

WAGE ASSISTANCE AGREEMENT TERMS AND CONDITIONS

Interpretation

1.1 In the Agreement:

- (a) **'ABN'** has the same meaning as it has in the *A New Tax System (Australian Business Number) Act 1999*;
- (b) **'Agreement'** means the agreement under which the Employer must provide full-time employment or part-time employment for the Employee and consists of the Application, these Wage Assistance Agreement Terms and Conditions, and the attached Schedule;
- (c) **'Application'** means the Wage Assistance Application and Agreement to which Wage Assistance Terms and Conditions are annexed as 'Annexure A';
- (d) **'Auditor-General'** means the person so appointed in accordance with the *Auditor-General Act 1997* or a properly appointed delegate;
- (e) **'Casual Employee'** and **'Casual Work'** means an employee who is engaged for work on an hourly basis and is paid for time worked. A casual employee generally does not receive payment for public holidays not worked and is generally not entitled to other benefits provided to full-time or part-time employees such as sick leave or annual leave (though under the Standard a casual employee is entitled to unpaid carer's leave and eligible casual employees are entitled to unpaid parental leave). A casual employee generally has no expectation of ongoing employment;
- (f) **'CDEP'** means the Community Development Employment Project programme administered by the Department of Employment and Workplace Relations;
- (g) **'Claim for Payment/ Tax Invoice'** means the claim for payment/ tax invoice in the form as directed by the Department from time to time and that the Employer must completed to the Department's satisfaction and lodge with claims for Wage Assistance;
- (h) **'Centrelink'** means the Commonwealth Services Delivery Agency established by Section 6 of the *Commonwealth Services Delivery Agency Act 1997*;
- (i) **'Commonwealth'** means the Commonwealth of Australia;
- (j) **'Department'** or **'DEWR'** means the Department of Employment and Workplace Relations acting for and on behalf of the Commonwealth or any such department that may exercise these functions from time to time;
- (k) **'Employee'** means an Indigenous Australian who has been employed by the Employer not more that 28 days prior to lodgement with the Department of the Application and who must have been on the date of his or her employment with the Employer:
 - an unemployed Indigenous Australian **and**
 - if 21 years of age, receiving an Eligible Income Support Payment **or**
 - if under 21 years of age, registered with Centrelink or a Job Network member as looking for work **or**
 - participating in a CDEP Programme;
- (l) **'Eligible Income Support Payment'** means an allowance, payment or benefit received in accordance with the *Social Security Act 1991*;
- (m) **'Employer'** means the employer specified in Item 1 of the Application who must:
 - provide full-time employment or part-time employment for the Employee
 - not be in receipt of Wage Assistance for more than 50 per cent of its employees at any one time and
 - not be in receipt of any other wage subsidy in respect of the employment (Job Seeker Account funds are excepted);

- (n) **'Full-time Employment'** has the meaning provided in the relevant industrial award or certified agreement, or, if none is provided, it means at least 35 hours of employment per week;
- (o) **'Group Training Company'** means an entity who provides its employees with New Apprenticeship training and who hires its employees to separate entities for a fee;
- (p) **'GST'** means Goods and Services Tax payable under *A New Tax System (Goods and Services Tax) GST Act 1999*;
- (q) **'Indigenous Australian'** means a person of Aboriginal or Torres Strait Islander descent who identifies as such and is accepted as such by the community in which he or she lives or has lived;
- (r) **'Job Network member'** means an entity contracted to deliver the Department's employment services programme;
- (s) **'Labour Hire Company'** means an entity who hires its employees to separate entities for a fee;
- (t) **'New Apprenticeship'** means the national apprenticeship and traineeship scheme coordinated by ANTA whereby a person enters into a contract of employment and training with employers to receive on-the-job training and are released from attendance at work for periods to attend new apprenticeship training;
- (u) **'Part-time Employment'** has the meaning provided in the relevant industrial award or certified agreement, or, if none is provided, it means at least 15 hours of continuous employment per week;
- (v) **'Personal Information'** and **'Privacy Commissioner'** have the same meaning and the *Privacy Act 1988*;
- (w) **'Ratio of Subsidised Employees'** means the ratio that defines the maximum permissible ratio of subsidised to unsubsidised employees as outlines in **Table 1**;

Number of <u>unsubsidised</u> employees at the workplace	Maximum number of Wage Assistance employees	Total number of subsidised employees allowed
1 to 9	9	9
10 to 12	9+1	10
13 to 15	9+1+1	11
16 to 18	9+1+1+1	12
etc	etc	

- (x) **'Schedule'** means the schedule attached to these Wage Assistance Terms and Conditions;
- (y) **'Taxable Supply'** has the same meaning as found in *A New Tax System (Goods and Services Tax) GST Act 1999*;
- (z) **'Wage Assistance'** means either the full-time employment Wage Assistance subsidy or the part-time Wage Assistance subsidy set out in clause 10 and that is claimable by the employer in the instalments set out in clause 11
- (aa) **'Wage Assistance Period'** means the two periods of 13 weeks each totalling 26 weeks of continuous full-time or part-time employment set out in clause 11;

Commencement and Duration of the Agreement

- 2.1 The Agreement will not commence until the Department has provided notice of its acceptance of the Application.
- 2.2 Unless earlier terminated, the Agreement will end at the expiration of the Wage Assistance Period.

General Rights and Obligations

- 3.1 The Commonwealth and the Employer agree that:
 - (a) any amendments to the Agreement must be agreed in writing between the parties;
 - (b) the Agreement shall be governed by and construed in accordance with the law of the State or Territory in which the application is made;
 - (c) if for any reason the Employee ceases to work for the Employer during the first four (4) weeks of employment, no Wage Assistance will be payable to the Employer, and the Employer will remain eligible to make further applications under the programme;
 - (d) words importing a gender include any other gender. Words in the singular number include the plural and words in the plural number include the singular;
 - (e) clause headings, words capitalised or in bold format and notes in square brackets (“[]”) are inserted for convenience only, and have no effect in limiting or extending the language provisions, except for the purpose of rectifying any erroneous cross-reference;
 - (f) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
 - (g) in the event of any conflict between the terms and conditions contained in the Agreement and any part of the Schedule, then the terms and conditions of the Schedule take precedence.

Employer’s Obligations

- 4.1 The Employer will provide continuous full-time employment or part-time employment to the Employee for not less than the Wage Assistance Period and:
 - (a) comply with Schedule 1 and treat as private and confidential all personal information of the Employee acquired by virtue of, or in connection with the Agreement;
 - (b) provide the Employee with a safe workplace free of sexual harassment and unlawful discrimination which contravenes the *Racial Discrimination Act 1992*;
 - (c) comply with all customary and statutory obligations including all provision of any award, enterprise agreement, certified agreement or industrial agreement to which it is a party;
 - (d) use their best endeavours to provide on-going employment for the Employee for a minimum period of three (3) months beyond the Wage Assistance Period;
 - (e) complete a Claim for Payment/ Tax Invoice immediately if the Employee ceases employment before the end of the Wage Assistance Period and forward it to the Department;
 - (f) notify the Department if:
 - there is any substantial change to the employment arrangements and understand that the Department may decline to pay the Wage Assistance for the new work arrangements; and
 - there is any change of the Employer’s details as set out in the Application;
 - (g) allow the Department, any person authorised by the Department and/ or the Auditor-General:
 - reasonable access to visit the Employee during working hours for monitoring purposes;

- access to any records and any other material held by the Employer to enable the Department or the Auditor-General to monitor the Employer's compliance with the Agreement; and
 - to do all things necessary to monitor the Employee's progress;
- (h) not represent itself as being an employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth;
- (i) acquire and maintain commercial general liability insurance covering liability arising from premises, operations, independent contractors, personal injury, products completed operations, and liability assumed under an insured contract on an occurrence basis, with a limit of not less than \$10million for each occurrence and in the aggregate;
- (j) in respect of the Employee, acquire and maintain a worker's compensation insurance policy and a superannuation policy for the amount required by, and in accordance with the relevant State or Territory legislation; and
- (k) indemnify and hold the Commonwealth harmless in relation to all losses, damages, costs (including legal costs on a solicitor/ own client basis) expenses, claims, demands, actions or suits suffered or incurred by or made or instituted against the Commonwealth as a result, directly or indirectly of a breach by the Employer of its obligations under the Agreement;

4.2 Clause 4.1 survives the expiration or earlier termination of the Agreement.

Labour Hire Company/ Group Training Company or Organisation

- 5.1 If the Employer is a Labour Hire Company or a Group Training Company or Organisation, the Employer must:
- (a) ensure that any contract with an entity to whom the Employee will be hired contains legally enforceable provisions that enable the Employer to meet its obligations under the Agreement;
- (b) in accordance with the Department's direction:
- i. provide the Department with a copy of the Employer's contract with the entity hiring and/ or training the Employee; and
 - ii. enforce the rights the Employer has against the entity hiring the Employee;
- (c) ensure that the Employee's workers' compensation insurance extends to cover any work done by the Employee for any hirer;
- (d) continue to deduct income tax for the Employee in accordance with the relevant taxation legislation; and
- (e) ensure that the benefits of the subsidy, paid for the Employee, are strictly directed to promoting and maintaining the employment of that Employee.

Commonwealth Obligations

- 6.1 Provided that the Employer complies with its obligations under the Agreement and subject to the employer providing to the Department's satisfaction a Wage Assistance Claim for Payment/ Tax Invoice, the Commonwealth will provide Wage Assistance (including GST) to the Employer in accordance with clauses 10 and 11.

Tax Issues

- 7.1 Wage Assistance includes GST for taxable supplies made by the Employer under the Agreement.
- 8.1 In relation to taxable supplies made under this Agreement, the Employer agrees to issue the Department with a Tax Invoice in accordance with the GST Act.
- 9.1 If required by the GST Act, the Department will withhold a certain percentage of the amount claimed under an invoice that does not quote an ABN in respect of the Employer.

Wage Assistance

- 10.1 Notwithstanding any other clause in the Agreement, the maximum amount of Wage Assistance (inclusive of GST) payable by the Department under the Agreement is:
- (a) **\$4 400** for 26 weeks of continuous full-time employment; **or**
 - (b) **\$2 200** for 26 weeks of continuous part-time employment.
- 11.1 Provided that the Employer employs the Employee for the Wage Assistance Period and subject to the Employer's compliance with the Agreement, the Employer may claim Wage Assistance in the instalments set out in either Table A or Table B as follows:

Table A

Wage Assistance Period for full-time Employment	Full-time Employment Wage Assistance instalment amount (including GST claimable)
Instalment 1: Upon completion of 13 weeks of continuous full-time Employment	\$2 200 (including GST)
Instalment 2: Upon completion of 26 weeks of continuous full-time Employment	\$2 200 (including GST)

OR

Table B

Wage Assistance Period for part-time Employment	Part-time Employment Wage Assistance instalment amount (including GST claimable)
Instalment 1: Upon completion of 13 weeks of continuous part-time Employment	\$1 100 (including GST)
Instalment 2: Upon completion of 26 weeks of continuous part-time Employment	\$1 100 (including GST)

- 12.1 Wage Assistance is not payable for:
- (a) the periods after which the employment is terminated or altered without the Department's written consent;
 - (b) unpaid leave in excess of five (5) days;
 - (c) any period for which the Employee is entitled to a workers' compensation payment;
 - (d) any period during which the Employee received the full rate of an Eligible Income Support Payment; or
 - (e) any period during which the Employee received CDEP wages for that position.
- 13.1 Any money paid to the Employer as a result of fraud or misrepresentation by the Employer or employee under the Agreement:
- (a) will constitute a debt; and
 - (b) the value of the money paid must be immediately repaid to the Commonwealth as directed by the Department.

Default

- 14.1 If the Employer is in default under the Agreement on account of the failure to perform or observe any obligation or undertaking to be performed or observed on its part under the Agreement, the Department may, without prejudice to any right of action or remedy which may accrue in favour of the Commonwealth:
- (a) withhold payment of Wage Assistance until the Department determines (in its absolute discretion) that the Employer has satisfactorily met each of its obligations;
 - (b) give notice to the Employer specifying the breach and directing that the breach be rectified within seven (7) days from the date of service of the notice; and
 - (c) if the Employer fails to rectify the breach within seven (7) days from the date of service of the notice referred to in sub-clause 14(b), terminate the Agreement immediately by notice to the Employer without liability to pay damages, compensation or any other termination payment, other than a Wage Assistance component that the Department (in its absolute discretion) determines is properly due to the Employer under the Agreement before the termination.
- 15.1 If the Employer:
- (a) goes into liquidation or a receiver or receiver and manager or mortgagee's or chargee's agent is appointed; or
 - (b) in the case of an individual becomes bankrupt or enters into a scheme of arrangement with creditors, the Department may by written notice, terminate the Agreement without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.

Termination

- 16.1 The Department may at any time by written notice, terminate the Agreement;
- 16.2 On receipt of a notice of termination, the Employer must immediately:
- (a) comply with the terms as specified in the notice; and
 - (b) take all available steps to minimise loss resulting from that termination;
- 16.3 The Commonwealth will not be liable to pay compensation in any amount which the Department (in its absolute discretion) determines will, in addition to any amounts paid or due, or becoming due, to the Employer under the Agreement together exceed the Wage Assistance set out in clause 10;
- 16.4 The employer will not be entitled to compensation for loss of prospective profits.

Notices

- 17.1 Any notice, request or other communication to be given or served in relation to the Agreement must be in writing (including facsimile, email or electronic lodgement) and dealt with as follows:
- (a) if given by the Employer to the Department, addressed and sent to Wage Assistance, Department of Employment and Workplace Relations, GPO Box 9879, Loc code 10M43, Canberra 2601 or otherwise notified by the Department; or
 - (b) if given by the Department to the Employer, addressed and sent to the Employer's address as set out in the Application.

Special Terms and Conditions applicable only where the Agreement operates as a Memorandum of Understanding (MOU)

Where the Employer is a Commonwealth Department or Agency, the Agreement will be constructed and have effect as a Memorandum of Understanding (MOU).

Protection of Personal Information (Subclause 4.1(a))

- 1.1 In respect of this Agreement, the Employer agrees:
- (a) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the *Privacy Act 1988* which if done or engaged in by the Department would amount to a breach of that IPP;
 - (b) to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act and, in particular, comply with the requirements relating to the collection, storage, access, alteration, use and disclosure of Personal Information created or obtained as a result of the Employer performance of the Agreement;
 - (c) not to engage in an act or practice that would breach the *Privacy Amendment (Private Sector) Act 2000*. This includes, but is not limited to:
 - i. an act or practice that would be a breach of a National Privacy Principle (NPP) contained in Schedule 3 of the Privacy Act where applicable (or an approved privacy code binding a party to the Agreement) and in particular NPPs 7 to 10 except where that act or practice is authorised by the Agreement; and
 - ii. using or disclosing any Personal Information obtained in the performance of the Agreement for direct marketing purposes, unless that use or disclosure is necessary to meet an obligation under the Agreement;
 - (d) to carry out and discharge the Employer's obligations contained in the NPPs (or an approved privacy code binding a party to the Agreement);
 - (e) to inform in writing any person who requests to be informed of the content of provision of the Agreement that are inconsistent with a NPP or an approved privacy code binding a party to the Agreement;
 - (f) to immediately notify the Department if the Employer becomes aware of a breach or possible breach of any obligations contained in, or referred to in subclause 1.1 whether by the Employer or any sub contractor;
 - (g) to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth arising out of, or in connection with a breach of any of the obligations of the Employer under this clause; and
 - (h) to comply with any directions, guidelines, determinations or recommendations relating to Personal Information made by the Privacy Commissioner or by the Department.
- 1.2 The Employer will not enter into any sub contract for the purpose of directly or indirectly fulfilling its obligations under this Agreement unless such a sub contract obliges the sub contractor to comply with equivalent provisions to those contained in this Schedule 1.
- 1.3 The Employer will indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth arising out of or in connection with a breach of any of the obligations of a sub contractor under subclause 1.2.
- 1.4 The provisions of this Schedule 1 survive the expiration or earlier termination of the Agreement.