

***Securing Jobs for Your Future -  
Skills for Victoria***

**FUNDING AGREEMENT 2009**

Between  
The Victorian Skills Commission (VSC)  
and  
The Registered Training Organisation (RTO)

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## 1. BACKGROUND TO THIS AGREEMENT

- 1.1. The *Education and Training Reform Act 2006* (**Act**) gives the Victorian Skills Commission (**VSC**) responsibilities for vocational education and training in Victoria and empowers it, under Section 3.1.2 and Section 3.1.4 of the Act, to enter into agreements including this Agreement.

## 2. PURPOSE OF THIS AGREEMENT

- 2.1. The purpose of this Agreement is to set out the terms and conditions under which the VSC will make payments to the Registered Training Organisation (**RTO**) for the provision of training services as specified in Clause 4 (**Services**).

## 3. TERM OF THIS AGREEMENT

- 3.1. The term of this Agreement will commence on 1 July 2009 and continue until 31 December 2009 (**Term**) or until all obligations under this Agreement are satisfied by the RTO (whichever is the latter), to the satisfaction of the VSC, for Services commenced during the Initial Term.
- 3.2. Subject to the RTO complying with all its obligations under this Agreement, the VSC will be entitled in its sole discretion to extend the Term of the Agreement for a further 12 month period commencing 1 January 2010 and concluding 31 December 2010.
- 3.3. Extension of the Term in accordance with clause 3.2 will be undertaken in December 2009 by the VSC providing written notice to the RTO.
- 3.4. The RTO must during the Term perform the following to the satisfaction of the VSC:
  - comply with the Minimum Performance Standards in Schedule 1 (Minimum Performance Standards);
  - maintain financial viability (a Business Viability Assessment and Certificate is required annually);
  - submit AVETMISS data monthly or as required;
  - comply with audits as specified in this agreement (including adherence to all Registration requirements).
- 3.5. A RTO deemed by the VSC not to have met its obligations will be notified in writing that the Term will not be extended in accordance with clause 3.2.

## **4. SERVICES**

- 4.1. The RTO must deliver nationally recognised training services (**Services**) as per its scope of registration to eligible individuals under *Skills for Victoria* initiative and meet all requirements of this Funding Agreement including the Minimum Performance Standards.
- 4.2. Subject to meeting all other existing requirements (refer to Executive Memorandum 2009-32 Eligibility for Government Funded Training From 1 July 2009), individuals will only be eligible for funded training if they:
  - a. are commencing training on or after 1 July 2009; and
  - b. are new enrolments in qualifications in the Skills Deepening category; or
  - c. are new enrolments in qualifications at AQF level 5 and above and are an apprentice or trainee; or
  - d. have been referred through the *Skills for Growth* program in courses in any category.
- 4.3. The Services must be delivered within the State of Victoria. Flexible or on-line delivery must be part of a training program in which all the delivery involves the physical presence of the student in Victoria.
- 4.4. The Services delivered may be subject to variation as per Executive Memoranda issued from time to time by the Department.
- 4.5. It is the responsibility of the RTO to ensure Services are delivered in accordance with Executive Memoranda which will have the weight of a contractual requirement.

## **5. DUTIES AND OBLIGATIONS OF THE RTO**

- 5.1. The RTO must provide the Services as well as any directions, policies and procedures specified by the VSC from time to time, including without limitation, any direction, policy or procedure relating to any aspect of the Services.
- 5.2. The RTO must provide the Services with all due skill, care and attention and under proper supervision so that the Services are suitable for the purposes for which they are intended.
- 5.3. In particular, the RTO must :
  - a. maintain registration under Part 4.3 of the Act and comply with the Australian Quality Training Framework 2007 Essential Standards for

Registration (**AQTF 2007**), as amended from time to time, at all times during the term of this Agreement; and

- b. comply with the Minimum Performance Standards; and
  - c. ensure that the Minimum Performance Standards are provided to and understood by persons employed or engaged by the RTO to provide the Services; and
  - d. ensure that all its employees providing the Services are qualified and experienced in accordance with the AQTF 2007; and
  - e. advise the VSC, within 24 hours, if the RTO's registration is suspended or cancelled, or the RTO is placed in administration, is bankrupt or insolvent.
- 5.4. The RTO must ensure that the Services are provided by fit and proper persons, in a safe and proper manner and to a standard acceptable to the VSC.
- 5.5. The RTO must comply with all laws and regulations associated with the Working With Children Act 2005 (**WWC Act**). In particular the RTO must:
- a. ensure all RTO staff are made aware of the requirements of the WWC Act as it relates to persons under 18 years of age and its application; and
  - b. ensure that personnel associated with the delivery of Services to persons under 18 undertake a Working With Children check, where applicable; and
  - c. obtain the consent of personnel to retain a copy of the relevant Working With Children check and provide a copy to the VSC's auditors on request; and
  - d. retain copies of the relevant Working With Children check for all relevant staff.
- 5.6. The RTO must, unless this Agreement otherwise provides, supply at its own cost everything necessary for the proper provision of the Services and the proper performance of its obligations under this Agreement.
- 5.7. The VSC may at any time, in its sole discretion, even if the relevant Services have been paid for:
- a. suspend or reject any part of the Services that are not provided in accordance with this Agreement; and
  - b. direct the RTO to undertake replacement or additional services or to correct the Services. All costs associated with the replaced, corrected or additional Services must be borne solely by the RTO.

- 5.8. If the VSC directs the RTO to replace or correct any of the Services as specified in clause 5.7b, the RTO must commence replacement or correction in accordance with the direction of the VSC within seven (7) business days of receipt of the direction of the VSC and must complete the replacement or correction at its own cost and to the satisfaction of the VSC, within a specified timeframe by the VSC.
- 5.9. If the RTO fails to comply with clause 5.8, the VSC may have the Services (or any part of them) replaced or corrected by any other person. The costs incurred by the VSC in having the Services replaced or corrected are recoverable from the RTO by the VSC and may be deducted by the VSC from any money payable to the RTO under this or any other agreement between the VSC and the RTO.
- 5.10. If the RTO fails to deliver any of the Services in accordance with this Agreement, the VSC may withhold or take action to recover payments from this or any other agreement between the VSC and the RTO.
- 5.11. The RTO must participate in the National Student Outcomes Survey, managed by the National Centre for Vocational Education and Research (**NCVER**), by providing to Skills Victoria the NAT00085 Statistical Data File described in the 2009 Victorian VET Student Statistical Collection Guidelines. The RTO should advise students of the possibility of receiving a survey.

## **6. SUBCONTRACTING**

- 6.1. If the RTO subcontracts to another RTO to provide the Services (or any part of them):
  - a. the subcontracted RTO may deliver no more than 50 per cent of the nominal hours in relation to any enrolment in a qualification;
  - b. the subcontracted RTO must be registered with the VRQA or the National Audit Registration Authority (**NARA**) under Victorian delegation;
  - c. the RTO must, prior to any subcontracted RTO commencing training, notify the VSC in writing of the name and Training Organisation Identification Number (**TOID**) of each subcontractor and particulars of the training to be subcontracted;
  - d. the RTO must, prior to the commencement of the subcontracted training delivery, document the arrangements with an executed contract that ensures the obligations under this Agreement are met by the subcontractor.
  - e. the subcontractor must use Funding Source Code S1 for training delivered through this initiative.

- 6.2. The VSC is not liable for subcontractor arrangements and will not become involved in the internal administration of subcontracts or act as a mediator between the parties.
- 6.3. All costs associated with any subcontracted training are the responsibility of the RTO.
- 6.4. A contractual relationship is not created between the VSC and a subcontractor. The RTO must ensure the provision of the Services that have been subcontracted. The RTO is responsible for the performance of this Agreement and the provision of the Services. The subcontract arrangement does not relieve the RTO of any liabilities or obligations under this Funding Agreement. The RTO must ensure that any subcontractor adheres to the provisions of this Funding Agreement that relate to subcontractors.
- 6.5. The RTO is liable to the VSC for the acts, defaults and neglects of any sub-contractor or any employee, officer or agent of the sub-contractor, as fully as if they were the acts, defaults or neglects of the contracted RTO, or the employees, officers or agents of the contracted RTO. The contracted RTO indemnifies and releases the VSC against all expenses, losses, damages and costs arising from any acts, neglects or defaults by any subcontracted RTO (or person) in connection with, or in the course of the performance of the Services under this Agreement or any breach hereunder.
- 6.6. The RTO must ensure that the subcontractor has insurance cover no less than that required of the RTO.

## **7. FUNDING AND PAYMENTS**

- 7.1. The VSC will only make payments to the RTO with which it has an Agreement and only for qualifications listed on the RTO's scope of registration. It will not make payments to a third party.
- 7.2. Nothing in this Agreement is to be construed as creating an obligation, commitment or undertaking by the VSC to provide additional or further funding or assistance beyond that provided for in this Agreement.
- 7.3. The VSC may deduct from any payment due to the RTO under this or any other agreement between the VSC and the RTO :
  - a. any amounts due to the VSC under this or any other agreement between the VSC and the RTO; and
  - b. money paid for any Services that the VSC is satisfied have not been provided in accordance with this Agreement; and

- c. money paid to auditors, or any other authorised persons, to verify the replacement or correction of any of the Services.
- 7.4. If the RTO is, in the opinion of the VSC or its delegate, non-compliant with any aspect of this, or any other agreement, with the VSC, the VSC may withhold payment under this agreement until such time as the non-compliance is addressed to the satisfaction of the VSC.
- 7.5. Each payment under this Agreement will be increased by an amount equal to any GST payable with respect to the Taxable Supply for which the payment is made provided that with each relevant claim for payment is accompanied by a valid Tax Invoice. The total amount of monies paid under this Agreement will be increased to include the total amount of GST payable. The RTO is required to maintain a current agreement with the VSC allowing the VSC to issue Recipient Created Tax Invoices in relation to all payments.
- 7.6. Payments are subject to the RTO having complied in all respects with all prior and current agreements with the VSC. In particular, the RTO must have submitted all reports and complied with the 2009 Victorian VET Student Statistical Collection Guidelines under any prior and current agreement. Payments may be suspended pending completion of prior or current contractual obligations, or pending resolution of prior or current issues of non-compliance.
- 7.7. For each eligible individual, the RTO must report training delivery consistent with the requirements of the 2009 Victorian Student Statistical Collection Guidelines. Activity Reports must report the Scheduled Hours as at the date that the Activity Report is lodged.
- 7.8. Subject to this Agreement, the VSC will pay the RTO for training and assessment services provided to eligible individuals. Eligibility requirements for individuals are described in Executive Memorandum 2009-32 "Eligibility for Government Funded Training From 1 July 2009".
- 7.9. Apprentices and Trainees under a Training Contract must commence structured training within three months of the commencement of the Training Contract. If more than three months elapses between the date of commencement of the Training Contract and the start of structured training the RTO is ineligible for funding of the Apprentice or Trainee (as applicable).
- 7.10. The RTO will be paid monthly in arrears on the basis of student statistical data submitted by the RTO. Claims for payment 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. The RTO will be paid in arrears for the monthly Scheduled Hours delivered and reported where the RTO has evidence of participation.



- 7.11. Subject to this Agreement, the VSC will pay the RTO for training delivered under this Agreement in 2009 at the rate per Scheduled Hour described in the 2009 list of funded courses up to the maximum Nominal Hours per qualification as identified in the relevant Victorian Purchasing Guide or State Accredited Course. The rate of funding for training delivered in subsequent years will be as encompassed within the Victorian Government policy *Securing Jobs for Your Future – Skills for Victoria*.
- 7.12. In the event that an individual withdraws from training prior to achieving competency in an individual module or unit of competency, the enrolment must be reported against outcome code "40" in the "Outcome Identifier - National" field of the NAT120 file in that month's statistical data submission in accordance with the 2009 Victorian VET Student Statistical Collection Guidelines. In these instances, payment for the individual module or unit of competency will be made in accordance with the Hours Attended as reported in the NAT120 file.
- 7.13. For partial completion of a qualification, the RTO must be able to provide evidence to substantiate provision of training and/or assessment. In the event that training for an individual is discontinued, and there is not sufficient evidence to substantiate the provision of training and/or assessment, any claims made by the RTO for that individual must be reconciled and an appropriate negative claim recorded.
- 7.14. The RTO must identify all modules/units of competency relevant to the 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 funding for the Scheduled Hours associated with these modules/units of competency, and must report these as Credit Transfer.
- 7.15. RPL will be paid up to the nominal hours per unit of competency/module. Recognition of Current Competency will not be paid.
- 7.16. Where the RTO has granted one of the following fee concessions, the RTO will be reimbursed by the VSC for income foregone:
- a. payment of the minimum fee on the basis of clauses 2.2 and 2.3 of the 2009 Ministerial Directions about Fees; or
  - b. payment of the minimum fee by an Indigenous student under the Indigenous Completions Initiative.
- 7.17. Reimbursement is on the basis of AVETMISS data including scheduled hours and qualifications for enrolments for which concessions were granted, and data indicating the grounds for the concession.

- 7.18. In line with clause 7.3 of the 2009 Ministerial Directions about Fees the RTO is required to keep records, including evidence, to support any claim for reimbursement of income foregone as a result of granting fee concessions.
- 7.19. The reimbursement amount will be calculated on the basis of 80 per cent of the applicable maximum hourly tuition fee, up to the applicable maximum, less the minimum fee. Reimbursement payments will be made in the first quarter of 2010.
- 7.20. Income foregone on the basis of concessions granted under clause 2.7 of the Ministerial Directions about Fees will not be reimbursed.

## **8. RECORDS, REPORTS AND AUDIT**

- 8.1. The RTO must, on request, make available to the VSC for inspection during working hours, all books, documents, current year's financial viability statement or other records in its possession, control or power relating to the Services.
- 8.2. The RTO must keep separate books and accounting records in connection with the Services in such a manner as to enable the accounts to be conveniently audited by the Auditor-General for Victoria or any other person as directed by the VSC. The books and records must indicate particulars of and payments to subcontractors, and any alterations as to the subcontractors being utilised.
- 8.3. The RTO must, within the time specified by the VSC, supply any other information reasonably required by the VSC for the purposes of this Agreement including information sufficient to allow the VSC to satisfy itself as to the financial viability of the RTO.
- 8.4. The RTO must respond fully in writing to the VSC within 14 days on any matter relating to this Agreement within the time specified in writing by the VSC.
- 8.5. The RTO must permit, whenever the Services are being performed and otherwise at all reasonable times, persons acting on behalf of the VSC to enter its premises, and areas within those premises that are used for the Services, to conduct audits to confirm whether the terms and conditions of this Agreement are being met. The RTO must participate in and assist, as required, with any audits required by the VSC under this clause.
- 8.6. The RTO must reimburse any costs incurred by the VSC in conducting audits.

- 8.7. The RTO's performance at contract compliance audit may be taken into consideration for future contractual arrangements.
- 8.8. The RTO must publish on its website or provide on request by any person a copy of its most recent AQTF audit report.
- 8.9. The RTO must assist, and must ensure that any subcontractor assists, as requested by the VSC or its auditors with audits under this clause.
- 8.10. If required by the VSC, the RTO must make available any records relating to the RTO and/or the Services at a location in Victoria specified by the VSC.
- 8.11. Every six (6) months, the RTO must conduct internal audits, using a checklist supplied by the VSC, on its compliance with the provisions of this Agreement. The completed checklist must be provided to the VSC or its auditors on request.
- 8.12. The RTO must develop an improvement plan to rectify any non-compliance identified via the internal audit specified in 8.10 within an agreed timeframe. The improvement plan (where required) must be made available to the VSC or its auditors on request.
- 8.13. The RTO must retain all records relating to participation in training and relating to the services for seven (7) years after their completion. These records must be available for audit purposes. The RTO must also comply with all laws relating to record keeping, in particular the:
  - a. *Public Records Act 1973*;
  - b. record keeping requirements of the AQTF 2007 Standards;
  - c. *Information Privacy Act 2000*; and
  - d. *Electronic Transactions (Victoria) Act 2000*.

## **9. INTELLECTUAL PROPERTY**

- 9.1. The RTO must not, in performing the Services, do any act or undertake any process which would infringe an intellectual property right of the State of Victoria, the VSC or any other person or body.
- 9.2. The RTO must indemnify, keep indemnified and hold harmless the VSC, its officers, employees, servants and agents against all expenses, losses, liabilities, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against the indemnified party) arising out of the infringement, or alleged infringement, of an intellectual property right where the infringement or alleged infringement occurs directly or indirectly as a result of the provision of the Services under this Agreement.

## **10. INDEMNITIES**

- 10.1. The RTO hereby releases and indemnifies and holds harmless the VSC, the State of Victoria, its officers, employees, servants, agents and any person authorised by the VSC against all liabilities, costs, claims, damages, demands, losses and expenses incurred, resulting from or arising out of:
- a. any breach by the RTO of this Agreement;
  - b. any negligent act or omission of the RTO;
  - c. damage or loss of property (including property of the VSC) arising from or relating directly or indirectly to the provision of the Services; and
  - d. loss, damage, personal injury or death occasioned to or suffered by any person arising from or relating directly or indirectly to the provision of the Services.

## **11. INSURANCE**

- 11.1. The RTO must, at its own expense, take out and maintain and observe at all times insurance policies to cover the performance of the Services and any risk, loss or damage arising out of or caused by the performance of the Services in the joint names of the VSC, the RTO and any subcontractors engaged in providing any part of the Services.
- 11.2. The RTO must ensure it has all the insurance cover necessary to carry out its business and provide the Services including insurance for workers compensation, public liability, professional liability, professional indemnity, building and contents. The insurance policies must include public liability insurance of not less than \$10 million per event for the term of this Agreement.
- 11.3. The insurances must be with insurers, and on terms, acceptable to the VSC and cover all risks required by the VSC.

## **12. LEGAL COMPLIANCE**

- 12.1. The RTO must comply with the requirements of, and pay all fees and bear all costs connected with, all laws in any way affecting or applicable to the provision of the Services.

- 12.2. The RTO must be aware of the requirements of the *Charter of Human Rights and Responsibilities*.  
Refer to [www.justice.vic.gov.au/humanrights](http://www.justice.vic.gov.au/humanrights) and any applicable requirements of the *Disability Act 2006*.

### 13. VSC COMPLIANCE

- 13.1. The RTO must comply with policies issued by or on behalf of the VSC from time to time that relate to the Services.
- 13.2. Current VSC policies, procedures and Executive Memoranda will be published on the Skills Victoria Training System website. It is the responsibility of the RTO to access this website regularly. Executive Memoranda will have the weight of a contractual requirement.
- 13.3. The RTO must apply the Ministerial Directions about Fees as published from time to time on the Skills Victoria Training System website.

### 14. DISPUTE RESOLUTION

- 14.1 If a dispute arises between the parties in connection with this Agreement or the Services, a party will give written notice of the dispute to the other party. The parties must seek to settle a dispute in good faith.
- 14.2 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, each party must appoint a representative with authority to settle the dispute.
- 14.3 The appointed representatives must meet within a further seven (7) days to attempt to settle the dispute. 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 VSC - to its Executive Director or the Deputy Secretary of Skills Victoria, or delegate (**VSC's Representative**); and
  - b. in the case of the RTO - to its CEO (**RTO's CEO**).
- 14.4 The VSC's Representative and the RTO's CEO must meet with each other to seek to resolve the dispute within seven (7) days of the last day of the Referral Period.

- 14.5 If the dispute is not resolved within seven (7) days of the VSC's Representative and the RTO's CEO first meeting, matter will be referred to the Minister within seven (7) days to the Minister for Skills and Workforce Participation or the Minister's successor for determination. The decision of the Minister or the Minister's nominee will be final and binding on both parties.
- 14.6 Neither party will oppose an application for urgent interlocutory relief pending the resolution of a dispute under this clause 14.

## **15. VARIATION OR TERMINATION**

- 15.1. The VSC may vary or terminate this Agreement without the consent of the RTO at any time and for any reason, by giving written notice to the RTO.
- 15.2. Unless, at the time of giving notice of the variation or termination, the RTO is in default under this Agreement, the RTO is entitled to payment in accordance with this Agreement for Services provided to the date of variation or termination together with reasonable loss and expense, incurred as a consequence of the variation or termination of the Agreement.
- 15.3. The RTO is not entitled to any payment for loss of anticipated profits resulting from the variation or termination.
- 15.4. In determining the loss and expense for the purposes of clause 15.2, the RTO's actions in mitigating the consequences of the variation or termination will be taken into account.
- 15.5. In the event of a variation or termination under this clause, the RTO remains liable to the VSC under this Agreement in respect of Services provided prior to and including the date of variation or termination (including completion of the Services beyond the date of termination for those Services commenced and not completed as at the date of termination).

## **16. TERMINATION FOR DEFAULT**

- 16.1. If:
- a. the RTO becomes bankrupt or insolvent, or being a company goes into liquidation or has a receiver or manager appointed on behalf of its debenture holders, creditors or their assigns, or control is taken or assumed by or on behalf of a debenture holder, mortgagee or

chargee over property of the RTO that is the subject of the debenture, mortgage or charge, or is placed under statutory management; or

- b. the VSC is satisfied, in its reasonable opinion, that the RTO –
  - i. is no longer financially viable; or
  - ii. is likely, during the term of this Agreement, to cease to be financially viable; or
- a. the RTO is subject to a petition presented or proceedings or an application taken or instituted in any Court for the compulsory winding up of the RTO and not having the petition or proceedings removed within one (1) month of service; or
- b. the RTO suffers a distress, levy or execution against any of its assets required for the performance of this Agreement and fails to satisfy the action for distress, the levy or execution processed within one (1) month of commencement; or
- c. the registration of the RTO under the Education Training Reform Act 2006 is suspended or cancelled; or
- d. the VSC is satisfied that the RTO has not delivered any part of the Services for which it has claimed payment under this Agreement; or
- e. the RTO commits an act or omission constituting a breach of an obligation under this Agreement and fails to remedy the breach within one (1) month of delivery of a notice from the VSC requiring the RTO to remedy the breach and stating that, if the breach is not remedied, the VSC may terminate this Agreement for default; or
- f. the RTO assigns or sublets this Agreement or any part of it or purports to do so or agrees to continue to perform the Services for the benefit of any other person without the approval of the VSC other than in accordance with this Agreement; or
- g. a change in the controlling interest in the RTO occurs without the prior written consent of the VSC. In this paragraph, “controlling interest” means the capacity to directly or indirectly exercise, control the exercise of, or substantially influence the exercise of, 50 per cent or more of the voting power attached to voting shares, or any class of voting shares, issued by the RTO;

then the VSC may exercise all or any of the following powers:

- h. it may suspend payments under this Agreement until the default has been remedied to its satisfaction;

- i. it may require the RTO to repay money paid for Services that the VSC is satisfied have not been provided in accordance with this Agreement;
- j. it may deduct money that the VSC is satisfied is due to it by reason of the RTO's breach of this Agreement from other payments to the RTO under this Agreement;
- k. it may suspend the performance of the Services or any part of the Services until the fault has been remedied to its satisfaction;
- l. it may take the Services remaining to be completed wholly or partly out of the hands of the RTO or of any other person in whose hands or possession the Services or part of them may be;
- m. it may exercise a power specified elsewhere in this agreement; and/or
- n. it may terminate this Agreement.

16.2. In the event of termination under clause 16.1:

- a. the RTO remains liable to the VSC under this Agreement in respect of Services performed prior to and including the date of termination (including completion of the Services beyond the date of termination for those Services commenced and not completed as at the date of termination); and
- b. the RTO must immediately deliver to the VSC all unexpended money and assets purchased or created with money provided under this Agreement.

## **17. PROVISION AND PUBLICATION OF INFORMATION**

- 17.1. The VSC may communicate to any person or publish in any way or medium, any and all information relating to the RTO and this Agreement, other than personal information. In particular, the VSC may communicate or publish course and qualification details, funding details, details of any breaches of this Agreement, any action taken by the VSC under the Agreement, and findings and outcomes of any audit undertaken pursuant to this Agreement.
- 17.2. The RTO must publish on its website or provide on request by any person a copy of its most recent AQTF audit report.



## **18. CONFIDENTIALITY**

- 18.1. The RTO will not disclose or permit the disclosure of any of the VSC or the Department's Confidential Information without written permission from the VSC, except:
- a. to the VSC, Department or the State;
  - b. where required under this Agreement.
  - c. where the information disclosed is already in the public domain other than due to a breach of this Agreement; or
  - d. where the disclosure is required by law.
- 18.2. Confidential Information means details of the funding under this Agreement, the terms and conditions contained in this Agreement and all other confidential or commercially sensitive information regarding the VSC, State, Department or the RTO, or other aspects of the business or activities of the parties to this Agreement.
- 18.3. Clause 18 will survive the termination of this Agreement.

## **19. PRIVACY**

- 19.1. The RTO acknowledges and agrees that it will be bound by the *Information Privacy Act 2000* in the same way and to the same extent as the VSC would be bound by the *Information Privacy Act 2000*.

## **20. INTERPRETATION**

- 20.1. In this Agreement, including its Schedules and Attachments, unless the context otherwise requires:
- a. the singular includes the plural and vice versa and words importing a gender include other genders;
  - b. a reference to any legislation or statutory instrument is construed in accordance with the relevant interpretation of that legislation or statutory instrument;
  - c. headings are used for references only;
  - d. a Business Day is a day on which trading banks (as defined in the Banking Act 1959 (Cwlth)) are open for business in Victoria and if any day for the payment of money under this Agreement falls on a

Saturday, Sunday or a day on which trading banks (as defined in the Banking Act 1959 (Cwlth)) are not open for business in Victoria (a 'Non-Business Day'), the payment will be due on the next day which is not a Non-Business Day;

- e. 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 (unless otherwise terminated in accordance with this Agreement);
- f. no provision of this Agreement shall in any way fetter, restrict, or prevent the exercise by the VSC of discretions, elections or options available to the VSC under legislation which is applicable to the VSC;
- g. the obligations of the VSC under this Agreement are at all times subject to the requirements of the Act and, without limitation, to sections 11 and 13 of the Act;
- h. this Agreement (including its Schedules and Attachments) constitutes the entire agreement of the parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matter;
- i. defined terms not otherwise defined in this Agreement have the meaning given to them in the Minimum Performance Standards
- j. a notice to be given by a party to another party under this Agreement must be :
  - i. in writing;
  - ii. directed to the recipient's address specified in this Agreement or as varied by written notice; and
  - iii. left at or sent by prepaid registered post, hand delivery, email or facsimile to that address;

and is deemed to be duly given on the first to occur of the following (as applicable):

- iv. on the day of delivery by hand;
- v. five (5) days after the date of posting by prepaid registered post;  
or
- vi. if sent by e-mail at the time the sender's computer acknowledges that the email has been sent; or

- vii. if sent by facsimile, at the time the sender's fax machine records that the facsimile has been delivered to the recipient.
  - k. if an example is given of anything, such as by saying it includes something else, the example does not limit the scope of that thing;
  - l. a reference to the VSC includes any duly authorised officer or agent;
  - m. a reference to the Skills Victoria or the Department of Innovation, Industry and Regional Development includes any duly authorised officer or agent and its successor Government department and all references to the Skills Victoria or the Department of Innovation, Industry and Regional Development will be read and construed as references to the State of Victoria;
  - n. any waiver of a breach of this Agreement must be in writing signed on behalf of the VSC and is effective only to the extent specifically set out in that waiver;
  - o. Neither the VSC nor the RTO :
    - i. is in any way an agent, partner or joint venturer of the other party for any purpose or has any right to hold itself out as such; and
    - ii. may make any promise, warranty or representation or execute any contract or otherwise deal on behalf of the other party;
  - p. the RTO must not hold itself out or allow itself to appear as an agent or other representative of the VSC or the State;
  - q. 'RPL' means Recognition of Prior Learning;
  - r. "GST" has the same meaning as specified in the GST Law;
  - s. "GST Law" means *A New Tax System (Goods and Services Tax) Act 1999* (as amended);
  - t. "Tax Invoice" has the same meaning as specified in the GST Law.
- 20.2. A power, function or discretion of the VSC under this agreement may be exercised by a person authorised by the Deputy Secretary, Skills Victoria or any person authorised by the Deputy Secretary, either generally or in a particular case.

## **SCHEDULE 1 - MINIMUM PERFORMANCE STANDARDS**