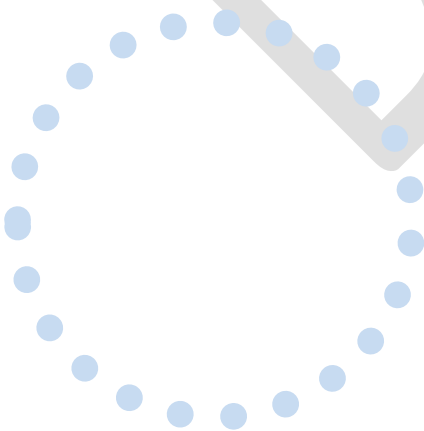
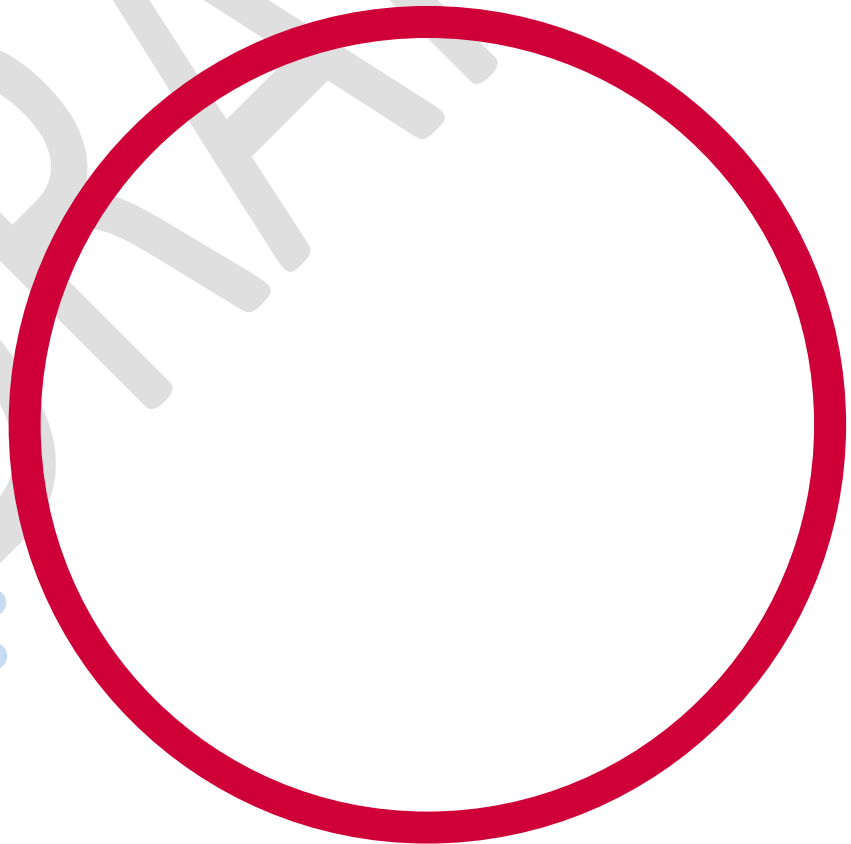
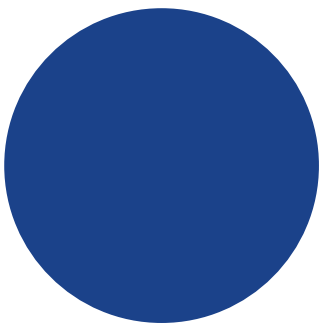


Smart and Skilled Contract Terms and Conditions

2023-2024 Activity Period

Effective from 1 July 2023



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Smart and Skilled terms and conditions

This Contract starts on the date on which the Provider confirms to the Department its acceptance of the Contract including the Activity Schedule(s) (the **Contract Acceptance Date**).

1. Parties

The Parties are the State of New South Wales by its Department of Education through Training Services NSW (the **Department**) and the Provider.

2. Purpose and objectives

- (a) The Contract sets out the terms and conditions for the payment of Subsidies and Loadings to the Provider for Training and Assessment delivered by the Provider to Enrolled Students under any Smart and Skilled Program or the School Based Apprenticeships and Traineeships Program (**Subsidised Training**).
- (b) The Provider is responsible for the delivery of Subsidised Training to:
 - (i) maximise usage of, but not exceed, any applicable Financial Caps
 - (ii) facilitate the provision of high quality Subsidised Training in accordance with [NSW Quality Framework](#), that is relevant to industry and employers; and
 - (iii) promote the interests of students.
- (c) The Provider's entitlement to Subsidies and Loadings requires the Provider to comply with all of its obligations under this Contract and all Applicable Laws, including the RTO Standards.
- (d) The Provider acknowledges that the Department will take into account the Provider's performance in accordance with the Smart and Skilled Market Management Policy and other performance measures throughout the Term of the Contract in determining the Provider score.
- (e) If the Provider is party to any other contract with the Department in relation to Smart and Skilled which has a term that commenced prior to the Contract Acceptance Date (each an **other contract**), the Provider agrees:
 - (i) entry into the Contract by the Department is not a waiver by the Department of any rights that the Department may have under any other contract; and
 - (ii) the Department may, notwithstanding entry into the Contract, take any action it is permitted to take, by law or in equity, to enforce any of its rights under any other contract, including its rights to seek the refund of any amounts paid to the Provider where the Provider was not entitled to such payments under any other contract.
- (f) If the Provider is a High Performing Provider, the Contract includes HPP Schedule 4. In the event of any inconsistency between HPP Schedule 4 and any other provision of the Contract, HPP Schedule 4 will prevail to the extent of the inconsistency.

3. Training covered by this Contract

The Department will provide Subsidies and Loadings to deliver Training and Assessment for the following types of Qualifications or Part Qualifications which may be allocated to the Provider under this Contract.

Clause 4 (Activity Schedules) sets out how the Provider is notified of the Qualifications and Part Qualifications it has been allocated.

3.1 Smart and Skilled Entitlement Foundation Skills

These are Qualifications identified as Smart and Skilled Entitlement Foundation Skills on the Skills List.

3.2 Smart and Skilled Entitlement Full Qualifications

These are Qualifications identified as Smart and Skilled Entitlement Full Qualifications on the Skills List.

3.3 Smart and Skilled Entitlement Apprenticeships and Traineeships Qualifications

These are Qualifications identified as Smart and Skilled Entitlement Apprenticeships and Traineeships Qualifications on the Skills List.

3.4 Smart and Skilled Targeted Priorities Full Qualifications

These are Qualifications identified as Smart and Skilled Targeted Priorities Full Qualifications on the Skills List.

3.5 Smart and Skilled Targeted Priorities Prevocational and Part Qualifications

These are Approved Qualifications, Qualifications or Part Qualifications that the Department identifies as Smart and Skilled Targeted Priorities Prevocational and Part Qualifications from time to time.

The Smart and Skilled Program for the Smart and Skilled Targeted Priorities Prevocational and Part Qualifications will be indicated on an Approved Qualifications Activity Schedule and/or a Provider Activity Schedule.

3.6 School Based Apprenticeships and Traineeships Qualifications

These are Qualifications identified by the Department as School Based Apprenticeships and Traineeships Qualifications from time to time.

3.7 Additional Programs

- (a) The Department may, from time to time and in its absolute discretion, offer the Provider the opportunity to apply for Subsidies and Loadings to deliver Training and Assessment for additional Programs or Initiatives (**Additional Programs**) on the terms set out in the Contract, as modified in accordance with this clause 3.7.
- (b) The Department may impose separate eligibility criteria for the Additional Programs which will apply in addition to the existing terms of the Contract.
- (c) The Department may publish additional operating guidelines and policies for any Additional Programs. Those operating guidelines and policies will be Operating Guidelines and Policies and will form part of the Contract from the date of publication.
- (d) If the Provider makes an application for Subsidies and Loadings to deliver Training and Assessment for any Additional Programs, the Department will determine, in its

absolute discretion, whether to allocate that Additional Program to the Provider for provision of Subsidies and Loadings under clause 4.1.

4. Activity Schedules

4.1 Activity Schedules

The Department, in its absolute discretion, will determine which Qualifications and Part Qualifications it will allocate to the Provider for provision of Subsidies and Loadings under this Contract. The Department will notify the Provider of this allocation by providing the Provider with one or more of the following:

- (a) **(Smart and Skilled Entitlement Foundation Skills Program)** an Approved Qualifications Activity Schedule for Smart and Skilled Entitlement Foundation Skills
- (b) **(Smart and Skilled Entitlement Full Qualifications Program)** an Approved Qualifications Activity Schedule for Smart and Skilled Entitlement Full Qualifications
- (c) **(Smart and Skilled Entitlement Apprenticeships and Traineeships Program)** an Approved Qualifications Activity Schedule for Smart and Skilled Entitlement Apprenticeships and Traineeships Qualifications
- (d) **(Smart and Skilled Targeted Priorities Full Qualifications Program)** an Approved Qualifications Activity Schedule for Smart and Skilled Targeted Priorities Full Qualifications
- (e) **(Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Program)** an Approved Qualifications Activity Schedule and/or Provider Activity Schedule for Smart and Skilled Targeted Priorities Prevocational and Part Qualifications
- (f) **(School Based Apprenticeships and Traineeships Program)** an Approved Qualifications Activity Schedule for School Based Apprenticeships and Traineeships Qualifications; and
- (g) **(Additional Program)** one or more Approved Qualifications Activity Schedule and/or Provider Activity Schedule for Additional Programs.

4.2 Details in Activity Schedules

- (a) Each Approved Qualifications Activity Schedule will specify:
 - (i) the code and name of each qualification
 - (ii) the Activity Period
 - (iii) Start Dates and End Dates
 - (iv) any Regions applicable to the Training (where no Region is stated, the Training may be delivered anywhere in NSW)
 - (v) any Financial Caps (if applicable)
 - (vi) the Status of each Qualification; and
 - (vii) may include additional terms and conditions.
- (b) Each Provider Activity Schedule will specify:
 - (i) the number of Places

- (ii) the Maximum Subsidy
 - (iii) the Training Commencement Period
 - (iv) the Training End Date; and
 - (v) may include additional terms and conditions.
- (c) Qualifications and Part Qualifications listed on an Activity Schedule are called **Approved Qualifications**.

4.3 Start Dates and End Dates and Training Commencement Period

Subsidised Training in an Approved Qualification may only Commence:

- (a) for an Approved Qualification that is a Smart and Skilled Targeted Priorities Prevocational and Part Qualification, during the Training Commencement Period for the Approved Qualification set out on the applicable Activity Schedule; or
- (b) for all other Approved Qualifications, between the Start Date and End Date for the Approved Qualification set out on the Approved Qualifications Activity Schedule.

4.4 VET Regulator prompted changes to Approved Qualifications Activity Schedules

- (a) The Status of an Approved Qualification on an Approved Qualifications Activity Schedule may automatically change if there is an amendment to the Provider's registration with the VET Regulator including scope of registration, affecting that Approved Qualification.
- (b) Changes to the Status of an Approved Qualification on the National Register will be reflected in the Approved Qualifications Activity Schedule. This may include an Approved Qualification being superseded, suspended or deleted and for VET Regulator imposed restrictions for transition and teach out arrangements.
- (c) A replacement Qualification may be added to an Approved Qualifications Activity Schedule where the VET Regulator determines it is a replacement of the superseded Approved Qualification.

4.5 Supplementary and replacement Activity Schedules

- (a) The Department may, at the request of the Provider or otherwise, issue a replacement Activity Schedule or issue a supplementary Activity Schedule.
- (b) The Department will follow the Market Management Policy when determining whether to issue a replacement Activity Schedule or issue a supplementary Activity Schedule.
- (c) The Provider may, in accordance with the Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Program Policy, submit a Training Needs Identification application to the Department from time to time during the Term.
- (d) The Department will determine, in its absolute discretion, whether it will allocate a Qualification or Part Qualification to the Provider for provision of a Subsidy under the Contract in response to a Training Needs Identification application submitted by the Provider. The Department will notify the Provider of this allocation by providing the Provider with one or more Activity Schedules for the Qualification or Part Qualification.
- (e) The Provider must accept each Activity Schedules provided by the Department before delivering the relevant Training and Assessment. Each Activity Schedule will be incorporated into the Contract from the date it is accepted by the Provider.

- (f) The Training and Assessment provided by the Provider under an Activity Schedule accepted by the Provider in accordance with clause 4.5(e) must be delivered in accordance with the Contract, including the Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Program Policy.

5. Term

The Contract starts on the Contract Acceptance Date and expires on 30 June 2024, unless terminated earlier under the Contract (the **Term**).

6. Review of the Contract

- (a) At least 2 months before the end of the Activity Period, the Department may, if it determines in its absolute discretion to do so, provide to the Provider a notice (the **Review Notice**) asking for the Provider's consent to the terms and conditions in the Review Notice (which may include one or more new Activity Schedules).
- (b) If the Provider does not provide its consent to the terms and conditions in the Review Notice by the date set out in the Review Notice, the Contract will end on 30 June 2024.
- (c) If the Provider does consent to the terms and conditions in the Review Notice by the date set out in the Review Notice:
- (i) the Provider may immediately market and enrol students in Subsidised Training based on each new Activity Schedule in the Review Notice; and
 - (ii) the terms and conditions in the Review Notice will take effect on the date specified in the Review Notice.
- (d) For clarity, the Department is not obliged to follow the Review Notice procedure set out in this clause 6 and may elect to award Smart and Skilled contracts for subsequent Activity Periods through an alternate process.
- (e) The issue by the Department of a Review Notice, or failure by the Department to issue a Review Notice, is not an indication of whether or not the Department has determined that the Provider has breached the Contract. The Department does not waive any rights that it might have in respect of any such breach.

7. Provider general obligations

The Provider must:

- (a) (**maintenance of registration with VET Regulator**) 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
- (b) (**scope of registration with VET Regulator**) ensure that all Approved Qualifications remain within the scope of its registration with the VET Regulator for the delivery of Training in NSW
- (c) (**maintenance of approval as an Approved NSW ACE Provider**) ensure that it remains an Approved NSW ACE Provider if any of the Provider's Approved Qualifications Activity Schedules include any Smart and Skilled Entitlement Foundation Skills
- (d) (**capacity to deliver Training**) maintain the capacity to deliver each Approved Qualification to ensure the provision of high quality Subsidised Training in accordance with the NSW Quality Framework

- (e) **(principal business address in NSW)** ensure that it maintains either:
 - (i) the Provider's principal business address (that is, the primary location where the Provider carries on business as is displayed as the "principal place of business" on the ASIC public register or the "official address" registered with NSW Fair Trading) is in New South Wales; or
 - (ii) if the Provider's principal business address is not in New South Wales, the Provider meets the eligibility criteria and the NSW-based eligibility requirements as set out in the Smart and Skilled Policy for Market Management - Part B for Applications for a Smart and Skilled Contract.
- (f) **(maintenance of standard of operations)** maintain its operations to the standard described by the Provider in the Application and as otherwise required in the Contract, including:
 - (i) maintaining facilities and equipment
 - (ii) providing student administration support services
 - (iii) providing career advice services; and
 - (iv) providing specialised Training and Assessment services.
- (g) **(no discrimination)** not discriminate in any way between Prospective Students when accepting enrolments for Approved Qualifications, treat all Prospective Students fairly and equitably including in compliance with all relevant equal opportunity and anti-discrimination Applicable Laws and provide Prospective Students seeking enrolment in an Approved Qualification all reasonable opportunity to enrol in and undertake Subsidised Training for an Approved Qualification
- (h) **(not engage services of certain persons)** not engage the services of a person:
 - (i) that held or holds a management position or has or had ownership in a company that:
 - (A) had any of the following types of contracts terminated for non-compliance with the terms and conditions of that contract or poor performance:
 1. a Smart and Skilled contract; or
 2. a vocational education and training related contract with a Government Agency, whether in New South Wales or any other Australian jurisdiction, or
 - (B) had its registration with the VET Regulator (or a regulator under similar or previous laws) refused, cancelled or revoked; or
 - (ii) unless otherwise agreed by the Department, who has (to the knowledge of the Provider, having made all reasonable enquiries):
 - (A) left the employment of a training organisation registered with the VET Regulator; or
 - (B) has had their consultancy or similar contract with a training organisation registered with the VET Regulator prematurely terminated,

in circumstances where allegations have been made by that training organisation, whether or not proven in legal proceedings, of a serious

breach by that person of the terms of their employment or consultancy or similar contract.

The engagement must not be in any capacity including as employee, officer, contractor or consultant.

- (i) **(information true, accurate and complete)** ensure that all information it provides the Department (including Training Activity Data), NCVET and the USI Registry or to the VET Regulator is true, accurate, complete and not misleading in any way
- (j) **(notify of any overpayment)** notify the Department immediately when the Provider becomes aware that an overpayment of Subsidy or Loading has been made by the Department under the Contract
- (k) **(charge correct Fees)** ensure that it only charges Fees in accordance with the Contract including the Fee Administration Policy and with the required supporting evidence
- (l) **(transfer of non-funded pre-existing students)** not induce or encourage a person who is undertaking a Qualification (other than a NSW Apprentice or Trainee) that is not funded by a Government Agency to re-enrol or transfer their enrolment in order to undertake Subsidised Training in the same or an equivalent Approved Qualification
- (m) **(marketing and communications):**
 - (i) only market, publicise or otherwise communicate its connection to Smart and Skilled in accordance with the Operating Guidelines; and
 - (ii) publish and make available readily accessible information on all Approved Qualifications of the Provider
- (n) **(VET Student Loans Program obligations)** if it is a VET Student Loans Program Approved Provider, the Provider must:
 - (i) comply with the obligations in relation to VET Student Loans Program that are set in the Operating Guidelines, and all Applicable Laws; and
 - (ii) notify the Department if it has its approval revoked under VET Student Loans Program.
- (o) **(comply with all Applicable Laws)** comply with all Applicable Laws and lawful directions of any Government Agency, including but not limited to Applicable Laws and directions relating in any way to the provision of Subsidised Training under the Contract or relating in any way to the performance of its obligations under the Contract
- (p) **(notification of investigation)** notify the Department within 24 hours when the 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) or an investigation (or similar process) under a vocational education and training related contract with a Government Agency, whether in New South Wales or any other Australian jurisdiction
- (q) **(no unethical, dishonest or detrimental conduct)** act in good faith and not act in any way that could be seen to be unethical, reckless, illegal or dishonest conduct, in relation to any matter

- (r) (**reporting unethical or dishonest conduct**) promptly and, in any event within 2 Business Days of becoming aware of the conduct, notify the Department and if appropriate a law enforcement authority such as the NSW Police Service and each Government Agency with jurisdiction to consider the conduct, if the Provider becomes aware of any unethical, reckless, illegal or dishonest conduct in relation to vocational education and training or reasonably suspects such conduct has occurred. The Provider will be deemed to have become aware of, or suspect, such conduct when any of its Personnel become aware of, or reasonably suspect, that conduct
- (s) (**USI obligations**) comply with all Applicable Laws in respect of the Unique Student Identifier (USI) and report the USI to the Department when requested
Further obligations in relation to USI are set out in the Operating Guidelines.
- (t) (**cooperation with other RTOs**) cooperate with other registered training organisations, as directed by the Department, or otherwise, to ensure the integrated and efficient conduct of all programs operated by the Department. This obligation does not extend to requiring a Provider to share any intellectual property or confidential information of the Provider (which specifically does not include information relating to the Enrolment) with any other registered training organisation;
- (u) (**issue Statements of Attainment and Testamurs**) issue within 30 days and in accordance with the Australian Qualifications Framework:
 - (i) Statements of Attainment and statements of fees and receipt to all Enrolled Students who discontinue Training in an Approved Qualification, and who have successfully completed one or more Units of Competency but have not completed the Approved Qualification; and
 - (ii) Testamurs to all Enrolled Students who have successfully completed all Units of Competency required in the Training Plan for that Approved Qualification; and
- (v) (**maintain financial viability**) at all times during the Term, maintain the financial resources necessary to, even in an unsure economic environment:
 - (i) acquire the requisite assets and physical resources to comply with its obligations under the Contract
 - (ii) employ sufficient appropriately qualified staff to undertake all Subsidised Training
 - (iii) provide appropriate levels of student services to Enrolled Students; and
 - (iv) remain in business to ensure that each Enrolled Student can achieve completion of their Subsidised Training.

8. Other Funding

- (a) The Provider must not claim or receive a Subsidy from the Department under this Contract to deliver Training where the Provider has or will receive any type of other funding from any person (including any Government Agency in Australia) to deliver that same Training (**Other Funding**).

To be clear, Other Funding does not include the Fee for that Approved Qualification, any amounts paid for Fee-Free Scholarships or Loadings.

- (b) If the Provider receives Other Funding it must notify the Department with details of the Other Funding.
- (c) The Department may seek to recover the amount of Other Funding by exercising any of its rights set out in clause 22.

9. Notification of Enrolment

- (a) The Provider will comply with the process for the notification of enrolment of Prospective Students in all Approved Qualifications as set out in the Operating Guidelines (the **Notification of Enrolment Process**).
- (b) The Notification of Enrolment process must be carried out simultaneously with the Provider's enrolment process and must be completed before any Subsidised Training is delivered to the student.

10. Subsidised Training planning and delivery

10.1 Training Plan

The Provider will prepare for, and provide to, each Enrolled Student a Training Plan in accordance with the Operating Guidelines.

10.2 Delivery of Subsidised Training

- (a) The Provider will plan and deliver Subsidised Training in accordance with the Training Plan and the Contract, including all Applicable Laws and the Operating Guidelines and Policies.
- (b) The Provider will ensure that any student/learner management system used by the Provider in the delivery of the Subsidised Training captures the Enrolled Student's interaction and participation in Subsidised Training in each applicable Unit of Competency.

10.3 Apprentices and Trainees

All Subsidised Training delivered to Apprentices and Trainees must be delivered in accordance with their Training Contract. The Provider must not deliver any Subsidised Training to an Apprentice or Trainee if the Training Contract term has not commenced or has ended.

11. Transferring students

Any transferring of students to or from the Provider must be in accordance with the Operating Guidelines and the Fee Administration Policy.

12. Performance Monitoring

- (a) The Department may at any time carry out monitoring of the Provider's operations and compliance with the Contract (including without limitation compliance with Applicable Laws, Operating Guidelines and Policies and each Activity Schedule) (**Performance Monitoring**).
- (b) The Department will carry out Performance Monitoring in accordance with the [NSW Quality Framework](#).
- (c) The Provider will provide all assistance, access to premises and supply any information requested within the timeframe set by the Department to carry out

Performance Monitoring. The Department may retain external Personnel to assist with Performance Monitoring.

13. Records and reporting

13.1 Records

- (a) The Provider will collect and maintain records in compliance with its obligations under the Contract and will provide these records to the Department when requested from time to time.
- (b) The Provider will comply with the record keeping obligations set out in the Operating Guidelines, the Fee Administration Policy and all Applicable Laws.
- (c) The Provider will retain the required records for not less than 3 years after the relevant Enrolled Student completes or ends their Subsidised Training. The required records will be readily accessible, easily distinguishable and able to be separated from the records for the Provider's Training that is not Subsidised Training.

13.2 Reporting

- (a) The Provider will comply with the reporting obligations set out in the Operating Guidelines and all Applicable Laws, in each case, within the timeframes specified in the Operating Guidelines or Applicable Law.
- (b) The Provider will within the timeframe requested by the Department, provide any information in relation to the Contract (including Subsidised Training), including but not limited to records of complaints made in respect of the Provider, requested by the Department for the purposes of the Contract, including Performance Monitoring and evaluation.

13.3 Financial record keeping and reporting

- (a) The Financial Information which the Provider will maintain includes the information required under the Operating Guidelines and all Applicable Laws.
- (b) The Financial Information must be prepared in accordance with accounting principles and standards and best practice and other reporting requirements determined by the Department.

13.4 Third party assessment

Without limiting the Operating Guidelines, or clause 12(c), the Provider consents to the Department forwarding any information or material obtained by the Department from the Provider pursuant to this clause 13, clause 14 or otherwise, to the Department's agent or contractor to perform a financial assessment or similar service. Any report of the Department's agent or contractor will be confidential to the Department and the Provider will not be entitled to inspect or receive a copy of the report.

14. Reporting of Training Activity Data

14.1 Training Activity Data

- (a) Training Activity Data for every Enrolled Student who has Commenced must be reported by submitting the Training Activity Data in accordance with the Operating Guidelines.
- (b) If the Provider reports a UoC Outcome Achievement but has not complied with this Contract or the Operating Guidelines, the Provider must notify the Department of the details of the non-compliance immediately.

14.2 Frequency of reporting

- (a) The Provider must successfully submit Training Activity Data for an Enrolled Student who has Commenced:
- (i) to notify of the Commencement of the Enrolled Student before the expiry of the corresponding Commitment ID
 - (ii) to report UoC Outcome Achievements by submitting Training Activity Data that includes the respective UoC Outcome Codes within 28 days of the date of the UoC Outcome Achievement; and
 - (iii) at least once every 28 days, even if no UoC Outcome Achievements have occurred.
- (b) Training Activity Data is not considered to have been **submitted** until it has been uploaded into the Department's Portal. That is, it has not been rejected by the AVS system / external validation process.

14.3 Training Activity Data UoC Outcome Codes

The Provider must use the corresponding codes (**UoC Outcome Codes**) to submit Training Activity Data:

UoC Outcome Code	UoC Outcome Name	UoC Outcome Achievement Please refer to the AVETMIS Standard definitions of the UoC Outcomes together with the descriptions below
20	Competency achieved / pass	The Enrolled Student has been Assessed and satisfies all the requirements for the Unit of Competency (as specified in the relevant Training Package).
30	Competency not achieved / fail	The Enrolled Student has been Assessed as not satisfying all the requirements for the Unit of Competency (as specified in the relevant Training Package).
40	Withdrawn	The Enrolled Student has Participated in Subsidised Training for the Unit of Competency and has withdrawn before completing all Training and Assessment (as specified in the relevant Training Package).
51	Recognition of Prior Learning – granted	The Enrolled Student has successfully undertaken a Recognition Process to satisfy all the requirements of the Unit of Competency (as specified in the relevant Training Package).
60	Credit Transfer	The Enrolled Student has received Credit Transfer to satisfy all the requirements of the Unit of Competency (as specified in the relevant Training Package).
70	Continuing enrolment	The Enrolled Student has Participated in Subsidised Training in the Unit of Competency and no other UoC Outcome Achievement has occurred.

UoC Outcome Code	UoC Outcome Name	UoC Outcome Achievement Please refer to the AVETMIS Standard definitions of the UoC Outcomes together with the descriptions below
85	Not yet started	This outcome code is to be used if the student has enrolled in the Unit of Competency but Training has not yet commenced.

14.4 Enrolled Students who discontinue or defer Subsidised Training after Commencement

The Provider must use the following codes in Training Activity Data to report Enrolled Students who discontinue or defer their Subsidised Training after Commencement:

Code	Name	Description
TNC	Training Not Completed	Enrolled Students who discontinue their Subsidised Training in an Approved Qualification after Commencement.
D	Deferred	Enrolled Students who defer their Subsidised Training in an Approved Qualification after Commencement.

The Operating Guidelines set out the Provider's obligations in relation to Enrolled Students who discontinue or defer their Subsidised Training.

15. Prices

- (a) The Price is the amount for the Qualification set out in:
- (i) the "Qualification Price" column of the Schedule of Prices, Fees and Subsidies; or
 - (ii) the relevant Activity Schedule for Smart and Skilled Targeted Priorities Prevocational and Part Qualifications.
- (b) **(Applicable Price)** The Price that applies for a Qualification is the Price at the time that the Enrolled Student Commences.
- (c) **(Adjusted Price)** If an Enrolled Student receives Recognition of Prior Learning or Credit Transfer for any Units of Competency in the Training Plan for the Approved Qualification, the Price will be adjusted as calculated in accordance with the standard formula as outlined in the Provider Guide to Smart and Skilled Prices, Fees and Subsidies.
- (d) The Price (or Adjusted Price if applicable) for an Approved Qualification is divided into two components:
- (i) the Fee; and
 - (ii) the Subsidy.

16. Fees

- (a) The Provider will only charge Enrolled Students for Subsidised Training provided to the Enrolled Student in accordance with the Contract and the [Fee Administration Policy](#).
- (b) The Provider must maintain arrangements for the protection of any Fees paid in advance in accordance with the [Fee Administration Policy](#).

17. Subsidy and Loadings

This section sets out how the Subsidy and any applicable Loadings will be calculated and when they will be paid. Subsidies and Loadings will be paid at certain milestones as a student progresses through a Qualification.

17.1 Calculation of Subsidy

The Subsidy is the difference between the Price (or Adjusted Price if applicable) and the Fee.

- (a) For Smart and Skilled Programs, the Provider Calculator will calculate the Subsidy for an Approved Qualification for the Enrolled Student based on information provided by the Provider. This will occur as part of the Notification of Enrolment Process set out in the Operating Guidelines, and subsequently upon the submission of Training Activity Data. Where Recognition of Prior Learning and/or Credit Transfer are reported, the Subsidy may change.
- (b) For the School Based Apprenticeships and Traineeships Program, the Subsidy for an Approved Qualification will be calculated based on information entered by the Provider into a facility that will be made available on the Portal. Where Recognition of Prior Learning and/or Credit Transfer are reported, the Subsidy may change.

17.2 Calculation of Loading

The Loading for an Approved Qualification means the amount calculated in accordance with Schedule 2.

If there has been an adjustment in the Price as a result of Recognition of Prior Learning or Credit Transfer being reported, then the Loading will be calculated on the Adjusted Price.

17.3 Payment of Subsidy and Loading by instalments

The Provider will be entitled to the relevant 'Percentage of Subsidy (and Loading if applicable)', when:

- (a) the Provider has complied with its obligations under this Contract, including the submission of Training Activity Data in accordance with clause 14 (Reporting of Training Activity Data); and
- (b) the 'UoC Outcome Achievement Stage' for an Approved Qualification for an Enrolled Student has been reached; and
- (c) the Training Activity Data is both successfully submitted via the Portal by the Provider and has been accepted by the Department (following any necessary validation), in each case in accordance with clause 17.4.

The 'Percentage of Subsidy (and Loading if applicable)' applicable to 'UoC Outcome Achievement Stage' reached is determined according to the following table:

Approved Qualification level	Payment Instalment	UoC Outcome Achievement Stage	Percentage of Subsidy (and Loading if applicable)
Certificate I Certificate II Certificate III Certificate IV Prevocational & Part Qualifications <i>This includes where the Approved Qualification is being undertaken as part of a Traineeship</i>	Certificate Commencement	At least one Unit of Competency is reported with a UoC Outcome Code of 20, 30, 40, 51 or 70	20%
	Certificate Progress	At least 50% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60; and at least one of those Units of Competency is reported with a UoC Outcome Code of 20, 30, 40 or 51	40%
	Certificate Completion	100% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	40%
Diploma Advanced Diploma <i>This includes where the Approved Qualification is being undertaken as part of a Traineeship</i>	Diploma Levels Commencement	At least one Unit of Competency is reported with a UoC Outcome Code of 20, 30, 40, 51 or 70	10%
	Diploma Levels Progress 1	At least 25% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60; and at least one of those Units of Competency is reported with a UoC Outcome Code of 20, 30, 40 or 51	20%
	Diploma Levels Progress 2	At least 50% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	25%
	Diploma Levels Progress 3	At least 75% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	20%

Approved Qualification level	Payment Instalment	UoC Outcome Achievement Stage	Percentage of Subsidy (and Loading if applicable)
	Diploma Levels Completion	100% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	25%
Apprenticeships	Apprenticeships Commencement	At least one Unit of Competency is reported with a UoC Outcome Code of 20, 30, 40, 51 or 70	10%
	Apprenticeships Progress 1	At least 16% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60; and at least one of those Units of Competency is reported with a UoC Outcome Code of 20, 30, 40 or 51	10%
	Apprenticeships Progress 2	At least 33% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	16%
	Apprenticeships Progress 3	At least 49% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	16%
	Apprenticeships Progress 4	At least 66% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	16%
	Apprenticeships Progress 5	At least 83% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	16%
	Apprenticeships Completion	100% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	16%

Where: **Total UoCs** means the total number of Units of Competency required for the Qualification or for Smart and Skilled Targeted Priorities Prevocational and Part Qualifications, as specified in the Activity Schedule (if any) that the Provider must include in the relevant Training Plan for the Enrolled Student.

17.4 Validation, invoice and payment process

- (a) The Provider must submit its Training Activity Data to the Department via the Portal in accordance with clause 14.
- (b) Following successful submission of Training Activity Data by the Provider in accordance with clause 17.4(a), the Department may, assess whether the Training Activity Data is sufficient for determining whether any payments are due to the Provider under the Contract and may take any or all of the following actions:
 - (i) **(seek clarification)** make enquiries with the Provider regarding the Training Activity Data submitted and the Provider must promptly respond to those enquiries
 - (ii) **(request evidence)** request evidence from the Provider to support the Training Activity Data submitted and the Provider must promptly provide that evidence; and
 - (iii) **(reject Training Activity Data)** reject the Training Activity Data submitted in which case the Training Activity Data must be corrected and resubmitted via the Portal by the Provider and this clause 17.4(b) will apply to the corrected Training Activity Data when it is correctly submitted via the Portal.
- (c) If the Training Activity Data demonstrates that the 'UoC Outcome Achievement Stage' for an Approved Qualification for an Enrolled Student has been reached and the Department accepts the Training Activity Data and determines that a Subsidy (and Loading) is due and payable to the Provider, the Department will, within 28 days:
 - (i) **(create and email invoices)** generate an invoice to cover any payments due to the Provider as a consequence of that submission of Training Activity Data. The Department may bundle payments for multiple submissions of Training Activity Data on the one invoice or split them among multiple invoices. Invoices will be accessible within the Portal and also emailed to the Provider; and
 - (ii) **(payment)** send the Provider payment for the invoices by electronic funds transfer or cheque or otherwise will notify the Provider.
- (d) Acceptance of the Training Activity Data by the Department under this clause 17.4 or payment of Subsidies (and Loadings):
 - (i) does not mean that the Department accepts that the Provider is entitled to Subsidies (and Loadings) under this Contract including in accordance with clause 17.3;
 - (ii) does not prevent the Department from contacting the Provider or requesting evidence to support the Training Activity Data; and
 - (iii) does not affect the Department's rights under this Contract or at Law, including its rights under clause 22.

17.5 Payment Continuity Strategy

- (a) Any payment that is made by the Department under this clause 17, or the Contract generally, is subject to the conditions of the Payment Continuity Strategy being met by the Provider.
- (b) If the Provider did not participate in the Payment Continuity Strategy, this clause 17.5 does not apply.

18. Financial Caps

This clause 18 does not apply to the Smart and Skilled Entitlement Apprenticeships and Traineeships Program and the School Based Apprenticeships and Traineeships Program.

18.1 Financial Cap

(a) What is a Financial Cap?

A Financial Cap is the maximum amount of Standard Subsidies that a Provider is eligible to receive in the relevant Activity Period. In this clause 18, **eligible to receive** Standard Subsidies means Standard Subsidies for which an invoice has been generated and issued to the Provider in accordance with clause 17.4(b)(i).

(b) Where are the amounts of the Financial Caps set out?

The Financial Caps will be set out in the Approved Qualifications Activity Schedules.

(c) What does the Financial Cap apply to?

Where an Enrolled Student is entitled to a Fee Exemption or Concession, the Subsidies can be seen to be made up of Standard Subsidy and the additional part to cover that Fee Exemption or Concession ('subsidy gap').

That is: $\text{Subsidy} = \text{Standard Subsidy} + \text{'subsidy gap'}$

The Financial Cap is a maximum amount of the Standard Subsidy part of the Subsidies that the Provider may receive in an Activity Period. This standard part of a Subsidy, that is subject to the Financial Cap, is called a 'Standard Subsidy'.

The Standard Subsidy is determined as follows:

- (i) For an Enrolled Student who is not entitled to a Fee Exemption or a Concession: it is the Subsidy; or
- (ii) For an Enrolled Student who is entitled to a Fee Exemption or a Concession: it is the Subsidy that would have applied if the Enrolled Student were not entitled to the Fee Exemption or Concession.

The Financial Cap applies to the Standard Subsidy part of the Subsidy only.

(d) How do Financial Caps apply for new or continuing students?

The relevant Financial Cap for the Subsidised Training delivered to all Students in the Activity Period is set out in the Approved Qualifications Activity Schedule or a supplementary Approved Qualifications Activity Schedule for the current Activity Period.

If the Approved Qualifications Activity Schedule or supplementary Approved Qualifications Activity Schedule specifies the relevant Financial Cap is for:

- (i) Continuing Students Only – the Financial Cap applies only to Subsidised Training delivered to Continuing Students and there is no Financial Cap for New Commencements under that Smart and Skilled Program or Region (as applicable); or
 - (ii) New Commencements and Continuing Students – the Financial Cap applies to Subsidised Training delivered to both Continuing Students and New Commencements.
- (e) **What are the Provider’s obligations regarding Financial Caps?**
- (i) The Provider must maximise its usage of Financial Caps. The Department will consider the Provider’s usage of its Financial Cap when determining whether to reduce Financial Caps or issue a Review Notice to the Provider.
 - (ii) The Provider must request a reduction in its Financial Caps if it is unlikely to use at least 95% of its Financial Caps.
 - (iii) Where a Financial Cap is for Commencing and Continuing Students, the Provider must manage its delivery of Subsidised Training to ensure that there is sufficient Financial Cap available for all Continuing Students. The Provider must only enrol new students using the available remainder of the Financial Cap.

18.2 Types of Financial Caps

The following table describes the different Financial Caps that will apply to different types of Approved Qualifications.

Approved Qualifications		Financial Cap
Smart and Skilled Entitlement Full Qualifications Financial Cap	Smart and Skilled Entitlement Full Qualifications	Maximum amount of Standard Subsidies for all these Approved Qualifications in the specified Region
Smart and Skilled Entitlement Foundation Skills Financial Cap	Smart and Skilled Entitlement Foundation Skills	Maximum amount of Standard Subsidies for all these Approved Qualifications in all specified Regions
Smart and Skilled Targeted Priorities Full Qualifications Financial Cap	Smart and Skilled Targeted Priorities Full Qualifications	Maximum amount of Standard Subsidies for all these Approved Qualifications in the specified Region
Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Financial Cap	Smart and Skilled Targeted Priorities Prevocational and Part Qualifications	Maximum amount of Standard Subsidies for all these Approved Qualifications as described in the relevant Approved Qualifications Activity Schedule.

	Approved Qualifications	Financial Cap
Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Financial Cap	Smart and Skilled Targeted Priorities Prevocational and Part Qualifications	Maximum amount of Standard Subsidies as further described in the relevant Approved Qualifications Activity Schedule. <i>This Financial Cap is known as the Maximum Subsidy.</i>

18.3 Regions

Where a Region is set out in an Approved Qualifications Activity Schedule or supplementary Approved Qualifications Activity Schedule, the Provider may only deliver face to face (classroom based or work-based) Subsidised Training in a corresponding Approved Qualification:

- (a) within that Region; or
- (b) outside of that Region (**Out of Region Activity**), which is within:
 - (i) the Region(s) that are named in same Regional Cluster as the Region nominated on the Approved Qualifications Activity Schedule or supplementary Approved Qualifications Activity Schedule, or
 - (ii) in the case of the Sydney Region, any other Region.

The following limits apply to Out of Region Activity:

- (i) where the Financial Cap for the Region is less than \$400,000, then up to 50% can be used for Out of Region Activity; and
- (ii) where the Financial Cap for the Region is greater than \$400,000, then up to \$200,000 in total can be used for Out of Region Activity; or
- (iii) as approved by the Department.

The Regional Clusters and Regions belonging to each Regional Cluster are shown below:

Regional Cluster	Region(s)
Hunter and Central Coast Cluster	Newcastle and Lake Macquarie, Central Coast, Hunter Valley excluding Newcastle
North Coast Cluster	Richmond Tweed, Coffs Harbour – Grafton, Mid North Coast
South West Cluster	Riverina, Murray, Capital Region
Southern Cluster	Southern Highlands and Shoalhaven and Illawarra
Western and North West Cluster	Far West and Orana, Central West, New England and North West

18.4 Exceeding a Financial Cap

- (a) The Provider must not exceed any Financial Cap. It is the Provider's responsibility to ensure that the Standard Subsidies that it is eligible to receive in an Activity Period do not exceed the Financial Cap.
- (b) The Department may not pay the Provider any amount that exceeds the Financial Cap in the Activity Period. Any decision to pay any amount above the Financial Cap will be at the Department's absolute discretion.
- (c) Where the Department has issued a Commitment ID and the Provider has reached its Financial Cap for the Activity Period, the Department may send payment of the amount that exceeds the Financial Cap, in the next Activity Period if the Contract continues after the end of the Activity Period.

18.5 Cap usage

(a) Cap Usage Estimate

The Department, from time to time, may make available an estimate of the total Standard Subsidies that the Provider may receive in the Activity Period for each Financial Cap (the **Cap Usage Estimate**). The Cap Usage Estimate will be based on Training Activity Data or, where Training Activity Data is not available, the information provided in the Notification of Enrolment Process. The Cap Usage Estimate will be compared against the relevant Financial Cap to show the Provider's potential progress against that Financial Cap.

(b) Cap Usage Estimate a guide only

The Cap Usage Estimate is only a guide and, if provided, cannot be relied upon by the Provider as any representation or warranty about the amount of Subsidies it may receive or how it will use its Financial Cap over the Activity Period.

(c) Provider to track Standard Subsidies

The Provider remains responsible for ensuring that the Standard Subsidies that it becomes eligible to receive does not exceed the Financial Cap. The Provider must track its own performance and Standard Subsidies against the relevant Financial Cap (the **Provider Estimate**).

The amount that the Provider is eligible to receive in Standard Subsidies will be determined by numerous factors including Enrolled Student's progress, the Provider's compliance with the Contract and generally the terms and conditions of the Contract.

The Provider must accurately report Training Activity Data in a timely manner, which will have an impact on the calculation against the Financial Cap, including Planned Start Dates and Planned End Dates for Units of Competency. The Provider must allow sufficient margin within each Financial Cap to allow for events that may cause the Standard Subsidies it is to receive to increase from any initial expectations.

18.6 Monitoring and adjustment of Financial Caps over the Activity Period

(a) Monitoring

The Department may monitor the Provider's use of its Financial Caps during the Activity Period. This may include reviewing the Provider's actual delivery of Training Activity and actual usage of Financial Caps as well as the Provider's estimated further usage of its Financial Caps in the Activity Period.

(b) **Adjusting Financial Caps following Monitoring Review Dates**

During an Activity Period and following monitoring of the Provider's use of its Financial Caps, the Department may adjust (by either increasing or decreasing) a Provider's Financial Cap by giving no less than 14 days' notice.

(c) **No representation or warranty**

The Department does not represent or warrant and the Provider must not have any expectation that any Financial Cap will increase from the initial Financial Cap at any time during the Activity Period.

19. Government taxes, duties and charges

- (a) All taxes, duties and charges imposed or levied in any state or territory or federally in Australia or overseas in connection with the performance of the Contract must be borne by the Provider.
- (b) The services provided under this Contract (the provision of GST-free vocational education and training, together with incidental reporting to meet the requirements of the Commonwealth Government under funding arrangements between the Commonwealth and the States and Territories) retain their character as GST-free services by the Provider to the Enrolled Student. In accordance with GSTR 2002/1, the Subsidy also retains this GST-free status.
- (c) In the event of any future change to taxation legislation, rulings and determinations that effects a change in the GST status of some or all of the services (or the Department elects to treat them as taxable supplies), provided that the Provider is registered for GST and this clause 19 applies, the Department will increase all components of the prices in respect of such services by the applicable rate of GST (currently 10%) or the relevant alternative taxation obligation, subject to the issue of a recipient created tax invoice.
- (d) The Department is the only party to this Contract permitted to issue tax invoices for supplies by the Provider under this Contract. The Provider will not issue tax invoices in respect of those supplies. The Department acknowledges that it is a government entity for the purposes of GSTR 2000/10. The Provider acknowledges that it is registered for GST and that it will notify the Department if it ceases to be registered.

20. Insurance

- (a) The Provider will have and maintain the following insurance:
- (i) for the Term:
- (A) public and products liability insurance with a minimum limit of \$20 million for any one occurrence
- (B) professional indemnity insurance with a minimum limit of \$3 million for any one occurrence and in the aggregate for the insurance period; and
- (C) workers compensation and other compulsory third party insurance as required by law; and
- (ii) for 6 years after the Term, a valid and enforceable professional indemnity insurance policy to the extent and in the amounts specified in clause 20(a)(i)(B) above,
- (the **Insurance Policies**).

- (b) The Insurance Policies must be taken out by the Provider with reputable and solvent insurers acceptable to the Department which carries on insurance business in Australia and is authorised in Australia to operate an insurance company.
- (c) The Provider must:
 - (i) 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 the claim; and
 - (ii) without limiting clause 20(a), promptly reinstate any Insurance Policies if it lapses or if the cover is exhausted.
- (d) The Provider will, on request by the Department, provide current relevant confirmation of insurance documentation including certificates of currency, certifying that it has insurance as required by this clause 20, noting any restrictions that may be relevant to the performance of the Contract.
- (e) If the Provider does not comply with this clause 20, then without limiting any other remedy available to the Department, the Department may withhold payment of any money due under the Contract to the Provider until the Provider has complied.
- (f) The Provider will 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 afterwards keep the Department fully informed of developments concerning any claim.
- (g) The requirements of this clause 20 do not affect the Provider's liabilities in connection with the Contract.
- (h) The Provider's obligations under this clause 20 are continuing obligations and survive termination of the Contract whilst the obligations of the Provider under this clause 20 continue.

21. Termination, suspension, variation or remediation

21.1 Termination for convenience

- (a) The Department may, at any time, terminate the Contract for any reason by giving at least 2 months' notice to the Provider. To be clear, the Department will have no obligation to pay any Subsidies and Loadings above what has accrued up to the date of termination of the Contract. This clause 21.1(a) does not limit the Department's rights under clause 21.2(c) or at law. The Provider releases the Department from any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses, arising from the termination of the Contract under this clause 21.1(a).
- (b) The Provider may, at any time, terminate the Contract for any reason by giving at least 2 months' notice to the Department. The Department releases the Provider from any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses, arising from the termination of the Contract under this clause 21.1(b). The Provider will not be released from any obligations or liabilities arising under the Contract at any time up to and including the date of termination and the Department may continue to enforce those obligations and liabilities after the date of termination.

21.2 Termination, suspension, variation or remediation for default

- (a) The Provider will not allow an Event of Default to occur.

- (b) If an Event of Default occurs, the Provider will immediately notify the Department of the Event of Default and provide sufficient detail to the Department to assess the significance and impact of the Event of Default.
- (c) If an Event of Default occurs the Department may, by written notice to the Provider, immediately do any one or more of the following:
 - (i) suspend all or part of the Provider's rights under the Contract
 - (ii) withhold in whole or in part any Subsidies and Loadings payable to the Provider
 - (iii) impose any further conditions in relation to Subsidised Training
 - (iv) vary the Contract in accordance with clause 21.3
 - (v) exercise any of its other rights under the Contract
 - (vi) where the Department determines that the Event of Default is capable of remedy, require the Provider to remedy the Event of Default within 28 days of the date of that notice or within such other longer period specified in the notice or as otherwise agreed by the Department in accordance with a remediation strategy prepared by Provider, as required by the Department, and approved by the Department
 - (vii) terminate the Contract, if the Provider fails to remedy the Event of Default in accordance with clause 21.2(c)(vi); or
 - (viii) terminate the Contract.
- (d) If the Department believes that an Event of Default has occurred, the Department may (but is not obliged to) give the Provider a notice requiring the Provider to show that there has been no such Event of Default. If the Department is satisfied that the Provider has failed to show that the Event of Default did not occur, the Department may exercise its rights under the Contract in respect of that Event of Default, including clause 21.2(c) or at law

An Event of Default will remain outstanding until it has been remedied to the satisfaction of the Department (if this occurs). The issue by the Department of a Review Notice is not relevant in determining whether an Event of Default has occurred or whether an Event of Default has been remedied.

- (e) **Event of Default** means any of the following (whether or not caused by anything outside the control of the Provider):
 - (i) **non-compliance:** the Provider has not complied with any term or condition of this Contract or any other Smart and Skilled contract to which the Provider is a party, or any direction issued by the Department under any such contract, including any timeframe for compliance specified in the relevant contract or direction
 - (ii) **incorrect or incomplete statement:** any statement made by the Provider is incorrect or incomplete in a way which would have affected the original decision to enter into the Contract with the Provider (including the specific terms in the Activity Schedules)
 - (iii) **untrue warranty:** a representation, warranty or statement made by the Provider (including under clause 24) is untrue or misleading or a reply to a question made by, or on behalf of, the Department, is untrue or misleading

- (iv) **void document:** this Contract or any other related agreement entered into by the Provider and the Department is void, voidable or otherwise unenforceable by the Department or is claimed to be so by the Provider
 - (v) **compliance unlawful:** it is unlawful for the Provider to comply with any of its obligations under this Contract or any other related agreement entered into by the Provider and the Department or it is claimed to be so by the Provider
 - (vi) **authorisation ceasing:** an authorisation from a Government Agency necessary to allow the Provider to comply with its obligations under this Contract or any other related agreement entered into by the Provider and the Department or carry on its principal business or activity is withheld or ceases to be in full force and effect
 - (vii) **termination of other contracts:** the Provider or a related body corporate (as defined in the *Corporations Act 2001* (Cth)) of the Provider has an education related contract with the Department or any other Government Agency that has been terminated for any reason
 - (viii) **disrepute:** the Department believes that the continuation of the Contract may: bring into disrepute; affect the reputation of; or, be detrimental to, the Department, Smart and Skilled or the NSW vocational education training market (separately subsidised and non-subsidised)
 - (ix) **non-compliance with any government VET requirements:** if the Provider, at any time during the Term, receives subsidises from any other State, Territory or Commonwealth agency for the provision of VET in any other Australian jurisdiction, the Provider:
 - (A) fails to maintain or comply with any terms and conditions of the approval received from such other agency or any contract it has entered into for the provision of such subsidies; or
 - (B) any such approval or contract is terminated.
 - (x) **unfavourable VET Regulator Audit Report:** a VET Regulator audit report indicates a non-compliance by the Provider with the RTO Standards set by the VET Regulator
 - (xi) **issue of VET Regulator Notice:** a notice from the VET Regulator is issued to the Provider to rectify a non-compliance with the RTO Standards
 - (xii) **regulatory decision of the VET Regulator:** an adverse regulatory decision is made by the VET Regulator in relation to the Provider or a notice of intent to make such a decision is issued by the VET Regulator in relation to an Approved Qualification, whether or not the Provider's rights for reconsideration or appeal have been exhausted, or
 - (xiii) **change in Control event:** the Provider experiences a change in Control not in accordance with clause 30.
- (f) Without limiting its other rights under this Contract, including under clause 21.2(d) or 21.2(e), the following are sufficient grounds for the Department to believe that an Event of Default has occurred:
- (i) a complaint received by the Department supported by a statutory declaration or affidavit
 - (ii) an electronically recorded record of interview or signed statement obtained by the Department in the course of carrying out Performance Monitoring

under clause 12 of this Contract and clause 16 of the Operating Guidelines;
or

- (iii) the identification by the Department of risk factors based on:
 - (A) data submitted by the Provider to the Department under the Contract;
 - (B) records kept by the Provider under the Contract; or
 - (C) previous breaches of the Contract by the Provider as evidenced by notices issued to the Provider under clause 21.2(c) or any equivalent provision of a Smart and Skilled contract.
- (g) Without limiting clause 21.2(c) or any other rights of the Department, the occurrence of an Event of Default may adversely impact on any decision the Department may make about providing any additional funding to the Provider at any time during or after the Term.

21.3 Variation of the Contract

- (a) The Department may vary the Contract:
 - (i) at any time, with the consent of the Provider; or
 - (ii) otherwise in accordance with the Contract.
- (b) The Department may, in its absolute discretion, vary the Contract:
 - (i) at any time if there is an Event of Default; or
 - (ii) at any time, by giving at least one months' notice to the Provider.
- (c) In this clause 21.3, vary the Contract means to vary any terms and conditions of the Contract and includes to:
 - (i) add or remove a Qualification or Part Qualification from the Approved Qualifications
 - (ii) vary the terms and conditions of a Smart and Skilled Program or the School Based Apprenticeships and Traineeships Program
 - (iii) restrict a Provider from enrolling students in a Smart and Skilled Program or the School Based Apprenticeships and Traineeships Program, an Approved Qualification or in a particular Region
 - (iv) impose a Financial Cap or other restriction on the Smart and Skilled Entitlement Apprenticeships and Traineeships Program or the School Based Apprenticeships and Traineeships Program
 - (v) vary a Financial Cap or any other part of an Activity Schedule
 - (vi) vary the Prices, Subsidies, Fees or Loadings in the Schedule of Prices, Fees and Subsidies at any time during an Activity Period; and
 - (vii) withdraw, or impose conditions on, any waiver or consent given by the Department.
- (d) This clause 21.3 does not limit the Department's rights under the remainder of the Contract.
- (e) In giving notice of any changes under this clause 21.3, the Department will specify the date on which the change is to take effect.

- (f) The Department may exercise its rights under clause 21.3(b)(ii) for no reason or for any reason at all, including to:
 - (i) manage the Department's budget
 - (ii) support vocational education and training in NSW; and
 - (iii) otherwise ensure the success of Smart and Skilled.
- (g) Without limiting any other provision of this clause 21.3, the Department may vary the Prices, Subsidies, Fees and/or Loadings in the Schedule of Prices, Fees and Subsidies during each Activity Period. Any such variation to the Contract will either be:
 - (i) made in accordance with this clause 21.3; or
 - (ii) made by publishing the variation of the Prices, Subsidies, Fees and/or Loadings on the Department's website, for example, on this page: [Smart and Skilled prices, fees and subsidies | NSW Government](#).
- (h) The Provider releases the Department from any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses, in respect of, arising from or connected in any way with the variation of the Contract under this clause 21.3.
- (i) If the Provider does not agree to a variation of the Contract made under this clause 21.3, it may exercise its rights to terminate the Contract under clause 21.1(b).

21.4 Effect of notice of termination

Following receipt of a notice of termination from the Department, the Department will not allow the Provider to Commence any further students, unless otherwise notified by the Department to the Provider.

21.5 Effect of termination

If the Contract terminates, the Provider will (at its own cost) do anything that the Department requests, including any one or more of the following:

- (a) provide all reasonable assistance to facilitate the transfer of all Enrolled Students to another registered training organisation, including:
 - (i) complying with the Transfer Out Process as set out in the Operating Guidelines, within the timeframes set out in the Operating Guidelines; and
 - (ii) providing all information, documents or certifications required by the Enrolled Student such as a Statement of Attainment or Testamur,
- (b) pass on any communications or information to Enrolled Students
- (c) ensure that all Training Activity Data has been submitted in accordance with its obligations under this Contract
- (d) cease the delivery of Subsidised Training to Enrolled Students; or
- (e) continue to deliver Subsidised Training to Enrolled Students who have Commenced, under clause 21.7.

21.6 Effect of suspension

- (a) If all or part of the Contract is suspended:

- (i) the Provider will (at its own cost) do anything that the Department requests, including:
 - (A) continue to deliver Subsidised Training to Enrolled Students who have Commenced, under clause 21.7
 - (B) cease to deliver Subsidised Training to Enrolled Students who have Commenced
 - (C) cease to enrol Prospective Students
 - (D) ensure that all Training Activity Data has been submitted in accordance with its obligations under this Contract;
 - (E) comply with any condition that the Department imposes; and
 - (ii) the Department may withhold all or part of the Subsidies and Loadings during the period that the Contract is suspended.
- (b) The Provider releases the Department from any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses, in respect of, arising from or connected in any way with the suspension of the Contract under this clause 21.6.

21.7 Continuation of Subsidised Training

If the Department requests the Provider to continue to deliver Subsidised Training to Enrolled Students who have Commenced:

- (a) the Provider will continue to provide the Subsidised Training in accordance with the terms and conditions of the Contract; and
- (b) the Provider will comply with any additional conditions imposed by the Department.

The Department may by notice to the Provider withdraw this request.

22. Repayment

The Provider must repay monies received that the Provider is not entitled to, including monies received based on incorrectly reported Training Activity Data or otherwise, under or arising out of this Contract.

The Department may, in its absolute discretion, by notice to the Provider:

- (a) require the monies to be paid back within a specified period of time
- (b) set-off the monies against other monies due to the Provider under this Contract; or
- (c) deal with it in another manner as directed by the Department.

23. Force majeure

23.1 Suspension of obligations

- (a) If a Party is unable to carry out its obligations under the Contract as a result of an event such as an act of God, lightning, storm, flood, fire, earthquake, explosion or war (a **Force Majeure Event**), then that Party's obligations will be suspended for the period of time they are affected provided it:
 - (i) notifies the unaffected Party promptly of the event with reasonable details and the extent to which it is unable to perform its obligations; and

- (ii) attempts to overcome the event as quickly as possible.
- (b) If after 14 days, such an event has not ceased, the Parties will meet in good faith to attempt to achieve a mutually satisfactory resolution to the problem. If this is unable to be resolved within a further 14 days then the unaffected Party can terminate the Contract immediately by written notice to the affected Party.

23.2 Extension of time

- (a) Where there is likely to be a delay in the Provider discharging an obligation under the Contract because of a Force Majeure Event (other than a circumstance arising out of any act or omission on the part of the Provider), the Provider can request a reasonable extension of time.
- (b) The Department may consent to a request for extension of time under this clause 23.2 provided that:
 - (i) the Provider uses its best endeavours to minimise the delay and recover lost time; and
 - (ii) where appropriate, the Provider provides the Department with a plan indicating in detail the steps and strategies the Provider proposes to take to minimise the impact of the Force Majeure Event and manage the consequences of the delay.
- (c) The Provider will not be entitled to any increase in any payment due to it, or damages, costs or expenses in connection with the delay.

24. Warranties

The Provider warrants that, on the Contract Acceptance Date and on each day following during the Term:

- (a) it complies with all Applicable Laws
- (b) it has the legal right and power to enter into the Contract and to perform its obligations under the Contract
- (c) the execution, delivery and performance of the Contract by it has been duly and validly authorised by all necessary corporate action on its part
- (d) each authorisation necessary to enable it to unconditionally execute and deliver and comply with its obligations under the Contract, and to carry on its principal business or activity, has been obtained, effected and complied with
- (e) the Contract constitutes a valid and binding agreement and is enforceable against it by the Department in accordance with its terms and conditions
- (f) the execution and performance of the Contract by it does not:
 - (i) violate or conflict with or result in a breach of or constitute a default under its constitution
 - (ii) constitute a violation of any judgment or order
 - (iii) constitute a default under any contract, which relates to the performance of the Contract; and
 - (iv) constitute an event that would, with notice or lapse of time, or both, constitute a default as described under clause 24(f)(iii)

- (g) the Provider does not have any interests or obligations (other than those notified to the Department in the Application) that conflict with its interests or obligations under the Contract
- (h) the Provider is not aware of any circumstances (other than those notified to the Department in the Application), including any financial circumstances or any litigation or other proceedings that are taking place, pending or are threatened, which adversely affects or might adversely affect the Provider's ability to perform the Contract
- (i) its performance of the Subsidised Training, the provision of any materials (including third party materials) by the Provider in connection with the Subsidised Training, and their use by the Provider, the Department or any Enrolled Student will not infringe the intellectual property rights of a third party
- (j) it has skilled, qualified and experienced Personnel who are capable of performing the Contract and it will ensure that those Personnel will undertake continuing training to ensure they remain capable of performing the Contract; and
- (k) all information provided by the Provider to the Department before the Contract Acceptance Date (including in connection to the Application) is true, accurate and complete and is not misleading in any way.

The Provider acknowledges and agrees that the Department has relied on the warranties in this clause 24 in appointing the Provider under the Contract, entering into the Contract and making payments to the Provider under the Contract.

25. Indemnities

- (a) The Provider must indemnify and keep indemnified the Department, including its Personnel (the **Indemnified**) against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment (including legal fees on a solicitor/client basis) which the Indemnified pays, suffers, incurs or is liable for in respect of or as a result of any act or omission by the Provider or its Personnel in connection with or arising out of the Contract including delivery of Subsidised Training.
- (b) The Provider's liability under this clause 25 will be reduced to the extent that any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment was caused or contributed to by the Department's breach of the Contract, negligent or unlawful acts or omissions.

26. Exclusion of liability

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

- (a) does not arise naturally or in the ordinary course of events; or
- (b) is a loss of goodwill, income, revenue, profit or savings.

27. Assumption of risks by Provider

The Provider accepts all risks connected to the Contract and its performance of the Contract, including the risk of:

- (a) the Contract not continuing beyond the current Activity Period
- (b) not receiving enrolments for any or all of places available in the Approved Qualifications within its Financial Caps

- (c) receiving an application for enrolment for Subsidised Training from a Prospective Student which does not proceed to Commencement
- (d) the Department not accepting or approving a Training Needs Identification submitted by the Provider
- (e) the withdrawal from Approved Qualifications by Enrolled Students
- (f) not receiving any or all of the Fees or any other amounts due, at any time, from Enrolled Students for the Subsidised Training provided by the Provider
- (g) the Department varying the Contract in accordance with clause 21.3
- (h) having to refuse an application for enrolment for Subsidised Training because it would exceed a Financial Cap
- (i) exceeding a Financial Cap and not receiving any amount in excess of the Financial Cap; or
- (j) the Department not to make payment of all or any Subsidies or Loadings requested by the Provider.

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

The Provider will perform its obligations under the Contract at its own cost. The Department's only payment obligation to the Provider in relation to the performance of the Provider's obligations under the Contract is to provide Subsidies and Loadings in accordance with the Contract.

28. Conflict of Interest

- (a) The Provider warrants that at the Contract Acceptance Date and on each day following during the Term that no Conflict of Interest exists or is likely to arise in the performance of its obligations under the Contract.
- (b) If during the Term, a Conflict of Interest arises, the Provider must:
 - (i) immediately notify the Department in writing of that Conflict of Interest making a full disclosure of all information relating to the Conflict of Interest; and
 - (ii) take such steps as the Department may reasonably require to resolve or otherwise deal with that Conflict of Interest.
- (c) If the Provider does not notify the Department under this clause 28, or is unable or unwilling to resolve or deal with the Conflict of Interest as required, the Department may terminate the Contract in accordance with clause 21.
- (d) The Provider agrees that it will not, and will use its best endeavours to ensure that any Personnel of the Provider do not, engage in any activity or obtain any interest during the course of this Contract that is likely to conflict with or restrict the Provider in performing the Contract.

29. Assignment

The Provider must not assign any or all of its rights and obligations under the Contract without the Department's approval.

30. Change in Control

- (a) If the Provider anticipates that it will experience a change in Control event (as defined by Section 50AA of the *Corporations Act 2001* (Cth)) (including the sale or transfer of all or some of the Provider's business), the Provider must obtain the Department's consent to the proposed change in Control event before the change in Control occurs.
- (b) The Department may terminate the Contract at any time if a change in Control of the Provider occurs without the Department's approval.

31. Third Party Arrangements

- (a) All Third Party Arrangements must comply with ASQA's General Direction – third party arrangements for training and/or assessment of VET courses available at <https://www.asqa.gov.au/resources/general-directions/third-party-arrangements-training-andor-assessment-vet-courses>.
- (b) A Brokering Arrangement is a type of Third Party Arrangement. A Provider must not enter into a Brokering Arrangement without the Department's prior written approval.
- (c) The Provider may apply for approval by completing the Smart and Skilled Application for Approval of a Brokering Arrangement form published by the Department.
- (d) If a Brokering Arrangement is approved by the Department, the third party will be subject to Performance Monitoring by the Department. Both the Provider and the third party will be responsible for ensuring that all activities conducted under an approved Brokering Arrangement complies with the Contract.
- (e) To be clear, it will be an Event of Default if a Provider does not comply with clause 31(a) or 31(b).

32. Communications to the Provider

The Department will communicate with the Provider, including for the purpose of notifying of any changes to Operating Guidelines and Policies, by:

- (a) the circulation of a general communications, including Smart and Skilled updates;
- (b) the Portal; or
- (c) email to the Provider's Representative or CEO.

33. Information

33.1 Provider Information

- (a) The Provider agrees that the Department may collect from the Provider or any other source, information about the Provider that relates to the Provider's performance under the Contract, the Provider's delivery of Training and the provision of government funding to the Provider (**Provider Information**). This includes any information that the Provider provides the Department as part of the Contract or under its Application and any feedback the Department obtains from third parties regarding the Provider's provision of Training.
- (b) The Provider agrees that the Department may share and disclose Provider Information to any Government Agency, including those located in States and

Territories outside New South Wales who may use Provider Information for any purpose connected to the exercise of their government functions.

33.2 Student Personal Information

- (a) The Provider must 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, as defined under section 6 of the Privacy Act, of all students (including Prospective Students and Enrolled Students) (**Student Personal Information**).
- (b) It is the Provider's responsibility to ensure that it:
 - (i) (**complies with the Australian Privacy Principles**) complies with the Australian Privacy Principles under the Privacy Act in relation to its privacy obligations under the Contract and at law
 - (ii) (**obtains notifications and disclosures**) provides 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 Contract; and
 - (iii) (**obtains consent and records**) ensures that it obtains all necessary consents for the collection, use and disclosure of Student Personal Information in accordance with clause 33.4 and retains written records and logs of all consents in accordance with clause 33.4(c).
- (c) Before the Provider collects Student Personal Information to disclose to the Department, the Provider must notify the student that their Student Personal Information will be used and disclosed in that way.

33.3 Provision of information to the Department and other government agencies

The Provider must provide the Department with all information, including Student Personal Information collected or obtained by the Provider in relation to all students in accordance with this Contract including as set out in the Operating Guidelines.

33.4 Consent

- (a) Before collection of Student Personal Information to proceed with the Notification of Enrolment Process the Provider must first obtain the consent of the students in accordance with this clause 33.4.
- (b) The consent under this clause 33.4 must be in, or include, the same wording as the privacy consent statement in the Operating Guidelines.
- (c) The Provider must retain records of this consent in accordance with clause 13.1 and the Operating Guidelines.

33.5 General

The Provider's obligations under this clause 33.5 are in addition to its obligations under Australian privacy laws, including the Privacy Act and do not relieve the Provider of its legal responsibilities relating to protection of Student Personal Information. It is the sole responsibility of the Provider 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.

33.6 Disclosure log (GIPA Act section 25)

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

33.7 Access to information (GIPA Act section 121)

- (a) (**Access**) The Provider must, within 5 Business Days of receiving a request by the Department, provide the Department with immediate access to the following information contained in records held or under the control of the Provider:
- (i) (**performance information**) information that relates directly to the performance of this Contract;
 - (ii) (**information from the public**) information collected from members of the public to whom the Provider offers to perform under the Contract; and
 - (iii) (**information from the Department**) information received by the Provider from the Department to enable it to perform under the Contract.
- (b) (**Limits**) For the purposes of clause 33.7(a), such information does not include:
- (i) (**finance information**) information that discloses or would tend to disclose the Provider's financing arrangements, financial modelling, cost structure or profit margin;
 - (ii) (**law**) information that the 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 Provider at a substantial commercial disadvantage in relation to its competitors, whether at present or in the future.
- (c) (**Provider's own cost**) The Provider must provide copies of any of the information requested by the Department, in accordance with clause 33.7(a), at the Provider's own cost.

34. Priority

To the extent of any inconsistency between the items referred to in (a), (b), (c), (d) and (e) below, the order of priority will be (a), (b), (c), (d) then (e):

- (a) any conditions in an Activity Schedule
- (b) any conditions in a supplementary Activity Schedule
- (c) Schedule 3 of these Contract Terms and Conditions
- (d) the remainder of these Contract Terms and Conditions; and
- (e) the Operating Guidelines and Policies (unless the Operating Guidelines and Policies expressly acknowledge the inconsistency and state that the Operating Guidelines and Policies will apply in priority).

35. Notices

35.1 Written notice

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

35.2 Addresses for notices

- (a) Unless otherwise specified under the Contract, a notice from the Department to the Provider must be:
 - (i) sent by post to the address provided by the Provider to the Department
 - (ii) sent by email to the Provider's Representative or CEO's email address provided by the Provider to the Department; or
 - (iii) delivered to the address provided by the Provider to the Department.
- (b) Unless otherwise specified under the Contract, a notice from the Provider to the Department must be:
 - (i) sent by post or delivered to the Director, Training Quality and Regulation, Training Services NSW, NSW Department of Education, GPO Box 33, Sydney NSW 2001; or
 - (ii) sent by email to training.market@det.nsw.edu.au, addressed to the attention of the Director, Training Quality and Regulation.

35.3 Receipt of Notice

If a notice is sent or delivered in a manner provided under this clause 35, it must be treated as given to and received by the Party to which it is addressed:

- (a) if sent by post, on the 4th 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.

36. General

36.1 Dictionary and interpretation

In this Contract, except where the contrary intention is expressed, words have the meaning given to them, and the rules of interpretation are set out, in Schedule 1 (**Definitions and interpretation**).

36.2 No employment, partnership or agency

- (a) The Provider is not by virtue of the Contract, or for any purpose, an employee, partner or agent of the Department, or invested with any power or authority to bind or represent the Department.
- (b) The Provider must not represent itself, and must ensure that its Personnel do not represent themselves, as being an employee, partner or agent of the Department, or as otherwise able to bind or represent the Department.

36.3 Further assurance

Each Party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to the Contract.

36.4 Costs

Each Party must pay its own legal costs and other expenses connected with the negotiation, preparation and execution of the Contract.

36.5 Severability

If anything in the Contract is unenforceable, illegal or void then it is severed and the rest of the Contract remains in force.

36.6 Survival

The following obligations are continuing obligations and survive termination or the expiry of the Contract:

- (a) clause 7(i) (**information true, accurate and complete**)
- (b) clause 7(p) (**no unethical, dishonest or detrimental conduct**)
- (c) clause 7(s) (**cooperation with other RTOs**)
- (d) clause 7(t) (**issue Statements of Attainment and Testamurs**)
- (e) clause 11 (**Transferring students**)
- (f) clause 12 (**Performance Monitoring**)
- (g) clause 13 (**Records and reporting**) and all other obligations relevant to the maintaining of records and reporting to the Department
- (h) clause 14 (**Reporting of Training Activity Data**)
- (i) clause 19 (**Government taxes, duties and charges**)
- (j) clause 20 (**Insurance**)
- (k) clause 21 (**Termination, suspension or variation**)
- (l) clause 22 (**Repayment**)
- (m) clause 25 (**Indemnities**)
- (n) clause 26 (**Exclusion of liability**)
- (o) clause 27 (**Assumption of risks by Provider**)
- (p) clause 33 (**Information**)
- (q) clause 34 (**Priority**)
- (r) clause 35 (**Notices**)
- (s) clause 36 (**General**)
- (t) clause 37 (**Governing law and jurisdiction**)
- (u) Schedule 1 (**Dictionary and interpretation**)

- (v) the content of Schedules, Operating Guidelines and Policies to the extent they refer to the subject matter of any of the above; and
- (w) any other provision of this Contract which, by its nature, would reasonably be expected to be performed after the termination or expiry of the Contract.

36.7 Entire understanding

The Contract:

- (a) is the entire agreement and understanding between the Parties on everything connected with the subject matter of the Contract; and
- (b) supersedes any prior agreement or understanding between the Parties on anything connected with that subject matter including the Application.

36.8 Waivers and consents

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

- (a) a waiver or consent under the Contract is not effective unless it is in writing and signed by the Parties entitled to give the waiver or consent
- (b) a waiver or consent may be given conditionally or unconditionally or withheld in the absolute discretion of the Party entitled to give the waiver or consent
- (c) a waiver of a power or right or the giving of consent is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given
- (d) a Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right; and
- (e) the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

36.9 Statutory discretion

This Contract does not restrict or otherwise affect the Department's unfettered discretion to exercise its statutory powers.

37. Governing law and jurisdiction

37.1 Governing law

The law of New South Wales governs the Contract.

37.2 Jurisdiction

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.

38. Provider's Personnel

- (a) All Personnel that the Provider employs or contracts with in any capacity are the Provider's responsibility.
- (b) The Provider will ensure that its Personnel are:
 - (i) aware of the terms and conditions of the Contract and comply with them; and

- (ii) sufficiently qualified, skilled and experienced to comply with the Provider's obligations under the Contract.
- (c) The Provider is deemed to be aware of all activities of its Personnel and is responsible for:
 - (i) the performance of all its obligations under the Contract even those that are performed by its Personnel; and
 - (ii) payment of all wages and entitlements to its Personnel.
- (d) The Provider must ensure that its relevant Personnel are available to attend any Performance Monitoring, briefings, training and information sessions held by the Department from time to time relating to the Contract.
- (e) No later than 5 Business Days after a request by the Department, the Provider must give the Department:
 - (i) the names and employment status (for example, full time, contractor) of each of all Personnel engaged by the Provider to deliver the Subsidised Training (including their training staff); and
 - (ii) copies of the qualifications held by their training staff in respect of all Subsidised Training.
- (f) In the event that:
 - (i) the Provider terminates a person's employment or a person leaves the employment of the Provider; or
 - (ii) a consultancy (or other similar arrangement) entered into by the Provider with any person is prematurely terminated,

in circumstances where allegations, whether or not proven in legal proceedings, of a serious breach by that person of the terms of their employment or consultancy or similar contract have been made by the Provider, the Provider must notify the Department within 2 Business Days of the termination of the employment or other contract.

- (g) The Provider must not engage any Personnel:
 - (i) who held, or currently hold, a management position within, or ownership of, a company that:
 - (A) had any of the following types of contracts terminated for non-compliance with the terms and conditions of that contract or poor performance:
 1. a Smart and Skilled contract; or
 2. a vocational education and training related contract with a Government Agency whether in New South Wales or any other Australian jurisdiction, or
 - (B) had its registration as a registered training organisation refused, cancelled, terminated or revoked; or
 - (ii) unless otherwise agreed by the Department, who has (to the knowledge of the Provider, having made all reasonable enquiries):

- (A) left the employment of a training organisation registered with the VET Regulator; or
- (B) has had their consultancy or similar contract with a training organisation registered with the VET Regulator prematurely terminated,

in circumstances where allegations have been made by that training organisation, whether or not proven in legal proceedings, of a serious breach by that person of the terms of their employment or consultancy or similar contract.

39. Self-Assessment and Education

39.1 Self-Assessment

- (a) The Department may request the Provider to, within a specified timeframe and using the Self-Assessment Tool, evaluate whether the Provider is compliant with the requirements of the Contract (**Self-Assessment**).
- (b) The Provider must conduct a Self-Assessment when requested in accordance with clause 39.1(a) and, if an area of non-compliance by the Provider with the Contract is identified as a result of that Self-Assessment, rectify the non-compliance as soon as practicable. The Provider may contact the Department in relation to such rectification if it requires assistance.
- (c) Failure to conduct the Self-Assessment within the timeframe specified by the Department is an Event of Default.

39.2 Education

- (a) The Department may, upon reasonable notice at any time during the Term, direct the Provider to ensure that its Personnel attend an educational workshop delivered by or on behalf of the Department.
- (b) If the Department issues a direction under clause 39.2(a), the Provider must ensure that its Personnel attend the educational workshop.
- (c) The Department will notify the Provider of the form, time and location of each educational workshop referred to in clause 39.2(a), including whether it will be held in person or online. If the educational workshop is held online, the Department may require the Provider to collect and submit to the Department evidence that its Personnel participated in the training.

Schedule 1: Dictionary and Interpretation

1. Dictionary

Accredited Course means a program of learning that comprises one or more components (e.g. Units of Competency, modules or subjects) that has been accredited by an accrediting authority

Activity Period means the period specified on the applicable Approved Qualifications Activity Schedule

Activity Schedule means an Approved Qualifications Activity Schedule or a Provider Activity Schedule, including any replacement or supplementary Approved Qualifications Activity Schedule or Provider Activity Schedule issued in accordance with clause 4.5 or any other provision of the Contract

Applicable Laws means all applicable laws, legislative instruments, Regulatory Requirements and Licences and Consents including the National Vocational Education and Training Regulator Act 2011 (Cth), the National Vocational Education and Training Regulator Regulations 2011 (Cth), the AT Act, the Apprenticeship and Traineeship Regulation 2010, the Children and Young Persons (Care and Protection) Act 1998 (NSW), the Higher Education Support Act (2003), the Copyright Act 1968, the Competition and Consumer Act 2010 (Cth), Disability Discrimination Act 1992 (Cth), Disability Discrimination Act Education Standards, the Privacy Act 1988 (Cth), the Privacy and Personal Information Act 1998 (NSW), the Animal Research Act 1985 (NSW), the Student Identifiers Act 2014 (Cth), VET Data Legislation and RTO Standards

Application means any application made by the Provider via the Portal, or otherwise, and includes all documentation and information provided in connection with such application

Apprentice has the meaning given to it in the AT Act

Apprenticeship means an apprenticeship established under Division 2 (Establishment of apprenticeships and traineeships), Part 2 (Apprenticeships and traineeships) of AT Act

Approved NSW ACE Provider means a registered training organisation who is an Adult and Community Education provider that has been approved by the Department to deliver Training in New South Wales

Approved Qualifications Activity Schedule means any schedule referred to as an "Approved Qualifications Activity Schedule" in clauses 4.1(a) to 4.1(g), inclusive

Assessment means the process of collecting evidence and making judgements on whether competency has been achieved to confirm that an Enrolled Student can perform to the standard expected in the workplace, as specified in a training package or VET accredited course

AT Act means *Apprenticeship and Traineeship Act 2001* (NSW)

Australian Aboriginal or Torres Strait Islander means a person who is of Australian Aboriginal or Torres Strait Islander descent; and identifies as an Australian Aboriginal or Torres Strait Islander person; and is accepted as such by the community in which that person lives or has lived

Australian Privacy Principles means the principles contained in Schedule 1 of the [Privacy Act 1988](#) (Cth)

Australian Qualifications Framework means the *Australian Qualifications Framework Second Edition January 2013* available at <https://www.aqf.edu.au/download/405/aqf-second-edition/3/aqf-second-edition/pdf>

AVETMIS Standard or **AVETMISS** means Australian Vocational Education and Training Management of Information Statistical Standard for the capture and reporting of vocational education and training data as updated from time to time

Brokering Arrangement means an arrangement between the Provider and another person for that person to:

- (a) recruit students, or enrol students, or accept applications for enrolment, in Subsidised Training
- (b) market, or provide information or advice in relation to, Subsidised Training
- (c) assist students to complete or submit applications for Subsidised Training; or
- (d) assist, or provide support for, students who could be eligible for Subsidised Training to complete any Assessments required to show that students are academically suited to undertake the Subsidised Training

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

Certificate or **Testamur** means an official certification document that confirms that a Qualification has been awarded to an individual. This may be called a parchment or award

Commencement means the commencement of an Approved Qualification by an Enrolled Student where the Enrolled Student has Participated in Subsidised Training for at least one of the Units of Competency specified in:

- (a) the Training Package (if the Approved Qualification is a Qualification); or
- (b) the Approved Qualifications Activity Schedule (if the Approved Qualification is a Smart and Skilled Targeted Priorities Prevocational and Part Qualification),

and **Commence** and **Commenced** have a corresponding meaning

Commitment ID means the numerical identifier that is generated by the Provider Calculator or SBATs enrolment data function

Conflict of Interest includes engaging in any activity, or obtaining any interest which restricts or is likely to conflict with the performance by the Provider of, or to restrict the Provider in performing, its obligations under the Contract

Continuing Student means an Enrolled Student who Commenced in a previous Activity Period and is continuing with the same Subsidised Training in the current Activity Period

Contract means these Contract Terms and Conditions, the Operating Guidelines and Policies and each of the Activity Schedules accepted by the Provider from time to time

Contract Terms and Conditions means these terms and conditions, known as the “Smart and Skilled Contract Terms and Conditions”

Credit Transfer means credit granted to an Enrolled Student for a Unit of Competency previously successfully completed

Employer has the meaning given to it in the AT Act

End Date has the meaning given to it in the relevant Approved Qualifications Activity Schedule (i.e., the last date on which the Provider can Commence an Enrolled Student in the Approved Qualification)

Enrolled Student means a student who is eligible to receive Subsidised Training as determined by either the Smart and Skilled Student Eligibility Policy or the School Based Apprenticeships and Traineeships Student Eligibility Policy and:

- (a) for whom the Provider has completed the Notification of Enrolment Process
- (b) for whom the Provider has been issued a Commitment ID; and
- (c) that has enrolled with the Provider in the Approved Qualification the subject of the Commitment ID.

Existing Worker Trainee has the meaning given to it at: [New Entrant and Existing Worker Traineeship Requirements | NSW Government](#)

Fee means the fee payable by an Enrolled Student for Subsidised Training determined by clause 16

Fee Administration Policy means:

- (a) the *Smart and Skilled Fee Administration Policy* found at: [Smart and Skilled NSW Contracts and policies for training providers | NSW Government](#) in relation to all Smart and Skilled Programs; or
- (b) the *School Based Apprenticeships and Traineeships Program Fee Administration Policy* found at: [Smart and Skilled NSW Contracts and policies for training providers | NSW Government](#) in relation to the School Based Apprenticeships and Traineeships Program

Fee Exemption has the meaning given to it in the Fee Administration Policy

Fee-Free Scholarships means a government subsidy for eligible people as determined by the Department from time to time that covers their Fee

Financial Information means information in relation to the financial circumstances and status of the Provider including its management accounts, annual reports, financial statements and any information or documents relevant to the Provider's operations and this Contract set out in the Operating Guidelines

Government Agency means any of the following:

- (a) the Commonwealth, a State or Territory;
- (b) an agency or authority of the Commonwealth, a State or Territory, including any agency or authority with responsibility for enforcing or monitoring compliance with any regulation on behalf of the Commonwealth, a State or Territory

GST means and includes the Goods and Services Tax currently levied by the Commonwealth and any subsequent or additional tax on goods and services, value added tax, broad-based consumption tax or other similar tax imposed on supplies made in Australia

High Performing Provider means any Smart and Skilled Provider which the Department has notified in writing is a "High Performing Provider"

HPP Schedule 4 means an agreement entered into between the Department and a High Performing Provider which the High Performing Provider is obligated to adhere to.

Licenses and Consents means any licenses, consents, authorisations, recognitions, qualifications, approvals and permits required by Applicable Laws, legislative instruments and Regulatory Requirements to provide the Subsidised Training and to perform obligations under the Contract

Long-term unemployed means a person who has been unemployed continuously for more than 52 weeks and can provide the required evidence to confirm this, in accordance with the Operating Guidelines

Maximum Subsidy is the maximum amount of Subsidies that a Provider may receive for the delivery of Subsidised Training in a Smart and Skilled Targeted Priorities Prevocational and Part Qualification the subject of an Activity Schedule

National Register means the national register on vocational education and training in Australia

NCVER means the National Centre for Vocational Education and Research

New Commencements means Enrolled Students who Commenced in the current Activity Period

New Entrant Trainee means a Trainee employed within an enterprise for not more than three months full-time; or 12 months part-time or casual or a combination of part-time/casual for a continuous period not exceeding 12 months

No. of Places means the number of students that a Provider may Commence in Subsidised Training in accordance with an Activity Schedule

Notification of Enrolment Process has the meaning given to it in the Operating Guidelines

NSW Quality Framework means the policy published by the Department at [NSW Quality Framework - Smart and Skilled | NSW Government](#)

Operating Guidelines means the guidelines published at: [Smart and Skilled NSW Contracts and policies for training providers | NSW Government](#)

Operating Guidelines and Policies means the guidelines and policies, including for the avoidance of doubt the NSW Quality Framework, published by the Department in connection with Smart and Skilled, as added, amended or replaced by the Department from time to time

Participated in Subsidised Training means:

- (a) the Enrolled Student has interacted and participated in the Subsidised Training with a trainer/assessor and/or student/learner management system in a manner that exceeds induction, mere attendance and/or accessing training materials; and
- (b) the Provider has documented this interaction and participation

Part Qualification means designated:

- (a) Skill Set(s); or
- (b) Units of Competency or modules that are part of a Qualification

Payment Continuity Strategy means the advance payment proposal set out in the Department's letters to the Provider dated 9 May 2020 and 20 September 2021

Personnel of a person includes that person's employee, agent, officer, or contractor

Planned End Date means the date that the Training in the relevant Approved Qualification is expected to be completed by

Portal means the secure website hosted at [Logins for NSW RTOs and ANPs | NSW Government](#) and any other websites, portals or systems made available to the Provider by the Department in connection with this Contract

Prospective Student means a person who makes an enquiry with the Provider to assess their eligibility to receive Subsidised Training with the Provider

Provider means a registered training organisation who is a party to this Contract

Provider Activity Schedule means any schedule referred to as a “Provider Activity Schedule” in clause 4.1(e) or 4.1(g) in respect of a Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Program

Provider Calculator means the calculator facility within the Portal

Provider Consumer Protection Policy has the meaning given to it in the Operating Guidelines

Provider Guide to Smart and Skilled Prices, Fees and Subsidies means the guide published on the Training Services NSW website

Provider's Representative has the meaning given to it in the Operating Guidelines

Qualification means an Accredited Course or a Training Package qualification that is a nationally endorsed group of Units of Competency to meet the Training requirements of industry workforce roles

Recognition of Prior Learning or RPL means recognition of prior learning granted to an Enrolled Student for a Unit of Competency as further described in clause 14.3

Recognition Process means the process for assessing and granting Recognition of Prior Learning

Region means an area described in an Approved Qualifications Activity Schedule or a supplementary Approved Qualifications Activity Schedule, as defined by the Department

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

RTO Standards means the Standards for Registered Training Organisations (RTOs) 2015

Schedule of Prices, Fees and Subsidies means the schedule for the applicable Activity Period found:

- (a) at [Smart and Skilled prices, fees and subsidies | NSW Government](#) in relation to all Smart and Skilled Programs; or
- (b) in the Fee Administration Policy in relation to the School Based Apprenticeships and Traineeships Program

School Based Apprentice means an Apprentice undertaking an apprenticeship while at school

School Based Apprenticeship means an Apprenticeship undertaken while at school

School Based Trainee means a Trainee undertaking a traineeship while at school

School Based Traineeship means a Traineeship undertaken while at school

Self-Assessment Tool means a tool supplied by the Department, in the form the Department determines, to enable the Provider to assess its systems, practices and performance to ensure compliance, identify risk with the Contract and to facilitate continuous improvement in the performance by the Provider of its obligations under the Contract

Skill Set is a specific group of Unit of Competencies that are defined in a training package and recognised by ASQA

Skills List means the list of Qualifications for the applicable Activity Period published by the Department at: [NSW Skills List - Smart and Skilled | NSW Government](#)

Smart and Skilled means the reform to the NSW Government subsidised vocational education and training

Smart and Skilled Programs means the programs identified in clause 3

Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Policy means the policy published by the Department at [\[link\]](#) that sets out additional requirements for the Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Program

Start Date has the meaning given to it in the relevant Approved Qualifications Activity Schedule

Statement of Attainment or **SOA** means an official document issued when an individual does not meet the requirements for an Approved Qualification as defined in a Training Package or an accredited course, but has completed:

- (a) one or more units from a VET qualification or an accredited short course
- (b) a Training Package identified skill set which meets a licence or Regulatory Requirements; or
- (c) a Training Package identified skill set which meets a defined industry need.

The Statement of Attainment lists all of the Units of Competency or modules achieved

Status means the status of a Qualification as identified and further defined in the relevant Approved Qualifications Activity Schedule

Subsidised Training has the meaning given to it in clause 2(a)

Teaching and Leadership Policy means the *Smart and Skilled Teaching and Leadership Policy* found at [Smart and Skilled NSW Contracts and policies for training providers | NSW Government](#)

Term has the meaning given to it in clause 5

Third Party Arrangement means an arrangement whereby a party provides Training and/or Assessment and/or other services on behalf of the Provider but does not include a contract of employment between a Provider and its employee

Total UoCs means the total number of Units of Competency that the Provider must include in the relevant Training Plan for the Enrolled Student

Trainee has the meaning given to it in the AT Act

Traineeship means a traineeship established under Division 2 (Establishment of apprenticeships and traineeships), Part 2 (Apprenticeships and traineeships) of *Apprenticeship and Traineeship Act 2001* (NSW)

Training means the delivery of vocational education and training by way of an accredited tertiary education course which is defined as a vocational education and training program being a structured approach to the development and attainment of one or more competencies for a particular AQF qualification to meet the requirements of Training Packages or, where there is no Training Package, a sequence of Training consisting of one or more modules from an accredited vocational education and training course. **Training** also means non-accredited, local courses developed by registered training organisations, or courses developed by industry, enterprise, community education or professional bodies to meet an identified training need which is vocational in intent

Training Activity Data means the data required to be reported by the Provider to the Department under clause 14

Training Contract has the meaning given to it in the AT Act

Training End Date means the date that the Training the subject of the relevant Activity Schedule must be completed by

Training Needs Identification or **TNI** means the application submitted by the Provider, in the form required by the Department, via the Portal that identifies the program details, training details and training rationale

Training Package means a nationally endorsed, integrated set of competency standards, Assessment guidelines and Australian Qualifications Framework (AQF) Qualifications for a specific industry, industry sector or enterprise

Unique Student Identifier or **USI** has the meaning given to student identifier in the *Student Identifiers Act 2014* (Cth)

Unit of Competency means the specifications of knowledge and skill and the application of that knowledge and skill to the standard of performance required in the workplace as specified in the Training Package

UoC Outcome means a UoC Outcome Achievement has occurred for which the corresponding UoC Outcome Code has been submitted to the Department

VET means vocational education and training

VET Regulator has the meaning given to it in the *National Vocational Education and Training Regulator Act 2011* (Cth)

VET Student Loans means loans made under the VET Student Loans Program

VET Student Loans Program means a Commonwealth Government loan program to help Enrolled Students enrolled in certain VET courses at VET Student Loans Program Approved Providers to pay their tuition fees

VET Student Loans Program Approved Provider means a registered training organisation that has been approved by the Commonwealth Government to offer VET Student Loans to Enrolled Students; and

Vocational Training Order or **VTO** means the set of terms and conditions of apprenticeships and traineeships in NSW as determined by the Department

2. Interpretation

In the Contract, unless the contrary intention appears:

- (a) a reference to:
 - (i) one gender includes all others
 - (ii) the singular includes the plural and the plural includes the singular
 - (iii) a clause, annexure or Schedule is a reference to a clause in or annexure or schedule to these Contract Terms and Conditions
 - (iv) a document (including the Contract, and any guidelines or policies) 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 Contract or affect its interpretation
- (g) a provision of the Contract must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Contract or the inclusion of the provision in the Contract
- (h) if a Provider consists of more than one person, the Contract binds each of them separately and any two or more of them jointly
- (i) an obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly; and
- (j) a Provider which is a trustee is bound both personally and in its capacity as a trustee.

Schedule 2: Loadings

Loadings are calculated as a percentage of the Price (or Adjusted Price if applicable) of an Approved Qualification. There are two categories of Loadings, which are divided into different sub-categories:

- (a) Needs – which is divided into:
 - (i) Australian Aboriginal or Torres Strait Islander; or
 - (ii) Disability; or
 - (iii) Long-term unemployed; and
- (b) Location – which is divided into:
 - (i) Regional; or
 - (ii) Remote.

The eligibility criteria and reporting requirements for each of these sub-categories of Loadings are set out in the Operating Guidelines.

The relevant percentage for each sub-category of Loadings are:

Category	Sub-category	Percentage of Price
Needs Loading	Australian Aboriginal or Torres Strait Islander	15%
	Disability	15%
	Long-term unemployed	10%
Location Loading	Regional	10%
	Remote	20%

The Provider will only be paid a maximum of one Loading for the 'Needs' category and one Loading for the 'Location' category for each Enrolled Student.

The Loading for the regional and remote sub categories is applicable only if the training delivery mode is not fully online, fully correspondence or a combination of online and correspondence.

The Loading for long-term unemployed is not applicable for the School Based Apprenticeships and Traineeships Program.

The Schedule of Prices, Fees and Subsidies for Smart and Skilled Programs gives examples of Loadings in the last four columns. These examples are indicative only and should not be relied upon. This Schedule 2 overrides the examples in the Schedule of Prices, Fees and Subsidies.

Schedule 3: School Based Apprenticeships and Traineeships Program

For Approved Qualifications in the School Based Apprenticeships and Traineeships Program, the Provider must:

- (a) deliver Subsidised Training in accordance with the approved NSW Education Standards Authority syllabus (where this exists) and guidelines or liaise with the school regarding an application for endorsement of the Training by the NSW Education Standards Authority

Details of NSW Education Standards Authority (HSC) VET courses are available at www.educationstandards.nsw.edu.au/wps/portal/nesa/11-12/stage-6-learning-areas/vet/school-based-apprenticeships-and-traineeships

- (b) deliver the Subsidised Training in a manner that recognises the Enrolled Student's HSC studies, other studies, work and other commitments, as scheduled in the Training Plan
- (c) not require the Enrolled Student to undertake Subsidised Training during school examination periods or school examination preparation periods
- (d) in respect of a School Based Apprenticeship - ensure that the Subsidised Training delivered to the Enrolled Student in the Approved Qualification will allow the Enrolled Student to complete stage one of the apprenticeship specified in the relevant Vocational Training Order and the school based component of the Training Plan by the end of the HSC school year
- (e) in respect of a School Based Traineeship - ensure that the Subsidised Training delivered to the Enrolled Student in the Approved Qualification will allow the Enrolled Student to complete the traineeship specified in the relevant Vocational Training Order and the school based component of the Training Plan by the end of the HSC school year
- (f) ensure that the Enrolled Student is named on a Training Contract which has been approved and/or registered by the Department
- (g) inform the school if the Enrolled Student does not successfully complete any of the Units of Competency they are delivering for the HSC program as listed in the Training Plan
- (h) inform the school of the Units of Competency successfully completed by the Enrolled Student as part of the school-based component of the Subsidised Training, which contribute to the student's HSC as listed in the Training Plan, and
- (i) comply with the Fee Administration Policy (there is a specific one for the School Based Apprenticeships and Traineeships Program).

The Provider will, at no additional cost to the Department or the School Based Apprentice or School Based Trainee, comply with:

- (a) any reasonable request made of it by the Department to supply information to a school or the NSW Education Standards Authority in connection with any school based apprenticeship or traineeship, as provided in the Department of Education's Guidelines for School Based Apprenticeships and Traineeships ([School-based apprenticeships and traineeships \(nsw.gov.au\)](http://www.nsw.gov.au/school-based-apprenticeships-and-traineeships))
- (b) any reasonable direction by the Department, a school or the NSW Education Standards Authority in connection with the School Based Apprentice's or School Based Trainee's candidature of the HSC

- (c) the following policies and guidelines:
- (i) Assisting Students with Learning Difficulties
 - (ii) Workplace Learning Policy for Secondary Students in Government Schools and TAFE NSW RTOs
 - (iii) Protecting and Supporting Children and Young People Policy, and
 - (iv) Working with Children Check Policy found at www.educationstandards.nsw.edu.au/wps/portal/nesa/11-12/stage-6-learning-areas/vet/school-based-apprenticeships-and-traineeships and [Programs to employ apprentices or trainees | NSW Government](http://www.nsw.gov.au/education/learning-and-teaching/programs-to-employ-apprentices-or-trainees) and as may be amended, revoked, varied or substituted from time to time.