

Vocational Education and Training (VET) Pre-qualified Supplier (PQS) Agreement

between

**STATE OF QUEENSLAND through the Department of
Employment, Small Business and Training**

and

«Supplier_Legal_Name»
[Supplier Legal Name]

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PARTICULARS

Item 1 Department

State of Queensland through the Department of Employment, Small Business and Training; ABN 84 375 484 963

Address: 85 George Street
Brisbane QLD 4000
Level 9

Attention: Executive Director, Design, Investment Division

Email: programdesign@desbt.qld.gov.au

Item 2 Supplier

Name «Supplier_Legal_Name»

[Supplier Legal name]

ABN «ABN»

[Supplier ABN]

Address: «Street_Address_1» «Street_Address_2», «Suburb», «State»,
«Postcode»

[Supplier Address]

Attention:

[Supplier to insert contact officer name]

Email:

[Supplier to insert email address]

Item 3 Program(s)

- the Certificate 3 Guarantee Program;
- the Higher Level Skills Program;

As defined within the 2019-20 Annual VET Investment Plan

AGREEMENT

BETWEEN: STATE OF QUEENSLAND through the Department of Employment, Small Business and Training ('the Department')

AND: The person named as the Supplier in the Particulars ('the Supplier')

BACKGROUND

- A. To receive funding from the Department for the delivery of Training and Assessment to Students under a Program, Suppliers must have Pre-qualified Supplier ('PQS') status.
- B. The Department is approving the Supplier as a Pre-qualified Supplier on the terms of this Agreement and the Department's Policies.
- C. The Supplier has applied to the Department to receive funding under the Program.
- D. The Department agrees to provide funding to the Supplier under the Program on the terms of this Agreement.

AGREED TERMS

1. Term

This Agreement starts on the Commencement Date as per the Delivery Schedule and will continue until the earlier of:

- (a) the date this Agreement is terminated in accordance with the terms of this Agreement; and
- (b) the date that the last Program ends.

2. Addition or removal of Programs

Without limiting the parties' rights under clauses 18 – 21, this Agreement may be amended to add a Program or Programs or to remove a Program or Programs, by the Department and the Supplier entering into a written agreement providing for that addition or removal.

The addition or removal of Qualifications for a Program will be actioned through the Delivery Schedule approval. The Delivery Schedule forms an addendum to this Agreement.

3. Supplier's obligations

To qualify for funding, and otherwise at all times, the Supplier must:

- (a) comply with the terms of this Agreement;
- (b) comply with the Department's Policies current at the Commencement Date and as may be amended or added from time to time;
- (c) comply with directives given by the Department and notified to the Supplier;
- (d) ensure that it remains registered as an RTO during the Term;

- (e) provide Training and Assessment to Students with skill, care and diligence to a high professional standard;
- (f) comply with:
 - (i) the VET Quality Framework as a RTO;
 - (ii) the NVR Act, and any other Act(s) that may apply;
 - (iii) all relevant laws in the performance of its obligations under this Agreement;
- (g) provide information about the Program, the relevant industry, Training and Assessment and related matters to Students or other persons notified by the Department from time to time;
- (h) ensure only the Department, the Supplier and no other person markets, promotes or advertises the Supplier's status as a Pre-qualified Supplier or the Supplier's capacity to claim funding under the Program except with the prior written consent of the Department;
- (i) participate in general research, monitoring or evaluation programs of the Department relating to the provision of Training and Assessment;
- (j) meet the Performance Standards for PQS and KPIs for the Program; and
- (k) be, and remain, financially viable and able to pay its debts as and when they fall due regardless of any funding to be provided under the Program.

4. Department's obligations

4.1 The Department must:

- (a) publish the Department's Policies on the Department's Website; and
- (b) pay funding to the Supplier in accordance with this Agreement and the Department's Policies, if at the time when the Training and Assessment for which funding is claimed was provided, and at all times subsequently:
 - (i) the Supplier has complied with its obligations under this Agreement; and
 - (ii) there is no Event of Default.

5. Reporting

5.1 The supplier must report to the Department electronically via DET Connect using an AVETMISS compliant system.

5.2 The AVETMISS data must be provided in accordance with:

- (a) AVETMISS documents, including data element definition rules and guidelines and specifications; and
- (b) the Department's Policies.

5.3 The Supplier must ensure that:

- (a) all AVETMISS data provided to the Department is accurate; and
- (b) the Supplier claims only for funding to which it is entitled in accordance with this Agreement and the Department's Policies.

- 5.4** The Supplier must give the Department any other information and material reasonably requested by the Department within 5 Business Days of the request, including (without limitation):
- (a) financial statements of the Supplier certified by a Qualified Accountant; and
 - (b) any other information to satisfy the Department of the Supplier's financial viability.
- 5.5** The Supplier consents to the Department forwarding any information or material obtained by the Department from the Supplier pursuant to clause 5.4, or otherwise, to the Department's agent or contractor to perform a financial assessment or similar service. Any report of the Department's agent or contractor will be confidential to the Department and the Supplier will not be entitled to inspect or receive a copy of the report.
- 5.6** The Department's reporting requirements prevail to the extent of any inconsistency between the AVETMISS reporting requirements and the Department's reporting requirements.

6. Supplier's acknowledgment regarding funding

The Supplier acknowledges that:

- (a) mere approval as a Pre-qualified Supplier is not a warranty or assurance by the Department that the Supplier will receive any funding during the Term;
- (b) the Department is under no obligation to provide any funding to the Supplier other than as provided for under this Agreement, including that payment for a Unit of Competency may be withheld until the Department is reasonably satisfied the Supplier has delivered Training and Assessment in that unit to the Student, and the Student is an eligible Student under the Program;
- (c) the Supplier provides Training and Assessment to Students at its own risk, including the risks that the Department may:
 - (i) change the Department's Policies (including, without limitation, by changing or reducing funding);
 - (ii) Suspend Funding pursuant to clause 18.1 or 18.3;
 - (iii) terminate the Agreement, whether for default (pursuant to clause 18) or without cause (pursuant to clause 20);
 - (iv) remove a Program or Qualification from the Agreement; or
 - (v) remove funding for outcomes, such as a Qualification, contemplated by the parties at the Commencement Date as being a part of the Program.

7. GST

- 7.1** The parties agree that the supplies of Training and Assessment funded under this Agreement are not subject to GST.
- 7.2** Amounts of any payments specified in this Agreement are inclusive of any GST and the recipient of a supply is not required to pay any additional amount to the supplier on account of GST.
- 7.3** The Department can issue recipient created tax invoices in respect of supplies by the Supplier under this Agreement.

- 7.4 The Supplier will not issue tax invoices in respect of the supplies by the Supplier.
- 7.5 The Supplier acknowledges that it is registered for GST when it enters into this Agreement and that it will notify the Department if it ceases to be registered.
- 7.6 The Department acknowledges that it is registered when it enters into this Agreement and that it will notify the Supplier if it ceases to be registered for GST.

8. Overpayments

- 8.1 In this clause, ‘**Overpayments**’ means payments by the Department to the Supplier to which the Supplier is not entitled in accordance with this Agreement or the Department’s Policies, for example, payments based on reports submitted by the Supplier which are incorrect.
- 8.2 Overpayments are and remain debts due to the Department.
- 8.3 The Supplier must repay any Overpayment to the Department without any deduction or set off within 5 Business Days of the Supplier discovering the Overpayment or the Department sending an invoice for the Overpayment to the Supplier, whichever is the earlier.
- 8.4 The Department may, without limitation, offset any amount payable by the Supplier to the Department under this clause, any other provision of this Agreement or any other agreement between the parties against any monies payable by the Department to the Supplier under this or another agreement between the parties.

9. Records

- 9.1 The Supplier must keep the following information and material for 6 years from the end of the Term:
 - (a) Information and material necessary to provide a complete record of Training and Assessment including:
 - (i) records of each Student’s participation in Training and Assessment for each Unit of Competency, including records of the commencement of educational content, attendance and progression;
 - (ii) evidence that the on-the-job training component (only if on-the-job training is applicable) has been achieved for each Unit of Competency for each Student before the Supplier claims payment of funding in relation to the Unit of Competency;
 - (iii) evidence supporting the accuracy and validity of data included in reports provided by the Supplier to the Department under clause 5, including evidence supporting the start and end dates for each Student for each Unit of Competency; and
 - (iv) copies of the Qualifications and Statements of Attainment issued to each Student.
 - (b) For each Unit of Competency, for each Student:
 - (i) the assessor’s completed marking guide, criteria and observation checklists for the Unit of Competency; and
 - (ii) the completed assessment items for the Unit of Competency retained in hard copy (paper-based) or electronic (digital/scanned) form.

(c) Any other information and material reasonably requested by the Department.

9.2 The Supplier must give the Department copies of the information and material specified in this clause 9 within 5 Business Days of the Department's request.

10. Access to premises and records

10.1 The Supplier must give the Department, its servants and agents, and the representatives of any relevant regulatory body or authority access to the Supplier's premises:

- (a) to inspect and copy information and material related to this Agreement or kept by the Supplier under clause 9.1; and
- (b) to monitor the provision of Training and Assessment and performance of the Supplier's obligations under this Agreement.

10.2 The Department must give 5 Business Days' notice to the Supplier before obtaining access under clause 10.1.

10.3 The Supplier must ensure that the Supplier's employees and contractors provide full and accurate answers to any questions the Department asks in connection with the Training and Assessment or the Supplier's obligations under this Agreement.

10.4 The Supplier must give the Department access to its Students for purposes connected with monitoring the Supplier's performance under this Agreement.

10.5 The Supplier acknowledges that the Department may make enquiries of employers or other third parties for purposes connected with monitoring the Supplier's performance under this Agreement.

11. Publicity

11.1 The Department may communicate or publish information to third parties about any matter relating to this Agreement, including (without limitation) information relating to:

- (a) the Supplier;
- (b) the funding;
- (c) enrolment, completion, and attrition rates; and
- (d) the Supplier's compliance with its obligations under this Agreement.

11.2 The Department may publish the information under clause 11.1 through any medium, including its website.

11.3 The Supplier must not make any misleading public statements, including any statements to Students, employers or any organisation, about this Agreement and any Program, the level of funding or actions taken by the Department under this Agreement.

11.4 The Supplier must, in making any public statements in relation to the Training and Assessment funded under this Agreement, include an acknowledgment of the funding received from the Department and such acknowledgement will be on terms reasonably approved by the Department.

11.5 The Supplier's marketing and promotional material must:

- (a) refer to the Program as set out in Item 3 of the Particulars or in some other way that may be specified from time to time by the Department;
- (b) not contravene any Department directive or publication/marketing guideline relating to the marketing of Program; and
- (c) in the case of the Program(s) agreed between the parties as contemplated by clause 2, refer to such Program(s) by such name as is specified from time to time by the Department.

11.6 The Supplier is not authorised, and nothing in this Agreement will be construed to authorise the Supplier, to use the logo of the State of Queensland or the Department or any other intellectual property of the Department on any advertising, promotional, training or other material of the Supplier unless the Department, in its absolute discretion, has given its prior written approval to the same and where such approval is granted by the Department, it may be granted on such terms and conditions as the Department determines.

12. Conflicts of interest and inducements

- 12.1** The Supplier warrants that as at the date it executes this Agreement it does not have a conflict of interest in the performance of this Agreement and that a conflict of interest is unlikely to arise.
- 12.2** If a conflict or risk of conflict of interest arises during the Term, the Supplier must immediately give notice of it to the Department.
- 12.3** The Supplier must comply with all reasonable directions of the Department in relation to the conflict of interest.
- 12.4** The Supplier must not offer anything to the Department or any employee or agent of the Department, including a parent, spouse, child or associate of the employee or agent, as an inducement, gift or reward, which could in any way influence the Department's actions in relation to this Agreement.
- 12.5** The Supplier must not give, or agree or offer to give, to another person any valuable consideration with a view to securing the enrolment with the Supplier of a Student or prospective Student in relation to a Qualification funded under a Program.
- 12.6** Without limiting clause 12.5, the persons to whom the Supplier must not give, or agree or offer to give, any valuable consideration for a purpose mentioned in clause 12.5 include:
- (a) a Student;
 - (b) a prospective Student; and
 - (c) a person who refers or offers to refer Students or prospective Students to the Supplier.

13. Insurance

The Supplier must obtain and maintain for the Term of this Agreement:

- (a) public liability insurance for a minimum of \$10 million arising out of any one event in respect of death, injury, loss, or damage howsoever sustained to any person or property; and
- (b) workers compensation insurance in relation to the Supplier's employees or as otherwise required by law.

14. Indemnity and release

14.1 The Supplier agrees to indemnify and keep indemnified the Department and its officers, employees and agents against any Claim which may be brought against or made on or incurred by them as a result of:

- (a) the provision of the Training and Assessment;
- (b) a breach by the Supplier of any of the provisions of this Agreement;
- (c) any unlawful or negligent act or omission of the Supplier, or its officers, employees, contractors and other personnel except to the extent that any act or omission by the Department causes or contributes to the Claim;
- (d) any publication under clause 11.1 made in good faith relying on information provided by the Supplier; and
- (e) any Claim by a third party for a breach or alleged breach of that third party's intellectual property rights in connection with the delivery of Training and Assessment under this Agreement.

14.2 The Supplier releases and discharges the Department from any Claim which, but for the provisions of this Agreement, might be brought against or made on the Department by the Supplier in connection with:

- (a) the Department's publication of any information about the Supplier provided by the Supplier to the Department; or
- (b) any failure of the Department's information technology systems.

15. Personal Information

15.1 The Supplier must:

- (a) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* in relation to the discharge of its obligations under this Agreement as if the Supplier was the Department;
- (b) fully co-operate with the Department to enable the Department to respond to applications for access to, or amendment of, a document containing an individual's Personal Information and to privacy complaints; and
- (c) comply with such other privacy and security measures as the Department reasonably advises the Supplier in writing from time to time.

15.2 Without limiting the Supplier's obligations under clause 15.1 in relation to Personal Information the Department has given to the Supplier, the Supplier must:

- (a) not use that Personal Information other than for the purposes of the performance of the Services, unless required or authorised by law;
- (b) not disclose that Personal Information without the prior written consent of the Department, unless required or authorised by law;
- (c) ensure that access to that Personal Information is restricted to those of its employees and officers who require access in order to perform their duties; and
- (d) ensure that its employees and officers do not access, use or disclose that Personal Information other than in the performance of their duties.

- 15.3** The Supplier must ensure that its contractors who have access to that Personal Information comply with obligations the same as those imposed on the Supplier under this clause.
- 15.4** On request by the Department, the Supplier must obtain from its employees, officers or contractors engaged for the purposes of this Agreement, an executed deed of privacy in a form acceptable to the Department.
- 15.5** The Supplier must immediately notify the Department on becoming aware of any breach of this clause 15.

16. Subcontracting

- 16.1** Subject to this clause 16, the Supplier may subcontract or enter into arrangements with third parties (“**Contractors**”) to assist the Supplier to deliver Training and Assessment under this Agreement.
- 16.2** The Supplier will remain liable to the Department for all of its obligations or liabilities under this Agreement.
- 16.3** The Supplier’s arrangements with its Contractors do not, and will not, create any entitlement, obligation, liability or relationship of any type between the Department and the Contractor. For example, the Supplier’s arrangement with a Contractor will not create an obligation for the Department to remunerate the Contractor.
- 16.4** The Supplier must not subcontract or enter into an arrangement whereby the Contractor promotes, markets or advertises the Program or the Supplier’s status as a Pre-qualified Supplier for the Program.

17. Events of Default

The following are ‘**Events of Default**’:

- (a) If the Supplier breaches this Agreement and the breach is determined by the Department, in its sole and unfettered discretion, to be a breach that is not capable of being remedied.
- (b) If the Supplier breaches this Agreement (other than clauses 3(c), 3(d), 3(e), 3(f), 3(g), 3(k), 5.3, 25, 26 or 27.9 – see below) and the breach is determined by the Department, in its sole and unfettered discretion, to be a breach that is capable of being remedied and the Supplier fails to remedy the breach within 10 Business Days after a notice to remedy from the Department specifying the breach.
- (c) If the Supplier breaches the same clause of this Agreement for which it has received a previous notice to remedy under clause 17.(b) within the last year.
- (d) If the Supplier has received 3 notices to remedy under clause 17.(b) within a 12 month period and then commits another breach of this Agreement.
- (e) If any information provided by the Supplier to the Department under this Agreement (including, without limitation, a report pursuant to clause 5) is false or misleading in any material respect.
- (f) If the Supplier fails to meet key performance indicators specified in the Department’s Policies.

- (g) If the Supplier breaches clauses 3(c), 3(d), 3(e), 3(f), 3(g), 3(j), 3(k), 5.3, 25, 26 or 27.9, or fails to issue a Qualification or Statement of Attainment in accordance with the NVR Act.
- (h) If the Supplier fails to make any claims under the Funding Program for a continuous period of one year.
- (i) If the Supplier breaches any other agreement between the Department and the Supplier for the provision of funding to the Supplier (including, without limitation, a previous Vocational Education and Training (VET) Pre-qualified Supplier (PQS) Agreement).
- (j) If the Supplier breaches the terms and/or conditions of any electronic data system provided by the Department for use by the Supplier, including (without limitation) the Purchasing Online Terms of Use and the DETConnect Terms and Conditions.
- (k) If the Supplier:
 - i. enters into any arrangement or composition with its creditors generally, or has a controller, receiver and manager or administrator appointed;
 - ii. goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purposes of reconstruction;
 - iii. has execution levied on any of its assets and the execution is not satisfied within 28 days; or
 - iv. is otherwise (in the Department's reasonable opinion) unable to pay its debts when they fall due.

18. Consequences of default

18.1 If there is an Event of Default the Department may, by written notice to the Supplier:

- (a) terminate this Agreement;
- (b) Suspend Funding for the Suspension Period; or
- (c) remove the Program or Qualification in relation to which the Event of Default occurred from this Agreement.

18.2 The Department may exercise its rights under clause 18.1(a) and 18.1(b) if the Event of Default relates to a single Program or if it relates to more than one Program.

18.3 If the Department reasonably suspects that an Event of Default has occurred, the Department may Suspend Funding for the Suspension Period and/or issue a directive to the Supplier under clause 3(c) to cease enrolments for the Suspension Period to allow the Department to investigate and make a determination as to whether there has been an Event of Default.

18.4 Without limiting the operation of, and for the purposes of, clause 18.3, the following are sufficient grounds for the Department to reasonably suspect that an Event of Default has occurred:

- (a) a complaint received by the Department supported by a statutory declaration or affidavit, or
- (b) the identification by the Department of risk factors based on:

- (i) data submitted by the Supplier pursuant to clause 5;
- (ii) records kept by the Supplier pursuant to clause 9; or
- (iii) previous breaches of this Agreement by the Supplier as evidenced by notices issued to the Supplier under clause 17(c) of the Agreement.

18.5 Any step taken by the Department under this clause is without prejudice to any other rights, remedies or actions the Department may have.

19. Termination or removal at Supplier's request

19.1 The Supplier may, by notice in writing to the Department, request that the Department agree to:

- (a) terminate this Agreement; or
- (b) remove a Program from this Agreement.

19.2 The Supplier may only make a request under clause 19.1 if the Supplier has made arrangements for the continued provision of Training and Assessment to the Students of the Supplier that are satisfactory to the Department.

20. Termination, suspension or removal by Department without cause

20.1 The Department may, at its convenience, by providing 20 Business Days written notice to the Supplier:

- (a) terminate this Agreement;
- (b) Suspend Funding for the Suspension Period; or
- (c) Remove/cancel a Program from this Agreement.

20.2 The Supplier releases the Department from any Claim in respect of, arising from or connected in any way with the termination of this Agreement, the suspension of funding or the removal or cancellation of a Program under this clause 20.

21. Consequences of termination, suspension or removal

21.1 On termination of this Agreement or removal of a Program from this Agreement, the Supplier must make arrangements satisfactory to the Department for the continued provision of Training and Assessment to Students, if any.

21.2 On expiry or termination of this Agreement or the removal of a Program from this Agreement, the Department may, in addition to any other right it may have to withhold funding, withhold any funding payable to the Supplier until:

- (a) the supplier notifies all of its current students that it is no longer funded under a Program; and
- (b) the Supplier provides all reasonable assistance (including, without limitation, all assistance requested by the Department), to enable the transition of students to another Pre-qualified Supplier, including ensuring that all students are issued Qualifications and Statements of Attainment in accordance with the Act.

21.3 For the avoidance of doubt:

- (a) if this Agreement is terminated under clauses 19.1(a) or 20.1(a), no funding is payable to the Supplier under this Agreement other than funding otherwise payable under this Agreement up to and including the date of termination;
- (b) if a Program is removed under clauses 19.1(b) or 20.1(c), no funding is payable to the Supplier under this Agreement in respect of that Program other than funding otherwise payable under, this Agreement in respect of that Program up to and including the date of removal; and
- (c) the Supplier must not request or receive any payment or benefit (whether monetary or otherwise) from any third party for the provision of the assistance referred to in clause 21.2(b).

22. Clauses to survive termination

The following clauses will survive termination or expiration of this Agreement:

- (a) Clause 5 (Reporting)
- (b) Clause 8 (Overpayments)
- (c) Clause 9 (Records)
- (d) Clause 10 (Access to premises and records)
- (e) Clause 11 (Publicity)
- (f) Clause 13 (Insurance)
- (g) Clause 14 (Indemnity)
- (h) Clause 15 (Personal Information)
- (i) Clause 21 (Consequences of termination, suspension or removal)
- (j) Clause 26 (Good faith)
- (k) Clause 27.8 (Further assistance).

23. Dispute resolution

23.1 For the purpose of this clause, a dispute will have arisen when either Party gives notice in writing to that effect to the other party.

23.2 The parties agree to endeavour to settle any dispute arising in connection with this Agreement in good faith by negotiation or mediation for a period of 14 days (or a longer period agreed between the parties).

23.3 This clause does not apply to action by the Department under clauses 18 or 20.

24. Notices

24.1 Any notice, request, consent or approval (a ‘notice’) under this Agreement must be in writing and may be sent by prepaid postage, email or delivered by hand to the following respective addresses:

- (a) for the Department - as set out in Item 1 of the Particulars;
- (b) for the Supplier:
 - (i) as set out in Item 2 of the Particulars; or

(ii) an address listed in the Organisation Details for the Supplier contained in the National VET register accessed via the website www.training.gov.au; or

(c) such other address as a party may subsequently notify to the other.

24.2 A notice will be deemed to be given:

(a) if posted - two days after the date of posting;

(b) if delivered - on the date of delivery; or

(c) if emailed - the earlier of:

(i) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;

(ii) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and

(iii) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

except that if that time is after 5:00 pm, the email will be deemed to be given on the next Business Day.

25. Change in control

25.1 Unless clause 25.4 applies, the Supplier must obtain the written consent of the Department prior to any:

(a) change in the Control of the Supplier;

(b) transfer of any legal or beneficial interest in any shares of the Supplier;

(c) change to the Supplier's director/s or secretary;

(d) change to the Key Personnel; or

(e) change to the Supplier's constitution.

25.2 The Department has an absolute discretion as to:

(a) if, when and whether it consents or refuses to consent under clause 25.1; and

(b) if it consents, any conditions imposed in connection with its consent.

25.3 Breach of a condition imposed by the Department on its consent under clause 25.2(b) is deemed to be a breach of this clause 25.

25.4 If the Supplier is:

(a) a company listed on the Australian Stock Exchange;

(b) both before and after a change in Control, the wholly owned subsidiary of a company listed on the Australian Stock Exchange; or

(c) another entity to which the Department has given notice in writing that it is not required to comply with clause 25.1,

the Supplier must immediately notify the Department of any change in Control of the Supplier including full details of the change.

25.5 For the purposes of clauses 25.1 and 25.4, a change in Control occurs if the Supplier comes under the control of a third party who did not Control the Supplier at the Commencement Date.

26. Good faith

26.1 The Supplier must act in good faith in all matters.

26.2 In performing its obligations under this Agreement, in delivering Training and Assessment to Students under a Program and in claiming funding under this Agreement the Supplier must:

- (a) act honestly;
- (b) act reasonably;
- (c) act fairly;
- (d) act consistently with the spirit of this Agreement and the Program; and
- (e) act in the way that best achieves the objectives of the Program.

27. General provisions

27.1 Entire agreement - This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements and agreements between the parties.

27.2 No partnership or joint venture, employment or agency - This Agreement does not create any relationship of partnership, joint venture, employment or agency between the Department and the Supplier, and the Supplier must not represent itself or allow itself or a Contractor to be represented as a partner or joint venturer, employee or agent of the Department.

27.3 Delay not to constitute waiver - Any failure by a party at any time to enforce a clause of this Agreement, or any forbearance, delay or indulgence granted by a party to the other, will not constitute a waiver of the party's rights.

27.4 Waiver to be in writing - No provision of this Agreement will be deemed to be waived unless that waiver is in writing and signed by the waiving party.

27.5 Waiver limited to specific occasion - A waiver by a party of a breach of any provision of this Agreement will not operate as a waiver of any subsequent breach of the same provision or as a waiver of any other provision.

27.6 Governing law - This Agreement is governed by the laws of Queensland and each party submits to the jurisdiction of the courts of Queensland.

27.7 Severability - If any part of this Agreement is determined to be invalid, unlawful or unenforceable for any reason then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of this Agreement and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

27.8 Further assistance - The Supplier must do all things reasonably required by the Department to give effect to this Agreement.

27.9 No assignment or novation - The Supplier may not assign or novate its interest in this Agreement, except with the prior written consent of the Department, which may consent or refuse to consent in its absolute discretion.

27.10 Negation of implied terms – To the full extent permitted by law and other than as expressly set out in this Agreement the parties exclude all implied terms, conditions and warranties.

28. Definitions and interpretation

28.1 In this Agreement the following definitions apply:

‘**Agreement**’ means this document, including the Particulars, and all schedules to this Agreement such as the Delivery Schedule.

‘**ASQA**’ means the Australian Skills Quality Authority or such other authority, body or entity replacing or substituted for ASQA.

‘**AVETMISS**’ means the Australian Vocational Education and Training Management Information Statistical Standard published by the National Centre for Vocational Education Research.

‘**Business Day**’ means a day other than a Saturday, Sunday or public holiday in Brisbane (Queensland).

‘**Claim**’ includes any claim or liability of any kind (including one which is prospective or contingent and one the amount of which is not ascertained) and costs (whether or not the subject of a court order).

‘**Commencement Date**’ means the date specified in the Department’s letter to the Supplier advising of the Supplier’s success in obtaining Pre-qualified Supplier status and the date specified for each Qualification as shown on the Delivery Schedule which forms an addendum to this VET PQS Agreement.

‘**Contractor**’ - see clause 16.1.

‘**Control**’ means, with respect to an entity, the ability or capacity to determine the outcome of decisions about that entity's financial and operating policies.

‘**Delivery Schedule**’ means an addendum to this VET PQS Agreement which lists the Qualifications approved to be delivered by the Supplier and the approval start date for each Qualification. The Supplier’s Delivery Schedule is generated by the Department once PQS status for the Supplier is approved. Added or removed Programs under this VET PQS Agreement will be actioned by adding or removing the relevant Qualifications on the Delivery Schedule.

‘**Department**’ means the Queensland Government Department of Employment, Small Business and Training, or any other Department having responsibility for the administration of the Program in place of the Department of Employment, Small Business and Training (or in place of any successor Department).

‘**Department’s Policies**’ includes the Department’s policies regulating Pre-qualified Suppliers and policies regulating a Program (including, without limitation, Evidence Guides) as published from time to time on the Department’s Website.

‘**Department’s Website**’ means <http://training.qld.gov.au> or other website notified by the Department.

‘**entity**’ includes a corporation, a person, a partnership, an incorporated association and an unincorporated body.

‘**Event of Default**’ has the meaning given in clause 17.

‘Key Personnel’ means an individual:

- (a) who is concerned in or takes part in the management of the Supplier;
- (b) who is an employee or agent of the Supplier with duties of such responsibility that his or her conduct may fairly be assumed to represent the Supplier in relation to its business;
- (c) who exercises a degree of control or influence over the management or direction of the Supplier including those who participate in making decisions that affect the business of the applicant or who has the capacity to significantly affect the future operations and financial standing;
- (d) who has the ability or capacity to determine the outcome of decisions about the financial and operating policies of the Supplier.

‘KPIs’ means Key Performance Indicators specified for a Program in the Department's Policies relating to the Program.

‘NVR Act’ means the *National Vocational Education and Training Regulator Act 2011*.

‘Particulars’ means the table of particulars at the start of this Agreement, page 3.

‘Performance Standard’ means a Performance Standard specified in the Department's Policies.

‘Personal Information’ means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

‘Pre-qualified Supplier’ or **‘PQS’** means an RTO approved as a Pre-qualified Supplier by the Department for a Program.

‘Program’ means the Department's program of funding the delivery of Training and Assessment specified in item 3 of the Particulars of this Agreement and any other Program subsequently added to this Agreement (as per the Delivery Schedule) as agreed in writing between the parties as contemplated by clause 2.

‘Qualification’ has the meaning assigned to that term in the NVR Act and VET Qualification has the same meaning.

‘Qualified Accountant’ has the meaning given in the *Corporations Act 2001* (Cth).

‘Registered Training Organisation’ or **‘RTO’** has the meaning given to Registered Training Organisation as defined in the NVR Act.

‘Statement of Attainment’ has the meaning given in the NVR Act.

‘Student’ means a person (being an individual) who is eligible under the Program, is enrolled in the Program with a PQS and has commenced training.

‘Supplier’ means the person named as the Supplier in the Particulars.

‘Suspend Funding’ means the Department notifying the Supplier that it will not pay funding to the Supplier in respect of the Supplier's delivery of Training and Assessment during the Suspension Period.

‘Suspension Period’ means the period described in the Department’s Notice (being a period before and/or after the date of the Department's Notice) for which funding will not be provided for Training and Assessment delivered by the Supplier to its Students.

‘Term’ means the term of this Agreement as set out in clause 1.

‘third party’ means any entity other than the Supplier.

‘Training and Assessment’ means:

- (a) vocational education and training in accordance with the VET Quality Framework provided in Queensland by the Supplier;
- (b) assessment provided in Queensland by the Supplier to a Student in accordance with the VET Quality Framework and the NVR Act; and
- (c) services to Students incidental to and supporting of the provision of the activities in paragraphs (a) and (b).

‘Unit of Competency’ means the specification of industry knowledge and skill and the application of that knowledge and skill to the standard of performance expected in the workplace.

‘VET Quality Framework’ has the meaning given to it in the NVR Act and means the set of standards and conditions that ASQA uses from time to time to assess whether an RTO meets the requirements for registration and, as at the date of this Agreement, comprises the following:

- (a) Standards for National VET Regulator Registered Training Organisations;
- (b) Australian Qualifications Framework;
- (c) Fit and Proper Person requirements;
- (d) Financial Viability Risk Assessment requirements; and
- (e) Data Provision requirements.

28.2 In this Agreement:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and vice versa;
- (c) all dollar amounts refer to Australian currency;
- (d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (e) a reference to the VET Quality Framework documents and AVETMISS documents includes documents amending or replacing those documents;
- (f) a reference to an individual or person includes a corporation or other legal entity;
- (g) a reference to ‘consent’ means prior written consent;
- (h) clause headings have been included for convenience of reference only and are not intended to affect the meaning or interpretation of this Agreement; and
- (i) if any expression is defined, other grammatical forms of that expression will have corresponding meanings.

- 28.3** If the Supplier comprises two or more persons, this Agreement will bind them jointly and each of them severally.
- 28.4** The terms of this Agreement prevail to the extent of any inconsistency between the terms of this Agreement and the terms of the Department's Policies.

EXECUTED AS A DEED on the dates set out below

SIGNED SEALED and DELIVERED for and on behalf of the STATE OF QUEENSLAND acting through the Department of Employment, Small Business and Training ABN 84 375 484 963 by

..... (insert name),
..... (position),
a duly authorised person, in the presence of:

.....
(insert name of witness)

.....
(signature of authorised person)
...../...../.....
(date)
.....
(signature of witness)
...../...../.....
(date)

(for a company)

SIGNED SEALED and DELIVERED under section 127 of the Corporations Act 2001 (Cth) by

«Supplier_Legal_Name» [legal name]
ABN «ABN» by

..... (insert name)
a Director,
in the presence of:

.....
(insert name of witness)

AND a Director/the Secretary,

..... (insert name),
in the presence of:

.....
(insert name of witness)

.....
(signature of Director)
...../...../.....
(date)
.....
(signature of witness)
...../...../.....
(date)
.....
(signature of Director/Secretary)
...../...../.....
(date)
.....
(signature of witness)
...../...../.....
(date)

(for an individual)

SIGNED SEALED and DELIVERED by

«Supplier_Legal_Name» [legal name]
ABN «ABN»

in the presence of:

.....
(insert name of witness)

.....
(signature of individual)
...../...../.....
(date)
.....
(signature of witness)
...../...../.....
(date)

(for a partnership)

SIGNED SEALED and DELIVERED by)
«Supplier_Legal_Name» [legal name])

ABN «ABN» by)

..... (insert name))
a Partner,) (signature of individual)

in the presence of:)/...../.....
(date)

.....)
(insert name of witness)) (signature of witness)

AND a Partner,)/...../.....
(date)

..... (insert name),)
in the presence of:) (signature of individual)

)/...../.....
(date)

.....)
(insert name of witness)) (signature of witness)

)/...../.....
(date)