

2013 Service Agreement Victorian Training Guarantee Program

BETWEEN Victorian Skills Commission
(the **Commission**)
89 290 258 378

2 Treasury Place
East Melbourne VIC 3002

AND Registered Training Organisation (the **RTO**)

VERSION	DATE	COMMENTS
2013 Version 1.0	October 2012	Draft as posted with EOI
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BACKGROUND TO THIS AGREEMENT

- A. The Commission was established under the *Vocational Education and Training Act 1990 (Vic)* and continues in operation under and subject to the *Education and Training Reform Act 2006 (Act)*. The functions of the Commission are set out in section 3.1.2(1) of the Act, and include to provide for the delivery of vocational education and training (VET) in Victoria by registered education and training organisations and the provision of further education in TAFE institutes.
- B. The Act 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. This guarantee is known as the *Victorian Training Guarantee*.
- C. The *Victorian Training Guarantee* Program is the vehicle through which registered education and training organisations such as the RTO will be contracted to deliver government subsidised Training Services to eligible individuals.
- D. The purpose of this Agreement is to set out the terms and conditions under which the Commission will make available, and the RTO will accept, funding for the purposes of the RTO delivering Training Services to Eligible Individuals who enrol and commence in an eligible training course or qualification with the RTO during the 2013 calendar year. A purpose of the Agreement is to make provision for the Market Monitoring Unit (MMU).

DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, unless the contrary intention appears:

Act means the *Education and Training Reform Act 2006* including any amendments.

Agreement means this Agreement and includes all schedules, annexures, attachments, plans and specifications and exhibits to it.

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

Approved Funded Scope means the RTO's scope of registration designated for delivery in Victoria as approved and designated by the relevant regulator at 21 November 2012, unless the Commission determines a different scope for the purpose of this Agreement.

AQTF means the *Australian Quality Training Framework* as updated from time to time.

ASQA means the Australian Skills Quality Authority.

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

Brokering Services means where an individual or organisation receives payment from the RTO in exchange for recruiting individuals to participate in government subsidised training. This does not include salaried individuals who are employees of the RTO whose primary purpose is 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.

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

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 *Information Privacy Act 2000*.

Commencement Date means the later of 1 January 2013 or when this Agreement is executed before 31 December 2013 by means of the RTO accepting an offer from the Commission to be bound by the terms and conditions of this Agreement.

Confidential Information means all confidential or commercially sensitive information of a Party.

Contact Hour Funds means the funds payable by the Commission in relation to the scheduled hours reported by the RTO as in respect of an Eligible Individual to whom the RTO has provided the Training Services as detailed in the schedules to this Agreement.

Department means the State of Victoria acting through the Department of Education and Early Childhood Development (or its successor).

Deputy Secretary means the Deputy Secretary of Higher Education and Skills Group, the Department (or successor).

Dispute means a dispute in relation to this Agreement.

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

Eligible Individual means an individual who is eligible for government subsidised training in accordance with the eligibility requirements set out in this Agreement.

Evidence of Participation means evidence of an Eligible Individual's participation in training and assessment provided by the RTO, as detailed in Schedule 1 of this Agreement.

Executive Director means the Executive Director, Training Market Operations Division, the Department (or successor).

Executive Memoranda means the executive memoranda issued by the Commission from time to time.

Executive Officer has the same meaning as in s 3 of the *National Vocational Education and Training Regulator Act 2011* (Cth), and has the corresponding meaning in relation to any registered training organisation not listed on the National Register, as may be the case from time to time.

Fee Concession Contribution means the contribution to be paid by the Commission to the RTO in respect of an Eligible Individual as detailed in Clause 12 of Schedule 1 of this Agreement.

Fee Waiver/Exemption Contribution means the contribution to be paid by the Commission to the RTO in respect of an Eligible Individual as detailed in Clause 12 of Schedule 1 of this Agreement.

Funded Courses Report means a report issued and approved by the Commission and includes educational and accredited vocational training courses; this does not include higher education courses. The Funded Courses Report is subject to variation at any time.

Funds means the money provided by the Commission to the RTO under this Agreement in respect of an Eligible Individual for the purposes of the RTO providing the Training Services to that individual, consisting of:

- a) the Contact Hour Funds;
- b) if applicable, the Fee Concession Contribution; and
- c) if applicable, the Fee Waiver/Exemption Contribution.

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

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

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

GST means the *Goods and Services Tax* and has the same meaning as specified in the GST Law. Where there are words and expressions that are not defined in this Agreement but which have a meaning in the GST Law, such meaning as prescribed by the GST Law will apply to this Agreement.

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

Incentives include:

- a) financial incentives, and/or
- b) non-financial incentives, such as any equivalent 'payment' in the form of goods, services or rewards.

High Managerial Agent has the same meaning as in s 3 of the *National Vocational Education and Training Regulator Act 2011 (Cth)*, and has the corresponding meaning in relation to any registered training organisation not listed on the National Register, as may be the case from time to time.

Information Privacy Principles means the information privacy principles set out in the *Information Privacy Act 2000*.

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.

Insolvency Event means:

- a) any change in the direct or indirect beneficial ownership or control of the RTO which is not subject to the Commission's prior written approval;
- b) the RTO disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- c) the RTO ceases to carry on business;
- d) an order is made by a Court of competent jurisdiction for the winding up or dissolution of the RTO;

- e) any step is taken to appoint a receiver, receiver and manager, trustee in bankruptcy or similar officer over all or any of the assets or undertakings of the RTO and is not discontinued or withdrawn within five (5) Business Days;
- f) any step is taken by a mortgagee to take possession either directly or by an agent over all or any of the assets, operations, or undertakings of the RTO and is not discontinued or withdrawn within five (5) Business Days;
- g) any step is taken to appoint a liquidator or provisional liquidator and is not discontinued or withdrawn within five (5) Business Days;
- h) any step is taken to appoint an administrator, or to enter into a deed of company arrangement;
- i) any step is taken to enter into any arrangement between the RTO and its creditors; or
- j) any similar step.

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 the RTO:

- a) failing to meet its obligations regarding:
 - i) the application of all eligibility criteria to determine Eligible Individuals;
 - ii) the application of fees, including as required under any ministerial directions, orders, regulations or guidelines about fees;
 - iii) the application of fee concessions, fee waivers/ exemptions;
 - iv) specific requirements for all Training Services including Pre-Training Review, Training Plan, and Evidence of Participation in relation to each Eligible Individual;

- v) specific requirements for apprenticeship/traineeship Training Services; and
 - vi) acting ethically, and not doing or omitting to do anything which may damage, ridicule, bring into disrepute or be detrimental, to the Commission, the VET sector, the Victorian government subsidised training market, the Department or the State's name or reputation. A determination in this regard will be made at the absolute discretion of the Commission, giving due regard to the obligations of the Commission under Statute or otherwise; and made in good faith,

as specified in
 - vii) this Agreement;
 - viii) any ministerial directions, ministerial orders, or regulations in relation to fees issued pursuant to the Act; or
 - ix) any directions, policies, procedures or guidelines as issued by the Commission from time to time; and
- b) failing to publish its fees in accordance with Clause 6.4;
 - c) refusing to permit, participate in or assist with, or preventing or unreasonably delaying an audit or review as required by the Commission or Department in accordance with Clause 11; and
 - d) making a claim for payment under this Agreement for the delivery of Training Services that has not occurred at the time the claim is made, including but not limited to:
 - i) Reporting that a unit of competency/ module has commenced, as indicated by the Enrolment Activity Start Date, prior to its actual commencement such that the RTO receives a full or partial payment for the unit prior to it commencing; and/or
 - ii) Reporting that a unit of competency/ module has been completed, as indicated by the Enrolment Activity End Date, before it has actually been completed such the RTO is paid in full for the unit of competency/ module before it has been completed.

MMU means the Market Monitoring Unit within the Regional Support Group of the Department (or successor).

Minister means the Minister for Higher Education and Skills (or successor).

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

National Register has the same meaning as in s 3 of the *National Vocational Education and Training Regulator Act 2011* (Cth).

Party/ Parties mean the parties to this Agreement.

Peer Review Panel means a Panel comprised of CEOs or representatives of RTOs, accepted by the Department, formed in accordance with the process in Clause 11 of this Agreement.

Public Authority means public authority within the meaning of s 4 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), including because that entity has functions under this Agreement relevant to s 4(c).

Quality Indicators means an annual summary report against the quality indicators required as a condition of registration under the Act and National Act.

Records means any document within the meaning of the *Evidence Act 2008* (Vic) including:

- a) anything on which there is writing;
- b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- d) a map, plan, drawing or photograph,

and which is produced or created by the RTO under or in the course of performing its obligations under this Agreement.

Recordkeeping means making and maintaining complete, accurate and reliable evidence of business transactions in the form of recorded information.

Regional Postcodes Report means a report issued and approved by the Commission that identifies postcodes which will attract a regional loading as detailed in Clause 12 of Schedule 1 of this Agreement.

Relevant Person means a registered training organisation, or any Executive Officer, High Managerial Agent or any person or entity which exercises a degree of control or influence over the management or direction of the registered training organisation.

RPL Approved Provider List means a list of RTOs approved by the Commission, or authorised delegate, to deliver Recognition of Prior Learning (RPL) which is funded by the Commission.

Secretary means the Secretary of the Department (or successor).

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 his or her duties.

Service Agreement Notifications means service agreement notifications issued by the Commission from time to time via the SVTS.

SNR means Standards for National VET Regulator (NVR) Registered Training Organisations.

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

Statement of Fees means an itemised list of all fees and materials required for a calendar year for each Eligible Individual.

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

Student Tuition Fee Contribution Report means a report issued and approved by the Commission and includes the maximum hourly rate the Commission will pay for Fee Concession Contributions; and the hourly rate the Commission will pay for Fee Waiver/ Exemption Contributions. The Student Tuition Fee Contribution Report is subject to variation as directed by the Commission at any time.

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

Term is defined in Clause 2.

TOID means the Training Organisation Identifier or RTO Code.

Training Services means

- a) training and assessment associated with currently endorsed courses and qualifications or parts thereof, as identified on the Funded Courses Report, and that are on the RTO's Approved Funded Scope, as provided to Eligible Individuals by the RTO; and
- b) all related requirements under this Agreement including but not limited to:
 - i) determination of eligibility,
 - ii) completion of student enrolment forms,
 - iii) levying of student tuition fees; concessions and exemptions/ waivers,
 - iv) Evidence of Participation, and

- v) matters that reasonably relate to providing the Training Services.

VET Quality Framework has the same meaning as in the *National Vocational Education and Training Regulator Act 2011* (Cth).

VRQA means the Victorian Registration and Qualifications Authority.

Victorian VET Student Statistical Collection Guidelines means the guidelines of that name issued by the Commission from time to time.

1.2. Interpretation

- a) If there is any conflict or inconsistency between the terms and conditions contained in the clauses of this Agreement and any part of the schedules, then the terms and conditions of the clauses in this Agreement will prevail to the extent of the conflict or inconsistency.
- b) In this Agreement, unless the context otherwise requires:
 - i) words importing any gender include each other gender;
 - ii) the plural includes any singular and vice versa;
 - iii) a reference to 'dollars' or '\$' is a reference to the lawful currency of Australia;
 - iv) a reference to a person includes any other entity recognised by law and vice versa;
 - v) a reference to a statute, ordinance, code or other law includes subordinate legislation, consolidations, amendments, re-enactments, and replacements of it;
 - vi) a reference to any legislation or statutory instrument is construed in accordance with the relevant interpretation of that legislation or statutory instrument;
 - vii) a reference to a Party to this Agreement includes the executors, administrators, successors and permitted assigns of that Party;
 - viii) a reference to an individual or person includes a corporation, partnership, joint venture, association, governments, local government authorities and agencies;
 - ix) a reference to the Commission includes any duly authorised officer or agent;

- x) a power, function or discretion of the Commission under this Agreement may be exercised by a person authorised by the Deputy Secretary, the Commission or any person authorised by the Deputy Secretary, either generally or in a particular case;
- xi) a reference to the Commission or the Department includes any duly authorised officer or agent and its successor Government department and all references to the Commission or the Department will be read and constructed as references to the State of Victoria;
- xii) a reference to a recital, clause, schedule or annexure is a reference to a recital, clause, schedule or annexure to this Agreement, each of which forms a part of this Agreement;
- xiii) a cross reference to a clause number is a reference to all its subclauses;
- xiv) where a term is defined, the definition includes all grammatical forms of that term;
- xv) headings are used for references only;
- xvi) terms which are defined in a schedule and which are not otherwise defined in this Agreement have the meaning given to them in that schedule;
- xvii) where the expression 'including' or 'includes' is used it means 'including but not limited to' or 'including without limitation';
- xviii) if any day for the payment of Funds under this Agreement falls on a Non-Business Day, the payment will be due on the next Business Day; and
- xix) a reference to a breach includes a Material Breach.

1.3. General

- a) The provisions of this Agreement do not merge or terminate on completion of the transactions contemplated in this Agreement but, to the extent that they have not been fulfilled and satisfied or are capable of having effect, remain in full force and effect.
- b) No provisions in this Agreement shall in any way fetter, restrict, or prevent the exercise by the Commission of

discretions, elections or options available to the Commission under legislation which is applicable to the Commission (including the Act).

- c) Any waiver of a right or obligation of this Agreement 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.
- d) If a provision in this Agreement 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 the Agreement are enforceable.
- e) It is not necessary for the Commission to make payment before enforcing its right, including a right of indemnity conferred by this Agreement.
- f) Each Party:
 - i) is not an agent, partner, joint venturer or representative of the other Party, and must not hold itself out as such; and
 - ii) must not make any promise, warranty or representation or execute any contract or otherwise deal on behalf of the other Party.
- g) This Agreement may only be varied by the Commission or with the Commission's written approval. The Commission will not unreasonably withhold consent to a request by the RTO to vary the Agreement.
- h) Subject to Clause 5, the RTO must not assign, transfer, novate or otherwise deal with this Agreement or any right under it without the prior written consent of the Commission (not to be unreasonably withheld).
- i) This Agreement is governed by the law of Victoria.
- j) Notwithstanding any other clause or provision in this Agreement or pursuant to this Agreement, the Commission reserves the right to fund or not fund any course or qualification on the RTO's scope of registration at its absolute discretion.

1.4. This Clause 1 continues despite any expiry or termination of the Agreement.

2. TERM OF THIS AGREEMENT

- 2.1. Subject to Clause 2.2, the term of this Agreement will begin on the Commencement Date and continues, in the case of each Eligible Individual to whom the Training Services are being provided by the RTO and in respect of whom the Funds are provided by the Commission, until all relevant Eligible Individuals have completed or withdrawn from the relevant training course or qualification in which they are enrolled (the Term).
- 2.2. The provisions of this Agreement only operate during the Term, except where the Agreement specifies otherwise.
- 2.3. For the avoidance of doubt, any Eligible Individual must commence a training course or qualification with the RTO between the Commencement Date and 31 December 2013.
- 2.4. The Commission may take account of the RTO's performance (including at audit or review) in any calendar year when considering future contractual arrangements with the RTO.

3. GENERAL OBLIGATIONS OF RTO

- 3.1. The RTO must,
 - a) as applicable to and for the RTO:
 - 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; or
 - iii) if the RTO did not have a principal place of business with a physical site in Victoria at the Commencement Date of the Agreement but held a 2011 Skills for Victoria Service Agreement and a 2012 Skills for Victoria Service Agreement with the Commission, maintain registration as a registered training organisation under the National Act;
 - b) 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;
 - c) maintain at least one (1) nationally recognised qualification for delivery on its scope of registration;

- d) maintain and use AVETMISS compliant software for reporting purposes;
- e) deliver nationally recognised training on its Approved Funded Scope and in accordance with the requirements of the accredited course or endorsed national training package and consistent with purchasing guides, directions or policies issued by the Commission;
- f) comply with the AQTF and/or the VET Quality Framework including the Standards for NVR Registered Training Organisations as applicable;
- g) comply with all requirements in the schedules to this Agreement, including in relation to determining eligibility, completing enrolments, levying and collecting tuition fees, application of tuition fee concessions and waivers, Evidence of Participation, and otherwise meeting the relevant specifications and performance standards;
- h) not pay or offer, either directly or indirectly, Incentives to undertake government subsidised training;
- i) use the Funds reasonably for the purpose of providing the Training Services to the relevant Eligible Individual to whom such Funds apply;
- j) unless this Agreement otherwise provides, provide the Training Services to each Eligible Individual and otherwise perform its obligations under this Agreement at its own cost;
- k) ensure each Eligible Individual is made aware in circumstances where they are accessing their Victorian Training Guarantee entitlement that this may impact their access to further government subsidised training;
- l) 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 to each Eligible Individual and receipt of the Funds from the Commission;
- m) not engage, employ, contract or otherwise deal with any Relevant Person that within three (3) years prior to the Commencement Date:

- i) had a contract for government subsidised training delivery with the Commission terminated prior to the expiration date on the basis of performance; or
 - ii) had its registration under the Act or National Act, or relevant equivalent legislation revoked, suspended, cancelled or had restrictions imposed on its registered training organisation operations that the Commission considers would have affected its ability to provide services equivalent to those under this Agreement; or
 - iii) was responsible, via their acts or omissions, for any of the matters raised in sub-clauses 3.1 m) occurring to another person or entity;
- n) ensure that all persons employed or engaged by the RTO to provide the Training Services to each Eligible Individual are aware of all obligations under this Agreement as appropriate;
- o) provide the Training Services in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from an expert and experienced provider of Training Services;
- p) comply with the requirements of, and pay all fees and bear all costs connected with all applicable laws and regulations, including without limitation all relevant privacy, anti-discrimination and equal opportunity legislation, the *Disability Act 2006* and the *Working With Children Act 2005*;
- q) if the RTO is not a Public Authority, comply with the requirements of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) 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 s 4 (c) of the Charter;
- r) demonstrate the highest ethical standards in its dealings and conduct in the provision of the Training Services;
- s) make all reasonable efforts to work and communicate effectively with and maintain the confidence of, all stakeholders affected by this Agreement;

- t) at all times be accountable to the Commission for its performance under this Agreement and demonstrate its compliance, or report its non-compliance, with the terms of this Agreement;
- u) act ethically, and must not do or omit to do anything which may damage, ridicule, bring into disrepute or be detrimental to the Commission, the VET sector, the Victorian government subsidised training market, the Department or the State's name or reputation. In this context, this clause encompasses notions such as:
 - i) behaving honestly and in a way that upholds the objects and values of the *Victorian Training Guarantee Program*;
 - ii) not behaving in a manner that damages the public confidence in the integrity of the *Victorian Training Guarantee Program*;
 - iii) knowing and complying with all policies, procedures and guidelines that relate to the performance by the RTO of its obligations under this Agreement; and
 - iv) not making improper use of the position of trust placed in the RTO in the appropriate expenditure of substantial amounts of public moneys for vocational education and training;
- v) not, in providing the Training Services to each Eligible Individual, do any act or undertake any process which would infringe an Intellectual Property right of, the Commission, the State or any other person or body;
- w) have a valid ABN and keep the Commission indemnified against any loss arising out of the cancellation of the ABN; and
- x) immediately notify the Commission in writing of any significant changes to its ownership or operations (including its financial viability and any intention or decision to cease operations as an RTO in Victoria).

4. PROVISION OF THE TRAINING SERVICES

- 4.1. The RTO must provide high quality training and assessment including teaching and learning strategies, have strong links to industry and provide support to Eligible Individuals.

- 4.2. The RTO must provide the Training Services to each Eligible Individual:
- a) in accordance with the schedules to this Agreement and any applicable directions, policies or procedures issued by the Commission and/or the State from time to time (including as set out in any Service Agreement Notifications or Executive Memoranda, the contents of which the RTO acknowledges and agrees will form part of this Agreement and will prevail over the requirements of this Agreement including any of its schedules to the extent that they are expressed to do so or to the extent that they are inconsistent with those requirements);
 - b) exercising due care, skill and judgment and at all times acting in accordance with applicable professional ethics, principles and standards;
 - c) through fit and proper persons, in a safe and proper manner and to a standard acceptable to the Commission ; and
 - d) within the State of Victoria, and to an Eligible Individual having a physical presence in Victoria. This includes online delivery except where online delivery takes place during an industry or practical placement and involves the Eligible Individual being temporarily located interstate or overseas for a defined period. During this defined period, no more than 50% of the total scheduled hours applying to the Training Services in which the Eligible Individual is enrolled may be delivered online.

5. SUBCONTRACTING OF THE TRAINING SERVICES

Training and assessment

- 5.1. The RTO may only subcontract training and assessment relating to its Approved Funded Scope to another RTO that is currently contracted under a 2013 Service Agreement. For the avoidance of doubt, both RTOs must be contracted with the Commission and both must have the relevant Approved Funded Scope. The Commission may, however, in its absolute discretion, approve a written request from the RTO to subcontract training and assessment relating to its Approved Funded Scope to another RTO that is not contracted under a 2013 Service Agreement.

- 5.2. The RTO may only subcontract some or all assessment relating to Recognition of Prior Learning (RPL) if both the contracted RTO and the subcontracted RTO are on the RPL Approved Provider List.
- 5.3. Subcontracting training and assessment under Clauses 5.1 or 5.2 is an arrangement where the RTO defers day-to-day responsibility for all or part of the management and conduct of training delivery and assessment activities for subsidised training to another RTO. Where an individual or organisation is solely engaged to conduct the role of trainer or assessor and is not an RTO then this would not represent a subcontracting arrangement as defined under Clauses 5.1 or 5.2.
- 5.4. If the RTO enters into a subcontract arrangement under Clauses 5.1 or 5.2, it must refer on its website and corporate materials to the identity of the subcontracted RTO, and the respective roles in the provision of training and assessment.
- 5.5. The RTO must ensure that each Eligible Individual who receives training and assessment under a subcontract arrangement under Clauses 5.1 or 5.2 is aware that they are enrolled with the RTO, not the subcontracted RTO.
- 5.6. The RTO must ensure that any subcontract arrangement entered into under Clauses 5.1 or 5.2 does not allow a party or person other than the contracted RTO to award to an Eligible Individual a qualification for which this Agreement provides.
- 5.7. A subcontract arrangement entered into under Clauses 5.1 or 5.2 must be on terms that the RTO may immediately terminate the arrangement if the subcontracted RTO's Service Agreement with the Commission is suspended or terminated.

Broker Arrangements

- 5.8. The RTO must promptly notify the Commission via SVTS if the RTO enters into an arrangement for Brokering Services under this Agreement.

All subcontracting arrangements

- 5.9. The RTO represents and warrants to the Commission that all subcontractors it will use under this Agreement have appropriate qualifications and are suitably experienced and capable of providing Training Services as required by this Agreement.
- 5.10. If the RTO 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 Agreement; and
 - iii) otherwise permits the RTO to comply with its obligations under this Agreement;
- b) must provide a copy of the executed subcontract agreement to the Commission if requested;
 - c) retains prime responsibility for all of its obligations under this Agreement and any subcontract arrangement does not relieve the RTO of any of its liabilities or obligations under this Agreement or to otherwise provide the Training Services to an Eligible Individual;
 - 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 Agreement;
 - e) is liable to the Commission 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 RTO (or the employees, officers or agents of the RTO);
 - f) indemnifies (and must keep indemnified) the Commission 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 to an Eligible Individual or any breach of this Agreement;
 - g) acknowledges that the Commission is not liable for the RTO's subcontractor arrangements and will not become involved in the internal administration of subcontracts or act as a mediator between the RTO and any subcontractor;
 - h) acknowledges that all costs associated with any subcontract are the responsibility of the RTO; and
 - i) must procure that any subcontractor assists, if requested by the Commission or its auditors or reviewers, with any audits or reviews under Clause 11 of this Agreement.

This Clause 5.10 continues despite any expiry or termination of the Agreement.

6. PROMOTIONAL MATERIALS AND OTHER PUBLICATIONS

6.1. In any promotional publication, report, signage or other material prepared by (or on behalf of) the RTO relating to the Training Services, the RTO 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 Commission, use any logo or trademarks of the State or the Commission;
- c) ensure that such materials meet the requirements of the *Equal Opportunity Act 2010* and related laws, including the provision of materials encouraging individuals with disabilities to access government subsidised training;
- d) ensure marketing and advertising of the Training Services to prospective clients is ethical, accurate and consistent with the requirements under this Agreement and at law; and
- e) identify the RTO legal entity and/or trading name and TOID.

6.2. The RTO must publish on its website a copy of its most recent registration audit report.

6.3. The RTO must publish on its website a copy of its most recent Quality Indicators (or its successor). Indicators relating to the previous calendar year must be published within one (1) month of the Commencement Date. Indicators relating to the current calendar year must be published by 31 July of each calendar year into which the Term extends. The following Explanatory Notes must be published with the Indicators:

- a) For the Learner Engagement and Employer Satisfaction Surveys:

‘These indicators are based on a survey of [number] students (and if applicable) and [number] employers. This sample represents [percentage] per cent of this

organisation's training delivery in the [201X] calendar year. The students (if applicable) and employers surveyed for these indicators were selected by this organisation in accordance with national guidelines'.

b) For the Competency Completions Reports:

'Competency completions, in this case, are a measure of volume'.

6.4. The RTO must publish on its website:

a) standard hourly fees for government subsidised training for each course/qualification it offers under this Agreement. 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'; and

b) details of any other fees including but not limited to student services, amenities, goods or materials.

6.5. The RTO must publish on its website its complaints and appeals process.

7. REPORTING

7.1. The RTO must:

a) use an electronic Student Management System that complies with the *Victorian VET Student Statistical Collection Guidelines* as issued by or on behalf of the Commission from time to time;

b) provide Student Statistical Reports to the Commission in relation to the Training Services being provided by the RTO to Eligible Individuals which are compliant with the *Victorian VET Student Statistical Collection Guidelines*;

c) submit Student Statistical Reports to the Commission via the SVTS no less than once every calendar month per collection year. Each monthly submission must include full details for all reportable training activity already delivered within the collection year. This includes delivery already commenced/underway and/or completed in the current collection year; and reporting in relation to qualification completions;

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- d) in the event that data previously submitted by the RTO as part of Student Statistical Reports to the Commission is incorrect, resubmit correct data by no later than the following month's Student Statistical Report;
 - e) 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 Commission 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 the Agreement.
 - f) participate in the National Student Outcomes Survey managed by the National Centre for Vocational Education and Research (NCVER);
 - g) advise students of the possibility of receiving an NCVER survey and/or an invitation to participate in a Department endorsed project and/or being contacted by the Commission (or persons authorised by the Commission) for audit or review purposes;
 - h) in each calendar year into which the Term extends, submit the percentage of trainers and assessors of the RTO who hold a Diploma level qualification or Diploma level equivalent or above, as at 30 June 2013, to the Commission in a format to be notified by the Commission. This includes trainers and assessors directly employed by the RTO and engaged through any subcontracting or third party arrangements;
 - i) provide such other reports relating to the Agreement, the Training Services or the Funds as reasonably requested by the Commission and within a reasonable period of time from such a request; and
 - j) in each calendar year into which the Term extends, submit data to the Commission on the following three (3) Quality Indicators (or its successor) for the preceding calendar year in a format to be notified by the Commission:
 - i) Competency completion;
 - ii) Learner engagement; and
 - iii) Employer satisfaction,

on or before 30 June of each year, or within one (1) month of the Commencement Date whichever is later. This Clause 7.1 j) continues despite any expiry or termination of the Agreement.

Quality Indicators

- 7.2. The Commission will not share or release to other parties any Quality Indicator data (or its successor) provided by the RTO under this Agreement on an individual RTO basis.
- 7.3. The RTO acknowledges that the Commission may publish aggregated Quality Indicator data gathered through this process and use it to inform future quality improvement initiatives that support and promote quality training provision. This Clause 7.3 continues despite any expiry or termination of the Agreement.

Government subsidised tuition fees

- 7.4. The RTO must report (in cents) the actual tuition fee per hour charged to each Eligible Individual for government subsidised training via the Client Tuition Fee field in the Student Statistical Report.
- 7.5. The RTO acknowledges that the Commission may publish fee information related to government subsidised training gathered through this process on an individual RTO basis. This Clause 7.5 continues despite any expiry or termination of the Agreement.

8. FUNDING AND PAYMENTS

- 8.1. Subject to Clauses 8.3, 17 and 18, the Commission agrees to pay the Funds in respect of each Eligible Individual to whom the RTO is providing the Training Services. The Commission will make payment of the Funds to the RTO in accordance with procedures set out in Schedule 1.
- 8.2. The RTO acknowledges and agrees:
- a) that the Commission's payment of the Funds to the RTO in respect of an Eligible Individual under this Agreement is conditional upon the Commission being satisfied (and continuing to be satisfied) that:
 - i) the Training Services are being provided by the RTO to the relevant individual in accordance with this Agreement; and
 - ii) the Funds are being reasonably applied by the RTO for the purpose of the provision of the Training Services to that individual, or on matters that

reasonably relate to providing the Training Services;

- b) that the Commission is only obliged to pay the Funds to the RTO in respect of an Eligible Individual:
 - i) until, and on condition that, the Eligible Individual completes the training course or qualification, or part thereof, in which they are enrolled; or
 - ii) until the Eligible Individual withdraws from the training course or qualification in which they are enrolled;
- c) that the Commission may at its sole discretion vary any or all parts of the Funds that are to be paid to the RTO in respect of one or more Eligible Individuals under this Agreement on 20 Business Days written notice, 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 Commission's *Victorian Training Guarantee* program budget; and
 - iii) in respect of an Eligible Individual who at the time a variation is made has already enrolled in and commenced an eligible course or qualification with the RTO during the 2013 calendar year;
- d) that the Commission will only pay the Funds under this Agreement in respect of an Eligible Individual to the RTO and not to any other party;
- e) that the Funds and associated payment arrangements constitute the full extent of Funds available to the RTO from the Commission for provision of the Training Services in respect of an Eligible Individual; and
- f) that the RTO is not entitled to and may not claim any additional funding or assistance from the Commission in relation to the Training Services.

8.3. Without limiting Clauses 17 and 18, or any other rights of the Commission, the Commission may deduct from any payment of Funds due to the RTO under this Agreement in respect of Contact Hour Funds, or seek payment from the RTO in respect of Contact Hour Funds:

- a) any amounts due to the Commission by the RTO under this Agreement;
- b) money paid for the provision of any Training Services to Eligible Individuals that the Commission is satisfied (in its absolute discretion) have not been provided by the RTO in accordance with this Agreement;
- c) money expended by the Commission to make good any non compliance by the RTO with this Agreement; and
- d) money paid by the Commission to auditors or reviewers, or any other authorised person, to verify the delivery, replacement or correction of any of the Training Services by the RTO.

This Clause 8.3 continues despite any expiry or termination of the Agreement.

9. GST

- 9.1. Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.
- 9.2. All suppliers under this Agreement must be registered for GST. If GST is payable in respect of any supply made under this Agreement by a supplier under this Agreement, the Commission 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 Commission 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 Commission contains an embedded RCTI Agreement.
- 9.4. If an adjustment event occurs in relation to a taxable supply under this Agreement, the Commission will provide to the supplier a recipient created adjustment note.
- 9.5. This Clause 9 continues despite any expiry or termination of the Agreement.

10. ACCOUNTS AND RECORDS

- 10.1. If there is any inconsistency between the obligations of the RTO with respect to Records and Recordkeeping in this Clause 10 and any obligations in the AQTF and/or the VET Quality Framework including the SNR as applicable, the obligations in the AQTF and/or the VET

Quality Framework including the SNR as applicable, will apply to the extent of the inconsistency.

- 10.2. On termination or expiry of this Agreement, the RTO will retain ownership and custody of its Records.
- 10.3. The RTO 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 RTO. The Recordkeeping system must comply with all applicable standards issued under the *Public Records Act 1973 (Vic)* (PR Act).
- 10.4. The RTO must store and ensure the security of all Records in accordance with all applicable standards issued under the PR Act.
- 10.5. The RTO must immediately provide access to the Records in the following circumstances:
 - a) in accordance with requirements in the PR Act and any other 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 Commission or an authorised representative of the Commission for any purpose connected with this Agreement.
- 10.6. Subject to Clauses 10.7 and 10.8, the RTO must only dispose of Records in accordance with standards issued under the PR Act (including the General Retention & Disposal Authority for the Records for Higher and Further Education Institutions) and in accordance with any specific instructions provided by the Commission from time to time.
- 10.7. The RTO must not dispose of any Records:
 - a) that are required as part of enrolment processes to confirm an individual's eligibility for government subsidised training under the Agreement, including records required under Schedule 1, and to confirm the application of fees in accordance with the requirements of this Agreement, for at least seven (7) years after the relevant Eligible Individual has completed or withdrawn from the relevant training course or qualification in which they are enrolled; or
 - b) related to Training Plans for at least two (2) years after the relevant Eligible Individual has completed or

- withdrawn from the relevant training course or qualification in which they are enrolled; or
- c) related to Evidence of Participation requirements under this Agreement, including but not limited to assessment records, for at least two (2) years after the relevant Eligible Individual has completed or withdrawn from the relevant module or unit of competency in which they are enrolled.
- 10.8. The RTO must ensure that all Records are made available to the Commission on request, including taking any number of copies of any Records or other documents as required and determined by the Commission or Department (or persons authorised by the Commission or Department).
- 10.9. The RTO indemnifies the Commission from and against any Liability or Claim made by any person for Loss suffered or incurred in connection with a breach of the RTO's obligations under this Clause 10.
- 10.10. Without limiting any of the above obligations in this Clause 10, the RTO must:
- a) ensure appropriate accounting processes and controls are implemented and administered in connection with the Agreement, the Training Services and the Funds;
 - b) keep complete Records and accounts of all dealings connected with this Agreement, including as required by law and any regulatory authorities applicable to the RTO, which may include quotations, invoices and receipts and must indicate particulars of and payments to any subcontractors;
 - c) upon request by the Commission or Department, make available to the Commission for inspection at a location in Victoria specified by the Commission during business hours, all books, documents or other records in its possession, control or power relating to the Funds or the Training Services;
 - d) supply any information reasonably required by the Commission for the purposes of this Agreement, including information sufficient to allow the Commission to satisfy itself as to the financial position of the RTO, the use of the Funds and/ or the capacity of the RTO to deliver the Training Services to Eligible Individuals;
 - e) retain, and make available to the Commission or Department, or its auditors or reviewers for audit or

review purposes, all records relating to the Training Services, including Evidence of Participation in respect of each Eligible Individual to whom the RTO provides the Training Services;

- f) comply with all laws and standards applicable to the RTO relating to Recordkeeping, including the recordkeeping requirements outlined in the AQTF and/or the VET Quality Framework including the SNR, *Information Privacy Act 2000*, and the *Electronic Transactions (Victoria) Act 2000*; and
- g) keep accounting Records in relation to the Funds provided by the Commission under this Agreement 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 Commission.

10.11. This Clause 10 continues despite any expiry or termination of the Agreement.

11. AUDIT OR REVIEW

11.1. The RTO acknowledges that:

- a) the Commission or Department (or persons authorised by the Commission or Department) may conduct an audit or review of the RTO at any reasonable time:
 - i) in order to confirm whether the RTO is complying with this Agreement;
 - ii) in order to establish whether and to what extent the Funds have been used for the provision of the Training Services to Eligible Individuals;
 - iii) in order to investigate allegations or suspected misuse of the Funds; and/or
 - iv) if applicable, as part of the Commission's Audit and Risk Committee's Internal Audit Plan.

11.2. For the avoidance of doubt, whether the time of an audit or review under Clause 11.1 is reasonable may be informed by timing considerations connected to the Commission's need to ensure the proper administration of the Agreement and the Funds.

11.3. The RTO must provide the Commission or Department (or persons authorised by the Commission or Department) with all assistance needed to perform the audit or review, including providing access to

office space, telephones and photocopy facilities at the RTO's premises.

11.4. Without limiting the Commission's rights under Clause 18, the Commission may invoke any of its rights under Clause 17 in response to any audit outcomes or review outcomes identifying non compliance with the Agreement or any misuse of the Funds.

11.5. The RTO must:

- a) permit, whenever the Training Services are being provided to Eligible Individuals and otherwise at all reasonable times, the Commission or Department (or persons authorised by the Commission or Department) to enter its premises, and areas within those premises that are used for the Training Services, to conduct audits or reviews;
- b) participate in and assist, as required, with any audits or reviews required by the Commission or Department, including the Commonwealth Department of Education, Employment and Workplace Relations Invalid Enrolment Audit and any other audits or reviews specified in the schedules to this Agreement;
- c) take steps to prevent future instances of non compliance with the Agreement which are identified by an audit or review through implementation of a management action plan agreed between the RTO and the Commission (or persons acting on behalf of or engaged by the Commission);
- d) within 6 months of an auditor notifying the RTO in writing of its recommendations, advise the Commission in writing (including submitting appropriate documentation as determined by the Commission) of compliance with and implementation of the auditor's recommendations and/or management action plan as referred to in this Clause 11.5 c), except in circumstances where the Commission has agreed to or required, in writing, an alternate timeframe;
- e) reimburse any costs incurred by the Commission in conducting audits or reviews, if directed to do so; and/or repay any funds paid for the provision of any Training Services to Eligible Individuals that the Commission is satisfied (in its absolute discretion) have not been provided by the RTO in accordance with this Agreement;

- f) respond fully in writing to the Commission (within a timeframe specified by the Commission) on any matter requested by the Commission relating to audits or reviews;
- g) conduct an internal audit of its compliance with the provisions of this Agreement during the 2013 calendar year, using a checklist supplied by the Commission. The internal audit must be:
 - i) completed within six (6) months from the Commencement Date or, if the Commencement Date is after 1 July 2013, completed by 31 December 2013;
 - ii) signed off by the CEO of the RTO; and
 - iii) provided to the Commission or its auditors or reviewers on request.
- h) develop an improvement plan within a reasonable timeframe to rectify any instances of non compliance with the Agreement which are identified through the internal audit specified above. The improvement plan (if required) must be made available to the Commission or its auditors or reviewers on request; and
- i) participate in and assist, as required, with any Peer Review Panel as reasonably requested by the Commission or Department;

Peer Review Panel

- 11.6. The RTO agrees that it will ensure that its CEO or representative accepted by the Department or Commission is available to participate in a Peer Review Panel process:
- a) at least once per year at the reasonable request of the Department or Commission; and
 - b) for a period of time that enables the CEO or other representative to actively participate as a sitting panel member for up to three business days in one calendar year.
- 11.7. If a matter comes to the attention of MMU that is:
- a) relevant to the conduct, advertising or pricing of the Training Services; and
 - b) falls within the scope of the MMU's purpose;

the MMU may convene a Peer Review Panel to consider the matter.

- 11.8. The MMU may seek the participation of the RTO's CEO or other representative in any particular Peer Review Panel on 1 month's written notice.
- 11.9. Before giving the CEO or other representative material that is to be considered by the Peer Review Panel, the MMU may require that the CEO or other representative sign, as a condition of participation:
- a) a confidentiality deed; and
 - b) a terms of reference document.
- 11.10. The RTO agrees and acknowledges that its CEO or other representative may be restricted from sharing information in relation to the Peer Review Panel publically and with other personnel at the RTO.
- 11.11. The RTO agrees and acknowledges that:
- a) the Peer Review Panel will be required to give any report, recommendation, finding or other document that it produces directly to the MMU for consideration; and
 - b) the MMU is under no obligation of any kind by reason of this Agreement to adopt, recommend, publish, release or refer that material.
- 11.12. If the RTO fails to comply with any of its obligations under Clause 11 to assist, permit or participate in an audit or review, or prevents or delays an audit or review from occurring:
- a) the Commission at its sole discretion and not withstanding Clause 18.3 (c) may serve a notice on the RTO specifying:
 - i) an amount, being some or all of the Funds it has paid to the RTO in respect of Training Services; and
 - ii) a reasonable time by which the RTO must pay that amount to the Commission.
 - b) The RTO must pay the amount in accordance with the notice unless one of the event/s in Clause 11.12 (c) occurs.
 - c) The RTO is not required to pay the amount in accordance with the notice if immediately on receipt of the notice, and to the Commission's satisfaction, the

RTO notifies the Commission and meets its obligations under Clause 11 and allows the audit to occur.

- d) If the RTO fails to pay the amount in accordance with the notice, and the events in Clause 11.12 (c) do not occur, the Commission may seek the payment of the amount as a debt recoverable before a court or tribunal of competent jurisdiction without the requirement for any further proof.

11.13. A demand under Clause 11.12 is without prejudice to any of the Commission's other rights.

11.14. This Clause 11 continues despite any expiry or termination of the Agreement.

11.15. This Clause 11 applies to Clause 9 of Schedule 1 of this Agreement. To be clear, Clause 9 of Schedule 1 of this Agreement continues despite any expiry or termination of the Agreement.

12. THE MARKET MONITORING UNIT

Purpose of the MMU

- 12.1. The RTO acknowledges and agrees that the MMU's purpose is to:
- a) monitor, analyse and report on matters relating to the efficiency of the government subsidised VET market in Victoria, including competition, price, and the quality of training outcomes; and
 - b) in connection with those actions and matters:
 - i) conduct reviews or investigations and evaluate the practices of a particular government subsidised body, including the RTO, through a Rapid Response Team; and
 - ii) convene and administer a Peer Review Panel.

Collection and disclosure of information by the MMU

- 12.2. The RTO acknowledges and agrees that:
- a) the MMU, by reason that it is part of the Department, holds and may exercise and enjoy each right, power, entitlement and benefit that the Department has under this Agreement or otherwise, including any right, power, entitlement or benefit regarding the collection of, access to and disclosure of information; and

- b) if the MMU exercises or enjoys a right, power, entitlement or benefit regarding the collection of, access to and disclosure of information under this Agreement:
 - i) it does so for the purpose referred to in Clause 12.1; and
 - ii) may exercise and enjoy the right, power, entitlement or benefit with such additional scope as may be necessary to enable it to fulfil the purpose referred to in Clause 12.1.

12.3. For the avoidance of doubt:

- a) no restriction under this Agreement on the RTO disclosing or permitting the disclosure of information applies to the access to or collection of information by the MMU pursuant to Clause 12.2; and
- b) nothing in this Clause 12 prevents the MMU from disclosing any information that it collects to another part of the Department.

13. CONFIDENTIALITY AND PRIVACY

13.1. The RTO must not, without the prior written approval of the Commission, disclose (or permit the disclosure of) information regarding this Agreement (including details of the Funds being provided by the Commission in respect of any Eligible Individual) or any Confidential Information of the Commission, the Department or the State, except:

- a) to the extent required under this Agreement;
- b) to the extent required by Law;
- c) to the extent that the information is already in the public domain (other than due to a breach of this Agreement);
- d) to its solicitors, barristers and / or other professional advisors in order to obtain advice in relation to its rights under this Agreement, the Training Services or the Funds and provided such advisors are under a duty of confidentiality;
- e) to the extent necessary for the registration or recording of documents where required; and / or
- f) to the extent required in connection with legal proceedings;

and then only to the extent strictly necessary for that purpose.

13.2. The RTO acknowledges and agrees that:

- a) the Commission at its discretion may disclose any and all information relating to the RTO and this Agreement including course and qualification details, government subsidised fee information, details of the Funds paid, details of any non-compliance by the RTO with this Agreement, any action taken by the Commission under this Agreement, and findings and outcomes of any audits or reviews undertaken pursuant to this Agreement;
- b) the Commission may make a disclosure referred to in (a), and regarding any suspected non-compliance by the RTO, to the MMU;
- c) disclosure by the Commission of information regarding this Agreement (including details of the Funds paid) or any Confidential Information of the RTO may be required in certain circumstances; and
- d) it consents to such disclosure and, if required, will use all reasonable endeavours to assist the Commission in meeting any of its disclosure obligations including, without limitation:
 - i) in connection with permitted re-tendering or any benchmarking or market testing;
 - ii) under the *Freedom of Information Act 1982*;
 - iii) under the *Ombudsman Act 1973*; or
 - iv) to satisfy the disclosure requirements of the Victorian Auditor-General under the *Audit Act 1994* or of Parliamentary accountability or in the case of a Minister to fulfil their duties of office.

13.3. For the avoidance of doubt, a disclosure under Clause 13.2 may be to an entity that is the equivalent of the Commission in another State or Territory, to any relevant government department; to the Department, or to a regulator.

13.4. The RTO 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 RTO under or in connection with this Agreement in the same way and to the same extent as the Commission would have been bound had it been directly done or engaged in by the Commission.

- 13.5. The RTO must include a standard privacy notice in all enrolment forms, in accordance with the *Victorian VET Student Statistical Collection Guidelines* which advises students how their data may be supplied to and used by the Commission and Commonwealth VET Fee-Help agencies.
- 13.6. This Clause 13 survives the expiry or termination of this Agreement.

14. LIABILITY, INDEMNITY AND INSURANCE

- 14.1. The RTO acknowledges that it is solely responsible for carrying out its obligations under this Agreement and that the Commission is in no way liable for the actions of the RTO or its personnel.
- 14.2. The RTO releases the Commission from all liabilities and Claims directly or indirectly incurred or suffered by the RTO or its personnel arising from or in connection with this Agreement, including termination of the Agreement under Clause 18.
- 14.3. To the maximum extent permitted by law, the RTO indemnifies (and must at all times keep indemnified) the Commission, the State and their employees, servants and agents (on behalf of whom the Commission has agreed this Clause 14.3) from and against all Loss and liability 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 this Agreement and:
- a) the provision of, or failure to provide, Training Services by or on behalf of the RTO;
 - b) any act or omission of the RTO, its officers, employees, agents or subcontractors in connection with this Agreement, the Funds or the provision of the Training Services;
 - c) any breach by the RTO of any obligation under this Agreement (including breach of any warranty given under this Agreement) or at law;
 - d) any negligent, fraudulent, reckless, wilfully wrongful, unlawful or other wrongful act or omission of the RTO, its officers, employees, agents, or subcontractors;
 - e) the loss of, or damage to, any property (including property of the Commission) or data;
 - f) the death of, disease or injury to any person; and
 - g) any infringement, or alleged infringement, of an Intellectual Property right by the RTO, 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 Agreement.

- 14.4. The RTO's liability to indemnify the Commission under Clause 14.3 will be reduced proportionally to the extent that a negligent, wilfully reckless, or unlawful act or omission of the Commission has directly caused the relevant liability.
- 14.5. The Commission will not have any liability to the RTO for any indirect, special or consequential Loss arising out of breach of this Agreement.
- 14.6. The RTO must, at its own expense:
- a) take out and maintain until 7 years after expiry of the Term all appropriate insurances at an adequate level to cover the provision of the Training Services to Eligible Individuals 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 Commission upon request; and
 - e) immediately notify the Commission if any insurance is cancelled, any insurance details change or an insurer refuses to indemnify it.
- 14.7. This Clause 14 continues despite any expiry or termination of the Agreement.

15. NOTICES AND REPRESENTATIVES

- 15.1. A notice issued under this Agreement by a Party (Notice) must:

- a) be in writing;
 - b) signed by or on behalf of the Party giving it; and
 - c) be hand delivered or sent by pre paid post (airmail if posted to or from a place outside Australia) to the recipient's address for Notices specified on offer and acceptance documentation relating to this Agreement (as varied by any notice given by the recipient to the sender).
- 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 pre paid 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 Agreement are as follows:
- a) the Commission's representative is the Executive Director or the Deputy Secretary, the Department; and
 - b) the RTO's representative is the CEO.
- 15.4. This Clause 15 continues despite any expiry or termination of the Agreement.

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 Agreement.
- 16.4. This clause does not affect the rights of the Commission, which includes all of its rights and its right to terminate this Agreement.
- 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.

- 16.6. If a Party provides a Dispute Notice under this Clause 16, it is open to either Party to provide written 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 that Dispute Resolution process as specified in this Clause 16 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 (7) 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 (7) days to attempt to settle the Dispute.
- 16.9. If the representatives are unable to resolve the Dispute within seven (7) days of first meeting, the Dispute must be referred within a further seven (7) day period (Referral Period) to:
- a) in the case of the Commission - its Executive Director or the Deputy Secretary of the Department, or delegate; and
 - b) in the case of the RTO – its CEO .
- 16.10. The Commission's representative and the CEO must meet with each other to seek to resolve the Dispute within seven (7) days of the last day of the Referral Period.
- 16.11. If the Dispute is not resolved within seven (7) days of the first meeting of the Commission's representative and the CEO, the Commission 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 Commission:
- a) the parties will agree on a mediator within 7 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 Commission may notify the Minister of any Dispute.
- 16.14. In the event that the Commission 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 Commission may, in its sole discretion, 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 Clause 11 or Clause 18 of the Agreement, or Clause 9 of Schedule 1 of the Agreement.

17. SUSPENSION AND RIGHT TO WITHHOLD FUNDS

- 17.1. The Commission may take one or more of the actions in Clause 17.2 if:
- a) the RTO has breached, or the Commission reasonably suspects that the RTO has breached or may breach a clause of this Agreement; or
 - b) an event referred to in Clause 18.3 has occurred, or the Commission reasonably suspects that such an event has occurred or may occur; or
 - c) the Commission becomes aware of what it considers to be an irregularity or inconsistency regarding the RTO's operations, reporting or other obligations under this Agreement, which the RTO fails to explain to the Commission's reasonable satisfaction in the time required by the Commission; or
 - d) the RTO fails to provide immediate written notice to the Commission in accordance with Clause 3.1(x); or
 - e) the Commission becomes aware of any communication, representation or step taken by ASQA or VRQA that indicates that ASQA or VRQA has formed an adverse view in relation to the RTO, or which the Commission considers will impair the RTO's performance of this Agreement.

- 17.2. The Commission may by written notice:
- a) direct the RTO to suspend part or all of the provision of Training Services under this Agreement (whether in respect of one Eligible Individual, a group of Eligible Individuals or all Eligible Individuals);
 - b) withhold, suspend, cancel or terminate payment of any part of the Funds as the Commission determines is appropriate until the Commission is satisfied that the issue has been satisfactorily resolved;
 - c) require the RTO to refund such amount of the Funds previously paid as the Commission reasonably deems appropriate (together with interest calculated daily at the rate prescribed under Penalty Interest Rates Act 1983 (Vic) at the date of this Agreement until the amount is refunded by the RTO);
 - d) set off money which the Commission is satisfied is due to it by reason of the RTO's non-compliance with this Agreement from Funds payable to the RTO under this Agreement.
- 17.3. The RTO must immediately comply with a direction from the Commission given under Clause 17.1 or Clause 18, which may include a direction to assist Eligible Individuals to transfer to another RTO in order to continue the training commenced by the Eligible Individual, under this Agreement.
- 17.4. This Clause 17 continues despite any expiry or termination of the Agreement.

18. TERMINATION RIGHTS

- 18.1. In addition to any other rights it has to terminate this Agreement, the Commission may in its sole and absolute discretion terminate this Agreement at any time by giving the RTO 20 Business Days written notice of termination.
- 18.2. This Agreement may be terminated at any time by written agreement between the Parties.
- 18.3. The Commission may terminate this Agreement immediately by written notice to the RTO if:
- a) the RTO commits a Material Breach of this Agreement;
 - b) the RTO commits a breach of this Agreement which cannot be remedied;

- c) the RTO commits a breach of this Agreement and the RTO:
 - i) fails to commence action to remedy the breach within 10 Business Days after the Commission 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 Commission's notice;
 - d) without limiting Clauses 18.3 a), b) or c), the RTO fails to provide some or all of the Training Services for which Funds have been paid or if the Training Services are not provided to a standard satisfactory to the Commission;
 - e) there has been any fraud or reasonably suspected fraud relating to the RTO or the Funds, misappropriation of Funds by the RTO or there has otherwise been any misleading or deceptive conduct on the part of the RTO in connection with this Agreement or the provision or use of the Funds;
 - f) an Insolvency Event occurs in relation to the RTO;
 - g) at any time, the ultimate holding company of the RTO (as defined in Clause 9 of the *Corporations Act 2001* (Cth)), as at the date of this Agreement ceases to be the ultimate holding company of the RTO; or if there is a change which the Commission (acting reasonably) considers material in the ownership of the RTO;
 - h) the RTO has made, or the Commission reasonably suspects that the RTO has made any false or misleading representation to the Commission in connection with this Agreement (whether by act or omission, and whether before or after the Commencement Date);
 - i) the registration of the RTO under applicable legislation is suspended, withdrawn, cancelled or otherwise ceases.
- 18.4. The RTO must promptly notify the Commission if the RTO becomes subject to an Insolvency Event or if any event occurs that may be covered by Clauses 18.3.g) or 18.3.i).
- 18.5. Termination of this Agreement does not affect any accrued rights of either Party. Termination of this Agreement does not affect any

provisions which are stated, or by their context required, to survive termination or expiry, including Clauses 1, 5.10, 7.3, 7.5, 8.3, 9, 10, 11, 13, 14, 15, and 17.

- 18.6. If the Commission terminates this Agreement other than under Clause 18.1, or under Clause 18.3 f) from the date of an Insolvency Event occurring as envisaged under c) to j) of the definition of an Insolvency Event, or Clause 18.3 i) from the date of suspension or cancellation, the Commission may require the RTO to refund such amount of the Funds previously paid by the Commission as the Commission 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 Commission demanding the refund and the RTO refunding the Funds).

2013 Service Agreement

Schedule 1

Victorian Training Guarantee Program Specifications

PURPOSE

This Schedule 1 describes the program specifications and minimum performance standards for the Training Services funded through the 2013 Service Agreement (the Agreement) and must be read in conjunction with the Agreement.

1 ELIGIBILITY

Eligibility Exclusions

- 1.1 An individual is not eligible for government subsidised training under this Agreement if the individual is:
- a a student enrolled in a school and seeking to enrol in accredited vocational education and training (VET) that has been arranged by, or in conjunction with, the school (excluding a School Based Apprentice/Trainee). Government schools are responsible for funding these opportunities for VET 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. This, of course, does not preclude an individual of school age accessing VET opportunities separate to and outside of their school education; or
 - b a prisoner within the meaning of the *Corrections Act 1986* who is held at any one of the following custodial settings:
 - i Ararat Prison
 - ii Barwon Prison
 - iii Beechworth Prison
 - iv Dame Phyllis Frost Centre
 - v Dhurringile Prison
 - vi Langi Kal Kal Prison
 - vii Loddon Prison
 - viii Marngoneet Correctional Centre
 - ix Tarrengower Prison
 - x Truganina (Metropolitan Remand Centre)
 - xi West Melbourne (Melbourne Assessment Prison)
 - xii Fulham Correctional Centre
 - xiii Port Phillip Prison
 - c A person who is detained under the *Mental Health Act 1986*; or the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* or the *Sentencing Act 1991* at the Thomas Embling Hospital.

- d A person who is detained (other than on weekend detention) under the *Children, Youth and Families Act 2005* or the *Sentencing Act 1991* or who is held on remand in one of the following youth justice facilities:
 - i Malmsbury Juvenile Justice Centre
 - ii Parkville Youth Residential Centre
- 1.2 The exclusions described in Clauses 1.1 b, c and d of this Schedule 1 do not apply to young people on community based orders made under the *Children, Youth and Families Act 2005*, or individuals held in Judy Lazarus Transition Centre who, subject to Clause 1 of this Schedule 1, may be eligible for funding under this Schedule 1 as they are able to physically access training outside of a custodial setting without supervision.

Eligibility Requirements

- 1.3 The RTO must apply the following requirements to determine whether an individual is eligible for government subsidised training under this Schedule 1 and thereby be an Eligible Individual for the purpose of this Agreement.
- 1.4 To be eligible, an individual must meet *Victorian Training Guarantee* requirements as follows:
- a An individual must be:
 - i an Australian citizen; or
 - ii a holder of a permanent visa; or
 - iii a New Zealand citizen;and
 - b An individual must enrol and commence training in a course or qualification provided by the RTO between the later of 1 January 2013 or when this Agreement is executed, and 31 December 2013 inclusive and be:
 - i under 20 years of age (as at 1 January 2013) and seeking to enrol in nationally recognised training; or
 - ii over 20 years of age (as at 1 January 2013) and seeking to enrol in nationally recognised training in an Approved Foundation Skills List course; or
 - iii over 20 years of age (as at 1 January 2013) and seeking to enrol in nationally recognised training as an Apprentice (not Trainee); or
 - iv over 20 years of age (as at 1 January 2013) and seeking to enrol 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 2013) and seeking to enrol 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.
- 1.5 An individual is eligible to commence a maximum of two government subsidised courses in 2013. Where an individual is enrolled in a course(s) that is scheduled to commence at a later date in 2013, this course(s) must be counted for the purpose of this clause when assessing eligibility.
- 1.6 An individual is eligible to undertake a maximum of two government subsidised courses at any one time in 2013.
- 1.7 For the purposes of Clauses 1.5 and 1.6 of this Schedule 1, qualifications listed in the Approved Foundation Skills List will not be counted towards the course maximums.
- 1.8 For the purposes of Clauses 1.5 and 1.6 of this Schedule 1, if an individual is seeking to enrol in an Apprenticeship (not Traineeship), qualifications listed in the Approved Pre-Apprentice and Pathway Qualifications will not be counted towards the course maximums.
- 1.9 The RTO must have a clear and documented business process for the determination of eligibility of individuals for government subsidised training under 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 Commission or Department (or persons authorised by the Commission or Department) for audit or review purposes.
- 1.10 The RTO must comply with the *Guidelines for Determining Student Eligibility and Supporting Evidence* as issued by the Commission from time to time.

Additional Apprentices/Trainee Eligibility Requirements

- 1.11 If the RTO is to deliver training to eligible Apprentices/Trainees who are Eligible Individuals in accordance with the schemes deemed by the VRQA to be Approved Training Schemes under the Act, then in addition to individual eligibility requirements detailed in Clauses 1.4, 1.5 and 1.6 of Schedule 1 of the Agreement, to be eligible for government subsidised training under the Agreement as an Apprentice/Trainee and thereby be an Eligible Individual for the purposes of this Agreement, 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 RTO, to a Training Plan; and

e involved in paid work and Structured Training, either workplace based or off-the job.

1.12 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.education.vic.gov.au/training/providers/rto/Pages/schemes.aspx>

Evidence of Eligibility for the Victorian Training Guarantee

1.13 Relevant evidence is to be sighted by the RTO for each Eligible Individual, prior to commencement in training, in accordance with the *Guidelines about Determining Student Eligibility and Supporting Evidence*.

1.14 The evidence described in Clause 1.13 of this Schedule 1 must be recorded in a form prescribed by the Commission or in a form which records the exact information as the form prescribed by the Commission and must be made available to the Commission (or persons authorised by the Commission) for audit or review purposes.

1.15 Eligible Individuals referred to training under the following arrangements must present the relevant Referral Form to the RTO. The RTO must retain a copy of the relevant Referral Form for audit or review purposes:

- a Referred Job Seekers;
- b Asylum Seekers and Victims of Human Trafficking Initiative;
- c Single and Teenage Parents Training Initiative (if appropriate to the RTO); and
- d Young People Transitioning from Care Initiative (if appropriate to the RTO).

2 ELIGIBILITY EXEMPTIONS

- 2.1 Exemptions may be granted by the Commission only for individuals who do not meet the eligibility requirements detailed in Clause 1 of this Schedule 1 (referred to as Eligibility Exemptions).
- 2.2 Eligibility Exemptions will be available for individuals in accordance with formal advice provided by the Commission and updated from time to time.
- 2.3 Eligibility Exemptions will apply to the total hours that an individual undertakes in a course or qualification, up to completion. An Eligibility Exemption provides access to a government subsidised place only and does not extend to student tuition or other fees, which apply to these enrolments in the same way as all other enrolments.
- 2.4 In some instances, the Commission, or an organisation authorised by the Commission, may directly grant an Eligibility Exemption to an individual who does not meet the eligibility requirements detailed in Clause 1 of this Schedule 1. In these instances:
 - a the individual is required to provide the RTO with documentation to verify that an Eligibility Exemption has been granted; and
 - b the RTO must retain documented evidence confirming the individual's Eligibility Exemption; and
 - c the RTO must enrol the individual in accordance with the relevant procedures issued by the Department from time to time.
- 2.5 Instances outlined in Clause 2.4 of this Schedule 1 currently include the:

Asylum Seekers and Victims of Human Trafficking Initiative

- 2.6 Individuals referred to training under the Asylum Seekers and Victims of Human Trafficking Initiative must meet all *Victorian Training Guarantee* eligibility criteria except the citizenship/residency requirements set out at Clause 1.4 (a) of this Schedule 1.

Workers in Transition Program

- 2.7 Individuals referred to training under the Workers in Transition Program must meet all *Victorian Training Guarantee* eligibility criteria except the 'upskilling' requirement set out at Clause 1.4(b)(v) of this Schedule 1.
- 2.8 Individuals referred to training under the Workers in Transition Program must present to the RTO a Workers in Transition Program Eligibility Letter from the Department of Education and Early Childhood Development (the Department) and a copy of the separation certificate from their previous employer.
- 2.9 The RTO must retain the Eligibility Letter and a copy of the separation certificate for audit or review purposes.

Single and Teenage Parents Training Initiative

- 2.10 Individuals referred to training under the Single and Teenage Parents Training Initiative as being in the Guaranteed Access Cohort only *do not* have to meet the *Victorian Training Guarantee* eligibility criteria set out at Clauses 1.4, 1.5 and 1.6 of this Schedule 1. This includes citizenship/residency, upskilling, and multiple enrolments requirements.
- 2.11 Individuals referred to training under the Single and Teenage Parents Training Initiative as being in the Secondary Access Cohort must meet all *Victorian Training Guarantee* eligibility criteria.
- 2.12 Individuals referred to training under the Single and Teenage Parents Training Initiative are eligible to enrol in training only at the Certificate II to Advanced Diploma level.

Eligibility Exemptions

- 2.13 The RTO must report Eligibility Exemptions relating to Clause 2.7 and Clause 2.10 of this Schedule 1 to the Department through the use of the Eligibility Exemption Indicator field in the monthly Student Statistical Reports to be provided under the Agreement.
- 2.14 An individual granted an Eligibility Exemption in accordance with this Clause 2 will be considered an Eligible Individual for the purposes of Schedule 1.

3 APPLICATION AND ENROLMENT REQUIREMENTS

- 3.1 The RTO must inform the Eligible Individual that the enrolment is under the Victorian Training Guarantee and may impact their access to further government subsidised training.
- 3.2 The RTO must complete enrolments for all Eligible Individuals in accordance with the:
- a *Victorian VET Student Statistical Collection Guidelines*; and
 - b *AQTF Essential Conditions and Standards for Continuing Registration* and/or the *Standards for NVR Registered Training Organisations* as applicable.
- 3.3 The RTO must ensure that all mandatory standard enrolment questions as described in the *Victorian VET Student Statistical Collection Guidelines*, together with any directions of the Commission, are applied during the enrolment process of all Eligible Individuals.
- 3.4 The RTO must ensure that it complies with Victorian Student Number (VSN) reporting requirements and includes the VSN for all students aged under 25 years in all Student Statistical Reports as specified in the *Victorian VET Student Statistical Collection Guidelines*.
- 3.5 For each Eligible Individual, the RTO must conduct a Pre-Training Review of current competencies including literacy and numeracy skills to:
- a identify any competencies previously acquired (Recognition of Prior Learning (RPL), Recognition of Current Competency (RCC) or Credit Transfer); and

- b ascertain that proposed learning strategies and materials are appropriate for that individual.

4 TUITION FEES

4.1 The RTO must adhere to:

- a the requirements set out in the *2013 Guidelines about Fees* as issued by the Commission and updated from time to time; and
- b any subsequent relevant requirements set out in:
 - i) a Service Agreement 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 Agreement.

4.2 For the avoidance of doubt:

- a Fee Requirements set out in any subsequent Service Agreement Notification or subsequent orders or regulations pursuant to the Act or the National Act take priority over Fee Requirements set out in the *2013 Guidelines about Fees*;
- 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 Service Agreement Notification.

5 TRAINING PLAN REQUIREMENTS

For all Eligible Individuals

5.1 The RTO must document information on training and assessment in a Training Plan to be provided for all Eligible Individuals in respect of which Funds are paid by the Commission under this Agreement:

- a For non-apprentices/trainees, this may be either as a group of Eligible Individuals or a single Eligible Individual.
- b For Apprentices/Trainees, this must be as a single Eligible Individual.

5.2 The information should include, at least the:

- a name and contact details of the RTO (and employer, for apprentices/trainees);
- b title and code of qualification;
- c unit title and code of competencies/modules to be obtained;
- d scheduled hours for competencies to be obtained;

- e timeframe for achieving competencies including the start date and end date of each competency (and actual dates for where training has already occurred, for Apprentices/Trainees);
- f delivery modes to be used;
- g assessment details and arrangements;
- h party or parties responsible for the delivery and/or assessment of each competence; and
- i record of RPL and Credit Transfer hours granted, as relevant.

Additional Apprentice/Trainee requirements:

- j detailed training activities and responsibilities for training to be undertaken as part of any workplace based training arrangements;
 - k details (when, how & how much) of the time allocated outside routine work duties for Structured Training;
 - l signature (including date of signature) of the RTO representative, employer, Apprentice/Trainee (School-based Apprentices / Trainees also require the signature of the school's representative); and
 - m any other specific requirements to be met in accordance with the Training Contract or the Approved Training Scheme.
- 5.3 The information must be consistent with the qualifications or competencies to be attained and customised (as required), for the needs of the Eligible Individual or group of Eligible Individuals, including the needs identified in the Pre-Training Review.
- 5.4 The information on training and assessment must be agreed and endorsed by the RTO and the Eligible Individual or group of Eligible Individuals. A copy of the signed information must be provided to each Eligible Individual. This information ensures that both the RTO 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.
- 5.5 Training Plans may be developed and signed prior to training commencement but no later than four (4) weeks after training commencement.
- 5.6 The RTO must update the Training Plan according to any changes mutually agreed throughout the Training Services. The RTO must monitor each Eligible Individual's progress in satisfying the requirements of the qualification, in line with the Training Plan.

Additional Training Plan Requirements for Apprentices/Trainees

- 5.7 Employers are required to arrange for their Apprentices/Trainees to be enrolled with an RTO and for a Training Plan to be signed within three (3) months of the date of commencement of the Training Contract. This period also has an impact on the payment of Commonwealth government incentives.

- 5.8 The RTO's enrolment timelines should not impede the employer's ability to comply with this requirement.
- 5.9 Subject to any nominal duration that may be specified in an Approved Training Scheme, the employer and Apprentice/Trainee (but not the RTO) 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.
- 5.10 Training models offered by RTOs should ensure compliance with the Commission's Part Time policy (refer to *Guidelines about Apprenticeship/ Traineeship Training Delivery*).
- 5.11 The Training Plan must be developed by the RTO, together with the employer, and Apprentice/Trainee.
- 5.12 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 provided by the RTO and the practical experience in the occupation provided by the employer) that will be delivered during the Apprenticeship/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).
- 5.13 The Training Plan is a living document that is intended to reflect the current status of the apprentice or trainee's training. The Training Plan must include all of the specifications outlined at Clause 5.2 of this Schedule 1 and be straight forward, easy to follow and written in plain English.
- 5.14 The RTO 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.
- 5.15 Training Plan guidelines are provided at the following web address:
<http://www.education.vic.gov.au/training/providers/rto/Pages/trainingplans.aspx>
- 5.16 Victorian Purchasing Guides and sample training plans are available at:
<http://trainingsupport.skills.vic.gov.au>

6 APPRENTICESHIP/ TRAINEESHIP TRAINING DELIVERY REQUIREMENTS

- 6.1 If the RTO delivers training to Apprentices or Trainees under a Training Contract, the RTO must adhere to all legislative requirements under the Act and the *Guidelines about Apprenticeship/ Traineeship Training Delivery* as issued and updated from time to time.

7 NURSING COURSES / QUALIFICATIONS TRAINING DELIVERY REQUIREMENTS

- 7.1 If the Training Services to be provided by the RTO to Eligible Individuals includes the delivery of:
- a the Certificate IV in Nursing (Enrolled/Division 2 Nursing); and/or
 - b the Diploma of Nursing (Enrolled/Division 2 Nursing); and/or
 - c any other course/units of competency that are regulated by the Nursing and Midwifery Board of Australia (NMBA) or accredited by the Australian Nursing and Midwifery Accreditation Council Limited (ANMAC);
- then the provision of Training Services by the RTO must be in accordance with the guidelines and regulations of the NMBA and the ANMAC, and delivery (including method, mode and location/facilities) must be approved by the NMBA and ANMAC as appropriate.

8 EVIDENCE OF PARTICIPATION

- 8.1 All Training Services delivered by the RTO to an Eligible Individual must be supported by Evidence of Participation as defined in Clauses 8.3, 8.4 and 8.5 of this Schedule 1 for each unit of competency/module such that a reasonable judgement regarding an Eligible Individual's participation in Training Services can be made.
- 8.2 Evidence sought in this regard must be authenticated by documented evidence from the RTO of engagement by the student in the learning and/or assessment activity. Unless specified further at Clause 8.5 of this Schedule 1, to be valid, evidence provided must contain the student's name or identification number, a module or unit of competency identifier and a date. The Commission will determine, at its absolute discretion, if the evidence provided is sufficient to substantiate the claim that the student participated in training.
- 8.3 In addition, the following minimum specifications must be met to evidence an Eligible Individual's engagement in Training Services activity:
- a One (1) point of Evidence of Participation per unit of competency/module must be provided if the period between the Enrolment Activity Start Date and Enrolment Activity End Date for the unit of competency/module is one month or less;
 - b Two (2) points of Evidence of Participation per unit of competency/module must be provided if the period between the Enrolment Activity Start Date and Enrolment Activity End Date for the unit of competency/module is greater than one month, including one point within the last month of training delivery and/or assessment as identified by the reported Enrolment Activity End Date. An auditor would consider the time elapsed between the start and end date (or withdrawal) of the unit of competency/ module 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/module.

- 8.4 In instances where competency based completions are involved, and where the employer signoff has not yet been received by the RTO, an auditor will consider the last point of Evidence of Participation relating to training and/or assessment.
- 8.5 The only Evidence of Participation that will be accepted for this purpose is as follows:

- a. **Evidence of work submitted relating to engagement by the student in the unit of competency or module:** At a minimum, this evidence must contain the student's signature, in addition to the student's name, unit of competency/module and date required for all Evidence of Participation. 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 student, the unit of competency/module and date completed, for example identification of a student trademark and a delivery schedule or equivalent detailing how the piece of work covers the module or unit of competency in question, including due dates and milestones.

OR

- b. **Instructor (trainer and/or assessor) notes based on personal interviews, telephone, e-mail, or other communication modes on the engagement of a student in learning and/or assessment activity of the unit of competency or module.**

OR

- c. **A provider endorsed attendance roll:** In order to be considered acceptable, the format of the roll should be one that is recognised by the training organisation as a tool to record attendance as a part of their normal processes. 'Endorsed' in this instance means a signature of the trainer or relevant administration person of the RTO on the attendance roll, the printed name and date (including a key to any symbols used if appropriate). This will be sufficient provided it can be shown that the actual unit of competency or module 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 individual has only attended the first class supporting documentation must be supplied demonstrating that there was engagement in the learning and/or assessment activities of the module / 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 or modules are clustered together the evidence provided must satisfy participation at the unit of competency and module level requested;
- ii. where the modules are delivered consecutively, a notation on a roll or student management sheet that indicates which training was actually delivered in a session at the unit of competency or module level will be sufficient;
- 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 or module level, on the date/s the individual was in attendance.

OR

- d. **Primary documentation that provides evidence of assessment:** Primary documentation is considered to be either a secure paper based or electronic record that indicates an actual result consistent with assessment. All results should be supported by trainer/assessor endorsed documentation such as the Training Plan, trainer's record book, diary, the actual assessment or similar record which confirms delivery to the individual student. Evidence of student results should have an endorsement at the delivery level that confirms the accuracy of the student information such as the signature of the trainer, printed name and position. For all RPL outcomes, only the primary assessment tool used for any skills recognition assessments will be accepted.

OR

- e. **Where primary recording documentation is not available a signed statutory declaration from the relevant RTO staff affirming an individual's participation:** In the event that extreme circumstances prevent the provision of any of the primary recording documentation as detailed above (e.g. fire, flood or other equivalent circumstances), staff directly associated with the training delivery that are authorised by the RTO may be prepared to attest participation of the individual in the unit of competency or module enrolment in question. In all such cases the staff member is required to submit and sign a statutory declaration affirming their evidence.

To result in a verifiable enrolment an auditor would be required to record two (2) elements, certified by an appropriate staff member:

- i. a full explanation of the reasons why primary recording documentation is not available; and
- ii. a signed and dated statutory declaration containing a full explanation of the evidence being provided and affirmed. The auditor would determine if the evidence provided is sufficient to substantiate the claim that the individual participated and thereby verify the enrolment. It should be noted that a signed document merely stating that participation within the enrolment has occurred would not meet verification requirements.

OR

- f. **Login and engagement with learning and/or assessment activity required for the unit of competency or module:** Where an individual has a secure login to specific learning and/or assessment activity (for the unit of competency or module) in which they are enrolled, the login record demonstrating on-line engagement with the learning and/or assessment activity will constitute evidence of engagement. 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 RTO has checked with the student that they are continuing to engage across the unit of competency/ module.

OR

- g. **In flexible and distance modes of learning, records of staff/student engagement with learning and/or assessment activity at a unit of competency or module level that indicates the individual has commenced working on the learning materials received.** Records must also indicate that the RTO has checked with the student that they are continuing to engage across the unit of competency/ module.

General Requirements associated with verification of participation

- 8.6 Evidence of Participation for each Eligible Individual being provided with Training Services by the RTO and in respect of which Funds are payable by the Department must be collected and retained by the RTO for audit or review purposes.
- 8.7 In undertaking an audit or review of Evidence of Participation in respect of Eligible Individuals, an auditor will attempt to utilise appropriate recording models adopted by the RTO to assure Evidence of Participation relating to the unit of competency or module.
- 8.8 An auditor may use judgement when Evidence of Participation relating to common elements of competency across several units of

competency/modules is provided to validate more than one unit of competency/module.

- 8.9 Where a final assessment in the next collection year is supplied to justify participation in a module or unit of competency for a continuing enrolment in the current collection year, an auditor may verify each enrolment for participation on its merits.
- 8.10 An auditor will not accept RTO based Certificates in isolation to satisfy Evidence of Participation at the unit of competency or module level.
- 8.11 Statements from Eligible Individuals declaring they participated in the module/unit of competency will only be accepted if evidence of extreme and exceptional circumstances such as fire, flood or theft, outlined in 8.5 (e), is provided.
- 8.12 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 module or unit of competency. These sets of questions are typically completed on the first day of student attendance, covering all modules or 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

- 8.13 There are particular requirements for Evidence of Participation in respect of Eligible Individuals relating to VCE Units 3 & 4:
 - a the criteria of Evidence of Participation apply to VCE Units 3 & 4 as they do to all other units or modules;
 - b 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 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;
 - c where withdrawal is prior to May 1st, the individual will be automatically withdrawn from both Units 3 and 4;
 - d where an individual ceases to participate after May 1st 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
 - e where an individual completes Unit 3, they may be withdrawn from Unit 4, up to July 10, after which time they must be recorded as a Code 30 Assessable Enrolment – Competency Not Achieved / Fail.

9 AUDITS OR REVIEWS RELATING TO EVIDENCE OF PARTICIPATION, EVIDENCE OF ELIGIBILITY AND EVIDENCE OF FEE CONCESSIONS/WAIVERS/EXEMPTIONS

Evidence of Participation

- 9.1 The Commission may instigate an Evidence of Participation Audit at any time should the Commission have any concerns relation to Training Services provided under this Agreement.
- 9.2 The RTO must be able to support the sampled units of competency/ modules with Evidence of Participation as prescribed in Clause 8 of Schedule 1 of this Agreement, in respect of each Eligible Individual for which it has made a claim for payment from the Department.
- 9.3 If the Evidence of Participation Audit using a statistically valid sample size as determined by the Commission, reveals that units of competency/ modules audited are not supported, then without limiting the Commission's rights under Clauses 17 and 18 of the Agreement, where the percentage of unsupported units of competency/ modules exceeds a threshold specified by the Commission, the Commission may seek a refund of some or all the Funds from the RTO.
- 9.4 The value of Funds sought by the Commission under this clause may be up to the percentage points of unsupported units of competency/ modules above the threshold, applied to the total Funds paid to the RTO across the total population of units of competency/ modules from which the statistically valid sample has been drawn.

Evidence of Eligibility and Evidence of Concession

- 9.5 The Commission may instigate an Evidence of Eligibility Audit or Evidence of Concession Audit, at any time should the Commission have any concerns in relation to Training Services provided under this Agreement, or any other Service Agreement.
- 9.6 The RTO must be able to support:
- a assessment of student eligibility for the Victorian Training Guarantee as prescribed in this Agreement, and the related *Guidelines about Determining Student Eligibility and Supporting Evidence*; and
 - b application of fee concessions and fee waivers/exemptions as prescribed in this Agreement, and the related *2013 Guidelines about Fees*;
- as relevant, in respect of each Eligible Individual for which it has made a claim for payment from the Department.
- 9.7 If the Evidence of Eligibility Audit or Evidence of Concession Audit using a statistically valid sample size as determined by the Commission reveals insufficient documentation, then without limiting the Commission's rights under Clauses 17 and 18 of the Agreement, where

the percentage of unsupported units of competency/ modules exceeds a threshold specified by the Commission, the Commission may:

- a instigate further audit or review activity; and/or
- b seek a refund of some or all the Funds from the RTO.

10 DATA SYSTEMS

10.1 The RTO 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 RTO 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.

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

10.3 When an RTO is nominated as the training provider relating to Clause 10.2, the details for the Apprentice or Trainee are lodged by an AAC and registered on the Department's DELTA database. The RTO must have access to DELTA and should also check it regularly.

10.4 The RTO 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
 Department of Education and Early Childhood Development
 PO Box 266
 Melbourne 3001

Phone: 03 9651 4513
 Fax: 03 9637 3220

10.5 The RTO 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 *Skills Victoria Training System: Guide to Claims*.

11 PRACTICAL PLACEMENTS

- 11.1 In accordance to section 5.4.15 of the Act, practical placements must be conducted in accordance with the *Guidelines for Registered Training Organisations and Employers in relation to students of technical and further education undertaking Practical Placement* (the Practical Placement Guidelines) available at:
<http://www.education.vic.gov.au/Documents/training/providers/rto/pracpl/acemg.DOC>

12 DETERMINATION AND PAYMENT OF CONTACT HOUR FUNDS

Government Subsidy

- 12.1 The Commission will only make payment of Contact Hour Funds (as calculated in accordance with this Clause 12 of this Schedule 1) for Training Services delivered to Eligible Individuals for currently endorsed courses and qualifications as identified on the Funded Courses Report as published on the SVTS and which are on the RTO's Approved Funded Scope.
- 12.2 The RTO may request (through the SVTS Enquiry function) the Commission to add a VET course or qualification to the Funded Courses Report or the Approved Funded Scope. The RTO may be required to provide appropriate industry or employer references to support the application for a change to the Approved Funded Scope. Private copyright courses will only be considered for inclusion where relevant course documentation is provided to the Commission.
- 12.3 Subject to Clauses 12.1, 12.8, 12.12, 12.16 and 12.17 of this Schedule 1, the Commission will pay the RTO for scheduled hours of training and assessment reported under this Schedule 1 as having been delivered to Eligible Individuals.
- 12.4 Subject to Clauses 12.1, 12.8, 12.12, 12.16 and 12.17 of this Schedule 1, the Commission will only pay the RTO for scheduled hours of training and assessment reported as Recognition of Prior Learning (RPL) if the RTO is approved by the Commission, or authorised agents of the Commission, to be funded for RPL delivery under the RPL Approved Provider List.
- 12.5 For Eligible Individuals, the Commission will pay the RTO at the hourly rate per scheduled hour as identified in Clause 12.6 of this Schedule 1.
- 12.6 The hourly rate per scheduled hour is based on the 'Course Subsidy' field of the Funded Courses Report as published on the SVTS, taking into account the applicable payment year, course commencement date and enrolment type (non-apprenticeship or apprenticeship), and adjusted (if applicable) as follows:
- a By a student loading being either or both of the following two:
 - i) The relevant 'Course Subsidy' detailed on the Funded Courses Report will be adjusted by the Commission 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 ‘Course Subsidy’ for the course (as identified on the Funded Courses Report) by 1.5

and

- ii) The relevant ‘Course Subsidy’ detailed on the Funded Courses Report will be adjusted by the Commission for Eligible Individuals aged 15-19 years as at 1 January 2013 without a senior secondary certificate or an accredited qualification at Australian Qualifications Framework (AQF) II or above, and eligible for a concession in accordance with Clauses 3.6 and 3.7 of the *2013 Guidelines about Fees*, by multiplying the ‘Course Subsidy’ for the course (as identified on the Funded Courses Report) by 1.3.
- b By a regional loading whereby the relevant ‘Course Subsidy’ for units/modules delivered in non-metropolitan locations to Eligible Individuals will be adjusted by the Commission by multiplying the ‘Course Subsidy’ for the course (as identified on the Funded Courses Report), by 1.05. 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. The Regional Postcodes Report is subject to change at any 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 “VIC” or “OSPC” or
 - ii) the Delivery Mode Identifier in the NAT00120 file in the Student Statistical Report is “20” (electronic based) or “40” (Other).
- c By an RPL adjustment whereby the relevant ‘Course Subsidy’ will be reduced by the Commission for Eligible Individuals assessed through Recognition of Prior Learning (RPL) for units in courses (as identified on the Funded Courses Report as published on the SVTS), by multiplying the ‘Course Subsidy’ for the course (as identified on the Funded Courses Report as published on the SVTS), by 0.5. This adjustment only applies if the RTO is approved by the Commission to be funded for RPL delivery under the RPL Approved Provider List.

12.7 For the avoidance of doubt, the adjustments outlined in Clause 12.6 a, b and c, will be used as multipliers of the ‘Course Subsidy’ in determining the Contact Hour Funds paid for an Eligible Individual.

12.8 RPL undertaken as part of a government subsidised enrolment in an Approved Foundation Skills List course, or RPL undertaken by an RTO not on the RPL Approved Provider List, will not be funded by the

Commission under the Agreement. If the RTO is on the RPL Approved Provider List, RPL will be paid based on the scheduled hours up to the nominal hours per unit of competency or module in accordance with Clause 12.6 c) of this Schedule 1. Recognition of Current Competency (RCC) will not be funded by the Commission under the Agreement.

- 12.9 Payments of Contact Hour Funds to the RTO in respect of an Eligible Individual by the Commission under this Schedule 1 will be made monthly in arrears by the Commission on the basis of Student Statistical Reports submitted by the RTO to the Commission in accordance with the Agreement and on the understanding that the RTO has Evidence of Participation for each Eligible Individual in respect of which it is claiming payment. The act of lodging a Student Statistical Report by the RTO to the Commission is considered a claim for payment.
- 12.10 Evidence of Participation in respect of each Eligible Individual, for the purpose of payment of Contact Hour Funds by the Commission under this Schedule 1, is required and must be in accordance with the types of evidence specified at Clause 8 of Schedule 1.
- 12.11 Contact Hour Funds paid by the Commission to the RTO in respect of an Eligible Individual will be calculated at the unit of competency or module level, such that the scheduled hours reported will be spread over the number of months of scheduled delivery.
- 12.12 The Commission will pay the Contact Hour Funds to the RTO in respect of an Eligible Individual up to the maximum nominal hours per course or qualification as identified in the relevant Victorian Purchasing Guide or State Accredited course curriculum document.
- 12.13 The RTO must ensure Student Statistical Reports to the Skills Victoria Training System (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. In particular Enrolment Activity Start Dates and Enrolment Activity End Dates must match the actual period of time within which Training Services occurred.
- 12.14 Training Services to Eligible Individuals which are funded by the Commission under this Schedule 1 must be reported by the RTO in accordance with the *Victorian VET Student Statistical Collection Guidelines* against:
 - a Funding Source Code P for Eligible Individuals who are not under a referral form, and who are not under a contract of training (i.e. not apprentices/trainees); or
 - b Funding Source Code WTP for Eligible Individuals who are referred to the RTO through the Workers in Transition Program (or its successor) and who are not under a contract of training (i.e. not apprentices/trainees); or

- c Funding Source Code ASP for Eligible Individuals (Asylum Seekers and Victims of Human Trafficking) with a Referral Form, and who are not under a contract of training (i.e. not apprentices/trainees); or
 - d Funding Source Code L for Eligible Individuals who are not under a referral form, and who are under a contract of training (i.e. apprentices/trainees); or
 - e Funding Source Code WTL for Eligible Individuals who are referred to the RTO through the Workers in Transition Program (or its successor), and who are under a contract of training (i.e. apprentices/trainees); or
 - f Funding Source Code ASL for Eligible Individuals (Asylum Seekers and Victims of Human Trafficking) with a Referral Form, and who are under a contract of training (i.e. apprentices/trainees).
- 12.15 The RTO must identify all units of competency or modules 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. The RTO is not eligible for Contact Hour Funds from the Commission for the student contact hours associated with these units of competency or modules, and must report such units of competency/modules as Credit Transfer.
- 12.16 In the event that an Eligible Individual withdraws from Training Services delivered under this Schedule 1 prior to achieving competency in an individual module or unit of competency, and the RTO has sufficient evidence of the student's participation, the enrolment must be reported by the RTO 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 Commission for the individual module or unit of competency from which the individual withdrew will be made in accordance with the reported Hours Attended prior to withdrawal.
- 12.17 In the event that an Eligible Individual withdraws from Training Services delivered under this Schedule 1 without participation, or where the RTO has insufficient evidence of the student's participation, the RTO must either:
- a exclude that student's unit of competency/module 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*,
- No payment is made from Contact Hour Funds in respect of withdrawals with no attendance.
- 12.18 All withdrawals (Outcome Identifier – National Code "40") must be reported within the year of the scheduled commencement in training and no later than two (2) months from the point of withdrawal, unless

extenuating circumstances prevent this from occurring (or by 15 January 2014, 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.

Fee Concession Contribution

- 12.19 Where the RTO has granted a fee concession to an Eligible Individual in accordance with the requirements set out in the *2013 Guidelines about Fees*, the RTO will receive a contribution from the Commission as a result of charging the concession fee to that individual.
- 12.20 The RTO must report to the Commission all fee concessions granted by the RTO to Eligible Individuals in accordance with the fee concession reporting requirements outlined in the *Victorian VET Student Statistical Collection Guidelines* issued by the Commission from time to time.
- 12.21 The Fee Concession Contribution paid to the RTO by the Commission under Clause 12.19 of this Schedule 1 is on the basis of Student Statistical Reports provided by the RTO taking into account scheduled hours; qualifications for enrolments for which concessions were granted; and data indicating the grounds for the concession granted to an individual.
- 12.22 The Fee Concession Contribution amount for the purposes of Clause 12.19 of this Schedule 1 will be 90% of revenue foregone, up to a maximum value. This will be calculated based on 3.6 times the actual hourly rate paid by the student and reported by the RTO (being 20% of the standard published hourly fee), up to a maximum hourly value, applied to the paid scheduled hours in each enrolment. 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 as published on the SVTS).
- 12.23 The Commission will not pay a Fee Concession Contribution to the RTO in relation to individuals who are granted a fee concession and who are also referred Job Seekers. A referred Job Seeker is an individual who holds a standard Job Seeker Referral Form. In these instances, with prior agreement of the referring agency, providers must invoice the referring agency directly for the portion of the tuition fee not covered by the referred Job Seeker. The RTO must report the correct Fee Concession/ Exemption Identifier for this, which may be subject to annual reconciliation with the Commonwealth.

Fee Waiver/Exemption Contribution

- 12.24 Where the RTO has granted a fee waiver/exemption to an Eligible Individual in accordance with the requirements set out in the *2013 Guidelines about Fees*, the RTO will receive a contribution from the Commission as a result of waiving/exempting the fee for that individual.

- 12.25 The RTO must report to the Commission 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* issued by the Commission from time to time.
- 12.26 The Fee Waiver/Exemption Contribution paid to the RTO by the Commission under Clause 12.24 of this Schedule 1 is on the basis of Student Statistical Reports provided by the RTO taking into account scheduled hours; qualifications for enrolments for which concessions were granted; and data indicating the grounds for the concession granted to an individual.
- 12.27 The Fee Waiver/Exemption Contribution under Clause 12.24 of this Schedule 1 will be calculated and paid by the Commission on the basis of the relevant 'Fee Waiver/Exemption Contribution per Hour' (fixed value) for the course (as identified on the Student Tuition Fee Contribution Report as published on the SVTS), applied to the paid scheduled hours in each enrolment.

13 COMPLETIONS

- 13.1 The RTO must report all completions in Student Statistical Reports to the Commission 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 NAT 130 'Qualification Completed' file in each monthly submission.
- 13.2 When the Eligible Individual has completed activity under the Training Plan, the RTO must assess, record and report qualification completion as soon as possible after successful completion..
- 13.3 The RTO must issue recognised qualifications or Statements of Attainment to the specifications of the relevant accredited courses, endorsed national Training Packages, as well as any other applicable guidelines, regulations or legislation. Refer to the *Guidelines about Apprenticeship/Traineeship Training Delivery* for particular requirements relating to completions by Apprentices/Trainees.

14 USEFUL WEBSITES

Approved Training Schemes

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

Australian Apprenticeships Centres

<http://www.australianapprenticeships.gov.au/search/aacsearch.asp>

Australian Quality Training Framework (AQTF)

http://www.nssc.natese.gov.au/vet_standards

Australian Skills Quality Authority (ASQA)

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

Course Accreditation

<http://www.vrqa.vic.gov.au/accreditation/vet/default.htm>

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

Curriculum Maintenance Managers

<http://trainingsupport.skills.vic.gov.au>

Guide to Apprenticeships and Traineeships

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

Higher Education and Skills website

<http://www.education.vic.gov.au/training/Pages/default.aspx>

Standards for the National VET Regulator (NVR)

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

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://trainingsupport.skills.vic.gov.au>

Victorian Registration and Qualification Authority (VRQA)

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

15 GLOSSARY

Terms	Explanation
Approved Training Schemes	An Approved Training Scheme means a training scheme approved under section 5.5.2. of the Education and Training Reform Act 2006.
Course Commencement Date	Date of first scheduled training for the first module towards the completion of the qualification in which the student has enrolled.
Credit Transfer	Credit given based on documentary evidence of statement of attainment/qualifications.
DELTA Database	The DELTA Database records all Apprentices and Trainees in Victoria. All contracted RTOs delivering training to Apprentices or Trainees must have access to this database. It is an important source of information about Apprentices or Trainees that have been allocated to your RTO. Access to DELTA is a mandatory requirement for RTOs who receive funding for Apprentices and Trainees.
Enquiries	A form in the SVTS for RTOs to complete and submit for any enquiries about the Victorian Training Guarantee Program.
Enrolment Type	Enrolment Type refers to either an apprenticeship (not traineeship) or a non apprenticeship qualification.
Nominal Hours	Nominal Hours are the anticipated hours of learning or training deemed necessary in order to adequately cover the educational material. These hours are generally specified in the curriculum documentation of courses or the purchasing guides for training package qualifications.
Recognition of Current Competency (RCC)	RCC applies if an individual has previously successfully completed the requirements of a unit of competency or module and is now required to be reassessed to ensure that the competence is being maintained. It is particularly relevant where there is a requirement for an occupational license or ticket in order to practice in the skill area, e.g. first aid, meat inspection.
Recognition of Prior Learning (RPL)	RPL involves the assessment of any previously unrecognised skills and knowledge that an individual has achieved outside the formal education and training system. RPL is an assessment process (as distinct from a training process) that assesses the individual's non-formal and informal learning. This assessment determines 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.
Scheduled Hours	The hours of teaching activity (including assessment times) that the RTO schedules for a module or unit of competency enrolment. The Scheduled Hours will often be the same as the Nominal Hours, however different local circumstances or delivery types may result in a variation from the nominal curriculum hours.
SMS	Student Management System
Structured Training:	This is Structured Training and Assessment that the RTO delivers in a formal setting. It is often referred to as 'trade school' or 'block release'.

Terms	Explanation
Off-the-job	Timetables vary, but may include a day a week or blocks of weeks at a training facility.
Structured Training: Workplace-based	This is the Structured Training (and assessment) organised to take place in the workplace by the RTO. It takes place when the Apprentice or Trainee is withdrawn from regular work duties.
SVTS	Skills Victoria Training System (SVTS) – The Commission’s IT system for managing contracts between the Victorian Skills Commission and RTOs for delivery of Victorian government subsidised training.
TOID	Training Organisation Identifier or RTO Code.
Training Contract	A Training Contract is 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 Contract Commencement Date	The date of commencement of the Training Contract for the Apprenticeship / Traineeship can be found on the DELTA record at the field called: <i>(date) Commenced</i> . The data in this field is the date on which the legal Contract between the employer and the Apprentice / Trainee comes into effect.
Training Package Qualification	Identifies the title of the training package qualification directly related to the training, as described at http://training.gov.au/
Training Plan	A Training Plan documents detailed information on training and assessment to a group of students (collective Training Plan) or an individual student whose training is subsidised under this Agreement. This information ensures that both the RTO and the group of students or the individual student are making informed decisions about the services required and the respective obligations in the delivery of these services. The Training Plan provides details of the arrangements.
Victorian Training Guarantee (VTG)	The <i>Victorian Training Guarantee</i> is an entitlement to a government subsidised place in recognised training that can be accessed in accordance with criteria set out in the Act and the Service Agreement.

2013 Service Agreement

Schedule 2

Single and Teenage Parents Training Initiative

(Single and Teenage Parents Training Initiative
Provider Network RTOs only)

VERSION	DATE	COMMENTS
2013 Version 1.0	October 2012	Draft Schedule posted with EOI
2013 Version 1.1	November 2012	Final Schedule

Purpose

This Schedule 2 describes the requirements of the Single and Teenage Parents Training Initiative. This Schedule 2 has no legal effect unless the RTO has specifically been contracted in a letter of offer from the Commission.

1 Roles and Responsibilities of Provider Network RTOs

1.1 Under this Schedule 2, the RTO agrees:

- a. to make every reasonable effort to place an individual referred under this Initiative,
- b. to participate fully with the Commission, the Commonwealth Government, referring agencies and any other relevant body in investigations of instances where a referred individual is unable to be placed at any RTO in the Provider Network (i.e. a 'guarantee failure'),
- c. to fulfil the 'Roles and Responsibilities' defined at clauses 1.2 and 1.3 of this Schedule 2, and
- d. that information provided on the Expression of Interest form submitted by the RTO may be published and/or provided to referring agencies and other relevant parties at the discretion of the Commission.

1.2 The RTO's roles and responsibilities with respect to individuals referred as being in the Guaranteed Access Cohort are to:

- a. work with referring agencies in the RTO's 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 associated costs, which will assist in the resolution of issues at the local level without further escalation, and
 - iii. provide information to support referring agencies' referral and follow up processes.
- b. guarantee a place 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. provide places that as far as possible fit with the caring responsibilities of the individual,
- d. where a referred individual is not able to be enrolled in the recommended course, provide the reason to the individual and the relevant referring agency for refusing enrolment and work towards resolving the issue
- e. cooperate with any investigations of guarantee failures, and

- f. report on individuals that access guarantee places and report on guarantee failures as required by the Commission to support reporting obligations.
- g. complete the Single and Teenage Parents Training Initiative – Unmet Referral form when the RTO is unable to place a student in the Guaranteed Access Cohort. The RTO must provide a copy of this form to the referring agency and retain the original for audit purposes.

1.3 The RTO's roles and responsibilities with respect to individuals referred as being in the Secondary Access Cohort are to:

- a. 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, and
 - ii ensure up to date information is available on course availability, prerequisite requirements and associated costs, which will assist in the resolution of issues at the local level without further escalation,
 - iii provide information to support referring agencies' referral and follow up processes,
- b. provide places that as far as possible fit with the caring responsibilities of the individual.

2 Application, Payment and Reporting of fee concessions

- 2.1 The RTO must charge the concession fee to all Eligible Individuals who have been referred to training under the Single and Teenage Parents Training Initiative in accordance with the 2013 Guidelines about Fees as issued by the Commission from time to time.
- 2.2 The RTO will receive a contribution from the Commission as a result of charging the concession fee to an Eligible Individual under the Single and Teenage Parents Training Initiative in accordance with Schedule 1 of the Agreement.
- 2.3 The RTO must report to the Commission all Training Services delivered to Eligible Individuals under the Single and Teenage Parents Training Initiative in accordance with the reporting requirements outlined in the Victorian VET Student Statistical Collection Guidelines as issued by the Commission from time to time.

2013 Service Agreement

Schedule 3

Young People Transitioning From Care Initiative

(Young People Transitioning From Care Provider Network RTOs only)

VERSION	DATE	COMMENTS
2013 Version 1.0	October 2012	Draft Schedule posted with EOI
2013 Version 1.1	November 2012	Final Schedule

Purpose

This Schedule 3 describes the requirements of the Young People Transitioning From Care Initiative for young Victorians who are living, or have lived, in out of home care and subject to Victorian child protection custody or guardianship orders. This Schedule 3 has no legal effect unless the RTO has specifically been contracted in a letter of offer from the Commission.

1 Roles and Responsibilities of Provider Network RTOs

1.1 Under this Schedule 3, the RTO agrees:

- a. That information provided on the Expression of Interest application form submitted by the RTO may be published and/or provided to referring agencies and other relevant parties at the discretion of the Commission.
- b. 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
 - iii. provide information to support eligible young people and referring agencies' to make informed choices for referral and follow up processes
- c. To make every reasonable effort to place an individual referred under this Initiative, 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)
- d. To participate fully with the Commission, the Victorian Government, referring agencies and any other relevant body in assisting a referred individual to undertake accredited training
- e. To provide information about services and support available to individuals referred under this Initiative.

2 Application, Payment and Reporting of the fee waiver/exemption

- 2.1 The RTO must apply a fee waiver/exemption to all Eligible Individuals who have been referred to training under the Young People Transitioning From Care Initiative in accordance with the 2013 Guidelines about Fees as issued by the Commission from time to time.
- 2.2 The RTO will receive a contribution from the Commission as a result of waiving/exempting the fee to an Eligible Individual under the Youth From Care Initiative in accordance with Schedule 1 of the Agreement.
- 2.3 The RTO must report to the Commission 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 as issued by the Commission from time to time.