



Adult and Community Education (ACE) Program

ACE Provider Contract Terms and Conditions 2021-22

[01/07/2021 – 30/06/2022]

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ACE Provider Contract Terms and Conditions

These 2021-2022 Contract Terms and Conditions are effective from 1 July 2021 for any ACE Provider who has an existing ACE Provider Contract.

1. Parties

The parties to this ACE Provider Contract are the Crown in right of the State of New South Wales acting through the Department of Education (the **Department**) and the ACE Provider.

2. The ACE Provider Contract

The ACE Provider Contract is comprised of:

- (a) the Activity Schedule(s);
- (b) the Offer Letter(s);
- (c) these ACE Provider Contract Terms and Conditions;
- (d) the ACE Provider Operating Guidelines; and
- (e) any other Guidelines and Policies published by the Department in relation to the ACE Program.

To the extent of any inconsistency between the items referred to in (a), (b), (c), (d), and (e) above, the order of priority will be (a), (b), (c), (d) and (e) unless the Guidelines and Policies expressly acknowledge the inconsistency and state that the Guidelines and Policies will apply in priority.

3. Purpose of the ACE Provider Contract

The ACE Provider Contract sets out the terms and conditions for the provision of Funding to the ACE Provider for Training delivered to Enrolled Students under the ACE Program as determined by the Department (the **Funded Training**).

4. Contract Acceptance Date and Term

The ACE Provider Contract commences on the date on which the Department confirms to the ACE Provider its execution of the Activity Schedule(s) (the **Contract Acceptance Date**) and continues until the earlier of:

- (a) 30 June 2022; or
- (b) the date it is terminated under the ACE Provider Contract, (the **Term**)

5. Funding

5.1. Allocation of Funding

The Department will allocate to the ACE Provider a maximum amount of Funding that the ACE Provider may be entitled to for the delivery of Funded Training during the Activity Period subject to the ACE Provider Contract (the **Maximum Funding**).

5.2. Payment of Funding

The Department may pay to the ACE Provider an amount equal to the Maximum Funding in accordance with the payment schedule in the Activity Schedule.

Even though the ACE Provider receives this advance payment, the ACE Provider is only entitled to retain any part of this amount in accordance with clauses 5.3 and 5.4.

5.3. Entitlement to Funding

The amount of Funding that the ACE Provider is entitled to is calculated as follows:

- (a) \$400 for each Funded Unit/Module that a Regional or Remote Student Completes during an Activity Period under the ACE Program (CSR); and
- (b) \$420 for each Funded Unit/Module that a Disadvantaged Student Completes during an Activity Period under the ACE Program (CSD),
- (c) \$320 for each Funded Unit/Module that an eligible student Completes during an Activity Period under the ACE Program Targeted skills for Small Business (TSB),

or otherwise as set out in the relevant Activity Schedule.

5.4. Funding reconciliation

The amount of Funding that the ACE Provider is entitled to for the Activity Period (the **Actual Funding**) is determined by the number of Completions during that Activity Period. The ACE Provider will notify the Department of this number by submitting Training Activity Data. The amount (if any) by which the Maximum Funding exceeds the Actual Funding is an overpayment and clause 22 applies.

Clause 14 and the ACE Provider Operating Guidelines set out further details with respect to the submission of Training Activity Data. Clause 22 of these Terms and Conditions details the way Overpayments are set-off or recovered.

6. Funded Training

6.1. Requirements for Funded Training

The ACE Provider must only use the Funding and/or deliver Funded Training in the following categories and in accordance with the following conditions:

Category	Description	Conditions
<p>A. Pathways to Entitlement</p> <p>- Part Qualifications</p>	<p>Part Qualifications for eligible students as a pathway to training in Smart and Skilled Entitlement Programs may include:</p> <ul style="list-style-type: none"> • individual Funded Unit/Module only training; • bundles of Funded Units/Modules; or • skill sets 	<p>No more than 50% of the number of units of Competency in a Qualification can be delivered to a student as Funded Training under this category.</p>
<p>B. Pathways to Entitlement Foundation Skills support</p> <p>- Part Qualifications</p>	<p>Module/Unit of Competency only training from the Smart and Skilled Entitlement Foundation Skills Program (language, literacy, numeracy and employability skills) identified on the NSW Skills List.</p> <p>This training supports eligible students who are not ready to undertake a Full Qualification in Smart and Skilled Entitlement Foundation Skills Program and/or need additional support to complete a Full Qualification.</p>	<p>N/A</p>
<p>C. Addressing barriers to Entitlement training</p> <p>- Full Qualifications</p>	<p>Targeted training to meet the needs of eligible Disadvantaged Students at any level up to and including Certificate III qualifications on the NSW Skills List ONLY when there are barriers to accessing training under Smart and Skilled Programs.</p>	<p>The ACE Provider must obtain prior written approval from the Department prior to the delivery of Full Qualifications.</p>
<p>D. Regional and Remote Community access</p> <p>- Part Qualifications and/or approved Full Qualifications</p>	<p>Addressing training needs in Regional and Remote Communities through the provision to eligible students of Part Qualifications and/or approved Full Qualifications up to Certificate III.</p>	<p>This is only to be used after all other avenues for training under the Smart and Skilled Entitlement Programs have been explored for Regional or Remote Students.</p> <p>No more than 40% of the Initial Target can be used for training to Regional or Remote Students (see clause 8).</p> <p>The ACE Provider must obtain prior written approval from the Department prior to delivery of Full Qualifications to Regional or Remote Students.</p>

Category	Description	Conditions
E. Pathways to Entitlement - Non-accredited vocational training		No more than 20% of the Initial Target can be used for non-accredited training. All non-accredited training must have a vocational intent. See paragraph 10.2 of the ACE Provider Operating Guidelines.
F. Targeted Skills for Small Business (TSB)	Accredited and non-accredited training in targeted courses in information technology, business services or foundation skills.	No more than 10% of the Initial Target can be used for TSB training.

6.2. Funded Units/Modules

Funded Training must:

- (a) only comprise of Units of Competency or modules that fall within the categories set out in clause 6.1, or such other categories as may be notified by the Department from time to time, including as set out in Activity Schedules, **(Funded Units/Modules)**; and
- (b) Comply with the conditions set out in clause 6.1, or such other conditions as may be notified by the Department from time to time.

6.3. Credit Transfer

The ACE Provider is not entitled to receive any Funding in connection with any Credit Transfers granted.

7. Community

Where a Community is set out in an Activity Schedule, the ACE Provider must only deliver Funded Training:

- (a) face to face (classroom based or work based) within that Community; or
- (b) Online or by correspondence to Enrolled Students who live or work in that Community.

8. Initial Target

- (a) The ACE Provider must use all reasonable endeavours to deliver Funded Training to Disadvantaged Students during the Activity Period in a number of Funded Units/Modules that is equal to the Initial Target if the Funded Training is under the

ACE Program.

The Initial Target is calculated by dividing the Maximum Funding by \$420 (or such other relevant amount as set out in the Activity Schedule). The Initial Target assumes that 100% of the Funded Training will be delivered to Disadvantaged Students.

- (b) If the ACE Provider does not, or is unlikely to, meet the Initial Target, the ACE Provider may deliver the Funded Training to Regional or Remote Students. The number of Funded Unit/Module Completions delivered to Regional or Remote Students during the Activity Period must not exceed 40% of the Initial Target.

This does not affect the ACE Provider's obligations under clause 12.

9. Eligibility

Eligibility of a person to receive Funded Training is set out in the ACE Provider Operating Guidelines.

10. Smart and Skilled Entitlement Programs

If a person is eligible to receive Subsidised Training under a Smart and Skilled Entitlement Program, the ACE Provider must not provide Funded Training in a Qualification to that person unless the ACE Provider assesses and determines there are Barriers to Access such Subsidised Training. The ACE Provider must be able to demonstrate why it has reached this determination including keeping evidence in support.

See the ACE Provider Operating Guidelines for further information.

11. Activity Schedules

The Department may, at its sole discretion, provide the ACE Provider with a schedule that specifies for an Activity Period:

- (a) the ACE Program under which the Funding is being made available (for example, the ACE Program)
- (b) the Maximum Funding
- (c) any Community(s) applicable to the Training; and
- (d) the Initial Target,

and may include any applicable conditions (the **Activity Schedule**).

To be clear, the Department is not obliged to provide any Activity Schedules to the ACE Provider and the provision of one or more Activity Schedule(s) does not guarantee that further Activity Schedules will be provided.

12. ACE Provider General Obligations

The ACE Provider must:

- (a) **(successful completion)** use its best endeavours to ensure that all Funded Units/Modules are successfully completed. Best endeavours should include providing support and training that take into account the Barriers to Access
- (b) **(maintenance of registration with VET Regulator)** maintain its registration with the VET Regulator as a training organisation and its listing in the official national register (training.gov.au) to deliver Training in New South Wales as an RTO Type: Community Based Adult Education Provider
- (c) **(non-accredited Funded Units/Modules)** ensure that all non-accredited Funded Units/Modules meet the AVETMIS Standard
- (d) **(scope of registration with VET Regulator)** ensure that all accredited Funded Units/Modules remain within the scope of their registration with the VET Regulator for the delivery of Training in New South Wales
- (e) **(maintenance of approval as an Approved ACE Provider)** ensure that it remains an Approved ACE Provider
- (f) **(capacity to deliver Training)** maintain the capacity to deliver Training throughout each of the relevant Community(s) to the standard described by the ACE Provider in the Application and as otherwise required in the ACE Provider Contract, including:
 - (i) maintaining all Licenses and Consents
 - (ii) maintaining the required number of appropriately skilled trainers and assessors
 - (iii) ensuring all of its Personnel undertake professional development and continuous improvement as described in the ACE Provider Operating Guidelines; and
 - (iv) validating and contextualising training and assessment resources as described in the ACE Provider Operating Guidelines

- (g) **(servicing NSW students)** remain able to deliver adult and community education in New South Wales to students who work or reside in New South Wales
- (h) **(maintenance of standard of operations)** maintain its operations to the standard described by the ACE Provider in the Application and as otherwise required in the ACE Provider Contract, including:
 - (i) maintaining facilities and equipment
 - (ii) providing student administration support services
 - (iii) providing career advice services; and
 - (iv) providing specialised training and assessment services
- (i) **(no discrimination)** not discriminate in any way between Prospective Students when accepting enrolments for Training, treat all Prospective Students fairly and equitably including in compliance with all relevant equal opportunity and anti-discrimination Applicable Laws and provide Prospective Students seeking enrolment in Training all reasonable opportunity to enrol in and undertake Training
- (j) **(not engage services of certain persons)** not engage the services of a person that:
 - (i) had any of the following types of contracts terminated for non-compliance with the terms and conditions of that contract or poor performance:
 - a) a Smart and Skilled Contract; or
 - b) a vocational education and training related contract with a government agency
 - (ii) has had its registration with the VET Regulator (or a regulator under similar or previous laws) refused, cancelled or revoked; and
 - (iii) Contributed (including by act or omission) to either the events referred to in clauses 12(j) (i) and 12(j) (ii) happening to another person.

The engagement must not be in any capacity including as employee, officer, contractor or consultant.

To be clear, a person who was a director, committee member or senior member of staff of a person that either of the events referred to in clauses 12(j) (i) and 12(j) (ii) has happened to is taken to have contributed to such event.
- (k) **(information true, accurate and correct)** ensure that all information it provides the Department (including Training Activity Data) is true, accurate, complete and correct and not misleading in any way
- (l) **(charge correct Fees)** ensure that it only charges Fees in accordance with the ACE Provider Contract including appropriately and accurately and with the required supporting evidence
- (m) **(marketing and communications):**
 - (i) only market, publicise or otherwise communicate its connection to any ACE Program in accordance with the ACE Provider Operating Guidelines; and
 - (ii) publish and make available readily accessible information on the Funded Training
- (n) **(consumer protection)** develop and communicate an ACE Provider Consumer Protection Policy in accordance with the ACE Provider Operating Guidelines
- (o) **(VET Student Loans Program obligations)** if it is a VET Student Loans ACE Provider:

- (i) provide the Department with any information or data it requests in respect of VET Student Loans Program
- (ii) take reasonable steps to maintain its approval as a VET Student Loans Program Approved Provider
- (iii) comply with all its obligations under the VET Student Loans Program and all Applicable Laws; and
- (iv) notify the Department if it has its approval revoked under the VET Student Loans Program
- (p) **(obligations to Commonwealth government agencies)** comply with its obligations to any Commonwealth government agency, including any obligations under any Applicable Laws
- (q) **(notification of investigation)** notify the Department immediately when the ACE Provider is notified or becomes aware that it is or may become subject to an investigation (or a similar process) by any government agency including the VET Regulator, Australian Competition and Consumer Commission (**ACCC**), Australian Securities and Investments Commission (**ASIC**) or the Australian Tax Office (**ATO**)
- (r) **(no unethical or dishonest conduct)** act in good faith and not act in any way that could be seen to be unethical, reckless, illegal or dishonest conduct or do anything that may bring into disrepute or be detrimental to the Department, any ACE Program, or the NSW vocational education training market
- (s) **(not for profit)** remain a not for profit organisation in accordance with applicable laws such as the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), *the Charities Act 2013* (Cth), *the Associations Incorporation Act 2009* (NSW) and *Charitable Trusts Act 1993* (NSW)

The ACE Provider must be an organisation that is not operating for the profit or gain of its individual members, whether these gains would have been direct or indirect.

The ACE Provider will have a 'non-profit' and a 'dissolution' clause in its constituent or governing documents, substantially similar to the following paragraphs:

- ***(non-profit)** the assets and income of the not for profit organisation shall be applied solely in the furtherance of its objectives and no portion shall be distributed directly or indirectly to the members of the not for profit organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the not for profit organisation.*
- ***(dissolution)** if it is being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another not for profit organisation with similar purposes which is not carried on for the profit or gain of its individual members.*
- (t) **(USI obligations)** comply with all Applicable Laws in respect of the Unique Student Identifier (**USI**) and report the USI to the Department when requested
Further obligations in relation to USI are set out in the ACE Provider Operating Guidelines.
- (u) **(cooperation with other RTOs)** cooperate with other registered training organisations to ensure the integrated and efficient conduct of all programs operated by the Department. This includes the ACE Provider providing such reasonable assistance to other registered training organisations as the Department may request from time to time; and
- (v) **(issue Statements of Attainment and Qualifications)** issue within 30 days:

- (i) Statements of Attainment to all Enrolled Students who have successfully completed one or more Funded Units/Modules but have not completed a full Qualification. This is required when an Enrolled Student ceases their Funded Training with the ACE Provider or at such other time as is requested by the Enrolled Student or the Department; and
 - (ii) Qualifications to all Enrolled Students who have successfully completed all Funded Units/Modules for a full Qualification.
- (w) **participate in reviews and evaluations** to ensure stakeholder feedback is considered.

13. Other Funding

- (a) The ACE Provider must not claim or receive any Funding from the Department under the ACE Provider Contract to deliver Training where the ACE Provider has or will receive any type of other funding (full or partial) from any person (including any government agency in Australia such as the Department) to deliver that same Training (**Other Funding**).
To be clear, Other Funding does not include the Fee for that Training.
- (b) If the ACE Provider receives Other Funding it must notify the Department with details of the Other Funding. The Department may, in its absolute discretion request a repayment of (all or part of) the Funding already paid for that Training where the ACE Provider was also receiving Other Funding in accordance with clause 22.

14. Guidelines and Policies

The ACE Provider will comply with the Guidelines and Policies. If anything contained in any Guidelines and Policies is inconsistent with the ACE Provider Contract, the ACE Provider Contract will apply to the extent of the inconsistency unless the relevant Guideline and Policy expressly acknowledges the inconsistency and states that the Guideline and Policy will apply in priority.

15. Performance Monitoring

- (a) The Department may at any time carry out monitoring of the ACE Provider's operations and compliance with the ACE Provider Contract (including compliance with Applicable Laws and Guidelines and Policies) (**Performance Monitoring**).
- (b) The Department will carry out Performance Monitoring by any means including by requesting a self-assessment by the ACE Provider, monitoring and/or auditing all records of the ACE Provider and any other information provided by the ACE Provider, by attending the ACE Provider's site(s), interviewing the ACE Provider's board of management, employees, agents or subcontractors, or interviewing any Enrolled Students who are receiving or have received Funded Training. This includes giving access to correspondence and reports from the VET Regulator. This Performance Monitoring may be carried out by any person authorised by the Department including

external contractors.

- (c) The ACE Provider will provide all assistance, information or access required to the Department to enable the Department to carry out Performance Monitoring within the timeframe requested by the Department.
- (d) The Department may retain external Personnel to assist it with Performance Monitoring.

To be clear, any non-compliance with the ACE Provider Contract (including Applicable Laws and Guidelines and Policies) is an Event of Default and may result in the Department exercising its rights under the ACE Provider Contract, including the right to suspend or terminate the ACE Provider Contract, decrease the Maximum Funding or otherwise vary an Activity Schedule.

16. Records and Reporting

16.1. Records

- (a) The ACE Provider will maintain records in connection with its obligations under the ACE Provider Contract including:
 - (i) all consents and declarations given by Enrolled Students;
 - (ii) the eligibility of each Enrolled Student;
 - (iii) the enrolment of Enrolled Students;
 - (iv) Credit Transfers (CT) and Recognition of Prior Learning (RPL) granted (and the processes undertaken relating to these);
 - (v) the Fees charged to and paid by each Enrolled Student and Fee Exemptions and Concessions granted;
 - (vi) the delivery of Funded Training;
 - (vii) the assessment of Funded Training delivered; and
 - (viii) Certificates, Statements of Attainment and Qualifications issued,
 or as otherwise required by the Department from time to time and will provide to the Department any records requested by it from time to time.
- (b) The ACE Provider will comply with the record keeping obligations set out in the ACE Provider Operating Guidelines and all Applicable Laws.
- (c) The ACE Provider will maintain records for Funded Training for not less than 3 years after the relevant Enrolled Student completes or ends their Funded Training. The records for Funded Training will be readily accessible, easily distinguishable and able to be separated from the records for the ACE Provider's Training that is not Funded Training.

16.2. Reporting

- (a) The ACE Provider will liaise with and report to the Department as required by the Department for the purposes of the ACE Provider Contract in connection with:
 - (i) changes to any details about the ACE Provider (including contact details, delivery sites, facilities offered and senior management team);
 - (ii) the enrolment of Enrolled Students;
 - (iii) the commencement and progress of Funded Training delivered;
 - (iv) the assessment of Funded Training delivered;
 - (v) engagement with industry;
 - (vi) Credit Transfers and RPLs granted; and
 - (vii) Certificates, Statements of Attainment and Qualifications issued,
 or as otherwise required by the Department from time to time.
- (b) The ACE Provider will comply with the reporting obligations (in particular the required time-frames) set out in the ACE Provider Operating Guidelines and all Applicable Laws.
- (c) The ACE Provider will within the time-frame requested by the Department, provide any information in relation to the ACE Provider Contract (including Funded Training) requested by the Department for the purposes of the ACE Provider Contract, including Performance Monitoring and evaluation.
- (d) The ACE Provider will, on a quarterly or more frequent basis, report Total ACE Activity to the AVETMIS Standard in the manner and format set out in the ACE Provider Operating Guidelines. The ACE Provider must obtain the consent of all applicable students to provide this information in accordance with the ACE Provider Operating Guidelines if such information is not de identified.

16.3. Financial record keeping and reporting

- (a) The ACE Provider will maintain up to date and accurate Financial Information which can be readily accessed and will be provided to the Department within 7 days of a request by the Department at any time in order to allow the Department to make an informed assessment about the ongoing financial position of the ACE Provider.
To be clear, the Department may retain external Personnel to access and request Financial Information from the ACE Provider.
- (b) If the Department determines, in its absolute discretion, that the ACE Provider's financial position has or may adversely affect the ACE Provider's delivery of Training (**Financial Viability Issue**), the Department may exercise certain rights as detailed in clause 21. This clause does not limit the Department's rights under the ACE Provider Contract.
- (c) The Financial Information which the ACE Provider will maintain includes the information required under the ACE Provider Operating Guidelines and all Applicable Laws.
- (d) The Financial Information must be prepared in accordance with accounting principles and standards and best practice and other reporting requirements determined by the Department.

17. Reporting of Training Activity Data

Training Activity Data for every Enrolled Student who undertakes Funded Training should be reported by submitting the Training Activity Data in accordance with the ACE Provider Operating Guidelines.

18. Fees

This clause sets out how the ACE Provider must charge Enrolled Students for Funded Training.

18.1. Determining Fees

The ACE Provider will only charge Enrolled Students for Training provided to the Enrolled Student the fee determined in accordance with the ACE Provider Operating Guidelines (the Fee).

18.2. Fee protection

The ACE Provider must maintain arrangements for the protection of any Fees paid in advance in accordance with the ACE Provider's obligations under Applicable Laws.

19. Government Taxes, Duties and Charges

- (a) All taxes, duties and charges imposed or levied in any state or territory or federally in Australia or overseas in connection with the performance of the ACE Provider Contract must be borne by the ACE Provider.
- (b) The services provided under the ACE Provider Contract (the provision of GST-free vocational education and training, together with incidental reporting to meet the requirements of the Commonwealth Government under funding arrangements between the Commonwealth and the States and Territories) retain their character as GST-free services by the ACE Provider to the Enrolled Student. In accordance with GSTR 2002/1, the Subsidy also retains this GST-free status.
- (c) In the event of any future change to taxation legislation, rulings and determinations that effects a change in the GST status of some or all of the services (or the Department elects to treat them as taxable supplies), provided that the ACE Provider is registered for GST and this clause 19 applies, the Department will increase all components of the prices in respect of such services by the applicable rate of GST (currently 10%) or the relevant alternative taxation obligation, subject to the issue of a recipient created tax invoice.
- (d) The Department is the only party to the ACE Provider Contract permitted to issue tax invoices for supplies by the ACE Provider under the ACE Provider Contract. The ACE Provider will not issue tax invoices in respect of those supplies. The Department acknowledges that it is a government entity for the purposes of GSTR 2000/10. The ACE Provider acknowledges that it is registered for GST and that it will notify the Department if it ceases to be registered.

20. Insurance

- (a) The ACE Provider will have and maintain the following insurance:
- (i) for the Term:
 - a) public and products liability insurance with a minimum limit of \$20 million for any one occurrence; and
 - b) professional indemnity insurance with a minimum limit of \$3 million for any one occurrence and in the aggregate for the insurance period; and
 - c) workers compensation and other compulsory third party insurance as required by law; and
 - (ii) for 6 years after the Term, a valid and enforceable professional indemnity insurance policy to the extent and in the amounts specified in clause 20(a)(i)b) above,
- (the **Insurance Policies**).
- (b) The Insurance Policies must be taken out by the ACE Provider with a reputable and solvent insurer(s) acceptable to the Department which carries on insurance business in Australia and is authorised in Australia to operate an insurance company.
- (c) The ACE Provider must:
- (i) not do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse the claim; and
 - (ii) without limiting clause 20(a), promptly reinstate any insurance if it lapses or if the cover is exhausted.
- (d) The ACE Provider will, on request by the Department, provide current relevant confirmation of insurance documentation including certificates of currency, certifying that it has insurance as required by this clause 20, noting any restrictions that may be relevant to the performance of the ACE Provider Contract.
- (e) If the ACE Provider does not comply with this clause then without limiting any other remedy available to the Department, the Department may withhold payment of any money due under the ACE Provider Contract to the ACE Provider until the ACE Provider has complied.
- (f) The ACE Provider will as soon as practicable notify the Department of any occurrence that may give rise to a claim under the public liability or professional indemnity Insurance Policies and afterwards keep the Department fully informed of developments concerning any claim.
- (g) The requirements of this clause do not affect the ACE Provider's liabilities in connection with the ACE Provider Contract.
- (h) The ACE Provider's obligations under this clause are continuing obligations and survive termination of the ACE Provider Contract whilst the obligations of the ACE Provider under this clause continue.

21. Termination, Suspension or Variation

21.1. Termination for convenience

- (a) The Department may, at any time, terminate the ACE Provider Contract for any reason by giving at least 2 months' notice to the ACE Provider.

To be clear, the Department will have no obligation to pay any funding above what has accrued up to the date of termination of the ACE Provider Contract. This clause does not limit the Department's rights under clause 21.2(c) or at law.

- (b) The ACE Provider may, at any time, terminate the ACE Provider Contract for any reason by giving at least 2 months' notice to the Department.

21.2. Termination, suspension or variation for default

- (a) The ACE Provider will not allow an Event of Default to occur.
- (b) If an Event of Default occurs, the ACE Provider will immediately notify the Department of the Event of Default and provide sufficient detail to the Department to assess the significance and impact of the Event of Default.
- (c) If an Event of Default occurs or if there is a Financial Viability Issue the Department may, by written notice to the ACE Provider, immediately:
- (i) suspend all or part of the ACE Provider's rights under the ACE Provider Contract;
 - (ii) withhold in whole or in part any Funding payable to the ACE Provider;
 - (iii) require the repayment of any Funding paid to the ACE Provider;
 - (iv) place any further conditions in relation to Training;
 - (v) vary the ACE Provider Contract in accordance with clause 21.3;
 - (vi) exercise any of its other rights under the ACE Provider Contract; or
 - (vii) terminate the ACE Provider Contract.
- (d) If the Department believes that the ACE Provider has failed to comply with the ACE Provider Contract, the Department may give the ACE Provider a notice requiring the ACE Provider, within 14 days after receiving the notice, to show that there has been no such failure, or to remedy the failure where the failure is capable of remedy. If, after the 14 days have expired, the Department is satisfied that the ACE Provider did fail to comply as alleged in the notice and has not remedied the failure, the Department may, by written notice to the ACE Provider, terminate the ACE Provider Contract. This clause does not limit the Department's rights under clause 21.2(c) or at law.
- (e) **Event of Default** means any of the following (whether or not caused by anything outside the control of the ACE Provider):
- (i) **non-compliance:** the ACE Provider has not complied with any term or condition of the ACE Provider Contract;
 - (ii) **incorrect or incomplete statement:** any statement made by the ACE Provider is incorrect or incomplete in a way which would have affected the original decision to enter into the ACE Provider Contract with the ACE Provider (including the specific terms in the Activity Schedules);

- (iii) **untrue warranty:** a representation, warranty or statement made by the ACE Provider (including clause 25) is untrue or misleading or a reply to a question made by, or on behalf of, the Department, is untrue or misleading;
- (iv) **void document:** the ACE Provider Contract or any other related agreement, entered into by the ACE Provider and the Department is void, voidable or otherwise unenforceable by the Department or is claimed to be so by the ACE Provider;
- (v) **authorisation ceasing:** an authorisation from a government agency necessary to allow the ACE Provider to comply with its obligations under the ACE Provider Contract or any other related agreement entered into by the ACE Provider and the Department or carry on its principal business or activity is withheld or ceases to be in full force and effect;
- (vi) **non-compliance with, or termination of, other contracts:** the ACE Provider or a related body corporate (as defined in the *Corporations Act 2001 (Cth)*) of the ACE Provider has not complied with any term or condition of an education related contract with the Department or any other government agency, or had such a contract terminated for any reason;
- (vii) **disrepute:** the Department believes that the continuation of the ACE Provider Contract may: bring into disrepute; affect the reputation of; or, be detrimental to, the Department, any ACE Program or the NSW vocational education training market (separately subsidised and non- subsidised);
- (viii) **unfavourable VET Regulator Audit Report:** a VET Regulator audit report indicates a serious material or significant non-compliance of the standards set by the VET Regulator;
- (ix) **regulatory decision of the VET Regulator:** an adverse regulatory decision made by the VET Regulator which affects the ACE Provider's ability to perform its obligations under the ACE Provider Contract, whether or not the ACE Provider's rights for reconsideration or appeal have been exhausted;
- (x) **non-compliance with Smart and Skilled Contract:** the ACE Provider has not complied with any term or condition of the Smart and Skilled Contract it holds with the Department; or
- (xi) **change in Control event:** the ACE Provider experiences a change in Control not in accordance with clause 31.

21.3. Variation of the ACE Provider Contract

- (a) The Department may vary the ACE Provider Contract (including the Maximum Funding or any other part of an Activity Schedule):
 - (i) at the conclusion of the Activity Period, by issuing a new Activity Schedule. This is at the Department's absolute discretion and may be under different contract terms;
 - (ii) at any time if there is an Event of Default and the ACE Provider has failed to, or is unable to, remedy the Event of Default within 14 days of the Department providing notice to the ACE Provider of the Event of Default;
 - (iii) if there is a Financial Viability Issue;
 - (iv) at any time, with the consent of the ACE Provider or by giving at least one months' notice to the ACE Provider; or
 - (v) otherwise in accordance with the ACE Provider Contract.

- (b) *To be clear, this clause does not limit the Department's rights under the remainder of the ACE Provider Contract.*
- (c) In giving notice of any changes under this clause 21.3, the Department will specify the date on which the change is to take effect.
- (d) If the Maximum Funding is reduced, clause 22 will apply to the amount by which the Maximum Funding was reduced.

21.4. Effect of notice of termination

Following receipt of a notice of termination from the Department, the Department will not allow the ACE Provider to commence any further students, unless otherwise notified by the Department to the ACE Provider.

21.5. Effect of termination

If the ACE Provider Contract terminates, the ACE Provider will (at its own cost) do anything that the Department requests, including any one or more of the following:

- (a) provide all reasonable assistance to facilitate the transfer of all Enrolled Students to another registered training organisation including providing all information, documents or certification required by the Enrolled Students such as a Statement of Attainment or Qualification;
- (b) pass on any communications or information to Enrolled Students;
- (c) ensure that all Training Activity Data has been submitted in accordance with its obligations under this ACE Provider Contract;
- (d) cease the delivery of Funded Training to Enrolled Students; or
- (e) continue to deliver Funded Training to Enrolled Students who have Commenced, under clause 21.7.

21.6. Effect of suspension

If all or part of the ACE Provider Contract is suspended:

- (a) the ACE Provider will (at its own cost) do anything that the Department requests, including:
 - (i) continue to deliver Funded Training to Enrolled Students who have Commenced, under clause 21.7;
 - (ii) cease to deliver Funded Training to Enrolled Students who have Commenced;
 - (iii) cease to enrol Prospective Students;
 - (iv) comply with any condition that the Department imposes; and
- (b) the Department may withhold all or part of the funding.

21.7. Continuation of Funded Training

If the Department requests the ACE Provider to continue to deliver Funded Training to Enrolled Students who have Commenced:

- (a) the ACE Provider will continue to provide the Funded Training in accordance with the terms of the ACE Provider Contract;
- (b) the ACE Provider Contract will continue to provide the Funded Training to all Enrolled Students undertaking the Funded Training until they have all completed or discontinued the Funded Training that they are enrolled in; and

- (c) the ACE Provider will comply with any additional conditions imposed by the Department.

The Department may by notice to the ACE Provider withdraw this request.

22. Overpayments

The ACE Provider must repay monies overpaid to it by the Department due to the Maximum Funding exceeding the Actual Funding or otherwise due to the Department under or arising out of the ACE Provider Contract.

The Department may, in its absolute discretion, by notice to the ACE Provider:

- (a) require the amount of overpayment to be paid back within a specified period of time;
- (b) set-off the amount of the overpayment against any Allocated Funding for the next Activity Period;
- (c) set-off the overpayment amount against monies due to the ACE Provider under the ACE Provider Contract; or
- (d) deal with it in another manner as directed by the Department.

23. Dispute Resolution

The Parties will act in good faith to resolve any disputes.

24. Force Majeure

24.1. Suspension of obligations

- (a) If a Party is unable to carry out its obligations under the ACE Provider Contract as a result of an event such as an act of God, lightning, storm, flood, fire, bushfire, pandemic, earthquake, explosion or war (a **Force Majeure Event**), then that Party's obligations will be suspended for the period of time they are affected provided it:
 - (i) notifies the unaffected Party promptly of the event with reasonable details and the extent to which it is unable to perform its obligations; and
 - (ii) attempts to overcome the event as quickly as possible.
- (b) If after 14 days, such an event has not ceased, the Parties will meet in good faith to attempt to achieve a mutually satisfactory resolution to the problem. If this is unable to be resolved within a further 14 days then the unaffected Party can terminate the ACE Provider Contract immediately by written notice to the affected Party.

24.2. Extension of time

- (a) Where there is likely to be a delay in the ACE Provider discharging an obligation under the ACE Provider Contract because of a Force Majeure Event (other than a circumstance arising out of any act or omission on the part of the ACE Provider), the ACE Provider can request a reasonable extension of time.

- (b) The Department may consent to a request for extension of time under this clause 24.2 provided that:
 - (i) the ACE Provider uses its best endeavours to minimise the delay and recover lost time; and
 - (ii) where appropriate, the ACE Provider provides the Department with a plan indicating in detail the steps and strategies the ACE Provider proposes to take to minimise the impact of the Force Majeure Event and manage the consequences of the delay.
- (c) The ACE Provider will not be entitled to any increase in any payment due to it, or damages, costs or expenses in connection with the delay.

25. Warranties

The ACE Provider warrants that, on the Contract Acceptance Date and for the Term:

- (a) it will comply with all Applicable Laws;
- (b) it has the legal right and power to enter into the ACE Provider Contract and to perform its obligations under the ACE Provider Contract;
- (c) the execution, delivery and performance of the ACE Provider Contract by it has been duly and validly authorised by all necessary corporate action on its part;
- (d) each Authorisation necessary to enable it to unconditionally execute and deliver and comply with its obligations under the ACE Provider Contract, and to carry on its principal business or activity, has been obtained, effected and complied with;
- (e) the ACE Provider Contract constitutes a valid and binding agreement and is enforceable against it by the Department in accordance with its terms;
- (f) the execution and performance of the ACE Provider Contract by it does not:
 - (i) violate or conflict with or result in a breach of or constitute a default under its constitution;
 - (ii) constitute a violation of any judgment or order;
 - (iii) constitute a default under any contract, which relates to the performance of the ACE Provider Contract; and
 - (iv) constitute an event that would, with notice or lapse of time, or both, constitute a default as described under clause 25(f)(iii)
- (g) the ACE Provider does not have any interests or obligations (other than those notified to the Department in the Application) that conflict with its interests or obligations under the ACE Provider Contract;
- (h) the ACE Provider is not aware of any circumstances (other than those notified to the Department in the Application), including any financial circumstances or any litigation or other proceedings that are taking place, pending or are threatened, which adversely affects or might adversely affect the ACE Provider's ability to perform the ACE Provider Contract;
- (i) its performance of the Funded Training, the provision of any materials (including third party materials) by the ACE Provider in connection with the Funded Training, and their use by the ACE Provider, the Department or any Enrolled Student will not infringe the intellectual property rights of a third party;

- (j) it has skilled, qualified and experienced Personnel who are capable of performing the ACE Provider Contract; and
- (k) all information provided by the ACE Provider to the Department before the Contract Acceptance Date (including in connection to the Application) is true, accurate and complete and is not misleading in any way.

26. Indemnities

- (a) The ACE Provider must indemnify and keep indemnified the Department, including its Personnel (the **Indemnified**) against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment (including legal fees on a solicitor/client basis) which the Indemnified pays, suffers, incurs or is liable for in respect of or as a result of any act or omission by the ACE Provider or its Personnel in connection with or arising out of the ACE Provider Contract including delivery of Funded Training.
- (b) The ACE Provider's liability under this clause will be reduced to the extent that any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment was caused or contributed to by the Department's breach of the ACE Provider Contract, negligent or unlawful acts or omissions.

27. Exclusion of Liability

The Department will not be liable to the ACE Provider for any loss or damage suffered or incurred by the ACE Provider that:

- (a) does not arise naturally or in the ordinary course of things from the act or omission that caused the liability; or
- (b) is a loss of goodwill, income, revenue, profit or savings.

28. Assumption of Risks by ACE Provider

The ACE Provider accepts all risks connected to the ACE Provider Contract and its performance of the ACE Provider Contract, including the risk of:

- (a) not becoming entitled to Funding equal to the Maximum Funding and having to repay some or all of any amount received in advance;
- (b) the withdrawal of an application for enrolment in Training from a Prospective Student;
- (c) the withdrawal from Training by Enrolled Students;
- (d) not receiving any or all of the Fees or any other amounts due, at any time, from Enrolled Students for the Training provided by the ACE Provider;
- (e) not receiving any further Activity Schedule(s);
- (f) having to refuse an application for enrolment for Training because it would exceed the Maximum Funding; or

- (g) exceeding the Maximum Funding and not receiving any amount in excess of the Maximum Funding.

The ACE Provider will not make any claim against the Department in respect of these matters or any other related matters.

The ACE Provider will perform its obligations under the ACE Provider Contract at its own cost. The Department's only payment obligation to the ACE Provider in relation to the performance of the ACE Provider's obligations is to provide funding in accordance with the terms and conditions under the ACE Provider Contract.

29. Conflict of Interest

- (a) The ACE Provider warrants that at the Contract Acceptance Date and for the Term of this ACE Provider Contract that no Conflict of Interest exists or is likely to arise in the performance of its obligations under the ACE Provider Contract.
- (b) If during the term of this ACE Provider Contract, a Conflict of Interest arises, the ACE Provider must:
 - (i) immediately notify the Department in writing of that Conflict of Interest making a full disclosure of all information relating to the Conflict of Interest; and
 - (ii) take such steps as the Department may reasonably require to resolve or otherwise deal with that Conflict of Interest.
- (c) If the ACE Provider does not notify the Department under this clause, or is unable or unwilling to resolve or deal with the Conflict of Interest as required, the Department may terminate the ACE Provider Contract in accordance with clause 21.
- (d) The ACE Provider agrees that it will not, and will use its best endeavours to ensure that any Personnel of the ACE Provider do not, engage in any activity or obtain any interest during the course of this ACE Provider Contract that is likely to conflict with or restrict the ACE Provider in performing the ACE Provider Contract.

30. Assignment

The ACE Provider must not assign any or all of its rights and obligations under the ACE Provider Contract without the Department's prior written approval.

31. Change in Control

- (a) Any change in Control (as defined by Section 50AA of the *Corporations Act 2001* (Cth)) of the ACE Provider requires the Department's prior written approval.
- (b) The Department may terminate the ACE Provider Contract at any time if a change in Control of the ACE Provider occurs without the Department's prior written approval.

32. Third Party Arrangements

- (a) All Third Party Arrangements must comply with ASQA's [General Direction - third party arrangements for training and/or assessment of VET courses](#).
- (b) A Brokering Arrangement is a type of Third Party Arrangement.
- (c) The ACE Provider must not enter into a Third Party Arrangement without the Department's prior written approval.
- (d) The ACE Provider may apply for approval by completing the ACE Program Application for Approval of a Third Party Arrangement form published by the Department.
- (e) If a Third Party Arrangement is approved by the Department, the third party will be subject to Performance Monitoring by the Department. Both the ACE Provider and the Third Party will be responsible for ensuring that all activities conducted under an approved Third Party Arrangements comply with the ACE Provider Contract.

To be clear, entering into a Third Party Arrangement for training and/or assessment of Funded Training without the prior written approval of the Department is an Event of Default.

33. Communications to the ACE Provider

With the exception of written notice and/or approval (which is governed by clause 35), the Department may communicate with the ACE Provider, including for the purpose of notifying of any changes to Guidelines and Policies, by:

- (a) the circulation of a general communication;
- (b) the ACE Portal; or
- (c) email to the ACE Provider's Representative or CEO.

34. Privacy

34.1. ACE Provider Information

- (a) The ACE Provider agrees that the Department may collect from the ACE Provider or any other source, information about the ACE Provider that relates to the ACE Provider's performance under the ACE Provider Contract, the ACE Provider's delivery of Training and the provision of government funding to the ACE Provider (**ACE Provider Information**). This includes any information that the ACE Provider provides the Department as part of the ACE Provider Contract or under its Application and any feedback the Department obtains from third parties regarding the ACE Provider's provision of Training.
- (b) The ACE Provider agrees that the Department may share and disclose ACE Provider Information to any Australian government agency, including those located in States and Territories outside New South Wales who may use ACE Provider Information for any purpose connected to the exercise of their government functions.

34.2. Student Personal Information

- (a) The ACE Provider must comply with all applicable Australian privacy laws, including the *Privacy Act 1988* (Cth) (**Privacy Act**) in relation to the collection, use and disclosure of personal information, as defined under section 6 of the Privacy Act, of all students (including Prospective Students and Enrolled Students) (**Student Personal Information**).
- (b) It is the ACE Provider's responsibility to ensure that it:
 - (i) **(complies with the Australian Privacy Principles)** complies with the Australian Privacy Principles under the Privacy Act in relation to its privacy obligations under the ACE Provider Contract and at law;
 - (ii) **(obtains notifications and disclosures)** provides all necessary notifications and disclosures as required under the Privacy Act in relation to its collection, use and disclosure of Student Personal Information, including disclosure under the ACE Provider Contract; and
 - (iii) **(obtains consent and records)** ensures that it obtains all necessary consents for the collection, use and disclosure of Student Personal Information in accordance with clause 34.4 and retains written records and logs of all consents in accordance with clause 34.4(c).

To be clear, before the ACE Provider collects Student Personal Information to disclose to the Department, the ACE Provider must notify the student that their Student Personal Information will be used and disclosed in that way.

34.3. Provision of information to the Department and other Government agencies

The ACE Provider must provide the Department with all information, including requirements of Section 121 of the *Government Information (Public Access) Act 2009* and including Student Personal Information collected or obtained by the ACE Provider in relation to all students in accordance with the ACE Provider Contract including as set out in the ACE Provider Operating Guidelines.

34.4. Consent

- (a) Before collection of Student Personal Information the ACE Provider must first obtain the consent of the students in accordance with this clause.
- (b) The consent under this clause must be in, or include, the same wording as the privacy consent statement in the ACE Provider Operating Guidelines.
- (c) The ACE Provider must retain records of this consent in accordance with clause 13.2 and the ACE Provider Operating Guidelines.

34.5. General

The ACE Provider's obligations under this clause are in addition to its obligations under Australian privacy laws, including the Privacy Act and do not relieve the ACE Provider of its legal responsibilities relating to protection of Student Personal Information. It is the sole responsibility of the ACE Provider to ensure that it complies with all applicable Australian privacy laws relating to the collection, use and disclosure of Student Personal Information, including the provision of notification and disclosure statements and the procurement of all necessary privacy consents.

35. Notices

35.1. Written notice

Unless otherwise specified under the ACE Provider Contract, a notice, approval or other communication connected with the ACE Provider Contract has no legal effect unless it is in writing.

35.2. Addresses for notices

- (a) Unless otherwise specified under the ACE Provider Contract, a notice from the Department to the ACE Provider must be:
 - (i) sent by post to the address provided by the ACE Provider to the Department;
 - (ii) sent by email to the ACE Provider's Representative or CEO's email address provided by the ACE Provider to the Department; or
 - (iii) delivered to the address provided by the ACE Provider to the Department.
- (b) Unless otherwise specified under the ACE Provider Contract, a notice from the ACE Provider to the Department must be:
 - (i) sent by post or delivered to the Director, Training Sector Governance, Training Services NSW, Level 12, 1 Oxford St, Darlinghurst, NSW 2010, PO Box 960, Darlinghurst NSW 1300; or
 - (ii) sent by email to TS.ACEdesk@det.nsw.edu.au addressed to the attention of the Director, Training Sector Governance, Training Services NSW.

35.2. Receipt of Notice

If a notice is sent or delivered in a manner provided under this clause, it must be treated as given to and received by the party to which it is addressed:

- (a) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
- (b) if sent by email, 1 Business Day after the email was sent, unless the party sending the email knows or ought reasonably to suspect that the email was not delivered to the e-mail address; or
- (c) if delivered before 5 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

36. General

36.1. Dictionary and interpretation

In the ACE Provider Contract, except where the contrary intention is expressed, words have the meaning given to them, and the rules of interpretation are set out, in the Schedule (Definitions and interpretation).

36.2. No employment, partnership or agency

- (a) The ACE Provider is not by virtue of the ACE Provider Contract, or for any purpose, an employee, partner or agent of the Department, or invested with any power or authority to bind or represent the Department.
- (b) The ACE Provider must not represent itself, and must ensure that its Personnel do not represent themselves, as being an employee, partner or agent of the Department, or as otherwise able to bind or represent the Department.

36.3. Further assurance

Each Party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to the ACE Provider Contract.

36.4. Costs

Each Party must pay its own legal costs and other expenses connected with the negotiation, preparation and execution of the ACE Provider Contract.

36.5. Severability

If anything in the ACE Provider Contract is unenforceable, illegal or void then it is severed and the rest of the ACE Provider Contract remains in force.

36.6. Survival

The following obligations are continuing obligations and survive termination of the ACE Provider Contract:

- (a) clause 12(k) (**information true, accurate and correct**)
- (b) clause 12(n) (**consumer protection**)
- (c) clause 12(r) (**no unethical or dishonest conduct**)
- (d) clause 12(u) (**cooperation with other RTOs**)
- (e) clause 12(v) (**issue Statements of Attainment and Qualifications**)
- (f) clause 15 (**Performance Monitoring**)
- (g) clause 16 (**Records and reporting**) and all other obligations relevant to the maintaining of records and reporting to the Department
- (h) clause 17 (**Reporting of Training Activity Data**)
- (i) clause 19 (**Government taxes, duties and charges**)
- (j) clause 20 (**Insurance**)
- (k) clause 21 (**Termination, suspension or variation**)
- (l) clause 22 (**Overpayments**)
- (m) clause 23 (**Dispute resolution**)
- (n) clause 26 (**Indemnities**)
- (o) clause 27 (**Exclusion of liability**)
- (p) clause 28 (**Assumption of risks by ACE Provider**)
- (q) clause 34 (**Privacy**)
- (r) clause 35 (**Notices**)
- (s) clause 36 (**General**)
- (t) clause 37 (**Governing law and jurisdiction**)
- (u) Schedule (**Dictionary and interpretation**)
- (v) the content of Schedule and Guidelines and Policies to the extent they refer to the subject matter of any of the above; and
- (w) any other provision of this ACE Provider Contract which, by its nature, would reasonably be expected to be performed after the termination of this ACE Provider Contract.

36.7. Entire understanding

The ACE Provider Contract:

- (a) is the entire agreement and understanding between the Parties on everything connected with the subject matter of the ACE Provider Contract; and
- (b) supersedes any prior agreement or understanding between the Parties on anything connected with that subject matter including the Application.

36.8. Waivers and consents

Except as expressly stated in the ACE Provider Contract, each Party acknowledges that:

- (a) a waiver or consent under the ACE Provider Contract is not effective unless it is in writing and signed by the Parties entitled to give the waiver or consent;
- (b) a waiver or consent may be given conditionally or unconditionally or withheld in the absolute discretion of the Party entitled to give the waiver or consent;
- (c) a waiver of a power or right or the giving of consent is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given;
- (d) a Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right; and
- (e) the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

37. Governing Law and Jurisdiction

37.1. Governing law

The law of New South Wales governs the ACE Provider Contract.

37.2. Jurisdiction

The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts which are entitled to hear appeals from them.

Schedule

Dictionary and interpretation

1. Dictionary

In the ACE Provider Contract:

ACE Program means the program in respect of adult and community education described in the ACE Provider Operating Guidelines

ACE Portal means the portal found at <https://www.training.nsw.gov.au/ace/index.html>, or such other portals, intranets or websites notified by the Department from time to time including portals for Training Activity Data or Contract Management

ACE Provider means an Approved ACE Provider who is a party to the ACE Provider Contract as identified in the Activity Schedule

ACE Provider Consumer Protection Policy has the meaning given to it in the ACE Provider Operating Guidelines

ACE Provider Contract has the meaning given to it in clause 2

ACE Provider Information has the meaning given to it in clause 34.1

ACE Provider Operating Guidelines means the guidelines published on the ACE Portal

ACE Provider's Representative has the meaning given to it in the ACE Provider Operating Guidelines

Activity Period means the period specified on an Activity Schedule

Activity Schedule has the meaning given to it in clause 11

Actual Funding has the meaning given to it in clause 5.4

Applicable Laws means all applicable laws, legislative instruments, Regulatory Requirements and Licences and Consents including the *National Vocational Education and Training Regulator Act 2011* (Cth), the *National Vocational Education and Training Regulator Regulations 2011* (Cth), the *A&T Act*, the *Apprenticeship and Traineeship Regulation 2010*, the *Children and Young Persons (Care and Protection) Act 1998* (NSW), the *Higher Education Support Act (2003)*, the *Copyright Act 1968*, the *Competition and Consumer Act 2010* (Cth), *Disability Discrimination Act 1992* (Cth), *Disability Discrimination Act Education Standards*, the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Act 1998* (NSW), the *Animal Research Act 1985* (NSW), the *Student Identifiers Act 2014* (Cth) and *Standards for NVR Registered Training Organisations 2012*

Application means the application made by the ACE Provider for Funding and includes all documentation and information provided in connection with the application

Approved ACE Provider means a registered training organisation that is an Adult and Community Education Provider and has been approved by the Department to deliver Funded Training in New South Wales

A&T Act means *Apprenticeship and Traineeship Act 2001* (NSW)

Australian Aboriginal or Torres Strait Islander means a person who is of Australian Aboriginal or Torres Strait Islander descent; and identifies as an Australian Aboriginal or Torres Strait Islander person; and is accepted as such by the community in which that person lives or has lived

AVETMIS Standard or **AVETMISS** means Australian Vocational Education and Training Management of Information Statistical Standard for the capture and reporting of vocational education and training data

Barriers to Access means one or more barriers to successful access to or completion of Subsidised Training under a Smart and Skilled Entitlement Program as determined by the ACE Provider by undertaking a Barriers to Access Assessment

Barriers to Access Assessment has the meaning given to it in the ACE Provider Operating Guidelines

Brokering Arrangement means an arrangement between the ACE Provider and another person for that person to:

- (a) recruit students, or enrol students, or accept applications for enrolment, in Funded Training;
- (b) market, or provide information or advice in relation to, Funded Training;
- (c) assist students to complete or submit applications for Funded Training; or
- (d) assist, or provide support for, students who could be eligible for Funded Training to complete any assessments required to show that students are academically suited to undertake the Funded Training.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made

Certificate means an official certification document that confirms that a Qualification has been awarded to an individual

Commencement means the commencement of a Funded Unit/Module by an Enrolled Student where the Enrolled Student has participated in Funded Training, and **Commence** and **Commenced** have a corresponding meaning

Community means an area described in an Activity Schedule as defined by the Department

Completion means the completion of a Funded Unit/Module with any of the following AVETMISS outcome identifier – national codes: 20, 30, 40, 51, 81 or 82, by an Enrolled Student where the Enrolled Student has Participated in, and Completed (including withdrawn) Funded Training, and **Complete**, **Completes** and **Completed** have a corresponding meaning

Concession has the meaning given to it in the ACE Provider Operating Guidelines

Conflict of Interest includes engaging in any activity, or obtaining any interest which restricts or is likely to conflict with the performance by the ACE Provider of, or to restrict the ACE Provider in performing, its obligations under the ACE Provider Contract

Contract Acceptance Date has the meaning given to it in clause 4

Contract Terms and Conditions means these terms and conditions

Credit Transfer means credit granted to an Enrolled Student for a Unit of Competency previously successfully completed

Department has the meaning given to it in clause 1

Disadvantaged Student has the meaning given to it in the ACE Provider Operating Guidelines

Enrolled Student means a student who is eligible to receive Funded Training in one or more Funded Unit(s)/Module(s) and has enrolled with the ACE Provider in the Funded Unit(s)/Module(s)

Event of Default has the meaning given to it in clause 21.2(e)

Fee means the fee payable by an Enrolled Student for Funded Training determined by clause 18

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Fee Exemption means where a Fee of \$0 is payable by an Enrolled Student as determined by the ACE Provider Operating Guidelines

Financial Information means information in relation to the financial circumstances and status of the ACE Provider including its management accounts, annual reports, financial statements and any information or documents relevant to the ACE Provider's operations and this ACE Provider Contract set out in the ACE Provider Operating Guidelines

Financial Viability Issue has the meaning given to it in clause 16.3(b)

Full Qualifications means a Training Package qualification that is a nationally endorsed group of Units of Competency designed to meet the training requirements of industry workforce roles.

Funded Course means a course comprising of Funded Units/Modules that a student undertakes Funded Training in

Funded Training has the meaning given to it in clause 3

Funded Units/Module has the meaning given to it in clause 6

Funding means funding paid to the ACE Provider under the ACE Provider Contract

GST means and includes the Goods and Services Tax currently levied by the Commonwealth and any subsequent or additional tax on goods and services, value added tax, broad-based consumption tax or other similar tax imposed on supplies made in Australia

Guidelines and Policies means the guidelines and policies published by the Department in connection with any ACE Program and any other program connected to the ACE Provider Contract, including the ACE Provider Operating Guidelines as added, amended or replaced by the Department from time to time

Initial Target has the meaning given to it in clause 8.1

Licenses and Consents means any licenses, consents, authorisations, recognitions, qualifications, approvals and permits required by applicable laws, legislative instruments and Regulatory Requirements to provide the Funded Training and to perform obligations under the ACE Provider Contract

Insurance Policies has the meaning given to it in clause 20(a)

Maximum Funding has the meaning given to it in clause 5.1

Offer Letter means the letter from the Department to the ACE Provider in connection with the offer of Funding to the ACE Provider subject to the ACE Provider Contract.

Other Funding has the meaning given to it in clause 13

Participated in Funded Training means

- (a) the Enrolled Student has interacted and participated in the Funded Training in a manner that exceeds mere attendance; and
- (b) the ACE Provider has documented this interaction and participation

Parties means the parties to the ACE Provider Contract collectively and Party means each of them individually

Part Qualification means designated:

- (a) skill sets; or
- (b) Units of Competency or modules that are part of a Qualification

Performance Monitoring has the meaning given to it in clause 15

Personnel of a person includes that person's employee, agent, officer, or contractor

Prospective Student means a person who makes an enquiry with the ACE Provider to assess

their eligibility to receive Funded Training with the ACE Provider

Qualification means a Training Package qualification that is a nationally endorsed group of Units of Competency to meet the training requirements of industry workforce roles

Recognition of Prior Learning or RPL means recognition of prior learning granted to an Enrolled Student for a Unit of Competency

Regional or Remote Student has the meaning given to it in the ACE Provider Operating Guidelines

Regulatory Requirements means:

- (a) any industry-wide non-statutory rule or obligation
- (b) other non-statutory rules or a non-statutory mandatory code of conduct or
- (c) any non-statutory rule of any industry body

RTO means a training provider registered by the Australian Skills Quality Authority to deliver vocational education and training services

Skills List or NSW Skills List means the list of Qualifications for the applicable Activity Period published by the Department at: www.training.nsw.gov.au/smartandskilled/nsw_skills_list.html

Smart and Skilled means the reform to the NSW Government subsidised vocational education and training

Smart and Skilled Contract means (if applicable) the contract between the Department and the ACE Provider for the delivery of Subsidised Training under Smart and Skilled

Smart and Skilled Contract Terms and Conditions means the terms and conditions published by the Department at: https://www.training.nsw.gov.au/smartandskilled/contract_policy.html

Smart and Skilled Entitlement Programs means the Smart and Skilled Entitlement Foundation Skills Program, Smart and Skilled Entitlement Full Qualifications Program and Smart and Skilled Entitlement Apprenticeships and Traineeships Program, each as defined in the Smart and Skilled Contract Terms and Conditions

Statement of Attainment (SOA) means an official document issued when an individual does not meet the requirements for a Qualification as defined in a Training Package or an accredited course, but has completed:

- (a) one or more units from a VET qualification or an accredited short course;
- (b) a Training Package identified skill set which meets a licence or regulatory requirements;
or
- (c) a Training Package identified skill set which meets a defined industry need.

The Statement of Attainment lists all of the Units of Competency or modules achieved

Student Personal Information has the meaning given to it in clause 34.2(a)

Subsidised Training has the meaning given to it in the Smart and Skilled Contract Terms and Conditions

Targeted Skills for Small Business or TSB means the category described in clause 6

Term has the meaning given to it in clause 4

Third Party Arrangement means an arrangement whereby a party provides training and/or assessment on behalf of the ACE Provider but does not include a contract of employment between an ACE Provider and its employee.

Total ACE Activity means all Training conducted by the ACE Provider in NSW and/or for NSW students, including all government funded/subsidised training, training supplied on a fee for service basis, via commercial arrangements and Training that may be offered free of charge. This

includes all new enrolments, re-enrolments and completions

Training means the delivery of vocational education and training by way of an accredited tertiary education course which is defined as a vocational education and training program being a structured approach to the development and attainment of one or more competencies for a particular AQF qualification to meet the requirements of training packages or, where there is no training package, a sequence of training consisting of one or more modules from an accredited vocational education training course

Training also means non-accredited, local courses developed by training organisations, or courses developed by industry, enterprise, community education or professional bodies to meet an identified training need which is vocational in intent

Training Activity Data has the meaning given to it in clause 17

Training Package means a nationally endorsed, integrated set of competency standards, assessment guidelines and Australian Qualifications Framework (AQF) qualifications for a specific industry, industry sector or enterprise

Unique Student Identifier or **USI** has the meaning given to student identifier in the *Student Identifiers Act 2014* (Cth)

Unit of Competency means the specifications of knowledge and skill and the application of that knowledge and skill to the standard of performance required in the workplace as specified in the Training Package

VET Regulator has the meaning given to it in the *National Vocational Education and Training Regulator Act 2011* (Cth); and

VET Student Loans are income contingent loans provided by the Australian Government to students to support them undertake high quality training for skills that are aligned to workplace needs; and

VET Student Loans Program Provider means a registered training organisation that has been approved by the Australian Government to offer VET Student Loans to Enrolled Students.

2. Interpretation

In the ACE Provider Contract, unless the contrary intention appears:

- (a) a reference to:
 - (i) one gender includes the other;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a clause, annexure or Schedule is a reference to a clause in or annexure or schedule to these Contract Terms and Conditions;
 - (iv) a document (including the ACE Provider Contract) includes any variation or replacement of it;
 - (v) a statute, ordinance, code or other law includes a regulation or other statutory or legislative instrument made or issued under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (vi) a person includes a partnership, body corporate, unincorporated association or an authority;
 - (vii) a Party includes the Party's executors, administrators, successors and permitted assigns;
 - (viii) **dollars, Australian dollars, A\$ or \$** is a reference to the lawful currency of Australia; and

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- (ix) time is a reference to Sydney time
- (b) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day
- (c) if an act must be done on a given day which is not a Business Day, it must be done instead on the next Business Day
- (d) the words **include, including, for example** or **such as** when introducing an example, do not limit the meaning of the words to which the example relates to the example or to examples of a similar kind
- (e) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning
- (f) headings and any index are for convenience only and do not form part of the ACE Provider Contract or affect its interpretation
- (g) a provision of the ACE Provider Contract must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the ACE Provider Contract or the inclusion of the provision in the ACE Provider Contract
- (h) if the ACE Provider consists of more than one person, the ACE Provider Contract binds each of them separately and any two or more of them jointly
- (i) an obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly
- (j) if the ACE Provider is a trustee it is bound both personally and in its capacity as a trustee

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