



**Australian Government**

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**Department of Social Services**

**Terms and Conditions**

**Disability Employment National Panel of Assessors Program**

**Grant Agreement**

**2018-2023**

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## **Section 1 National Panel of Assessors**

### **1. Objectives**

1.1 The objectives of the National Panel of Assessors are to deliver Supported Wage System (SWS) Assessment, Ongoing Support (OSA) Assessment and Workplace Modifications (WMS) Assessment services which may enhance:

- (a) employment participation by people with disability;
- (b) support services which are provided to people with disability in the workplace;
- (c) access to employment by people with disability; and
- (d) workplace productivity.

1.2 The Provider is appointed to the National Panel of Assessors for:

- (a) the SWS Services, OSA Services and/or the WMS Services; and
- (b) other assessment-related services,

as specified in the Schedule to this Agreement ('the Schedule').

*Note: A Provider may be appointed to provide SWS Services and OSA Services, or only WMS Services, or SWS Services, OSA Services and WMS Services.*

#### **JobAccess Provider**

1.3 In this Agreement, a reference to the Department includes, as the context requires, a reference to the person or organisation approved by the Department to deliver JobAccess Services in accordance with the Disability Employment Services Agreement and the Guidelines, including where that person is acting in its capacity as agent for the Commonwealth for the coordination of WMS Assessments.

### **2. Standing offer**

2.1 The Provider has represented that it has the skills, qualifications and experience necessary to perform and manage the Services required by the Department and makes an irrevocable standing offer to supply the Services to the Department on the terms and conditions set out in this Agreement.

### **3. Commonwealth not bound to order from Provider**

3.1 It is an express condition of this Agreement that the Department:

- (a) does not guarantee or represent that any Services will be ordered from the Provider;
- (b) is not obliged to request Services from the Provider; and
- (c) may at any time purchase or fund Services or any other similar services, in any way, from any person on such terms and conditions as may be agreed by the Department.

### **4. Formation of Grant Agreements**

4.1 A Grant Agreement to provide the Services is formed between the Department and the Provider when the Provider confirms acceptance of a Work Order in relation to the Services and the Provider will supply the Services on the terms and conditions specified in the Work Order and this Agreement.

4.2 Work Orders will be submitted to the Provider by the Department using the Department's IT System and, in relation to the WMS Services, will be submitted to the Provider in the form notified by the Department from time to time.

- 4.3 The Department may have regard to the Provider's previous rejections of Work Orders when deciding whether to allocate further Work Orders to that Provider and the Department may withdraw a Work Order for any reason at any time up until acceptance of the Work Order by the Provider.
- 4.4 Within one (1) Business Day of receiving a Work Order, using the Department's IT System, or, in relation to the WMS Services, by e-mail or facsimile transmission, the Provider must:
- (a) accept the Work Order; or
  - (b) reject the Work Order in whole or in part, and provide reasons for the whole or partial rejection.
- 4.5 Work Orders will be in the form set out in the Guidelines.

## **Section 2 Performing the Services**

### **5. General Requirements**

- 5.1 The Provider must perform the Services:
- (a) in accordance with the terms and conditions specified in the Grant Agreement and this Agreement;
  - (b) in a manner which meets the objectives in clause 1.1;
  - (c) in a manner that maintains the good reputation of the Services; and
  - (d) to the Department's satisfaction.
- 5.2 For the avoidance of doubt, no right or obligation arising from this Agreement or any Grant Agreement is to be read or understood as limiting the Provider's right to enter into public debate regarding policies of the Australian Government, its agencies, employees, servants or agents.
- 5.3 Without limiting the Department's rights under this Agreement or at law, if the Provider becomes aware that it is unable to satisfy or has otherwise failed to comply with the requirements of the Agreement, the Provider must Notify the Department immediately of:
- (a) the details of the requirements which it is unable to satisfy or failed to comply with; and
  - (b) any other information that the Department requests.

### **6. Areas of coverage**

- 6.1 The Provider must perform the Services within the locations specified in the Schedule, unless otherwise agreed with the Department.

### **7. Conduct of Assessments**

- 7.1 The Provider must undertake the Assessment(s):
- (a) in accordance with the specific requirements for the Assessment as specified in Section 6 and any Guidelines;
  - (b) if the Assessment requires special knowledge and expertise, conduct the Assessment using appropriate Specified Personnel with the required special knowledge and expertise;
  - (c) in accordance with the terms of the Grant Agreement;
  - (d) at a time negotiated between the Employer, the Participant and his or her nominee, the Participant's Disability Employment Service provider or Employment Service Provider and, if required by the Department, the Department; and
  - (e) when requested to undertake both a SWS Assessment and an OSA Assessment for the same Participant, both Assessments at the same time wherever practicable to do so.
- 7.2 If the Department reasonably considers an Assessment is unsatisfactory or incomplete, the Provider must, without additional charges or Grant Payments, conduct a further Assessment, if requested by the Department.
- 7.3 The Provider must follow the procedures in the Guidelines for managing any dispute of an Assessment by the Participant, the Participant's nominee, the Participant's Employer or, where relevant, the Participant's Disability Employment Service provider and Employment Service Provider.

## **8. Services specifically not required**

- 8.1 The Services do not include assessment or reporting on issues regarding industrial relations determinations, income support arrangements, medical, health, legal or other related Commonwealth, State or Territory programs including those purchased by the Department.

## **9. Provider's Personnel**

- 9.1 Assessments must only be performed by Specified Personnel with the required qualifications and experience specified in any Guidelines.
- 9.2 The Department will approve, at its absolute discretion, Personnel as Specified Personnel, based on the information supplied by the Provider and any other information available to the Department. No person can undertake an Assessment unless and until approved by the Department as Specified Personnel. The Department may issue Guidelines in relation to the process of approving Specified Personnel.
- 9.3 Where Specified Personnel are unable to undertake work in respect of a Grant Agreement, the Provider must notify the Department immediately and, if notified by the Department, provide replacement Personnel acceptable to the Department without additional payment, at the earliest opportunity and in accordance with this clause 9.
- 9.4 The Department may give notice, on reasonable grounds related to the performance, or integrity and reputation of the Services, requiring the Provider to remove Personnel (including Specified Personnel) from work on the Services. The Provider must, at its own cost, promptly arrange for the removal of such Personnel from work on the Services and their replacement with Personnel acceptable to the Department.
- 9.5 For the purposes of clause 9.4, if the Provider is unable to provide replacement Personnel who are acceptable to the Department, the Department may terminate this Agreement under clause 52 [Termination for default].

### *Training*

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

## **10. Working with vulnerable persons**

- 10.1 This clause applies if the Services or any part of the Services involves working with, or contact with, Vulnerable Persons.
- 10.2 Before engaging or deploying any Person (whether as an officer, employee, contractor, or volunteer) in relation to any part of the Services, the Provider must:
- (a) conduct a Police Check for that Person or where relevant, confirm a similar check by appropriate authorities has occurred;
  - (b) confirm that no Commonwealth, State or Territory law prohibits that Person from being engaged in a capacity where they may have contact with Vulnerable Persons; and
  - (c) comply with all other legal requirements of the place where the Services, or part of the Services, is being conducted in relation to engaging or deploying persons in a capacity where they may have contact with Vulnerable Persons.

- 10.3 For the purposes of clause 10.2(a) the Provider does not have to conduct a Police Check for a Person where they have a current Working with Children (NSW) check or an equivalent check in another jurisdiction that is current.
- 10.4 The Provider agrees:
- (a) if a Police Check or other relevant check by authorities indicates that a Person has a Serious Record, or a Criminal or Court Record, not to engage, deploy or redeploy the Person unless the Provider has conducted and documented a risk assessment of that Person;
  - (b) within 24 hours of becoming aware of a Person being charged or convicted of any Serious Offence or Other Offence, to conduct and document a risk assessment in accordance with clauses 10.5 to 10.6 to determine whether to allow that Person to continue performing the Services or any part of the Services; and
  - (c) to document the actions the Provider will take as a result of conducting the risk assessment.
- 10.5 The Provider will be wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Person with a Serious Record, Criminal or Court Record, to work on any Services, or any part of a Service.
- 10.6 In undertaking the risk assessment under clauses 10.4 and 10.5 the Provider agrees to take into account the following factors:
- (a) whether the Person's Serious Record, Criminal or Court Record is directly relevant to the role the Person will or is likely to perform in relation to the Services or any part of the Services;
  - (b) the length of time that has passed since the Person's conviction and the Person's record since that time;
  - (c) the nature of the offence pertaining to the Serious Record, Criminal or Court Record and the circumstances in which it occurred;
  - (d) whether the offence involved Vulnerable Persons;
  - (e) the nature of the Services and the circumstances in which the Person will or is likely to have contact with Vulnerable Persons;
  - (f) the particular role the Person is proposed to undertake or is currently undertaking in relation to the Services and whether the fact the Person has a Serious Record, Criminal or Court Record is reasonably likely to impair the Person's ability to perform or continue to perform the inherent requirements of that role; and
  - (g) the Person's suitability based on their merit, experience and references to perform the role they are proposed to undertake or are currently undertaking in relation to the Services or any part of the Services.
- 10.7 After taking into account the factors set out in clause 10.6, the Provider agrees to then determine whether it is reasonably necessary to:
- (a) not engage, deploy or redeploy the Person in relation to the Services or any part of the Services; or
  - (b) remove the Person from working in any position or acting in any capacity in relation to the Services or any part of the Services which involves working or having contact with Vulnerable Persons; or

- (c) make particular arrangements or impose conditions under which the Person's role in relation to the Services or any part of the Services and, where relevant, contact with Vulnerable Persons is to occur; or
  - (d) take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom the Services relate.
- 10.8 If the Department requires, the Provider must promptly provide evidence, in a form specified by the Department, that the Provider has complied with the requirements of this clause 10.
- 10.9 The Provider agrees to reflect their obligations under clause 10 in all Subcontracts entered into in relation to the Services or part of the Services.
- 10.10 In this clause 10:
- (a) "**Child**" means an individual under the age of 18;
  - (b) "**Criminal or Court Record**" means any record of any Other Offence;
  - (c) "**Other Offence**" means a conviction, finding of guilt, on-the-spot fine for, or court order relating to:
    - (i) an apprehended violence or protection order made against the Person; or
    - (ii) one or more traffic offences involving speeding more than 30 kilometres over the speed limit, injury to a person or damage to property; or
    - (iii) a crime or offence involving the consumption, dealing in, possession or handling of alcohol, a prohibited drug, narcotic or other prohibited substance; or
    - (iv) a crime or offence involving violence against or the injury, but excluding the death of a person; or
    - (v) a minor crime or offence involving dishonesty, other than those crimes or offences referred to in paragraph (c) of this clause.
  - (d) "**Person**" means each of the Provider's officers, employees, contractors and volunteers;
  - (e) "**Police Check**" means a formal inquiry made to the relevant police authority in each Australian State or Territory where the Provider knows the Person has resided, designed to obtain details of the Person's criminal conviction or a finding of guilt in all places (within and outside Australia);
  - (f) "**Serious Record**" means a conviction or any finding of guilt for a Serious Offence;
  - (g) "**Serious Offence**" means:
    - (i) a crime or offence involving the death of a person;
    - (ii) a sex-related offence or a crime, including sexual assault (whether against an adult or Child); Child pornography, or an indecent act involving a Child;
    - (iii) a crime or offence involving dishonesty that is not minor;
    - (iv) fraud, money laundering, insider dealing or any other financial offence or crime, including those under legislation relating to companies, banking, insurance or other financial services.
  - (h) "**Vulnerable Person**" means:
    - (i) a Child; or

- (ii) an individual aged 18 years and above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.

## **11. Provider's responsibility**

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

- (a) acceptance by the Department of Specified Personnel;
- (b) Subcontracting the Services or any part of the Services;
- (c) access rights specified in, or any action taken under, clause 40 [Access to premises and records];
- (d) involvement by the Department in the performance of the Services; or
- (e) payment made to the Provider on account of the Services.

11.2 The Provider must advise its officers and employees:

- (a) that they are Commonwealth public officials for the purposes of section 142.2 of the *Criminal Code Act 1995*;
- (b) that acting with the intention of dishonestly obtaining a benefit for any person is punishable by penalties including imprisonment;
- (c) that disclosures of wrongful conduct under the *Public Interest Disclosure Act 2013* (Cth) can be made directly to their supervisors within the Provider, or to an authorised officer of the Department, and where a disclosure of relevant conduct is made to a supervisor within the Provider, the supervisor is required under section 60A of the *Public Interest Disclosure Act 2013* (Cth) to pass information about the conduct to an authorised officer of the Department; and
- (d) that suspicions or evidence of incorrect claims or acceptance of payments or any other activities that may be a breach of the Agreement may be reported to the Department through the Employment Services Tip Off Line.

## **12. Liaison and compliance**

12.1 The Provider must:

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

12.2 The day to day management of, and communication under, this Agreement and any Grant Agreement is to be handled by the relevant Account Manager and Contact Person or their delegates and may be by means of electronic mail.

## **13. Excluded activities**

13.1 The Provider must not conduct an Assessment of an employee of, or a person who has received or is receiving Program Services from, the Provider's Own Organisation or Related Entity. The Provider must immediately notify the

Department in the event the Provider receives a Work Order for such an employee or person.

- 13.2 The Department may at its absolute discretion treat a breach of clause 13.1 as a breach of an essential term of this Agreement that is not capable of being rectified.
- 13.3 If at any time the Department becomes aware that the Provider is unable to deliver Services due to clauses 13.1 or due to a Conflict, the Department may withdraw a Work Order and will not be liable to pay any Grant Payment or other amount to the Provider in relation to that Work Order.

#### **14. Location**

- 14.1 The Provider must ensure that any premises owned or leased by the Provider which are to be used to provide the Services and accessed by Customers are:
  - (a) accessible to people with disability; and
  - (b) presented in a manner that upholds and maintains the good reputation of the Services, as determined by the Department.
- 14.2 The Provider must avoid acts or omissions which could cause injury to Customers or any other persons at the premises referred to in clause 14.1.

## **Section 3 Conditions**

### **Section 3A Length of Agreement and any Grant Agreements**

#### **15. Term of this Agreement**

- 15.1 The Term of this Agreement runs from the Commencement Date and expires on the Completion Date.
- 15.2 The Department may, at its sole discretion, extend the Term up to an additional maximum of ten years, by giving notice to the Provider.
- 15.3 Despite termination or expiration of this Agreement:
  - (a) the terms and conditions of this Agreement continue in force in respect of all Grant Agreements which have not been terminated or have not expired and which were entered into prior to the date of termination or expiration of this Agreement; and
  - (b) any Grant Agreement formed prior to expiration or termination of this Agreement will continue in force until it is terminated or expires notwithstanding that this Agreement is no longer in force.

#### **16. Survival**

- 16.1 The operation of clauses 23 [Debts and offsetting], 26 [Evaluation activities], 30 [Ownership of Intellectual Property], 31 [Licensing of Existing Material], 33 [Commonwealth Material], 34 [Personal and Protected Information], 36 [Confidential Information], 37 [Records the Provider must keep], 38 [Access by Customers to Records held by the Provider], 43 [Indemnity], 44 [Insurance], 49 [Dispute resolution], 50 [Remedies for breach], 66 [Applicable law and jurisdiction] and any other provisions that are expressly specified as surviving or by implication from their nature are intended to continue, survive the expiry or earlier termination of this Agreement or any Grant Agreement.
- 16.2 Clause 40 [Access to premises and records] survives for seven (7) years from the expiry or earlier termination of this Agreement or any Grant Agreement.

### **Section 3B Financial Matters**

#### **17. General**

- 17.1 Subject to appropriation being available, and compliance by the Provider with this Agreement and any Grant Agreement to the Department's satisfaction, and depending on the Services that the Provider is required to provide, the Department will pay to the Provider Grant Payments in accordance with this Agreement, to the bank account specified in the Schedule.
- 17.2 It is a precondition of the Provider's entitlement to be paid any Grant Payments that it:
  - (a) has, at the time it makes a claim for a payment, sufficient documentary evidence to prove that the Provider has performed the relevant Services in accordance with, or otherwise has relevantly complied with, the Grant Agreement;
  - (b) has a valid ABN and correctly quotes its ABN on all documentation provided to the Department;
  - (c) immediately notifies the Department if it ceases to have a valid ABN;
  - (d) supplies proof of its GST registration, if requested by the Department;

- (e) immediately notifies the Department of any changes to its GST status; and
  - (f) submits tax invoices to the Department for payment.
- 17.3 The Department, in its absolute discretion, may index the Grant Payments annually on 1 July. The first indexation point will not be before 1 July 2019. The indexation value is at the Department's absolute discretion
- 17.4 If the Department exercises its right under clause 17.3, it will issue a Notice to the Provider with the new Grant Payment amounts.

**18. Evidence to support claims for payment**

- 18.1 The Provider must:
- (a) retain sufficient documentary evidence to prove its entitlement for payment under any Grant Agreement for a period of not less than seven (7) years; and
  - (b) provide that evidence to the Department with 10 Business Days of a request at any time by the Department.

**19. Superannuation**

- 19.1 Subject to clause 19.2, the Department is not required to make any superannuation contributions in connection with this Agreement and any Grant Agreement.

*Unincorporated Providers – PAYG and superannuation*

- 19.2 This clause 19.2 and clause 19.3 only operate where the circumstances of the engagement of the Provider are such that, under a law of the Commonwealth, the Department is required to either:
- (a) deduct withholding tax under the "Pay As You Go" system; or
  - (b) make compulsory contributions, on the Provider's behalf, to a superannuation fund,
- in relation to the Grant Payments to be paid to the Provider under a Grant Agreement.

- 19.3 The amount of any payments referred to under clause 19.2 may be deducted by the Department from the amount of the Grant Payments otherwise payable to the Provider pursuant to this Agreement.

**20. No charge to Participants**

- 20.1 The Provider must not demand or receive any payment or any other consideration either directly or indirectly from any Participant or Employer for, or in connection with, the Services.

**21. When can we withhold payment?**

- 21.1 We can withhold any or all Grant Payments if we consider that you:
- (a) have not carried out the Services in accordance with this Agreement or any Grant Agreement and/or have breached this Agreement or any Grant Agreement;
  - (b) have not claimed the Grant Payment in accordance with this Agreement or any Grant Agreement; or
  - (c) are in serious breach of any other agreement under which you receive funding from the Commonwealth (a serious breach is one which would entitle the Commonwealth to terminate the other agreement).

21.2 Subject to termination of this Agreement or any Grant Agreement, we will pay you a Grant Payment that was withheld under clause 22.1(b) when you have carried out the part of the Services to which the payment relates in accordance with the requirements of this Agreement or any Grant Agreement.

21.3 If we withhold Grant Payments under this clause 22, you cannot claim an additional amount from a Participant or Employer for, or in connection with, the Services.

## **22. Overpayment**

22.1 If, at any time, an overpayment by the Department occurs, including where:

- (a) a Tax Invoice is found to have been incorrectly rendered after payment; or
- (b) a payment has been made in error; or
- (c) the Department overpays a Provider an amount; or
- (d) the Department pays a Provider an amount that the Provider has incorrectly claimed; or
- (e) the Department determines that the Provider has received Grant Payments of an amount that the Provider is not entitled to, including where the Provider is unable to prove their entitlement to the Grant Payments to the Department's satisfaction,

then this amount is a debt owed to the Department in accordance with clause 23 [Debts and offsetting].

## **23. Debts and offsetting**

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

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

23.3 Where any debt is owed to the Department, Interest accrues on that debt if it is not repaid within 30 calendar days of receipt of a notice from the Department requiring payment, or the due date for the payment, whichever is the earlier, until the amount is paid in full.

23.4 Without limiting the Department's rights under this Agreement, under statute, at law or in equity, if the Provider:

- (a) owes the Department any debt; or
- (b) has outstanding or unacquitted money under any contract or arrangement with the Commonwealth,

the Department may offset or deduct an amount equal to that debt owed, or outstanding or unacquitted money, against any other payments due to the Provider under this Agreement.

## **24. Taxes, duties and government charges**

24.1 Unless expressly stated to the contrary, all dollar amounts in this Agreement or any Grant Agreement are inclusive of GST.

- 24.2 If a claim for payment of Grant Payments is not in relation to a Taxable Supply, the Provider must only claim an amount exclusive of GST and the Department will only pay the GST exclusive amount under the Grant Agreement.
- 24.3 The Provider must give to the Department a Tax Invoice for any Taxable Supply before any Grant Payments are payable to the Provider as consideration for the Taxable Supply.
- 24.4 The Provider must not claim from the Department any amount for which it can claim an Input Tax Credit.
- 24.5 Subject to this clause 24, all taxes, duties and government charges imposed in Australia or overseas in connection with this Agreement must be borne by the Provider.
- 24.6 Unless otherwise defined in this Agreement, capitalised terms used in this clause, and in clause 17, have the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* or the *A New Tax System (Australian Business Number) Act 1999* as the context requires.

### **23A. Financial statements and guarantees**

23A.1 If required by the Department, the Provider must provide to the Department:

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

## **Section 3C Evaluation and Management of Provider's Performance**

### **25. Code of Practice and Service Guarantee**

- 25.1 The Provider must conduct the Services at or above the minimum standards in the Code of Practice and the Service Guarantee.
- 25.2 The Provider must make available to Customers any Material made available by the Department about the Code of Practice and the Service Guarantee.

### **26. Evaluation activities**

- 26.1 The Provider agrees that:
  - (a) the Department may conduct evaluation activities for the purposes of evaluating the Services including, but not limited to:
    - (i) monitoring, measuring and evaluating the Services, including through Customer satisfaction surveys;
    - (ii) the Provider being interviewed by the Department or its nominee;
    - (iii) the Provider giving the Department or its nominee access to the Provider's premises and records in accordance with clause 40 [Access to Premises and Records]; and
  - (b) it will assist the Department or its nominee in carrying out these and any other evaluation activities which the Department requires to be undertaken, including any review and final evaluation of the Services.

## 27. Key Performance Indicators

27.1 In providing the Services, the Provider must meet the KPIs set out in Table 1 below, and the Department will measure the Provider's performance against KPIs having regard to the following:

- (a) all Providers:
  - (i) deliverables specified in individual Grant Agreements;
  - (ii) each Assessment;
  - (iii) performance audits conducted by the Department including Customer satisfaction surveys; and
- (b) SWS Providers, in addition to those specified in 27.1(a), the SWS Wage Assessment Agreement.

**Table 1** KPIs

KPI	Description	Measures
KPI 1 Efficiency	1.1 Timeliness	<ul style="list-style-type: none"> <li>(a) 90 per cent of assessment services are completed within the timeframes set out in the Agreement and any Grant Agreement.</li> <li>(b) 90 per cent of allocated assessments are accepted by the Panel Member.</li> <li>(c) Where Panel Members reject allocated assessments, the Panel Member provides acceptable reasons for all rejections.</li> <li>(d) Where the Department has returned Assessment Reports to the Panel Member for corrective action, all subsequent reports are finalised and submitted to the Department within 5 Business Days of receipt of request by the Panel Member for SWS and OSA and, within 2 Business Days of receipt of request by the Panel Member for WMS.</li> </ul>
KPI 2 Effectiveness	2.1 Accurate individualised assessments 2.2 Thorough assessment reports	<ul style="list-style-type: none"> <li>(a) Assessments are conducted in a manner that responds to the individual with disability's circumstances, measured by:               <ul style="list-style-type: none"> <li>(i) Department sampling of assessment reports; and</li> <li>(ii) taking into consideration where there is a higher than average level of appealed decisions that are overturned.</li> </ul> </li> <li>(b) 90 per cent of assessment reports sampled by the Department are accepted as complete, without requiring further work.</li> </ul>
KPI 3 Quality	3.1 Stakeholder satisfaction	<ul style="list-style-type: none"> <li>(a) The Department's satisfaction with the delivery of the Service, as measured by but not limited to</li> </ul>

		results of stakeholder satisfaction surveys, satisfaction feedback (including from other assessors subsequently assessing the same client) and complaints.
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**28. Performance Management**

28.1 Where the Department at any time determines that the performance of the Provider is less than satisfactory, including if the Provider has failed to meet one or more of the performance measures under the KPIs, including those KPIs set out in Table 1 of clause 27, the Department may notify the Provider by notice that a failure to improve its performance to the Department’s satisfaction within a period of time specified by the Department, will allow the Department to take the action specified in clause 28.2.

28.2 If, following a notification given under clause 28.1 the Department determines that the Provider’s performance has not improved to the Department’s satisfaction within the period of time specified in the notice, the Department may:

- (a) reduce or cease submitting Work Orders to the Provider; and/or
- (b) withhold or reduce any Grant Payments set out in this Agreement and any Grant Agreement and direct the Provider to undertake specific activities to remedy the under-performance; and/or
- (c) without limiting any other rights in this Agreement, take action under clause 50 [Remedies for breach]; and/or
- (d) immediately terminate this Agreement and any Grant Agreement without the need to provide Notice to the Provider and clauses 50.2 and 50.3 apply, as if the Agreement was terminated under clause 52 [Termination for Default].

**29. Customer feedback**

29.1 The Provider must comply with the Customer feedback provisions as set out in the Guidelines from time to time.

## **Section 4 Information and Information Management**

### **Section 4A Intellectual Property Rights**

#### **30. Ownership of Intellectual Property**

30.1 As between the Department and the Provider (but without affecting the position between the Provider and a third party) ownership of and Intellectual Property Rights in all Agreement Material (excluding Existing Material) vests immediately upon its creation in the Commonwealth. However, the Department grants the Provider a licence to use, copy, reproduce, communicate, adapt and exploit the Agreement Material only for the purposes of this Agreement or any Grant Agreement and in accordance with any conditions or restrictions specified in the Grant Agreement and any conditions or restrictions which the Department may from time to time notify to the Provider.

#### **31. Licensing of Existing Material**

31.1 The Provider grants to the Department or must arrange for the grant to the Department of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Existing Material for any Commonwealth purpose.

#### **32. Dealing with Intellectual Property Rights**

32.1 The Provider warrants that it:

- (a) is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Existing Material and the Agreement Material in accordance with this clause 32; and
- (b) has obtained valid written consents from all owners of Intellectual Property Rights, and all authors (including approved Subcontractors) involved in creating the Agreement Material and Existing Material so that the Department's use of that Material will not infringe the Intellectual Property Rights of any third party or any author's Moral Rights under the *Copyright Act 1968*.

32.2 The Provider must, if requested by the Department to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 32.

#### **33. Commonwealth Material**

33.1 Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in the Department, but the Department grants the Provider a licence to use, copy, reproduce, communicate, adapt and exploit that Material only for the purposes of this Agreement, and in relation to each Grant Agreement, subject to any conditions or restrictions which the Department may from time to time notify to the Provider.

33.2 The licence in clause 33.1 is revocable on 10 Business Days' notice by the Department, or otherwise expires on the later of the Completion Date or the termination or expiry of any Grant Agreement.

##### *Commonwealth Coat of Arms*

33.3 The Provider must not use the Commonwealth Coat of Arms for the purposes of this Agreement, except as authorised in accordance with the *Use of the*

## Section 4B Control of Information

### 34. Personal and Protected Information

34.1 The Provider must:

- (a) in relation to any 'personal information' as defined in the *Privacy Act 1988*, comply with that Act as if it were an 'agency' within the meaning of that Act; and
- (b) comply with any request, directions, guidelines, determinations or recommendations of the Department to the extent that they are consistent with the requirements of this clause 34.

34.2 The Provider must ensure that when handling Protected Information, it complies with the requirements under Division 3 [Confidentiality] of Part 5 of the *Social Security (Administration) Act 1999*. For the purposes of this clause, 'Protected Information' has the same meaning as under section 23 of the *Social Security Act 1991*.

34.3 The Provider must immediately notify the Department if it becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 34, by any Personnel or Subcontractor.

### 35. The Department's right to publicise the Services and release information

35.1 The Provider agrees that the Department may, by any means, publicise and report on the Services and the Agreement and any Grant Agreements, including the name of the Provider or any Subcontractor, the Provider's performance, the amounts of Grant Payments given to the Provider, and a brief description of the Services and the Provider agrees to provide to the Department such information as the Department reasonably requires for the purposes of this clause.

### 36. Confidential Information

36.1 Subject to this clause 36, the Parties must not, without each other's prior written approval, disclose any of each other's Confidential Information to a third party.

36.2 In giving written approval to disclosure, a Party may impose conditions as it thinks fit, and the other Party agrees to comply with the conditions.

36.3 The obligations on the Parties under this clause 36 will not be breached if information:

- (a) is shared by the Department within the Department's organisation, or with another agency, where this serves the Department's legitimate interests;
- (b) is disclosed by the Department to the responsible Minister;
- (c) is disclosed by the Department, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (d) is authorised or required by law to be disclosed; or
- (e) is in the public domain otherwise than due to a breach of this clause 36.

36.4 Nothing in this clause 36 limits the obligations of the Provider under clause 34 [Personal and Protected Information] or clause 40 [Access to premises and records].

## Section 4C Records and Access

### 37. Records the Provider must keep

37.1 The Provider must create and maintain full and accurate Records of the conduct of the Services, including the Customer feedback register and any other Material as specified in the Guidelines and, when requested provide the Records to the Department, within the timeframe required by the Department.

37.2 The Provider must keep financial accounts and Records of its transactions and affairs regarding payments that it receives from the Department under any Grant Agreement in accordance with relevant accounting standards and such that all payments made by the Department are clearly and separately identified.

37.3 The Provider must:

- (a) store, and manage access to, all Records in accordance with the Guidelines and the Department's Security Policies;
- (b) maintain an up to date list of its Records and make this list available to the Department on request;
- (c) not transfer, or be a party to an arrangement for the transfer of Records to any person, entity or organisation without the written approval of the Department, and as directed by the Department; and
- (d) not destroy, deal with or otherwise dispose of Records except in accordance with the relevant Guidelines or as directed by the Department.

37.4 All Records must be retained by the Provider for a period of not less than seven (7) years after the creation of the Record, unless otherwise specified in the Guidelines.

37.5 Subject to this clause 37, and until such time as the Department advises that a Third Party IT Provider Deed is required in accordance with clause 37.6, where the Provider gives access to electronic Records, or any derivative thereof, to third parties, including, but not limited to:

- (a) third party hosting entities; or
- (b) outsourced information technology service providers,

the Provider must ensure that a non-disclosure deed, in the form specified at Annexure 3 to this Agreement, is signed by each relevant third party prior to that third party being granted any such access and only grant such access in accordance with the Department's Security Policies, the Cybersafety Policy and any Guidelines.

37.6 The Provider must:

- (a) not give access to electronic Records, or any derivative thereof, to a Third Party IT Provider who has not, by the date specified by the Department, entered into a Third Party IT Provider Deed with the Department of Employment, and only grant such access in accordance with the terms of that agreement and any Guidelines;
- (b) in any contract with a Third Party IT Provider, reserve a right of termination to take account of the Department of Employment's right of termination in the relevant Third Party IT Provider Deed; and

- (c) on receipt of any advice from the Department that the Department of Employment has terminated a relevant Third Party IT Provider Deed, terminate the Provider's contract with the Third Party IT Provider and, at its own cost, promptly cease using the Third Party IT Provider.

### **38. Access by Customers to Records held by the Provider**

- 38.1 Subject to this clause 38, the Provider must allow Participants to access Records that contain their own Personal Information, and provide them with copies of such Records if they require, except to the extent that Commonwealth legislation would, if the Records were in the possession of the Department, require or authorise the refusal of such access by the Department.
- 38.2 The Provider must in providing access to the requested Records in accordance with clause 38.1:
  - (a) ensure that a Participant requesting the access provides proof of identity before access is given to the requested Records; and
  - (b) notate the relevant files with details of the Records to which access was provided, the name of the person granted access and the date and time of such access.
- 38.3 Requests for access to Records that the Provider has determined could be refused under Commonwealth legislation specified in clause 38.1 including but not limited to, access to Records containing information falling within the following categories:
  - (a) Records also containing information about another person;
  - (b) medical/psychiatric records (other than those actually supplied by the Participant or Employer, or where it is clear that the Participant has a copy or has previously sighted a copy of the records);
  - (c) psychological records; and
  - (d) information provided by other third parties,must be directed to the Department for consideration.
- 38.4 The Provider must comply with any direction given by the Department in relation to the provision, or refusal, of access to Records held by the Provider.

### **39. Access to documents**

- 39.1 In this clause 39, 'document' has the same meaning as in the *Freedom of Information Act 1982 (Cth)*.
- 39.2 The Provider agrees that:
  - (a) where the Department has received a request for access to a document created by, or in the possession of, the Provider or any Subcontractor engaged by the Provider in relation to the performance of this Agreement, the Department may at any time by Notice require the Provider to provide the document to the Department and the Provider must, at no additional cost to the Department, promptly comply with the Notice;
  - (b) the Provider must assist the Department in respect of the Department's obligations under the *Freedom of Information Act 1982 (Cth)*; and
  - (c) the Provider must include in any Subcontract relating to the performance of this Agreement provisions that will enable the Provider to comply with its obligations under this clause 39.

#### **40. Access to premises and records**

40.1 The Provider must at all reasonable times give any Department Employee:

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

##### *Limitation on access rights*

40.2 The rights referred to in clause 40.1 are subject to:

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

##### *Investigation of Breaches and Fraud*

40.3 If a matter is being investigated that, in the opinion of the Department, may involve:

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

clause 40.2 does not apply, and the Department Employees may remove and retain Material and original Records that are relevant to the investigation, including items stored on an electronic medium, provided that they return a copy of all relevant Records to the Provider, or the relevant Material and original Records, within a reasonable period of time.

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

### **Section 4D Information Technology**

#### **41. General**

41.1 If required by the Department, the Provider must conduct the Services using the Department's IT Systems provided by the Department for that purpose and, in doing so, must comply, and ensure that its Subcontractors and Third Party IT Providers comply, with the Department's Security Policies, the Commonwealth Cybersafety Policy and the information technology provisions set out in the Guidelines from time to time as relevant.

## *Cybersafety Policy*

41.2 For the purposes of this Cybersafety Policy:

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

**'Reasonable Steps'** means having in place strategies to minimise and manage risks of exposure to inappropriate or harmful 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's staff regarding the risks of, and protection from, inappropriate or harmful on-line content.

41.3 The Commonwealth's Cybersafety Policy is that where an organisation is funded by the Commonwealth to carry out the Services using computers and/or other digital technology, the safety of Clients when using those computers and/or other digital technology must be assured.

41.4 The Provider must take Reasonable Steps to protect its Clients' cybersafety.

41.5 If the Department gives the Provider Notice requiring it, the Provider must provide the Department, within 10 business days of receiving the Notice, with evidence satisfactory to the Department that the Provider has complied with the requirements of this Cybersafety Policy.

41.6 The Provider agrees to include its obligations in relation to this Cybersafety Policy in all Subcontracts it enters into in relation to Services.

## **42. Access and security**

### *Access to Systems*

42.1 The Provider must:

- (a) advise the Department of any proposed use of Third Party Systems to interface with the Department's IT Systems;
- (b) where the Department imposes any terms and conditions in respect of the use of these interfaces, comply with those terms and conditions as advised by the Department;
- (c) ensure that any Third Party System it uses:
  - (i) meets the minimum requirements of the Department for entry to the Department's IT Systems, and for record keeping and program assurance purposes, as advised by the Department; and
  - (ii) has secure logons for each operator such that each operator's logon is identifiable to the Department and entries are traceable, and have date and time stamps; and
  - (iii) ensure that Records held in any Third Party System relating to the Services can be, and are, provided on request, to the Department and in an unadulterated form, i.e. with no amendment to the Records.

### *Detection and reporting of breaches*

42.2 Where the Department considers that the Provider may be in breach of this Agreement or any Grant Agreement or there is a risk of such a breach, the

Department may, at its absolute discretion, immediately suspend access to the Department's IT Systems for any one or more of the following:

- (a) any Personnel;
- (b) any Subcontractor;
- (c) any Third Party IT Provider; or
- (d) the Provider,

by providing Notice to the Provider.

42.3 Where the Department determines that the Provider is in breach of, or has previously breached, this Agreement or any Grant Agreement, the Department may immediately take action including any one or more of the following:

- (a) suspending or terminating access to the Department's IT Systems for any Personnel, Subcontractor, Third Party IT Provider or the Provider;
- (b) requiring the Provider to obtain new logon IDs for any Personnel or Subcontractor or Third Party IT Provider and if so, the Provider must promptly obtain such new logons; or
- (c) requiring the Provider to prepare and implement an IT security plan to the Department's satisfaction, and if so, the Provider must do so within the timeframe required by the Department.

42.4 If the Department gives Notice to the Provider that access to the Department's IT Systems is revoked for particular Personnel or Subcontractor or Third Party IT Provider, the Provider must immediately take all actions necessary to terminate that access.

## Section 5 Administration

### Section 5A Indemnity and Insurance

#### 43. Indemnity

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

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

arising from or in connection with:

- (d) any act or omission by the Provider in connection with this Agreement or any Grant Agreement, where there was a negligent or unlawful act or omission or wilful misconduct on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;
- (e) any breach by the Provider of this Agreement or any Grant Agreement;
- (f) any breach by the Provider of clause 34 [Personal and Protected Information]; or
- (g) the use by the Department of the Agreement Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights under the *Copyright Act 1968* in that Material.

43.2 The liability of the Provider to indemnify the Department under this clause 43 will be reduced proportionately to the extent that fault on the Department's part contributed to the relevant cost, loss, damage, expense, or liability.

43.3 The Department's right to be indemnified under this clause 43 is in addition to any other right, power, or remedy provided by law, but the Department will not be entitled to be compensated in excess of the amount of the relevant loss, damage, expense or liability.

43.4 A reference to the Department in this clause 43 is not to be read as a reference to the JobAccess Provider.

#### 44. Insurance

44.1 In connection with the performance of this Agreement, any Grant Agreement and the Services, the Provider must have and maintain valid and enforceable insurance policies for, at a minimum:

- (a) public liability providing coverage in respect of each claim for at least \$10 million;
- (b) workers' compensation for an amount required by the relevant State or Territory legislation; and
- (c) professional indemnity for at least \$5 million, to be maintained during the Term and for at least seven years following the Completion Date that covers the liability of the Provider at general law and as additionally or assumed under the terms of clause 45; and
- (d) any other insurance relevant to the Services.

44.2 The Provider must give evidence of insurance required under this clause within 10 Business Days of the request when the Department asks for it.

#### **45. Liability of Provider to the Department**

45.1 To the extent permitted by law, where more than one person is a signatory to this Agreement as the Provider, or the Provider is a partnership, each of those persons, or each partner, as the case may be, is jointly and severally liable for:

- (a) the performance of all of the obligations of the Provider under this Agreement and any Grant Agreement; and
- (b) all losses caused by the Provider or any Subcontractor engaged for the purposes of this Agreement and any Grant Agreement.

45.2 To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Provider under or in connection with this Agreement or any Grant Agreement.

#### **46. Special rules about trustees**

##### *Trustee's warranties*

46.1 If the Provider acts as trustee for a trust (the 'Trust') in relation to this Agreement and any Grant Agreement, the Provider warrants to the Department that:

- (a) the Provider is the only trustee of the Trust;
- (b) the Provider has not been removed from, or ceased to act, or resigned or retired from the office of trustee of the Trust, nor has any decision or action been taken or proposed in respect of the removal, resignation or retirement of the Provider as trustee of the Trust, or to appoint an additional trustee of the Trust;
- (c) the Provider is not in default under the Trust deed;
- (d) the Provider has power under the Trust deed to enter into and observe the Provider's obligations under this Agreement and any Grant Agreement;
- (e) the Provider has entered in this Agreement and any Grant Agreement in its capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust;
- (f) the Provider has a right, and will at all times have a right, to be fully indemnified out of the assets of the Trust in respect of the obligations incurred by it under this Agreement and any Grant Agreement;
- (g) the assets of the Trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Provider has a right to be indemnified out of the trust fund; and
- (h) to the extent that the assets of the Trust are insufficient to satisfy any right of indemnity, the Provider holds professional indemnity insurance as required by clause 44 of this Agreement.

##### *Provider's indemnity as trustee*

46.2 The Provider indemnifies the Department against any liability or loss arising from, and any expenses (including, without limitation, legal costs and expenses on a full indemnity basis) incurred in connection with the following situations:

- (a) where a warranty made by the Provider under this clause 46 is found to be incorrect or misleading when made or taken to be made; and/or

- (b) the Provider ceases to be the trustee of the Trust or any step is taken to appoint another trustee of the Trust.

## **SECTION 5AA Changes in Persons Delivering Services**

### **47. Corporate governance**

#### *Constitution*

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

#### *Personnel*

- 47.3 Unless otherwise agreed by the Department in writing in its absolute discretion, the Provider must not employ, engage or elect any person who would have a role in its management, financial administration or, if Notified by the Department, the performance of the Services, if:
  - (a) the person is an undischarged bankrupt either in or outside of Australia;
  - (b) there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy;
  - (c) the person has suffered final judgment for a debt and the judgment has not been satisfied;
  - (d) subject to Part VIIC of the *Crimes Act 1914* (Cth), the person has been convicted of an offence within the meaning of section 85ZM(1) of that Act, unless:
    - (i) that conviction is regarded as spent under paragraph 85ZM(2) (taking into consideration the application of Division 4 of Part VIIC);
    - (ii) the person was granted a free and absolute pardon because the person was wrongly convicted of the offence; or
    - (iii) the person's conviction for the offence has been quashed;
  - (e) the person is or was a Director or a person who occupied an influential position in the management or financial administration of an organisation that had failed to comply with the terms of any agreement with the Commonwealth, and where that failure gave the Commonwealth the right to terminate the agreement; or
  - (f) the person is otherwise prohibited from being a member or Director or employee or responsible officer of the organisation of the Provider.
- 47.4 Unless otherwise agreed by the Department in writing at its absolute discretion, where a person falls, or is discovered as falling, within any of clauses 47.3(a) to 47.3(f) while employed or engaged by the Provider, or elected as an officer of the Provider, in a role in:
  - (a) its management or financial administration, the Provider will be in breach of clause 47.3, if the Provider does not:
    - (i) transfer the person to a position that does not have a role in its management or financial administration; or

- (ii) terminate the employment or engagement of the person or remove the person from office,

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

- (b) the performance of the Services, the Provider must Notify the Department on becoming aware that the person falls or has been discovered as falling within any of clauses 47.3(a) to 47.3(f), and take any action in respect of that person, that is Notified by the Department.

*Note: For the avoidance of doubt, clause 47.4(b) will also apply where a person is transferred in accordance with clause 47.4(a)(i), to a role in the performance of the Services.*

- 47.5 If the Provider advises the Department that it considers termination action under clause 47.4(b) would be a breach of a statutory provision binding on the Provider, the Department will take the Provider's view into account in deciding what action to take as a result of the breach of clause 47.3.

#### *Change in Control of the Provider*

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

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

- 47.8 The Provider must, within five (5) Business Days of receiving a written request from the Department, provide such information and supporting evidence as the Department may request in relation to the:

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

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

- 47.9 If the Provider does not:

- (a) obtain the Department's consent to a Change in Control as required by clause 47.6; or
- (b) provide the Department with any information required by the Department in accordance with clause 47.8,

The Department may do either or both of the following:

- (c) take action under clause 50 [Remedies for breach]; or
- (d) immediately terminate this Agreement or any Grant Agreement without the need to provide Notice to the Provider and clauses 50.2 and 52.3 apply, as if the Agreement or Grant Agreement was terminated under clause 52 [Termination for default].

#### *Change in management*

47.10 The Provider must:

- (a) inform the Department in writing within five (5) Business Days of any changes to the membership of its board of Directors, board of management or executive during the Term of this Agreement; and
- (b) obtain a completed credentials information form (as supplied by the Department) from any Director, or member of its board of management or executive, and supply it to the Department, if the Department requests it, within 10 Business Days of the Department's request.

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

#### **48. External administration**

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

- (a) any notice requiring the Provider to show cause why the Provider should not come under any form of external administration referred to in clause 48.1(b);
- (b) any record of a decision of the Provider, notice or orders that the Provider has, or will, come under one of the forms of external administration referred to in:
  - (i) Chapter 5 of the *Corporations Act 2001* (Cth);
  - (ii) the equivalent provisions in the incorporated associations legislation of the Australian states and territories; or
  - (iii) Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- (c) any statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (d) any proceedings initiated with a view to obtaining an order for the Provider's winding up;
- (e) any decisions and orders of any court or tribunal made against the Provider, or involving the Provider, including an order for the Provider's winding up;
- (f) any notice that a shareholder, member or Director is convening a meeting for the purpose of considering or passing any resolution for the Provider's winding up; or
- (g) being an individual, any notice that the Provider has become bankrupt or has entered into a scheme of arrangement with his or her creditors.

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

- (a) has decided to place itself, or has otherwise come under, any one of the forms of external administration, referred to in clause 48.1(b); or
- (b) is ceasing to carry on business.

### **Section 5B Resolving Problems**

#### **49. Dispute Resolution**

49.1 Each Party agrees that it will:

- (a) only seek to rely on this clause in good faith, and only where the Party seeking to rely on this clause has made a reasonable assessment that the rights and obligations of the Parties in respect of a matter subject to this clause 49, are genuinely in dispute; and
- (b) cooperate fully with any process instigated in accordance with this clause 49, in order to achieve a prompt and efficient resolution of any dispute.

49.2 The Parties agree that any dispute arising in relation to this Agreement and any Grant Agreement will be dealt with, in the first instance, through the process outlined in the Guidelines.

49.3 If any dispute arising in relation to this Agreement and any Grant Agreement cannot be resolved using the process in clause 49.1, the Parties will use the following process:

- (a) the Party claiming that there is a dispute will give the other Party a notice setting out the nature of the dispute;
- (b) within five (5) Business Days of receipt of the notice under clause 49.2, each Party will nominate a representative who has not been previously involved in the dispute;
- (c) the Parties' representatives will try to settle the dispute by direct negotiation between them;
- (d) if the dispute is not resolved within 10 Business Days of the date on which the last Party to do so nominates a representative under clause 49.2 (b), the Party claiming that there is a dispute will refer the dispute to an independent third person, as agreed between the Parties, with power to mediate and recommend some form of non-binding resolution;
- (e) if the dispute is not resolved within 10 Business Days of the date on which the dispute was referred to an independent third person in accordance with clause 49.2(d), the Party claiming that there is a dispute will refer the dispute to an independent third person, as agreed between the Parties, with power to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution; and
- (f) if:
  - (i) agreement on an independent third person cannot be reached under clauses 49.2(d) or (e); or
  - (ii) the dispute is not resolved within 20 Business Days of referring the dispute to an independent third person pursuant to clause 49.2(e),

either Party may commence legal proceedings.

49.4 Each Party will bear its own costs of complying with this clause 49, and the Parties must bear equally the cost of any independent third person engaged under clauses 49.2(d) or 49.2(e).

49.5 This clause 49 does not apply to the following circumstances:

- (a) either Party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken, or purportedly taken, by the Department under clauses [17] General Requirements, [18] Evidence to support claims for payment, [23] Debts and Offsetting, [28] Performance Management, [38] Access by Customers to Records held by the Provider, [40] Access to premises and records, [50] Remedies for breach, [51] [Termination with costs], 52 [Termination for default] or [58] Subcontracting; or

- (c) where the Department is conducting its own breach of Grant Agreement or fraud investigation.

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

## **50. Remedies for breach**

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

- (a) the Provider fails to rectify a breach, or pattern of breaches, of this Agreement or any Grant Agreement to the Department's satisfaction within 10 Business Days of receiving a Notice from the Department to do so, or within such other period specified by the Department;
- (b) the Provider fails to fulfil, or is in breach of, any of its obligations under this Agreement or any Grant Agreement that are not capable of being rectified (as determined by the Department); or
- (c) an event has occurred which would entitle the Department to terminate this Agreement or any Grant Agreement in whole or in part under clause 52 [Termination for default],

the Department may, by providing notice to the Provider, immediately exercise one or more of the remedies specified in clause 52.2.

50.2 The remedies that the Department may exercise are:

- (a) suspending any payment under the Agreement or a Grant Agreement in whole or in part;
- (b) imposing additional conditions on the payment of Grant Payments;
- (c) withholding Grant Payments and/or the referral of Work Orders until such time as the performance of the Provider has improved to the Department's satisfaction;
- (d) reducing or not paying specific payments that would otherwise have been payable in respect of the relevant obligation;
- (e) where the Department has already paid the relevant Grant Payments, under this Agreement or any Grant Agreement, recovering, at the Department's absolute discretion but taking into account the extent and nature of the breach, some or all of the relevant Grant Payments as a debt;
- (f) imposing additional financial or performance reporting requirements on the Provider;
- (g) reducing the scope of this Agreement and any Grant Agreement; and
- (h) taking any other action specified in this Agreement and any Grant Agreement.

50.3 For the avoidance of doubt, any reduction in Grant Payments or the scope of this Agreement or any Grant Agreement under this clause 50 does not amount to a reduction of scope or termination for which compensation is payable.

### *Good faith and proportionality*

50.4 The Department will exercise its rights under this clause 50 in good faith, taking into account the relevant breach.

### *Variation*

50.5 If the Department takes any action under this clause 50:

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

*Notice*

50.6 If the Department takes any action under this clause 50, the Department will notify the Provider:

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

**51. Termination with costs**

51.1 The Department may, at any time by notice, terminate, or reduce the scope of, this Agreement, any Grant Agreement or the Services, without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination or reduction.

51.2 Upon receipt of a notice of termination or reduction the Provider must:

- (a) stop work as specified in the notice;
- (b) take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Agreement Material; and
- (c) continue work on any part of the Services not affected by the notice.

51.3 If this Agreement or any Grant Agreement is terminated under clause 51.1, the Department is liable only for:

- (a) payments under clause 17 that were properly due before the effective date of termination; and
- (b) reasonable costs incurred by the Provider and directly attributable to the termination.

51.4 If the scope of the Services is reduced, the Department's liability to pay any Grant Payments and any allowances and costs abates in accordance with the reduction in the Services.

51.5 The Department is not liable to pay compensation under clause 51.3(b) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Provider under a Grant Agreement, exceed the maximum Grant Payment that would have been payable but for the termination or reduction.

51.6 The Provider is not entitled to compensation for loss of prospective profits or loss of any benefits that would have been conferred on the Grant Agreement or had the termination or reduction not occurred.

**52. Termination for default**

52.1 The Department may, if any of the following events occur, immediately terminate this Agreement or any Grant Agreement in whole or in part, by giving notice to the Provider, if:

- (a) the Provider fails to fulfil, or is in breach of any of its obligations under this Agreement or the Grant Agreement that are not capable of being rectified (as determined by the Department);

- (b) the Provider is in breach of any of its obligations under this Agreement or the Grant Agreement that are capable of being rectified, and does not rectify the omission or breach, or pattern of omissions or breaches, within 10 Business Days, or such other period specified by the Department, of receiving a notice from the Department to do so;
- (c) the Provider fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001*;
- (d) the Provider fails to notify the Department of a Conflict in accordance with clause 57 or is unable or unwilling to resolve or deal with the Conflict as reasonably required by the Department;
- (e) the Provider or its Personnel or Subcontractors engages in fraudulent activity;
- (f) the Provider is more than 20 Business Days overdue in providing an Assessment report to the Department;
- (g) the Provider is unable to provide replacement Personnel who are acceptable to the Department in accordance with clause 9;
- (h) The Department determines that the performance of the Provider is less than satisfactory and has notified the Provider that a failure to improve its performance to the Department's satisfaction within a period of time specified by the Department could result in termination, and the Provider's performance has not improved within that specified time;
- (i) proceedings are initiated with a view to obtaining an order for the Provider's winding up or any shareholder, member or director convenes a meeting for the purpose of considering or passing any resolution for the Provider's winding up;
- (j) the Provider comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or equivalent provisions in any other legislation, or an order has been made for the purpose of placing the Provider under such external administration;
- (k) being an individual, the Provider becomes bankrupt or enters into a scheme of arrangement with creditors;
- (l) The Department is otherwise satisfied that the Provider is unable to pay all of its debts as and when they become due and payable;
- (m) The Department is satisfied that, prior to entering into this Agreement or any Grant Agreement, the Provider:
  - (i) has engaged in misleading or deceptive conduct;
  - (ii) has made a statement that is incorrect or incomplete; or
  - (iii) has omitted to provide information to the Department,
 that may have affected the Department's decision to enter into this Agreement or a Grant Agreement or any action taken by the Department under this Agreement or a Grant Agreement; or
- (n) notice is served on the Provider or proceedings are taken to cancel its incorporation or cancel its registration or to dissolve the Provider as a legal entity; or
- (o) The Department otherwise becomes entitled to terminate this Agreement or any Grant Agreement under any other provision of this Agreement or the Grant Agreement.

52.2 Where the Department terminates this Agreement or any Grant Agreement in whole or in part under clause 51.1:

- (a) The Department is liable to pay Grant Payments as specified in clause 50.3(a); and
- (b) clause 50.4 applies as if the Agreement was terminated in accordance with clause 50.1.

52.3 Clause 52 does not limit or exclude any of the Department's other rights, including the right to recover any other amounts from the Provider on termination of this Agreement or any Grant Agreement, the right to reduce payments due on termination on the basis of breach or poor performance, or any rights of offset.

## **Section 5C Other Matters**

### **53. Transition Out**

53.1 The Provider must, if directed by the Department, provide sufficient assistance and cooperation to any person nominated by the Department to enable Services to continue to be provided to Customers:

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

53.2 The sufficient assistance and cooperation the Provider must provide under clause 53.1 will include, as a minimum, complying with the Department's directions in relation to the transfer of Agreement Material and Commonwealth Material in the Provider's possession or control to any person nominated by the Department, or to the Department.

### **54. Disability Employment Strategy**

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

### **55. Indigenous Opportunities Policy**

55.1 The Provider acknowledges it is Commonwealth Policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Commonwealth Indigenous Procurement Policy for further information).

55.2 The Provider must use reasonable endeavours to increase its:

- (a) purchasing from Indigenous Enterprises in its supply chain; and
- (b) employment of Indigenous Australians

in delivering the Services.

55.3 49.3 Purchases from Indigenous Enterprises for the purpose of clause 49.2(a) above may be in the form of engagement of an Indigenous Enterprise as a Subcontractor and use of Indigenous suppliers in the Provider's supply chain.

### **56. Acknowledgement and promotion**

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

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

in accordance with any Guidelines.

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

## **57. Conflict of interest**

- 57.1 The Provider warrants that, to the best of its knowledge and belief after making diligent inquiries, no Conflict exists, or is likely to arise, in the performance of its obligations under this Agreement or any Grant Agreement.
- 57.2 Where the Provider also provides other Commonwealth funded employment assistance services, it is a Conflict for the Provider to provide the Services to the recipients of its other Commonwealth funded employment assistance services and this Conflict is not permitted under this Agreement or any Grant Agreement.
- 57.3 If, during the Term of this Agreement or any Grant Agreement, a Conflict arises, or is likely to arise, the Provider must:
  - (a) immediately notify the Department of the Conflict and the steps that the Provider proposes to take to resolve or otherwise deal with the Conflict;
  - (b) make full disclosure to the Department of all relevant information relating to the Conflict; and
  - (c) take such steps as the Department may reasonably require resolving or otherwise dealing with the Conflict.

## **58. Subcontracting**

- 58.1 The Provider must not Subcontract the performance of any of its obligations under this Agreement or any Grant Agreement without the prior written approval of the Department.
- 58.2 In approving any Subcontractor, the Department may, in its absolute discretion, impose any terms or conditions to that approval.
- 58.3 The Department may revoke its approval of a Subcontractor on reasonable grounds by notifying the Provider. On receipt of the notice, the Provider must, at its own cost, promptly cease using that Subcontractor and arrange a replacement with its Personnel or another Subcontractor acceptable to the Department.
- 58.4 If the Department withdraws its approval of a Subcontractor, the Provider remains liable under this Agreement or any Grant Agreement for the past acts or omissions of its Subcontractors as if they were current Subcontractors.
- 58.5 The Provider acknowledges and agrees that the Department may publicly disclose the names of any Subcontractors engaged by the Provider in connection with the

Services and the Provider will provide such details of Subcontractors as the Department may require. The Provider will inform any such Subcontractor accordingly.

- 58.6 The Provider must, in any Subcontract, bind the Subcontractor, with respect to the Department, to all relevant terms and conditions of the Agreement including, but not limited to, clauses 9 [Provider's Personnel], 34 [Personal and Protected Information], 36 [Confidential Information], 37 [Records the Provider must keep], 40 [Access to premises and records], 44 [Insurance], 60 [Negation of employment, partnership and agency] and 67 [Compliance with laws and government policies].

#### *Workplace gender equality*

- 58.7 The Provider must not enter into a Subcontract under this Agreement 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).

### **59. Assignment and novation**

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

### **60. Negation of employment, partnership and agency**

- 60.1 The Provider must not represent itself, and must ensure that its officers, employees, partners, agents and Subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Department, or as otherwise able to bind or represent the Department. This Agreement or any Grant Agreement does not create a relationship of employment, agency or partnership between the parties.

### **61. Special rules about Consortium**

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

### **62. Waiver**

- 62.1 If either Party does not exercise (or delays in exercising) any rights under this Agreement or any Grant Agreement, that failure or delay does not operate as a waiver of those rights. A single or partial exercise by either Party of any of its rights under this Agreement or any Grant Agreement does not prevent the further exercise of any right. Waiver of any provision of, or right under, this Agreement or any Grant Agreement must be in writing signed by the Party entitled to the benefit of that provision or right and is effective only to the extent specified in the written waiver.

### **63. Severance**

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

**64. Entire Agreement**

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

**65. Variation of this Agreement and any Grant Agreement**

65.1 Except for action the Department is expressly authorised to take elsewhere in this Agreement and any Grant Agreement, this Agreement and any Grant Agreement may only be varied in writing and signed by the Parties.

**66. Applicable law and jurisdiction**

66.1 This Agreement and any Grant Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the laws of New South Wales. The Parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales in respect to any dispute under this Agreement or any Grant Agreement.

**67. Compliance with laws and government policies**

67.1 The Provider must, in carrying out its obligations under this Agreement or any Grant Agreement, comply with:

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

67.2 Without limiting clause 67.1 the Provider must provide Services that are free of harassment and any form of unlawful discrimination.

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

*Workplace gender equality*

67.4 Clauses 67.4(a) to (d) apply only to the extent that the Provider is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).

- (a) Without limiting clause 67.1, the Provider must comply with its obligations, if any, under the WGE Act.
- (b) If the Provider becomes non-compliant with the WGE Act during the Term of this Agreement, the Provider must notify the Account Manager.
- (c) The Provider must provide a current letter of compliance annually, to the Account Manager.
- (d) Compliance with the WGE Act does not relieve the Provider of its responsibility to comply with its other obligations under this Agreement.

### *Work Health and Safety legislation*

67.5 The Provider must at all times:

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

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

- (a) prepare, submit, supply or obtain any document, including but not limited to a WHS management plan, a risk assessment, a safe work method statement, a work method statement, an emergency plan, safety data sheets, a notice to the Regulator, or a register (together '**WHS Safety Documents**'), or review any existing WHS Safety Documents;
- (b) obtain or sight any licence, permit, or authorisation (together '**WHS Licences**'); or
- (c) display or install any sign, or barrier;

specific to the Services, the Provider must:

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

before commencing any, or undertaking further, Services.

67.7 The Department may monitor the Provider's compliance with the WHS Laws, including but not limited to:

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

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

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

## **68. Use of interpreters**

### *Use of interpreters*

68.1 The Provider must, when carrying out the Services, provide an interpreter, in accordance with any Guidelines, to facilitate communication between the Provider and Participants wherever necessary, including where a Participant requires assistance:

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

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

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

### *Staff training*

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

### *Record Keeping*

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

## **69. Notices**

- 69.1 A notice under this Agreement is only effective if it is in writing, addressed to the Account Manager or the Contact Person, as relevant, and signed by the person giving the notice or transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.
- 69.2 A notice given in accordance with clause 69.1 is taken to be received:
- (a) if hand delivered, on delivery;
  - (b) if sent by prepaid post, five (5) Business Days after the date of posting, unless it has been received earlier; and
  - (c) if transmitted electronically -when received by the addressee.

## **Section 6 The National Panel of Assessors Services**

### **Section 6A The SWS Assessment Services**

#### **70. The SWS Services**

- 70.1 The Supported Wage System ('SWS') is an industrial mechanism that enables people with disability who, due to their disability, cannot be paid a full rate of pay, to access a reliable process of productivity-based wage assessment and related workplace-specific assistance in order to access appropriate jobs in the open workforce.
- 70.2 The SWS is an independent Commonwealth funded productivity-based wage assessment mechanism that enables Employers and workers with disabilities to determine fair pay for fair work. The SWS can only be applied when the appropriate award or industrial order includes the SWS provisions (as confirmed by the Department State Office SWS Management Units). The SWS can be accessed by workers that meet the impairment criteria for the Disability Support Pension.

#### *SWS Training for Specified Personnel*

- 70.3 The Provider must ensure that each of its Specified Personnel attend training provided by the Department in using the Supported Wage System Assessment Tool (SWAT) which is an electronic SWS productivity based assessment tool and which the Department may amend from time to time. Each Specified Personnel must complete the SWS online training modules before conducting SWS Assessments. The SWS Assessment process is outlined in the Supported Wage System Handbook which is accessible from <https://www.jobaccess.gov.au/downloads/supported-wage-system-handbook>.
- 70.4 SWAT training will be provided in Australian capital cities by the Department on such dates as notified by the Department.

#### **71. SWS Assessments**

- 71.1 SWS Assessments must be conducted in accordance with:
- (a) the requirements of the Guidelines as amended from time to time; and
  - (b) the SWAT as specified in the Guidelines and SWAT training provided by the Department, accessible on the Department's IT System.

#### **72. SWS Assessment Reports**

- 72.1 The Provider must:
- (a) in the SWS Assessment Report, outline the results of the SWS Assessment including describing the job tasks undertaken by the Participant and the timings of observations for each task, including a SWS Wage Assessment Agreement;
  - (b) in the SWS Wage Assessment Agreement, confirm the agreement of the Participant and the Employer and any other party to that agreement by obtaining the signatures of all parties to the agreement; and
  - (c) within seven (7) Business Days of completion of the Assessment, submit the Assessment Report to the Department using the Department's IT System in the format required by the Department's IT System and, for SWS Assessment Reports, in accordance with the SWAT.
- 72.2 If the Department at its absolute discretion considers the Assessment Report to be not of sufficient standard, the Department may require the Provider to, at its own

cost, resubmit a revised Assessment Report incorporating amendments as required by the Department within five (5) Business Days of the request to resubmit, and the Department may repeat this process until satisfied with the Assessment Report.

### **73. SWS Grant Payments**

73.1 Upon completion of a SWS Assessment and SWS Assessment Report and the Department's acceptance of the SWS Assessment Report, the Department will pay to the Provider:

- (a) the SWS Assessment Grant Payment of \$600.00 (GST inclusive); plus
- (b) if the Assessment is conducted in a CDP Region, an additional SWS Assessment Grant Payment of \$420.00 (GST inclusive).

73.2 Where the SWS Assessment and SWS Assessment Report will jointly take more than five (5) hours to complete, the Provider may apply to the Department for Grant Payments additional to those specified in clause 73.1, which Grant Payments, if approved by the Department:

- (a) will be payable at \$120.00 (GST inclusive) per hour;
- (b) will be payable at \$204.00 (GST inclusive) per hour for SWS Assessments conducted in a CDP Region; and
- (c) will not exceed a maximum of four (4) hours, or a lesser number of hours specified by the Department at the time the Department gives that approval.

73.3 Where the Provider seeks the Department's agreement to pay the additional Grant Payments specified in clause 73.2:

- (a) The Department retains absolute discretion whether to approve the request; and
- (b) the Provider must:
  - (i) provide to the Department written details of why the SWS Assessment and SWS Assessment Report will take more than 5 hours to complete; and
  - (ii) notify the Department at the earliest opportunity when the Provider first becomes aware that the SWS Assessment and SWS Assessment Report will take more than five (5) hours to complete; and
  - (iii) irrespective of whether the Department approves the additional Grant Payments specified in clause 73.2, complete the SWS Assessment and Assessment Report in accordance with this Agreement.

73.4 The amounts specified in clauses 73.1 and 73.2 are inclusive of all costs incurred by the Provider in providing the Service. The Department will not pay or reimburse the Provider for additional costs such as travel costs incurred by the Provider in delivering the Service.

## **Section 6B The OSA Assessment Services**

### **74. OSA Services**

74.1 Ongoing Support Assessments ('OSAs') will independently assess the Ongoing Support needs of Participants. An OSA will be completed where a Program Provider identifies to the Department that a Participant is likely to need Ongoing Support in the workplace to retain their job.

## **75. OSA Assessments**

75.1 Subject to clause 75.2, the Provider must undertake the OSA Assessment to ascertain the Participant's Ongoing Support needs by:

- (a) interviewing the Program Provider;
- (b) interviewing the Participant;
- (c) conducting a workplace assessment of the Participant and interviewing the Participant's Employer, if consented to by the Participant; and
- (d) reviewing relevant documents held by the Program Provider.

75.2 Where the Provider is unable to obtain information in accordance with clause 75.1(c) due to non-disclosure by the Participant and/or their Employer due to privacy concerns or otherwise, the Provider may, in accordance with the Guidelines, exclude the corresponding activity from the OSA Assessment.

75.3 In undertaking the OSA Assessment, the Provider must assess all relevant information to properly determine the ongoing support needs of the Participant and whether the Participant should:

- (a) exit as an Independent Worker;
- (b) receive Flexible Ongoing Support;
- (c) receive Moderate Ongoing Support; or
- (d) receive High Ongoing Support,

in accordance with any Guidelines.

## **76. OSA Assessment Reports**

76.1 The Provider must, within seven (7) Business Days of completion of the Assessment, submit the Assessment Report to the Department using the Department's IT System in the format required by the Department's IT System.

76.2 If the Department at its absolute discretion considers the Assessment Report is not of sufficient standard, the Department may require the Provider to, at its own cost, resubmit a revised Assessment Report incorporating amendments as required by the Department within five (5) Business Days of the request to resubmit, and the Department may repeat this process until satisfied with the Assessment Report.

## **77. OSA Grant Payments**

77.1 Upon completion of an OSA Assessment and OSA Assessment Report and the Department's acceptance of the OSA Assessment Report, the Department will pay to the Provider the OSA Assessment Grant Payment of \$420.00 (GST inclusive).

77.2 The amounts specified in clause 77.1 are inclusive of all costs incurred by the Provider in providing the Service. The Department will not pay or reimburse the Provider for additional costs such as travel costs incurred by the Provider in delivering the Service.

## **Section 6C The WMS Assessment Services**

### **78. WMS Assessment Services**

- 78.1 The JobAccess service will provide a single point of contact for people seeking information about disability-related employment issues, including information about workplace modifications. JobAccess will be supported by a website which will provide a national hub for Employers, employment service providers and job seekers and people with disability. It will also contain secure online application forms for assistance under the Employment Assistance Fund.
- 78.2 The EAF aims to remove barriers for employing people with a disability by providing financial assistance for the cost of workplace assessments and modifications. EAF replaces the Workplace Modifications Scheme and the Auslan for Employment program. The EAF is available for financial assistance to implement a range of measures that improve access to employment and the workplace productivity of people with disability, including work-related modifications. WMS Providers will be required to complete Assessments of work-related modifications which will help improve access to employment and workplace productivity. The Provider must ensure that Specified Personnel who are approved to undertake WMS Assessments, deliver WMS Assessments in accordance with this Agreement, any Grant Agreement and the Guidelines.
- 78.3 The Department will maintain a register of WMS Providers, which will include information on any ESA Specialist Assessment Group specified in Item 8.2 of the Schedule and also details of relevant qualifications, skills and knowledge of Specified Personnel who are approved to undertake WMS Assessments. The JobAccess service will allocate WMS Assessments to Providers taking into consideration any specialist knowledge required in respect to assessments. Where relevant, JobAccess will consider the ESA Specialist Assessment Group specified in Item 8.2 of the Schedule, as well as the specialist knowledge and skills of Specified Personnel who are approved to undertake WMS Assessments, when allocating WMS Assessment Services to Providers.

### **79. WMS Assessments**

- 79.1 In relation to each WMS Assessment, the Provider must:
- (a) clarify with the applicant any ambiguities in relation to the details on the EAF application form submitted to the Department;
  - (b) conduct the Assessment in accordance with the requirements of this Agreement, any Grant Agreement and the Guidelines, including by discussion with the Employer and Participant and, where relevant the Department, to identify the work requirements, work environment, nature of the Participant's disability and barriers to performing work tasks as a result of the Participant's disability;
  - (c) conduct research into available modifications that will be suitable to respond to the identified barriers, and discussing options with the Department; and
  - (d) discuss with the Employer and Participant the potential modifications which are available through the EAF to improve access to work and work productivity.

### **80. WMS Assessment Reports**

- 80.1 The Provider must within twelve (12) Business Days of the date of acceptance of the Work Order, submit a Workplace Modifications Assessment Report to the Department in the format set out in Guidelines.

80.2 If the Department at its absolute discretion considers the Assessment Report to be not of sufficient standard, the Department may require the Provider to, at its own cost, resubmit a revised Assessment Report incorporating amendments as required by the Department within two (2) Business Days of the request to resubmit, and the Department may repeat this process until satisfied with the Assessment Report.

## **81. WMS Grant Payments**

81.1 Upon completion of a WMS Assessment and WMS Assessment Report and the Department acceptance of the WMS Assessment Report, the Provider may apply for a WMS Assessment Grant Payment of \$120.00 (GST inclusive) per hour up to a maximum of five (5) hours.

81.2 Where the WMS Assessment and WMS Assessment Report will jointly take more than 5 hours to complete, the Provider may apply to the Department for Grant Payments additional to those specified in clause 81.1 which Grant Payments, if approved by the Department:

- (a) will be payable at \$120.00 (GST inclusive) per hour; and
- (b) will not exceed a maximum of four (4) hours, or a lesser number of hours specified by the Department at the time the Department gives that approval.

81.3 Where the Provider seeks the Department's agreement to pay the additional Grant Payments specified in clause 81.2:

- (a) the Department retains absolute discretion whether to approve the request and no additional Grant Payments under clause 81.2 will be payable in respect of travel time; and
- (b) the Provider must:
  - (i) provide to the Department written details of why the WMS Assessment and WMS Assessment Report will take more than five (5) hours to complete;
  - (ii) notify the Department at the earliest opportunity when the Provider first becomes aware that the WMS Assessment and WMS Assessment Report will take more than five (5) hours to complete; and
  - (iii) irrespective of whether the Department approves the additional Grant Payments, complete the WMS Assessment and Assessment Report in accordance with this Agreement.

81.4 Subject to this clause 80.4, the amounts specified in clauses 81.1 and 81.2 are otherwise inclusive of all costs incurred by the Provider in providing the Service. In addition to the amounts specified in clauses 81.1 and 81.2, where the WMS Assessment requires the Provider to travel for more than 200km, the Department will pay to the Provider the following additional travel costs:

- (a) \$50.00 (GST inclusive) per hour for travel time up to a maximum of eight (8) hours per day and which travel time will not include time used for Assessment or Reporting services; plus
- (b) reimbursement of the Provider's accommodation and meal expenses provided that:
  - (i) the Provider produces to the Department Tax Invoices and evidence of payment; and

- (ii) reimbursement of accommodation and meal expenses will not exceed the rates specified for employees with an annual salary of the amount prescribed in Table 1 of taxation determination TD2016/13<sup>1</sup> published by the Australian Taxation Office, or the amount prescribed in any other relevant taxation determinations issues in respect of subsequent financial years.

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<sup>1</sup> <https://www.ato.gov.au/law/view/pdf/pbr/td2016-013.pdf>

## **Section 7 Interpretation and Definitions**

### **82. Rules for Interpretation**

82.1 In this Agreement and any Grant Agreement, unless the contrary intention appears:

- (a) all capitalised terms have the meaning given to them in the Definitions (clause 84);
- (b) the Definitions apply to the whole of this Agreement and any Grant Agreement, including any Guidelines;
- (c) words in the singular include the plural and vice versa;
- (d) words importing a gender include all genders;
- (e) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (f) the chapter headings, section headings, clause headings and subheadings within clauses, notes and information boxes are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
- (g) all references to dollars are to Australian dollars;
- (h) a reference to any legislation or legislative provision is to that legislation or legislative provision as in force from time to time;
- (i) a reference to a clause is to a clause of this Agreement;
- (j) any uncertainty or ambiguity in the meaning of a provision of this Agreement or any Grant Agreement is not to be interpreted against a Party just because that Party prepared the provision;
- (k) a reference to an internet site includes those sites as amended from time to time;
- (l) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- (m) a reference to writing is a reference to any visible representation of words, figures or symbols.

82.2 Subject to clause 82.3, any Guidelines do not expand or add essential terms to this Agreement.

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

### **83. Precedence**

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

- (a) this Agreement;
- (b) any Grant Agreements;
- (c) the Schedule; or
- (d) any Guidelines,

then the first-mentioned material has precedence over material mentioned in a subsequent subparagraph, to the extent of any conflict or inconsistency.

## 84. Definitions

**'Aboriginal or Torres Strait Islander person'** means a person who:

- (a) is identified as such on the Department's IT Systems; or
- (b) is of Aboriginal and/or Torres Strait Islander descent;
- (c) identifies as an Aboriginal and/or Torres Strait Islander person; and
- (d) is accepted as such in the community in which the person lives or has lived, and

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

**'Account Manager'** means the person for the time being holding, occupying or performing the duties of the position specified in the Schedule and any Grant Agreement who has authority to receive and sign notices and written communications for the Department in relation to the Agreement and any Grant Agreement.

**'Agreement'** means this document, which is in the form of a deed, as varied or extended by the Parties from time to time in accordance with this Agreement, and includes all Annexures, the Schedule and other documents incorporated by reference, including any Guidelines, but excluding any attachments.

**'Agreement Material'** means all Material:

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

**'Assessment'** means an Ongoing Support Assessment, Supported Wage System Assessment or Workplace Modifications Assessment, as relevant, and which is to be undertaken in accordance with the terms of this Agreement and any Grant Agreement and Guidelines.

**'Assessment Report'** means a report completed in respect of an Ongoing Support Assessment, Supported Wage System Assessment, or Workplace Modifications Assessment, as relevant, in accordance with the terms of this Agreement and any Grant Agreement and Guidelines.

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

**'Change in Control'** means

- (a) subject to paragraph (b) below, in relation to a Corporation, a change in any of the following:
  - (i) Control of more than one half of the voting rights attaching to shares in the Corporation, whether due to one or a series of transactions occurring together or on different occasions; or
  - (ii) Control of more than one half of the issued share capital of the Corporation, whether due to one or a series of transactions occurring together or on different occasions, excluding any part of the issued share capital which carries no right to participate beyond receipt of an amount in the distribution of either profit or capital; or
  - (iii) Control of more than one half of the voting rights attaching to membership of the Corporation, where the Corporation does not have any shareholders;
- (b) in relation to a Corporation which is owned or controlled by a trustee company, any change as set out in paragraph (a) above in relation to either that Corporation or its corporate trustee;
- (c) in relation to a partnership:
  - (i) the sale or winding up or dissolution of the business by the partners;

- (ii) a change in any of the partners; or
- (iii) the retirement, death, removal or resignation of any of the partners;
- (d) in relation to an Exempt Public Authority, a change in relation to any of the following:
  - (i) the composition of the board of Directors;
  - (ii) ownership of any shareholding in any share capital; or
  - (iii) the enabling legislation so far as it affects Control, if any;
- (e) in relation to a Consortium:
  - (i) any change in the membership of the Consortium;
  - (ii) a change of the lead member of the Consortium, if the Consortium has appointed a lead member for the purposes of this Agreement; or
  - (iii) a Change in Control as defined in paragraphs (a) to (d) above in any member of the Consortium.

**'Code of Practice'** means the code of practice for the Disability Employment National Panel of Assessors at Annexure 1.

**'Commencement Date'** means the date on which the Agreement was signed by the last party to do so.

**'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 Material'** means any Material provided by the Department to the Provider for the purposes of this Agreement or any Grant Agreement or which is copied or derived from that Material except for Agreement Material.

**'CDP Region'** means one of 60 geographical areas identified and displayed at <https://www.dpmc.gov.au/resource-centre/indigenous-affairs/community-development-programme-regions>

**'Complaint'** means any expression of dissatisfaction by a Customer with the Provider's policies, procedures, employees or the quality of the Services, but does not include:

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

**'Completion Date'** means, unless terminated earlier, the later of:

- (a) 30 June 2023; or
- (b) where the Term is extended under clause 15, the expiry of the extended Term.

**'Confidential Information'** means all information that the Parties agree to treat as confidential:

- (a) by notice to each other after the Commencement Date; or
- (b) that the Parties know, or ought reasonably to know, is confidential to the other Party.

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

**'Constitution'** means (depending on the context):

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

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

**'Contact Person'** means the person specified in the Schedule and any Grant Agreement who has the authority of the Provider to receive and sign notices and written communications, and accept any request or direction in relation to the Agreement and any Grant Agreement as applicable.

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

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

**'Customer'** includes Employers, Participants and any other beneficiary of the Services.

**'Cybersafety Policy'** means the Commonwealth policy of that name as specified at clause 41.2 to 41.6.

**'Department'** means the Commonwealth Department of Social Services or such other agency or department as may administer this Agreement on behalf of the Commonwealth from time to time and, where the context so admits, includes the Commonwealth's relevant officers, delegates, employees and agents.

**'Department Employee'** means an employee of the Commonwealth working for the Department of Social Services and:

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

**'Department of Employment'** means the Commonwealth Department of Employment and, where the context so admits, includes the Commonwealth's relevant officers, delegates, employees and agents.

**'Department's IT Systems'** means the IT computer system accessible by a Provider, through which information is exchanged between the Provider, Subcontractors, DHS, DHS Assessment Services, Ongoing Support Assessors and the Department in relation to the Services.

**'Department's Security Policies'** means policies relating to the use and security of the Department's IT Systems and Records, and includes the policy by the name of the Department of Employment Security Policy for External Service Providers and Users and any other security policies Notified by the Department from time to time. Relevant policies are available on the Department's IT Systems through the following path: Provider Portal > DES > Provider Operations > IT Security & Access, or at such other location as advised by the Department from time to time.

**'DHS'** means the Commonwealth Department of Human Services.

**'Director'** means any of the following:

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

- (d) a person who would be a director of the body corporate under paragraph (a) above if the body corporate were a body corporate within the meaning of the *Corporations Act 2001* (Cth);
- (e) a person who acts in the position of a director of a body corporate;
- (f) a person whose instructions or wishes the directors of a body corporate are accustomed to acting upon, and not simply because of the person's professional capacity or business relationship with the directors or the body corporate; and
- (g) a member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate.

**'Disability Employment Services'** means Disability Employment Services – Disability Management Service and Disability Employment Services – Employment Support Service delivered in accordance with the Disability Employment Services Agreement; JobAccess Services and NDRC Services delivered in accordance with the Disability Employment Services Agreement; and the Assessment Services delivered in accordance with the Disability Employment National Panel of Assessors Agreement.

**'Disability Employment Services Agreement'** means this document, which is in the form of a deed, as varied or extended by the Parties from time to time in accordance with this Agreement, and includes all Annexures, the Schedule and other documents incorporated by reference, including any Guidelines, but excluding any attachments.

**'Disability Employment Strategy'** means a strategy implemented by the Provider designed to attract, develop and maintain employees with disability within the Provider's own organisation.

**'Employer'** means an entity with the legal capacity to enter into a contract of employment with an employee (including a Participant).

**'Employment Assistance Fund'** or **'EAF'** means the Commonwealth scheme which provides financial assistance for the costs of work related modifications and work equipment for people with disability.

**'Employment Service Provider'** means any employment service provider under any employment services deed with the Department of Employment, the Department of Prime Minister and Cabinet, or the Department of Social Services.

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

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

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

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

**'Flexible Ongoing Support'** means the provision of Program Services to a Participant to maintain the Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with the Disability Employment Services Agreement and any Guidelines.

**'Grant Agreement'** means an agreement created pursuant to clause 4 of this Agreement for the provision of the Services, as varied or extended by the Parties from time to time in accordance with this Agreement.

**'Grant Payment'** means the amount payable by the Department under a Grant Agreement as specified in Section 6.

**'GST'** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999*.

**'Guidelines'** refers to any guidelines related to the Services, if any, that apply to the provision of Disability Employment Services, as amended from time to time by the Department.

**'High Ongoing Support'** means the provision of Program Services to a Participant to maintain the Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with the Disability Employment Services Agreement and any Guidelines.

**'Independent Worker'** means a Participant who is assessed as not requiring Ongoing Support, in accordance with the Disability Employment Services Agreement and any Guidelines.

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

**'Inspector'** means a person appointed as such under the WHS Act.

**'Intellectual Property Rights'** includes:

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

but does not include:

- (d) Moral Rights under the *Copyright Act 1968*;
- (e) the non-proprietary rights of performers; or
- (f) rights in relation to confidential information.

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

**'Key Performance Indicators'** or **'KPIs'** means the performance indicators specified in this Agreement or as notified to the Provider by the Department from time to time.

**'Moderate Ongoing Support'** means the provision of Program Services to a Participant to maintain the Participant's Employment, Unsubsidised Self-Employment, Apprenticeship or Traineeship, in accordance with the Disability Employment Services Agreement and any Guidelines.

**'Modification'** means the implementation of a piece of equipment or technology, or modification to an existing piece of equipment or technology or implementation of a service available from the EAF that enables a worker with disability to carry out a particular job.

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

**'National Customer Service Line'** means a free call telephone service which puts Participants and Employers in contact with a customer service officer, and is 1800 805 260, or such other number as Notified by the Department from time to time.

**'National Panel of Assessors'** or **'the Panel'** means the panel of assessors that provide the SWS Assessment Services, the OSA Assessment Services, the WMS Assessment Services or other assessment-related services established in accordance with this Agreement.

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

**'Ongoing Support'** means the Program Services a Participant may receive while they are in Employment, Unsubsidised Self-Employment, an Apprenticeship or a Traineeship after a 26 Week Employment Outcome or Job in Jeopardy Outcome and until they Exit in accordance with the Disability Employment Services Agreement and any Guidelines.

**'Ongoing Support Assessment'** or **'OSA'** means the process for determining a Participant's need for Ongoing Support.

**'OSA Services'** means the services described in Section 6B.

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

**'Participant'** means a person, other than an Employer, to whom the Provider provides Services.

**'Party'** or **'Parties'** means a party to this Agreement.

**'Personnel'** means in relation to an entity, any natural person who is an officer, employee, volunteer or professional advisor of the entity.

**'Program Provider'** means a provider of any Program Services under the Disability Employment Services Agreement.

**'Program Services'** means Disability Employment Services – Disability Management Services and Disability Employment Services – Employment Support Services delivered in accordance with the Disability Employment Services Agreement.

**'Provider'** means a provider of any Services under this Agreement, and includes its Personnel, successors and assigns, and any constituent entities of the Provider's organisation, and includes reference to a Consortium funded to provide Services under this Agreement, where applicable.

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

**'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* with the word '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, a subsidiary, or a subsidiary of a holding company, of the Provider;
  - (ii) has one or more directors who are also directors of the Provider; or
  - (iii) without limiting clauses (b)(i) or (ii) of this definition, controls the Provider; or
- (c) an entity, where a familial or spousal relationship between the principals, owners, directors, officers or other like persons exists between that entity and the principals, owners, directors, officers or like persons of the Provider.

**'Schedule'** means the schedule to this Agreement that is signed by us and you. It may include annexures and incorporate other documents by reference.

**'Service Guarantee'** means the set of minimum service standards of that name specified for the Disability Employment National Panel of Assessors at Annexure 2.

**'Services'** means the SWS Assessment Services, the OSA Assessment Services the WMS Assessment Services or other assessment-related services for which the Provider has been funded to provide under this Agreement.

**'Specified Personnel'** means the specified personnel (whether the Provider's officers, employees or Subcontractors) approved by the Department in accordance with clause 9.2 for the purposes of undertaking Assessments in accordance with this Agreement and any Grant Agreement.

**'Subcontract'** means an agreement entered into by the Provider by which some or all of the Services are conducted by another entity, and **'Subcontract'** and **'Subcontracting'** refer to the act of entering into any such agreement.

**'Subcontractor'** means any party which has entered into a Subcontract with the Provider.

**'Support Wage Assessment Tool'** or **'SWAT'** means the online productivity based assessment tool used by Providers under this Agreement to record results of SWS Assessments.

**'Supported Wage System'** or **'SWS'** means the Australian Government program that makes provision for eligible people with disability to access a productivity based wage assessment.

**'SWS Assessment'** means the process for determining a productivity rating for a SWS Participant performing a specific job.

**'SWS Assessment Services'** means the services described in Section 6A.

**'SWS Assessment Report'** means a productivity assessment and Supported Wage System agreement prepared by the Provider in accordance with Section 6A of this Agreement.

**'SWS Wage Assessment Agreement'** means a written agreement prepared by a Provider that reflects agreement between an Employer and a SWS Participant and the results of the SWS Assessment.

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

**'Taxable Supply'** has the meaning given in section 195-1 of the GST Act.

**'Term'** refers to the period described in clause 15 of the Agreement.

**'Third Party IT Provider'** means an entity contracted by the Provider to provide information technology services to the Provider for the purposes of providing the Services, whether or not the entity is a Subcontractor, and includes a third-party hosting entity and an outsourced information technology service provider.

**'Third Party IT Provider Deed'** means an agreement between a Third Party IT Provider and the Department of Employment in the terms and form as advised by the Department.

**'Third Party System'** means the information technology system of a Third Party IT Provider.

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

**'WHS Entry Permit Holder'** has the same meaning as that given in the WHS Act.

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

**'WHS Regulations'** means the regulations made under the WHS Act.

**'WMS Assessment Services'** means the services described in Section 6C.

**'Work Order'** means a work order as described in clause 4.

**'Workplace Modifications'** or **'WMS'** means the Australian Government assistance for modifying a workplace or purchasing special services or equipment for eligible employees with disability.

**'Workplace Modifications Assessment'** means an evaluation of the specific work related requirements of a person with disability in response to a request for assistance under the EAF.

**'Workplace Modifications Assessment Report'** means a report prepared by a Provider under Section 6C recommending work related solutions to improve access to work and work productivity.

## **ANNEXURE 1 Code Of Practice**

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

We commit to working with our clients, employees, sub-contractors, and other providers to deliver quality employment services by:

- Ensuring staff have the skills and experience they need to provide quality and culturally sensitive services to job seekers Employers and local communities
- Working in collaborative partnerships with stakeholders and communities to identify needs and how they can be met
- Behaving ethically and acting with honesty, due care and diligence
- Being open and accountable
- Avoiding any practice or activity which a provider could reasonably foresee could bring employment services into disrepute
- Sensitively managing any information collected.

We commit to helping each job seeker find their pathway into employment by:

- Meeting the Service Guarantees
- Tailoring assistance to the job seekers' personal circumstances, skills, abilities and aspirations
- Using available Government funding appropriately to support job seekers
- Treating every job seeker fairly and with respect
- Providing a fair and accessible feedback process.

We commit to assisting Employers meet their skill and labour shortage needs by:

- Working with Employers to identify job and industry specific training needs and how they can be met
- Referring the most appropriately qualified and experienced job seekers available
- Providing a timely response to Employer inquiries.

The Australian Government will support employment services providers in achieving these standards by:

- Evaluating and sharing best practice to enable continuous improvement in the delivery of employment services
- Providing a customer service line on free call 1800 805 260 for job seekers who cannot resolve any concerns or problems they have with their provider. Participants of Disability Employment Services can also contact the free Complaints Resolution and Referral Service on 1800 880 052
- Providing an Employer Hotline on free call 13 17 15 for businesses to access providers.

## **ANNEXURE 2     Service Guarantee**

### ***Disability Employment National Panel of Assessors – Your Service Guarantee***

The Australian Government's Disability Employment National Panel of Assessors provides assessment services to enhance employment participation and support for people with disability. National Panel of Assessors will work cooperatively with clients including people with disability, Employers and Disability Employment Service providers. We will:

- Explain clearly the purpose of the assessment services, what assessment services you will receive, what we will do for you, and what you have to do
- Deliver a professional, confidential and timely service
- Treat you fairly and with respect
- Ensure the information we provide is current and accurate
- Work continually to improve our services
- Produce an independent assessment report taking into consideration information obtained during the conduct of the assessment

#### **What can I expect?**

We will work with you to conduct the following assessments:

- Ongoing Support Assessment for Participants of the Disability Employment Services program
- Supported Wage System Assessment
- Workplace Modifications Assessment

We will contact you prior to conducting the assessment to:

- Explain the purpose and procedure for the assessment
- Make arrangements to meet with you to conduct the assessment
- Agree any special requirements for the assessment, including access to the worksite, OH&S requirements and interpreters
- Answer any questions about the assessment
- Obtain information that may help us to understand your employment requirements and prepare for the assessment
- Provide our contact details to you and be available to answer questions relating to each assessment that we conduct.

When we conduct the assessment, we will:

- Describe the steps involved in the assessment
- Discuss the relevant work tasks, and any issues that impact on performing those tasks
- Behave in a manner that is not obstructive or stressful

- Respect you and the work environment
- Record appropriate information that relates to the assessment and that will assist us in preparing the assessment report
- Ensure that your privacy and dignity are maintained

### **What are my responsibilities?**

If for any reason you are not able to keep an appointment, you should advise us as soon as you can and we will reschedule the appointment.

To ensure that we provide an effective and efficient assessment service to you, you need to provide current and accurate information to us.

If we visit your worksite to conduct assessment services, the Employer should advise us of any special access and OH&S requirements.

### **What happens to what I tell you?**

We will collect information from you for the purpose of completing the assessment.

We will keep all information that you provide in accordance with the *Privacy Act 1988* (Cth).

If you ask, we will usually be able to show you the information we hold about you. If you have any concerns about the way in which information about you is being managed, you can discuss your concerns with us.

More information about the *Privacy Act 1988* (Cth) and the powers of the Information Commissioner can be found on the Office of the Australian Information Commissioner's website at [www.oaic.gov.au](http://www.oaic.gov.au).

### **What can I do if I'm not happy with the assessment service?**

If you are not satisfied with the way we conducted the assessment service, you should first try to talk to us. We will provide a feedback process which is fair and we will try to resolve your concerns.

If you can't do this, or you are still not happy, you can get assistance from one of the following relevant numbers:

Ongoing Support Assessments – contact the National Customer Service Line on 1800 805 260

Supported Wage System Assessments – contact the Supported Wage Management Unit on 1800 065 123

Workplace Modifications Assessments – contact the JobAccess service on 1800 464 800

**ANNEXURE 3 Non-Disclosure Deed**

**DEED POLL as to CONFIDENTIALITY & PRIVACY**

I,  
  
Full name in block letters

of:  
  
Full residential address

employed by:  
  
Name of organisation/company/agency

being a person who is authorised to represent and bind the above named organisation/company/agency (**‘the Recipient’**), agree on behalf of the Recipient for the benefit of the [insert the name of the Provider] (**‘the Provider’**), in connection with any services performed by the Recipient for the Provider (**‘the Works’**) as follows:

- 1. For the purpose of the Works, 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’**.

For the purpose of this clause, **‘Personal Information’** means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

- 2. Subject to clause 3 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 Provider;
  - (c) deliver up to the Provider all Confidential Information in its possession or control, as directed by the Provider; and

