



Education &  
Communities

Public Schools NSW

**Registered training organisations  
providing HSC VET courses  
in 2014**

**Guidelines and Procedures**

*(To be read before completing  
the Agreement for Provision of Training)*

*Last updated 23 July 2013*

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## 1.0 Introduction

This document describes how vocational education and training (VET) courses may be delivered to NSW government schools with senior secondary school students (and subject to certain conditions Stage 5 students) by Private or Community Registered Training Organisations other than DEC schools or TAFE NSW. It details the procedures needed to achieve efficient delivery of the courses and high quality student outcomes.

**This document does not apply to students who are School-based Trainees or Apprentices.** For more information about the requirements for these students (including training plans and Board Endorsed Course (BEC) applications), see *School Based Apprenticeships and Traineeships in NSW* website at

<http://www.sbatinnsw.info/>

This document is updated regularly. All new contracts should use a document freshly downloaded from the Senior Pathways Unit internet site at

<https://www.det.nsw.edu.au/vetinschools/vet/index.html>

## 2.0 Procedures for accessing a private or community RTO

- 2.1 Identify course requirements
- 2.2 Identify appropriate private or community RTOs
- 2.3 Complete the agreement
- 2.4 Determine the course costs
- 2.5 Finalise the Agreement
- 2.6 Conduct a quality assurance review
- 2.7 Deliver the course and report student achievement
- 2.8 Pay for course delivery

### 2.1 Identify course requirements

The school will determine:

- the VET curriculum needs of their students for the following year
- the level of student interest in an HSC VET course that meets those needs
- the school's own capacity to deliver the course, in full or in part
- the delivery capacity of other local government schools and TAFE NSW, in full or in part
- the effect of external delivery on school staffing. (All external VET delivery must be reported on the school's Annual Enrolment Return (AER))

- course exclusions
- that delivery to Stage 5 students is approved to be debited against the regional Stage 5 External VET delivery allocation (unless details of external funding are provided)
- Student(s) and school Principal to meet before proceeding further with *Agreement* to check on student interest and student study load.

### 2.2 Identify appropriate private or community registered training organisations (RTOs)

With the support of the Senior Pathways Unit, the school will:

- compile a list of potential providers which best meets the identified training needs of the students
- ensure that the private or community RTOs are aware of the number of students with a disability and the nature of the disability so that appropriate arrangements are made to meet those students' special needs within the agreed cost of the course delivery
- check that the training is within the listed providers' scope of registration by sighting documentation on the TGA website. (<http://training.gov.au/>)
- check that listed providers have appropriate public liability insurance.

### 2.3 Complete the agreement

The RTO with the support of the Senior Pathways Unit and the school will negotiate and complete a formal agreement **before** the commencement of the course. (Draft agreement to be received by Senior pathways Unit by 1 December each year).

The RTO will:

- complete the relevant schedules of the *Agreement*
- forward *Schedule 4* to the school (or schools) to complete
- ensure that the **HSC components** of the course (where the course is an Industry Curriculum Framework) are covered and a **trial examination** is conducted for students wishing to undertake the optional examination.
- ensure that the **course costs do not exceed** the costs of delivery of comparable units by TAFE.

Where the course involves a mandatory **work placement** component, the school is required to ensure that:

- the provider has access to the guidelines and regulations covering workplace learning for secondary students in government schools
- all parties are clear about their responsibilities for organising, monitoring and reporting on work placements
- any work placements provided on the private or community RTO site are in a safe and healthy environment for school students

For new **Board Endorsed Courses** not on the Board of Studies from 2013.

The School will:

- complete an *Application for a Board Endorsed VET Course*, in accordance with the *Guidelines for a Board Endorsed VET Course* (<http://www.boardofstudies.nsw.edu.au/manuals/index.html#vetboardendorsesdcourses>)
- forward the completed *Agreement* to the Senior Pathways Unit together with the *Application for a Board Endorsed VET Course* (if applicable).

## 2.4 Determine the course costs

The costs charged for delivery of units of competency by a private or community RTO must not exceed the costs of delivery of comparable units by TAFE.

The cost of delivery may be calculated in one of two ways:

### A. By calculating the cost of each unit of competency

The cost per student of delivering each unit of competency is calculated by multiplying the number of delivery hours by the hourly charge rate (i.e. the dollar value for that unit of competency ) as follows:

$$\text{Cost per student of each unit of competency} \\ = \text{Number of delivery hours} \times \text{hourly charge rate}$$

The cost per student for a course is calculated by adding the costs of all the units of competency, which were calculated above.

$$\text{Cost per student} = \text{Total of the costs per student of each unit of competency}$$

### B. By charging an overall fee for the course delivery per student

The total cost for a course is calculated by multiplying the cost per student by the number of students participating in the course.

$$\text{Total course cost} = \text{Cost per student} \times \text{number of students}$$

The DEC cannot be invoiced for more than the total cost for school students calculated in this way.

A private or community RTO cannot charge any additional fees, such as enrolment deposits or costs for materials.

**Payment arrangements:** The Department of Education and Communities agrees to make payments to the Contractor as follows:

Course costs for each year of the course will be paid based on the number of students identified in the Agreement.

#### Year 1

##### Initial Payment

Fifty percent (50%) of the payment for the year will be paid at the end of Term 1 on receipt of an invoice. Invoice to be forwarded to the Vocational Education in Schools Directorate by the private provider or community RTO.

**Final Payment**

Fifty percent (50%) of the payment for the year will be paid at the end of the course delivery for Year 1, Term 3 on receipt of the invoice and confirmation credentials have been issued.

**Year 2 (in the case of a two year course)**

**Schedule 4 should be resubmitted by Week 4 of Term 4 for 2 year courses**

**Initial Payment**

Fifty percent (50%) of the payment for the year will be paid at the end of Term 4 on receipt of invoice. Invoice to be forwarded to the Senior Pathways Unit by the private provider.

**Final payment**

Fifty percent (50%) of the payment for the year will be paid at the end of the course delivery, usually Term 3 on receipt of the invoice, confirmation credentials have been issued and the course evaluation.

**Student equipment:** The private or community RTO will provide, at no extra charge, all specific personal protective clothing (including uniforms), textbooks and workbooks for each student, as well as all equipment and consumables required for the delivery of the course. No extra cost can be charged to DEC, the participating schools or the students. For example, a private or community RTO would typically need to provide the following personal protective equipment, workbooks and textbooks for all students participating in a Hospitality industry curriculum framework course:

**Hospitality course student equipment (example)**

Item	Description
Uniform	Chef's trousers (black and white check) Chef's apron – waist, white Chef's hat – paper Chef's jacket – white double breasted Neckerchief - white Fully encased leather shoes
Workbooks	Basic Methods of Cookery Workplace Hygiene Procedures Etc.

## 2.5 Finalising the agreement

The private or community RTO will:

- complete the *Agreement* by liaising with the participating schools, submit the *Agreement* to the Senior Pathways Unit no later than the 1 December each year.
- submit a final list of agreed students (Schedule 3 & Schedule 4) to the Vocational Education in schools Directorate no later than Term 1 week 4 (COB Friday)

The Senior Pathways Unit will

- provide a copy of the *Agreement*, once it has been approved to participating schools and the RTO.

## 2.6 Conducting a quality assurance review

The Senior Pathways Unit will:

- conduct a quality assurance review of the *Agreement*
- provide feedback from the quality assurance review and any amendments to the RTO and the school(s)
- consider the Application for a Board Endorsed VET Course (if applicable) and, if approved, submit it to the Board of Studies for endorsement.
- notify the school/s and the RTO that the agreement is approved, and course delivery may commence.

## 2.7 Delivering the course and reporting student achievement

- Once the *Agreement* has been approved, course delivery may commence. No additional **students may be added** from the time that the *Agreement* is finalised. **NB: Cut off date is Week 4 of Term 1**
- **If students *withdraw*** during the course, the school must **promptly** notify the RTO and the Senior Pathways Unit using Schedule 4.
- The private or community RTO **must** contact the school if a student misses 2 or more sessions in a row, to ascertain the status of the student.
- For two year courses, if the number of students commencing the second year varies from those who completed the first year, Schedule 4 must be resubmitted by Week 4 Term 4 in order to update the agreement.

**The school has the responsibility to ensure that the following entries are made on eBOS VCS:**

- Student names, qualification and the RTO
- student withdrawals, if applicable
- it remains the responsibility of schools to **check and verify the data entered by the RTO**. A flag will appear on eBOS when the RTO has entered data, which is awaiting verification by the school. The data is not uploaded to the student's record until this verification is activated by the school.

**The private or community RTO has the responsibility to ensure that the following entries are made on RTOs Online:**

- competency data

## 2.8 Paying for course delivery

The private or community RTO will provide invoices to the Senior Pathways Unit for payment, with an Invoice Cover, a current list of enrolled students, updated to reflect the current course enrolments.

All delivery to Stage 5 students is to be debited against the regional Stage 5 External VET delivery allocation (unless details of external funding are provided).

## 3.0 Responsibilities

### 3.1 Participating schools will:

- identify the vocational education and training needs of students and determine the level of student interest in the identified course
- consider the school's own capacity to deliver the identified course to meet the above needs by reviewing teacher training, planning, resources, equipment and access to appropriate work placements
- investigate capacity of local government schools to deliver the course, or parts of the course, and the level of interest from students in local schools to participate in the course
- investigate the capacity of TAFE NSW or a private or community RTO to deliver the course or parts of the course
- participate in the completion of an *Agreement* to deliver training which is coordinated by the RTO
- complete the *Application for a Board Endorsed VET course* (if applicable)
- make phone contact with the provider on a regular basis to ascertain the progress of the students, and to ensure the students are meeting the course requirements under the contract
- let the private or community RTO know of any issues that may affect the progress or capacity of a student to complete the course, including health care, learning and support needs for example, illness or misadventure leading to prolonged or regular student absence, personal problems that may affect their ability to complete the course, or school-based disciplinary action, E.g. a work placement student with anaphylaxis
- inform the private or community RTO and the Senior Pathways Unit if a student ceases to be enrolled at the school. Make contact with the training provider to assess how the students are adjusting to the training environment
- seek feedback on student results throughout the duration of the *Agreement*
- follow up any complaint relevant to this *Agreement* which is reasonably made by the private or community RTO within 2 ordinary business days of being notified
- immediately notify the RTO and the Senior Pathways Unit if a student withdraws from the course
- complete or amend the Annual Enrolment Return (AER) to indicate the number of students and HSC units of study involved in an externally delivered course

- enter student course and qualification data on The Board of Studies Schools Online eBOS- VCS
- verify the student competency data and completion data entered by the RTO on eBOS-VCS
- notify the community or private RTO of students wishing to sit for an examination in an Industry Curriculum Framework course
- monitor the delivery of the course to ensure it is in accordance with the *Agreement*, including work placement, if applicable.
- ensure the provider has access to the guidelines and regulations covering workplace learning for secondary students in government schools
- ensure all parties are clear about their responsibilities for organising, monitoring and reporting on work placements
- ensure any work placements provided on the private or community RTO site are in a safe and healthy environment for school students

### 3.2 The Private or community RTO will:

- provide evidence of their current status as a registered training organisation (RTO) and their scope of registration to deliver the proposed training
- provide evidence of current and adequate public liability insurance
- accept responsibility for all legal requirements under the Workers Compensation Act and Income Taxation requirements for their employees
- indemnify the Department of Education and Communities against liability for injury to a student caused by negligence of the provider
- ensure that training facilities provide a safe and healthy environment for school students
- identify course delivery locations
- indicate minimum and maximum class size numbers
- provide students with specified personal protective equipment, textbooks and consumables (at no extra cost to the students)
- specify the necessary transportation or travel arrangements required for students accessing the training provider's delivery site
- provide confirmation that all personnel delivering courses or parts of the course meet the requirements for delivery as determined by ASQA
- complete the relevant sections of the *Agreement*, signed by the senior officer of the organisation (e.g. CEO, manager, etc)
- confirm they are aware of the special responsibilities involved in working with children and ensure that all personnel have undergone employment screening checks
- complete the *Agreement* to deliver training which is coordinated by the Senior Pathways Unit

- provide schools with information on all students, reporting on student progress and student attendance (not just absences) on a regular basis, at least monthly
- provide the Senior Pathways Unit with a list of enrolled students by Week 4 of Term 1
- comply with Board of Studies satisfactory completion criteria as detailed in the *ACE Manual*  
<http://www.boardofstudies.nsw.edu.au/manuals/index.html#acemanual>
- enter competencies attempted and competencies achieved on RTOs Online for verification by the school.** (Contact the Board of Studies to gain an access password to enter student competencies data).
- ensure that any onsite or off-site work or workplacements provide a safe and healthy environment for school students
- provide suitable insurance and indemnity arrangements for work placements hosted within their organisation.  

Note: Work placements organised by the provider with host employers outside the organisation, and in consultation with the school, are supported by the Department's insurance and indemnity arrangements.
- act in accordance with the Work Health & Safety, Equal Opportunity and Anti-Discrimination Acts
- ensure that the procedures covering work place learning are adhered to
- guarantee compliance with any other requirements that may arise as a consequence of changes in DEC policy
- submit invoices to the Senior Pathways Unit with a list of enrolled students as specified in the *Guidelines* (2.8)

### 3.3 The Senior Pathways Unit will:

- conduct the quality assurance review of the *Agreement*
- assist the private or community RTO as required
- notify all parties that contracts are approved, and course delivery may commence
- provide a copy of the agreement to the RTO and all schools involved with the agreement
- submit the *Application for a Board Endorsed Course* to the Board of Studies (if applicable)
- arrange payment on receipt of invoices and relevant documentation
- review course evaluations

## 4.0 Monitoring, Evaluation and Reporting Requirements

As described in Section 2.7 above, the school will:

- ensure students are entered on eBOS-VCS
- ensure student competencies and their completion data are verified on eBOS-VCS
- participate in the completion of the *Course Evaluation* at the completion of course delivery (if required)

## 5.0 Associated Documents and Forms

The following support documents can be accessed through the **Board of Studies** web site [www.boardofstudies.nsw.edu.au](http://www.boardofstudies.nsw.edu.au):

- *Accreditation Certification and Examination (ACE) Manual* (contains HSC course requirements including guidelines for satisfactory course completion)  
<http://www.boardofstudies.nsw.edu.au/manuals/index.html#acemanual>
- *Board endorsed VET Course Application Forms*  
<http://www.boardofstudies.nsw.edu.au/manuals/index.html#vetboardendorsedcourses>
- *Industry curriculum framework syllabus documents Part A and B*  
[http://www.boardofstudies.nsw.edu.au/syllabus\\_hsc/index.html](http://www.boardofstudies.nsw.edu.au/syllabus_hsc/index.html)

The following policy and support documents can be accessed through the **NSW Department of Education and Communities** web site [www.det.nsw.edu.au](http://www.det.nsw.edu.au):

- *TAFE NSW delivered HSC VET Courses for current year: Guidelines*  
<https://www.det.nsw.edu.au/vetinschools/vet/tvet/index.html>

## For Further Information

The Principal Officer, VET in Schools  
Senior Pathways Unit  
Department of Education and Training  
Level 3, 1 Oxford Street DARLINGHURST NSW 2010  
Telephone: (02) 9244 5000

## Terms of the Agreement

A copy of these Terms must be provided to the private or community RTO. They do NOT need to be included in the documents provided to the Vocational Education in Schools Directorate.

### 1. The following terms shall have the following meaning:

ACE	Assessment Certification and Examination (Manual)
AQF	Australian Qualifications Framework
ASQA	Australian Skills Quality Authority
Board of Studies (BOS or OBOS)	New South Wales Board of Studies, which is the government authority responsible for the curriculum, collection of assessment data and credentialing requirements for the award of the Higher School Certificate or RoSA in the case of eligible Year 10 students
Conflict of Interest	a situation where personal or financial interests of a person conflict or appear to conflict with the person's responsibilities and duties under this Agreement
Contracted Services	in relation to the Department of Education and Communities to purchase and specify the conditions under which vocational courses will be delivered by the contractor, herein referred to as the provider
Course	a vocational course as a structured program of study or training being undertaken that meets the accreditation requirements of the Board of Studies and the requirements of ASQA
Department	the New South Wales Department of Education and Communities or the Director-General of such Department as the context may require
Insurances	the private or community RTO must indemnify the Department of Education and Communities against liability for injury to a student caused by negligence of the provider (Employers Liability Act 1991)
Minister	the New South Wales Minister for Education and Communities.
N (Determination)	Students who have not complied with the course completion criteria for a HSC course cannot be regarded as having satisfactorily completed the course. The principal will then issue an "N" determination (see the ACE Manual)
NRT	nationally recognised training
Policy	Government policy articulated in legislation and statements of educational direction by the Minister, and documentation generated by the Department supporting Government policy
Principal	Principal of the NSW government school at which a student undertaking a vocational course is enrolled
Provider	the legal entity which is a registered training organisation which undertakes to render the service as is provided by this <i>Agreement</i> and, where the provider is an individual or a partnership, the expression shall include the personal representatives of that individual or of the partners and the expression shall also include any person to whom the benefit of the <i>Agreement</i> may be assigned by the provider with the consent of the School Education Director
Payment	the amount of money and method by which that amount of money is to be paid to the Contractor under this <i>Agreement</i> .
Regional Vocational Education Consultant	the Departmental officer who is responsible for facilitating liaison between the school(s) and the provider

RTO	.....registered training organisation
Schedule	.....terms included in this Agreement
School	.....NSW government or non-government school attended by students undertaking a training course.
School Education Director	.....the senior Departmental officer of a School Education Area who holds the delegated authority from the Director-General to act on his behalf
Student	.....a student enrolled in a NSW government or non-government school
Training	.....the vocational training component of a vocational course as set out in course details in <i>The Agreement</i>

## 2. Interpretations

In this Agreement

- monetary references refer to Australian currency only
- a reference to a clause number shall be a reference to all of its sub-clauses
- words meaning the singular shall be deemed to include the plural and vice versa; words meaning the male gender shall be deemed to include the female gender and vice versa
- a reference to a person shall be a reference to the legal entity of body corporate or corporation as well as an individual person.

## 3. The Contractor (also referred to as the provider)

- 3.1 The Contractor at the time of entering into this Agreement and for the life of this Agreement shall be registered with ASQA as a RTO, or its equivalent in other states and territories. The Contractor shall be accredited to deliver vocational training courses, or modules/units of competency within vocational training courses, including National Training Package courses.
- 3.2 The Contractor will possess or can readily access the human and physical resources required to deliver the training paid for by the Department.
- 3.3 The Contractor has adequate financial resources to ensure continuity of delivery of the training over the life of this Agreement.
- 3.4 The Contractor agrees to nominate one person to liaise directly with the Senior Pathways Unit under this Agreement. The name and contact details of the nominated person are provided in *Course, Student and Equipment Details*.
- 3.5 The Contractor agrees to take all reasonable steps to assist the Department to fulfil its duty of care in respect of students in training courses. In doing so the Contractor will liaise with the Principal to develop appropriate strategies to comply with reasonable requests made by the Principal.
- 3.6 The Contractor agrees to comply with all the policies and procedures published by the Department of Education and Communities and as may be changed from time to time.
- 3.7 The Contractor agrees to inform his/her employees of their responsibilities for the implementation of requirements of the DEC Policy for Protecting Children and Young People, and to ensure all personnel involved with students have undergone the relevant checks.
- 3.8 The Contractor will comply with *The Agreement for Private or community registered training organisations providing HSC VET courses* which accompanies these *Guidelines*
- 3.9 The Contractor will provide course and costing details for inclusion in *The Agreement*, and deliver the course and/or units of competency as specified.
- 3.10 The Contractor will deliver training at a place agreed to by the School Education Director. The Contractor will ensure that the premises at which the course/units of competency are delivered will be suitable for the purposes and shall comply with the DEC WHS policy

- 3.11 The Contractor will provide the resources to deliver the course and/or units of competency specified in *Course, Student and Equipment Details*.
- 3.12 When resources owned by the Department are used by the Contractor in providing the course and/or units of competency, the Department's resources will:
- remain the property of the Department
  - be kept in a secure storage area when not in use
  - be returned to the Department upon termination of this Agreement.
- 3.13 Where premises owned by the Department of Education and Communities are used by the Contractor to deliver the course or units of competency, the Contractor will ensure that the premises are maintained in their existing condition and will comply with any request from the School Education Director relating to their maintenance.

#### **4. The Department**

- 4.1 The School Education Director or delegate will confirm that the Contractor is accredited to deliver the vocational course/s or units of competency it is contracted to provide.
- 4.2 The School Education Director or delegate will provide the name and contact details of the participating schools and the Departmental contact person with whom the Contractor can liaise. This information will be included in *The Agreement for Private or community registered training organisations providing HSC VET courses*.
- 4.3 The School Education Director or delegate will provide the Contractor with a copy of the Department's relevant Policies and Procedures, on request.
- 4.4 The School Education Director or delegate reserves the right to carry out a credit check upon the Contractor at any time through a recognised credit rating organisation.
- 4.5 The School Education Director or delegate will comply with the *Guidelines for Private or community registered training organisations providing HSC VET courses* supplied to support course delivery.
- 4.6 The School Education Director or delegate will complete *Course, Student and Equipment Details* and implement the *Course Evaluation* in accordance with the process specified on the *Course Evaluation Plan*.
- 4.7 The School Education Director or delegate will approve the premises at which the Contractor will conduct delivery of the course and/or units of competency.

#### **5. Courses**

- 5.1 The training or course will lead to an AQF qualification or Statement of Attainment, where one is available.
- 5.2 The course will not exceed 400 hours for an AQF Certificate II or 600 hours for AQF Certificate III and IV.
- 5.3 Where the course involves more than one AQF qualification there will be continuity of training from the initial qualification to the next level of qualification.
- 5.4 The course will be delivered as specified in *Course, Student and Equipment Details*.
- 5.5 Training shall be conducted to meet the requirements of the national standards where appropriate, the requirements of the Board of Studies, and to the satisfaction of the Department.

#### **6. Assignment**

The Contractor, without the written consent of the School Education Director, will not subcontract the performance of any part of the course and/or units of competency that are the subject of this Agreement. In giving written approval the School Education Director may impose such terms and conditions as the School Education Director thinks fit.

### **7. Copyright**

- 7.1 The Contractor warrants to the Department that in carrying out its obligations under the Agreement there shall be no infringement of any copyright vested in any other party.
- 7.2 The Contractor warrants that in carrying out its obligations under the Agreement it will not breach any provisions of the Copyright Amendment Act 2006
- 7.3 Ownership of copyright of all materials produced by the Contractor pursuant to the Agreement vests solely in the Contractor.
- 7.4 In consideration of payment of all fees and expenses due to the Contractor, the Contractor shall be granted, for the term of the Agreement, a non-exclusive, otherwise royalty-free licence to use the intellectual property owned by the Department for the purposes only of delivering the course and/or units of competency covered by this Agreement.

### **8. Confidentiality**

The Department and the Contractor will not at any time either during the continuance or after the termination of this Agreement for any reason:

- 8.1 divulge any of the business information, affairs or secrets of the other party to any company or person, except that which is or becomes public knowledge, or was already in the possession of either party without restrictions on disclosure, or has been independently developed or acquired by either party without the prior written consent of a duly authorised officer of the other party, nor
- 8.2 use nor attempt to use any information acquired in the course of this Agreement in any manner which is not authorised by this Agreement, or which may injure or cause loss or be able to injure or cause loss to the other party.

### **9. Insurance and Indemnity**

- 9.1 The Contractor agrees that it shall arrange and maintain the following insurance with an insurance company acceptable to the Department for the life of the Agreement.
  - (a) public liability insurance to the value of at least \$20 million in respect of each claim and
  - (b) workers' compensation insurance for its employees as required by law including, but not limited to, the Workers Compensation Act 1987  
<http://www.workcover.nsw.gov.au/aboutus/workerscompensation/Pages/default.aspx>
- 9.2 The Contractor agrees on request from the School Education Director to produce satisfactory evidence of insurances provided for in clause 9.1.
- 9.3 The Contractor indemnifies the:
  - Department and the Director-General and his delegates or agents
  - officers of the Department or
  - the Minister responsible for the Departmentfor loss or damage caused by the:
  - Contractor
  - Contractor's employees or sub-contractors or
  - Contractor's agentsif that loss or damage arises from any of these things:
  - legal action under common law or statute, regulation or by-law
  - claims, compensation, costs, legal fees or other expenses
  - personal injury
  - in tort or contract
  - loss or damage to property
  - failing to do something or negligently doing something under this Agreement

- failing to comply with the law in performance under this Agreement or
- in any way whatsoever.

### 10. Student Reporting Requirements

The Contractor shall provide the following written reports:

#### 10.1 Student Attendance

- (a) Where the method of training delivery is no more than two days per week the Contractor will provide the Principal of each student undertaking the training a written attendance report
  - (i) every term
  - (ii) when any individual student is absent for the whole of a training session or a significant part of a training session
    - for two consecutive training sessions or
    - a total of any three training sessions.
- (b) Where the method of training delivery is more than two days per week (also known as 'block release') the Contractor will provide the Principal of each student undertaking the training with a written attendance report
  - (i) every week
  - (ii) when any individual student is absent for the whole of a training session or a significant part of a training session
    - for two consecutive training sessions or
    - a total of any three training sessions.

#### 10.2 Student Progress Reporting

The Contractor will provide a written progress report to the Principal of each student at the end of each semester in a format and manner to be approved by the Principal. Each report will show the units of competency completed/achieved by each student. In the case of industry curriculum framework courses, competency record books developed by the Board of Studies may be used for this purpose.

The Contractor will:

- make themselves available for phone contact with the school on a regular basis to report on the student(s) progress in meeting the course requirements
- let the school know of any issues that are hindering the progress of the student(s)
- facilitate visits by the school to the Contractor's premises to enable the school to assess how the students are adjusting to the training environment
- provide feedback on student results throughout the duration of the Agreement and
- identify and make known to the Senior Pathways Unit relevant complaints or issues

#### 10.3 Board of Studies Requirements

The Contractor agrees to comply with all Board of Studies requirements as given in the ACE Manual including, but not restricted to, course completion and N determination requirements. The Contractor will provide information as requested by the school(s) for entry to *eBOS VCS*, or may be provided with access to enter the information themselves (via secure external access), subject to review and approval by the school(s).

#### 10.4 Qualifications and Certificates

The Contractor agrees to comply with the requirements of:

- (a) the Board of Studies
- (b) the VQF

when making determinations in regard to Higher School Certificate/School Certificate credentials, certificates or qualifications.

The Contractor will issue the appropriate certificate or qualifications to the student(s).

### 11. Monitoring, Evaluation and Record Keeping

- 11.1 The Contractor will maintain records of student attendance and achievement of competencies and work placement hours (if relevant) and provide this to the school(s) and Board of Studies, as per clause 10.3.
- 11.2 The Contractor will make students aware that monitoring and evaluation of the Contractor's performance under this Agreement and the provision and delivery of the training may be conducted by the Senior Pathways Unit or another authorised person for the Department. Monitoring and evaluation may involve direct contact with the students and the Contractor, the Contractor's employees and the Contractor's agents.
- 11.3 The outcome of any monitoring and/or evaluation will be used by the Department for internal management purposes only. Any information concerning an individual student will not be disclosed to the public.
- 11.4 The Contractor will obtain a signed declaration from each student in which he/she consents to:
- being reasonably contacted by the Senior Pathways Unit for the purpose of monitoring and evaluation
  - the use of his/her results in the evaluation of the outcomes of delivery.
- 11.5 If the Senior Pathways Unit elects to monitor the Contractor's performance and/or the delivery of the training, then that monitoring will be conducted according to the terms of the Agreement. The School Education Director may vary the terms of the Agreement in regard to course monitoring upon giving notice.
- 11.6 If the Senior Pathways Unit elects to evaluate the Contractor's performance and/or the delivery of the training, then that evaluation will be conducted according to the *Evaluation Plan (Schedule 4a)*.
- 11.7 The Contractor will participate in a formal evaluation of the delivery of the course and of the course outcomes including:
- student completion and attrition,
  - qualifications and/or employment gained, and
  - identification of measures that need to be taken in order to improve the quality of the delivery of the course.
- Evaluation may also include student selection, student attitudes and workload, work placement effectiveness, effectiveness for the student group, and other such items as appropriate.
- The School Education Director may vary the terms of the Agreement in terms of course evaluation upon giving notice.
- 11.8 The Senior Pathways Unit may ask that the Contractor show all records and documents relevant to their performance under this Agreement. If a request to show is made:
- the Contractor must make all records and documents available for inspection at the Contractor's registered office within five working days of receiving the notice
  - the Regional Vocational Education Consultant may make copies of all or part of these records or documents
  - the Contractor will be paid reasonable costs if costs are incurred
  - the Contractor must provide the Regional Vocational Education Consultant with reasonable help and assistance to prepare for and conduct an inspection or audit of accounts
  - the Contractor must allow the Regional Vocational Education Consultant to visit any location where training or administration related to performance under this Agreement occurs, to talk to any person connected to performance under this Agreement at a reasonable time; and to attend the Contractor's Board or Executive meetings, as an observer, so long as the meeting, or part of it the representative is to attend, is about performance under this Agreement and reasonable notice of attendance is provided.
- 11.9 The Contractor must keep proper accounting records at least to the same level as required under the Corporations Law.

### 12. Notices

- 12.1 A notice from the School Education Director is only considered given to the Contractor if it is:

- in writing
- signed by the School Education Director and
- sent or delivered to the Contractor at the most recent address the School Education Director has for the Contractor's registered office:
  - (a) by hand
  - (b) electronically (eg. by facsimile or email) or
  - (c) by mail.

12.2 A notice from the Contractor is only considered given to the School Education Director if it is:

- in writing;
- signed by the Contractor or his agent and
- sent or delivered to the address in Section 3 in the *Agreement for the provision of training by a private or community registered training organisations to NSW government school students*.
  - (a) by hand
  - (b) electronically (eg. by facsimile or email) or
  - (c) by mail.

12.3 A party is taken to have received a notice one ordinary business day after it is sent.

### **13. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales and the parties hereby submit to the jurisdiction of the Courts of that State.

### **14. Dispute Resolution Procedures**

All disputes arising under this Agreement, including any which may relate to discussions or negotiations prior to entering into this Agreement, or the performance of the Agreement, that cannot be resolved within ten ordinary business days of arising shall be submitted to arbitration on the application of any one party. The arbitrator shall be a person agreed to by both parties, or where there is no Agreement between the parties shall be appointed by the Australian Commercial Disputes Centre. The Arbitration will be conducted in Sydney, New South Wales, and the costs of the arbitrator and the hire of arbitration rooms and like services are to be shared equally by both parties.

### **15. Warranties**

15.1 A warranty is a promise under this Agreement. If the Contractor breaches any of the promises in this clause the Contractor must pay the Department compensation (also known as damages) for any loss the Contractor causes him or the Department because of that breach.

15.2 In this Agreement the Contractor promises that:

- (a) the Contractor will not purport to be an employee, agent or representative of the Department in any dealings with other persons. The Contractor must only represent itself in everything it does under this Agreement
- (b) the Contractor must mention the support of the Department, and the Minister, in any publications, promotional material, correspondence or reports about this Agreement or the training provided for under this Agreement except for those that only the Contractor or the Department will see
- (c) the Contractor will obey all Commonwealth, State and local laws in performing under this Agreement
- (d) the Contractor's directors, employees or agents do not have a conflict of interest in doing what they must do to carry out this Agreement. If a conflict of interest, or a risk of a conflict of interest, arises while this Agreement operates the Contractor must give notice to the School Education Director at once in writing and tell him of the circumstances about that conflict or potential conflict of interest
- (e) the Contractor must not disclose to anyone anything about this Agreement unless this Agreement requires the Contractor to do so, or the Contractor has the written approval of the School Education

Director to do so. This shall not prevent the Contractor discussing this Agreement with the Contractor's legal or financial advisers

- (f) the School Education Director may ask the Contractor to promise that the Contractor will not disclose confidential information that may arise from performance under this Agreement. The School Education Director may also ask the Contractor to arrange for the Contractor's employees and / or agents and / or sub-contractors to make similar promises as to confidentiality. Where the School Education Director asks the Contractor to promise as to confidentiality the Contractor must arrange to effect the promise as soon as is practicable and enforce that promise for a reasonable amount of time that the School Education Director asks the Contractor to maintain the promise including beyond the life of the Agreement
- (g) the Contractor's employees are the Contractor's responsibility alone. The Contractor must fully comply with the Workers Compensation Act 1987 NSW, as amended, and any other law the Contractor would ordinarily be required to comply with in respect of the Contractor's employees.

### 16. Termination

- 16.1 If both parties agree in writing, this Agreement may end at any time during the Agreement period. Otherwise, the Agreement expires at 5.00 pm on December 31 of the year agreed for delivery or in the case of a two year course, 5.00 pm on December 31 of the second year of delivery.
- 16.2 The Agreement may be terminated with the written consent of both parties.
- 16.3 The School Education Director may terminate the Agreement in the event that:
  - (a) The Contractor resolves to go into liquidation, or summons for its winding up is presented to Court or an order for bankruptcy in respect of the Contractor is presented to court or the Contractor enters into a scheme or arrangement with its creditors under the Corporations Law or a Liquidator receiver or official manager is appointed under the Corporation Law; or
  - (b) The Contractor is in breach of the Agreement.
- 16.4 If the School Education Director terminates the Agreement, it will be by giving 30 days notice in writing addressed to the Contractor, whereupon all further payments to the Contractor shall cease whether or not funding for training or for a particular period remains partly paid AND if the School Education Director in such notice so requires the Contractor shall:
  - (a) repay in part or whole the unexpended funds paid to the Contractor under this Agreement;
  - (b) deliver to the School Education Director all goods and assets purchased or leased by the Contractor from funds provided under this Agreement;
  - (c) transfer to the School Education Director all investments made by the Contractor using funds provided under this Agreement;
  - (d) pay to the School Education Director any amount of the payment made under this Agreement which has been used for purposes other than has been provided for by the Agreement.
- 16.5 If the School Education Director ends this Agreement for any of the reasons given the School Education Director will cease payments to the Contractor immediately. The Contractor will get no further payments even if the Contractor has received part only of the payment at that time, and the School Education Director may send the Contractor a notice requiring the Contractor to do any of the following:
  - return to the School Education Director any payments the Contractor has not yet spent
  - transfer to the School Education Director all investments the Contractor made with the payments
  - transfer to the School Education Director all goods and assets that the Contractor has bought or leased with the payments or
  - repay the School Education Director any amount of payment that has been used for purposes other than has been provided for under this Agreement.

### 17. Course Costing and Payment Arrangements

- 17.1 The method of payment and the price paid to the Contractor for training is provided for in the *Course Content and Costings, Participating Schools and Students*).

- 17.2 The Department does not have to pay the Contractor any more than is provided for in *Course, Student and Equipment Details*.
- 17.3 The price paid to the Contractor is for the costs required for delivery of the training and includes the textbooks, learning resource materials and safety equipment and clothing ordinarily required for the proper delivery of the training.
- 17.4 The price does not include costs associated with student travel.
- 17.5 The Contractor agrees that for the payment of the price each student will be provided with:
- (a) appropriate and relevant training materials
  - (b) a reasonable opportunity to attend make-up classes or tutorial sessions on the Contractor's premises in order to catch up on learning where the normal learning progression has been interrupted:
    - by student absence due to accident, misadventure or any reasonable excuse or
    - by teacher absence for any reason.
- 17.6 The School Education Director may consider a written application from the Contractor for payment for other costs not included in the delivery of training where those costs are related to performance under this Agreement. The School Education Director will have the right to decide whether any payment will be made under this clause, and this clause is not subject to Arbitration under clause 13 of this Agreement. The School Education Director will have the right to decide whether any payment will be made under this clause, and this clause is not subject to Arbitration under clause 14 of this Agreement.

### **18. Goods and Services Tax**

- 18.1 Notwithstanding any other provisions of this Contract:
- (a) If a GST applies to any supply made by either party under or in connection with this Contract, the consideration provided or to be provided for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply.
  - (b) If the imposition of a GST or any subsequent change in the GST law is accompanied by or undertaken in connection with the abolition of or reduction in any existing taxes, duties or statutory charges (in this clause 'taxes') the consideration payable by the recipient of the supply made under this Contract will be reduced by the actual costs of the party making the supply that are reduced directly or indirectly as a consequence of the abolition of or reduction in taxes.
- 18.2 The parties agree to meet prior to the imposition of a GST in order to determine the variation of any consideration in accordance with the above.
- 18.3 Each party warrants that at the time any supply is made under this Contract on which GST is imposed, that party is or will be registered under the GST law. If the other party requests written evidence or registration, the party claiming to be registered will promptly produce evidence satisfactory to the party seeking such evidence.
- 18.4 Any invoice rendered by a party to this Contract in connection with a supply under this Contract, which seeks to recover an amount of GST payable by that party, must conform to the requirements for a tax invoice (as that term is defined in the GST law). If requested to do so by the recipient of the supply, the supplier must provide a tax invoice within 14 days.