



Smart and Skilled Contract Terms and Conditions

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Table of contents

1.	Parties	1
2.	Purpose and objectives	1
3.	Training covered by this Contract	2
3.1.	Smart and Skilled Entitlement Foundation Skills.....	2
3.2.	Smart and Skilled Entitlement Full Qualifications.....	2
3.3.	Smart and Skilled Entitlement Apprenticeships and Traineeships Qualifications	2
3.4.	Smart and Skilled Targeted Priorities Full Qualifications	2
3.5.	Smart and Skilled Targeted Priorities Prevocational and Part Qualifications	3
3.6.	School Based Apprenticeships and Traineeships Qualifications.....	3
4.	Approved Qualifications Activity Schedules	3
4.1.	Approved Qualifications Activity Schedules.....	3
4.2.	Details in Approved Qualifications Activity Schedules	4
4.3.	Start Dates and End Dates and Training Commencement Period	4
4.4.	Regions.....	4
4.5.	VET Regulator prompted changes to Approved Qualifications Activity Schedules	5
4.6.	Changes to Approved Qualifications Activity Schedules.....	5
5.	Contract Acceptance Date and Term.....	6
6.	Review of the Contract.....	6
7.	Provider general obligations	7
8.	Other Funding.....	12
9.	Operating Guidelines and Policies	12
10.	Notification of Enrolment Process.....	12
11.	Subsidised Training planning, delivery and assessment.....	13
11.1.	Training Plan.....	13
11.2.	Subsidised Training delivery and assessment.....	14
11.3.	Apprentices and Trainees	14
12.	Transferring students	14
13.	Performance Monitoring	14
14.	Records and reporting	15
14.1.	Records	15
14.2.	Reporting	16
14.3.	Financial record keeping and reporting	16
15.	Reporting of Training Activity Data	17
15.1.	Training Activity Data	17
15.2.	Frequency of reporting	17
15.3.	Training Activity Data UoC Outcome Codes.....	17
15.4.	Enrolled Students who discontinue or defer Subsidised Training after Commencement.....	18

16.	Prices	18
17.	Fees	19
	17.1. Schedule of Prices, Fees and Subsidies and Fee Administration Policy	19
	17.2. Fees.....	19
	17.3. Calculating Fees for an Enrolled Student	20
	17.4. Fee protection	20
18.	Subsidy and Loadings	21
	18.1. Calculation of Subsidy.....	21
	18.2. Calculation of Loading.....	21
	18.3. Payment of Subsidy and Loading by instalments	21
	18.4. Invoice and payment process.....	24
19.	Financial Caps	25
	19.1. Financial Cap	25
	19.2. Types of Financial Caps.....	26
	19.3. Financial Caps for Continuing Students	27
	19.4. Exceeding a Financial Cap.....	27
	19.5. Cap usage	28
	19.6. Monitoring and adjustment of Financial Caps over the Activity Period.....	29
	19.7. No representation or warranty	29
20.	Government taxes, duties and charges	30
21.	Insurance	30
22.	Termination, suspension or variation	31
	22.1. Termination for convenience	31
	22.2. Termination, suspension or variation for default	31
	22.3. Variation of the Contract.....	33
	22.4. Effect of notice of termination.....	34
	22.5. Effect of termination	35
	22.6. Effect of suspension.....	35
	22.7. Continuation of Subsidised Training.....	35
23.	Repayment	36
24.	Good faith	36
25.	Force majeure	36
	25.1. Suspension of obligations	36
	25.2. Extension of time.....	36
26.	Warranties	37
27.	Indemnities	38
28.	Exclusion of liability	38
29.	Assumption of risks by Provider	38
30.	Conflict of Interest	39
31.	Assignment	39
32.	Change in Control	40
33.	Subcontracting and Brokering Arrangements	40

34.	Communications to the Provider	40
35.	Information.....	40
35.1.	Provider Information.....	40
35.2.	Student Personal Information.....	41
35.3.	Provision of information to the Department and other government agencies.....	41
35.4.	Consent	41
35.5.	General.....	42
35.6.	Disclosure log (GIPA Act section 25).....	42
35.7.	Access to information (GIPA Act section 121).....	42
36.	Priority.....	43
37.	Notices	43
37.1.	Written notice	43
37.2.	Addresses for notices.....	43
37.3.	Receipt of Notice.....	43
38.	General	44
38.1.	Dictionary and interpretation.....	44
38.2.	No employment, partnership or agency	44
38.3.	Further assurance	44
38.4.	Costs.....	44
38.5.	Severability	44
38.6.	Survival.....	44
38.7.	Entire understanding	45
38.8.	Waivers and consents.....	46
38.9.	Statutory discretion	46
39.	Governing law and jurisdiction	46
39.1.	Governing law	46
39.2.	Jurisdiction	46
	Schedule 1	47
	Schedule 2	58
	Schedule 3	60
	Schedule 4	61

Smart and Skilled terms and conditions

These Smart and Skilled terms and conditions are effective from 1 January 2018 for any Providers who have an existing Smart and Skilled Contract. For Providers who do not have an existing Smart and Skilled Contract, these Smart and Skilled terms and conditions are effective from the date on which the Provider confirms to the Department its acceptance of the Contract.

1. Parties

The Parties are the State of New South Wales by its Department of Industry through Training Services NSW (the **Department**) and the Provider.

2. Purpose and objectives

- (a) The Contract sets out the terms and conditions for the payment of Subsidies and Loadings to the Provider for Training delivered by the Provider to Enrolled Students under a Smart and Skilled Program or the School Based Apprenticeships and Traineeships Program (**Subsidised Training**).
- (b) The Provider must responsibly manage the delivery of Subsidised Training to:
 - (i) maximise usage of, but not exceed, any Financial Caps
 - (ii) facilitate the provision of high quality Subsidised Training that is relevant to industry and employers; and
 - (iii) promote the interests of students.
- (c) The Provider's entitlement to Subsidies and Loadings requires the Provider to comply with all of its obligations under this Contract, including its obligations to:
 - (i) train and assess students in accordance with the Contract
To be clear, this includes compliance with the RTO Standards.
 - (ii) submit accurate Training Activity Data for all Enrolled Students according to the required frequency
The frequency of reporting is set out in clause 15.2.
 - (iii) report all UoC Outcome Achievements accurately in the required timeframe; and
UoC Outcome Achievements are set out in the table in clause 15.3. The timeframes for reporting these are set out in clause 15.2.
 - (iv) create, collect and maintain all records required under this Contract and provide records to the Department when requested.

The Provider must maintain all records for not less than 3 years after the relevant student ends their Subsidised Training.

- (d) The Provider acknowledges that the obligations under this Contract are additional to the Provider's obligations under all Applicable Laws, including the RTO Standards.
- (e) The Provider acknowledges that the Department will take into account the Provider's standard of performance under this Contract when exercising the Department's discretion, including to:
 - (i) offer a Review Notice
 - (ii) increase or decrease Financial Caps; and
 - (iii) add or remove Approved Qualifications from the Provider's Approved Qualifications Activity Schedules.

The Provider's standard of performance includes the Provider's actual delivery of Subsidised Training against the scope of its Approved Qualifications Activity Schedules. This scope includes any Approved Qualifications, Regions and Financial Caps.

3. Training covered by this Contract

The Department will provide Subsidies and Loadings to deliver Training for the following types of Qualifications or Part Qualifications which may be allocated to the Provider under this Contract.

Clause 4 (Approved Qualifications Activity Schedule) sets out how the Provider is notified of the Qualifications and Part Qualifications it has been allocated.

3.1. Smart and Skilled Entitlement Foundation Skills

These are Qualifications identified as Smart and Skilled Entitlement Foundation Skills on the Skills List.

3.2. Smart and Skilled Entitlement Full Qualifications

These are Qualifications identified as Smart and Skilled Entitlement Full Qualifications on the Skills List.

3.3. Smart and Skilled Entitlement Apprenticeships and Traineeships Qualifications

These are Qualifications identified as Smart and Skilled Entitlement Apprenticeships and Traineeships Qualifications on the Skills List.

3.4. Smart and Skilled Targeted Priorities Full Qualifications

These are Qualifications identified as Smart and Skilled Targeted Priorities Full Qualifications on the Skills List.

3.5. **Smart and Skilled Targeted Priorities Prevocational and Part Qualifications**

These are Qualifications or Part Qualifications that the Department identifies as Smart and Skilled Targeted Priorities Prevocational and Part Qualifications from time to time.

The Smart and Skilled Program for the Smart and Skilled Targeted Priorities Prevocational and Part Qualifications will be indicated on the Activity Schedule.

3.6. **School Based Apprenticeships and Traineeships Qualifications**

These are Qualifications identified by the Department as School Based Apprenticeships and Traineeships Qualifications from time to time.

A Qualification may be included in more than one Smart and Skilled Program and appear as more than one of the types of Qualifications above.

4. **Approved Qualifications Activity Schedules**

4.1. **Approved Qualifications Activity Schedules**

The Department, in its absolute discretion, will determine which Qualifications and Part Qualifications it will allocate to the Provider for provision of a Subsidy under this Contract. The Department will notify the Provider of this allocation by providing the Provider with one or more of the following Approved Qualifications Activity Schedules (**Approved Qualifications Activity Schedules**):

- (a) **(Smart and Skilled Entitlement Foundation Skills Program)** an Approved Qualifications Activity Schedule for Smart and Skilled Entitlement Foundation Skills
- (b) **(Smart and Skilled Entitlement Full Qualifications Program)** an Approved Qualifications Activity Schedule for Smart and Skilled Entitlement Full Qualifications
- (c) **(Smart and Skilled Entitlement Apprenticeships and Traineeships Program)** an Approved Qualifications Activity Schedule for Smart and Skilled Entitlement Apprenticeships and Traineeships Qualifications
- (d) **(Smart and Skilled Targeted Priorities Full Qualifications Program)** an Approved Qualifications Activity Schedule for Smart and Skilled Targeted Priorities Full Qualifications
- (e) **(Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Program)** an Approved Qualifications Activity Schedule for Smart and Skilled Targeted Priorities Prevocational and Part Qualifications. This is known as an 'Activity Schedule'; and
- (f) **(School Based Apprenticeships and Traineeships Program)** an Approved Qualifications Activity Schedule for School Based Apprenticeships and Traineeships Qualifications.

To be clear, the Department may issue more than one of the same type of Approved Qualifications Activity Schedules. If more than one of the same type of Approved Qualifications Activity Schedule are issued, the Department will specify if one Approved

Qualifications Activity Schedule replaces, or is additional to, another Approved Qualifications Activity Schedule.

4.2. **Details in Approved Qualifications Activity Schedules**

- (a) Each Approved Qualifications Activity Schedule (other than an Activity Schedule) will also specify:
- (i) the Activity Period
 - (ii) Start Dates and End Dates
 - (iii) any Region(s) applicable to the Training (where no Region is stated, the Training may be delivered anywhere in NSW)
 - (iv) the Financial Cap(s) (if applicable)
 - (v) the Status of each Qualification; and
- may include additional terms and conditions.
- (b) Each Activity Schedule for the Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Program will also specify:
- (i) the No. of Places
 - (ii) the Maximum Subsidy
 - (iii) the Training Commencement Period
 - (iv) the Training End Date; and
- may include additional terms and conditions.

(Qualifications and Part Qualifications listed on an Approved Qualifications Activity Schedule are called **Approved Qualifications**).

4.3. **Start Dates and End Dates and Training Commencement Period**

Subsidised Training in an Approved Qualification may only Commence:

- (a) between the Start Date and End Date for the Approved Qualification (other than a Smart and Skilled Targeted Priorities Prevocational and Part Qualification) set out on the Approved Qualifications Activity Schedule; or
- (b) during the Training Commencement Period for the Approved Qualification (that is a Smart and Skilled Targeted Priorities Prevocational and Part Qualification) set out on the Activity Schedule.

4.4. **Regions**

Where a Region is set out in an Approved Qualifications Activity Schedule, the Provider may only deliver face to face (classroom based or workbased) Subsidised Training in a corresponding Approved Qualification:

- (a) within that Region;

- (b) within the part of a Smart and Skilled Region (but not the whole Smart and Skilled Region), located next to a Region, that has been identified as having a unique training need. A Smart and Skilled Region is a region within New South Wales as identified by the Department from time to time;
- (c) outside of that Region, provided that the total amount of Standard Subsidies the Provider receives for all Subsidised Training delivered outside of the Region for a Smart and Skilled Program must not exceed 15% of the aggregate Financial Cap for the relevant Smart and Skilled Program.

To be clear, if the aggregate Financial Cap for the Smart and Skilled Entitlement Full Qualifications Program (that is, the sum of all Financial Caps for that Smart and Skilled Program) for a Provider is \$200,000, the Provider may deliver Subsidised Training outside of the Region(s) for up to \$30,000 of Standard Subsidies that the Provider receives in the Activity Period. Further detail regarding Financial Caps is set out in clause 19.

The Operating Guidelines set out further information on Regions.

Where there is a Financial Cap for Continuing Students Only that applies to a Region, no Subsidised Training may be delivered outside of that Region using that Financial Cap.

4.5. **VET Regulator prompted changes to Approved Qualifications Activity Schedules**

- (a) The Status of an Approved Qualification on an Approved Qualifications Activity Schedule may automatically change if there is an amendment to the Provider's registration with the VET Regulator including scope of registration, affecting that Approved Qualification.
- (b) Changes to the Status of an Approved Qualification on the National Register will be reflected in the Approved Qualifications Activity Schedule. This may include an Approved Qualification being superseded, suspended or deleted and for VET Regulator imposed restrictions for transition and teach out arrangements.
- (c) A replacement Qualification may be added to an Approved Qualifications Activity Schedule where the VET Regulator determines it is a replacement of the superseded Approved Qualification.

To be clear, the Provider may only deliver Subsidised Training in Qualifications that remain on the Provider's scope of registration with the VET Regulator and is an Approved Qualification for the duration of the delivery of Subsidised Training in that Qualification.

4.6. **Changes to Approved Qualifications Activity Schedules**

- (a) The Department may, from time to time, identify opportunities for the Provider to request amendments to its Approved Qualifications Activity Schedules. This includes requests to increase Financial Caps or add Approved Qualifications. The approval of any requests is at the Department's absolute discretion.

- (b) If, at any time, the Provider becomes aware that it will be unable to deliver enough Training to meet its Financial Cap, the Provider must request a reduction in its Financial Cap and/or the removal of certain Approved Qualifications from its Approved Qualifications Activity Schedule.

The Department will take into consideration the extent to which the Provider delivers Training up to its Financial Cap when offering future Approved Qualification Activity Schedules. It is in the Provider's interest to ensure that it maintains an achievable Financial Cap.

5. **Contract Acceptance Date and Term**

The Contract starts on the date on which the Provider confirms to the Department its acceptance of the Contract including the Approved Qualifications Activity Schedule(s) (the **Contract Acceptance Date**) and continues until terminated under the Contract (the **Term**).

Clauses 22.1 and 22.2 set out how the Contract may terminate.

Clause 22.7 sets out how the Contract may continue beyond termination for some of the obligations of the Parties.

These Smart and Skilled terms and conditions are effective from 1 January 2018 for any Providers who have an existing Smart and Skilled Contract.

6. **Review of the Contract**

- (a) At least 2 months before the end of each Activity Period, the Department may provide to the Provider a notice (the **Review Notice**) asking for the Provider's consent to the terms and conditions in the Review Notice (which may include new Approved Qualifications Activity Schedule(s)).

The Review Notice may vary the Contract in any way including adding performance requirements, reporting requirements and other obligations for the Provider, removing Qualifications from the Approved Qualifications and changes to Subsidies, Loadings and Financial Caps.

The Department may terminate the Contract under clause 22.1 as an alternative to issuing a Review Notice.

- (b) If the Provider does not provide its consent to the terms and conditions in the Review Notice within 10 Business Days of receiving the Review Notice (or such longer period of time set out in the Review Notice or approved by the Department), the Contract will end with effect from the end of the current Activity Period.

Clause 22.5 sets out what will happen if the Contract terminates under this clause 6.

- (c) If the Provider does consent to the terms and conditions in the Review Notice within 10 Business Days of receiving the Review Notice (or such longer period of time either set out in the Review Notice or approved by the Department):

- (i) the Provider may immediately market and enrol students in Subsidised Training based on the new Approved Qualifications Activity Schedule(s) in the Review Notice; and
- (ii) the terms and conditions in the Review Notice will take effect on the date specified in the Review Notice.

7. Provider general obligations

The Provider must:

- (a) **(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
- (b) **(scope of registration with VET Regulator)** ensure that all Approved Qualifications remain within the scope of their registration with the VET Regulator for the delivery of Training in NSW
- (c) **(maintenance of approval as an Approved NSW ACE Provider)** ensure that it remains an Approved NSW ACE Provider if any of the Provider's Approved Qualifications Activity Schedules include any Smart and Skilled Entitlement Foundation Skills
- (d) **(capacity to deliver Training)** maintain the capacity to deliver each Approved Qualification throughout each of the relevant Region(s) to the standard described by the Provider in the Application and as otherwise required in the 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 Operating Guidelines; and
 - (iv) validating and contextualising training and assessment resources as described in the Operating Guidelines
- (e) **(principal business address in NSW)** ensure that either:
 - (i) the Provider's principal business address (that is, the primary location where the Provider carries on business as is displayed as the "principal place of business" on the ASIC public register or the "official address" registered with NSW Fair Trading) is in New South Wales
 - (ii) if the Provider's principal business address is not in New South Wales, the Provider has:
 - (A) an agreement for Training delivery covering the Activity Period with at least one national enterprise having at

least 50 employees in NSW and least 50 employees in at least one other jurisdiction; and

- (B) in the Department's opinion, evidence of its capacity to deliver quality Training in NSW; or

To be clear for the purpose of this clause 7(e)(ii), if the Provider submitted a successful Application in 2014, then on 30 June 2014 the Provider must have had a NSW Approved Providers List (APL) contract. If the Provider submitted a successful Application afterwards, then on the date of the Application, the Provider must have had a NSW Approved Providers List (APL) contract or a Smart and Skilled Contract.

- (iii) if the Provider's principal business address is not in New South Wales, the Provider is a non-government enterprise-based RTO with:

- (A) at least 50 employees working in NSW; and
- (B) in the Department's opinion, evidence of its capacity to deliver quality Training in NSW

- (f) **(maintenance of standard of operations)** maintain its operations to the standard described by the Provider in the Application and as otherwise required in the 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
- (g) **(no discrimination)** not discriminate in any way between Prospective Students when accepting enrolments for Approved Qualifications, 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 an Approved Qualification all reasonable opportunity to enrol in and undertake Subsidised Training for an Approved Qualification
- (h) **(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) an Approved Providers List (APL) contract
- (B) a Smart and Skilled contract; or
- (C) 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 of the events referred to in clauses 7(h)(i) and 7(h)(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 7(h)(i) or 7(h)(ii) has happened to is taken to have contributed to such event.

- (i) **(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
- (j) **(charge correct Fees)** ensure that it only charges Fees in accordance with the Contract including appropriately and accurately and with the required supporting evidence
- (k) **(transfer of non-funded pre-existing students)** not entice, induce or otherwise encourage a person who is undertaking a Qualification (other than a NSW Apprentice or Trainee) that is also an Approved Qualification and is not funded by a Government Agency (including, to be clear, an Existing Worker Trainee) to re-enrol or transfer their enrolment in order to undertake Subsidised Training in the same or an equivalent Approved Qualification

To be clear, this clause 7(k) does not apply to any NSW Apprentices and Trainees who are not enrolled in Subsidised Training but meet all the required criteria to receive Subsidised Training.

- (l) **(transfer of Training Participants)** not allow a person who is undertaking a Qualification that is also an Approved Qualification and is a Training Participant as defined in the 2011-2012 Approved Providers List (APL) Contract (and as varied from time to time) to re-enrol or transfer their enrolment in order to undertake Subsidised Training in the same or an equivalent Approved Qualification
- (m) **(marketing and communications):**
 - (i) only market, publicise or otherwise communicate its connection to Smart and Skilled in accordance with the Operating Guidelines; and
 - (ii) publish and make available readily accessible information on all Approved Qualifications of the Provider
- (n) **(consumer protection)** develop and communicate a Provider Consumer Protection Policy in accordance with the Operating Guidelines and participate in and facilitate any action taken by the Department in accordance with the Consumer Protection Strategy

- (o) **(VET Student Loans Program obligations)** if it is a VET Student Loans Program Approved Provider:
- (i) make Prospective Students aware of the fact that it is a VET Student Loans Program Approved Provider and of the availability of VET Student Loans Program
 - (ii) facilitate the provision of VET Student Loans to Prospective Students (that enrol and that are eligible for VET Student Loans Program)
 - (iii) provide the Department with any information or data it requests in respect of VET Student Loans Program
 - (iv) take reasonable steps to maintain its approval as a VET Student Loans Program Approved Provider
 - (v) comply with all of its obligations under VET Student Loans Program and all Applicable Laws; and
 - (vi) notify the Department if it has its approval revoked under VET Student Loans Program

Further obligations in relation to VET Student Loans Program are set out in the Operating Guidelines.

- (p) **(obligations to Government Agencies)** comply with its obligations to all Government Agencies, including any obligations under any Applicable Laws
- (q) **(delivery of Subsidised Training)** use all reasonable endeavours to deliver Subsidised Training up to:
- (i) the Financial Caps (where there are Financial Caps)
 - (ii) No. of Places (for the Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Program); and
 - (iii) the total capacity for student commencements in the relevant Regions and Qualifications indicated in the Provider's Application (taking into account the Provider's non-subsidised Training activity).

To be clear, the Provider will:

- (i) use reasonable endeavours to carry out marketing and promotion of all Approved Qualifications in accordance with the Operating Guidelines
- (ii) ensure that detailed information regarding all Approved Qualifications is available to all Prospective Students and promptly respond to any enquiries by Prospective Students; and
- (iii) ensure that Prospective Students are aware of the Subsidies available

- (r) **(notification of investigation)** notify the Department immediately when the 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**)
- (s) **(no unethical, dishonest or detrimental conduct)**
- (i) act in good faith and not act in any way that could be seen to be unethical, reckless, illegal or dishonest conduct, in relation to any matter; and
 - (ii) not do anything that may bring into disrepute or be detrimental to the Department, any Government Agency, Smart and Skilled or vocational education and training
- (t) **(reporting unethical or dishonest conduct)** notify the Department if the Provider becomes aware of any unethical, reckless, illegal or dishonest conduct in relation to vocational education and training, including fraud or misconduct
- (u) **(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 Operating Guidelines.*
- (v) **(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 Provider providing such reasonable assistance to other registered training organisations as the Department may request from time to time provided always that nothing in this Contract is to be taken to be given effect as requiring the Provider to share any intellectual property rights or confidential information of the Provider with any other registered training organisation; and
- (w) **(issue Statements of Attainment and Testamurs)** issue within 30 days:
- (i) Statements of Attainment to all Enrolled Students who discontinue Training in an Approved Qualification, and who have successfully completed one or more Units of Competency but have not completed the Approved Qualification; and
 - (ii) Testamurs to all Enrolled Students who have successfully completed all Units of Competency required in the Training Plan for that Approved Qualification.

To be clear, Statements of Attainment and Testamurs must be issued in accordance with the Australian Qualifications Framework.

8. Other Funding

- (a) The Provider must not claim or receive a Subsidy from the Department under this Contract to deliver Training where the 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 Approved Qualification, any amounts paid for Fee-Free Scholarships or Loadings.

For example, if a Prospective Student is a participant in an Australian Apprenticeships Access Program for a particular Qualification or Unit(s) of Competency they are not eligible to commence Subsidised Training in this same Qualification or Unit(s) of Competency.

- (b) If the Provider receives Other Funding it must notify the Department with details of the Other Funding. The Department may, in its absolute discretion:
- (i) request a repayment of (all or part of) the Subsidies (and Loadings) already paid for that Training where the Provider was also receiving Other Funding. (The Provider must make the repayment within 7 days of the Department's request); and
 - (ii) not pay or reduce the Subsidies (and Loadings) paid for further Training while the Provider is receiving that Other Funding.

9. Operating Guidelines and Policies

The Provider will comply with the Operating Guidelines and Policies. If anything contained in any Operating Guidelines and Policies is inconsistent with the Contract, the Contract will apply to the extent of the inconsistency unless the Operating Guidelines and Policies expressly acknowledge the inconsistency and states that it will apply.

10. Notification of Enrolment Process

The following process applies to the notification to the Department of the enrolment in Subsidised Training of eligible Prospective Students. This process does not apply to the School Based Apprenticeships and Traineeships Program.

- (a) The Provider will comply with the process for the notification of enrolment of Prospective Students in all Approved Qualifications as set out in the Operating Guidelines (the **Notification of Enrolment Process**) including:
- (i) obtaining all required consents from the Prospective Student
 - (ii) determining if the Prospective Student is eligible for Subsidised Training
 - (iii) providing the Prospective Student with the details of the Fee that the Prospective Student would have to pay for the Approved Qualification

- (iv) capturing the Prospective Student's USI
 - (v) obtaining a declaration from the Prospective Student in respect of the correctness of the information provided by the Prospective Student and confirming the receipt of certain information from the Provider; and
 - (vi) reporting enrolments with all required information (including the proposed date of Commencement (the **Planned Start Date**)) to the Department via the Provider Calculator.
- (b) The Planned Start Date, where the Notification of Enrolment Process is completed:
- (i) prior to the start of the Activity Period, may not be later than 4 months from the start of the Activity Period; or
 - (ii) after the start of the Activity Period, may not be later than 4 months after the date of issue of the Commitment ID.
- (c) The Notification of Enrolment Process will be completed for a Prospective Student when all of the above steps have been undertaken (as further detailed in the Operating Guidelines) and a Commitment ID is issued by the Department for the Prospective Student. A Prospective Student only becomes an **Enrolled Student** once the Notification of Enrolment Process has been completed, a Commitment ID has been issued **and** the Prospective Student has enrolled in the relevant Approved Qualification with the Provider. If a Commitment ID has been issued for a Prospective Student and the Prospective Student does not enrol with the Provider or cancels their enrolment, the Provider must cancel the Commitment ID immediately.
- (d) The Provider will take all steps to:
- (i) Commence the Enrolled Student in the Approved Qualification connected to the Commitment ID on the Planned Start Date; and
 - (ii) submit Training Activity Data for the Enrolled Student within 6 weeks of the Planned Start Date.

If the Training Activity Data for the Enrolled Student is not submitted within 6 weeks of the Planned Start Date, the Commitment ID will expire.

- (e) The Notification of Enrolment Process must be carried out simultaneously with the Provider's enrolment process and must be completed before any Training is delivered to the student.

11. **Subsidised Training planning, delivery and assessment**

11.1. **Training Plan**

The Provider will prepare for, and provide to, each Enrolled Student a Training Plan in accordance with the Operating Guidelines.

11.2. Subsidised Training delivery and assessment

The Provider will plan, deliver and assess Subsidised Training in accordance with the Training Plan and the Contract, including all Applicable Laws and the Operating Guidelines and Policies.

11.3. Apprentices and Trainees

All Subsidised Training delivered to Apprentices and Trainees must be delivered in accordance with their Training Contract. To be clear, the Provider must not deliver any Subsidised Training to an Apprentice or Trainee if the Training Contract term has not commenced or has ended.

12. Transferring students

- (a) If a student elects to transfer to the Provider from another registered training organisation, the Provider will follow the relevant Transfer In Process applicable for that student as set out in the Operating Guidelines, including:
- (i) provide information and assistance to the student
 - (ii) review the student's records and determine whether they are entitled to receive Credit Transfer for any Units of Competency previously completed and will grant such credit; and
 - (iii) follow a Recognition Process in relation to the student's current competencies and/or prior learning and give the student all reasonable opportunity to be granted Recognition of Prior Learning for those current competencies and prior learning.

To be clear, the Provider will comply with clauses 9 and 10 in respect of any transferring students and the transfer of the student to the Provider is subject to the relevant Financial Cap.

- (b) If a student that has Commenced but not completed an Approved Qualification elects, or is required under clause 22.5 or 22.6, to transfer from the Provider to another registered training organisation the Provider will follow the Transfer Out Process as set out in the Operating Guidelines.

13. Performance Monitoring

- (a) The Department may at any time carry out monitoring of the Provider's operations and compliance with the Contract (including compliance with Applicable Laws and Operating Guidelines and Policies) (**Performance Monitoring**).
- (b) The Department will carry out Performance Monitoring by any means including by requesting a self-assessment by the Provider, monitoring and/or auditing all records of the Provider and any other information provided by the Provider, by attending the Provider's site(s), interviewing the Provider's officers, employees, agents or subcontractors, or interviewing any Enrolled Students who are receiving or have received Subsidised Training and Employers. 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 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. To be clear, the Department may retain external Personnel to assist it with Performance Monitoring.

To be clear, any non-compliance with the Contract (including Applicable Laws and Operating Guidelines and Policies) is an Event of Default and may result in the Department exercising its rights under the Contract, including the right to suspend or terminate the Contract, decrease a Financial Cap or remove an Approved Qualification from the Approved Qualifications Activity Schedule(s).

14. **Records and reporting**

14.1. **Records**

- (a) The Provider will create, collect and maintain records in connection with its obligations under the 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 and Recognition of Prior Learning granted (and the processes undertaken relating to these and the supporting evidence)
 - (v) the Fees charged to and paid by each Enrolled Student and Fee Exemptions and Concessions granted
 - (vi) the delivery of Subsidised Training
 - (vii) the assessment of Subsidised Training delivered
 - (viii) anything required by Applicable Laws, including the RTO Standards; and
 - (ix) Certificates, Statements of Attainment and Testamurs 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 Provider will comply with the record keeping obligations set out in the Operating Guidelines and all Applicable Laws.
- (c) The Provider will retain the required records for not less than 3 years after the relevant Enrolled Student completes or ends their Subsidised Training. The required records will be readily accessible, easily distinguishable and able to be separated from the records for the Provider's Training that is not Subsidised Training.

14.2. Reporting

- (a) The Provider will liaise with and report to the Department as required by the Department for the purposes of the Contract in connection with:
 - (i) changes to any details about the Provider (including contact details, delivery sites, facilities offered and senior management team)
 - (ii) the enrolment of Enrolled Students
 - (iii) the commencement and progress of Subsidised Training delivered
 - (iv) the assessment of Subsidised Training delivered
 - (v) Credit Transfers, Recognition Processes and exemptions granted; and
 - (vi) Certificates, Statements of Attainment and Testamurs issued,
 or as otherwise required by the Department from time to time.
- (b) The Provider will comply with the reporting obligations (in particular the required time-frames) set out in the Operating Guidelines and all Applicable Laws.
- (c) The Provider will within the time-frame requested by the Department, provide any information in relation to the Contract (including Subsidised Training) requested by the Department for the purposes of the Contract, including Performance Monitoring and evaluation.

14.3. Financial record keeping and reporting

- (a) The 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 Provider. To be clear, the Department may retain external Personnel to access and request Financial Information from Providers.
- (b) If the Department determines, in its absolute discretion, that the Provider's financial position has or may adversely affect the Provider's delivery of Subsidised Training (**Financial Viability Issue**), the Department may exercise certain rights as detailed in clause 22. This clause 14.3(b) does not limit the Department's rights under this Contract.
- (c) The Financial Information which the Provider will maintain includes the information required under the 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.

15. Reporting of Training Activity Data

15.1. Training Activity Data

- (a) Training Activity Data for every Enrolled Student who has Commenced must be reported by submitting the Training Activity Data in accordance with the Operating Guidelines and include:
- (i) the Commitment ID
 - (ii) all Units of Competency and the respective Planned Start Dates, Planned End Dates and subsequent actual start dates and actual end dates of those Units of Competency
 - (iii) any UoC Outcome Achievements in respect of the Units of Competency in accordance with the table in clause 15.3; and
 - (iv) the current status of the Enrolled Student, including whether they have discontinued or deferred Subsidised Training in accordance with the table in clause 15.4.
- (b) If the Provider reports a UOC Outcome Achievement but has not complied with this Contract, the Provider must notify the Department of the details of the non-compliance immediately.

15.2. Frequency of reporting

The Provider must submit Training Activity Data for an Enrolled Student who has Commenced:

- (a) to notify of the Commencement of the Enrolled Student before the expiry of the corresponding Commitment ID
- (b) to report UoC Outcome Achievements by submitting Training Activity Data that includes the respective UOC Outcome Codes within 28 days of the date of the UoC Outcome Achievement; and
- (c) at least once every 28 days, even if no UOC Outcome Achievements have occurred.

15.3. Training Activity Data UoC Outcome Codes

The Provider must use the corresponding codes (**UoC Outcome Codes**) to submit Training Activity Data in respect of the UoC Outcome Achievement for a Unit of Competency:

UoC Outcome Code	UoC Outcome Name	UoC Outcome Achievement Please refer to the AVETMIS Standard definitions of the UoC Outcomes together with the descriptions below
20	Competency achieved / pass	The Enrolled Student has been assessed and satisfies all the requirements for the Unit of Competency (as specified in the relevant Training Package).

UoC Outcome Code	UoC Outcome Name	UoC Outcome Achievement Please refer to the AVETMIS Standard definitions of the UoC Outcomes together with the descriptions below
30	Competency not achieved / fail	The Enrolled Student has been assessed as not satisfying all the requirements for the Unit of Competency (as specified in the relevant Training Package).
40	Withdrawn	The Enrolled Student has Participated in Subsidised Training for the Unit of Competency and has withdrawn before completing all training and assessment criteria (as specified in the relevant Training Package).
51	Recognition of Prior Learning - granted	The Enrolled Student has successfully undertaken a Recognition Process to satisfy all the requirements of the Unit of Competency (as specified in the relevant Training Package).
60	Credit Transfer	The Enrolled Student has received Credit Transfer to satisfy all the requirements of the Unit of Competency (as specified in the relevant Training Package).
70	Continuing enrolment	The Enrolled Student has Participated in Subsidised Training in the Unit of Competency and no other UoC Outcome Achievement has occurred.

To be clear, if the Enrolled Student has not Participated in Subsidised Training for a Unit of Competency and the Planned Start Date for that Unit of Competency is in the future, no UoC Outcome Code is to be reported.

15.4. Enrolled Students who discontinue or defer Subsidised Training after Commencement

The Provider must use the following codes in Training Activity Data to report Enrolled Students who discontinue or defer their Subsidised Training after Commencement:

Code	Name	Description
TNC	Training Not Completed	Enrolled Students who discontinue their Subsidised Training in an Approved Qualification after Commencement.
D	Deferred	Enrolled Students who defer their Subsidised Training in an Approved Qualification after Commencement.

The Operating Guidelines set out the Provider's obligations in relation to Enrolled Students who discontinue or defer their Subsidised Training.

Note: An Enrolled Student may only defer for up to 12 months from the date of notice to the Provider.

16. Prices

This section sets out the amount the Provider can receive for an Approved Qualification.

- (a) The **Price** is the amount for the Qualification set out in:

- (i) the "Qualification Price" column of the Schedule of Prices, Fees and Subsidies; or
 - (ii) the relevant Approved Qualifications Activity Schedule, for Smart and Skilled Targeted Priorities Prevocational and Part Qualifications.
- (b) **(Applicable Price)** The Price that applies for a Qualification is the Price at the time that the Enrolled Student Commences.
- (c) **(Adjusted Price)** If an Enrolled Student receives Recognition of Prior Learning or Credit Transfer for any Unit(s) of Competency in the Training Plan for the Approved Qualification, the Price will be adjusted as calculated in accordance with the standard formula as outlined in the Provider Guide to Smart and Skilled Prices, Fees and Subsidies.
- (d) The Price (or Adjusted Price if applicable) for an Approved Qualification is divided into two components:
- (i) the Fee; and
 - (ii) the Subsidy.

To be clear, the amount of the Fee and the amount of the Subsidy will be adjusted if the Enrolled Student receives any Recognition of Prior Learning or Credit Transfer for any Units of Competency. The calculation to adjust the Fee and Subsidy where Recognition of Prior Learning and/or Credit Transfer has been granted will be done in the Provider Calculator or after Training Activity Data is submitted (in the cases where Recognition of Prior Learning and/or Credit Transfer is not sought until after Training has commenced.) For the School Based Apprenticeships and Traineeships Program adjustments to the Fee and Subsidy amount can only be done after Training Activity Data is submitted.

17. Fees

This section sets out how the Provider must charge Enrolled Students for Subsidised Training.

17.1. Schedule of Prices, Fees and Subsidies, and Fee Administration Policy

The Provider will only charge Enrolled Students for Subsidised Training provided to the Enrolled Student in accordance with the Fee Administration Policy and:

- (a) the Schedule of Prices, Fees and Subsidies
- (b) the relevant Approved Qualifications Activity Schedule for Smart and Skilled Targeted Priorities Prevocational and Part Qualifications; or
- (c) where specified on any other Approved Qualifications Activity Schedule.

17.2. Fees

- (a) The Schedule of Prices, Fees and Subsidies sets out in the "Student Fee" columns, the Fee amounts for each Qualification.

- (b) The Fee amounts for Smart and Skilled Targeted Priorities Prevocational and Part Qualifications are set out in the relevant Activity Schedule.
- (c) The Fee for an Enrolled Student will be determined in accordance with the Fee Administration Policy.
- (d) For students who are eligible for a Fee Exemption, the amount of the Fee is \$0.
- (e) The Fee for an Enrolled Student is adjusted if that Enrolled Student receives Recognition of Prior Learning or Credit Transfer for any Unit(s) of Competency for the Approved Qualification.

The Fee to be charged to the Enrolled Student is calculated as follows:

Fee = Adjusted Price x Fee Percentage

Where:

Fee Percentage means the relevant Fee amount in clauses 17.2(a) to (d), expressed as a percentage of the Price; and

Adjusted Price has the meaning given to it in clause 16(c).

17.3. Calculating Fees for an Enrolled Student

- (a) For Smart and Skilled Programs, the Provider Calculator will calculate the Fee that is to be charged to and paid by the Enrolled Student based on information provided by the Provider. This will occur as part of the Notification of Enrolment Process set out in the Operating Guidelines.
- (b) For the School Based Apprenticeships and Traineeships Program, the Fee to be charged and paid is defined in the Schedule of Prices, Fees and Subsidies and will be determined by the student meeting the defined Fee eligibility criteria set out in the Fee Administration Policy.
- (c) Where UoC Outcomes, Recognition of Prior Learning granted and/or Credit Transfer are reported, the Fee amount may be adjusted in accordance with clause 17.2(e) and the Provider will be advised of the new Fee. The Provider must inform the Enrolled Student, and make any adjustments in accordance with the Fee Administration Policy.

To be clear, where the Provider Calculator determines an amount for the Fee based on the expectation that Recognition of Prior Learning or Credit Transfer may be granted, and if the Recognition of Prior Learning or Credit Transfer reported in the Training Activity Data is different from that submitted in the Provider Calculator, the Fee will be recalculated in accordance with the Training Activity Data.

17.4. Fee protection

The Provider must maintain arrangements for the protection of any Fees paid in advance in accordance with the Fee Administration Policy.

18. Subsidy and Loadings

This section sets out how the Subsidy and any applicable Loading(s) will be calculated and when they will be paid. Subsidies and Loadings will be paid at certain milestones as a student progresses through a Qualification.

The amount of the Subsidy and any applicable Loading(s) will be adjusted if the Enrolled Student receives Recognition of Prior Learning or Credit Transfer for any Units of Competency.

18.1. Calculation of Subsidy

The Subsidy is the difference between the Price (or Adjusted Price if applicable) and the Fee.

- (a) For Smart and Skilled Programs, the Provider Calculator will calculate the Subsidy for an Approved Qualification for the Enrolled Student based on information provided by the Provider. This will occur as part of the Notification of Enrolment Process set out in the Operating Guidelines, and subsequently upon the submission of Training Activity Data. Where Recognition of Prior Learning and/or Credit Transfer are reported, the Subsidy may change.
- (b) For the School Based Apprenticeships and Traineeships Program, the Subsidy for an Approved Qualification will be calculated based on information entered by the Provider into a facility that will be made available on the Portal. Where Recognition of Prior Learning and/or Credit Transfer are reported, the Subsidy may change.

Where:

Fee is the amount calculated in accordance with clause 17.

18.2. Calculation of Loading

The Loading for an Approved Qualification means the amount calculated in accordance with Schedule 3.

If there has been an adjustment in the Price as a result of Recognition of Prior Learning or Credit Transfer being reported, then the Loading will be calculated on the Adjusted Price.

18.3. Payment of Subsidy and Loading by instalments

The Provider will be entitled to the relevant 'Percentage of Subsidy (and Loading if applicable)', when:

- (a) the Provider has complied with its obligations under this Contract; and
To be clear, the Provider must comply with its obligations under clause 22.2(b) to immediately notify the Department of any Events of Default.
- (b) the 'UoC Outcome Achievement Stage' for an Approved Qualification for an Enrolled Student has been reached.

The 'Percentage of Subsidy (and Loading if applicable)' applicable to 'UoC Outcome Achievement Stage' reached is determined according to the following table:

Approved Qualification level	Payment Instalment	UoC Outcome Achievement Stage	Percentage of Subsidy (and Loading if applicable)
Certificate I Certificate II Certificate III Certificate IV Prevocational & Part Qualifications <i>This includes where the Approved Qualification is being undertaken as part of a Traineeship</i>	Certificate Commencement	At least one Unit of Competency is reported with a UoC Outcome Code of 20, 30, 40, 51 or 70	20%
	Certificate Progress	At least 50% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60; and at least one of those Units of Competency is reported with a UoC Outcome Code of 20, 30, 40 or 51	40%
	Certificate Completion	100% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	40%
Diploma Advanced Diploma <i>This includes where the Approved Qualification is being undertaken as part of a Traineeship</i>	Diploma Levels Commencement	At least one Unit of Competency is reported with a UoC Outcome Code of 20, 30, 40, 51 or 70	10%
	Diploma Levels Progress 1	At least 25% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60; and at least one of those Units of Competency is reported with a UoC Outcome Code of 20, 30, 40 or 51	20%
	Diploma Levels Progress 2	At least 50% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	25%
	Diploma Levels Progress 3	At least 75% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	20%

Approved Qualification level	Payment Instalment	UoC Outcome Achievement Stage	Percentage of Subsidy (and Loading if applicable)
	Diploma Levels Completion	100% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	25%
Apprenticeships	Apprenticeships Commencement	At least one Unit of Competency is reported with a UoC Outcome Code of 20, 30, 40, 51 or 70	10%
	Apprenticeships Progress 1	At least 16% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60; and at least one of those Units of Competency is reported with a UoC Outcome Code of 20, 30, 40 or 51	10%
	Apprenticeships Progress 2	At least 33% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	16%
	Apprenticeships Progress 3	At least 49% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	16%
	Apprenticeships Progress 4	At least 66% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	16%
	Apprenticeships Progress 5	At least 83% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	16%
	Apprenticeships Completion	100% of the Total UoCs are reported with any of the following UoC Outcome Codes: 20, 30, 40, 51 or 60	16%

Where: **Total UoCs** means the total number of Units of Competency that the Provider must include in the relevant Training Plan for the Enrolled Student.

To be clear, each of the UoC Outcome Achievement Stages requires the submission of Training Activity Data in accordance with clause 15 (Reporting of Training Activity Data).

18.4. Invoice and payment process

- (a) Within 28 days of the Department's acceptance of the correct and complete submission of Training Activity Data in respect of a UoC Achievement Stage under clause 18.3, the Department will:
- (i) **(create and email invoices)** create an invoice to cover any payments due to the Provider from that submission of Training Activity Data. The Department may bundle payments for multiple submissions of Training Activity Data on the one invoice or split them among multiple invoices. The invoice(s) will be accessible within the Portal and also emailed to the Provider; and
 - (ii) **(payment)** send the Provider payment for the invoices by electronic funds transfer or cheque.

To be clear, the Department will only accept the Training Activity Data as correctly and completely submitted if the Department has accepted all Training Activity Data for submission without any amendments or additional data, evidence or information required.

- (b) The Department may at any time:
- (i) **(seek clarification)** make enquiries with the Provider regarding the Training Activity Data submitted
 - (ii) **(request evidence)** request evidence supporting the Training Activity Data submitted; or
 - (iii) **(reject Training Activity Data)** reject the Training Activity Data.

To be clear, if the Training Activity Data is not accepted by the Department, the Department may require resubmission of the Training Activity Data by the Provider. The 28 days referred to above will apply from the date of acceptance of the resubmitted Training Activity Data.

- (c) Acceptance of the Training Activity Data by the Department under this clause 18.4 or payment of Subsidies (and Loadings):
- (i) does not mean that the Department accepts that the Provider is entitled to Subsidies (and Loadings) under this Contract including in accordance with clause 18.3; and
 - (ii) does not affect the Department's rights under this Contract or at law, including its rights under clause 23.

This applies even where the Department accepted the Training Activity Data or paid Subsidies (and Loadings) with knowledge of an Event of

Default or did not make enquiries to determine if there was an Event of Default.

19. Financial Caps

This clause 19 does not apply to the Smart and Skilled Entitlement Apprenticeships and Traineeships Program and the School Based Apprenticeships and Traineeships Program. See clause 22.3(c)(iv) about applying limits to Smart and Skilled Entitlement Apprenticeships and Traineeships Program and the School Based Apprenticeships and Traineeships Program.

19.1. Financial Cap

(a) What is a Financial Cap?

A Financial Cap is the maximum amount of Standard Subsidies that a Provider may receive for Subsidised Training successfully submitted in the relevant Activity Period. The Financial Cap for a Smart and Skilled Targeted Priorities Prevocational and Part Qualification is known as a Maximum Subsidy.

To be clear, the Financial Cap is set out in the Approved Qualifications Activity Schedule. Clause 19.4 applies where the Provider successfully submits Training Activity Data for Standard Subsidies in excess of the Financial Cap.

(b) Where are the amounts of the Financial Caps set out?

These Financial Caps will be set out in the Approved Qualifications Activity Schedule.

(c) What does the Financial Cap apply to?

Where an Enrolled Student is entitled to a Fee Exemption or Concession, the Subsidies can be seen to be made up of Standard Subsidy and the additional part to cover that Fee Exemption or Concession ('subsidy gap').

That is:

$$\text{Subsidy} = \text{Standard Subsidy} + \text{'subsidy gap'}$$

The Financial Cap is a maximum amount of the Standard Subsidy part of the Subsidies that the Provider may receive in an Activity Period. This standard part of a Subsidy, that is subject to the Financial Cap, is called a 'Standard Subsidy'.

The Standard Subsidy is determined as follows:

- (i) for an Enrolled Student who is not entitled to a Fee Exemption or a Concession: it is the Subsidy; or
- (ii) for an Enrolled Student who is entitled to a Fee Exemption or a Concession: it is the Subsidy that would have applied if the Enrolled Student were not entitled to the Fee Exemption or Concession.

To express it another way, the additional part of the Subsidy that is over and above the Standard Subsidy that is paid for the Fee Exemption or

Concession (that is, the 'subsidy gap') is not subject to the Financial Cap.

The Financial Cap applies to the Standard Subsidy part of the Subsidy.

To be clear, Loadings are not subject to the Financial Cap.

(d) What are the Provider’s obligations regarding Financial Caps?

The Provider must maximise its usage of Financial Caps as set out in clause 2(b)(i). The Department will consider the Provider’s usage of its Financial Cap when determining whether to reduce Financial Caps or issue a Review Notice to the Provider. The Provider must request a reduction in its Financial Caps if it is unlikely to use all of its Financial Caps.

Please see clauses 2(e), 4.6(b), 19.6 and 22.3.

19.2. Types of Financial Caps

The following table describes the different Financial Caps that will apply to different types of Approved Qualifications.

	Approved Qualifications	Financial Cap
Smart and Skilled Entitlement Full Qualifications Financial Cap	Smart and Skilled Entitlement Full Qualifications	Maximum amount of Standard Subsidies for all these Approved Qualifications in the specified Region
Smart and Skilled Entitlement Foundation Skills Financial Cap	Smart and Skilled Entitlement Foundation Skills	Maximum amount of Standard Subsidies for all these Approved Qualifications in all specified Regions
Smart and Skilled Targeted Priorities Full Qualifications Financial Cap	Smart and Skilled Targeted Priorities Full Qualifications	Maximum amount of Standard Subsidies for all these Approved Qualifications in the specified Region
Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Financial Cap	Smart and Skilled Targeted Priorities Prevocational and Part Qualifications	Maximum amount of Standard Subsidies as further described in the relevant Activity Schedule <i>This Financial Cap is known as the Maximum Subsidy.</i>

Example:

An Approved Qualifications Activity Schedule for Smart and Skilled Entitlement Full Qualifications provides the Provider with:

- (i) for the Sydney Region, the Approved Qualifications: Certificate II in Business, Certificate III in Pathology and Certificate IV in Frontline Management; and
- (ii) a Financial Cap of \$25,000.

This means that during the Activity Period across all of these Approved Qualifications in the Sydney Region, the Provider will not be entitled to receive more than \$25,000 in Standard Subsidies.

19.3. Financial Caps for Continuing Students

If a Provider has any Continuing Students, the relevant Financial Cap for the Subsidised Training delivered to all Continuing Students in the Activity Period is set out in the Approved Qualifications Activity Schedule for the current Activity Period.

If the Approved Qualifications Activity Schedule specifies the relevant Financial Cap is for:

- (a) **Continuing Students Only** – the Financial Cap applies only to Subsidised Training delivered to Continuing Students and there is no Financial Cap for New Commencements under that Smart and Skilled Program or Region (as applicable); or
- (b) **New Commencements and Continuing Students** – the Financial Cap applies to Subsidised Training delivered to both Continuing Students and New Commencements.

19.4. Exceeding a Financial Cap

- (a) The Provider must not exceed any Financial Cap. It is the Provider's responsibility to ensure that the Standard Subsidies that it is eligible to receive in an Activity Period do not exceed the Financial Cap.
- (b) The Department may not pay the Provider any amount of Standard Subsidies that exceeds the Financial Cap in the Activity Period. Any decision to pay any amount above the Financial Cap will be at the Department's absolute discretion.
- (c) Where the Department has issued a Commitment ID and the Provider has reached its Financial Cap for the Activity Period, the Department may send payment of the amount that exceeds the Financial Cap, in the next Activity Period if the Contract continues after the end of the Activity Period.
- (d) If the Contract continues after the end of the Activity Period, the amount paid under clause 19.4(c) will count against the relevant Financial Cap for the next Activity Period. If there is no relevant Financial Cap, the Department may, in its absolute discretion, determine which Financial Cap the excess amount will count against.
- (e) If the Contract does not continue after the end of the Activity Period, the Provider will not be entitled to receive any amount that exceeds the Financial Cap.

19.5. Cap usage

(a) Cap Usage Estimate

The Department, from time to time, may make available an estimate of the total Standard Subsidies that the Provider may receive in the Activity Period for each Financial Cap (the **Cap Usage Estimate**). The Cap Usage Estimate will be based on Training Activity Data or, where Training Activity Data is not available, the information provided in the Notification of Enrolment Process. The Cap Usage Estimate will be compared against the relevant Financial Cap to show the Provider its potential progress against that Financial Cap.

(b) Cap Usage Estimate a guide only

The Cap Usage Estimate is only a guide and, if provided, cannot be relied upon by the Provider as any representation or warranty about the amount of Subsidies it may receive or how it will use its Financial Cap over the Activity Period.

(c) Provider to track Standard Subsidies

The Provider remains responsible for ensuring that the Standard Subsidies that it becomes entitled to receive does not exceed the Financial Cap. The Provider must develop its own process for tracking Standard Subsidies against the relevant Financial Cap (the **Provider Estimate**).

The amount that the Provider will receive in Standard Subsidies will be determined by numerous factors including Enrolled Student's progress, the Provider's compliance with the Contract and generally the terms and conditions of the Contract.

The Provider must accurately report Training Activity Data in a timely manner, which will have an impact on the calculation against the Financial Cap, including Planned Start Dates and Planned End Dates for Units of Competency. The Provider must allow sufficient margin within each Financial Cap to allow for events that may cause the Standard Subsidies it is to receive to increase from any initial expectations.

(d) Examples of how the Provider Estimate should operate

Some examples of how the Provider Estimate should operate are as follows:

- (i) **(each new Commitment ID)** each time a Commitment ID is provided, the Provider Estimate for the relevant Financial Cap should be adjusted to add the expected Standard Subsidies that will be paid during the Activity Period based on a formula that will be provided by the Department
- (ii) **(cancellation or expiry of a Commitment ID)** each time a Commitment ID is cancelled or expires because an Enrolled Student did not Commence, the Provider Estimate for the relevant Financial Cap, should be adjusted to remove the

Standard Subsidies that were expected to be paid during the Activity Period for that Commitment ID

- (iii) **(changes to data provided for an Enrolled Student)** the Provider Estimate should adjust calculations of expected Standard Subsidies over the Activity Period to correspond with actual progress through Subsidised Training and changes to Planned Start Dates and Planned End Dates for Units of Competency for the Enrolled Student, as reported in each Training Activity Data submission; and
- (iv) **(attrition)** each time an Enrolled Student discontinues Training in their Qualification, the Provider Estimate should be adjusted to remove the balance of the Standard Subsidy that was expected to be paid during the Activity Period for the Enrolled Students. The Provider Estimate should be adjusted after the submission of Training Activity Data that showed the Training was discontinued. To be clear, any part of the Standard Subsidy that has been paid should still be reflected in the Provider Estimate.

See clause 4.6 regarding requesting amendments to Financial Caps and Approved Qualifications, including where the Provider becomes aware that it will not be able to deliver Training up to its Financial Cap.

The Department will take into consideration the extent to which the Provider delivers Training up to its Financial Cap when offering future Approved Qualification Activity Schedules. It is in the Provider's interest to ensure that it maintains an achievable Financial Cap.

19.6. **Monitoring and adjustment of Financial Caps over the Activity Period**

(a) **Monitoring**

The Department may monitor the Provider's use of its Financial Caps during the Activity Period. This may include reviewing the Provider's actual delivery of Training Activity as well as the Provider's estimated usage of its Financial Cap in the Activity Period.

(b) **Reducing Financial Caps**

The Department reserves the right to adjust a Provider's Financial Cap, including reducing a Financial Cap during the Activity Period.

If this monitoring indicates that the Provider is unlikely to utilise all or some of a Financial Cap the Department will communicate with the Provider about the Provider's anticipated usage of the Financial Cap and may give notice of a reduction of the Financial Cap.

This clause does not limit the Department's rights elsewhere under this Contract and at law including to reduce Financial Caps.

19.7. **No representation or warranty**

The Department does not represent or warrant and the Provider must not have any expectation that any Financial Cap will increase from the initial Financial Cap at any time during the Activity Period.

20. 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 Contract must be borne by the Provider.
- (b) The services provided under this 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 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 Provider is registered for GST and this clause 20 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 this Contract permitted to issue tax invoices for supplies by the Provider under this Contract. The 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 Provider acknowledges that it is registered for GST and that it will notify the Department if it ceases to be registered.

21. Insurance

- (a) The 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
 - (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 21(a)(i)(B) above,

(the **Insurance Policies**).
- (b) The Insurance Policies must be taken out by the 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 Provider must:
 - (i) not do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the Insurance Policies or entitle the insurer to refuse the claim; and
 - (ii) without limiting clause 21(a), promptly reinstate any Insurance Policies if it lapses or if the cover is exhausted.
- (d) The 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 21, noting any restrictions that may be relevant to the performance of the Contract.
- (e) If the Provider does not comply with this clause 21 then without limiting any other remedy available to the Department, the Department may withhold payment of any money due under the Contract to the Provider until the Provider has complied.
- (f) The 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 21 do not affect the Provider's liabilities in connection with the Contract.
- (h) The Provider's obligations under this clause 21 are continuing obligations and survive termination of the Contract whilst the obligations of the Provider under this clause 21 continue.

22. Termination, suspension or variation

22.1. Termination for convenience

- (a) The Department may, at any time, terminate the Contract for any reason by giving at least 2 months' notice to the Provider. To be clear, the Department will have no obligation to pay any Subsidies and Loadings above what has accrued up to the date of termination of the Contract. This clause 22.1(a) does not limit the Department's rights under clause 22.2(c) or at law.
- (b) The Provider may, at any time, terminate the Contract for any reason by giving at least 2 months' notice to the Department.

22.2. Termination, suspension or variation for default

- (a) The Provider will not allow an Event of Default to occur.
- (b) If an Event of Default occurs, the 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 Provider, immediately:
- (i) suspend all or part of the Provider's rights under the Contract
 - (ii) withhold in whole or in part any Subsidies and Loadings payable to the Provider
 - (iii) place any further conditions in relation to Subsidised Training
 - (iv) vary the Contract in accordance with clause 22.3
 - (v) exercise any of its other rights under the Contract; or
 - (vi) terminate the Contract.
- (d) If the Department believes that an Event of Default has occurred, the Department may (but is not obliged to) give the Provider a notice requiring the Provider, within 14 days after receiving the notice, to show that there has been no such Event of Default, or to remedy the Event of Default where the Event of Default is capable of remedy. If, after the 14 days have expired, the Department is satisfied that the Provider has failed to comply with the notice by either showing that the Event of Default did not occur or by remedying the Event of Default, the Department may, by written notice to the Provider, terminate the Contract. This clause 22.2(d) does not limit the Department's rights under the Contract (including clause 22.2(c)) or at law.
- (e) **Event of Default** means any of the following (whether or not caused by anything outside the control of the Provider):
- (i) **non-compliance:** the Provider has not complied with any term or condition of this Contract

To be clear, this includes the Operating Guidelines and Policies.
 - (ii) **incorrect or incomplete statement:** any statement made by the Provider is incorrect or incomplete in a way which would have affected the original decision to enter into the Contract with the Provider (including the specific terms in the Approved Qualifications Activity Schedules)
 - (iii) **untrue warranty:** a representation, warranty or statement made by the Provider (including clause 26) 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:** this Contract or any other related agreement entered into by the Provider and the Department is void, voidable or otherwise unenforceable by the Department or is claimed to be so by the Provider
 - (v) **compliance unlawful:** it is unlawful for the Provider to comply with any of its obligations under this Contract or any other related agreement entered into by the Provider and the Department or it is claimed to be so by the Provider

- (vi) **Insolvency Event:** an Insolvency Event occurs in relation to the Provider
- (vii) **authorisation ceasing:** an authorisation from a Government Agency necessary to allow the Provider to comply with its obligations under this Contract or any other related agreement entered into by the Provider and the Department or carry on its principal business or activity is withheld or ceases to be in full force and effect
- (viii) **termination of other contracts:** the Provider or a related body corporate (as defined in the *Corporations Act 2001* (Cth)) of the Provider has an education related contract with the Department or any other Government Agency that has been terminated for any reason
- (ix) **disrepute:** the Department believes that the continuation of the Contract may: bring into disrepute; affect the reputation of; or, be detrimental to, the Department, Smart and Skilled or the NSW vocational education training market (separately subsidised and non-subsidised)
- (x) **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
- (xi) **regulatory decision of the VET Regulator:** an adverse regulatory decision made by the VET Regulator which affects the Provider's ability to perform its obligations under the Contract, and/or is made in relation to an Approved Qualification, whether or not the Provider's rights for reconsideration or appeal have been exhausted
- (xii) **non-compliance with APL contract:** the Provider has not complied with any term or condition of an Approved Providers List (APL) contract with the Department; or
- (xiii) **change in Control event:** the Provider experiences a change in Control not in accordance with clause 32.

22.3. Variation of the Contract

- (a) The Department may vary the Contract:
 - (i) at any time, with the consent of the Provider; or
 - (ii) otherwise in accordance with the Contract.
- (b) The Department may, in its absolute discretion, vary the Contract:
 - (i) at the conclusion of the Activity Period, by issuing a new Approved Qualifications Activity Schedule with a Review Notice. This may be under different terms and conditions
 - (ii) at any time if there is an Event of Default

- (iii) if there is a Financial Viability Issue; or
 - (iv) at any time, by giving at least one months' notice to the Provider.
- (c) In this clause 22.3, vary the Contract means to vary any terms and conditions of the Contract and includes to:
- (i) add or remove a Qualification or Part Qualification from the Approved Qualifications
 - (ii) vary the terms and conditions of a Smart and Skilled Program or the School Based Apprenticeships and Traineeships Program
 - (iii) restrict a Provider from enrolling students in a Smart and Skilled Program or the School Based Apprenticeships and Traineeships Program, an Approved Qualification or in a particular Region
 - (iv) impose a Financial Cap or other restriction on the Smart and Skilled Entitlement Apprenticeships and Traineeships Program or the School Based Apprenticeships and Traineeships Program
To be clear, this includes stopping all Providers from enrolling students in the Smart and Skilled Entitlement Apprenticeships and Traineeships Program or the School Based Apprenticeships and Traineeships Program
 - (v) vary a Financial Cap or any other part of an Approved Qualifications Activity Schedule
 - (vi) vary the Prices, Subsidies, Fees or Loadings in the Schedule of Prices, Fees and Subsidies at any time during an Activity Period; and
 - (vii) withdraw, or impose conditions on, any waiver or consent given by the Department.
- (d) To be clear, this clause 22.3 does not limit the Department's rights under the remainder of the Contract.
- (e) In giving notice of any changes under this clause 22.3, the Department will specify the date on which the change is to take effect.
- (f) The Department may exercise its rights under clause 22.3(b)(iv) for no reason or for any reason at all, including to:
- (i) manage the Department's budget
 - (ii) support vocational education and training in NSW; and
 - (iii) otherwise ensure the success of Smart and Skilled.

22.4. Effect of notice of termination

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

22.5. Effect of termination

If the Contract terminates, the 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:
 - (i) comply with the Transfer Out Process; and
 - (ii) providing all information, documents or certification required by the Enrolled Student such as a Statement of Attainment or Testamur
- (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 Contract
- (d) cease the delivery of Subsidised Training to Enrolled Students; or
- (e) continue to deliver Subsidised Training to Enrolled Students who have Commenced, under clause 22.7.

To be clear, nothing in this Contract affects the Department's rights to do anything in relation to students including the transferring of students.

22.6. Effect of suspension

If all or part of the Contract is suspended:

- (a) the Provider will (at its own cost) do anything that the Department requests, including:
 - (i) comply with the Transfer Out Process
 - (ii) continue to deliver Subsidised Training to Enrolled Students who have Commenced, under clause 22.7
 - (iii) cease to deliver Subsidised Training to Enrolled Students who have Commenced
 - (iv) cease to enrol Prospective Students
 - (v) comply with any condition that the Department imposes; and
- (b) the Department may withhold all or part of the Subsidies and Loadings.

22.7. Continuation of Subsidised Training

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

- (a) the Provider will continue to provide the Subsidised Training in accordance with the terms and conditions of the Contract

- (b) the Contract will continue for all Enrolled Students undertaking the Subsidised Training until they have all completed or discontinued the Subsidised Training that they are enrolled in; and
- (c) the Provider will comply with any additional conditions imposed by the Department.

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

23. Repayment

The Provider must repay monies received that the Provider is not entitled to, including monies received based on incorrectly reported Training Activity Data or otherwise, under or arising out of this Contract.

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

- (a) require the monies to be paid back within a specified period of time
- (b) set-off the monies against other monies due to the Provider under this Contract; or
- (c) deal with it in another manner as directed by the Department.

24. Good faith

The Parties will act in good faith in connection with this Contract, including to resolve any disputes.

25. Force majeure

25.1. Suspension of obligations

- (a) If a Party is unable to carry out its obligations under the Contract as a result of an event such as an act of God, lightning, storm, flood, fire, 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 Contract immediately by written notice to the affected Party.

25.2. Extension of time

- (a) Where there is likely to be a delay in the Provider discharging an obligation under the Contract because of a Force Majeure Event (other

than a circumstance arising out of any act or omission on the part of the Provider), the Provider can request a reasonable extension of time.

- (b) The Department may consent to a request for extension of time under this clause 25.2 provided that:
 - (i) the Provider uses its best endeavours to minimise the delay and recover lost time; and
 - (ii) where appropriate, the Provider provides the Department with a plan indicating in detail the steps and strategies the Provider proposes to take to minimise the impact of the Force Majeure Event and manage the consequences of the delay.
- (c) The Provider will not be entitled to any increase in any payment due to it, or damages, costs or expenses in connection with the delay.

26. **Warranties**

The Provider warrants that, on the Contract Acceptance Date and on each day following during the Term:

- (a) it complies with all Applicable Laws
- (b) it has the legal right and power to enter into the Contract and to perform its obligations under the Contract
- (c) the execution, delivery and performance of the 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 Contract, and to carry on its principal business or activity, has been obtained, effected and complied with
- (e) the Contract constitutes a valid and binding agreement and is enforceable against it by the Department in accordance with its terms and conditions
- (f) the execution and performance of the 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 Contract; and
 - (iv) constitute an event that would, with notice or lapse of time, or both, constitute a default as described under clause 26(f)(iii)
- (g) the 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 Contract

- (h) the 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 Provider's ability to perform the Contract
- (i) its performance of the Subsidised Training, the provision of any materials (including third party materials) by the Provider in connection with the Subsidised Training, and their use by the 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 Contract; and
- (k) all information provided by the 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.

27. **Indemnities**

- (a) The 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 Provider or its Personnel in connection with or arising out of the Contract including delivery of Subsidised Training.
- (b) The Provider's liability under this clause 27 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 Contract, negligent or unlawful acts or omissions.

28. **Exclusion of liability**

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

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

29. **Assumption of risks by Provider**

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

- (a) the Contract not continuing beyond the current Activity Period
- (b) not receiving enrolments for any or all of places available in the Approved Qualifications within its Financial Caps
- (c) receiving an application for enrolment for Subsidised Training from a Prospective Student which does not proceed to Commencement

- (d) the withdrawal from Approved Qualifications by Enrolled Students
- (e) not receiving any or all of the Fees or any other amounts due, at any time, from Enrolled Students for the Subsidised Training provided by the Provider
- (f) the Department varying the Contract in accordance with clause 22.3
- (g) having to refuse an application for enrolment for Subsidised Training because it would exceed a Financial Cap; or
- (h) exceeding a Financial Cap and not receiving any amount in excess of the Financial Cap.

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

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

30. **Conflict of Interest**

- (a) The Provider warrants that at the Contract Acceptance Date and on each day following during the Term that no Conflict of Interest exists or is likely to arise in the performance of its obligations under the Contract.
- (b) If during the Term, a Conflict of Interest arises, the 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 Provider does not notify the Department under this clause 30, or is unable or unwilling to resolve or deal with the Conflict of Interest as required, the Department may terminate the Contract in accordance with clause 22.
- (d) The Provider agrees that it will not, and will use its best endeavours to ensure that any Personnel of the Provider do not, engage in any activity or obtain any interest during the course of this Contract that is likely to conflict with or restrict the Provider in performing the Contract.

31. **Assignment**

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

The Department may, from time to time, issue guidelines which set out the circumstances in which it may provide its approval.

32. **Change in Control**

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

The Department may, from time to time, issue guidelines which set out the circumstances in which it may provide its approval.

33. **Subcontracting and Brokering Arrangements**

- (a) The Provider must not subcontract any part of its obligations under the Contract without the Department's consent in accordance with the Operating Guidelines.
- (b) The Provider must not enter into any Brokering Arrangement in relation to the Contract without the Department's consent in accordance with the Operating Guidelines.

The process for applying for the Department's approval is set out in the Operating Guidelines. The Provider must comply with the Operating Guidelines in respect of any appointed subcontractors and Brokering Arrangements.

To be clear, the Department has absolute discretion whether to approve any subcontracting or Brokering Arrangements.

34. **Communications to the Provider**

The Department will communicate with the Provider, including for the purpose of notifying of any changes to Operating Guidelines and Policies, by:

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

35. **Information**

35.1. **Provider Information**

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

Provider Information for any purpose connected to the exercise of their government functions.

35.2. Student Personal Information

- (a) The 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 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 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 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 35.4 and retains written records and logs of all consents in accordance with clause 35.4(c).
- (c) To be clear, before the Provider collects Student Personal Information to disclose to the Department, the Provider must notify the student that their Student Personal Information will be used and disclosed in that way.

35.3. Provision of information to the Department and other government agencies

The Provider must provide the Department with all information, including Student Personal Information collected or obtained by the Provider in relation to all students in accordance with this Contract including as set out in the Operating Guidelines.

35.4. Consent

- (a) Before collection of Student Personal Information to proceed with the Notification of Enrolment Process the Provider must first obtain the consent of the students in accordance with this clause 35.4.
- (b) The consent under this clause 35.4 must be in, or include, the same wording as the privacy consent statement in the Operating Guidelines.
- (c) The Provider must retain records of this consent in accordance with clause 14.1 and the Operating Guidelines.

35.5. **General**

The 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 Provider of its legal responsibilities relating to protection of Student Personal Information. It is the sole responsibility of the 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.

35.6. **Disclosure log (GIPA Act section 25)**

The Provider acknowledges that the Department may disclose certain information about this Contract in accordance with its obligations under *the Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**). This includes making certain information about this Contract (and a copy of this Contract) publicly available.

35.7. **Access to information (GIPA Act section 121)**

- (a) **(Access)** The Provider must, within 5 Business Days of receiving a request by the Department, provide the Department with immediate access to the following information contained in records held or under the control of the Provider:
 - (i) **(performance information)** information that relates directly to the performance of this Contract
 - (ii) **(information from the public)** information collected from members of the public to whom the Provider offers to perform under the Smart and Skilled Contract; and
 - (iii) **(information from the Department)** information received by the Provider from the Department to enable it to perform under the Smart and Skilled Contract.
- (b) **(Limits)** For the purposes of clause 35.7(a), such information does not include:
 - (i) **(finance information)** information that discloses or would tend to disclose the Provider's financing arrangements, financial modelling, cost structure or profit margin
 - (ii) **(law)** information that the Provider is prohibited from disclosing to the Department by provision made by or under any law; or
 - (iii) **(commercial disadvantage)** information that, if disclosed to the Department, could reasonably be expected to place the Provider at a substantial commercial disadvantage in relation to its competitors, whether at present or in the future.
- (c) **(Provider's own cost)** The Provider must provide copies of any of the information requested by the Provider, in accordance with clause 35.7(a), at the Provider's own cost.

36. Priority

To the extent of any inconsistency between the items referred to in (a), (b), (c) and (d) below, the order of priority will be (a), (b), (c) then (d):

- (a) any conditions in an Approved Qualifications Activity Schedule
- (b) Schedule 4 of these Contract Terms and Conditions
- (c) the remainder of these Contract Terms and Conditions; and
- (d) the Operating Guidelines and Policies (unless the Operating Guidelines and Policies expressly acknowledge the inconsistency and state that the Operating Guidelines and Policies will apply in priority).

37. Notices

37.1. Written notice

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

37.2. Addresses for notices

- (a) Unless otherwise specified under the Contract, a notice from the Department to the Provider must be:
 - (i) sent by post to the address provided by the Provider to the Department
 - (ii) sent by email to the Provider's Representative or CEO's email address provided by the Provider to the Department; or
 - (iii) delivered to the address provided by the Provider to the Department.
- (b) Unless otherwise specified under the Contract, a notice from the Provider to the Department must be:
 - (i) sent by post or delivered to the Manager, Training Market Operations, Training Services NSW Division, NSW Department of Industry PO Box 960, Darlinghurst NSW 1300; or
 - (ii) sent by email to training.market@industry.nsw.gov.au, addressed to the attention of the Manager, Training Market Operations.

37.3. Receipt of Notice

If a notice is sent or delivered in a manner provided under this clause 37, 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.

38. **General**

38.1. **Dictionary and interpretation**

In this Contract, except where the contrary intention is expressed, words have the meaning given to them, and the rules of interpretation are set out, in Schedule 1 (Definitions and interpretation).

38.2. **No employment, partnership or agency**

- (a) The Provider is not by virtue of the 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 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.

38.3. **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 Contract.

38.4. **Costs**

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

38.5. **Severability**

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

38.6. **Survival**

The following obligations are continuing obligations and survive termination of this Contract:

- (a) clause 7(i) (**information true, accurate and correct**)
- (b) clause 7(n) (**consumer protection**)
- (c) clause 7(r) (**no unethical, dishonest or detrimental conduct**)
- (d) clause 7(v) (**cooperation with other RTOs**)

- (e) clause 7(w) (**issue Statements of Attainment and Testamurs**)
- (f) clause 12(b) (**Transferring students**)
- (g) clause 13 (**Performance Monitoring**)
- (h) clause 14 (**Records and reporting**) and all other obligations relevant to the maintaining of records and reporting to the Department
- (i) clause 15 (**Reporting of Training Activity Data**)
- (j) clause 19.4(e) (**Exceeding a Financial Cap**)
- (k) clause 20 (**Government taxes, duties and charges**)
- (l) clause 21 (**Insurance**)
- (m) clause 22 (**Termination, suspension or variation**)
- (n) clause 23 (**Repayment**)
- (o) clause 24 (**Good faith**)
- (p) clause 27 (**Indemnities**)
- (q) clause 28 (**Exclusion of liability**)
- (r) clause 29 (**Assumption of risks by Provider**)
- (s) clause 35 (**Information**)
- (t) clause 36 (**Priority**)
- (u) clause 37 (**Notices**)
- (v) clause 38 (**General**)
- (w) clause 39 (**Governing law and jurisdiction**)
- (x) Schedule 1 (**Dictionary and interpretation**)
- (y) the content of Schedules, Operating Guidelines and Fee Administration Policy to the extent they refer to the subject matter of any of the above; and
- (z) any other provision of this Contract which, by its nature, would reasonably be expected to be performed after the termination of this Contract.

38.7. **Entire understanding**

The Contract:

- (a) is the entire agreement and understanding between the Parties on everything connected with the subject matter of the Contract; and

- (b) supersedes any prior agreement or understanding between the Parties on anything connected with that subject matter including the Application.

38.8. **Waivers and consents**

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

- (a) a waiver or consent under the 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

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.

38.9. **Statutory discretion**

This Contract does not restrict or otherwise affect the Department's unfettered discretion to exercise its statutory powers.

39. **Governing law and jurisdiction**

39.1. **Governing law**

The law of New South Wales governs the Contract.

39.2. **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 1

Dictionary and interpretation

1. Dictionary

In the Contract:

Accredited Course means a program of learning that comprises one or more components (e.g. Units of Competency, modules or subjects) that has been accredited by an accrediting authority

Activity Period means the period specified on the applicable Approved Qualifications Activity Schedule

Adjusted Price has the meaning given to it in clause 16(c)

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 AT 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 RTO Standards

Application means any application made by the Provider via the Portal and includes all documentation and information provided in connection with such application

To be clear, this includes the initial application made by the Provider and any further application made.

Apprentice has the meaning given to it in the AT Act

Apprenticeship means an apprenticeship established under Division 2 (Establishment of apprenticeships and traineeships), Part 2 (Apprenticeships and traineeships) of AT Act

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

Approved Qualifications has the meaning given to it in clause 4.2

Approved Qualifications Activity Schedule has the meaning given to it in clause 4.1

AT 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

Australian Privacy Principles means the principles contained in Schedule 1 of the [Privacy Act 1988](#) (Cth)

Australian Qualifications Framework means the *Australian Qualifications Framework Second Edition January 2013* available at <https://www.aqf.edu.au/sites/aqf/files/aqf-2nd-edition-january-2013.pdf>

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

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

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

Cap Usage Estimate has the meaning given to it in clause 19.5(a)

Certificate or **Testamur** means an official certification document that confirms that a Qualification has been awarded to an individual. This may be called a parchment or award

Commencement means the commencement of an Approved Qualification by an Enrolled Student where the Enrolled Student has Participated in Subsidised Training for at least one of the Units of Competency specified in:

- (a) the Training Package (if the Approved Qualification is a Qualification); or
- (b) the Approved Qualifications Activity Schedule (if the Approved Qualification is a Smart and Skilled Targeted Priorities Prevocational and Part Qualification,

and **Commence** and **Commenced** have a corresponding meaning

Commitment ID means the numerical identifier that is generated by the Provider Calculator or SBATs enrolment data function

Concession has the meaning given to it in the Fee Administration Policy

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

Continuing Student means an Enrolled Student who Commenced in a previous Activity Period and is continuing with the same Subsidised Training in the current Activity Period

Contract means these Contract Terms and Conditions, the Operating Guidelines and Policies and the Approved Qualifications Activity Schedules accepted by the Provider from time to time

Contract Acceptance Date has the meaning given to it in clause 5

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 as further described in clause 15.3

Department has the meaning given to it in clause 1

Employer has the meaning given to it in the AT Act

End Date has the meaning given to it in the relevant Approved Qualifications Activity Schedule (i.e., the last date on which the Provider can Commence an Enrolled Student in the Approved Qualification)

Enrolled Student means a student who is eligible to receive Subsidised Training as determined by Schedule 2 and:

- (a) for whom the Provider has completed the Notification of Enrolment Process
- (b) for whom the Provider has been issued a Commitment ID; and
- (c) that has enrolled with the Provider in the Approved Qualification the subject of the Commitment ID,

as further described in clause 10(c)

Event of Default has the meaning given to it in clause 22.2(e)

Existing Worker Trainee has the meaning given to it at:
www.training.nsw.gov.au/aacs/advice_instructions/existing_worker_trainee.html

Fee means the fee payable by an Enrolled Student for Subsidised Training determined by clause 17

Fee Administration Policy means:

- (a) the *Smart and Skilled Fee Administration Policy* found at:
www.training.nsw.gov.au/smartandskilled/contract_policy.html in relation to all Smart and Skilled Programs or

- (b) the *School Based Apprenticeships and Traineeships Program Fee Administration Policy* found at: www.training.nsw.gov.au/smartandskilled/contract_policy.html in relation to the School Based Apprenticeships and Traineeships Program

Fee Exemption has the meaning given to it in the Fee Administration Policy

Fee-Free Scholarships means a government subsidy for eligible people as determined by the Department from time to time that covers their Fee

Fee Percentage has the meaning given to it in clause 17.2(e)

Financial Cap has the meaning given to it in clause 19

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

Financial Viability Issue has the meaning given to it in clause 14.3(b)

Government Agency means any of the following:

- (a) the Commonwealth, a State or Territory;
- (b) an agency or authority of the Commonwealth, a State or Territory

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

Insolvency Event means any of the following events in relation to the Provider:

- (a) the Provider becoming unable to pay its debts as and when they fall due
- (b) the Provider is taken to have failed to comply with a statutory demand
- (c) an application for winding up is made regarding the Provider and not stayed, withdrawn or dismissed within 14 days
- (d) a winding up order is made against the Provider
- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed to the Provider
- (f) a mortgagee enters into the possession of any property of the Provider
- (g) it is subject to any arrangement, assignment, moratorium or composition, protection from creditors under any statute or dissolved, other than to carry out a reconstruction while solvent, subject to any approvals required under the Contract
- (h) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or

(i) any actions of a substantially similar effect are taken in any jurisdiction

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 Subsidised Training and to perform obligations under the Contract

Loading has the meaning given to it in clause 18.2

Long-term unemployed means a person who has been unemployed continuously for more than 52 weeks and can provide the required evidence to confirm this, in accordance with the Operating Guidelines

Maximum Subsidy is the maximum amount of Subsidies that a Provider may receive for the delivery of Subsidised Training in a Smart and Skilled Targeted Priorities Prevocational and Part Qualification the subject of an Activity Schedule

National Register means the national register on vocational education and training in Australia

New Commencements means Enrolled Students who Commence(d) in the current Activity Period

New Entrant Trainee means a Trainee employed within an enterprise for not more than:

- (a) three months full-time; or
- (b) 12 months part-time or casual; or
- (c) a combination of part-time/casual for a continuous period not exceeding 12 months

No. of Places means the number of students that a Provider may Commence in Subsidised Training in accordance with an Activity Schedule

To be clear, the No. of Places is a target and a maximum

Notification of Enrolment Process has the meaning given to it in the Operating Guidelines

Operating Guidelines means the guidelines published at:
www.training.nsw.gov.au/smartandskilled/contract_policy.html

Operating Guidelines and Policies means the guidelines and policies published by the Department in connection with Smart and Skilled, including the Operating Guidelines, Fee Administration Policy, Consumer Protection Strategy, Teaching and Leadership Policy, NSW Recognition Framework, Skills List, the Schedule of Prices, Fees and Subsidies, the Policy for the Delivery of the Certificate IV in Training and Assessment (TAE40116), Provider Guide to Smart and Skilled Prices, Fees and Subsidies, and the Statement of Expectations, as added, amended or replaced by the Department from time to time

Other Funding has the meaning given to it in clause 8

Participated in Subsidised Training means:

- (a) the Enrolled Student has interacted and participated in the Subsidised Training in a manner that exceeds mere attendance or accessing training materials; and
- (b) the Provider has documented this interaction and participation

Parties means the parties to the 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 13

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

Planned End Date means the date that the Training in the relevant Approved Qualification is expected to be completed by

Planned Start Date has the meaning given to it in clause 10(a)(vi)

Portal means the secure website hosted at www.training.nsw.gov.au/about_us/login.html and any other websites, portals or systems made available to the Provider by the Department in connection with this Contract

Price has the meaning given to it in clause 16(a)

Prospective Student means a person who makes an enquiry with the Provider to assess their eligibility to receive Subsidised Training with the Provider

Provider means a registered training organisation who is a party to this Contract

Provider Calculator means the calculator facility within the Portal

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

Provider Estimate has the meaning given to it in clause 19.5(c)

Provider Guide to Smart and Skilled Prices, Fees and Subsidies means the guide published on the Training Services NSW website

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

Qualification means an Accredited Course or 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 as further described in clause 15.3

Recognition Process means the process for assessing and granting Recognition of Prior Learning

Region means an area described in an Approved Qualifications Activity Schedule as defined by the Department

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

Review Notice has the meaning given to it in clause 6

RTO Standards means the *Standards for Registered Training Organisations (RTOs) 2015*

Schedule of Prices, Fees and Subsidies means the schedule for the applicable Activity Period found:

- (a) at www.training.nsw.gov.au/smartandskilled/prices_fees.html in relation to all Smart and Skilled Programs; or
- (b) in the Fee Administration Policy in relation to the School Based Apprenticeships and Traineeships Program

School Based Apprentice means an Apprentice undertaking a School Based Apprenticeship

School Based Apprenticeship means an Apprenticeship undertaken while at school

School Based Apprenticeships and Traineeships Program has the meaning given to it in clause 4.1(f)

School Based Apprenticeships and Traineeships Qualification has the meaning given to it in clause 3.6

School Based Trainee means a Trainee undertaking a School Based Traineeship

School Based Traineeship means a Traineeship undertaken while at school

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 Entitlement Apprenticeships and Traineeships

Qualifications has the meaning given to it in clause 3.3

Smart and Skilled Entitlement Apprenticeships and Traineeships Program

has the meaning given to it in clause 4.1(c)

Smart and Skilled Entitlement Foundation Skills

has the meaning given to it in clause 3.1

Smart and Skilled Entitlement Foundation Skills Program

has the meaning given to it in clause 4.1(a)

Smart and Skilled Entitlement Full Qualifications

has the meaning given to it in clause 3.2

Smart and Skilled Entitlement Full Qualifications Program

has the meaning given to it in clause 4.1(b)

Smart and Skilled Programs means the Smart and Skilled Entitlement Foundation Skills Program, the Smart and Skilled Entitlement Full Qualifications Program, the Smart and Skilled Entitlement Apprenticeships and Traineeships Program and the Smart and Skilled Targeted Priorities Programs

Smart and Skilled Targeted Priorities Full Qualifications

has the meaning given to it in clause 3.4

Smart and Skilled Targeted Priorities Full Qualifications Program

has the meaning given to it in clause 4.1(d)

Smart and Skilled Targeted Priorities Prevocational and Part

Qualifications has the meaning given to it in clause 3.5

Smart and Skilled Targeted Priorities Prevocational and Part

Qualifications Program has the meaning given to it in clause 4.1(e)

Smart and Skilled Targeted Priorities Programs means the Smart and Skilled Targeted Priorities Full Qualifications Program and the Smart and Skilled Targeted Priorities Prevocational and Part Qualifications Program

Standard Subsidy has the meaning given to it in clause 19.1(c)

Start Date has the meaning given to it in the relevant Approved Qualifications Activity Schedule (i.e., the date on or after which the Provider can Commence an Enrolled Student in the Approved Qualification)

Statement of Attainment or **SOA** means an official document issued when an individual does not meet the requirements for an Approved 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

Status means the status of a Qualification as identified and further defined in the relevant Approved Qualifications Activity Schedule

Student Personal Information has the meaning given to it in clause 35.2(a)

Subsidised Training has the meaning given to it in clause 2

Subsidy has the meaning given to it in clause 18.1

Teaching and Leadership Policy means the *Smart and Skilled Teaching and Leadership Policy* found at www.training.nsw.gov.au/smartandskilled/contract_policy.html

Term has the meaning given to it in clause 5

Trainee has the meaning given to it in the AT Act

Traineeship means a traineeship established under Division 2 (Establishment of apprenticeships and traineeships), Part 2 (Apprenticeships and traineeships) of *Apprenticeship and Traineeship Act 2001* (NSW)

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 registered 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 15.1

Training Commencement Period has the meaning given to it in clause 4.3(b)

Training Contract has the meaning given to it in the AT Act

Training End Date means the date that the Training the subject of the relevant Activity Schedule must be completed by

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

Training Plan has the meaning given to it in the Operating Guidelines

Transfer In Process has the meaning given to it in the Operating Guidelines

Transfer Out Process means the process for transferring out students set out in the Operating Guidelines

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

UoC Outcome means a UoC Outcome Achievement has occurred for which the corresponding UoC Outcome Code has been submitted to the Department

UoC Outcome Achievement has the meaning given to it in clause 15.3

UoC Outcome Achievement Stage has the meaning given to it in clause 18.3

UoC Outcome Code has the meaning given to it in clause 15.3

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

VET Student Loans means loans made under the VET Student Loans Program

VET Student Loans Program means a Commonwealth Government loan program to help Enrolled Students enrolled in certain VET courses at VET Student Loans Program Approved Providers to pay their tuition fees

VET Student Loans Program Approved Provider means a registered training organisation that has been approved by the Commonwealth Government to offer VET Student Loans to Enrolled Students; and

Vocational Training Order or **VTO** means the set of terms and conditions of apprenticeships and traineeships in NSW as determined by the Department

2. Interpretation

In the 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 Contract, and any guidelines or policies) 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
- (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 Contract or affect its interpretation
- (g) a provision of the Contract must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Contract or the inclusion of the provision in the Contract
- (h) if a Provider consists of more than one person, the 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; and
- (j) a Provider which is a trustee is bound both personally and in its capacity as a trustee.

Schedule 2

Eligibility

1. Eligibility criteria for all Smart and Skilled Programs except Smart and Skilled Entitlement Apprenticeships and Traineeships Program

A person who is eligible to receive Subsidised Training in all Smart and Skilled Programs except Smart and Skilled Entitlement Apprenticeships and Traineeships Program is a person who, at the time of enrolment in an Approved Qualification:

- (a) either:
 - (i) lives or works in NSW (determined by postcode of the usual place of residence or place of work); or
 - (ii) lives in a defined interstate NSW border area (as identified by a postcode in the list set out in the Operating Guidelines) and is Australian Aboriginal or Torres Strait Islander; and
- (b) is:
 - (i) an Australian citizen; or
 - (ii) a permanent Australian resident; or
 - (iii) a humanitarian visa holder; or
 - (iv) a New Zealand citizen; and
 - (v) is aged 15 years or older; and
 - (vi) is no longer in secondary education.

2. Eligibility criteria for Smart and Skilled Entitlement Apprenticeships and Traineeships Program

A person who is eligible to receive Subsidised Training in the Smart and Skilled Entitlement Apprenticeships and Traineeships Program is a person who:

- (a) at the time of Commencement in an Approved Qualification is an Apprentice or New Entrant Trainee and has an approved Training Contract in NSW; and
- (b) has the Approved Qualification shown on their Training Contract.

3. Exceptions

Despite clauses 1 and 2 of this Schedule 2:

- (a) if a person is approved or registered as an Existing Worker Trainee, they will not be eligible to receive Subsidised Training in an Approved Qualification that is associated with the Training Contract for their

existing worker traineeship, in relation to any Smart and Skilled Program; and

- (b) the Department may, in its absolute discretion, allow a Provider to treat a person who does not fit any of the criteria set out in clauses 1 or 2 of this Schedule 2 as eligible to receive Subsidised Training.

4. Eligibility criteria for School Based Apprenticeships and Traineeships Program

A person who is eligible to receive Subsidised Training in School Based Apprenticeships and Traineeships Program is a person who:

- (a) at the time of Commencement in an Approved Qualification is approved or registered as a School Based Apprentice or School Based Trainee in NSW; and
- (b) has the Approved Qualification shown on their Training Contract.

Schedule 3

Loadings

Loadings are calculated as a percentage of the Price (or Adjusted Price if applicable) of an Approved Qualification. There are two categories of Loadings, which are divided into different sub-categories:

- (a) Needs – which is divided into:
 - (i) Australian Aboriginal or Torres Strait Islander; or
 - (ii) Disability; or
 - (iii) Long-term unemployed; and
- (b) Location – which is divided into:
 - (i) Regional; or
 - (ii) Remote.

The eligibility criteria and reporting requirements for each of these sub-categories of Loadings are set out in the Operating Guidelines.

The relevant percentage for each sub-category of Loadings are:

Category	Sub-category	Percentage of Price
Needs Loading	Australian Aboriginal or Torres Strait Islander	15%
	Disability	15%
	Long-term unemployed	10%
Location Loading	Regional	10%
	Remote	20%

The Provider will only be paid a maximum of one Loading for the 'Needs' category and one Loading for the 'Location' category for each Enrolled Student.

To be clear, if the Enrolled Student has a disability and is long-term unemployed, the higher of these two Loadings (that is, 15%) will be applied.

The Loading for long-term unemployed is not applicable for the School Based Apprenticeships and Traineeships Program.

The Schedule of Prices, Fees and Subsidies for Smart and Skilled Programs gives examples of Loadings in the last four columns. These examples are indicative only and should not be relied upon. This Schedule 3 overrides the examples in the Schedule of Prices, Fees and Subsidies.

Schedule 4

School Based Apprenticeships and Traineeships Program

For Approved Qualifications in the School Based Apprenticeships and Traineeships Program, the Provider must:

- (a) deliver Subsidised Training in accordance with the approved NSW Board of Studies syllabus (where this exists) and guidelines or liaise with the school regarding an application for endorsement of the Training by the Board of Studies

Details of Board of Studies Higher School Certificate (HSC) VET courses are available at www.boardofstudies.nsw.edu.au/voc_ed/apprenticeships-traineeships.html
- (b) deliver the Subsidised Training in a manner that recognises the Enrolled Student's HSC studies, other studies, work and other commitments, as scheduled in the Training Plan
- (c) not require the Enrolled Student to undertake Subsidised Training during school examination periods or school examination preparation periods
- (d) in respect of a School Based Apprenticeship - ensure that the Subsidised Training delivered to the Enrolled Student in the Approved Qualification will allow the Enrolled Student to complete stage one of the apprenticeship specified in the relevant Vocational Training Order and the school based component of the Training Plan by the end of the HSC school year
- (e) in respect of a School Based Traineeship - ensure that the Subsidised Training delivered to the Enrolled Student in the Approved Qualification will allow the Enrolled Student to complete the traineeship specified in the relevant Vocational Training Order and the school based component of the Training Plan by the end of the HSC school year
- (f) ensure that the Enrolled Student is named on a Training Contract which has been approved and/or registered by the Department
- (g) inform the school if the Enrolled Student does not successfully complete any of the Units of Competency they are delivering for the HSC program as listed in the Training Plan
- (h) inform the school of the Units of Competency successfully completed by the Enrolled Student as part of the school-based component of the Subsidised Training, which contribute to the student's HSC as listed in the Training Plan, and
- (i) comply with the Fee Administration Policy (there is a specific one for the School Based Apprenticeships and Traineeships Program).

The Provider will, at no additional cost to the Department or the School Based Apprentice or School Based Trainee, comply with:

- (a) any reasonable request made of it by the Department to supply information to a school or the Board of Studies in connection with any school based apprenticeship or traineeship, as provided in the Department of Education's Guidelines for School Based Apprenticeships and Traineeships (www.sbatinnsw.info)
- (b) any reasonable direction by the Department, a school or the Board of Studies in connection with the School Based Apprentice's or School Based Trainee's candidature of the HSC; and
- (c) the following policies and guidelines:
 - (i) Assisting Students with Learning Difficulties
 - (ii) Workplace Learning Policy for Secondary Students in Government Schools and TAFE NSW RTOs
 - (iii) Protecting and Supporting Children and Young People Policy, and
 - (iv) Working with Children Check Policy

found at www.det.nsw.edu.au/policiesinter/category.do?level=schools and www.training.nsw.gov.au/aacs/advice_instructions/school_based_app_tr.html and as may be amended, revoked, varied or substituted from time to time.

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