**THIS CONTRACT is -**

**BETWEEN:** School Council of **[Insert name of School]** ABN **[Insert ABN]**, of **[Insert Address]** (“**the School Council**”)

**AND: [Insert name of Contractor]** ABN **[Insert ABN]** of **[Insert address]** ("**the Contractor**")

**RECITALS**

A. The School Council wishes to engage the Contractor to provide the Services.

B. The Contractor has agreed to provide the Services on the terms and conditions of this Contract.

**THE PARTIES AGREE AS FOLLOWS:-**

1. **INTERPRETATION**
   1. In this Contract unless inconsistent with the context or subject matter-

“**Act**” means the *Education and Training Reform Act 2006* (Vic);

“**AQTF**” means Australian Quality Training Framework;

“**Additional Student**” means a student who is not listed in Schedule 1 of the Contract but who in accordance with clause 2.2 participates or enrols in the Program during the Term.

“**Background Intellectual Property**” means Intellectual Property Rights in all curriculum materials, learning resources and assessment materials used in the provision of the Services existing at the Commencement Date;

“**Code of Practice**” means a code of practice as referred to in section 17 of the IP Act;

"**Commencement Date**" means the date in [Schedule 2](#sch2);

“**Completion Date**” means the date in [Schedule 2](#sch2);

“**Contract**” means this contract, including the Schedules, the Appendices and any annexed documents;

“**Department**” means the Department of Education and Early Childhood Development of the State of Victoria, and its successors;

“**GST**” means any tax imposed under any GST Law and includes GST within the meaning of the GST Act;

“**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) as amended;

“**GST Law**” means the GST Law as defined in the GST Act and includes any Act of the Parliament of Australia that imposes or deals with GST;

“**GST Related Tax Reform**” includes any changes, reductions or abolition of any State, Territory or Commonwealth taxes, excise, fees or imposts including, but not limited to, financial transactions tax, wholesale sales tax, stamp duty, debits tax, associated with the introduction of the GST Law;

"**Home School**" means the school in which a Student is enrolled;

“**Information Privacy Principles**” means the information privacy principles set out in the *Information Privacy Act 2000* (Vic);

“**Intellectual Property Rights**” means all rights in relation to inventions, designs, trade marks, trade names, circuit layouts, confidential information and copyright;

“**IP Act**” means the *Information Privacy Act 2000* (Vic);

“**Managed Individual Pathways**” means the ‘Managed Individual Pathways’ initiative which aims to ensure that students aged 15 years and over and Koorie students in Years 8 and 9 enrolled in government schools are provided with an individual career action plan and associated support to successfully transition from their compulsory years of education, to further education, training or full-time employment. Additional support is provided to students at risk of disengaging or not making a successful transition to further education, training or secure employment;

“**NSSC**” means the National Skills Standards Council;

“**Parent**” means a parent or legal guardian of a Student;

“**Party**” or “**Parties**” means severally the parties to this Contract;

"**Person**" and words importing persons includes bodies corporate;

**“Program”** means the education and re-engagement program approved by the School Council and delivered by the Contractor on behalf of the School to the Students through the provision of the Services;

"**Schedule**" means a Schedule to this Contract;

“**School**” means a Government school as defined in section 1.1.3 of theAct;

“**School Council’s Representative**” is the person for the time being holding the position in clause 27 under the heading “To the School Council”.

“**Senior Secondary Qualification**” means, for the purpose of this Contract, the VCAL or the VCE;

"**Service Fee**" means the total amount set out in [Schedule 2](#sch2);

“**Services**” means educational and other services delivered by the Contractor as part of the Program;

“**Services Commencement Date**”means the first day of the school term due to commence after the Commencement Date;

“**Specified Personnel**” mean the specified personnel in [Schedule 2;](#sch2)

“**Stages of Learning Funding**” means the funding per Student provided to Schools by the Department pursuant to the SRP and as described in clause 6.3;

“**Standard Curriculum Program**” includes core learning and teaching activities associated with the Victorian Essential Learning Standards and senior secondary certificates (VCE and VCAL, including VET programs);

“**Student**” means a student named in Schedule 1 and any Additional Student;

“**Student** **Results**” means the outcome of assessments related to the performance or level of competence of students enrolled in a Program;

“**SRP**” means the Student Resource Package funding model for Victorian Government Schools, as outlined in the *Guide to the Student Resource Package* published by the Department each year;

“**Tax Invoice**” has the same meaning as in the GST Act properly rendered by the Contractor to the School Council in accordance with this Contract.

“**Term**” means the period commencing on the Commencement Date and ending on the Completion Date.

“**VASS**” means the Victorian Assessment Software System;

“**VCAA**” means the Victorian Curriculum Assessment Authority;

“**VCAA Authorisation**” means to be authorised by the VCAA to deliver a Senior Secondary Qualification;

“**VCAL**” means the Victorian Certificate of Applied Learning;

“**VCE**” means the Victorian Certificate of Education;

“**VIT**” means the Victorian Institute of Teaching;

“**VRQA**” means the Victorian Registration and Qualifications Authority;

“**VRQA Registration**” means to be registered by the VRQA to deliver a senior secondary qualification and/or registered by the VRQA as a registered training organisation (in respect of VET Services);

“**Working with Children Check**” means the process under Part 2 of the *Working with Children Act 2005* (Vic) for assessing or re-assessing whether a person is suitable to work in child-related work.

* 1. A reference to an Act or any section of an Act is a reference to the Act or section as amended from time to time.
  2. Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
  3. Each Party includes the successor or successors of that Party.
  4. Words denoting the singular include the plural and vice versa.
  5. Words denoting any gender include all genders.
  6. Any marginal notes or headings are included for convenience and do not affect the interpretation of this Contract.
  7. References to clauses are references to clauses of this Contract.
  8. The Schedules, Appendix and other documents (if any) annexed to this Contract form part of this Contract.
  9. In the event of any discrepancy or inconsistency between this Contract, its Schedules, Appendices or other documents (if any) annexed to this Contract or any of them the following order of precedence shall apply to resolve the same-
     1. This document.
     2. The Schedules.
     3. The Appendices;
     4. The annexed documents.

1. **SERVICES TO BE PERFORMED** 
   1. Subject to clause 3, the Contractor must provide and deliver the Services in accordance with this Contract, to the School Council, for the Term.
   2. The School Council may request that the Contractor deliver Services to Additional Students during the Term by giving the Contractor a contract variation notice (“Notice”) in substantially the same terms as set out in Schedule 3.
   3. The Contractor must notify the School Council, within seven days of the date of receipt of the Notice, of its decision to either reject or accept the variation of this Contract in accordance with clause 2.2. If the Contractor does not notify the School Council within seven days of receipt of the Notice it is deemed to have accepted the variation as set out in the Notice.
   4. The Contractor must not deliver Services to any student unless the Contractor has obtained the prior approval of the School Council for that student to participate or enrol in the Program.
2. **OBLIGATIONS OF CONTRACTOR**
   1. The Contractor must:
      1. at all times be registered by the VRQA as a Registered Training Organisation and comply with:
         1. the minimum standards for registration as a training organisation;
         2. the Act; and
         3. any legislation or legal requirement that applies to the Contractor in relation to provision of the Services*;*
      2. provide the Services in a timely manner and in accordance with the terms of this Contract;
      3. be responsible for the care and supervision of the Students whilst they are in receipt of the Services which care and supervision includes, but is not limited to:
         1. whilst Services are being provided at the premises of a School;
         2. whilst Services are being provided at any premises outside of a School; and
         3. during any travel by the Students organised by the Contractor, including but not limited to travel as part of an excursion, travel between the school and premises of the Contractor, and travel between premises of the Contractor;
      4. perform the Services with all due care, skill and otherwise in accordance with all applicable professional standards, principles and practices;
      5. follow all reasonable instructions of the School Council’s Representative in respect of the performance by the Contractor of its obligations under this Contract;
      6. cooperate with and act in good faith towards the School Council;
      7. comply with all laws in performing this Contract;
      8. use any facilities provided by the School Council or a School solely for the purposes of this Contract and in accordance with the directions of the School Council’s Representative;
      9. permit the School Council, its employees, agents or representatives access to any premises where the Services are being provided and to have contact with a Student of the School at any reasonable time during the Term; and
      10. provide to the School Council (by completing the Service Fee table in schedule 2) with details of other sources and amounts of government funding the Contractor has received or reasonably expects to receive during the Term in relation to the delivery of Services to Students (in addition to the Service Fee paid by the School Council to the Contractor under this Contract).
   2. The Contractor must:
      1. record and monitor the attendances of the Students in receipt of the Services and promptly notify the School Council's Representative of any non-attendance in accordance with the Victoria School Policy and Advisory Guide, and the School Council’s policy on student attendance;
      2. provide the School Council and Parents with Student Results that comply with the Assessment and Reporting of Student Performance Requirements specified in Appendix A by the due date(s) as notified by the School Council to the Contractor;
      3. report to the School Council’s Representative immediately upon becoming aware of any danger to any Student in connection with the Student’s participation in the Program;
      4. provide information and documentation in the Contractor’s custody or power arising from or relevant to the Services and/or this Contract as may be reasonably requested by the School Council's Representative;
      5. report to the School Council’s Representative on all matters and at such times, and in such manner, as may be reasonably requested by the School Council’s Representative;
      6. if a danger to any Student has been identified, implement or assist in implementing (as the case requires) any arrangements considered necessary by the School Council to remove or alleviate that danger, or remove the Student(s) from that danger; and
      7. record and monitor the Contractor’s compliance with the Responsibility Matrix (Appendix A) in such form and at such times as may be reasonably requested by the School Council’s Representative.
   3. The Contractor warrants that:
      1. all persons engaged to deliver the Services are qualified and experienced for the role they perform, and all trainers and assessors have the minimum qualifications and experience required by the NSSC;
      2. all persons responsible for or involved in the provision of the Services pursuant to this Contract and required by the *Working with Children Act 2005* (Vic) to undertake a Working with Children Check, have undertaken a Working With Children Check; and
      3. the Contractor complies with its obligations under clauses 3.4(a) and (b) in respect of such replacement persons proposed by the Contractor pursuant to clause 11 of this Contract.
   4. The Contractor must:
      1. obtain the consent of each of the Specified Personnel to deliver a copy of the relevant Working With Children Check to the School Council’s Representative; and
      2. provide a copy of the relevant Working With Children Check of the Contractor and all of the Specified Personnel to the School Council’s Representative.
3. **DAMAGE TO PROPERTY**

If the Contractor, its employees or sub-contractors damage any property or premises of the School Council, or the State of Victoria then the Contractor must promptly make good the damage and pay any compensation required by law.

1. **CONFIDENTIALITY**
   1. Subject to clause 5.2 other than for the purpose of performing its obligations under this Contract:
      1. the Parties must treat as confidential all information which comes into its possession pursuant to or as a result of or in the performance of this Contract; and
      2. a Party must not, without the written permission of the other Party, disclose such information to a third party.
   2. The School Council or the Department may:
      1. publish all such information as is necessary to comply with government policy including the Victorian Government’s Contracts Publishing System;
      2. make available to the Victorian Auditor-General all information that is requested by the Auditor-General; and
      3. make available all information in relation to the Contractor or this Contract as may be required to comply with obligations under the *Freedom of Information Act* 1982 (Vic).
2. **PAYMENTS and PAYMENT TERMS**
   1. Subject to clauses 6.2, 6.3, and 6.4, the School Council must pay the Contractor the Service Fee in accordance with the Payment Terms contained in Schedule 2.
   2. The School Council is not obliged to pay any amount due under this Contract unless the Contractor issues the School Council a valid tax invoice and provides the School Council with Student Results in accordance with clause 3.2(b).
   3. If, during the Term, the School Council requires the Contractor to provide the Services in respect of Additional Students in accordance with clause 2.2, and if that requirement results in an increase to the total number of Students listed in Schedule 1, the Service Fee will be varied by an amount calculated using the Service Fee table specified in Schedule 2.
   4. Withdrawal of a Student from a Program, during the Term, will not result in a variation of the Service Fee.
   5. Subject to clause 6.6, the Service Fee is inclusive of all costs and expenses of the Contractor whether foreseen or unforeseen, including without limitation, insurance, duties, imposts and taxes which must be paid by the Contractor.
   6. If GST is payable by the Contractor on the Services invoiced to the School Council under this Contract, the GST payable must be paid by the School Council to the Contractor.
   7. This clause 6 does not limit the School Council's rights to withhold other payments due to the Contractor under this Contract or the School Council’s other rights in respect of a breach of this Contract. The Contractor acknowledges that failure to provide Student Results by the due date is a breach of this Contract and will cause substantial loss and damage to the School Council.
3. **PARENT PAYMENTS**
   1. The Contractor must not request any payments from Parents for or in relation to the provision of a Program or Service except as permitted by the Department’s Policy titled ‘Parent Payments in Victorian Government Schools’ (‘the Parent Payment Policy’).
   2. Any request by the Contractor to Parents for payment (**Request for Payment**) must comply with:
      1. the Parent Payments Policy; and
      2. the School Council’s policy on parent payments.
   3. Prior to making a Request for Payment, the Contractor must obtain the prior approval of the School Council with respect to the amount of the payment and the form of the Request for Payment.
   4. For the avoidance of doubt, the Contractor acknowledges that no fees may be charged to parents for the provision of learning and teaching, instructional supports, materials and resources, administration and facilities associated with the provision of a Standard Curriculum Program.
4. **ASSIGNMENT AND SUB CONTRACTING**
   1. The Contractor shall not assign this Contract in whole or in part or sub contract the performance of any part of the Contract without the prior written consent of the School council which shall be under no obligation to grant any such consent.
   2. Without limiting the generality of clause 8.1, if the Services to be provided under this Contract exceed the Contractor's VRQA registration, or if for any other reason the Contractor desires to arrange for the provision of some of the Services by another provider, the Contractor must obtain the written consent of the School Council prior to engaging another provider.
   3. The School Council shall not be under any obligation to grant any consent under clause 8.2.
   4. At or about the time of seeking the School Council's consent under clause 8.2, the Contractor must:

(a) provide the School Council with:

(i) details of those parts of the Responsibility Matrix at Appendix A listed under "Provider responsibility" which are to be the responsibility of the other provider, and

(ii) details of those parts of Schedule 1 which are to be the responsibility of the other provider, and any other relevant details for Schedule 1 such as the location where the training is to be provided.

(b) provide the School Council with a copy of the proposed contract or other documentation between the Contractor and other provider, and which must contain :

(i) clauses similar to 2, 3, 4, 5.2, 8.2, 10, 13, 14, 19, 22, 23, 24, 25 and 26 but which refer to the 'provider' in place of the 'Contractor';

(ii) clause 5.1 but which refer to the 'Contractor and provider' in place of the 'Parties';

(iii) in place of clause 9.1, a clause which states that the Parties agree that 'all intellectual property rights created as a direct result of the provision of the Services shall vest in the School Council, and the Parties agree to effect all documents necessary to assign those rights to the School Council';

(iv) a clause which prohibits the other provider from sub-contracting or assigning the delivery or the provision of any part of the Services.

(c) ensure that the other provider satisfies any legal requirement to be registered to provide the Services;

(d) if requested by the School Council, ensure the School Council is a party (and signatory) to the contract with the other provider in respect of the matters listed in 8.4(b); and

(e) if not requested under 8.4(d) by the School Council to be a party (and signatory) to the contract, ensure that the contract with the other provider contains a clause which states that the Contractor holds the contractual promises in clause 8.4(b) as a trustee for the benefit of the School Council as the beneficiary.

8.5 Despite any consent by the School Council under this clause and the engagement by the Contractor of another provider to provide Services:

(a) the Contractor shall continue to be liable for the due performance of all its obligations under this Contract, except where the provision of the Services exceeds the Contractor's VRQA registration; and

(b) the Contractor shall be responsible for ensuring the performance by another provider meets the standards and obligations owed to the School Council and Students under this Contract.

1. **INTELLECTUAL PROPERTY AND OWNERSHIP OF WORK**
   1. The ownership of the Background Intellectual Property will remain vested in the owner.
   2. The Contractor warrants that it is entitled to use any Intellectual Property Right used by it in the provision of the Services.
   3. All Intellectual Property Rights created as a direct result of the provisions of the Services shall vest in the School Council.
   4. Subject to clause 21, the School Council grants to the Contractor a non exclusive, royalty free license to use the Intellectual Property Rights in any curriculum material, learning resources and assessment materials created as a direct result of the provisions of the Services.
2. **CONTRACTOR’S CAPACITY**

Nothing in this Contract constitutes the Contractor as an employee, servant or agent of the School Council nor is the Contractor authorised to incur nor shall the Contractor incur any debt or obligation on behalf of the School Council without the prior written consent of the School Council.

1. **SPECIFIED PERSONNEL**
   1. The Contractor must appoint the Specified Personnel as having responsibility for the Services.
   2. The Contractor must not substitute other personnel for the Specified Personnel without the School Council's written consent. The Contractor may only seek the School Council's written consent after the Contractor has complied with clause 3.4 of this Contract in relation to substitute Specified Personnel proposed by the Contractor.
   3. Wherever any of the Specified Personnel are unable to perform any of the Services, the Contractor shall immediately notify the School Council and arrange for replacement of that person with a person satisfactory to the School Council.
   4. The School Council may at any time by notice in writing to the Contractor require that the Contractor cease to permit any of the Specified Persons to be engaged in carrying out the Services and in such event the Contractor shall as soon as is practicable cease to provide the service of such person or persons and shall provide the services of such replacement or substitute persons as may be acceptable to the School Council.
2. **INDEMNITIES AND INSURANCE**

**Indemnity**

* 1. The Contractor hereby indemnifies the School Council, its employees, servants and agents, and the State of Victoria and its employees employed in the Department, against all loss, damage, claims, actions, liability or expenses (including legal costs) suffered as a direct or indirect result of:
     1. a breach of this Contract by the Contractor, including any failure to provide the Services in accordance with this Contract;
     2. any negligent act or omission of the Contractor or its employees, servants, agents or subcontractors

except to the extent that the loss, damage, claim, action or expense is caused by the negligence or other wrongful act or omission of the School Council, its employees, servants or agents.

* 1. It is not necessary for the School Council or the State of Victoria to incur expense or make payment before enforcing a right of indemnity conferred by this Contract. If any indemnity payment is made by the Contractor under this clause 12, the Contractor must also pay an additional amount equal to any tax which is payable by the indemnified party in respect of that payment.

**Insurances**

* 1. The Contractor must obtain and maintain for the Term public liability insurance to provide it with at least A$10,000,000 (ten million dollars) cover per event in respect of the Services and shall provide the School Council with evidence of such insurances prior to submitting its first invoice under this Contract and otherwise on request by the School Council and/or the Department (for and on behalf of itself and the School Council).
  2. Any insurance obtained pursuant to this clause 12 must be taken out with an insurer acceptable to the Department and on terms (including any excess) which are acceptable to the Department. In addition, any insurance that the Contractor is required to obtain and maintain under this Contract must be in the joint names of the Contractor and the School Council and include a cross liability clause under which the insurer agrees to waive all rights of subrogation or action against any of the persons named in the relevant insurance policy as the ‘insured’ and for the purpose of which the insurer accepts the term ‘insured’ as applying to each of the persons so named as if a separate policy of insurance had been issued to each of them.

1. **TERMINATION**
   1. This Contract may be terminated:
      1. at any time by written agreement between the Parties.
      2. at any time and without notice (except as otherwise stated) by the School Council if the Contractor:
         1. becomes or takes any step towards becoming bankrupt or enters or attempts to enter into any composition, scheme or arrangement with creditors or being a company enters or takes any step towards entry into liquidation whether voluntary or compulsory (save for the purposes of amalgamation or reconstruction) or has a Receiver or Manager appointed to the whole or any part of its undertaking; or

(ii) undergoes any change in its structure which, in the reasonable opinion of the Department, limits the capacity of the Contractor to provide the Services or otherwise precludes or adversely affects the Contractor’s ability to carry out its obligations and duties under this Contract;

(iii) is in default of any term hereof and such default remains un-remedied after fourteen days' notice in writing specifying the default complained of has been given by School Council to the Contractor; or

(iv) wholly suspends the performance of the Services; or

(v) fails to proceed regularly and diligently with performance of the Services; or

* + - 1. any servant, agent or employee of the Contractor is, in the School Council's or the Department’s opinion, guilty of misconduct in relation to the performance of the Services.
    1. pursuant to clause 24.
  1. In the event this Contract is terminated by the School Council pursuant to clause 13.1(b), the School Council may employ and pay one or more other persons to carry out and complete the performance of the Services and in so doing may use all or any Background Intellectual Property and all payments made to every other persons for so doing may be deducted from any sum due or to become due to the Contractor or recovered from the Contractor as and by way of damages.
  2. Clauses 5, 9, 12, 13.2, 21, 22, 24.4 and 25 of this Contract survive the termination or expiry of this Contract or the completion of the Services and may be enforced at any time.

1. **GOVERNING LAW AND JURISDICTION**

This Contract is governed by and shall be construed according to the laws of the State of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

1. **VARIATIONS**

No addition to or variation of this Contract shall be of any force or effect unless in writing signed by or on behalf of both Parties.

1. **WAIVERS**

The waiver by one Party of a breach by another Party of any provision of this Contract does not operate as a waiver of another or continuing breach by the other Party of the same or any other provision of this Contract. No waiver by either Party shall be binding upon that Party unless in writing.

1. **SEVERABILITY**

If any provision of this Contract is held invalid, unenforceable or illegal for any reason, the remainder of this Contract has full force apart from such provision which shall be deemed deleted.

1. **ACTING ON BEHALF OF SCHOOL COUNCIL**

Any right, duty or power (including the right to issue a notice or give any consent) of the School Council under this Contract may be exercised by the School Council or its executive officer, or the School Council's Representative (or the person for the time holding or acting in that position).

1. **ENTIRE CONTRACT**

This Contract constitutes the entire contract between the Parties and supersedes any communications or representations made in connection with the subject matter herein.

1. **CONFLICT OF INTEREST**

The Contractor warrants that, to the best of its knowledge and belief after due inquiry as at the date of this Contract, it has no duties or interests that create or might reasonably be anticipated to create a conflict with its duties and obligations under this Contract.

1. **PRIVACY**
   1. The Contractor acknowledges that the School Council is bound by the provisions of the IP Act.
   2. The Contractor acknowledges and agrees to be bound by the Information Privacy Principles and any applicable Code of Practice (including any applicable Code of Practice attached to this agreement) with respect to any act done, or practice engaged in by the Contractor for the purposes of this Contract in the same way to the same extent as if the act done, or practice engaged in had been directly done or engaged in by the School Council.
   3. Without limiting the generality of subclauses 21.1 and 21.2, in relation to the collection, management, holding, use, quality, accuracy, disclosure or transfer of any information, the Contractor must comply with:

(a) the IP Act;

(b) the Information Privacy Principles as amended from time to time; and

(c) any Code of Practice that applies to the School Council or to which the School Council is required to comply, including any applicable Code of Practice attached to this Contract.

* 1. If:

(a) this Contract authorises or require the Contractor to transfer outside Victoria personal information obtained under this contract, and

(b) Information Privacy Principle 9.1(a) is the only means available to transfer that personal information, and

(c) the intended recipient of the personal information resides outside Victoria and is not subject to a law or binding scheme which effectively upholds principles for fair handling of personal information that are substantially similar to the Information Privacy Principles,

the Contractor must ensure that any contract entered by the Contractor with an intended recipient for the purpose of complying with Information Privacy Principle 9.1(a) contains the Model Terms for Transborder Data Flows of Personal Information contained in guidelines issued in June 2006 by the Office of Victorian Privacy Commissioner, available at http://www. privacy.vic.gov.au/dir100/priweb.nsf, as amended from time to time.

* 1. Clause 21.4 does not apply to any health information within the meaning of the *Health Records Act 2001* (Vic).

1. **AUDIT OF AND OTHER ACCESS TO CONTRACTOR’S RECORDS**
   1. The Contractor must permit an accountant or auditor on behalf of the School Council or Department from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Contractor for the purposes of this Contract. The Contractor, its servants, agents and subcontractors must give all reasonable assistance to any person authorised to undertake such audit or inspection. Any information provided, or to which an accountant or auditor has access under this clause, shall be treated as confidential information and shall not be used other than for the purposes of this Contract or disclosed other than as permitted under clause 5, required at law or to meet any requirements of the Parliament of Victoria.
   2. The confidentiality obligations of the Parties under this clause shall not extend to:

(a) information already in the public domain other than due to a breach of this Contract; and/or

(b) information reasonably required in order to publish appropriate and comprehensive performance data relating to the Services under this Contract.

1. **ETHICAL EMPLOYMENT**
   1. This clause only applies if the Service Fee is in excess of $100,000 (including GST) for the Term.

**Definitions**

* 1. For the purpose of this clause, the following definitions apply.

**Applicable Industrial Instruments and Legislation** means all Applicable Industrial Instruments and all Applicable Legislation.

**Applicable Industrial Instrument** means an industrial instrument (award or enterprise agreement) that specifically applies to the employees of the Contractor and is binding on it.

**Applicable Legislation** means:

* *Outworkers (Improved Protection) Act 2003* (Vic)
* *Dangerous Goods Act 1985* (Vic)
* *Equipment (Public Safety) Act 1994* (Vic)
* *Occupational Health and Safety Act 2004* (Vic)
* *Fair Work Act 2009* (Cth)
* *Long Service Leave Act 1992* (Vic)
* similar legislation in States and Territories other than Victoria
* any other legislation designated as Applicable Legislation under the Ethical Purchasing Policy from time to time published by the Victorian Government Purchasing Board.

**Assessment** means an assessment by the School Council pursuant to the Ethical Purchasing Policy that, in the opinion of the School Council, the Contractor does not satisfy the Ethical Employment Standard.

**Award** means any award of Fair Work Australia or any tribunal empowered to make industrial awards for Victorian employees or employees in any other State or Territory.

**Enterprise Agreement** means any certified agreement by Fair Work Australia.

**Ethical Employment Standard** is the requirement for persons that supply or propose to supply goods and services to the Victorian Government to demonstrate to the reasonable satisfaction of the government buyer, and in accordance with the requirements of the Ethical Purchasing Policy, that the relevant contracting or tendering entity meets its obligations to its employees under Applicable Industrial Instruments and Legislation at the time a contract is awarded and continues to meet such obligations during the term of that contract.

**Ethical Employment Reference Register** has the meaning attributed to it in the Ethical Purchasing Policy.

**Ethical Employment Statement** has the meaning attributed to it in the Ethical Purchasing Policy.

**Ethical Purchasing Policy** means the Victorian Government's Ethical Purchasing Policy supporting fair and safe workplaces, which is published on the Victorian Government Purchasing Board web site.

**Law** means the law in force in the jurisdiction in which the obligations under this Contract are to be performed including without limitation, common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-law, ordinances or other legislative or regulatory measures and includes any amendment, modification or re-enactment of them.

**Contractor to satisfy the Ethical Employment Standard**

* 1. Without limiting or derogating from the Contractor’s obligation to comply with any Law, the Contractor must satisfy the Ethical Employment Standard at all times during the Term.

**Satisfaction of the Ethical Employment Standard**

* 1. The School Council may make an assessment if, at any time during the Term a court, tribunal, commission or board:

(a) makes a finding of a serious breach of an Applicable Industrial Instrument against the Contractor or convicts the Contractor of a serious offence under Applicable Legislation; or

(b) makes a finding of a breach of an Applicable Industrial Instrument against the Contractor or convicts the Contractor of an offence under Applicable Legislation that is part of a pattern of repeated or ongoing breaches or offences.

1. **TERMINATION FOR FAILURE TO SATISFY ETHICAL EMPLOYMENT STANDARD**

**Ethical Employment Standard Not Satisfied**

* 1. If at any time during the term of the Contract, the School Council notifies the Contractor in writing that it has made an Assessment pursuant to clause 23.4, the Contractor must, within 14 days of receipt of such notice, or such longer period agreed by the School Council, provide a statutory declaration from a partner, director or company secretary of the Contractor setting out:
     1. any additional information which in the opinion of the Contractor is relevant to the Assessment, including the Contractor's grounds for any objection to the Assessment and;
     2. details of any information on which the Assessment is based which in the opinion of the Contractor is incorrect, incomplete or otherwise unfairly prejudicial to the Contractor and;
     3. any existing or planned remedial measures which the Contractor has taken or will be taking to prevent a breach or offence similar to the breach or offence on which the Assessment is based from recurring.
  2. Following the receipt of the statutory declaration or expiration of the period described in 24.1, whichever comes first, the School Council may, in its discretion, do one or all of the following:
     1. request the Contractor show cause as to why this Contract should not be suspended or terminated with effect from 14 days; and/or
     2. suspend the operation of this Contract for a specified period of up to 6 months with 14 days notice; and/or
     3. terminate this Contract with 14 days notice.
  3. In exercising its discretion under 24.2, the School Council will take into consideration:
     1. whether the Contractor has taken or will take measures which, in the reasonable opinion of the School Council, are commensurate with the breach or the offence on which the Assessment is based and can be reasonably expected to prevent such breach or offence from recurring; or
     2. whether the School Council is otherwise satisfied that the Contractor has shown good cause why the Contract should not be suspended or terminated.

The remedies under this clause are in addition to and do not limit any other rights or remedies of the School Council under this Contract or otherwise at law.

**Ethical Employment Reference Register**

* 1. If this Contract is terminated pursuant to this clause, the Contractor's name and details (including its Australian Business Number) will be included in the Ethical Employment Reference Register for a period of 24 months from the date termination takes effect.
  2. Victorian Government departments will access the Ethical Employment Reference Register for the purpose of applying the Ethical Purchasing Policy.
  3. Inclusion of any details in the Ethical Employment Reference Register will not be used to determine whether the Contractor meets the Ethical Employment Standard or to exclude the Contractor from participation in other Tender Processes.

1. **DISPUTE RESOLUTION**
   1. A Party claiming that a dispute or disagreement has arisen under this Contract may give the other Party a dispute notice (“Dispute Notice”).
   2. A Dispute Notice may be withdrawn at any time by the Party that gave the Dispute Notice.
   3. Within 14 days of the date of issue of the Dispute Notice, the Parties must enter into good faith discussions in an attempt to resolve the dispute.
   4. If the Parties have not resolved the dispute within 20 Business Days of the date of issue of the Dispute Notice, the Parties agree to endeavour in good faith to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) in accordance with ACDC's guidelines, before having recourse to expert determination or litigation.
   5. The Parties will continue to perform their respective obligations under this contract pending the resolution of a dispute under this clause 25.
2. **LEGAL COSTS**

Except as expressly stated otherwise in this Contract, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Contract.

1. **NOTICES**
   1. Any notice given or served by one Party upon the other Party pursuant to this Contract must be in writing and may be given by facsimile transmission, certified mail or hand to that Party at the address or addressed to the address, as the case may be, set out hereunder or by hand personally to any person named hereunder as a recipient for such Party.

To the Contractor

...................................... (insert name)

...................................... (insert position)

Insert name and address of contractor

if different to details on first page)

Facsimile Number (03) ......................

To the School Council

.................................... (insert name)

.................................... (insert position)

(Insert name and postal address of the School Council if different to details on first page )

Facsimile Number (03) ...................

* 1. Where notice of a new address, new registered office address or new facsimile transmission telephone number has been given by notice by one Party to the other Party the same shall for all purposes be deemed to have been substituted for the previous address, registered office address or facsimile transmission telephone number as the case may be of the Party giving such notice as and from the date of service of such notice and service of any notice thereafter by a Party having received such notice shall be made as if such substitution appeared herein in lieu of the words and/or figures for which the same was substituted.

**Executed as a contract.**

THE COMMON SEAL of [insert School name] School Council

was affixed by order of the Council and in the presence

of the President of the School Council )

or its Authorised Appointed:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(signature of President of School Council) (print name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(signature of Authorised Appointee ) (print name)

THE COMMON SEAL of the [insert Contractor name]

was hereunto affixed on the

..........day of .......................20­­\_\_ )

in accordance with its Articles of Association )

in the presence of: )

............................................Director

(***or amend as appropriate***)

..........................................Secretary

**SCHEDULE 1 – DETAILS OF PROGRAM**

(To be completed)

**Name of re-engagement Program to be delivered by Contractor:**

**Description of the education/training Program to be delivered:**

**Details of Students:**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Student name** | **Date of birth** | **Year level enrolment** | Program / course title (eg Certificate II in General Education for Adult) | **Scheduled contact hours/days per week** | **Start date** | **Anticipated completion date** |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

Location(s) where the Program will be provided (including address and telephone number):

|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |
|  |  |

**Description of other services to be provided (such as Managed Individual Pathways, wellbeing support etc)**

(Schedule 1 ends here)

**SCHEDULE 2 - FUNDING**

1. **Service Fee (per Student) is calculated according to the following table:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Student Name** | **Length of placement (in days or weeks)** | **Placement fee (SRP daily rate\* x days of placement OR weekly/annual rate as appropriate)** | **Additional Funding where applicable (eg VETiS, MIPs, PSD calculated for number of days placement)** | **TOTAL fee for each student placement** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  | | | **Total Service Fee** |  |

***\*Placement fee***

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Daily rate** | **Weekly rate** | **Annual rate** |
| **Primary level** | $25.98 | $129.90 | $5170 |
| **Secondary level** | $31.35 | $156.75 | $6231 |

1. **Payment Terms**
2. The Contractor will issue the School Council, at the end of each Victorian school term (“School Term”), a tax invoice for Services delivered for that School Term. The invoice will be supported by satisfactory documentary evidence (as determined by the School Council, acting reasonably) such as (but without limitation) the total days of Services delivered to each Student during the School Term.
3. The Contractor will issue an invoice based on length of placement that the Student is scheduled to attend the Program, not the actual days of that Student’s attendance.

1. The School Council will pay tax invoices within 30 days of receipt.
2. **Commencement Date:** **[date to be inserted]**
3. **Completion Date:** **[end of calendar year]**
4. **Specified Personnel:**

Only the personnel of the Contractor specified in the table below are to perform the Services (education, training, assessment or other specified services). Processes for amending the list, should this be necessary, are outlined in clause 11 of the Contract.

|  |  |  |  |
| --- | --- | --- | --- |
| **Name of employee of contracted provider** | **Role** | **Qualification / Experience** | **Working With Children Compliance provided** |
|  |  |  | Yes / No |
|  |  |  | Yes / No |
|  |  |  | Yes / No |
|  |  |  | Yes / No |
|  |  |  | Yes / No |
|  |  |  | Yes / No |
|  |  |  | Yes / No |
|  |  |  | Yes / No |
|  |  |  | Yes / No |
|  |  |  | Yes / No |
|  |  |  | Yes / No |

(Schedule 2 ends here)

**SCHEDULE 3 – CONTRACT VARIATION NOTICE**

Date:

To: Insert Name of Contractor

Insert Address Details of Contractor

[Insert name of School] hereby confirms that pursuant to clause 2.2 of the contract between [insert name of School] and [insert name of Contractor] for provision of a re-engagement program dated [insert date of contract](“Contract”), services are required for Additional Students. Details of Additional Students and additional Service Fees payable to [insert name of Contractor] by [insert name of School] are detailed below.

**Details of Students:**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Student name** | **Date of birth** | **Year level enrolment** | Program / course title (eg Certificate II in General Education for Adult) | **Scheduled contact hours/days per week** | **Start date** | **Anticipated completion date** |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

**Service Fee (per Student) is calculated according to the following table:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Student Name** | **Length of placement (in days or weeks)** | **Placement fee (SRP daily rate\* x days of placement OR weekly/annual rate as appropriate)** | **Additional Funding where applicable (eg VETiS, MIPs, PSD calculated for number of days placement)** | **TOTAL fee for each student placement** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  | | | **Total Service Fee** |  |

***\*Placement fee***

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Daily rate** | **Weekly rate** | **Annual rate** |
| **Primary level** | $25.98 | $129.90 | $5170 |
| **Secondary level** | $31.35 | $156.75 | $6231 |

**Payment Terms**

The payment terms detailed in Schedule 2 of the Contract will apply to any Service Fee payable for Additional Students unless otherwise documented below:

Signature of School Council Representative

[Insert Name of School Council Representative]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Acceptance**

[insert name of Contractor] hereby agrees to provide Services to the Additional Students stated in this Contract Variation Notice and in accordance with the Contract.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Authorised Representative

Name of Authorised Representative

**Appendix A**

RESPONSIBILITY MATRIX

A school engaging another education provider to deliver a re-engagement program to students enrolled at the school retains accountability for these students.

The school’s accountabilities include but are not limited to ensuring that:

* + the curriculum and delivery of education and training meets the appropriate standards;
  + staff are appropriately qualified, have VIT registration (teaching staff only) and have passed the required Working with Children checks;
  + student outcomes are delivered as required under the School Accountability and Improvement Framework (SAIF);
  + the duty of care to students is met;
  + students have access to adequate physical facilities and learning resources; and
  + the use of school funding is appropriate.

# Instructions for use

# This matrix is intended to be used as a template for documenting the roles and responsibilities of the organisations that are Party to this Contract for the delivery of a re-engagement Program.

***Requirements:***This column gives a general overview of the areas to be considered and some suggestions of the specific arrangements to be documented.

***Home School* and *Provider Responsibility****:* Thesecolumns need to be completed to document the particular arrangements negotiated between the two organisations.

References to Provider in this matrix means the Contractor delivering the re-engagement Program under the Contract. Home School refers to the enrolling school of Students participating in the re-engagement Program.

| Requirements | ***Home School* Responsibility** | ***Provider* Responsibility** |
| --- | --- | --- |
| Staff Competency |  |  |
| Ensure the competence of the staff of the Provider engaged in teaching and assessing enrolled students of the School. Competence includes:   * experience and expertise at a level appropriate to the curriculum being delivered, * minimum qualifications required as determined by the NSSC for trainers and assessors, and * knowledge of the professional and administrative requirements of the unit and qualification.   For non-training staff such as wellbeing staff, competence includes:   * Experience and expertise in providing support to children and young people who experience a range of social and personal barriers to engagement with school. * Appropriate qualifications such as social work, welfare or psychology   ***Responsibility Matrix to include the following:***   * *List the relevant policies and procedures to be used* * *Identify who will be responsible for verifying staff qualifications and experience* * *List evidence of staff competence in Schedule 2 of this Contract,* |  |  |
| Contracted Provider Staff Working with Children Checks |  |  |
| All staff of the Provider involved in teaching and assessing Students comply with the Working with Children Check requirements outlined in the *Working with Children Act 2005* and compliance is documented in Schedule 2 of this Contract.  **It will be the responsibility of the Home School Principal to ensure that the requirements are fully met.**  ***Responsibility Matrix to include the following:***   * *Specify the process for ensuring that the above requirements are met, and* * *Identify who will be responsible for obtaining the required check*s. |  |  |
| **Administration and Policy** |  |  |
| Effective administration structures are in place. Administrative structures should be appropriate to the program being delivered and include:   * daily and weekly timetables, and * policies for teaching, learning, professional development, curriculum review, assessment, reporting and behaviour management.   ***Responsibility Matrix to include the following:***   * *Identify the relevant policies and procedures to be followed* * *Identify whether the policies and procedures are the Home School or Provider’s documents* * *The role of each of the parties in implementing these policies and procedures.* |  |  |
| Student Attendance |  |  |
| Maintenance of student attendance records in accordance with the Victorian School Policy and Advisory Guide, and the School Council’s policy on student attendance.  ***Responsibility Matrix to include:***  *The role of the Home School and Provider in maintaining attendance records, reporting student attendance and action to be taken in the event of student non-attendance.* |  |  |
| Premises, facilities and environment |  |  |
| The site that the Services are delivered must be registered as a campus of the Provider by the VRQA.  Students have access to physical facilities that meet building regulation requirements and occupational health and safety standards. Premises and facilities must be adequate with regard to the number of Students enrolled and appropriately lit, heated/cooled, furnished and ventilated.  ***Responsibility Matrix to include:***  *The role of the Home School and Provider in ensuring the premises, facilities and environment are adequate and registered as required.* |  |  |
| Safety and Welfare |  |  |
| Appropriate safety provisions are in place for curriculum areas being delivered. This includes:   * Maintenance and appropriate auditing of safety systems * Use of emergency management and critical incident management plans * Maintenance of major and minor accident register * Procedures for mandatory reporting, and * First aid policy and procedures.   ***Responsibility Matrix to include:***  *The responsibilities of the Home School and Provider in respect of each of the above. Refer to the Victorian School Policy and Advisory Guide for additional information about curriculum safety standards.* |  |  |
| Duty of Care |  |  |
| The Home School has procedures in place to:   * take reasonable steps to protect enrolled Students participating in a re-engagement program delivered by the Provider from risks of injury that are foreseeable * Ensure that Students are adequately supervised when off the school premises * Inform parent/guardians about activities that the Student is undertaking off the school premises, and * Obtain written acknowledgement and permission from parents/guardians regarding attendance at the Program delivered by the Provider   Detail arrangements for contact between the Home School and the Students attending the Program.  ***Responsibility Matrix to include:***  *The responsibilities of the Home School and Provider in respect of each of the above. Refer to the Victorian School Policy and Advisory Guide for additional information about the Home School’s Duty of Care responsibilities.* |  |  |
| Individual Education Plans |  |  |
| All students participating in the program have an Individual Education Plan that details goals with reference to the strengths and issues for participation and the plan for how these will be addressed by the programs. ***Responsibility Matrix to include:***  *The responsibilities of the Home School and Provider in development, reviewing and updating the Individual Education Plans.*  Refer to [Re-engagement Programs: Individual Education Plans](http://www.education.vic.gov.au/school/principals/participation/pages/reengageplans.aspx) for more information. |  |  |
| Education Resources |  |  |
| * Education resources appropriate to the units being delivered are made available to the Students, including library and classroom teaching resources, access to external resources including on-line services, information technology and other resources as applicable.   ***Responsibility Matrix to include:***  *The responsibilities of the Home School and Provider in providing access to relevant education resources and services.* |  |  |
| Delivery of Programs |  |  |
| The Programs reflect the Provider’s documentation and the requirements of this Contract in regard to:   * content, and * expected student outcomes.   ***Responsibility Matrix to include:***  *The responsibilities of the Home School and Provider in respect of executing and monitoring each of the above.* |  |  |
| Engagement and Wellbeing |  |  |
| Students participating in the Program are provided with engagement and wellbeing support including but not limited to the areas of:Behaviour support and managementStudent participationHolistic individual supportParent and family engagement ***Responsibility Matrix to include:***  *The responsibilities of the Home School and Provider in respect of each of the above, with reference to relevant policies and procedures in place.*  Refer to [Re-engagement Programs: Engagement and Wellbeing](http://www.education.vic.gov.au/school/principals/participation/Pages/reengagewellbeing.aspx) for more information. |  |  |
| Pathways and Transitions |  |  |
| Pathways for individual Students following participation in the re-engagement Program are planned at the point of entry to the Program.  Appropriate support is provided to Students to make a successful transition to their education (or training/employment) destination following the Program.  Each student 15 years and older, and all Koorie students in Years 8 and 9, have a current Career Action Plan under the Managed Individual Pathways Initiative.  ***Responsibility Matrix to include:*** *The responsibilities of the Home School and Provider in respect of the above.*Refer to [Re-engagement Programs: Pathways and Transitions](http://www.education.vic.gov.au/school/principals/participation/Pages/reengagepathways.aspx) for more information*.* |  |  |
| Assessment and Reporting of Student Performance |  |  |
| Assessment procedures used are consistently applied, meet the standards for the unit/qualification being delivered and:   * encourage the use of varied, sound and relevant assessment procedures * identify and apply student learning outcomes * use effective recording methods * support continuous review and improvement of student performance, program planning and teaching   Reporting procedures provide for effective communication of Student performance to parents and Students and for effective feedback from Students and parents, and enable schools to meet the requirements for student reporting outlined in the Victorian School Policy and Advisory Guide.  Student results are provided by the Contractor to the Home School for entry onto the VASS database in sufficient time to meet the requirements of the VCAA.  All relevant information is recorded on the VASS database by the Home School  ***Responsibility Matrix to include:***  *The responsibilities of the Home School and Provider in respect of executing and monitoring each of the above.* |  |  |
| Marketing and Advertising |  |  |
| Ensure that any marketing of courses conforms to government regulations. [Note: the Provider cannot market itself as a VCE, VCAL or provider of other school education where this education is being provided on behalf of the school or use the school’s name without the written permission of the School Council]  ***Responsibility Matrix to include:***  *The responsibilities of the Home School and Provider in respect of executing and monitoring the above.* |  |  |
| Audits |  |  |
| All of the school education provided to be subject to relevant school audit processes.  ***Responsibility Matrix to include:***  *The responsibilities of the Home School and Provider in respect of all appropriate audit processes.* |  |  |