

# Draft 2022 Standard VET Funding Contract

## Skills First Program

BETWEEN The State of Victoria through the Secretary of the Department of Education and Training  
(the **Secretary**)  
ABN 52 705 101 522

2 Treasury Place  
East Melbourne VIC 3002

AND The registered training organisation that has agreed to be bound by the terms of this VET Funding Contract by way of signing and submitting an acceptance form (the **Training Provider**)

VERSION	DATE	COMMENTS
1.0	31 August 2021	

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## BACKGROUND

- A. Government funded vocational education and training is dealt with under Part 3.1 of Chapter 3 of the Act.
- B. Section 3.1.2(1) of the Act provides for the Secretary to:
  - a) enter into a VET funding contract with a registered training organisation in relation to the provision by the registered training organisation of vocational education and training that is funded wholly or partially by the State; and
  - b) make payments to registered training organisations that provide or intend to provide vocational education and training on any terms and conditions the Secretary thinks fit.
- C. An individual has a guaranteed place in a government-subsidised program of training if they meet, and the program of training meets, the criteria set out in section 1.2.2(2)(e) of the Act.
- D. The Skills First Program is the way that training providers are contracted in Victoria to deliver government-subsidised training to individuals.
- E. By applying for, and accepting, a VET Funding Contract, a training provider has represented that it will comply with the requirements of the Skills First program. This includes its agreement that:
  - a) these requirements are significantly more onerous than the legal requirements that otherwise apply to registered training organisations. This is on the basis that government subsidisation is being provided; and
  - b) it has carried out all relevant investigations to acquaint itself with its contractual obligations.
- F. The purpose of each VET Funding Contract is to set out the conditions under which the Department will provide funding, and that training providers must meet, including:
  - a) providing quality training suitable for each individual so it enables them to be:
    - i) skilled to be job-ready;
    - ii) prepared for further education; and/or
    - iii) given access to training if they are disadvantaged learners;
  - b) record-keeping, reporting and auditing to maintain high standards of probity and accountability in the use of public funds; and
  - c) meeting the Department's expected standards of behaviour and practice.
- G. Each VET Funding Contract also includes the terms and conditions of the Department's funding for special initiatives, as described in Schedule 3 (where applicable).

## ACRONYMS AND ABBREVIATIONS USED IN THIS CONTRACT

### General

ADC	Australian Disputes Centre Limited ABN 87 003 042 840
AQF	Australian Qualifications Framework
AQTF	Australian Quality Training Framework
ASQA	Australian Skills Quality Authority
AVETMISS	Australian Vocational Education and Training Management Information Statistical Standard
CEO	Chief Executive Officer (or equivalent)
GST	Goods and Services Tax
NCVER	National Centre for Vocational Education and Research
SVTS	Skills Victoria Training System
TOID	Training Organisation Identifier (or Training Provider Code)
VCAL	Victorian Certificate of Applied Learning
VCE	Victorian Certificate of Education
VET	Vocational education and training
VRQA	Victorian Registration and Qualifications Authority

### Legislation

The Act	<i>Education and Training Reform Act 2006 (Vic)</i>
Corporations Act	<i>Corporations Act 2001 (Cth)</i>
GST law	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>
Human Rights Charter	<i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i>
Health Records Act	<i>Health Records Act 2001 (Vic)</i>
National Act	<i>National Vocational Education and Training Regulator Act 2011 (Cth)</i>
National RTO Standards	<i>Standards for Registered Training Organisations (RTOs) 2015 (Cth) and its User Guide</i>
PDP Act	<i>Privacy and Data Protection Act 2014 (Vic)</i>

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## REFERENCE DOCUMENTS ISSUED BY THE DEPARTMENT OF EDUCATION AND TRAINING

Guidelines About Apprenticeship/Traineeship Training Delivery  
Guidelines About Eligibility  
Guidelines About Fees  
Literacy and Numeracy Support Implementation Guide  
The Skills First Quality Charter ('the Quality Charter')  
Victorian Purchasing Guide  
Victorian VET Student Statistical Collection Guidelines

## 1. DEFINITIONS AND INTERPRETATION

### Definitions

1.1 In this Contract, unless the contrary intention appears:

**Activity End Date** means the date reported as such in a Student Statistical Report for an individual's enrolment in an individual subject.

**Activity Start Date** means the date reported as such in a Student Statistical Report for an individual's enrolment in an individual subject.

**Apprentice** has the meaning given to it in the Act.

**Approved Training Scheme** means a training scheme approved under section 5.5.2 of the Act.

**Brokering Services** means the recruitment of individuals to participate in Skills First subsidised training in exchange for payment from the Training Provider or the student. It excludes activities carried out by individuals who are employees of the Training Provider on the Training Provider's payroll, whose role includes the identification and recruitment of potential students.

**Business Day** means a day which is not a Saturday, Sunday or a public holiday in Melbourne, Victoria.

**Business Hours** means the hours from 9.00am to 5.00pm on a Business Day.

**Change in Control** means that any person ceases to have or commences having, directly or indirectly, Control of the Training Provider, but excludes any such event resulting from the transfer of shares or other securities on a stock exchange.

**Claim** means any cause of action, allegation, claim, demand, debt, liability, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent or at Law (including negligence), in equity, under statute or otherwise.

**Commencement Allocation** means the maximum number of commencements that the Department will fund under this Contract (subject to all other eligibility and funding restrictions), as specified:

- a) in Schedule 2 and varied from time to time by the Department under Clause 5; or
- b) where applicable, in Schedule 3.

**Commencement Date** means the later of:

- a) 1 January 2022; and
- b) the date on which this Contract is entered into by means of the Training Provider taking the action required by the Department to accept the Department's contract offer.

**Confidential Information** means all confidential or commercially sensitive information of a Party, but does not include information that is already in the public domain (other than due to a breach of this Contract).

**Contact Hour Funds** means the funds paid or payable by the Department under this Contract for the Scheduled Hours of supervised training and assessment reported for a Skills First Student.

**Contract** means this VET Funding Contract and includes all schedules, annexures, attachments, plans and specifications and exhibits to it.

**Contract Notification** means a document issued by the Department via the SVTS that either provides specific information or advice about aspects of this Contract or formally notifies the Training Provider of a variation to this Contract.

**Control** means, with regard to an entity:

- a) the legal, financial or equitable ownership, directly or indirectly, of 50 percent or more of the share capital (or other ownership interest, if not a corporation limited by shares) of the entity;
- b) the ability to cast, or control the casting, of a majority of votes at the meeting of members of the entity; or
- c) control of, or having the capacity to control:
  - i) the composition of the board or other decision-making body of the entity; or
  - ii) decision making (directly or indirectly) in relation to the financial and operating policies of the entity,

whether or not the ability or control referred to in paragraph (b) or paragraph (c) is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that entity or otherwise.

**Department** means the State of Victoria acting through the Department of Education and Training (or its successor).

**Deputy Secretary** means the person holding, acting in, or performing the duties of Deputy Secretary of Higher Education and Skills in the Department.

**Disallowed Person** means any person (which, to avoid doubt, includes any of the types of entity specified in Clause 1.2(h)) who, since 1 January 2011:

- a) was a registered training organisation that was party to a contract with the Department regarding government-subsidised training which the Department terminated for any reason other than on a ground equivalent to one of the grounds specified in Clauses 17.4(f), 17.4(g) and 17.4(h), or a Relevant Person at such a registered training organisation;
- b) was a registered training organisation that was subject to an Other VET Funding Arrangement Termination Event, or a Relevant Person at such a registered training organisation; or
- c) was responsible, via their acts or omissions, for any of the matters raised in paragraphs (a) or (b) of this definition occurring to another person or entity.

**Dispute** means a dispute about this Contract.

**Dispute Notice** means a Notice setting out details about a Dispute that is given under Clause 15.

**Enrolment Type** means whether a particular program is being delivered as an Apprenticeship, a Traineeship, or neither an Apprenticeship nor Traineeship ('non-Apprenticeship/Traineeship') as specified in the Funded Programs Report and/or in Schedule 2.

**Evidence of Fee Concession/Fee Waiver** means evidence of a Skills First Student's entitlement to a Fee Concession or Fee Waiver for Skills First subsidised training, in accordance with the Guidelines About Fees.

**Evidence of Eligibility** means evidence of an individual's eligibility for Skills First subsidised training in accordance with the eligibility requirements set out in this Contract and the Guidelines About Eligibility.

**Evidence of Participation** means evidence provided by the Training Provider of an individual's participation in learning and/or assessment, as required under Clause 9 of Schedule 1 of this Contract.

**Executive Director** means the person holding, acting in, or performing the duties of Executive Director, Training Market Services Division, of the Department.

**Executive Officer**, in relation to an entity, means:

- a) a person (by whatever name called and whether or not a director of the entity) who is concerned in, or takes part in, the management of the entity;
- b) if the entity is a body corporate:
  - i) a person who owns 15% or more of the entity; or
  - ii) a person who is entitled to receive 15% or more of dividends paid by the entity;
- c) an administrator, receiver and manager, or liquidator of the entity (other than a receiver and manager, or liquidator, appointed by a court);
- d) if the entity is a body corporate, the administrator of a deed of company arrangement executed by an entity; or
- e) if the entity is a body corporate, a trustee or other person administering a compromise or arrangement made between the entity and another person or other persons.

**Fee Concession** means a concession on tuition fees granted, or to be granted, in circumstances where this Contract or the Guidelines About Fees specify that the Training Provider must grant a concession on tuition fees to a Skills First Student.

**Fee Concession Contribution** means the contribution to be paid by the Department to the Training Provider when the Training Provider grants a Fee Concession to a Skills First Student, as detailed in Clauses 11.5 and 11.6 of Schedule 1 of this Contract.

**Fee Waiver** means a waiver of tuition fees granted, or to be granted, in circumstances where this Contract or the Guidelines About Fees specify that the Training Provider must not charge a tuition fee, or where the Department otherwise directs that a tuition fee must not be charged, to a Skills First Student.

**Fee Waiver Contribution** means the contribution to be paid by the Department to the Training Provider when the Training Provider grants a Fee Waiver to a Skills First Student, as detailed in Clauses 11.7 and 11.8 of Schedule 1 of this Contract.

**Foundation Skills Approved Provider List** means a list of training providers approved by the Department to receive funds for delivery of Foundation Skills Programs.

**Foundation Skills Program** means a program identified as a Foundation Skills Program, on the Funded Programs Report.

**Funded Programs Report** means a report issued and approved by the Department that includes educational and accredited vocational training programs (but not including higher education courses), as varied by the Department from time to time (including by adding programs to, or removing programs from, or changing the 'Effective for PCD from'/'Effective from PCD to' dates in the report at any time).

**Funded Scope** means the specific list of programs the Training Provider is entitled to be paid Funds for delivering under this Contract, as set out in Schedule 2 (and Schedule 3 where applicable) and varied from time to time.

**Funded Skill Set List** means the list of programs that are identified as Skill Sets on the Funded Programs Report.

**Funds** means the money provided, or to be provided, by the Department to the Training Provider under this Contract for a Skills First Student, consisting of:

- a) the Contact Hour Funds;
- b) if applicable, the Fee Concession Contribution;
- c) if applicable, the Fee Waiver Contribution; and
- d) if applicable, any special initiative payments described in a schedule to this Contract.

**High Managerial Agent**, in relation to an entity, means an employee or agent of the entity with duties of such responsibility that their conduct may fairly be assumed to represent the entity in relation to its business (which, where the entity is the Training Provider, means its business connected with the delivery of programs of training).

**Hours Attended** means the hours of supervised training and assessment that a Skills First student participated in prior to their withdrawal from a subject.

**Incentives** means any incentives, including:

- a) financial incentives; and/or
- b) non-financial incentives, including in the form of goods, services or rewards.

**Insolvency Event** means:

- a) the Training Provider disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- b) the Training Provider ceases to carry on business;
- c) an order is made by a court of competent jurisdiction for the winding up or dissolution of the Training Provider;
- d) any step is taken to appoint a receiver, receiver and manager, trustee in bankruptcy or similar officer over all or any of the assets or undertakings of the Training Provider and is not discontinued or withdrawn within five Business Days;
- e) any step is taken by a mortgagee to take possession either directly or by an agent over all or any of the assets, operations, or undertakings of the Training Provider and is not discontinued or withdrawn within five Business Days;
- f) any step is taken to appoint a liquidator or provisional liquidator to the Training Provider and is not discontinued or withdrawn within five Business Days;
- g) any step is taken to appoint an administrator to the Training Provider, or for the Training Provider to enter into a deed of company arrangement;
- h) any step is taken to enter into any arrangement between the Training Provider and its creditors; or
- i) any similar event occurring in relation to the Training Provider.

**Intellectual Property Rights** means any intellectual property rights, including copyright, patents, trade marks, designs, circuit layout rights and rights in respect of the disclosure and use confidential information (including know-how and trade secrets), rights to apply for, and applications for, registration of any such rights, and all other intangible property rights including moral rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Law** means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time, the common law and equity as applicable from time to time and any applicable industry codes of conduct.

**Learn Local Organisation** means a registered training organisation that is a community owned and managed not-for-profit that is registered with the Adult, Community and Further Education Board (as continued under the Act).

**Literacy and Numeracy Support Units** means approved literacy and numeracy support units as designated by the Department in the Literacy and Numeracy Support Implementation Guide, which are used to address individual needs of vocational learners to facilitate completion of a program of training under the Skills First Program.

**Loss** means any loss, damage, liability, cost or expense (including legal expenses on a full indemnity basis) of any kind suffered or incurred or agreed to be paid by way of settlement or compromise and includes any direct, indirect, special or consequential loss or damage, including loss of profits, loss of production, loss or corruption of data, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expenses and damage to property, personal injury and death.



**Material Breach** means any material breach by the Training Provider of its obligations under this Contract, which is deemed to include the Training Provider failing to:

- a) meet any of its obligations set out in:
  - i) Clause 4.8 (act ethically);
  - ii) Clause 6 (subcontracting);
  - iii) Clause 11.2 (audit participation);
  - iv) Clause 1 of Schedule 1 (student information and protection);
  - v) Clause 3 of Schedule 1 (assessing and evidencing eligibility);
  - vi) Clause 4 of Schedule 1 (Pre-Training Review and enrolment requirements);
  - vii) Clause 5 of Schedule 1 (tuition and other fees);
  - viii) Clause 6 of Schedule 1 (planning for training and assessment);
  - ix) Clause 7 of Schedule 1 (training and assessment);
  - x) Clause 9 of Schedule 1 (Evidence of Participation);
  - xi) Clause 10.3 of Schedule 1 (specific data elements);
  - xii) Clause 10.8 of Schedule 1 (reporting withdrawals);
  - xiii) Clause 11.19 of Schedule 1 (claims for payment); or
  - xiv) Paragraph 4 of Attachment 1 of Schedule 2 for Non-Victorian Training Providers delivering to a national enterprise (deliver training to at least 50 Victorian employees); or
- b) provide training and assessment to Skills First Students consistently with, and in a manner that promotes achievement of, the objectives in Clause 3.1 (as required by Clause 4.13).

**Maximum Payable Hours** means the number of hours specified for each program in the 'Maximum Payable Hours' field in the Funded Programs Report.

**Minister** means the Minister for Training and Skills (or their successor).

**Notice** means a communication given under this Contract by a Party to the other Party that must occur in accordance with Clause 14.

**Online Training and Assessment** means delivery of supervised training and/or assessment by the Training Provider in a way that requires a Skills First Student to access a digital network.

**Other VET Funding Arrangement** means:

- a) approval under the *Higher Education Support Act 2003* (Cth) to offer VET Student Loans to eligible individuals;
- b) a Smart and Skilled contract entered into with the State of New South Wales through its Department of Industry, Skills and Regional Development (or its successor);
- c) a Vocational Education and Training (VET) Pre-qualified Supplier (PQS) Agreement entered into with the State of Queensland through its Department of Education and Training (or its successor);
- d) a WorkReady accredited training services agreement or skills agreement entered into with the State of South Australia through its Minister for Employment, Higher Education and Skills (or its successor);
- e) a purchase of training services contract entered into with the VET (WA) Ministerial Corporation (or its successor);
- f) a Skills Tasmania agreement entered into with the State of Tasmania as represented by its Department of State Growth trading as Skills Tasmania (or its successor);
- g) an ACT funding agreement for registered training organisations; or

- h) any other arrangement under which a registered training organisation is approved to receive government subsidies for the provision of vocational education and training in any Australian jurisdiction (including any alteration, supplement or replacement of any of the contracts or other arrangements referred to in paragraphs (a) to (g)).

**Other VET Funding Arrangement Termination Event** means, in relation to a registered training organisation, any Other VET Funding Arrangement is terminated in relation to that registered training organisation, other than a termination that affects a number of registered training organisations and is for reasons of government policy or other reasons not associated with that registered training organisation's performance under the Other VET Funding Arrangement.

**Parties** mean the parties to this Contract.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Practical Placement** means the placement of a Skills First Student in a workplace to develop or reinforce skills relevant to their Skills First funded training, whether or not that work experience is voluntary or mandated as a program requirement and whether or not that placement is undertaken with the Skills First Student's own employer or a host organisation.

**Pre-Training Review** means the process undertaken between the Training Provider and a prospective Skills First Student to determine the most suitable and appropriate training for that individual, as described in Clauses 4.1 to 4.5 of Schedule 1.

**Program Allocation** means the maximum number of commencements for a specified program that the Department will fund under this Contract (subject to all other eligibility and funding restrictions), as specified in Schedule 2 and amended from time to time by the Department under Clause 5.

**Program Commencement Date** means the date of first scheduled training for the first subject towards the completion of the program the Skills First Student has enrolled in.

**Program Delivery Plan** means an electronic form submitted by a Training Provider via the SVTS describing the types of training it intends to deliver.

**Record** means any 'document' within the meaning of the *Evidence Act 2008 (Vic)* that is created by the Training Provider or any Training Provider Personnel, or is in or enters the possession of the Training Provider or any Training Provider Personnel, under or in the course of the Training Provider performing its obligations under this Contract.

**Regulatory Standards** means:

- a) the AQF;
- b) the National RTO Standards or the AQTF; and
- c) any other guidance issued from time to time by the relevant regulator (being VRQA or ASQA, as applicable) under its relevant standards.

**Related Training Provider** means a registered training organisation that is any of the following:

- a) an entity that Controls, is Controlled by or under common Control with the Training Provider (whether directly or indirectly);
- b) an entity with whom the Training Provider has an arrangement, agreement or understanding for the purpose of providing the Training Services; or
- c) an entity one of whose Relevant Persons is:
  - i) a Relevant Person of the Training Provider or an entity referred to in paragraph (a); or
  - ii) a 'relative' (as defined in the Corporations Act) of a person referred to in paragraph (c)(i).

**Relevant Person** means, in relation to an entity:

- a) any Executive Officer or High Managerial Agent of the entity; or
- b) any person or entity which exercises a material degree of control or influence over the management or direction of any material part of the business of the entity (which, where the entity is the Training Provider, means its business connected with the delivery of programs of training).

**RPL** means recognition of prior learning, being an assessment process that assesses the competency of an individual that may have been acquired through formal, non-formal (such as previously unrecognised skills and knowledge), or informal learning. This process determines the extent to which an individual has achieved the required learning outcomes of, competency outcomes of, standards for entry into, and/or partial or total completion of, a program of study. To avoid doubt, RPL does not include credit transfer or recognition of current competency.

**Scheduled Hours** has the same meaning as given to it in the Victorian VET Student Statistical Collection Guidelines.

**Segregation of Duties** means the assignment of different people in the responsibility of authorising transactions, recording transactions and maintaining custody of assets with the intention of reducing the opportunities to allow any person to be in a position to both perpetrate and conceal fraud or error due to fraud in the normal course of their duties.

**Skills First Entitlement** means the entitlement to a government-subsidised place in training for persons who are eligible in accordance with the criteria set out in the Act or established under the Act, and reflected in this Contract.

**Skills First Program** means the Victorian Government's program for funding individuals' Skills First Entitlement.

**Skills First Student** means an individual who is eligible for Skills First subsidised training in accordance with the eligibility requirements specified in this Contract and who is enrolled at the Training Provider into such training.

**Skills First Teacher** means an individual trainer and/or assessor who is:

- a) employed directly by the Training Provider;
- b) engaged by the Training Provider as a Sole Trader; or
- c) engaged by the Training Provider through a subcontract arrangement which meets the conditions of Clause 6 of this Contract,

for the purpose of delivering training and/or assessment elements of the Training Services.

**Skills for Victoria Program** means the program of that name.

**Skill Set** means a program that is on the Funded Skill Set List and may include:

- a) an accredited course with the title 'Course in...';
- b) a nationally recognised skill set;
- c) a single accredited subject; or
- d) a group of accredited subjects approved by the Department.

**Sole Trader** means an individual who carries on business as a sole trader rather than through a company or other body corporate, corporation sole, body politic, partnership, incorporated association, unincorporated association or trust and who (if there is an ABN in relation to that business) holds the ABN in their individual capacity.

**State** means the Crown in right of the State of Victoria.

**Statement of Fees** means a document for each Skills First Student that sets out fee and other information required by the National RTO Standards and the Guidelines about Fees.

**Structured Training: Off-the-job** means the training and assessment that the Training Provider delivers in a formal setting to Apprentices or Trainees. It is often referred to as 'trade school' or 'block release'.

**Structured Training: Workplace-based** means the training and assessment organised to take place in the workplace by the Training Provider for Apprentices or Trainees. It takes place when the Apprentice or Trainee is withdrawn from regular work duties.

**Student Statistical Reports** means reports provided to the Department in accordance with the Victorian VET Student Statistical Collection Guidelines.

**Term** means the term of this Contract, as set out in Clause 2.2.

**Trainee** means an individual enrolled in an Approved Training Scheme that has been deemed a traineeship by the VRQA.

**Training and Assessment Strategy** means the document or documents created by the Training Provider which details its plan to deliver training and assessment of a particular program, and for each cohort that particular program will be delivered to, as described in Clauses 6.1 to 6.4 of Schedule 1.

**Training Contract** means an agreement signed by the employer and the Apprentice or Trainee (and a parent or guardian if applicable), in accordance with the Act and Regulatory requirements.

**Training Package** means a set of qualifications and units of competency developed to meet the training needs of an industry, or a group of industries, and endorsed at the national level.

**Training Plan** means the plan for training and assessment to be delivered to a Skills First Student created by the Training Provider under Clauses 6.5 to 6.20 of Schedule 1.

**Training Provider Group** means the Training Provider and any other registered training organisation that is a Related Training Provider, other than by reason of paragraph (b) of that term.

**Training Provider Personnel** means:

- a) all officers, employees, agents and contractors (including subcontractors) of the Training Provider; and
- b) in respect of each contractor of the Training Provider, all officers, employees, agents and contractors (including subcontractors) of that contractor,

who are involved in any way with the delivery or support of any of the Training Services or otherwise with the Training Provider fulfilling its obligations under this Contract (including Skills First Teachers and administrative staff).

**Training Services** means all activities undertaken, or required under this Contract to be undertaken, in relation to the delivery of Skills First subsidised training, including:

- a) student attraction activities, including marketing and advertising, in relation to any training within the Training Provider's Funded Scope;
- b) the provision of information about program offerings, fees, support and the impact on an individual's Skills First Entitlement;
- c) conduct of the Pre-Training Review;
- d) testing any individual's eligibility for training subsidised through the Skills First Program and any relevant Fee Concession or Fee Waiver;
- e) enrolment of individuals into a program, including undertaking any enrolment processes required under this Contract;
- f) development and documentation of a Training Plan;
- g) levying fees, including implementing any Fee Concessions or Fee Waivers;
- h) delivering training and assessment;
- i) collecting and maintaining evidence relating to (a) to (h) above, as required under this Contract;
- j) reporting data and other information to the Department as required under this Contract; and

- k) any other matters that reasonably relate to the conduct of the activities set out in paragraphs (a) to (j).

**Victorian Skills Gateway** means the Department's website for VET in Victoria.

**Victorian Training Guarantee Program** means the program of that name.

### Interpretation

1.2 In this Contract, unless the context otherwise requires:

- a) words importing any gender include all genders;
- b) the plural includes any singular and vice versa;
- c) a reference to 'dollars' or '\$' is a reference to the lawful currency of Australia;
- d) a reference to a statute, ordinance, code or other law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it;
- e) a reference to any legislation or statutory instrument is construed in accordance with the relevant interpretation of that legislation or statutory instrument;
- f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time (whether or not its title remains the same);
- g) a reference to a Party includes the executors, administrators, successors and permitted assigns of that Party;
- h) a reference to a person includes a natural person, body corporate, partnership, association, governmental or local government authority or agency or other entity;
- i) a reference to a recital, clause, schedule or annexure is a reference to a recital, clause, schedule or annexure to this Contract;
- j) a cross-reference to a Clause is a reference to all its subclauses;
- k) where a term is defined, the definition includes all grammatical forms of that term;
- l) headings are used for reference only;
- m) terms which are defined in a schedule and which are not otherwise defined in this Contract have the meaning given to them in that schedule;
- n) acronyms, abbreviations and other terms that are identified in the 'acronyms and abbreviations' section of this Contract have the meaning given to them in that section;
- o) a reference to a document specified in the 'reference documents issued by the Department of Education and Training' section of this Contract means the document of that name issued by the Department from time to time;
- p) the meaning of general words is not limited by specific examples introduced by 'including', 'for example', 'such as' or similar expressions;
- q) a reference to a program, or program of training, includes AQF qualifications endorsed in Training Packages and Skill Sets;
- r) a reference to a subject includes units of competency and modules;

- s) where appropriate to the context, where there are words and expressions that are not defined in this Contract but which have a meaning in the GST Law, that meaning will apply to this Contract; and
  - t) where a Clause requires an action to be undertaken in accordance with the National RTO Standards, this applies regardless of whether the Training Provider is registered with ASQA or VRQA.
- 1.3 Where there is ambiguity in the interpretation of this Contract, the objectives in Clause 3.1 will be applied to aid in the resolution of the interpretation, provided this does not limit and is not inconsistent with any of the Training Provider's obligations or the Department's rights or powers under, or any other provision of, this Contract.

#### **Schedules to this Contract**

- 1.4 Any additional provisions or conditions set out in Schedules (as amended from time to time) form part of this Contract, including:
- a) Schedule 1 – Skills First program specifications;
  - b) Schedule 2 – Individual details and conditions; and
  - c) Schedule 3 – (if applicable to the Training Provider) Special initiatives.

#### **Priority**

- 1.5 If there is any conflict or inconsistency between:
- a) any Contract Notification;
  - b) any part of Schedule 2;
  - c) Clauses 1 to 19 in the body of this Contract;
  - d) Schedule 1;
  - e) (if applicable to the Training Provider) any part of Schedule 3; or
  - f) any other document the Training Provider must comply with under this Contract (including policies, directions or any other requirements issued under Clause 4.7),

then the provision specified higher in this Clause 1.5 will prevail over the provision specified lower to the extent of the conflict or inconsistency, except that a document specified in Clause 1.5(f) will take higher priority over this Contract if specified in a Contract Notification or in another Clause of this Contract.

#### **Powers, functions and discretion of the Department**

- 1.6 Powers, functions and discretions of the Department under this Contract:
- a) may be carried or exercised out by officers of the Department or other persons who have delegated authority or who are otherwise engaged by the Department; and
  - b) will, when they are carried out or exercised by the Department or any person engaged by the Department, be taken as having been carried out or exercised by the Secretary (or their delegate).

- 1.7 Except as expressly set out in this Contract, the Department may, in its discretion:
- a) give any approval or consent under this Contract conditionally or unconditionally, or withhold that approval or consent; and
  - b) exercise any power or function conferred on it under this Contract.
- 1.8 No provisions in this Contract shall in any way fetter, restrict, or prevent the exercise by the Department of discretions, elections or options available to the Department under legislation which is applicable to the Department (including the Act).
- 1.9 It is not necessary for the Department to make payment before enforcing any of its rights, including any right of indemnity, conferred by this Contract.
- 1.10 The Department may take account of the Training Provider's performance under this Contract (including as assessed through any audit, review or investigation) in any calendar year when considering future contractual arrangements with the Training Provider.

**General**

- 1.11 This Contract is governed by the law of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and courts of appeal from them.
- 1.12 If a provision in this Contract is held to be illegal, invalid, void, voidable or unenforceable, that provision will be read down or severed, to the extent necessary to ensure that all other provisions of this Contract are enforceable.
- 1.13 The provisions of this Contract do not merge or terminate on completion of the transactions contemplated within it, but to the extent that they have not been fulfilled and satisfied or are capable of having effect, remain in full force and effect.
- 1.14 The Training Provider must not assign, transfer, novate or otherwise deal with this Contract or any right under it without the prior written consent of the Department, including in accordance with Clause 6 (Subcontracting).
- 1.15 A Party to this Contract:
- a) is not an agent, partner, joint venturer or representative of the other Party, and must not hold itself out as such; and
  - b) must not make any promise, warranty or representation or execute any contract or otherwise deal on behalf of the other Party.

**Waiver of a right or obligation, or variation of this Contract**

- 1.16 Any waiver of a right or obligation of this Contract must be in writing signed on behalf of the Party waiving the right or obligation and is effective only to the extent specifically set out in that waiver.
- 1.17 This Contract may be varied either:
- a) by the Department by issuing a Contract Notification or a Notice to the Training Provider where:
    - i) the variation imposes no material burden upon, or causes no material disadvantage to, the Training Provider and is reasonably necessary to protect the Department's legitimate interests;

- ii) it considers that a variation is necessary in light of a change in policy or to ensure the proper and responsible administration of the Funds and of the Skills First Program budget;
  - iii) it considers that a variation is necessary to accommodate external changes that have occurred or of which the Department has become aware since entry into this Contract;
  - iv) it considers a variation is necessary in light of the jobs and skills needs of a sector of the economy or geographic area of the State of Victoria; or
  - v) the Department considers a variation is necessary in any other circumstances, in which event the Department will endeavour to give the Training Provider a reasonable period of advance notice of the variation, depending on the nature of the variation;
- b) in accordance with any other term of this Contract (including Clauses 5.1, 5.8, 5.11 and 8.3); or
  - c) in writing signed by each Party.

## **2. APPLICATION AND TERM OF THIS CONTRACT**

- 2.1 This Contract applies only to Training Services for any Skills First Student who commences training between the Commencement Date and 31 December 2022.
- 2.2 This Contract begins on the Commencement Date and continues until the earlier of:
  - a) such time as all Skills First Students in respect of whose training Funds are provided have completed or withdrawn from that training;
  - b) such time as there has been no training activity reported for any continuous period of 12 months after 15 January 2023, unless the Training Provider notifies the Department via the SVTS, no later than 30 days before the expiry of the 12 month period, that one or more relevant Skills First Students remain enrolled in training;
  - c) the termination of this Contract (in accordance with its provisions); or
  - d) notwithstanding any other part of this Clause 2.2, the date otherwise agreed in writing by the Department.

## **3. OBJECTIVES**

- 3.1 The objectives of the Parties are that Training Services subsidised through the Skills First Program will be:
  - a) high quality and relevant to industry and employers;
  - b) provided to Skills First Students to:
    - i) enable them to obtain the required skills to make them job-ready;
    - ii) assist them to undertake further education; and/or
    - iii) promote/enable participation in training for disadvantaged learners; and
  - c) provided by the Training Provider in the best interests of Skills First Students.



#### 4. GENERAL OBLIGATIONS OF TRAINING PROVIDER

##### Maintain registration and standards

4.1 The Training Provider must:

- a) maintain registration as a registered training organisation:
  - i) under the Act;
  - ii) under the National Act and maintain a principal place of business with a physical site in Victoria, unless otherwise agreed in writing by the Department; or
  - iii) under the National Act if Schedule 2 specifies that the Training Provider is a non-Victorian training provider delivering training to a one or more national enterprises;
- b) maintain at least one nationally recognised program of training on its scope of registration as a registered training organisation;
- c) maintain and use AVETMISS compliant software for reporting purposes;
- d) deliver training within the Funded Scope:
  - i) in accordance with the requirements of the accredited course or Training Package, including with regard to program descriptions, pathways information, entry requirements and outcomes;
  - ii) consistent with any applicable Victorian Purchasing Guides; and
  - iii) in compliance with all applicable Regulatory Standards.

##### Requirements for Skills First Teachers

4.2 The Training Provider must ensure that all training and assessment is delivered by Skills First Teachers who:

- a) hold relevant qualifications and meet standards as required by ASQA or the VRQA (as applicable); and
- b) are, if the Skills First Teacher is engaged by the Training Provider through a subcontract arrangement, engaged under a subcontract arrangement that complies with Clause 6 (Subcontracting).

4.3 The Department may require Skills First Teachers to undergo certain professional development or training, within a timeframe determined by the Department, and consistent with the relevant Regulatory Standards, and the Training Provider must ensure that each Skills First Teacher complies with all such requirements.

4.4 The Training Provider must sight and retain copies of documentary evidence confirming that each Skills First Teacher meets the requirements referred to in Clauses 4.2(a) and 4.3, such as transcripts and testamurs; mapping of vocational competence (where applicable); demonstration of industry currency; and/or completion of professional development requirements.

4.5 The Training Provider must ensure it maintains sufficient Records to enable the Department to determine, at any time, which Skills First Teacher was responsible for delivering each subject in programs on the Funded Scope delivered under this Contract.

### **Comply with Laws**

- 4.6 The Training Provider must provide the Training Services in compliance with all applicable Laws, and bear all associated costs of complying with those Laws, including:
- a) occupational health and safety Laws;
  - b) the Australian Consumer Law;
  - c) privacy Laws;
  - d) anti-discrimination and equal opportunity Laws;
  - e) the *Disability Act 2006* (Vic);
  - f) the *Working With Children Act 2005* (Vic);
  - g) the Human Rights Charter, as though it was a public authority within the meaning of section 4(c) of this legislation, including not acting in a way that is incompatible with a human right protected by it or, when making a decision about performing the Training Services, failing to properly consider such a human right; and
  - h) the Child Safe Standards as made under the *Child Wellbeing and Safety Act 2005* (Vic).

### **Comply with Department directions and policies**

- 4.7 The Training Provider must comply with:
- a) any applicable directions, guidelines, policies or procedures issued by the Department and/or the State from time to time (including as set out in any Contract Notifications), whether or not expressly referred to in this Contract; and
  - b) the Quality Charter.

### **Act ethically**

- 4.8 The Training Provider must demonstrate the highest ethical standards in its dealings and conduct in providing the Training Services, including by:
- a) not doing, or omitting to do, anything which may damage, ridicule, bring into disrepute or be detrimental to the Department, the VET sector, the Skills First Program, the Victorian government-subsidised training market, or the Department's or the State's name or reputation;
  - b) behaving honestly and in a way that upholds the objectives of the Skills First Program;
  - c) not behaving in a manner that damages the public confidence in the integrity of the Skills First Program;
  - d) not making improper use of the position of trust placed in it to appropriately expend substantial amounts of public moneys for VET;
  - e) not harassing, intimidating, threatening or seeking to improperly influence the exercise of any powers or functions by any person exercising powers on behalf of the Department under this Contract;
  - f) not paying, providing or offering, either directly or indirectly, Incentives to undertake training subsidised through the Skills First Program, whether to any prospective student or to any other person (such as an employer or social organisation); and

- g) not engaging, employing, contracting or otherwise dealing with any Disallowed Person in connection with this Contract.

**Be accountable**

4.9 The Training Provider must at all times be accountable to the Department for its performance under this Contract, including by:

- a) demonstrating its compliance with this Contract to the Department on request;
- b) reporting to the Department any non-compliance with this Contract;
- c) ensuring that all persons it employs or engages to provide the Training Services are aware of all obligations under this Contract as appropriate;
- d) providing the Training Services at its own cost, unless otherwise provided for under this Contract;
- e) using the Funds reasonably;
- f) implementing appropriate compliance, reporting and auditing frameworks and controls, including the appropriate Segregation of Duties, for providing the Training Services and receipt of the Funds;
- g) not, in providing the Training Services, doing any act or undertaking any process which would infringe any Intellectual Property Rights of the State or any other person;
- h) participating in:
  - i) any performance improvement initiatives as reasonably determined by the Department, including the introduction of performance targets to be met by the Training Provider over a reasonable time period; and
  - ii) the National Student Outcomes Survey managed by NCVET; and
- i) responding and co-operating in good faith with the Department in its resolution of student complaints made to, or other issues raised with, the Department in relation to the Training Provider's delivery of the Training Services

4.10 The Department may contact individuals for whom the Training Provider has claimed Funds, for any reason it sees fit, including for any audit, review, investigation, monitoring, or evaluation, or to otherwise confirm the Training Provider's compliance with, and performance under, this Contract.

4.11 The Training Provider must ensure that:

- a) its CEO takes responsibility for overseeing the Training Provider's performance of all of its obligations under this Contract;
- b) its CEO is available at all reasonable times to answer questions from, and otherwise communicate with, the Department in relation to such performance;
- c) its CEO provides an accurate, complete and reasonably detailed response to any request by the Department for information relating to the Training Provider's performance under this Contract by:
  - i) the time specified by the Department in the request;
  - ii) any longer timeframe agreed by the Department in writing; or

- iii) if no time is specified, within a reasonable period of time from the Department's request; and
- d) during any absence of the CEO, a person is delegated, and carries out, the responsibilities of the CEO referred to in paragraphs (a) to (c).

### **Stakeholders**

- 4.12 The Training Provider must make all reasonable efforts to work with, communicate effectively with, and maintain the confidence of, all stakeholders affected by this Contract, including maintaining strong links to industry.

### **Consistency with objectives**

- 4.13 The Training Provider must perform its obligations under this Contract consistently with, and in a manner that promotes the achievement of, the objectives in Clause 3.1, except to the extent this would limit or be inconsistent with any of the Training Provider's obligations or the Department's rights or powers under, or any other provision of, this Contract

## **5. SCOPE OF THE TRAINING SERVICES**

### **Funded Scope**

- 5.1 The Department may add or remove a program from the Funded Scope or may otherwise alter Schedule 2.
- 5.2 The Department may conduct a process, at a time and in a manner as it sees fit, to allow the Training Provider to apply for the Department's approval to increase the Funded Scope, taking into consideration issues such as labour market needs.

### **Commencement and Program Allocations**

- 5.3 The Commencement Allocation and (where applicable) any Program Allocation are as at the Commencement Date, for the initial period of the Term set out in Schedule 2.
- 5.4 The Commencement Allocation is comprised of a separate number of commencements for:
- a) programs that are Skill Sets; and
  - b) programs that are AQF qualifications.
- 5.5 For the Department to determine the Commencement Allocation and any Program Allocation after the period initially set out in Schedule 2, the Training Provider must participate in a process advised and conducted by the Department at a time and in a manner as the Department sees fit.
- 5.6 There is no guarantee that the Department will grant the Training Provider any, or any particular, Commencement Allocation or Program Allocation under Clause 5.5.
- 5.7 For the Department to determine allocations either under Clause 5.5 or 5.8, the Training Provider will be required to submit Program Delivery Plans documenting anticipated delivery of a program, and the Department will consider issues such as labour market needs.
- 5.8 The Department may add or remove commencements from the Training Provider's Commencement Allocation or any Program Allocation or may otherwise alter Schedule 2 (including as result of conducting a process under Clause 5.9).

- 5.9 The Department may conduct a process, at a time and in a manner as it sees fit, to allow the Training Provider to apply for the Department's approval to increase its Commencement Allocation or any Program Allocation.

**Foundation Skills Approved Provider List**

- 5.10 To receive Funds for delivery of a Foundation Skills Program (except Literacy and Numeracy Support Units), the Training Provider must be on the Foundation Skills Approved Provider List and have the relevant approval to provide that program.
- 5.11 The Department may add or remove the Training Provider from the Foundation Skills Approved Provider List, and/or vary its approvals on the Foundation Skills Approved Provider List at any time, by notification via the SVTS.

**Additional capability or quality assurance process may be required by the Department**

- 5.12 The Department may introduce a capability or quality assurance process and require the Training Provider to participate in it, in order to be able to receive Funds for delivery of particular programs or types of training as defined by the Department.
- 5.13 If the Training Provider does not participate in a process advised under Clause 5.12, or does not meet the required standard, the Department may notify the Training Provider via the SVTS that it will remove relevant programs from the Funded Scope and/or direct the Training Provider to cease enrolments in particular programs or types of training.

**6. SUBCONTRACTING**

**Definition of subcontracting**

- 6.1 The Training Provider will be considered to have subcontracted any part of the Training Services if they are carried out by an individual other than:
- a) an employee or officer of the Training Provider, acting in their capacity as such an employee or officer; or
  - b) a Sole Trader engaged directly by the Training Provider (and to avoid doubt, not through an intermediary) in their capacity as a Sole Trader.
- 6.2 To avoid doubt, it is considered to be subcontracting to engage:
- a) an individual through a franchise, labour hire or other similar arrangement; or
  - b) any person to undertake Brokering Services.

**Subcontracting of Pre-Training Review**

- 6.3 The Training Provider must not subcontract any aspect of the Pre-Training Review.

**Subcontracting of training and assessment**

- 6.4 The Training Provider must not subcontract training and/or assessment without the Department's written approval, which approval will only be granted through a process determined by the Department.
- 6.5 The Training Provider must ensure that each Skills First Student who receives training and assessment under a subcontract arrangement is aware that they are enrolled with the Training Provider, not the subcontractor.

6.6 Where a subcontract arrangement under Clause 6.4 is between the Training Provider and another registered training organisation that holds a VET Funding Contract, it must be on terms that allow the Training Provider to immediately terminate it if the subcontractor's VET Funding Contract with the Department is suspended or terminated.

**Subcontracting generally**

6.7 The Training Provider represents and warrants to the Department that on every day during the Term, all subcontractors it uses have appropriate qualifications and skills and are suitably experienced and capable of providing Training Services as required by this Contract.

6.8 The Department may direct the Training Provider to cease, or otherwise vary the scope of, any subcontract arrangement.

6.9 The Training Provider must ensure that any subcontract arrangement:

- a) prohibits further subcontracting by the subcontractor;
- b) requires the subcontractor to provide all necessary assistance, documentation and information that is required under this Contract;
- c) permits it to immediately suspend the subcontract arrangement if this Contract is suspended;
- d) permits it to immediately terminate the subcontract arrangement if this Contract is terminated; and
- e) otherwise permits it to comply with its obligations under this Contract (including its obligations to ensure that any subcontractor cooperates and assists with any audit, review or investigation under Clause 11).

6.10 The Training Provider:

- a) must provide a copy of any executed subcontract agreement to the Department if requested;
- b) retains responsibility for all of its obligations under this Contract despite entry into any subcontract arrangement, and is not relieved by any subcontract arrangement of any of its liabilities or obligations under this Contract or to otherwise provide the Training Services;
- c) is responsible for ensuring the suitability of the subcontractor and for ensuring that any work performed by the subcontractor meets the requirements of this Contract;
- d) is liable to the Department for the acts, or omissions or negligence of any subcontractor (or any employee, officer or agent of the subcontractor) as if they were the acts, or omissions or negligence, of the Training Provider (or the employees, officers or agents of the Training Provider);
- e) indemnifies (and must keep indemnified) the Department against any or all Loss arising from any acts or omissions by any subcontractor in connection with, or in the course of, the provision of the Training Services or any breach of this Contract (whether or not the breach is a Material Breach);
- f) acknowledges that the Department is not liable for, nor will it become involved in, the internal administration of subcontract arrangements or act as a mediator between the Training Provider and any subcontractor; and
- g) must bear all costs associated with any subcontract arrangement.

## 7. REPORTING AND INFORMATION

### Reporting generally

7.1 The Training Provider must:

- a) use an electronic Student Management System that complies with the Victorian VET Student Statistical Collection Guidelines;
- b) provide accurate and complete Student Statistical Reports and other reports or information to the Department about the Training Services, in accordance with Clauses 10 and 11 of Schedule 1;
- c) provide any other information or reports the Department may require from time to time relating to this Contract by the time specified by the Department, or if no time is specified, within a reasonable period of time from the Department's request;
- d) if the Department requires, collect new information and create new documents in a format specified by the Department; and
- e) provide any reports to the Department in accordance with Schedule 3 – special initiatives (if applicable to the Training Provider).

### Reporting of subcontract arrangements for Brokering Services

7.2 The Training Provider must provide the Department, in a format determined by the Department, details of each subcontract arrangement it has entered into for the delivery of Brokering Services as follows:

- a) details of any subcontract arrangements entered into prior to the Commencement Date, within 30 days of the Commencement Date; and
- b) details of any further subcontract arrangement, within 30 days of entering into that arrangement.

### Change in Control

7.3 The Training Provider must notify the Department via the SVTS immediately upon becoming aware of any proposed Change in Control and, in any event, at least 20 Business Days before the Change in Control takes effect. The Training Provider must provide in its notification details of the Change in Control and when it is to take effect.

7.4 If the Department receives a notification under Clause 7.3, it may give the Training Provider notification via the SVTS setting out whether or not it approves the proposed Change in Control, and any such approval is at the Department's sole discretion.

### Notification of events

7.5 If the Training Provider holds an Other VET Funding Arrangement, it must promptly notify the Department via the SVTS if:

- a) any restriction or reduction in scope is imposed on its entitlement to offer or deliver government-subsidised training under such an arrangement, whether or not this affects programs on the Funded Scope (except that this notification requirement does not apply if the restriction or reduction is imposed on a number of registered training organisations and is for reasons not associated with the Training Provider's performance under the Other VET Funding Arrangement); or

- b) an Other VET Funding Arrangement Termination Event occurs in relation to the Training Provider, or any other registered training organisation that is a member of the Training Provider Group.
- 7.6 The Training Provider must immediately notify the Department via the SVTS of any significant changes to its ownership, CEO or operations (including its financial viability and any intention or decision to cease operations as a registered training organisation in Victoria).
- 7.7 The Training Provider must promptly notify the Department via the SVTS if its shares or other securities are listed on a stock exchange and that listing has not been notified to the Department under Clause 7.3.
- 7.8 The Training Provider must promptly notify the Department via the SVTS if, at any time at which its shares or other securities are listed on a stock exchange, any Disallowed Person obtains:
- a) at least 35% of the voting power in the Training Provider; or
  - b) Control of the Training Provider.

## **8. PAYMENTS AND OTHER FINANCIAL ARRANGEMENTS**

### **Payments for Training Services**

- 8.1 The Department agrees to pay the Funds in accordance with Schedule 1.
- 8.2 The Department's obligation to pay the Funds is conditional upon the Department being satisfied (and continuing to be satisfied) that:
- a) each individual for whom Funds are claimed is a Skills First Student;
  - b) the Training Services are being provided in accordance with this Contract;
  - c) the Funds are being reasonably applied to the costs of providing Training Services to the Skills First Students for whom the Funds have been claimed; and
  - d) there are not, and will not be, any amounts payable by the Training Provider to the Department in relation to this Contract up to the amount of those Funds.
- 8.3 The Department may vary the Funds for one or more Skills First Students by issuing a Notice or a Contract Notification at least 10 Business Days before the variation will take effect, including:
- a) for reasons of a change of policy; or
  - b) to ensure the proper and responsible administration of the Funds and of the Department's Skills First Program budget,

which may include where the Skills First Student has already enrolled in and/or commenced training with the Training Provider at the time the variation is made.

- 8.4 The Department will only pay the Funds to the Training Provider and not to any other person.
- 8.5 The Funds are the full amount of funding that will be made available and the Training Provider is not entitled to, and may not claim, any additional funding or assistance from the Department in relation to the Training Services.



### **Payments for special initiatives under Schedule 3**

- 8.6 The Department will pay the Training Provider payments for special initiatives as described in Schedule 3 (if applicable to the Training Provider), provided that the Training Provider meets the applicable conditions specified in that Schedule 3.

### **Payments generally**

- 8.7 If any day for the payment of Funds is not a Business Day, the payment will be due on the next Business Day.

### **Recovery of amounts**

- 8.8 If the Training Provider is paid any amount it is not entitled to be paid under this Contract, that amount is a debt due to the Department and must be promptly repaid and, in any event, must be repaid:

- a) in accordance with any applicable repayment arrangement agreed in writing between the parties from time to time; or
- b) in the absence of agreement under subclause (a), within 30 days after the Department requires it.

- 8.9 If the Training Provider owes the Department any amount under or in relation to:

- a) this Contract (including under Clause 8.8 or Clause 16); or
- b) any earlier agreement between the Parties under the Skills First Program, the Victorian Training Guarantee Program or the Skills for Victoria Program,

the Department may recover that amount by setting it off against any other amount which is, or becomes, due to the Training Provider from the Department under this Contract. This may include processing a payment reversal via SVTS or another Departmental business system to deduct monies owed by the Training Provider from a future payment or payments.

- 8.10 Any exercise by the Department of its rights under Clause 8.8 or Clause 8.9 is without prejudice to any other rights or remedies available to it under this Contract.

## **9. GST**

- 9.1 Except as otherwise provided by this Clause 9, all consideration payable under this Contract in relation to any supply is exclusive of GST.

- 9.2 If GST is payable in respect of any supply made by a Party under this Contract:

- a) the consideration payable or to be provided for that supply under this Contract but for the application of this Clause 9.2 is increased by; and
- b) the other Party must also pay to that Party at the same time and in the same manner as the consideration,

an amount equal to the GST payable by the Supplier on that supply, subject to the Supplier providing a tax invoice to the Recipient in respect of its taxable supply (unless Clause 9.3 applies).

- 9.3 The Department, as a recipient of each taxable supply made by the Training Provider, will issue a recipient created tax invoice to the Training Provider. The Recipient agrees that it will not issue tax invoices in respect of the Funds.

- 9.4 If an adjustment event occurs in relation to a taxable supply made by the Training Provider under this Contract, the Department will provide to the supplier a recipient created adjustment note.
- 9.5 The Training Provider must have a valid ABN and be registered for GST throughout the Term and keep the Department indemnified against any loss arising out of the cancellation of the ABN or its failure to be registered for GST.

## **10. RECORDS**

### **Record keeping requirements**

- 10.1 The Training Provider must make and keep accurate Records for all Training Services in sufficient detail to allow the Department to determine compliance with this Contract (including the accuracy of claims for payment of the Funds).
- 10.2 Records may be retained either in hard copy or electronic form.
- 10.3 The Training Provider must retain (and not dispose of) any Records until three years after the Skills First Student to whom the Records relate has completed or withdrawn from the relevant program they are enrolled in.
- 10.4 The Department may, at any time, direct the Training Provider to retain Records it is not then retaining, if it considers it necessary to confirm compliance with this Contract.
- 10.5 A requirement under this Contract for the Training Provider to retain Records in a particular manner does not allow the Training Provider to keep Records in a different manner to how they are required to do so under the Regulatory Standards or any other applicable Law.
- 10.6 A right for the Training Provider to cease retaining Records under this Contract does not allow the Training Provider to dispose of Records if they are required to be kept for a longer amount of time under the Regulatory Standards or any other applicable Law
- 10.7 On termination or expiry of the Term, the Training Provider will retain ownership and custody of its Records
- 10.8 The Training Provider indemnifies the Department from, and against, any Loss due to a breach of its obligations under this Clause 10.

### **Security and integrity of Records**

- 10.9 The Training Provider must have effective security measures to safeguard Records from unauthorised access or use (including amendment of Records inconsistent with Clause 10.10), for as long as those Records are required to be retained under this Contract.
- 10.10 The Training Provider must not amend Records in a way that is not accurate. Where the Training Provider needs to amend a Record, through continuous improvement processes or otherwise, it must document the amendment in a way that a reasonable person could ascertain the nature of, and rationale for, the amendment in a straightforward way, including annotating when, and by whom, the amendment was made.

### **Accounting Records**

- 10.11 The Training Provider must:
- a) use appropriate processes and controls to fully account for administration of the Funds;

- b) keep complete Records of all financial dealings under this Contract, including all quotations, invoices and receipts, which must contain full particulars of payments made by the Training Provider to its subcontractors and other third parties; and
- c) keep Records in relation to the Funds in a way that would enable them to be audited by the Auditor-General of Victoria or any other entity as directed by the Department.

#### **Providing access to Records**

10.12 In addition to its obligations under Clause 11 (Audit, Review and Investigation), upon request by the Department, the Training Provider must promptly provide the Department with copies of, or make available for inspection during Business Hours at a location in Victoria specified by the Department:

- a) any Records relevant to the Funds or the Training Services, including those relevant to determining the quality of the Training Services, or those required in accordance with Clause 7.1;
- b) Records reasonably required to allow the Department to satisfy itself as to the financial position of the Training Provider, the use of the Funds and the capacity of the Training Provider to deliver the Training Services;
- c) Evidence of Eligibility, Evidence of Fee Concession/Fee Waiver, Statements of Fees and Evidence of Participation;
- d) evidence of each Pre-Training Review conducted under Clauses 4.1 to 4.5 of Schedule 1;
- e) evidence the Training Provider has received the fees from Skills First Students that it reported as having charged (via the SVTS), and supporting documentation including:
  - i) invoices or statements provided to the Skills First Student; and
  - ii) bank generated transaction statements of the Training Provider's accounts the fees were paid into;
- f) the information referred to in Clauses 4.4 and 4.5 in relation to Skills First Teachers; and
- g) each of the Agreements as defined in Attachment 1 to Schedule 2 (if applicable where the Training Provider is a non-Victorian training provider delivering training to one or more national enterprises).

10.13 If the Training Provider fails to make a Record available if it is requested to do so under Clause 10 or 11 (within a reasonable time, or by a specified time where relevant), then for the purpose of this Contract it will be deemed not to exist and activity it would have evidenced not to have occurred. The Department may exercise all rights available to it on that basis.

#### **Electronic signatures**

10.14 If the Training Provider is required under this Contract to procure and keep a document signed by any person (whether the Training Provider itself, a person employed or engaged by the Training Provider or a third party), that document may be signed by way of an 'electronic action equivalent to a signature', unless it is specified otherwise in Clause 10.16.

10.15 For the purposes of Clause 10.14, an electronic action by a person will be considered to be equivalent to a signature where it:

- a) identifies that person;

- b) indicates the person's agreement to the relevant information, and
  - c) is as reliable as appropriate in the light of all the circumstances (including so that the Department can rely on the action as demonstrating the person's agreement to the relevant matters in the event of any audit, review or investigation).
- 10.16 The Training Provider may not sign a document itself, or collect signatures through use of an electronic action equivalent to a signature if:
- a) that signature:
    - i) binds that person to a contract with the Department or an amendment to such a contract; or
    - ii) is on a Notice,  
including for the purposes of execution of an acceptance form by the Training Provider binding the Training Provider to the terms of this Contract; or
  - b) it is not permitted to do so in the Regulatory Standards, or under any other applicable Law.

## **11. AUDIT, REVIEW AND INVESTIGATION**

### **Audits, reviews and investigations by Department**

- 11.1 The Department may conduct an audit, review or investigation at any reasonable time to confirm whether the Training Provider is complying with this Contract, including:
- a) to establish whether and to what extent the Funds have been used in respect of Skills First Students;
  - b) to investigate allegations or suspicions of misuse of the Funds;
  - c) to determine the extent to which the Training Services are of high quality;
  - d) as set out in Clause 12 of Schedule 1; and/or
  - e) if applicable, as part of the Department's Audit and Risk Committee's Internal Audit Plan.
- 11.2 In the event of an audit, review or investigation under Clause 11.1, the Training Provider must, as directed:
- a) permit the Department to enter its premises, and areas within those premises used for the delivery of Training Services, at any time reasonably required by the Department, including times when training and assessment is being delivered to Skills First Students;
  - b) provide the Department with all necessary assistance, including:
    - i) access to office space, telephones, photocopy facilities and other facilities at the Training Provider's premises;
    - ii) access to all Training Provider Personnel;
    - iii) assisting the Department to locate, access and view Records, including all Records that the Training Provider is required to keep or provide under this Contract, and including associated metadata; and

- iv) permitting the Department to take copies of any Records; and
  - c) on request, reimburse the Department for any costs incurred in conducting the audit, review or investigation.
- 11.3 If an audit, review or investigation reveals non-compliance with this Contract, the Department may:
- a) exercise any of its rights under Clauses 16 (Enforcement) or 17 (Termination Rights); and/or
  - b) require the Training Provider to:
    - i) provide a written response on any matter relating to the audit, review or investigation in accordance with the Department's requirements;
    - ii) take all reasonable steps, to the Department's satisfaction, to prevent future instances of non-compliance by implementing a management action plan agreed between the Training Provider and the Department; and/or
    - iii) within six months of the Training Provider being notified in writing of the recommendations arising from the audit, review or investigation, or such other timeframe specified in writing by the Department:
      - A. advise the Department in writing of the steps taken by the Training Provider to comply with and implement the recommendations, the management action plan and this Contract, after receiving notification of the audit findings; and
      - B. provide any documentation required by the Department evidencing compliance with, and implementation of, the recommendations, the management action plan and this Contract.

#### **Internal audits**

- 11.4 The Training Provider must conduct an internal audit of its compliance with this Contract during each calendar year, in accordance with any requirements of the Department.
- 11.5 The first internal audit conducted under Clause 11.4 must be completed within six months after the Commencement Date.
- 11.6 The Training Provider must ensure that each internal audit :
- a) is signed by the CEO of the Training Provider; and
  - b) is provided to the Department on request.
- 11.7 If an internal audit reveals non-compliance with this Contract, the Training Provider must:
- a) develop a rectification plan within a reasonable timeframe to rectify the non-compliance within a reasonable timeframe; and
  - b) provide the Department with a copy of the rectification plan on request.

#### **Third party audits**

- 11.8 The Training Provider must participate in, assist with, and not prevent or unreasonably delay, an audit, review or investigation administered by the Commonwealth Government in connection with the Training Services.

## 12. CONFIDENTIALITY AND PRIVACY

### Confidentiality

- 12.1 The Training Provider must not, without prior written approval of the Department, disclose (or permit the disclosure of) information regarding this Contract (including details of the Funds paid for any individual) or any Confidential Information of the Department or the State, except:
- a) to the extent required under this Contract;
  - b) to the extent required by Law;
  - c) to its solicitors, barristers and/or other professional advisors in order to obtain advice in relation to its rights under this Contract, the Training Services or the Funds and provided such advisors are under a duty of confidentiality;
  - d) to the extent necessary for the registration or recording of documents where required; and/or
  - e) to the extent required in connection with legal proceedings,
- and then only to the extent strictly necessary for that purpose.
- 12.2 The Department may disclose or otherwise make available (whether to the public generally or to any particular person or group of persons) any information relating to the Training Provider and this Contract (including Confidential Information of the Training Provider), as it considers reasonably appropriate to facilitate the proper operation of the Skills First Program including:
- a) program details;
  - b) government-subsidised fee information;
  - c) details of the Funds paid;
  - d) the results of any surveys the Training Provider participates in as required by Clause 4.9(h)(ii), or the results of any student or employer surveys administered by, or on behalf of, the Department;
  - e) any information that the Training Provider is required to publish on its website or otherwise make publicly available under this Contract;
  - f) details of any non-compliance by the Training Provider with this Contract;
  - g) any action taken by the Department under this Contract;
  - h) findings and outcomes of any audits, reviews or investigations under this Contract; and
  - i) fee information related to training subsidised through the Skills First Program on an individual Training Provider basis, as reported by the Training Provider.
- 12.3 The Department may disclose information referred to in Clause 12.2, and any information regarding any suspected non-compliance by the Training Provider with this Contract, for the purpose of satisfying its obligations under:
- a) the *Freedom of Information Act 1982* (Vic);
  - b) the *Ombudsman Act 1973* (Vic);
  - c) the *Audit Act 1994* (Vic); or

- d) the requirements of Parliamentary accountability or a Minister's obligations to fulfil their duties of office,

and the Training Provider must take all steps and make all efforts to assist the Department in complying with any of these obligations.

- 12.4 The Department may disclose information referred to Clauses 12.2 and 12.3 to the counterparty to any Other VET Funding Arrangement, any regulator who has responsibility for issuing or monitoring compliance with the Training Provider's status as a registered training organisation, or to another government entity in any jurisdiction that has an interest in the regulation and funding of the VET sector.

### **Privacy**

- 12.5 The Training Provider is bound by the information privacy principles set out in the PDP Act, and any applicable code of practice under it, for any act done, practice it engages in, under or in connection with this Contract in the same way and to the same extent as the Department would have been bound had it been directly done or engaged in by the Department.

- 12.6 In collecting any Personal Information for the purposes of this Contract, the Training Provider must ensure that it has obtained all necessary consents, in accordance with all applicable Laws, including the PDP Act, the Health Records Act and (if applicable) the *Privacy Act 1988* (Cth), for:

- a) the Training Provider to collect, use, hold and disclose that Personal Information, including by disclosing it to the Department as contemplated by this Contract (including by way of the submission of reports and other information under Clause 7 and Clauses 10 and 11 of Schedule 1, for the purposes of complying with Record disclosure obligations under Clause 10 and in the course of any audit, review or investigation under Clause 11); and
- b) the Department to collect, use, hold and disclose that Personal Information for the purposes of this Contract and its operation and management of the Skills First Program.

- 12.7 The Training Provider must cooperate with, and provide any assistance requested by, the Department in relation to:

- a) resolving any complaint made to the Department alleging a breach of the PDP Act or the Health Records Act about any Personal Information collected, used, held or disclosed by the Department that was provided to it by the Training Provider in connection with this Contract; and
- b) providing access to or amendment of any record of Personal Information collected, used, held or disclosed in connection with this Contract following a request from an individual made to the Department.

- 12.8 If the Training Provider becomes aware of any:

- a) breach of any of Clauses 12.5 to 12.7;
- b) unauthorised disclosure, use, modification or access, attempted unauthorised disclosure, use, modification or access, or misuse or loss of any Personal Information collected or held for the purposes of this Contract; or
- c) act or practice of the Training Provider which causes a failure by the Department to comply with its obligations under the PDP Act or the Health Records Act,

it must notify the Department via the SVTS and cooperate with the Department in any investigation or other steps taken by the Department in response to that matter.

### 13. LIABILITY, INDEMNITY AND INSURANCE

- 13.1 The Training Provider is solely responsible for carrying out its obligations under this Contract and the Department is in no way liable for the actions of the Training Provider or the Training Provider Personnel.
- 13.2 The Training Provider releases the Department from all liabilities and Claims directly or indirectly incurred or suffered by the Training Provider or the Training Provider Personnel arising from or in connection with the Department's exercise (or purported exercise in good faith) of its rights, powers and functions under this Contract, including termination of this Contract under Clause 17.
- 13.3 To the maximum extent permitted by Law, the Training Provider indemnifies (and must at all times keep indemnified) the Department, the State and their employees, servants and agents (on behalf of whom the Department has agreed this Clause 13.3) from and against all Loss which it or they may incur or suffer and all Claims which may be brought or made against it or them by any third party arising out of or in connection with:
- a) the provision of, or failure to provide, Training Services by or on behalf of the Training Provider;
  - b) any act or omission of the Training Provider, its officers, employees, agents or subcontractors in connection with this Contract, the Funds or the provision of the Training Services;
  - c) any breach by the Training Provider of any obligation under this Contract (including breach of any warranty given under this Contract, and whether or not the breach is a Material Breach) or at Law;
  - d) any negligent, fraudulent, reckless, wilfully wrongful, unlawful or other wrongful act or omission of the Training Provider or any Training Provider Personnel as a result of the provision of the Training Services or otherwise in connection with this Contract;
  - e) the loss of, or damage to, any property (including property of the Department) or data as a result of the provision of the Training Services or otherwise in connection with this Contract;
  - f) the death of, disease or injury to any person as a result of the provision of the Training Services or otherwise in connection with this Contract;
  - g) any infringement, or alleged infringement, of any Intellectual Property Rights by the Training Provider or any Training Provider Personnel that occurs directly or indirectly as a result of the provision of the Training Services or otherwise in connection with this Contract; or
  - h) the Training Provider suspending or otherwise ceasing to deliver the Training Services for any Skills First Student before their completion or withdrawal from a program, including as a result of the Training Provider having a liquidator appointed to it.

Loss incurred by the Department in this instance includes Loss incurred as a result of the Department taking steps to assist Skills First Students to transfer to another registered training organisation to continue the training they commenced under this Contract, and may include funding the delivery of that training by that other registered training organisation.

- 13.4 The Training Provider's liability to indemnify the Department under Clause 13.3 will be reduced proportionally to the extent that a negligent, wilfully reckless, or unlawful act or omission of the Department has directly caused the relevant Loss or Claim.



13.5 The Department will not have any liability to the Training Provider for any indirect, special or consequential Loss arising out of breach of this Contract.

13.6 The Training Provider must, at its own expense:

- a) take out (with reputable insurers) all appropriate insurances at an adequate level to cover the provision of the Training Services and any risk, loss or damage arising out of or caused by the performance of those Training Services. This must include workers compensation insurance as required by Law and public liability (of not less than \$20 million per event), professional liability and indemnity, and property insurances;
- b) maintain each such insurance policy throughout the Term and (in the case of insurances taken out on a claims made basis) for seven years after the expiry of the Term; and
- c) comply with insurance requirements, including conducting and improving relevant risk management practices and incident notification processes, and not do any thing to jeopardise indemnity under an insurance policy.

13.7 The Training Provider must:

- a) provide the Department upon request copies of insurance certificates of currency, including details of limits on cover, and any other evidence of insurances maintained; and
- b) immediately notify the Department via the SVTS if any insurance is cancelled, any insurance details change or an insurer refuses to indemnify it.

#### **14. NOTICES AND REPRESENTATIVES**

14.1 A Notice issued under this Contract by a Party must be:

- a) in writing;
- b) signed by or on behalf of the Party giving it; and
- c) either:
  - i) hand delivered or sent by prepaid priority post (airmail if posted to or from a place outside Australia) to the recipient's address for Notices as follows:
    - A. for Notices to the Department, addressed to the Executive Director, Training Market Services, 2 Treasury Place, East Melbourne, 3002, or as varied by any Notice given by the Department;
    - B. for Notices to the Training Provider, the Head Office address listed in training.gov.au; or
  - ii) in the case of any Notice issued by the Department under Clause 16, sent by email (with a read receipt requested) to the email address of the Training Provider's CEO listed in training.gov.au.

14.2 A Notice takes effect from the time it is received, unless a later time is specified in it. A Notice will be deemed to have been received by the addressee:

- a) in the case of hand delivery, at the time of delivery;
- b) in the case of prepaid priority post, on the second Business Day (or seventh Business Day if posted to or from a place outside Australia) after posting; or

- c) in the case of email, on the first to occur of:
  - i) receipt by the sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the applicable email address;
  - ii) the time that the Notice enters an information system which is under the control of the Training Provider; and
  - iii) the time that the Notice is first opened or read by the intended addressee,

but if the event that would otherwise give rise to deemed receipt occurs on a day that is not a Business Day or after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

14.3 The authorised representative of each Party who will be responsible for issuing and receiving Notices under this Contract is as follows:

- a) the Department's representative is the Executive Director or the Deputy Secretary; and
- b) the Training Provider's representative is its CEO.

## **15. DISPUTE RESOLUTION**

15.1 A Party claiming that a Dispute has arisen must promptly give the other Party a Dispute Notice.

15.2 A Party must not commence any court proceedings in relation to a Dispute, except proceedings for urgent interlocutory relief, unless it has complied with this Clause 15 in relation to that Dispute.

15.3 Despite the existence of a Dispute, the Parties must continue to perform their obligations under this Contract.

15.4 This Clause 15 does not limit or otherwise affect the rights of the Department, which includes all of its rights under, this Contract, including its right to terminate it.

15.5 If a Party gives a Dispute Notice under this Clause 15, it is open to either Party to give a Notice of any other issue or dispute connected with the initial Dispute, and all other issues or disputes raised shall be deemed to have been included in the initial Dispute Notice.

15.6 If a Dispute Notice has been given by a Party and that Dispute is the subject of the Dispute resolution process under this Clause 15, neither Party may give a further Dispute Notice which commences a new Dispute resolution process for that Dispute without the consent of the other Party. A Party seeking to give a further Dispute Notice or Dispute Notices must provide evidence to the other Party as to why the new issues that it wishes to raise cannot be managed as part of resolving the current Dispute, and that the Dispute which warrants the giving of a further Dispute Notice is clearly distinguished from, or does not arise as a result of, the Dispute resolution process that was commenced by the initial Dispute Notice.

15.7 If a Party gives a Dispute Notice, the Parties must seek to resolve that Dispute through good faith negotiations.

15.8 If the Parties are unable to settle a Dispute within seven days of one Party giving a Dispute Notice to the other Party, each Party must appoint a representative with authority to settle the Dispute. The appointed representatives must meet within a further seven days to attempt to settle the Dispute.

- 15.9 If the representatives are unable to resolve the Dispute within seven days of first meeting, the Dispute must be referred within 14 days after their meeting to:
- a) in the case of the Department – its Executive Director or the Deputy Secretary of, or their delegate; and
  - b) in the case of the Training Provider – its CEO.
- 15.10 The Department’s representative and the CEO must meet with each other to seek to resolve the Dispute within seven days after the end of the referral period under Clause 15.9.
- 15.11 If the Dispute is not resolved within seven days of the first meeting of the Department’s representative and the Training Provider’s CEO, the Department may refer the Dispute to mediation administered by the ADC according to its mediation guidelines.
- 15.12 If a Dispute is referred to mediation by the Department:
- a) the mediation will be conducted in accordance with the ADC’s Guidelines for Commercial Mediation operating at the time the Dispute is referred to ADC;
  - b) the Parties must (unless they agree otherwise) conduct the mediation within 14 days of the mediator being appointed;
  - c) each Party will pay its own costs of attending and participating in the mediation; and
  - d) the cost of the ADC and the appointed mediator will be shared equally between the Parties.
- 15.13 The Department may notify the Minister of any Dispute.
- 15.14 In the event that the Department refers the Dispute to mediation and the Parties are unable to resolve the Dispute in accordance with Clause 15.12, or the Dispute is not referred to mediation, then the Department may refer the Dispute to the Secretary or the Secretary’s nominee for determination. A decision made under a referral in accordance with this Clause 15.14, will be final and binding on both Parties.
- 15.15 This Clause 15 does not apply to a Dispute arising under Clause 11 or Clause 17 or Clause 11 of Schedule 1.

## **16. ENFORCEMENT**

- 16.1 The Department may take one or more of the actions in Clause 16.2 if:
- a) the Training Provider has breached, or the Department reasonably suspects that the Training Provider has breached or may breach, this Contract (whether or not the breach, or suspected breach or potential breach, is a Material Breach);
  - b) an event referred to in Clause 17.4 has occurred, or the Department reasonably suspects that such an event has occurred or may occur; or
  - c) the Training Provider has breached an obligation to make a payment to the Department in relation to any earlier agreement between the Parties under the Skills First Program, the Victorian Training Guarantee Program and/or the Skills for Victoria Program, whether or not such amounts comprise a refund of funds previously paid by the Department or any interest, penalty, or other moneys.

- 16.2 If it is entitled to do so under Clause 16.1, the Department may issue a Notice to:
- a) direct the Training Provider to suspend part or all of the provision of Training Services under this Contract (whether for one individual, a group of individuals or all individuals);
  - b) withhold or suspend payment of any part of the Funds as the Department determines is appropriate until it is satisfied that the Training Provider is entitled to be paid those Funds under this Contract;
  - c) cancel the Training Provider's entitlement to any part or all of the Funds paid to or claimed by the Training Provider;
  - d) require the Training Provider to refund such amount of the Funds previously paid as the Department reasonably deems appropriate (together with interest calculated daily at the rate prescribed under *Penalty Interest Rates Act 1983* (Vic) until the amount is refunded by the Training Provider);
  - e) require that the Training Provider pay to the Secretary a monetary amount specified in, or calculated in accordance with, this Contract (in which case Clause 16.6 applies);
  - f) where Clause 16.1(a) applies, seek an order for specific performance. As set out in section 3.1.5 of the Act, the order for specific performance will be available despite anything to the contrary in a rule of, or principle at, common law or equity, even though:
    - i) adequate damages may be available for the breach of this Contract; or
    - ii) enforcement of this Contract may require personal services to be provided;
  - g) require the Training Provider to pay any money expended by the Department to make good any non-compliance by the Training Provider with this Contract; and
  - h) require the Training Provider to pay any money paid by the Department to any auditor, reviewer or investigator, or any other authorised person, to verify the delivery, replacement or correction of any of the Training Services by the Training Provider.
- 16.3 In addition to its powers under Clause 16.2, if the Department becomes aware of what it considers to be an irregularity or inconsistency regarding the Training Provider's operations, reporting or other obligations under this Contract, which the Training Provider fails to explain to the Department's reasonable satisfaction in the time required by the Department, the Department may withhold or suspend payment of any part of the Funds as the Department determines is appropriate until the Department is satisfied that the Training Provider is entitled to be paid those Funds.
- 16.4 For the purposes of this Clause 16, the Department may exercise any of its rights under Clause 16.2(a) to (f) or Clause 16.3 as if the Training Provider has breached an obligation under this Contract (or the Department reasonably suspects it has breached) for a population of individuals for whom the Training Provider has claimed Funds that is specified by the Department (or a proportion of that population determined by the Department) if:
- a) the Department has a reasonable basis to believe that a breach of an obligation under this Contract has occurred in relation to a number of a sample of individuals from the population;
  - b) that sample of individuals was randomly selected; and
  - c) the sample of individuals and the number of those individuals for whom there is a reasonable basis for the Department to believe that a breach of this Contract has occurred are each of such a size that it is statistically valid for the Department to make the extrapolation to the population of individuals.

16.5 Where the Department requires a payment from the Training Provider under Clause 16.2 and has not recovered that amount under Clause 8.9, the Training Provider will pay the amount due within 30 days, or such other timeframe specified by the Department.

16.6 To avoid doubt, where the Training Provider is required to pay a monetary amount to the Department in accordance with Clause 16.2(e) as a result of:

- a) a breach of this Contract;
- b) a failure to meet a performance requirement specified in this Contract which does not fall within subclause (a); or
- c) termination of this Contract,

the Training Provider will (as set out in section 3.1.4 of the Act) be obliged to make payments despite anything to the contrary in a rule of, or principle at, common law relating to liquidated damages or penalties.

## 17. TERMINATION RIGHTS

17.1 In addition to any other termination rights it has, the Department may terminate this Contract at any time by issuing a Notice to the Training Provider. Such a termination will take effect 20 Business Days after the Notice takes effect under Clause 14.2, or at any later time specified in the Notice.

17.2 If the Department terminates this Contract under Clause 17.1, it will determine and pay:

- a) amounts that, in its reasonable opinion, are due and payable under Clause 8 as at the date of termination; and
- b) reasonable costs (but not including loss of profit or income) that, in its reasonable opinion, have been necessarily and directly incurred by the Training Provider as a result of the termination, provided that the Training Provider has, to the reasonable satisfaction of the Department:
  - i) used its best efforts to minimise any costs arising as a result of the termination; and
  - ii) provided adequate documentary evidence to substantiate those costs.

17.3 This Contract may be terminated at any time by written agreement between the Parties.

17.4 The Department may terminate this Contract immediately by issuing a Notice to the Training Provider if:

- a) the Training Provider commits a Material Breach;
- b) the Training Provider commits a breach of this Contract (whether or not it is a Material Breach) which cannot be remedied;
- c) the Training Provider commits a breach of this Contract (whether or not it is a Material Breach) and it:
  - i) fails to commence action to remedy the breach within 10 Business Days after the Department has served a Notice requiring it to do so; or
  - ii) having commenced action to remedy the breach, fails to complete that action as soon as possible and in any event within 20 Business Days of the Department's Notice;

- d) without limiting paragraphs (a) to (c), the Training Provider fails to provide some or all of the Training Services for which Funds have been claimed and/or paid or any such Training Services are not provided to a standard satisfactory to the Department;
- e) there has been any fraud, or the Department reasonably suspects any fraud, relating to the Training Provider or the Funds, or there has been any misappropriation of Funds by the Training Provider or any other misleading or deceptive conduct on the part of the Training Provider in connection with this Contract or the claiming, receipt or use of the Funds;
- f) an Insolvency Event occurs (provided that termination on this ground is subject to any applicable statutory stay on the exercise of rights, including sections 415D, 434J and 451E of the Corporations Act, as the case may be);
- g) the Training Provider undergoes a Change in Control that has not been approved by the Department under Clause 7.4;
- h) the Training Provider undergoes an event referred to in Clause 7.8;
- i) the Training Provider has made, or the Department reasonably suspects that the Training Provider has made, any false or misleading representation to the Department in connection with this Contract (whether by act or omission, and whether before or after the Commencement Date);
- j) the Training Provider's registration as a registered training organisation under the Act or the National Act is suspended, withdrawn, cancelled or otherwise ceases;
- k) the Department terminates any other contract with the Training Provider regarding government-subsidised training under any provision of that contract other than on a ground equivalent to a ground set out in one of Clauses 17.1, 17.4(f), 17.4(g), 17.4(h) and 17.4(j);
- l) the Department terminates any contract with a Related Training Provider regarding government-subsidised training under any provision of that contract other than on a ground equivalent to a ground set out in one of Clauses 17.1, 17.4(f), 17.4(g), 17.4(h) and 17.4(j);
- m) an Other VET Funding Arrangement Termination Event occurs; and/or
- n) an Other VET Funding Arrangement Termination Event occurs to another registered training organisation that is a member of the Training Provider Group.

## **18. EFFECT OF SUSPENSION OR TERMINATION**

- 18.1 The Department may exercise its right to give the Training Provider a direction under Clause 4.7 if:
- a) this Contract is terminated;
  - b) the Training Provider suspends delivery of the Training Services for any Skills First Student under a direction given by the Department under Clause 16.2(a); or
  - c) the Training Provider otherwise ceases to deliver the Training Services for any Skills First Student before they have completed or withdrawn from the relevant program.
- 18.2 A direction referred to in Clause 18.1 may, for example, require the Training Provider to:
- a) assist Skills First Students to transfer to another registered training organisation to continue the training they have commenced under this Contract; and

b) issue statements of attainment for subjects the Skills First Student has completed.

18.3 The Department may require the Training Provider to refund such amount of the following Funds as the Department reasonably deems appropriate (together with interest calculated daily at the rate prescribed under the *Penalty Interest Rates Act 1983* (Vic), for the period between the Department demanding the refund and the Training Provider refunding the Funds):

- a) where this Contract was terminated under a provision other than Clause 17.4(g) or Clause 17.4(h), Funds paid prior to the date of the termination;
- b) where this Contract was terminated under Clause 17.4(f) by reason of an Insolvency Event referred to in any of paragraphs (c) to (i) of the definition, Funds paid at any time on or after the date of the Insolvency Event; or
- c) where this Contract was terminated under Clause 17.4(j), Funds paid at any time from the date of the relevant suspension, withdrawal, cancellation or cessation.

**19. SURVIVAL**

19.1 The following Clauses survive the termination or expiry of the Term of this Contract and may be enforced at any time:

a) body of this Contract:	b) Schedule 1.
1; 3; 4.5, 4.10; 6.10; 8.8, 8.9 and 8.10; 9; 10; 11.1 - 11.3 and 11.8; 12; 13; 14; 15; 16; 18; and 19	3.3, 3.4 and 3.5; 4.6 and 4.7; 5.2; 6.4 and 6.6; 9; 10.1 to 10.8; 11; and 12.

**Draft 2022 Standard VET Funding Contract**  
**Schedule 1**  
**Skills First Program Specifications**

DRAFT

<b>VERSION</b>	<b>DATE</b>	<b>COMMENTS</b>
1.0	31 August 2021	



## PURPOSE

This Schedule 1 further describes the Training Provider's obligations for delivering Skills First subsidised training. It must be read in conjunction with the rest of this Contract.

It is divided into three parts.

**Part A** includes obligations about attracting prospective students, assessing and evidencing eligibility, enrolment processes and delivering training to Skills First Students:

1. Student information and protection;
2. Skills First eligibility;
3. Assessing and evidencing eligibility
4. Pre-Training Review and enrolment requirements;
5. Tuition and other fees;
6. Planning for training and assessment;
7. Training and assessment; and
8. Practical Placements.

**Part B** includes obligations about reporting and making claims for payment of the Funds and the Department's rights in relation to certain types of audits:

9. Evidence of Participation;
10. Reporting training activity, government-subsidised tuition fees and other information;
11. Determining and paying Funds; and
12. Specific audits or reviews.

**Part C** sets out conditions of programs and initiatives that allow the Training Provider to grant eligibility exemptions or Fee Waivers:

13. Asylum Seeker VET Program;
14. Eligibility Exemptions Initiative;
15. Training to Support the 10-Year Industry Plan for Family Violence Prevention and Response;
16. JobTrainer; and
17. Skills First Youth Access Initiative.

## **PART A**

### **1. STUDENT INFORMATION AND PROTECTION**

#### **Marketing and recruiting students**

1.1 When marketing (including promoting and advertising) programs on the Funded Scope and recruiting prospective students, the Training Provider must be accurate and honest and act in an ethical and responsible manner, including by:

- a) complying with all applicable Laws, including the Australian Consumer Law;
- b) ensuring that all prospective students are accurately informed about:
  - i) the nature and requirements of the training and assessment;
  - ii) financial arrangements, including the cost and other financial impacts on the prospective student;
  - iii) training hours and commitment;
  - iv) the expected outcomes of the training; and
  - v) any subcontract arrangements that will impact on who delivers the training and assessment to the prospective student;
- c) not making false, misleading or inaccurate:
  - i) comparisons between the Training Provider or any of its training with other education providers or their training;
  - ii) claims of association of the Training Provider with any other education provider; or
  - iii) representations regarding the quality or outcomes of the Training Provider's training (including employment and immigration outcomes);
- d) not engaging in any unconscionable conduct, including taking advantage of any prospective student's vulnerability (including due to their age, disability or illiteracy) to recruit them into a program of training; and
- e) not marketing programs as Skills First subsidised training if the Training Provider is not permitted to offer those programs in that manner under this Contract, including Foundation Skills Programs if the Training Provider is not on the Foundation Skills Approved Provider List.

#### **Promotional materials**

1.2 Any promotional publication, report, signage or other material prepared by (or on behalf of) the Training Provider relating to the Training Services must:

- a) acknowledge in a prominent way that the Training Services are provided with Funds made available by the Victorian and Commonwealth Governments (for example, by stating that 'This training is delivered with Victorian and Commonwealth Government funding');
- b) not, without the prior written approval of the State or the Department, use any logo or trade marks of the State or the Department;

- c) ensure that such materials meet the requirements of the *Equal Opportunity Act 2010* (Vic) and related Laws, including the provision of materials encouraging individuals with disabilities to access training subsidised through the Skills First Program; and
- d) identify the Training Provider's legal entity and/or registered business name and its TOID.

#### **Training Provider website and Victorian Skills Gateway**

1.3 The Training Provider must publish in a prominent place on its website:

- a) a summary of its latest registration audit information, which must at a minimum include:
  - i) audit date;
  - ii) programs audited on that audit date; and
  - iii) audit outcomes as follows:
    - A. audit non-compliance identified: Yes / No;
    - B. a summary of significant and/or critical non-compliances and actions taken to rectify; and
    - C. non-compliances rectified: Yes / No / Not Applicable;
- b) standard tuition fees for Skills First subsidised training for each program it delivers on the Funded Scope. This must be kept up to date and include the following caveat:

'The student tuition fees as published are subject to change given individual circumstances at enrolment';
- c) details of any other fees, including student services, amenities, goods or materials;
- d) a list of all providers of Brokering Services;
- e) where there is a subcontract arrangement for training and assessment, the identity of the subcontractor, and the respective roles of the Training Provider and subcontractor in the provision of training and assessment;
- f) its Online Training and Assessment service standards in accordance with requirements prescribed by the Department; and
- g) its complaints and appeals process.

1.4 The Training Provider must register for, and maintain, an up to date profile on, the Victorian Skills Gateway.

## **2. SKILLS FIRST ELIGIBILITY**

2.1 The eligibility criteria and requirements set out in this Clause 2 must be read in conjunction with the Guidelines About Eligibility. In particular, these Guidelines set out which forms of Evidence of Eligibility are accepted by the Department and provide information about how to apply the eligibility requirements in particular circumstances.

### **Eligibility requirements**

2.2 To be eligible for Skills First subsidised training, an individual must be:

- a) an Australian citizen, a holder of a permanent visa or a New Zealand citizen (the '**citizenship /permanent residence**' eligibility criterion);

- b) enrolling in and commencing training in a program provided by the Training Provider between the Commencement Date and 31 December 2022 inclusive; and
- c) physically present in the State of Victoria at all times at which they are undertaking the training and assessment.

The only exception to this 'physical presence' requirement is where a Skills First Student is temporarily located interstate or overseas for a defined period for a Practical Placement associated with their training. During the period the Skills First Student is interstate or overseas, they may receive Online Training and Assessment, provided that such Online Training and Assessment only accounts for up to 50% of the total Scheduled Hours.

### Impact of age on eligibility

- 2.3 An individual who is **under 20 years of age** (as at 1 January in the year of commencement of training) is eligible to enrol in any Skills First subsidised training.
- 2.4 An individual who is **20 years of age** or older (as at 1 January in the year of commencement of training) is eligible to enrol in Skills First subsidised training in:
  - a) a program that is at a higher AQF level than the highest qualification held at the time of the scheduled commencement of training (**'upskilling'**);
  - b) a Foundation Skills Program (unless the individual already holds a qualification issued by an Australian VET or higher education provider that is at AQF level 5 (Diploma) or higher);
  - c) training as an Apprentice (not Trainee) under an Approved Training Scheme;
  - d) training in the VCE or the VCAL (Intermediate or Senior); or
  - e) a Skill Set.

### Limits on the amount of training that can be subsidised

- 2.5 In addition to meeting the eligibility requirements in Clauses 2.2 to 2.4, a Skills First Student can only:
  - a) commence a maximum of two Skills First subsidised Skill Sets in a calendar year (**the '2 Skill Sets in a year' limit**).

Where an individual is enrolled in a Skill Set(s) that is scheduled to commence at a later date in that calendar year, this Skill Set(s) must be counted for the purpose of this limit;
  - b) commence a maximum of two Skills First subsidised programs that are AQF qualifications in a calendar year (**the '2 AQF qualifications in a year' limit**).

Where an individual is enrolled in a program(s) that is scheduled to commence at a later date in that calendar year, this program(s) must be counted for the purpose of this limit;
  - c) undertake a maximum of two Skills First subsidised programs at any one time (**the '2 at a time' limit**); and
  - d) commence a maximum of two government-subsidised programs in their lifetime that are at the same AQF level (**the '2 at level in a lifetime' limit**).

### Eligibility exemptions

- 2.6 The Training Provider may exempt an otherwise ineligible individual from particular eligibility requirements or limits on the amount of training that can be subsidised only if it is permitted to do so in accordance with Part C of this Schedule 1.
- 2.7 The Training Provider must also refer to Part C of this Schedule 1 and the Guidelines About Eligibility for information about specific programs or circumstances that are not to be taken into account in determining an individual's eligibility.

### Additional eligibility requirements for Apprentices and Trainees

- 2.8 If an individual is an Apprentice or Trainee, to be eligible for Skills First subsidised training they must be:
- a) employed in Victoria in either a full time or part time capacity under an award or registered agreement;
  - b) undertaking an Approved Training Scheme; and
  - c) a signatory to a Training Contract with their employer that is registered with the VRQA.

### Additional eligibility requirements for individuals under 17 years of age

- 2.9 If an individual will be under 17 years of age at the time their training commences, unless they are undertaking training as part of a School Based Apprenticeship or Traineeship, to be eligible for Skills First subsidised training, they must have received an exemption from school attendance.
- 2.10 To receive an exemption from school attendance, an individual must participate in training on a **full-time basis**<sup>1</sup>, or participate in a combination of training and employment. The exemption from school attendance referred to in Clause 2.9 must:
- a) clearly identify:
    - i) the Training Provider and the training to be undertaken; or
    - ii) the employer, if the individual is to undertake an Apprenticeship or Traineeship; and
  - b) be signed by:
    - i) a Department Regional Director if the individual has **not yet completed Year 10**<sup>2</sup>; or

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<sup>1</sup> Training on a 'full-time basis' has the meaning given in Ministerial Order No. 705, that is:

- a) a course of education or training considered to be full-time by the provider of the education or training; or
- b) an average of at least 25 hours per week, subject to the following provisions:
  - i) when computing the 25 hours, the time spent by the child in travelling to and from an education institution or employer is to be excluded; and
  - ii) normal term and public holidays of an education institution and recreation leave and other leave entitlements if the student is in employment are excluded when calculating the average number of hours spent in education, training and employment per week.

<sup>2</sup> 'completed Year 10' has the meaning given in Ministerial Order No. 705, that is:

- a) the completion of a program of study at a registered school or as part of registered home schooling in Victoria that would ordinarily entitle the student to progress to a senior secondary course;
- b) the completion of a nationally recognised VET course as equivalent to Certificate I or above; the completion of a program of study undertaken in another State, Territory or country which is equivalent to a program of study in Victoria that would ordinarily entitle the student to progress to a senior secondary course; or
- c) the completion of education in any special, similar or other circumstances approved by the Secretary.

- ii) the school principal or a Department Regional Director if the individual **has completed Year 10**; or
- iii) a Department Regional Director if the individual **is not currently, or has not ever been, enrolled in a Victorian school**, for example, an individual registered for home schooling or who has previously only undertaken schooling interstate or overseas.

2.11 The Training Provider must sight and retain evidence of the exemption from school attendance in accordance with the Guidelines About Eligibility.

2.12 Where a student under 17 years of age is enrolled in training on the basis that they have been granted an exemption from school attendance to undertake a specific program with the Training Provider, if they stop attending that program, or complete that program, and are at that time still under 17 years of age, the Training Provider must notify the relevant Regional Office of the Department and (where applicable) the student's previous Victorian school that they are no longer attending training.

### **Eligibility exclusions**

2.13 An individual is not eligible for Skills First subsidised training if they are:

- a) enrolled in a school (unless they are a School Based Apprentice or Trainee). This includes:
  - i) any government, non-government, independent or Catholic school; or
  - ii) a student registered for home schooling in Victoria;
- b) a prisoner held at a prison within the meaning of the *Corrections Act 1986* (Vic);
- c) detained under the *Mental Health Act 2014* (Vic), the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) or the *Sentencing Act 1991* (Vic) at the Thomas Embling Hospital; or
- d) detained (other than on weekend detention) under the *Children, Youth and Families Act 2005* (Vic) or the *Sentencing Act 1991* (Vic) or held on remand in a youth justice facility.

2.14 The exclusions described in Clause 2.13(b) to (d) of this Schedule 1 **do not apply** to individuals who are:

- a) either:
  - i) young people on community based orders made under the *Children, Youth and Families Act 2005* (Vic); or
  - ii) individuals held in Judy Lazarus Transition Centre; and
- b) able to physically access training outside of a custodial setting without supervision.

## **3. ASSESSING AND EVIDENCING ELIGIBILITY**

### **Assessing eligibility**

3.1 The Training Provider must determine whether an individual is eligible to receive their Skills First Entitlement before their commencement in training.

3.2 The Training Provider must have a clear and documented business process for determining if an individual is eligible for Skills First subsidised training. This process must include

assessment of all the requirements in Clause 2 of this Schedule 1 and must comply with the Guidelines About Eligibility.

### **Evidencing eligibility**

- 3.3 In accordance with the Guidelines About Eligibility, the Training Provider must, for each Skills First Student:
- a) record its assessment of the individual's eligibility using the form prescribed by the Department in those Guidelines, or in a form that records the same information; and
  - b) sight and retain Evidence of Eligibility.

### **Additional evidence requirements**

- 3.4 If the Training Provider grants an eligibility exemption to an individual in accordance with a program or initiative in Part C of this Schedule 1, it must sight and retain any additional evidence that is specified in the Guidelines About Eligibility.
- 3.5 If the Training Provider enrolls an individual in a program that, as part of that program's accreditation, includes a requirement for them to provide evidence that they meet particular entry requirements, the Training Provider must sight and retain a copy of that evidence.

For example, to enrol in 22567VIC Certificate I in Transition Education an individual must provide evidence of permanent cognitive impairment or intellectual disability.

## **4. PRE-TRAINING REVIEW AND ENROLMENT REQUIREMENTS**

### **Pre-Training Review**

- 4.1 The Training Provider must conduct a Pre-Training Review for each prospective Skills First Student, as part of enrolment, or before the commencement of training, to ascertain a suitable, and the most suitable, program for that individual to enrol in.
- 4.2 The Training Provider must have a clear and documented business process for conducting the Pre-Training Review. The business process must be consistent with the objectives set out in Clause 3 of this Contract.
- 4.3 The Pre-Training Review must:
- a) identify the individual's objectives for training and the likely job or further study outcomes from the development of new competencies and skills;
  - b) identify any competencies previously acquired (including through RPL, recognition of current competency (RCC) or credit transfer);
  - c) consider the individual's:
    - i) existing educational attainment and capabilities;
    - ii) literacy and numeracy skills; and
    - iii) digital capability where the proposed learning includes portions of Online Training and Assessment; and
  - d) identify whether the proposed learning strategies (including Online Training and Assessment) and materials are appropriate for that individual and, where necessary, steps to overcome any barriers.

4.4 The Training Provider must document why it determined the program each Skills First Student enrolled in was a suitable, and the most suitable, program for that individual, with reference to the information obtained through considering all items in Clause 4.3 of this Schedule 1.

4.5 The Training Provider must not enrol a Skills First Student in a program that is at an inappropriate level for that individual, including in Foundation Skills Programs that would not provide additional relevant competencies.

For example, it would be inappropriate to enrol an individual assessed at Australian Core Skills Framework Level 3 in all core skills areas in either Certificate I in General Education for Adults or Certificate II in Skills for Work and Vocational Pathways.

4.6 If an audit reveals that any Pre-Training Review has not been completed and documented in accordance with Clauses 4.1 to 4.5 of this Schedule 1, then (without limiting the circumstances in which it may exercise such rights) the Department may exercise its rights under Clauses 16 and 17 of this Contract.

4.7 For the purpose of the Department exercising its rights under Clause 16.2(e) of this Contract in the circumstances set out in Clause 4.6 of this Schedule 1, the monetary amount will be \$200.00 per absent, incomplete or inadequate Pre-Training Review.

#### **Enrolment requirements**

4.8 Before enrolling a prospective Skills First Student, the Training Provider must inform them that their enrolment is under the Skills First Program and must explain how their enrolment will impact their future Skills First Entitlement.

4.9 The Training Provider must enrol all individuals as Skills First Students in accordance with:

- a) the Victorian VET Student Statistical Collection Guidelines;
- b) all applicable Regulatory Standards.

4.10 The Training Provider must ensure that its enrolment processes include asking all mandatory standard enrolment questions as described in the Victorian VET Student Statistical Collection Guidelines.

4.11 The Training Provider must include a standard privacy notice in all enrolment forms, in accordance with the Victorian VET Student Statistical Collection Guidelines, which advises individuals how their data may be supplied to, and used by, the Department and Commonwealth VET Student Loan agencies.

4.12 The Training Provider must advise prospective Skills First Students of the possibility of:

- a) receiving an NCVET survey;
- b) receiving an invitation to participate in a Department endorsed project;
- c) receiving an invitation to participate in the Department's annual student outcome survey; and/or
- d) being contacted by the Department for audit, review or investigation purposes.

#### **5. TUITION AND OTHER FEES**

5.1 The Training Provider may determine the tuition fee it charges to any Skills First Student for delivery of programs on the Funded Scope, unless:

- a) the individual has an entitlement to a Fee Concession; or



b) there is a requirement to apply a Fee Waiver.

5.2 The Training Provider must comply with the requirements in the Guidelines About Fees for levying tuition and other fees, including collecting and maintaining evidence to support the application of Fee Concessions and Fee Waivers.

## **6. PLANNING FOR TRAINING AND ASSESSMENT**

### **Training and Assessment Strategy**

6.1 The Training Provider must have a Training and Assessment Strategy consistent with Standard 1 of the National RTO Standards and its User Guide for each program it delivers on the Funded Scope.

6.2 The Training Provider must justify and document in the Training and Assessment Strategy if a program is structured so it will be completed in a shorter time than described in the Australian Qualifications Framework. This justification must be based on the previous skills, knowledge and needs of the students, and explain how the relevant cohort:

- a) has the characteristics to achieve the required rigour and depth of training; and
- b) can meet the competency requirements in a shorter time.

6.3 Where a program is entirely or partly comprised of Online Training and Assessment, the Training and Assessment Strategy must reflect the unique requirements of that delivery mode, and must include:

- a) the methodology for engagement between learners, teachers and support staff;
- b) learner progress monitoring arrangements and evidence-informed feedback models designed to strengthen learning outcomes; and
- c) the validation method for online assessment tools.

6.4 The Training Provider must have a clear and documented business process to ensure that all Training and Assessment Strategies are reviewed, evaluated and updated from time to time to ensure that they continue to comply with this Contract.

### **General Training Plan requirements (non-Apprentice/Trainee Skills First Students)**

6.5 The Training Provider must develop a Training Plan for each non-Apprentice/Trainee Skills First Student for each program they are enrolled in, to ensure they are fully informed about:

- a) the nature of their training and assessment; and
- b) the respective obligations of the Training Provider and student.

6.6 The Training Provider must have a clear and documented business process that shows how information in the Training Plan is authorised by the Training Provider and how it is made available to each non-Apprentice/Trainee student.

6.7 The Training Plan must be developed and provided to the non-Apprentice/Trainee Skills First Student either before training commencement, or no later than four weeks after training commencement.

6.8 The Training Provider is not required to issue a Training Plan under Clause 6.5 of this Schedule 1 for a Skill Set that is a single subject. However, the Training Provider must ensure the student is accurately informed of the nature and requirements of the training and assessment to make an informed decision about their enrolment.

**Additional Training Plan endorsement for training conducted in a workplace**

- 6.9 A Training Plan for a non-Apprentice or Trainee Skills First Student who is to participate in training conducted in a workplace where they are employed must be agreed to and signed by the employer that manages and controls the workplace.

**Form of Training Plan (non-Apprentice/Trainee Skills First Students)**

- 6.10 The information in the Training Plan for a non-Apprentice/Trainee Skills First Student may be:
- a) provided in a single document or in a number of separate documents.
  - b) provided either as a generic plan for a group of individuals who are undertaking the same training in the same way, or as a single plan for each individual.

**Content of Training Plan (non-Apprentice/Trainee Skills First Students)**

- 6.11 The Training Plan for a non-Apprentice/Trainee Skills First Student must:
- a) be consistent with the programs or subjects to be attained and must be customised (as required) for the needs of an individual; and
  - b) align with the relevant TAS, or document and justify any variation from the TAS.
- 6.12 The Training Plan for a non-Apprentice/Trainee Skills First Student must include the:
- a) name and contact details of the Training Provider;
  - b) title and code of program;
  - c) expected duration of the program;
  - d) title and code for each subject to be completed as part of the program;
  - e) Scheduled Hours for each subject;
  - f) timeframe for each subject, including the start date and end date of each subject;
  - g) delivery modes to be used for each subject;
  - h) method(s) of assessment for each subject;
  - i) persons responsible for the delivery and/or assessment of each subject (where this information is not available within the timeframe for first issuing a Training Plan, it must be made available as soon as is reasonably practicable); and
  - j) record of RPL and credit transfer hours granted, as relevant.

**Maintenance of Training Plan (non-Apprentice/Trainee Skills First Students)**

- 6.13 The Training Provider must update the Training Plan for a non-Apprentice/Trainee Skills First Student according to any changes that occur during the delivery of training and/or assessment and ensure each individual receives the updated information as soon as is reasonably practicable.
- 6.14 The Training Provider must monitor each non-Apprentice/Trainee Skills First Student's progress in attaining the required competencies of the program, in line with the Training Plan.

**General Training Plan requirements (Apprentices/Trainees)**

- 6.15 The Training Provider, employer and the Apprentice/Trainee must jointly develop a Training Plan for the program the Apprentice/Trainee is enrolled in under the relevant Approved Training Scheme. The Training Plan must be:
- a) vocationally relevant;
  - b) reflect industry requirements; and
  - c) supported by appropriate work within the workplace.
- 6.16 The Training Plan must be signed (and dated) by the Training Provider, the employer and the Apprentice/Trainee (and the school in the case of a school-based Apprenticeship/Traineeship). A copy of the signed Training Plan must be provided to all parties.
- 6.17 The Training Plan for an Apprentice/Trainee may be developed and signed before training commencement but in any case must be developed and signed no later than four weeks after the commencement of training.

**Content of the Training Plan (Apprentices/Trainees)**

- 6.18 The Training Plan for an Apprentice/Trainee must include the:
- a) name and contact details of the Training Provider representative, employer and Apprentice/Trainee (and, in the case of school-based Apprentices/Trainees, the school's representative);
  - b) title and code of program;
  - c) expected duration of the program
  - d) title and code for each subject to be completed as part of the program;
  - e) Scheduled Hours for each subject;
  - f) timeframe for each subject, including the start date and end date of each subject, and including actual dates for when training has already occurred;
  - g) delivery modes and persons responsible for the delivery and/or assessment of each subject, including Structured Training: Workplace based, Structured Training off-the-job and/or detailed training activities to be undertaken as part of any workplace based training arrangements (where this information is not available within the timeframe for first issuing a Training Plan, it must be made available as soon as is reasonably practicable);
  - h) details of the time allocated outside routine work duties for Structured Training Workplace based and/or Structured Training off-the-job;
  - i) assessment method(s) for each subject;
  - j) record of RPL and credit transfer hours granted, as relevant; and
  - k) any other specific requirements to be met in accordance with the Training Contract or the Approved Training Scheme.

### **Maintenance of Training Plan (Apprentices/Trainees)**

- 6.19 Each Training Plan for an Apprentice/Trainee must be reviewed regularly and reflect the current status of the Apprentice's or Trainee's training, so that the Training Plan can facilitate competency based progression and completion.
- 6.20 The Training Provider must update the Training Plan for an Apprentice/Trainee according to any changes mutually agreed with the parties to the Training Contract throughout the delivery of the training and assessment. The changes must be endorsed by the employer and Apprentice/Trainee.

For example, the employer and Apprentice/Trainee (but not the Training Provider) can:

- a) specify that completion will be available earlier than the nominal completion date of the Training Contract if all competencies have been attained; or
- b) mutually agree to apply for an extension to the Training Contract duration if all required competencies have not been attained by the nominal completion date.

## **7. TRAINING AND ASSESSMENT**

### **Amount of training**

- 7.1 The Training Provider must ensure that the amount of training it delivers for programs on the Funded Scope is determined with reference to the matters described in Clause 1.1 and 1.2 of Standard 1 of the National RTO Standards.

### **Deliver training and assessment in accordance with TAS and Training Plan**

- 7.2 The Training Provider must ensure that all training and assessment in programs on the Funded Scope is delivered in accordance with the relevant Training Plan and Training and Assessment Strategy.

### **Requirements for assessment in a workplace**

- 7.3 Where the Training Package or course curriculum requires that a subject be assessed in the workplace, the Training Provider must visit the Skills First Student's workplace in person to carry out that assessment.

### **Learning materials for Online Training and Assessment**

- 7.4 The Training Provider must ensure that all learning materials used for Online Training and Assessment delivery comply with the principles of the Web Content Accessibility Guidelines 2.0.

### **Training delivery where other regulatory requirements apply**

- 7.5 If any additional requirements in Regulatory Standards or other Laws apply to specific programs or types of training on the Funded Scope, the Training Provider must comply with those requirements, including:
- a) for training delivered to Apprentices/Trainees, the requirements of the Act and the Guidelines About Apprenticeship/Traineeship Training Delivery; and
  - b) for the Diploma of Nursing, requirements set by the Nursing and Midwifery Board of Australia, including only delivering an 'Approved Program of Study'.

### Issuing certificates and statements of attainment

- 7.6 The Training Provider must issue recognised certificates or statements of attainment in accordance with the specifications of the relevant accredited courses and Training Packages, as well as any other applicable guidelines, regulations or legislation (including the Guidelines About Apprenticeship/Traineeship Training Delivery for completions by Apprentices/Trainees).

### 8. PRACTICAL PLACEMENTS

- 8.1 If a Skills First Student is to undertake a Practical Placement, the Training Provider must enter into a written Practical Placement agreement.

- 8.2 The Practical Placement agreement must be made before the Skills First Student commences the Practical Placement and must be signed by:

- a) the Training Provider;
- b) the employer or the organisation hosting the Practical Placement; and
- c) the Skills First Student.

- 8.3 The Practical Placement agreement must include the following information:

- a) the rights, obligations and duties of the employer or organisation hosting the Practical Placement, the Training Provider and the Skills First Student;
- b) the program name and the relevant skills required as part of that program to be developed, reinforced and/or assessed during the Practical Placement;
- c) the location and address of the Practical Placement; and
- d) the start and finish dates, the total length of the Practical Placement expressed as hours, and the maximum hours per week.

- 8.4 The Training Provider must ensure the Practical Placement is sufficient and appropriate in order to meet the vocational outcomes of the subjects to which it pertains.

- 8.5 The Training Provider must refer to the ['Guidelines issued by the Department of Education and Training Victoria for Registered Training Organisations and Employers in relation to Post-Secondary Students undertaking Practical Placements \(Updated Practical Placement Guidelines\) as at 10 April 2017'](#), in particular for information about insurance coverage for a Skills First Student undertaking a Practical Placement.

**PART B**

**9. EVIDENCE OF PARTICIPATION**

- 9.1 The Training Provider must document Evidence of Participation for all programs on the Funded Scope that are delivered to Skills First Students.
- 9.2 Evidence of Participation must be documented for each subject in a way that enables the Department to make a reasonable judgement about a Skills First Student's participation in learning and/or assessment.
- 9.3 The Department will determine if Evidence of Participation provided is sufficient to substantiate the claim that a Skills First Student participated in learning and/or assessment.
- 9.4 To be valid, Evidence of Participation must contain:
- a) the Skills First Student's name or client identifier;
  - b) a subject identifier; and
  - c) a date expressed in day/month/year format.
- 9.5 One point of Evidence of Participation is one of the items of evidence specified in Clause 9.7 of this Schedule 1.
- 9.6 The number of points of Evidence of Participation that must be documented and maintained for each subject is as follows:

Time Period	Evidence of Participation Requirement
a) if the period between the Activity Start Date and Activity End Date (inclusive) of the subject is <b>30 days or fewer</b>	<b>one point</b> of Evidence of Participation per subject must be provided
b) if the period between the Activity Start Date and Activity End Date for the subject is <b>more than 30 days</b>	<p><b>two points</b> of Evidence of Participation per subject must be provided in compliance with the following conditions:</p> <ul style="list-style-type: none"> <li>i) one point must be no later than 30 days <b>after</b> (and no earlier than) the reported Activity Start Date;</li> <li>ii) one point must be no earlier than 30 days <b>before</b> (and no later than) the reported Activity End Date; and</li> <li>iii) the two points of Evidence of Participation must be two different items of evidence from the list specified in Clause 9.7 of this Schedule 1.</li> </ul>

9.7 The only items of Evidence of Participation the Department accepts are:

Item of Evidence of Participation	Explanation and minimum requirements
a) evidence of work submitted by the Skills First Student relating to engagement in the subject	<p>This must be the work itself, or a copy if this is not possible.</p> <p>If the information required under Clause 9.4 of this Schedule 1 (student name or client identifier, a subject identifier and a date expressed in day/month/year format) cannot be recorded on the work itself, separate evidence must be provided to link the work to the Skills First Student, the subject and date it was completed. For example, a delivery schedule (timetable, lesson plan or equivalent) detailing how the piece of work covers the subject in question, including due dates and milestones for completion of the work.</p>
b) Skills First Teacher notes based on communication between the Skills First Teacher and Skills First Student, establishing their engagement in the learning and/or assessment activity of the subject	<p>This includes personal interviews, two-way telephone conversations or e-mail exchanges, or other communication about the Skills First Student's engagement in learning and/or assessment activity of the subject.</p> <p>It may include reference to notes from another person working alongside the Skills First Teacher, for example an industry expert or workplace supervisor.</p>
c) a Training Provider endorsed attendance roll showing that the Skills First Student attended a training session related to the subject.	<p>The attendance roll must:</p> <ul style="list-style-type: none"> <li>i) be recognised by the Training Provider as a tool to record attendance used as part of its normal processes;</li> <li>ii) be accompanied by additional evidence to show how information is entered, updated and interpreted if the attendance roll is kept electronically;</li> <li>iii) be signed by the Skills First Teacher who conducted the training session, and show their name;</li> <li>iv) include the date of the training session; and</li> <li>v) show what subject was delivered at the point at which the Skills First Student is marked on the roll as having attended.</li> </ul> <p>For clustered delivery (where a training session or assessment activity covers more than one subject), additional evidence must be provided to show what subjects were delivered in each training session, such as a delivery schedule (a timetable, lesson plan or equivalent).</p> <p>If a Skills First student withdraws from a subject enrolment, an attendance roll dated the same as the Activity Start Date alone is not sufficient Evidence of Participation, unless the Training Provider can provide additional evidence to show what content was covered in the training session. This additional evidence must show that it was not simply an induction, information session or orientation class, and that training and/or assessment occurred in relation to the subject indicated on the attendance roll.</p>

Item of Evidence of Participation	Explanation and minimum requirements
<p>d) primary documentation that provides evidence of assessment</p>	<p>The documentation must be in the form of a secure record that indicates an actual result consistent with the outcome of an assessment (for example 'competent/not yet competent' or a marked score).</p> <p>The documentation must be endorsed at the subject level and signed by the Skills First Teacher who made the assessment, to confirm the accuracy of the information.</p> <p>For all RPL outcomes, only the primary assessment tool used for any skills recognition assessments will be accepted.</p>
<p>e) secure login to an online learning management system and evidence of the Skills First Student's engagement with learning and/or assessment activity required for the subject</p>	<p>Where a Skills First Student has a secure login (meaning they are issued a unique user ID and password) to an online learning management system to undertake learning and/or assessment activity for the subject, the Training Provider must have:</p> <ul style="list-style-type: none"> <li>i) a record of the login</li> <li>ii) evidence that the Training Provider has checked with the student that they are continuing to engage in the subject.</li> </ul> <p>A login record indicating the Skills First Student received training materials alone is not sufficient Evidence of Participation. Evidence of engagement with learning and/or assessment activity should also be provided, for example participation in a discussion forum, completion of an online quiz, completion of an online reflection task or similar activities.</p>
<p>f) in flexible and distance modes of learning, communication between the Training Provider and Skills First Student engagement confirming that that the Skills First Student has commenced engagement in learning and/or assessment activity</p>	<p>This must include evidence that the Training Provider has checked with the Skills First Student that they are continuing to engage in the subject.</p>
<p>g) in extreme circumstances (for example, fire, flood or other equivalent circumstances), a statutory declaration from the relevant Training Provider Personnel attesting to the Skills First Student's engagement in learning and/or assessment activity</p>	<p>If extreme circumstances prevent the Training Provider from retaining any of the items of Evidence of Participation in paragraphs (a) to (f), the Training Provider must contact the Department for further information and comply with the requirements directed by or agreed with the Department.</p>



### Verifying Evidence of Participation

- 9.8 In undertaking an audit, review or investigation of Evidence of Participation, the Department:
- a) may use judgement when a single item Evidence of Participation is provided to verify participation in more than one subject;
  - b) may verify each enrolment for participation on its merits where a final assessment in the next data collection year is supplied to justify participation in a subject for a continuing enrolment in the current data collection year; and
  - c) will not accept certificates issued to an individual by the Training Provider to satisfy Evidence of Participation at the subject level.
- 9.9 If the Training Provider cannot obtain the employer's confirmation of an Apprentice's competency in the workplace (as required in the Guidelines About Apprenticeship/Traineeship Training Delivery) on, or soon after, the date when all supervised training and/or assessment ended for the subject and this results in there being no Evidence of Participation within the time required by Clause 9.6(b)(ii) of this Schedule 1:
- a) the second point of Evidence of Participation must be no earlier than 30 days before (and no later than) the date when all supervised training and/or assessment ended; and
  - b) the Training Provider must retain a record within the Skills First Student's file of the date when all supervised training and/or assessment ended.
- 9.10 The Department will not accept documents such as 'catch all' sets of questions as Evidence of Participation in the absence of other evidence of learning and/or engagement in the subject. These sets of questions are typically completed on the first day of an individual's attendance, covering all subjects within the cluster, and are not considered to demonstrate engagement in learning and/or assessment activity.
- 9.11 The Department may accept evidence of learning and/or engagement activity that occurs as part of a Skills First Student's Practical Placement as Evidence of Participation. The Training Provider must provide sufficient information to show how the Practical Placement evidences learning and/or engagement in the relevant subject and must meet all other requirements of the relevant item of Evidence of Participation. Practical Placement agreements alone are not accepted as Evidence of Participation.

## 10. REPORTING TRAINING ACTIVITY, GOVERNMENT-SUBSIDISED TUITION FEES AND OTHER INFORMATION

### Data submitted to SVTS must be timely and accurate

- 10.1 The Training Provider must:
- a) submit accurate and complete Student Statistical Reports to the Department via the SVTS at least once every calendar month per data collection year;
  - b) include in each Student Statistical Report full details for all training activity already delivered within the data collection year, including government-subsidised and fee for service training activity. This includes delivery already commenced and/or completed in the current data collection year; and reporting of program completions; and
  - c) resubmit correct data by no later than the following month's Student Statistical Report if any data it previously submitted as part of Student Statistical Reports is incorrect.

10.2 The Training Provider must ensure that all required data is included and correct in the final Student Statistical Report for each calendar year into which the Term extends and that it is submitted to the Department via SVTS by no later than (whichever is the earlier date):

- a) 5pm on 15 January of the next calendar year; or
- b) one month after the expiry of the Term or termination of this Contract.

10.3 The Training Provider must ensure that reporting of key information about a Skills First Student and their program of training is accurate and complete at all times, including through the following data items:

- a) name and contact details of the Skills First Student as required in the NAT00085 file;
- b) the Delivery Mode Identifier, Outcome Identifier – National, Activity Start Date and Activity End Date as required in the NAT00120 file; and
- c) Training Organisation Delivery Location Identifier as required in the NAT00120 file, and associated delivery location details as provided in the NAT00020 file.

**Data submitted to SVTS must be certified and approved**

10.4 Before submitting a Student Statistical Report under Clauses 10.1 and 10.2 of this Schedule 1, the CEO of the Training Provider (or their nominee) must certify, by confirming as such through the SVTS submission screen or any other mechanism made available through SVTS, that:

- a) all of the data to be submitted is, to the best of their knowledge, accurate and complete; and
- b) they have made all reasonably necessary inquiries to satisfy themselves of the accuracy and completeness of the data.

10.5 Submitting a Student Statistical Report in accordance with Clause 10.4 of this Schedule 1 means the Department is entitled to rely on all data contained in it as having been approved by the Training Provider CEO.

**Reporting of the Victorian Student Number**

10.6 The Training Provider must ensure that it complies with VET Provider reporting requirements for the Victorian Student Number (VSN) as specified by the Victorian Curriculum Assessment Authority, and must accurately report the VSN to the Department in Student Statistical Reports.

**Reporting of Literacy and Numeracy Support Units**

10.7 The Training Provider must report Literacy and Numeracy Support Units using the LNSUPPORT program code and in accordance with the requirements set out in the Literacy and Numeracy Support Implementation Guide.

**Reporting of withdrawals**

10.8 The Training Provider must report a Skills First Student's withdrawal from a program or subject in accordance with the requirements in the Victorian VET Student Statistical Collection Guidelines, by the earlier of:

- a) two months after the date of withdrawal; or
- b) the final data submission date for the data collection year.

### Pre- and post-testing of Foundation Skills

- 10.9 If the Training Provider is on the Foundation Skills Approved Provider List, it must collect and submit for each Skills First Student who commences, completes or withdraws from a Domain A or Domain B Foundation Skills Program, in each calendar year into which the Term extends, data that measures their skill level translated into the Australian Core Skills Framework or equivalent (as determined by the Department) as at the:
- a) commencement of training; and
  - b) completion of or withdrawal from training.
- 10.10 The data specified in Clause 10.9 of this Schedule 1 must be submitted in a format and timeframe notified by the Department.
- 10.11 To avoid doubt, the requirements in Clause 10.9 of this Schedule 1 only apply to enrolments in Domain A or Domain B Foundation Skills Programs. They do not apply to enrolments in Literacy and Numeracy Support Units (using program code LNSUPPORT).

## 11. DETERMINING AND PAYING FUNDS

### Contact Hour Funds

- 11.1 Subject to the conditions and limitations set out in this Contract, the Department will pay the Training Provider Contact Hour Funds by multiplying:
- a) the number of Scheduled Hours of training and assessment reported by the Training Provider under this Schedule 1 as delivered, or to be delivered, to a Skills First Student; and
  - b) the applicable hourly rate per Scheduled Hour as identified in Clause 11.2 of this Schedule 1.
- 11.2 The hourly rate per Scheduled Hour is the rate specified in either the 'Subsidy' or 'RPL Subsidy' field of the Funded Programs Report (for the relevant payment year, Program Commencement Date and Enrolment Type), adjusted for the following loadings where applicable (including in accordance with Clause 11.3 of this Schedule 1):
- a) **Indigenous loading** – where the Skills First Student self-identifies as being of Aboriginal or Torres Strait Islander descent (and is reported as such through the 'Indigenous Student Identifier' field of the Student Statistical Report) the 'Subsidy' or 'RPL Subsidy' will be increased by 50%;
  - b) **Disengaged youth loading** – where the Skills First Student:
    - i) is aged 15-19 years as at 1 January in the year of commencement of training;
    - ii) does not hold a senior secondary certificate or an accredited qualification at AQF level II or above; and
    - iii) is eligible for a Fee Concession in accordance with Clauses 3.8, 3.12(a) and 3.12(b) of the Guidelines About Fees,the 'Subsidy' or 'RPL Subsidy' will be increased by 30%;
  - c) **VCAL loading** – where the Skills First Student:
    - i) meets the requirements for the Disengaged Youth loading in subclause (b); and

- ii) is undertaking training in the VCAL (Foundation, Intermediate or Senior), for subjects reported against the VCAL program code,

the 'Subsidy' or 'RPL Subsidy' will be increased by 10%; and/or

- d) **Regional loading** – where a subject is delivered to a Skills First Student in a delivery location reported with a regional postcode (as determined by the Department), the 'Subsidy' or 'RPL subsidy' will be increased by 10%.

The regional loading does not apply to Online Training and Assessment or to distance education, which is deemed have occurred if the Predominant Delivery Mode reported is 'E' (external delivery). The only exception is for training delivery where the student's usual residential address is reported with a regional postcode (as determined by the Department).

- 11.3 If more than one of the loadings in Clause 11.2 of this Schedule 1 applies, the loadings will be applied cumulatively. For example, if the conditions for both the Indigenous Loading and the Regional Loading are met, the hourly rate would be increased by 50%, and then that increased rate would be increased by a further 10%.

- 11.4 Where a Skills First Student withdraws from a subject, payment of Contact Hour Funds for their enrolment in that subject will be calculated based on the Hours Attended, not the Scheduled Hours.

#### **Fee Concession Contribution**

- 11.5 The Department will pay a Fee Concession Contribution (subject to the Training Provider being eligible for the payment of Contact Hour Funds for the Skills First Student), where the Training Provider has:

- a) granted a Fee Concession to a Skills First Student in accordance with the Guidelines About Fees; and
- b) reported that Fee Concession in accordance with the Victorian VET Student Statistical Collection Guidelines.

- 11.6 The Fee Concession Contribution amount payable will be calculated by multiplying:

- a) the number of Scheduled Hours the Training Provider is entitled to be paid Contact Hour Funds for the Skills First Student; and
- b) the lesser of:
  - i) four times the actual hourly tuition fee paid by the Skills First Student as reported by the Training Provider via the Client Tuition Fee field of the Student Statistical Report; or
  - ii) the 'Maximum Fee Concession Contribution per hour' for the Program, Enrolment Type and relevant concession type as identified in the Funded Programs Report.

#### **Fee Waiver Contribution**

- 11.7 The Department will pay a Fee Waiver Contribution (subject to the Training Provider being eligible for the payment of Contact Hour Funds for the Skills First Student) where the Training Provider has:

- a) granted a Fee Waiver to a Skills First Student in accordance with the Guidelines About Fees; and

- b) reported that Fee Waiver in accordance with the Victorian VET Student Statistical Collection Guidelines.

11.8 The Fee Waiver Contribution payable will be calculated by multiplying:

- a) the number of Scheduled Hours for which the Training Provider is entitled to be paid Contact Hour Funds for the Skills First Student; and
- b) the applicable 'Fee Waiver Contribution per Hour' (fixed value) for the program (as identified on the Funded Programs Report).

#### **Payment of Funds**

11.9 Contact Hour Funds will be paid to the Training Provider monthly in arrears on the basis of Student Statistical Reports submitted by the Training Provider to the Department in accordance with this Contract.

11.10 Contact Hour Funds will be calculated at the subject level, and the Training Provider will be paid for the Scheduled Hours reported for the subject in equal instalments over the number of months of scheduled delivery. Each monthly instalment will be for a whole number of Scheduled Hours. If the total number of Scheduled Hours divided by the number of months of scheduled delivery is not a whole number, payment will be apportioned in a reasonable manner determined by the Department.

11.11 If the Training Provider delivers a program to a Skills First Student and, in the Department's view:

- a) the Training Provider has another program on the Funded Scope that would meet the needs of the Skills First Student;
- b) a lower subsidy applies to the other program (as listed on the Funded Programs Report); and
- c) payment of the Funds would not be contrary to Clause 11.29 of this Schedule 1 (claims for Funds cannot be made for training and assessment inconsistent with packaging rules or vocational intent),

then the Department may:

- d) calculate the Funds to be paid based on the other program; and
- e) re-calculate any Funds already paid based on the subsidy that applies to the other program, and take other action as it sees fit in respect of any difference between the amount paid and the re-calculated amount.

#### **Relationship between reporting and payments**

11.12 The Department is only liable to pay Funds to the Training Provider for training activity that is reported in accordance with Clause 10 of this Schedule 1.

11.13 When the Training Provider lodges a Student Statistical Report, it is considered to be a claim for payment and constitutes a representation by the Training Provider that it:

- a) has delivered the reported hours of training and/or assessment in accordance with this Contract;
- b) has Evidence of Participation in accordance with this Contract for each Skills First Student; and

- c) is otherwise entitled to payment for those hours of training and/or assessment under this Contract.
- 11.14 The Department is not liable to pay Funds for a subject unless the Training Provider has created a valid claim for payment for that subject within 60 days of the Activity Start Date. A valid claim for payment is created when the Training Provider has lodged one or more Student Statistical Report(s) for a subject where the record for that subject in the SVTS has passed validation rules consistent with the requirements of this Contract and has not been assigned a validation error.
- 11.15 The Department may recover any Funds paid for any relevant subject where no valid final 'Outcome identifier – National' is reported after the Activity End Date, by the earlier of:
- a) 90 days after the Activity End Date; or
  - b) the end of the data collection year.
- 11.16 Where Funds are recovered under Clause 11.15 of this Schedule 1, if a valid final 'Outcome identifier – National' is subsequently reported for that subject by the end of the data collection year, then the Department will pay the Training Provider Funds to which it is entitled. The Department is not liable to pay any Funds for a subject under these circumstances after the end of the data collection year.
- 11.17 Where the Training Provider changes any of the data reported for a subject in a Student Statistical Report and that change causes the total amount of Funds payable, and/or the amount of any instalment of Funds calculated under Clause 11.10 of this Schedule 1, to be either higher or lower than the amount calculated using the data in the earlier report, then:
- a) **if the amount is higher**, the Department will (subject to its other rights under this Contract) adjust the Funds so that the Training Provider receives the correct total amount by the date of payment for the reporting period in which the relevant Activity End Date occurs (or as soon as reasonably possible thereafter). This will take place in a manner determined by the Department (which may or may not involve a change in the amount of Funds paid for any outstanding payment that exists at the time the Student Statistical Report containing the updated data is submitted); or
  - b) **if the amount is lower**, (without limiting Clause 8.8 of this Contract) the Department may recalculate the amount of Funds due at any time (including by recalculating the amount payable as a result of any claims already submitted by the Training Provider) and determine that the amount of any overpayment of Funds is a debt due to the Department under Clause 8.8 of this Contract.
- 11.18 The Training Provider must ensure Student Statistical Reports reflect actual training activity that is supported by Evidence of Participation. At a minimum, each monthly submission of Student Statistical Reports must include full details for all reportable training activity already delivered within the data collection year. For example, Activity Start Dates and Activity End Dates must match the actual period of time in which Training Services occurred (or, where applicable, are reasonably expected to occur).
- 11.19 The Training Provider must not make a claim for payment for training activity that has not occurred at the time the claim is made, including:
- a) reporting that a subject has commenced, as indicated by the Activity Start Date, prior to its actual commencement so that the Training Provider receives a full or partial payment for the subject prior to its commencing; and/or
  - b) reporting that a subject has been completed, as indicated by the Activity End Date, before it has actually been completed so that the Training Provider is paid in full for the subject before it has been completed.

11.20 The Training Provider must support all claims for payment in its reporting, including using the correct 'Funding Source Identifier' in accordance with the Victorian VET Student Statistical Collection Guidelines, and accurately reporting if the Skills First Student is an Apprentice or Trainee.

**Restrictions on payments of Funds**

11.21 The Department is not liable to pay Funds for programs other than those that are on the Funded Programs Report and the Funded Scope. To avoid doubt, Funds will only be paid where the Program Commencement Date for the program falls within the 'Effective for PCD from' and 'Effective for PCD to' dates for the program specified in the Funded Programs Report and on the Funded Scope.

11.22 The Department is not liable to pay Funds for training and/or assessment delivered by a person who did not at all relevant times comply with the Skills First Teacher requirements set out in Clauses 4.2 and 4.3 of this Contract.

11.23 The Department is not liable to pay Funds for commencements in excess of the Commencement Allocation, or any Program Allocation (where applicable), in a calendar year. To avoid doubt:

- a) unused commencements in any calendar year cannot be carried over to the Commencement Allocation or any Program Allocation in a subsequent calendar year;
- b) the number of commencements given under Clause 5.4 for Skill Sets cannot be used for AQF qualifications and vice versa;
- c) the number of commencements given under Clauses 5.3 and 5.5 is subject to any additional conditions specified in Schedule 2;
- d) training activity reported using the LNSUPPORT program code in accordance with Clause 10.7 of this Schedule 1 is not counted as a commencement towards the Commencement Allocation or any applicable Program Allocation; and
- e) if the Training Provider receives any Funds for a Skills First Student's enrolment, a commencement is deemed to have occurred for the purpose of the applicable Commencement Allocation and any applicable Program Allocation, even if the payment of Funds is subsequently reversed, refunded or otherwise repaid to the Department for any reason.

11.24 Where the Training Provider submits a claim for payment for two or more commencements for which Funds have not previously been paid, and payment for one or more of those commencements would exceed the Commencement Allocation and/or any Program Allocation, the Department may determine the part of the claims it will, or will not, pay Funds for, so that neither the Commencement Allocation nor any Program Allocation will be exceeded.

11.25 The Department is not liable to pay Funds for RPL undertaken as part of enrolment in a Foundation Skills Program, or the Certificate I in Vocational Preparation.

11.26 The Department is not liable to pay Funds for recognition of current competency (RCC) or credit transfer.

11.27 The Department is not liable to pay the Contact Hour Funds in excess of the Maximum Payable Hours for a program.

11.28 The Department is not liable to pay the Contact Hour Funds:

- a) in excess of two times the nominal hours per subject as published in the Victorian Purchasing Guide; and

- b) in excess of the nominal hours per subject as published in the Victorian Purchasing Guide for RPL.
- 11.29 The Department is not liable to pay any Funds for training or assessment that is inconsistent with the packaging rules or vocational intent of the program, as specified in the Training Package or accredited course documentation.
- 11.30 The Department is not liable to pay Funds for a Skills First Student's participation in a subject where the Activity End Date is after the 'Subsidised Training End Date' as identified for the program in the Funded Programs Report.
- 11.31 The Department is not liable to pay Funds where a claim is lodged for an Apprentice or Trainee, but relevant information reported via the Student Statistical Report does not match the information about the student and Training Contract as recorded in the Epsilon database.
- 11.32 The Department is not liable to pay Funds where a claim is lodged for an Apprentice or Trainee, but the training activity occurs after the nominal end date of the Training Contract.

## 12. SPECIFIC AUDITS OR REVIEWS

- 12.1 Under Clause 11 of this Contract (Audit, Review and Investigation), the Department may audit Evidence of Participation, Evidence of Eligibility and/or Evidence of Fee Concession/Fee Waiver at any time.
- 12.2 To avoid doubt, where the Department takes any action under Clause 16 (Enforcement) of this Contract in relation to audits of the type referred to in Clause 12.1 of this Schedule 1, this does not limit any of the Department's other rights under Clauses 16 and 17 (Termination Rights) of this Contract.

### Evidence of Participation audit

- 12.3 The Department may conduct an Evidence of Participation audit, using a statistically valid sample size it determines. If the audit reveals unsupported subjects (**exceptions**) without satisfactory Evidence of Participation in accordance with this Contract (including Clause 9 of this Schedule 1) and the percentage of exceptions exceeds a threshold determined by the Department, it may take action under Clause 16 (Enforcement) of this Contract.
- 12.4 For the purpose of Clause 12.3 of this Schedule 1, if the Department:
- a) applies a monetary amount under Clause 16.2(e), that amount will be 10 per cent of the total Funds claimed and/or paid to the Training Provider across the total population of subjects from which the statistically valid sample has been drawn, multiplied by the percentage of exceptions; and/or
  - b) requires a refund of the Funds under Clause 16.2(d), the value of Funds sought may be up to the percentage of exceptions above the threshold, multiplied by the total Funds claimed and/or paid to the Training Provider across the total population of subjects from which the statistically valid sample has been drawn.

### Evidence of Eligibility audit

- 12.5 If an Evidence of Eligibility audit reveals that the Training Provider does not have sufficient documentation to demonstrate it has correctly assessed an individual's Skills First Entitlement (in accordance with Clause 3 of Schedule 1) and the Training Provider has claimed Funds for that individual (**exception**), then the Department may take action under Clause 16 (Enforcement) of this Contract.



- 12.6 For the purpose of Clause 12.5 of this Schedule 1, if the Department applies a monetary amount under Clause 16.2(e), that amount will be 10 per cent of the total Funds claimed and/or paid to the Training Provider for each enrolment for which an exception has been identified.

**Evidence of Fee Concession/ Fee Waiver audit**

- 12.7 If an Evidence of Fee Concession/Fee Waiver audit reveals that the Training Provider does not have sufficient documentation to demonstrate that it has correctly assessed a Skills First Student's entitlement to receive a Fee Concession or Fee Waiver (in accordance with this Contract, including Clause 5 of this Schedule 1), and the Training Provider has claimed Funds for that individual (**exception**) then the Department may take action under Clause 16 (Enforcement) of this Contract.
- 12.8 For the purpose of Clause 12.7 of this Schedule 1, if the Department applies a monetary amount under Clause 16.2(e), that amount will be 10 per cent of the total Fee Concession Contribution or Fee Waiver Contribution claimed and/or paid to the Training Provider for each enrolment where an exception has been identified.

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## PART C

### 13. ASYLUM SEEKER VET PROGRAM

#### Program settings

- 13.1 The Training Provider may exempt an individual from the **citizenship/permanent residence** eligibility criterion (as set out in Clause 2.2(a) of this Schedule 1) if:
- a) the individual is referred to training via the Asylum Seeker Resource Centre or the Australian Red Cross Victims of Human Trafficking Program and they present a 'Referral to Government Subsidised Training – Asylum Seekers' form; or
  - b) the Training Provider confirms using the Commonwealth Visa Entitlement Verification Online (VEVO) that the individual holds a valid:
    - i) Bridging Visa Class E (BVE) – (subclass 051);
    - ii) Safe Haven Enterprise Visa (SHEV) – (subclass 790);
    - iii) Temporary Protection Visa (TPV) – (subclass 785); or
    - iv) Bridging Visa Class F (BVF) – (subclass 060).
- 13.2 The Training Provider must sight and retain evidence of the student's entitlement to receive an exemption under Clause 13.1 of this Schedule 1 in accordance with the Guidelines About Eligibility.
- 13.3 The Training Provider must grant a Fee Concession to a Skills First Student enrolled under the Asylum Seeker VET Program in accordance with Clause 5 of this Schedule 1.

### 14. ELIGIBILITY EXEMPTIONS INITIATIVE

#### Initiative settings

- 14.1 If the Training Provider is a Learn Local Organisation, it may exempt an individual from the:
- a) **'upskilling'** requirement (Clause 2.4(a) of this Schedule 1); and/or
  - b) **'2 at level in a lifetime'** limit (Clause 2.5(d) of this Schedule 1).
- 14.2 The maximum number of commencements for which exemptions may be granted under Clause 14.1 of this Schedule 1 is as specified in Schedule 2 – Individual Details and Conditions.
- 14.3 Eligibility exemptions granted under Clause 14.1 of this Schedule 1 cannot be applied to Skills First Students with a Program Commencement Date prior to the Commencement Date.
- 14.4 Commencements are not counted for the purpose of Clause 14.2 if they are reported using specific Funding Source Identifiers – State Training Authority identified in the Victorian VET Student Statistical Collection Guidelines.
- 14.5 Where the Training Provider grants an exemption under Clause 14.1 of this Schedule 1, it must offer guidance on the best training to undertake to improve job outcomes and complement previous training undertaken. This must be supported through undertaking effective Pre-Training Reviews as required under this Contract.

- 14.6 Preference for exemptions under Clause 14.1 of this Schedule 1 should be granted to individuals seeking to enrol in training that meets identified skills shortages and localised labour market needs and/or improves their employment prospects, and in accordance with any guidance issued by the Department (except that, to avoid doubt, such preference should not be granted over individuals referred to in Clause 14.7 of this Schedule 1).
- 14.7 The Training Provider must offer exemptions under Clause 14.1 of this Schedule 1 to individuals from the following cohorts, when they present evidence specified in the Guidelines About Eligibility:
- a) retrenched workers;
  - b) automotive supply chain workers;
  - c) Jobs Victoria Employment Network Clients; and/or
  - d) any other specific cohort as determined by the Department from time to time.
- 14.8 The Department may vary:
- a) the Funding Source Identifiers or cohorts to which eligibility exemptions under this Clause 14 can be applied; and/or
  - b) the Funding Source Identifiers that are not counted towards the maximum number of commencements referred to in Clause 14.2 of this Schedule 1.

## 15. TRAINING TO SUPPORT THE 10-YEAR INDUSTRY PLAN FOR FAMILY VIOLENCE PREVENTION AND RESPONSE

### Purpose

- 15.1 This Clause 15 sets out eligibility exemptions for training to support the Victorian Government's 10-year Industry Plan for family violence prevention and response.

### Eligibility exemptions

- 15.2 The '22510VIC – Course in identifying and responding to family violence risk' is aimed at both existing professionals potentially delivered as stand-alone training, and pre-service students for inclusion as part of a broader community service related program.
- 15.3 Under this Clause 15, if the Training Provider has the program on its Funded Scope, it may exempt an individual seeking to enrol in 22510VIC – Course in identifying and responding to family violence risk from the:
- a) '2 Skill Sets in a year' limit (Clause 2.5(a) of this Schedule 1); and/or
  - b) '2 at a time' limit (Clause 2.5(c) of this Schedule 1).

### Impact of participating in this initiative on an individual's future Skills First Entitlement

- 15.4 As part of the Pre-Training Review, and before the commencement of training, the Training Provider must advise a Skills First Student that commencement in, or completion of, 22510VIC – Course in identifying and responding to family violence risk under this Clause 15 will not impact their future Skills First Entitlement and will not be taken into account when assessing whether they meet the:
- a) '2 Skill Sets in a year' limit (Clause 2.5(a) of this Schedule 1); and/or
  - b) '2 at a time' limit (Clause 2.5(c) of this Schedule 1).

## 16. JOBTRAINER

### Purpose

- 16.1 This Clause 16 sets out requirements for granting (within the Training Provider's allocation of JobTrainer commencements) eligibility exemptions, a JobTrainer Fee Concession or Fee Waiver (the **JobTrainer benefits**) to individuals who are eligible to participate in the JobTrainer initiative.

### Scope

- 16.2 This Clause 16 applies to training activity that commences between the Commencement Date and 30 June 2022.
- 16.3 The Training Provider may apply the JobTrainer benefits under this Clause 16 to individuals undertaking programs on the JobTrainer Funded Programs Report that are also on the Training Provider's Funded Scope.

### The JobTrainer benefits

- 16.4 The Training Provider may exempt an individual who is eligible to participate in JobTrainer and is seeking to enrol in a program that is an AQF qualification on the JobTrainer Funded Programs Report from the following eligibility requirements:
- a) 'upskilling' (Clause 2.4(a) of this Schedule 1); and
  - b) '2 at level in a lifetime' (Clause 2.5(d) of this Schedule 1).
- 16.5 The Training Provider must offer a JobTrainer Fee Concession to an individual who is eligible to participate in JobTrainer and is seeking to enrol in a program that is an AQF qualification on the JobTrainer Funded Programs Report.
- 16.6 The Training Provider must offer a Fee Waiver to an individual who is eligible to participate in JobTrainer and is seeking to enrol in a Skill Set on the JobTrainer Funded Programs Report.

### Allocations

- 16.7 The Training Provider will be given a maximum number of commencements for which the JobTrainer benefits can be applied (the JobTrainer allocation). This will be documented in its Schedule 2 – Individual Details and Conditions.
- 16.8 The JobTrainer allocation is comprised of a separate number of commencements for:
- a) programs that are Skill Sets; and
  - b) programs that are AQF qualifications.
- 16.9 The Department may make available a process for the Training Provider to apply to receive additional commencements in its JobTrainer allocation, which will be determined at the Department's discretion.
- 16.10 A commencement where the JobTrainer benefits are applied will not count towards the Training Provider's Commencement Allocation.
- 16.11 To avoid doubt, the Department may apply a Program Allocation under Clause 5 to specific programs on the Funded Scope for which the JobTrainer benefits can be applied.

### Student Participation Requirements

- 16.12 To participate in the JobTrainer initiative an individual must be:
- a) 17 to 24 years of age at the time of commencement of training; or
  - b) a job seeker.
- 16.13 For the purpose of JobTrainer, a job seeker is an individual who:
- a) holds a current and valid Health Care Card issued by the Commonwealth, Pensioner Concession Card or Veteran's Gold Card;
  - b) has a separation certificate from their employer;
  - c) has a letter from an employer or company receiver on company letterhead stating that they have been made, or will be made, redundant or retrenched; or
  - d) does not have one of the forms of evidence in paragraphs (a) to (c) but has made and signed a self-declaration that they are currently unemployed.
- 16.14 A Skills First Student is entitled to receive the JobTrainer benefits for a commencement in:
- a) **one** program that is an AQF qualification on the JobTrainer Funded Programs Report; and
  - b) **one** program that is a Skill Set on the JobTrainer Funded Programs Report.
- 16.15 As part of enrolment and prior to the commencement of training, the Training Provider must, in accordance with the Guidelines About Eligibility, confirm that the Skills First Student meets the requirements of Clause 16.14 of this Schedule 1.
- 16.16 To avoid doubt, if a Skills First Student withdraws from, and then seeks to recommence, in the same program for which they have received their JobTrainer benefits, the JobTrainer benefits may be applied in respect of that recommencement if it occurs during the period in which JobTrainer commencements can be made (until 30 June 2022).

### Apprenticeships and Traineeships

- 16.17 A Skills First Student is not entitled to receive the JobTrainer benefits for a program that is delivered as an Apprenticeship (including a School Based Apprenticeship) or as a School Based Traineeship.
- 16.18 A Skills First Student may receive JobTrainer benefits for a program that is delivered as a Traineeship if:
- a) they are 17 to 24 years of age at the time of commencement of training; or
  - b) they are over 24 years of age and:
    - i) hold a current and valid Health Care Card issued by the Commonwealth, Pensioner Concession Card or Veteran's Gold Card;
    - ii) were unemployed on the commencement date of their Training Contract; or
    - iii) became employed no earlier than 31 days before the commencement date of their Training Contract.

## Payment

16.19 The Department will use the JobTrainer Funded Programs Report to determine:

- a) the 'Maximum Fee Concession Contribution per hour' payable for enrolment in a program that is an AQF qualification; and
- b) the 'Fee Waiver Contribution per Hour' payable for a Skill Set.

## 17. SKILLS FIRST YOUTH ACCESS INITIATIVE

### Purpose

17.1 The Skills First Youth Access Initiative is to support participation in training by young people (24 years of age or under) who have been, or are currently on, Youth Justice Orders or Child Protection Orders, or are residents of an Education First Youth Foyer.

### Initiative settings

17.2 If the Training Provider is a Learn Local Organisation, it must grant a Fee Waiver to a Skills First Student who meets the criteria in Clause 17.1 of this Schedule 1 and who is referred to training by:

- a) the Department of Families, Fairness and Housing;
- b) the Department;
- c) the Department of Justice and Community Safety; or
- d) a referring agency, which is defined for this purpose as an organisation based in the State of Victoria that currently receives funding or is contracted by the Victorian Government or the Commonwealth Government to provide services to children, youth and/or families.

17.3 For the purpose of the Skills First Youth Access Initiative:

- a) Youth Justice Order means:
  - iv) a community sentence, which includes:
    - A. an undertaking;
    - B. a youth control order;
    - C. a probation order;
    - D. a youth supervision order;
    - E. a youth attendance order;
    - F. a youth parole order; or
  - v) a custodial sentence, which includes:
    - A. a youth residential centre order; or
    - B. a youth justice centre order

each as defined in, or issued or given under, the *Children, Youth and Families Act 2005* (Vic);

- b) Child Protection Order has the meaning given to protection order in the *Children, Youth and Families Act 2005* (Vic), which includes:
  - i) a temporary assessment order;
  - ii) an interim accommodation order;
  - iii) a family preservation order;
  - iv) a family reunification order;
  - v) a care by Secretary order;
  - vi) a long-term care order;
  - vii) a permanent care order; or
  - viii) an undertaking; and
- c) a resident of an Education First Youth Foyer means a resident of one of the following Education First Youth Foyers: Broadmeadows, Lilydale, Glen Waverley, Shepparton or Warrnambool.

17.4 To avoid doubt, the eligibility exclusions in Clause 2.13 of this Schedule 1 (including for prisoners held in a prison, or detained or held in remand, as described in Clause 2.13) apply to individuals seeking to participate in this initiative.

17.5 The Training Provider must sight and retain evidence of an individual's entitlement to receive a Fee Waiver under the Skills First Youth Access Initiative in accordance with the Guidelines About Fees.

#### **Training Provider responsibilities**

17.6 If Clause 17.2 of this Schedule 1 applies to the Training Provider, it must:

- a) work with referring agencies in its region to ensure strong working relationships and:
  - i) provide the referring agencies with up to date advice on appropriate programs for referral purposes;
  - ii) ensure up to date information is made available to the referring agencies on program availability, prerequisite requirements and costs (any other costs which are not student tuition fees), to assist agencies in the placement of young people in appropriate programs; and
  - iii) provide information to the referring agencies to support eligible young people and referring agencies to make informed choices for referral and follow up processes;
- b) make every reasonable effort to place individuals referred under this program into suitable programs, by offering training in the recommended program for the individual in the current student intake, or if not possible, in the next student intake (subject to meeting any program entry requirements);

- c) participate fully with the Department, the Victorian Government, referring agencies and any other relevant body in assisting a referred student to undertake accredited training; and
- d) provide information to individuals referred to training under this program about services and support available to them.

**Payment**

- 17.7 To avoid doubt, the Training Provider will receive a Fee Waiver Contribution as a result of granting a Fee Waiver to a Skills First Student under the Skills First Youth Access Initiative.

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