

SKILLS AGREEMENT



Government
of South Australia

AGREEMENT made on

BETWEEN:

THE MINISTER FOR INNOVATION AND SKILLS of Level 10, 1 King William Street, Adelaide, SA, 5000 ("**the Minister**")

AND:

THE ORGANISATION NAMED IN ITEM 2 OF THE FUNDED ACTIVITIES ANNEXURE ("**Recipient**")

IT IS AGREED

- A. The South Australian Government is committed to increasing the skilled workforce in South Australia through making available funding for training and skills development for eligible participants (**Funded Activities**).
- B. The Minister and the Recipient have agreed to enter into this Skills Agreement in contemplation of the parties entering into one or more subservient agreements (**Funded Activities Agreement**) under which the Minister will provide funding to the Recipient for the delivery of agreed Funded Activities.
- C. This Agreement comprises this Title Page, Standard Terms and Conditions (Attachment 1), Training Schedule (Attachment 2), Project Activities Schedule (Attachment 3), Funded Activities Annexure Template (Attachment 4) and the Execution Page.

ATTACHMENT 1

STANDARD TERMS & CONDITIONS

AGREED TERMS

1. TERM AND TERMINATION

- 1.1 This Agreement commences on execution by both parties and continues until terminated by the Minister in accordance with clause 28 of this Agreement ("Term").

2. CONTRACT REPRESENTATIVES

- 2.1 The persons named in the Funded Activities Annexure as the Contract Representatives are responsible for overseeing the effective administration of this Agreement.
- 2.2 Each Representative has authority to:
- (a) exercise all the powers and functions of his or her Party under this Agreement; and
 - (b) bind his or her Party in relation to any matter arising out of or in connection with this Agreement including by signing Funded Activities Annexures on behalf of its Party.
- 2.3 Either Party may change its Representative by giving written notice to the other Party.

3. CONSIDERATION

- 3.1 The Parties agree that the exchange of promises in this Agreement is good and sufficient legal consideration for the purposes of this Agreement.

4. SUPPLY OF FUNDED ACTIVITIES

- 4.1 The Funded Activities that the Minister may fund under this Agreement are:
- (a) Training; and
 - (b) Project Activities.
- 4.2 The Recipient must use any Funding granted to it by the Minister solely for the Purpose of the Funded Activities to achieve the Outcomes.
- 4.3 The Recipient must ensure that the Funded Activities are delivered:
- (a) By the dates specified in the Funded Activities Annexure (or such other date as may be agreed by the Minister);
 - (b) In accordance with the requirements in the Funded Activities Agreement;
 - (c) In accordance with any national registration standards;
 - (d) In accordance with any policies and directions notified in writing by the Minister to the Recipient from time to time; and
 - (e) In accordance with the warranties in clause 10.

5. FORMATION OF FUNDED ACTIVITIES AGREEMENTS

- 5.1 In order to receive Funding for a Funded Activity:
- (a) The Recipient must have successfully applied for Funding; and
 - (b) The Minister must have issued a Funded Activities Annexure (using the form in Attachment 4) to the Recipient.
- 5.2 The terms and conditions of a Funded Activities Agreement are those specified in:
- (a) This Agreement (excluding the Schedules); and
 - (b) The Funded Activities Annexure signed by the Contract Representatives,
- and depending on the Funded Activities being funded:
- (c) The Training Schedule; and/or

- (d) The Project Activities Schedule.

- 5.3 A Funded Activities Agreement takes effect on the Commencement Date and expires on the Expiry Date.

- 5.4 Termination or expiry of a Funded Activities Agreement will not operate to terminate this Agreement except as may be specifically provided for in this Agreement.

6. RECIPIENT'S PERSONNEL

- 6.1 The Recipient, if required by the Minister, must give its consent to and procure the consent of the Recipient's Personnel, to the conduct of a police check.
- 6.2 If the Minister acting reasonably, considers any one or more of the Recipient's Personnel to be an Unsuitable Person then the Minister may give the Recipient notice in writing requiring those persons to be withdrawn from supplying the Funded Activities and the Recipient must immediately comply with the notice and provide replacement Personnel acceptable to the Minister.
- 6.3 The Recipient must ensure that Recipient's Personnel are available to attend any briefing, training and information sessions held by the Minister from time to time relating to this Agreement.

7. ASSESSMENT OF PROSPECTIVE PARTICIPANTS

- 7.1 The Recipient acknowledges and agrees that only persons that meet the Participant Eligibility Criteria specified for a particular Funded Activity are eligible to participate in that Funded Activity.
- 7.2 Where Funded Activities are being delivered to Participants, the Recipient must conduct an assessment of the prospective Participant's needs and his or her willingness to complete the Funded Activity.
- 7.3 The Recipient must not provide Funded Activities to a prospective Participant if:
- (a) the Recipient cannot meet the needs of the prospective Participant identified in an assessment;
 - (b) the prospective Participant does not have the willingness to complete the Funded Activity.
- 7.4 Where the Recipient has assessed a Participant as being suitable to participate in a Funded Activity, where applicable the Recipient must ensure that each Participant signs the appropriate form at commencement, completion or withdrawal as specified in Item 10 of the Funded Activities Annexure.
- 7.5 The Recipient must retain the signed forms referred to in clause 7.4.

8. PARTICIPANT PROFILE

- 8.1 The Recipient may be required to collect information and evidence to create a Participant Profile in the Department's System as specified in Item 10 of the Funded Activities Annexure.
- 8.2 If the Participant already has a profile in the Department's System, this should be validated against the information collected by the Recipient and the Minister must be notified of any amendments/corrections required to existing records.

9. GROUP TRAINING ORGANISATION'S OBLIGATIONS

- 9.1 Where the Recipient is a Group Training Organisation, the Recipient agrees with the Minister that during the Term, the Recipient:
- (a) will remain registered as an employer under the *Training and Skills Development Act 2008* (SA); and

- (b) will comply with the current Training and Skills Commission's Guidelines for the Registration of Employers of Apprentices and Trainees who utilise hosting arrangements.

10. RECIPIENT'S WARRANTIES

- 10.1 The Recipient warrants that the Funded Activities will:
 - (a) be provided with due care and skill;
 - (b) be provided in a timely and efficient manner;
 - (c) be supplied without infringing any person's Intellectual Property Rights.
- 10.2 The Recipient warrants that:
 - (a) It has all rights, title, licences (including where relevant a labour hire licence), authorisations, consents and other approvals necessary to perform its obligations under this Agreement;
 - (b) It has not omitted information or made any false or misleading representations or statements, including in any applications for Funding for Funded Activities.

11. FUNDING AND INVOICING

- 11.1 The Minister will pay the Funding for a Funded Activity in the amounts and at the times specified in the Funded Activities Annexure for that Funded Activity.
- 11.2 The Recipient must maintain accounts for the Funding which identify the use of the Funding in accordance with generally accepted accounting principles.
- 11.3 If the Tax Invoice Issuing Party is the Minister:
 - (a) the Parties agree that this Agreement satisfies the requirement for a written agreement specifying the supplies to which the Recipient Created Tax Invoice ("RCTI") relates;
 - (b) the Minister must provide a copy of the RCTI to the Recipient within 30 days of the making, or determining of the value, of the Taxable Supply; and
 - (c) The Recipient must not issue a Tax Invoice in respect of a Taxable Supply the subject of the RCTI.
- 11.4 If the Tax Invoice Issuing Party is the Recipient, the Recipient may invoice the Minister for payment at the times specified in the relevant Funded Activities Annexure.

12. GST

- 12.1 Subject to clause 12.2 and 12.3 the Recipient represents that:
 - (a) the ABN shown in Item 2 of the Funded Activities Annexure is the Recipient's ABN; and
 - (b) it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cth).
- 12.2 If the Recipient is not registered for GST, then GST must not be charged on supplies made under this Agreement.
- 12.3 If Recipient does not have an ABN it must submit an ATO *Statement by a Supplier* to the Minister otherwise the Minister may be obliged under the *Taxation Administration Act 1953* (Cth) to deduct a withholding from the Funding and will not be obliged to gross up the Funding or provide any other compensation to the Recipient.

13. FUNDING FROM OTHER GOVERNMENT SOURCES

- 13.1 Subject to clause 13.2, the Recipient will not be eligible under this Agreement for Funding in respect of any Funded Activity if the Recipient receives funds for those Funded Activities from another Government entity (including but not limited to local, State and Federal Government entities).
- 13.2 Clause 13.1 does not operate to restrict the payment of Funding where the Funding is funding part of an activity or expense and funds provided by another Government entity is being provided to fund a distinctly separate part of the same activity or expense.
- 13.3 Where the Recipient becomes aware that it has received or will receive additional funds in respect of the Funded

Activities in the manner contemplated by clause 13.1, the Recipient must immediately notify the Minister.

- 13.4 Where the Minister becomes aware of any additional funding in respect of the Funded Activities in the manner contemplated under clause 13.1, further Funding otherwise payable by the Minister in respect of such Funded Activities under a Funded Activities Agreement will cease and any payments made by the Minister under the Funded Activities Agreement be repaid to the Minister and any such amounts payable will comprise a debt due and owing to the Minister.
- 13.5 In the event of payment of additional funds as provided for in clause 13.1 and in addition to the rights of recovery described in clause 13.4, the Minister may, in its sole discretion, treat the actions of the Recipient in obtaining the Funding from the Minister and another source as an Event of Default for the purposes of clause 28.

14. PUBLICATION OF INFORMATION ABOUT RECIPIENTS

- 14.1 The Minister may publish and maintain information identifying Recipients and the Funded Activities.
- 14.2 The Minister may include such information as the Minister considers relevant and appropriate, including, but not limited to:
 - (a) any subcontractors of the Recipient and details of subcontract arrangements; and
 - (b) details about the Funded Activities Agreement with the Recipient.
- 14.3 The Recipient must provide the following information to the Minister for publication within ten (10) Business Days after a written request from the Minister:
 - (a) location of the Funded Activities being provided to Participants; and
 - (b) availability of Funded Activities for Participants.
- 14.4 The Recipient agrees that the Minister is not in any way responsible for the accuracy of the information published about the Recipient and the Recipient must, as soon as reasonably practicable by written notice to the Minister, advise when information published about the Recipient is incorrect.

15. PROVISION OF INFORMATION

- 15.1 The Recipient must provide those reports and other documents as may be specified in a Funded Activities Annexure.
- 15.2 If the Minister reasonably suspects that the Funding is not being used for the Funded Activities, it may request additional information from the Recipient.
- 15.3 The Recipient must immediately inform the Minister in writing of:
 - (a) any significant changes to the nature and/or scope of the activities conducted by the Recipient which would impact on the Funded Activities;
 - (b) any change to the name of the legal entity or trading name of the Recipient or the addition of a new trading name of the Recipient;
 - (c) any change to the Recipient's Contract Representative;
 - (d) any change in the location(s) of the place of business of the Recipient or its registered address (being the address registered with either the Australian Securities and Investment Commission or Consumer and Business Services Funded Activities);
 - (e) any change in the locations at which any Funded Activities are delivered;
 - (f) any changes to any material facts relating to the Recipient's financial situation which have not been disclosed to the Minister and which could or might affect the willingness of the Minister to continue engaging with the Recipient under this Agreement; or
 - (g) any operational changes that may adversely impact on the Recipient's delivery of the Funded Activities in accordance with its obligations under this Agreement

including but not limited to changes in the financial position of the Recipient.

16. FINANCIAL REPORTING AND AUDITING

- 16.1 The Recipient must provide an acquittal in relation to the expenditure of all Funding paid by the Minister under a Funded Activities Agreement:
- (a) certifying that the Funding has been properly spent, in accordance with the requirements of the Funded Activities Agreement;
 - (b) signed by at least one member of the Recipient's board of management (or equivalent); and
 - (c) on or before the Expiry Date of the Funded Activities Agreement.
- 16.2 The Recipient agrees the Minister may direct that the financial accounts of the Recipient be audited at the Minister's cost, and the Minister may specify the minimum qualifications that must be held by the person appointed to conduct the audit.
- 16.3 If the audit discloses that the Recipient has applied the Funding other than for the agreed Funded Activity, then the Recipient will be required to reimburse the Minister the costs of the audit and the provisions of clause 28.2 will apply.

17. RECORDS

- 17.1 The Recipient must maintain full complete and accurate records about the Funded Activities delivered under this Agreement.
- 17.2 Where Funded Activities are delivered to Participants, the Recipient must maintain complete and accurate records for each Participant which include the details of the Funded Activities provided to the Participant.
- 17.3 The Recipient must provide substantiating evidence of the eligibility assessment of the Participant undertaken under clause 7.2, to the Minister upon written request.
- 17.4 The Recipient must retain evidence in support of each payment of Funding that it claims from the Minister.
- 17.5 The Recipient must keep all records and other documentation required to be kept by the Recipient under this Agreement and under any other legislation or statutory instrument, for a period of:
- (a) at least five (5) years after the later of the Expiry Date of this Agreement; or
 - (b) such longer period required by law.

18. INSPECTION

- 18.1 The Recipient must allow any officer or person authorised by the Minister (**Minister's Representative**) on the giving of reasonable notice, to enter the premises of and to inspect the operations of the Recipient (including equipment, premises, accounting records, documents and information) and interview the Recipient's Personnel on matters pertaining to the operations and reporting obligations of the Recipient under this Agreement.
- 18.2 The Minister's Representative may make copies of some or all of the documents and other records created, prepared or maintained by the Recipient relating to this Agreement and to the provision of the Funded Activities.

19. INTELLECTUAL PROPERTY RIGHTS

- 19.1 Nothing in this Agreement affects the ownership of Intellectual Property Rights created before the Commencement Date.
- 19.2 The Recipient grants to the Minister and the Crown in right of the State of South Australia a perpetual, irrevocable, royalty free, fee free licence to use, copy, modify and adapt any Intellectual Property Rights in any reports required to be supplied under a Funded Activities Agreement.
- 19.3 The Recipient must not infringe the Intellectual Property rights of any person in delivering the Funded Activities.

20. CONFIDENTIAL INFORMATION

- 20.1 Subject to this clause 20, neither Party may disclose any Confidential Information belonging to the other Party except as genuinely and necessarily required for the provision of the Funded Activities.
- 20.2 A Party may disclose Confidential Information belonging to the other Party:
- (a) to an employee, agent or adviser of that Party, on a "need to know" and confidential basis;
 - (b) as required by law or a court order;
 - (c) in accordance with any Parliamentary or constitutional convention;
 - (d) for the purposes of prosecuting or defending proceedings.
- 20.3 The Minister may disclose this Agreement in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request.
- 20.4 In the event of unauthorised disclosure of Confidential Information by a third party related to one of the Parties to this Agreement, that Party must promptly notify the other Party and assist the other Party with any proceedings which may institute against any persons for the disclosure.

21. PRIVACY

- 21.1 The Recipient in relation to all Personal Information received created or held by it for the purposes of this Agreement, must comply with:
- (a) The *Privacy Act 1988* (Cth) ("**Privacy Act**") and the Australian Privacy Principles established under that Act; and
 - (b) the South Australian Government Information Privacy Principles (a copy of which can be found on the Department of the Premier and Cabinet website www.dpc.sa.gov.au) ("**IPPs**") as if the Recipient were an "agency" for the purposes of the IPPs.
- 21.2 The Recipient must allow the Minister to undertake, and cooperate with any audit or investigation which the Minister deems necessary to verify that the Recipient is complying with the requirements in clause 21.1.
- 21.3 The Recipient must promptly notify the Minister if it fails to comply with this clause or if it becomes aware of any actual or threatened disclosure of or unauthorised access to Personal Information.
- 21.4 For the purposes of this special condition, "Personal Information" has the same meaning as in the Privacy Act.

22. MARKETING AND PUBLICITY

- 22.1 The Recipient must not engage in any misleading or deceitful marketing practices or do anything that may damage the reputation of the Minister or bring the Minister into disrepute.
- 22.2 The Recipient in all advertising and promotional material (including websites and other media) related to Funded Activities must:
- (a) include the statement: 'Participant Eligibility Criteria apply' or 'Visit www.skills.sa.gov.au for Participant Eligibility Criteria';
 - (b) clearly identify any conditions that exist in relation to a Funded Activity;
 - (c) clearly identify any Participant Fees and details of any other incidental expenses and costs that may be incurred by the Participant; and
 - (d) clearly identify only the eligibility criteria specified by the Minister.
- 22.3 The Recipient will acknowledge the Funding by the Minister in any advertising, publicity or promotional material relating to the Funded Activities by including:
- (a) A 'Supported by Government of South Australia' statement; or
 - (b) The 'An Initiative of Government of South Australia' logo provided by the Minister's Representative.

- 22.4 The Minister's Contract Representative will provide the Recipient with image files (.jpeg, .eps, .png and .pdf) of the logo referred to in clause 22.3(b) which must be used in accordance with the 'Government of South Australia Branding Guidelines'.
- 22.5 The Recipient will participate in promotional or publicity activity in relation to the Funded Activities funded by the Minister as is reasonably required by the Minister.
- 22.6 The Recipient and the Minister must use their best endeavour to mutually agree on the content of any public announcements or media releases about the Funded Activities.
- 22.7 If due to urgent circumstances or due to the nature and timing of the media request, it is not possible to provide prior notice of an announcement or media release to the other Party, then the Party making the announcement or media release must notify the other Party and provide a summary of the announcement or a copy of the media release as soon as possible after making the announcement or media release.
- 22.8 Nothing in this clause derogates from the operation of the *Not-for-Profit Sector Freedom to Advocate Act 2013* (SA).
- 23. INSURANCE**
- 23.1 During the Term the Recipient must effect and maintain:
- Public Liability Insurance for not less than \$1,000,000; and
 - If the Recipient is an RTO, Professional Indemnity Insurance for no less than \$1,000,000 to be maintained on similar terms for three years after the expiration or earlier termination of this Agreement.
- 24. LIABILITY LIMIT**
- 24.1 The Recipient's liability to the Minister under this Agreement, is limited to one times the total amount of Funding received by the Recipient under this Agreement.
- 25. DISPUTE RESOLUTION**
- 25.1 Subject to clause 25.4, a Party may not commence legal proceedings under this Agreement without first referring the dispute to the other Party under this clause.
- 25.2 Either Party may give the other a notice in writing ("**dispute notice**") setting out the details of the dispute.
- 25.3 Within five (5) Business Days or such other period as may be agreed by the Parties, the Contract Representatives must meet and use reasonable endeavours to resolve the dispute.
- 25.4 A Party may seek immediate interlocutory relief or other interim remedy in case of genuine urgency.
- 26. REPAYMENT OF UNEXPENDED OR MISUSED FUNDS**
- 26.1 If the Recipient has not expended all of the Funding for a Funded Activity by the Expiry Date of the Funded Activities Agreement, it must notify the Minister of the unexpended amount and may submit a written request for retention or carryover of unexpended amounts specifying:
- the amount to be retained or carried over; and
 - the Funded Activities for which the unexpended amount will be used.
- 26.2 The Minister must consider the Recipient's request and notify the Recipient in writing whether it:
- agrees that the Recipient may retain or carry over all or part of the unexpended amount for Funded Activities and the Contract Representatives must sign a new Funded Activities Annexure; or
 - requires the Recipient to repay all or part of that amount as notified by the Minister, to the Minister within 30 days of receipt of the notice from the Minister.
- 26.3 If the Recipient does not apply any part of the Funding for the Purpose of the Funded Activities then in addition to any other rights that the Minister may have, the Minister may require the Recipient to repay the portion of misused Funding within 30 days of a written notice from the Minister.
- 26.4 The Minister may require repayment of Funding provided for a Participant to undertake a Funded Activity within 30 days of a written notice if:
- the Participant is ineligible to receive Funded Activities;
 - the Recipient:
 - has not conducted an assessment of the Participant as required by clause 7.2; or
 - has not provided substantiating evidence of the Participant's eligibility as required by clause 17.3.
- 26.5 The Recipient agrees that any amount owed to the Minister is recoverable as a debt without further proof of the debt.
- 27. SET-OFF**
- Any claim the Minister may have against the Recipient may be set off against monies owed to the Recipient under this Agreement.
- 28. DEFAULT AND TERMINATION**
- 28.1 If the Recipient is in breach of a Funded Activities Agreement (**Event of Default**) the Minister will give the Recipient not less than five (5) Business Days' written notice to remedy the breach (**Event of Default Notice**).
- 28.2 The Minister may terminate a Funded Activities Agreement immediately by notice in writing to the Recipient if:
- at the expiration of the period in the Event of Default Notice,
 - the Event of Default has not been made good; or
 - the Event of Default is incapable of being remedied; or
 - the Minister terminates this Agreement under clause 28.3.
- 28.3 The Minister may terminate this Agreement immediately by notice in writing to the Recipient if:
- the Recipient commits more than three (3) Events of Default relating to the same or substantially the same breach (whether or not any Event of Default is remedied);
 - the Recipient suffers any form of insolvency administration or bankruptcy;
 - any representation or warranty made or given by the Recipient is proved to be false, misleading, deceptive, incomplete or inaccurate in any material respect when it was made;
 - any director, secretary, officer of the Recipient is convicted of a criminal offence involving dishonesty and the Recipient fails to remove such person from his or her office immediately after a conviction is made, delivered or recorded;
 - the Minister becomes aware that the Recipient is in material breach of its statutory obligations with respect to its employees;
 - the Recipient fails to comply with a notice issued under clause 6.2; or
 - the Recipient assigns or purports to assign any of its rights without the Minister's prior written consent.
- 28.4 The Minister may terminate this Agreement without cause by giving the Recipient one month's notice in writing.
- 28.5 Termination of this Agreement under clause 28.4 will not terminate any Funded Activities Agreement entered into before the termination date and such clauses of this Agreement as are necessary or relevant will continue to have effect in relation to that Funded Activities Agreement until its expiry or termination.

29. CONSEQUENCES OF TERMINATION

- 29.1 If the Minister terminates a Funded Activities Agreement in accordance with clause 28:
- (a) the Recipient has no claim against the Minister arising out of or in relation to such termination other than the right to be paid for Funded Activities provided before the effective termination date; and
 - (b) the Recipient must comply with all reasonable directions given by the Minister.
- 29.2 The Recipient must provide to the Minister documentary evidence that it has incurred the costs referred to in clause 29.1(a) and if the claim is not disputed the Minister must pay such claim within 30 days of receipt of the claim.
- 29.3 Upon termination or expiry of a Funded Activities Agreement the Recipient must provide a final acquittal as required by clause 16.1.
- 29.4 Any termination of this Agreement or a Funded Activities Agreement does not affect any accrued right of either Party.
- 29.5 Despite termination or expiry of this Agreement, this clause 29 and clauses 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27 and those other terms that by their nature remain in force, will survive.

30. SUBCONTRACTING

- 30.1 The Recipient must not engage any subcontractor under a Funded Activities Agreement without the prior written permission of the Minister.
- 30.2 Approved Sub-contractors may only perform the activities specified in a Funded Activities Annexure.
- 30.3 The Recipient remains responsible for obligations performed by a subcontractor to the same extent as if such obligations were performed by the Recipient.

31. COMPLIANCE WITH LAWS

- 31.1 The Recipient must comply with the laws in force in the State of South Australia in performing its obligations under this Agreement.

32. GOVERNING LAW AND JURISDICTION

- 32.1 This Agreement is governed by the laws in the State of South Australia.
- 32.2 The courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.

33. RELATIONSHIP

- 33.1 Nothing in this Agreement should be construed to create any fiduciary relationship between the Parties or any relationship of employer and employee, principal and agent or partnership between the Minister and the Recipient or the Recipient's staff, employees or agents.
- 33.2 Except as expressly provided for in this Agreement, in their dealings with third Parties, neither the Minister nor the Recipient or any of the Recipient's staff, employees or agents have the authority to bind the other Party in any manner whatsoever, except with the prior written approval of the other Party.

34. ENTIRE AGREEMENT

The Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understanding and negotiations in respect of the matters dealt with in this Agreement.

35. NO ASSIGNMENT

- 35.1 The Recipient must not assign, encumber or otherwise transfer any of its rights or obligations under this Agreement without the written approval of the Minister which approval shall not be unreasonably withheld.
- 35.2 Subject to any contrary legislative intention, the Parties agree that if there is any Machinery of Government

Change, this Agreement is deemed to refer to the new entity succeeding or replacing the Minister and all of the Minister's rights and obligations under this Agreement will continue and will become rights and obligations of that new entity.

36. MODIFICATION

- 36.1 No addition to or modification of any provision of this Agreement will be binding upon the Parties unless agreed by the Parties in writing.

37. SEVERANCE

- 37.1 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.
- 37.2 Severance of any part of this Agreement will not affect any other part of this Agreement.

38. COUNTERPARTS

- 38.1 This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by email.

39. NO FURTHER OBLIGATION

- 39.1 The Recipient acknowledges that any Funding represents a one-off contribution by the Minister towards the Funded Activity, and the Recipient agrees any request for subsequent funding will require a new application to the Minister. The Minister is under no obligation to agree to pay any subsequent funding to the Recipient.
- 39.2 The Recipient acknowledges the Minister will not be liable to reimburse the Recipient for any losses or cost over runs that may result from the operation of this Agreement or the carrying out of the Funded Activities.

40. INTERPRETATION

- 40.1 In this Agreement (unless the context requires otherwise):
- (a) a reference to any legislation includes:
 - (i) all legislation, regulations and other forms of statutory instrument issued under that legislation; and
 - (ii) any modification, consolidation, amendment, re-enactment or substitution of that legislation;
 - (b) a word in the singular includes the plural and a word in the plural includes the singular;
 - (c) a reference to two or more persons is a reference to those persons jointly and severally;
 - (d) a reference to dollars is to Australian dollars;
 - (e) a reference to a Party includes that party's administrators, successors and permitted assigns.
- 40.2 In order to give effect to clause 5.2 and unless the context otherwise requires, references to "this Agreement" shall be read and construed as references to a Funded Activities Agreement.

41. DEFINITIONS

In this Agreement:

- (a) **"Acquittal Report"** means the report specified in a Funded Activities Annexure;
- (b) **"Approved Sub-contractors"** means the entities approved by the Minister and named in Item 14 of a Funded Activities Annexure;
- (c) **"Australian Vocational Education and Training Management Information Statistical Standard"** or **"AVETMISS"** means the national standard for the collection, analysis and reporting of vocational education and training statistical information;
- (d) **"Business Day"** means any day that is not a Saturday or Sunday or a public holiday in South Australia;

- (e) **"Commencement Date"** means the commencement date of a Funded Activities Agreement as specified in Item 4 of a Funded Activities Annexure;
- (f) **"Confidential Information"** means information, which is identified as confidential information by a Party, but does not include this Agreement;
- (g) **"Department"** means the Department for Innovation and Skills or its successor;
- (h) **"Department's System"** means the information technology system used by the Minister and which the Recipient may access through the website and includes any other information technology system prescribed by the Minister;
- (i) **"Expiry Date"** means the expiry date of a Funded Activities Agreement as specified in Item 4 of a Funded Activities Annexure;
- (j) **"Funded Activities"** means the Training and Project Activities that may be funded under this Agreement;
- (k) **"Funded Activities Agreement"** means an agreement made by the Minister and the Recipient as contemplated by clause 5;
- (l) **"Funded Activities Annexure"** is a document required to form a Funded Activities Agreement which is substantially based on the template in Attachment 4;
- (m) **"Funded Activities Requirements"** means the requirements specified in a Funded Activities Annexure;
- (n) **"Funding"** means the funds payable for Funding Activities;
- (o) **"GST"** means the tax imposed by the GST Law;
- (p) **"GST Law"** means meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (q) **"Intellectual Property Rights"** means all intellectual property rights, including but not limited to:
 - (i) patents, copyright, registered designs, trademarks, know-how and any right to have Confidential Information kept confidential; and
 - (ii) any application or right to apply for registration of any of the rights referred to in paragraph (i), but for the avoidance of doubt excludes moral rights and performers' rights;
- (r) **"Machinery of Government Change"** means a change to the structure, function or operations of the South Australian Government or the Government Party as a result of any government reorganisation, restructuring or other organisational or functional change;
- (s) **"Outcome"** means the outcomes as specified in a Funded Activities Annexure;
- (t) **"Participant"** means a person who meets the Eligibility Criteria for the Funded Activities;
- (u) **"Participant Eligibility Criteria"** means the participant eligibility criteria specified in Funded Activities Annexure;
- (v) **"Party"** means a party to this Agreement;
- (w) **"Project"** means the project (if any) specified in a Funded Activities Annexure;
- (x) **"Project Activities"** means non-training related activities as specified in the Project Activities Schedule in Attachment 3;
- (y) **"Purpose"** means the purpose of the Funded Activities (if any) specified in a Funded Activities Annexure;
- (z) **"Recipient's Personnel"** means any employees, agents, subcontractors employed or engaged by the Recipient to perform this Agreement.
- (aa) **"Registered Training Organisation or RTO"** has the meaning provided in the *National Vocational Education and Training Regulator Act 2011* (Cth);
- (bb) **"Taxable Supply"** has the same meaning as in the GST Law;
- (cc) **"Training"** means Accredited and Non-Accredited Training as specified in the Training Schedule in Attachment 2; and
- (dd) **"Unsuitable Person"** means a person who is the subject of any arrest, charge or conviction for:
 - (i) a sexual offence or an offence of indecency;
 - (ii) any offence of violence or deprivation of liberty (whether indictable or not) or other indictable offence; or
 - (iii) any other offence that the Minister notifies the Recipient in writing the Minister considers renders the Recipient's Personnel unsuitable to be involved in the provision of Funded Activities.

ATTACHMENT 2

TRAINING SCHEDULE

PART A – GENERAL TERMS AND CONDITIONS

1. BACKGROUND

- 1.1 This Schedule sets out the terms and conditions relevant to the provision of Accredited Training and Non-Accredited Training and should be read in conjunction with the terms and conditions contained within the Skills Agreement.
- 1.2 The terms and conditions in Part A apply to all Training, in addition Part B applies to all Accredited Training and Part C applies to all Non-Accredited Training, delivered by the Recipient.

2. DEFINITIONS

- 2.1 “**Accountable Officer**” means the designated staff member of the Recipient for the purposes of clause 8 and who at the Commencement Date of the Funded Activities Annexure is the person specified in Item 13 of the Funded Activities Annexure.
- 2.2 “**Accredited Training**” means all training and assessment services relating to any nationally recognised qualification, Training Package, Course, Foundation Skills Course, Bridging Unit or Unit of Competency for a Participant that is delivered by a Registered Training Organisation (“**RTO**”).
- 2.3 “**Activity Start Date**” means the date to be entered for AVETMISS reporting that the Training activity starts for a Participant in a Unit of Competency.
- 2.4 “**Australian Core Skills Framework**” means the framework published by the Commonwealth Department of Education or its successor which assists both specialist and non-specialist English language, literacy and numeracy practitioners to describe an individual’s performance in the five core skills of learning, reading, writing, oral communication and numeracy.
- 2.5 “**Australian Qualifications Framework**” or “**AQF**” means the framework for regulated qualifications in the Australian education and training system, as agreed by the Commonwealth, State and Territory ministerial council with responsibility for higher education.
- 2.6 “**Australian School Based Apprenticeship**” or “**ASBA**” means a school-based paid traineeship or apprenticeship, employment-based training arrangement where Year 10, 11 or 12 students are able to combine employment, training and education to gain a nationally recognised qualification, usually at Certificate II or III level across a range of industry sectors and training packages.
- 2.7 “**Australian Skills Quality Authority**” or “**ASQA**” means the Australian Skills Quality Authority which is the national regulator for Australia’s vocational education and training sector to ensure nationally approved quality standards are met.
- 2.8 “**Australian Vocational Education and Training Management Information Statistical Standard**” or “**AVETMISS**” means the national standard for the collection, analysis and reporting of vocational education and training statistical information.
- 2.9 “**AVETMISS Result Code**” means an outcome identifier prescribed by the AVETMISS standard.
- 2.10 “**Bridging Unit**” means a Unit of Competency a Participant has been assessed to require, to support qualification completion. A Bridging Unit is not part of the Qualification the Participant is enrolled in and is undertaken in conjunction with the Qualification to support a documented learning outcome.
- 2.11 “**Completion Payment**” means a payment made by the Minister to the Recipient pursuant to Item 12 of the Funded Activities Annexure.
- 2.12 “**Course**” means a nationally recognised Qualification or Skill Set.
- 2.13 “**Course Condition**” means any condition on a Course imposed by the Minister with which the Recipient must comply.
- 2.14 “**Credit Transfer**” means training credit for a Unit of Competency previously completed by a Participant undertaken in line with ASQA requirements.

- 2.15 **“Employment Services Provider”** or **“ESP”** means an entity that has been appointed by the Australian Government to assist Jobseekers to find employment or such other entity determined by the Minister from time to time.
- 2.16 **“Employment Services Provider Referral Form”** means a document in the form prescribed by the Minister which is used to facilitate the referral of a Jobseeker by an Employment Services Provider to the Recipient.
- 2.17 **“Enrolment”** means the creation of a Training Account by the Recipient for a Participant for the delivery of a Course to the Participant.
- 2.18 **“Enrolment End Date”** means the date from which the Recipient cannot enrol any Participants for a course as specified in Item 4 of the Funded Activities Annexure.
- 2.19 **“Entitlement Criteria”** means the criteria specified in Item 9 of the Funded Activities Annexure.
- 2.20 **“Equivalent Qualification”** means a Qualification described in the National Register as being equivalent to the Qualification in which the Participant seeks to enrol or has enrolled.
- 2.21 **“Equivalent Unit of Competency”** means a Unit of Competency described in the National Register as being equivalent to a Unit of Competency in the Course in which the Participant seeks to enrol or has enrolled.
- 2.22 **“Fee Free”** means a Course published on the STL on the Department’s Website and no Participant Course Fee can be charged.
- 2.23 **“Foundation Skills Course”** means a Qualification which is identified by the Minister as a Foundation Skills Course.
- 2.24 **“Incidental Fee”** means a fee charged by the Recipient to a Participant in accordance with clause 20.1(a).
- 2.25 **“Jobseeker”** means a Participant who is unemployed and registered with an Employment Services Provider.
- 2.26 **“Non-Accredited Training”** means training that does not lead to an AQF Qualification or issuance of a Statement of Attainment.
- 2.27 **“National Register”** has the meaning provided in the *National Vocational Education and Training Regulator Act 2011* (Cth).
- 2.28 **“No New Enrolments Date”** is a Course Condition applied to a Course published on the STL on the Department’s Website, being the date from which the Recipient cannot enrol any Participants in that Course.
- 2.29 **“Participant Agreement”** means a document in the form prescribed by the Minister from time to time which includes, but is not limited to, the provision of consent by the Participant to the collection, use and disclosure of his or her Personal Information.
- 2.30 **“Participant Course Fee”** means the fee that is charged by the Recipient to a Participant for the provision of all Accredited Training (including assessment for Recognition of Prior Learning) necessary to complete a Course but excluding Incidental Fees.
- 2.31 **“Qualification”** means a qualification recognised under the Australian Qualifications Framework and which is listed on the National VET Register at www.training.gov.au.
- 2.32 **“Quota”** means the allocation of a set number of places for a Course to a Recipient as specified in the Funded Activities Annexure.
- 2.33 **“Recognition of Prior Learning”** or **“RPL”** means assessment of a Participant’s relevant prior learning (including formal, informal and non-formal learning) to determine the outcomes of the Participant’s application for Course credit. RPL is undertaken in accordance with all relevant ASQA Standards and Guidelines.
- 2.34 **“Registered Training Organisation”** or **“RTO”** has the meaning provided in the *National Vocational Education and Training Regulator Act 2011* (Cth).
- 2.35 **“SACE”** is the South Australian Certificate of Education.
- 2.36 **“School Enrolled Participant”** is a Participant who is enrolled in a secondary school and is either undertaking VET as part of an ASBA, SACE or equivalent.
- 2.37 **“Skill Cluster”** means a single Unit of Competency or a combination of Units of Competency which support the acquisition of vocational competencies.

- 2.38 **“Skill Set”** means a group of Units of Competency nationally endorsed within a Training Package and identified/defined by ASQA.
- 2.39 **“Standard”** means the standards made pursuant to section 185(1) of the *National Vocational Education and Training Regulator Act 2011* (Cth).
- 2.40 **“Subsidised Training List”** or **“STL”** means the Department’s Subsidised Training List as published on the Department’s Website.
- 2.41 **“Training”** means Accredited Training and Non-Accredited Training.
- 2.42 **“Training Account”** means the account established in the Department’s System by the Recipient for each Participant that is enrolled in a Course funded by the Department.
- 2.43 **“Training Activity Completion Date”** means the date specified in Item 4 of the Funded Activities Annexure, being the date by which the Recipient must have completed delivery of the Training.
- 2.44 **“Training Contract”** means an apprenticeship or traineeship agreement between a Participant and an employer.
- 2.45 **“Training Package”** means a group of qualifications endorsed by the Australian Industry and Skills Committee or its delegate.
- 2.46 **“The Training Guarantee for SACE Students”** or **“TGSS”** means a Course Condition supporting eligible school enrolled students to access Accredited Training funded by the Minister (or a substitute program that achieves the same or a similar outcome) to support the attainment of the SACE, a Qualification and an industry work placement.
- 2.47 **“Unique Student Identifier”** or **“USI”** means the identifier assigned to an individual participant as specified in the *Student Identifiers Act 2014* (Cth).
- 2.48 **“Unit of Competency”** means a Unit of Competency within an endorsed Training Package or a Course listed on the National Register.
- 2.49 **“Upfront Assessment of Need”** means an assessment conducted by the Recipient pursuant to clause 12 and 13.
- 2.50 **“VET”** means vocational education and training delivered to Participants to gain qualifications for all types of employment and attain specific workplace skills to a nationally agreed industry standard.

3. ASSESSMENT FOR DELIVERY OF TRAINING TO PROSPECTIVE PARTICIPANTS

- 3.1 Before the Recipient agrees to deliver Training to a prospective Participant the Recipient must undertake an assessment as required by clause 7 of the Skills Agreement.

4. ASSESSMENT OF ELIGIBILITY

- 4.1 Where applicable the Recipient must assess Participants against the Eligibility Criteria specified in Item 8 of a Funded Activities Annexure.
- 4.2 The Recipient may only deliver the Training to Participants if the Participants meet the specific Eligibility Criteria.
- 4.3 The Recipient must not deliver Training to a Participant unless and until the Participant’s name, address, details about the Training to be undertaken by the Participant and such other information required by the Minister have been entered into the Department’s System.

5. ENTITLEMENT CRITERIA

- 5.1 Where applicable the Recipient must assess Participants against the Entitlement Criteria specified in Item 9 of a Funded Activities Annexure.

6. REPAYMENT EVENT

- 6.1 In addition to all other rights arising under the Skills Agreement, the Minister may at its sole discretion require the Recipient to make a repayment if the Minister has paid Funding to the Recipient:
- (a) for a Unit of Competency for which the Participant had completed an Equivalent Unit of Competency prior to enrolling in the Course;
 - (b) where the Participant:
 - (i) did not meet the Eligibility Criteria or the Entitlement Criteria;
 - (ii) was assessed pursuant to clause 12 and 13 as having individual learning and support needs which the Recipient could not meet;

- (iii) did not comply with the conditions of access to the Funded Activity determined through the Upfront Assessment of Need; or
- (iv) did not apply to enrol in a Course.

PART B – ACCREDITED TRAINING

7. RECIPIENT'S WARRANTIES

- 7.1 In addition to the warranties specified in the Skills Agreement, the Recipient warrants and represents that the Recipient:
- (a) at all times during the Term of this Agreement and when delivering Accredited Training, it is registered under the *National Vocational Education and Training Regulator Act 2011* (Cth) as a Registered Training Organisation;
 - (b) will comply with the Standard and any other registration requirements under State or Commonwealth legislation;
 - (c) has no outstanding notices of non-compliance under the Standard; and
 - (d) will meet any other conditions or standards required by ASQA regarding any additional quality, standards or consumer protection issues in respect of training in South Australia.

8. ACCOUNTABLE OFFICER

- 8.1 The Recipient must ensure that it appoints and maintains during the Term of the Funded Activities Annexure an Accountable Officer for the purposes of the Skills Agreement.
- 8.2 The Recipient must ensure that the person it appoints as the Accountable Officer has the following minimum qualifications:
- (a) hold a Certificate IV in Training and Assessment, or higher related qualification; and
 - (b) have a minimum of 5 years of industry experience in the Vocational Education and Training (VET) sector.

9. COURSE DELIVERY BY THE RECIPIENT

- 9.1 The Recipient may enrol Participants and commence delivery of Training from the Commencement Date and upon the creation of a Training Account.
- 9.2 The Recipient must not enrol a prospective Participant in a Course unless and until the Recipient has complied with clause 12 and 13.
- 9.3 Where a maximum number of Participants is identified for a Course in the Funded Activities Annexure, the Recipient must not enrol more than the maximum number of Participants identified for that Course;
- 9.4 The Recipient must not enrol any Participants into a Course on or after the Enrolment End Date for that Course as specified:
- (a) on the STL published on the Department's Website; and
 - (b) in Item 4 in the Funded Activities Annexure.
- 9.5 The Recipient must have completed the delivery of Accredited Training to all Participants enrolled in the Courses before the Training Activity Completion Date in Item 4 of the Funded Activities Annexure.
- 9.6 Where the Recipient operates more than one Registered Training Organisation, all Accredited Training under this Funded Activities Agreement must be delivered by the Registered Training Organisation registered under the RTO Code set out in Item 4 of the Funded Activities Annexure.
- 9.7 Before any Enrolment End Date or Training Activity Completion Date for a Course, the Recipient may apply in writing to the Minister for an extension of that date. The Recipient acknowledges that the decision to grant or refuse the requested extension is at the Minister's sole discretion.
- 9.8 The Recipient may only receive Funding towards the delivery of those Courses:
- (a) listed in their ASQA scope and published on the STL on the Department's Website, with training places available and not excluded by a notice of condition issued by the Minister; or
 - (b) listed in the Funded Activities Annexure.

10. FUNDING FOR ACCREDITED TRAINING

- 10.1 The Minister will publish information about the Funding payable for each Unit of Competency on the Department's Website. The Minister may at its absolute discretion set a Funding of \$0 for a Unit of Competency which forms part of a Qualification.
- 10.2 Subject to compliance with this Agreement (including but not limited to clause 11 of the Skills Agreement and clause 5 of this Schedule) and any Course Conditions, the Minister will pay the Recipient the Funding set out in the published information for Units of Competency completed before the Training Activity Completion Date by Participants who have been enrolled in a Course in accordance with this Agreement.
- 10.3 In accordance with the Agreement, unless otherwise specified in a Course Condition, the Recipient will be paid for each Unit of Competency reported for each Participant based on the AVETMISS Result Codes as specified in Item 12 of the Funded Activities Annexure.
- 10.4 Participants will have up to three (3) attempts or such other number as the Minister may determine to successfully pass a Unit of Competency within a Course. An attempt is defined as a result for each Enrolment using the AVETMISS Result Codes as specified in Item 12 of the Funded Activities Annexure. In this case the Minister will pay for the same Unit of Competency for each attempt, according to the AVETMISS Result Codes as specified in Item 12 of the Funded Activities Annexure. No Funding will be payable for any attempts beyond the limit set out or determined in accordance with this paragraph.
- 10.5 Funding will be payable for an additional attempt in the same or equivalent Unit of Competency if an AVETMISS result code has been recorded in the Participant's funded Training history as Competency Not Achieved/Fail (30) or Recognition of Prior Learning Not Achieved (52) and:
- (a) the Participant has subsequently re-enrolled, undertaken further training and been re-assessed in the same Unit of Competency;
 - (b) the Recipient maintains evidence to this effect;
 - (c) Funding has been paid for the same Unit of Competency no more than twice; and
 - (d) if claiming a second or third attempt, the Commencement Date and Training Activity Completion Date must be different, distinct and not overlap for each attempt.
- 10.6 Once a Participant receives an AVETMISS Result Code 20, 51, or 70-AP where payable the Participant will no longer be entitled for further Funding for that Unit of Competency.
- 10.7 The Minister may pay a Completion Payment as specified in Item 12 of the Funded Activities Annexure which will vary depending on the qualification (recognised under the Australian Qualifications Framework and which is listed in the National Register) issued by the Recipient to a Participant and reported in the Department's System.
- 10.8 To qualify for the Completion Payment, in the Department's System, the Recipient must:
- (a) update the Participant's Training Account status to "Qualification Issued";
 - (b) enter against the Training Account the parchment number and date issued; and
 - (c) submit relevant AVETMISS compliant data.
- 10.9 The Funding comprises:
- (a) a training fee, based on completion of a Unit of Competency, inclusive of delivery location loadings, adjustments and concession and exemption of Participant Course Fees;
 - (b) where relevant, a completion payment on completion of the Course.
- 10.10 The training fee is determined in as specified in Item 12 of the Funded Activities Annexure.
- 10.11 Delivery Location Loading calculation is based on the following:
- (a) a Unit of Competency completed by a Participant may attract an additional payment if the delivery location of the Training is outside the Adelaide metropolitan area;
 - (b) the AVETMISS training organisation delivery location must specify for each Participant the location where the Training is delivered for each completed Unit of Competency;
 - (c) the training organisation delivery location identifier reported to the Department for the Unit of Competency. Delivery locations are to identify the place where the training is conducted; or, for online, correspondence or 'on the road' delivery, the place from which training is coordinated;
 - (d) Recipients can obtain more detailed information of the location loading for postcodes and specific suburbs on the Department's Website. The location loading classifications and additional Funding loadings are specified in Item 12 of the Funded Activities Annexure.

10.12 The Minister may, at its sole discretion and by written notice to the Recipient, vary the amount of Funding or any allowances for location, fee concessions or fee exemptions for Accredited Training. Where the Minister varies the amount of Funding:

- (a) if the amount of Funding is increased then the new Funding will apply to any Unit of Competency completed under Training Accounts created from the date prescribed by the Minister in the notice; and
- (b) if the amount of the Funding is decreased, then the decrease in the Funding will apply to any Units of Competency completed under Training Accounts created from:
 - (i) the date twenty (20) Business Days from the date of the notice to the Recipient; or
 - (ii) such date specified in the notice, whichever is the later.

11. ADDING OR REMOVING A COURSE FROM THE STL

11.1 The Minister may from time to time and at its absolute discretion add a Course to or remove a Course from the STL.

11.2 A Recipient can apply at any time to add a Course to the STL.

12. UPFRONT ASSESSMENT OF NEED

12.1 The Recipient must not enrol a Participant in a Course unless and until the Recipient has undertaken for the specific purpose of that Course an Upfront Assessment of Need, which requires the Recipient to assess the Participant:

- (a) where applicable, has a completed Employment Services Provider Referral Form, as prescribed by the Minister, from their Employment Service Provider if they are a Jobseeker under mutual obligation, which the Recipient has received;
- (b) as meeting the Eligibility Criteria;
- (c) as meeting the Entitlement Criteria; and
- (d) for his or her suitability for the Course, individual learning and support needs and language, literacy and numeracy needs.

12.2 The Recipient must record the outcomes from the Upfront Assessment of Need as prescribed by the Minister on the Department's Website.

12.3 If a Participant is a Jobseeker, the Recipient must obtain a completed referral from the Employment Services Provider prior to undertaking an Upfront Assessment of Need.

13. SUPPORTING PARTICIPANTS' NEEDS

13.1 Before enrolling a Participant in a Course, the Recipient:

- (a) must assess a Participant's learning needs in line with the requirements of the Upfront Assessment of Need process;
- (b) must determine whether it is able to meet the individual learning, support needs and language, literacy and numeracy needs of the Participant as identified in the Upfront Assessment of Need process;
- (c) must not enrol the Participant in a course they are deemed not yet ready for the AQF level or unsuitable, even with Learner Support Services and or bridging units;
- (d) where the Recipient is unable to meet a Participant's individual learning and support needs in partnership with its Learner Support provider and or its bridging unit partner, it must refer the Participant to the Department for further assistance to connect to a more suitable RTO.

13.2 The Recipient must not enrol Participant and must refer the Participant back to the Employment Service Provider, if the Participant:

- (a) is a jobseeker and the ESP referral form does not indicate the ESP supports the Participant to undertake Funded Activity;
- (b) does not agree to abide by the conditions of access to the Funded Activity determined through the Upfront Assessment of Need;
- (c) is a Jobseeker registered with an Employment Services Provider and is assessed through the Upfront Assessment of Need to require a Foundation Skills Course; and
- (d) is eligible for an Australian Government funded program that assists language, literacy or numeracy development.

14. ENROLMENT

- 14.1 The Recipient must enter into a Participant Agreement with the Participant. The Participant Agreement must include the "Standard Enrolment Questions" published in the Australian Vocational Education and Training Management Information Statistical Standard (AVETMISS) VET Provider Collection Specifications and include declarations by the Participant that the Participant has:
- (a) honestly and accurately provided information and evidence for the purposes of enrolment and eligibility;
 - (b) consented to the collection, use and storage of personal information by the Recipient;
 - (c) been informed by the Recipient that the enrolment may impact their future entitlement to government subsidised Training; and
 - (d) agrees to the conditions of access determined through the Upfront Assessment of Need.
- 14.2 Prior to enrolling a Participant in a Course, the Recipient must provide the Participant with full and accurate information to enable the Participant to determine if the Course is appropriate for them.
- 14.3 Where a Participant has previously completed a Unit of Competency, and is enrolling into a Qualification which includes an equivalent Unit of Competency, a Credit Transfer must be recorded in that Unit of Competency
- 14.4 Where a Funded Activities Annexure stipulates a limit on the number of Participants that the Recipient may enrol in a Course, the Recipient must not enrol any more than the maximum number identified.
- 14.5 The Recipient must allow a Participant, on application, to take leave from enrolment in a Course for a period of up to 6 months. The Recipient must keep the Training Account active during the period of leave but must change the status of the Training Account to indicate that the Participant has taken leave from enrolment.
- 14.6 The Recipient must not enrol a Participant:
- (a) in a Course if the Course Conditions are not met; or
 - (b) into a Course, if the completion of the Course would result in the Participant exceeding his or her entitlement for subsidised Training as described in clause 5.
- 14.7 The Recipient must not enrol a secondary school enrolled student as a Participant into a Course that is superseded or is soon to be superseded if the Recipient cannot be sure that the student has the capacity to complete the Course within the nominal hours prescribed by the training package.

15. LIMITATIONS ON ENROLMENT

- 15.1 Subject to the Entitlement Criteria specified in Item 9 of the Funded Activities Annexure, a Participant may only be enrolled in two Courses contemporaneously, unless they are a school enrolled student or in a Foundation Skills Course not aligned to a Training Contract where participants can only be enrolled in one course at a time.
- 15.2 A Participant may be enrolled in a Foundation Skills Course if assessed by the Recipient to require one pursuant to clause 13 and 14, regardless of the Participant's previous qualification level.
- 15.3 The time of Enrolment is the date that the Recipient establishes a Training Account after accepting an Enrolment from the Participant.

16. RECOGNITION OF PRIOR LEARNING

- 16.1 The use of Recognition of Prior Learning (RPL) will be closely monitored by the Department, as the attainment of any qualification funded under the Agreement is expected to comprise substantial skill and knowledge development, rather than large amounts of RPL activity. Where much of the qualification is likely to be achieved through RPL, the Department expects that the Recipient will assess and support the Participant to enrol instead in a higher-level qualification to ensure that skill levels are increased.
- 16.2 The Funding paid for RPL (AVETMISS result code 51 or 52) in a Unit of Competency completed by a Participant enrolled in a Course at Certificate III and above, is 50% of the published Funding inclusive of the location loading.
- 16.3 Funding will not be paid for RPL for Participants as specified in Item 12 of the Funded Activities Annexure or Units of Competency deemed to be a Foundation Skills Course or a Bridging Unit.

17. BRIDGING UNITS

- 17.1 Funding will be payable for up to five (5) Bridging Units completed by a Participant enrolled in a Qualification.

17.2 The Recipient must:

- (a) ensure that Bridging Units are delivered by vocational trainers and assessors who hold at a minimum:
 - (i) a vocational qualification in their field of expertise at least to the level of the Course being delivered; and
 - (ii) Certificate IV in Training and Assessment (TAE40116 or equivalent);
 - (iii) additionally, where the bridging unit is foundation skills the vocational trainers and assessors must also have the Skill Set "TAESS00009 (or equivalent) Address Foundation Skills in Vocational Practice" from the Training and Education (TAE) Training Package, and have regular access to a literacy and/or numeracy trainer and assessor; or
 - (iv) is enrolled in and undertaking the Skill Set "TAESS00009 (or equivalent) Address Foundation Skills in Vocational Practice" from the Training and Education (TAE) Training Package and is under the direct supervision of a literacy and/or numeracy trainer and assessor.
- (b) conduct an Upfront Assessment of Need for each Participant and carefully determine the need for Bridging Units based on the assessment;
- (c) select appropriate Bridging Units that are specific to the learning needs of Participants to assist them in the successful completion of a Course;
- (d) ensure that the Bridging Unit is drawn from a Course on the Subsidised Training List;
- (e) add the Bridging Unit to the Participant's Training Account prior to the commencement of Training. Bridging Units can be added or edited while a Training Account is active; and
- (f) maintain all evidence that supports the determination and selection of Bridging Units for each Participant.

17.3 The Recipient must not:

- (a) enrol a Participant:
 - (i) in a Bridging Unit unless the Recipient has undertaken an Upfront Assessment of Need in accordance with clause 12 and 13;
 - (ii) in a Bridging Unit unless the Bridging Unit will assist the Participant to complete the Qualification in which the Participant is enrolled.
 - (iii) in more than five (5) Bridging Units per Qualification.
- (b) use Bridging Units if the Participant is enrolled in a Skill Set or Skill Cluster;
- (c) select as Bridging Units those units of competency that are listed as prerequisites for the Course in which the Participant is enrolled;
- (d) select as Bridging Units those units of competency that are core or elective units for the Course in which the Participant is enrolled;
- (e) use Bridging Units to assist Participants in gaining additional skills that are over and beyond the Training package qualification in which the Participant is enrolled;
- (f) select Bridging Units for the purpose of the Participant complying with any licensing, legislative or compliance requirements; or
- (g) use Bridging Units for school enrolled students.

18. FOUNDATION SKILLS TRAINING PACKAGE

18.1 The Recipient may only deliver a Foundation Skills Training Package Course in its entirety where the Activities are delivered by literacy and/or numeracy trainers and assessors who hold at minimum:

- (a) a literacy and/or numeracy qualification at the Certificate IV level;
- (b) Certificate IV in Training and Assessment (TAE40116 or equivalent); and
- (c) at least 2 years' full-time experience in teaching and assessing literacy and/or numeracy in the VET sector.

19. TRAINING ACCOUNTS

19.1 Once the Participant Profile has been created (or validated an existing Participant Profile) in the Department's System, the Recipient must establish a new Training Account for each Course undertaken by each Participant.

19.2 The Recipient must ensure that the information in all Training Accounts for its Participants is always accurate, complete and reflects the information provided to the Recipient by the Participant.

- 19.3 The Training Commencement Date must be no later than thirty (30) days after the Training Account is created.
- 19.4 The Recipient must ensure that the Training Account is rendered inactive or closed within twenty (20) Business Days of when the Participant:
- (a) completes a Course;
 - (b) withdraws from a Course; or
 - (c) otherwise ceases to receive the Accredited Training.
- 19.5 Where a Participant does not commence Training within thirty (30) days of creation of the Training Account, the Recipient must assess the likelihood of the Participant commencing the Training and either:
- (a) terminate the enrolment and change the Training Account status to “Closed”; or
 - (b) update the Training Account field “Training Commencing Date” with the new commencement date(s) for the Training.
- 19.6 The Minister may, at its sole discretion, close a Training Account where no Funding is payable or has been paid for at least sixty (60) Business Days.

20. FEES PAYABLE BY PARTICIPANTS

- 20.1 The Recipient must, in a location which is prominent, accessible and online, publish to its Participants and to prospective Participants information about its Participant Course Fee policies so that Participants and prospective Participants may make decisions about Enrolment in a Course after being informed of the full cost of the Course. The participant fee policies to be published must include:
- (a) a breakdown of the Participant Course Fee (if any);
 - (b) all Incidental Fees that a Participant may be liable to pay; and
 - (c) criteria for eligibility of a Participant for fee concessions and fee exemptions.
- 20.2 The Recipient must only charge a Participant for Accredited Training an amount that is in accordance with information provided to the Participant under clause 20.1.
- 20.3 The Recipient may only charge Incidental Fees if the Participant is made aware that the Incidental Fees may be charged before enrolling in the Course and the Incidental Fees are a charge for an essential good or service that the Participant has the choice of acquiring from a supplier other than the Recipient and is for:
- (a) equipment or items that become the physical property of the Participant and that are not consumed during the Course; or
 - (b) food, transport and accommodation costs associated with the provision of field trips that form part of the Course.
- 20.4 Other than Incidental Fees, all other costs of the Course must be included in the Participant Course Fee.
- 20.5 Where a Participant Course Fee is payable, the Recipient must collect the Participant Course Fee and retain evidence of the collection of the Participant Course Fee.

21. COLLECTION OF PARTICIPANT COURSE FEE

- 21.1 Funding levels are premised on the principle of co-investment, i.e. in addition to the Funding, there will be a financial contribution for the Training in the form of a Participant Course Fee paid to the Recipient by the Participant, the employer of a Participant, or some other person or body. Hence, there is an expectation that the Recipient will charge a Participant Course Fee, unless otherwise specified by the Minister (see below). The Participant Course Fee cannot be paid or waived by the Recipient.
- 21.2 Where a Participant Course Fee is payable, the Recipient must record it accurately in the creation of a Training Account and must retain evidence of the collection of the fee.
- 21.3 Recipients must only charge Participants the Participant Course Fee.

22. PARTICIPANT COURSE FEE EXEMPTION

- 22.1 Participants over the age of 16 and who are, or have been, under the Guardianship of the Minister for Education (or interstate equivalent) on any guardianship order, will be eligible for a Participant Course Fee exemption.
- 22.2 Where a Participant is entitled to an exemption of the Participant Course Fee, the Recipient must not impose a Participant Course Fee.

23. PARTICIPANT COURSE FEE CONCESSION REIMBURSEMENT

- 23.1 A Participant enrolled in a Course for which a Participant Course Fee can be charged will be eligible for a Participant Course Fee concession if:
- (a) at the commencement of Training in a Unit of Competency in the Course, the Participant holds a current:
 - (i) Health Care Card;
 - (ii) Pensioner Concession Card; or
 - (iii) Veteran Affairs Concession Card.
 - (b) the Participant is a Prisoner.
- 23.2 The Recipient must offer a Participant Course Fee concession to a Participant who holds one of the above concession cards, and the level of concession must be commensurate with the Department's calculation of concession reimbursement described in clause 24.
- 23.3 For the purposes of this clause 23, "Prisoner" is all prison inmates, detainees, people on remand, those held in South Australian institutions in connection with the commission of an offence and extends to children in South Australian detention centres who are beyond the age of compulsory schooling.
- 23.4 The Recipient must seek evidence of eligibility for a Participant Course Fee concession from the Participant and record this in the Participant's Training Account to ensure that the correct Funding is paid.
- 23.5 The Recipient must ensure the information about concession eligibility recorded in the Training Account for each Participant is current and maintained throughout the period of the Enrolment.
- 23.6 The concession Funding will only be paid for a completed Unit of Competency if the expiry date of the Concession Card is later than the Activity Start Date for the Unit of Competency.
- 23.7 Where a Recipient gives a Participant a concession, and the expiry date of the Concession Card is later than the Activity Start Date for the Unit of Competency, the Recipient will be reimbursed by the Minister for the concession saving passed on to the participant, up to the maximum specified in Item 12 of the Funded Activities Annexure. The reimbursement cannot be more than the concession given to the Participant.

24. CALCULATION OF CONCESSION REIMBURSEMENT

- 24.1 The concession reimbursement payable by the Minister is specified in Item 12 of the Funded Activities Annexure.
- 24.2 The calculation of a concession reimbursement is based on the information provided by the Recipient in the creation of a Training Account.

25. REPORTING IN THE DEPARTMENT'S SYSTEM

- 25.1 Without limiting any other reporting requirements in the Agreement, the Recipient must ensure that within fifteen (15) Business Days of Accredited Training being delivered under this Agreement the activity is uploaded or entered as AVETMISS compliant data into the Department's System using the appropriate Fund Source Indicator and/or Contract ID (if required) as specified in Item 4 of the Funded Activities Annexure.
- 25.2 The Minister will provide the Recipient with appropriate information to allow access to the Department's System.

26. AVETMISS REPORTING

- 26.1 The Recipient must ensure that AVETMISS compliant data for its Participants reported to the Department is always accurate and complete.
- 26.2 No later than thirty (30) days after the Unit of Competency activity is completed, the Recipient must submit the relevant AVETMISS compliant data, including the Participant's USI, to the Department.
- 26.3 At the conclusion of each AVETMISS calendar year, there will be a final reconciliation of Funding paid compared to AVETMISS data reported. The reconciliation will investigate:
- (a) AVETMISS data no longer being reported by a Recipient;
 - (b) AVETMISS data still being reported, but no longer coded with the correct Fund Source Indicator; and

- (c) AVETMISS data still being reported, but the result code has changed and is no longer a payable result code.

26.4 Reports will identify data integrity issues highlighted by the reconciliation. The Recipient will be given the opportunity to amend records where appropriate. Discrepancies that cannot be amended may result in recovery action.

27. PAYMENT OF FUNDS

27.1 For each Participant, Funding towards the delivery of Courses will be paid to the Recipient in accordance with this clause and clause 17 of the Skills Agreement.

27.2 Where fee free has been applied to a Course published on the STL on the Department's Website, Funding will be provided to the Recipient for that Course. In this instance, the Recipient is not to charge a fee to the Participant;

27.3 The Minister will not provide Funding to the Recipient for a Course (or related Unit of Competency) listed on their ASQA scope and on the STL published on the Department's Website:

- (a) where Training Contracts Only has been applied to a Course published on the STL on the Department's Website and, at the time of the commencement of training, the status of a Training Contract is not "Approved";
- (b) for a Participant who is enrolled post a No New Enrolments Date applied to a Course published on the STL on the Department's Website;
- (c) where Training Contracts Only has been applied to a Course published on the STL on the Department's Website and the Recipient is not the nominated Training provider for the Participant;
- (d) for a Participant who is enrolled in a Course after that Course has been declared to be superseded on the National Register;
- (e) for a Participant who is enrolled after the Enrolment End Date;
- (f) for a Participant who has not completed his or her Training by the Training Activity Completion Date;
- (g) for any Participants that exceed the 'Maximum Number of Units of Competency' listed for each Course published on the STL on the Department's Website; or
- (h) for a Participant who is enrolled in that Course where the Enrolment contravenes a Course Condition.

28. CLAIM ADJUSTMENT RESULTING IN FUNDING ADJUSTMENT

28.1 Funding may need to be recovered, or additional Funding paid, as a result of data reported into the Department's Systems that was previously not complete, compliant and accurate as required by AVETMISS.

28.2 Claim adjustments will be undertaken annually based on a monthly reconciliation. Resulting Funding adjustments will be limited to activity within the current AVETMISS reporting period, i.e. no Funding adjustment will occur if the data cannot be reported under AVETMISS.

PART C – NON-ACCREDITED TRAINING

29. NON-ACCREDITED TRAINING

29.1 The Recipient must use the Funding to deliver the Non-Accredited Training to Participants specified in the Funded Activities Annexure.

30. ENROLMENT

30.1 The Recipient must not enrol a Participant:

- (a) in Non-Accredited Training unless the Recipient has entered into a Participant Agreement with the Participant; and
 - (i) entered data into the Department's System to generate a Participant Number and a Participant Profile;
 - (ii) provided the Participant Number to the Participant; and
 - (iii) added the Participant to the Project (where applicable) into the Department's System as specified in Item 10 of the Funded Activities Annexure.

31. ON-JOB TRAINING AND EMPLOYER-BASED DELIVERY

- 31.1 No Funding will be payable to a Recipient where the Non-Accredited Training is delivered or provided by the employer of the Participant, and where the Recipient's role is to validate the achievement of competency and issue the qualification or statement of attainment.
- 31.2 No Funding will be payable for a course or other qualification completed by a Participant who is under a Training Contract where the Participant and the employer select the "on-job" option in the approved Training Plan as required under the *Training and Skills Development Act 2008* (SA).

ATTACHMENT 3

PROJECT ACTIVITIES SCHEDULE

PART A – GENERAL TERMS AND CONDITIONS

1. BACKGROUND

- 1.1 This Schedule sets out the terms and conditions relevant to the provision of Project Activities and should be read in conjunction with the terms and conditions contained within a Funded Activities Annexure and the Skills Agreement.
- 1.2 The terms and conditions in Part A apply to all Project Activities, in addition, Part B applies to Group Training Organisation Support, Part C applies to Core Skill Profile Interpretation Report, Part D applies to Learner Support, Part E applies to Other Project Activities.
- 1.3 Project Activities are Funded Activities designed to assist prospective Participants to obtain and sustain employment by combining skill development with activities that address Barriers to employment.
- 1.4 Project Activities comprise one or more of the following:
 - (a) supporting the pastoral care of apprentices and trainees in areas of State priority by Group Training Organisations through the South Australian Group Training Program (SAGTP);
 - (b) Learner Support which is aimed at:
 - (i) increasing qualification completion rates of students with complex support needs; and
 - (ii) supporting successful transitions to further study or employment following training.
 - (c) Project Management; and/or
 - (d) any Other Project Activities.

2. DEFINITIONS

- 2.1 In this Schedule, all words and expressions (other than those defined below) bear the same meaning as in the Skills Agreement unless the context otherwise requires:
 - (a) **“Barriers”** means aspects of a Participant’s personal, educational, social and economic circumstances that preclude or deter the Participant from participating in training or employment.
 - (b) **“Core Skills Profile Interpretation Report”** or **“CSPA”** means the interpretation of the Literacy and Numeracy Comprehensive Assessment and completion of the Interpretation Report.
 - (c) **“Learner Support”** or **“LS”** means the provision of specialised support to disadvantaged people to:
 - (i) improve equity and accessibility of accredited vocational training;
 - (ii) address barriers to learning;
 - (iii) support retention in training; and
 - (iv) assist Participants to complete their qualifications and transition to employment.
 - (d) **“Milestones”** means the milestones set out in Item 11 of the Funded Activities Annexure (where applicable).
 - (e) **“Project Activity Completion Date”** means the date specified in Item 4 of the Funded Activities Annexure, being the date by which the Recipient must have completed delivery of the Project Activities.
 - (f) **“Other Project Activities”** means those Project Activities prescribed by the Minister under Part E of this Project Activities Schedule.
 - (g) **“Project Management”** means the framework for the implementation of the Project through planning, organisation, performance monitoring, assessment of the results and, if necessary, making changes to meet the objectives of the Project.

3. PAYMENT OF FUNDS

- 3.1 The maximum value of the Funding available for the Project for delivery of Project Activities is specified in Item 7 of the Funded Activities Annexure.
- 3.2 Payment will be made at the next available payment run:
- (a) upon receipt and acceptance to the Minister's satisfaction of reports and required information as specified in Item 10 of the Funded Activities Annexure which demonstrates the delivery of the Project Activities in accordance with this Schedule (with such reports and information to be provided through the Department's System); or
 - (b) upon receipt and acceptance to the Minister's satisfaction of the achievement of the Milestones specified in Item 11 of the Funded Activities Annexure.

4. PROJECT MANAGEMENT

- 4.1 The Recipient must:
- (a) where applicable, define the objectives, scope and deliverables of the Project and document these elements in an action plan;
 - (b) implement and coordinate the delivery of the Project;
 - (c) monitor the progress the Project to ensure that the Purpose as specified in Item 5 of the Funded Activities Annexure and Milestones are achieved;
 - (d) review and evaluate this Project on its completion and document the evaluation in a Final Report;
 - (e) review and evaluate this Project on its completion and complete an Acquittal Report.

5. SPECIAL CONDITIONS

- 5.1 Formal monitoring activity will occur during the Project to confirm that Participants are receiving Activities that align to the Purpose and Outcomes of the Project as specified in the Funded Activities Annexure.

PART B – GROUP TRAINING ORGANISATION SUPPORT

6. GROUP TRAINING ORGANISATION (GTO) SUPPORT ELIGIBILITY

- 6.1 A GTO is eligible to receive funding if:
- (a) it is registered under the National Standards for Group Training Organisations in South Australia, by the Department; and
 - (b) it is required to pay payroll tax in South Australia.

7. GTO SUPPORT FUNDING

- 7.1 The purpose of this Funding is to provide a subsidy for the Payroll Tax incurred by a GTO for the employment and mentoring of apprentices/trainees.

PART C – CORE SKILLS PROFILE FOR ADULTS INTERPRETATION REPORT

8. INTERPRETATION OF THE LITERACY AND NUMERACY COMPREHENSIVE ASSESSMENT (LANCA)

- 8.1 The Recipient must have staff with the required interpretation expertise to interpret a LaNCA and complete a CSPA Interpretation Report or partner with another RTO with staff with the required interpretation expertise.
- 8.2 Where the Recipient partners with another RTO, that RTO must hold a current Skills Agreement with the Department for this Activity.
- 8.3 The Recipient undertaking the Upfront Assessment of Need will receive payment for submitted and accepted CSPA Interpretation Reports on a quarterly basis (i.e. March, June, September and December) in accordance with the process as published on the Department's Website.

PART D – LEARNER SUPPORT

9. LEARNER SUPPORT ACTIVITIES

- 9.1 Learner Support is prescribed by the Minister in the Learner Support Operational Guidelines published on the Department's website. Learner Support activities are described in the table below:

Support Type	Description
Assessment of Support Needs	Intake interview for Case Management support including assessment of support needs and initial support planning. Completion and submission to the Department of the LS Evidence Form and LS Consent Form.
Learning Support	In-class Support supporting one or more students in a class/learning setting to guide and answer questions, assist with comprehension and support classroom interaction. Study Skills Support providing assistance one-on-one or in a group setting to review and address comprehension of class presented materials and provide guidance on assignment preparation.
External Referral and Advocacy	Liaison with external agencies, advocating for student to access support services, setting up appointments, consulting with agencies, support planning with agencies providing ongoing support to students, government and non-government service agencies including Employment Service Providers and Australian Apprenticeship Support Network (AASN) providers.
Internal Referral and Liaison	Referral to and liaison with RTO staff, including administrative staff for access to administrative services and trainers for making reasonable adjustments (disability); addressing classroom and campus environment issues; and managing issues with staff/student interactions.
Personal Support	Counselling/listening to personal, social, emotional, family and cultural issues and providing practical assistance to deal with such issues, following up students, making meeting times/rescheduling.
Transition Support	Guidance: Assisting the student to acclimatise to an adult learning environment, assistance to navigate the system and understand expectations. Referral to external agencies for guidance (e.g. JSA/DES or DIS Career Services). Follow up with students as needed. Vocational Placements: Providing support while on vocational placements. Planning: Discussing next options and the student to navigate relevant systems. Where applicable liaising with and referring students to JSA/DES provider and/or other external service agencies for support on exiting training. Advocacy: Advocating with ESP or Centrelink over issues associated with transitioning into or out of training.

- 9.2 The Learner Support Post Course Transition activities are described in the table below:

Support Type	Description
Further Study Transitions	
Further Study Support Planning	As for Learner Support activities but complete and submit to the Department the LS Post Course Support Plan and LS Post Course Consent form.
Transition Support	Work with RTO/trainer and/or student to establish course expectations, identify any gaps in assumed knowledge or skill for the course, establish effective study habits, review initial progress.
Employment Transitions	
Employment Support Planning	Initial interview to explore anticipated employment related issues or personal issues that may impact on a successful transition; identify areas for development in skills for work or personal career management; completion and submission to the Department of the LS Post Course Support Plan and LS Post Course Consent Form.
Employer Interactions	Meeting with employer or participant (separately or together) to discuss expectations, how participant is faring and any issues that need addressing; developing agreement on strategies to address issues; reviewing strategies and issues; establish effective communication processes.

- 9.3 It is permissible for the Recipient to use a portion of the Funding on ad-hoc support that are outside of the specified Learner Support, provided that, the total amount claimed for ad-hoc support during the Term is not more than 7.5% (or value otherwise prescribed by the Minister) of the Funds payable under the Annexure; and where the ad-hoc support necessary:
- (a) to meet extraordinary expenses to enable a Participant to participate in study, work experience or support activities; and
 - (b) the Recipient or referring RTO is unable to provide the support either because reasonable general student support of the Recipient or referring RTO has been exhausted or there is a need for specialist support.
- 9.4 The following Participants are not eligible for Learner Support:
- (a) Participants enrolled in accredited units of competency delivered through Adult Community Education (ACE) or a Project; and
 - (b) Participants enrolled in fee-for-service courses not on the Subsidised Training List.

PART E – OTHER PROJECT ACTIVITIES

10. **OTHER PROJECT ACTIVITIES**
- 10.1 The Minister reserves the right to provide Funding for other Project Activities excluding accredited and non-accredited training that contributes to the success of the Participants and Project outcomes.
- 10.2 The Recipient must comply with the detailed requirements for other Project Activities specified in a Funded Activities Annexure.