

Skills Assure Supplier

Third Party Arrangements Directive – 2022-2024

The purpose of this Directive is to:

- outline when a Skills Assure Supplier (**SAS**) is permitted to subcontract to a third party to deliver Training and Assessment services under its SAS Agreement;
- confirm the requirements that must be met by SAS when entering into a third party subcontracting arrangement.

The requirements set out in the SAS Agreement and this Directive are in addition to the requirements set out in the Department's Policies and related documents.

If a SAS fails to comply at all times with the requirements set out in this Directive and the SAS Agreement, there is a significant risk of sanction action.

SAS warrant that it and their Personnel have read and understood this Directive. As a result, the Department assumes that SAS and their Personnel are aware of the requirements for Third Party Arrangements when it carries out monitoring and compliance activities.

A. Defined terms used in this Directive

The following defined terms used in this Directive have been extracted from the SAS Agreement. Please note that all other capitalised terms have the meanings given to them in the SAS Agreement.

Related Parties means:

- a) related bodies corporate as defined in the *Corporations Act 2001* (Cth);
- b) any current or former director or officeholder of the Supplier;
- c) any current or former shareholder of the Supplier; and
- d) relatives (including spouses of any of the persons listed in paragraphs (b) and (c)).

School TPA means a Third Party Arrangement under which a School is to provide enrolment and recruitment services and Training and Assessment under the SAS Agreement in respect of school based trainees but is not a subcontract or arrangement:

- a) under which the School is subcontracted to deliver more than 50% of the Services associated with any Qualification listed in the Delivery Schedule; and
- b) between the SAS and a Related Party, without the express written consent of the Department (which may or may not be given subject to conditions), acting reasonably.

Services means Training and Assessment and any other deliverable of the SAS under this Agreement or the Department's Policies.

Subcontractor means an entity that is a party to a Third Party Arrangement with the SAS.

Third Party Arrangement means:

- a) a subcontract for delivery of any part of the Services; and
- b) the arrangements described as "Third Party Arrangements" in the *Standards for Registered Training Organisations 2015* (Cth) and any updated or replacement standards and accompanying factsheets or guides published by ASQA from time to time.

Training and Assessment means:

- a) vocational education and training in accordance with the Department's Policies provided in Queensland by the SAS;



- b) assessment provided in Queensland to a Student in accordance with the Department's Policies and the NVR Act;
- c) services to Students incidental to and supporting the provision of the activities described in paragraphs (a) and (b); and
- d) where Services are delivered under the User Choice Program, off-the-job vocational education, training and assessment provided in Queensland by the SAS to a Student in accordance with the Training Contract and Training Plan (as defined in the Act) for the Student, and the Act.

Prohibited Subcontract has the meaning given to it in clause 18.7 of the SAS Agreement

A Prohibited Subcontract:

- a) is any subcontract or arrangement under which the counterparty (other than the SAS) undertakes any one of the following activities:
 - i. promoting, marketing, or advertising:
 - the Program; or
 - the supplier's status as a SAS for the Program;
 - ii. training or business development in respect of activities listed in paragraph (a);
 - iii. recruiting or enrolling Students into Qualifications on the Supplier's Delivery Schedule [with the exception of third party recruitment or enrolment under School TPAs]; or
 - iv. under which a third party is subcontracted to deliver more than 50% of the Services associated with any Qualification listed in the Delivery Schedule; and
- b) is any subcontract or arrangement between the SAS and a Related Party, without the express written consent of the Department (which may or may not be given subject to conditions), acting reasonably.
- c) does not include School TPAs.

B. When and what is a SAS permitted to subcontract?

A SAS may only subcontract delivery of the Services if it is not a Prohibited Subcontract (refer to Part F below) and:

- a) the subcontractor is not subject to any sanction imposed or proposed by ASQA;
- b) the subcontractor was not previously a pre-qualified supplier (including a SAS) and has an agreement with the Department terminated;
- c) the subcontractor had not previously applied for pre-qualified supplier or SAS status with the Department and had that application refused as a result of not meeting the minimum criteria, including:
 - Qualifications required;
 - Services delivery history;
 - RTO registration date;
 - financial viability;
 - legal issues; and
 - demonstrated industry support.
- d) the subcontracting arrangement is in writing;
- e) the subcontracting arrangement complies with this Directive including the minimum standard terms (**Attachment 1**); and
- f) ASQA has been notified of the arrangement in accordance with the Standards.

C. Requirements for Third Party Arrangements

If a SAS intends to subcontract any part of the Services, the SAS must:

- a) declare all Third Party Arrangements the Supplier has in place as part of its application for an offer to renew the SAS Agreement;

- b) give notice to the Department of any new Third Party Arrangement no later than 10 Business Days after doing so and the notice must include all of the information required under clause 18.2(e) SAS Agreement, including third party delivery location;
- c) ensure that all Third Party Arrangements include the minimum standard terms;
- d) give the Department notice of any change in control in respect of a counterparty to a Third Party Arrangement or termination of a Third Party Arrangement, no later than 5 Business Days after becoming aware of such an action;
- e) except in respect of School TPAs, carry out a formal, documented compliance review of all Services delivered under Third Party Arrangements:
 - every six months of the Term (at least twice every calendar year); and
 - no later than one month after a change in Control of the counterparty.
- f) in respect of School TPAs, carry out a formal, documented compliance review of all Services delivered under Third Party Arrangements at least once every year of the Term;
- g) not allow third parties to have access to DETConnect or any replacement systems under any circumstances unless and until access has been approved in writing by the Department and the third party has signed and returned an access deed on terms acceptable to the Department; and
- h) comply with the requirements of the Department's Policies in respect of the data that must be provided in respect of Services delivered under a Third Party Arrangement when the Supplier submits a claim for payment in respect of those Services.

D. SAS remains liable

The SAS is liable at all times for the delivery of Training and Assessment regardless of whether delivery is by a third party under a Third Party Arrangement. If a third party

breaches the SAS Agreement requirements (including the Department's Policies), the SAS will be responsible for any resulting sanction.

The SAS must ensure that any third party delivering any part of the Services:

- knows the SAS' obligations as set out in in the SAS Agreement and the Department's Policies;
- complies with the SAS' obligations as set out in in the SAS Agreement and the Department's Policies; and
- cooperates fully with SAS performance monitoring activities, including allowing the Department and any auditors acting on the Department's behalf, access to the Subcontractors premises to conduct SAS compliance audits. This means providing all necessary records, documents, information or reports to indicate proper conduct and compliance with all aspects of the program (SAS Policy Performance standard 3.A and 3.F, clauses 18.2, 19.7 and 19.9 of SAS Agreement).

The SAS must systematically monitor the third parties delivery of the Services to ensure ongoing compliance with the SAS Agreement and the Department's Policies (clauses 2.2 and 2.4 of the Standards).

The SAS must report third party delivery as part of its monthly data submissions.

E. Students must be informed of third party delivery

The SAS must inform Students that part or all of the Qualification the SAS intends to deliver will be provided by a third party under a Third Party Arrangement. The SAS must:

- notify any prospective Student of the name, RTO number (if applicable) and contact details of the third party, and detail which part/s of the Services associated with the Student's proposed Qualification will be provided by the third party;

- identify where the SAS is delivering Services on behalf of another SAS or where Services are being delivered on its behalf by a third party (clause 4 of the Standards); and
- where there are any changes to Third Party Arrangements, advise the Student before the change comes into effect (clauses 4.1 and 5.2 of the Standards, SAS Policy Performance standard 1.F and Marketing and disclosure directives).

F. Prohibited Subcontracts

The SAS must not subcontract or enter into an arrangement which is a Prohibited Subcontract without the Department's prior written consent (see clause 18.2 and 18.7 of SAS Agreement).

If the SAS does enter into a Prohibited Subcontract without the express prior written consent of the Department, the Department will consider that action to be a significant breach of the SAS Agreement constituting an Event of Default (clause 20.2(b)(ii)(G) of SAS Agreement).

Prohibited Subcontracts under clause 18.7(a)

The SAS must manage Third Party Arrangements in accordance with all other requirements in the SAS Agreement, this Directive and Policies.

The Department will **not** under any circumstance consider a request for an exemption to allow the Supplier to have a subcontract or arrangement for the activities outlined in clause 18.7(a) (i), (ii) and (iii).

Only in **exceptional** circumstances will the Department consider granting an exemption to allow the SAS to have an arrangement with a third party under which the third party is subcontracted to deliver more than 50% of training and/or assessment Services associated with any Qualification listed on the relevant Delivery Schedule (clause 18.7(a)(iv) of SAS Agreement).

Prohibited Subcontracts with Related Parties under clause 18.7(b)

It is prohibited for the SAS to have any subcontract or arrangement with a Related Party without the

prior written consent of the Department (*cl. 18.7(b) of SAS Agreement*) under all Programs. To be clear, this provision does not apply to arrangements between Related Parties relating to fee-for-service delivery.

The Department takes the view that these types of arrangements immediately create actual (real), potential and/or perceived Conflicts of Interest, which impact, or are likely to impact, compliance with the terms of the SAS Agreement and the Department's Policies.

If a conflict of interest exists with a Related Party, it must be declared by the SAS.

The SAS will then need to demonstrate it can manage the Conflict of Interest with the Related Party under a Conflict of Interest Management Plan as certified in the Conflict of Interest Statutory Declaration. These Plans may be subject to assurance or audit activities and can be requested by the Department at any time. The requirement for a Conflict of Interest Management Plan will include situations aligned to more than 50% delivery by a Related Party.

To be clear, in these circumstances a SAS will be expected to manage all Conflicts of Interest, whether actual (real), potential or perceived in nature. For further information about the Department's expectations with respect to managing Conflict of Interest or to obtain a copy of the Conflict of Interest Statutory Declaration, please contact Contract Management by email to contractmanagement@desbt.qld.gov.au.

More information

For more information visit:
www.desbt.qld.gov.au/training

For clarification, SAS should contact their departmental contract manager or email contractmanagement@desbt.qld.gov.au.

ATTACHMENT 1 –

MINIMUM STANDARD TERMS FOR THIRD PARTY ARRANGEMENTS

The SAS must ensure that all Third Party Arrangements include the following terms and conditions.

Skills Assure Supplier – Third Party Arrangement Minimum Standard Terms

1. The following terms have the following meanings unless a contrary intention appears:
 - a. **SAS** means the supplier contracted to deliver the Services under the SAS Agreement;
 - b. **SAS Agreement** means the agreement between the SAS and the State of Queensland (represented by Department of Employment, Small Business and Training) for the delivery of the Services attached to this document at Annexure 1;
 - c. **this Agreement** means this document and any attachments to this document;
 - d. **Third party** means the party to this Agreement that is not the SAS.
2. Capitalised terms used in this clause have the meanings given to them in the SAS Agreement unless a contrary intention appears.
3. If there is any inconsistency between this clause and any other provision of this Agreement, the terms of this clause will prevail to the extent of the inconsistency.
4. This Agreement must not allow or permit the Third Party to undertake any of the following activities:
 - a. promoting, marketing, or advertising:
 - i. the Program; or
 - ii. the Supplier's status as a SAS for the Program;
 - b. training or business development in respect of activities listed in paragraph (a);
 - c. recruiting or enrolling Students into Qualifications on the SAS's Delivery Schedule; or
 - d. the Third Party is subcontracted to deliver more than 50% of the Services associated with any Qualification listed in the Delivery Schedule; and
5. The Third Party warrants and represents that:
 - a. it is not a Related Party of the SAS or, if it is a Related Party it will not provide any Services under this Agreement unless and until the Department has provided express written consent for it to do so;
 - b. it does not have any employees, contractors or agents that have been convicted of a criminal offence under the Criminal Code in the Criminal Code Act 1899 (Qld) where one of the elements is that the person is a participant in a criminal organization within the meaning of the Criminal Code; and
 - c. it complies with the Queensland Government Ethical Supplier Threshold and Ethical Supplier Mandate (if applicable); and
 - d. it has not, to the best of the Third Party's knowledge and belief, been convicted of any offence involving Modern Slavery;
 - e. it is not subject to any sanction imposed or proposed by ASQA;
 - f. it has not had, nor does it have any employees or contractors that have been employed or engaged by an organisation that had, any of the following types of contract terminated for non-compliance, breach or poor performance:
 - i. a pre-qualified supplier agreement and/or SAS Agreement, with the Department; or
 - ii. a vocational education and training related contract with a Government Agency.
6. The Third Party must not allow or permit a Change in Control to occur without first giving written notice to the SAS.
7. The Third Party acknowledges and agrees that:
 - a. it does not have any Conflict of Interest;
 - b. it understands and will comply with the requirements of the SAS Agreement as though named as the SAS in respect of the creation and retention of records (clause 11) and personal information (clause 17);

- c. the SAS must give a copy of this Agreement to the Department;
 - d. the Third Party expressly consents to the Department receiving, using, disclosing (to any Government Agency) and storing any personal information in this Agreement for the purposes of administering, monitoring, enforcing the requirements of the SAS Agreement, the Department's Policies and the Law;
 - e. the Third Party must deliver any Services it is subcontracted to deliver under this Agreement in accordance with the requirements of the SAS Agreement, as though they are named as the SAS in that document;
 - f. if the Third Party fails to comply with the SAS Agreement in the delivery of any subcontracted Services it is obliged to deliver under this Agreement, the SAS may be subject to remedies under the SAS Agreement including but not limited to termination of the SAS Agreement;
 - g. the SAS can terminate this Agreement on 30 days' notice if required to by the Department.
- 8. The SAS must undertake performance reviews of the Third Party's delivery of Services on a regular basis and the Third Party agrees to cooperate with those reviews.
 - 9. The Third Party must not assign or novate its rights and obligations under this Agreement without the prior written consent of the SAS which may be subject to requirements imposed by the Department.
 - 10. The Third Party must make itself, its staff, records and premises available for the purpose and duration of any audit or Performance Review undertaken by the Department in respect of the SAS Agreement and comply with the requirements of the Department as though the Third Party is an employee of the SAS.
 - 11. The parties agree that nothing in this Agreement creates any form of legal relationship between the Third Party and the Department.