

NSW ACE Program

ACE Contract Conditions

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PART A - Key details

This Part A describes:

- who the ACE Contract is between
- the description and values of the ACE Program
- the purpose of the ACE Contract
- the documents that make up the ACE Contract; and
- when the ACE Contract will start and end

1. Parties

The parties to this ACE Contract are the Crown in right of the State of New South Wales acting through the Department of Education (the **Department**) and the party identified in Item 1 of the Activity Schedule (the **ACE Provider**).

2. The ACE Program

2.1 Description of the ACE Program

The ACE Program aims to promote access to training and increase vocational education and training outcomes for those who experience significant barriers to training and employment. It is designed to target Disadvantaged Students, and students in Regional and Remote communities in NSW. The ACE Program provides funding towards training up to and including Certificate III level.

The ACE Program offers support to individuals, small business owners and their staff by providing fully subsidised accredited and non-accredited training in targeted courses in information technology, business services or foundation skills.

Adult and community education providers who deliver training under the ACE Program (**Providers**) assist disadvantaged and vulnerable members of the NSW community to gain skills that enable them to fully participate in community life, engage in lifelong learning, enter, and remain in the workforce and contribute to the economic development of NSW.

2.2 ACE Program Values

The following values (the **ACE Program Values**) apply to both the Department and all Providers (as defined above), including the ACE Provider. The parties must perform their obligations under the ACE Contract in line with the ACE Program Values.

Partnership We share a mutual responsibility with participants, employers, delivery partners, Providers and the government for effective involvement and collaboration, informing of the evolving needs of communities and delivering outcomes for learners.

Accountability We are dedicated to delivering sustainable outcomes for learners by creating fit-for-purpose and safe learning environments. Our commitment is demonstrated in the way we deliver the ACE Program and hold all involved responsible, including ourselves.

Empowerment We work locally and in partnership with participants, employers, delivery partners, Providers and the government to ensure learners have appropriate access to the tools or services they need. This enables Providers to support learners to overcome barriers to employment and take advantage of employment or lifelong learning opportunities to fully participate in their community.

Agility We are responsive to evidence, actively seek out data on what works and encourage testing of new ideas. We see every task and interaction as an opportunity to learn and continually improve performance and outcomes. We are agile and reflective within the community we serve. We ask for and act on feedback, proactively and regularly evaluating performance and the outcomes of learners.

Integrity We are fair and transparent; we do as we say and say what we do, building trust and respect among participants, employers, delivery partners, Providers and the government.

Education Delivering tailored education to empower all people in NSW with equitable access to lifelong learning opportunities, further building on the value and outcomes of communities.

For clarity, references to 'we' above refers to the Department and to the ACE Provider.

3. The ACE Contract

3.1 Purpose of the ACE Contract

The ACE Contract sets out the terms and conditions for the provision of Funding to the ACE Provider for training delivered to eligible students under the ACE Program (the **Funded Training**).

Funding means the funding the ACE Provider is entitled to under the ACE Contract, including as set out in an Activity Schedule.

3.2 Contract documents



The ACE Provider must comply with each of the documents set out below. Failing to comply is an event of default and may lead to termination of the ACE Contract and / or other consequences. See clause 27.

The ACE Provider must comply with:

Activity
Schedule(s)

Schedule(s) issued by the Department (at the Department's discretion), and accepted by the ACE Provider, describing the Funding available under the ACE Program and any specific conditions. This may include any approved CSE Application or other documents as agreed between the parties. See clause 4 below.

ACE Contract Conditions	This document. It also may be referred to as the Contract Conditions .
Guidelines and Policies	Any guidelines or policies published by the Department in connection with the ACE Program and any other program connected to the ACE Contract, as added, amended, or replaced by the Department from time to time.

Together, these documents are the **ACE Contract**.



(If there is any inconsistency) The documents above are set out in descending order of priority. If there is any inconsistency between any of these documents, the document higher on the list above will have priority to the extent of the inconsistency. For example, if there is an inconsistency between an Activity Schedule and these Contract Conditions, the Activity Schedule will have priority.

4. Activity Schedule(s)

The Department may, at its sole discretion, provide the ACE Provider with an Activity Schedule for an Activity Period (being the time period specified in Item 3(a) of the Activity Schedule).

The ACE Provider is only entitled to Funding if there is an Activity Schedule for the relevant Activity Period.



The Department is not obliged to provide any Activity Schedules to the ACE Provider and the provision of one or more Activity Schedule(s) does not guarantee that further Activity Schedules will be provided.

5. ACE Contract start and end

The ACE Contract commences on the earlier of:

- (a) the date on which the Department signs the Activity Schedule (the **Start Date**); or
- (b) the start of the Activity Period specified in the Activity Schedule,

and continues until the earlier of:

- (c) the end of the Activity Period specified in the Activity Schedule; or
- (d) the date it is terminated under the ACE Contract,

(the **Term**).



If the ACE Provider enters into an Activity Schedule for an Activity Period starting immediately after the end of the current Activity Period, the ACE Contract is considered to have continued through to the subsequent Activity Period.

PART B - Student engagement, enrolment, and training

This Part B describes the obligations of the ACE Provider in connection with:

- marketing and communications about the ACE Program
- engaging with and enrolling students
- training students
- supporting students

6. Marketing and communications

To maintain the integrity, and promote awareness, of the ACE Program, the ACE Provider must market and communicate about the ACE Program in accordance with the ACE Contract.

6.1 Promoting the ACE Program

The ACE Provider must develop and implement strategies for the effective marketing and promotion of the ACE Program including all of its Funded Training. These strategies must not rely solely on activities undertaken by the Department.



Evidence: Copy of these strategies and all marketing and promotion materials to demonstrate implementation of the strategies.

6.2 Communications about Funded Training

All marketing, promotional, communication and information materials used by the ACE Provider related to the ACE Program must display the ACE Provider's legal name and code as displayed on the national register at training.gov.au.

The ACE Provider must explicitly acknowledge in marketing and information for prospective students the availability of funding from the NSW Government. In any communications about the ACE Program, the ACE Provider must use the statement:

'This training is funded by the NSW Government.'

6.3 Providing information for the Department's use

Information about the ACE Provider may be published on a Department website in connection with the ACE Program. The ACE Provider will provide information requested by the Department for this purpose. The ACE Provider will also update this information if there are any changes.

6.4 Protecting the Department's intellectual property

The ACE Provider may not use any logo, product names, icons, trademarks or other intellectual property of the Department, or the NSW Government, including in connection with the ACE Program without written permission from the Department and subject to any guidelines issued from time to time.

7. Engaging with and enrolling students

7.1 Providing information to students

The ACE Provider must ensure that all students considering enrolling in Funded Training receive, or are aware of how to access, certain information, either electronically or in hard copy form before enrolment, which is designed to make these students aware of policies

relating to their training, including their rights and responsibilities and avenues for complaint (the **Student Information**).

The Student Information must include:

- (a) the ACE Provider's consumer protection policy – including:
 - (i) student consumer protection rights
 - (ii) details of how the ACE Provider will manage, investigate and respond to queries, complaints or allegations (including matters relating to the conduct of the ACE Provider's staff or subcontractors); and
 - (iii) contact details for a dedicated consumer protection officer; and,
- (b) details of how to access support and assistance during the training, including contact details for various support services provided by the ACE Provider (e.g. interpreter services).

7.2 USI required

To be eligible for Funded Training, students must have a **Unique Student Identifier** or **USI** (which has the meaning given to 'student identifier' in the *Student Identifiers Act 2014* (Cth)).

When enrolling a student in Funded Training, the ACE Provider must:

- (a) **(if the student has a USI)** verify the student's USI with the Student Identifiers Registrar (as defined in the *Student Identifiers Act 2014* (Cth))
- (b) **(if the student does not have a USI)** either:
 - (i) assist the student with applying for a USI from the Student Identifiers Registrar; or
 - (ii) apply to the Student Identifiers Registrar for a USI to be assigned to the student (if authorised by the student to do so); and,
- (c) ensure that the student sets access controls in relation to their USI that allow the Department and the ACE Provider the appropriate levels of access to their USI records.

7.3 Determining student eligibility

The ACE Provider must determine if students are eligible for Funded Training as set out in the Activity Schedule. This includes determining if a student meets the general eligibility criteria (set out in Appendix C to the Activity Schedule) and the specific eligibility criteria (set out in Appendix D to the Activity Schedule) of at least one Funding Stream.

7.4 Student privacy consent

The ACE Provider must obtain the consent of a student enrolling in Funded Training by:

- (a) the student signing or electronically accepting a consent form that includes the wording provided by the Department (the **Consent Wording**); or
- (b) the student verbally providing their consent provided that the Consent Wording is read to the student or is made available for the student to read prior to giving their verbal consent.

If a student does not provide their consent, the ACE Provider must not continue to enrol the student in Funded Training.



Evidence: The ACE Provider must keep a copy of every consent provided under (a) and keep a file note or log of every consent provided under (b).

7.5 No fees or charges to be imposed

The ACE Provider must not impose any fees or charges in connection with Funded Training without the Department's prior approval. This includes any amounts imposed on students or others (such as employers).

8. Training and supporting students

8.1 Training students

The ACE Provider must:

- (a) **(compliance with RTO Standards)** comply with the [Standards for RTOs 2015](#) as amended or replaced by ASQA (**RTO Standards**) and other ASQA requirements in connection with the delivery of Funded Training; and
- (b) **(successful completion)** use its best endeavours to ensure that all Funded Units/Modules are successfully completed. Best endeavours should include providing support and training tailored to the student's individual needs.

8.2 Student support

The ACE Provider must provide a range of student support strategies that will enhance a student's potential to successfully complete their training. The ACE Provider must keep necessary records to demonstrate what support has been provided to students.

PART C - ACE Provider organisation and operations

This Part C describes the obligations of the ACE Provider relating to its organisation and its operations in connection with the ACE Contract including:

- maintaining standard of operations and meeting regulatory requirements
- restrictions on third-party arrangements
- insurance requirements
- professional developments and continuous improvement and independent validation of assessment expectations

9. Standard of operations and regulatory requirements

The ACE Provider must:

- (a) **(maintain RTO registration)** maintain its registration with the VET Regulator as a training organisation and its listing in the official national register (training.gov.au) to deliver training in New South Wales as an RTO Type: Community Based Adult Education Provider
- (b) **(maintain scope)** ensure that accredited Funded Units/Modules that are in line with the priorities of the ACE Program remain within the scope of their registration with the VET Regulator for the delivery of Training in New South Wales
- (c) **(focus on ACE)** continue to focus its operations on the ACE Program and the delivery of adult and community education generally
- (d) **(maintain capacity and standard)** remain able to deliver adult and community education to students who work and reside in New South Wales including ACE Program students and maintain the capacity to deliver training to the standard required in the ACE Contract, including:
 - (i) maintaining all Licences and Consents
 - (ii) meeting all Regulatory Requirements
 - (iii) maintaining the assets and physical resources needed
 - (iv) providing appropriate levels of student services
 - (v) employing the required number of appropriately skilled trainers and assessors
 - (vi) ensuring all of its staff undertake professional development and continuous improvement as described in clause 12; and
 - (vii) validating and contextualising training and assessment resources as described in clause 13
- (e) **(not engage certain persons)** not engage the services of a person that:
 - (i) had a Smart and Skilled Contract or other VET related contract with a government agency terminated for non-compliance with the terms and conditions of that contract or poor performance
 - (ii) has had its registration with the VET Regulator (or a regulator under similar or previous laws) refused, cancelled or revoked; or
 - (iii) contributed (including by act or omission) to either the events referred to in clauses 9(e)(i) or (ii) happening to another entity.

The engagement must not be in any capacity, including as employee, officer, contractor or consultant. If a person who was a director, committee member or senior member of

staff of an entity that either of the events referred to in clauses 9(e)(i) or (ii) has happened to is taken to have contributed to such event; and,

- (f) **(maintain website)** maintain a current and accurate website. The homepage of the ACE Provider's website must contain a direct link to the Training Services NSW website. The ACE Provider's website must also include the following:
- (i) details of the ACE Provider's enrolment process including the information and evidence that the student must provide (such as, all consents and declarations the student must make)
 - (ii) the process for obtaining a Unique Student Identifier; and
 - (iii) the Student Information in accordance with clause 7.1.

10. Third party arrangements

The ACE Provider must not enter into a Third Party Arrangement without the Department's prior approval. Entering into a Third Party Arrangement without the Department's prior approval is an Event of Default.

If a Third Party Arrangement is approved by the Department, the third party will be subject to monitoring or review by the Department in accordance with clause 23. Both the ACE Provider and the third party will be responsible for ensuring that all activities conducted under an approved Third Party Arrangement complies with the ACE Contract.

All Third Party Arrangements must comply with ASQA's [General Direction - third party arrangements for training and/or assessment of VET courses](#).

Third Party Arrangement means an arrangement where another party engages in activities on behalf of the ACE Provider in connection with Funded Training. This could include recruitment, enrolment, assisting/supporting, training or assessment of students. It does not include a contract of employment between an ACE Provider and its employee or referral arrangements with government or other support agencies.

11. Insurance

11.1 Insurance policies required

The ACE Provider must hold and maintain the following insurances for the periods and amounts specified in the following table:

Insurance	Minimum limit	Term of policy
Public and products liability insurance	\$20 million for any one occurrence	the Term
Professional indemnity insurance	\$3 million for any one occurrence and in the aggregate	the Term and 6 years after the Term
Workers compensation and other compulsory third party insurance	As required by law	the Term

(together the **Insurance Policies**).

The Insurance Policies must be with a reputable and solvent insurer(s) acceptable to the Department, and which carries on insurance business in Australia and is authorised in Australia to operate an insurance company.

11.2 Maintaining policies and notifying of claims

The ACE Provider must:

- (a) not do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the Insurance Policies or entitle the insurer to refuse a claim
- (b) without limiting clause 11.1, immediately reinstate any Insurance Policy if the relevant policy lapses or if the cover is exhausted; and
- (c) as soon as practicable, notify the Department of any occurrence that may give rise to a claim under the public liability or professional indemnity Insurance Policies and keep the Department fully informed of developments concerning any claim or potential claim.

11.3 Providing evidence of policies

Within 7 days of the Department's request, the ACE Provider must provide the Department with:

- (a) certificates of currency issued by the ACE Provider's insurer or insurance broker and other relevant evidence confirming that all Insurance Policies are current, and the insurance has the required limits of cover
- (b) information about any restrictions in relation to the Insurance Policies that may be relevant to the ACE Contract; and
- (c) any information reasonably requested by the Department regarding the Insurance Policies.

11.4 Other obligations

If the ACE Provider does not comply with this clause 11, the Department may withhold payment of any money due to ACE Provider until the non-compliance is resolved. For clarity, this does not limit any other remedy available to the Department.

The ACE Provider's obligations and liabilities in connection with the ACE Contract or otherwise will not be affected in any way by any terms of insurance or any refusal by the insurer to indemnify the ACE Provider under the Insurance Policies.

This clause 11 (including the ACE Provider's obligations under this clause 11) survives termination.

12. Professional development and continuous improvement

The ACE Provider must ensure all of its staff undertake professional development and continuous improvement and maintain currency of relevant qualifications.

The ACE Provider is also required to implement a continuing professional development policy. The ACE Provider should refer to the Teaching and Leadership Policy as a guide, which is available on the Training Services NSW website at https://www.training.nsw.gov.au/smartandskilled/contract_policy.html.

The ACE Provider must also include in its continuing professional development policy, a policy relating to the professional development and continuous improvement of the board of management of the ACE Provider.

Professional development and continuous improvement activities are further described in the RTO Standards and may include:

- (a) organisational governance
- (b) RTO registration compliance
- (c) government contract management
- (d) delivery of specialist student support services (e.g. counselling)
- (e) training to support industry regulations (e.g. training in Child Protection, Workplace Health and Safety)
- (f) training design and delivery
- (g) assessment and/or recognition; and
- (h) collaboration and engagement activities (see Part D).



Evidence: Records of professional development undertaken by staff

13. Independent validation of assessment requirements

Independent validation of assessment is important for ensuring quality assessment outcomes that are consistent and meet industry expectations. The ACE Provider is encouraged to engage in independent validation of assessment in accordance with the RTO Standards and as set out below.

13.1 What is independent validation of assessment?

Independent validation of assessment is a process that ensures that the assessment practices of the ACE Provider are appropriate to the outcomes of training, are consistently applied, meet standards for assessment, and are aligned with industry and Training Package requirements for unit(s) of competency. It involves:

- (a) checking:
 - (i) the validity, reliability, sufficiency and currency of the assessment tool
 - (ii) that assessment strategies meet the needs of industry
 - (iii) students' assessment tasks to determine whether the requirements of the relevant aspects of the training have been met; and
 - (iv) that assessors are making consistent judgements; and
- (b) reviewing and making recommendations for future improvements to the assessment tool, process and outcomes.

The key aspects of assessment that are reviewed through a validation process are:

- (a) *the assessment process* — policy, enrolments and assessments, recording, reporting and appeals
- (b) *assessment tools* — specific assessment tasks, instructions for candidates, instructions for assessors, evidence guides, checklists, assessment criteria, rules of judgement, and examples of acceptable responses to, and descriptions of, typical competent performance
- (c) *evidence of assessment* — for example, third-party reports, observation and simulation
- (d) *application of assessment tool* — assessors use of the tool; and
- (e) *recognition of prior learning process* — tools and evidence of assessment.

13.2 Who undertakes independent validation of assessment?

Independent validation of assessment is undertaken by individuals or agencies that are independent of the ACE Provider. It can involve industry representatives, other registered training organisations, specialist assessors, and experts in education and assessment.

13.3 What are the benefits of independent validation of assessment?

The benefits of an independent process for assessment validation include:

- (a) obtaining industry acceptance of VET outcomes
- (b) ensuring assessment strategies meet industry needs
- (c) gathering feedback to improve assessment processes
- (d) building assessor confidence and capabilities
- (e) fostering the development of informal networks
- (f) facilitating assessor acquisition of up-to-date industry knowledge; and
- (g) assisting assessors to apply consistent standards and make consistent judgements.

14. Integrity and transparency

14.1 General obligations

The ACE Provider must:

- (a) **(information true, accurate and correct)** ensure that all information it provides the Department (including Training Activity Data) is true, accurate, complete, correct and not misleading in any way
- (b) **(obligations to government agencies)** comply with its obligations to any government agency, including any obligations under any Applicable Laws
- (c) **(notification of investigation)** notify the Department immediately when the ACE Provider is notified or becomes aware that it is or may become subject to an investigation (or a similar process) by any government agency including the VET Regulator, Australian Competition and Consumer Commission (**ACCC**), Australian Securities and Investments Commission (**ASIC**) or the Australian Tax Office (**ATO**); and
- (d) **(no unethical or illegal conduct)** act in good faith and not act in any way that could be seen to be unethical, reckless, illegal or dishonest conduct or do anything that may bring into disrepute or be detrimental to the Department, any ACE Program, or the NSW vocational education training market.

14.2 Conflict of Interest

- (a) The ACE Provider warrants that, on and from the Start Date, no Conflict of Interest exists or is likely to arise.
- (b) The ACE Provider must:
 - (i) immediately notify the Department in writing if a Conflict of Interest arises or is likely to arise
 - (ii) make full disclosure of all information relating to the Conflict of Interest; and
 - (iii) take all steps that may reasonably be required by the Department to avoid, minimise, resolve or otherwise deal with that Conflict of Interest.
- (c) If the ACE Provider:
 - (i) does not notify the Department under clause 14.2(b); or
 - (ii) is unable or unwilling to resolve the Conflict of Interest as required by the

Department,

the Department may terminate the ACE Contract in accordance with the process set out in clause 27.

(d) The ACE Provider agrees that it:

- (i) will not; and
- (ii) will use best endeavours to ensure that its officers, employees, agents and contractors do not,

engage in any activity or obtain any interest that is likely to conflict with or restrict the ACE Provider performing its obligations under the ACE Contract.

14.3 Remaining a not-for-profit organisation

The ACE Provider must remain a not-for-profit organisation in accordance with relevant Applicable Laws such as the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), the *Charities Act 2013* (Cth), the *Associations Incorporation Act 2009* (NSW) and *Charitable Trusts Act 1993* (NSW).

This includes meeting requirements to:

- (a) not operate for the direct or indirect profit or gain of its individual members (except as bona fide compensation for services rendered or expenses incurred)
- (b) solely apply its assets and income to the furtherance of its objectives; and
- (c) on dissolution, transfer all amounts remaining after satisfying liabilities to another not-for-profit organisation with similar purposes.

14.4 Other funding

The ACE Provider must not claim or receive any Funding from the Department under the ACE Contract to deliver training where the ACE Provider has or will receive any type of other funding (full or partial) from any person (including any government agency in Australia such as the Department) to deliver that same Training (**Other Funding**).

If the ACE Provider receives Other Funding, it must notify the Department with details of the Other Funding. The Department may, in its absolute discretion request a repayment of (all or part of) the Funding already paid for that training where the ACE Provider was also receiving Other Funding in accordance with this clause.



The ACE Provider should contact the Department if concerned that any arrangement supporting the ACE Provider with funds or in-kind contributions may be considered Other Funding.

PART D - Collaboration and engagement

This Part D describes the expected participation of the ACE Provider in collaboration and engagement activities. This may include activities relating to the ACE Program, the ACE Contract or to the adult and community education sector.

15. Responsibility to participate in collaboration and engagement

In line with the values of the ACE Program, the ACE Provider has a responsibility to participate in collaboration and engagement activities with relevant stakeholders, such as the Department or other government agencies, other Providers, industry bodies, employer industry bodies, employers and/or community groups.



The Department may consider the ACE Provider's participation in collaboration and engagement activities when making decisions about the ACE Provider's ACE Contract such as:

- whether to offer the ACE Provider an Activity Schedule for a further Activity Period; and/or
- the Maximum Funding allocated to the ACE Provider.

16. Objectives of collaboration and engagement activities

Collaboration and engagement activities include activities involving the Department that have objectives that support the ACE Program Values, the ACE Contract, the adult and community education sector, and other government priorities, such as:

- (a) improving access to, and successful completion of, Funded Training
- (b) increasing awareness of the availability of Funded Training
- (c) supporting students when engaging in vocational education and training
- (d) supporting training and employment outcomes for individuals and communities
- (e) ensuring that all NSW residents have appropriate access to the services they need to fully participate in their community
- (f) contributing to the NSW Government's priorities for well-connected communities with quality local environments and breaking the cycle of disadvantage
- (g) supporting strong career paths for community education workforce

17. Examples of collaboration and engagement activities

Examples of collaboration and engagement activities include:

- (a) participating in meetings, discussions, or workshops arranged by the Department
- (b) responding to Department surveys or requests for feedback
- (c) collaborating and cooperating with other Providers
- (d) attending professional development training facilitated and/or funded by the Department
- (e) partnering with NSW Industry Training Advisory Bodies, Skills Service Organisations, and employer industry associations, or consulting at the enterprise or organisation level; or
- (f) partnering with community organisations that provide support to, or work for, disadvantaged students in the local community.



Evidence: The ACE Provider should document and retain evidence of all collaboration and engagement activities.

PART E - Record keeping

This Part E describes the record keeping obligations of the ACE Provider including:

- the requirement to create and maintain records
- examples of the records to be maintained
- other record keeping obligations

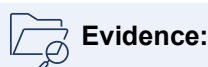
18. Requirement to create and maintain records

Records should be evidence of the ACE Provider's compliance with the ACE Contract. This includes evidence supporting: student eligibility (general and specific); training activity reported; support services provided; marketing and enrolment activities; and collaboration and engagement activities.

The ACE Provider must maintain records of all Funded Training and for all students enrolled in Funded Training for a period of 3 years from the later of:

- (a) the completion of each Funded Unit/Module
- (b) the issue of a qualification; or
- (c) a student's exit from the Funded Training.

Evidence that must be maintained in the ACE Provider's records includes any documents identified in the ACE Contract within the following example box:



Evidence:

Records must be valid, readily accessible, current, sufficient, authentic and capable of verification by the Department. These records can be either soft or hard copy unless otherwise specified. The records must be provided to the Department within a reasonable time on request.



Any records or evidence required under the ACE Contract must be promptly provided to the Department on its request.

19. Examples of records

The table below sets out examples of the types of records that should be maintained.

Records required for:	Evidence type:
Training Activity	
Attendance	<ul style="list-style-type: none">• Class rolls with dates and signatures confirming attendance• Online course attendance records• Phone logs and emails in relation to attendance or training, assessments and other training activities submitted
Learning resources	<ul style="list-style-type: none">• Copies of learning materials/resources supplied to the student, structured learning guides or navigation tools• Records of acknowledgement of receipt of learning materials/resources by the student

Records required for:	Evidence type:
Support	<ul style="list-style-type: none"> Record of support provided to the student, including primary evidence of support provided, a log and/or file notes in connection with the support provided
Withdrawn outcome	<ul style="list-style-type: none"> Notification of withdrawal by student (e.g. email from student) Staff Declaration (see Appendix D of Activity Schedule)
Participated (in relation to a Funded Unit/Module)	<ul style="list-style-type: none"> Documented evidence that the student has interacted and participated in the Funded Unit/Module with a trainer/assessor or student/learner management system in a manner that exceeds induction, mere attendance or accessing training materials
Assessment	
Workplace relevance	<ul style="list-style-type: none"> Documents that demonstrate how the assessment meets the requirements of the relevant Training Package and standard of performance required in that particular workplace
Assessment plan	<p>Assessment plan documentation that outlines:</p> <ul style="list-style-type: none"> the Funded Units/Modules the standard of performance/criteria required by the Funded Units/Modules in the workplace; and the assessment strategies/tools/tasks to be used
Completed assessments	<ul style="list-style-type: none"> Completed assessment documentation (e.g. strategies/tools/tasks) for each Funded Unit/Module for the student, including the evidence used to support assessment outcomes
Assessment progress and/or outcomes for each Funded Unit/Module	<p>A summary record of assessment progress and/or outcomes for each Funded Unit/Module that includes:</p> <ul style="list-style-type: none"> the name and signature of the student the name of the Funded Unit/Module and its identifier (National Code) the actual result which must be consistent with assessment grading (e.g. Competency Achieved/Pass or Competency Not Achieved/Fail) the type of evidence used in the assessment an assessment record that supports the student's activity in the Funded Unit/Module the date of the assessment the name and signature of the assessor evidence of participation in Funded Training by the student; and the date of participation in Funded Training
Qualifications and Recognition	
Credentials issued	<ul style="list-style-type: none"> Certified copies of credentials issued
Completion details	<ul style="list-style-type: none"> Records of outcomes of Qualifications, Part Qualifications or Pathway Training (if applicable) delivered
Recognition of Prior Learning	<p>Records in support of the granting of Recognition of Prior Learning including:</p> <ul style="list-style-type: none"> record of observation of workplace performance, demonstration, simulation records from third parties, e.g. reports from workplace supervisors, references from past and/or present employers, testimonials from clients challenge tests on elements

Records required for:	Evidence type:
	<ul style="list-style-type: none"> work samples collected and/or documented



The evidence of training activity must include evidence that supports the outcome reported in the Training Activity Data.

20. Other record keeping requirements

20.1 Electronic signatures

Electronic signatures may be used or accepted by the ACE Provider if the ACE Provider has evidence:

- that the signature can be properly attributed to the individual that is alleged to have signed; and
- that the individual applied the signature electronically.

This electronic audit trail may be confirmed, for example, through email correspondence. For assessors, a declaration may be applied to the document which states that the assessor applied the signature based on their own determination regarding competence in the task or Funded Unit/Module.

20.2 Record keeping for online delivery

Where Funded Training is delivered via online delivery and where, for instance an attendance sheet is not marked, the ACE Provider's online delivery platform must be capable of capturing the details of a student's engagement and Participation in Funded Training. For example, if required the ACE Provider would be able to supply the Department with a report of when, what times and for what Funded Unit/Module a student logged onto the online delivery platform to undertake online learning and/or to complete an assessment task(s).

20.3 Record keeping for delivery by correspondence

Where Funded Training is delivered via correspondence and where, for instance an attendance sheet is not marked, the ACE Provider must retain phone logs, emails, copies of assessments and any other training activities submitted by the student.

PART F - Reporting, monitoring and reviewing

Gathering and exchanging information is key to the exercise of the ACE Values.

This Part F describes the ACE Provider's obligations to report information and otherwise participate in monitoring and review activities.

21. Reporting

21.1 Reporting Total VET Activity

The ACE Provider must report Total VET Activity in accordance with the process specified by the Department in the Activity Schedule and on the Department's website at <https://www.nsw.gov.au/education-and-training/adult-and-community-education/faqs-ace-reporting>.

The ACE Provider must maintain a data housing and reporting system that supports submission of Total VET Activity to the Department as required by the ACE Contract.

Total VET Activity means all training activity (including accredited and non-accredited training) conducted by the ACE Provider in NSW and/or for NSW students, including all government funded/subsidised training, training supplied on a fee for service basis, via commercial arrangements and training that may be offered free of charge. This includes all AVETMISS data that must be reported under the National VET Data Policy (<https://www.dewr.gov.au/national-vet-data/resources/national-vet-data-policy>).

21.2 Financial Reports

Within 6 months of the end of the ACE Provider's financial year, the ACE Provider must provide a copy of its audited financial records for that financial year to the Department.

The audited financial reports must contain financial statements that have been audited by an independent auditor and not a member or employee of the ACE Provider. The auditor must be:

- a member of the Institute of Chartered Accountants;
- a member of the Australian Society of Certified Practising Accountants;
- a member of the National Institute of Accountants who holds a current Public Practice Certificate; or
- a Company Auditor who is registered with the Australian Securities and Investment Commission (**ASIC**).

Financial statements must include a balance sheet, a statement of profit and loss and an auditor's report for the relevant year. The financial statements must be prepared in accordance with accounting standards approved under the *Corporations Act 2001* (Cth).

21.3 Other financial information

Within 7 days of a request by the Department, the ACE Provider will provide up to date and accurate information about the ACE Provider's ongoing financial position.

The ACE Provider must also immediately report any issues that may affect the ongoing financial viability of its operations or otherwise impact its ability to deliver Funded Training or meet its other obligations under the ACE Contract.

21.4 ACE Provider Information

The Department may collect from the ACE Provider or any other source, information about the ACE Provider that relates to the ACE Provider's:

- (a) performance under the ACE Contract;
- (b) delivery of Training and the provision of government funding to the ACE Provider;
- (c) any information the ACE Provider provides the Department as part of the ACE Contract or its Application; and
- (d) any feedback the Department obtains from third parties regarding the ACE Provider's provision of training.

(together, **ACE Provider Information**).

21.5 How the Department uses records

The Department may share and disclose ACE Provider Information to any Australian government agency, including those located in States and Territories outside New South Wales who may use ACE Provider Information for any purpose connected to the exercise of their government functions.

The Department uses the evidence and records the ACE Provider collects and keeps, for performance monitoring, audit, verification, research, statistical analysis, program evaluation, post-completion surveys and internal management purposes. It is also used by the Department to report to the National Centre for Vocational Education and Research (**NCVER**).

These records form part of the evidence to be provided for any performance monitoring activities conducted by the Department. The ACE Provider must also submit such evidence as is required as part of the NCVER VET Non-Financial Audit, which audits Funded Training at a Funded Unit/Module level. Issues raised during the NCVER audit can also inform the Department's performance monitoring activities.

Students must be made aware by the ACE Provider that the information supplied by them (including their personal details and identification) will be used by the Department, and all students must give their consent in accordance with clause 7.4.

22. Purpose of monitoring and reviewing

The Department may at any time conduct monitoring and reviews in connection with the ACE Contract for the purpose of:

- (e) reviewing ACE Provider compliance with all terms and conditions of the ACE Contract, including reviewing completeness and accuracy of records, reporting and payments
- (f) reviewing performance and progress against the CSD Target (as defined in the Activity Schedule)
- (g) investigating any complaint received or concerns about the ACE Provider; or
- (h) gathering information to assist in the review and further development of the ACE Program and other Department priorities.

The ACE Provider must comply with all requests from the Department to participate in monitoring and reviewing as set out below.

23. Methods of monitoring and reviewing

Monitoring and reviewing may be carried out by a variety of different activities, including:

23.1 Desk audits

The Department may review information provided by the ACE Provider or obtained from other sources. The ACE Provider must provide any information or documents requested by the Department in accordance with the ACE Contract.

23.2 Site visits

If requested by the Department the ACE Provider must, within 7 days of receipt of notice from the Department, allow and facilitate the visit of any person nominated by the Department to the ACE Provider's premises (including, all places where Funded Training takes place and the business headquarters/administrative offices).

During such site visits the ACE Provider must ensure that the Department's nominee is able to carry out any required activity, including:

- (a) inspecting and taking copies of any documents and records related to the ACE Contract or to the ACE Provider's financial and business affairs, including accounts, governance and any other information verifying or evidencing the ACE Provider's financial standing; and
- (b) carrying out surveys or interviews in accordance with clause 23.3 below.

23.3 Surveys and interviews

If requested by the Department, the ACE Provider must facilitate surveys or interviews to be carried out by any nominee of the Department with the ACE Provider and/or its student, employees, executive officers, subcontractors, accountants, bookkeepers, auditors, agents or any other party the Department requests. The ACE Provider must not say or do anything that has the intention or effect of obstructing, hindering, influencing, coercing or interfering with the surveys, interviews or their process in any way.

23.4 ACE Provider self-assessment

If requested by the Department, the ACE Provider must complete a self-assessment survey. The self-assessment survey may address one or more subjects relating to the ACE Program and/or the ACE Contract. The ACE Provider must complete the self-assessment survey within the specified timeframe. If requested by the Department, the ACE Provider must provide evidence to support its responses in the self-assessment survey within 7 days.

23.5 Internal reviews

If requested by the Department, the ACE Provider must conduct an internal review to establish compliance and risks, and to determine where improvements are required to meet the provisions of the ACE Contract. The Department will specify the areas that must be covered in the internal review. Internal reviews must:

- (a) be undertaken in the format that the Department prescribes
- (b) describe the organisation as it is at the time of the internal review (where so requested)
- (c) contain information that is meaningful, accurate, correct, complete and not misleading in any way
- (d) be maintained fully with all documentation referenced as supporting evidence

- (e) where appropriate, reference documentation provided to the Department as part of the internal review by recording the document name, document reference number and version or such other method to allow documentation to be clearly identified
- (f) set out any identified non-compliances and list the actions that the ACE Provider will undertake to rectify the non-compliances and the proposed timeframes for correction of the non-compliances
- (g) specify a person who is authorised by the ACE Provider to be the point of contact for the Department in respect of addressing noncompliance and monitoring the progress of remediating the noncompliance; and
- (h) be submitted to the Department in the required format via email to TS.ACEdesk@det.nsw.edu.au within one month of the Department's request.

The ACE Provider must update its internal review as any identified non-compliances are addressed, together with appropriate evidence to demonstrate compliance.

PART G - Contract management

This Part G describes the management procedures for the ACE Contract. These include procedures such as:

- Notices
- Termination, Suspension and Variation
- Events beyond control
- Taxes, duties and charges
- Other contract matters such as survival, waivers and consents, governing law and jurisdiction

24. Requirement to provide information

The ACE Provider must provide the following information to the Department:

- (a) the bank account that payments under the ACE Contract are to be sent via electronic funds transfer
- (b) the name and contact details of the ACE Provider's Representative (see Item 1(d) of the Activity Schedule)
- (c) persons with organisational control of the ACE Provider (such as major shareholders, directors, officers or committee members, members of the board of management, trustees); and
- (d) senior management team (such as chief executive officer, general manager, finance director or financial controller, operations director or manager, chief compliance manager or site, centre or branch managers).

The ACE Provider must notify the Department of any change to the information above.

25. ACE Provider's Representative

The ACE Provider must nominate a representative who is the operational point of contact for the ACE Provider and must have the knowledge and information to be able to answer the Department's questions about contract related issues (**ACE Provider's Representative**). The ACE Provider's Representative's name and contact details are set out in Item 1(d) of the Activity Schedule.

The Department will address operational correspondence to the ACE Provider's Representative (excluding correspondence relating to matters that have been escalated to the ACE Provider's chief executive officer). The ACE Provider's Representative must have a level of authority to provide any requested information to the Department and to make commitments on behalf of the ACE Provider.

26. Notices

26.1 Written notice

Unless otherwise specified under the ACE Contract, a notice or other communication connected with the ACE Contract has no legal effect unless it is in writing.

26.2 Addresses for notices

Unless otherwise specified under the ACE Contract:

- (a) a notice from the Department to the ACE Provider must be sent by post, delivered or emailed to at least one of the addresses of notices specified in Item 2 of the Activity Schedule or as otherwise provided by the ACE Provider
- (b) a notice from the ACE Provider to the Department must be:
 - (i) sent by post or delivered to the Director, Training Sector Governance, Training Services NSW, 105 Phillip Street, Parramatta NSW 2150; or
 - (ii) sent by email to TS.ACEdesk@det.nsw.edu.au addressed to the attention of the Director, Training Sector Governance, Training Services NSW.

26.3 Receipt of Notice

If a notice is sent or delivered under clause 26.2, it must be treated as given to and received by the party to which it is addressed:

- (a) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting
- (b) if sent by email, 1 Business Day after the email was sent, unless the party sending the email knows or ought reasonably to suspect that the email was not delivered to the e-mail address; or
- (c) if delivered before 5 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

26.4 Other communications with ACE Provider

Except for written notices and approvals set out elsewhere in this clause 26, the Department may communicate with the ACE Provider, including for the purpose of notifying of any changes to Guidelines and Policies, by the circulation of a general communication, posting on the Department's website or portal accessible to the ACE Provider, or email to the ACE's Provider's Representative or CEO.

27. Termination and suspension

27.1 Termination for convenience

- (a) The ACE Contract may be terminated for any reason by either party by giving at least 2 months' notice to the other party.
- (b) If the ACE Contract is terminated under this clause 27.1:
 - (i) the Department will have no obligation to pay any Funding above what has accrued up until the date of termination; and
 - (ii) the ACE Provider releases the Department from any from any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses, arising from the termination of the ACE Contract under this clause 27.1.
- (c) For clarity, nothing in this clause 27.1 limits the Department's rights under clause 27.2(b) or at law.

27.2 Termination, suspension or variation for Event of Default

- (a) The ACE Provider must:
- (i) immediately notify the Department of any Event of Default; and
 - (ii) give the Department sufficient details about the Event of Default to help the Department assess its significance and impact.
- (b) If:
- (i) the ACE Provider notifies the Department of an Event of Default; or
 - (ii) the Department, in its absolute discretion, believes that there has been an Event of Default or there is a Financial Viability Issue,
- the Department may immediately by written notice to the ACE Provider:
- (iii) suspend all or part of the ACE Provider's rights under the ACE Contract
 - (iv) withhold all or part of the Funding
 - (v) require repayment of any Funding
 - (vi) vary the ACE Contract in accordance with clause 28.1 (including place any further conditions in relation to Funded Training)
 - (vii) exercise any of its other rights under the ACE Contract; or
 - (viii) terminate the ACE Contract.

Financial Viability Issue means a determination by the Department, in its absolute discretion, that the ACE Provider's financial position has or may adversely affect the ACE Provider's delivery of Training.

27.3 Termination for breach

- (a) If the Department believes that the ACE Provider breached a term of the ACE Contract, the Department may notify the ACE Provider of the breach (**Notification**).
- (b) The ACE Provider can, within 14 days of receiving the Notification (**Notification Period**), give the Department evidence to show:
- (i) that there has not been any breach; or
 - (ii) remedy the breach.
- (c) If, after the Notification Period expires, the Department is satisfied that the ACE Provider:
- (i) did breach a term of the ACE Contract
 - (ii) did not remedy the breach; or
 - (iii) did not provide sufficient evidence under clause 27.3(b),
- the Department may immediately terminate the ACE Contract by written notice to the ACE Provider.
- (d) For clarity, nothing in this clause 27.3 limits the Department's rights under clause 27.2(b) or at law.

27.4 Effect of notice of termination

Immediately from the time that the ACE Provider receives a notice of termination from the Department, the ACE Provider must not commence or enroll any further students, unless otherwise notified by the Department.

27.5 Effect of termination

Following termination of the ACE Contract, the ACE Provider will (at its own cost) do anything that the Department requests, including:

- (a) provide all reasonable assistance to facilitate the transfer of all enrolled students to another registered training organisation. This includes providing all information, documents or certification required by the enrolled student
- (b) pass on any communications or information to enrolled students
- (c) ensure that all Total VET Activity has been submitted in accordance with its obligations under this ACE Contract
- (d) cease the delivery of Funded Training to enrolled students; or
- (e) continue to deliver Funded Training in accordance with clause 27.7.

27.6 Effect of suspension

Following suspension of all or part of the ACE Contract, the ACE Provider will (at its own cost) do anything that the Department requests, including:

- (a) continue to deliver Funded Training in accordance with clause 27.7
- (b) cease to deliver Funded Training to students who have commenced
- (c) cease to enrol further students in Funded Training; or
- (d) comply with any condition that the Department imposes.

The ACE Provider acknowledges that the Department may withhold all or part of the Funding during any period of suspension.

27.7 Continuation of Funded Training

- (a) If all or part of the ACE Contract is suspended or terminated, the Department may request the ACE Provider to continue to deliver Funded Training to students who have commenced.
- (b) If the Department makes a request under clause 27.7(a), the ACE Provider must:
 - (i) continue to provide the Funded Training in accordance with the terms of the ACE Contract
 - (ii) continue to provide the Funded Training to all students undertaking the Funded Training until they have all completed or discontinued the Funded Training that they are enrolled in; and
 - (iii) comply with any additional conditions imposed by the Department.
- (c) The Department may, by notice to the ACE Provider, withdraw its request under clause 27.7(a).

27.8 Event of Default

Event of Default means any of the following (regardless of if caused by the ACE Provider):

- (a) **(non-compliance)** the ACE Provider has not complied with any term of the ACE Contract
- (b) **(incorrect or incomplete statement)** any statement made by the ACE Provider is incorrect or incomplete in a way which may have affected the original decision to enter into the ACE Contract with the ACE Provider (including the specific terms in the Activity Schedule(s))
- (c) **(untrue warranty)** a representation, warranty or statement made by the ACE Provider is untrue or misleading or a reply to a question made by, or on behalf of, the Department, is untrue or misleading

- (d) **(void document)** the ACE Contract or any other related agreement, entered into by the ACE Provider and the Department is void, voidable or otherwise unenforceable by the Department or is claimed to be so by the ACE Provider
- (e) **(non-compliance with, or termination of, other contracts)** the ACE Provider or a related body corporate (as defined in the *Corporations Act 2001* (Cth)) of the ACE Provider has not complied with any term or condition of an education related contract with the Department or any other government agency, or had such a contract terminated for any reason
- (f) **(disrepute)** the Department believes that the continuation of the ACE Contract may: bring into disrepute; affect the reputation of; or, be detrimental to, the Department, the ACE Program or the NSW vocational education training market (separately subsidised and non-subsidised)
- (g) **(unfavourable VET Regulator Audit Report)** a VET Regulator audit report indicates a serious material or significant non-compliance of the standards set by the VET Regulator
- (h) **(regulatory decision of the VET Regulator)** an adverse regulatory decision made by the VET Regulator which affects the ACE Provider's ability to perform its obligations under the ACE Contract, whether or not the ACE Provider's rights for reconsideration or appeal have been exhausted
- (i) **(non-compliance with Smart and Skilled Contract)** the ACE Provider has not complied with any term or condition of the Smart and Skilled Contract it holds or has previously held with the Department; or
- (j) **(change in Control event)** the ACE Provider experiences a change in Control not in accordance with clause 28.3.

28. Variation, assignment or novation, change in Control

28.1 Variation of the ACE Contract

The Department may vary the ACE Contract (including the Maximum Funding or any other part of an Activity Schedule):

- (a) at the conclusion of the Activity Period, by issuing a new Activity Schedule. This is at the Department's absolute discretion and may be under different terms
- (b) at any time if the ACE Provider has failed to, or is unable to, remedy the Event of Default within 14 days of either party notifying the other party of the Event of Default
- (c) if there is a Financial Viability Issue
- (d) at any time if the change does not negatively impact the ACE Provider
- (e) at any time, with the consent of the ACE Provider or by giving at least 1 months' notice to the ACE Provider; or
- (f) otherwise in accordance with the ACE Contract.

The Department will specify the date on which any changes under this clause 28.1 will take effect.

If the Maximum Funding is reduced (**New Maximum Funding**), the ACE Provider must repay to the Department any amount received over and above the New Maximum Funding.

For clarity, nothing in this clause 28.1 limits the Department's rights under the remainder of the ACE Contract.

28.2 Assignment or novation

The ACE Provider must not, in whole or in part, assign or novate any or all of its rights and obligations under the ACE Contract without the Department's prior approval.

28.3 Change in Control

Any change in Control (as defined by Section 50AA of the *Corporations Act 2001* (Cth)) of the ACE Provider requires the Department's prior approval.

The Department may terminate the ACE Contract at any time if a change in Control of the ACE Provider occurs without the Department's prior approval.

29. Government Taxes, Duties and Charges

The Provider is responsible for all taxes, duties and charges imposed or levied in Australia or overseas in connection with the ACE Contract.

The ACE Provider Services retains its character as a GST-free service. For clarity, in accordance with GSTR 2002/1, the Funding also retains this GST-free status.

If the ACE Provider is registered for GST and there is a change to the GST status of the ACE Provider Services due to:

- (a) a change to taxation legislation
- (b) rulings or determinations; or
- (c) the Department opting to treat the ACE Provider Services as taxable supplies,

the Department will increase all components of the prices of the ACE Provider Services by the applicable rate of GST or the relevant alternative taxation obligation, subject to the issue of a recipient created tax invoice.

The ACE Provider must not issue tax invoices for ACE Provider Services. For clarity, the Department can, at its discretion, issue tax invoices for ACE Provider Services.

The Department acknowledges that it is a government entity for the purposes of GSTR 2000/10.

The ACE Provider acknowledges that it is registered for GST and that it will immediately notify the Department if it ceases to be registered.

ACE Provider Services means the ACE Provider's provision of GST-free vocational education and training under the ACE Contract, together with incidental reporting to meet the requirements of the Commonwealth Government under funding arrangements between the Commonwealth and the States and Territories.

30. Events Beyond Control

30.1 Definition of Event Beyond Control

Event Beyond Control means an event such as an act of God, lightning, storm, flood, fire, bushfire, pandemic, earthquake, explosion or war.

30.2 Suspension of obligations

Subject to clause 30.3, a party's performance of its obligations under the ACE Contract is suspended to the sole extent that performance is prevented by an Event Beyond Control (**Affected Party**), provided that the Affected Party:

- (a) promptly notifies the other party with reasonable details of the Event Beyond Control and

the extent to which the Affected Party is unable to perform its obligations

- (b) provides the other party with details of the Affected Party's attempts to overcome the Event Beyond Control as quickly as possible
- (c) takes all reasonable steps to work around or reduce the effects of the Event Beyond Control; and
- (d) resume performance as soon as possible after termination of the Event Beyond Control or after the Event Beyond Control has abated to an extent which permits resumption of performance.

The ACE Provider will not be entitled to any increase in any payment due to it, or damages, costs or expenses in connection with any suspension or delay from an Event Beyond Control.

30.3 Liability not relieved

An Event Beyond Control affecting the ACE Provider's performance under the ACE Contract will not relieve the ACE Provider of liability in the event, and to the extent that:

- (a) its negligence, act or omission, or breach of the ACE Contract (which was not caused by the Event Beyond Control) caused or contributed to its failure to perform; or
- (b) it failed to use all reasonable endeavours to remedy the situation and to remove the event or circumstances giving rise to the Event Beyond Control.

30.4 Prolonged Event Beyond Control

If after 14 days of the Affected Party's notification in clause 30.2(a), the relevant Event Beyond Control has not ceased, the parties will meet in good faith to attempt to achieve a resolution.

If the parties are unable to resolve the issue within a further 14 days, then the unaffected party can terminate the ACE Contract immediately by written notice to the Affected Party.

31. Other contract matters

31.1 No employment, partnership or agency

- (a) Nothing in the ACE Contract creates or is intended to constitute a relationship between the parties of employer and employee, principal and agent, partnership or joint venturers.
- (b) The ACE Provider does not have authority to bind or represent the Department.
- (c) The ACE Provider must not hold itself out in any manner which is contrary to this clause.

31.2 Further assurance

Each party must promptly, at its own cost, do all things and execute all further documents necessary to give full effect to the ACE Contract.

31.3 Costs

Each party must pay its own costs and other expenses in connection with the negotiation, preparation and execution of the ACE Contract.

31.4 Severability

Any term of the ACE Contract which is wholly or partly unenforceable, illegal or void is severed to the extent that it is unenforceable, illegal or void. The validity or enforceability of the remainder of the ACE Contract is not affected.

31.5 Survival

The following provisions are continuing and survive termination and expiry of the ACE Contract:

- (a) clause 7.4 (**Student privacy consent**)
- (b) clause 11 (**Insurance**)
- (c) clause 14.1(a) (**information true, accurate and correct**)
- (d) clause 14.1(d) (**no unethical or illegal conduct**)
- (e) clause 15 (**Responsibility to participate in collaboration and engagement**)
- (f) Part E (**Record keeping**)
- (g) Part F (**Reporting, monitoring and reviewing**) and all other obligations relevant to maintaining records and reporting to the Department
- (h) clause 26 (**Notices**)
- (i) clause 27(**Termination and suspension**)
- (j) clause 28.1 (**Variation of the ACE Contract**)
- (k) clause 29 (**Government Taxes, Duties and Charges**)
- (l) clause 31 (**Other contract matters**)
- (m) clause 32 (**Governing law and jurisdiction**)
- (n) clause 33 (**Warranties**)
- (o) clause 34 (**Indemnities**)
- (p) clause 35 (**Exclusion of liability**)
- (q) clause 36 (**Assumption of risks by ACE Provider**)
- (r) Part I (**Laws, regulations and policies**)
- (s) Part J (**Interpretation and index of defined terms**)
- (t) Appendix B of the Activity Schedule
- (u) Item 7 and Appendix E of the Activity Schedule
- (v) the content of the Activity Schedule(s) and Guidelines and Policies to the extent they refer to the subject matter of any of the above clauses; and
- (w) any other provisions that are expressed to or which, by their nature, would reasonably be expected to survive termination or expiry.

31.6 Entire understanding

The ACE Contract is the entire agreement and understanding between the parties on its subject matter and replaces all previous agreements or understandings between the parties on that subject matter, including the Application.

31.7 Waivers and consents

Except as expressly stated in the ACE Contract, each party acknowledges that:

- (a) a waiver or consent:
 - (i) is not effective unless it is in writing and signed by the relevant parties;
 - (ii) may be given conditionally, unconditionally or withheld in the absolute discretion of the party entitled to give the waiver or consent;

- (iii) is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given;
- (b) a party's failure or delay to exercise a power or right does not operate as a waiver of that power or right; and
- (c) the exercise of a power or right does not preclude its exercise in the future or the exercise of any other power or right.

32. Governing law and jurisdiction

The law of New South Wales governs the ACE Contract. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts which are entitled to hear appeals from them.

PART H - Warranties, indemnities, liability and risk

This Part H sets out, in connection with the ACE Contract:

- the warranties the ACE Provider makes
- the ACE Provider's indemnification of the Department
- the Department's exclusion of liability
- the assumption of risks by the ACE Provider

33. Warranties

The ACE Provider warrants that, on and from the Start Date:

- (a) the ACE Provider will comply with all Applicable Laws
- (b) the ACE Provider has the legal right and power to enter into and perform its obligations under the ACE Contract
- (c) the ACE Provider is not aware of any circumstances (other than those notified to the Department in the Application), which does or might adversely affect its ability to perform its obligations under the ACE Contract. For clarity, this includes any financial circumstances and any current, pending or threatened litigation or proceedings
- (d) the ACE Provider's delivery of Funded Training, provision and use of any materials in connection with the Funded Training (including use by the Department or any student) does not and will not infringe the intellectual property rights of a third party; and
- (e) all information provided by the ACE Provider to the Department before the Start Date (including in connection to the Application) is true, accurate, complete and is not misleading in any way.

Application means any application by the ACE Provider in connection with the ACE Program, including an application for the ACE Contract.

34. Indemnities

The ACE Provider must indemnify and keep indemnified the Department, including its officers, employees, agents and contractors (the **Indemnified**) against any Claim which the Indemnified pays, suffers, incurs or is liable for in respect of or as a result of any act or omission by the ACE Provider or its officers, employees, agents or contractors in connection with or arising out of the ACE Contract, including delivery of Funded Training.

The ACE Provider's liability under this clause will be reduced to the extent that any Claim was caused or contributed to by the Department's breach of the ACE Contract, negligence or unlawful acts or omissions.

Claim means any allegation, cause of action, action, liability, loss, claim, proceeding, suit, demand of any nature, damage, cost, charge, expense, outgoing or payment, whatsoever arising (including legal fees on a solicitor/client basis), and whether present or future, fixed or unascertained, actual or contingent and whether at law, under state or otherwise.

35. Exclusion of liability

The Department will not be liable to the ACE Provider for any loss or damage that:

- (a) does not arise naturally or in the ordinary course of things from the act or omission that caused the liability; or
- (b) is a loss of goodwill, income, revenue, profit or savings.

36. Assumption of risks by ACE Provider

The ACE Provider accepts all risks in connection with the ACE Contract, including but not limited to:

- (a) not being entitled to Funding and being required to repay some or all of any Funding received in advance
- (b) withdrawal of an application for enrolment in Funded Training from a prospective student
- (c) the withdrawal from Funded Training by enrolled students
- (d) not receiving any further Activity Schedule(s)
- (e) refusing an application for enrolment for Funded Training because it would exceed the Maximum Funding; or
- (f) exceeding the Maximum Funding and not receiving any amount in excess of the Maximum Funding.

The ACE Provider will not make any Claim against the Department in respect of these matters or any related matters.

The ACE Provider must perform its obligations under the ACE Contract at its own cost. The Department has no obligation to make any payment to the ACE Provider, other than providing Funding in accordance with the ACE Contract.

PART I - Laws, regulations and policies

This Part I specifies other laws, regulations and policies the ACE Provider must comply with.

37. Requirement to comply with all Applicable Laws

The ACE Provider must comply with all Applicable Laws. This includes in relation to ACE Program training activity, the ACE Contract, as well as the ACE Provider's operations outside of the ACE Program.

Applicable Laws means all laws, legislative instruments, Regulatory Requirements and Licences and Consents that apply to the ACE Provider's organisation and/or operations. This may include:

- **(relating to VET)** the *National Vocational Education and Training Regulator Act 2011* (Cth), the *National Vocational Education and Training Regulator Regulations 2011* (Cth), the *Apprenticeship and Traineeship Act 2001* (NSW), the *Apprenticeship and Traineeship Regulation 2010* (NSW), *Standards for Registered Training Organisations (RTOs) 2015*, the *Student Identifiers Act 2014* (Cth), the *Higher Education Support Act 2003* (Cth), the *Animal Research Act 1985* (NSW),
- **(relating to privacy)** the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Act 1998* (NSW)
- **(relating to disability rights)** *Disability Discrimination Act 1992* (Cth), *Disability Discrimination Act Education Standards*
- **(relating to other matters)** *Children and Young Persons (Care and Protection) Act 1998* (NSW), the *Copyright Act 1968*, the *Competition and Consumer Act 2010* (Cth)

Licences and Consents means any licences, consents, authorisations, recognitions, qualifications, approvals and permits required by Applicable Laws, legislative instruments and Regulatory Requirements to provide the Funded Training and to perform obligations under the ACE Contract

Regulatory Requirements means:

- (a) any industry-wide non-statutory rule or obligation
- (b) other non-statutory rules or a non-statutory mandatory code of conduct or
- (c) any non-statutory rule of any industry body

38. Privacy

38.1 Student Personal Information

The ACE Provider must:

- (a) comply with all applicable Australian privacy laws, including the *Privacy Act 1988* (Cth) (**Privacy Act**) in relation to the collection, use and disclosure of Personal Information of all students (including prospective students and enrolled students) (**Student Personal Information**);
- (b) comply with the Australian Privacy Principles under the Privacy Act in relation to its privacy obligations under the ACE Contract and at law;
- (c) provide all necessary notifications and disclosures as required under the Privacy Act in

relation to its collection, use and disclosure of Student Personal Information, including disclosure under the ACE Contract; and

- (d) obtain all necessary consents for the collection, use and disclosure of Student Personal Information in accordance with clause 7.4

Before the ACE Provider collects any Student Personal Information to disclose to the Department or in connection with the ACE Contract, the ACE Provider must notify the student that their Student Personal Information will be used and disclosed in that way.

Personal Information and **Australian Privacy Principles** have the meaning given to them in the Privacy Act.

38.2 General privacy obligations

The ACE Provider's obligations under this clause 38 are in addition to its obligations under Australian privacy laws, including the Privacy Act and do not relieve the ACE Provider of its legal responsibilities relating to protection of Student Personal Information.

It is the ACE Provider's sole responsibility to ensure that it complies with all applicable Australian privacy laws relating to the collection, use and disclosure of Student Personal Information, including the provision of notification and disclosure statements and the procurement of all necessary privacy consents.

39. GIPA requirements

39.1 Disclosure log (GIPA Act section 25)

The ACE Provider acknowledges that the Department may disclose certain information about the ACE Contract in accordance with its obligations under the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**). This includes making certain information about the ACE Contract (and a copy of the ACE Contract) publicly available.

39.2 Access to information (GIPA Act section 121)

- (a) **(Access)** The ACE Provider must, at its own cost and within 5 Business Days of receiving a request by the Department, provide the Department with immediate access to the following information contained in records under the control of the ACE Provider:
 - (i) **(performance information)** information that relates directly to the performance of this ACE Contract
 - (ii) **(information from the public)** information collected from members of the public to whom the ACE Provider offers to perform under the ACE Contract
 - (iii) **(Student Personal Information)** Student Personal Information collected or obtained by the ACE Provider in accordance with the ACE Contract; and
 - (iv) **(information from the Department)** information received by the Provider from the Department to enable it to perform under the ACE Contract.
- (b) **(Limits)** For the purposes of clause 39.2(a) such information does not include:
 - (i) **(finance information)** information that is likely to disclose the ACE Provider's financing arrangements, financial modelling, cost structure or profit margin
 - (ii) **(law)** information that the ACE Provider is prohibited from disclosing to the Department by provision made by or under any law; or
 - (iii) **(commercial disadvantage)** information that, if disclosed to the Department, could reasonably be expected to place the ACE Provider at a substantial commercial disadvantage in relation to its competitors, whether at present or in the future.

PART J - Interpretation and index to definitions

This Part J includes as index of terms defined in the ACE Contract (including the Contract Conditions and Activity Schedule) and other information relevant to definitions and interpretation applicable to the ACE Contract. This should be read together with Appendix F of the Activity Schedule.

40. Contract Conditions defined terms

The definitions for the following terms are set out in the Contract Conditions as indicated:

ACE Contract	clause 3.2	Funded Training	clause 3.1
ACE Program	clause 2	Funding	clause 3.1
ACE Program Values	clause 2.2	Guidelines and Policies	clause 3.2
ACE Provider	clause 1	Indemnified	clause 34
ACE Provider Information	clause 21.4	Insurance Policies	clause 11.1
ACE Provider Services	clause 29	Licences and Consents	clause 37
ACE Provider's Representative	clause 25	NCVER	clause 21.5
Activity Schedule	clauses 3.2, 4	New Maximum Funding	clause 28.1
Affected Party	clause 30.2	Notification	clause 27.3(a)
Applicable Law	clause 37	Notification Period	clause 27.3(b)
Application	clause 33	Other Funding	clause 14.4
Business Day	clause 26.3	Providers	clause 2.1
Claim	clause 34	Regulatory Requirement	clause 37
Collaboration and engagement activities	clause 16	RTO Standards	clause 8.1
Consent Wording	clause 7.4	Start Date	clause 5
Contract Conditions	clause 3.2	Student Information	clause 7.1
Department	clause 1	Term	clause 5
Event Beyond Control	clause 30.1	Third Party Arrangement	clause 10
Event of Default	clause 27.8	Total VET Activity	clause 21.1
Financial Viability Issue	clause 27.2	USI	clause 7.2

41. Activity Schedule defined terms

The definitions for the following terms are set out in the Activity Schedule as indicated:

Aboriginal or Torres Strait Islander	section 1, Appendix D	Funding per unit/module	Item 5(a); section 3, Appendix B
ACE Provider	Item 1	Funding Stream	section 1, Appendix A
ACE Provider's Representative	Item 1(d)	Identity Evidence	section 3, Appendix C
Activity Period	Item 3(a)	Maximum Funding	Item 4(a)
Actual Funding	section 4, Appendix B	Maximum Funding	section 1, Appendix B
Additional Conditions	Item 8	Overpayment	section 16, Appendix B
Applicable Benefits	section 2, Appendix D	Part Qualification	section 2, Appendix A
Categories	section 2, Appendix A	Part Qualification Limit	section 13, Appendix B
Completes	section 3, Appendix B	Participated	section 3, Appendix B

CSD Criteria	section 1, Appendix D	Pathway Training Limit	Item 4(d)
CSD Target	Item 6(a); section 6, Appendix B	Payment Schedule	Item 5(b)
CSR Limit	Item 4(b)	Refugee or Humanitarian Visa requirements	section 1, Appendix C
Disadvantaged Student	section 1, Appendix D	Review Date	Item 3(c)
Eligible Asylum Seeker	section 1, Appendix C	Review Target	Item 6(b); section 8, Appendix B
Exception to Part Qualification Limit	section 13, Appendix B	Skills List	section 2, Appendix A
Exception to Pathway Training Limit	section 12, Appendix B	Start Date	Item 3(b)
Foundation Skills	section 2, Appendix A	Training Activity Data	Appendix E
Full Qualification	section 2, Appendix A	TSB Limit	Item 4(c)
Funded Unit/Module	section 3, Appendix B		

42. Terms defined in laws and standards

Unless otherwise indicated, terms relevant to vocational education and training are defined as set out in:

- *National Vocational Education and Training Regulator Act 2011* (Cth) (<https://www.legislation.gov.au/Details/C2021C00430>)
- AVETMISS Standard (<https://www.ncver.edu.au/rto-hub/what-is-avetmiss>) - (including the AVETMISS data element definitions - <https://www.ncver.edu.au/rto-hub/statistical-standard-software/avetmiss-data-element-definitions-edition-2.3>); and
- Standards for RTOs 2015 (<https://www.asqa.gov.au/about-us/asqa-overview/key-legislation/standards-rtos-2015>),

and any guidance or resources issued by ASQA or NCVER in relation to the above.

43. Updates to external references

Any external reference in the ACE Contract includes any update or amendment to that external reference. This includes references that are outside of the ACE Program and the Department, such as:

- links to websites or webpages; or
- references to other government agencies (including regulatory bodies) including any materials from other government agencies.

44. Interpretation

In the ACE Contract, unless the contrary intention appears:

- (a) a reference to:
 - (i) the singular includes the plural and the plural includes the singular
 - (ii) a **clause** or **Part** is a reference to a clause in or part of these Contract Conditions
 - (iii) a **Item**, **section** or **Appendix** is a reference to an item or section in, or an appendix to, the Activity Schedule
 - (iv) a document (including the ACE Contract) includes any variation or replacement of it

- (v) a statute, ordinance, code or other law includes a regulation or other statutory or legislative instrument made or issued under it and consolidations, amendments, re-enactments or replacements of any of them
- (vi) a **person** includes a partnership, body corporate, unincorporated association or an authority
- (vii) a **party** includes the party's executors, administrators, successors and permitted assigns
- (viii) **dollars, Australian dollars, A\$ or \$** is a reference to the lawful currency of Australia; and
- (ix) time is a reference to Sydney time
- (b) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day
- (c) if an act must be done on a given day which is not a Business Day, it must be done instead on the next Business Day
- (d) the words **include, including, for example** or **such as** when introducing an example, do not limit the meaning of the words to which the example relates to the example or to examples of a similar kind
- (e) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning
- (f) headings and any index are for convenience only and do not form part of the ACE Contract or affect its interpretation. All other text, including where provided in tables or boxes, are part of the ACE Contract
- (g) a provision of the ACE Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the ACE Contract or the inclusion of the provision in the ACE Contract
- (h) an obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly
- (i) if the ACE Provider is a trustee it is bound both personally and in its capacity as a trustee