

Transfer of disability services – employer commitments after transfer

There is an agreement between the Department of Family and Community Services and the service provider that you are transferring to. This agreement is legally enforceable and forms part of the contract between FACS and the service provider.

The purpose of this fact sheet is to provide all staff with extracts from the agreement that relate to the employment commitments that have been made by the new provider.

Schedule 8 of the agreement is enclosed and details the service provider's commitment to employees that will come into effect post-completion date. The agreement is a legal document and uses formal language and style.

If you have any questions please speak with your manager. Alternatively you can email HRDisabilityOperations@facs.nsw.gov.au.

If you find that you need additional support during this time, we encourage you to contact the free and confidential Employee Assistance Program on 1300 687 327.

Sections that relate to employer commitment

Schedule 8

Purchaser obligations regarding Employees (Employee Commitments)

From Completion, the Purchaser acknowledges and agrees, and undertakes to procure that:

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(a) **(Same terms)** the Purchaser must continue to employ each Transferring Employee on the terms and conditions of their employment applying immediately prior to Completion, including in respect to:

- (i) benefits arising under the *Government Sector Employment Act 2013* (NSW) or *Government Sector Employment Regulations 2014* (NSW), and
- (ii) Transferring Employees on or affected by parental leave, workers' compensation leave or return to work arrangements or Secondary Employment Consent Arrangements.

(iii) The terms and conditions of a Transferring Employee may be varied consistent with the terms of employment including by consent between the Transferring Employee and the Purchaser, subject to clause (b) below;

(b) **(Bound by Relevant Industrial Instruments)** the Purchaser is covered by the Relevant Industrial Instruments which applied to the employment of Transferring

Employees immediately before Completion and will remain covered by the Relevant Industrial Instruments in respect of the Transferring Employees at all times during the Employment Guarantee Period, and thereafter subject to the provisions of the *Fair Work Act 2009* (Cth) and the remainder of this Schedule 8;

(c) (**Employment Guarantee Period**) the Purchaser will not terminate the employment of a Transferring Employee during the applicable Employment Guarantee Period, except:

(i) for serious misconduct;

(ii) under the proper application of reasonable disciplinary procedures; or

(iii) by agreement with the relevant Transferring Employee;

(d) (**Recognition of previous service**) the Purchaser must recognise the previous service of each Transferring Employee with the Vendor (including other service recognised by the Vendor for the purpose of the Transferring Employee's employment with the Vendor) for all purposes (which for the avoidance of doubt includes accrued but untaken paid personal/carer's leave, and extended leave) apart from any accrued leave in respect of which the Transferring Employee has received payment;

(e) (**Continuity of service**) the Purchaser recognises that continuity of each Transferring Employee's period of service is not broken by virtue of the Employees Transfer Order (or the resulting transfer of employment) or otherwise the transfer of an Identified Workers Compensation, Long Term Absent or Illness Employee other than by the Employees Transfer Order, and that all prior services of a Transferring Employee with the Vendor (or recognised by the Vendor) will be recognised for the purposes of calculating Employee Benefits from Completion;

(f) (**Recognition of Employee Entitlements**) the Purchaser must recognise the Employee Entitlements and other accrued Employee Benefits as at the Effective Time of each Transferring Employee;

(g) (**Superannuation**) the Purchaser must comply with clause 14 of the Agreement to which this Schedule is attached in respect of all superannuation benefits and schemes of the Transferring Employees; and

(h) (**Waiver of anti-discrimination exemptions**) notwithstanding any available exemption under state or federal antidiscrimination law in relation to acts or practices adopted to conform to the doctrines of a religion or necessary to avoid injury to the religious susceptibilities of the adherents of that religion (**Anti-Discrimination Exemption**), the Purchaser must not during the Employment Guarantee Period rely on such Anti-Discrimination Exemption in the conditions offered to, or any other treatment of a Transferring Employee, and must otherwise comply with applicable anti-discrimination laws as if such Exemptions do not apply.