



## TRAINING INITIATIVE FUNDING AGREEMENT



**Date**

\_\_\_\_\_

**Parties**

**AUSTRALIAN CAPITAL TERRITORY**

**[INSERT FULL NAME OF TRAINING PROVIDER INCLUDING ABN]**

**Template**

ACT Government Solicitor

**Prepared by**

Level 6, 12 Moore Street  
Canberra City ACT 2601

**Template**

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**Revision**

**Version**

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## CONTRACT DETAILS

<p><b>PARTIES</b></p>	<p>AUSTRALIAN CAPITAL TERRITORY, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth) (<b>Territory</b>) represented by the represented by the Chief Minister, Treasury and Economic Development Directorate.</p> <p>[INSERT FULL NAME, INCLUDING ACN FOR A COMPANY OR ABN FOR OTHER ORGANISATION AND CHECK IT IS A LEGAL ENTITY] of [Insert address] (<b>Training Provider</b>).</p>
<p><b>CONTACT OFFICERS</b></p>	<p><b>Territory's Contact Officer:</b>          Executive Branch Manager, Skills Canberra          Chief Minister, Treasury and Economic Development Directorate          220 London Circuit          GPO Box 158          CANBERRA ACT 2601          Phone: (02) 6205 8555          Email: <a href="mailto:skills@act.gov.au">skills@act.gov.au</a></p>
	<p><b>Training Provider's Contact Officer:</b></p> <p><b>Name:</b> Click or tap here to enter text.  <b>Street Address:</b> Click or tap here to enter text.  <b>Postal Address:</b> Click or tap here to enter text.  <b>Phone:</b> Click or tap here to enter text.  <b>Email:</b> Click or tap here to enter text.</p>
<p><b>TERM</b></p>	<p>The period commencing 1 October 2023 and ending 30 September 2025.</p>
<p><b>FURTHER PERIOD</b></p>	<p>Each of the following periods:</p> <p>The period commencing 1 October 2025 and ending 30 September 2026.</p> <p>The period commencing 1 October 2026 and ending 30 September 2027.</p>

## BACKGROUND

- A. The Territory has responsibility for the oversight and promotion of quality vocational education and training in the Territory.
- B. The Training Provider is a registered training organisation (RTO) registered with the National VET Regulator under the *National Vocational Education and Training Regulator Act 2011*.
- C. The Territory has agreed to make Funding available to the Training Provider in respect of the delivery of various Training Initiatives by the Training Provider on the terms and conditions of this Agreement.

IT IS AGREED by the parties as follows.

### 1. INTERPRETATION

#### 1.1. Definitions

In this Agreement, unless the context otherwise requires:

<b>Accounting Standards</b>	means the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
<b>ACT Standards</b>	means the ACT Standards for delivery of Training Initiatives, at <b>Schedule 1</b> of this Agreement, as varied from time to time in accordance with the procedure outlined at <b>clause 5.2</b> .
<b>Additional Support Agreement</b>	has the meaning given in the Compliance Guides.
<b>Agreement</b>	means the Contract Details, <b>clauses 1 to 16</b> and all schedules to this Agreement.
<b>Agreement Material</b>	means Material created or in any way brought into existence wholly or partly with Territory Funding for the delivery of the Subsidised Training but does not include Territory Material.
<b>Associates</b>	means, in relation to a party, any officer, agent, adviser, consultant, contractor (including subcontractor) or employee of that party.
<b>Audit Guide for Training Providers</b>	means the Audit Guide for Training Providers in the ACT, available on the Skills Canberra Website, as updated by the Territory from time to time by notice to the Training Provider.
<b>Australian Apprenticeship</b>	means any Training Products governed by the ACT Standards Compliance Guide for Australian Apprenticeships, available on the Skills Canberra Website.
<b>Australian Core Skills Framework (ACSF)</b>	has the meaning given in the Compliance Guides.
<b>Australian Qualifications Framework (AQF)</b>	has the meaning given in the Compliance Guides.

<b>Authority</b>	means any government or any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality.
<b>AVETARS Account</b>	means an AVETARS user account as required to access restricted AVETARS functionality including student enrolment management, the nomination of Training Products for delivery, and the claiming of Funding.
<b>AVETMISS</b>	Australian Vocational Education and Training Management Information Statistical Standard (AVETMISS) is the agreed national data standard for the collection, analysis and reporting of VET information in Australia. See also ACT AVETMISS.
<b>Brokerage Arrangement</b>	means an arrangement between the Training Provider and another person for that person to: <ul style="list-style-type: none"> <li>(a) recruit students, or enrol students, or accept applications for enrolment in a Training Initiative;</li> <li>(b) market, or provide information or advice in relation to, a Training Initiative;</li> <li>(c) assist students to complete or submit applications for a Training Initiative; or</li> <li>(d) assist, or provide support for, students who could be Eligible Individuals, to complete any assessments required to show that students are academically suited to undertake the Subsidised Training.</li> </ul>
<b>Certification Documentation</b>	has the meaning referred to in the Compliance Guides.
<b>Change in Control</b>	means in relation to any entity (other than a natural person), at any time, any person or entity alone, or together with any Associate or Associates, ceases to or commences to, directly or indirectly have Control of that entity.  For the purposes of this definition, Associate or Associates has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act).
<b>Claim</b>	means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made: <ul style="list-style-type: none"> <li>(a) under or in connection with this Agreement; or</li> <li>(b) at Law or for specific performance, restitution, payment of money (including damages) or any other form of relief.</li> </ul>
<b>Commencement Date</b>	means the date specified on the cover page of the Agreement.
<b>Completion Payment</b>	has the meaning referred to in the Compliance Guides.

<b>Compliance Audit</b>	means an audit conducted pursuant to the Audit Guide for Training Providers, in respect of the Training Providers compliance with the ACT Standards.
<b>Compliance Guides</b>	means the guides issued by the Territory and published on the Skills Canberra Website, as amended in accordance with <b>clause 5.3</b> , which set the Territory's requirements for compliance with the ACT Standards, including the following: <ul style="list-style-type: none"> <li>(a) the ACT Standards Compliance Guide for Australian Apprenticeships; and</li> <li>(b) the ACT Standards Compliance Guide for Skilled Capital.</li> </ul>
<b>Contact Officer</b>	means in relation to each party, the officers whose names and contact details are specified in the Contract Details, or as notified from time to time by one party to the other.
<b>Control</b>	means: <ul style="list-style-type: none"> <li>(a) control of, or having the capacity to control the composition of the board or partnership committee, or decision making, directly or indirectly, in relation to the financial and operating policies;</li> <li>(b) being in a position to cast, or control the casting of, more than 20% of the maximum number of votes that may be cast at a general meeting, meeting of unitholders in a trust, meeting of partners in a partnership or similar; or</li> <li>(c) having a relevant interest (as defined in section 608 of the Corporations Act) in more than 20% of the Securities,</li> </ul> of an entity (whether alone or together with any Associates). For the purposes of this definition: <ul style="list-style-type: none"> <li>(d) Associate or Associates has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act); and</li> <li>(e) Securities has the meaning given the in the Corporations Act.</li> </ul>
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>Credit Transfer</b>	has the meaning referred to in the Compliance Guides.
<b>Delivery Mode</b>	has the meaning referred to in the Compliance Guides.
<b>Disallowed Person</b>	means any person (which includes any of the entities referenced in <b>clause 1.2(3)</b> ) who since the day 7 years prior to the commencement of this Agreement: <ul style="list-style-type: none"> <li>(a) was an RTO that was a party to a contract with the Territory in relation to Funding in respect of delivery of Training Initiatives which was terminated,</li> </ul>

suspended or had conditions placed upon the Training Providers access to entitlements;

- (b) had its registration as an RTO revoked, cancelled, suspended or had conditions placed on its registration by the National VET Regulator;
- (c) if the Training Provider is approved to receive government subsidies for the provision of VET in any other Australian jurisdiction, had its agreement for funding in that jurisdiction terminated, suspended or had conditions placed upon the Training Providers access to entitlements; or
- (d) was responsible, by their acts or omissions, for any of the matters raised in sub-paragraph (a), (b) or (c) above occurring to another person.

**Eligible Individual**

means a person who:

- (a) is eligible for Subsidised Training in accordance with the criteria set out in the Compliance Guides; and
- (b) continues to meet those criteria for the period for which the person undertakes training in a Training Product.

**Funded Place**

means an allocation of Funding by the Territory for delivery of a Training Initiative by the Training Provider to an Eligible Individual.

**Funding**

means the total of the following amounts in relation to all Funded Places approved by the Territory pursuant to **clause 4.2** (or pursuant to any Prior Funding Agreement):

- (a) the subsidy for each Training Product advertised on the ACT Qualifications Register; and
- (b) the loadings, support funding, and any other amount specified in the Compliance Guides,

less any deductions specified in the Compliance Guide. For the purposes of this definition, the amount of each subsidy, loading or deduction will be as specified in the relevant document as at the date each application is made by the Training Provider.

**Further Period**

means the period(s) of the further agreement(s) which may be offered by the Territory pursuant to **clause 3.2** and as specified in the Contract Details.

**Government Party**

means all and any of the Territory, and any Authority of the Territory.

**GST**

has the same meaning as it has in the GST Act.

**GST Act**

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

**Initial Skills Assessment**

has the meaning referred to in the Compliance Guides.

<b>Internal Review</b>	means the RTO Internal Review Tool, or similar, to be completed by the Training Provider to assess its performance in accordance with the Agreement in the form provided on the Skills Canberra Website.
<b>Language, Literacy and Numeracy (LLN)</b>	has the meaning referred to in the Compliance Guides.
<b>Law</b>	means: <ul style="list-style-type: none"> <li>(a) those principles of common law and equity established by decisions of courts; and</li> <li>(b) all legislation, statutes, rules, regulations, by-laws, ordinances and subordinate legislation of the Commonwealth or the Territory.</li> </ul>
<b>Liability</b>	means any debt, obligation, claim, action, cost, (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is: <ul style="list-style-type: none"> <li>(a) actual, prospective or contingent; or</li> <li>(b) currently ascertainable or not,</li> </ul> and whether under or arising out of or in any way in connection with this Agreement or arising at Law.
<b>Material</b>	means all documents, posters, literature, brochures, booklets, publications, audio or video recordings, Internet or other electronic representation and any other educational, publicity or other item or representation in any form including documents, information and data stored by any means.
<b>National Standards</b>	means the <i>Standards for Registered Training Organisations (RTOs) 2015</i> (Cth) made under subsection 185(1) and subsection 186(1) of the NVETR Act.
<b>NVETR Act</b>	means <i>National Vocational Education and Training Regulator Act 2011</i> (Cth).
<b>Personal Information</b>	means personal information as defined in section 8 of the <i>Information Privacy Act 2014</i> (ACT).
<b>Prior Funding Agreement</b>	means an agreement for the Funding of Subsidised Training in the period prior to the commencement of this Agreement.
<b>Recognition of Prior Learning (RPL)</b>	has the meaning given in the Compliance Guides.
<b>RTO</b>	means a registered training organisation, as defined in the NVETR Act.
<b>Scope of Registration</b>	has the meaning given in the NVETR Act.
<b>Skills Canberra Website</b>	means the website for Skills Canberra, or the administrative unit of the Territory which administers this Agreement from time to time.



<b>Special Conditions</b>	means the special conditions detailed in <b>SCHEDULE 2</b> (if any).
<b>Structured Training</b>	has the meaning given in the Compliance Guides.
<b>Subsidised Training</b>	means the delivery of a Training Initiative to an Eligible Individual by the Training Provider in accordance with this Agreement, and for which the Training Provider has applied for Funding pursuant to <b>clause 4.2</b> or pursuant to any Prior Funding Agreement, and includes all matters relating to or connected with the delivery of that Training Initiative.
<b>Term</b>	means the term specified in the Contract Details.
<b>Territory</b>	means, when used: <ul style="list-style-type: none"> <li>(a) in a geographical sense, the Australian Capital Territory; and</li> <li>(b) in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).</li> </ul>
<b>Territory Information</b>	means the kind of information that: <ul style="list-style-type: none"> <li>(a) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Territory which are by their nature confidential;</li> <li>(b) is notified (whether in writing or not) by the Territory to the Training Provider as being confidential; or</li> </ul> but does not include information that: <ul style="list-style-type: none"> <li>(c) is or becomes public knowledge other than by breach of this Agreement;</li> <li>(d) has been independently developed or acquired by the Training Provider; or</li> <li>(e) has been notified by the Territory to the Training Provider as not being confidential.</li> </ul>
<b>Territory Material</b>	means any Material provided by the Territory to the Training Provider for the purposes of this Agreement.
<b>TPPs</b>	means the Territory Privacy Principles provided for in section 13 and set out in Schedule 1 of the <i>Information Privacy Act 2014</i> (ACT).
<b>TPP Code</b>	means a code of practice about information privacy which having regard to sub-sections 21(1) and (3) of the <i>Information Privacy Act 2014</i> (ACT) binds an agency that engages the Training Provider in the delivery of the Subsidised Training.
<b>Training Initiative</b>	means the Training Product funded by the Territory, and listed on the ACT Qualifications Register available on the Skills Canberra Website.
<b>Training Plan</b>	has the meaning given in the Compliance Guides

<b>Training Product</b>	has the meaning given in the National Standards.
<b>Training Provider Material</b>	means all Material owned by the Training Provider and used for the purpose of delivering the Subsidised Training.
<b>Transition Out Period</b>	means the period described in <b>clause 15.1(2)</b> .
<b>Tuition Fees</b>	has the meaning given in the Compliance Guides.
<b>VET</b>	means vocational education and training.

Further terms and definitions for the delivery of Subsidised Training are included in the Compliance Guides.

## 1.2. General

In this Agreement, unless the context otherwise requires:

- (1) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any determinations, notifiable instruments or other subordinate legislation issued under that legislation or legislative provision;
- (2) the singular includes the plural and vice versa;
- (3) a reference to a person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (4) a reference to any gender includes all genders;
- (5) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this Agreement;
- (6) a recital, schedule, annexure or description of the parties forms part of this Agreement;
- (7) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
- (8) a reference to any party to this Agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (9) where an expression is defined anywhere in this Agreement it has the same meaning throughout;
- (10) a reference to "dollars" or "\$" is to an amount in Australian currency;
- (11) the word "include" and its derivations are not to be construed as words of limitation; and
- (12) the expression "this Agreement" includes the agreement, arrangement, understanding or transaction recorded in this Agreement.

## 2. PURPOSE

The purpose of this Agreement is to set the terms and conditions upon which the Territory may make Funding available in respect of Subsidised Training delivered in accordance with this Agreement. The Training Provider acknowledges that the payment of any Funding is subject to the Territory being reasonably satisfied of the quality of Subsidised Training

delivered by the Training Provider, and the Training Provider's compliance with this Agreement.

### **3. TERM**

#### **3.1. Term**

This Agreement is for the Term unless terminated earlier.

#### **3.2. Further Agreement**

The Territory may, no later than 90 calendar days prior to the expiry of the Relevant Period, offer the Training Provider a further agreement in relation to Funding for Subsidised Training for the following Further Period. The Training Provider may accept the offer by providing notice in writing to the Territory no later than 30 calendar days before expiry of the Relevant Period. The Further Period will be on the standard terms and conditions of the Territory for Funding of Subsidised Training at the time the offer is made.

- (1) For the purposes of this clause the Relevant Period means the expiry of the initial Term or a Further Period where there is more than one Further Period.

### **4. THE TRAINING INITIATIVES**

#### **4.1. System Access**

- (1) Within 10 business days of the Commencement Date, the Territory will provide the Training Provider with the login credentials for an AVETARS Account.
- (2) The Training Provider's access to an AVETARS Account is, at all times, limited by its Scope of Registration and subject to its compliance with its obligations under this Agreement.
- (3) The Territory may amend, limit or place conditions upon the Training Provider's AVETARS Account, as reasonably necessary to reflect any change to the Training Provider's Scope of Registration or to exercise, enforce or obtain the benefit of any right of the Territory or enforce any obligation of the Training Provider under this Agreement.

#### **4.2. Enrolment of Students**

- (1) The Training Provider may during the Term apply for Funded Places in accordance with this **clause 4.2**.
- (2) Subject to **clause 4.2(4)**, the relevant process for application for Funded Places and approval of Funded Places by the Territory in respect of any Training Product is as set out in the Compliance Guides.
- (3) For the purposes of an application for a Funded Place in an Australian Apprenticeship, the Training Provider is taken to have applied for a Funded Place at the time that the Training Provider notifies the Territory of its acceptance of the enrolment of the Eligible Individual (such as acceptance of a notification of business).
- (4) Notwithstanding anything in the Compliance Guides, the Territory may approve or reject any application for a Funded Place in its discretion at any time in the period of 30 calendar days after an application is made by a Training Provider. This clause applies notwithstanding whether the Territory's approval or rejection of a Funded

Place has been automatically notified through the Training Provider's AVETARS Account prior to the expiry of the 30 day period.

- (5) The date of approval of any Funded Place under this Agreement will be the later of:
  - (a) the Territory's confirmation of approval in accordance with the Compliance Guide; or
  - (b) the expiry of the period in **clause 4.2(4)**.
- (6) The Training Provider may only apply for any Funded Place where:
  - (a) there is an available Funded Place in the Training Initiative applied for;
  - (b) the Training Provider is authorised to deliver the relevant Training Product pursuant to its Scope of Registration; and
  - (c) the Training Provider has nominated to deliver the relevant Training Product, in accordance with the applicable Compliance Guide.
- (7) The Territory may in its discretion:
  - (a) set caps or limits upon the number of Funded Places available in any particular Training Product from time to time;
  - (b) change the Training Products in respect of which the Territory will make Funded Places available;
  - (c) change the amount of any Funding which is provided in respect of a particular Training Product or category of Training Products,

provided that the Territory will not apply such variations in relation to an application by the Training Provider for a Funded Place which is already approved.
- (8) The Territory does not guarantee or represent that it will:
  - (a) make any Funding, or any minimum level of Funding available to the Training Provider;
  - (b) make any number, or any minimum number, of Funded Places available to the Training Provider; or
  - (c) make any number, or any minimum number, of Funded Places available in respect of any particular Training Product.

#### **4.3. Delivery of Training Initiatives**

In consideration of the Funding, the Training Provider must deliver the Subsidised Training to Eligible Individuals diligently and otherwise in accordance with this Agreement.

### **5. ACT STANDARDS AND COMPLIANCE GUIDES**

#### **5.1. Training Provider to meet ACT Standards and Compliance Requirements**

- (1) The Training Provider must ensure that the delivery of the Subsidised Training meets the standard set out in the ACT Standards as assessed by the Territory and in accordance with the requirements of the Compliance Guides.
- (2) The Training Provider must, by 1 February in each year during the Term, or such other date as may be advertised on the Skills Canberra Website, complete an Internal Review of its performance against the requirements of this Agreement, the ACT Standards and the Compliance Guides.

## **5.2. Variation of ACT Standards**

- (1) The Territory may amend the ACT Standards from time to time in accordance with the procedure outlined in this clause.
- (2) In respect of any of the following matters, the Territory may update the ACT Standards by giving 30 calendar days' notice in writing to the Training Provider:
  - (a) any administrative matter, time frame, reporting requirement or procedure; or
  - (b) any other matter which is practically necessary by reason of a change to the NVETR Act, or the requirements of the National VET Regulator.
- (3) In respect of an amendment dealing with any matter other than those specified in **clause 5.2(1)**, the Territory must provide notice in writing to the Training Provider detailing the proposed amendment (**Amendment Notice**).
- (4) If the Training Provider does not agree to the proposed amendment in an Amendment Notice, the Training Provider may, within 30 calendar days of receipt of the Amendment Notice (**Notice Period**), terminate this Agreement, and in that event **clause 15** will apply.
- (5) If the Training Provider does not exercise its rights under **clause 5.2(4)**, the amendment is deemed to have been agreed immediately on expiry of the Notice Period.

## **5.3. Variation to the Compliance Guides**

The Territory may amend the Compliance Guides and the Audit Guide for Training Providers from time to time by 30 calendar days' notice in writing to the Training Provider.

## **6. FUNDING**

### **6.1. Payment of the Funding**

Subject to the Territory being reasonably satisfied that the Training Provider has complied with this Agreement and delivered the Subsidised Training in accordance with the ACT Standards and the Compliance Guides, the Territory must pay the Funding to the Training Provider in the manner specified in the Compliance Guides.

### **6.2. Non-compliance**

- (1) In addition to any other rights of the Territory pursuant to this Agreement, where, in the reasonable opinion of the Territory, the Training Provider has not complied with this Agreement or has not delivered the Subsidised Training (or any part thereof) in compliance with the ACT Standards or the Compliance Guides, the Territory may:
  - (a) defer or withhold payment of the Funding (or any part thereof) to the Training Provider until such time as the Training Provider has fulfilled its obligations; or
  - (b) deduct from the Funding an amount the Territory reasonably considers proportionate to any non-compliance by the Training Provider with its obligations under this Agreement; and
  - (c) deduct from the Funding an amount the Territory reasonably considers proportionate to the non-compliance by the Training Provider with the ACT Standards in accordance with the Compliance Guides.

- (2) Without limiting any other rights of the Territory or the matters which may be considered by the Territory, in determining whether to defer, withhold or deduct any amount pursuant to this **clause 6.2** the Territory may consider:
  - (a) information provided by the Training Provider in an Internal Review;
  - (b) any matter identified in a review, investigation or audit pursuant to **clause 10**;
  - (c) any matter identified in a Compliance Audit; and
  - (d) the proportion of non-compliance identified in a Compliance Audit.

### **6.3. Refund and Set Off**

- (1) In respect of any portion of the Funding already paid by the Territory to which a deduction in **clause 6.2** applies, the Training Provider must immediately refund the relevant proportion of the Funding as a debt due and payable to the Territory.
- (2) The Territory may set-off any amount due and payable by the Training Provider to the Territory pursuant to this Agreement or otherwise, against the Funding (or any part thereof) or any other amount payable by the Territory to the Training Provider pursuant to this Agreement.

### **6.4. GST**

- (1) For the purposes of this clause, 'recipient', 'supplier', 'supplies' and 'tax invoice' have the meaning given in the GST Act.
- (2) Unless expressly stated, all sums payable or consideration to be provided under this Agreement is exclusive of GST.
- (3) The parties agree:
  - (a) the Territory, as the recipient, can issue tax invoices in respect of the supplies; and
  - (b) the Training Provider, as the supplier, will not issue tax invoices in respect of the supplies.
- (4) Each party acknowledges that at the date of this Agreement it is registered for GST and that it will notify the other party if it ceases to be registered.

## **7. GENERAL TRAINING PROVIDER OBLIGATIONS**

The Training Provider must, for the Term of this Agreement:

- (1) **(remain registered)** ensure that it remains registered as an RTO and complies with any conditions of its registration;
- (2) **(maintain capacity)** maintain the capacity to deliver any Training Product which the Training Provider has nominated to deliver at **clause 4.2(6)(c)**, including maintaining an adequate number of personnel to deliver each Training Product;
- (3) **(comply with national scheme)** comply with the National Standards, the NVETR Act, any order, direction or undertaking made pursuant to the NVETR Act, and any other requirements or conditions set by the National VET Regulator;
- (4) **(comply with ACT scheme)** in relation to the delivery of Subsidised Training, comply with:
  - (a) the ACT Standards; and

- (b) the Compliance Guides.
- (5) **(comply with any jurisdiction's scheme)** if the Training Provider is approved to receive government subsidies for the provision of VET in any other Australian jurisdiction, the Training Provider must:
  - (a) maintain and comply with any conditions of that approval; and
  - (b) notify the Territory within 10 Business Days if its approval in another Australian jurisdiction has been terminated or suspended;
- (6) **(no Disallowed Persons)** not, without the prior written approval of the Territory, have as an Associate, a related entity (as defined in the Corporations Act) or otherwise deal with any Disallowed Person;
- (7) **(no dishonest conduct)** not engage in any conduct constituting fraud, dishonesty, recklessness or gross negligence;
- (8) **(communicate effectively)** make all reasonable efforts to work and communicate effectively with and maintain the confidence of the Territory and all stakeholders affected by this Agreement;
- (9) **(no disrepute)** not do or omit to do anything which may damage, ridicule, bring into disrepute or be detrimental to the VET sector or the Territory, its name or reputation. For the purposes of this **clause 7(9)**, matters which may be detrimental to the VET sector or the Territory, its name or reputation include the following:
  - (a) behaving dishonestly and in a way that fails to uphold the objects and values of the VET sector in the Territory;
  - (b) behaving in a manner that damages the public confidence in the integrity of the VET sector in the Territory;
  - (c) any abuse, serious incident or misconduct by the Training Provider or its Associates in dealings with a student; and
  - (d) making improper use of the position of trust placed in the Training Provider in the appropriate expenditure of public moneys for vocational education and training; and
- (10) **(maintain financial viability)** maintain financial viability in accordance with *Financial Viability Risk Assessment Requirements 2011 (Cth)*.

## **8. SUBCONTRACTING AND OTHER THIRD PARTY ARRANGEMENTS**

### **8.1. Subcontracting**

- (1) Subject to the Training Provider's compliance with this **clause 8**, the Training Provider may subcontract the delivery of the Subsidised Training (or a part thereof) as follows:
  - (a) to an RTO that holds a current ACT Training Initiative Funding Agreement by notice in writing to the Territory; or
  - (b) to any other person, with the prior written consent of the Territory.
- (2) In relation to any request for consent by a Training Provider pursuant to **clause 8.1(1)(b)**, the Territory will notify the Training Provider of its decision within 30

calendar days of receiving a written request. If the Territory grants its consent pursuant to **clause 8(1)(b)** the Territory may impose such conditions as it sees fit, and the Training Provider must comply with those conditions.

- (3) Where the Training Provider subcontracts any of its services pursuant to this **clause 8.1**, the Training Provider must:
  - (a) enter into a written agreement with the subcontractor which contains provisions consistent with the Territory's rights under this Agreement, including provisions:
    - (i) incorporating obligations mirroring the Training Provider's obligations under **clauses 5.1(1), 7(3), 7(4), 7(6) 7(7), 7(9), 11 and 12;**
    - (ii) which give effect to the Territory's rights pursuant to **clause 9 and clause 10** of this Agreement; incorporating obligations mirroring the Training Provider's obligations and giving effect to the Territory's rights under **clause 14**; and
    - (iii) prohibiting the subcontractor from further assigning or subcontracting the Subsidised Training.
  - (b) if the subcontractor is an RTO, ensure the subcontractor's Scope of Registration includes the Training Product to be delivered by the subcontractor;
  - (c) ensure it is brought to the attention of each Eligible Individual who receives Subsidised Training under a subcontract arrangement that they are enrolled with the Training Provider, not the subcontractor;
  - (d) ensure any subcontractor has appropriate qualifications and is suitably experienced and capable of providing Subsidised Training as required by this Agreement;
- (4) If the Training Provider subcontracts the delivery of some or all Subsidised Training, the Training Provider acknowledges and agrees:
  - (a) notwithstanding any consent given by the Territory, the Training Provider remains primarily liable to the Territory in respect of all of its obligations and liabilities under this Agreement, as if the acts or omissions of the subcontractor were the acts or omissions of the Training Provider;
  - (b) the Territory will not pay any portion of the Funding directly to any subcontractor; and
  - (c) the Training Provider must notify the Territory within 30 calendar days of the subcontract agreement coming to an end.
- (5) Except as provided in **clause 8(1)** and **clause 8(2)**, the Training Provider must not subcontract delivery of the Subsidised Training or its other activities related to delivery of the Subsidised Training, without the prior written consent of the Territory.

## **8.2. Brokerage Arrangements**

- (1) The Training Provider may only enter into a Brokerage Arrangement in accordance with this **clause 8.2**.



- (2) If the Training Provider proposes to enter into a Brokerage Arrangement, then the Training Provider must:
  - (a) provide the Territory with a minimum of 10 business days written notice of the proposed arrangement;
  - (b) not assign any of its obligations to the proposed broker in relation to enrolling students, conducting Initial Skills Assessments or collecting student Tuition Fees;
  - (c) enter into a written agreement with the proposed broker prior to delivery of any services by that broker, which contains provisions that require the broker:
    - (i) to deliver its services in accordance with this Agreement and the Compliance Guides, the NVETR Act and the National Standards as relevant; and
    - (ii) not to collect Personal Information for the purposes of taking enrolments of students, conducting Initial Skills Assessment or collecting student Tuition Fees on behalf of the Training Provider; and
  - (d) provide a copy of its written agreement with the proposed broker to the Territory on request.

### **8.3. Assignment and Change in Control**

- (1) The Training Provider must not assign the whole or part of this Agreement without the prior written consent of the Territory. If the Territory gives its consent, the Territory may impose any conditions it sees fit.
- (2) A Change in Control of the Training Provider or a company that controls the Training Provider (except a company listed on an Australian stock exchange) is taken to be an assignment for the purposes of **clause 8.3(1)**.
- (3) If the Training Provider breaches **clause 8.3(1)** the Territory reserves its rights, including to require the Training Provider to provide information regarding the proposed assignee's capability to comply with the terms of this Agreement or to exercise any of its rights pursuant to **clause 14.2**.

### **8.4. Disallowed Persons**

- (1) Notwithstanding any right of the Training Provider pursuant to this **clause 8**, the Training Provider must not assign or subcontract to, or allow a Change in Control in favour of, a Disallowed Person, without the prior written consent of the Territory.
- (2) If during the Term of this Agreement the Training Provider, or any of its Associates, becomes a Disallowed Person:
  - (a) the Training Provider must notify the Territory as soon as reasonably practical, and specify the basis upon which the Training Provider or its Associate is disallowed; and
  - (b) the Territory may exercise its rights pursuant to **clause 14.2**.

## **9. RECORDS AND REPORTING**

### **9.1. Training Provider must keep accounts**

The Training Provider must:

- (1) keep comprehensive and accurate accounts and records, in accordance with the following requirements (in order of priority):
  - (a) this Agreement;
  - (b) the Compliance Guides;
  - (c) the NVETR Act;
  - (d) the requirements of the National VET Regulator;
  - (e) AVETMISS; and
  - (f) the Accounting Standards (as relevant),and in the event of any inconsistency between those standards and requirements the more onerous requirement applies to the extent of the inconsistency; and
- (2) retain the accounts and records referred to in this **clause 9** for the Term and a further period of two years from the expiry or termination of this Agreement or such longer period as may be required by Law, or any of the requirements or standards at **clause 9.1**.

## **9.2. Provision of records to the Territory**

The Training Provider must:

- (1) upon five business days written notice by the Territory, produce copies of any of the accounts or records referred to in **clause 9.1** and any other records in relation to the delivery of the Subsidised Training, for inspection by the Territory at any place or in the manner designated in that notice during normal business hours; and
- (2) provide any other reports or records that the Territory may reasonably require from time to time, including to:
  - (a) confirm the Training Provider's capacity to continue to deliver the Subsidised Training;
  - (b) confirm the Training Provider's compliance with this Agreement; and
  - (c) assess the Training Provider's financial viability in accordance with *Financial Viability Risk Assessment Requirements 2011* (Cth).

## **9.3. Format of Reports**

The Territory may specify a format or the details to be included in any report required pursuant to this **clause 9**.

## **10. ACCESS TO PREMISES AND RECORDS**

### **10.1. Access to records and Materials**

The Territory may, at reasonable times and on reasonable notice, enter the Training Provider's premises and inspect, review or audit the accounts and records kept by the Training Provider in relation to any matter relating to the Subsidised Training, the Funding or this Agreement.

### **10.2. Compliance Audit**

- (1) Without limiting the rights of the Territory pursuant to **clause 9.2** or **clause 10.1**, the Territory may conduct a Compliance Audit at the times and in the manner set out in the Audit Guide for Training Providers.

- (2) The Training Provider must comply with the requirements (including timeframes) specified in the Audit Guide for Training Providers.

### **10.3. Access assistance by Training Provider**

The Training Provider must:

- (1) give the Territory, or its authorised representative, access to those facilities and such assistance as may reasonably be necessary to enable the Territory to conduct an inspection, audit or review under **clause 10.1**, or a Compliance Audit;
- (2) permit the Territory, at its own cost, to take copies of any records which it considers relevant to its inspection, review or audit, or Compliance Audit; and
- (3) facilitate the interview by the Territory of any Associate of the Training Provider, student or employer assisting or associated with the delivery of Subsidised Training pursuant to this Agreement.

### **10.4. Costs of Audit**

In the event that any audit under **clause 10.1** or Compliance Audit conducted pursuant to this clause identifies any Event of Default pursuant to **clause 14.1**, upon the Territory's written request the Training Provider must pay to the Territory any costs or expenses incurred by the Territory to third parties in conducting the relevant audit. Nothing in this **clause 10.4** will prejudice any other rights or remedies of the Territory in respect of any breach of this Agreement.

### **10.5. Access to hardware and software**

The Training Provider must provide the Territory or any person nominated by the Territory with access to the Training Provider's computer hardware and software to the extent necessary for the Territory to exercise its rights under **clause 10.1**, and must provide the Territory with any reasonable assistance requested by it to use that hardware and software.

## **11. USE AND DISCLOSURE OF INFORMATION**

### **11.1. Disclosure of Information to other agencies**

- (1) In giving effect to the principles of open and accountable government, the Territory may disclose documents and information unless it has otherwise agreed, or is otherwise required under Law, to keep the information confidential.
- (2) The Territory may disclose to any Authority involved in the provision or regulation of education and training services (including the National VET Regulator) any information relating to the Training Provider, this Agreement or any previous agreement, or the Subsidised Training, including details of:
  - (a) Training Products nominated;
  - (b) Funding paid or Funded Places applied for;
  - (c) any non-compliance by the Training Provider with this Agreement;
  - (d) any failure to deliver Subsidised Training in accordance with the ACT Standards or the Compliance Guides;
  - (e) any action taken by the Territory under this Agreement; and
  - (f) findings and outcomes of any inspection, review, audit or Compliance Audit undertaken pursuant to this Agreement.

- (3) The Territory may take into consideration for future contractual arrangements between the Territory and the Training Provider the results of any review, inspection, audit or Compliance Audit in relation to the Training Provider's performance.

#### **11.2. Use of Territory Information by Training Provider**

- (1) Except as provided in this Agreement, the Training Provider must not disclose Territory Information to any person, nor deal with Territory Information in any way except for the purpose of this Agreement, without the prior written consent of the Territory except to the extent that the Territory Information is:
  - (a) required or authorised to be disclosed by Law;
  - (b) disclosed to the Training Provider's solicitors, auditors, insurers or advisers;
  - (c) generally available to the public; or
  - (d) in the possession of the Training Provider without restriction in relation to disclosure before the date of receipt from the Territory.
- (2) The Training Provider must take all reasonable measures to ensure that Territory Information accessed or held by it in connection with this Agreement is protected against loss, unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose and that only its authorised personnel have access to Territory Information.
- (3) The Training Provider must do all things necessary to ensure that Territory Information accessible to the Training Provider and the Training Provider's personnel by virtue of the performance of this Agreement is not accessed, published or communicated in any way, including imposing upon the Training Provider's personnel obligations of confidentiality with respect to Territory Information.
- (4) In respect of any Personal Information held in connection with this Agreement, the Training Provider must:
  - (a) comply with the TPPs and any applicable TPP Code as if the Training Provider was a public sector agency and must not (and procure that any subcontractor engaged by the Training Provider under this Agreement does not) act or engage in a practice that breaches a TPP or a TPP Code; and
  - (b) co-operate with any reasonable requests or directions of the Territory arising directly from, or in connection with, the exercise of the functions of the information privacy commissioner under the Information Privacy Act.

#### **11.3. Acknowledgement of effect of Crimes Act**

The Training Provider acknowledges that the publication or communication of any fact or document by a person which has come to its knowledge or into its possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Training Provider is authorised to publish or disclose the fact or document) may be an offence under section 153 of the *Crimes Act 1900* (ACT).

### **12. INSURANCES AND INDEMNITY**

#### **12.1. Insurances**

From the commencement of the Term the Training Provider must effect and maintain all insurance which a prudent person in the position of the Training Provider would obtain including:

- (1) public liability coverage of not less than \$20 million in respect of each claim.
- (2) professional indemnity insurance with coverage in the amount of not less than \$2 million in respect of each claim and in the annual aggregate.
- (3) all insurance policies required by Law; and
- (4) worker's compensation insurance in relation to all of its workings, including any volunteers of the Training Provider,

and must within a reasonable time of a request by the Territory provide evidence satisfactory to the Territory of the currency those policies.

## **12.2. Indemnity**

The Training Provider indemnifies the Territory from and against any Claim or Liability suffered or incurred by the Territory or any of its Associates in connection with:

- (1) any breach of this Agreement;
- (2) any loss or damage to or of property, including any real or personal property and including property belonging to the Territory or its Associates;
- (3) any injury to, illness or death of, any person; or
- (4) any third party actions brought against the Territory or its Associates,

to the extent caused or contributed to by the Training Provider or any of its Associates in connection with the Subsidised Training or this Agreement.

## **13. OWNERSHIP AND USE OF MATERIAL**

### **13.1. Ownership of material**

Ownership of:

- (1) all Territory Material, including any intellectual property rights, remains with the Territory;
- (2) all Agreement Material, including any intellectual property rights, is owned on creation by the Training Provider; and
- (3) all Training Provider Material, including any intellectual property rights, remains with the Training Provider.

### **13.2. Licence of material**

- (1) The Territory grants to the Training Provider a royalty-free, limited licence to use the Territory Material for the Term for the purposes of delivering the Subsidised Training and complying with its obligations under this Agreement.
- (2) The Training Provider grants to the Territory an irrevocable, royalty-free, perpetual, licence to use the Training Provider Material and the Agreement Material for its internal administrative and reporting purposes, and for any other purpose contemplated by this Agreement.
- (3) For the purpose of this clause, "use" includes:
  - (a) such uses as are reasonably necessary for the Territory to obtain the full benefit of this Agreement; and
  - (b) such uses as are reasonably necessary for the Training Provider to deliver the Subsidised Training or as otherwise agreed by the Territory,

and may include supply, reproduce, publish, perform, communicate, broadcast, adapt and copy as the context requires.

### 13.3. Third party rights

The Training Provider must ensure:

- (1) the use of any Agreement Material or Training Provider Material will not infringe the intellectual property rights of any third party;
- (2) it has procured all relevant consents from the authors of any work to the licence in favour of the Territory at **clause 13.2(2)**, including consent for the Territory to use the work without attribution or with alternate attribution, and to materially alter the work; and
- (3) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Territory's (or its agents') use of any Agreement Material or Training Provider Material.

## 14. TERMINATION

### 14.1. Events of Default

For the purposes of this **clause 14**, each of the following is an Event of Default:

- (1) **(failure to meet obligation)** the Training Provider fails to comply with any obligation of the Training Provider under this Agreement;
- (2) **(failure to deliver Subsidised Training)**: the Training Provider fails to deliver the Subsidised Training, or part of the Subsidised Training, diligently and in accordance with:
  - (a) the ACT Standards;
  - (b) the Compliance Guides;
  - (c) the National Standards; or
  - (d) the NVETR Act.
- (3) **(assignment, transfer or disposal)**: the Training Provider assigns, transfers or otherwise disposes of any of its right, title or interest in or under this Agreement other than in accordance with this Agreement;
- (4) **(Disallowed Person)** the Training Provider or any of its Associates becomes a Disallowed Person, except where the Territory provides its prior written approval in accordance with **clause 7(6)**;
- (5) **(default not remedied)**: the Training Provider fails to perform or observe any of its obligations under this Agreement having been given not less than five Business Days' notice to remedy such breach;
- (6) **(failure to meet timeframes)** the Training Provider fails to comply with any timeframe under this Agreement, the Compliance Guides or the Audit Guide for Training Providers on two or more occasions within any six month period during the Term;
- (7) **(persistent breach)**: the Territory has notified the Training Provider there are persistent or repeated breaches of this Agreement including where there have been four or more occasions within any six month period during the Term on which the Training Provider has failed to comply with its obligations under this Agreement;

- (8) (**National VET Regulator Audit**) an audit report from the National VET Regulator indicates that there may have been, at any time, a serious non-compliance with the National Standards by the Training Provider;
- (9) (**National VET Regulator Notice**) a notice from the National VET Regulator indicates that there may have been, at any time, a serious non-compliance with the National Standards by the Training Provider;
- (10) (**National VET Regulator Decision**) the National VET Regulator makes, or issues a notice that indicates that the National VET Regulator intends to make, a decision which may significantly affect the Training Provider's ability to perform or prevent it from performing its obligations under this Agreement, whether or not the Training Provider's rights for reconsideration or appeal have been exhausted;
- (11) (**Insolvency Event**): subject to the *Corporations Act 2001* (Cth), an Insolvency Event occurs in relation to the Training Provider;
- (12) (**disrepute**): the Territory is satisfied on reasonable grounds that the Training Provider has breached its obligations under **clause 7(9)**;
- (13) (**false statements**) the Territory is satisfied on reasonable grounds that any statement, representation or warranty made by the Training Provider is incorrect or incomplete in any way;
- (14) (**representations and warranties**): a representation or warranty given by the Training Provider under this Agreement is found to be materially incorrect or misleading or a review, investigation, audit or Compliance Audit discloses fraudulent, false, misleading or negligent reporting by the Training Provider in respect of any accounts, reports or records of the Training Provider; and
- (15) (**Insurances**): a breach by the Training Provider of any its obligations under **clause 12.1**.

#### 14.2. Consequences for Default

- (1) Upon the occurrence of any Event of Default, the Territory may, at its sole discretion, by written notice to the Training Provider:
  - (a) immediately terminate this Agreement;
  - (b) immediately suspend or place conditions upon:
    - (i) the payment of any Funding, or a portion of any Funding, for a specified period; or
    - (ii) the exercise of any other right or benefit of the Training Provider under this Agreement, including all rights pursuant to **clause 4.2**; or
  - (c) determine that the Event of Default is capable of being remedied and give notice in writing to the Training Provider to remedy the Event of Default within 28 calendar days or such other period specified by the Territory. Where the Training Provider fails to remedy the Event of Default within the time specified in the notice, the Territory may exercise the remedies set out in **clause 14.2(1)(a)** or **clause 14.2(1)(b)**.
- (2) the Territory will not be liable for any Claim or Liability of the Training Provider incurred by reason of the exercise of a remedy outlined at **clause 14.2(1)**. Any termination, suspension or conditions exercised by the Territory for an Event of Default will take effect upon the date of the notice given under this **clause 14.2**.

### **14.3. Termination or reduction of funding for any reason**

The Territory may, at any time by written notice to the Training Provider, terminate this Agreement or reduce the Funding for the Subsidised Training for any reason and:

- (1) in the event of termination, the provisions of **clause 15** will apply; and
- (2) in the event of a reduction in Funding, the Training Provider must continue to deliver the Subsidised Training in accordance with the notice.

### **14.4. No prejudice**

Nothing in this **clause 14** prejudices any other rights or remedies of the Territory in respect of any breach of this Agreement.

## **15. TRANSITION OUT**

### **15.1. Application and Transition Out Period**

- (1) The provisions of this **clause 15** survive the termination or expiry of this Agreement and apply where:
  - (a) this Agreement is terminated or has expired; and
  - (b) the Territory and the Training Provider do not enter into a further agreement in relation to the provision of Funding for Subsidised Training for the period commencing immediately following the termination or expiry of this Agreement.
- (2) The Transition Out Period will commence on the day immediately after the termination or expiry of this Agreement, and will conclude on the later of the following dates:
  - (a) the date the Training Provider ceases to deliver Subsidised Training to any Eligible Individual enrolled during the Term under this Agreement;
  - (b) the date upon which the Training Provider has concluded its administrative responsibilities in respect of all Subsidised Training provided under this Agreement;
  - (c) the date upon which the Training Provider and the Territory enter into a new Agreement for Funding of Subsidised Training; or
  - (d) the date otherwise notified by the Territory to the Training Provider in writing.

### **15.2. Obligations during Transition Out**

During the Transition Out Period, the Training Provider must:

- (1) in respect of each Eligible Individual to whom the Training Provider provides Subsidised Training, comply with any direction of the Territory (acting reasonably), including a direction to:
  - (a) suspend or discontinue delivery of the Subsidised Training;
  - (b) assist the Eligible Individual to transfer to another RTO in order to continue the training commenced by the Eligible Individual with the Training Provider pursuant to this Agreement; or
  - (c) continue delivery of the Subsidised Training at the Training Provider's cost until completion of the relevant Training Product.



- (2) promptly after commencement of the Transition Out Period, provide all records, information, accounts and materials reasonably required by the Territory, or set out in the Compliance Guides;
- (3) comply with all obligations of this Agreement in relation to the delivery of any Subsidised Training, except to the extent otherwise directed by the Territory;
- (4) not advertise to potential students or offer new places in any Training Initiative on the basis that the Training Product will be subsidised; and
- (5) provide all reasonable assistance required by the Territory and comply with all reasonable directions given by the Territory that are otherwise in accordance with this Agreement, to ensure the timely, orderly and efficient transfer of Eligible Individuals to a new RTO and the resolution of the administrative arrangements of the parties.

### **15.3. Obligations of Territory during Transition Out**

- (1) The Territory must provide the Training Provider with such access to its AVETARS Account as is reasonably required to comply with its obligations under this **clause 15.2**.
- (2) During the Transition Out Period, subject to the Territory being reasonably satisfied that the Training Provider:
  - (a) has delivered the relevant Subsidised Training in accordance with this Agreement; and
  - (b) complied with its obligations pursuant to this clause,  
the Territory will continue to pay the Funding to the Training Provider, in respect of any Funded Places approved prior to the expiry or termination of this Agreement.

### **15.4. Agreement continues to apply**

- (1) The Training Provider acknowledges and agrees it is not entitled to apply for any new Funded Place, or exercise any right under **clause 4.2** during the Transition Out Period, or after the expiry or termination of this Agreement.
- (2) Subject to **clause 15.4(1)**, the terms of this Agreement continue to apply in respect of any Subsidised Training delivered by the Training Provider during the Transition Out Period.

## **16. GENERAL**

### **16.1. Territory's executive rights, duties and functions**

- (1) Unless otherwise expressly provided, nothing in this Agreement gives rise to any duty on the part of the Territory to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with this Agreement.
- (2) Notwithstanding anything expressly provided or implied in this Agreement to the contrary, the parties agree:
  - (a) that the Territory is not obliged to exercise:
    - (i) any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of any of its executive or statutory rights or duties;

- (ii) any influence the Territory may have with any Authority of any other jurisdiction; and
  - (b) nothing expressly provided or implied in this Agreement has the effect of constraining the Territory or placing any fetter on the Territory's discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- (3) The Training Provider is not entitled to make any Claim against the Territory for any Liability relating to any exercise or failure of the Territory to exercise any of its executive or statutory rights or duties.

#### **16.2. Reasonable endeavours of the Territory**

Any statement in this Agreement providing that the Territory or any officer or agent of the Territory will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the Territory or any officer or agent of the Territory:

- (1) will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (2) does not guarantee the relevant outcome will be brought about; and
- (3) is not required to:
  - (a) exercise a right of any Government Party, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of its legal, statutory or executive duties and functions;
  - (b) exercise any influence the Territory may have with any Authority of any other jurisdiction;
  - (c) exercise a power or discretion in a manner that the Territory regards as not in the public interest;
  - (d) develop or implement new policy or a change in policy;
  - (e) procure any new legislation or a change in legislation; or
  - (f) act in any way that the Territory regards as not in the public interest.

#### **16.3. Conflict of interest**

The Training Provider warrants that no conflict of interest exists or is likely to arise in the performance of the Subsidised Training and its other obligations under this Agreement and must, if a conflict or risk of conflict arises, notify the Territory and comply with any requirement of the Territory to eliminate or deal with that conflict or risk.

#### **16.4. No employment, partnership, agency or good faith relationship**

Nothing in this Agreement:

- (1) creates a partnership, joint venture, fiduciary, employment or agency relationship between the Territory and the Training Provider; or
- (2) imposes any duty of good faith on a party (unless otherwise expressly provided).

#### **16.5. Entire agreement**

This Agreement comprises the entire agreement between the parties in relation to its subject matter and supersedes any prior representations, negotiations, writings, memoranda and agreements.

## **16.6. Priority**

In the event of any inconsistency between the documents forming part of this Agreement, or incorporated by reference into this Agreement, the documents must be interpreted in accordance with the following order of priority, with a document higher in the list prevailing over a document lower in the list to the extent of any inconsistency:

- (1) the Special Conditions (if any);
- (2) **clauses 1 to 16** of this Agreement;
- (3) The ACT Standards;
- (4) the Compliance Guides; and
- (5) the Audit Guide for Training Providers;
- (6) any other document incorporated by reference in this Agreement or the above documents.

## **16.7. Severability**

Any provision of this Agreement that is illegal, void or unenforceable will not form part of this Agreement to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Agreement will not be invalidated by an illegal, void or unenforceable provision.

## **16.8. Variation**

No amendment or variation of this Agreement is valid or binding on a party unless made in accordance with the provisions of this Agreement or otherwise by the written agreement of the parties.

## **16.9. No waiver**

Failure or omission by the Territory at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights and remedies that the Territory may have in respect of that provision.

## **16.10. Governing law and compliance with the law**

This Agreement is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory. The Training Provider must comply with all Laws in performing the Subsidised Training.

## **16.11. Notices**

Any notice, including any other communication, required to be given or sent to either party under this Agreement must be in writing and given to the relevant Contact Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two Business Days after the date on which it was sent;
- (3) if sent by electronic mail, on whichever of the following occurs first:
  - (a) the other party's acknowledgement of receipt by any means;
  - (b) the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address; or
  - (c) the expiration of two Business Days after the date on which it was sent without receipt of a notification that the delivery failed,

and if given in two or more ways, on the first of paragraphs (1) to (3) occurring.

**16.12. Survival of clauses**

During the Transition Out Period, the provisions of this Agreement survive to the extent set out in **clause 15**, in addition to that clause the following clauses will survive the expiration or earlier termination of this Agreement and the end of the Transition Out Period, **clauses 9.2, 10, 11, 12.2, 13 and 14.4.**

TEMPLATE ONLY

## **SCHEDULE 1: ACT STANDARDS FOR DELIVERY OF SUBSIDISED TRAINING**

### **1. GENERAL STANDARDS**

#### **Standard 1.1 Promotion and publications**

All information and services provided by the Training Provider should be fully disclosed so the student and/or employer can determine if the services advertised match what is being sought. The published material must contain accurate information about the Training Provider.

- 1.1.1. The Training Provider must ensure all publicity relating to Training Initiatives, including publications, promotional and advertising materials, public announcements and activities or any products or processes, is ethical, accurate and consistent.
- 1.1.2. Publications and promotion of Training Initiatives must:
  - a) identify the Training Provider's legal entity and/or trading name and RTO code
  - b) include the indicative fees for each Training Product it offers under the specific Training Initiative
  - c) include an acknowledgement of any government funding as required under the specific Training Initiative
  - d) include information outlining any subcontracting arrangements, where the Training Provider subcontracts any part of the Subsidised Training.
- 1.1.3. The Training Provider must ensure its published Tuition Fees for each Delivery Mode match the fees published on the ACT Qualifications Register. Where changes to Tuition Fees have occurred, evidence of historical fees must be retained.

#### **Standard 1.2 Data collection and reporting**

The Training Provider must meet national and ACT reporting and recordkeeping obligations.

- 1.2.1. The Training Provider must ensure responses to all mandatory ACT Australian Vocational Education and Training Management Information Statistical Standard (AVETMISS) enrolment questions are sought during the enrolment process for each student.
- 1.2.2. The Training Provider must ensure there is a valid enrolment for each student. A valid enrolment is a complete, signed and dated AVETMISS compliant enrolment form.
- 1.2.3. The Training Provider must ensure the student management system contains full, correct and current information against mandatory AVETMISS fields as per the ACT AVETMISS requirements.
- 1.2.4. The Training Provider must report all training activity as specified in the ACT AVETMISS requirements and under the specific Training Initiative, within the required timeframes. Where Certification Documentation is withheld from the student due to non-payment of fees or any other outstanding obligations to the Training Provider, training activity must still be reported.

## **2. SERVICE STANDARDS**

### **Standard 2.1 Student eligibility**

The Training Provider must ensure that prospective students meet the eligibility requirements for the specific Training Initiative before finalising enrolment. The determination of eligibility includes student criteria and where applicable, covers specific requirements for the workplace location.

- 2.1.1. The Training Provider must have a documented process that ensures students are assessed against the specific eligibility criteria for each Training Initiative.
- 2.1.2. The Training Provider must ensure the student satisfies the eligibility criteria within the timeframes identified under the specific Training Initiative.
- 2.1.3. The Training Provider must ensure evidence to support the assessment of eligibility is collected prior to the finalisation of enrolment.

### **Standard 2.2 Fees and charges**

The Training Provider must ensure all fees and charges related to the provision of training services are outlined to all parties prior to enrolment. Information provided is to be clear, accurate and sufficient to enable an informed choice.

- 2.2.1. The Training Provider must publish all fees and charges including, but not limited to:
  - a) compulsory Tuition Fees
  - b) additional charges or co-contributions
  - c) application process for exemptions and concessions
  - d) methods of collection
  - e) refund information
- 2.2.2. The Training Provider must ensure students are provided with information regarding eligibility for the Completion Payment prior to finalisation of enrolment.
- 2.2.3. The Training Provider must charge students at least the minimum Tuition Fee in accordance with the specific Training Initiative.
- 2.2.4. The Training Provider must collect, record and retain all evidence relating to fee transactions. Where a fee concession, waiver, exemption or refund is granted, the Training Provider must retain all supporting evidence relating to the decision for each student.  
Note: fee exemptions apply to the Australian Apprenticeships Training Initiative only.
- 2.2.5. The Training Provider must have a formal process in place to support the assessment of student eligibility for waiving any remaining fees and charges, after concessions have been applied.

### **Standard 2.3 Initial Skills Assessment**

For each student, the Training Provider must conduct an Initial Skills Assessment comprising of an assessment of Language, Literacy and Numeracy (LLN) skills to ascertain the proposed Training Product, learning program, strategies and materials are appropriate.

The Training Provider must ensure students are made aware of opportunities for recognition prior to commencing training and that adequate information, support and opportunities are provided to students to engage in the Recognition of Prior Learning (RPL) process.

- 2.3.1. The Training Provider must conduct and document an Initial Skills Assessment for each student prior to the development of the Training Plan.

- 2.3.2. The Initial Skills Assessment for each student must:
- a) offer RPL, explain Credit Transfer obligations and identify any relevant competencies previously achieved
  - b) ascertain the most suitable Training Product for the student, based on the student's existing educational attainment and capabilities
  - c) assess LLN skills to determine whether the Training Product and proposed learning strategies and materials are appropriate
  - d) assess the need for Additional Support
  - e) identify any actions or strategies to be implemented to address identified needs for the student, including any adjustments required to the learning program, delivery strategy or materials.
- 2.3.3. The Training Provider must have a documented process for conducting the LLN assessment, which includes how the Australian Core Skills Framework (ACSF) level (1 – 5) of the student is determined.
- 2.3.4. The Training Provider must align the results of the LLN assessment with the ACSF. The ACSF level (1 – 5) of the student must be recorded on the LLN assessment.

#### **Standard 2.4 Recognition**

The Training Provider must recognise Certification Documentation issued by other RTOs. Where a student has extensive workplace experience or has undertaken prior studies in a field related to the current training program they may also be eligible for RPL.

- 2.4.1. Where the Credit Transfer and/or RPL process results in the student already holding 80% or more of the required competencies, the Training Provider must, in consultation with the student and where applicable, the employer, reassess the suitability of the Training Product and:
- a) select a different Training Product, or
  - b) document the decision to continue with the enrolled Training Product. Evidence of the discussion and decision must be retained.
- 2.4.2. The Training Provider must retain evidence to support all Credit Transfer and RPL awarded.

#### **Standard 2.5 Training plan**

Information on training and assessment is to be documented in a Training Plan for all students. The Training Plan must be developed by the Training Provider and agreed with the student and, where required by the specific Training Initiative, the employer.

- 2.5.1. The Training Provider must have a documented process to ensure a Training Plan is completed and maintained for each student.
- 2.5.2. The Training Provider must ensure the Training Plan is consistent with the specifications for each Training Initiative.
- 2.5.3. The Training Plan must be:
- a) consistent with the Training Product to be attained
  - b) consistent with the proposed delivery and assessment strategies
  - c) customised as required, for the needs of the employer where applicable, and the student or student group, including the needs identified in the Initial Skills Assessment
  - d) signed and dated by all relevant parties.

- 2.5.4. The Training Provider must ensure a fully executed copy of the Training Plan is provided to the student and where applicable, to the employer within 10 business days of its completion and evidence of its provision must be retained. The original and any updated versions of the Training Plan must be held by the Training Provider for each student.
- 2.5.5. The Training Provider must review the Training Plan and update where necessary, to take into account student progress and any changes, within the timeframes identified under the specific Training Initiative.
- 2.5.6. The Training Provider must update the Training Plan with any mutually agreed changes to training and assessment details. Changes must be endorsed by all required parties.

### **Standard 2.6 Training delivery and participation**

The delivery of Structured Training should be designed to maximise the opportunity for the student to achieve high quality outcomes. All training delivery must be supported by evidence of participation in each unit of competency.

- 2.6.1. The Training Provider must deliver training that is:
  - a) customised to meet student, industry and where applicable, employer needs
  - b) in accordance with the training commencement date and training modes identified on the Training Plan. Where changes are required, the changes are to be reflected on a compliant revised Training Plan
  - c) in line with the delivery strategy for the Training Product
  - d) in accordance with the timeframes identified under the specific Training Initiative.
- 2.6.2. The Training Provider must provide the student with access to training materials and resources within the timeframe identified under the specific Training Initiative. Evidence of the provision of information must be retained.
- 2.6.3. Evidence of participation in each unit of competency must be collected and retained and contain the student's name or identification number, a unit of competency identifier and a date.
- 2.6.4. The evidence collected by the Training Provider must validate that participation has occurred in the unit of competency for each student.

### **Standard 2.7 Student transition**

The Training Provider must manage its Scope of Registration on the national register (training.gov.au (TGA)), including, but not limited to, the transition to replacement training packages/Training Products within 12 months of publication, to ensure it delivers Training Products from currently endorsed training packages. Where the transition period is extended by ASQA, the transition must occur within the approved extension timeframe.

- 2.7.1. The Training Provider must ensure students, employers (if applicable) and other stakeholders affected by changes to Training Products, are advised how the change will impact them.
- 2.7.2. The Training Provider must have a documented strategy to manage its operations when ceasing to deliver Training Products in the ACT, including managing the impact on affected students as required under the specific Training Initiative.



## **Standard 2.8 Support and monitoring**

The Training Provider must provide students with learning resources that are relevant to support the development of underpinning knowledge required for the units of competency and monitor that the skills and knowledge outcomes are being achieved and any Additional Support has been provided as required.

- 2.8.1. The Training Provider must monitor the progress of the student consistent with the specifications for each Training Initiative.
- 2.8.2. The Training Provider must retain signed and dated records of any visits and contacts, matters discussed, actions taken and any outcomes achieved.
- 2.8.3. The Training Provider must provide any required Additional Support as identified in the Initial Skills Assessment or through student progress monitoring. Evidence of its provision must be retained.
- 2.8.4. Where a loading has been paid to the Training Provider which is required to be used for the specific provision of services, the Training Provider must be able to verify that services have been provided in accordance with the specifications for each Training Initiative.

## **Standard 2.9 Assessment**

Assessment practices and tools used by the Training Provider to determine competence must be consistently applied and evidence retained to support the assessment judgement.

- 2.9.1. The Training Provider must ensure the assessment methods used are consistent with the student's Training Plan. Where changes to the assessment methods are required, the changes should be reflected on the Training Plan.
- 2.9.2. The Training Provider must retain evidence of completed assessment items for each student for each unit of competency or cluster of units. The evidence must contain the student's name or identification number, a unit of competency identifier, the assessment result, assessor signature and a date.
- 2.9.3. The Training Provider must work with the student and where applicable, the employer to ensure assessment is finalised prior to the due to complete date.
- 2.9.4. The Training Provider must, at any time, be able to produce an up-to-date summary assessment record for each student, identifying progress against each unit of competency on the Training Plan.

## **Standard 2.10 Issuance of certification documentation**

Training Providers must issue an Australian Qualifications Framework (AQF) compliant qualification certificate to students who successfully complete a qualification or, where a student withdraws from the program prior to completing, the Training Provider must issue an AQF compliant statement of attainment for units of competency achieved.

- 2.10.1. The Training Provider must issue AQF compliant Certification Documentation to each student within 30 calendar days of completion of, or withdrawal from, Subsidised Training, provided the Training Provider's requirements have been met.
- 2.10.2. The Certification Documentation issued must include all elements required under the specific Training Initiative.
- 2.10.3. The Training Provider must retain evidence of Certification Documentation issued to each student.

**SCHEDULE 2: SPECIAL CONDITIONS**

[INSERT IF IT IS NECESSARY TO VARY THE STANDARD TERMS OF CONTRACT. SEEK ADVICE IF REQUIRED. IF NONE THEN INSERT '[NOT USED]']

TEMPLATE ONLY

**SIGNED** for and on behalf of the  
**AUSTRALIAN CAPITAL TERRITORY**  
in the presence of:

)  
) .....  
) Signature of Territory delegate

.....  
Signature of witness

.....  
Print name

.....  
Print name

**[Insert this signature block if the Training Provider is  
a Company]**

**SIGNED** pursuant to s.127 of the *Corporations Act 2001*  
for and on behalf of  
**[insert full name of Training Provider and ABN if  
company]:**

)  
)  
)

.....  
Signature of director/ secretary

.....  
Signature of director

.....  
Print name and position

.....  
Print name

**[Insert this signature block if the Training Provider is  
an individual]**

)  
)  
)

**SIGNED** for and on behalf of  
**[insert full name of the Training Provider if  
individual]** in the presence of:

.....  
Signature of witness

.....  
Signature of Training Provider

.....  
Print name of witness

.....  
Print name

**[Insert this signature block if the Training Provider is an incorporated association]** )  
)  
)

**SIGNED** for and on behalf of  
**[insert full name of Training Provider and ARBN if relevant]** in the presence of:

.....  
Signature of authorised person

.....  
Print name

.....  
Signature of authorised person

.....  
Print name

TEMPLATE ONLY