



Government of **Western Australia**  
Department of **Training**  
and **Workforce Development**

D16/0111473

# **VET (WA) MINISTERIAL CORPORATION PURCHASE OF TRAINING SERVICES**

## **GENERAL PROVISIONS (CONDITIONS OF CONTRACT)**

**FOR**

## **ENTITLEMENT AND PARTICIPATION EQUITY PROGRAMS DTWD239S2016**

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**JULY 2016 (Version 1.0)**

## TABLE OF CONTENTS

1	DEFINITIONS AND INTERPRETATION .....	5
1.1	Definitions in Request.....	5
1.2	Definitions .....	5
1.3	Interpretation .....	18
1.4	Government Policy .....	19
1.5	Corporation's Discretion .....	19
2	FORMATION AND CONTENTS OF CONTRACT .....	20
2.1	Formation of a Contract.....	20
2.2	Constitution and Precedence of Contract Documents.....	20
3	SERVICES.....	21
3.1	Services – Term .....	21
3.2	Services – Further Term.....	21
3.3	Variations .....	21
3.4	Panel Arrangement.....	21
3.5	Transition Out.....	22
4	SERVICE PROVIDER'S OBLIGATIONS.....	22
4.1	Service Provider's General Obligations .....	22
4.2	Quality Standards/Legislation/Policies.....	23
4.3	Buy Local .....	25
4.4	Registration and Scope to Deliver .....	25
4.5	Service Provider's Expenses and Equipment .....	25
5	NOTIFIABLE INCIDENT .....	25
6	LIABILITY.....	25
7	INDEMNITY .....	26
8	CONFLICT OF INTEREST.....	26
9	SERVICE REQUIREMENTS.....	26
9.1	Funded Training List.....	26
9.2	Inability to Provide Training Services.....	27
9.3	Restricted Places .....	28
10	REPORTING REQUIREMENTS .....	28
11	ALTERNATIVE FUNDING .....	28
12	SERVICE PAYMENT .....	28
12.1	Payments .....	28
12.2	Invalid Enrolment.....	29
12.3	Overpayment and Underpayment.....	29

**GENERAL PROVISIONS (CONDITIONS OF CONTRACT)**

12.4	Failure to Pay .....	30
12.5	Right to Request Further Details.....	30
13	RECORDS .....	30
13.1	Record Keeping.....	30
13.2	Survival of Clause.....	31
14	AUDITS.....	31
14.1	Contract Audits.....	31
14.2	Spot Contract Audits.....	31
14.3	Regulator Audits.....	32
15	MEASURING PERFORMANCE.....	32
15.1	Performance Criteria .....	32
15.2	Unsatisfactory performance.....	32
15.3	Complaints .....	32
16	INSURANCE .....	33
16.1	Insurance Requirements.....	33
16.2	Failure to Prove Insurance.....	33
16.3	Incidents and Claims .....	33
16.4	Continuing Obligations .....	33
16.5	No Limitation of Other Liabilities .....	34
17	PUBLIC DISCLOSURE AND CONFIDENTIALITY .....	34
17.1	Disclosure .....	34
17.2	Disclosure of Offer Information .....	34
17.3	Auditor General .....	34
17.4	Release.....	35
17.5	Confidentiality.....	35
17.6	Survival .....	35
18	SHARING OF INFORMATION .....	35
19	INTELLECTUAL PROPERTY RIGHTS TO BE OWNED BY THE CORPORATION ..	36
20	PUBLICITY .....	36
21	COOPERATION WITH OTHER SERVICE PROVIDERS.....	36
22	ASSOCIATES.....	36
22.1	Associates Generally.....	36
22.2	Specified Personnel.....	37
22.3	Awards & Workplace Agreements .....	37
22.4	Police Clearance .....	37
22.5	Working with Children.....	37
23	GENERAL REPRESENTATIONS AND WARRANTIES .....	38

**GENERAL PROVISIONS (CONDITIONS OF CONTRACT)**

23.1	Service Provider’s General Representations and Warranties .....	38
23.2	General Representations and Warranties Made Continuously.....	38
24	DEFAULT, TERMINATION AND SUSPENSION.....	38
24.1	Consequences of Event of Default .....	38
24.2	Recommencement of Service Payment.....	39
24.3	Suspension at Any Time.....	39
24.4	Ending of Suspension.....	39
24.6	Consequences of Termination.....	39
25	FORCE MAJEURE .....	40
25.1	Notification .....	40
25.2	Entitlement of the Affected Party .....	40
25.3	Implications of a Force Majeure Event.....	40
25.4	Effect of a Force Majeure Event .....	40
25.5	Termination .....	41
26	ADDITIONAL CLAUSES .....	41
27	NOTICES .....	41
27.1	Notices Generally .....	41
28	NOTICES SENT BY EMAIL .....	42
29	ASSIGNMENT, NOVATION.....	42
29.1	Subcontracting .....	43
30	DISPUTE RESOLUTION .....	44
31	MISCELLANEOUS.....	44
31.1	Waiver.....	44
31.2	Entire Contract .....	45
31.3	Rights are Cumulative .....	45
31.4	Further Assistance.....	45
31.5	Relationship.....	45

# 1 DEFINITIONS AND INTERPRETATION

## 1.1 Definitions in Request

Unless the context otherwise requires, terms which are defined in the Request have the same meaning when used in these General Provisions.

## 1.2 Definitions

In these General Provisions and Business Rules, unless the context otherwise requires:

**Accredited Course** means a structured program of training consisting of a number of Units of Competency or Modules, leading to the award of a certified Qualification. An Accredited Course is utilised when no endorsed Training Package Qualification is available to meet training needs.

**Apprentice** means a person who is named in a training contract as the person who will be trained under the contract, whether the person is termed an apprentice, a trainee, a cadet, an intern or some other term.

**Apprenticeship** means a formal Training Contract between an employer and employee for the purpose of the employee attaining a nationally recognised qualification in a traditional trade listed in the Classification of prescribed VET qualification as an Apprenticeship.

**Apprenticeship Office** means the Business Unit within the Department of Training and Workforce Development (VET (WA) Ministerial Corporation) responsible for regulating and administering the Western Australian Apprenticeship and Traineeship system pursuant to Part 7 of the VET Act and its corresponding VET Regulations.

**Apprenticeship Policy Guidelines** means the current Apprenticeship Policy published through the Apprenticeship Office website:

<http://www.dtwd.wa.gov.au/employeesandstudents/apprenticeshipoffice/Pages/default.aspx>

**AQTF** means the Australian Quality Training Framework.

**ASQA** means the Australian Skills Quality Authority established under the *National Vocational Educational and Training Regulator Act 2011*.

**Associates** means the Service Provider's officers, agents, advisers, consultants, contractors, representatives, nominees, licensees, invitees and employees, and volunteers used by the Service Provider in carrying out the Services.

**Auditor General** means the State's Auditor General.

**AVETMISS** means the Australian Vocational Education and Training Management Information Statistical Standard - national standard for the collection and analysis of VET information throughout Australia.

**Business Day** means any working day but not a weekend day or public holiday in Perth, Western Australia.

**Business Rules** means the Corporation's instructions to Service Providers relating to the administration and management of the Contract to deliver

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

VET training in Western Australia.

**Broker** means an organisation approved by the Corporation to refer students to training offered by Panel Members and are published on the Corporations website.

**CALD** means Culturally and Linguistically Diverse group.

**Calendar Year** means the year in which training delivery and/or assessment takes place for contracted programs of study.

**Commonwealth** means Commonwealth of Australia.

**Confidential Information** means information in respect of the Contract that:

- (a) is by its nature confidential; or
- (b) is specified to be confidential in the Contract; or
- (c) the Service Provider knows or ought to know is confidential.

**Contract** refers to the Contract between the Corporation and the Service Provider that comprises of the documents listed in clause 2.2.

**Contract Commencement Date** means the date specified as such in the Contract.

**Contract Documents** means the documents listed in clause 2.2.

**Contracted Program of Study** or **CPS** means a course or training program funded under the Contract.

**Copyright Act** means the *Copyright Act 1968 (Cwth)*.

**Credit Transfer** means credit granted to a student for a Unit of Competency (UoC) already successfully completed.

**Corporation** means the VET (WA) Ministerial Corporation under the *Vocational Education & Training Act 1996*.

**Corporation Representative** means a person or an officer's position nominated by the Corporation as its representative and identified as such in the Contract.

**Course** has the same meaning as Accredited Course.

**Demographics** mean the quantifiable statistics of the students including and not limited to gender, race, ethnicity, disability, CALD and age.

**End** means Expiry or Termination.

**Enrolment** means a valid registration of a Student against a UoC.

**Event of Default** means the occurrence of any one of the following events:

- (a) the occurrence of a Serious Incident; or
- (b) the occurrence of a Serious Contract Management Issue; or
- (c) the Service Provider breaches an obligation under the Contract that cannot be remedied; or

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (d) the Service Provider breaches any other obligation under the Contract and that breach is not remedied within the period of time specified in the notice (being no more than 10 Business Days at any event) after the Corporation gives a notice to the Service Provider requiring the breach to be remedied; or
- (e) a representation or warranty made by the Service Provider under the Contract is or becomes untrue or is breached; or
- (f) an Insolvency Event occurs in respect of the Service Provider; or
- (g) the Service Provider ceases, or threatens to cease, to carry on business; or
- (h) it becomes unlawful for the Service Provider to perform its Obligations; or
- (i) the Service Provider or any person included in the Specified Personnel is convicted of a criminal offence that is punishable by imprisonment or detention; or
- (j) if the Service Provider is a body corporate, the Service Provider is convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, \$10,000; or
- (k) if in the reasonable opinion of the Corporation, the reputation of the Corporation or the State is, or is likely to be damaged by any act or omission of the Service Provider; or
- (l) if this Contract or any aspect of it is for whatever reason void, voidable or invalid; or
- (m) the Service Provider has persistently breached this Contract by not complying with any requirement, request, condition, direction or notice given or issued by the Corporation under this Contract; or
- (n) the Service Provider has been found non-compliant or sanctioned by the Regulator and the non-compliances or sanction have been deemed by the Department to pose a risk to the Service Providers capacity to deliver training; or
- (o) any event, circumstance, happening or state of affairs which justifies the Corporation terminating this Contract in good faith and/or on public policy grounds.

**Evidence of Fees and Charges** means the documentation in either hard or soft copy which is used to verify that the Fees and Charges have been applied according to:

- (a) the then current Corporation's VET Fees and Charges Policy requirements including and not limited to the specified enrolment invoicing and receipt requirements contained in this Policy; and
- (b) any law and other legal requirements relevant to these Services or this Contract.

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

**Evidence of Participation** means the documentation either hard or soft copy which is used to verify that a training or assessment activity has occurred and met the current specified standards in the Western Australian VET Enrolment Data Standard.

**Executive Officer**, in relation to a registered training organisation, means:

- (a) a person, by whatever name called and whether or not a director of the organisation, who is concerned in, or takes part in, the management of the Service Provider; or
- (b) if the Service Provider is a body corporate:
  - (1) a person who, at any time during a period for which the Service Provider is registered, owns 15% or more of the Service Provider; or
  - (2) a person who, at any time during a period for which the Service Provider is registered, is entitled to receive 15% or more of dividends paid by the Service Provider; or
- (c) an administrator, receiver and manager, or liquidator of the Service Provider (other than a receiver and manager, or liquidator, appointed by a court); or
- (d) if the Service Provider is a body corporate – the administration of a deed of company arrangement executed by an Service Provider; or
- (e) if the Service Provider is a body corporate – a trustee or other person administering a compromise or arrangement made between the Service Provider and another person or other persons.

**Existing Material** means a work (as defined in the *Copyright Act*), a product or any other material, which satisfies all of the following criteria:

- (a) the work, product or other material:
  - (i) was created prior to the commencement of the Term; or
  - (ii) is to be created during the Term outside the scope of the Contract, including any subsequent modifications to such work, product or material;
- (b) the Intellectual Property Rights in the work, product or other material are not owned by the State or the Corporation; and
- (c) the work, product or other material is required specifically for, or in connection with, the Services or Records.

**Expiry** means the end of the Contract due to expiration of the contract term (as opposed to Termination) or under clause 25.5.

**Financial Records** means all books, records, monetary forms, vouchers and other records of any kind from which accounts have been compiled relating to the Service Payment and the Training Services including all documents regarding revenues and expenses arising from or in connection with the provision of the Training Services.



## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

**Force Majeure Event** means an event that prevents a Party from performing its Obligations, or receiving the benefit of the other Party's Obligations, in whole or in part, under the Contract and which is an unforeseeable event and beyond the reasonable control of the affected Party including:

- (a) acts of God;
- (b) explosion or fire;
- (c) cyclone (of any category);
- (d) flood;
- (e) landslides;
- (f) earthquake or tsunami;
- (g) volcanic eruption;
- (h) high impact of vehicles or aircraft;
- (i) failure of a public utility;
- (j) epidemic or pandemic;
- (k) civil unrest;
- (l) industrial action (other than industrial action limited to the affected party or a subcontractor);
- (m) war (including civil war);
- (n) acts of terrorism; and
- (o) radioactive or biological contamination

but does not include:

- (p) any occurrence which results from the wrongful or negligent act or omission of the affected party or the failure by the affected party to act in a reasonable and prudent manner; or
- (q) an event or circumstance where the event or circumstance or its effects on the affected party or the resulting inability of the affected Party to perform its Obligations, or receive the benefit of the other Party's Obligations, could have been prevented, overcome or remedied by the exercise by the affected Party of the standard of care and diligence consistent with that of a reasonable and prudent person; or
- (r) the failure of a third party to fulfill a contractual commitment with the affected Party other than as a result of any of items (a) to (o) inclusive above.

**Funding** means funding allocated to the Service Provider under the Contract.

**Funding Schedule** means a schedule to the Contract that sets out details of the Training Services provided by the Service Provider and the funding payable by the Corporation for each CPS listed in the Funding Schedule.

**Funded Student** means any student who meets the student eligibility criteria in the Contract.

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

**GST** means the goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999 (Cwth)* (GST Act).

**Income Contingent Loan** or **ICL** means a loan provision funded by the Commonwealth Government and available to students who enroll in certain courses including diploma and advanced diploma courses with a Training Provider approved by the Commonwealth Government to offer ICLs.

**Insolvency Event** means the occurrence of any of the following events:

- (a) (informs creditors) a corporation informs its creditors generally that it is insolvent;
- (b) (receiver) a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of any of the assets of a corporation;
- (c) (execution) a distress, attachment other execution is levied or enforced upon or against any assets of a corporation and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days;
- (d) (voluntary liquidation) a corporation enters into voluntary liquidation;
- (e) (application) an application is made for the administration, dissolution or winding up of a corporation which application is not stayed within 10 Business Days of being made;
- (f) (winding up) an order is made for the administration, dissolution or winding up of a corporation;
- (g) (resolution) a resolution is passed for the administration or winding up of a corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Corporation;
- (h) (arrangement or composition) a corporation enters, or resolves to enter into or has a meeting of its creditors called to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Corporation;
- (i) (statutory demand) a corporation fails to comply with, or fails to apply to have set aside, a statutory demand within 10 Business Days of the time for compliance, or;
  - (i) a corporation applies to have a statutory demand set aside within 10 Business Days of the time for compliance;
  - (ii) the application to set aside the statutory demand is unsuccessful; and
  - (iii) the corporation fails to comply with the statutory demand within 5 Business Days of the order of the court dismissing the application;

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (j) (execution levied against it) a corporation has execution levied against it by creditors, debenture holders or trustees or under a floating charge or circulating security interest; or
- (k) (insolvency – corporation) a corporation is unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable legislation (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute);
- (l) (insolvency – persons) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001 (Cwth)* or action which could result in that event;
- (m) (death, etc.) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; and
- (n) (analogous matters) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Intellectual Property Rights** means:

- (a) patents, copyright, rights in circuit layouts, registered designs, trademarks and the right to have confidential information (being information) which is capable of being protected by way of an action for breach of confidence) kept confidential; and
- (b) any application or right to apply for registration of any of those rights, but does not include Moral Rights.

**Invalid Enrolment** or **IE** means an audited enrolment in an audited Unit of Competency for which the Service Provider cannot provide satisfactory proof of student participation that meets the requirements of the *Western Australian VET Enrolment Data Standard*.

**Letter** means a letter signed by the Corporation that:

- (a) accepts the Offer; and
- (b) may also specify:
  - (i) any amendments to the General Provisions or the Contract or both; or
  - (ii) any other terms and conditions which are to form part of the Contract, which the Corporation and the Service Provider have agreed.

**Lodgement** means an electronic report of CPS outcomes made through the Corporation's online reporting system currently called RAPT.

**Material** means Existing Material and New Material.

**Module** means a standard against which a student enrolls and is assessed as a component of an Accredited Course.

**Moral Rights** has the same meaning as in the Copyright Act.

**New Material** means anything created by the Service Provider under the Contract in which Intellectual Property Rights subsist.

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

**Nominal Hours** means the nominal hours for a Qualification or Unit of Competency as listed on the State Training and Recognition Program (**STARS**) for an Accredited Course or Module.

**Notifiable Incident** means the occurrence of any of the following:

- (a) a Serious Incident;
- (b) any referral of any matter or complaint regarding any Service User, the Services or the Service Provider generally, to any regulatory or investigative body;
- (c) the charging of the Service Provider or an Associate with a criminal offence involving a sexual offence, dishonesty or breach of trust or which otherwise may result in imprisonment of that person;
- (d) serious verbal or written complaints received in relation to the Service Provider generally; and
- (e) any event which may cause adverse publicity including but not limited to if the Service Provider is contacted by the media for comment on any aspect of the Services or involving a Service User.

**Notice of Acquittal** is a confirmation that the terms of the Contract have been met in relation to one or more CPS.

**NVR** means the National VET Regulator.

**Obligation** means an obligation or liability under the Contract.

**Offer** means the offer submitted by the Service Provider in response to the Request.

**Offer Information** means information submitted by the Service Provider as part of or in relation to its Offer.

**Option** means the option under clause 3.2(a).

**Other Service Recipient** means a person who receives Training Services from a Service Provider.

**Outcomes** mean training outcomes.

**Outcomes Codes** refers to the codes detailed in the Business Rules.

**Outcome Codes Achieved** means the outcomes reported by the provider for each unit of competency or module undertaken by each Student. Each outcome is detailed in the Business Rules.

**Panel** means the panel of Panel Members resulting from the Request and any subsequent variations.

**Panel Contract** means a Contract which forms part of an arrangement for the supply of services by Panel Members to the Corporation.

**Panel Arrangement** means the arrangement for supply of services by Panel Members to the Corporation, of which the Contract forms part of.

**Panel Member** means a Service Provider appointed to the Panel.

**Party** means a party to the Contract.

**Parties** means both parties to this Contract.

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

**Payment** means payment made against the outcomes reported in a Lodgement for eligible students and programs set out in the Contract.

**Payment Schedule** means the schedule for payment of the Service Payment set out in the Contract.

**Post Course Report** means a report provided by the Service Provider to the Corporation detailing the employment, education or training status of the student post course completion.

**Pre-Apprenticeships in Schools** means a program that allows students in Years 11 and 12, who are considering an apprenticeship after completing school, to undertake a trade specific pre-apprenticeship.

**Premises** means any premises which the Service Provider must attend or to which the Service Provider has access in order to provide the Services but does not include premises owned or occupied by the Service Provider.

**Private Training Provider** or **PTP** means a Registered Training Organisation (RTO) other than a WA TAFE College or other institution that receives direct profile funding from the Corporation.

**Program** refers to a funded program for the procurement of a defined type of training delivery, for example, Apprenticeship training.

**Public Authority** refers to government agencies as defined under the *State Supply Commission Act (WA) 1991*.

**Qualification** means a nationally endorsed qualification or an accredited course.

**Quality Indicators** (AQTF or NVR) refers to the quality indicators including and not limited to Learner Engagement, Employer Satisfaction and Competency Completion.

**Quality Standards** means the standards agreed as such by the Parties in the Contract.

**Recipient Created Tax Invoice** or **RCTI** means a Recipient Created Tax Invoice as defined in the *Goods and Services Tax Act 1999*.

**RAPT** or **Resource Allocation Program for Training** means the Corporation's current internet based system that can be accessed by a contracted RTO to enable lodgement of reports, validation of data and to obtain information relating to payments.

**Recognition of Current Competencies** or **RCC** means an assessment process against UoCs that, under specific licensing requirements, are required to be periodically reassessed. RCC is granted where a Student has already successfully completed the UoCs under assessment.

**Recognition of Prior Learning** or **RPL** means an assessment process resulting in the formal recognition of competencies acquired through formal or informal training, work experience and life experience. RPL is granted where a Student has not previously successfully completed the UoCs.

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

**Records** means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records correspondence with the supply of the Services, whether or not containing Confidential Information, and however such records and information are held stored or recorded.

**Region** means location.

**Registered Training Organisation** or **RTO** means a Training Provider registered with the Training Accreditation Council (**TAC**), Victorian Registration and Qualifications Authority (**VRQA**) or Australian Skills Quality Authority (**ASQA**).

**Regulator** (Registration Authority) currently refers to the Training Accreditation Council (**TAC**), the Victorian Registration and Qualifications Authority (**VRQA**) or the Australian Skills Quality Authority (**ASQA**).

**Regulator's Requirements** refers to the requirements of the State VET Regulator (TAC) and those of the national VET Regulator (ASQA) in the NVR standards. Requirements of the Victorian VET Regulator (VRQA) are in the AQTF Standards.

**Related RTO** means a registered training organisation that is any of the following:

- a) a body corporate that would be a 'related body corporate' within the meaning of the Corporations Act 2001 (Cth) in relation to the RTO;
- b) an entity that controls the RTO;
- c) an entity that:
  - (i) owns the RTO (in whole or in part), or
  - (ii) is owned (in whole or in part) by another entity that owns the RTO (in whole or in part);
- d) an entity with whom the RTO has an arrangement, Contract or understanding for the purpose of providing the Training Services;
- e) an entity one of whose:
  - (i) Executive Officers;
  - (ii) High Managerial Agents;is also:
  - (iii) an Executive Officer;
  - (iv) a High Managerial Agent; or
  - (v) a spouse or other relative of a person referred to in iii) or iv);of:
  - vi) the RTO; or
  - vii) an entity that controls the RTO; or
  - viii) an entity that owns the RTO (in whole or in part);

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- f) an entity one of whose:
  - i) Executive Officers; or
  - ii) High Managerial Agents;

exercises a degree of control or influence over the management or direction of the RTO.

**Remote Mode of Delivery** means a form of training delivery such as remote live electronic conferencing, video/television based learning and online learning but does not include local face-to-face delivery.

**Request** means the Request issued by the Corporation in respect of the Services, which, for the avoidance of doubt, incorporates the Process Terms and Conditions Document.

**Response** means online Response to the Request, which contains details of the Training Services, offered by the Service Provider.

**Restricted** means a limited number of places for the Program as specified in the Contract.

**Right** includes interest, right, power or entitlement in or under this Contract.

**RTO** means Registered Training Organisation under the *VET Act*.

**RTONet** means the electronic system that can be accessed by an RTO to gain information, which includes Registration scope, training product information and submission of an Offer (Response).

**Schedule** means a Schedule to the Contract including revised or additional Schedules added through variations to the Contract.

**School Based Apprenticeship** or **SBA** means an Apprenticeship arrangement undertaken by a Student while still in school.

**School Based Traineeship** or **SBT** means a Traineeship arrangement undertaken by a Student while still in school.

**Scope** means the delivery scope registration issued to an RTO by the Regulator.

**Serious Contract Management Issues** means an issue or issues of non-compliance or business activity that is deemed by the Corporation to be a risk to either the students or their training outcomes or the integrity of the Program.

**Serious Incident** means an event which:

- (a) results in or is likely to result in injury, illness or death of a Service User or Other Service Recipient or compromises the safety or welfare of a Service User or Other Service Recipient; or
- (b) causes or is likely to cause a serious risk to the health, safety or welfare of a Service User or Other Service Recipient, where such event involves an actual or perceived breach of duty of care of the Service Provider.

**Service Payment** means the amount or amounts specified in, or the amount determined by the formula set out in, the Contract.

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

**Service Provider** means the successful Respondent and where the context permits or requires a reference to the Service Provider includes Associates.

**Service Provider Representative** means the legally responsible officer listed on training.gov.au (TGA) website. The Service Provider may request to nominate an alternative officer as its representative by providing in writing the name, position and contact details (address, phone and e-mail) of the officer to the Corporation.

**Service User** means a person who accesses Services from the Service Provider under this Contract.

**Service User Information** means all information relating to a Service User.

**Services** means those services which the Parties agree in the Contract are to be provided under the Contract.

**Skills Recognition** is a term that, for the purposes of the Contract, is synonymous with RPL.

**STARS** means State Training and Recognition System.

**State** means the State of Western Australia.

**Statement of Attainment** or **SOA** means a statement issued by an RTO confirming that one or more nationally recognised UoCs have been completed.

**Student** means an Apprentice, Trainee or other person provided with Training Services.

**Student Commencing End Date** means the Student commencing end date specified in the Funding Schedule of the Contract.

**Student Curriculum Hours** or **SCH** means the nominal hours for each UoC of a student's enrolment.

**Subcontracting** means an arrangement where the Service Provider defers day-to-day responsibility for all or part of the material operative or administrative functions of the Service Provider of the management and conduct of training delivery and/or assessment activities to another individual or organisation. This does not include contracts of employment with individual trainers.

**TAC** means the Training Accreditation Council of Western Australia.

**Term** means, subject to clauses 3.2 and 25, the period specified as such in the Contract, commencing on the Contract Commencement Date, and includes any extension thereof.

**Termination** means the ending of this Contract under clause 24.1 or by repudiation (or acceptance thereof).

**Total SCH** means the maximum SCH allocated for a funded CPS.

**Trainee** means the same as an apprentice.

**Training Activity End Date** means the training activity end date specified for the CPS in the Funding Schedule of the Contract.



## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

**Traineeship** means a formal Training Contract between an employer and employee for the purposes of the employee attaining a nationally recognised qualification in a non-trade industry area listed in the classification of prescribed VET qualification as a Traineeship

**Training Arrangement** means a Contract between the Service Provider and another party that will provide some of the Training Services. Training Arrangement has the same meaning as subcontracting.

**Training Contract** means a legally binding Contract between an employer and employee for the training of apprentices and trainees leading to a nationally recognised qualification.

**Training Course** or **Training Program** is a qualification or Accredited Course or a Statement of Attainment comprising one or more UoCs or Modules.

**Training Delivery** means the Training Services that are to be provided under the Contract.

**Training Package** means a set of nationally endorsed standards and qualifications that are used for the delivery of training and assessment against these qualifications.

**Training Plan** means the training delivery and assessment strategy to be undertaken throughout the Apprenticeship and Traineeship Training Contract. It is developed by the nominated training provider in accordance with the *VET Regulations* and in negotiation with the parties to the Training Contract.

**Training Services** means the Training Services listed in the Contract.

**Unique Student Identifier** or **USI** is the 10-character randomly generated code issued by the Student Identifiers Registrar in accordance with the *Student Identifiers Act 2014 (Cwth)*, which has been verified by the RTO or an agency representing the RTO, as belonging to the individual whose training activity it is reported against.

**Unit Enrolment** means the enrolment of a Student in a UoC.

**Unit, Unit of Competency** or **UoC** means a competency standard against which a Student enrolls and is assessed. A Unit of Competency is a component of a Training Package. References to Units of Competency include Modules from accredited Courses.

**Variation** means a written variation to the content of the Contract issued by the Corporation.

**VET** means Vocational Education and Training.

**VET Act** means the *Vocational Education and Training Act 1996 (WA)*.

**VRQA** means the Victorian Registration and Qualifications Authority

**WA** means the State of Western Australia.

### 1.3 Interpretation

In these General Provisions, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (c) a reference to a gender includes other genders;
- (d) a reference to a person includes a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (f) if the Service Provider consists of a consortium of two or more persons whether by way of partnership or joint venture or otherwise, then;
  - (i) an Obligation imposed on the Service Provider binds each person comprising the Service Provider jointly and severally;
  - (ii) each person who comprises the Service Provider agrees to do all things necessary to enable the Obligations imposed on the Service Provider to be undertaken; and
  - (iii) the act of one person who comprises the Service Provider binds the other persons who comprise the Service Provider;
- (g) a Contract, representation or warranty on the part of or in favour of two or more persons binds, or is for the benefit of, them jointly and severally;
- (h) no rule of interpretation applies to the disadvantage of the Corporation on the basis that the Corporation put forward these General Provisions;
- (i) "includes" in any form is not a word of limitation;
- (j) the meaning of "or" will be that of the inclusive "or", meaning one, some or all of a number of possibilities;
- (k) a reference to these General Provisions or another instrument or document (including any policy) includes all variations and replacements of any of them;
- (l) a reference to a document published at an electronic address is to the document as published at that electronic address on the date of first public issue of the Request;
- (m) a reference to a clause is a reference to a clause of these General Provisions; headings are included for convenience only and do not affect the interpretation of the General Provisions;

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (n) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (o) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (p) a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as email correspondence and facsimile transmission;
- (q) a reference to a liability includes all Obligations to pay money and all other losses, costs and expenses of any kind;
- (r) a reference to a month is to a calendar month and a reference to a year is to a calendar year;
- (s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (t) if a date is stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (u) a reference to money means Australian dollars;
- (v) a reference to time means the time observed by the general community in Perth, Western Australia.
- (w) a reference to a document (including this Contract) includes its Schedules and Annexures;
- (x) a reference to a thing includes each part of that thing;
- (y) a reference to a policy (either by name, or not) is a reference to a policy of the Corporation or State (as the case may be); and
- (z) a reference to a contractor means a contractor or subcontractor at any tier.

### 1.4 Government Policy

If any obligations relating to Government procurement policies are specified in the Contract and Business Rules, then those obligations form part of the Contract and the Service Provider must comply with them.

### 1.5 Corporation's Discretion

- (a) Whenever the Corporation (including when acting through the Corporation Representative) has any rights or power under the Contract, including the provision of consents and approvals, the Corporation may:
  - (i) exercise its right or power in its sole and absolute discretion;
  - (ii) give reasons but does not have to; and
  - (iii) impose such conditions as it determines.

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (b) The Service Provider agrees that any failure by the Service Provider to comply with or perform a condition imposed by the Corporation under clause 1.5 (a)(iii) will constitute a breach of a material obligation of the Service Provider under the Contract.

## **2 FORMATION AND CONTENTS OF CONTRACT**

### **2.1 Formation of a Contract**

The Contract comes into existence if and when the Service Provider receives the Letter.

### **2.2 Constitution and Precedence of Contract Documents**

2.2.1 The following documents constitute a contract between the Parties. Subject to what follows in this clause 2.2, the Contract Documents shall be read in the following order in the precedence:

- (a) the Letter;
- (b) the Offer (Service Provider's Response);
- (c) the Request, the Process Terms & Conditions (in the Request) and any Addenda;
- (d) Business Rules; and
- (e) these General Provisions.

The Contract Documents bind the Parties and are enforceable in accordance with their terms. Each of the Contract Documents supplements and must be read with each of the other Contract Documents.

2.2.2 Where any inconsistency occurs between the provisions of two or more Contracts Documents, the Contract Document lower in the order of precedence shall where possible be read down to resolve the inconsistency. If the inconsistency remains incapable of resolution that way, the inconsistent provisions shall be severed from the Contract Document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions.

2.2.3 Where the Offer contains a departure from the Contract details or the General Provisions, that departure will not apply and the relevant part of the Contract details or the General Provisions (as the case may be) will take precedence unless that departure or variation is expressly accepted by the Corporation in the Letter.

### **3 SERVICES**

#### **3.1 Services – Term**

The Service Provider agrees to provide the Services for the Term in accordance with the Contract.

#### **3.2 Services – Further Term**

- (a) The Corporation has the option or options to extend the Term for the period or periods (as applicable) as specified in the Request at the sole discretion of the Corporation.
- (b) If the Corporation wishes to exercise the Option, then the Corporation must give the Service Provider a notice:
  - (i) by the date or dates specified in the Contract; or
  - (ii) if no period is specified in the Contract, at least 20 Business Days before the Expiry, stating that the Contract is to be extended and the period of the extension.

#### **3.3 Variations**

The Contract may only be varied in writing duly executed by both Parties and will come in to effect on the date as written in the variation.

#### **3.4 Panel Arrangement**

Under a Panel Arrangement:

- (a) the Letter of award, and any subsequent Variations, will detail the Contracted Programs of Study that the Service Provider is funded to supply, will be funded in any one year of the Contract;
- (b) subject to Clause 12, a commitment to fund a service is established only if and when an eligible Student chooses the Service Provider, and an Enrolment is effected, and the Service Provider submits a valid Lodgment;
- (c) the Corporation makes no representation that the Service Provider will attract Student Enrolments; and
- (d) the Service Provider acknowledges that, subject to clause 3.4(b):
  - (i) appointment to the Panel does not give the Service Provider an exclusive right to provide Services to the Corporation;
  - (ii) Students may select any other Panel Member;
  - (iii) the Corporation reserves the right to appoint as many Panel Members as it sees fit; and at any time supplement or vary the Panel and any of its qualifications with additional Panel Members;
  - (iv) the Corporation reserves the right at any time to remove a Panel member due to an Event of Default or when no training activity has been reported against contracted programs for a calendar year.

### **3.5 Transition Out**

- (a) Prior to the Expiry or Termination, and subject to any qualification or provision to the contrary in the Contract, the Service Provider will, if requested by the Corporation, assist the Corporation in transferring responsibility for providing the Training Services to an alternative service provider and may include making arrangements for:
  - (i) The transfer of the Student's data to an alternative service provider;
  - (ii) The granting by the Service Provider to an alternative service provider of access to all material developed specifically for the Student as part of the Training Services regardless of the manner of storage.
- (b) The Corporation may request the Service Provider to continue to provide the Services at the Contract terms and conditions if and to the extent requested by the Corporation during the transition out phase.
- (c) This clause 3.5 survives Expiry.

## **4 SERVICE PROVIDER'S OBLIGATIONS**

### **4.1 Service Provider's General Obligations**

The Service Provider must:

- (a) Act in accordance with the Corporation's vocational training policy directions including implementing Government priorities, policies and decisions.
- (b) Act reasonably and in good faith in all matters and not act in any way that could be seen as unethical, reckless, illegal or dishonest conduct or do anything that may bring into disrepute or be detrimental to the Corporation.
- (c) Deliver nationally recognised training in accordance with its scope of registration and the requirements of the accredited course or endorsed national training package and consistent with the Contract, purchasing guidelines, standards and directions issued by the Corporation.
- (d) Commit to excellence in service delivery and maximising outcomes for Students.
- (e) Act in the best interests of Students and with sensitivity to their diverse social, cultural and special learning needs.
- (f) Comply with all the terms and conditions as specified in the Contract including all relevant Schedules.
- (g) Ensure that its framework is comprehensive, accountable and transparent for the delivery of vocational training including ensuring that appropriate compliance, reporting and auditing frameworks, controls and systems are in place.
- (h) Cooperate fully with the Corporation in respect of the administration of the Contract including reporting, meeting and management requirements.

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (i) Provide the Training Services in a proper, timely and efficient manner using the standard of care, skill, diligence and prudence that would reasonably be expected from an expert and experienced provider of Training Services.
- (j) Promptly notify the Corporation if any representation or warranty under clause 23 is breached or becomes untrue.
- (k) Use public funds in a manner that is effective, accountable and consistent with the Contract requirements.
- (l) Ensure that all persons employed or engaged by the Service Provider to provide Training Services to each Student are aware of all Obligations under the Contract as applicable.
- (m) Use its best endeavours to ensure that no Associate causes the Service Provider to breach the Contract.
- (n) Immediately notify the Corporation in writing of any significant changes to its ownership or operations.
- (o) Attend and/or otherwise undertake training and education sessions targeted at achieving improved training outcomes and/or contract performance as prescribed by the Corporation.
- (p) Not advertise, offer or provide incentives or inducements to Students to enroll in Training Courses that could be viewed as seeking a competitive advantage.
- (q) Promptly provide the Corporation with all information and documentation, relating in any way to the Contract, upon written request.

### 4.2 Quality Standards/Legislation/Policies

4.2.1 The Contract is governed by the laws of the State. The Parties irrevocably submit to the exclusive jurisdiction of the courts of the State. The Service Provider agrees to provide the Training Services in accordance with the requirements of the quality standards, current legislation, policies, and guidelines. These shall include:

- (a) *Vocational Education and Training Act 1996;*
- (b) *Vocational Education and Training (General) Regulations 2009;*
- (c) *VET Fees and Charges Policy;*
- (d) *All relevant operational policies of the Corporation including:*
  - (i) *The Apprenticeship policy;*
  - (ii) *School-based apprenticeships policy;*
  - (iii) *Trade Skills Recognition (TSR) policy: RPL for Class A and Class B qualifications;*
  - (iv) *Pre-apprenticeship policy*
  - (v) *Aboriginal School Based Training policy*
  - (vi) *Business Rules;*
  - (vii) *Student Identifier Data Collection and Payment Policy;*

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (e) RTOs Registered through TAC or ASQA must comply with the Standards for Registered Training Organisations (RTOs) 2015;
- (f) RTOs Registered through VRQA must comply with the the AQTF Standards;
- (g) Western Australian VET Enrolment Data Standard;
- (h) State Records Act 2000 (WA);
- (i) Occupational Safety and Health Act 1984; and
- (j) All State and Commonwealth laws relevant to the Contract.

4.2.2 In addition to the above, the Service Provider must comply with the following legislative requirements:

- i. The Service Provider agrees to comply with its obligations (if any) under or arising pursuant to the *Privacy Act 1988 (Cwth)* to the extent relevant to the Contract:
  - (i) such other Commonwealth, State or Territory legislation related to privacy which is relevant to the Contract;
  - (ii) any directions made by a Privacy Commissioner relevant to the Contract;
  - (iii) any privacy procedures stated in the Contract; and
  - (iv) any other reasonable direction relating to privacy which is given by the Corporation.
- ii. If the Service Provider is exempt from compliance with the Privacy Act 1988 (Cwth) because its annual turnover is less than the prescribed threshold, and if the Service Provider is not subject to an approved privacy code, the Service Provider must comply with the National Privacy Principles set out in the Privacy Act 1988 (Cwth) as if it were required to comply with that legislation.
- iii. Equal Opportunity Act 1984 – The Service Provider must select Students in a manner that promotes equity in access to training in accordance with the WA Equal Opportunity Act 1984.
- iv. Disability Services Act 1993 – The Service Provider must, to the extent possible, contribute and report the Corporation's Disability Access and Inclusion Plan in accordance with the Disability Services Act 1993.
- v. Substantive Equality – the Service Provider must give consideration to equal opportunity legislation and promote substantive equality in its practices and service delivery, ensuring that services are sufficiently tailored to meet the needs of WA's diverse community; including persons from Aboriginal and ethnic minority communities.
- vi. Freedom of Information Act 1992 (WA) applies to:
  - (i) the Contract; and
  - (ii) the information held or compiled by the Corporation or the State in relation to the Contract or the Services.



### **4.3 Buy Local**

The Service Provider must, where it is reasonable and feasible to do so, endeavour to use local labour, material and goods and services for its Training Services.

### **4.4 Registration and Scope to Deliver**

- (a) The Service Provider must maintain registration and scope with the Regulator and keep all its details current through the Corporation's online reporting system, RTONet and with the Regulator.
- (b) Where registration as an RTO ceases, the Service Provider must immediately inform the Corporation as soon as practicable.
- (c) If the RTO registration of the Service Provider under applicable legislation is withdrawn, cancelled or otherwise ceases, the Corporation may immediately terminate the Contract by giving written notice to the Service Provider.

### **4.5 Service Provider's Expenses and Equipment**

Unless the Corporation agrees otherwise in writing, the Service Provider:

- (a) must pay all out-of-pocket expenses incurred by the Service Provider in connection with the Contract including travel expenses, accommodation and subsistence expenses; and
- (b) must provide everything necessary to enable it to fully comply with all of its Obligations, subject to the Corporation doing everything that is required on the Corporation's part, under the Contract to enable the Service Provider to so comply.

## **5 NOTIFIABLE INCIDENT**

The Service Provider must notify the Corporation of the occurrence of a Notifiable Incident as soon as possible after it occurs, providing details of the nature of that Notifiable Incident.

## **6 LIABILITY**

- (a) The liability of either Party for breach of the Contract or for any other common law or statutory cause of action arising out of the operation of the Contract will be determined under the relevant law in Western Australia that is recognised, and would be applied, by the High Court of Australia from time to time.
- (b) Other than where the Corporation has repudiated the Contract or damages are not an appropriate remedy, if the Corporation breaches the Contract, then the remedies of the Service Provider are limited to damages.

## 7 INDEMNITY

- (a) The Service Provider shall indemnify the Corporation, the State and all their respective officers, employees and agents against all costs, actions, proceedings, suits, losses, expenses, claims, damages and other liabilities (including, without limitation, legal costs and expenses) suffered or incurred by or made against any of them on account of any:
- (i) breach of the Contract by the Service Provider;
  - (ii) willful, tortious or unlawful act or omission of the Service Provider or any Associate; or
  - (iii) breach of a State or Commonwealth law relevant to the Contract by the Service Provider or any Associate.
- (b) The Service Provider's liability under the indemnity in clause 7(a) will be reduced proportionally to the extent that any costs, losses, expenses, claims, damages or other liabilities result from the negligence of the Corporation, the State or their respective officers, employees or agents.
- (c) The Corporation agrees to use reasonable endeavours to cooperate with the Service Provider, at the Service Provider's cost, in respect of the conduct of any defence, or the Contract of any settlement, of any third party action, suit, claim, demand or proceedings the subject of the indemnity under clause 7(a).

## 8 CONFLICT OF INTEREST

If an actual, potential or perceived conflict of interest arises in respect of the Service Provider, the Service Provider must promptly:

- (a) notify the Corporation that the conflict has arisen and provide full details; and
- (b) take reasonable steps in consultation with the Corporation to remove or manage the conflict.

## 9 SERVICE REQUIREMENTS

The Service Provider agrees to provide the Services in accordance with the Contract. In addition:

### 9.1 Funded Training List

- (a) The Corporation will from time to time publish a Funded Training List of Qualifications for each Program. For each qualification on the Funded Training List the Corporation may specify whether:
- (i) New Enrolments may be taken; and
  - (ii) If relevant, a No New Enrolments Date;

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (b) The Corporation may at any time at its sole discretion publish a variation to the Funded Training List;
- (c) The Funded Training List will be available on the Corporation's website.
- (d) The Corporation may add or remove a condition attached to a Qualification by setting an effective date by which the condition will be varied;
- (e) The Service Provider must not enroll any Students into a Qualification after the No New Enrolments Date notified by the Corporation under this clause; and
- (f) The Corporation will provide the Service Provider with at least thirty (30) days prior written notice of the intent to take any action under clause 9.1.

### 9.2 Inability to Provide Training Services

Where the Service Provider is unable to offer the Training Services specified in the Contract and elects to withdraw from the market, the Service Provider must:

- (a) notify the Corporation in writing within seven (7) days;
- (b) continue to provide the existing delivery where possible prior to the withdrawal date;
- (c) not commence new UoCs that cannot be completed by the time of their withdrawal (must be approved by the Corporation);
- (d) refund the funding received for students that have not completed the UoC, commenced after the notification date;
- (e) generate and issue a qualification, Statement of Attainment (SoA) and academic records to all students where appropriate ; and
- (f) work with the Corporation to find an alternative Service Provider to complete the training. The alternative Service Provider must not be a Related Service Provider unless approved by the Corporation in writing.

Where the Service Provider is unable to offer the Training Services specified in the Contract due to going into Administration or Liquidation, the Service Provider must:

- (a) notify the Corporation in writing within seven (7) days;
- (b) cease training to all students unless otherwise negotiated and approved by the Corporation;
- (c) generate and issue a qualification, SoA and academic record to all students where appropriate;
- (d) work with the Corporation to find an alternative Service Provider to complete the training. The alternative Service Provider must not be a Related Service Provider unless approved by the Corporation in writing.

### 9.3 Restricted Places

- (a) The Corporation may place a restriction or remove allocated places in a Program for a Service Provider by giving the Service Provider:
  - (i) 10 Business Days' written notice as a result of unsatisfactory performance; or
  - (ii) in any other case 30 Business Days' written notice.
- (b) The Corporation may also place a restriction on funded training places available for a program and/or a qualification within a Program for budget or market management purposes (oversupply) by giving the Service Provider 30 Business Days' written notice.
- (c) The Corporation will undertake an annual review of allocated places against all the Service Providers CPS for each calendar year. This allocation will be reduced to the student numbers report in the Service Providers' lodgement received by 31 January of the following year unless otherwise notified by the Corporation.

## 10 REPORTING REQUIREMENTS

The Reporting requirements as described in the Business Rules applies to all program delivery funded under the Contracts unless otherwise specified.

## 11 ALTERNATIVE FUNDING

- (a) The Service provider confirms that, other than the funds provided in the Contract, it has not received other Government funding (including Commonwealth funding) to deliver any of the Training Services in the Contract.
- (b) The Service Provider shall notify the Corporation within seven (7) days if the Service Provider secures funding (either in full or in part) from another source to deliver any of the Training Services as specified in the Contract.
- (c) Upon notification, the Corporation may change the amount payable to the Service Provider under the Contract.

## 12 SERVICE PAYMENT

In addition to the Business Rules regarding Service Payment, the following applies to all program delivery funded under the Contracts unless otherwise specified.

### 12.1 Payments

- (a) The Corporation shall pay the Service Payment to the Service Provider in accordance with the Payment Schedule.

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (b) The Corporation has no obligation to make any payment to the Service Provider unless and until the Training Services have been supplied in accordance with the Contract unless the Contract provides otherwise.
- (c) The Service Payment and the process for making payments may be varied at any time in accordance with the formula or method specified in the Business Rules.
- (d) The Corporation may withhold payments that would otherwise be payable if the Service Provider does not satisfactorily meet any of its Obligations.
- (e) In the event of any non-compliances or sanctions being applied against the Service Provider by the Regulator that is deemed by the Corporation to pose a risk to the training, the Corporation has the discretion to suspend payments until such time when the non-compliances are remedied and/or the sanctions are lifted.
- (f) Payment will only be made within 30 days of a valid Lodgement being received.

### 12.2 Invalid Enrolment

- (a) The Service Provider must return any funds that have been received for any UoC deemed by the Corporation to be an Invalid Enrolment.
- (b) The Corporation may take action against the Service Provider where the Service Provider cannot provide acceptable evidence of Student participation. These actions may include:
  1. non-consideration for future tender processes;
  2. payment arrangements may be changed to reduce the amount paid on commencements of UoCs;
  3. claim back any payments that have been made where contractual obligations have not been met;
  4. payment may be suspended; and/or
  5. the Contract being terminated.

### 12.3 Overpayment and Underpayment

- (a) If during the Term any overpayment or underpayment is identified, an appropriate adjustment will automatically be made in the payment that results from the Service Provider's following month's Lodgement.
- (b) If the Service Provider has no remaining Lodgement and an underpayment amount is identified, the Corporation shall pay the amount to the Service Provider within thirty (30) days. If an overpayment is identified, the Corporation shall supply the Service Provider with an invoice for the amount which the Service Provider shall repay within thirty (30) days. Alternatively, the Corporation may elect to offset the overpayment against the amount payable for the Contract when the Corporation conducts a reconciliation of payments.

## 12.4 Failure to Pay

If demanded by the Corporation, the Service Provider must pay interest on any payment not made by the date required under clause 12.3 (b) or any later date for payment as agreed by the Corporation. Interest under clause 12.4 is to be:

- (a) Calculated from the due date for payment determined under clause 12.3(b) until (but not including) the date of payment (as determined under clause 12.3(b); and
- (b) At the rate specified in the Contract or, if no rate is specified in the Contract, at the rate payable under the *Civil Judgements Enforcement Act 2004* on unpaid Judgements.

## 12.5 Right to Request Further Details

If the Corporation requests, the Service Provider must promptly provide information and documentation sufficient to confirm that the amount specified in an invoice is calculated in accordance with the Contract and is payable.

# 13 RECORDS

## 13.1 Record Keeping

- (a) The Service Provider must store and ensure the security of all relevant records held in its custody. The Service Provider must keep accurate, complete and current records relating to the Contract including:
  - (i) The type of Training Services, including separate tasks, supplied to the Corporation during the Term.
  - (ii) The time that the Service Provider spent providing the Training Services during the Term.
- (b) The name and title of all Associates who provided the Training Services or were responsible for supervising the provision of the Training Services.
- (c) The Service Provider must comply with the directions of the Corporation in relation to the keeping of Records whether those directions relate to the period before or after the expiry of the Term.
- (d) Records must be able to substantiate that Training Services and outcomes claimed for payment have been delivered whilst meeting all contractual obligations.
- (e) The Service Provider must keep all financial, enrolment, participation and assessment records related to the Contract in a way that will enable them to be conveniently inspected by the Corporation.
- (f) The Service Provider shall keep accounting records that allow income and expenditure related to the Contract to be identified separately, that is, by each separate line item.

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (g) The Service Provider must do everything necessary to obtain any third party's consent which is required to enable the Corporation to have access to Records under this clause 13.

### 13.2 Survival of Clause

This clause 13 survives the End by five (5) years.

## 14 AUDITS

### 14.1 Contract Audits

The Corporation may at any time carry out audits including investigations (routine or otherwise), assessments and annual reviews, in respect of the Service Provider's Obligations.

- (a) The Service Provider is to provide all reasonable assistance to the Corporation including and not limited to:
  - (i) access to the Premises and Records; and
  - (ii) meeting with the Service Provider's employees, agents, contractors and Students (where required by the Corporation)

in respect of any audit/s conducted under clause 14.1(a).

- (b) If, as a result of an audit/s conducted under clause 14.1(a), the Corporation determines in the Corporation's reasonable opinion that the Services are not being provided in accordance with the Contract then:
  - (i) the Corporation may direct the Service Provider to take such action(s) as it considers necessary or appropriate to ensure that the Services are provided in accordance with the Contract; and
  - (ii) the Service Provider must, at its own cost, comply with all directions made by the Corporation under clause 14.1(b)(i).

### 14.2 Spot Contract Audits

- (a) The Corporation may conduct spot contract audits on the Service Provider, and where possible, unannounced;
- (b) At the Corporation's request, the Service Provider must provide the information necessary to effectively conduct the spot audits;
- (c) Where following a spot audit, contractual non-compliances are identified that are deemed by the Corporation to place Students' training at risk, the Corporation may invoke actions described in clause 24 which actions may remain in place until the matter has been resolved to the Corporation's satisfaction or the Contract ends.

### 14.3 Regulator Audits

- (a) If the Regulator has conducted an audit on the Service Provider, the Service Provider must send the Corporation a copy of the initial audit report along with any subsequent rectification reports and associated correspondence within 10 days of receipt of the said reports from the Regulator.
- (b) Where the Regulator's findings result in non-compliances deemed by the Corporation to place students' training at risk, no further contract variations will be entertained until the Service Provider is deemed compliant by the Regulator. Please note that the Corporation will not be held responsible or liable (in negligence or howsoever) for any business loss during the period of non-compliance deemed by the Regulator.
- (c) Where the Regulator's decision following the rectification period reveals non-compliances deemed by the Corporation to place the Students' training at risk, this will constitute a breach of Clause 4.2. The Corporation's Rights under this clause 14 are without prejudice to, and do not preclude, the exercise of its other Rights.
- (d) Where the Regulator has issued the Service Provider a sanction or condition related to its rectification, the Service Provider must send the relevant documentation to the Corporation with 10 days of receipt of the said sanction or condition from the Regulator.

## 15 MEASURING PERFORMANCE

### 15.1 Performance Criteria

The Corporation in its review of the Service Provider's performance will assess the Service Provider's performance against the key performance indicators (KPIs) as specified in the Contract.

### 15.2 Unsatisfactory performance

Where the Service Provider's performance is unsatisfactory, the Corporation reserves the right to exercise its rights under clauses 9.3, 12.1 and 24.

### 15.3 Complaints

- (a) The Corporation may investigate any complaint it receives about the Service Provider, from any source, in relation to any matter connected with the Training Services or this Contract.
- (b) If it is considered necessary to conduct an investigation of a complaint received regarding a Service Provider, the Corporation will do so under the terms of the Corporation's *Complaints Management Policy*.
- (c) The Corporation is not required to give the Service Provider notice of the complaint received prior to the Corporation determining to investigate, nor whilst investigating the complaint.



## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (d) The Corporation may investigate the complaint in any manner it determines is appropriate.
- (e) Where the Corporation determines the Service Provider must take remedial action, notice of such requisite remedial action will be served on the Service Provider. The Service Provider must then promptly comply with such notice.

## 16 INSURANCE

### 16.1 Insurance Requirements

The Service Provider must:

- a) take out and maintain the insurances as specified in the Business Rules and any other as specified in the Contract.
- b) give to the Corporation sufficient evidence of the insurances required under clause 16.1 (a) and provide a current certificate of currency of insurance as and when requested by the Corporation.
- c) Maintain any professional indemnity insurance request required under clause 16.1 (a) throughout the Term and for a period of six (6) years after the End.
- d) promptly reinstate any insurance if it lapses or if cover is exhausted provide a copy of the current certificate of currency to the Corporation within 10 days of said insurance been issued not do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim.

### 16.2 Failure to Prove Insurance

If the Service Provider does not comply with clauses 16.1 then without limiting any other remedy available to the Corporation, the Corporation may withhold payments due under the Contract to the Service Provider and/or not consider any contract variations until the Service Provider has so complied.

### 16.3 Incidents and Claims

- (a) If the Corporation or the Service Provider becomes aware of any event or incident occurring which gives rise or is likely to give rise to a claim under any insurance required under clause 16.1, it must as soon as reasonably practicable notify the Corporation or the Service Provider (as applicable) in writing of that event or incident.
- (b) A breach of clause 16.3(a) will not invalidate or otherwise affect any indemnities, liabilities or releases under the Contract.

### 16.4 Continuing Obligations

The Service Provider's obligations under this clause 16 are continuing obligations and survive the End whilst the obligations of the Service Provider under clause 16.1 continue.

### **16.5 No Limitation of Other Liabilities**

Nothing in this clause 16 limits the Service Provider's other Obligations.

## **17 PUBLIC DISCLOSURE AND CONFIDENTIALITY**

### **17.1 Disclosure**

The Service Provider agrees to:

- (a) the disclosure by any person to the Corporation of information concerning the Service Provider for the purpose of the Corporation exercising its rights set out in the Contract or at law;
- (b) the Corporation disclosing any information provided by the Service Provider to the Corporation under or in connection with the Contract to enable the Corporation to meet public disclosure obligations the Corporation may have:
  - i. under any legislation; or
  - ii. under any policy of the Corporation or the State; or
  - iii. in the course of official duties of the State Government Minister responsible for the Corporation; or
  - iv. to satisfy requirements of parliamentary accountability; or
  - v. under annual reporting obligations of the Corporation; or
  - vi. to satisfy any other recognised public requirement.
- (c) The Corporation publicly disclosing the identity of the Service Provider, and the value and terms of the Contract.

### **17.2 Disclosure of Offer Information**

Subject to the other provisions of this clause 17 and to the provisions of the Financial Management Act 2006 and the Auditor General's Act 2006, the Corporation will not make public any part of the Offer or any Offer Information that the Service Provider expressly and reasonably nominates in its Offer as confidential. However, the Corporation may require the Service Provider to withdraw any claim of confidentiality in respect of any part of the Offer or any Offer Information as a condition of acceptance of the Offer.

### **17.3 Auditor General**

- (a) The Service Provider agrees and acknowledges that the powers and responsibilities of the Auditor General under the *Financial Management Act 2006 (WA)* and the *Auditor General Act 2006 (WA)* are not limited or otherwise affected by the Contract.
- (b) The Service Provider must allow the Auditor General, or its authorised representative, to have access to and examine the Service Provider's records concerning the Contract.

#### **17.4 Release**

The Service Provider releases the Corporation from all liability whatsoever (including in negligence or howsoever) for any loss, injury, damage, liability, costs or expense resulting from the disclosure of information about the Service Provider under clauses 17.1 and 17.2 by the Corporation.

#### **17.5 Confidentiality**

The Service Provider must:

- (a) keep Confidential Information confidential.
- (b) not disclose, use or reproduce or distribute to any person Confidential Information except:
  - (i) where necessary (and only to the extent necessary) for the purpose of supplying the Services; or
  - (ii) as authorised in writing by the Corporation; or
  - (iii) to the extent that Confidential Information is public knowledge (other than because of a breach of this clause by the Service Provider); or
  - (iv) as required by any law, judicial or parliamentary body or government agency; or
  - (v) when required (and only to the extent required) to the Service Provider's professional advisors and the Service Provider must ensure that such professional advisers are bound by the confidentiality obligations imposed on the Service Provider under this clause 17.5.
- (c) immediately notify the Corporation if it becomes aware of a suspected or actual unauthorised disclosure, copying or misuse of Confidential Information.
- (d) ensure that each person to whom it discloses Confidential Information (except a person to whom disclosure is legally required) including any Associate, complies with the obligations in clauses 17.5(a), 17.5(b) and 17.5(c).

#### **17.6 Survival**

Clause 17 survives the End.

### **18 SHARING OF INFORMATION**

- (a) The Corporation may disclose to government agencies information (no personal information) including Course and Qualification details, funding details, details of any non-compliance, any action taken by the Corporation under the Contract/s, findings and outcomes of any audits undertaken; and
- (b) The Service Provider consents to the Corporation disclosing information, and if required, will use all reasonable endeavours to assist the Corporation in meeting any of its disclosure obligations.

## **19 INTELLECTUAL PROPERTY RIGHTS TO BE OWNED BY THE CORPORATION**

- (a) The Intellectual Property Rights in all materials supplied by the Corporation in relation to the Contract belongs to the State.
- (b) These materials may only be used by the Service Provider for the purpose of meeting its Obligations and must be returned to the Corporation at the expiry of the Contract where requested to do so.

## **20 PUBLICITY**

- (a) Unless:
  - (i) the Corporation gives its prior written consent or a Public Authority is specified in the Contract Details; or
  - (ii) the Service Provider is required by law to do so, the Service Provider must not use the State Government logo.
- (b) The Service Provider must not make any misleading or inflammatory public statement concerning the Contract.
- (c) The Corporation may use the Contract and the Service Provider's name and logo for reasonable promotional or publicity purposes, but if the Corporation uses the same for such purposes, then the Corporation must acknowledge the role of the Service Provider to the extent that is reasonable in the circumstances.

## **21 COOPERATION WITH OTHER SERVICE PROVIDERS**

- (a) Subject to clause 21(b), the Service Provider must cooperate with any third party service provider appointed by the Corporation where this is necessary to ensure the integrated and efficient conduct of the Corporation's operations. This will include the Service Provider providing such reasonable assistance to other Service Providers as the Corporation may request from time to time, provided that the Service Provider may by prior Contract with the Corporation (which will not be unreasonably withheld) charge for reasonable costs incurred as a direct result of providing such cooperation.
- (b) Nothing in clause 21(a) will require the Service Provider to disclose its Confidential Information to a third party service provider.

## **22 ASSOCIATES**

### **22.1 Associates Generally**

The Service Provider must ensure that all Associates:

- (a) are properly qualified, experienced and suitable for tasks that they are to do;
- (b) hold all necessary permits, licences and authorities required by law; and
- (c) act, in all circumstances and at all times, in a fit and proper manner.

## 22.2 Specified Personnel

Where Specified Personnel are specified in the Contract as being responsible for the performance of key roles or tasks under the Contract, the Service Provider will provide those individuals to fulfill those tasks. If, notwithstanding this obligation, a specified individual is unavailable at any time during the scheduled performance of these key roles or tasks, the Service Provider will promptly advise the Corporation and propose a substitute.

Any substitute Specified Personnel must be approved by the Corporation. The Corporation may not unreasonably withhold its approval of a substitute but for the avoidance of doubt it may give its approval subject to such conditions as it reasonably considers necessary to protect its Rights.

## 22.3 Awards & Workplace Agreements

The Service Provider must ensure that the remuneration and terms of employment of all Associates for the duration of the Contract will be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.

## 22.4 Police Clearance

- (a) The Corporation may request the Service Provider, at any time and from time to time, to obtain and provide it with an Australia-wide police clearance in respect of any Associate.
- (b) The Service Provider must comply with that request within 30 Business Days of such request.
- (c) If any police clearance evidences that any Associate has committed a criminal offence punishable by imprisonment or detention, then the Corporation may, without prejudice to its other rights under the Contract, request the Service Provider to promptly remove that Associate from involvement in the Contract.
- (d) If the Service Provider is requested to remove any Associate under this clause, the Service Provider must, at its own cost, promptly remove that Associate from all involvement in the Contract and arrange for a suitable replacement of that Associate.

## 22.5 Working with Children

- (a) If the Services to be provided by the Service Provider under the Contract involve “child-related work” (as that term is defined in section 6 of the *Working with Children (Criminal Record Checking) Act 2004*) in this clause 22.5, “the Act”) then:
  - (i) the Service Provider must at all times comply, and ensure that all Associates comply, with the provisions of the Act; and
  - (ii) the Corporation may require the Service Provider to immediately remove any Association from the Premises who does not have a current assessment notice.
- (b) A breach of this clause is an irremediable Event of Default.

## **23 GENERAL REPRESENTATIONS AND WARRANTIES**

### **23.1 Service Provider's General Representations and Warranties**

Except where the Service Provider has otherwise disclosed in writing to the Corporation, and the Corporation has given its prior written consent to the matter disclosed, the Service Provider represents and warrants in favour of the Corporation that:

- (a) the Service Provider has no conflict of interest arising out of or in connection with the Contract;
- (b) the Service Provider is properly authorised and has the power to enter into the Contract and perform its Obligations;
- (c) the Service Provider's Obligations are valid and binding and are enforceable against the Service Provider;
- (d) all information provided by the Service Provider to the Corporation in connection with the Contract is complete, up-to-date, true and correct;
- (e) there is no litigation or arbitration, and there are no administrative proceedings including investigation from Australian Crime and Corruption Commission (ACCC), taking place, pending or threatened against the Service Provider which could have a materially adverse effect on the Service Provider's ability to comply with the Contract;
- (f) if the Service Provider is a body corporate, the Service Provider has not been convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, \$10,000; and
- (g) except where lawfully excused under the Contract nothing prevents the Service Provider from complying with any Obligation.

### **23.2 General Representations and Warranties Made Continuously**

The representations and warranties made by the Service Provider under clause 23.1 are taken to be made continuously throughout the Term.

## **24 DEFAULT, TERMINATION AND SUSPENSION**

### **24.1 Consequences of Event of Default**

If an Event of Default occurs, then the Corporation:

- (a) may, after notice to the Service Provider do one, some or all of the following:
  - (i) subject to clause 24.1(b), withhold paying the Service Payment to the Service Provider;
  - (ii) restrict or change the number of student places allocated to the Service Provider;
  - (iii) remove or amend the Service Providers' eligible delivery from designated preferred provider panels;
  - (iv) Suspend variations in all or some Programs; and

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (v) terminate the Contract; and
- (b) will pay the Service Payment on a pro rata basis for Services provided up until the date of the Event of Default subject to the Service Provider meeting the requirements under clause 12 and the Corporation being able to withhold any amount owing to it under any indemnity or other contractual entitlement.

### **24.2 Recommencement of Service Payment**

If the Corporation exercises rights under clause 24.1 (a) (i), the Corporation may in its absolute discretion, recommence payment of the Service Payment if and when satisfied that the relevant Event of Default has been rectified.

### **24.3 Suspension at Any Time**

The Corporation may at any time and from time to time, for any or no reason whatsoever, by notice to the Service Provider suspend all or any part/s of the Contract (except for clauses 5, 6, 7, 8, 16, 17, 20, 22, 23, 24.1, 24.3, 27, 28 and 31). If the suspension lasts for longer than 90 days, either party may then terminate the Contract.

### **24.4 Ending of Suspension**

The Corporation may end the suspension at any given time by notice to the Service Provider. At the end of the suspension, the Rights and Obligations of the parties will recommence.

### **24.6 Consequences of Termination**

- (a) The End does not affect any Rights, liabilities or Obligations of the Corporation or the Service Provider as a result of anything occurring before such End.
- (b) Following receipt of a notice of termination from the Corporation, the Service Provider must, as soon as possible:
  - cease all training for existing students;
  - not commence any further students, unless otherwise notified by the Corporation; and
  - issue statements of attainment and/or qualifications to all students where appropriate.
- (c) As soon as is practicable after termination of the Contract under clause 24.1(a)(v), the Service Provider must:
  - (i) Where applicable, assist the Corporation to transfer Students to another Service Provider to continue their training.
  - (ii) Co-operate with the Corporation as reasonably required by the Corporation to minimize any loss, damage or inconvenience to the Corporation resulting from such termination.

## **25 FORCE MAJEURE**

### **25.1 Notification**

A Party that claims it is prevented from performing its, or receiving the benefit of the other Party's Obligations, under this Contract by a Force Majeure Event must, within 5 Business Days of the first occurrence of the Force Majeure Event, give to the other party written notice containing full particulars of the Force Majeure Event, including:

- (a) the nature of the Force Majeure Event;
- (b) the date of the first occurrence of the Force Majeure Event;
- (c) the effect of the Force Majeure Event on that Party's ability to perform its, or receive the benefit of the Party's Obligations; and
- (d) the expected duration of the Force Majeure Event.

### **25.2 Entitlement of the Affected Party**

- (a) If a Party is prevented from performing its, or receiving the benefit of the other Party's Obligations in whole or part by a Force Majeure Event then, subject to that Party complying with clauses 25.1, 25.2(b) and 25.4, performance or receipt of those Obligations is suspended to the extent that performance or receipt is prevented by that Force Majeure Event.
- (b) The affected Party must provide the other Party with regular updates as to the affected Party's circumstances and the impact of the Force Majeure Event during the time that is prevented from performing its, or receiving the benefit of the other Party's Obligations, and in any event must provide the other Party with an update within 2 Business Days of a request at any time by the other Party.
- (c) The affected Party must notify the other Party in writing as soon as possible, and in any event within 2 Business Days of, the Force Majeure Event ceasing to prevent it from performing or receiving those Obligations.

### **25.3 Implications of a Force Majeure Event**

If a Party's Obligations are suspended under clause 25.2, then during that period of suspension:

- (a) that Party's actual non-performance, or delay in performance, of this Contract resulting from the Force Majeure Event will not be deemed to be a breach of the Contract; and
- (b) each Party will bear its own costs.

### **25.4 Effect of a Force Majeure Event**

- (a) Within 5 Business Days of receipt by a Party of a notice referred to in clause 25.1, the Parties must meet to discuss the steps that the Parties will take to minimise any effects of the Force Majeure Event.



## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (b) Irrespective of any other Obligations under this clause 25, on and from the date a Party is aware of a Force Majeure Event, that Party must do all that is reasonable to mitigate and minimise the effect of the Force Majeure Event.
- (c) The Service Provider is not entitled to payment for those Obligations whilst they are suspended under clause 25.2.

### 25.5 Termination

If a Party is prevented from performing its, or receiving the benefit of the other Party's Obligations in whole or in part by a Force Majeure Event for a period in excess of 120 Business Days then either Party may by notice in writing to the other Party terminate this Contract.

## 26 ADDITIONAL CLAUSES

The Parties agree that the additional clauses (if any) set out in the Contract Details form part of the Contract.

## 27 NOTICES

### 27.1 Notices Generally

Each notice or other communication that may or must be given under the Contract:

- (a) must be in writing;
- (b) must be sent from the Corporation to the Service Provider's Representative unless otherwise specified by the Service Provider;
- (c) may be given by an authorised officer or solicitor of the Corporation or the Service Provider (as applicable); and
- (d) must be:
  - (i) hand delivered or sent by prepaid post to the address of the Service Provider Representative;
  - (ii) sent by email to the address of the Service Provider's Representative and the email must be sent with automatic receipt notification; or
  - (iii) sent by facsimile to the facsimile number of the Service Provider's Representative,
- (e) subject to clause 27.1(d), is taken to be received in the case of:
  - (i) hand delivery, on the date of delivery;
  - (ii) post, on the third Business Day after posting; and
  - (iii) email, at the time and place to which it is sent equivalent to the time shown on the automatic receipt notification received by the Party sending the email from the recipient;

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (iv) facsimile, on the date on which the sender's facsimile machine records that the facsimile was successfully transmitted; and
- (v) if received after 5.00pm or on a day other than a Business Day, is taken to be received on the next Business Day.

## 28 NOTICES SENT BY EMAIL

Regarding a notice sent by email, the Parties agree that:

- (a) any text in the body of the email or the subject line will form part of the notice; and
- (b) an attachment to the email will only form part of the notice if it is in .pdf or .xlsx format or such other format as may be agreed between the Parties from time to time, and with respect to any notice sent by email under or in connection with the Contract, each Party must ensure that:
  - (i) its firewall and/or email server (as applicable):
    - (i) allow messages of up to 6MB to be received;
    - (ii) in the case of the Service Provider, does not trap any messages in the spam filter which have been sent from the wa.gov.au domain; and
    - (iii) automatically send a receipt of notification to the sender upon receipt of a message.
- (d) its systems automatically send a receipt notification to each of the sender and the recipient when a message is received by the recipient's domain that cannot or will not be delivered to the recipient.

## 29 ASSIGNMENT, NOVATION

- (a) Unless the Service Provider obtains the Corporation's prior written consent, the Service Provider must not:
  - (i) sell, transfer, assign, novate, mortgage, charge or otherwise dispose of or deal with any of its Rights or Obligations to any other organisation; or
  - (ii) subcontract any of its Rights or Obligations to any other organisation.
- (b) If the Service Provider is a corporation (other than a public company as defined in the *Corporation's Act 2001 (Cwth)*) the Service Provider is taken to have assigned the Contract if:
  - (i) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Service Provider to another person; or
  - (ii) there is any change in control of the Service Provider within the meaning of the *Corporations Act 2001 (Cwth)*.

### 29.1 Subcontracting

- (a) The Service Provider must not subcontract any of the Training Services without prior written permission from the delegated authority of the Corporation. Where the Service Provider is permitted to subcontract the Training Services, the Service Provider must exercise due diligence in its engagement of subcontractors.
- i. The Service Provider must not subcontract to anyone who exercises a degree of control or influence over the management of the Service Provider, and
  - ii. who within the previous three (3) years had (or worked for an organisation that had):
    - a contract for government subsidised Training Services with the Corporation prematurely terminated on the basis of performance; or
    - its RTO registration revoked, suspended, cancelled or had restrictions imposed on its RTO operations by the Regulator that would have affected its ability to provide services equivalent to those under the Contract.
- (b) The Service Provider must submit the Corporation's subcontracting application form when applying for approval to establish a subcontracting arrangement.
- (c) The Service Provider must ensure the terms of a Training Arrangement with the subcontractor are in writing, and are not inconsistent with this Contract;
- (d) The Service Provider must ensure that where services are provided on its behalf by a Third Party these services are consistent with the requirements of the AQTF and/or NVR as applicable;
- (e) The Service Provider must ensure the subcontractor is financially viable and has adequate professional indemnity and public liability insurances;
- (f) The Service Provider must ensure the subcontractor gives permission and provides all reasonable assistance to the Corporation including and not limited to:
- (i) access to premises and records; and
  - (ii) meeting with the subcontractors employees, agents, contractors and Students (where required by the Corporation);
- (g) The Service Provider must ensure that the interests of the Students, the Corporation and the State are properly safeguarded;
- (h) The Service Provider shall be liable to the Corporation for the acts, or omissions or negligence of any contractor engaged by the Service Provider (or any officer or employee of such contractor) at any tier (or any employee, officer or agent of the subcontractor) as if they were the acts, omissions or negligence of the Service Provider (or the employees, officers or agents of the Service Provider); and

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

- (i) The Service Provider acknowledges that the Corporation is not liable for the Service Provider's Training Arrangements and will not become involved in the internal administration of subcontracts or act as a mediator between the Service Provider and any subcontractor.
- (j) The Service Provider must not enter into a Training Arrangement solely to act as a Broker for the Training Services.
- (k) The Service Provider must not subcontract any Training Services for which the Service Provider does not have Scope except where delivery of a Qualification under the Training Package rules allows inclusion of imported Units for which the Service Provider does not have Scope. In this case the Service Provider may subcontract another RTO to deliver those units under the subcontractor's RTO Scope.
- (l) Subcontracting any part of the delivery or assessment of subsidised training without the written approval of the Corporation may result in an Event of Default in clause 24.

### 30 DISPUTE RESOLUTION

- (a) The Parties agree to use reasonable efforts to resolve by negotiation any problem that arises between them under the Contract. Neither Party will resort to legal proceedings, or terminate the Contract, until the following process has been exhausted, except if it is necessary to seek an urgent interim determination.
- (b) If a problem arises (including a breach or an alleged breach) under the Contract which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at the operational level, the Party concerned about the problem may notify the other. Management representatives of each of the Parties will then endeavor in good faith to agree upon a resolution.
- (c) The preceding provisions of this clause 30 only apply for the first 20 Business Days after the problem first arises.

### 31 MISCELLANEOUS

#### 31.1 Waiver

- (a) Any waiver of a Right by the Corporation or the Service Provider must be in writing and signed by the Party waiving the Right.
- (b) Any waiver of a Right by the Corporation or the Service Provider does not affect its rights in respect of any other breach of the Contract by the other Party.
- (c) Subject to clause 31.1(a), any delay or failure by the Corporation or the Service Provider to enforce any Right or any law will not be construed as a waiver of their respective Rights or any law.

## GENERAL PROVISIONS (CONDITIONS OF CONTRACT)

### 31.2 Entire Contract

The Contract supersedes all prior negotiations, understandings and Contracts (whether in writing or not) between the Parties relating to the matters covered by the Contract and constitute the full and complete Contract between the Parties relating to such matters.

### 31.3 Rights are Cumulative

Unless otherwise stated the Rights are in addition to, and not exclusive of, the Rights, powers and remedies existing at law or in equity.

### 31.4 Further Assistance

The Corporation and the Service Provider must do everything reasonable and reasonably necessary, at that Party's expense, including signing further documents, to give full effect to, perfect or complete, the Contract.

### 31.5 Relationship

The Service Provider:

- (a) is an independent contractor, and nothing in the Contract may be construed to make the Service Provider a partner, agent, employee or joint venture of the Corporation.
- (b) must not represent that the Service Provider or any of its Associates are the employees, agents, partners or joint venture of the Corporation.

## END OF GENERAL PROVISIONS