

2018-19 Dual Sector VET Funding Contract

Skills First Program

BETWEEN The State of Victoria through the Secretary of the
Department of Education and Training

(the **Secretary**)

ABN 52 705 101 522

2 Treasury Place

East Melbourne VIC 3002

AND **[Institute Legal Name]**, the registered training organisation that
has agreed to be bound by the terms of this VET Funding
Contract by way of signing the contract execution page attached
to this contract (the **Training Provider**)

VERSION	DATE	COMMENTS
1.0	1 November 2017	

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BACKGROUND TO THIS VET FUNDING CONTRACT

- A. Government funded vocational education and training is provided for under, and subject to, Part 3.1 of Chapter 3 of the Act.
- B. Section 3.1.2(1) of the Act provides for the Secretary to:
- i) enter into a VET funding contract with a registered training organisation in relation to the provision by the registered training organisation of vocational education and training that is funded wholly or partially by the State; and
 - ii) make payments to registered training organisations that provide or intend to provide vocational education and training on any terms and conditions the Secretary thinks fit.
- C. The Act also provides that a student has a guaranteed vocational education and training place for a government subsidised course if certain criteria set out in section 1.2.2(2)(e) of the Act are satisfied.
- D. The *Skills First* Program is the vehicle through which registered training organisations are contracted to deliver Training Services in respect of Eligible Individuals that will be subsidised by the Department, provided that the registered training organisations meet certain requirements, including regarding standards of behaviour and provider practice in the delivery of Training Services.
- E. The Training Provider has represented that it will comply with the requirements of the *Skills First* Program.
- F. The purpose of this VET Funding Contract is to set out the terms and conditions under which the Department will make available, and the Training Provider will accept, funding for the purposes of the Training Provider delivering Training Services in respect of Eligible Individuals, provided that the Training Provider complies with all of its obligations under this VET Funding Contract, including obligations relating to:
- i) the quality and suitability for the relevant Eligible Individuals of the training delivered by the Training Provider with funding from the Department, in order to ensure that Eligible Individuals obtain the required skills to make them job-ready and/or to assist them to undertake further education and/or, if they are disadvantaged learners, facilitate them accessing education and training; and
 - ii) record-keeping, reporting and auditing in order to maintain high standards of probity and accountability in relation to the use of public funding provided by the Department under this VET Funding Contract.
- G. This VET Funding Contract also sets out the terms and conditions under which the Department will make available, and the Training Provider will accept, funding for special initiatives, as described in Schedule 2.

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this VET Funding Contract, unless the contrary intention appears:

Act means the *Education and Training Reform Act 2006* (Vic).

Activity End Date means the date reported as such in a Student Statistical Report in relation to an individual's enrolment in an individual unit of competency.

Activity Start Date means the date reported as such in a Student Statistical Report in relation to an individual's enrolment in an individual unit of competency.

Amount of Training means the amount of training as described in Standard 1 of the National RTO Standards.

Apprentice has the meaning given to it in the Act.

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

AQF means the Australian Qualifications Framework.

AQTF means the Australian Quality Training Framework.

ASQA means the Australian Skills Quality Authority.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

AVETMISS means the Australian Vocational Education and Training Management Information Statistical Standard.

Brokering Services means the recruitment of individuals to participate in training that is to be subsidised under this VET Funding Contract, by an individual or organisation in exchange for payment from the Training Provider or the student, but excludes activities carried out by salaried individuals who are employees of the Training Provider whose role includes the identification and recruitment of potential students.

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

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

CEO means the Chief Executive Officer (or relevant equivalent) of the Training Provider.

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

Charter means the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

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

Code of Practice means a code of practice as defined in, and approved under, the PDP Act.

Commencement Date means the later of:

- a) 1 January 2018; and
- b) the date on which this VET Funding Contract is entered into by means of the Training Provider taking the action required by the Department to accept the Department's contract offer.

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

Contact Hour Funds means the funds paid or payable by the Department under this VET Funding Contract in respect of the scheduled hours of supervised training and assessment reported in relation to an Eligible Individual.

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

Control means, with regard to an entity:

- a) the legal, financial or equitable ownership, directly or indirectly, of 50 percent or more of the share capital (or other ownership interest, if not a corporation limited by shares) of the entity;
- b) control or influence of, or having the capacity to control or influence, the composition of the board or other decision-making body of the entity, or of decision making (directly or indirectly) in relation to the financial and operating policies of the entity, whether or not the control or influence is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that entity or otherwise; or
- c) effective control of the entity.

Corporations Act means the *Corporations Act 2001* (Cth).

Course Commencement Date means the date of first scheduled training for the first unit of competency towards the completion of the qualification in which the Eligible Individual has enrolled.

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

Deputy Secretary means the Deputy Secretary of Higher Education and Skills Group of the Department (or their successor from time to time).

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

- a) was a registered training organisation that was party to a contract with the Department regarding government subsidised training which the Department terminated for any reason other than on a ground equivalent to the ground specified in Clause 18.3(i), or a Relevant Person at such a registered training organisation;
- b) was a registered training organisation that:
 - i) had its registration under the Act, National Act or relevant equivalent legislation revoked, suspended, or cancelled for a reason / or reasons that the Department considers would have affected its ability to provide services equivalent to the Training Services; or
 - ii) had restrictions imposed on its registered training organisation operations that the Department considers would have affected its ability to provide services equivalent to the Training Services,

or was a Relevant Person at such a registered training organisation;

- c) was a registered training organisation that was subject to an Other VET Funding Arrangement Termination Event, or a Relevant Person at such a registered training organisation; or
- d) was responsible, via their acts or omissions, for any of the matters raised in paragraph (a), (b) or (c) occurring to another person or entity.

Dispute means a dispute in relation to this VET Funding Contract.

Dispute Notice means a Notice setting out details about a Dispute that is given under Clause 16.

Duration means the period from the Course Commencement Date until the Program Supervised Teaching Activity Completion Date, being a measure of the length of time that an Eligible Individual is engaged in training and assessment from the Eligible Individual's perspective.

Eligible Individual means an individual who is eligible for training subsidised through the *Skills First* Program in accordance with the eligibility requirements specified in this VET Funding Contract.

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

Entitlement to Funded Training means the entitlement to a government subsidised place in recognised training for persons who are eligible in accordance with the criteria set out in the Act or established pursuant to the Act, and reflected in this VET Funding Contract.

Evidence of Concession/Waiver/Exemption means evidence of an Eligible Individual's entitlement to concession tuition fees, or to a waiver of or exemption from tuition fees for training subsidised through the *Skills First* Program, in accordance with the Guidelines about Fees.

Evidence of Eligibility means evidence of an individual's eligibility for training subsidised through the *Skills First* Program in accordance with the eligibility requirements set out in this VET Funding Contract and the Guidelines about Determining Student Eligibility and Supporting Evidence.

Evidence of Participation means evidence of an individual's participation in training and assessment provided by the Training Provider, as detailed in Clause 11 of Schedule 1 of this VET Funding Contract.

Executive Director means the Executive Director, Training Market Quality Division, of the Department (or their successor from time to time).

Executive Officer, in relation to an entity, means:

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

- f) if the entity is a body corporate, a trustee or other person administering a compromise or arrangement made between the entity and another person or other persons.

Fee Concession Contribution means the contribution to be paid by the Department to the Training Provider in respect of a fee concession granted by the Training Provider to an Eligible Individual, as detailed in Clause 13 of Schedule 1 of this VET Funding Contract.

Fee Waiver/Exemption Contribution means the contribution to be paid by the Department to the Training Provider in respect of a fee waiver or exemption granted by the Training Provider to an Eligible Individual, as detailed in Clause 13 of Schedule 1 of this VET Funding Contract.

Foundation Skills Approved Provider List means a list of training providers approved by the Department to receive government funding for delivery of courses or qualifications on the Foundation Skills List.

Foundation Skills List means the specific list of approved foundation courses issued by the Department from time to time.

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

Funded Scope means the specific list of courses for the delivery of which the Training Provider is entitled to be paid Funds under this VET Funding Contract, as set out in Schedule 2 and varied from time to time pursuant to this VET Funding Contract.

Funds means the money provided or to be provided by the Department to the Training Provider under this VET Funding Contract in respect of an Eligible Individual, consisting of:

- a) the Contact Hour Funds;
- b) if applicable, the Fee Concession Contribution;
- c) if applicable, the Fee Waiver/Exemption Contribution; and
- d) if applicable, any payments for special initiatives described in Schedule 2 to this VET Funding Contract.

Guidelines about Apprenticeship/Traineeship Training Delivery means the guidelines of that name issued by the Department from time to time.

Guidelines about Determining Student Eligibility and Supporting Evidence means the guidelines of that name issued by the Department from time to time.

Guidelines about Fees means the guidelines of that name issued by the Department from time to time.

GST has the meaning given to it in the GST Law.

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

Health Records Act means the *Health Records Act 2001* (Vic).

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

Incentives means any incentives, including:

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

Information Privacy Principles means the information privacy principles set out in the PDP Act.

Intellectual Property means any method, discovery, formulae, copyright, all rights in relation to inventions (including registered and registrable patents), registered and unregistered trade marks, registered and unregistered designs, circuit layouts, know how and confidential information, and all other rights including moral rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields of intangible property.

Intensity means the number of Program Unique Supervised Hours divided by the Duration for a course or qualification, being a measure of the concentration of training and assessment delivered from the Eligible Individual's perspective.

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

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

Literacy and Numeracy Support Implementation Guide means the guide of that name (or any successor) issued by the Department from time to time.

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

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

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

- a) failing to meet any of its obligations set out in:
 - i) Clause 4.4 (acting ethically);
 - ii) Clause 5.2(a) (student attraction activities);
 - iii) Clause 5.2(b) (provide information about course offerings);
 - iv) Clause 5.2(g) (levy fees correctly);
 - v) Clause 6 (subcontracting);
 - vi) Clause 11.2 (audit participation);
 - vii) Clause 3 of Schedule 1 (assessing and evidencing eligibility for the *Skills First* Program);
 - viii) Clause 4 of Schedule 1 (application and enrolment requirements);
 - ix) Clause 5 of Schedule 1 (planning for training and assessment);
 - x) Clause 6 of Schedule 1 (tuition and other fees);
 - xi) Clause 7 of Schedule 1 (training and assessment);
 - xii) Clause 8 of Schedule 1 (Apprenticeship/Traineeship training delivery requirements);

- xiii) Clause 11 of Schedule 1 (Evidence of Participation requirements);
 - xiv) Clause 12.4 of Schedule 1 (specific data elements);
 - xv) Clause 13.19 of Schedule 1 (claims for payment); or
 - xvi) Clause 13.22 of Schedule 1 (reporting withdrawals).
- b) failing to provide the Training Services in paragraph (h) of the definition of that term in accordance with Clause 5.1 (delivery of high quality Training Services).

Maximum Scheduled Hours, in relation to a course or qualification, means the Department-identified maximum nominal hours or maximum payable hours for that course or qualification, as published on the Funded Courses Report.

Minister means the Minister for Training and Skills (or their successor from time to time).

National Act means the *National Vocational Education and Training Regulator Act 2011* (Cth).

National Register has the same meaning as in section 3 of the National Act.

National RTO Standards means the *Standards for Registered Training Organisations (RTOs) 2015* (Cth) and its User Guide.

NCVER means the National Centre for Vocational Education and Research.

Notice means a notice given under this VET Funding Contract by a Party.

Online Delivery Restriction List means the section of the Funded Courses Report that identifies specific courses and qualifications that have restrictions in relation to online delivery.

Other VET Funding Arrangement means:

- a) approval under the *Higher Education Support Act 2003* (Cth) to offer VET Student Loans to eligible students;
- b) a Smart and Skilled contract entered into with the State of New South Wales through its Department of Industry, Skills and Regional Development (or its successor);
- c) a Vocational Education and Training (VET) Pre-qualified Supplier (PQS) Agreement entered into with the State of Queensland through its Department of Education and Training (or its successor);
- d) a WorkReady head agreement entered into with the State of South Australia through its Minister for Employment, Higher Education and Skills (or its successor);
- e) a purchase of training services contract entered into with the VET (WA) Ministerial Corporation (or its successor);
- f) a Skills Tasmania agreement entered into with the State of Tasmania as represented by its Department of State Growth trading as Skills Tasmania (or its successor);
- g) an ACT funding agreement; or
- h) any other arrangement under which a registered training organisation is approved to receive government subsidies for the provision of vocational education and training in any Australian jurisdiction (including any alteration, supplement or replacement of any of the contracts or other arrangements referred to in paragraphs (a) to (g)).

Other VET Funding Arrangement Termination Event means, in relation to a registered training organisation, any Other VET Funding Arrangement is terminated in relation to that

registered training organisation, other than a termination that affects a number of registered training organisations and is for reasons of government policy or other reasons not associated with that registered training organisation's performance under the Other VET Funding Arrangement.

Parties mean the parties to this VET Funding Contract.

PDP Act means the *Privacy and Data Protection Act 2014* (Vic).

Peer Review Panel means a panel comprised of CEOs or representatives of registered training organisations accepted by the Department, as contemplated by Clause 11.6.

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

Pre-Training Review means the process undertaken between the Training Provider and an Eligible Individual to determine the most suitable and appropriate training for that individual, as described in Clause 5 of Schedule 1.

Program Supervised Teaching Activity Completion Date means the date of final scheduled training or assessment for the final unit of competency towards the completion of the qualification in which the Eligible Individual has enrolled.

Program Unique Supervised Hours means the total number of unique (non-overlapping) hours of supervised training and assessment activity undertaken by an Eligible Individual for their enrolment in a course or qualification.

Quality Charter means the *Skills First Program - Quality Charter*, or its successor.

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

Regional Postcodes Report means a report issued and approved by the Department that identifies postcodes which will attract a regional loading (as detailed in Clause 13 of Schedule 1 of this VET Funding Contract), as varied and reissued by the Department from time to time.

Regulatory Standards means:

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

Register of Trainers and Assessors means the register required to be established and maintained under Clause 12.8 of Schedule 1.

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

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

- ii) a Relative of a person referred to in paragraph (c)(i).

Relative has the same meaning as in the Corporations Act.

Relevant Person means, in relation to an entity:

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

RPL means recognition of prior learning, being a process of assessment of any skills and knowledge that an individual has achieved outside the formal education and training system, in order to determine the extent to which an individual has achieved the required learning outcomes, competency outcomes, or standards for entry to, and/or partial or total completion of, a qualification.

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

Skills First Program means the Victorian Government's program for funding individuals' Entitlement to Funded Training.

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

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

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

Skills for Victoria Program means the program of that name (or its successor) from time to time.

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

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

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

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

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

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

Student Tuition Fee Contribution Report means the sections of the Funded Courses Report that include the maximum hourly rate the Department will pay for Fee Concession Contributions and the hourly rate the Department will pay for Fee Waiver/Exemption Contributions, as varied and updated by the Department from time to time.

SVTS means the Skills Victoria Training System or any future system that replaces the Skills Victoria Training System.

TAFE Institute has the meaning given to it in the Act.

Term means the term of this VET Funding Contract, as set out in Clause 2.1.

TOID means the Training Organisation Identifier or Training Provider Code.

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

Training and Assessment Strategy (TAS) means the document or documents created by the Training Provider which details the Training Provider's plan to deliver training and assessment of a particular course, and for each cohort within that particular course, as described in Clause 5 of Schedule 1.

Training Contract means an agreement signed by the employer and the Apprentice or Trainee (and a parent or guardian if applicable) specifying the type of Apprenticeship or Traineeship that will be undertaken. It details the training obligations of employers and Apprentices or Trainees. It also contains details on the commencement date for the training, the duration of the training period, at what workplace/location the Apprentice or Trainee will receive practical experience, and which registered training organisation will provide the structured, off-the-job or workplace based training. A Training Contract must be signed within 14 days of the Apprentice or Trainee being employed.

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

Training Plan means the plan for the training and assessment to be delivered to an individual created by the Training Provider pursuant to Clause 7 of Schedule 1.

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

Training Provider Personnel means:

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

who are involved in any way with the delivery or support of any of the Training Services or otherwise with the Training Provider fulfilling its obligations under this VET Funding Contract (including trainers, assessors and administrative staff).

Training Services means:

- a) student attraction activities including marketing and advertising in relation to any training within the Training Provider's Funded Scope;
- b) the provision of information about course offerings, fees, support and the impact on an individual's Entitlement to Funded Training;
- c) conduct of the Pre-Training Review;
- d) testing any individual's eligibility for training subsidised through the *Skills First* Program and any relevant concession or exemption/waiver on tuition fees;
- e) enrolment of individuals into a course or qualification, including undertaking any enrolment processes required under this VET Funding Contract;
- f) development and documentation of a Training Plan;

- g) levying fees, including any concessions, exemptions or waivers;
- h) delivering training and assessment that is suitable and appropriate to each Eligible Individual;
- i) collecting and maintaining evidence relating to (a) to (h) above, as required under this VET Funding Contract;
- j) reporting data and other information to the Department as required under this VET Funding Contract; and
- k) any other matters that reasonably relate to the conduct of the activities set out in paragraphs (a) to (j).

VET means vocational education and training.

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

VET Quality Framework has the same meaning as in the National Act.

Victorian Purchasing Guide means a purchasing guide for a Training Package containing hour allocations for units of competency and qualifications within the Training Package and sample training programs.

Victorian Skills Gateway means the Department's website for vocational training in Victoria, or its successor.

Victorian Training Guarantee Program means the program of that name and any of its predecessors.

Victorian VET Student Statistical Collection Guidelines means the guidelines of that name issued by the Department from time to time, or its successor.

Volume of Learning has the meaning given to it in the AQF.

VRQA means the Victorian Registration and Qualifications Authority.

Interpretation

1.2 In this VET Funding Contract, unless the context otherwise requires:

- a) words importing any gender include all genders;
- b) the plural includes any singular and vice versa;
- c) a reference to 'dollars' or '\$' is a reference to the lawful currency of Australia;
- d) a reference to a statute, ordinance, code or other law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it;
- e) a reference to any legislation or statutory instrument is construed in accordance with the relevant interpretation of that legislation or statutory instrument;
- f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time (whether or not its title remains the same);
- g) a reference to a Party includes the executors, administrators, successors and permitted assigns of that Party;
- h) a reference to a person includes a natural person, body corporate, partnership, association, governmental or local government authority or agency or other entity;

- i) a reference to a recital, clause, schedule or annexure is a reference to a recital, clause, schedule or annexure to this VET Funding Contract;
- j) a cross-reference to a clause is a reference to all its subclauses;
- k) where a term is defined, the definition includes all grammatical forms of that term;
- l) headings are used for reference only;
- m) terms which are defined in a schedule and which are not otherwise defined in this VET Funding Contract have the meaning given to them in that schedule;
- n) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- o) a reference to courses includes qualifications, and vice versa;
- p) a reference to units of competency includes modules, and vice versa; and
- q) where appropriate to the context, where there are words and expressions that are not defined in this VET Funding Contract but which have a meaning in the GST Law, such meaning as prescribed by the GST Law will apply to this VET Funding Contract.

Priority

- 1.3 If there is any conflict or inconsistency between the terms and conditions contained in the clauses of this VET Funding Contract and any part of Schedule 1 or Schedule 2, then the terms and conditions of the clauses in this VET Funding Contract will prevail to the extent of the conflict or inconsistency.
- 1.4 If there is any conflict or inconsistency between the terms and conditions contained in this VET Funding Contract and any Contract Notification, the Contract Notification will prevail to the extent of the conflict or inconsistency.
- 1.5 Except as expressly set out in Clause 1.4 or otherwise in this VET Funding Contract, if there is any conflict or inconsistency between the terms and conditions contained in this VET Funding Contract and any other document with which the Training Provider is required to comply under this VET Funding Contract (including pursuant to Clause 4.3), the terms and conditions contained in this VET Funding Contract prevail to the extent of the conflict or inconsistency.

References to Department

- 1.6 Powers and functions of the Department under this VET Funding Contract may be carried out by officers of the Department or other persons who have delegated authority.
- 1.7 A power, function or discretion exercised by the Department under this VET Funding Contract will be taken as having been exercised by the Secretary (or their delegate).

General

- 1.8 The provisions of this VET Funding Contract do not merge or terminate on completion of the transactions contemplated in this VET Funding Contract but, to the extent that they have not been fulfilled and satisfied or are capable of having effect, remain in full force and effect.

- 1.9 No provisions in this VET Funding Contract shall in any way fetter, restrict, or prevent the exercise by the Department of discretions, elections or options available to the Department under legislation which is applicable to the Department (including the Act).
- 1.10 Any waiver of a right or obligation of this VET Funding Contract must be in writing signed on behalf of the Party waiving the right or obligation and is effective only to the extent specifically set out in that waiver.
- 1.11 If a provision in this VET Funding Contract is held to be illegal, invalid, void, voidable or unenforceable, that provision will be read down or severed, to the extent necessary to ensure that all other provisions of this VET Funding Contract are enforceable.
- 1.12 It is not necessary for the Department to make payment before enforcing any of its rights, including any right of indemnity, conferred by this VET Funding Contract.
- 1.13 A Party:
- a) is not an agent, partner, joint venturer or representative of the other Party, and must not hold itself out as such; and
 - b) must not make any promise, warranty or representation or execute any contract or otherwise deal on behalf of the other Party.
- 1.14 This VET Funding Contract may be varied:
- a) by the Department by way of a Contract Notification or a Notice to the Training Provider where:
 - i) the variation imposes no material burden upon, or causes no material disadvantage to, the Training Provider and is reasonably necessary to protect the legitimate interests of the Department;
 - ii) the Department considers that such a variation is necessary in light of a change in policy or in order to ensure the proper and responsible administration of the Funds and of the Department's *Skills First* Program budget;
 - iii) the Department considers that such a variation it necessary to accommodate external changes that have occurred or of which the Department has become aware since entry into this VET Funding Contract;
 - iv) the Department considers such a variation is necessary in light of the jobs and skills needs of a sector of the economy or geographic area of the State of Victoria; or
 - v) in any other circumstances,in which event the Department will endeavour to give the Training Provider a reasonable period of advance notice of the variation, depending on the nature of the variation;
 - b) in accordance with any other term of this VET Funding Contract (including Clauses 5.5(b), 5.6(b), 5.7(b) and 8.2(c)); or
 - c) in writing signed by each Party.

- 1.15 Subject to Clause 6, the Training Provider must not assign, transfer, novate or otherwise deal with this VET Funding Contract or any right under it without the prior written consent of the Department.
- 1.16 This VET Funding Contract is governed by the law of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and courts of appeal from them.
- 1.17 Except as expressly set out in this VET Funding Contract, the Department may, in its discretion:
- a) give any approval or consent under this VET Funding Contract conditionally or unconditionally, or withhold that approval or consent; and
 - b) exercise any power or function conferred on it under this VET Funding Contract.

2. TERM OF THIS VET FUNDING CONTRACT

- 2.1 Subject to Clause 2.2 and any earlier termination of this VET Funding Contract in accordance with its terms, the term of this VET Funding Contract will begin on the Commencement Date and continues until the earlier of:
- a) all Eligible Individuals in respect of whom the Training Services are provided by the Training Provider and in respect of whom the Funds are provided by the Department have completed or withdrawn from the relevant training course or qualification in which they are enrolled; and
 - b) such time as there has been no training activity reported against this VET Funding Contract for any continuous period of 12 months after 15 January 2020, unless, no later than 30 days before the expiry of the 12 month period, the Training Provider gives the Department Notice that one or more relevant Eligible Individuals remain enrolled in a relevant training course or qualification.
- 2.2 The terms of this VET Funding Contract apply only to the Training Services provided in respect of any Eligible Individual who commences a training course or qualification with the Training Provider between the Commencement Date and 31 December 2019.

3. OBJECTIVES OF THIS VET FUNDING CONTRACT

- 3.1 The objectives of the Parties in entering into this VET Funding Contract are that:
- a) Training Services subsidised through the *Skills First* Program will be of high quality and relevant to industry and employers;
 - b) access to high quality courses and qualifications will be provided to Eligible Individuals so as to:
 - i) enable Eligible Individuals to obtain the required skills to make them job-ready;
 - ii) assist Eligible Individuals to undertake further education; and/or
 - iii) promote/enable participation in training for disadvantaged learners;
 - c) the Training Provider will provide Training Services in the best interests of Eligible Individuals;

- d) the Department is only liable to pay government subsidies through the *Skills First* Program in relation to Training Services that it is satisfied meet the requirements of this VET Funding Contract; and
- e) the Training Provider will maintain, and provide to the Department as required, all of the necessary information to satisfy the Department under sub-clause (d).

3.2 The Training Provider acknowledges and agrees that:

- a) the performance of this VET Funding Contract imposes significantly more onerous obligations on the Training Provider than apply by virtue of its status as a registered training organisation, on the basis that it will seek government subsidisation of the Training Services as contemplated by this VET Funding Contract;
- b) it has carried out all relevant investigations to acquaint itself with the requirements of this VET Funding Contract; and
- c) it applied to participate in the *Skills First* Program on the basis that it will be able to comply with all of its obligations under this VET Funding Contract.

3.3 Where there is ambiguity in the interpretation of this VET Funding Contract, the objectives in Clause 3.1 will be applied to aid in the resolution of the interpretation of this VET Funding Contract, provided that the objectives must not be applied to limit any of the Training Provider's obligations or the Department's rights or powers under this VET Funding Contract.

3.4 The Training Provider must perform its obligations under this VET Funding Contract consistently with, and in a manner that promotes the achievement of, the objectives in Clause 3.1, except to the extent that such performance would limit or be inconsistent with any other obligation of the Training Provider under, any right or power of the Department under, or any other provision of, this VET Funding Contract.

4. GENERAL OBLIGATIONS OF TRAINING PROVIDER

Maintain registration and standards

4.1 The Training Provider must:

- a) as applicable to and for the Training Provider:
 - i) maintain registration as a registered training organisation under the Act; or
 - ii) maintain registration as a registered training organisation under the National Act and maintain a principal place of business with a physical site in Victoria, unless otherwise agreed in writing by the Department;
- b) maintain at least one nationally recognised qualification for delivery on its scope of registration as referred to in paragraph (a);
- c) maintain and use AVETMISS compliant software for reporting purposes;
- d) deliver training within its Funded Scope:
 - i) in accordance with the requirements of the accredited course or Training Package;
 - ii) having regard to course/qualification descriptions, pathways information, entry requirements and outcomes; and

- iii) consistent with any applicable Victorian Purchasing Guides; and
- iv) in compliance with Regulatory Standards as applicable.

Comply with Laws

4.2 The Training Provider must:

- a) provide the Training Services in compliance with the requirements of all Laws in any way affecting or applicable to the provision of the Training Services, including Laws relating to occupational health and safety and the Australian Consumer Law;
- b) comply with the requirements of, and pay all fees and bear all costs connected with all applicable Laws, including all relevant privacy, anti-discrimination and equal opportunity legislation, the *Disability Act 2006* (Vic) and the *Working With Children Act 2005* (Vic);
- c) comply with the requirements of the Charter and not act in a way that is incompatible with a human right protected by the Charter or when making a decision in relation to the performance of the Services, fail to give proper consideration to such a human right, as though it was a public authority within the meaning of section 4(c) of the Charter; and
- d) comply with the requirements of the Child Safe Standards as made under the *Child Wellbeing and Safety Act 2005* (Vic).

Comply with Department directions and policies

4.3 The Training Provider must, in providing the Training Services and otherwise performing its obligations under this VET Funding Contract, comply with:

- a) the Quality Charter; and
- b) any other applicable directions, guidelines, policies or procedures issued by the Department and/or the State from time to time (including as set out in any Contract Notifications), whether or not expressly referred to in this VET Funding Contract.

Act ethically

4.4 The Training Provider must:

- a) demonstrate the highest ethical standards in its dealings and conduct in the provision of the Training Services and in otherwise performing its obligations under this VET Funding Contract;
- b) not do or omit to do anything which may damage, ridicule, bring into disrepute or be detrimental to the Department, the VET sector, the *Skills First* Program, the Victorian government subsidised training market, or the Department's or the State's name or reputation;
- c) behave honestly and in a way that upholds the objectives and values of the *Skills First* Program;
- d) not behave in a manner that damages the public confidence in the integrity of the *Skills First* Program;
- e) be aware of the existence and requirements of, and comply with, all directions, policies, procedures and guidelines that are binding on the Training Provider under,

or otherwise relate to the performance by the Training Provider of its obligations under, this VET Funding Contract;

- f) not make improper use of the position of trust placed in the Training Provider in the appropriate expenditure of substantial amounts of public moneys for VET;
- g) not harass, intimidate, threaten or seek to improperly influence the exercise of any powers or functions by any person exercising powers on behalf of the Department under this VET Funding Contract;
- h) not pay, provide or offer, either directly or indirectly, Incentives to undertake training subsidised through the *Skills First* Program, whether to any prospective student or to any other person (such as an employer or social organisation); and
- i) not engage, employ, contract or otherwise deal with any Disallowed Person.

Be accountable

4.5 The Training Provider must:

- a) at all times be accountable to the Department for its performance under this VET Funding Contract and demonstrate its compliance, or report its non-compliance, with the terms of this VET Funding Contract;
- b) ensure that it delivers a Volume of Learning in line with recommendations in the AQF;
- c) ensure that the Amount of Training is in accordance with Standard 1 of the National RTO Standards, and the Training Provider must justify and document any deviation when it occurs;
- d) upon request, demonstrate to the Department the appropriateness of training Duration and Intensity at any time and/or as part of any audit, review or investigation conducted under Clause 11;
- e) ensure that all persons employed or engaged by the Training Provider to provide the Training Services to Eligible Individuals are aware of all obligations under this VET Funding Contract as appropriate;
- f) unless this VET Funding Contract otherwise provides, provide the Training Services in respect of each Eligible Individual, and otherwise perform its obligations under this VET Funding Contract, at its own cost;
- g) use the Funds reasonably for the purpose of providing the Training Services to the relevant Eligible Individual to whom such Funds apply;
- h) ensure that appropriate compliance, reporting and auditing frameworks, controls and systems are in place, including the appropriate Segregation of Duties, with respect to the provision of the Training Services and receipt of the Funds from the Department;
- i) not, in providing the Training Services, do any act or undertake any process which would infringe an Intellectual Property right of the State or any other person or body; and
- j) participate in:

- i) any performance improvement initiatives as reasonably determined by the Department, including the introduction of performance targets to be met by the Training Provider over a reasonable time period; and
 - ii) the National Student Outcomes Survey managed by NCVET.
- 4.6 The Training Provider acknowledges and agrees that the Department (or persons authorised by the Department) may from time to time contact persons in relation to whom the Training Provider has made a claim for Funds, for any reason the Department sees fit, including for any audit, review, investigation, monitoring, or evaluation, or to otherwise confirm and assess the Training Provider's compliance with and performance under this VET Funding Contract.

Comply with Schedule 1

- 4.7 In performing the Training Services, the Training Provider must at all times comply with the requirements set out in Schedule 1, regardless of whether or not a particular clause of this VET Funding Contract refers to Schedule 1 in relation to any aspect of the Training Services.

5. SCOPE AND PROVISION OF THE TRAINING SERVICES

Provision of Training Services

- 5.1 The Training Provider must deliver high quality Training Services in accordance with this VET Funding Contract.
- 5.2 The Training Provider must:
 - a) deliver student attraction activities, including marketing and advertising, in relation to any aspect of this VET Funding Contract in accordance with Clause 1 of Schedule 1;
 - b) provide information to prospective students about course offerings, fees, support and the impact on the individual's Entitlement to Funded Training in accordance with Clauses 4.1 and 6 of Schedule 1;
 - c) test any individual's eligibility for training subsidised through the *Skills First* Program and any relevant concession or exemption/waiver of tuition fees in accordance with Clauses 2, 3 and 6 of Schedule 1 and the Guidelines about Determining Student Eligibility and Supporting Evidence;
 - d) conduct Pre-Training Reviews in accordance with Clause 5 of Schedule 1;
 - e) conduct enrolment processes required including in accordance with Clause 4 of Schedule 1;
 - f) develop and document Training Plans in accordance with Clause 7 of Schedule 1;
 - g) levy fees, including applying any concessions, exemptions or waivers, including in accordance with Clause 6 of Schedule 1;
 - h) collect and maintain evidence relating to sub-clauses (a) to (g) above as required under this VET Funding Contract;
 - i) make all reasonable efforts to work and communicate effectively with, and maintain the confidence of, all stakeholders affected by this VET Funding Contract, including maintaining strong links to industry;

- j) provide support to Eligible Individuals; and
- k) report data and other information to the Department including in accordance with Clause 12 of Schedule 1.

5.3 Where training and/or assessment is provided to an Eligible Individual under this VET Funding Contract, the Eligible Individual must be physically present in the State of Victoria at all times at which they are undertaking the training and/or assessment.

5.4 Notwithstanding the requirement in Clause 5.3 for an Eligible Individual to be physically present in the State of Victoria at all times at which they are undertaking the training and/or assessment, where an Eligible Individual is temporarily located interstate or overseas for a defined period as part of an industry or practical placement associated with their training, up to 50% of the total scheduled hours applying to the training and/or assessment in which the Eligible Individual is enrolled may be delivered online during the period the Eligible Individual is interstate or overseas.

Funded Scope

5.5 The Training Provider acknowledges and agrees that:

- a) a course or qualification will be automatically added to the Training Provider's Funded Scope if that course or qualification is added to the Training Provider's scope of registration as a registered training organisation, provided that (unless otherwise agreed by the Department) the course or qualification is listed on the Funded Course Report; and
- b) the Department may add or remove a course or qualification from the Training Provider's Funded Scope or may otherwise alter the Training Provider's Funded Scope.

Delivery of Training Services to Eligible Individuals that meet characteristics defined by the Department

5.6 The Training Provider acknowledges and agrees that:

- a) to deliver Training Services to Eligible Individuals that meet characteristics defined by the Department, the Training Provider may be required to participate in a capability or quality assurance process determined by the Department; and
- b) without limiting Clause 5.5(b), if the Training Provider does not participate in a process advised under Clause 5.6(a) or does not meet the required standard, the Department may, by giving Notice to the Training Provider, remove relevant courses from the Training Provider's Funded Scope and/or direct the Training Provider to cease enrolments in respect of Eligible Individuals that meet characteristics defined by the Department.

Foundation Skills Approved Provider List

5.7 The Training Provider acknowledges and agrees that:

- a) in order to receive Funds in respect of Eligible Individuals undertaking courses/qualifications from the Foundation Skills List (except Literacy and Numeracy Support Units), the Training Provider must be on the Foundation Skills Approved Provider List and have the relevant approval(s) to provide that course or qualification; and

- b) the Department may add or remove the Training Provider from the Foundation Skills Approved Provider List, and/or vary the Training Provider's approvals on the Foundation Skills Approved Provider List, at any time by giving Notice to the Training Provider.

Requirements for Skills First Teachers

- 5.8 The Training Provider must ensure that all training and assessment is delivered by *Skills First Teachers* who:
 - a) are listed on the Training Provider's Register of Trainers and Assessors;
 - b) hold relevant qualifications as required by ASQA or the VRQA (as applicable); and
 - c) if the *Skills First Teacher* is engaged by the Training Provider through a subcontracting arrangement, is engaged under a subcontracting arrangement which meets the conditions of Clause 6.
- 5.9 The Department may, from time to time, require *Skills First Teachers* to undergo certain professional development courses or training, within a timeframe determined by the Department, and consistent with the relevant Regulatory Standards, and the Training Provider must ensure that each *Skills First Teacher* complies with all such requirements.
- 5.10 Without limiting Clause 12.8 of Schedule 1, the Training Provider must ensure it maintains sufficient Records such that the Department may determine, at any time, which trainer and/or assessor was responsible for delivering each unit of competency of training and assessment delivered under this VET Funding Contract.

6. SUBCONTRACTING OF THE TRAINING SERVICES

Definition of subcontracting

- 6.1 For the purposes of this VET Funding Contract, the Training Provider will be considered to have subcontracted any part of the Training Services where any individual who carries out those Training Services is an individual other than:
 - a) an employee or officer of the Training Provider, acting in their capacity as such an employee or officer; or
 - b) a Sole Trader engaged directly by the Training Provider (and to avoid doubt, not through an intermediary) in their capacity as a Sole Trader.
- 6.2 For the avoidance of doubt, engagement of an individual through a franchise, labour hire or other similar arrangement is considered to be subcontracting for the purposes of this VET Funding Contract.

Subcontracting of Pre-Training Review

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

Subcontracting of training and assessment

- 6.4 The Training Provider must not subcontract training and assessment without the prior written approval of the Department granted through an approval process determined by the Department from time to time.
- 6.5 The Training Provider acknowledges that it will not be permitted by the Department to subcontract some or all training and assessment relating to courses and qualifications on

the Foundation Skills List (except Literacy and Numeracy Support Units) under Clause 6.4 unless both the Training Provider and the subcontractor are on the Foundation Skills Approved Provider List.

- 6.6 The Training Provider must ensure that each Eligible Individual who receives training and assessment under a subcontract arrangement is aware that they are enrolled with the Training Provider, not the subcontracted party.
- 6.7 Where a subcontract arrangement entered into under Clause 6.4 is between the Training Provider and another registered training organisation that holds a VET Funding Contract, the subcontract arrangement must be on terms that allow the Training Provider to immediately terminate the arrangement if the subcontracted registered training organisation's VET Funding Contract with the Department is suspended or terminated.
- 6.8 The Training Provider acknowledges that, pursuant to Clause 5.8, it must ensure that the details of any trainers and/or assessors engaged through a subcontractor are included on the Training Provider's Register of Trainers and Assessors.

Subcontracting requirements generally

- 6.9 The Training Provider represents and warrants to the Department on every day during the Term that all subcontractors it uses under this VET Funding Contract have appropriate qualifications and skills and are suitably experienced and capable of providing Training Services as required by this VET Funding Contract.
- 6.10 The Training Provider acknowledges and agrees the Department may direct the Training Provider to cease, or otherwise vary the scope of, an arrangement to subcontract some or all of the Training Services, including an arrangement entered into pursuant to Clause 6.4.
- 6.11 If the Training Provider subcontracts the provision of some or all of its performance of the Training Services, it:
- a) must ensure that any subcontract entered into:
 - i) prohibits further subcontracting by the subcontractor;
 - ii) requires the subcontractor to provide all necessary assistance, documentation and information that is required under this VET Funding Contract;
 - iii) permits the Training Provider to immediately suspend the subcontract if the Training Provider's VET Funding Contract with the Department is suspended;
 - iv) permits the Training Provider to immediately terminate the subcontract if the Training Provider's VET Funding Contract with the Department is terminated; and
 - v) otherwise permits the Training Provider to comply with its obligations under this VET Funding Contract (including its obligations to ensure that any subcontractor cooperates and assists with any audit, review or investigation under Clause 11);
 - b) must provide a copy of the executed subcontract agreement to the Department if requested;
 - c) retains responsibility for all of its obligations under this VET Funding Contract and any subcontract arrangement does not relieve the Training Provider of any of its

liabilities or obligations under this VET Funding Contract or to otherwise provide the Training Services;

- d) is responsible for ensuring the suitability of the subcontractor and for ensuring that any work performed by the subcontractor meets the requirements of this VET Funding Contract;
- e) is liable to the Department for the acts, or omissions or negligence of any subcontractor (or any employee, officer or agent of the subcontractor) as if they were the acts, or omissions or negligence, of the Training Provider (or the employees, officers or agents of the Training Provider);
- f) indemnifies (and must keep indemnified) the Department against any or all Loss arising from any acts or omissions by any subcontractor in connection with, or in the course of, the provision of the Training Services or any breach of this VET Funding Contract (whether or not the breach is a Material Breach);
- g) acknowledges that the Department is not liable for the Training Provider's subcontractor arrangements and will not become involved in the internal administration of subcontracts or act as a mediator between the Training Provider and any subcontractor; and
- h) acknowledges that all costs associated with any subcontract are the responsibility of the Training Provider.

7. REPORTING AND PROVISION OF INFORMATION

Reporting

7.1 The Training Provider must:

- a) use an electronic Student Management System that complies with the Victorian VET Student Statistical Collection Guidelines;
- b) provide accurate Student Statistical Reports to the Department in relation to the Training Services, which comply with Clauses 12 and 13 of Schedule 1;
- c) provide reports in accordance with Clause 12 of Schedule 1;
- d) provide such other reports and information as the Department may require from time to time relating to this VET Funding Contract, the Training Services and the Funds by the time specified by the Department, or if no time is specified, within a reasonable period of time from the Department's request;
- e) if the Department requires, collect new information and create new documents in such format as the Department may specify; and
- f) provide any reports to the Department in accordance with Schedule 2.

Reports on anticipated commencements

7.2 The Training Provider must provide a report to the Department detailing the Training Provider's anticipated commencement numbers for any period, including related information, as requested by the Department, within a reasonable period of time from such a request and in a form prescribed by the Department.

7.3 The Department may use information referred to in Clause 7.2 for the Department's planning, resourcing, administration and management, both in connection with the *Skills*

First Program generally and this VET Funding Contract, including scheduling or taking specific actions under or in relation to this VET Funding Contract.

Change in Control

- 7.4 The Training Provider must give the Department Notice immediately upon becoming aware of any proposed Change in Control and, in any event, at least 20 Business Days in advance of the Change in Control taking effect.
- 7.5 The Training Provider must provide to the Department in its Notice under Clause 7.4 details of the Change in Control and when it is to take effect.
- 7.6 If the Department receives a Notice under Clause 7.4, the Department may give the Training Provider a Notice setting out whether or not the Department approves the proposed Change in Control.

Notification of events

- 7.7 The Training Provider must promptly give the Department Notice if:
 - a) any restriction is imposed on the Training Provider's entitlement to offer or deliver government-subsidised training under an Other VET Funding Arrangement, or the Training Provider's entitlement is reduced in scope, whether or not the restriction or reduction affects courses or qualification within the Funded Scope (other than a restriction or reduction that is imposed on a number of registered training organisations and is imposed for reasons not associated with the Training Provider's performance under the Other VET Funding Arrangement); or
 - b) an Other VET Funding Arrangement Termination Event occurs in relation to the Training Provider or any other registered training organisation that is a member of the Training Provider Group.
- 7.8 The Training Provider must immediately give the Department Notice of any significant changes to its ownership, CEO or operations (including its financial viability and any intention or decision to cease operations as a registered training organisation in Victoria).
- 7.9 The Training Provider must promptly give Notice to the Department if, at any time, any event occurs that may be covered by Clause 18.3(f) or 18.3(i).

Reporting of Brokering Services

- 7.10 The Training Provider must provide the Department, in a format to be determined by the Department from time to time, with details of all third party arrangements for the delivery of Brokering Services on the Training Provider's behalf within 30 days of the Commencement Date of this VET Funding Contract, and thereafter within 30 days of entering into any such further arrangement.

8. FUNDING, PAYMENTS AND OTHER FINANCIAL ARRANGEMENTS

Payments for Training Services

- 8.1 Subject to this VET Funding Contract, the Department:
 - a) agrees to pay the Funds in respect of each Eligible Individual in respect of whom the Training Provider is providing the Training Services; and
 - b) will make payment of the Funds to the Training Provider in accordance with Schedule 1.

8.2 The Training Provider acknowledges and agrees that:

- a) the Department's obligation to pay the Funds to the Training Provider in respect of an individual under this VET Funding Contract is conditional upon the Department being satisfied (and continuing to be satisfied) that:
 - i) the individual is an Eligible Individual;
 - ii) the Training Services are being provided by the Training Provider in respect of the relevant individual in accordance with this VET Funding Contract; and
 - iii) the Funds are being reasonably applied by the Training Provider for the purpose of the provision of the Training Services in respect of that individual;
- b) the Department's obligation to pay any Funds to the Training Provider under this VET Funding Contract is conditional upon the Department being satisfied (and continuing to be satisfied) that there are not, and will not be, any amounts payable by the Training Provider to the Department under or in relation to this VET Funding Contract up to the amount of those Funds;
- c) the Department may vary any or all parts of the Funds that are to be paid to the Training Provider in respect of one or more Eligible Individuals under this VET Funding Contract by issuing a Notice at least 10 Business before the variation will take effect, including:
 - i) for reasons of a change of policy;
 - ii) for reasons of ensuring the proper and responsible administration of the Funds and of the Department's *Skills First* Program budget; and
 - iii) in respect of an Eligible Individual who at the time a variation is made has already enrolled in and/or commenced an eligible course or qualification with the Training Provider during the period 1 January 2018 to 31 December 2019 inclusive;
- d) the Department will only pay the Funds under this VET Funding Contract in respect of an Eligible Individual to the Training Provider and not to any other person;
- e) the Funds and associated payment arrangements constitute the full extent of Funds available to the Training Provider from the Department for provision of the Training Services in respect of an Eligible Individual; and
- f) the Training Provider is not entitled to and may not claim any additional funding or assistance from the Department in relation to the Training Services.

Special Initiatives under Schedule 2

8.3 The Department agrees to pay the Training Provider payments for special initiatives as described under Schedule 2 in accordance with Schedule 2 (provided that the Training Provider has met any conditions set out in, and otherwise complies with any obligations imposed on it under, Schedule 2).

Payments generally

8.4 If any day for the payment of Funds under this VET Funding Contract falls on a day that is not a Business Day, the payment will be due on the next Business Day.

Recovery of amounts

- 8.5 If the Training Provider is paid any amount to which it is not entitled under this VET Funding Contract, that amount is a debt due to the Department and the Training Provider must promptly repay that amount to the Department (and, in any event, within 30 Business Days after the Department requires the repayment).
- 8.6 If the Training Provider owes the Department any sum under or in relation to this VET Funding Contract (including pursuant to Clause 8.5 or Clause 17) or any earlier agreement between the Parties pursuant to the *Skills First* Program, the Victorian Training Guarantee Program or the Skills for Victoria Program, the Department may recover that sum by setting it off against any other money which is or becomes due to the Training Provider from the Department under this VET Funding Contract (including by way of the Department processing a payment reversal via SVTS or other Departmental business system such that the monies owed by the Training Provider are deducted from a future payment or payments). Any exercise by the Department of its rights under this Clause 8.6 is without prejudice to any other rights or remedies available to the Department under this VET Funding Contract.

9. GST

- 9.1 Except as otherwise provided by this clause, all consideration payable under this VET Funding Contract in relation to any supply is exclusive of GST.
- 9.2 All suppliers under this VET Funding Contract must be registered for GST. If GST is payable in respect of any supply made under this VET Funding Contract by a supplier under this VET Funding Contract, the Department will gross up the GST exclusive amounts by the amount equal to the GST payable and pay the amount of GST at the same time and in the same manner as the GST exclusive amount.
- 9.3 The Department as a recipient of the taxable supply will issue to the supplier a Recipient Created Tax Invoice (RCTI) without entering into a separate RCTI Agreement, as each RCTI issued by the Department contains an embedded RCTI Agreement.
- 9.4 If an adjustment event occurs in relation to a taxable supply under this VET Funding Contract, the Department will provide to the supplier a recipient created adjustment note.
- 9.5 The Training Provider must have a valid ABN throughout the Term and keep the Department indemnified against any loss arising out of the cancellation of the ABN.

10. ACCOUNTS AND RECORDS

Records generally

- 10.1 This Clause 10 does not limit the other obligations of the Training Provider with respect to Records and recordkeeping, including obligations in the Regulatory Standards as applicable, and obligations under any other applicable Law.
- 10.2 On termination or expiry of this VET Funding Contract, the Training Provider will retain ownership and custody of its Records.

Accounting and record-keeping obligations

- 10.3 The Training Provider must implement and administer a recordkeeping system that creates and maintains full and accurate hard copy and/or electronic Records for all Training Services provided by the Training Provider, in sufficient detail to allow the Department to determine the Training Provider's compliance with this VET Funding Contract and the accuracy of the reports and claims for payment submitted under this VET Funding Contract.

The Department may, at any time, direct the Training Provider to maintain or retain Records that the Training Provider is not then retaining, if the Department considers that the maintenance or retention of such Records is required in order for the Department to confirm the Training Provider's compliance with this VET Funding Contract.

- 10.4 The Training Provider must establish and maintain effective security measures to safeguard the Records from unauthorised access or use (including amendment of Records that is inconsistent with Clause 10.9(h)) for as long as those Records are required to be maintained under this VET Funding Contract.
- 10.5 The Training Provider must immediately provide access to the Records in the following circumstances:
- a) in accordance with any applicable legislation;
 - b) to the Victorian Auditor-General or Victorian Ombudsman on request in writing;
 - c) to a government representative on request in writing; and
 - d) to the Department or an authorised representative of the Department for any purpose connected with this VET Funding Contract.
- 10.6 The Training Provider must retain and not dispose of any Records until three years after the Eligible Individual to whom the Records relate has completed or withdrawn from the relevant training course or qualification in which they are enrolled.
- 10.7 The Training Provider must ensure that all Records are made available to the Department promptly on request, including taking any number of copies of any Records or other documents as required and determined by the Department (or persons authorised by the Department).
- 10.8 The Training Provider indemnifies the Department from and against any Loss suffered or incurred in connection with a breach of the Training Provider's obligations under this Clause 10.
- 10.9 Without limiting any of the above obligations in this Clause 10, the Training Provider must:
- a) ensure appropriate accounting processes and controls are implemented and administered in connection with this VET Funding Contract, the Training Services and the Funds;
 - b) keep complete Records and accounts of all dealings connected with this VET Funding Contract, including:
 - i) all quotations, invoices and receipts, which must contain full particulars of payments made by the Training Provider to its subcontractors and other third parties; and
 - ii) other Records and accounts as required by Law and any relevant regulatory authorities;
 - c) in addition to its obligations under Clause 11, upon request by the Department, make available to the Department for inspection at a location in Victoria specified by the Department during Business Hours, all Records, and any other documents in its possession, control or power relating to or otherwise used or held by the Training Provider in connection with the Funds or the Training Services or relevant to determining the quality of the Training Services, including copies of any reports or information required by the Department pursuant to Clause 7.1;

- d) in addition to its obligations under Clause 11, supply any information reasonably required by the Department for the purposes of this VET Funding Contract, including information sufficient to allow the Department to satisfy itself as to the financial position of the Training Provider, the use of the Funds, the capacity of the Training Provider to deliver the Training Services in respect of Eligible Individuals and/or the delivery by the Training Provider of the Training Services;
 - e) retain, and make available to the Department, or its auditors or reviewers for audit, review or investigation purposes, all records relating to the Training Services, including:
 - i) Evidence of Eligibility, Evidence of Concession/Waiver/Exemption, Statements of Fees and Evidence of Participation;
 - ii) in respect of each Pre-Training Review that is required to be conducted, the evidence of that Pre-Training Review required under Clauses 5.1 to 5.4 of Schedule 1; and
 - iii) evidence that the training and assessment provided was appropriate and of high quality as defined in the Quality Charter and meets the requirements set out in Clause 4.1(d); and
 - iv) evidence that the Training Provider has received any and all fees from Eligible Individuals that the Training Provider reported via the SVTS as having charged, and copies of any invoices, or statements provided to the Eligible Individuals, and bank generated transaction statements of the Training Provider's accounts into which the fees were paid or received, such that the Department can confirm that the Training Provider received the fee for which each Eligible Individual was invoiced,in respect of each Eligible Individual in relation to whom the Training Provider provides the Training Services;
 - f) comply with all Laws and standards applicable to the Training Provider relating to recordkeeping, including the recordkeeping requirements outlined in the Regulatory Standards, PDP Act, and the *Electronic Transactions (Victoria) Act 2000* (Vic);
 - g) keep accounting Records in relation to the Funds provided by the Department under this VET Funding Contract in such a manner as to enable them to be audited by the Auditor-General of Victoria or any other entity as directed by the Department; and
 - h) not make or amend Records such that they are not accurate. Where the Training Provider identifies, through its continuous improvement processes or otherwise, the need to amend a Record, the Training Provider must take steps to document the amendment(s) such that a reasonable person could ascertain the nature of and rationale for the amendment(s) in a straightforward way.
- 10.10 If the Training Provider is required or requested for the purpose of either this Clause 10 or Clause 11 to make available or provide any information, Record or other document, and the Training Provider fails to do so within a reasonable time, or where relevant, by the specified time, then the information, Record or document will be deemed not to exist, and for the purpose of this VET Funding Contract any activity that that information, Record or document would have evidenced will be deemed not to have occurred or been carried out, and the Department may exercise all rights available to it on that basis.
- 10.11 Without limiting any other requirements under this VET Funding Contract, the Training Provider must ensure that its systems, processes and practices for the generation, creation, collation, amendment, retention and storage of Records, including metadata associated

with any electronic Records, are adequate to demonstrate to a reasonable standard that each of the Records (including any Records made available to or accessed by the Department, or its authorised representatives or any other person entitled to such access pursuant to this VET Funding Contract) is complete, accurate and authentic and has not been amended except in accordance with Clause 10.9(h).

Electronic records and signatures

- 10.12 Subject to any obligations to the contrary that the Training Provider may have under any applicable Law, any Records may be created and maintained in an electronic form for the purposes of this VET Funding Contract, provided that (without limiting the Training Provider's obligations under this VET Funding Contract, including under Clause 10.11):
- a) the Training Provider can demonstrate with supporting documentation that the Records are held in a secure environment, safe from unauthorised access, loss or damage; and
 - b) the Training Provider can demonstrate with supporting documentation that appropriate authorisations to access and amend the Records have been applied.
- 10.13 Subject to Clause 10.15, where this VET Funding Contract or any other document with which the Training Provider is required to comply under Clause 4.3 requires the Training Provider to procure and to keep a document signed by any person (whether the Training Provider itself, a person employed or engaged by the Training Provider or a third party), that document may be signed by way of an electronic action equivalent to a signature.
- 10.14 For the purposes of Clause 10.13, an electronic action by a person will be considered to be equivalent to a signature where the action identifies that person and indicates the person's agreement to the relevant information, and is as reliable as appropriate in the light of all the circumstances (including so that the Department can rely on the action as demonstrating the person's agreement to the relevant matters in the event of any audit pursuant to this VET Funding Contract).
- 10.15 Clause 10.13 does not:
- a) apply to any signature of the Training Provider itself, any person signing a document on behalf of the Training Provider, or a representative of the Training Provider on the Peer Review Panel, where that signature binds that person to a contract with the Department or an amendment to such a contract or is on a Notice, including for the purposes of execution of an acceptance form by the Training Provider binding the Training Provider to the terms of this VET Funding Contract; or
 - b) limit any obligations of the Training Provider as to the obtaining and keeping of signatures, including obligations in the Regulatory Standards, as applicable, and obligations under any other applicable Law.

11. AUDIT, REVIEW AND INVESTIGATION

- 11.1 The Department (or persons authorised by the Department) may conduct an audit, review or investigation of the Training Provider at any reasonable time to confirm whether the Training Provider is complying with this VET Funding Contract, including:
- a) to establish whether and to what extent the Funds have been used for the provision of the Training Services in respect of Eligible Individuals;
 - b) to investigate allegations or suspected misuse of the Funds;

- c) to determine the extent to which the Training Services delivered by the Training Provider are of high quality; and/or
- d) if applicable, as part of the Department's Audit and Risk Committee's Internal Audit Plan.

11.2 The Training Provider must, in accordance with the Department's directions:

- a) permit the Department, or persons authorised by the Department, to enter its premises, and areas within those premises that are used for the delivery of Training Services, to conduct audits or reviews at any time reasonably required by the Department, including times when training and assessment is being delivered to Eligible Individuals;
- b) provide the Department (or persons authorised by the Department) with all assistance needed to perform the audit, review or investigation, including:
 - i) providing access to office space, telephones, photocopy facilities and other facilities at the Training Provider's premises;
 - ii) providing access to all Training Provider Personnel;
 - iii) assisting the Department to locate, access and view Records, including associated metadata; and
 - iv) permitting the Department to take copies of any Records;
- c) participate in, assist with, and not prevent or unreasonably delay any audit, review or investigation:
 - i) administered by the Commonwealth Government (including an Invalid Enrolment Audit); or
 - ii) specified in Schedule 1, including Clause 14 of Schedule 1; and
- d) reimburse the Department for any costs incurred in conducting audits or reviews, if directed to do so.

11.3 If an audit, review or investigation conducted by, or on behalf of, the Department concludes that there has been non-compliance by the Training Provider with this VET Funding Contract, the Department may:

- a) exercise any of its rights under Clauses 17 or 18; and/or
- b) require the Training Provider to:
 - i) provide a written response to the Department on any matter relating to the audit, review or investigation in accordance with the Department's requirements;
 - ii) take all reasonable steps, to the Department's satisfaction, to prevent future instances of non-compliance with this VET Funding Contract by implementing a management action plan agreed between the Training Provider and the Department (or persons acting on behalf of or engaged by the Department); and/or

- iii) within six months of an auditor notifying the Training Provider in writing of its recommendations or such other timeframe specified in writing by the Department:
 - A. advise the Department in writing of the steps taken by the Training Provider to comply with and implement the auditor's recommendations, the management action plan and this VET Funding Contract, after receiving notification of the audit findings; and
 - B. provide any documentation required by the Department evidencing compliance with, and implementation of, the auditor's recommendations, the management action plan and this VET Funding Contract.

Internal Audits

- 11.4 The Training Provider must conduct an internal audit of its compliance with this VET Funding Contract during each calendar year in accordance with any requirements of the Department. The Training Provider must ensure, in respect of each such internal audit, that:
 - a) (in the case of the first internal audit conducted under this Clause 11.4) the audit is completed six months from the Commencement Date;
 - b) the audit report is signed off by the CEO of the Training Provider; and
 - c) the audit report is provided to the Department, or its auditors or reviewers, on request.
- 11.5 If an internal audit conducted in accordance with Clause 11.4 reveals non-compliance with this VET Funding Contract, the Training Provider must:
 - a) promptly notify the Department of the identified non-compliance;
 - b) develop a rectification plan within a reasonable timeframe to rectify any non-compliance with this VET Funding Contract within a reasonable timeframe; and
 - c) provide the Department, or its auditors or reviewers, with a copy of the rectification plan on request.

Peer Review Panel

- 11.6 The Department may convene a Peer Review Panel at any time to consider any matter that comes to its attention that:
 - a) is relevant to the conduct, advertising or pricing of the Training Services; or
 - b) otherwise is relevant to the operation of the government subsidised VET market in Victoria, including competition, price, and the quality of training outcomes.
- 11.7 If the Department convenes a Peer Review Panel as contemplated by this Clause 11, the Training Provider must, on receipt of a Notice by the Department at least one month beforehand, make its CEO or an alternative representative approved by the Department available to participate in and assist with a Peer Review Panel.
- 11.8 For the purpose of Clause 11.7:

- a) the Training Provider must make its CEO or alternative representative available at least once per calendar year for up to three Business Days; and
 - b) 'participate in and assist with' means participating in discussions with other members of the Peer Review Panel, and contributing to the preparation of any report, recommendation, finding or other document to be submitted by the Peer Review Panel to the Department.
- 11.9 The Training Provider must ensure that, as required by the Department, its representative on the Peer Review Panel signs, as a condition of participation:
- a) a confidentiality deed; and
 - b) a terms of reference document.
- 11.10 The Training Provider agrees and acknowledges that, in addition to its obligations under Clause 13.1, the Training Provider must ensure that its CEO or other representative does not disclose Confidential Information in relation to the Peer Review Panel to third parties or any Training Provider Personnel.
- 11.11 The Peer Review Panel will submit any report, recommendation, finding or other document to the Department.
- 11.12 For the avoidance of doubt, the Department is under no obligation of any kind by reason of this VET Funding Contract or otherwise to adopt, recommend, publish, release or refer any material provided by the Peer Review Panel.

12. COMPLAINTS HANDLING

- 12.1 The Training Provider acknowledges and agrees that it will respond to and co-operate in good faith with any complaints handling mechanism or process established by the Department from time to time, for the purpose of resolving student complaints or other issues in relation to the Training Provider's delivery of Training Services.

13. CONFIDENTIALITY AND PRIVACY

- 13.1 The Training Provider must not, without the prior written approval of the Department, disclose (or permit the disclosure of) information regarding this VET Funding Contract (including details of the Funds being provided by the Department in respect of any individual) or any Confidential Information of the Department or the State, except:
- a) to the extent required under this VET Funding Contract;
 - b) to the extent required by Law;
 - c) to its solicitors, barristers and/or other professional advisors in order to obtain advice in relation to its rights under this VET Funding Contract, the Training Services or the Funds and provided such advisors are under a duty of confidentiality;
 - d) to the extent necessary for the registration or recording of documents where required; and/or
 - e) to the extent required in connection with legal proceedings,
- and then only to the extent strictly necessary for that purpose.
- 13.2 The Training Provider acknowledges and agrees that:

- a) the Department may disclose or otherwise make available (whether to the public generally or to any particular person or group of persons) any and all information relating to the Training Provider and this VET Funding Contract (including Confidential Information of the Training Provider), including:
- i) course and qualification details;
 - ii) government subsidised fee information;
 - iii) details of the Funds paid;
 - iv) the contents of any surveys in which the Training Provider participates pursuant to Clause 4.5(j)(ii) or any employer surveys;
 - v) any information that the Training Provider is required to publish on its website or otherwise make publicly available under this VET Funding Contract;
 - vi) details of any non-compliance by the Training Provider with this VET Funding Contract;
 - vii) any action taken by the Department under this VET Funding Contract; and
 - viii) findings and outcomes of any audits or reviews undertaken pursuant to this VET Funding Contract,

as it considers reasonably appropriate to facilitate the proper operation of the *Skills First* Program, including as contemplated by Clause 12.3 of Schedule 1;

- b) the Department may disclose information referred to in paragraph (a), and any information regarding any suspected non-compliance by the Training Provider with this VET Funding Contract, for the purpose of satisfying its obligations under:
- i) the *Freedom of Information Act 1982* (Vic);
 - ii) the *Ombudsman Act 1973* (Vic); or
 - iii) the *Audit Act 1994* (Vic); or
 - iv) the requirements of Parliamentary accountability or a Minister's obligations to fulfil their duties of office; and
- c) the Department may disclose information referred to in paragraph (a) or paragraph (b) to the counterparty to any Other VET Funding Arrangement, any regulator who has responsibility for issuing or monitoring compliance with the applicable registration referred to in Clause 4.1(a), or other government entity in any jurisdiction that has an interest in the regulation and funding of the VET sector.

- 13.3 The Training Provider must take all steps and make all efforts to assist the Department in complying with any of the obligations referred to in Clause 13.2(b).
- 13.4 The Training Provider acknowledges that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Training Provider under or in connection with this VET Funding Contract in the same way and to the same extent as the Department would have been bound had it been directly done or engaged in by the Department.
- 13.5 The Training Provider must include a standard privacy notice in all enrolment forms, in accordance with the Victorian VET Student Statistical Collection Guidelines, which advises

Eligible Individuals how their data may be supplied to and used by the Department and Commonwealth VET Student Loan agencies.

- 13.6 The Training Provider must, in collecting any Personal Information for the purposes of this VET Funding Contract, ensure that it has obtained all necessary consents for:
- a) the Training Provider to collect, use, hold and disclose that Personal Information, including by disclosing it to the Department as contemplated by this VET Funding Contract (including by way of the submission of reports under Clause 12 of Schedule 1, for the purposes of complying with Record disclosure obligations under Clause 10 and in the course of any audit, review or investigation under Clause 11); and
 - b) the Department to collect, use, hold and disclose that Personal Information for the purposes of this VET Funding Contract and its operation and management of the *Skills First Program*,

in accordance with all applicable Laws, including the PDP Act, the Health Records Act and (if applicable to the Training Provider) the *Privacy Act 1988* (Cth).

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

14. LIABILITY, INDEMNITY AND INSURANCE

- 14.1 The Training Provider warrants and represents that it has not withheld from the Department any document, information or other fact material to the decision of the Department to enter into this VET Funding Contract with the Training Provider.
- 14.2 The Training Provider acknowledges that it is solely responsible for carrying out its obligations under this VET Funding Contract and that the Department is in no way liable for the actions of the Training Provider or the Training Provider Personnel.
- 14.3 The Training Provider releases the Department from all liabilities and Claims directly or indirectly incurred or suffered by the Training Provider or the Training Provider Personnel arising from or in connection with the Department's exercise (or purported exercise in good faith) of its rights, powers and functions under this VET Funding Contract, including termination of this VET Funding Contract under Clause 18.
- 14.4 To the maximum extent permitted by Law, the Training Provider indemnifies (and must at all times keep indemnified) the Department, the State and their employees, servants and agents (on behalf of whom the Department has agreed this Clause 14.4) from and against all Loss which it or they may incur or suffer and all Claims which may be brought or made against it or them by any third party arising out of or in connection with:
- a) the provision of, or failure to provide, Training Services by or on behalf of the Training Provider;

- b) any act or omission of the Training Provider, its officers, employees, agents or subcontractors in connection with this VET Funding Contract, the Funds or the provision of the Training Services;
 - c) any breach by the Training Provider of any obligation under this VET Funding Contract (including breach of any warranty given under this VET Funding Contract and whether or not the breach is a Material Breach) or at Law;
 - d) any negligent, fraudulent, reckless, wilfully wrongful, unlawful or other wrongful act or omission of the Training Provider, its officers, employees, agents, or subcontractors as a result of the provision of the Training Services or otherwise in connection with this VET Funding Contract;
 - e) the loss of, or damage to, any property (including property of the Department) or data as a result of the provision of the Training Services or otherwise in connection with this VET Funding Contract;
 - f) the death of, disease or injury to any person as a result of the provision of the Training Services or otherwise in connection with this VET Funding Contract;
 - g) any infringement, or alleged infringement, of an Intellectual Property right by the Training Provider, its officers, employees, agents or subcontractors where the infringement or alleged infringement occurs directly or indirectly as a result of the provision of the Training Services or otherwise in connection with this VET Funding Contract; or
 - h) the Training Provider suspending delivery of the Training Services in respect of any Eligible Individual or otherwise ceasing to deliver the Training Services in respect of any Eligible Individual prior to that Eligible Individual having completed or withdrawn from the relevant course or qualification, including as a result of the Training Provider having a liquidator appointed to it (which Loss includes Loss incurred as a result of the Department taking steps to assist Eligible Individuals to transfer to another registered training organisation in order to continue the training commenced by the Eligible Individual under this VET Funding Contract, which steps may include funding the delivery of that training by that other registered training organisation).
- 14.5 The Training Provider's liability to indemnify the Department under Clause 14.4 will be reduced proportionally to the extent that a negligent, wilfully reckless, or unlawful act or omission of the Department has directly caused the relevant Loss or Claim.
- 14.6 The Department will not have any liability to the Training Provider for any indirect, special or consequential Loss arising out of breach of this VET Funding Contract.
- 14.7 The Training Provider must, at its own expense:
- a) take out and maintain until seven years after expiry of the Term all appropriate insurances at an adequate level to cover the provision of the Training Services and any risk, loss or damage arising out of or caused by the performance of those Training Services, including insurance for workers compensation, public liability, professional liability, professional indemnity and property. The insurance policies must include public liability insurance of not less than \$20 million per event;
 - b) ensure that the insurances are taken out and maintained with reputable insurers;
 - c) comply with all relevant insurance requirements, including conducting and improving relevant risk management practices and incident notification processes and not do any thing to jeopardise indemnity under an insurance policy;

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

15. NOTICES AND REPRESENTATIVES

15.1 A Notice issued under this VET Funding Contract by a Party must be:

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

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

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

15.3 The authorised representative of each Party who will be responsible for issuing and receiving Notices under this VET Funding Contract are as follows:

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

16. DISPUTE RESOLUTION

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

16.2 The Parties must attempt to resolve all Disputes under this Clause 16 before commencing any court proceedings, except proceedings for urgent interlocutory relief.

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

16.4 This Clause 16 does not affect the rights of the Department, which includes all of its rights and its right to terminate this VET Funding Contract.

16.5 The Parties must seek to resolve all Disputes acting in good faith and must not unreasonably delay or hinder the dispute resolution process provided for under this Clause 16.

- 16.6 If a Party provides a Dispute Notice under this Clause 16, it is open to either Party to provide a Notice of any other issue or dispute, and all other issues or disputes raised shall be deemed to have been included in the initial Dispute Notice.
- 16.7 If a Dispute Notice has been served by a Party, neither Party may issue a further Dispute Notice which recommences the Dispute resolution process as specified in this Clause 16 in respect of that Dispute without the consent of the other Party. A Party seeking to issue a further Dispute Notice or Dispute Notices must provide evidence to the other Party as to why the new issues that it wishes to raise cannot be managed as part of resolving the current Dispute, and that the Dispute which warrants the issue of a further Dispute Notice is clearly distinguished from, or does not arise as a result of, that which was commenced by the initial Dispute Notice.
- 16.8 If the Parties are unable to settle a Dispute within seven days of one Party giving a Dispute Notice to the other Party, each Party must appoint a representative with authority to settle the Dispute. The appointed representatives must meet within a further seven days to attempt to settle the Dispute.
- 16.9 If the representatives are unable to resolve the Dispute within seven days of first meeting, the Dispute must be referred within a further seven day period (**Referral Period**) to:
- a) in the case of the Department – its Executive Director or the Deputy Secretary of the Department, or their delegate; and
 - b) in the case of the Training Provider – its CEO.
- 16.10 The Department's representative and the CEO must meet with each other to seek to resolve the Dispute within seven days of the last day of the Referral Period.
- 16.11 If the Dispute is not resolved within seven days of the first meeting of the Department's representative and the CEO, the Department may refer the Dispute to mediation administered by the Australian Commercial Disputes Centre (**ACDC**) according to its mediation guidelines.
- 16.12 If a Dispute is referred to mediation by the Department:
- a) the Parties will agree on a mediator within seven days of the referral, failing which a mediator will be provided by ACDC;
 - b) the Parties must (unless they agree otherwise) conduct the mediation within 14 days of the mediator being appointed;
 - c) each Party will pay its own costs in relation to attendance at, and participation in, the mediation; and
 - d) the cost of the ACDC and the appointed mediator will be shared equally between the Parties.
- 16.13 The Department may notify the Minister of any Dispute.
- 16.14 In the event that the Department refers the Dispute to mediation and the Parties are unable to resolve the Dispute pursuant to Clause 16.12, or the Dispute is not referred to mediation, then the Department may refer the Dispute to the Secretary, or such other person nominated by the Secretary, as appropriate. A decision made pursuant to a referral under this Clause 16.14, will be final and binding on both Parties.
- 16.15 This Clause 16 does not apply to a Dispute arising under Clause 11 or Clause 18 or Clause 13 of Schedule 1.

17. ENFORCEMENT

17.1 The Department may take one or more of the actions in Clause 17.2 if:

- a) the Training Provider has breached, or the Department reasonably suspects that the Training Provider has breached or may breach a clause of this VET Funding Contract (whether or not the breach, or suspected breach, is a Material Breach);
- b) an event referred to in Clause 18.3 has occurred, or the Department reasonably suspects that such an event has occurred or may occur; or
- c) the Training Provider has breached an obligation to make a payment to the Department in connection with any earlier agreement between the Parties with respect to the *Skills First* Program, the Victorian Training Guarantee Program and/or the Skills for Victoria Program, whether or not such amounts comprise a refund of funds previously paid by the Department or any interest, penalty, or other moneys.

17.2 If it is entitled to do so pursuant to Clause 17.1, the Department may issue a Notice to:

- a) direct the Training Provider to suspend part or all of the provision of Training Services under this VET Funding Contract (whether in respect of one individual, a group of individuals or all individuals);
- b) withhold or suspend payment of any part of the Funds as the Department determines is appropriate until the Department is satisfied that the Training Provider is entitled to be paid those Funds under this VET Funding Contract;
- c) cancel the Training Provider's entitlement to any part or all of the Funds paid to or claimed by the Training Provider;
- d) require the Training Provider to refund such amount of the Funds previously paid as the Department reasonably deems appropriate (together with interest calculated daily at the rate prescribed under *Penalty Interest Rates Act 1983* (Vic) until the amount is refunded by the Training Provider);
- e) require that the Training Provider pay to the Secretary a monetary amount specified in, or calculated in accordance with, this VET Funding Contract (in which case Clause 17.7 applies);
- f) where Clause 17.1(a) applies, pursuant to section 3.1.5 of the Act, seek an order for specific performance. The order for specific performance will be available despite anything to the contrary in a rule of, or principle at, common law or equity, even though:
 - i) adequate damages may be available for the breach of contract; or
 - ii) enforcement of the contract may require personal services to be provided;
- g) require the Training Provider to pay any money expended by the Department to make good any non-compliance by the Training Provider with this VET Funding Contract; and
- h) require the Training Provider to pay any money paid by the Department to auditors or reviewers, or any other authorised person, to verify the delivery, replacement or correction of any of the Training Services by the Training Provider.

- 17.3 In addition to its powers under Clause 17.2, if the Department becomes aware of what it considers to be an irregularity or inconsistency regarding the Training Provider's operations, reporting or other obligations under this VET Funding Contract, which the Training Provider fails to explain to the Department's reasonable satisfaction in the time required by the Department, the Department may withhold or suspend payment of any part of the Funds as the Department determines is appropriate until the Department is satisfied that the Training Provider is entitled to be paid those Funds under this VET Funding Contract.
- 17.4 For the purposes of this Clause 17, the Department may exercise any of its rights under Clause 17.2(a) to (f) or Clause 17.3 as if the Training Provider has breached an obligation under this VET Funding Contract (or the Department reasonably suspects it has breached) in respect of a population of individuals in relation to whom the Training Provider has claimed Funds under this VET Funding Contract that is specified by the Department (or a proportion of that population determined by the Department) if:
- a) the Department has a reasonable basis to believe that a breach of an obligation under this VET Funding Contract has occurred in relation to a number of a sample of individuals from the population;
 - b) that sample of individuals was randomly selected; and
 - c) the sample of individuals and the number of those individuals in respect of whom there is a reasonable basis for the Department to believe that a breach of this VET Funding Contract has occurred are each of such a size that it is statistically valid for the Department to make the extrapolation to the population of individuals.
- 17.5 Where the Department requires a payment from the Training Provider under Clause 17.2 and has not recovered that amount under Clause 8.6, the Training Provider will pay the amount due within 30 Business Days, or such other timeframe specified by the Department.
- 17.6 The Department may, by issuing a Notice to the Training Provider, direct the Training Provider to suspend part or all of the provision of Training Services under this VET Funding Contract in respect of any group of Eligible Individuals if the Training Provider fails to meet any capability or quality assurance requirements specified by the Department pursuant to Clause 5.6.
- 17.7 For the avoidance of doubt, where the Training Provider is required to pay a monetary amount to the Department in accordance with Clause 17.2(e) as a result of:
- a) a breach of this VET Funding Contract;
 - b) a failure to meet a performance requirement specified in this VET Funding Contract which does not fall within subclause (a); or
 - c) termination of this VET Funding Contract,
- pursuant to section 3.1.4 of the Act, the Training Provider will be obliged to make payments despite anything to the contrary in a rule of, or principle at, common law relating to liquidated damages or penalties.

18. TERMINATION RIGHTS

- 18.1 In addition to any other rights it has to terminate this VET Funding Contract, the Department may terminate this VET Funding Contract at any time by issuing a Notice to the Training Provider 20 Business Days prior to the termination date. In the event that the Department terminates this VET Funding Contract in accordance with this Clause 18.1, the Department will pay:

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

The Training Provider acknowledges and agrees that any amount paid by the Department will be finally determined by the Department.

18.2 This VET Funding Contract may be terminated at any time by written agreement between the Parties.

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

- a) the Training Provider commits a Material Breach of this VET Funding Contract;
- b) the Training Provider commits a breach of this VET Funding Contract (whether or not the breach is a Material Breach) which cannot be remedied;
- c) the Training Provider commits a breach of this VET Funding Contract (whether or not the breach is a Material Breach) and the Training Provider:
 - i) fails to commence action to remedy the breach within 10 Business Days after the Department has served a Notice requiring it to do so; or
 - ii) having commenced action to remedy the breach, fails to complete that action as soon as possible and in any event within 20 Business Days of the Department's Notice;
- d) without limiting Clauses 18.3(a), (b) or (c), the Training Provider fails to provide some or all of the Training Services for which Funds have been claimed and/or paid or if the Training Services are not provided to a standard satisfactory to the Department;
- e) there has been any fraud or reasonably suspected fraud relating to the Training Provider or the Funds, misappropriation of Funds by the Training Provider or there has otherwise been any misleading or deceptive conduct on the part of the Training Provider in connection with this VET Funding Contract or the claiming, receipt or use of the Funds;
- f) the registration of the Training Provider under applicable legislation is suspended, withdrawn, cancelled or otherwise ceases;
- g) an Other VET Funding Arrangement Termination Event occurs;
- h) an Other VET Funding Arrangement Termination Event occurs to another registered training organisation that is a member of the Training Provider Group; and/or

- i) the Training Provider is abolished or will otherwise cease to exist pursuant to its governing legislation.

19. EFFECT OF SUSPENSION OR TERMINATION

19.1 If this VET Funding Contract is terminated, the Training Provider suspends delivery of the Training Services in respect of any Eligible Individual pursuant to a direction given by the Department under Clause 17.2(a), or the Training Provider otherwise ceases to deliver the Training Services in respect of any Eligible Individual prior to that Eligible Individual having completed or withdrawn from the relevant course or qualification, then:

- a) the Department may give the Training Provider directions, including a direction to assist Eligible Individuals to transfer to another registered training organisation in order to continue the training commenced by the Eligible Individual under this VET Funding Contract; and
- b) pursuant to Clause 4.3(b), the Training Provider must immediately comply with such a direction.

19.2 If the Department terminates this VET Funding Contract other than under Clause 18 or under Clause 18.3(f) from the date of suspension or cancellation, the Department may require the Training Provider to refund such amount of the Funds previously paid by the Department as the Department reasonably deems appropriate (together with interest calculated daily at the rate prescribed under the *Penalty Interest Rates Act 1983* (Vic) for the period between the Department demanding the refund and the Training Provider refunding the Funds).

20. SURVIVAL

20.1 Clauses 1, 3, 5.10, 6.11, 8.5, 8.6, 9, 10, 11.1 to 11.3, 13, 14, 15, 16, 17 and 19 of this VET Funding Contract, this Clause 20 and Clauses 3.4, 3.7, 3.8, 4.7, 5.3, 5.5, 5.6, 5.11, 11, 12.1 to 12.6, 12.10, 13 and 14 of Schedule 1 of this VET Funding Contract, survive the termination or expiry of this VET Funding Contract and may be enforced at any time.

2018-19 Dual Sector VET Funding Contract
Schedule 1
***Skills First* Program Specifications**

VERSION	DATE	COMMENTS
1.0	1 November 2017	

PURPOSE

This Schedule 1 of this VET Funding Contract comprises the *Skills First Program Specifications*. This schedule describes important processes and requirements with which the Training Provider must comply in delivering government subsidised training under this VET Funding Contract. This Schedule 1 must be read in conjunction with the body of this VET Funding Contract. This Schedule 1 is divided into four parts.

Part A sets out obligations of the Training Provider with respect to attracting, enrolling and delivering training to Eligible Individuals subsidised through the *Skills First Program* (and related processes), including:

1. Promotional activities, website and other publications;
2. *Skills First Program* – eligibility criteria;
3. Assessing and evidencing eligibility for the *Skills First Program*
4. Application and enrolment requirements;
5. Planning for training and assessment;
6. Tuition and other fees;
7. Training and assessment;
8. Apprenticeship/Traineeship training delivery requirements;
9. Nursing courses/qualifications training delivery requirements;
10. Practical Placements; and
11. Evidence of Participation requirements.

Part B sets out obligations of the Training Provider with respect to the Department (and related entities and processes), including:

12. Reporting
13. Determination and payment of Funds;
14. Audits or Reviews relating to Evidence of Participation, Evidence of Eligibility and Evidence of Fee Concessions/Waivers/Exemptions;
15. Enrolments in Courses and Qualifications on the Foundation Skills List; and
16. Completions.

Part C sets out obligations of the Training Provider with respect to certain initiatives, namely:

17. Asylum Seeker VET Program;
18. TAFE and Learn Local Eligibility Exemptions for up to 15% of Commencements;
19. Latrobe Valley Initiative
20. Program X;
21. Back to Work Scheme.

Part D provides additional reference material, including:

22. Data Systems; and
23. Links to useful websites.

PART A

1. PROMOTIONAL ACTIVITIES, WEBSITE AND OTHER PUBLICATIONS

1.1 The Training Provider must:

- a) without limiting Clause 4.2 of this VET Funding Contract, market and promote the courses and qualifications within its Funded Scope in accordance with all applicable Laws, including the Australian Consumer Law;
- b) market and promote the courses and qualifications within its Funded Scope with integrity and accuracy;
- c) act in an honest, ethical and responsible manner when promoting the courses and qualifications within its Funded Scope to prospective students and recruiting students into those courses and qualifications;
- d) ensure that all prospective students are accurately informed about:
 - i) the nature and requirements of the Training Provider's training;
 - ii) the financial arrangements in respect of the Training Provider's training, including the cost to and other financial impacts on the prospective student;
 - iii) training hours and commitment; and
 - iv) the assessment and expected outcomes of the training;
- e) not engage in false or misleading advertising, promotion or recruitment practices, including by not making:
 - i) any false or misleading comparisons between the Training Provider or any of its training and any other education provider or their courses;
 - ii) any inaccurate claims of association of the Training Provider with any other education provider; or
 - iii) false or misleading representations regarding the quality or outcomes of the Training Provider's training (including employment and immigration outcomes);
- f) not engage in any unconscionable conduct in marketing and promoting the courses and qualifications within its Funded Scope, including taking advantage of any prospective student's vulnerability (including due to their age, disability or illiteracy) to recruit them into a course or qualification;
- g) not market or promote as being delivered wholly online any qualification listed on the Online Delivery Restriction List or any other qualification delivered as an Apprenticeship; and
- h) without limiting Clause 4.3 of this VET Funding Contract, conduct all promotional and recruitment activities in accordance with the Quality Charter.

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

- a) acknowledge in a prominent way that the Training Services are provided to Eligible Individuals with Funds made available by the Victorian and Commonwealth

Governments (for example, by stating that “This training is delivered with Victorian and Commonwealth Government funding”);

- b) not, without the prior written approval of the State or the Department, use any logo or trade marks of the State or the Department;
- c) ensure that such materials meet the requirements of the *Equal Opportunity Act 2010* (Vic) and related Laws, including the provision of materials encouraging individuals with disabilities to access training subsidised through the *Skills First Program*;
- d) identify the Training Provider legal entity and/or trading name and TOID;
- e) if the Training Provider enters into a subcontract arrangement in respect of any training or assessment, refer on its website and corporate materials to the identity of the subcontracted party, and the respective roles in the provision of training and assessment, in relation to any Training Services to which a subcontract arrangement applies; and
- f) without limiting Clause 1.1 of this Schedule 1, if the Training Provider is not authorised to deliver courses or qualifications on the Foundation Skills List pursuant to Clause 5.7 of this VET Funding Contract, ensure that it is made clear to prospective Eligible Individuals that any such delivery by the Training Provider is not eligible for subsidisation by the Victorian government.

1.3 The Training Provider must publish a summary of its latest registration audit information in a prominent position on its website. The minimum registration audit information to be published by the Training Provider is as follows:

- a) audit date;
- b) qualifications audited (list all qualifications audited on the above audit date); and
- c) audit outcomes as follows:
 - i) audit non-compliance identified: Yes / No;
 - ii) a summary of significant and/or critical non-compliances and actions taken to rectify; and
 - iii) non-compliances rectified: Yes / No / Not Applicable.

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

- a) standard fees for training subsidised through the *Skills First Program* for each course/qualification it offers under this VET Funding Contract. This information must be kept up to date and include the following caveat:

‘The student tuition fees as published are subject to change given individual circumstances at enrolment’;

- b) details of any other fees including student services, amenities, goods or materials;
- c) a list of all providers of Brokering Services used by the Training Provider; and
- d) the Training Provider’s online service standards as prescribed by the Department from time to time.

- 1.5 The Training Provider must ensure that all learning materials used for the online delivery of training and assessment comply with the principles of the Web Content Accessibility Guidelines 2.0.
- 1.6 The Training Provider must publish on its website its complaints and appeals process.
- 1.7 The Training Provider must register for, and maintain an up to date profile on, the Victorian Skills Gateway.

2. SKILLS FIRST PROGRAM – ELIGIBILITY CRITERIA

- 2.1 The eligibility criteria set out in this Clause 2 must be read in conjunction with the Guidelines for Determining Student Eligibility and Supporting Evidence.

Eligibility Requirements

- 2.2 In order to be an Eligible Individual in respect of any training, an individual must be:
 - a) either:
 - i) an Australian citizen;
 - ii) a holder of a permanent visa; or
 - iii) a New Zealand citizen;
 - b) enrolling and commencing training in a course or qualification provided by the Training Provider between the Commencement Date and 31 December 2019 inclusive; and
 - c) either:
 - i) under 20 years of age (as at 1 January in the year of commencement of training) and enrolling in nationally recognised training;
 - ii) over 20 years of age (as at 1 January in the year of commencement of training) and enrolling in nationally recognised training in a Foundation Skills List course;
 - iii) over 20 years of age (as at 1 January in the year of commencement of training) and enrolling in nationally recognised training as an Apprentice (not Trainee);
 - iv) over 20 years of age (as at 1 January in the year of commencement of training) and enrolling in training in the Victorian Certificate of Education or the Victorian Certificate of Applied Learning (Intermediate or Senior); or
 - v) over 20 years of age (as at 1 January in the year of commencement of training) and enrolling in nationally recognised training in a course that is at a higher qualification level than the highest qualification held at the time of the scheduled commencement of training.
- 2.3 In addition to meeting the requirements of Clause 2.2 of this Schedule 1, an individual is only eligible to:
 - a) commence a maximum of two courses subsidised through the *Skills First Program* in a calendar year. Where an individual is enrolled in a course(s) that is scheduled to

commence at a later date in that calendar year, this course(s) must be counted for the purpose of this clause when assessing eligibility;

- b) undertake a maximum of two courses subsidised through the *Skills First Program* at any one time;
- c) commence a maximum of two government subsidised courses at the same level within the AQF in their lifetime; and
- d) commence a maximum of two government subsidised accredited courses with the title 'Course in...' in their lifetime.

Eligibility Exclusions

2.4 Subject to Clause 2.5 of this Schedule 1, an individual is not eligible for training subsidised through the *Skills First Program* under this VET Funding Contract if the individual is:

- a) a student enrolled in a school (excluding a school based Apprentice/Trainee). This includes:
 - i) any government, non-government, independent or Catholic school; or
 - ii) a student registered for home schooling in Victoria.

Government schools are responsible for funding these opportunities for VET within the school curriculum through their Student Resource Package (SRP) allocation, including targeted VET in schools funding. Non-government schools make similar decisions for students on the basis of the resources available to them;

- b) within the meaning of the *Corrections Act 1986 (Vic)*, a prisoner held at a prison, including:
 - i) Hopkins Correctional Centre (Ararat);
 - ii) Barwon Prison;
 - iii) Beechworth Correctional Centre;
 - iv) Dame Phyllis Frost Centre;
 - v) Dhurringile Prison;
 - vi) Langi Kal Kal Prison;
 - vii) Loddon Prison Precinct;
 - viii) Marngoneet Correctional Centre;
 - ix) Tarrengower Prison;
 - x) Metropolitan Remand Centre;
 - xi) Melbourne Assessment Prison;
 - xii) Fulham Correctional Centre;
 - xiii) Port Phillip Prison; or

- xiv) Karrenga Annex;
- c) a person who is detained under the *Mental Health Act 2014* (Vic), or the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) or the *Sentencing Act 1991* (Vic) at the Thomas Embling Hospital; or
- d) a person who is detained (other than on weekend detention) under the *Children, Youth and Families Act 2005* (Vic) or the *Sentencing Act 1991* (Vic) or who is held on remand in one or more of the following youth justice facilities:
 - i) Malmsbury Youth Justice Centre;
 - ii) Parkville Youth Residential Centre; or
 - iii) Melbourne Youth Justice Centre.

2.5 The exclusions described in Clauses 2.4(b), (c) and (d) of this Schedule 1 do not apply to:

- a) young people on community based orders made under the *Children, Youth and Families Act 2005* (Vic); or
- b) individuals held in Judy Lazarus Transition Centre,

who, subject to otherwise complying with the requirements in this Clause 2, may be eligible for training subsidised through the *Skills First Program* as they are able to physically access training outside of a custodial setting without supervision.

Additional Apprentice/Trainee Eligibility Requirements

2.6 If the Training Provider is to deliver training to eligible Apprentices and/or Trainees through an Approved Training Scheme, then in addition to individual eligibility requirements detailed in Clauses 2.2 and 2.3 of this Schedule 1, to be eligible for training subsidised through the *Skills First Program* under this VET Funding Contract as an Apprentice or Trainee and thereby be an Eligible Individual for the purposes of this VET Funding Contract, the individual must be:

- a) employed in Victoria in either a full time or part time capacity under an award or registered agreement;
- b) undertaking an Approved Training Scheme;
- c) a signatory to a Training Contract with their employer which is registered with the VRQA;
- d) a signatory, jointly with the employer and the Training Provider, to a Training Plan; and
- e) involved in paid work and Structured Training: Workplace-based or Structured Training: Off-the job.

2.7 Whether an individual is an Apprentice or a Trainee depends on how the qualification they are undertaking is designated in the relevant Approved Training Scheme. Information on current Approved Training Schemes can be found at:

<http://www.vrqa.vic.gov.au/apprtrain/Pages/schemes.aspx>

Exceptions to the Skills First Program eligibility criteria under particular arrangements

- 2.8 Individuals referred to training under particular arrangements may be exempted by the Training Provider from certain eligibility criteria in accordance with Part C of this Schedule 1.

3. ASSESSING AND EVIDENCING ELIGIBILITY FOR THE SKILLS FIRST PROGRAM

Assessment of eligibility

- 3.1 The Training Provider must have a clear and documented business process for the determination of eligibility of individuals for training subsidised through the *Skills First* Program (prior to commencement in training) against the requirements set out in Clause 2 of this Schedule 1. The business process and related documentation demonstrating that appropriate checks have been performed to establish each individual's eligibility must be made available to the Department (or persons authorised by the Department) for audit, review or investigation purposes.

- 3.2 The Training Provider must comply with the Guidelines for Determining Student Eligibility and Supporting Evidence.

Evidence of Eligibility

- 3.3 Relevant evidence is to be sighted by the Training Provider and a copy of the relevant evidence retained for each Eligible Individual, prior to commencement in training, in accordance with the Guidelines about Determining Student Eligibility and Supporting Evidence.

- 3.4 The evidence described in the Guidelines about Determining Student Eligibility and Supporting Evidence must be recorded in the form prescribed by the Department or in a form which records the exact information as the form prescribed by the Department and must be made available to the Department (or persons authorised by the Department) for audit, review or investigation purposes.

- 3.5 Prior to enrolling an individual under the age of 17 years:

- a) if the individual has not yet completed Year 10, the Training Provider must sight correspondence or a certificate signed by a Department Regional Director that exempts that individual from school attendance and either:

- i) clearly identifies the Training Provider and the training to be undertaken; or
- ii) clearly identifies the relevant employer where the student is to undertake an apprenticeship or traineeship; or

- b) if the individual has completed Year 10, the Training Provider must sight a completed 'Transition From School Form', or correspondence or a certificate signed by the school principal or a Department Regional Director that exempts that individual from school attendance and either:

- i) clearly identifies the Training Provider and the training to be undertaken; or
- ii) clearly identifies the relevant employer where the student is to undertake an apprenticeship or traineeship.

- 3.6 Where an individual under 17 years is enrolled in training on the basis that they have been granted an exemption from school attendance to undertake a specific course with the Training Provider (as contemplated by Clause 3.5(a)(i) or Clause 3.5(b)(i) of this Schedule 1, as the case may be), if that individual stops attending that training with that Training Provider, and is at that time still under 17 years, the Training Provider should notify

the relevant Regional Office of the Department that the individual is no longer attending training.

- 3.7 If the Training Provider enrolls an individual on the basis of their eligibility pursuant to Clause 2.8 of this Schedule 1, the Training Provider must:
- a) enrol the individual in accordance with the relevant procedures issued by the Department from time to time, including, where applicable, reporting the activity against appropriate Funding Source Identifier – State Training Authority (as defined in the Victorian VET Statistical Guidelines) for the relevant initiative; and
 - b) retain a copy of the relevant evidence (including any referral form or letter) for audit, review or investigation purposes.
- 3.8 If the Training Provider enrolls an individual into a course that has, as part of its accreditation, specified entry requirements which require the Training Provider to sight or retain particular evidence (for example, evidence of an individual having a permanent cognitive impairment or intellectual disability in the case of 22301VIC Certificate I in Transition Education or any replacement or successor), the Training Provider must sight and retain a copy of that evidence for audit, review or investigation purposes.

4. APPLICATION AND ENROLMENT REQUIREMENTS

- 4.1 Prior to enrolling an individual in any course or qualification for which the Training Provider will claim Funds under this VET Funding Contract, the Training Provider must inform the Eligible Individual that the enrolment is under the *Skills First Program* and must explain to the Eligible Individual how their enrolment will impact their access to further government subsidised training under this VET Funding Contract and the Guidelines about Determining Student Eligibility and Supporting Evidence.
- 4.2 The Training Provider must complete enrolments for all Eligible Individuals in accordance with the:
- a) Victorian VET Student Statistical Collection Guidelines;
 - b) Regulatory Standards, as applicable;
 - c) Guidelines about Determining Student Eligibility and Supporting Evidence; and
 - d) Quality Charter.
- 4.3 The Training Provider must ensure that all mandatory standard enrolment questions as described in the Victorian VET Student Statistical Collection Guidelines, together with any directions of the Department, are applied during the enrolment process of all Eligible Individuals.
- 4.4 The Training Provider must ensure that it complies with Victorian Student Number (VSN) reporting requirements and includes the VSN as specified in the Victorian VET Student Statistical Collection Guidelines.
- 4.5 The Training Provider must include the Unique Student Identifier for each Eligible Individual, as specified in the Victorian VET Student Statistical Guidelines.
- 4.6 The Training Provider must advise Eligible Individuals of the possibility of:
- a) receiving an NCVER survey;
 - b) receiving an invitation to participate in a Department endorsed project;

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

Evidence of Concession/Waiver/Exemption

- 4.7 The Training Provider must collect and maintain evidence to support the application of fee concessions and fee waivers/exemptions as required under the Guidelines about Fees in respect of each Eligible Individual.

5. PLANNING FOR TRAINING AND ASSESSMENT

Pre-Training Review

- 5.1 For each Eligible Individual, the Training Provider must conduct a Pre-Training Review, as part of enrolment, or prior to the commencement of training, to ascertain a suitable, and the most suitable (as defined in the Quality Charter), course for that student to enrol in. The Pre-Training Review must:
- a) ascertain the individual's aspirations and interests with due consideration of the likely job outcomes from the development of new competencies and skills;
 - b) consider the individual's existing educational attainment and capabilities;
 - c) include consideration of literacy and numeracy skills;
 - d) identify any competencies previously acquired (RPL, recognition of current competency (RCC) or credit transfer);
 - e) ascertain that the proposed learning strategies and materials are appropriate for that individual;
 - f) where the proposed learning includes portions delivered online, identify the individual learner's digital capability, including access to necessary technology, and where necessary identify steps to overcome any barriers in this regard; and
 - g) without limiting Clause 4.3 of this VET Funding Contract, be carried out consistently with any applicable requirements in the Quality Charter.
- 5.2 The Training Provider must have a clear and documented business process for conducting the Pre-Training Review. The business process for conducting the Pre-Training Review must be consistent with the objective of this VET Funding Contract set out in Clause 3.1(b) of this VET Funding Contract.
- 5.3 The business process and related documentation used by the Training Provider to conduct the Pre-Training Review must be made available to the Department (or persons authorised by the Department) for audit, review or investigation purposes.
- 5.4 The Training Provider must document how it determined the course or qualification each Eligible Individual enrolled in was a suitable, and the most suitable, training option for that Eligible Individual, with reference to the items in Clause 5.1 of this Schedule 1. The Training Provider must not enrol an Eligible Individual in a course or qualification that is at an inappropriate level for that student, including enrolling students in courses on the Foundation Skills List that would not provide additional relevant competencies.

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

- 5.5 If an audit of the Training Provider's compliance with Clauses 5.1 to 5.4 conducted by or on behalf of the Department reveals that any Pre-Training Review has not been completed and documented in accordance with Clauses 5.1 to 5.4, then (without limiting the circumstances in which it may exercise such rights) the Department may exercise its rights under Clauses 17 and 18 of this VET Funding Contract.
- 5.6 For the purpose of the Department exercising its rights under Clause 17.2(e) in the circumstances set out in Clause 5.5, the monetary amount will be \$200.00 per incomplete or inadequate Pre-Training Review.

Training and Assessment Strategy

- 5.7 For the purposes of training and assessment under the *Skills First* Program, the Training Provider must have a Training and Assessment Strategy consistent with Standard 1 of the National RTO Standards and its User Guide. This includes having a Training and Assessment Strategy for each course, and for each cohort within a particular course, that meets the requirements of the relevant Training Package or curriculum materials.
- 5.8 If the Training and Assessment Strategy for a course or individual cohort undertaking a course is structured so as to be completed in a shorter time period than the minimum described in the Australian Qualifications Framework, the Training Provider must justify and document within the Training and Assessment Strategy, using a rationale based on the previous skills and knowledge and the needs of learners, how a specific learner cohort:
- a) has the characteristics to achieve the required rigour and depth of training; and
 - b) can meet all of the competency requirements in a shorter timeframe.
- 5.9 Without limiting Clause 5.7 of this Schedule 1, each Training and Assessment Strategy for a course, or an individual cohort taking a course, that will be delivered and/or assessed partly or wholly online must reflect and respond to the unique requirements of online delivery of training and assessment, and must include:
- a) the methodology for engagement between learners, teachers and support staff;
 - b) learner progress monitoring arrangements and evidence-informed feedback models designed to strengthen learning outcomes; and
 - c) the validation method for online assessment tools.
- 5.10 The Training Provider must adopt, document and comply with appropriate protocols to ensure that all Training and Assessment Strategies are reviewed, evaluated and updated from time to time as appropriate to ensure that they continue to comply with this VET Funding Contract.
- 5.11 The Training and Assessment Strategy documentation must be made available as part of any audit, review or investigation conducted under Clause 11 of this VET Funding Contract, and/or at any other time upon the request of the Department.

6. TUITION AND OTHER FEES

- 6.1 The Training Provider must adhere to:

- a) the requirements set out in the Guidelines about Fees as issued by the Department and updated from time to time; and
- b) any subsequent relevant requirements set out in:
 - i) a Contract Notification; and/or
 - ii) orders or regulations pursuant to the Act or the National Act,with respect to the amount, imposition and collection of tuition fees and other fees for government subsidised training and financial and accountability requirements with regards to student fees (**Fee Requirements**) as if they were set out in this VET Funding Contract.

6.2 To the extent of any inconsistency between Fee Requirements referred to in Clause 6.1:

- a) Fee Requirements set out in any subsequent Contract Notification or subsequent orders or regulations pursuant to the Act or the National Act take priority over Fee Requirements set out in the Guidelines about Fees; and
- b) Fee Requirements set out in orders or regulations pursuant to the Act or the National Act take priority over Fee Requirements set out in a Contract Notification.

7. TRAINING AND ASSESSMENT

Training Plan Requirements for all Eligible Individuals

- 7.1 The Training Provider must document information on training and assessment and provide it to an Eligible Individual in a Training Plan, which must be:
- a) for Eligible Individuals who are not Apprentices or Trainees, documented either as a group of Eligible Individuals or a single Eligible Individual; or
 - b) for Apprentices and Trainees, documented for a single Eligible Individual.
- 7.2 The information documented in a Training Plan must include the:
- a) name and contact details of the Training Provider (and employer, for Apprentices and Trainees);
 - b) title and code of qualification;
 - c) the Program Unique Supervised Hours for the qualification;
 - d) the Program Supervised Teaching Activity Completion Date for the qualification;
 - e) title and code for each unit of competency to be obtained;
 - f) scheduled hours for each unit of competency to be obtained;
 - g) timeframe for achieving units of competency including the start date and end date of each unit of competency (and actual dates for where training has already occurred, for Apprentices and Trainees);
 - h) delivery modes to be used for each unit of competency;
 - i) assessment details and arrangements;

- j) persons responsible for the delivery and/or assessment of each competency; and
 - k) record of RPL and credit transfer hours granted, as relevant.
- 7.3 The information must be consistent with the qualifications or units of competency to be attained and must be customised (as required) for the needs of the Eligible Individual or group of Eligible Individuals, including the needs identified in the Pre-Training Review.
- 7.4 The Training Plan may be in hardcopy paper or electronic format.
- 7.5 The information on training and assessment must be agreed and endorsed by the Training Provider and the Eligible Individual or group of Eligible Individuals via signature. A copy of the endorsed (hardcopy or electronic) information must be provided to each Eligible Individual. This information ensures that both the Training Provider and the group of Eligible Individuals or the Eligible Individual are making informed decisions about the Training Services required and the respective obligations in the delivery of these Training Services.
- 7.6 Training Plans may be developed and signed prior to training commencement but no later than four weeks after training commencement.
- 7.7 The Training Provider must update the Training Plan according to any changes mutually agreed throughout the Training Services. The Training Provider must monitor each Eligible Individual's progress in satisfying the requirements of the qualification, in line with the Training Plan.
- 7.8 The Training Provider must ensure that each Eligible Individual's Training Plan aligns with the relevant TAS and that any variation from the TAS is documented and justified in the Training Plan.

Further Training Plan Requirements for Apprentices/Trainees

- 7.9 The following additional information must also be documented in a Training Plan for an Apprentice or Trainee:
- a) detailed training activities and responsibilities for training to be undertaken as part of any workplace based training arrangements;
 - b) details (when, how and how much) of the time allocated outside routine work duties for Structured Training;
 - c) signature (including date of signature) of the Training Provider representative, employer and Apprentice/Trainee (and, in the case of school-based Apprentices/Trainees, the signature of the school's representative); and
 - d) any other specific requirements to be met in accordance with the Training Contract or the Approved Training Scheme.
- 7.10 Employers are required to arrange for their Apprentices/Trainees to be enrolled with a registered training organisation and for a Training Plan to be signed within three months of the date of commencement of the Apprentice/Trainee's Training Contract (or within two months for school-based arrangements in accordance with the Approved Training Scheme). The Training Provider's enrolment timelines should not impede the employer's ability to comply with this requirement.
- 7.11 Subject to any nominal duration that may be specified in an Approved Training Scheme, the employer and Apprentice/Trainee (but not the Training Provider) can specify a duration less than the maximum over which competencies will be attained. Completion will be available earlier than the specified duration in the Training Contract if all competencies have

been attained, and an extension to the maximum duration can be mutually agreed if all required competencies have not been attained.

- 7.12 Training models offered by the Training Provider should ensure compliance with the Department's part time policy as set out in the Guidelines about Apprenticeship/Traineeship Training Delivery).
- 7.13 The Training Plan must be developed by the Training Provider, together with the employer and the Apprentice or Trainee.
- 7.14 The Training Plan must be vocationally relevant and reflect industry requirements and the workplace setting. It must list all the training (both the Structured Training: Workplace-based and/or Structured Training: Off-the-job provided by the Training Provider and the practical experience in the occupation provided by the employer) that will be delivered during the Apprenticeship or Traineeship. A copy of the Training Plan signed by all parties must be provided to all parties (including the school if a school-based Apprentice/Trainee).
- 7.15 The Training Plan is a living document that is intended to facilitate competency based progression and completion and reflect the current status of the Apprentice's or Trainee's training. The Training Plan must be straight forward, easy to follow and written in plain English.
- 7.16 The Training Provider must update the Training Plan according to any changes mutually agreed with the parties to the Training Contract throughout the Training Services. The changes must be endorsed by the employer and Apprentice/Trainee.

Further Training Plan Requirements for training conducted in workplace

- 7.17 A Training Plan for an Eligible Individual who is not an Apprentice or Trainee but who is to participate in training conducted in a workplace where that Eligible Individual is employed must also be agreed and signed by the employer that manages and controls the workplace (in addition to being agreed and endorsed by the Training Provider and the Eligible Individual pursuant to Clause 7.5 of this Schedule 1).

Delivery of training and assessment

- 7.18 The Training Provider must ensure that all Training Services are delivered in accordance with the relevant Training Plan and TAS.
- 7.19 Where the Training Package or course curriculum requires that a unit of competency be assessed in the workplace, the Training Provider must visit the Eligible Individual's workplace in person in order to carry out that assessment.
- 7.20 If any of the training and assessment within the Training Provider's Funded Scope is delivered online, the Training Provider must:
- a) adopt and implement a professional development program that is specific to online delivery of training and/or assessment; and
 - b) ensure that all trainers and assessors involved in online delivery of training and/or assessment as part of the Training Services undertake appropriate professional development as part of the program specified in Clause 7.20(a).

8. APPRENTICESHIP/TRAINEEESHIP TRAINING DELIVERY REQUIREMENTS

- 8.1 If the Training Provider delivers training to Apprentices or Trainees under a Training Contract, the Training Provider must adhere to all legislative requirements under the Act and the Guidelines about Apprenticeship/Traineeship Training Delivery.

9. NURSING COURSES/QUALIFICATIONS TRAINING DELIVERY REQUIREMENTS

- 9.1 If the Training Provider delivers the Diploma of Nursing, then all training and assessment must be an 'Approved Program of Study' as determined by the Nursing and Midwifery Board of Australia (NMBA) from time to time, and the training and assessment must be delivered in accordance with the NMBA's requirements for such an 'Approved Program of Study'.

10. PRACTICAL PLACEMENTS

- 10.1 The Training Provider must conduct practical placements in accordance with the *Amended Guidelines for Registered Training Organisations and Employers in relation to students of technical and further education undertaking Practical Placement* or its successor available at:
<http://www.education.vic.gov.au/training/providers/rto/Pages/workplacelearn.aspx>.
- 10.2 The Training Provider must have a written practical placement agreement executed by the Training Provider, the organisation hosting the practical placement and the Eligible Individual prior to an Eligible Individual commencing the relevant practical placement.
- 10.3 The practical placement agreement must include the following information at a minimum:
- a) the rights, obligations and duties of the employer, the Training Provider and the Eligible Individual;
 - b) the course of study with the Training Provider and the relevant skills required as part of that course to be developed, reinforced and/or assessed during the practical placement, for each Eligible Individual;
 - c) the location and address of the practical placement for each Eligible Individual; and
 - d) the start and finish dates, the total length of the practical placement expressed as hours, and the maximum hours per week.
- 10.4 The Training Provider must ensure that the practical placement is sufficient and appropriate in order to meet the vocational outcomes of the unit of competency to which it pertains.

11. EVIDENCE OF PARTICIPATION

- 11.1 All Training Services delivered by the Training Provider to an Eligible Individual must be supported by Evidence of Participation in accordance with the remainder of this Clause 11 for each unit of competency, such that a reasonable judgement regarding an Eligible Individual's participation in Training Services can be made.
- 11.2 The Training Provider must maintain documented evidence of engagement by the Eligible Individual in the learning and/or assessment activity. Except as permitted under Clause 11.5 of this Schedule 1, to be valid, evidence must contain the Eligible Individual's name or identification number, a unit of competency identifier and a date. The Department will determine if the evidence provided is sufficient to substantiate the claim that the Eligible Individual participated in training.
- 11.3 In addition, the following minimum specifications must be met to evidence an Eligible Individual's engagement in Training Services activity:
- a) one point of Evidence of Participation per unit of competency must be provided if the period between the Activity Start Date and Activity End Date (inclusive) for the unit of competency is one month or less; or

- b) two points of Evidence of Participation per unit of competency must be provided if the period between the Activity Start Date and Activity End Date for the unit of competency is greater than one month, including one point within the first month and one point within the last month of training delivery and/or assessment as identified by the reported Activity End Date. Two different forms of Evidence of Participation must be used. An auditor would consider the time elapsed between the start and end date (or withdrawal) of the unit of competency and use discretion as to a reasonable demonstration of ongoing engagement by an individual in learning and/or assessment activity across the unit of competency,

where one point of Evidence of Participation is one item of evidence as specified in Clause 11.5 of this Schedule 1.

- 11.4 In instances where competency based completions are involved, and where the employer signoff has not yet been received by the Training Provider, an auditor will consider the last point of Evidence of Participation relating to training and/or assessment.

- 11.5 The only Evidence of Participation that is acceptable under this VET Funding Contract is:

- a) **evidence of work submitted relating to engagement by the Eligible Individual in the unit of competency:** At a minimum, this evidence must contain the Eligible Individual's signature, and comply with the requirements set out in Clause 11.2 of this Schedule 1. In cases where this information cannot be recorded on the work itself, separate evidence must accompany the work to allow it to be linked to the Eligible Individual, the unit of competency and date completed, for example, identification of an Eligible Individual by a client identifier and a delivery schedule or equivalent detailing how the piece of work covers the unit of competency in question, including due dates and milestones;
- b) **Skills First Teacher notes based on communication between the Skills First Teacher and Eligible Individual, establishing the Eligible Individual's involvement in the learning and/or assessment activity of the unit of competency.** This includes personal interviews, telephone, e-mail, or other communication modes on the engagement of an Eligible Individual in learning and/or assessment activity of the unit of competency and may include reference to notes from another person working alongside the *Skills First* Teacher, for example an industry expert or workplace supervisor;
- c) **a Training Provider endorsed attendance roll:** The roll must be recognised by the Training Provider as a tool to record attendance as a part of its normal processes; contain the signature and name of the *Skills First* Teacher who conducted the training sessions, and the date; and show that the actual unit of competency was delivered at the point at which the Eligible Individual is marked on the roll (i.e. endorsed each time the Eligible Individual is marked on the roll). Where the roll indicates that the Eligible Individual has only attended the first class of an enrolment period, supporting documentation must be supplied demonstrating that there was engagement in the learning and/or assessment activities of the unit of competency during that class. Attendance at an induction or orientation class alone is not sufficient Evidence of Participation.

For clustered delivery:

- i) where, for the purposes of delivery or assessment, units of competency are clustered together, the evidence provided must satisfy participation at the unit of competency level requested;

- ii) where the subjects are delivered consecutively, a roll must be annotated to indicate what training was actually delivered in the session at the unit of competency level; and
- iii) for other types of clustered delivery, a delivery schedule or equivalent must be provided that shows the planned training, at the unit of competency level, on the date/s the Eligible Individual was in attendance.

For electronic rolls support documentation is required to indicate the processes involved in annotating, entering, updating and generating the rolls, as well as how to interpret the rolls;

- d) **primary documentation that provides evidence of assessment:** Primary documentation is considered to be a secure record that indicates an actual result consistent with assessment. All results must be supported by *Skills First* Teacher endorsed documentation, such as the Training Plan, *Skills First* Teacher's record book, diary, the actual assessment or similar record which confirms delivery to the Eligible Individual. Evidence of an Eligible Individual's results should have an endorsement at the delivery level that confirms the accuracy of the information such as the signature of the *Skills First* Teacher, their name and position. For all RPL outcomes, only the primary assessment tool used for any skills recognition assessments will be accepted;
- e) **where primary recording documentation is not available, a signed statutory declaration from the relevant Training Provider Personnel and the relevant Eligible Individual affirming the Eligible Individual's participation:** In the event that extreme circumstances prevent the provision of any of the primary recording documentation detailed in paragraphs (a) to (d), (f) and (g) (e.g. fire, flood or other equivalent circumstances), Training Provider Personnel directly associated with the training delivery that are authorised by the Training Provider may attest participation of the Eligible Individual in the unit of competency enrolment in question. In all such cases the relevant Training Provider Personnel is required to submit and sign a statutory declaration affirming their evidence.

In order to constitute sufficient Evidence of Participation, an appropriate Training Provider Personnel member must provide a full explanation of the reasons why primary recording documentation is not available and:

- i) a signed and dated statutory declaration containing a full explanation of the evidence being provided and affirmed that is sufficient to substantiate the claim that the Eligible Individual participated. It should be noted that a signed document merely stating that participation within the enrolment has occurred would not meet verification requirements; and/or
 - ii) a statement from an Eligible Individual declaring they participated in the unit of competency;
- f) **login and engagement with learning and/or assessment activity required for the unit of competency :** Where an Eligible Individual has a secure login to specific learning and/or assessment activity (for the unit of competency) in which they are enrolled, the login record demonstrating on-line engagement with the learning and/or assessment activity can constitute Evidence of Participation. The login record must evidence the Eligible Individual undertaking learning and/or assessment activity. A login record indicating the Eligible Individual received training materials alone is not sufficient Evidence of Participation. Records must also indicate that the Training Provider has checked with the Eligible Individual that they are continuing to engage across the unit of competency; or

- g) **in flexible and distance modes of learning, records of Training Provider Personnel/Eligible Individual engagement with learning and/or assessment activity at a unit of competency level that indicates the individual has commenced working on the learning materials received.** Records must also indicate that the Training Provider has checked with the Eligible Individual that they are continuing to engage across the unit of competency.

General Requirements associated with verification of participation

11.6 The Training Provider acknowledges and agrees that:

- a) in undertaking an audit, review or investigation of Evidence of Participation in respect of Eligible Individuals, an auditor will attempt to utilise appropriate recording models adopted by the Training Provider to assure Evidence of Participation relating to the unit of competency;
- b) an auditor may use judgement when Evidence of Participation relating to common elements of competency across several units of competency is provided to validate more than one unit of competency;
- c) where a final assessment in the next collection year is supplied to justify participation in a unit of competency for a continuing enrolment in the current collection year, an auditor may verify each enrolment for participation on its merits; and
- d) an auditor will not accept Training Provider based Certificates in isolation to satisfy Evidence of Participation at the unit of competency level.

11.7 Verification of enrolments will not be allowed where documents such as ‘catch all’ sets of questions are provided as the only Evidence of Participation in respect of an Eligible Individual for a unit of competency. These sets of questions are typically completed on the first day of student attendance, covering all units of competency within the cluster and the nature of the questions are very simple with limited educational use.

Clarification Regarding Participation in VCE Units 3 & 4

11.8 The following additional requirements apply to Evidence of Participation in respect of Eligible Individuals relating to VCE Units 3 & 4:

- a) VCE Units 3 & 4 should be reported on the AVETMISS as individual units of study, (e.g. “Unit 3 Economics” Code ECO33 and “Unit 4 Economics” Code ECO34). Where an individual withdraws after commencing Unit 3, the Training Provider will also need to withdraw the individual from Unit 4, as both units must be delivered sequentially. In this instance the individual would be considered to have participated only in Unit 3, but not Unit 4 as there was no attendance or participation;
- b) where withdrawal is prior to 1 May, the individual will be automatically withdrawn from both Units 3 and 4;
- c) where an individual ceases to participate after 1 May they must be recorded as a Code 30 Assessable Enrolment – Competency Not Achieved/Fail for Unit 3. They must also be separately withdrawn from Unit 4; and
- d) where an individual completes Unit 3, they may be withdrawn from Unit 4, up to 10 July, after which time they must be recorded as a Code 30 Assessable Enrolment – Competency Not Achieved/Fail.

PART B

12. REPORTING

Training activity data and Government subsidised tuition fees

12.1 The Training Provider must:

- a) submit accurate Student Statistical Reports to the Department via the SVTS no less than once every calendar month per collection year. Each monthly submission must include full details for all training activity already delivered within the collection year, including government subsidised and fee for service training activity. This includes delivery already commenced/underway and/or completed in the current collection year; and reporting in relation to qualification completions;
- b) in the event that data previously submitted by the Training Provider as part of Student Statistical Reports to the Department is incorrect, resubmit correct data by no later than the following month's Student Statistical Report; and
- c) ensure that all required data is included and correct in the final Student Statistical Report for each calendar year into which the Term extends and that this report is submitted to the Department via SVTS by no later than the earlier of:
 - i) 5pm on 15 January of the next calendar year; or
 - ii) one month after the expiration or termination of this VET Funding Contract.

12.2 The Training Provider must:

- a) report (in cents) the actual tuition fee per hour charged to each Eligible Individual for training subsidised through the *Skills First* Program via the Client Tuition Fee field in the Student Statistical Report;
- b) report (as a rounded up dollar amount) any non-tuition fees charged to each Eligible Individual in connection with training subsidised through the *Skills First* Program, including any materials and equipment costs charged to the Eligible Individual, via the Client Fees – Other field in the Student Statistical Report; and
- c) where delivering the Victorian Certificate of Education or the Victorian Certificate of Applied Learning (Foundation, Intermediate, or Senior), report all units undertaken towards achievement of the VCE/VCAL against the relevant VCE or VCAL course code as identified in the Funded Courses Report, including VET units undertaken towards completion of the VCE or VCAL.

12.3 The Department may publish fee information related to training subsidised through the *Skills First* Program on an individual Training Provider basis as reported by the Training Provider.

12.4 The Training Provider must ensure that data that provides key information about an Eligible Individual and their course of study is accurate at all times, including through the following data items:

- a) name and contact details of the Eligible Individual as required in the NAT00085 file;
- b) the Delivery Mode Identifier, Outcome Identifier – National, Activity Start Date and Activity End Date as required in the NAT00120 file;

- c) Training Organisation Delivery Location Identifier as required in the NAT00120 file, and associated delivery location details as provided in the NAT00020 file;
- d) the Program Unique Supervised Hours as required in the NAT00130 file; and
- e) Program Supervised Teaching Activity Completion Date as required in the NAT00130 file.

12.5 Prior to submitting a Student Statistical Report under Clause 12.1 of this Schedule 1, the CEO of the Training Provider (or their nominee) must certify that:

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

by confirming as such through the SVTS submission screen or any other mechanism made available through SVTS from time to time.

12.6 The Training Provider acknowledges and agrees that, by submitting a Student Statistical Report in accordance with Clause 12.5, the Department is entitled to rely on all data contained in that Student Statistical Report as having been approved by the CEO.

Third Party Arrangements

12.7 If requested in writing by the Department, the Training Provider must promptly provide the Department with details of all third party arrangements for the delivery of Training Services (including determination of eligibility and enrolment processes, marketing and Brokering Services) on the Training Provider's behalf that have not already been notified to the Department pursuant to Clause 6.11(b) or Clause 7.10 of this VET Funding Contract.

Register of Trainers and Assessors

12.8 The Training Provider must establish and maintain an up to date Register of Trainers and Assessors detailing, for each *Skills First* Teacher:

- a) the individual's name;
- b) whether the Training Provider engages the individual as a trainer or assessor, or as both;
- c) for which qualifications the individual will be delivering training and/or assessment;
- d) the title of the highest qualification in training and assessment that the individual has obtained, and the date on which it was obtained;
- e) details of the individual's vocational competencies for each industry area in which they will deliver qualifications, being either:
 - i) the title of the highest qualification in each industry area that the individual has obtained that is at least of the level being delivered, and the date on which it was obtained; or
 - ii) confirmation that their vocational competencies have been mapped and determined to be equivalent to the level being delivered;

- f) details of the individual's current industry skills that are directly relevant to the training and/or assessment being delivered; and
 - g) details of the individual's participation in professional development, including:
 - i) in the fields of the knowledge and practice of vocational training, learning and assessment, including competency based training and assessment; and
 - ii) the individual's participation in professional development related to online delivery pursuant to Clause 7.20 of this Schedule 1.
- 12.9 The Training Provider must sight and retain documentary evidence (such as transcripts, testamurs and/or industry association membership cards) confirming the information entered on the Register of Trainers and Assessors.
- 12.10 The Training Provider must make its Register of Trainers and Assessors available to the Department at any time.

Pre- and post-testing of Foundation Skills

- 12.11 If the Training Provider is on the Foundation Skills Approved Provider List, the Training Provider must, in each calendar year into which the Term extends, collect and submit for each Eligible Individual that commences, completes or withdraws from a qualification in Domain A and Domain B of the Foundation Skills List:
- a) data that measures an Eligible Individual's skill level translated into the Australian Core Skills Framework or equivalent (as determined by the Department) at commencement of training; and
 - b) data that measures the same Eligible Individual's skill level translated into the Australian Core Skills Framework or equivalent (as determined by the Department) at the completion or withdrawal of training.
- 12.12 The data specified in Clause 12.11 must be submitted to the Department in a format, and by a date, notified by the Department. If the Training Provider is on the Foundation Skills Approved Provider List, it must submit:
- a) the data specified in Clause 12.11(a) within 60 days of the Course Commencement Date; and
 - b) the data specified in Clause 12.11(b) within 60 days of the last Activity End Date for the Eligible Individual.

For the avoidance of doubt, the Training Provider is not required to report on Eligible Individuals who are enrolled in enrolled in Literacy and Numeracy Support Units (using course code LNSUPPORT) but no other qualification on the Foundation Skills List.

Reporting of Literacy and Numeracy Support Units

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

13. DETERMINATION AND PAYMENT OF FUNDS

Determination of Funds

- 13.1 Subject to the conditions and limitations set out in this VET Funding Contract, the Department will pay the Training Provider Contact Hour Funds for scheduled hours of training and assessment reported in relation to Eligible Individuals. The Contact Hour Funds are calculated by multiplying:
- a) the number of scheduled hours of training and assessment reported by the Training Provider under this Schedule 1 as having been delivered, or to be delivered, to Eligible Individuals; and
 - b) the applicable hourly rate per scheduled hour as identified in Clause 13.3 of this Schedule 1.
- 13.2 The Department is not liable to make payment of Funds for Training Services delivered to Eligible Individuals except for currently endorsed courses and qualifications as identified on the Funded Courses Report as published on the SVTS and which are on the Training Provider's Funded Scope. For the avoidance of doubt, payment of Funds will only be made where the Course Commencement Date for the relevant course or qualification:
- a) falls within the "Effective for CCD from" and "Effective for CCD to" dates for the course as identified in the Training Provider's Funded Scope; and
 - b) falls within the "Effective for CCD from" and "Effective for CCD to" dates for the course as identified in the Funded Courses Report.
- 13.3 The hourly rate per scheduled hour is the rate specified in either the 'Subsidy' or 'RPL Subsidy' field (as applicable) of the Funded Courses Report as published on the SVTS from time to time in respect of the applicable payment year, Course Commencement Date and Enrolment Type (non-Apprenticeship/Traineeship, Traineeship or Apprenticeship), as adjusted (if applicable) as follows:
- a) by a student loading being any combination of the following:
 - i) for Eligible Individuals who self-identify as being of Aboriginal or Torres Strait Islander descent (and are reported as such through the "Indigenous Student Identifier" field of the Student Statistical Report) by multiplying the 'Subsidy' or 'RPL Subsidy' for the course by 1.5; and
 - ii) for Eligible Individuals aged 15-19 years as at 1 January in the year of commencement of training without a senior secondary certificate or an accredited qualification at AQF level II or above, and eligible for a concession in accordance with Clauses 3.7 and 3.8 of the Guidelines about Fees, by multiplying the 'Subsidy' or 'RPL Subsidy' for the course (or, if a student loading has already been applied under Clause 13.3(a)(i) of this Schedule 1, the amount determined under Clause 13.3(a)(i)) by 1.3; and
 - iii) for Eligible Individuals aged 15-19 years as at 1 January in the year of commencement of training without a senior secondary certificate or an accredited qualification at AQF level II or above, and undertaking training in the Victorian Certificate of Applied Learning (Foundation, Intermediate or Senior) in units of competency reported against the VCAL course code, by multiplying the 'Subsidy' or 'RPL Subsidy' for the course (or, if a student loading has already been applied under Clause 13.3(a)(i) or (ii) of this Schedule 1, the amount determined under Clause 13.3(a)(i) or (ii)) by 1.1; and/or

- b) by a regional loading whereby the relevant 'Subsidy' or 'RPL Subsidy' for units of competency delivered in non-metropolitan locations to Eligible Individuals will be adjusted by the Department by multiplying the 'Subsidy' or 'RPL Subsidy' for the course (or, if a student loading has already been applied under Clause 13.3(a) of this Schedule 1, the amount determined under Clause 13.3(a)) by 1.1.

Training will be considered to be in a non-metropolitan location if the postcode of the training delivery location identified in the NAT000120 file is one of the postcodes identified as "non-metropolitan" on the Regional Postcodes Report as published on SVTS from time to time. The Regional Loading does not apply to online delivery or to distance education. Delivery will be deemed to have been delivered online or via distance education if:

- i) the postcode of the training delivery location identified in the NAT000120 file is "OSPC"; or
- ii) the Predominant Delivery Mode Identifier in the NAT00120 file in the Student Statistical Report is "E" (External delivery).

Restrictions on payments of Funds

- 13.4 The Department is only liable to pay Funds to the Training Provider for training activity that is reported in accordance with Clause 12 of this Schedule 1.
- 13.5 The Department is not liable to pay any Funds for training and/or assessment carried out by a person who did not at all relevant times comply with the *Skills First* Teacher requirements set out in Clauses 5.8 and 5.9 of this VET Funding Contract.
- 13.6 RPL undertaken as part of enrolment in a Foundation Skills List course, or the Certificate I in Vocational Preparation, will not be funded by the Department under this VET Funding Contract. Where RPL is funded by the Department under this VET Funding Contract, RPL will be paid based on the scheduled hours up to the nominal hours per unit of competency in accordance with this Schedule 1.
- 13.7 The Department is not liable to pay Funds in respect of recognition of current competency (RCC) under this VET Funding Contract.
- 13.8 The Department is not liable to pay the Contact Hour Funds to the Training Provider in respect of an Eligible Individual in excess of the Maximum Scheduled Hours for the applicable course or qualification.
- 13.9 The Department is not liable to pay the Contact Hour Funds to the Training Provider in respect of an Eligible Individual in excess of two times the nominal hours per unit of competency as published in the relevant Victorian Purchasing Guide.
- 13.10 The Department is not liable to pay, and the Training Provider must not make a claim for, any Funds in respect of any training or assessment provided to an Eligible Individual that is inconsistent with the packaging rules or vocational intent of the course, as specified in the Training Package or accredited course documentation.
- 13.11 The Department is not liable to pay Funds to the Training Provider in respect of:
- a) an Eligible Individual who commences training in a superseded qualification unless the Eligible Individual commences within 12 months of the date the replacement qualification is released on the National Register;

- b) an Eligible Individual that commences training in a deleted or removed course unless the Eligible Individual commences prior to the date the course is removed or deleted from the National Register;
 - c) an Eligible Individual undertaking training in a superseded qualification after a period of 12 months has elapsed from the date the replacement qualification is released on the National Register; or
 - d) an Eligible Individual undertaking training in a deleted qualification after a period of 24 months has elapsed from the date the qualification was removed or deleted from the National Register.
- 13.12 The Department is not liable to pay Funds to the Training Provider in respect of an Eligible Individual's participation in a unit of competency where the Activity End Date is after the "Subsidised Training End Date" as identified for the course in the Funded Courses Report.
- 13.13 The Department is not liable to pay Funds to the Training Provider in respect of an Eligible Individual's participation in a unit of competency unless the Training Provider has created a claim within 60 days of the Activity Start Date.
- 13.14 The Department is not liable to pay Funds to the Training Provider in respect of any training and/or assessment delivered to an Eligible Individual as part of a qualification on the Online Delivery Restriction List or any other qualification that is delivered as an Apprenticeship, where the qualification is delivered wholly online.

Payment

- 13.15 Payments of Contact Hour Funds to the Training Provider in respect of an Eligible Individual by the Department under this Schedule 1 will be made monthly in arrears by the Department on the basis of Student Statistical Reports submitted by the Training Provider to the Department in accordance with this VET Funding Contract.
- 13.16 The act of lodging a Student Statistical Report by the Training Provider to the Department is considered a claim for payment and constitutes a representation by the Training Provider that it:
- a) has delivered the reported hours of training and assessment in accordance with this VET Funding Contract;
 - b) has Evidence of Participation in accordance with this VET Funding Contract for each Eligible Individual in respect of which it is claiming payment; and
 - c) is otherwise entitled to payment in respect of those hours of training and assessment under this VET Funding Contract.
- 13.17 Contact Hour Funds paid by the Department to the Training Provider in respect of an Eligible Individual will be calculated at the unit of competency level, such that the Training Provider will be paid for the scheduled hours reported in respect of the unit of competency in equal instalments over the number of months of scheduled delivery, except that each monthly instalment will be for a whole number of scheduled hours. To the extent that the total number of scheduled hours divided by the number of months of scheduled delivery is not a whole number, then for the purposes of calculating instalments under this Clause 13.17:
- a) in respect of each month other than the final month of scheduled delivery, the number of scheduled hours for the month will be rounded down to the nearest whole number of hours; and

- b) the Contact Hour Funds in respect of any remaining scheduled hours will be paid in the final month of scheduled delivery.
- 13.18 The Training Provider must ensure Student Statistical Reports submitted via the SVTS reflect actual Training Services that are supported by Evidence of Participation. At a minimum, each monthly submission of Student Statistical Reports must include full details for all reportable training activity already delivered within the collection year. For example, Activity Start Dates and Activity End Dates must match the actual period of time within which Training Services occurred (or, where applicable, are reasonably expected to occur).
- 13.19 The Training Provider must not make a claim for payment under this VET Funding Contract for the delivery of Training Services that has not occurred at the time the claim is made, including:
- a) reporting that a unit of competency has commenced, as indicated by the Activity Start Date, prior to its actual commencement such that the Training Provider receives a full or partial payment for the unit of competency prior to its commencing; and/or
 - b) reporting that a unit of competency has been completed as indicated by the Activity End Date, before it has actually been completed such that the Training Provider is paid in full for the unit of competency before it has been completed.
- 13.20 Training Services to Eligible Individuals in respect of which the Training Provider claims any payment of Funds under this VET Funding Contract must be reported by the Training Provider with the correct 'Funding Source Identifier' in accordance with the Victorian VET Student Statistical Collection Guidelines, and accurately reflecting whether the Eligible Individual is an Apprentice or Trainee.
- 13.21 The Training Provider must identify all units of competency relevant to the course or qualification in which an Eligible Individual is enrolled that have been attained by an individual as a result of previous formal training. To avoid doubt, the Training Provider is not eligible for Contact Hour Funds from the Department for the Eligible Individual contact hours associated with these units of competency, and must report such units of competency as credit transfer.
- 13.22 In the event that an Eligible Individual withdraws from a course or qualification prior to achieving competency in an individual unit of competency, and the Training Provider has sufficient evidence of the Eligible Individual's participation, the enrolment must be reported by the Training Provider as a withdrawal in all future Student Statistical Reports for the calendar year in accordance with the current Victorian VET Student Statistical Collection Guidelines. In these instances, payment of Contact Hour Funds in respect of the individual by the Department for the individual unit of competency from which the individual withdrew will be made based on the Hours Attended by the individual prior to withdrawal.
- 13.23 Where the Training Provider changes any of the data reported in a Student Statistical Report in respect of an individual's participation in a unit of competency from what it had earlier reported, and that change causes the total amount of the Funds payable, and/or the amount of any instalment of Funds calculated pursuant to Clause 13.17 of this Schedule 1, in respect of that individual's participation in that unit of competency to be either higher or lower than the amount calculated based on the data provided by the Training Provider in any earlier claim for payment of Funds, then either:
- a) if the amount is higher, the Department will (subject to its other rights under this VET Funding Contract) adjust its payments of Funds so that the Training Provider receives the correct total amount of Funds by the date of payment in respect of the reporting period in which the relevant Activity End Date occurs (or as soon as reasonably possible thereafter), in any manner determined by the Department from

time to time (which may or may not involve a change in the amount of Funds paid as a result of any claim for payment that is outstanding at the time of submission of the Student Statistical Report containing the updated data); or

- b) if the amount is lower, (without limiting Clause 8.5 of this VET Funding Contract) the Department may recalculate the amount due to the Training Provider at any time (including by recalculating the amount payable as a result of any claims for payment of Funds already submitted by the Training Provider) and determine that the amount of any overpayment made to the Training Provider is a debt due to the Department for the purposes of Clause 8.5 of this VET Funding Contract.

For example, if the Training Provider changes the Activity Start Date or Activity End Date that has been reported under Clause 12 of this Schedule 1 in respect of an individual's participation in a unit of competency, subsequent to the Training Provider's first claim for payment of Funds in respect of that unit of competency being undertaken by that individual, and that change causes the proportion of the Funds paid to date for the unit of competency to be greater than the proportion that would have been payable based on applying the calculation set out in Clause 13.17 of this Schedule 1 to the corrected Activity Start Date and Activity End Date reported by the Training Provider, the Department may determine that the amount of the overpayment is a debt due to the Department (even though there is no change to the total amount of Funds payable in respect of that individual's participation in that unit of competency).

- 13.24 In the event that an Eligible Individual withdraws from Training Services delivered under this Schedule 1 without participation, or where the Training Provider has insufficient evidence of the Eligible Individual's participation, the Training Provider must either:
- a) exclude that Eligible Individual's unit of competency from future Student Statistical Reports for the calendar year; or
 - b) report the enrolment as a withdrawal with zero Hours Attended in all future Student Statistical Reports for the collection year in accordance with the current Victorian VET Student Statistical Collection Guidelines.

To avoid doubt, no payment is made from Contact Hour Funds in respect of withdrawals with no attendance.

- 13.25 All withdrawals (Outcome Identifier – National Code “40”) must be reported within the year of the scheduled commencement in training and no later than two months from the point of withdrawal, unless extenuating circumstances prevent this from occurring (or by the final data submission date for the collection year as advised by the Department, whichever is earliest). For the avoidance of doubt, the point of withdrawal is either:
- a) the date of formal withdrawal; or
 - b) in the case of no formal withdrawal, the date of the last engagement.

13.26 If in the Department's view:

- a) the Training Provider has another course on its Funded Scope that would meet the needs of the Eligible Individual(s);
- b) a lower subsidy applies to the other course (as listed on the Funded Courses Report); and
- c) the packaging rules and vocational intent of that course would permit the training and assessment so that claim would not be contrary to Clause 13.10 of this Schedule 1,

then the Department may:

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

13.27 The Department may recover any monies paid in relation to Training Services for any relevant unit of competency (other than in relation to the delivery of Approved Training Schemes to Apprentices and Trainees) where 90 days has elapsed from the Activity End Date and the Outcome identifier – National is listed with the Outcome Code of 70 'Enrolments continuing into a following collection year'.

13.28 Funds recovered in accordance with Clause 13.27 of this Schedule 1 will be paid to the Training Provider in the event that a valid Outcome Identifier – National is subsequently reported by the end of the collection year.

Fee Concession Contribution

13.29 Where the Training Provider has:

- a) granted a fee concession to an Eligible Individual in accordance with the requirements set out in the Guidelines about Fees; and
- b) reported to the Department that fee concession in the applicable Student Statistical Reports in accordance with the fee concession reporting requirements outlined in the Victorian VET Student Statistical Collection Guidelines,

then (subject to the Training Provider being eligible for the payment of Contact Hour Funds in respect of that course or qualification provided to that Eligible Individual, and subject to Clause 13.31 of this Schedule 1) the Department will also pay a Fee Concession Contribution to the Training Provider.

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

- a) 100% of revenue foregone, as calculated based on four times the actual hourly rate paid by the Eligible Individual and reported by the Training Provider (being 20% of the standard published hourly fee), up to a maximum hourly value. The maximum hourly value is the relevant 'Maximum Fee Concession Contribution per hour' for the course (as identified on the Student Tuition Fee Contribution Report); and
- b) the number of hours for which the Training Provider is entitled to be paid the Contact Hour Funds in relation to the delivery of the training and assessment for that course to that Eligible Individual.

13.31 The Department will not pay a Fee Concession Contribution to the Training Provider in relation to individuals who are referred job seekers. A referred job seeker for the purposes of this Clause 13.31 is an individual who holds a standard Job Seeker Referral Form. In these instances, with prior agreement of the referring agency, the Training Provider must invoice the referring agency directly for the portion of the tuition fee not covered by the referred job seeker. The Training Provider must report the correct Fee Concession/Exemption Identifier for this, which may be subject to annual reconciliation with the Commonwealth.

Fee Waiver/Exemption Contribution

13.32 Where the Training Provider has:

- a) granted a fee waiver/exemption to an Eligible Individual in accordance with the requirements set out in the Guidelines about Fees; and
- b) reported to the Department that fee waivers/exemption in the applicable Student Statistical Reports in accordance with the fee waiver/exemption reporting requirements outlined in the Victorian VET Student Statistical Collection Guidelines,

then (subject to the Training Provider being eligible for the payment of Contact Hour Funds in respect of that course or qualification provided to that Eligible Individual) the Department will also pay a Fee Waiver/Exemption Contribution to the Training Provider.

13.33 The Fee Waiver/Exemption Contribution payable will be calculated by multiplying:

- a) the applicable 'Fee Waiver/Exemption Contribution per Hour' (fixed value) for the course (as identified on the Student Tuition Fee Contribution Report); and
- b) the number of hours for which the Training Provider is entitled to be paid the Contact Hour Funds in relation to the delivery of the training and assessment for that course to that Eligible Individual.

14. AUDITS OR REVIEWS RELATING TO EVIDENCE OF PARTICIPATION, EVIDENCE OF ELIGIBILITY AND EVIDENCE OF CONCESSION/WAIVER/EXEMPTION

14.1 Without limiting Clause 11 of this VET Funding Contract, the Department may instigate an audit of any Evidence of Participation, Evidence of Eligibility and/or Evidence of Concession/Waiver/Exemption at any time.

Evidence of Participation audit

14.2 If the audit of Evidence of Participation using a statistically valid sample size as determined by the Department reveals that units of competency audited are not supported by satisfactory Evidence of Participation as required under this VET Funding Contract (including Clause 11 of this Schedule 1), then (without limiting either the Department's other rights under Clauses 17 and 18 of this VET Funding Contract in that event, or any of its rights under Clauses 17 and 18 of this VET Funding Contract in any other circumstance) where the percentage of unsupported units of competency (exceptions) exceeds a threshold specified by the Department, the Department may:

- a) apply a monetary amount in accordance with Clause 17 of this VET Funding Contract;
- b) require a refund of some or all of the Funds from the Training Provider; and/or
- c) cancel some or all of the Funds claimed by the Training Provider.

14.3 For the purpose of Clause 14.2(a), the monetary amount will be 10 per cent of the total Funds claimed and/or paid to the Training Provider across the total population of units of competency from which the statistically valid sample has been drawn, multiplied by the percentage of exceptions.

14.4 For the purpose of Clause 14.2(b), the value of Funds sought by the Department may be up to the percentage of exceptions above the threshold, multiplied by the total Funds claimed and/or paid to the Training Provider across the total population of units of competency from which the statistically valid sample has been drawn.

Evidence of Eligibility audit

- 14.5 If the audit of Evidence of Eligibility reveals insufficient documentation to demonstrate that the Training Provider has correctly, and in accordance with this VET Funding Contract (including Clause 3 of this Schedule 1), assessed the eligibility for the Entitlement to Funded Training of individual in respect of whom a claim for Funds has been made by the Training Provider (exceptions), then (without limiting either the Department's other rights under Clauses 17 and 18 of this VET Funding Contract in that event, or any of its rights under Clauses 17 and 18 of this VET Funding Contract in any other circumstance) the Department may:
- a) apply a monetary amount in accordance with Clause 17 of this VET Funding Contract;
 - b) require a refund of some or all of the Funds from the Training Provider; and/or
 - c) cancel some or all of the Funds claimed by the Training Provider.
- 14.6 For the purpose of Clause 14.5(a), the monetary amount will be 10 per cent of the total Funds claimed and/or paid to the Training Provider for each enrolment for which an exception has been identified.

Evidence of Concession/Waiver/Exemption audit

- 14.7 If the audit of Evidence of Concession/Waiver/Exemption reveals insufficient documentation to demonstrate that the Training Provider has correctly, and in accordance with this VET Funding Contract (including Clause 4.7 of this Schedule 1), assessed the eligibility for a fee concession, waiver or exemption of an individual in respect of whom a claim for Funds has been made by the Training Provider (exceptions) then (without limiting either the Department's other rights under Clauses 17 and 18 of this VET Funding Contract in that event, or any of its rights under Clauses 17 and 18 of this VET Funding Contract in any other circumstance) the Department may:
- a) apply a monetary amount in accordance with Clause 17 of this VET Funding Contract;
 - b) require a refund of some or all of the Funds from the Training Provider; and/or
 - c) cancel some or all of the Fee Concession Contribution or Fee Waiver/Exemption Contribution claimed by the Training Provider.
- 14.8 For the purpose of Clause 14.7(a), the monetary amount will be 10 per cent of the total Fee Concession Contribution or Fee Waiver/Exemption Contribution claimed and/or paid to the Training Provider for each enrolment for which an exception has been identified.

15. ENROLMENTS IN COURSES AND QUALIFICATIONS ON THE FOUNDATION SKILLS LIST

- 15.1 The Department will not pay, and the Training Provider must not make a claim for, any Funds in respect any unit of competency undertaken as part of enrolment in a course on the Foundation Skills List, unless that unit of competency is:
- a) specified as a core unit of competency in the curriculum for that course;
 - b) specified and listed as a unit of competency within a specialisation or as an elective unit in the curriculum for that course; or
 - c) a Literacy and Numeracy Support Unit.

15.2 This Clause 15 does not apply to the Victorian Certificate of Applied Learning (Foundation).

16. COMPLETIONS

16.1 The Training Provider must report all completions in Student Statistical Reports to the Department in relation to each Eligible Individual. Completions must be reported in accordance with the Victorian VET Student Statistical Collection Guidelines, specifically in relation to the NAT00130 'Program (Qualification) Completed' file in each monthly submission.

16.2 When the Eligible Individual has completed activity under the Training Plan, the Training Provider must assess, record and report qualification completion as soon as possible after successful completion.

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

PART C

17. ASYLUM SEEKER VET PROGRAM

- 17.1 The Training Provider may exempt a student from the citizenship eligibility criterion (Clause 2.2(a) of this Schedule 1) if it sights and retains a referral letter from either the Asylum Seeker Resource Centre or the Australian Red Cross Victims of Human Trafficking Program.
- 17.2 Alternatively, if the Training Provider is a TAFE Institute or a Dual Sector University as defined in the Act, or a Learn Local Organisation, it may confirm an individual's eligibility for the Asylum Seeker VET Program by using the Commonwealth Visa Entitlement Verification Online (VEVO) to confirm the individual holds a valid:
- a) Bridging Visa Class E (BVE);
 - b) Safe Haven Enterprise Visa (SHEV); or
 - c) Temporary Protection Visa (TPV).
- 17.3 If the Training Provider confirms eligibility through VEVO under Clause 17.2, it must retain evidence of eligibility in accordance with the Guidelines about Determining Student Eligibility and Supporting Evidence.
- 17.4 Where the Training Provider has granted an exemption under Clause 17.1, the associated training activity must be reported with the Eligibility Exemption Indicator in the NAT00120 file set to 'Y', and using the following Funding Source Identifiers - State Training Authority:
- a) 'ASL' (Apprentice/Trainee); or
 - b) 'ASP' (General - non-Apprentice/Trainee).
- 17.5 The Training Provider must grant a fee concession to a student enrolled under the Asylum Seeker VET Program in accordance with Clause 4.7 of this Schedule 1 and the Guidelines about Fees.

18. TAFE AND LEARN LOCAL ELIGIBILITY EXEMPTIONS FOR UP TO 15% OF COMMENCEMENTS

- 18.1 If the Training Provider is:
- a) a TAFE Institute or a Dual Sector University as defined in the Act;
 - b) a Learn Local Organisation; or
 - c) the Centre for Adult Education or AMES (each as defined in the Act),
- then the Training Provider may exempt individuals from the following eligibility requirements:
- d) 'upskilling' (Clause 2.2(c)(v) of this Schedule 1);
 - e) 'two at level in a lifetime' (Clause 2.3(c) of this Schedule 1); and/or
 - f) 'two "courses in..." in a lifetime' (Clause 2.3(d) of this Schedule 1).

- 18.2 The number of students exempted under Clause 18.1 in a calendar year cannot exceed 15% of the Training Provider's total number of commencements for that calendar year, unless directed by the Department.
- 18.3 For the purposes of calculating the 15% total per calendar year, the following exemption ratio will be used: the total number of new government subsidised commencements where an eligibility exemption has been granted (NAT00120 file set to "Y"), divided by the total number of new government subsidised commencements reported. Exemptions using Funding Source Identifier - State Training Authority 'LVP' or 'LVL' will not be included in the exemption ratio.
- 18.4 Eligibility exemptions granted under Clause 18.1 cannot be applied to Eligible Individuals with a Course Commencement Date prior to the Commencement Date of this VET Funding Contract.
- 18.5 Where the Training Provider grants an exemption under Clause 18.1, the Training Provider must offer guidance on the best training to undertake to improve job outcomes and complement previous training undertaken. This needs to be supported through undertaking effective Pre-Training Reviews as required under this VET Funding Contract.
- 18.6 Preference for exemptions should be granted to individuals seeking to enrol in training that meets identified skills shortages and localised labour market needs and in accordance with guidance as issued by the Department from time to time.
- 18.7 Providers must offer exemptions to individuals from the following cohorts, when an individual presents evidence specified in the Guidelines About Determining Student Eligibility and Supporting Evidence:
- a) Retrenched workers;
 - b) Automotive supply chain workers;
 - c) Jobs Victoria Employment Network Clients; and/or
 - d) Any other specific cohort as determined by the Department from time to time.
- 18.8 Where the Training Provider has granted an exemption under Clause 18.1, the associated training activity must be reported with:
- a) the Eligibility Exemption Indicator in the NAT00120 file set to 'Y'; and
 - b) where the individual is from one of the cohorts identified in Clause 18.7, using the following Funding Source Identifiers – State Training Authority:
 - i) 'SCL' - Retrenched workers (Apprentice/Trainee) or 'SCP' – Retrenched workers (General – non-Apprentice/Trainee);
 - ii) 'AEL' - Automotive supply chain workers (Apprentice/Trainee) or 'AEP' Automotive supply chain workers (General, non-Apprentice/Trainee); or
 - iii) 'JVL' - Jobs Victoria Employment Network Client (Apprentice/Trainee) or 'JVP' Jobs Victoria Employment Network Client (General, non-Apprentice/Trainee).
- 18.9 The Department may, from time to time, vary the Funding Source Identifiers or courses or qualifications to which eligibility exemptions under this Clause 18 can be applied.

18.10 All other eligibility rules apply as specified in this VET Funding Contract and the Guidelines about Determining Student Eligibility and Supporting Evidence.

19. LATROBE VALLEY INITIATIVE

Purpose

19.1 This Clause 19 sets out the Training Provider's roles and responsibilities with respect to administering assistance to individuals in the Latrobe Valley.

Roles and Responsibilities of the Training Provider

19.2 Under this Clause 19 the Training Provider may exempt an individual from the following eligibility criteria:

- a) 'upskilling' (Clause 2.2(c)(v) of this Schedule 1);
- b) 'two at level in a lifetime' (Clause 2.3(c) of this Schedule 1); and/or
- c) 'two "courses in..." in a lifetime' (Clause 2.3(d) of this Schedule 1).

19.3 If the Training Provider is:

- a) a TAFE Institute or a Dual Sector University as defined in the Act;
- b) a Learn Local Organisation; or
- c) the Centre for Adult Education or AMES (each as defined in the Act);

the Training Provider may grant an exemption from the requirements identified at Clause 19.2 when an individual is referred to training by the Latrobe Valley Authority or the Morwell Skills and Jobs Centre.

19.4 If the Training Provider is not a provider of the type described at Clause 19.3, the Training Provider may grant an exemption from the requirements identified at Clause 19.2 when an individual presents a *Training Referral Letter* signed by the Executive Director, Industry Engagement and VET Systems Division of the Department of Education and Training.

19.5 For individuals referred to training under Clauses 19.3 or 19.4, the Training Provider must report the training activity for all individuals referred under this initiative (even those who do not require an exemption to the eligibility criteria) against the appropriate Funding Source Identifier - State Training Authority, namely:

- a) 'LVP' - Latrobe Valley Retrenched Workers (General - non-Apprentice/Trainee); or
- b) 'LVL' - Latrobe Valley Retrenched Workers (Apprentice/Trainee).

19.6 If the individual is otherwise eligible for subsidies under the *Skills First Program*, but requires an exemption to any of the eligibility criteria specified in Clause 19.2, the Training Provider must report the associated training activity with the Eligibility Exemption Indicator in the NAT00120 file set to "Y".

19.7 The Training Provider must retain evidence of eligibility for any exemption granted under this Clause 19 in accordance with the Guidelines About Determining Student Eligibility and Supporting Evidence.

20. PROGRAM X

20.1 If the Training Provider is:

- a) a TAFE Institute or a Dual Sector University as defined in the Act;
- b) a Learn Local Organisation; or
- c) the Centre for Adult Education or AMES (each as defined in the Act);

the Training Provider must apply a fee waiver/exemption for an Eligible Individual, if it sights and retains a validly endorsed referral form from either the Department of Health and Human Services, the Department, the Department of Justice and Regulation, or a referring agency. A referring agency is defined for this purpose as an organisation that is contracted by the Department of Health and Human Services or the Department of Justice and Regulation to deliver child protection or youth justice support services.

Purpose

20.2 Program X is to support young people on Youth Justice Orders or Child Protection Orders, or who have been on Youth Justice Orders or Child Protection Orders and are not more than 22 years of age, to participate in education and training.

Eligibility

20.3 For the purposes of this program:

- a) Youth Justice Order means a probation order, youth supervision order, youth attendance order (YAO), youth residential centre order (YRCO), youth justice centre order (YJC) or a youth parole order (YPO) imposed under the *Children, Youth and Families Act 2005* (Vic), or a community correction order defined in the *Sentencing Act 1991* (Vic).
- b) Child Protection Order has the meaning given to protection order in the *Children, Youth and Families Act 2005* (Vic), including permanent care orders.

Roles and Responsibilities

20.4 Under this Clause 20, the Training Provider agrees:

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

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

Application, Payment and Reporting of the fee waiver/exemption

- 20.5 The Training Provider must apply a fee waiver/exemption to all Eligible Individuals who have been referred to training under Program X in accordance with the Guidelines about Fees.
- 20.6 The Training Provider will receive a contribution from the Department as a result of waiving/exempting the fee to an Eligible Individual under Program X in accordance with this Schedule 1.
- 20.7 The Training Provider must report to the Department all fee waivers/exemptions granted to Eligible Individuals in accordance with the fee waiver/exemption reporting requirements outlined in the Victorian VET Student Statistical Collection Guidelines.

21. BACK TO WORK SCHEME

- 21.1 Under this Clause 21, the Training Provider may exempt an individual from the following eligibility criteria:
 - a) 'upskilling' (Clause 2.2(c)(v) of this Schedule 1);
 - b) 'two at level in a lifetime' (Clause 2.3(c) of this Schedule 1); and/or
 - c) 'two "courses in..." in a lifetime' (Clause 2.3(d) of this Schedule 1),

where the Training Provider has sighted and retained a copy of the standard email issued by the State Revenue Office to the individual's employer that confirms the individual's status as a 'Back to Work' participant.

- 21.2 Where the Training Provider has granted an exemption under Clause 21.1, the associated training activity must be reported with the Eligibility Exemption Indicator in the NAT00120 file set to 'Y'; and using the following Funding Source Identifiers - State Training Authority:
 - a) 'BWL' (Apprentice/Trainee); or
 - b) 'BWP' (General, non-Apprentice/Trainee).

PART D

22. DATA SYSTEMS

22.1 The Training Provider is required to access and/or submit data to a number of data systems managed by the Department. The table below provides a summary of relevant data systems and login addresses.

System Name	Purpose	Login Address	Comments
DELTA	Track and complete Training Contracts	https://www.eduweb.vic.gov.au/deltarto	The DELTA database records all Apprentices/Trainees in Victoria.
SVTS	Statistical reporting and claiming for training	http://www.education.vic.gov.au/svts/	Enter monthly delivery data for all training and claims.
	Enquires		The Training Provider should complete and submit all enquiries to the Department.
	Lost/Forgotten User ID and/or Password details		Refer to instructions on the Skills Victoria Training System Homepage.

22.2 If the Training Provider is delivering in Apprenticeship/Traineeship mode, the Training Provider must access the DELTA database at least weekly to identify new individuals that have nominated the Training Provider as their preferred provider.

22.3 When the Training Provider is nominated as the training provider as contemplated by Clause 23.2, the details for the Apprentice or Trainee are lodged by an AASN and registered on the Department’s DELTA database. The Training Provider must have access to DELTA and should also check it regularly.

22.4 The Training Provider must register to use DELTA by completing the Conditions of Use form. Contact the DELTA Database Manager for a copy of the Conditions of Use form:

DELTA Database Manager
 Victorian Registration and Qualifications Authority
 GPO Box 2317

Melbourne 3001
 Phone: 03 9032 1501
 Fax: 03 9032 1579

22.5 The Training Provider must use the SVTS for all student statistical data and claims for funding in accordance with the Victorian VET Student Statistical Collection Guidelines and the *Guide to SVTS* (or its successor) made available by the Department from time to time.

23. USEFUL WEBSITES

Approved Training Schemes

<http://www.vrqa.vic.gov.au/apprtrain/Pages/schemes.aspx>

Australian Apprenticeships Support Network

<https://www.australianapprenticeships.gov.au/australian-apprenticeship-support-network>

Australian Skills Quality Authority (ASQA)

<http://www.asqa.gov.au/>

Course Accreditation

<http://www.vrqa.vic.gov.au/accreditation/pages/default.aspx>

<http://www.asqa.gov.au/course-accreditation/course-accreditation.html>

Curriculum Maintenance Managers

<http://www.education.vic.gov.au/training/providers/rto/Pages/products.aspx>

Guide to Apprenticeships and Traineeships

<http://www.education.vic.gov.au/training/learners/apprentices/Pages/what.aspx>

Skills First website

<http://www.education.vic.gov.au/skillsfirst>

Standards for Regulators (AQTF and National VET Regulator)

<http://www.asqa.gov.au/about/australias-vet-sector/standards-for-vet-regulators.html>

Training.gov.au

<http://training.gov.au/>

Victorian VET Student Statistical Collection Guidelines

<http://www.education.vic.gov.au/training/providers/rto/Pages/datacollection.aspx>

Victorian Curriculum and Assessment Authority (VCAA)

<http://www.vcaa.vic.edu.au/>

Victorian Purchasing Guides

<http://www.education.vic.gov.au/training/providers/rto/Pages/purchasingguides.aspx>

Victorian Registration and Qualification Authority (VRQA)

<http://www.vrqa.vic.gov.au>