreement must do so in writing (including by email) and using the contact details in clause 2; or
  - (b) the Project Agreement must do so in writing, including by email and using the contact details specified in the Project Schedule.
- 28.2 A Notice given under clause 28.1 is taken to have been received:
- (a) if delivered by hand – upon delivery to the relevant address;

- (b) if sent by pre-paid post – 5 Business Days after the date of posting to the relevant address;
- (c) if sent by email – at the time of receipt under section 14A of the *Electronic Transactions Act 1999* (Cth) as if the notice was being given under a law of the Department.

## **29. Variation**

### **Change to a Project Schedule**

29.1 A Project Schedule may only be varied in writing signed by both the Department and the Provider.

### **Change to a Project Agreement document other than a Project Schedule**

29.2 The Provider acknowledges the Department's intention to maintain a consistent framework across all providers.

29.3 The Provider acknowledges and agrees that no person other than the Department has any authority to:

- (a) vary or waive any provision of this Head Agreement, the Annexures, or the Guidance; or
- (b) add any additional term, or vary or remove any existing term in respect of any Project Schedule which is inconsistent with this Head Agreement, the Annexures, or the Guidance.

29.4 The Provider agrees that the Department may, acting reasonably, vary:

- (a) the Head Agreement;
- (b) the Annexures; or
- (c) the Guidance,

by giving the Provider at least 20 Business Days' Notice. If the Provider does not wish to accept the variation, the Provider may terminate the Project Schedule by written Notice to the Department before the date when the variation is to come into effect.

## **30. Assignment and novation**

30.1 The Provider must not assign its rights or obligations under the Head Agreement or Project Agreement in whole or in part without prior written approval from the Department, and any approval will not relieve the Provider of its obligations and responsibilities of its obligations under the Project Agreement.

30.2 The Provider must not negotiate with any other person to enter into an arrangement that would require novation of the Head Agreement or Project Agreement without first consulting the Department.

## **31. Entire agreement and severance**

31.1 Each Project Agreement constitutes the parties' entire agreement and supersedes all previous oral or written communications, agreements and undertakings in relation to its subject matter.

31.2 If a court or tribunal holds that any provision of the Project Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate, or restrict the operation of, any other provision.

- 31.3 If immediately prior to the Start Date, the parties were parties to a “*Funding Agreement 2013 – 2018 Remote Jobs and Communities Programme*” (“**Previous Funding Agreement**”), the parties agree:
- (a) that the Previous Funding Agreement is terminated, by mutual consent, on the Start Date (and neither party will be liable to the other party for any amount as a result of that termination);
  - (b) the Annexures set out the only requirements for ongoing payment of Monies in relation to services provided under the Previous Funding Agreement; and
  - (c) the termination of the Previous Funding Agreement will not affect any rights or liabilities accrued under it before termination.

### **32. Waiver**

- 32.1 If either party does not exercise (or delays in exercising) any rights under the Project Agreement, that failure or delay does not operate as a waiver of those rights.
- 32.2 A single or partial exercise by either party of any of its rights under the Project Agreement does not prevent the further exercise of that right.
- 32.3 Waiver of any provision of, or right under, the Project Agreement:
- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
  - (b) is effective only to the extent set out in the written waiver.

### **33. Force Majeure Events**

- 33.1 If a party's ability to undertake or perform its obligations under the Project Agreement is affected, or likely to be affected, by a Force Majeure Event:
- (a) that party must immediately give to the other party Notice of that fact, including full particulars of the Force Majeure Event, an estimate of its likely duration, the obligations affected by it and the extent of its effect on those obligations, and the steps taken to rectify it; and
  - (b) the obligations under the Project Agreement of the party giving the Notice are suspended to the extent to which they are affected by the Force Majeure Event as long as the Force Majeure Event continues.
- 33.2 A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible.
- 33.3 The Provider will not have the right to any payment (except in respect of Monies payable by the Department prior to the occurrence of the Force Majeure Event) from the Department to the extent that its performance of the Project Agreement is affected by a Force Majeure Event.
- 33.4 If a Force Majeure Event continues for 30 days either party may immediately terminate the Project Agreement by written Notice to the other.
- 33.5 Where either party terminates the Project Agreement in accordance with clause 33.4, the Department will only be liable to make payment which the Provider could have properly claimed prior to termination.

### **34. Applicable law and jurisdiction**

- 34.1 The Project Agreement is governed by the law of New South Wales.

34.2 The parties agree to submit to the non-exclusive jurisdiction of the courts of the State of the New South Wales in respect to any dispute under the Project Agreement.

**35. Counterparts**

35.1 The Project Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement.

## **ANNEXURE 1 – SERVICE DESCRIPTIONS**

***[Note to Providers: This ANNEXURE 1 – SERVICE DESCRIPTIONS is divided into three parts according to the different types of Services that may be delivered as part of the Community Development Program: PART A – GENERAL, PART B – CDP SERVICES, PART C – TWES SERVICES]***

### **ANNEXURE 1 – PART A: GENERAL**

#### **1. Application**

- 1.1 This ANNEXURE 1 details the Services that the Provider must deliver in accordance with the Project Schedule.

## **ANNEXURE 1 – PART B: CDP SERVICES**

### **1. Introduction**

- 1.1 This ANNEXURE 1 PART B details the CDP Services the Provider must deliver if the Project Schedule specifies CDP Services.

### **2. Application**

- 2.1 The Provider must deliver the CDP Services in accordance with clause 5 of the Head Agreement and the Guidance.
- 2.2 The CDP Services consist of the following:
- (a) General Services;
  - (b) Case Management Services;
  - (c) Compliance Services;
  - (d) Remote Employment Services; and
  - (e) other Services for Ineligible CDP Participants, as described in this ANNEXURE 1 PART B.
- 2.3 For all Eligible Job Seekers, the Provider must deliver:
- (a) General Services;
  - (b) Case Management Services; and
  - (c) Compliance Services.
- 2.4 For all Eligible Job Seekers who are also Work for the Dole Participants, the Provider must also deliver Remote Employment Services.
- 2.5 For all Ineligible CDP Participants, the Provider must:
- (a) directly Register an Ineligible CDP Participant who presents without a Referral;
  - (b) provide access to JobSearch Facilities;
  - (c) provide CDP Services in accordance with the Guidance; and
  - (d) Exit the Ineligible CDP Participant in accordance with the Guidance.
- 2.6 The Provider must only provide Services under clause 2.5 of this ANNEXURE 1 PART B if the Provider has ensured that:
- (a) the Ineligible CDP Participant who wishes to engage is doing so of their own free will; and
  - (b) providing Services to the Ineligible CDP Participant will not displace Eligible Job Seekers from CDP Services or reduce the amount of paid work available to workers in the Provider Region.
- 2.7 The Provider must not provide any CDP Services to:
- (a) a person who is an overseas visitor;
  - (b) a person on a working holiday visa; or
  - (c) a person who is prohibited by law from working in Australia.

### **3. General Service: Engagement with Employers**

- 3.1 The Provider must build relationships with Employers to facilitate the best possible delivery of CDP Services and to identify emerging job opportunities and upcoming skill needs.

### **4. General Service: Engagement with other services and organizations**

- 4.1 The Provider must build relationships and work co-operatively with government, private businesses and community services to facilitate the best possible delivery of CDP Services and to identify other programs that could assist Eligible Job Seekers to be work-ready.

### **5. General Service: Economic Development Support**

- 5.1 The Provider must work to support and assist community development, economic development and capacity-building by:
- (a) working to identify strategies and resources needed to address barriers to employment participation and retention;
  - (b) working within communities to identify and manage gaps in capabilities, existing infrastructure or services; and
  - (c) being aware and able to notify communities of any available sources of funding.

### **6. General Service: Additional support for Eligible Jobs Seekers with a disability**

- 6.1 For all Eligible Job Seekers with a disability, the Provider must:
- (a) take into account the impact of disability on the capacity of the Eligible Job Seeker when providing CDP Services;
  - (b) address relevant vocational and non-vocational barriers experienced by the Eligible Job Seeker;
  - (c) ensure they do not place the Eligible Job Seeker in any employment or Activity that is likely to aggravate their illness, injury or disability; and
  - (d) negotiate necessary flexible working arrangements with any Employer of the Eligible Job Seeker.

### **7. General Service: Employment Assistance Fund**

- 7.1 The Provider may apply for financial assistance under the Employment Assistance Fund with respect to an Eligible Job Seeker with a disability, or assist or act on behalf of an Employer in making such an application.
- 7.2 If the Provider makes an application in accordance with this clause 7 of ANNEXURE 1 PART B, the Provider must submit the application, or ensure the relevant Employer submits the application, to a JobAccess Provider.
- 7.3 If an application in accordance with this clause 7 of ANNEXURE 1 PART B is successful, the Provider must:
- (a) arrange for the purchase of the Approved Assistance for the Eligible Job Seeker with a disability from the Provider's own funds; and
  - (b) submit a claim for reimbursement of the Approved Assistance Amount through the IT Systems.
- 7.4 If the Provider or Employer is successful in an application made in accordance with this clause 7 of ANNEXURE 1 PART B, the Provider must ensure all payments to third parties are authorised and made in accordance with the Employment Assistance Fund Guidelines.

***[Note to Providers: The Department of Jobs and Small Business will reimburse Approved Assistance Amounts to the Provider or the Employer in accordance with, and subject to, the requirements for payment under the Employment Assistance Fund Guidance.]***

## **8. General Service: Recording Attendance**

- 8.1 The Provider must record participant attendance at Appointments in the IT Systems by close of business on the day of the Appointment where possible. The record of attendance must include a case note detailing the Appointment and otherwise be in accordance with any Guidance.
- 8.2 The Provider must schedule participant attendance at Activities and record participant attendance at Activities set out in a Job Plan in accordance with the Project Agreement and the Guidance.
- 8.3 The Provider must provide all attendance records to the Department upon request.
- 8.4 Where the Provider fails to comply with clause 8.1 or clause 8.2 of ANNEXURE 1 PART B, the Department may take action under clause 23.4 of the Head Agreement.

## **9. General Service: Issuing and recording Notification**

- 9.1 If an Eligible Job Seeker has a Mutual Obligation Requirement, but the full details of the requirement (for example, the time, date and location that the requirement is to be undertaken) is not specified in their Job Plan and they have not otherwise been notified of the full details of that requirement, the Provider must:
  - (a) notify the Eligible Job Seeker of the full details of their requirements; and
  - (b) where the IT Systems are not used to generate the notice to the Eligible Job Seeker, document the details of the relevant notice in the IT Systems, retain Records of the notice and provide those Records to the Department on request.

## **10. General Service: Eligible Job Seeker Contact Details**

- 10.1 The Provider must undertake a check of the currency of Eligible Job Seekers' contact details six months after the date of Registration and every six months thereafter. The contact details that must be checked are telephone number, email address and postal address.
- 10.2 The Provider must update Eligible Job Seekers' contact details in the IT Systems if they are no longer current.

## **11. General Service: Delegate Obligations**

- 11.1 The Provider must ensure that Delegates understand the powers, functions and duties that have been delegated to them under Social Security Law, including but not limited to:
  - (a) preparing, approving and varying Job Plans for Eligible Job Seekers;
  - (b) specifying Mutual Obligation Requirements in a Job Plan; and
  - (c) notifying Eligible Job Seekers about the impact of non-compliance with their Job Plan on their Income Support Payments.
- 11.2 The Provider must ensure that Delegates have undertaken applicable training in respect of their powers and functions, and the Job Seeker Compliance Framework, as directed by the Department.
- 11.3 The Provider must ensure that Delegates comply with Social Security Law.



## **12. General Service: Social Security Matters**

- 12.1 If the Provider believes there has been a change in circumstances that is likely to effect an Eligible Job Seeker's eligibility for Income Support Payments, the Provider must remind the Eligible Job Seeker of the obligation to report the change in circumstances to DHS.
- 12.2 The Provider must respond to any requests for information from DHS or the Department in relation to a change of circumstances referred to in this clause 12 of ANNEXURE 1 PART B within 5 days.
- 12.3 If the Provider believes that an Eligible Job Seeker should be exempt from any Mutual Obligation Requirements, the Provider must advise the Eligible Job Seeker that they may contact DHS to seek an Exemption.
- 12.4 The Provider must provide all reasonable assistance to the Commonwealth in relation to the Social Security Appeals Process, including ensuring the Provider's Personnel are available to appear at hearings; and preparing and providing evidence as necessary.

## **13. General Service: Suspensions**

- 13.1 Where an Eligible Job Seeker is Suspended, the Provider must take action in accordance with the Guidance, as relevant to the reason for the Suspension and the circumstances of the relevant Eligible Job Seeker.

## **14. General Service: Exits**

- 14.1 When an Eligible Job Seeker Exits, their current Period of Activities ends and the Provider may cease providing CDP Services to them.
- 14.2 Where an Eligible Job Seeker Exits, but returns for CDP Services less than 13 consecutive weeks after the Exit, the Eligible Job Seeker's Period of Activities continues from the date of the return, and the Provider must:
  - (a) record the resumption on the IT Systems in accordance with the Guidance; and
  - (b) resume providing CDP Services to the Eligible Job Seeker.
- 14.3 Where an Eligible Job Seeker Exits, but returns for CDP Services 13 consecutive weeks or more after the Exit, the Eligible Job Seeker begins a new Period of Activities from the date of the return and the Provider must resume providing CDP Services to the Eligible Job Seeker.

## **15. Case Management Service: Registration, Referral and Transfer of Eligible Job Seekers**

- 15.1 The Provider must only accept Referrals of Eligible Job Seekers made through the IT Systems or directly from DHS Assessment Services.
- 15.2 Where an Eligible Job Seeker is Referred to a Provider, the Provider must conduct an Initial Interview at the relevant Appointment made by DHS in the IT Systems and service the Eligible Job Seeker thereafter in accordance with the Project Agreement.
- 15.3 If a person presents to the Provider without a Referral, the Provider must determine if the person is an Eligible Job Seeker in accordance with the Guidance.
- 15.4 Where the Provider determines that a person is an Eligible Job Seeker, the Provider must immediately:
  - (a) Register the Eligible Job Seeker;
  - (b) conduct an Initial Interview with the Eligible Job Seeker;

- (c) deliver Services to the Eligible Job Seeker in accordance with the Project Agreement; and
  - (d) within four weeks of the Direct Registration, if appropriate, refer the Eligible Job Seeker to DHS to determine their eligibility for an Income Support Payment.
- 15.5 If an Eligible Job Seeker changes residential address and transfers away from a Provider Region, the Provider must provide sufficient assistance and cooperation to facilitate that transfer.
- 15.6 If an Eligible Job Seeker transfers to a Provider Region from another Region, the Provider must:
- (a) provide sufficient assistance and cooperation to any person as necessary to enable CDP Services to be provided or continue to be provided to the Eligible Job Seeker;
  - (b) immediately arrange an Initial Appointment with the Eligible Job Seeker; and
  - (c) start providing CDP Services to the Eligible Job Seeker in accordance with the Project Agreement.
- 15.7 The Provider cannot accept the transfer of an Eligible Job Seeker from another Region while the Eligible Job Seeker is Suspended.

#### **16. Case Management Service: Initial Interviews**

- 16.1 During an Initial Interview with an Eligible Job Seeker, the Provider must complete the following:
- (a) confirm the Eligible Job Seeker's identity;
  - (b) conduct an initial Assessment (including running the JSCI) of the Eligible Job Seeker's work experience, history, skills and qualifications;
  - (c) where appropriate, refer to Job Seeker for an ESA to ascertain the Eligible Job Seeker's individual circumstances;
  - (d) explain the CDP Services that will be provided to them;
  - (e) discuss, where relevant, the Eligible Job Seeker's participation in Work for the Dole, including satisfaction of participation criteria;
  - (f) prepare or update a Job Plan in accordance with clause 18 of this ANNEXURE 1 PART B;
  - (g) explain the Mutual Obligation Requirements under the Job Plan and explain the effect of non-compliance with a Mutual Obligation Requirement;
  - (h) provide a copy of the Provider Code of Practice and Service Guarantee and explain its use;
  - (i) explain, if necessary, how to use the JobSearch Facilities and where to locate them;
  - (j) provide initial advice on how to best look for employment in the local market, detailing applicable skills shortages, available jobs and upcoming opportunities in the Region; and
  - (k) record completion of the Initial Interview and initial interview comments in the IT systems in accordance with the Guidance.

## **17. Case Management Service: Assessment**

- 17.1 The Provider must conduct an Assessment (which may include running the JSCI) of an Eligible Job Seeker whenever the Eligible Job Seeker:
- (a) completes a key requirement that addresses vocational or non-vocational barriers under their Job Plan;
  - (b) experiences a change in circumstances; or
  - (c) discloses any information that may materially change the current Assessment.
- 17.2 When conducting an Assessment the Provider must consider the following matters:
- (a) non-vocational barriers that could impact employment;
  - (b) literacy and numeracy;
  - (c) educational achievements and other formal qualifications;
  - (d) work experience, including volunteer work;
  - (e) job readiness;
  - (f) skills and future skills requirements; and
  - (g) participation and development in activities required under the Job Plan.
- 17.3 Upon completing an Assessment, the Provider must:
- (a) update the Eligible Job Seeker's Job Plan to reflect the Assessment;
  - (b) record the Assessment in the IT Systems; and
  - (c) refer the Eligible Job Seeker to DHS Assessment Services if the Assessment reveals information that indicates that an ESAt might be required and the referral is in accordance with any Guidance.

## **18. Case Management Service: Job Plans**

- 18.1 The Provider must:
- (a) ensure that all Eligible Job Seekers have a current Job Plan at all times, in a form approved by the Department and in accordance with any Guidance;
  - (b) sign each Job Plan and provide a signed copy to the Eligible Job Seeker;
  - (c) review and, where appropriate, amend existing Job Plans;
  - (d) cancel or suspend Job Plans, as appropriate;
  - (e) create and maintain documentation in relation to Job Plans;
  - (f) enter information into the IT Systems in relation to Job Plans;
  - (g) do all things necessary to enable and encourage Eligible Job Seekers to comply with obligations under their respective Job Plans.
- 18.2 The Provider must ensure that each Job Plan:
- (a) is prepared in consultation with the Eligible Job Seeker;
  - (b) includes specific activities the Eligible Job Seeker is required to undertake during their current Period of Activities, including the date and time when each activity is to start and finish, the location and who to report to;
  - (c) includes terms tailored to address the Eligible Job Seeker's level of disadvantage, individual needs, barriers to Employment and any Partial Capacity to Work; and

- (d) includes requirements for Appointments between the Provider and the Eligible Job Seeker; and
  - (e) is understood by the Eligible Job Seeker, taking into consideration the Eligible Job Seeker's levels of literacy and numeracy.
- 18.3 In addition to the requirements of clause 18.2 of this ANNEXURE 1 PART B, the Provider must ensure that any Job Plan for an Eligible Job Seeker who has a Mutual Obligation Requirement includes:
- (a) terms with which they must comply to satisfy their Mutual Obligation Requirements;
  - (b) details of any additional voluntary activities in which the Eligible Job Seeker has agreed to participate in addition to meeting their Mutual Obligation Requirements.
- 18.4 In addition to the requirements of clauses 18.2 and 18.3 of this ANNEXURE 1 PART B, the Provider must ensure that any Job Plan for a WfD Participant who is required to participate in Work for the Dole because they meet the participation criteria set out in the Guidance includes:
- (a) a requirement to participate in Work for the Dole up to their Assessed capacity to work, described as a compulsory activity; and
  - (b) specification of the number of hours each fortnight during which the WfD Participant will participate in Work for the Dole, consistent with the Eligible Job Seeker's assessed work capacity and any maximum and minimum number of hours set out in the Guidance.

## **19. Case Management Service: Appointments**

- 19.1 The Provider must organise and attend as many Appointments with an Eligible Job Seeker as necessary to enable the Eligible Job Seeker to successfully complete any Mutual Obligation Requirement in their Job Plan, and at a minimum, the Provider must organise monthly Appointments with each Eligible Job Seeker.
- 19.2 At each Appointment with an Eligible Job Seeker the Provider must discuss their progress on their Mutual Obligation Requirements and/or new job opportunities identified by the Provider that are relevant for the Eligible Job Seeker.
- 19.3 The Provider must make an Appointment for an Eligible Job Seeker at the next available opportunity whenever:
- (a) an Eligible Job Seeker Directly Registers with the Provider;
  - (b) an Eligible Job Seeker does not attend an existing Appointment; or
  - (c) the Provider or an Eligible Job Seeker needs to reschedule an Appointment.
- 19.4 At all times the Provider must ensure the Electronic Diary has capacity to receive an Appointment (at an appropriate location for the Eligible Job Seeker) within the next two Business Days for the purposes of conducting an Initial Interview or Re-engagement.
- 19.5 Where an Eligible Job Seeker has an Appointment, the Provider must meet with the Eligible Job Seeker on the date of the Appointment as recorded in the Electronic Diary.
- 19.6 The Provider must tailor the timing, location and duration of each Appointment to meet the circumstances of the Eligible Job Seeker. All Appointments must be face-to-face unless:
- (a) extreme weather conditions or a natural disaster pose significant challenges to meeting in person;

- (b) the Eligible Job Seeker is participating in a Mutual Obligation Requirement which restricts their availability to attend face-to-face;
- (c) the Eligible Job Seeker is in full-time education, training or employment which restricts their availability to attend face-to-face;
- (d) DHS requires the Provider to meet with the Eligible Job Seeker within two days and the Provider is unable to be in the relevant location within that period; or
- (e) any other exception described in the Guidance or as advised by the Department applies.

## **20. Case Management Service: JobSearch Facilities**

- 20.1 The Provider must make Jobsearch Facilities available to Eligible Job Seekers during business hours in at least one Full-Time Site in each Provider Region, and provide guidance, training and assistance in the use of the Jobsearch Facilities.
- 20.2 The Provider must keep JobSearch Facilities clean, well-maintained, safe and fully operational; restrict access to inappropriate material consistent with the Guidance; and comply with any other direction of the Department regarding the JobSearch Facilities.

## **21. Case Management Service: Essential Skills Training**

- 21.1 The Provider must deliver training to each Eligible Job Seeker that:
- (a) is individually tailored to the needs of the Eligible Job Seeker;
  - (b) addresses any driving licence, language, numeracy or literacy skill gaps; and
  - (c) aligns with the specific needs of the Provider Region.

## **22. Case Management Service: Employment Assistance**

- 22.1 The Provider must actively assist Eligible Job Seekers to obtain and keep Employment in the communities in the Provider Region or in other Regions, including by:
- (a) providing one-on-one help in applying for jobs and preparing for interviews;
  - (b) providing on-the-job training to assist Eligible Job Seekers to remain in Employment; and
  - (c) working with Employers and communities in the Provider Region to support Activities, so as to create ongoing jobs and provide training and work experience as pathways to Employment.

## **23. Case Management Service: Mentoring**

- 23.1 Where appropriate, the Provider must deliver Mentoring to Eligible Job Seekers that is aimed at increasing the Eligible Job Seeker's employability, professional skills or personal growth.
- 23.2 Where the Provider delivers Mentoring to an Eligible Job Seeker, the Provider must:
- (a) ensure compliance with clauses 12.11 and 12.12 of the Head Agreement;
  - (b) take reasonable steps to appropriately match Mentors to Eligible Job Seekers;
  - (c) monitor the Mentoring relationship to determine its effectiveness and value;
  - (d) have an appropriate process for an Eligible Job Seeker or Mentor to report issues with the Mentoring; and
  - (e) investigate and help to resolve any issues raised regarding the Mentoring.

- 23.3 The Provider must ensure that any Mentor engaged to provide Mentoring to Eligible Job Seekers meets any criteria set in the Guidance.

#### **24. Case Management Service: Job Matching**

- 24.1 The Provider must actively canvass Employers, including Labour Hire Employers, for Vacancies.
- 24.2 If the Provider locates a Vacancy, the Provider must:
- (a) first record the Vacancy in the IT systems in accordance with any Guidance;
  - (b) endeavour to identify an Eligible Job Seeker suitable for the Vacancy;
  - (c) notify the Eligible Job Seeker, discuss the Vacancy and inform the Eligible Job Seeker that they may be referred to the Employer; and
  - (d) only after completing the actions set out in clauses 24.2(a) - 24.2(c), refer the Eligible Job Seeker to the Employer.

#### **25. Case Management Service: Post-Placement Support**

- 25.1 The Provider must deliver to Eligible Job Seekers who have commenced Employment the Post-Placement Support necessary to help them achieve an Employment Outcome.
- 25.2 Post-Placement Support must be delivered for a minimum of 6 months after the Eligible Job Seeker commences Employment, provided the Eligible Job Seeker remains employed.
- 25.3 The Provider must keep records of the Post-Placement Support delivered, including where it is offered by the Provider but declined by the Eligible Job Seeker.
- 25.4 Post-placement Support may include, but is not limited to:
- (a) additional training to meet Employer requirements;
  - (b) Mentoring;
  - (c) time management training;
  - (d) financial management training; and
  - (e) any other assistance specified in the Guidance.

#### **26. Case Management Service: Relocation Assistance**

- 26.1 The Provider must provide Relocation Assistance to Eligible Job Seekers who are relocating out of a Provider Region to take up employment and want to retain links to their community.
- 26.2 Relocation Assistance may include, but is not limited to:
- (a) Post-Placement Support; and
  - (b) other appropriate practice assistance; and
  - (c) any other assistance specified in the Guidance.

#### **27. Compliance Service: Monitoring**

- 27.1 The Provider must monitor the compliance of all Eligible Job Seekers in respect of the Mutual Obligation Requirements set out in the Eligible Job Seeker's Job Plan. This includes, but is not limited to, monitoring:
- (a) attendance at Appointments;
  - (b) attendance at interviews;

- (c) completion of Job Search Requirements; and
- (d) attendance at Activities.

- 27.2 Where the Provider determines that an Eligible Job Seeker has not met a Mutual Obligation Requirement, the Provider must, on the same day, report the non-compliance to DHS and document any information relevant to the non-compliance, including whether a Reasonable Excuse has been provided, in the IT Systems
- 27.3 For each Eligible Job Seeker with a Mutual Obligation Requirement, the Provider must regularly and actively monitor their compliance with each of their Mutual Obligation Requirements, including attendance at Appointments, entering into a current Job Plan, undertaking Job Searches as required and fulfilling other compulsory activities included in their Job Plan.
- 27.4 Where the Provider determines that an Eligible Job Seeker with a Mutual Obligation Requirement has failed to comply with their Mutual Obligation Requirements, the Provider must promptly take compliance action in accordance with the Project Agreement and the Guidance.

## **28. Compliance Service: General non-compliance action for Mutual Obligation Requirements**

- 28.1 Where an Eligible Job Seeker with Mutual Obligation Requirements has failed to comply with a Mutual Obligation Requirement, and did not give prior notice to the Provider of a Valid Reason, the Provider must, on the same Business Day as becoming aware of the event, attempt to contact the Eligible Job Seeker to assess if they had a Reasonable Excuse for not complying and record this in the IT Systems.
- 28.2 If the Provider makes an assessment that the Eligible Job Seeker had a Reasonable Excuse, the Provider must record the assessment in the IT Systems, and use its best endeavours to ensure that the Eligible Job Seeker complies with the Mutual Obligation Requirements outlined in their Job Plan at the next available opportunity.
- 28.3 If the Provider makes an assessment that the Eligible Job Seeker did not have a Reasonable Excuse or the Provider has not been able to make contact with the Eligible Job Seeker on the same Business Day, the Provider must comply with clauses 29 to 33 of this ANNEXURE 1 PART B as relevant.

## **29. Compliance Service: Non-attendance at an Appointment**

- 29.1 In relation to non-attendance at an Appointment by an Eligible Job Seeker, the Provider must, on the same business day as becoming aware of the event, determine whether any compliance action should be taken under the Job Seeker Compliance Framework.
- 29.2 If the Provider determines that compliance action should be taken under the Job Seeker Compliance Framework and the Provider is able to contact the Eligible Job Seeker, the Provider must:
- (a) document any information relevant to the event in the IT Systems;
  - (b) submit a Non-Attendance Report or Provider Appointment Report, in accordance with the Guidance, to DHS via the IT Systems on the same Business Day as the Appointment was scheduled to occur; and
  - (c) book a Re-engagement Appointment to occur within the next two business days.
- 29.3 If the Provider determines that compliance action should be taken under the Job Seeker Compliance Framework, but is not able to contact the Eligible Job Seeker, the Provider must:

- (a) document any information relevant to the event in the IT Systems;
  - (b) submit a Non-Attendance Report to DHS via the IT Systems on the same Business Day that the Appointment was scheduled to occur;
  - (c) on later making contact with the Eligible Job Seeker, determine whether they had a Reasonable Excuse for not complying.
- 29.4 If the Provider assesses that the Eligible Job Seeker did not have a Reasonable Excuse and that further compliance action should be taken under the Job Seeker Compliance Framework in relation to the event, and has submitted a Non-Attendance Report to DHS, the Provider may also:
- (a) decide to submit a Provider Appointment Report to DHS via the IT Systems on the same Business Day;
  - (b) document any information relevant to the event in the IT Systems; and
  - (c) book a Re-engagement Appointment, in consultation with the Eligible Job Seeker, to occur within the next two business days.
- 29.5 If the Provider assesses that the Eligible Job Seeker did not have a Reasonable Excuse, but no further compliance action should be taken under the Job Seeker Compliance Framework, the Provider must book a Re-engagement Appointment, in consultation with the Eligible Job Seeker, to occur within the next two Business Days.
- 29.6 If the Provider determines that no compliance action should be taken under the Job Seeker Compliance Framework, the Provider must take any action specified in the Guidance.

### **30. Compliance Service: Non-compliance with Job Plan**

- 30.1 In relation to non-attendance or inappropriate participation by an Eligible Job Seeker in a compulsory activity included in their Job Plan, the Provider must, on the same Business Day of becoming aware of the event, determine whether any compliance action should be taken under the Job Seeker Compliance Framework in accordance with the Guidance.
- 30.2 If the Provider determines that compliance action should be taken under the Job Seeker Compliance Framework, the Provider must on the same business day of becoming aware of the event, document any information relevant to the event and report the non-compliance to DHS via the IT Systems.
- 30.3 If the Provider determines that compliance action should not be taken under the Job Seeker Compliance Framework, the Provider must record the determination; and use best endeavours to ensure that the Eligible Job Seeker complies with their Mutual Obligation Requirements outlined in their Job Plan at the next available opportunity.

### **31. Compliance Service: Failure to attend a job interview or Work Refusal Failure**

- 31.1 In relation to failure to attend a job interview or a Work Refusal Failure by an Eligible Job Seeker, the Provider must, on the same Business Day of becoming aware of the event, determine whether any compliance action should be taken under the Job Seeker Compliance Framework in accordance with the Guidance.
- 31.2 If the Provider determines that compliance action should be taken under the Job Seeker Compliance Framework, the Provider must on the same business day of becoming aware of the event, document any information relevant to the event and report the non-compliance to DHS via the IT Systems.



- 31.3 If the Provider determines that compliance action should not be taken under the Job Seeker Compliance Framework, the Provider must record that determination.

### **31. Compliance Service: Job Search Requirements**

- 31.4 The Provider must ensure that a Job Search Requirement is specified in the Job Plan for each Eligible Job Seeker in accordance with their Mutual Obligation Requirements at all times during their Period of Activities (even where that Job Search Requirement is set at zero).
- 31.5 Clauses 31.6 to 31.7 of this ANNEXURE 1 PART B, and clause 32 below, apply only to Eligible Job Seekers with a Job Search Requirement set above zero.
- 31.6 The Provider must ensure that at all times each Eligible Job Seeker is aware of their current Job Search Requirement, that the Eligible Job Seeker must record and provide details of their Job Searches directly to the Provider, and how to do so.
- 31.3 Each month of the Term of the Project Agreement, the Provider must:
- (a) actively monitor and determine whether each Eligible Job Seeker has met their Job Search Requirement for each Job Search Period;
  - (b) where an Eligible Job Seeker does not use Australian JobSearch to record their Job Searches, obtain from the Eligible Job Seeker all Records required to document each Job Search in accordance with the Guidance and provide them to the Department on request; and
  - (c) otherwise use best endeavours to ensure that each Eligible Job Seeker meets their Job Search Requirement.

### **32. Compliance Service: Non-compliance with Job Search Requirements**

- 32.1 The Provider must, within ten Business Days of the end of each Job Search Period, determine whether each Eligible Job Seeker has appropriately met their Job Search Requirement for that Job Search Period.
- 32.2 If the Provider determines that the relevant Job Search Requirement has been appropriately met, the Provider must continue to monitor the Eligible Job Seeker's compliance with their Job Search Requirement in accordance with clause 31 of this ANNEXURE 1 PART B.
- 32.3 If the Provider determines that the relevant Job Search Requirement has not been appropriately met, the Provider must, on the same Business Day, determine whether any action should be taken under the Job Seeker Compliance Framework in relation to the event.
- 32.4 If the Provider determines that compliance action referred to in clause 32.3 of this ANNEXURE 1 PART B should be taken, the Provider must, on the same Business Day:
- (a) document that the Eligible Job Seeker has not appropriately met their Job Search Requirement and submit any information relevant to the event in the IT Systems; and
  - (b) report the non-compliance to DHS via the IT Systems.
- 32.5 If the Provider determines that compliance action referred to in clause 32.3 of this ANNEXURE 1 PART B should not be taken, the Provider must, on the same Business Day:
- (a) record the determination in the IT Systems;
  - (b) continue to monitor the Eligible Job Seeker's compliance with their Job Search Requirement in accordance with clause 31 of this ANNEXURE 1 PART B.

### **33. Compliance Service: Non-compliance action for DSP Recipients (Compulsory)**

- 33.1 Where a DSP Recipient (Compulsory) has not attended an Appointment, entered into a current Job Plan or appropriately participated in any Activities as specified in the Guidance, the Provider must attempt to contact the DSP Recipient (Compulsory) on the same Business Day as becoming aware of the non-compliance.
- 33.2 If the Provider has been able to make contact with the DSP Recipient (Compulsory), the Provider must, within 10 business days of the non-compliance, determine whether the non-compliance should be reported to DHS.
- 33.3 If the Provider determines that compliance action referred to in clause 33.2 of this ANNEXURE 1 PART B should be taken, the Provider must document any information relevant to the event and report the non-compliance to DHS via the IT Systems.
- 33.4 If the Provider determines that compliance action referred to in clause 33.2 of this ANNEXURE 1 PART B should not be taken, the Provider must use best endeavours to ensure that the DSP Recipient (Compulsory) complies with their compulsory requirements.
- 33.5 If the Provider has been unable to contact the DSP Recipient (Compulsory), the Provider must, within 10 Business Days of the non-compliance, determine whether any action should be taken under the Job Seeker Compliance Framework in relation to the non-compliance.
- 33.6 If the Provider determines that compliance action referred to in clause 33.5 of this ANNEXURE 1 PART B should be taken, the Provider must document any information relevant to the event and report the non-compliance to DHS using the IT Systems.

### **34. Compliance Service: DHS Compliance Obligations**

- 34.1 The Provider must, where directed by DHS, immediately arrange for an Eligible Job Seeker to participate in Compliance Activities. This includes but is not limited to:
  - (a) monitoring Eligible Job Seeker participation in Compliance Activities; and
  - (b) ensuring the Eligible Job Seeker's Job Plan is updated to reflect any change in Mutual Obligation Requirements.

### **35. Remote Employment Service: Establishment and conduct of Activities**

- 35.1 The Provider must, in accordance with the Guidance and in consultation with the communities in the Provider Region deliver appropriate and sufficient Activities to allow Work for the Dole Participants to meet the requirement in their Job Plan to participate in Work for the Dole.
- 35.2 Activities may be established and conducted by the Provider itself or by a Host.
- 35.3 The Provider must ensure that an Activity:
  - (a) individually, or as part of a WfD Participant's mix of Activities, sets a daily routine for the WfD Participant;
  - (b) has attendance guided by a Supervisor; and
  - (c) meets any other criteria or requirements set out in the Guidance.
- 35.4 The Provider must not conduct an Activity if the Provider has received or will receive any payment (other than under the Project Agreement) in relation to, or as a result of, the conduct of the Activity, including:
  - (a) any funding under a Commonwealth, State, Territory or local government program;
  - (b) and any payment or other benefit from a third party, including under a commercial arrangement.

- 35.5 The Provider must not conduct an Activity if any part of the Activity:
- (a) fulfils a function which would normally otherwise be undertaken by the Provider under the Project Agreement, or under any other contract or arrangement between the Provider and the Department or any other Commonwealth body, or between the Provider and a State, Territory or local government body;
  - (b) supports any operations, activities or infrastructure of the Provider which would otherwise have been acquired or in place had the Activity not occurred;
  - (c) would have been undertaken by a paid worker if the Activity had not been established or conducted;
  - (d) results in reduced hours for a paid worker, where those hours would not have been reduced if the Activity had not been established or conducted;
  - (e) does not comply with all laws, including those relating to work health and safety requirements and applicable Commonwealth policies;
  - (f) could reasonably be expected to bring a WfD Participant, the Provider or the Department into disrepute;
  - (g) causes a WfD Participant to be involved, in any way, in the sex industry, anything which involves any nudity by any person or any form of pornography, the gambling industry, or any form of illegal activity;
  - (h) involves any contact with a Vulnerable Person which would contravene clauses 12.11 to 12.14 of the Head Agreement; or
  - (i) involves activities which the Guidance specify must not be undertaken as part of an Activity without the Department's approval, including because the relevant activity is excluded from the Department's insurance coverage.
- 35.6 The Provider must take full responsibility for each Activity in which a WfD Participant is placed, including by ensuring that, where an Activity is conducted by a Host, the Host complies fully with all relevant obligations in the Project Agreement.
- 35.7 The Provider must ensure that all Activities meet all applicable Commonwealth, State and Territory legal requirements including all WHS Laws.
- 35.8 The Provider must ensure that all Work for the Dole Participants placed in an Activity receive:
- (a) all things necessary for participation in the Activity, including materials, tools, safety and other equipment and appropriate clothing, at no cost to the WfD Participant; and
  - (b) all practical support and training necessary to fully participate in the Activity.
- 35.9 The Provider must not make any payment in cash or kind to any Eligible Job Seeker for participation in an Activity, except as permitted under the Guidance.
- 35.10 The Provider must ensure that any training provided as an Activity, or as part of an Activity is either:
- (a) necessary for the WfD Participant to participate in an Activity; or
  - (b) directly meet the needs of an Employer.
- 35.11 For the purposes of clause 35.10 of this ANNEXURE 1 PART B, the Provider must make use of a range of existing Australian government foundation skills, pre-vocational and work-skills training programs and facilities to assist WfD Participants.

35.12 For the purposes of clause 35.10 of this ANNEXURE 1 PART B, the Provider may provide non-accredited training for Work for the Dole Participants, but must not provide accredited training for WfD Participants unless the Provider or relevant subcontractor is a Registered Training Organisation.

### **36. Remote Employment Services: Hosted Activities**

- 36.1 The Provider may subcontract or otherwise engage Hosts to conduct an Activity, unless the Guidance specifies that that type of Activity may not be Hosted.
- 36.2 The Provider must actively engage with potential Hosts in the Provider Region, including Employers, government organisations (both at the State or Territory and local government levels) and non-government organisations and encourage them to become Hosts.
- 36.3 Prior to engaging an entity as a Host, the Provider must ensure it has suitable contractual arrangement with the Host, in compliance with any requirements in the Guidance.
- 36.4 Without limiting clause 36.3 of this ANNEXURE 1 PART B, the Guidance may include requirements that any contractual arrangement with a Host must include:
- (a) payment by the Provider of a minimum amount to the Host for placement of WfD Participants in an Activity conducted by that Host;
  - (b) limits on the time during which any one WfD Participant may be placed in an Activity conducted by the Host;
  - (c) limits on the time during which an Activity conducted by a Host can continue; and
  - (d) an acknowledgement and agreement that if the Host is unable to employ an appropriate number of suitable WfD Participants at the end of their placement in the Activity conducted by the Host, or if the Host otherwise acts in a manner which the Provider or the Department consider to be exploitative, inappropriate or inconsistent with the Guidance, the Provider will not place any further WfD Participants in any Activity conducted by that Host.
- 36.5 If a Host entity conducts a selection process for placement in a Hosted Activity or otherwise selects a WfD Participant to participate in a Hosted Activity, and the selected WfD Participant is willing to participate in that Activity, the Provider must take the necessary actions to place the WfD Participant into that Activity unless:
- (a) the Department has confirmed in writing that the Provider does not need to make the placement; or
  - (b) the Guidance specifies conditions under which the Provider does not need to make a placement in accordance with this clause 36.5, and the Provider meets those conditions.

### **37. Remote Employment Service: Limiting liability**

- 37.1 The Provider must ensure that each WfD Participant and Host is aware that, to the extent allowed by law, the Host, the Provider or the Department may terminate any Activity at any time.
- 37.2 The Provider must ensure that, to the extent allowed by law, there is no intention or understanding on the part of a Host, a Registered Training Organisation or a WfD Participant that any Activity will create legal relations, including any Employment relationship, between a WfD Participant and:
- (a) the Department;
  - (b) the Provider;

- (c) a Registered Training Organisation; or
- (d) a Host.

### **38. Remote Employment Service: Placement of Work for the Dole Participants into Activities**

- 38.1 The Provider must record all Activities, any available places in those Activities, and any placements of WfD Participants into Activities on the IT Systems, in accordance with the Guidance. The Provider must comply with any particular method specified in the Guidance for making or keeping Records of attendance in Activities.
- 38.2 The Provider must place each WfD Participant in sufficient Activities for them to meet their requirement to participate in Work for the Dole, by screening and, to the extent possible, matching suitable WfD Participants with available placements in Activities.
- 38.3 The Provider must ensure that the Activities in which a WfD Participant is placed, are designed to build a set of skills and experience that provide a pathway to real Employment.
- 38.4 The Provider must ensure that WfD Participants clearly understand their requirement to attend Activities, and that this is clearly set out in their Job Plans in accordance with the Guidance.
- 38.5 The Provider must otherwise comply with any Guidance about the placement of WfD Participants in Activities.
- 38.6 Unless expressly permitted by the Guidance, or the Department gives written permission, the Provider must not place, or arrange for the placement of, a WfD Participant into an Activity if:
  - (a) the placement would involve the WfD Participant working with, or assisting in any way, an organisation which is owned or controlled by the WfD Participant; or
  - (b) the Activity contravenes clauses 35.4 or 35.5 of this ANNEXURE 1 PART B or any other requirement for Activities in the Guidance; or
  - (c) the Department has given the Provider notice that the Provider must not place the WfD Participant into an Activity.

### **39. Remote Employment Service: Supervision of Activities**

- 39.1 The Provider must ensure that WfD Participants participating in an Activity are adequately and appropriately supervised at all times, including with regard to the age, health, welfare and safety of WfD Participants while undertaking that Activity. This includes ensuring there is a greater level of supervision if an Activity involves WfD Participants who are Vulnerable Persons or involves WfD Participants having direct contact with one or more Vulnerable Persons.
- 39.2 The Provider must ensure that an Activity has a nominated Supervisor, unless the Guidance specifies that that Activity is a type which does not require a nominated Supervisor.
- 39.3 The Provider must ensure that all personnel including Supervisors involved in delivering Activities:
  - (a) are fit and proper persons to be involved in the Activity;
  - (b) have an appropriate level of skill, knowledge, training and experience; and
  - (c) are able to address any special needs of WfD Participants who are Aboriginal or Torres Strait Islander persons, Principal Carers, from culturally and linguistically diverse backgrounds, persons with a disability, or Children.
- 39.4 The Department may, on reasonable grounds related to the performance of the Activities, give the Provider a Notice to remove one or more Supervisors from participating in Activities. If this

case, the Provider must, at its own cost, promptly arrange for the removal of those Supervisors from work on the relevant Activities and must arrange for their replacement with Supervisors acceptable to the Department.

- 39.5 The Provider must implement strategies to ensure that the participation of WfD Participants in any Activity is not disrupted or adversely affected by any absence of Supervisors.

#### **40. Remote Employment Services: Department Directions concerning Activities**

- 40.1 The Department may, at any time and at its absolute discretion, give the Provider a written direction in relation to a particular Activity, a proposed Activity or a type of Activity, including a direction that:
- (a) a specific activity may not be undertaken, or continue, as part of an Activity;
  - (b) an Activity be varied; and/or
  - (c) an Activity be managed directly by the Provider, rather than by a Material Subcontractor or a Host.
- 40.2 If the Department gives a direction to the Provider in accordance with clause 40.1 of this ANNEXURE 1 PART B, the Provider must immediately take any action required by the direction.
- 40.3 The Department may, from time to time, Notify the Provider of a need to establish and conduct an Activity within a Provider Region of a particular type, which has particular characteristics and/or is in a particular location.
- 40.4 If the Department issues the Provider with a Notice under clause 40.3 of this ANNEXURE 1 PART B, the Provider must co-operate with the Department to:
- (a) determine a suitable way to implement the proposed Activity;
  - (b) determine whether the proposed Activity is feasible, including providing reasons and evidence if the Provider considers that the proposed Activity would involve significant and unacceptable risks, or would impose significant and unreasonable costs; and
  - (c) unless the Department is satisfied that the proposed Activity is unfeasible or unreasonable, establish and conduct the proposed Activity, and place WfD Participants into that Activity in accordance with the Project Agreement.
- 40.5 The Department is not liable for any costs incurred by the Provider attributable to:
- (a) any non-commencement, suspension, variation or termination of an Activity under clause 40.1 of this ANNEXURE 1 PART B; or
  - (b) the establishment or conduct of an Activity under clause 40.4 of this ANNEXURE 1 PART B.

## **ANNEXURE 1 – PART C: TWES SERVICES**

### **1. Introduction**

- 1.1 This ANNEXURE 1 PART C details the TWES Services the Provider must deliver if the Project Schedule specifies TWES Services.

### **2. Application**

- 2.1 The Provider must deliver TWES Services in their Provider Region in accordance with the Project Agreement and the Guidance including the Time to Work Employment Service Guarantee.
- 2.2 The Provider must deliver TWES Services:
- (a) to all Eligible Prisoners, in accordance with this ANNEXURE 1 PART C; and
  - (b) to all TWES Participants for the duration of their Period of Service.

### **3. Working with Prisons**

- 3.1 The Provider must work cooperatively with each Prison to deliver TWES Services, including by:
- (a) negotiating the manner of the Provider's attendance at the Prison and communication with Eligible Prisoners and TWES Participants; and
  - (b) complying with any Prison policies, procedures, requests or directions.

### **4. Promoting Time to Work Employment Services**

- 4.1 The Provider must develop links with each Prison and any in-prison service providers to attract and retain TWES Participants.
- 4.2 The Provider must promote the Time to Work Employment Service to Eligible Prisoners in each Prison, including by:
- (a) providing information about the Time to Work Employment Service and encouraging Eligible Prisoners to volunteer to participate; and
  - (b) providing information about Employment Services Programs available to Eligible Prisoners on release from Prison.

### **5. Initial Appointment**

- 5.1 Before providing TWES Services to a TWES Participant, the Provider must conduct an Initial Appointment with the TWES Participant.
- 5.2 During an Initial Appointment, the Provider must:
- (a) ensure the TWES Participant has completed the privacy consent form and registration form in accordance with clause 6 of this ANNEXURE 1 PART C;
  - (b) explain how the TWES Participant's Personal Information is handled in relation to the Time to Work Employment Service; and
  - (c) explain the TWES Services that the Provider will deliver.

### **6. Registration of TWES Participants**

- 6.1 The Provider must ensure that the TWES Participant has completed:
- (a) a privacy consent form; and

(b) a registration form,  
in the manner specified by the Department.

6.2 The Provider must Commence each TWES Participant as soon as possible after the TWES Participant completes a registration form in accordance with this clause 6 of ANNEXURE 1 PART C.

6.3 The Provider must not Commence a TWES Participant during a Transition Out Period.

6.4 As early as possible after a TWES Participant completes a privacy consent form in accordance with this clause 6 of ANNEXURE 1 PART C, the Provider must, in the form specified by the Department, request a copy of:

- (a) education records relevant to preparing the Transition Plan from the relevant education authorities and prison; and
- (b) medical records relevant to the conduct of an Employment Services Assessment from the relevant health and medical authorities and the Prison.

**7. Transfer of TWES Participants between Prisons**

7.1 If the Provider becomes aware that a TWES Participant who has previously received TWES Services from another provider has been transferred to a Prison in the Provider Region, the Provider must:

- (a) refer the TWES Participant to the Provider in the IT Systems; and
- (b) commence delivering TWES Services to the TWES Participant, except to the extent that TWES Services have already been provided to the TWES Participant by the other provider.

7.2 If the Provider becomes aware that a TWES Participant has been transferred to a Prison that is serviced by another provider, the Provider must immediately provide sufficient assistance and cooperation to facilitate continuity of TWES Services to:

- (a) the TWES Participant's new provider;
- (b) the TWES Participant's new Prison; and
- (c) any other person nominated by the Department.

**8. Identifying and addressing employment barriers**

8.1 The Provider must continually identify and assess each TWES Participant's employment barriers, including any need to:

- (a) address both non-vocational and vocational barriers and improve their personal situation;
- (b) address literacy and numeracy deficits;
- (c) obtain higher qualifications;
- (d) obtain a driver's licence; or
- (e) otherwise improve their work readiness.

8.2 The Provider must identify initiatives, services and education courses that will address a TWES Participant's employment barriers and must:

- (a) facilitate access to the initiatives, services and education courses available while the TWES Participant is in the Prison; and



- (b) prepare for access to the initiatives, services and education courses available after the TWES Participant's release from the Prison.

## **9. Contacts**

- 9.1 The Provider must engage each TWES Participant in appropriate Contacts that include:
- (a) an Initial Appointment in accordance with clause 5 of this ANNEXURE 1 PART C;
  - (b) assessment of the TWES Participant's level of disadvantage using the Job Seeker Classification Instrument;
  - (c) conduct of an Employment Services Assessment by DHS;
  - (d) discussion and approval of a Transition Plan;
  - (e) discussion of the TWES Participant's employment, education and training history, including any work, education and training while in prison, and any vocational and career aspirations;
  - (f) identification of any employment barriers evident from the TWES Participant's education and medical records; and
  - (g) a facilitated transfer meeting where applicable.
- 9.2 The Provider must ensure that:
- (a) all Contacts are face to face between the TWES Participant and the Provider, except where that is not possible due to circumstances outside of the Provider's control;
  - (b) all Contacts are delivered by the Provider in a culturally competent manner, in accordance with any Guidance and appropriately tailored to meet the individual circumstances of the TWES Participant;
  - (c) the results of all Contacts, except the Initial Appointment, are recorded in the IT Systems.

## **10. Job Seeker Classification Instrument**

- 10.1 Prior to the facilitated transfer meeting or the TWES Participant's release from the Prison, whichever occurs earlier, the Provider must:
- (a) assess the TWES Participant's level of disadvantage using the Job Seeker Classification Instrument in accordance with any Guidance; and
  - (b) record all information relevant to the Job Seeker Classification Instrument in the IT Systems.

## **11. Transition Plan**

- 11.1 Prior to a facilitated transfer meeting or the TWES Participant's release from the Prison (whichever occurs earlier), the Provider must prepare a Transition Plan for each TWES Participant.
- 11.2 A Transition Plan must:
- (a) be prepared in consultation with the TWES Participant, the relevant Prison, and any other in-prison service providers assisting the TWES Participant;
  - (b) be in the form and containing the content specified in the IT Systems and any Guidance;
  - (c) include reference to the TWES Participant's relevant education records; and

- (d) specify employment barriers and relevant initiatives, services and education courses identified by the Provider in accordance with clause 8 of this ANNEXURE 1 PART C.
- 11.3 Prior to the TWES Participant's Exit, the Provider must discuss the Transition Plan with the TWES Participant and use best endeavours to obtain the TWES Participant's approval to the Transition Plan in accordance with any Guidance.
- 11.4 The Provider must record the Transition Plan and any TWES Participant approval of the Transition Plan in the IT Systems in accordance with any Guidance.

## **12. Employment Services Assessment**

- 12.1 Prior to a facilitated transfer meeting or a TWES Participant's release from the Prison (whichever occurs earlier), the Provider must:
- (a) arrange for DHS to participate in a meeting with the TWES Participant to conduct an Employment Services Assessment,
  - (b) where the TWES Participant consents, attend the meeting referred to in clause 12.1(a) and assist the TWES Participant to engage with and provide information to DHS; and
  - (c) where the TWES Participant has provided a privacy consent, provide a copy of the TWES Participant's medical records to DHS.

## **13. Facilitated Transfer to Employment Services Programs**

- 13.1 Where a TWES Participant is referred by DHS to an Employment Services Provider, the Provider must arrange a facilitated transfer meeting between the TWES Participant and the proposed Employment Services Provider.
- 13.2 In preparation for a facilitated transfer meeting the Provider must discuss with the TWES Participant, and provide information about:
- (a) the region in which the TWES Participant intends to live on release from the Prison;
  - (b) the Employment Services Programs available in this region;
  - (c) the job vacancies and skills in demand in or near the region;
  - (d) how Employment Services Providers are allocated to job seekers including the DJSB policy in relation to choice of Employment Services Provider;
  - (e) any Mutual Obligations Requirements (including activity test or participation requirements) the TWES Participant may have to meet in order to receive an Income Support Payment; and
  - (f) the purpose and importance of the TWES Participant attending a DHS pre-release interview.
- 13.3 During the facilitated transfer meeting, the Provider must:
- (a) introduce the proposed Employment Service Provider to the TWES Participant;
  - (b) facilitate discussion between the TWES Participant and the proposed Employment Service Provider about transition to an Employment Services Program following release from the Prison and the TWES Participant's Transition Plan; and
  - (c) confirm the first post-release meeting between the TWES Participant and the proposed Employment Services Provider.

## **14. Exits**

- 14.1 Where an Exit occurs, the TWES Participant's Period of Service ends and the Provider may cease providing TWES Services to the TWES Participant.
- 14.2 An Exit occurs for a TWES Participant when:
- (a) the TWES Participant commences in an Employment Services Program (other than NEIS);
  - (b) a Provider Exit occurs in accordance with clause 14.3 of this ANNEXURE 1 PART C; or
  - (c) any other event specified by the Department occurs.
- 14.3 The Provider must perform a Provider Exit if a TWES Participant:
- (a) advises the Provider they no longer wish to participate or otherwise ceases to participate in the Time to Work Employment Service;
  - (b) ceases to be an Eligible Prisoner;
  - (c) is not eligible for an Employment Services Program, or is Exempt, on release from the Prison;
  - (d) does not complete a DHS pre-release interview or commence in an Employment Services Program within 13 weeks of release from the Prison;
  - (e) is referred to NEIS; or
  - (f) does any other act or fails to do an act, as specified by the Department.
- 14.4 Where an Exit occurs for any reason but the TWES Participant later returns to TWES Services, the Provider must Commence the TWES Participant and:
- (a) if the TWES Participant returns to TWES Services less than 13 weeks after the date of the Exit, resume delivering any TWES Services that have not yet been provided to the TWES Participant; or
  - (b) if the TWES Participant returns to TWES Services more than 13 weeks after the date of Exit, provide all TWES Services to them as a new TWES Participant.

## **15. Transition Out Period**

- 15.1 During the Transition Out Period, the Provider must:
- (a) cease delivering Services under clause 4 of this ANNEXURE 1 PART C;
  - (b) use best endeavours to deliver all other TWES Services in full to any TWES Participants prior to the Completion Date; and
  - (c) comply with any other reasonable direction of the Department.

## **ANNEXURE 2 – MONIES**

**[Note to Providers: This ANNEXURE 2 – MONIES is divided into three parts: PART A – GENERAL, PART B – CDP MONIES, PART C – TWES MONIES]**

### **ANNEXURE 2 – PART A: GENERAL**

#### **1. General Arrangements applicable to all Monies**

- 1.1 The Department will pay to the Provider the following Payments in accordance with the Project Agreement, if those Payments are specified in the Project Schedule:
  - (a) Case Management Payment;
  - (b) Attendance Payment;
  - (c) Employment Outcome Payment;
  - (d) TWES Service Payment;
  - (e) TWES Transition Plan Payment; and
  - (f) Ancillary Payments.
- 1.2 The Department will also pay to the Provider the following types of Funding as set out in the Project Agreement, if that Funding is specified in the Project Schedule:
  - (a) Employer Incentive Funding;
  - (b) Capital Investment Funding; and
  - (c) Strengthening Organisational Governance Funding.
- 1.3 The Provider is entitled to receive Monies for Services:
  - (a) delivered in respect of Eligible Job Seekers; and
  - (b) delivered in respect of Ineligible CDP Participants only where the Guidance expressly authorises the payment of such Monies.
- 1.4 The Department will adjust Payments calculated under the Project Agreement in respect of an Eligible Job Seeker who is the subject of a Suspension in accordance with the Guidance.
- 1.5 Where the Project Agreement indicates a date on which the IT Systems will calculate a Payment or Funding, but it is not possible or practicable to use that date, the calculation may be done on another date selected by the Department.
- 1.6 Where a Provider considers that the IT Systems have incorrectly calculated a Payment or Funding amount, the Provider may make a special claim for a Payment or Funding in accordance with the Guidance.
- 1.7 The Provider must ensure that it holds Documentary Evidence in relation to Payments and Funding which:
  - (a) complies with any requirements in the Guidance;
  - (b) is accurate and complete; andmust supply that Documentary Evidence to the Department when required by the Department.

#### **2. Capital Investment Funding**

- 2.1 Capital Investment Funding is payable to the Provider if the Provider is providing CDP Services to enable the Provider to purchase small capital items for use in the course of

Activities and for enterprise development. Capital Investment Funding is Funding for the purposes of the Project Agreement.

2.2 The Department will pay the Provider Capital Investment Funding where the Department is satisfied that:

- (a) the Provider has submitted a Capital Investment Fund application addressing any requirements set out in the Guidance; and
- (b) the Capital Investment Fund application has been approved by the Department.

2.3 If the Provider does not spend the Capital Investment Funding in accordance with the terms of the Capital Investment Fund application within 20 Business Days (or as otherwise agreed with the Department) of receiving an amount of Capital Investment Funding, the Provider must repay the Capital Investment Funding to the Department in accordance with the Guidance.

### **3. Strengthening Organisational Governance Funding**

3.1 Strengthening Organisational Governance Funding is payable to the Provider to assist with the one-off costs associated with transferring incorporation status. Strengthening Organisational Governance Funding is Funding for the purposes of the Head Agreement.

3.2 If the Provider has been required to become incorporated in accordance with clauses 13.17 to 13.21 of the Head Agreement, the Department will pay the Provider a one-off amount of \$10,000.00 (exclusive of GST) following the Provider providing proof of the change in incorporation status to the Department.

3.3 The Provider agrees that the amount referred to in clause 3.2 of this ANNEXURE 2 PART A represents a genuine pre-estimate of the costs likely to be incurred in complying with the incorporation requirement, and that the Department is not liable for any further amount. This amount will be paid only if the Provider has not received a similar payment under any other agreement with the Department.

### **4. Ancillary Payments**

4.1 Ancillary Payments are payable to the Provider, from time to time, at the Department's absolute discretion.

4.2 If the Department makes any Ancillary Payments, those Ancillary Payments will be subject to the Provider satisfying any terms and conditions Notified to the Provider, and meeting any requirements specified in the Guidance.

## ANNEXURE 2 – PART B: CDP MONIES

### 1. Case Management Payment

- 1.1 The Department will pay the Case Management Payment to the Provider for the delivery of all General Services, Case Management Services and Compliance Services in respect of all Eligible Job Seekers in accordance with the Project Agreement.
- 1.2 Case Management Payments will be calculated in accordance with the following principles:
- (a) Case Management Payments are payable for each weekday in a month as follows:
- Total number of Commenced or Suspended Eligible Job Seekers in the Caseload x Daily Rate for each Eligible Job Seeker***
- (b) The **Daily Rate** for an Eligible Job Seeker is calculated based on the applicable maximum annual rate for Case Management Payment, divided by 12 (months), divided by the actual number of weekdays in the relevant month.
- (c) The **Caseload** includes all Eligible Job Seekers with a status of Commenced or Suspended who resided in the Provider Region on the relevant day according to the information in the IT Systems.
- (d) The maximum annual Case Management Payment for Services provided in respect of each Eligible Job Seeker who is required to participate in Work for the Dole is **\$4,000** (exclusive of GST).
- (e) The maximum annual Case Management Payment for Services provided in respect of each Eligible Job Seeker who is not required to participate in Work for the Dole is **\$6,000** (exclusive of GST).
- 1.3 Case Management Payments will be paid monthly in arrears, for each calendar month.
- 1.4 Before the last day of the following calendar month, the IT Systems will use the principles in clause 1.2 of this ANNEXURE 2 PART B to calculate the total Case Management Payment payable to the Provider for that month.

### 2. Attendance Payment

- 2.1 The Department will pay the Attendance Payment to the Provider for the delivery of Remote Employment Services in respect of WfD Participants in accordance with the Project Agreement.
- 2.2 The Attendance Payment is only payable in respect of WfD Participants who meet all the following criteria:
- (a) have a status of Commenced;
- (b) have an Approved Job Plan;
- (c) have been placed in an Activity;
- (d) are not subject to a period of Time Off WfD.
- 2.3 Attendance Payment will be calculated in accordance with the following principles:
- (a) Attendance Payments are payable for each weekday in a month as follows:

$$\textbf{Total number of WfD Participants in the Caseload x Daily Rate for a WfD Participant}$$

- (b) The **Daily Rate** for a WfD Participant is calculated based on the applicable maximum annual Attendance Payment, divided by 12 (months), divided by the actual number of weekdays in the relevant month.
- (c) The **Caseload** includes all Commenced Eligible Job Seekers who resided in the Provider Region on the relevant day according to the information in the IT Systems.
- (d) The maximum annual Attendance Payment for Services provided in respect of each WfD Participant who is required to participate in Work for the Dole is **\$8,000** (exclusive of GST).
- (e) The maximum annual Attendance Payment for Services provided in respect of each WfD Participant who is not required to participate in Work for the Dole but has voluntarily elected to participate is **\$2,000** (exclusive of GST).
- (f) Attendance Payments will be paid monthly in arrears, for each calendar month.

2.4 Before the last day of the following calendar month, the IT Systems will use the principles in clauses 2.2 and 2.3 of this ANNEXURE 2 PART B to calculate the total Attendance Payment payable to the Provider for that month.

### 3. Employment Outcome Payments

3.1 Employment Outcome Payment is payable to Providers for Employment Outcomes achieved by any Eligible Job Seeker as part of CDP Services.

3.2 The Department will pay the Provider an Employment Outcome Payment calculated in accordance with clause 3.8 of this ANNEXURE 2 PART B below where the Department is satisfied that:

- (a) the requirements in clause 3.3 of this ANNEXURE 2 PART B for either a Full Employment Outcome or a Partial Employment Outcome have been met;
- (b) the Eligible Job Seeker has satisfied an Outcome Period in accordance with clauses 3.5 to 3.7 of this ANNEXURE 2 PART B; and
- (c) the Provider has confirmed that the relevant Employment Outcome has been achieved and that the Provider has retained accurate Documentary Evidence of the Employment Outcome by approving the Employment Outcome on the IT Systems.

3.3 The requirements for a Full Employment Outcome and a Partial Employment Outcome are as follows:

Eligible Job Seeker	Requirements for Full Employment Outcome	Requirements for Partial Employment Outcome
In receipt of Newstart Allowance (NSA) or Youth Allowance (YA)(other)	Eligible Job Seeker remains in Employment that generates sufficient income to cause income support to cease or remains in an apprenticeship or traineeship that is full-time.	Eligible Job Seeker gains Employment that generates sufficient income to reduce their Income Support Payments by an average of at least 60 per cent.
Not in receipt of NSA or YA (other)	Eligible Job Seeker remains in Employment for at least 20 hours in each week.	Eligible Job Seeker gains Employment for an average of 15 hours or more in each week.

Eligible Job Seeker	Requirements for Full Employment Outcome	Requirements for Partial Employment Outcome
In receipt of NSA, YA (other) or Parenting Payment (Partnered or Single) and is identified as a Principal Carer (as recorded on the IT Systems) or is in receipt of Carer Payment	Eligible Job Seeker remains in Employment for at least 30 hours in each fortnight.	Eligible Job Seeker remains in Employment for an average of 10 or more hours per week.
Has Partial Capacity to Work (PCW)	Eligible Job Seeker remains in Employment that equals or exceeds their minimum number of hours per week in a range as assessed through an ESAt or JCA, as recorded on the IT Systems (but is not less than 8 hours per week).	Eligible Job Seeker gains Employment for an average of at least 70 per cent or more of their minimum number of hours per week in a range as assessed through an ESAt or JCA, as recorded on the IT Systems (but is not less than 8 hours per week).

- 3.4 If a Partial Employment Outcome Payment has been paid to the Provider in relation to an Eligible Job Seeker, the Provider is not subsequently entitled to be paid any additional amount if the Eligible Job Seeker subsequently satisfies the requirements for a Full Employment Outcome.
- 3.5 The Outcome Period for a 13 Week Employment Outcome is a 13 Week Period (subject to any allowable breaks in Employment set out in the Guidance). This Outcome Period starts on the Outcome Start Date or any Moved Outcome Start Date. An Outcome period must not overlap with any other 13 Week Period.
- 3.6 The Outcome Period for a 26 Week Employment Outcome is a 13 Week Period which follows immediately after the end of a previous 13 Week Period over a maximum of 26 consecutive weeks (subject to any allowable breaks in Employment set out in the Guidance). An Outcome Period for a 26 Week Employment Outcome must not overlap with any other 13 Week Period.
- 3.7 The Outcome Period must be entered by the Provider on the IT Systems in accordance with the Guidance and must occur after Commencement.
- 3.8 The amount of the Employment Outcome Payment will be calculated for each Eligible Job Seeker who achieves an Employment Outcome in accordance with the following table:

Employment Outcome	Amount of Employment Outcome Payment (GST exclusive)
<b>13 Week Employment Outcome</b>	
Full Employment Outcome	<b>\$4,000.00</b>
Partial Employment Outcome	<b>\$2,000.00</b>



Employment Outcome	Amount of Employment Outcome Payment (GST exclusive)
<b>26 week Employment Outcome</b>	
Full Employment Outcome	<b>\$6,000.00</b>
Partial Employment Outcome	<b>\$3,000.00</b>

- 3.9 The Department will not pay the Provider an Employment Outcome Payment:
- (a) on a pro rata basis in relation to an Employment Outcome;
  - (b) in relation to a Non-Payable Outcome; or
  - (c) in relation to an Upgrade, unless all the requirements of the definition of Upgrade are satisfied and the Provider has complied with all requirements in the Guidance in relation to claiming an Employment Outcome Payment where there has been an Upgrade.
- 3.10 If after the Start Date the Provider would have been entitled to receive an Employment Outcome Payment under a *“Funding Agreement 2013 – 2018 Remote Jobs and Communities Programme”* ('Previous Funding Agreement'), because the Outcome Period for an Eligible Job Seeker commenced on or before the Start Date but the Outcome was achieved after the Start Date, the Department will pay the Provider an Employment Outcome Payment as if the Previous Funding Agreement had continued in force.

#### 4. Employer Incentive Funding

- 4.1 Employer Incentive Funding is payable to the Provider if the Provider is providing CDP Services, to help stimulate job creation, increase demand for employment of Eligible Job Seekers and strengthen relationships with Employers. Employer Incentive Funding is Funding for the purposes of the Project Agreement.
- 4.2 The IT Systems will alert the Provider of when to claim an amount of Employer Incentive Funding. The Provider must only claim an amount of Employer Incentive Funding in relation to an Eligible Job Seeker, where the Provider is satisfied that the Eligible Job Seeker has been employed by one Employer during a 26 Week Period (subject to any allowable breaks in Employment as set out in the Guidance), so as to satisfy a category set out in clause 4.7 of this ANNEXURE 2 PART B.
- 4.3 The Provider may only claim Employer Incentive Funding in respect of an Eligible Job Seeker once for a 26 Week Period.
- 4.4 The Provider must not claim an amount of Employer Incentive Funding where:
- (a) the Provider is the Employer, unless the Department has given approval; or
  - (b) the Employer is receiving any payments to employ the Eligible Job Seeker through any other Commonwealth, State or Territory government program.
- 4.5 Where the Provider receives an amount of Employer Incentive Funding, the Provider must ensure that the Employer of the relevant Eligible Job Seeker is paid an equivalent amount within 10 Business Days of the Provider receiving the Employer Incentive Funding.
- 4.6 If the Provider does not pay the Employer in accordance with clause 4.5 of this ANNEXURE 2 PART B within 10 Business Days of receiving an amount of Employer Incentive Funding, the

Provider must promptly repay the amount of the Employer Incentive Funding to the Department in accordance with the Guidance.

4.7 The amount of the Employer Incentive Funding will be calculated for each Eligible Job Seeker as follows:

<b>Eligible Job Seeker</b>	<b>Extent of Employment</b>	<b>Amount of Employer Incentive Funding (GST exclusive)</b>
In receipt of Newstart Allowance (NSA) or Youth Allowance (YA)(other)	Eligible Job Seeker remains in Employment that generates sufficient income to cause Income Support Payments to cease, or the Eligible Job Seeker remains in an apprenticeship or traineeship that is full-time.	<b>\$10,000</b>
	Eligible Job Seeker gains Employment that generates sufficient income to reduce their Income Support Payments by an average of at least 60 per cent.	<b>\$5,000</b>
Not in receipt of NSA or YA (other)	Eligible Job Seeker remains in Employment for at least 20 hours in each week.	<b>\$10,000</b>
	Eligible Job Seeker gains Employment for an average of 15 hours or more in each week.	<b>\$5,000</b>
In receipt of NSA, YA (other) or Parenting Payment (Partnered or Single) and is identified as a Principal Carer (as recorded on Our IT Systems) or is in receipt of Carer Payment	Eligible Job Seeker remains in Employment for at least 30 hours in each fortnight.	<b>\$10,000</b>
	Eligible Job Seeker remains in Employment for an average of 10 or more hours per week.	<b>\$5,000</b>
Has Partial Capacity to Work (PCW)	Eligible Job Seeker remains in Employment that equals or exceeds their minimum number of hours per week in a range as assessed through an ESAt or JCA, as recorded in the IT Systems (but is not less than 8 hours per week).	<b>\$10,000</b>
	Eligible Job Seeker gains Employment for an average of at least 70 per cent or more of their minimum number of hours per week in a range as assessed through an ESAt or JCA, as recorded in the IT Systems (but is not less than 8 hours per week).	<b>\$5,000</b>

4.8 The Department may, by giving the Provider Notice in writing:

- (a) change the amount of the Employer Incentive Funding;
- (b) change the eligibility requirements for Employer Incentive Funding;

- (c) impose a new mechanism for payment of Employer Incentive Funding; or
- (d) cease providing any Employer Incentive Funding.

4.8 If the Department gives the Provider a Notice under clause 4.8 of this ANNEXURE 2 PART B, any transitional provisions specified in the Notice will also apply.

## ANNEXURE 2 – PART C: TWES MONIES

### 1. TWES Service Payment

- 1.1 TWES Service Payment is payable to Providers in respect of TWES Services, to connect Indigenous people in prison with employment services, prepare them to transition back into the community and help them find work following their release from Prison.
- 1.2 The Department will pay the Provider TWES Service Payment for each Prison:
- at the Service Start Date, on a pro-rata basis in accordance with the calculations at clauses 1.3, as modified by clause 1.4, of this ANNEXURE 2 PART C; and
  - thereafter, at the beginning of each six month period for the Term of the Project Agreement in accordance with the calculation at clause 1.3 of this ANNEXURE 2 PART C.
- 1.3 TWES Service Payment for each six month period for each prison will be calculated in accordance with the following principles:
- the TWES Service Payment is calculated as: **Estimated Commencements x Service Fee**;
  - the **Service Fee** is **\$333**;
  - Estimated Commencements** is calculated as: **Service Percentage x Estimated Eligible Prisoners**;
  - Service Percentage** is calculated as:
 
$$\frac{\text{number of Participants Commenced in the preceding Six Month Period}}{\text{number Estimated Eligible Prisoners for the preceding Six Month Period}}$$
 or 50%, whichever is higher; and
  - Estimated Eligible Prisoners** is calculated as the Department's estimation of the number of Eligible Prisoners that will be in the Prison for the relevant Six Month Period, or the estimated number of Eligible Prisoners as specified in the Project Schedule, whichever is higher.
- 1.4 The TWES Service Payment to be paid at the Service Start Date for each Prison (for the first Six Month Period) is calculated as:

$$\text{TWES Service Payment amount calculated in accordance with clause 1.3 of this ANNEXURE 2 PART C} \times \frac{\text{No. of days from Service Start Date until the end of the relevant Six Month Period}}{\text{No. of days in the relevant Six Month Period}}$$

- 1.5 The Department will not pay the Provider a TWES Service Payment:
- on a pro rata basis, except in accordance with clause 1.4 of this ANNEXURE 2 PART C; or
  - after the Services End Date.

### 2. TWES Transition Plan Payment

- 2.1 TWES Transition Plan Payment is payable to Providers for TWES Services, for preparation and implementation of a Transition Plan.
- 2.2 The Department will pay the Provider a TWES Transition Plan Payment of \$666 for each Participant upon:

- (a) recording the Participant's approval of the Transition Plan in the IT systems; or
- (b) if the Participant does not approve the Transition Plan, as otherwise specified in the Guidance.

2.3 The Department will not pay the Provider a TWES Transition Plan Payment:

- (a) in respect of a Participant Commenced on or after the first day of the Transition Out Period; or
- (b) after the Services End Date.

## ANNEXURE 3 – REPORTING

The Provider must provide Reports to the Department during the Term, in accordance with this ANNEXURE 3 and the provisions of the Project Agreement.

All Reports must be in writing and provided to the Department via email, letter, or other means as directed by the Department.

No.	Reporting requirement	Description	Project Agreement Reference	Required Delivery date/s
<b>INCIDENT REPORTS</b>				
1.	Death or serious incident Notification	Provider must Notify the Department if a death or serious injury occurs or almost occurs while the Provider is conducting the Services.	Head Agreement, Clause 12.9	Immediately after incident has occurred
2.	Accident, serious injury or death Report	Provider must submit a Notification of Serious Incident Report to the Department	Head Agreement, Clause 12.9	Immediately, or within 24 hours of the incident
3.	Serious incident written report	Provider must submit a detailed written report to the Department including description of incident/injury, action taken to manage the incident, actions on the provider to manage the risk occurring again, how Provider will minimise the disruption to services or activities and any other relevant details as requested by the Department or the insurer	Head Agreement, Clause 12.9	Within 10 Business Days
4.	Notifiable Incident under WHS Act	Where relevant, Provider must give the Department Notice of Notifiable Incidents, and a copy of any written notice provided to the Regulator.	Head Agreement, Clause 12.9	At the same time as providing the report to the Regulator, or as soon as is possible in the circumstances.
5.	Notifiable Incident Report	Where relevant, the Provider must provide a copy of the Report given to the Regulator, detailing the circumstances of the Notifiable Incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future.	Head Agreement, Clause 12.9	Within the timeframe specified by the Department.

6.	Notifiable Incident informing requirements	The Provider must inform the Department of any suspected contravention of the WHS Laws relating to the Services; any workplace entry by a WHS entry permit holder, or an inspector, to any place where the Services are being performed or undertaken; and proceedings against the Provider, or any decision or request by the Regulator given to the Provider, under the WHS Laws.	Head Agreement, Clause 12.9	Within 24 hours of being aware of being required to report a notifiable incident under the WHS laws.
7.	IT Security breach	Providers must Report all breaches of IT security to the Department's Contract Manager in accordance with clauses 20.3 to 20.7. This includes situations where Provider's personnel suspects that breach may have occurred or that a person may be planning to breach security.	Head Agreement, Clauses 5.17, 5.18	As soon as possible, but within 24 hours of identifying the IT security breach.

#### **SERVICES REPORTS**

8.	Job seeker compliance reports	Providers are required to submit job seeker compliance reports according to the Guidance. These reports are submitted via the IT systems.	N/A	As required
9.	Provider information form (PIF)	Where a Provider has a change to site details, organisational contacts or bank account details, the information must be sent in a PIF to National Office via the Contract Manager	N/A	As required
10.	TWES Implementation Plan	As specified in Guidance	N/A	As required
11.	TWES Progress Report	As specified in Guidance	N/A	As required

#### **FINANCIAL REPORTS**

12.	Financial statements	The Provider must provide the Department with their financial statements for each year of the Project Agreement.	N/A	Within twenty business days of the Provider's Annual General Meeting (AGM) (or
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				if no AGM occurs, within twenty days of the compilation of the financial statements), and no later than 120 Business Days after the end of a financial year.
13.	Material Subcontractors and partnership financial statements	Material Subcontractor or partnership members must provide one copy of the consolidated financial statements for each Material Subcontractor or member of the partnership, unless otherwise directed by the Department.	N/A	Within twenty Business Days of the relevant direction by the Department.
14.	Audited financial statements	Where audited financial statements are created for the Provider, the Provider must provide them to the Department.	N/A	As soon as possible after receipt of the audited financial statements by the Provider.
15.	Other financial reports	The Department may at any time direct the Provider to provide any information that the Department may reasonably require to determine that that the Provider has sufficient financial resources to continue carrying on business.	N/A	The Provider must comply with the Department's direction within the timeframe that the Department specifies.
<b>OTHER REPORTS</b>				
16.	Working with Vulnerable People	The Provider must report on compliance with the Working with Vulnerable People requirements set out in the Head Agreement	Head Agreement, Clause 12.14	By no later than 31 October each year and in such form as may be specified by the Department



## **ANNEXURE 4 – TEMPLATES**

## ANNEXURE 4 – PART A – FORM OF MATERIAL SUBCONTRACTOR DEED POLL

THIS DEED POLL (Deed) is given by:

[*name and registration number of Material Subcontractor*] of [*address of Material Subcontractor*]  
(Material Subcontractor)

in favour of the Commonwealth of Australia, as represented by the Department of the Prime Minister and Cabinet (ABN 18 108 001 191) (the **Department**).

### RECITALS

- A. The Department and [*insert Provider name, address and registration number*] (**Provider**) are parties to a Head Agreement, under which the Provider can provide Services in relation to the Department's Community and Development Program.
- B. The Department and the Provider have agreed, or intend to agree, a Project Schedule for the provision of Services that will create a contract under the Head Agreement (**Project Agreement**).
- C. The Material Subcontractor has agreed, or intends to agree, with the Provider to provide aspects of the Services under the Project Agreement, on the terms of a Material Subcontract.
- D. Under clause 6 of the Head Agreement, the Material Subcontractor is required to provide this Deed to the Department before the Department will approve the Material Subcontractor providing Services under the Project Agreement.

### THIS DEED PROVIDES:

#### 1. Definitions

- 1.1 Words and expressions defined in the Project Agreement have the same meaning when used in this Deed.

#### 2. Covenants

- 2.1 The Material Subcontractor acknowledges and agrees, for the benefit of the Department:
  - (a) that it has been provided with, and has reviewed, a copy of the Head Agreement, the Project Schedule, and the Guidance (which are all part of the Project Agreement);
  - (b) to comply with the following clauses in the Head Agreement in relation to the Services provided under the Material Subcontract, as if it was the Provider providing those Services under the Project Agreement:
    - (i) 5 (Delivering the Services);
    - (ii) 7 (Reporting and Records Management);
    - (iii) 8 (Provider Performance);
    - (iv) 9.14-9.15 (Management of Funding);
    - (v) 9.24 to 9.25 (Sampling Reviews);
    - (vi) 9.26 to 9.27 (Sampling Methodology);
    - (vii) 10 (Assets);
    - (viii) 12 (Compliance with laws, policies and Guidance);
    - (ix) 13 (Corporate Governance);
    - (x) 14 (Indemnity);
    - (xi) 16 (Conflict of Interest);

- (xii) 17 (Fraud);
  - (xiii) 19 (Intellectual Property Rights);
  - (xiv) 20 (Privacy, confidentiality and data protection);
  - (xv) 21 (Acknowledgement and publicity);
  - (xvi) 22 (Dispute resolution);
  - (xvii) 23.1 (Suspension);
  - (xviii) 23.2 to 23.9 (Consequences of breach);
  - (xix) 24 (Termination);
  - (xx) 25 (Step-in rights); and
  - (xxi) 27 (Survival of clauses);
  - (xxii) 34 (Applicable law and jurisdiction);
- (c) that it agrees to the Department's rights under the Head Agreement in connection with its obligations in clause 2.1(b);
  - (d) that it will not act in any manner that would cause the Provider to breach its obligations under the Project Agreement;
  - (e) that under the Head Agreement, the Department has the right to revoke its approval of the Material Subcontractor (without payment of any compensation in relation to that revocation), and as a result that the Provider may terminate the Material Subcontract;
  - (f) that the Material Subcontractor will not further subcontract the provision of the Services without approval in writing from the Department; and
  - (g) to perform and observe all of the Material Subcontractor's obligations under the Material Subcontract, and to discharge all of the Material Subcontractor's liabilities under the Material Subcontract, or to cause those liabilities to be discharged.

### **3. No reduction or release**

- 3.1 Without limitation, the liability of the Material Subcontractor under this Deed will not be affected by:
  - (a) the granting by the Department to the Provider of time, waiver, indulgence or concession or the making of any composition or compromise with the Provider;
  - (b) any variation of any of the obligations and liabilities under the Project Agreement, made either with or without the knowledge of the Material Subcontractor; or
  - (c) the release of any of the Provider's obligations or liabilities under the Project Agreement.

### **4. Severability**

- 4.1 Any provision of this Deed which is illegal, void or unenforceable will be ineffective to the extent only of the illegality, voidness or unenforceability without invalidating the remaining provisions of this Deed.

### **5. Representations and warranties**

- 5.1 The Material Subcontractor represents and warrants to the Department that:
  - (a) this Deed constitutes a valid and legally binding obligation of it in accordance with its terms;

- (b) the execution, delivery and performance of this Deed by it does not breach any law, or any document or agreement to which it is a party or which is binding on it or any of its assets; and
- (c) all information provided by the Material Subcontractor to the Department in connection with this Deed and the Material Subcontract is true in all material respects and is not, by omission or otherwise, misleading in any material respect.

## **6. Applicable Project Agreement provisions**

6.1 The following clauses of the Head Agreement apply to this Deed as if they are provisions of this Deed Poll:

- (a) 4.2 – 4.5 and 4.7 – 4.11 (How this Head Agreement and Project Schedules work);
- (b) 28 (Notices);
- (c) 32 (Waiver); and
- (d) 34 (Applicable law and jurisdiction).

Choose the appropriate signature block for the Material Subcontractor, depending on whether they are (1) a company registered under the *Corporations Act 2001 (Cth)* or (2) a company registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*. If the Material Subcontractor is (1) an individual (2) an incorporated association or (3) a proprietary company with a sole director and no company secretary registered under the *Corporations Act 2001 (Cth)*, please seek guidance from the Legal Services Branch to ensure the Deed is properly executed.

Executed as a Deed Poll

**The Material Subcontractor acknowledges that it:**

- a) has read and understood this Deed Poll;**
- b) has had the opportunity to obtain independent legal advice prior to execution of this Deed Poll and to the extent that the Material Subcontractor fails to obtain independent legal advice, the Material Subcontractor covenants that such failure will not be used by the Material Subcontractor as a defence to the enforcement of the provisions of the Deed Poll; and**
- c) is knowingly and voluntarily entering into this Deed Poll.**

**SIGNED, SEALED AND DELIVERED for and on behalf of [Insert name of Material Subcontractor (ACN xxx xxx)] in accordance with section 127 of the *Corporations Act 2001 (Cth)*:**

\_\_\_\_\_  
(Director)

\_\_\_\_\_  
(Name)  
  
...../...../.....

\_\_\_\_\_  
(Director/Company Secretary)

\_\_\_\_\_  
(Name)  
  
...../...../.....

**SIGNED, SEALED AND DELIVERED** for and on behalf of **[Insert name of Material Subcontractor (ACN xxx xxx)]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_ (Sole Director and Company Secretary) \_\_\_\_\_ (Name) ...../...../.....

OR

**SIGNED, SEALED AND DELIVERED** for and on behalf of **[Insert name of Material Subcontractor (ICN xxx xxx)]** in accordance with section 99-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth):

\_\_\_\_\_ (Director) \_\_\_\_\_ (Name) ...../...../.....

\_\_\_\_\_ (Director/Company Secretary) \_\_\_\_\_ (Name) ...../...../.....

OR

**SIGNED, SEALED AND DELIVERED** for and on behalf of **[Insert name of Material Subcontractor (ICN xxx xxx)]** in accordance with section 99-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth):

\_\_\_\_\_ (Sole Director) \_\_\_\_\_ (Name) ...../...../.....

## ANNEXURE 4 – PART B – FORM OF NON-DISCLOSURE DEED POLL

### DEED POLL as to CONFIDENTIALITY & PRIVACY

I,  Full name in block letters
--------------------------------------

(‘Recipient’)

of:  Full residential address
-------------------------------------

may be provided with access to, or information about, the Department of Jobs and Small Business information technology computer system (or other Commonwealth systems) ( <b>the ‘IT Systems’</b> ) in connection with the provision of Services for the Community Development Program to the Commonwealth of Australia by:  Name of Provider (“ <b>Provider</b> ”)
---

#### 1. Operative provisions

The Recipient agrees as follows, for the benefit of the Commonwealth of Australia, as represented by the Department of the Prime Minister and Cabinet (ABN 18 108 001 191) (the **Department**).

- 1.1 If the Recipient is given access to, or information about, the IT Systems, the Recipient will receive and have access to information which:
- (a) is identified as confidential;
  - (b) the Recipient knows or ought to know is confidential;
  - (c) is by its nature confidential; or
  - (d) is Personal Information,
- collectively, ‘Confidential Information’.
- 1.2 For the purpose of this clause, ‘**Personal Information**’ means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- 1.3 Subject to clause 1.4 of this deed, the Recipient must:
- (a) at all times treat as confidential and must not disclose to any person any Confidential Information;
  - (b) at all times keep all Confidential Information securely stored in accordance with any directions by the Department;
  - (c) deliver up to the Provider all Confidential Information in its possession or control, as directed by the Department or the Provider; and

- (d) not:
  - (i) copy or duplicate or reproduce in any manner whatsoever, or evolve translations of or extractions from, any portion of the Confidential Information; or
  - (ii) modify, create or recreate by any means in whole or in part any aspect or version of the Confidential Information or cause or permit any other person to do any of the foregoing.

1.4 The restrictions under clause 1.3 of this deed do not apply to disclosure of any information:

- (a) to the extent to which it is required or authorised by law;
- (b) to the extent to which it is absolutely necessary to enable the Recipient to lawfully complete the provision of services to the Provider; or
- (c) which is in, or comes into, the public domain otherwise than by disclosure in breach of this deed.

1.5 The Recipient must:

- (a) take all action as may be necessary to satisfy its obligations under this deed;
- (b) promptly notify the Provider and the Department of any unauthorised possession, disclosure, use or knowledge of the Confidential Information and take all steps necessary to prevent the recurrence of such possession, disclosure, use or knowledge;
- (c) co-operate with the Provider or the Department in any litigation against third parties which might be considered necessary or appropriate by the Provider to protect the Confidential Information; and
- (d) do, or cause to be done, all acts, matters and things, and execute or cause to be executed all agreements, deeds and other documents as may be necessary to give effect to this deed.



**EXECUTED** as a deed poll

DATED: \_\_\_\_\_ day of \_\_\_\_\_, 20 .

**SIGNED SEALED AND DELIVERED** by

.....

(Signature)

in the presence of:

.....

(Signature of witness)

.....

(Name of witness in full)

## ANNEXURE 5 – INTERPRETATION AND GLOSSARY

### 1. Interpretation

- 1.1 In the Head Agreement and any Project Agreement, unless the contrary intention appears, all capitalised terms have the meaning given to them in this ANNEXURE 5 (INTERPRETATION AND GLOSSARY). All other words have their natural and ordinary meaning.
- 1.2 In the Head Agreement and any Project Agreement, unless the contrary intention appears:
- (a) words in the singular include the plural, and vice versa;
  - (b) words importing a gender include the other gender;
  - (c) a reference to a person includes a partnership and a body whether corporate or otherwise;
  - (d) a reference to a table, clause, paragraph, sub-paragraph, or an Annexure is a reference to a table, clause, paragraph, sub-paragraph, or an Annexure in the part of the Project Agreement in which the reference appears;
  - (e) clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
  - (f) all references to dollars are to Australian dollars;
  - (g) a reference to legislation is to legislation of the Commonwealth, as amended from time to time;
  - (h) a reference to Guidance is a reference to the Guidance as amended by the Department from time to time;
  - (i) any uncertainty or ambiguity in the meaning of a provision of the Head Agreement or any Project Agreement will not be interpreted against a party just because that party prepared the provision; 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.
- 1.3 No right or obligation in the Head Agreement or the Project Agreement is to be read or understood as limiting the Provider's rights to enter into public debate or criticism of the Department.
- 1.4 Material contained in any reader guides, notes or information boxes in this Head Agreement is for information only, and has no legal effect on the provisions.

### 2. Definitions

**ABN** has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

**Aboriginal and Torres Strait Islander person** means a person:

- (a) who is identified as such on the IT Systems; or
- (b) who:
  - (i) is of Aboriginal and/or Torres Strait Islander descent;
  - (ii) identifies as an Aboriginal and/or Torres Strait Islander person; and
  - (iii) is accepted as such in the community in which the person lives or has lived,

and **Aboriginal and Torres Strait Islander Peoples** has an equivalent meaning where reference is to more than one person.

**Activity** and **Activities** mean the activities that the Provider is required to conduct as part of Remote Employment Services in accordance with ANNEXURE 1 PART B (CDP Services).

**Adjustable Value** means the cost of an Asset less its decline in value determined in accordance with the Australian Taxation Office Guide to Depreciating Assets 2018, as amended or replaced from time to time.

**Adjustment Event** has the meaning given in section 195-1 of the GST Act.

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

**Ancillary Payment** means the Payment of that name described in ANNEXURE 2 PART A (MONIES).

**Annexure** means an annexure to this Head Agreement.

**Appointment** means a time for a meeting between the Provider and an Eligible Job Seeker in accordance with clause 19 of ANNEXURE 1 PART B (CDP Services).

**Approved Assistance** means assistance for which the Provider has submitted an application to a JobAccess Provider, and received the JobAccess Provider's approval for an Approved Assistance Amount to be expended on that assistance.

**Approved Assistance Amount** means the amount approved by a JobAccess Provider for expenditure under the Employment Assistance Fund.

**Archives Act** means the *Archives Act 1983* (Cth).

**Assessment** means a formal assessment of an Eligible Job Seeker's job readiness including current skills and work experience as well as any level of disadvantage, which is to be conducted by the Provider in accordance any Guidance. **Assess** has the corresponding meaning.

**Asset** means, unless a Project Schedule states otherwise, any item of real or personal property that has a value or acquisition cost of \$5,000 (excluding GST) or more, and is either:

- (a) leased or purchased (all or part) using any Funding; or
- (b) was purchased or leased by a Former Provider using any form of funding from the Commonwealth or the former Aboriginal and Torres Strait Islander Commission (or one of its predecessors), and subsequently transferred or made available to the Provider (either directly by the Former Provider or by any other entity) for the purpose of delivering any Services.

For clarity, an item described as an 'Asset' in the Project Schedule is an Asset.

**Attendance Payment** means the Payment of that name described in ANNEXURE 2 PART B (CDP Monies).

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

**Australian Jobsearch** means the job database of that name located at [www.jobsearch.gov.au](http://www.jobsearch.gov.au).

**Business Day** means:

- (a) day that is not a Saturday, a Sunday or a public holiday, special holiday or bank holiday in the place where the Services are being delivered; or
- (b) a day as determined in accordance with the Guidance.

**Capital Investment Fund** means the Australian Government's initiative which provides financial assistance to Providers to purchase small capital items such as equipment, tools and appliances for use by Eligible Job Seeker in their Activities, including Indigenous-led enterprise development.

**Capital Works Grant** means a grant under the Department's IAS Grant Guidance which is designated by the Department from time to time as a 'Capital Works Grant'.

**Case Management Payment** means the Payment of that name described in ANNEXURE 2 PART B (CDP Monies).

**Case Management Services** means the CDP Services of that name which the Provider is required to deliver as described in ANNEXURE 1 PART B (CDP Services).

**Caseload** has the meaning:

- (a) in respect of a Case Management Payment, described in clause 1.2 of ANNEXURE 2 PART B (CDP Monies); and
- (b) in respect of an Attendance Payment, described in clause 2.3 of ANNEXURE 2 PART B (CDP Monies).

**CDP Services** means the Services of that name described in ANNEXURE 1 PART B (CDP Services).

**Change of Control** means:

- (a) a body corporate or entity that Controls the Provider or any Material Subcontractor ceases to Control the Provider or Material Subcontractor; or
- (b) A body corporate or entity that does not Control the Provider or any Material Subcontractor comes to Control the Provider or any Material Subcontractor.

**Child** means an individual under the age of 18 years and Children has the corresponding meaning.

**Commence** means:

- (a) in respect of CDP Services, to record completion of the Initial Interview for an Eligible Job Seeker on the IT Systems;
- (b) in respect of TWES Services, to Register and Refer a TWES Participant to the Provider in the IT Systems.

**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 *It's an Honour – Commonwealth Coat of Arms*, available at <http://www.itsanhonour.gov.au/coat-arms/index.cfm>.

**Commonwealth public official** has the meaning given to that term by the *Criminal Code Act 1995* (Cth).

**Commonwealth Service Provider** has the meaning given to that term by section 3BA of the *Ombudsman Act 1976* (Cth).

**Community Advisory Board** means the community body or bodies designated in each Provider Region to deliver advice to the Provider regarding:

- (a) the design of community and economic development activities;
- (b) training opportunities for Eligible Job Seekers;
- (c) applications submitted (or proposed for submission) to the Department for the Capital Investment Fund;
- (d) other matters as otherwise directed by the Department in writing.

**Community Development Program** or **CDP** means the Commonwealth program of this name or such other name or program as advised by the Department from time to time.

**Compliance Activities** means intensive activities for Eligible Job Seekers:

- (a) in accordance with any Guidance; or
- (b) as otherwise directed by DHS.

**Compliance Review** means a review of Provider compliance with the Project Agreement, which may include Monies paid by the Department to the Provider, undertaken by the Department time to time.

**Compliance Services** means the CDP Services of that name as described in ANNEXURE 1 PART B (CDP Services).

**Confidential Information** means:

- (a) information that is described in a Project Schedule as confidential;
- (b) information that the parties agree in writing to be confidential for the purpose of the Project Agreement;
- (c) information that the parties know, or ought reasonably to have known, to be confidential; and/or
- (d) Secret and Sacred Material.

**Conflict of Interest** means 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 is likely to interfere with or restrict the Provider in delivering the Services fairly and independently.

**Contact** means:

- (a) with respect to CDP Services, a contact between a Provider and an Eligible Job Seeker in accordance with ANNEXURE 1 PART B (CDP Services); and
- (b) with respect to TWES Services, a contact between the Provider and a TWES Participant in accordance with ANNEXURE 1 PART C (TWES Services).

**Contract Manager** means a contract manager appointed by the Department from time to time to manage the Project Agreement.

**Control** means, in relation to the Provider or any Material Subcontractor, any of the following:

- (a) the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in the Provider or Material Subcontractor;
- (b) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in the Provider or Material Subcontractor;
- (c) the ability to appoint or remove a majority of the directors of the Provider or Material Subcontractor;
- (d) the ability to exercise or control the exercise of the casting of a majority of votes at the meeting of the board of directors of the Provider or Material Subcontractor; and
- (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of the Provider or the Material Subcontractor.

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**Criminal Code** means the Schedule of that name to the *Criminal Code Act 1995* (Cth).

**Cybersafety Policy** means the Commonwealth policy of that name as specified at clause 5.23, or any other policy which replaces that policy from time to time.

**Daily Rate**, for a particular Payment means the rate per day for that Payment, calculated in

accordance with ANNEXURE 2 (MONIES).

**Deed Poll** means the form of deed poll set out at ANNEXURE 4 (TEMPLATES).

**Deemed Invalid Claim** means a claim of that name as defined in clause 9.24 of the Head Agreement.

**Delegate** means a person engaged by a Provider who is a Delegate of the Secretary under the Social Security Law.

**Department** means the Department of the Prime Minister and Cabinet, or any other Commonwealth department or agency with responsibility for administration of the Head Agreement or Project Agreement.

**Department Material** means any Material provided by the Department to the Provider for the purpose of this Head Agreement or a Project Agreement, or that is copied or derived from that Material.

**Department of Human Services or DHS** means the Commonwealth Department of Human Services, or any other government agency or department as may administer or perform the functions of that department from time to time.

**Department of Jobs and Small Business or DJSB** means the Commonwealth Department of Jobs and Small Business or such other government agency or department as may administer or perform the functions of that department from time to time.

**Direct Registration or Directly Register** means registration by a Provider of an Eligible Job Seeker who does not have a Referral, in accordance with ANNEXURE 1 PART B (CDP Services) and any Guidance.

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

**Documentary Evidence** means Provider Records, as described in a Project Agreement, including in any Guidance, which are true, accurate and complete and evidence that Services were delivered by the Provider in relation to any payment of Monies under the Head Agreement or a Project Agreement, or which otherwise supports the payment of those Monies.

**DSP Recipient (Compulsory)** means an Eligible Job Seeker who is in receipt of Disability Support Pension, is under the age of 35, and has compulsory requirements.

**Effective Exit** means the automatic removal of an Eligible Job Seeker from the IT Systems as being eligible for Services, in accordance with the Guidance.

**Electronic Diary** means the part of the IT Systems used for Referrals and for making and managing Eligible Job Seekers Appointments.

**Eligible Job Seeker** means a person who is identified as eligible for CDP Services in the IT Systems and who meets the eligibility criteria identified in any Guidance.

**Eligible Prisoner** means a person who:

- (a) is an Indigenous person;
- (b) is over 18 years old;
- (c) is serving a sentence of imprisonment of three months or more; and
- (d) is identified by a Prison as having a known release date (whether due to fully serving their sentence of imprisonment or on parole) that is no less than two months and no more than four months in the future.

**Employer** means an entity that has the legal capacity to enter into a contract of employment with an Eligible Job Seeker.

**Employer Incentive Payment** means the Payment of that name as described in ANNEXURE 2 PART B (CDP Monies).

**Employment** or **Employed** means the status of a person who:

- (a) is in paid work, including an apprenticeship or traineeship, under a contract of employment or who is otherwise deemed to be an employee under relevant Australian legislation; and
- (b) is not in any arrangement expressly excluded in any Guidance.

**Employment Assistance Fund** means the Australian Government's initiative which provides financial assistance for the costs of work related modifications and the work equipment of people with disability.

**Employment Incentive Funding** means the Funding of that name described in the ANNEXURE 2 PART B (CDP Monies).

**Employment Outcome** means a Full Employment Outcome or a Partial Employment Outcome, as described in ANNEXURE 2 PART B (CDP Monies).

**Employment Outcome Payment** means the Payment of that name described in ANNEXURE 2 PART B (CDP Monies).

**Employment Services Assessment** or **ESAt** means an assessment of an Eligible Job Seeker's barriers to employment and work capacity conducted by DHS.

**Employment Services National Customer Service Line** means the national free call telephone service of that name operated by DJSB.

**Employment Services Program** means a Commonwealth program to assist individuals in finding and/or remaining in Employment, as advised by the Department from time to time. As at the Start Date, the following are Employment Services Programs:

- (a) jobactive (including the New Enterprise Incentive Scheme);
- (b) Transition to Work;
- (c) ParentsNext;
- (d) Disability Employment Services; and
- (e) Community Development Program.

**Employment Services Provider** means a person or entity engaged by the Commonwealth to perform services in relation to an Employment Services Program.

**End Date** has the meaning given in clause 1.2 of the Head Agreement.

**Exemption** means circumstances recorded by DHS, resulting in an exemption by DHS of an Eligible Job Seeker's Mutual Obligation Requirements for a specified period of time.

**Existing Material** means material developed independently of the Project Agreement which is incorporated in, or supplied as part of, any Services Material (including any such material generated or supplied by any third party).

**Exit** means a Provider Exit or an Effective Exit.

**Feedback Register** means the list of feedback provided by Eligible Job Seekers (and any Ineligible CDP Participants) kept by the Provider for each of Provider Region.

**Former Provider** means:

- (a) a person or body that was a CDEP Scheme Provider, in accordance with the definition of that term in section 23 of the *Social Security Act 1991* (Cth) on 30 June 2013 or before; or
- (b) a person or body that was a party to an agreement with the Department under which the person or body received Department funding to deliver the Remote Jobs and Communities Program or the Community Development Program.

**Force Majeure Event** means an event relating to a party which:

- (a) was not contemplated by that party and could not have reasonably been foreseen by that party at the commencement of the Project Agreement;
- (b) is completely outside the control of that party, or its Personnel;
- (c) is not an event or occurrence contemplated by, or referred to in, the Project Agreement;
- (d) is not caused by the other party or its Personnel; and
- (e) is not a result of industrial action or strike.

**Full Employment Outcome** means an outcome which meets the requirements for a Full Employment Outcome as described in the ANNEXURE 2 PART B (CDP Monies).

**Full-Time Site** means a Provider's site which is open on Business Days from 9am – 5pm, or as otherwise agreed with the Department in writing.

**Funding** means the amount or amounts payable or paid by the Department under the Project Agreement that are specified as Funding in the Project Schedule.

**General Services** means the Services of that name described in ANNEXURE 1 PART B (CDP Services).

**Guidance** means Guidance issued by the Department in connection with the Community Development Program, as amended from time to time by the Department.

**GST** has the same meaning as it has in section 195-1 of the GST Act.

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

**Head Agreement** means this Deed between the Department and the Provider.

**Host** means an organisation other than the Provider or a Material Subcontractor that conducts an Activity specified in the Guidance as one that can be Hosted. Any Related Entities of a Provider (other than one which is a Material Subcontractor) that conducts an Activity is a Host.

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

**Indigenous Advancement Strategy or IAS** is the way in which the Australian Government funds and delivers a range of programs designed to assist Aboriginal and Torres Strait Islander Peoples.

**Indigenous Australians** means Aboriginal and Torres Strait Islander Peoples.

- (a) **Indigenous Grants** means all funding and grants payable to the Provider and which are administered by the Indigenous Affairs Group of the Department of the Prime Minister and Cabinet.
- (b) **Indigenous Grant Agreements** means any agreement between the Provider and the Department under which an Indigenous Grant is payable.



**Indigenous Land Use Agreement** means an agreement, pursuant to the *Native Title Act 1993* (Cth), between a native title group and others about the use and management of land and waters where native title has, or has not yet, been determined.

**Indigenous Organisation** means an entity that meets the indigeneity requirement specified in subsection 29-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**Ineligible CDP Participant** means any person who:

- (a) resides in the Provider Region;
- (b) is not an Eligible Job Seeker; and
- (c) wishes to receive Case Management Services, and/or participate in Activities, as if they were an Eligible Job Seeker

but excludes overseas visitors on working holiday visas and persons who are prohibited by law from working in Australia.

**Initial Appointment** means a time for a meeting between the Provider and a TWES Participant in accordance with clause 5 of ANNEXURE 1 PART C (TWES Services).

**Initial Interview** means an initial meeting between the Provider and an Eligible Job Seeker in accordance with clause 16 of ANNEXURE 1 PART B (CDP Services).

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

**Intellectual Property Rights** means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than moral rights under the *Copyright Act 1968* (Cth)).

**IT Contact** means one or more persons with personnel with responsibility to:

- (a) receive and disseminate technical advice from the Department on the IT Systems; and
- (b) provide advice to the Department on technical issues arising from using the IT Systems.

**IT Systems** means:

- (a) the Department of Jobs and Small Business information technology (IT) computer system accessible by the Provider, through which information is exchanged between the Provider, Employers, DHS, DHS Assessment Systems and the Department in relation to the Services; or
- (b) any other IT computer system Notified by the Department to the Provider from time to time.

**JobAccess** or **JobAccess Services** means the services of that name administered by the Department (or any replacement advised by the Department from time to time).

**JobAccess Provider** means the entity contracted by the Department of Social Services to deliver JobAccess Services.

**Jobsearch Facilities** means computers or similar devices with internet connectivity, printer and other appropriate equipment which:

- (a) are sufficient to enable Eligible Job Seekers to search for work, investigate work related matters and create resumes; and
- (b) accord with specifications as Notified by the Department from time to time.

**Jobsearch Facility** has a corresponding meaning.

**Job Plan:**

- (a) has the meaning given to the term employment pathway plan under the *Social Security Act 1991* (Cth); or
- (b) means, for DSP Recipients (Compulsory), a participation plan under the *Social Security Act 1991* (Cth).

**Job Search** means an instance of active contact with a potential Employer to apply for a job, and includes a contact by phone or in person, by submitting a written application, or by attending a job interview.

**Job Search Period** means, unless otherwise specified in any Guidance, the first month and each successive month thereafter, of an Eligible Job Seekers Period of Unemployment.

**Job Search Requirement** means the number of Job Searches that an Eligible Job Seeker must complete as specified in, or calculated in accordance with, any Guidance.

**Job Seeker Classification Instrument** or **JSCI** means the tool used to measure an Eligible Job Seeker's relative level of disadvantage based on the expected difficulty in finding the Eligible Job Seeker employment because of personal circumstances and labour market skills.

**Job Seeker Compliance Framework** means the Guidance of that name, which set out actions that should or must be taken by the Provider in relation to an Eligible Job Seeker's act or potential act of non-compliance with his or her Mutual Obligation Requirements.

**Jobs, Land and Economy Program** is the program of that name administered by the Department (or any replacement).

**Key Performance Indicators** or **KPIs** means the performance indicators as described in clause 8 of the Head Agreement or as Notified to the Provider by the Department from time to time.

**Legislation** means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.

**Liquidated Damages** means the amount that the Department may recover from the Provider in accordance with clauses 24.10 to 24.12 of the Head Agreement.

**Material** includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them, but does not include Secret and Sacred Material.

**Material Subcontractor** means a subcontractor approved by the Department in accordance with clause 6 of the Head Agreement, and "**Material Subcontract**" has a corresponding meaning.

**Mentor** means someone who is considered to have sufficient experience or expertise to be able to assist others less experienced, and may be a community elder, or an Aboriginal and Torres Strait Islander Person with cultural knowledge and community endorsed authority.

**Mentoring** means the support and assistance provided by a mentor to Eligible Job Seekers in accordance with ANNEXURE 1 PART B (CDP Services) and any Guidance.

**Monies** means any amounts payable by the Department to the Provider under this Agreement.

**Moved Outcome Start Date** means, for an Employment Outcome, the day to which an Outcome Start Date is moved in the IT Systems, in accordance with any Guidance.

**Mutual Obligation Requirement** means an activity test, participation requirement or other requirements that an Eligible Job Seeker must meet in order to receive an Income Support Payment.

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

**Non-attendance Report** or **NAR** means an electronic report sent by the Provider through the IT Systems, to DHS notifying of the Providers assessment that an Eligible Job Seeker has failed to attend

an Appointment without a Valid Reason or a Reasonable Excuse.

**Non-Payable Outcome** means placement of an Eligible Job Seeker into any:

- (a) Employment in the sex industry, including retail positions;
- (b) Employment involving nudity;
- (c) Activities undertaken as part of Work for the Dole or any other unpaid work;
- (d) training course;
- (e) job that involves taking up Employment in another country, regardless of whether the salary is paid in Australian Dollars or by an Australian company;
- (f) job involving illegal activity;
- (g) Pre-Existing Employment, unless the requirements for an Upgrade in relation to that Employment are satisfied or the Employment is otherwise allowed in any Guidance;
- (h) Program funded by the Australian Government, or a State or Territory government;
- (i) Recurring Employment;
- (j) Employment that has already contributed to a claim for an Employment Outcome Payment for a 13 Week Period or a related 26 Week Period for an Eligible Job Seeker in the same Period of Activities;
- (k) Employment in the same or a similar position vacated in the previous 14 days by an Eligible Job Seeker who attracted an Employment Outcome Payment, unless otherwise agreed by the Department;
- (l) Employment that contravenes Department, State or Territory legislation or provides terms and conditions of Employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws;
- (m) Employment that pays a commission as either the entire remuneration or part of the remuneration, except where the commission being paid to the Eligible Job Seeker is in addition to an amount which is paid to the Eligible Job Seeker in accordance with any applicable Commonwealth, State or Territory legislation and any applicable modern award or a national minimum wage order; or
- (n) other situation that the Department may Notify, from time to time, or as specified in any Guidance.

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

**Notice** means a written notice sent from one party to the other party in accordance with the requirements of clause 28 of the Head Agreement and **Notify**, **Notified** and **Notification** means the action of sending a Notice in accordance with the requirements of clause 28 of the Head Agreement.

**Notifiable Incident** has the meaning given in the WHS Act.

**Objectives** means the objectives of the Services as described in clause 3 of the Head Agreement.

**Outcome Period** means the period for which Employment Outcome Payments and Employer Incentive Funding are payable in respect of an Employment Outcome achieved by an Eligible Job Seeker, in accordance with the ANNEXURE 2 PART B (CDP Monies).

**Outcome Start Date** means the first day of Employment which, when completed by the Eligible Job Seeker, meets the requirement of an Employment Outcome and which day is recorded on the IT

Systems in accordance with any Guidance.

**Outreach Site** means a Provider's site, which is open on a regular basis as set out in the Project Schedule, and is not a Full-Time Site or a Part-Time Site.

**Parenting Payment** has the meaning given to that term by Social Security Law.

**Part-time Site** means a Provider's site which is open at regular times, as set out in the Project Schedule, on Business Days, with hours of operation that are less than a Full-Time Site, or as otherwise agreed with the Department in writing.

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

**Partial Employment Outcome** means a Partial Employment Outcome, as described in ANNEXURE 2 PART B (CDP Monies).

**Payment** means any amount payable by the Department to the Provider under a Project Agreement, other than Funding.

**Period of Activities** means a period during which the Provider must conduct Services for the Eligible Job Seeker which starts on the Commencement of an Eligible Job Seeker and runs continuously until the Eligible Job Seeker either Exits or otherwise ceases to be an Eligible Job Seeker.

**Period of Service** means the period for each TWES Participant:

- (a) beginning when they meet the definition of a TWES Participant; and
- (b) ending when they are transferred from the Provider or Exited, whichever is the earliest.

**Personal Information** has the same meaning as it has in section 6 of the Privacy Act.

**Personnel** means a party's or other entity's employees, agents, officers and subcontractors. In the case of the Provider, the Provider Personnel includes the Personnel of the Provider's Subcontractors (including Material Subcontractors).

**PM&C** means the Department of the Prime Minister and Cabinet.

**Police Check** means a formal inquiry by an Australian police authority or CrimTrac accredited agency to establish whether a person has any disclosable Other Offence Record or Serious Offence Record or pending charges for one or more Other Offences or Serious Offences.

**Post-placement Support** means the support and assistance the Provider must deliver to Eligible Job Seekers in accordance with ANNEXURE 1 PART B (CDP Services).

**Pre-Existing** means having started before the Commencement of the relevant Eligible Job Seeker.

**Previous Funding Agreement** means the agreement between the parties, if any, referred to in clause 31.3 of the Head Agreement.

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

**Prison** means a prison or other correctional facility listed in the Project Schedule.

**Project** means all activities and tasks specified for a Project in a Project Schedule for which Monies are payable.

**Project Agreement** means a contract between the Provider and the Department which is created under the Head Agreement in accordance with clause 4.4 of the Head Agreement, for the provision of Services and payment of Monies.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Project Schedule** means the document setting out the specific terms and conditions that apply to the Provider, as described in clause 4.3 of the Head Agreement.

**Protected Information** has the same meaning as under section 23 of the *Social Security Act 1991* (Cth).

**Provider** means the Provider specified in clause 2 of the Head Agreement and includes, where relevant, its Personnel.

**Provider Appointment Report** or **PAR** means an electronic report sent by the Provider, through the IT Systems, recommending that a financial penalty be investigated and applied to an Eligible Job Seeker for non-attendance at an Appointment, where the Provider has assessed that the Eligible Job Seeker has failed to attend without a Valid Reason or a Reasonable Excuse.

**Provider Code of Practice** means the Code of Practice provided by the Department to the Provider governing the conduct of Provider's while providing Services.

**Provider Exit** means the manual exit of an Eligible Job Seeker by the Provider through recording the exit and relevant reasons on the IT Systems, in accordance with this Agreement including any Guidance.

**Provider Performance Review** means the Department's assessment of a Provider's performance in accordance with the Project Agreement.

**Provider Region** means each Region specified in the Project Schedule.

**Reasonable Excuse** has the meaning given to that term in the Social Security Law and the Guidance, as applicable.

**Recipient Created Tax Invoice** or **RCTI** means a recipient created tax invoice as defined in section 195-1 of the GST Act.

**Records** includes documents, information and data stored by any means and all copies and extracts of the same and includes the Records of any Material Subcontractor.

**Recurring Employment** means Employment in relation to which the Provider has already claimed an Employment Outcome Payment for the same Eligible Job Seeker, during the same Period of Activities, in the same Employment position, and with the same Employer.

**Re-engagement Appointment** means an Appointment for the purposes of Re-engagement that the Provider books when contact is made with an Eligible Job Seeker following non-attendance at an Appointment, where the Provider has made an assessment that the Eligible Job Seeker did not have a Valid Reason or Reasonable Excuse and a determination to report the non-attendance to DHS through a Non-Attendance Report or Provider Appointment Report.

**Referral** or **Referred** means a referral of a person to the Provider by the Department, DHS or DJSB.

**Region** means one of the geographical areas identified and displayed at: <http://lmip.gov.au/> from time to time, or on such other website as advised by the Department from time to time at the Department's absolute discretion.

**Register, Registration** or **Registered** means the act of registering the creation or activation of an Eligible Job Seekers record on the IT Systems.

**Registered Training Organisation** or **RTO** means a training organisation which meets the Australian Qualifications Framework *Essential Standards for Registrations* and is registered through the Australian Skills Quality Authority.

**Regulator** means the person who is the regulator within the meaning of the WHS Act.

**Related Entity** means:

- (a) entities connected with a corporation as defined in section 64B of the *Corporations Act 2001* (Cth) with the words the Provider substituted for every occurrence of the word corporation in that section;
- (b) If the Provider is a company, an entity that:
  - (i) is a holding company of the Provider;
  - (ii) is a subsidiary of the Provider;
  - (iii) is a subsidiary of a holding company of the Provider;
  - (iv) has one or more directors who are also directors of the Provider; or
  - (v) without limiting clauses (b)(i) to (b)(iv) of this definition, controls the Provider;
 or
- (c) any other type of entity defined in any Guidance or Notified by the Department.

**Relocation Assistance** means the assistance the Provider is obliged to deliver in accordance with clause 26 of ANNEXURE 1 PART B (CDP Services).

**Remote Employment Services** means the Services of that name which the Provider is required to deliver in accordance with ANNEXURE 1 PART B (CDP Services).

**Remote Jobs and Communities Programme** is the former name of the Community Development Program.

**Reports** means reports in writing which are required by the Department to be provided by the Provider under a Project Agreement.

**Sample Review** has the meaning given to it in clause 9.24 of the Head Agreement.

**Secret and Sacred Material** means all information and knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal tradition as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

**Security Contact** means one or more of Provider Personnel with responsibility:

- (a) for ensuring Provider compliance with the Compliance 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.

**Security Policy** means the document of that name available at the DJSB website or such other website as may be advised by the Department, or any other policy which replaces that policy from time to time.

**Serious Incident Report** means a report made by the Provider when any circumstance or incident occurs during, or as a result of, the Services:

- (a) in which a person suffers an injury for which treatment from a doctor or other health practitioner was sought or ought to have been sought;
- (b) that draws the attention of the police; or
- (c) where a person dies.

**Services** means any of the Services the Provider is obliged to deliver under a Project Agreement.

**Service Guarantee** means the document of that name that will be advised by the Department to the Provider.

**Services End Date** has the meaning given to it in the applicable Project Schedule.

**Services Material** means:

- (a) any Material specified to be Services Material or Activity Material in any Project Schedule or any Guidance;
- (b) any other Material (including Reports) produced by, or for, the Provider in carrying out obligations under this Head Agreement; and
- (c) any other Material incorporated in, or supplied with, or as part of the Material referred to in clauses (a) and (b) of this definition,

but does not include Existing Material. Services Material may also be called or otherwise known as **Activity Material**.

**Services Start Date** has the meaning given to it in the applicable Project Schedule.

**Site** means the one or more physical locations in the Provider Region from which the Provider provide Services as specified in the Project Schedule.

**Social Security Appeals Process** means reviews and appeals of decisions made under the Social Security Law.

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

**Start Date** has the meaning given in clause 1.1 of the Head Agreement.

**Step-In Notice** has the meaning given in clause 25.1 of the Head Agreement.

**Strengthening Organisational Governance Funding** means the Funding of that name described in ANNEXURE 2 PART A (MONIES).

**Subcontractor** means any entity to which the Provider has subcontracted the performance of the Services or any activity required to ensure compliance with this Head Agreement or a Project Agreement. A Subcontractor includes a Material Subcontractor.

**Supervisor** means a person who has the responsibility for supervising Eligible Job Seekers participating in an Activity.

**Suspension** means in respect of an Eligible Job Seeker, a period of time recorded on the IT Systems either by the Provider in accordance with the Project Agreement or by DHS, during which the requirement to provide Services to an Eligible Job Seeker is suspended.

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

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

**Taxable Supply** has the same meaning a taxable supply in section 195-1 of the GST Act.

**Term** means the period of time when this Head Agreement is in force, beginning on the Start Date and ending on the End Date, as specified in clause 1.

**Time Off WfD** means an approved break from participating in Work for the Dole Activities. Time Off WfD applies to job seekers required to participate in Work for the Dole.

**Time to Work Employment Service or TWES** means the program of that name administered by the Department, or such other name or program advised by the Department from time to time.

**Transition Out Period** means the two months preceding the end of the Service End Date for TWES Services.

**Transition Period** means the period or periods, if any, which is Notified by the Department to the Provider to enable a smooth transition to alternative arrangements for the Services after the end of the Head Agreement or Project Agreement.

**Transition Plan** means a plan that identifies a TWES Participant's post-release requirements for parole; reintegration and rehabilitation services; vocational education, employment and other activities; and support services.

**TWES Participant** means an Eligible Job Seeker who meets the requirements for participation in Time to Work Employment Services described in the Guidance.

**TWES Service Payment** means the Payment of that name described in ANNEXURE 1 PART C (TWES Monies).

**TWES Services** means the Services of that name which the Provider is required to deliver in accordance with ANNEXURE 1 PART C (TWES Services).

**TWES Transition Plan Payment** means the Payment of that name described in ANNEXURE 1 PART C (TWES Monies).

**Upgrade** means a change, as specified in any Guidance, in an Eligible Job Seeker's Employment, where the change:

- (a) occurs after the Provider has recorded, on the IT Systems, the completion of the Initial Interview with that Eligible Job Seeker;
- (b) occurs as a result of additional Remote Services provided by the Provider, as specified in any Guidance, in relation to an Employer and/or Eligible Job Seeker which are directly responsible for an increase in the Eligible Job Seeker's earnings, or number of hours worked in the relevant Employment;
- (c) is permanent and results in:
  - (i) the Employment satisfying the requirements for a Full Employment Outcome; and
  - (ii) an Effective Exit, and
- (d) is recorded on the IT Systems within 28 days of the day on which the change occurred in accordance with any Guidance.

**Vacancy** means any one or more vacant positions for paid Employment with an Employer, that are obtained and recorded on the IT Systems by the Provider in accordance with ANNEXURE 1 PART B (CDP Services), and that are not:

- (a) positions involving nudity or in the sex industry, including retail positions;
- (b) an Activity or any other unpaid work;
- (c) positions in contravention of Commonwealth, State or Territory legislation or which involve terms and conditions of employment which are inconsistent with the relevant workplace relations laws, or any instrument made under such laws;
- (d) positions in a training course;
- (e) positions in a program funded by the Commonwealth or by a State or Territory government;
- (f) in another country, regardless of whether the salary is paid in Australian dollars or by an Australian company; or
- (g) positions that the Department has advised, from time to time, are not acceptable.

**Valid Reason** means a valid and acceptable reason as specified in any Guidance.



**Vocational Barriers** means a lack of appropriate training, skills or qualifications for employment.

**Vulnerable Person** means:

- (a) a Child, being an individual under the age of 18; or
- (b) an individual aged 18 years and above who is or may be unable to take care of themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.

**Withdrawal Notice** has the meaning given to it in clause 25.4 of the Head Agreement.

**Work for the Dole Participant or WfD Participant** means an Eligible Job Seeker who:

- (a) is required to participate in Work for the Dole because they meet the participation criteria for WfD Participants as set out in the Guidance; or
- (b) does not satisfy clause (a), but has otherwise voluntarily elected to participate in Work for the Dole.

**WHS Act** means the *Work Health and Safety Act 2011* (Cth) and any corresponding WHS law within the meaning of section 4 of that Act

**WHS Code of Practice** means any code of practice approved for the purposes of the WHS Act.

**WHS Laws** means the WHS Act and WHS Regulations.

**WHS Regulations** means regulations made under a WHS Act.

**Work for the Dole** means the program of work of that name which is an approved program of work for income support payment (as that term is defined in the *Social Security Act 1991* (Cth)) as it applies to CDP Services, or any other approved program of work for income support payment which the Department Notifies to the Provider.

**Work Refusal Failure** means where an Eligible Job Seeker with Mutual Obligation Requirements refuses or fails to accept an offer of suitable employment.

**Working With Children Check** means the process in place pursuant to legislation relating to screening a person for their fitness to work with Children.

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

**EXECUTION PAGE**

Executed as a Deed

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Department:

**SIGNED, SEALED and DELIVERED for and on behalf of the Commonwealth of Australia as represented by the Department of the Prime Minister and Cabinet by:**

\_\_\_\_\_  
(Name of Department Representative)

\_\_\_\_\_  
(Signature of Department Representative)

\_\_\_\_\_  
(Position of Department Representative)

.../.../...

\_\_\_\_\_  
(Name of Witness in full)

\_\_\_\_\_  
(Signature of Witness)

Provider:

**[Note to Providers: An appropriate execution clause will be inserted depending on the legal nature of the Provider. Some examples are set out below.]**

The Provider acknowledges that it:

- a) has read and understood this Head Agreement;
- b) has had the opportunity to obtain independent legal advice prior to execution of this Head Agreement and to the extent that the Provider fails to obtain independent legal advice, the Provider covenants that such failure will not be used by the Provider as a defence to the enforcement of the provisions of the Head Agreement; and
- c) is knowingly and voluntarily entering into this Agreement.

**SIGNED, SEALED AND DELIVERED for and on behalf of [Insert name of Provider (ACN xxx xxx xxx)] in accordance with section 127 of the Corporations Act 2001 (Cth):**

\_\_\_\_\_  
(Director) (Name) ...../...../.....

\_\_\_\_\_  
(Director/Company Secretary) (Name) ...../...../.....

OR

**SIGNED, SEALED AND DELIVERED for and on behalf of [Insert name of Provider (ACN xxx xxx xxx)] in accordance with section 127 of the Corporations Act 2001 (Cth):**

\_\_\_\_\_  
(Sole Director and Company Secretary) (Name) ...../...../.....

OR

SIGNED, SEALED AND DELIVERED for and on behalf of **[Insert name of Provider (ICN xxx xxx xxx)]** in accordance with section 99-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*:

\_\_\_\_\_  
(Director)

\_\_\_\_\_  
(Name)

.../.../...

\_\_\_\_\_  
(Director/Company Secretary)

\_\_\_\_\_  
(Name)

.../.../...

OR

SIGNED, SEALED AND DELIVERED for and on behalf of **[Insert name of Provider (ICN xxx xxx xxx)]** in accordance with section 99-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)*:

\_\_\_\_\_  
(Sole Director)

\_\_\_\_\_  
(Name)

.../.../...

OR

SIGNED, SEALED AND DELIVERED by **[insert name of individual partner]** for and behalf of all partners of **[Insert name of Provider partnership]**, and who warrants that they are authorised to execute this Deed on behalf of all partners:

\_\_\_\_\_  
(Name of partner)

\_\_\_\_\_  
(Signature of partner)

.../.../...

\_\_\_\_\_  
(Name of Witness in full)

\_\_\_\_\_  
(Signature of Witness)