

2011 Service Agreement Skills for Victoria 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
2011 Version 1.0	October 2010	Draft as posted with EOI
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Schedule 1 Minimum Performance Standards for Training Services

Schedule 2 *Skills for Victoria* Program Specifications

BACKGROUND TO THIS AGREEMENT

- A. The Commission has the responsibility to provide for the delivery of vocational education and training in Victoria pursuant to the *Education and Training Reform Act 2006*.
- B. The 2011 calendar year represents the first year of full implementation of the *Victorian Training Guarantee*.
- C. The *Victorian Training Guarantee* delivers an entitlement to government subsidised training for eligible individuals.
- D. The *Skills for Victoria* program is the vehicle through which registered training organisations will be contracted to deliver government subsidised training to eligible individuals under the *Victorian Training Guarantee*.
- E. The purpose of this Agreement is to set out the terms and conditions under which, pursuant to the *Skills for Victoria* program the Commission will make available, and the RTO will accept, the Funds for the purposes of the RTO providing the Training Services to an Eligible Individual who has enrolled and commenced in a training course or qualification with the RTO during the 2011 calendar year.

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, unless the contrary intention appears:

Act means the *Education and Training Reform Act 2006*.

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

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

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.

Commencement Date means the later of 1 January 2011 or when this Agreement is executed by means of the RTO accepting an offer from the Commission to be bound by the terms and conditions of this Agreement.

(the) Commission means the Victorian Skills Commission, a body corporate, established pursuant to s 3.1.1 (3)(a) of the Act.

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 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 Department of Education and Early Childhood Development.

Dispute Notice means the notice referred to in Clause 14.

Eligible Individual means an individual who is eligible for government subsidised training in accordance with the eligibility requirements set out in the Schedules of the Agreement. For the avoidance of doubt, the eligible individual must enrol and commence a training course or qualification with the RTO between the Commencement Date and 31 December 2011.

Entry Requirements means the criteria for an RTO's entry to a service agreement as defined by the Commission from time to time.

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

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

Fee Concession Reimbursement means the reimbursement by the Commission for income foregone by the RTO by applying a fee concession in respect of an Eligible Individual as detailed in Clause 4 of Schedule 2 of this Agreement.

Fee Waiver Payment means the payment by the Commission for income foregone by the RTO by applying a fee waiver in respect of an Eligible Individual as detailed in Clause 5 of Schedule 2 of this Agreement.

Funding Arrangements is defined in Clause 2.

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 Waiver Payment; and/ or
- c) if applicable, Fee Concession Reimbursement.

GST means GST and has the same meaning as specified in the GST Law.

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

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 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 Business Days;
- g) any step is taken to appoint a liquidator or provisional liquidator and is not discontinued or withdrawn within five 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.

Minister means the Minister for Higher Education and Skills.

Notice is defined in Clause 13.1.

Party/ Parties mean the parties to this Agreement.

RCTI means Recipient Created Tax Invoice and has the same meaning as that term in the GST Law.

RTO means the Registered Training Organisation which accepts an offer by the Commission to be bound by the terms and conditions of this Agreement.

Service Agreement means this Agreement

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

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

SVTS means the Skills Victoria Training System.

Taxable Supply has the same meaning as specified in the GST Law.

Tax Invoice has the same meaning as specified in the GST Law.

Term is defined in Clause 2.

Training Services means the training and assessment to be provided by the RTO to an Eligible Individual, as described in the Schedules to this Agreement.

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. where a term is defined, the definition includes all grammatical forms of that term;
- xiv. headings are used for references only;
- xv. defined terms not otherwise defined in this Agreement have the meaning given to them in the Schedule; and
- xvi. if any day for the payment of Funds under this Agreement falls on a Saturday, Sunday or a day on which trading banks (as defined in the Banking Act 1959 (Cth) are not open for business in Victoria (Non-Business Day), the payment will be due on the next day which is not a Non-Business Day.

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;
- 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) 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;
- e) Where this Agreement permits a Party to take an action, form an opinion or exercise discretion, the action may be taken, opinion formed or discretion exercised by a person or entity authorised by that Party either generally or in a particular case;
- f) 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;
- g) 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);
- h) This Agreement is governed by the law of Victoria.

2. TERM OF THIS AGREEMENT

- 2.1. 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 the relevant Eligible Individual has completed or withdrawn from the relevant training course or qualification in which they are enrolled (the Term).
- 2.2. The arrangements between the Commission and the RTO contemplated by this Agreement (Funding Arrangements) may be extended in respect of the 2012 calendar year by the Commission in its absolute discretion.
- 2.3. An extension of the Funding Arrangements is subject to the RTO continuing to meet the Commission's Entry Requirements. The Commission will notify the RTO if it agrees to extend the Funding Arrangements at least 30 days prior to 31 December 2011.
- 2.4. The RTO acknowledges that any extension of the Funding Arrangements in respect of the 2012 calendar year will be subject to the RTO accepting an offer from the Commission to be bound by the terms and conditions of a new agreement.

3. GENERAL OBLIGATIONS OF RTO

- 3.1. During the Term, the RTO must, unless this Agreement otherwise provides:
- a) maintain registration as a registered training organisation under the Act;
 - b) deliver nationally recognised training in accordance with its scope of registration and the requirements of the accredited course or endorsed national training package and consistent with purchasing guides, directions or policies issued by the Commission;
 - c) comply with the AQTF;
 - d) comply with all requirements in the Schedules to this Agreement, including in relation to determining eligibility, completing enrolments, imposition and collection of tuition fees, application of tuition fee concessions and waivers and otherwise meeting the relevant specifications and performance standards;
 - e) use the Funds to provide the Training Services to the relevant Eligible Individual to whom such Funds apply;
 - f) 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;
 - g) ensure that appropriate compliance, reporting and auditing frameworks, controls and systems are in place with respect to the provision of the Training Services to each Eligible Individual and receipt of the Funds from the Commission;
 - h) 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;
 - i) 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 *Charter of Human Rights and Responsibilities Act 2006*, the *Disability Act 2006*, and the *Working With Children Act 2005* and, in particular, must:
 - i. ensure all persons employed or engaged by the RTO to provide the Training Services are made aware of the requirements of the *Working With Children Act*

2005 as it relates to persons under 18 years of age and its application;

- ii. ensure that persons associated with the delivery of Training Services to persons under 18 years of age undertake a Working With Children check, where applicable;
 - iii. obtain the consent of personnel to retain a copy of the relevant Working With Children check and provide a copy to the Commission and/or its auditors on request; and
 - iv. retain copies of the relevant Working With Children check for all relevant staff;
- j) must not, in performing 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.

4. PROVISION OF THE TRAINING SERVICES

- 4.1. During the Term, 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 as notified by the Commission and/or the State from time to time (including any Executive Memoranda, which the RTO acknowledges and agrees will have the weight of a contractual requirement);
 - 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 with 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. 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 during this period.

5. SUBCONTRACTING

- 5.1. The RTO may subcontract the provision of some or all of the Training Services. If the RTO subcontracts the provision of some or all of the Training Services, the RTO acknowledges and agrees that:
- a) there is no contractual relationship between the Commission and any subcontractor engaged by the RTO;
 - b) 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;
 - c) the RTO is liable to the Commission for the acts or omissions of any sub-contractor (or any employee, officer or agent of the sub-contractor) as if they were the acts or omissions, of the RTO (or the employees, officers or agents of the RTO);
 - d) the RTO 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;
 - e) 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;
 - f) prior to the commencement of any subcontracted arrangements, the RTO must put in place an executed contract that ensures the relevant liabilities and obligations of the RTO under this Agreement will be met by the subcontractor;
 - g) all costs associated with any subcontract are the responsibility of the RTO; and
 - h) the RTO must procure that any subcontractor assists, if requested by the Commission or its auditors, with any audits under Clause 10 of this 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; and
 - c) ensure that such materials meet the requirements of the *Equal Opportunity Act 1995* and related laws, including the provision of materials encouraging individuals with disabilities to access government subsidised training.
- 6.2. The RTO must not do or omit to do anything which may damage, ridicule, bring into disrepute or be detrimental to the Commission, the Department or the State's name, messages or reputation.
- 6.3. The RTO must publish on its website or provide on request by any person a copy of its most recent AQTF audit report.

7. REPORTING

- 7.1. During the Term, 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 a month, on or before the last day of each month;
 - 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 data is correct in the final Student Statistical Report for 2011 and that this report is submitted to the Commission via SVTS by no later than 15 January 2012;

- f) participate in the National Student Outcomes Survey, managed by the National Centre for Vocational Education and Research (NCVER) and advise students of the possibility of receiving an NCVER survey;
 - g) 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
 - h) submit data to the Commission on the following three AQTF Quality Indicators (which have been endorsed by the National Quality Council) in a format to be notified by the Commission:
 - i. Competency completion;
 - ii. Learner engagement; and
 - iii. Employer satisfaction,

on or before 30 June 2011, or within one month of the Commencement Date which ever is later, with all data relating to the previous calendar year.
- 7.2. The Commission will not share or release to other parties any AQTF Quality Indicator data provided by the RTO under this Agreement on an individual RTO basis.
- 7.3. The RTO acknowledges that the Commission may publish aggregated AQTF Quality Indicator data gathered through this process and use it to inform future quality improvement initiatives that support and promote quality training provision.

8. FUNDING AND PAYMENTS

- 8.1. Subject to Clauses 8.3 and 15, during the Term 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 applicable Funds to the RTO in accordance with procedures set out in Schedule 2.
- 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 applied by the RTO to the provision of the Training Services to that individual;
 - 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 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 will only pay the Funds under this Agreement in respect of an Eligible Individual to the RTO and not to any other party;
 - d) to use the Funds solely for the provision of Training Services to each Eligible Individual and otherwise in accordance with this Agreement;
 - 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 Clause 15 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 any other authorised person, to verify the delivery, replacement or correction of any of the Training Services by the RTO.
- 8.4. The RTO acknowledges that, if applicable, the Funds paid by the Commission to the RTO in respect of an Eligible Individual under this Agreement will be increased by an amount equal to any GST payable with respect to a Taxable Supply (if any).
- 8.5. The RTO must maintain a current agreement with the Commission allowing the Commission to issue an RCTI in relation to all payments for which GST is payable.

9. ACCOUNTS AND RECORDS

- 9.1. During the Term, the RTO must:
- a) ensure appropriate accounting processes and controls are exercised in connection with the Agreement, the Training Services and the Funds;
 - b) keep complete records and accounts 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, 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 other 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 its auditors for audit 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, for seven (7) years after completion of the course or qualification by each Eligible Individual;
 - f) comply with all laws relating to record keeping, including the *Public Records Act 1973*; record keeping requirements of the

AQTF Standards; 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. AUDIT OR REVIEW

10.1. The RTO acknowledges that, during the Term:

- a) the Commission (or persons authorised by the Commission) may conduct an audit 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.
- b) without limiting the Commission's rights under Clause 15, the Commission may apply penalties and sanctions to the RTO in accordance with the Commission's audit strategy in response to any audit outcomes identifying non compliance with the Agreement or any misuse of the Funds; and
- c) the Commission may take account of the RTO's performance in any audit when considering future contractual arrangements with the RTO.

10.2. During the Term, the RTO must:

- a) permit, whenever the Training Services are being provided to Eligible Individuals and otherwise at all reasonable times, the Commission (or persons acting on behalf of the Commission) to enter its premises, and areas within those premises that are used for the Training Services, to conduct audits;
- b) participate in and assist, as required, with any audits required by the Commission, including the Commonwealth Department of Education, Employment and Workplace Relations Invalid

- Enrolment Audit and any audits specified in the Schedules to this Agreement;
- c) if possible, rectify any instances of non compliance with the Agreement which are identified by an audit through implementation of a management action plan agreed between the RTO and the Commission (or persons acting on behalf of the Commission), and take steps to prevent future instances of non compliance;
 - d) reimburse any costs incurred by the Commission in conducting audits, if directed to do so;
 - e) respond fully in writing to the Commission (within a timeframe specified by the Commission) on any matter requested by the Commission relating to audits;
 - f) conduct an internal audit of its compliance with the provisions of this Agreement during the 2011 calendar year, using a checklist supplied by the Commission. The internal audit must be:
 - i. completed within six months from the Commencement Date or, if the Commencement Date is after 1 July 2011, completed by 31 December 2011;
 - ii. signed off by the CEO; and
 - iii. provided to the Commission or its auditors on request.
 - g) 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 on request.

11. CONFIDENTIALITY AND PRIVACY

- 11.1. 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; and
- 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.

11.2. 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 (other than personal information and information submitted on AQTF Quality Indicators by the RTO) including course and qualification details, funding details, 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 undertaken pursuant to this Agreement;
- b) disclosure by the Commission of information regarding this Agreement (including details of the Funds) or any Confidential Information of the RTO may be required in certain circumstances; and
- c) 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.

11.3. The RTO agrees to comply with the *Information Privacy Act 2000* and any other applicable privacy legislation and acknowledges that it will be bound by such legislation with

respect to any act done, or practice engaged in, by the RTO for the purposes of this Agreement in the same way and to the same extent as the Commission would be bound by the legislation.

11.4. This Clause 11 survives the expiry or termination of this Agreement.

12. LIABILITY, INDEMNITY AND INSURANCE

12.1. The RTO acknowledges that:

- a) the State, its servants and agents are not responsible at any time for any liabilities incurred or entered into by the RTO as a result of, or arising from, the RTO's rights and obligations under this Agreement or in relation to provision of the Training Services to Eligible Individuals; and
- b) it is the RTO's responsibility to carry out its obligations under this Agreement, receive Funds and to provide the Training Services to Eligible Individuals at its own risk.

12.2. The RTO indemnifies (and must keep indemnified) the Commission, the State and its employees, servants and agents (referred to in this Clause as 'those indemnified') against all Losses sustained or incurred by those indemnified and arising out of or a consequence of:

- a) any Claim against the Commission, State, its officers, employees or agents in relation to 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;
- b) any breach by the RTO of any obligation under this Agreement;
- c) any negligent, reckless, wilful or unlawful act or omission of the RTO, its officers, employees, agents, or subcontractors in connection with this Agreement, the Funds or the Training Services;
- d) damage or loss of property (including property of the Commission) arising from or relating directly or indirectly to this Agreement, the Funds or the provision of the Training Services;
- e) loss, damage, personal injury or death occasioned to or suffered by any person arising from or relating directly or

indirectly to this Agreement, the Funds or the provision of the Training Services; and

- f) 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.

12.3. The RTO's liability to indemnify those indemnified under this Clause 12 will be reduced proportionally to the extent that any negligent, reckless, wilful or unlawful act or omission on the part of those indemnified directly caused the relevant Loss.

12.4. The RTO must, at its own expense:

- a) take out and maintain until 7 years after the end 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;
- d) provide copies of insurance certificates of currency, including details of limits on cover, to the Commission upon request; and
- e) promptly notify the Commission if any insurance is cancelled or any insurance details change.

12.5. This Clause 12 continues despite any expiry or termination of the Agreement.

13. NOTICES AND REPRESENTATIVES

13.1. 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), sent by facsimile or electronic mail to the facsimile number or electronic email address of the recipient.

13.2. 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;
- 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;
- c) in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the recipient's facsimile number, with the exception of where the facsimile is received on a non business day, or after 4.00pm on a Business Day, in which case the communication will be deemed to be received on the next Business Day; and
- d) in the case of electronic mail, if the message is correctly addressed and successfully transmitted to that party's electronic mail address, at the time the sender's computer records that the transmission was successful.

13.3. 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, Skills Victoria; and
- b) the RTO's representative is the CEO.

14. DISPUTE RESOLUTION

14.1. If a dispute arises in relation to this Agreement, the Funds or the Training Services a party must not commence court proceedings relating to the dispute without first complying with this Clause, except proceedings for urgent interlocutory relief.

- 14.2. If a dispute arises between the parties in connection with this Agreement, the Funds or the Training Services, a party may give written notice of the dispute to the other party. The parties must seek to settle the dispute in good faith.
- 14.3. If the parties are unable to settle a dispute within seven (7) days of one party giving written notice of the dispute 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.
- 14.4. 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, Skills Victoria, or delegate; and
 - b) in the case of the RTO – its CEO .
- 14.5. 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.
- 14.6. If the dispute is not resolved within seven (7) days of the first meeting of the Commission’s representative and the CEO, the parties may agree on a process for resolving the dispute through other means such as further negotiations, mediation, conciliation or independent expert determination. The Commission may also notify the Minister of the dispute.
- 14.7. Nothing in this Clause prevents either party from seeking resolution by any means of any dispute that has not been resolved by the dispute resolution process in this Clause or otherwise.
- 14.8. The Parties must continue to perform their respective obligations under this Agreement during a dispute.

15. RIGHT TO WITHHOLD FUNDS, REQUIRE REFUND OR TERMINATE AGREEMENT

- 15.1. Where the Commission is of the reasonable opinion that:
- a) there has been a significant deterioration in the financial circumstances of the RTO;
 - b) the RTO has failed to comply with some or all of its material obligations pursuant to this Agreement and, where the non-

compliance is capable of remedy by the RTO, the RTO has failed to remedy the non-compliance within such reasonable period as specified by the Commission in writing;

- c) the RTO has not provided some or all of the Training Services for which Funds have been paid or claimed under the Agreement in respect of an Eligible Individual, or has not provided those Training Services to a standard satisfactory to the Commission;
- d) 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;
- e) the registration of the RTO under the Act is suspended or cancelled; or
- f) the RTO has become subject to an Insolvency Event

then the Commission may in its absolute discretion do one or more of the following:

- g) withhold, suspend, cancel or terminate any payment of the Funds (in whole or part) under this Agreement for such period the Commission reasonably deems appropriate (including until such time as any non compliance by the RTO with its obligations under the Agreement is addressed to the satisfaction of the Commission);
- h) 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);
- i) 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;
- j) suspend the performance of the Training Services to some or all Eligible Individuals (or any part of the Training Services) for such period the Commission reasonably deems appropriate;
- k) arrange for another RTO to provide some Training Services to some or all Eligible Individuals (or any part of the Training Services) for such period the Commission reasonably deems appropriate; and / or

- l) immediately terminate this Agreement by giving written notice to the RTO.
- 15.2. This Agreement may be terminated at any time by written agreement between the Parties.
- 15.3. The RTO acknowledges that the Commission may, in its absolute discretion suspend or terminate its obligation to pay Funds under this Agreement in respect of any Eligible Individuals who have not been accepted for enrolment in a course or qualification with the RTO by the date specified in the notice from the Commission.
- 15.4. The RTO must promptly notify the Commission if the RTO becomes subject to an Insolvency Event.
- 15.5. The RTO must promptly notify the Commission if a decision is taken regarding any restructuring of its business or change in ownership or control of the RTO which may have an impact on the RTO's ability to carry out its obligations under this Agreement or provide the Training Services to Eligible Individuals. If a restructure of the business or change in ownership or control of the RTO affects, or will in the opinion of the Commission affect, the RTO's ability to carry out its obligations under this Agreement, some or all of the Funds may be withheld or cancelled by the Commission in its absolute discretion.
- 15.6. In the event of a termination under this Clause 15, the RTO remains liable to the Commission under this Agreement in respect of Training Services provided prior to and including the date of termination.
- 15.7. Nothing in this Agreement (including this Clause) affects any rights or remedies otherwise available to the Commission at law.

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2011 Service Agreement

Schedule 1

Minimum Performance Standards for Training Services

VERSION	DATE	COMMENTS
2011 Version 1.0	October 2010	Draft as posted with EOI
2011 Version 1.1	December 2010	Final as contracted

PURPOSE

- A. This Schedule describes the minimum performance standards for the Training Services funded through the 2011 Service Agreement (the Agreement) and must be read in conjunction with the Agreement.
- B. The Schedule is divided into three parts:
 - i. Part A: General Requirements for all Training;
 - ii. Part B: Specific Requirements relating to Apprenticeship / Traineeship Training;
 - iii. Part C: Data Systems and Resources.

PART A: GENERAL REQUIREMENTS FOR ALL TRAINING

1. Application and Enrolment requirements

- 1.1. 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*.
- 1.2. The RTO must ensure that all mandatory standard enrolment questions as described in the Victorian VET Student Statistical Collection Guidelines are applied during the enrolment process of all Eligible Individuals.
- 1.3. 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 Current Competency (RCC) or Credit Transfer); and
 - b. ascertain that the proposed learning strategies and materials are appropriate for that individual.
- 1.4. Recognition of Prior Learning must be offered to all Eligible Individuals upon enrolment and prior to delivery of Structured Training. The RTO must be able to demonstrate that they have processes to encourage the uptake of, and to streamline, RPL assessments.

2. Documentation of Agreed Program Delivery

- 2.1. The RTO must document information on training and assessment to be provided for all Eligible Individuals in respect of which Funds are paid by the Commission under this Agreement, either as a group of Eligible Individuals or a single Eligible Individual.
- 2.2. The information should include, at least:
 - a. name and contact details of the RTO;
 - b. title of qualification;
 - c. competencies/modules to be obtained;
 - d. scheduled hours for competencies to be obtained;
 - e. timeframe for achieving competencies;
 - f. delivery modes to be used;
 - g. training to be undertaken;
 - h. assessment details and arrangements;
 - i. party/ies responsible of the delivery and/or assessment of each competence; and
 - j. record of RPL and Credit Transfer hours granted.
- 2.3. The information must be consistent with the qualifications or competencies to be attained and customised (as required), for the needs of the group of Eligible Individuals or Eligible Individual, including the needs identified in the Pre-Training Review.
- 2.4. The information on training and assessment must be agreed and signed by the RTO and the group of Eligible Individuals or Eligible Individual. 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. This information may be in the form of a Training Plan.
- 2.5. The RTO must record the scheduled hours specified within the Training Plan or equivalent document in their Student Management System (SMS) and upload to the Skills Victoria Training System (SVTS).

3. Evidence of Participation

- 3.1. All training delivery by the RTO to an Eligible Individual must be supported by Evidence of Participation for each unit of competency/module in accordance with the following specifications

such that continuity of an Eligible Individual's engagement in Training Services activity can be confirmed:

- a. One point of Evidence of Participation per unit of competency/module must be provided if the elapsed time for delivery of that unit of competency/module is one month or less; or
 - b. Two points of Evidence of Participation per unit of competency/module must be provided if the elapsed time for delivery of that unit of competency is greater than one month.
- 3.2. Evidence sought in this regard needs to be authenticated by documented evidence from the RTO of engagement by the student in the learning activity. To be valid, evidence provided must contain the student's name or identification number, a module or unit of competency identifier and a date.
- 3.3. 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.** 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 notes based on personal interviews, telephone, e-mail, or other communication modes on the engagement of a student in learning 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. This is deemed adequate to satisfy the minimum participation criterion in the unit of competency or module enrolment. 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 client 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 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 (or "lock-step"), 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 for a pass outcome, a non zero mark or grade for a component of the unit of competency or module or the final result, or an assessment record that supports the individual's activity in the unit of competency or module. For all other outcomes additional Evidence of Participation will be required. For RPL outcomes only the primary assessment tool used for any RPL assessments will be accepted.

Evidence of an individual's results should have an endorsement at the delivery level that confirms the accuracy of the client information.

OR

e. Where primary recording documentation is not available a signed statement from the relevant provider 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 statement affirming their evidence.

To result in a verifiable enrolment an auditor would be required to record two 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 statement 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 activity required for the unit of competency or module:**

Where an individual has a secure login to specific learning activity (for the unit of competency or module) in which they are enrolled, the login record demonstrating on-line engagement with the learning activity will constitute evidence of engagement.

OR

- g. **In flexible and distance modes of learning, records of staff/student engagement with learning activity at a unit of competency or module level that indicates the individual has commenced working on the learning materials received.**

3.4. 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 Commission must be collected and retained by the RTO for audit purposes.

3.5. In undertaking an audit 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.

3.6. **General Requirements associated with verification of participation**

- a. 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 will verify each enrolment for participation on its merits.
- b. An auditor will not accept RTO based Certificates in isolation to satisfy Evidence of Participation at the unit of competency or module level.
- c. 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 3.3e, is provided.
- d. Verification of enrolments will be disallowed 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.

3.7. **Clarification Regarding Participation in VCE Units 3 & 4**

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 *Australian Vocational Educational and Training Management Information Statistical Standard (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.

4. Practical Placements

- 4.1. 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.skills.vic.gov.au/corporate/providers/training-organisations>

5. Nursing courses / qualifications

- 5.1. 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 Council Limited (ANMC);then the provision of Training Services by the RTO must be in accordance with the guidelines and regulations of the NMBA and the ANMC, and delivery (including method, mode and location/facilities) must be approved by the NMBA and ANMC as appropriate.

6. Completions

- 6.1. The RTO must issue recognised qualifications or Statements of Attainment to the requirements of the relevant accredited courses, endorsed national Training Packages, as well as any other guidelines or regulations. Refer Part B for particular requirements relating to completions of Apprentices/Trainees.

PART B: SPECIFIC REQUIREMENTS RELATING TO APPRENTICESHIP / TRAINEESHIP TRAINING

7. Apprentice / Trainee eligibility requirements

- 7.1. The RTO is to deliver training to eligible Apprentices / Trainees who are Eligible Individuals in accordance with the schemes deemed by the Commission to be Approved Training Schemes under the Act.
- 7.2. In addition to individual eligibility requirements detailed in Schedule 2 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, an individual must be:
- a. employed in Victoria in either a full time or part time capacity under an award or registered agreement;
 - b. undertaking a Training Scheme approved by the Commission;
 - c. a signatory to a Training Contract with their employer which is registered with the Commission;
 - 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.
- 7.3. 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 listed in the industry guides at: <http://www.skills.vic.gov.au/corporate/publications/brochures-and-fact-sheets/apprenticeships-and-traineeships-in-victoria-industry-guides>
- 7.4. The RTO must enter and update information on the SVTS regarding the Approved Training Schemes that the RTO intends to deliver. Information to be updated includes the name of the course/ qualification, delivery location(s) and contact details.

8. Training Plan Requirements for Apprentices / Trainees

- 8.1. 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 months of the date of commencement of the Training Contract. This period also has an impact on the payment of government incentives.

The RTO's enrolment timelines should not impede the employer's ability to comply with this requirement.

- 8.2. 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.
- 8.3. Training models offered by RTOs should ensure compliance with the Commission's Part Time policy (refer to Clause 13).
- 8.4. A Training Plan must be developed by the RTO, together with the employer, and Apprentice / Trainee and should be consistent with the qualification to be obtained and customised (as required) consistent with the outcomes of the Pre-Training Review. Training Plans may be developed and signed prior to training commencement but no later than four weeks after training commencement.
- 8.5. 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).
- 8.6. A Training Plan must include all of the following and be straight forward, easy to follow and written in plain English:
 - a. name and contact details of the RTO and employer;
 - b. title of qualification;
 - c. competencies/modules to be obtained;
 - d. scheduled hours for competencies to be obtained;
 - e. timeframe for achieving competencies;
 - f. delivery modes to be used;
 - g. training to be undertaken;
 - h. assessment details and arrangements;
 - i. party/ies responsible of the delivery and/or assessment of each competence;
 - j. details (when, how & how much) of the time allocated outside routine work duties for Structured Training;

- k. record of RPL and Credit Transfer hours granted;
 - 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.
- 8.7. The RTO must update the Training Plan according to any changes mutually agreed with the parties to the Training Contract. The changes must be endorsed by the employer and Apprentice /Trainee.
- 8.8. Sample Training Plans are provided at the following web address: http://www.skills.vic.gov.au/corporate/publications/brochures_and_fact_sheets/training-plans.
- 8.9. Details of Training Packages and Victorian Implementation Guides are available at: <http://trainingsupport.skills.vic.gov.au>

9. General Administrative Practices

- 9.1. The RTO must immediately notify the relevant Australian Apprenticeships Centre (AAC) if the qualification on DELTA is not appropriate or relevant to the Apprentice's / Trainee's work duties, and request that the employer and Apprentice / Trainee vary the Training Contract.
- 9.2. The RTO must notify the Manager of Apprenticeship Administration at Skills Victoria on telephone 03 9637 3555 within 24 hours of being notified of the death of an Apprentice / Trainee.
- 9.3. The RTO must notify the relevant organisation as listed below within two weeks of:
- a. an Apprentice's / Trainee's non-enrolment – notify AAC (if not accepting enrolment, set the DELTA record to "POL unknown" and notify AAC);
 - b. a situation, including absences, which has the potential to affect completion of the Training Contract (after making an effort to resolve the matter via contact with the employer and Apprentice) – notify an Apprenticeship Field Officer;
 - c. withdrawal/non-start of enrolled Apprentice / Trainee – notify AAC;

- d. the requirements being met for issuing of a qualification to any Trainee, or an Apprentice who commenced training on or after the relevant dates shown in Clause 11.3 – notify Skills Victoria (update DELTA by marking “Successful completion of off-the-job training/POL complete”, change the status to “Complete” and enter the actual completion date);
 - e. the requirements being met for issuing of a qualification to an Apprentice who commenced training before the relevant dates in Clause 11.3 – notify Skills Victoria (update DELTA to mark “Successful completion of off-the-job training/POL Complete”);
 - f. an Apprentice’s / Trainee’s change of address – notify Skills Victoria by updating DELTA;
 - g. an Apprentice’s / Trainee’s change of employer – notify AAC.
- 9.4. The RTO must sign claim forms for Commonwealth Department of Education, Employment and Workplace Relations (DEEWR) Employer Incentives for Apprentices / Trainees when training delivery commences and as appropriate for progression and completion claims.

10. Delivery Practices

- 10.1. The RTO must not commence Structured Training before:
- a. the commencement date of the Training Contract;
 - b. creation of the DELTA record; and
 - c. the trainer has contacted the workplace supervisor of the Apprentice/Trainee to:
 - i. outline the supervisor’s responsibilities;
 - ii. outline the purpose of further contacts; and
 - iii. outline the key features of the Training Plan.
- 10.2. The RTO must:
- a. provide training in the Approved Training Scheme nominated on the Training Contract to full time or part time Apprentices / Trainees;
 - b. make all reasonable provisions for the Apprentice / Trainee to achieve all competencies required for the Structured Training identified in the Approved Training Scheme within the nominal duration of the Training Contract;

- c. advise the Apprentice / Trainee and their employer, that an application for an extension to the term of the Training Contract must be made if they are unable to complete the Structured Training prior to the nominal completion date of the Training Contract (this application should be lodged by the employer via the relevant AAC); and
- d. for Apprentices, commencing training on or after the dates shown in Clause 11.3, make a minimum of four contacts per year with the employer in person, in writing or electronically to discuss the Apprentice's progress against the Training Plan and obtain employer confirmation in writing (including e-mail) of the Apprentice's competence in the workplace.

(Timelines for employer confirmation should be agreed with an employer. Assessments of competence should be grouped around completion of clusters of competencies rather than for completion of any individual competency. If the employer is a Group Training Organisation (GTO), sign-off must be from the GTO, not the host employer).

- 10.3. The RTO may deliver Structured Training within one or a combination of both of the following modes:
- a. Off-the-job Structured Training refers to training that is conducted by the RTO's training staff at the RTO's training facility. It is often referred to as trade school, block release or on-campus training; and/or
 - b. Workplace based Structured Training refers to training that is conducted by the RTO's training staff at the Apprentice's / Trainee's workplace. The Apprentice / Trainee must be withdrawn from regular work duties in order to participate in the training.

11. Completion requirements for Apprentices/ Trainees

- 11.1. For all Trainees, and for all Apprentices who commenced training on or after the relevant dates shown in Clause 11.3, the RTO must issue the qualification only when:
- a. all competencies of the Structured Training have been achieved;
 - b. the employer has returned a written confirmation of the Apprentice's / Trainee's competence as an employee in the workplace (if the employer is a GTO, final confirmation must be from the GTO, not the host employer); and
 - c. the RTO has given clear advice to the employer that final confirmation completes the Training Contract.

- 11.2. For all Apprentices who commenced training before the relevant dates in Clause 11.3, the RTO must issue the qualification when all competencies of the structured training have been achieved.
- 11.3. Requirements for Competency Based Completions apply to Apprentices whose training commenced on or after the dates specified below:

Industry	Date
All <i>Engineering</i> industry Apprenticeships	1 January 2008
Apprenticeships in all other industries except those listed below	1 July 2010
All <i>Automotive</i> industry Apprenticeships	1 January 2011
<i>Electrotechnology</i> industry: only applies to the Certificate III in Electrotechnology Electrician (UEE30807) and the Certificate III in Refrigeration and Air-Conditioning (UEE31307) apprenticeships	1 January 2011
<i>Plumbing</i> industry: only applies to the Certificate III in Plumbing (CPC32408) apprenticeship	1 January 2011
<i>Building</i> industry: only applies to the Certificate III in Carpentry (CPC30208), Certificate III in Joinery (CPC31908) and Certificate III in Carpentry and Joinery (CPC32008)	1 January 2011
<i>Retail</i> industry: only applies to the Certificate III in Floristry (WRF30104) apprenticeship.	1 January 2011

- 11.4. The RTO must ensure that qualifications issued following the completion of an Approved Training Scheme contain on the certificate below the qualification title, the words "obtained under an approved Victorian Government Apprenticeship or Traineeship training scheme".

12. Workplace Based Training Minimum Compliance Standards

- 12.1. For every Apprentice / Trainee who is undertaking some workplace based training, in addition to the requirements in Clause 10, the RTO is required to:
- a. conduct a workplace induction with the Apprentice / Trainee and supervisor and sign off the Training Plan with the supervisor/employer;
 - b. depending on the proportion of training and assessment in the workplace, conduct a minimum number of additional visits as follows:

- i. 1 visit if 25 per cent or less of the SCHs of the qualification;
 - ii. 2 visits for 25 - 50 per cent of the SCHs of the qualification;
 - iii. 3 visits for 50 - 75 per cent of the SCHs of the qualification;
and
 - iv. 4 visits for more than 75 per cent of the SCHs of the qualification;
- c. obtain verification of the face to face visits by acquiring the dated signature of the employer/workplace supervisor and Apprentice / Trainee;
- d. during the course of the visit:
- i. meet with the Apprentice / Trainee external from their direct work environment to discuss progress in relation to the Training Plan;
 - ii. deliver training and/or assessment in accordance with the Training Plan; and
 - iii. document the training and/or assessment provided in reference to the competencies;
- e document the withdrawal time from routine work duties for Structured Training activities which are as follows:
- i. at Certificates III and above, a minimum of three hours per week, averaged over a four week cycle (pro rata for part time Trainees and only for the duration of competencies delivered and assessed in the workplace if the training program combines Off-the-job Structured Training and Workplace based Structured Training);
 - ii. at Certificates I and II a minimum of one and half hours per week, averaged over a eight week cycle (pro rata for part time Trainees and only for the duration of competencies delivered and assessed in the workplace if the training program combines Off-the-job Structured Training and Workplace based Structured Training); and
 - iii. a maximum of 40 hours of the annual withdrawal time may be delivered as block training within the first 3 months of training for all certificates. This training should focus on compliance and regulatory units and generic skills.
- f where an employer/supervisor is not allowing the Apprentice / Trainee to be withdrawn from routine work duties for the applicable

minimum specified time, report the non-compliance to the Manager of Apprenticeships Administration at Skills Victoria within 14 days if initial consultation with the employer/supervisor does not resolve the issue.

- g make monthly contact by either e-mail, fax or phone with both the Apprentice / Trainee and the workplace supervisor to:
 - i. monitor the progress of training against the Training Plan;
 - ii. monitor and document the training/learning activities undertaken during the withdrawal time for the previous month; and
 - iii. record the dates and time periods logged as withdrawal time in the previous month.

13. Part Time Apprenticeships / Traineeships

- 13.1. All Approved Training Schemes are available on a part time basis subject to there being a suitable industrial arrangement in place (which do not currently exist for most Apprenticeships).
- 13.2. The onus is on the employer to establish that this is the case and to certify to such on the Training Contract.
- 13.3. The RTO should not develop or market programs that impede the employer's ability to comply with this requirement.

14. School-Based Apprenticeships / Traineeships

- 14.1. All Apprenticeships / Traineeships can also be undertaken as school based programs, subject to the availability of suitable industrial arrangements. Arrangements are in place by the Victorian Curriculum and Assessment Authority (VCAA) to support any Apprentice / Trainee obtaining credit into their VCE or VCAL program.
- 14.2. In the event that the Apprentice / Trainee is undertaking the training as part of a School Based Apprenticeship / Traineeship (SBAT), the RTO must ensure that:
 - a. it makes contact with the secondary school to initiate completion of a Training Plan;
 - b. the Training Plan is also signed by an authorised representative of the SBAT's school within two months of the signing of the Training Contract;

- c. a copy of the completed (signed) Training Plan is provided to the relevant AAC;
- d. in consultation with the SBAT's school, report SBAT results in a timely manner for the school to enter results on the Victorian Assessment Software System (VASS). Results must be supplied to schools at least one week prior to the cut off date as schools require one week to allow for data entry. Check the exact date at www.vcaa.vic.edu.au and search for the VCE and VCAL Administrative Handbook;
- e. schools are notified when there are amendments to the Training Plan (this allows SBATs to receive full credit in their VCE or VCAL); and
- f. there is compliance with specific requirements as identified at Clause 13 *Part time Apprenticeships / Traineeships*.

15. Competency Based Wage Progressions

- 15.1. For engineering Apprentices whose training commenced on or after 1 January 2008, and for automotive Apprentices and automotive Trainees whose training commenced on or after 1 January 2011, the RTO must notify the employer immediately, in writing, when the Apprentice / Trainee attains any point of progression linked to a competency based wage system.

16. Unemployment of Apprentices / Trainees

- 16.1. In instances of Apprentice / Trainee unemployment:
 - a. an RTO must continue the Structured Training, under a relevant Apprentice / Trainee funding source code as outlined in the *Victorian VET Student Statistical Collection Guidelines*, of an Apprentice / Trainee who becomes unemployed before completing the qualification named on the Training Contract, for the following periods of time to provide reasonable opportunity of re-employment; and/or
 - b. an Apprentice may continue to receive training toward the qualification named on the Training Contract, subject to tuition fees being paid until completion of the qualification; and/or
 - c. a Trainee may continue to receive training towards the qualification named on the Training Contract for three months, or to the end of the enrolment period for which the Trainee's tuition fees have been paid, whichever is the greater.

- 16.2. If an Apprentice / Trainee successfully completes the Structured Training while continuing to be unemployed the qualification can be issued but the words "obtained under an approved Victorian Government Apprenticeship (or Traineeship) training scheme" should be omitted from the certificate OR at the Apprentice's request, withhold the certificate to allow for re-employment and completion of the Training Contract.

PART C: DATA SYSTEMS AND RESOURCES

17. Data Systems

17.1. The RTO is required to access and/or submit data to a number of data systems managed by Skills Victoria. 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://secure.otte.vic.gov.au/deltarto/	The DELTA database records all Apprentices / Trainees in Victoria.
SVTS	Statistical reporting and claiming for training	https://secure.otte.vic.gov.au/SVTS/	Enter monthly delivery data for all training and claims.
	Enquires	https://secure.otte.vic.gov.au/SVTS/	RTOs should complete and submit all enquiries to Skills Victoria. Please allow up to at least three working days for a response.
	Advise the Commission of Approved Training Schemes the RTO is delivering or intends to deliver	https://secure.otte.vic.gov.au/SVTS/	This information is made available to employers and AACs to assist them in identifying potential training providers for Apprentices / Trainees.
	Lost/Forgotten User ID and/or Password details	https://secure.otte.vic.gov.au/SVTS/	Refer to instructions on the Skills Victoria Training System Homepage.

17.2. 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.

17.3. When an RTO is nominated as the training provider relating to Clause 17.2, the details for the Apprentice or Trainee are lodged by an AAC and registered on Skills Victoria's DELTA database. The RTO must have access to DELTA and should also check it regularly.

17.4. 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
 Skills Victoria
 PO Box 266
 Melbourne 3001
 Fax: 03 9637 3220.

- 17.5. The RTO must use the SVTS for all student statistical data and claims for funding in accordance with the *Victorian VET Student Statistical Guidelines* and the *Skills Victoria Training System: Guide to Claims*.

18. Quick reference guide: Part Time and School-based Apprenticeships / Traineeships

	Part time Apprenticeship/ Traineeship	School based Apprenticeships and Traineeships (SBATs)
	A person undertaking a part time Apprenticeship / Traineeship outside of school hours. May or may not be a senior school student.	A senior school student undertaking a part time Apprenticeship / Traineeship partially in school hours. At least one day per week must be timetabled to be spent on the job or in training during the normal school week.
Minimum hours	At least 7 hours of employment and 6 hours of training per week This may be averaged over: <ul style="list-style-type: none"> • three periods of four months each in each year of the Training Contract for school students undertaking non integrated part time Apprenticeships/ Traineeships • 1, 2 or 4 week cycles for part time Apprentices/ Trainees not attending school (includes mature age workers, existing employees etc). • If the program is fully workplace based the Commission's standards for workplace based training shall apply. 	At least 7 hours of employment and 6 hours of training per week which may be averaged over three periods of four months in each year of the program, unless the program is fully workplace based in which case the Commission's standards for workplace based training shall apply.
School authorisation	Not required	In order for the Training Contract to be registered with Skills Victoria as a school based Apprentice, a school representative is required to sign the student's Training Plan. The school's acknowledgement indicates: <ul style="list-style-type: none"> • the student is enrolled in a senior secondary program (VCE or VCAL); • the school's awareness of the Training Plan and certification that the study, training and work commitments of the student form an integral part of that student's school learning program and study timetable. <p>In signing the Training Plan, the school is not endorsing the quality of the training for the SBAT, the occupational health and safety arrangements, or the wage arrangements/requirements.</p> <p>Note: The plan should be completed within 2 months of Training Contract commencing.</p>
Credit into VCE or VCAL	If the person is a school student, they are eligible to receive VCE or VCAL credit for the vocational training, if sought.	The student is eligible to receive VCE or VCAL credit for the vocational training.
Training Contract	Responds Yes or no to Q18 as appropriate Responds No to Q19.	Responds Yes to Q18 Responds Yes to Q 19.

Part time Apprenticeship and Traineeship					School Based Apprenticeships and Traineeships (SBATs)		
Not Fully Workplace Based	Minimum hours of employment	Non School Student		School Student		School Student	
		13		13		13	
		Employment	Training	Employment	Training	Employment	Training
		7	6	7	6	7	6
	Averaged Cycle	1, 2 or 4 weeks		3 periods of 4 months per year		3 periods of 4 months per year	
	<p>For part time Apprenticeships / Traineeships which are not fully workplace based, the requirements of the Commission's part time Apprenticeships / Traineeships policy shall apply. This requires that there be a minimum of 7 hours per week of employment and a minimum of six hours per week of Structured Training. This may be averaged over 1, 2 or 4 week cycles unless the Apprentice / Trainee is also a school student undertaking the Apprenticeship / Traineeship outside school hours in which case it may be averaged over three periods of four months in each year of the program.</p>				<p>In order for a Training Contract to be registered as a School-based Apprenticeship or Traineeship (SBAT), the Commission requires that there be a minimum of 7 hours per week of employment and a minimum of six hours per week of Structured Training which may be averaged over three periods of four months in each year of the program.</p> <p>However if the training program is fully workplace based, the Commission's standards for workplace based training shall apply (see below).</p> <p>Additionally a school representative is required to sign the Training Plan and that plan should be submitted within 2 months of the Training Contract commencing. At least one day per week must be timetabled to be spent on the job or in training during the normal school week.</p>		
Fully Workplace Based	<p>The minimum hours of employment are 13 hours per week.</p> <p>All Apprentices/Trainees undertaking workplace training at AQF levels 1 and 2 must be withdrawn from routine work duties for a minimum of 1.5 hours per week (pro rata for part time Apprentices/Trainees with a minimum of one half hour), averaged over a two month cycle for the purpose of undertaking Structured Training/learning activities. This release must occur periodically.</p> <p>Where the qualification is at Certificate III or above, Apprentices/Trainees must be withdrawn from routine work duties for a minimum of three hours per week (pro rata for part time Apprentices/Trainees with a minimum of one hour) for planned training, averaged over a four week cycle.</p> <p>The training undertaken during the period of release must include a focus on the compliance and regulatory units and the units concentrating on generic skills. Up to 40 hours of this training may be transferred, to be delivered in one or more blocks during the first three months of the training program.</p>						

19. Useful websites

Australian Apprenticeships Centres

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

Australian Quality Training Framework (AQTF)

<http://www.training.com.au>

Course Accreditation

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

Curriculum Maintenance Managers

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

Guide to Apprenticeships and Traineeships and industry guides

http://www.skills.vic.gov.au/corporate/publications/brochures_and_fact_sheets/apprenticeships-and-traineeships-in-victoria-industry-guides

Ministerial Directions including *Ministerial Directions about Fees*

http://www.skills.vic.gov.au/corporate/directions/policy_and_legislation/ministerial_directions

National Training Information Service (NTIS)

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

Skills Victoria Corporate website

<http://www.skills.vic.gov.au/corporate>

Victorian VET Student Statistical Collection Guidelines

<http://www.skills.vic.gov.au/corporate/statistics/>

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>

20. Glossary

Terms	Explanation
ATYB	Apprenticeships Traineeships and Youth Branch of Skills Victoria, which administers the registration of Training Contracts on behalf of the Victorian Skills Commission (VSC).
AAC	Australian Apprenticeship Centre
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.
AQF	The Australian Qualifications Framework
AQTF	Australian Quality Training Framework. The current standards for Registered Training Organisations (RTO). See http://www.training.com.au/portal/site/public/menuitem.91cdbaeb7a2bc0e2cd9ae78617a62dbc/
AVETMISS	Australian Vocational Education and Training Management Information Statistical Standard.
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 Skills for Victoria. Please allow up to three working days for a response.
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. For further information about vocational education and training products and services, see http://www.training.com.au/ .
Recognition of Current Competency (RCC)	RCC applies if a client 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. RCC will not be paid for through Skills for Victoria.
Recognition of Prior Learning (RPL)	RPL is a process through which people can gain entry to, or credit in, recognised courses based on competencies gained. The competencies may have been gained through experience in the workplace, in voluntary

Terms	Explanation
	work, in social or domestic activities or through informal or formal training. RPL does not include any additional training at the unit of competency or module level. RPL will be paid up to the nominal hours of the module or unit of competency.
SBAT	School-based Apprentice or Trainee. (Also referred to as ASbA – which stands for Australian School-based Apprenticeship and includes Trainees).
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: Off-the-job	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'. 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) – Skills Victoria's IT system for managing contracts between the Victorian Skills Commission and RTOs for delivery of Victorian government funded training.
TOID	Training Organisation Identifier
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://www.ntis.gov.au/?trainingpackage/all
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 funded 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

Terms	Explanation
	required and the respective obligations in the delivery of these services. The Training Plan provides details of the arrangements.
Victorian Training Guarantee	The <i>Victorian Training Guarantee</i> is an entitlement to a government subsidised place in recognised training that can be access at any time.
VRQA	Victorian Registration and Qualifications Authority – www.vrqa.vic.gov.au

2011 Service Agreement

Schedule 2

Skills for Victoria

Program Specifications

VERSION	DATE	COMMENTS
2011 Version 1.0	October 2010	Draft as posted with EOI
2011 Version 1.1	December 2010	Final as contracted

PURPOSE

This Schedule describes the *Skills for Victoria* program specifications and must be read in conjunction with the Agreement.

1 Eligibility requirements

- 1.1 The RTO must apply the following requirements to determine whether an individual is eligible for government subsidised training under this Schedule and thereby be an Eligible Individual for the purpose of this Schedule.
- 1.2 To be eligible, an individual must meet the general citizenship/residency requirements and *Victorian Training Guarantee* requirements as follows:
- a To meet general citizenship/ residency eligibility requirements, an individual must be:
 - i an Australian citizen; or
 - ii a holder of a permanent visa; or
 - iii a holder of a Special Category Visa (sub-class 444); or
 - iv an East Timorese asylum seeker; or
 - v a holder of a Temporary Protection Visa.
 - b To meet the *Victorian Training Guarantee* eligibility requirements, an individual must enrol and commence training in a course or qualification provided by the RTO between the later of 1 January 2011 or when this Agreement is executed, and 31 December 2011 inclusive and be:
 - i under 20 years of age (as at 1 January 2011) and undertaking recognised training; or
 - ii over 20 years of age (as at 1 January 2011) and undertaking recognised training in a Foundation Skills course; or
 - iii over 20 years of age (as at 1 January 2011) and undertaking recognised training as an Apprentice (not Trainee); or
 - iv over 20 years of age (as at 1 January 2011) and undertaking 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.
- 1.3 The RTO must have a clear business process in place for the determination of eligibility of individuals for government subsidised training under this Schedule. The business process and related documentation demonstrating that appropriate checks have been performed to establish each individual's eligibility must be available to the Commission (or persons authorised by the Commission) for audit purposes. Relevant evidence may include copies of an individual's

formal documentation evidencing citizenship/residency and age; a signed self declaration from the individual as to their eligibility including in relation to previous highest qualifications held; a signed confirmation by a responsible staff member of the RTO that all checks have been undertaken and relevant documentary evidence sighted or retained.

- 1.4 Additional guidance for determining eligibility of individuals is detailed at Attachment 1 to this Schedule.
- 1.5 The eligibility requirements include a reference to courses in the Foundation Skills category. Courses have been classified into categories for the purposes of determining eligibility, tuition fee calculation and funding rates. In general, the course categories are as follows:

Course Category	Award
Foundation Skills	Foundation Level and Pre-Accredited Courses
Skills Creation	Certificate I and II
Skills Building	Certificate III and IV
Traineeships	Various
Apprenticeships	Various
Skills Deepening	Diploma and Advanced Diploma

- 1.6 The current detailed list of course categories is at Attachment 2 to this Schedule.
- 1.7 An individual is not eligible for government subsidised training under this Schedule if the individual is:
 - a a student enrolled in a school (excluding a School Based Apprentice / Trainee), and undertaking accredited vocational education and training (VET) that has been arranged by the school. 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 an individual held in a custodial setting as defined in clause 2.10 of the *Ministerial Directions about Fees* at 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
- xiv Thomas Embling Hospital
- xv Malmsbury Juvenile Justice Centre
- xvi Parkville Youth Residential Centre

- 1.8 These exclusions do not apply to individuals on Community Based Orders or individuals held in Judy Lazarus Transition Centre who, subject to Clause 1 of this Schedule, may be eligible for funding under this Schedule as they are able to physically access training outside of custodial settings without supervision.

2 Eligibility Exemptions

- 2.1 A limited number of government subsidised places will be available for individuals who do not meet the eligibility requirements detailed in Clause 1 of this Schedule (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 An Eligibility Exemption cannot be granted for individuals who do not meet the citizenship/ residency eligibility requirements outlined above in Clause 1.2 a) of this Schedule.
- 2.4 The RTO will be advised by the Commission of the number of Eligibility Exemption places available to the RTO. Eligibility Exemptions may not be granted by the RTO until such time as the Commission confirms the number of Eligibility Exemption places available to the RTO.
- 2.5 The RTO is responsible for determining Eligibility Exemptions on a case by case basis, at a local level in accordance with the guidelines from the Commission. The RTO is required to retain documented evidence to support its decision to grant an Eligibility Exemption to an individual.
- 2.6 Eligibility Exemptions will apply to the total hours in a course or qualification, up to completion. An Eligibility Exemption provides access

to a government funded place only and does not extend to student tuition or other fees, which apply these enrolments in the same way as all other enrolments.

- 2.7 The RTO must report Eligibility Exemptions to the Commission through the use of the Eligibility Exemption Indicator field in the monthly Student Statistical Reports to be provided under the Agreement.
- 2.8 An individual granted an Eligibility Exemption in accordance with the above procedures will be considered an Eligible Individual for the purposes of the Schedule.

3 Tuition Fees

- 3.1 The RTO must adhere to the *Ministerial Directions about Fees and related fee tables*, or any subsequent relevant directions, in regards to the imposition and collection of tuition fees and other fees for government subsidised training, together with financial and accountability requirements with regards to student fees.

4 Determination and payment of Fee Concession Reimbursements

- 4.1 Fee concessions can only be considered for application to individuals undertaking government subsidised training funded under this Agreement.
- 4.2 Where the RTO has granted a fee concession:
 - a to an Eligible Individual who holds a relevant concession card in accordance with the *Ministerial Directions about Fees*; or
 - b to an Indigenous student under the Indigenous Completions Initiative;

the RTO will be reimbursed by the Commission for income foregone as a result of charging the minimum tuition fee to that individual.
- 4.3 The RTO must retain copies of all documentation demonstrating an individual's eligibility for the fee concession granted by the RTO for audit purposes and to meet the record keeping requirements of the *Ministerial Directions about Fees*.
- 4.4 The RTO must report all fee concessions granted by the RTO to Eligible Individuals to the Commission in accordance with the fee concession reporting requirements outlined in the *Victorian VET Student Statistical Collection Guidelines* issued by the Commission.
- 4.5 Reimbursement by the Commission under Clause 4.2 of this Schedule 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.
- 4.6 The reimbursement amount for the purposes of Clause 4.2 of this Schedule will be calculated by the Commission on the basis of 80 per

cent of the applicable maximum hourly tuition fee, up to the applicable maximum, less the minimum fee.

- 4.7 Income foregone on the basis of concessions granted to individuals in relation to extreme hardship as described in the *Ministerial Directions about Fees* will not be reimbursed by the Commission.
- 4.8 Should any audit of the RTO under the Agreement identify issues relating to inadequate documentary evidence for fee concessions granted to Eligible Individuals, the Commission may seek a refund of some or all of the Fee Concession Reimbursement payments made by the Commission to the RTO under this Agreement.

5 Determination and payment of Fee Waiver Payments

General Fee Waiver Requirements

- 5.1 Fee waivers can only be considered for application to individuals undertaking government subsidised training funded under this Agreement.
- 5.2 The RTO must retain copies of all documentation demonstrating an individual's eligibility for a fee waiver granted by the RTO for audit purposes and to meet the record keeping requirements of the *Ministerial Directions about Fees*.
- 5.3 The RTO must report all fee waivers granted to Eligible Individuals to the Commission in accordance with the fee exemption reporting requirements outlined in the *Victorian VET Student Statistical Collection Guidelines* issued by the Commission.
- 5.4 Should any audit of the RTO under the Agreement identify issues relating to inadequate documentary evidence for fee waivers, the Commission may seek a refund of some or all of the Fee Waiver payments made by the Commission to the RTO under this Agreement.

Job Seeker Fee Waiver

- 5.5 The RTO must apply a fee waiver to an Eligible Individual who is a Job Seeker. A 'Job Seeker' is defined as a person who is:
- a registered with an Employment Services Provider (ESP); and/ or
 - b a participant in the Commonwealth Government's Community Development Employment Program and/or Access Program.
- 5.6 Where the RTO has granted a fee waiver under Clause 5.5 of this Schedule to a Job Seeker who is an Eligible Individual, the RTO will be paid an amount by the Commission equal to the value of the revenue foregone by the RTO in applying the fee waiver to the Job Seeker.
- 5.7 The Job Seeker fee waiver to be applied by the RTO is limited to enrolments in Certificates I, II, III, and IV and does not extend to any other fees, such as student services and amenities fees.
- 5.8 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), the job seeker fee waiver supersedes the special tuition fee arrangements under the Indigenous Completions Initiative.

- 5.9 The RTO must sight and retain a copy of the original Job Seeker Referral form, and then return the original to the individual. On enrolment, a copy of this form must also be returned by the RTO to the Job Seeker’s referral agency.
- 5.10 Revenue foregone by the RTO (for the purposes of calculating the Fee Waiver Payment under this Schedule) will be calculated and reimbursed based on the scheduled hours in each enrolment, up to the relevant category fee cap. Hours below the usual minimum tuition fee will be included.

6 Determination and payment of Contact Hour Funds

- 6.1 The Commission will only make payment of Contact Hour Funds (as calculated in accordance with this Clause 6 of this Schedule) 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. The Funded Courses Report is subject to change at any time.
- 6.2 The RTO may request (through the SVTS Enquiry line) the Commission to add a course or qualification to the Funded Courses Report. Private copyright courses will only be considered for inclusion where relevant course documentation is provided to the Commission. The Commission reserves the right to fund or refuse funding to any course or qualification at its absolute discretion.
- 6.3 Subject to Clause 6.9 of this Schedule, the Commission will pay the RTO for scheduled hours of training reported under this Schedule as having been delivered to Eligible Individuals. The Commission will pay the RTO at the rate per student contact hour (SCH) detailed under the ‘SCH Rate Non-TAFE’ field of the Funded Courses Report as published on the SVTS.
- 6.4 The rate per SCH 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 ‘Base Rate Non-TAFE’ for the course (as identified on the Funded Courses Report) by 1.5.
- 6.5 Except where doing so will result in a lower rate per SCH, the rate per SCH detailed on the Funded Courses Report will be adjusted by the Commission for Eligible Individuals aged 15-19 years as at 1 January 2011 without Year 12 or equivalent (deemed to be Certificate II for this purpose) by multiplying the ‘Base Rate Non-TAFE’ for the course (as identified on the Funded Courses Report) by 1.3.
- 6.6 Payments of Contact Hour Funds to the RTO in respect of an Eligible Individual by the Commission under this Schedule 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.
- 6.7 Evidence of Participation in respect of each Eligible Individual, for the purpose of payment of Contact Hour Funds by the Commission under this Schedule, is required at a minimum of:
- a one point per unit of competency/ module if the elapsed time for delivery is one month or less; or
 - b two points per unit of competency/ module if the elapsed time for delivery is greater than one month ;
- and must be in accordance with the types of evidence specified at Clause 3 of Schedule 1.
- 6.8 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 averaged over the number of months of scheduled delivery.
- 6.9 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.
- 6.10 Training Services to Eligible Individuals which are funded by the Commission under this Schedule must be reported by the RTO against:
- a Funding Source Code PSG for Eligible individuals who are Skills for Growth referrals and who are not under a contract of training (i.e. not apprentices/trainees); or
 - b Funding Source Code P for Eligible individuals who are not Skills for Growth referrals and who are not under a contract of training (i.e. not apprentices/trainees); or
 - c Funding Source Code LSG for Eligible individuals who are Skills for Growth referrals and who are under a contract of training (i.e. apprentices/trainees); or
 - d Funding Source Code L for Eligible individuals who are not Skills for Growth referrals and who are under a contract of training (i.e. apprentices/trainees).
- 6.11 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 these student contact hours as Credit Transfer.

- 6.12 Recognition of Prior Learning (RPL) will be paid up to the nominal hours per unit of competency or module. Recognition of Current Competency will not be funded by the Commission under the Agreement.
- 6.13 In the event that an Eligible Individual withdraws from Training Services delivered under this Schedule prior to achieving competency in an individual module or unit of competency, the enrolment must be reported by the RTO against outcome code "40" in the "Outcome Identifier - National" field of the NAT120 file in that month's Student Statistical Report in accordance with the *2010 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 Hours Attended as reported in the NAT120 file, instead of the Scheduled Hours.

7 Audits relating to Evidence of Participation

- 7.1 Should any audit of the RTO under the Agreement identify issues relating to a lack of Evidence of Participation for Funds paid to the RTO for Training Services provided to Eligible Individuals under this Schedule, the Commission may instigate an Evidence of Participation Audit involving a statistically valid sample size.
- 7.2 The RTO must be able to support the sampled units of competency/ modules with Evidence of Participation as prescribed in Schedule 1 of this Agreement, in respect of each Eligible Individual for which it has received Funds from the Commission.
- 7.3 If the Evidence of Participation Audit reveals that units of competency/ modules audited are not sufficiently supported then, without limiting the Commission's rights under Clause 15 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.
- 7.4 The value of Funds sought by the Commission under this clause may be up to the percentage of unsupported units of competency/ modules above the threshold, applied to the total Funds paid to the RTO in the 2011 calendar year under this Agreement.

Attachment 1

Notes for the purpose of determining prior qualification in eligibility

This criterion applies to qualifications, not course categories.

For the purpose of applying this criterion, the following qualifications are equivalent to Certificate II:

- a) the Victorian Certificate of Applied Learning (Intermediate and Senior);
- b) the Victorian Certificate of Education and its predecessor qualifications;
- c) the International Baccalaureate Diploma; and
- d) senior secondary school certificates from other Australian jurisdictions.

With reference to vocational Graduate Certificate and vocational Graduate Diploma level qualifications, for the purpose of determining the highest qualification held, the Australian Qualification Framework (AQF) applies, i.e. qualifications at Bachelor Degree level are lower than qualifications at vocational Graduate Certificate and vocational Graduate Diploma level.

For the purpose of applying this criterion, the following prior qualifications are not taken into account:

- a) qualifications listed in the Foundation Skills category; and
- b) any VET certificates completed as part of a senior secondary qualification; and
- c) qualifications with the title 'Course in...' which are not aligned to a specified level within the Australian Qualifications Framework (AQF); and
- d) non-Australian qualifications, except where equivalency has been formally established with a qualification within the AQF.

Eligibility for accredited courses with the title 'Course in...'

A number of courses with the title 'Course in...' are accredited. These are nationally recognised training products providing skills recognition leading to a Statement of Attainment, rather than the award of a qualification recognised

within the Australian Qualifications Framework (AQF). They are not aligned with the AQF.

For funding and fee charging purposes each 'Course in...' is classified in one of three categories, according to whether its purpose is to develop Foundation Skills, to deliver specific skills or knowledge unrelated to trade licensing (Skills Creation) or to deliver specific skills and knowledge required for trade licensing (Skills Building). The classifications of these courses are recorded in the Funded Courses Report.

Enrolment in a 'Course in...' is subject to the same eligibility requirements as other enrolments. Other than for those classified in the Foundation Skills category, this includes the following eligibility criterion:

- Subject to citizenship/residency requirements, a person aged 20 years or over on 1 January in the year of the scheduled commencement of training is eligible for a government subsidised place in any course in any category other than Foundation Skills, or if the person is seeking to enrol in training as an Apprentice under a Training Contract, if the course is accredited at a higher qualification level than the highest qualification held at the time of scheduled commencement.

For the purpose of applying this criterion to enrolment in a course with the title 'Course in...', a person who holds a qualification no higher than Certificate IV is to be considered eligible. For the purpose of applying this criterion, qualifications at Diploma level or higher are considered higher than courses with the title 'Course in...'.

Attachment 2

Classification of courses into categories for the purposes of tuition fee calculation and funding rate

The following classification will be updated from time to time as determined by the Commission and in line with updates to accreditation status.

FOUNDATION SKILLS CATEGORY

Course code	Qualification
21770VIC	Course in Initial General Education for Adults
21896VIC	Course in Recognised Informal Learning
21938VIC	Course in ESL
91418NSW	Course in Preliminary Spoken and Written English
91471NSW	Course in Language, Literacy and Numeracy
VCALFND001	Victorian Certificate of Applied Learning (Foundation)
2200LZF	Preparatory Year 11 Equivalent – General Studies
22012VIC	Certificate I in Vocational Preparation
21671VIC	Certificate I in Transition Education
21672VIC	Certificate I in Work Education
21771VIC	Certificate I in General Education for Adults (Introductory)
21772VIC	Certificate I in General Education for Adults
21859VIC	Certificate I in Mumgu-dhai tyama-tiyt
21890VIC	Certificate I in Initial Adult Literacy and Numeracy (Entry)
21891VIC	Certificate I in Initial Adult Literacy and Numeracy (Foundation)
21892VIC	Certificate I in Initial Adult Literacy and Numeracy (Established)
21936VIC	Certificate I in ESL (Access)
91421NSW	Certificate I in Spoken and Written English
21773VIC	Certificate II in General Education for Adults
21860VIC	Certificate II in Mumgu-dhai tyama-tiyt
21932VIC	Certificate II in ESL (Access)
21945VIC	Certificate II in ESL (Employment)
91422NSW	Certificate II in Spoken and Written English
21774VIC	Certificate III in General Education for Adults
21861VIC	Certificate III in Mumgu-dhai tyama-tiyt
21933VIC	Certificate III in ESL (Access)
21935VIC	Certificate III in ESL (Employment)
21939VIC	Certificate III in ESL (Further Study)
91423NSW	Certificate III in Spoken and Written English
	<i>Continued...</i>

FOUNDATION SKILLS CATEGORY - continued

21934VIC	Certificate IV in ESL (Access)
21937VIC	Certificate IV in ESL (Employment/Professional)
21940VIC	Certificate IV in ESL (Further Study)
91419NSW	Certificate IV in Spoken and Written English – Further Studies
91420NSW	Certificate IV in Spoken and Written English – Employment

Note

This category is limited to the specific qualifications listed and their predecessors for which the accreditation period has expired. For example, predecessor qualifications for the current Certificate I in Initial Adult Literacy and Numeracy (Foundation) are 5336 (expired 2003) and 21344VIC (expired 2008).

SKILLS CREATION CATEGORY

Course code	Qualification
N/A	All qualifications accredited as Certificate I other than those classified as Foundation Skills and except when undertaken as an Apprenticeship or Traineeship
N/A	All qualifications accredited as Certificate II other than those classified as Foundation Skills and except when undertaken as an Apprenticeship or Traineeship
N/A	Single modules, units or a 'Course in...' undertaken as stand-alone training to meet regulatory or industry requirements (For example, 21659VIC Course in First Aid Management of Anaphylaxis; 21896VIC Course in Taxi Driving; Responsible Service of Alcohol; Responsible Service of Gaming)
VCALINT001	Victorian Certificate of Applied Learning (Intermediate)
VCALSEN001	Victorian Certificate of Applied Learning (Senior)
VCE0000001	Victorian Certificate of Education

Note

Accredited programs with the title 'Course in...' have a range of entry requirements and skill development purposes and are not aligned with levels within the Australian Qualifications Framework. These programs, other than those listed as Foundation Skills or for the purpose of trade licensing, are classified in the Skills Creation category.

SKILLS BUILDING CATEGORY

Course code	Qualification
N/A	All qualifications accredited as Certificate III other than those classified as Foundation Skills and except when undertaken as an Apprenticeship or Traineeship
N/A	All qualifications accredited as Certificate IV other than those classified as Foundation Skills and except when undertaken as an Apprenticeship or Traineeship
N/A	Single modules, units or a 'Course in...' undertaken as stand-alone training for the purpose of meeting licensing requirements for a trade or

an extension of trade licensing (For example, 2002AEC Course in Scaffolding – Advanced; 2002AIC Course in Tower Crane Operation)

Note

Accredited programs with the title “Course in...” have a range of entry requirements and skill development purposes. Any ‘Course in...’ for the purpose of trade licensing is classified in the Skills Building category.

TRAINEESHIPS CATEGORY

Course code	Qualification
N/A	All qualifications undertaken under a Training Contract registered within the Australian Apprenticeship and Traineeship Program. An individual is undertaking a Traineeship (as opposed to an Apprenticeship) if the qualification undertaken is designated as such in the relevant Approved Training Scheme.

Note

All qualifications undertaken as a Traineeship are included in this category, regardless of the AQF qualification being undertaken.

APPRENTICESHIPS CATEGORY

Course code	Qualification
N/A	All qualifications undertaken under a Training Contract registered within the Australian Apprenticeship and Traineeship Program. An individual is undertaking an Apprenticeship (as opposed to a Traineeship) if the qualification undertaken is designated as such in the relevant Approved Training Scheme.

Note

All qualifications undertaken as an Apprenticeship are included in this category, regardless of the AQF qualification being undertaken.

SKILLS DEEPENING CATEGORY

Course code	Qualification
N/A	All qualifications accredited as Diploma, except when undertaken as an Apprenticeship or Traineeship
N/A	All qualifications accredited as Advanced Diploma, except when undertaken as an Apprenticeship or Traineeship
N/A	All qualifications accredited as vocational Graduate Certificate
N/A	All qualifications accredited as vocational Graduate Diploma

Note

Graduate Certificates and Graduate Diplomas accredited as Higher Education qualifications are not included.