

AUSTRALIAN CAPITAL TERRITORY

FUNDING AGREEMENT

Dated

Parties

DEED OF FUNDING BETWEEN

AUSTRALIAN CAPITAL TERRITORY

**[INSERT FULL NAME OF RECIPIENT
INCL. ACN IF COMPANY OR ABN]**

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PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) (**Territory**) represented by the Chief Minister, Treasury and Economic Development Directorate.

[INSERT FULL NAME, INCLUDING ACN FOR A COMPANY OR ABN FOR OTHER ORGANISATION AND CHECK IT IS A LEGAL ENTITY] of [Insert address (of registered office if for a company)] (**Recipient**).

BACKGROUND

- A. The Territory's Chief Minister, Treasury and Economic Development Directorate (Territory) has responsibility for the oversight and promotion of quality vocational education and training in the Territory.
 - B. The Recipient is a registered training organisation (RTO) registered with the Australian Skills Quality Authority under the *National Vocational Education and Training Regulator Act 2011*.
 - C. This Deed is to outline the circumstances in which the Territory may provide discretionary Funds on behalf of the Commonwealth and Territory towards the cost of delivering Training Services under the umbrella of vocational education and training (VET).
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IT IS AGREED by the parties as follows:

1. Purpose of this Deed

- (1) The purpose of this Deed is to set out the terms and conditions under which the Territory may make available, and the Recipient may accept Funds towards the cost of the Recipient delivering Training Services to Eligible Individuals under a range of ACT Government Training Initiatives which are outlined in the Schedules to this Deed.
- (2) The Territory does not guarantee, warrant or otherwise represent that the Recipient will receive any discretionary Funding under this Deed.

2. Term of this Deed

- (1) This Deed is for the period specified in Item 2 of Schedule 1.
- (2) At the Territory's sole discretion and subject to the Territory being satisfied of the satisfactory performance of the Recipient's obligations under this Deed, the Term of this Deed may be extended for further periods specified in Item 3 of Schedule 1 (each an option period) on the terms and conditions then in effect, by the Territory giving thirty (30) calendar days written notice to the Recipient prior to the expiration of this Deed. If the Territory exercises its discretion to extend the Term, then the Deed is renewed on the same terms and conditions of this Deed which are then in effect.

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- (3) Unless the Territory otherwise requests, the Recipient must complete in accordance with this Deed all Training Services that had commenced as at, or prior to, the date of expiry of this Deed.

3. Updates to Schedules

- (1) From time to time during the Term, the Territory may, by notice to the Contract Officer, issue to the Recipient an update, amendment, change, new or addition to any Schedule (Updated Schedule) and provide details of where that update is located on the Territory's website.
- (2) Upon issue of a notice by the Territory pursuant to clause 3(1), the Updated Schedule forms part of this Deed and the Recipient must comply with its provisions. The Updated Schedule is, unless otherwise stated, in addition to the Recipient's obligations under any other Schedules.

4. The Recipient's Obligations

The Recipient must, for the Term of this Deed:

- (1) ensure that it remains registered as an RTO and complies with any conditions of its registration;
- (2) comply with all Standards or other requirements set by the National VET Regulator;
- (3) comply with all requirements set out in the Schedule/s;
- (4) if the Recipient is approved to receive government subsidies for the provision of VET in any other Australian jurisdiction, the Recipient must:
 - (a) maintain and comply with any conditions of that approval; and
 - (b) notify the Territory if its approval in another Australian jurisdiction has been terminated or suspended.
- (5) use the Funds for the sole purpose of providing the Training Services to which those Funds relate;
- (6) deliver the Training Services in accordance with the Schedule/s to all Eligible Individuals enrolled in an ACT Training Initiative through the Recipient;
- (7) during the term of this Deed not engage, employ, contract or otherwise deal with any person or entity that, within seven (7) years prior to the Commencement Date of this Deed unless the Territory agrees otherwise:
 - (a) had its agreement with the Territory or any other State/Territory Training Authority terminated or suspended prior to the expiration date for a breach of that agreement; or
 - (b) had conditions imposed on its registration or RTO operations in any State or Territory which affected its ability to provide the Training Services; or

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- (c) was responsible, via their acts or omissions, for any of the matters raised in sub-paragraph (b) above occurring to another person or entity;
- (8) in the performance of its obligations under this Deed, not engage in any conduct constituting fraud, dishonesty, recklessness, wanton disregard or gross negligence;
- (9) make all reasonable efforts to work and communicate effectively with and maintain the confidence of the Territory and all stakeholders affected by this Deed;
- (10) not do or omit to do anything which may damage, ridicule, bring into disrepute or be detrimental to the VET sector or the Territory, its name or reputation. For the purposes of this clause 4(10), matters which may be detrimental to the VET sector or the Territory, its name or reputation include (without limitation) the following:
 - (a) behaving dishonestly and in a way that fails to uphold the objects and values of the VET sector in the Territory;
 - (b) behaving in a manner that damages the public confidence in the integrity of the VET sector in the Territory; and
 - (c) making improper use of the position of trust placed in the Recipient in the appropriate expenditure of public moneys for vocational education and training;
- (11) maintain financial viability, in accordance with the *Financial Viability Risk Assessment Requirements 2011* – common indicators of financial performance and position may include but are not limited to the following:
 - (a) liquidity – including current ratio and cash flow assessments;
 - (b) solvency – including debt to assets assessment, debt to equity assessment;
 - (c) economic dependency – for example, reliance upon government funded training, or reliance on a particular cohort of students (e.g. overseas students);
 - (d) revenue, profit and cash flow;
 - (e) commercial risk;
 - (f) audit opinion;
 - (g) contingencies;
 - (h) compliance with all its statutory obligations (for example: GST, taxation, superannuation, Companies Code);
 - (i) compliance with accounting standards;
 - (j) impact of the Recipient’s accounting policies on its financial risk;
- (12) allow the Territory, or persons appointed by the Territory, to conduct an assessment of the Recipient’s financial viability based on the criteria in clause 4(11) (including

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by granting access to all premises and records and allowing all directors, managers, owners and employees of the Recipient to be interviewed), and must provide such assistance as may reasonably be required;

- (13) notify the Territory in writing within fourteen (14) calendar days of any significant change in circumstances pertaining to this Deed. Where the Territory is notified of such a change, it reserves its rights to seek further and more detailed information on the change, and may determine at its sole discretion, that such change is sufficient to require the Recipient to re-apply for a new Deed. Any significant change may include but is not limited to:
- (a) any changes to the Recipient's key personnel responsible for servicing the Territory, including but not limited to changes to its executive or non executive management, chief executive officer or chief financial officer;
 - (b) the Recipient changing ownership;
 - (c) the Recipient changing its legal and/or trading name; or
 - (d) the Recipient changing the address of the principal place of business in the Territory.

5. Access to Web System

- (1) On or following the Commencement Date, the Recipient will be provided with the login credentials for an AVETARS user account, required to access restricted AVETARS functionality including student enrolment management, the nomination of qualifications for delivery, and the claiming of payments for the delivery of training (User Account).
- (2) In the event that the Recipient fails to comply with the terms of this Deed or the Schedule/s the Territory may in its complete discretion amend, limit or place conditions upon the Recipient's User Account including (but not limited to) limiting or suspending the Recipient's ability to enrol new students in AVETARS or to otherwise be approved as the RTO for new students.

6. Subcontracting and other third party arrangements

- (1) The Recipient may subcontract Training Services to another RTO that holds an ACT Funding Agreement.
- (2) Where the Recipient proposes to subcontract Training Services to
- (a) an RTO that does not hold an ACT Funding Agreement; and/or
 - (b) an entity that is not an RTO;

the Recipient must seek written approval of the Territory prior to entering into subcontracting and other third party arrangements, noting where that arrangement is approved the Territory may impose such conditions as it sees fit.

- (3) Under clause 6(1) and where the Territory gives the Recipient written approval to enter into such an arrangement as provided under clause 6(2), the Recipient agrees

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and warrants that it will adopt as a minimum in a formal written agreement with the subcontractor, to be executed before the subcontractor begins providing any Training Services, the mandatory terms and conditions for the arrangement as set out in the following sub-clauses:

- (i) the subcontracted RTO must have the relevant AQF qualification, skill set or VET course on their scope of registration;
 - (ii) each Eligible Individual who receives Training Services under a subcontract arrangement must be aware that they are enrolled with the Recipient, not the third party;
 - (iii) the subcontractor to comply with the relevant liabilities and obligations of the Recipient under this Deed;
 - (iv) must permit the Recipient to immediately suspend the subcontract if the Recipient's Deed is suspended;
 - (v) must permit the Recipient to immediately terminate the subcontract if the Recipient's Deed is terminated;
 - (vi) all subcontractors have appropriate qualifications and are suitably experienced and capable of providing Training Services as required by this Deed;
 - (vii) must ensure that the subcontractor has insurance cover no less than that required of the Recipient under this Deed; and
 - (viii) must otherwise permit the Recipient to comply with its obligations under this Deed.
- (4) If the Recipient subcontracts the delivery of some or all Training Services, the Recipient acknowledges and agrees that:
- (a) the Recipient is liable to the Territory for the acts or omissions or negligence of any subcontractor (or any employee, officer or agent of the subcontractor) as if they were the acts or omissions or negligence of the Recipient;
 - (b) the Recipient indemnifies (and must keep indemnified) the Territory against all claims, loss and damage arising from any acts or omissions or negligence of any subcontractor in connection with, or in the course of, the delivery of Training Services to an Eligible Individual or any breach of this Deed;
 - (c) all costs associated with any subcontract are the responsibility of the Recipient;
 - (d) the Recipient must procure that any subcontractor provide all necessary assistance, documentation and information that is required under this Deed;
 - (e) the Recipient must notify the Territory within thirty (30) calendar days of the subcontract agreement coming to an end.

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- (5) The Recipient by entering into such arrangements under 6(1) and 6(2) is not relieved of its liabilities or obligations under this Deed.

7. Funding and Payments

- (1) Subject to the Territory being satisfied that the Recipient continues to comply with its requirements as an RTO and continues to meet its obligations in a timely manner under this Deed, it will make Funds available at the times and in the manner set out in the Schedule/s to the Recipient, and not a third party.
- (2) In respect of a National Training Contract, the Territory will only make available Funds where such a contract is submitted and approved by the Territory prior to the expiration of the Term.
- (3) The Recipient acknowledges and agrees that the Territory's payment of Funds to the Recipient in respect of an Eligible Individual under this Deed is conditional upon the Recipient continuing to deliver the Training Services in accordance with this Deed.
- (4) Nothing in this Deed is to be construed as creating an obligation, commitment or undertaking by the Territory to provide additional or further funding or assistance beyond that provided for in this Deed.
- (5) If the Recipient is non-compliant with any aspect of this or any other agreement between the Territory and the Recipient, the Territory may withhold, suspend, cancel or terminate payment of any part of the Funds under this or any other agreement as the Territory considers appropriate.
- (6) The Territory may deduct from any payment due to the Recipient under this Deed:
- (a) any amounts due to the Territory including but not limited to recovery of funds;
 - (b) money paid for any Training Services that the Territory deems to have not been provided in accordance with this Deed;
 - (c) money expended by the Territory to make good any non-compliance by the Recipient with this Deed (up to \$10,000).
- (7) Each payment due to the Recipient under this Deed will be increased by an amount equal to any GST payable with respect to the Taxable Supply for which the payment is made, provided that each relevant claim for payment is submitted as specified in the Schedule/s. The total amount of monies paid under this Deed will be increased to include the total amount of GST payable. The Recipient is required to maintain a current Deed with the Territory allowing the Territory to issue Recipient Created Tax Invoices in relation to all payments.
- (8) At the Territory's sole discretion and where this Deed has expired or terminated, and no later than thirty (30) calendar days after that expiry or termination, and subject to the Recipient having conducted Training Services to the Territory's satisfaction within both the term of this Deed and an appropriate payment was not made by the Territory, if the Recipient makes a claim and reports on that activity within the thirty (30) calendar day period, the Territory may make the appropriate payment to the Recipient.

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8. Accounts and Records

- (1) The Recipient must:
 - (a) ensure that it applies appropriate accounting processes and controls in connection with this Deed, Training Services and Funds;
 - (b) keep complete records and accounts as required by law and any regulatory authorities applicable to the Recipient, which may include quotations, invoices and receipts and must indicate particulars of and payments to any subcontractors evidencing compliance with the provisions of this Deed;
 - (c) upon request by the Territory, make available to the Territory (including any of its authorised representatives, including the ACT Auditor General), for inspection and copying if required, during business hours at a location specified by the Territory, such books, accounts, receipts, printed or electronic material and other documents or other records in its possession, control or power relating to the Funds or Training Services, and supply sufficient information to allow the Territory to satisfy itself as to the financial position of the Recipient, the use of Funds and the capacity of the Recipient to deliver Training Services to Eligible Individuals;
 - (d) retain, for seven (7) years after completion or withdrawal such records as outlined above demonstrating that the Recipient has complied with its obligations as an RTO and the terms of this Deed;
 - (e) comply with all legislation relating to record keeping requirements and as specified by the National VET Regulator and the Australian Vocational Education and Training Management Information Statistical Standard (AVETMISS).
- (2) The Territory must:
 - (a) take all reasonable measures to ensure that information accessed, provided by the Recipient or held by it in accordance with this Deed is protected against loss, unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose;
 - (b) ensure only authorised personnel have access to Recipient's information.

9. Compliance Monitoring

- (1) The Territory may conduct an audit of the Recipient and any subcontractor in accordance with the Audit Guide for Training Providers in the ACT for the purposes of determining the Recipient's standard of performance under this Deed or any other prior contractual arrangement.
- (2) Where the Territory becomes involved in a formal dispute with the Recipient and the dispute relates to the provision of training pursuant to this Deed or regulation under the Act the Territory will refer the matter to the National VET Regulator and may request the National VET Regulator to conduct an audit.

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- (3) Upon request, the Recipient must provide the Territory with access to all premises and all records needed to substantiate compliance with this Deed.
- (4) The Recipient must comply with all written directions from the Territory in relation to the obligations of the Recipient under this Deed.
- (5) The Recipient acknowledges that the Territory has the right, exercisable at any time, to interview all directors, managers, owners and employees of the Recipient, and employers, students and subcontractors receiving or assisting with the delivery of Training Services under this Deed.
- (6) If the Recipient fails to comply with any request from the Territory to provide any information in relation to the Recipient's compliance with this Deed or hinders the Territory in any way in the exercise of its rights under clause 9, the Territory may withhold any payments to the Recipient until such requests for information have been provided or hindrance removed.
- (7) The Recipient grants the Territory an irrevocable licence to enter and remain on any premises and to have access to such records as necessary to substantiate compliance with this Deed.
- (8) The Recipient must ensure that it and its employees and subcontractors, including persons, enterprises, schools or other organisations, make available proper access to all physical and electronic records and answer completely and accurately any request for information necessary for the Territory to perform any of the activities referred to in clause 9 of this Deed.
- (9) If breaches are identified through the compliance monitoring process, resulting in the termination of this Deed, the Recipient must reimburse any costs incurred by the Territory in conducting the audit/s under clause 9(1), if directed to do so and without prejudice to any other rights or claims the Territory may have.
- (10) The Territory will take into consideration for future contractual arrangements the results of the Recipient's performance, including results of any audits conducted under this Deed.
- (11) The Recipient must conduct an internal audit a minimum of once every calendar year, to assess the Recipient's ongoing suitability and compliance with this Deed and the adequacy of its operations in ensuring consistency of outcomes. The Recipient must use the Internal Review Tool provided to the Recipient by the Territory to report the outcomes of the internal audit and provide this evidence to the Territory on request.

10. Audit Methodology

- (1) The Territory will conduct audits at the times and in the manner set out in the Audit Guide for Training Providers in the ACT.
- (2) The Recipient must comply with the requirements (including timeframes) specified in the Audit Guide for Training Providers in the ACT.

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- (3) The Territory may annually publish audit results, including aggregate data in respect of the Recipient on:
- (a) number of audits conducted;
 - (b) number of non-compliances identified;
 - (c) number of RTOs suspended; and
 - (d) financial sanction applied.

11. Confidentiality and Privacy

- (1) Except as provided in this Deed, the Recipient must not disclose Territory Information to any person without the prior written consent of the Territory except to the extent that the Territory Information is:
- (a) required or authorised to be disclosed by law;
 - (b) disclosed to the Recipient's solicitors, auditors, insurers or advisers;
 - (c) generally available to the public; or
 - (d) in the possession of the Recipient without restriction in relation to disclosure before the date of receipt from the Territory.
- (2) The Recipient must take all reasonable measures to ensure that:
- (a) Territory Information accessed or held by it in connection with this Deed is protected against loss, unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose; and
 - (b) only authorised personnel have access to Territory Information.
- (3) The Recipient must:
- (a) use Territory Information held in connection with this Deed only for the purposes of fulfilling its obligations under this Deed;
 - (b) comply with the Territory Privacy Principles as set out in the *Information Privacy Act 2014 (ACT)* and must ensure that any subcontractor appointed under this Deed does not act or engage in any practice that breaches any of the Territory Privacy Principles (TPPs) or Territory Privacy Principles Code (TPP Code) of the Territory.
- (4) The Recipient must immediately notify the Territory if the Recipient becomes aware that:
- (a) a disclosure of Territory Information may be required by law; or
 - (b) an unauthorised disclosure of Territory Information has occurred.

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- (5) The Recipient acknowledges that the publication or communication of any fact or document by a person which has come to its knowledge or into its possession or custody by virtue of the performance of this Deed (other than to a person to whom the Recipient is authorised to publish or disclose the fact or document) may be an offence under section 153 of the *Crimes Act 1900* (ACT), the maximum penalty for which is two (2) years imprisonment.
- (6) The Recipient must ensure that any employee of the Recipient or any subcontractor requiring access to any Personal Information held in connection with this Deed:
 - (a) makes an undertaking in writing to not access, use, disclose or retain Personal Information except in performing their duties of employment or contractual obligations; and
 - (b) is informed that failure to comply with this undertaking may be a criminal offence and may also lead the Recipient to take disciplinary action against the employee or subcontractor.
- (7) The Recipient must, in respect of any Personal Information held in connection with this Deed, co-operate with any reasonable requests or directions of the Territory arising directly from, or in connection with, the exercise of the functions of the Privacy Commissioner under the *Information Privacy Act 2014* (ACT) or otherwise, including the issuing of any guidelines concerning the handling of Personal Information.
- (8) The Territory may use any information supplied by the Recipient to the Territory for the purposes of this Deed to prepare statistics, calculate subsidies, reporting and other research in connection with the *Skilling Australia's Workforce Act 2005* (Commonwealth) and the *Financial Management Act 1996* (ACT).
- (9) Clause 11 survives the expiry or termination of this Deed.

12. Exchange of Information with Other Agencies

- (1) The Territory may disclose to any government agency involved in the provision or regulation of education and training services any information relating to the Recipient and this Deed or any previous agreement (other than Personal Information) including course and qualification details, funding details, details of any non-compliance by the Recipient with this Deed, any action taken by the Territory under this Deed, and findings and outcomes of any audits undertaken pursuant to this Deed.
- (2) The Recipient consents to the Territory disclosing information and, if required, will use all reasonable endeavours to assist the Territory in meeting any of its disclosure obligations including, without limitation:
 - (a) under the *Freedom of Information Act 1989* (ACT);
 - (b) *Information Privacy Act 2014* (ACT); and
 - (c) under the *Ombudsman Act 1989* (ACT).

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- (3) The Territory may disclose to the Australian Apprenticeship Support Network any approved variations to the Training Contract.

13. Insurance

- (1) The Recipient must, at its own expense, ensure it has all the insurance cover necessary to carry out its business and provide Training Services including insurance for workers compensation, public liability, professional liability and professional indemnity. The insurance policies must include:
 - (a) public liability insurance of not less than \$20 million per event for the term of this Deed; and
 - (b) professional indemnity insurance of not less than \$2 million in respect of each claim and in the annual aggregate.

14. Indemnities

- (1) The Recipient indemnifies the Territory, its employees and agents against liability in respect of all claims, costs and expenses in relation to all loss, damage, injury or death to persons or property caused by the Recipient, in connection with the delivery of Training Services, except to the extent that the Territory caused the relevant loss, damage or injury.
- (2) The Recipient indemnifies the Territory, its employees and agents in respect of any liability, loss or expense incurred arising out of, or in connection with, a breach of the obligations of the Recipient for a breach of the *Information Privacy Act 2014* (ACT).
- (3) The Recipient must, at its expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnities in clauses 14(1) and 14(2) and the Territory may deduct the amount, or any part of it, from the monies due or becoming due to the Recipient.
- (4) In this clause, “liability, loss or expense” includes any amount paid by the Territory on behalf of the Commonwealth for an interference with the privacy of an individual being a reasonable amount as compensation for loss or damage for which the Commonwealth would have been liable under the *Information Privacy Act 2014* (ACT) if that breach had been that of the Territory.

15. Termination

- (1) The Territory may terminate this Deed or reduce the scope of the Training Services at any time and for any reason, including for change of policy or a machinery of government change, by the Territory giving written notice to the Recipient.
- (2) Where the Territory terminates this Deed under clause 15(1), it is not liable to pay to the Recipient any further Funds on and from the date of termination.
- (3) Where the Territory reduces the scope of the Training Services pursuant to clause 15(1), the Recipient must continue to deliver the Training Services in accordance

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with the notice, and any liability of the Territory to pay the Funds will, in the absence of agreement to the contrary, abate proportionately to the reduction in the scope of the Training Services.

16. Default

For the purposes of this Deed, each of the following is an Event of Default:

- (1) the Recipient fails to meet any of its obligations pursuant to this Deed;
- (2) any information the Recipient provides in connection with this Deed proves at any time to have been or to be incorrect, inaccurate or misleading in any material respect;
- (3) an Insolvency Event occurs in relation to the Recipient;
- (4) an audit report from the National VET Regulator indicates that there may have been a serious non-compliance with the Standards by the Recipient;
- (5) a notice from the National VET Regulator indicates that there may have been a serious non-compliance with the Standards by the Recipient;
- (6) the National VET Regulator makes, or issues a notice that indicates that the National VET Regulator intends to make, a decision which may significantly affect or prevent the Recipient's ability to perform its obligations under this Deed, whether or not a Recipient's rights for reconsideration or appeal have been exhausted;
- (7) the Recipient applies Funds for purposes other than the purpose stated in this Deed;
- (8) there has been any fraud or reasonably suspected fraud relating to the Recipient or Funds, misappropriation of Funds by the Recipient or there has otherwise been any misleading or deceptive conduct on the part of the Recipient in connection with this Deed or the provision or use of Funds;
- (9) the Recipient has made, or the Territory reasonably suspects that the Recipient has made, any false or misleading representation to the Territory in connection with this Deed (whether by act or omission, and whether before or after the Commencement Date); and
- (10) the registration of the Recipient, or any subcontractor, by any recognised regulatory body for the ACT is suspended, withdrawn, cancelled or otherwise ceases.

17. Consequences of Default

- (1) Upon the occurrence of any Event of Default, the Territory may, at its sole discretion, by written notice to the Recipient:
 - (a) immediately terminate this Deed;
 - (b) immediately suspend or place conditions upon:

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- (i) the payment of any Funds, or a portion of any Funds, for a specified period; or
 - (ii) the exercise of any other right or benefit of the Recipient under this Deed; or
 - (c) determine that the Event of Default is capable of being remedied and give notice in writing to the Recipient to remedy the Event of Default within twenty-eight (28) calendar days or such other period specified by the Territory. Where the Recipient fails to remedy the Event of Default within the time specified in the notice, the Territory may exercise the remedies set out in clause 17(1)(a) or clause 17(1)(b).
- (2) Upon the Territory exercising any of its rights pursuant to clause 17(1):
- (a) in respect of each Eligible Individual to whom the Recipient provides Training Services, the Recipient must comply with any direction of the Territory (acting reasonably) to assist the Eligible Individual to complete the relevant course or qualification in which they are enrolled with the Recipient. A direction of the Territory pursuant to this clause may include (without limitation):
 - (i) to suspend or discontinue delivery of the Training Services and assist the Eligible Individual to transfer to another RTO in order to continue the training commenced by the Eligible Individual with the Recipient under this Deed; or
 - (ii) to continue delivery of the Training Services at the Recipient's cost until completion of the relevant course or qualification.
 - (3) The Recipient is not entitled to any payment for loss of income or profit resulting from the termination of this Deed or other remedy exercised pursuant to this clause 17.
 - (4) The exercise of any of the rights described in this clause 17 of this Deed is without prejudice to any rights, remedies or actions the Territory may have against the Recipient by reason of the Recipient's breach and or termination of this Deed by the Territory.

18. Recovery of Funds

- (1) The Territory is entitled to seek recovery of Funds from the Recipient where the Territory has made an overpayment of Funding to the Recipient.
- (2) Without limiting the rights of the Territory pursuant to clause 16 and clause 17, The Recipient agrees that where it is in breach of any of its obligations under this Deed, the Territory is entitled to seek recovery of such funding amounts as determined in accordance with the methodology set out in the Audit Guide for Training Providers in the ACT.

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- (3) Without limiting the rights of the Territory pursuant to clause 16 and clause 17, at any time after an Event of Default has occurred, and whether or not the relevant Event of Default is continuing, the Territory may, by notice in writing to the Recipient require the Recipient to repay the Territory a specified amount on or before a specified date.
- (4) Any part of the amount required to be repaid to the Territory under this clause which is not in fact repaid shall remain a debt due to the Territory and may attract interest payable at the rate worked out in accordance with the rules under the *Court Procedures Act 2004* applying to the Supreme Court as if the unpaid amount were a judgment of the Supreme Court.

19. Dispute Resolution

- (1) If a difference or dispute (Dispute) arises then either party may give written notice to the other that a Dispute exists, which specifies details of the Dispute. The parties agree that, following the issue of that notice, they will endeavour to resolve the Dispute by negotiations, including by referring the Dispute to persons who have authority to intervene and direct some form of resolution.
- (2) If the Dispute has not been resolved within seven (7) calendar days of one party giving written notice of the Dispute to the other party, each party must appoint a representative with authority to settle the Dispute and determine a dispute resolution process. The appointed representatives must meet to attempt to settle the Dispute or agree a dispute resolution process within a further seven (7) calendar days.
- (3) If the Dispute is not resolved within seven (7) calendar days of the first meeting of the representatives, or a dispute resolution process is not agreed under clause 19(2), either party may refer the Dispute to mediation by providing notice to the other party. The mediator will be an independent mediator agreed by the parties or, failing agreement, nominated by the chairperson of The Institute of Arbitrators and Mediators Australia, ACT Chapter. The parties must (unless the Territory determines otherwise) commence the mediation within fourteen (14) calendar days of the mediator being appointed. Unless otherwise agreed, the parties will share equally the costs of the engagement of the mediator.
- (4) Where the Recipient fails to attempt to resolve a Dispute under this Deed by undue delay of the dispute resolution process, the Territory may exercise its discretion and terminate the Deed under clause 16.
- (5) Nothing in clause 19 will prejudice the rights of either party to institute proceedings to enforce this Deed or to seek injunctive or urgent declaratory relief in respect of any Dispute.
- (6) The Parties must continue to perform their respective obligations under this Deed during a Dispute, unless the Territory requires the Recipient, in writing, to cease delivering Training Services to Eligible Individuals.

20. General

- (1) The Recipient:

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- (a) warrants that, at the date of entering into this Deed, no conflict of interest exists or is likely to arise in the delivery of Training Services and performance of its other obligations under this Deed; and
- (b) must, if a conflict, or risk of conflict, of interest arises during the Term:
 - (i) notify the Territory immediately of that conflict or risk; and
 - (ii) comply with any requirement of the Territory to eliminate or otherwise deal with that conflict or risk.
- (2) Nothing in this Deed constitutes the Recipient, or its employees, agents or subcontractors as employees, partners or agents of the Territory or creates any employment, partnership or agency for any purpose.
- (3) The Recipient must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Territory.
- (4) This Deed comprises the entire agreement between the parties in relation to Training Services and supersedes any prior representations, negotiations, writings, memoranda and agreements.
- (5) Any provision of this Deed that is illegal, void or unenforceable will not form part of this Deed to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Deed will not be invalidated by an illegal, void or unenforceable provision.
- (6) Failure or omission by the Territory at any time to enforce or require strict or timely compliance with any provision of this Deed will not affect or impair that provision in any way or the rights and remedies that the Territory may have in respect of that provision.
- (7) This Deed is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.
- (8) The Recipient must comply with the laws from time to time in force in the Territory in performing Training Services.
- (9) Any notice, including any other communication, required to be given or sent to either party under this Deed must be in writing and given to the relevant Contract Officer. A notice will be deemed to have been given:
 - (a) if delivered by hand, on delivery;
 - (b) if sent by prepaid mail, on the expiration of two (2) business calendar days after the date on which it was sent;
 - (c) if sent by facsimile the time recorded by the transmitting machine;
 - (d) if sent by email the time of receipt of the electronic communication is the time when the electronic communication becomes capable of being retrieved

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by the addressee at an electronic address designated by the addressee.

- (10) This Deed may be signed in counterparts. All signed counterparts constitute one document.
- (11) If there is inconsistency between any of the documents forming part of this Deed, those documents will be interpreted in the following order of priority to the extent of any inconsistency:
 - (a) Agreed Terms;
 - (b) the Schedules;
 - (c) any attachments to the Schedules; and
 - (d) documents incorporated by reference in this Deed.

21. Definitions and Interpretation

Act	<i>National Education and Training Regulator Act 2011 (Commonwealth)</i>
ACT Funding Agreement	means an agreement, substantially in the form of this Deed, between an RTO and the Territory pursuant to which the Territory provides funding for the Training Services.
ACT Government Training Initiative	means any training initiative as described in the Schedules and funded by the Territory, whether in whole or in part. Training initiatives may target specific student groups, such as equity groups and/or specific skills and qualifications. Specific contractual provisions apply for each initiative.
AQF	means Australian Qualifications Framework. AQF specifies the standards for educational qualifications in Australia.
Agreed Terms	clauses 1 to 21 of the Deed which set out terms and conditions agreed by the Parties.
Audit Guide for Training Providers in the ACT	means the Audit Guide for Training Providers in the ACT published on the Territory’s website at http://www.cmd.act.gov.au/skillscanberra/act-quality-framework and updated from time to time in accordance with clause 3.
Audit Report	means the formal record of the audit findings prepared by the auditor/s for desktop and on-site audits, issued to the Recipient within thirty (30) calendar days of the audit date.
Australian Apprentice	means both apprentices and trainees, who have entered into a National Training Contract: <ul style="list-style-type: none"> (1) apprentice - person contracted to an employer who is undergoing training for a recognised trade occupation (2) trainee – person employed in a recognised traineeship vocation and who has entered into a National Training Contract with their employer.

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AVETARS	means the ACT Vocational Education and Training Administration Records System (AVETARS), the system for managing the administration of ACT Government training initiatives.
Commencement Date	means the Date of this Deed as specified in Schedule 1 Item 3.
Contract Officer	means in relation to each party, the representatives whose names and contact details are specified in Schedule 1 Item 1, or as notified from time to time by one party to the other.
Eligible Individual	means an individual who is eligible for government subsidised training in accordance with the eligibility requirements set out in the Schedule/s and is enrolled in an ACT Government Training Initiative.
Event of Default	has the meaning given in clause 16.
Funds	means the amounts to be paid by the Territory as specified in the Schedule/s for the delivery of Training Services.
Insolvency Event	<p>means:</p> <ul style="list-style-type: none"> (1) in respect of a natural person: <ul style="list-style-type: none"> (a) any orders, agreements or arrangements are made in respect of the affairs of the person in accordance with the <i>Bankruptcy Act 1966</i> (Cth); or (b) in the reasonable opinion of the Territory the person is likely to be declared bankrupt or lose control of the management of their financial affairs; or (2) in respect of all other entities: <ul style="list-style-type: none"> (a) any of the events listed in sub-sections 459C(2)(a) to (f) of the <i>Corporations Act 2001</i> (Cth) occur in respect of the entity; or (b) any other event occurs which, in the reasonable opinion of the Territory is likely to result, or has resulted, in the: <ul style="list-style-type: none"> (i) insolvency; (ii) winding up; or (iii) appointment of a controller (as that term is defined in the <i>Corporations Act 2001</i> (Cth)) in respect of part or all of the property, <p style="margin-left: 40px;">of the entity.</p> <p>For the purpose of subparagraph (2)(a) subsections 459C(2)(a) to (f) <i>Corporations Act 2001</i>(Cth) are to be read as if applying to all incorporated entities.</p>
Internal Review Tool	means the mandatory tool enabling RTOs to capture and record the results of its own annual internal audit.
National Training Contract	<p>means the legally binding agreement between an Australian Apprentice and an employer which defines the rights and responsibilities of each party. These include:</p> <ul style="list-style-type: none"> a) the employer guaranteeing to train the Australian Apprentice in the agreed occupation or training area and to allow time off work to

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attend any required off-the-job training; and

- b) the Australian Apprentice agreeing to learn all aspects of the occupation or training area and to work for the employer for a specified period.

Also referred to as a training contract.

National Regulator	VET has the meaning as given to that term in the Act.
Party/ Parties	means the parties to this Deed.
Personal Information	<p>means personal information as defined in section 8 of the <i>Information Privacy Act 2014</i> (ACT), namely: information about an identified individual or an individual who is reasonably identifiable:</p> <ul style="list-style-type: none"> (1) whether the information is true or not; and (2) whether the information or opinion is recorded in a material form or not <p>but does not include personal health information (as defined in the <i>Health Records (Privacy and Access) Act 1997</i> about the individual.</p>
Recipient	means the recipient of Funds paid by the Territory for Training Services provided under this described in the Parties of this Deed, and includes the Recipients employees, agents and subcontractors.
RTO	means a registered training organisation as defined in the Act.
Schedule	<p>means the suite of documents that forms the ACT Quality Framework published on the Territory’s website at http://www.cmd.act.gov.au/skillscanberra/act-quality-framework or such other address notified by the Territory to the Recipient in writing from time to time, and includes:</p> <ul style="list-style-type: none"> (1) the ACT Standards for the Delivery of Training and all associated compliance guides; (2) the Audit Guide for Training Providers in the ACT; and (3) the Statement of Expectations, <p>but excludes,</p> <ul style="list-style-type: none"> (4) the ACT Funding Agreement; and (5) Schedule 1. <p>A Schedule to this Deed includes any Schedule as amended, added or replaced by the Territory from time to time during the Term and notified to the Recipient pursuant to clause 3 of this Deed.</p>
Standards	means the Standards for RTOs made pursuant to sections 185(1) and 186(1) of the Act.
Subcontractor	means any third party that provides Training Services on behalf of the Recipient, including any associated partnership arrangements entered into by the Recipient but does not include a contract of employment between a Recipient and its employee.

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Subcontracting	means an arrangement where a Recipient defers day-to-day responsibility for all or part of the management and conduct of Training Services for Funded Training to another individual or organisation (the Subcontractor) for any part of an AQF qualification, skill set or VET course.
Term	means the period specified in Schedule 1 Item 2.
Territory Information	means the kind of information that: <ul style="list-style-type: none">(1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Territory which are by their nature confidential;(2) is notified (whether in writing or not) by the Territory to the Recipient as being confidential; (3) is Personal Information, but does not include information that:<ul style="list-style-type: none">(a) is or becomes public knowledge other than by breach of this Deed;(b) has been independently developed or acquired by the Recipient; or(c) has been notified by the Territory to the Recipient as not being confidential.
Third Party	see Subcontractor.
Training Services	means the training and assessment to be provided by the Recipient to an Eligible Individual, as described in the Schedule/s to this Deed.
VET	means vocational education and training.

SCHEDULE 1 - CONTRACT DETAILS

Item 1 Contract Officers

See clauses 20.9 and 21

For the Territory:

Director
Skills Canberra
Chief Minister, Treasury and Economic
Development Directorate
Canberra Nara Centre
1 Constitution Avenue
Canberra City ACT 2601

Phone: 02 - 62058555

Email: skills@act.gov.au (Attention Director)

Fax: 02 - 62058448

For the Recipient:

Name

Position

Full Name of Recipient including ACN if
Company or ABN

Address – physical (address from which it
conducts its business)

Address - postal

Phone:

Email:

Fax:

Item 2 Term

See clause 2

From [date of determination] to 30 June 2018.

Item 3 Options to Extend

See clause 2(2)

Extensions:

For an additional term of 12 months in duration

