

# Skills and Training Incentive Agreement

## GENERAL TERMS AND CONDITIONS

### CONTEXT

A. The Participant is a participant in the Skills Checkpoint for Older Workers Program.

B. A Skills Checkpoint assessment conducted in relation to the Participant has identified an opportunity for the Participant to undertake training that is eligible for the Skills and Training Incentive (the 'Incentive') with \_\_\_\_\_, an eligible training provider (the 'Training Organisation').

C. The career plan developed for the Participant as part of the Skills Checkpoint assessment ('Career Plan') (attached at Attachment A) includes

(the 'Agreed Training').

D. The Provider has identified the Participant as eligible for the Incentive.

E. The Incentive is an amount funded by the Department of Employment and Workplace Relations ('Department') which can be used to pay up to \_\_\_\_\_ of the cost of the Agreed Training but only up to a total maximum of \$2,200 (GST inclusive) and for the purposes of this Skills and Training Incentive Agreement (the 'Agreement') is \$\_\_\_\_\_.

F. The Participant has agreed to undertake the Agreed Training with the Training Organisation and to use the Incentive to contribute to the payment for the Agreed Training.

G. The Co-contributor agrees to pay a contribution of \$\_\_\_\_\_ (GST inclusive), towards the cost of the Agreed Training ('the Co-contribution') in accordance with the terms of this Agreement.

H. The Parties agree that the Incentive and Co-contribution will be used to pay for \_\_\_\_\_ associated with the Agreed Training.

### TERMS OF THIS AGREEMENT

1. This Agreement commences on the day it is signed by the last party to do so and ends when one of the following events occurs (whichever is the earliest):

- the Participant completes the Agreed Training;
- where the Co-contributor has not paid the Co-contribution to the Provider, the Participant decides to withdraw from the Agreed Training, or the Agreed Training is cancelled or otherwise does not proceed;

c. where:

- the Co-contributor has paid the Co-contribution to the Provider; and
  - the Participant decides to withdraw from the Agreed Training, or the Agreed Training is cancelled or otherwise does not proceed, when the Provider refunds some, or all, of the Co-Contribution or advises the Co-contributor that a refund is not available, in accordance with this Agreement; or
- d. the Participant or the Co-contributor (as applicable) advises the Provider that they no longer wish to pay the Co-contribution.

### AGREED TRAINING

2. The Career Plan agreed by the Participant and the Provider forms part of this Agreement.

3. The Provider must advise the Participant and the Participant's Employer (if the Employer is the Co-contributor) of the Training Organisation's requirements for the Agreed Training, including course costs and attendance requirements.

4. The Provider must advise the Participant and the Participant's Employer (if the Employer is the Co-contributor) of the Training Organisation's course cancellation and refund policies prior to enrolling the Participant in the Agreed Training and paying the Incentive and Co-contribution to the Training Organisation.

*Note to drafter: Where the Participant is not an Existing Participant, or is an Existing Participant accessing the Incentive on or after 1 October 2023, please insert the following text at paragraph 5(i):*

*(i) directly related to an occupation in national shortage or an occupation not in national shortage but with strong future demand, as identified in the National Skills Commission's Skills Priority List;*

*Where the Participant is an Existing Participant accessing the Incentive before 1 October 2023, please insert the following text at paragraph 5(i):*

*(i) either:*

- linked to the Participant's current job (for example, upgrading skills), a future job opportunity or an industry in demand; or
- directly related to an occupation in national shortage or an occupation not in national shortage but with strong future demand, as identified in the National Skills Commission's Skills Priority List;

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5. The Parties acknowledge and agree that the Agreed Training must be:

i.

and

ii. either:

- a. at Certificate II level or above; or
- b. lower than Certificate II level with a clearly demonstrated pathway to the Participant completing future training at Certificate II level or above that is directly related to an occupation in national shortage or an occupation not in national shortage but with strong future demand, as identified in the National Skills Commission's Skills Priority List.

### PARTIES' ACKNOWLEDGEMENTS

6. The Provider acknowledges and agrees that it:

- a. has performed an eligibility assessment and confirms that the Participant is eligible to access the Incentive, including ensuring that the Participant does not have an active referral to, or is not currently registered with, a Commonwealth funded employment services provider as identified in the Department's IT Systems;
- b. has delivered to the Participant, or confirmed that the Participant has received, the required Skills Checkpoint for Older Workers Program services and the Career Plan recommends the Agreed Training;
- c. will organise and pay the Incentive and the Co-contribution for the Agreed Training in a single payment to the Training Organisation;
- d. has confirmed the Training Organisation is eligible for the Incentive; and
- e. has advised the Co-contributor of the Training Organisation's cancellation and refund policies;
- f. has confirmed the Participant is eligible to access the Incentive at up to \_\_\_\_\_ % of the cost of the Agreed Training.

7. The Participant acknowledges and agrees that they:

- a. have reviewed and agreed to the Career Plan provided by the Provider;
- b. have not previously accessed the full value of the Incentive;
- c. must only use the Incentive for the Agreed Training identified in their Career Plan;
- d. commit to attend and complete the Agreed Training

with the Provider;

- e. have not commenced the Agreed Training; and
- f. understand the Training Organisation's cancellation and refund policies.

8. The Co-contributor acknowledges and agrees that:

- a. they have not previously made, and will not make, direct payments to any Training Organisation in relation to the Agreed Training;
- b. they understand the Training Organisation's cancellation and refund policies;
- c. in the event the Agreed Training is cancelled and/or does not proceed, they will only receive a reimbursement of some, or all, of their Co-contribution if the Training Organisation provides a refund to the Provider in accordance with this Agreement; and
- d. the Agreed Training is not related to professional learning and development training arranged by the Employer for the Participant to undertake as part of their employment.

### PAYMENTS – GENERAL

9. The Parties acknowledge and agree that:

- a. the Participant may use the Incentive to undertake further training courses in addition to the Agreed Training but only if the maximum value of the Incentive \$2,200 (GST inclusive) has not been expended, and that any such further training courses will be the subject of a separate Skills and Training Incentive Agreement between the Parties;
- b. the Incentive will be up to 75 per cent of the course cost for the Agreed Training and cannot exceed \$2,200 (GST inclusive); and
- c. the Co-contribution will be the remainder of the total cost of the Agreed Training, after the Incentive.

10. The Co-contributor must pay the Co-contribution to the Provider for the Agreed Training, on receipt of an invoice from the Provider.

11. Subject to this Agreement and within five business days of receiving the Co-contribution in its account, the Provider must pay the Incentive and Co-contribution as a single payment to the Training Organisation for the cost of the Agreed Training, unless otherwise invoiced by the Training Organisation.

### PAYMENTS – REFUNDS

12. The Participant and the Participant's Employer (if the Employer is the Co-contributor) acknowledge and agree

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that any refund of all, or part, of the Co-contribution is dependent on the cancellation and refund policies of the relevant Training Organisation, and in certain circumstances, a refund may not be available.

**13.** If the Agreed Training is cancelled and/or does not proceed as a result of a decision made by the Training Organisation, the Provider will take all reasonable steps to obtain a refund in relation to the training from the relevant Training Organisation and will return to the Co-contributor any amount refunded in accordance with this Agreement.

**14.** If the Participant does not start or attend the Agreed Training for any reason within their control, and the Training Organisation refunds some, or all, of the cost of the Agreed Training to the Provider, the Provider will return to the Co-contributor any amount refunded in accordance with this Agreement.

**15.** The value of the Co-contribution to be refunded by the Provider will depend on the amount of fees returned by the Training Organisation. If the Training Organisation returns some, or all, of the Incentive and Co-contribution to the Provider, the Provider will first repay the Co-contribution to the Co-contributor.

**16.** If for any reason, some, or all, of the Agreed Training costs are refunded directly to the Participant or Co-contributor, the Participant or Co-contributor:

- a. must notify the Provider that the Participant or Co-contributor received a refund of the Agreed Training costs directly and provide details of such refund;
- b. must return to the Provider the Incentive amount (or any remaining balance of the refunded amount, up to the amount of the Incentive); and
- c. if they are the Co-contributor, can retain the Co-Contribution amount; or
- d. if they are not the Co-contributor, must return the Co-contribution amount to the Co-contributor.

### PROVIDER OR RELATED ENTITY AS TRAINING ORGANISATION

**17.** In this Agreement, 'Related Entity' means:

- a. those parts of the Provider other than the Provider's own organisation;
- b. 'entities connected with a corporation' as defined in section 64B of the Corporations Act 2001 (Cth) with the word 'Provider' substituted for every occurrence of the word 'corporation' in that section;
- c. an entity that:

- iii. can control, or materially influence, the Provider's activities or internal affairs;
  - iv. has the capacity to determine, or materially influence, the outcome of the Provider's financial and operating policies; or
  - v. is financially interested in the Provider's success or failure or apparent success or failure;
- d.** if the Provider is a company, an entity that:
- i. is a holding company of the Provider;
  - ii. is a subsidiary of the Provider;
  - iii. is a subsidiary of a holding company of the Provider;
  - iv. has one or more Directors who are also Directors of the Provider; or
  - v. without limiting paragraphs (d)(i) to (d)(iv) of this definition, controls the Provider; or
- e.** an entity, where a familial or spousal relationship between the principals, owners, Directors, officers or other like individuals exists between that entity and the principals, owners, Directors, officers or like individuals of the Provider.

**18.** Clauses 12 to 15 do not apply where the Provider or its Related Entity is the Training Organisation.

**19.** Clause 20 applies where the Provider or its Related Entity is the Training Organisation.

**20.** The Provider acknowledges and agrees that:

- a. it disclosed to the Participant and the Participant's Employer (as relevant) that it or its Related Entity (as relevant) is the Training Organisation;
- b. it or its Related Entity (as relevant) must act fairly, transparently and in good faith towards the Participant and the Participant's Employer (as relevant) in performing its roles as the Training Organisation and the Provider; and
- c. where:
  - i. the Agreed Training is cancelled and/or does not proceed as a result of a decision made by the Training Organisation; or
  - ii. the Participant does not start or attend the Agreed Training for any reason within their control, the Provider must return the entire amount of the Co-contribution to the Participant or the Participant's Employer (as relevant) and the entire amount of the Incentive to the Department.

### PARTICIPANT'S EMPLOYER AS TRAINING ORGANISATION AND CO-CONTRIBUTOR

**21.** Causes 6.e, 8.b, 8.c and 12 to 15 do not apply where

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the Participant's Employer is the Training Organisation and Co-contributor.

**22.** Clause 23 applies where the Participant's Employer is the Training Organisation and Co-contributor.

**23.** The Co-contributor acknowledges and agrees that:

- it is responsible for paying the Co-contribution;
- it must act fairly, transparently and in good faith towards the Participant and the Provider in performing its roles as the Training Organisation and the Co-contributor; and
- where:
  - the Agreed Training is cancelled and/or does not proceed as a result of a decision made by the Training Organisation; or
  - the Participant does not start or attend the Agreed Training for any reason within their control, the Co-contributor must return the entire amount of the Incentive to the Provider.

### FREEDOM OF INFORMATION

**24.** Documents in the possession of the Department and its contracted service providers may be subject to disclosure in response to a request made under the Freedom of Information Act 1982 (Cth) ('FOI Act'), unless the documents are exempt or conditionally exempt under the FOI Act.

**25.** In accordance with its obligations under the FOI Act, the Department will consult with affected individuals or organisations prior to making a decision on access to documents.

**26.** The Participant and the Participant's Employer (if it is the Co-contributor) must, if requested by the Provider or the Department, assist the Department in meeting its obligations under the FOI Act.

### PRIVACY

**27.** When dealing with personal information (as defined in the Privacy Act 1988 (Cth) ('Privacy Act')) in carrying out its obligations under this Agreement, the Provider agrees not to do anything which, if done by the Commonwealth, would be a breach of the Privacy Act.

**28.** The information in and related to this Skills and Training Incentive Agreement is collected by the Department for the purpose of facilitating the Agreed Training, including administering employment services

programs in Australia, and related purposes as described in the Department's Privacy Policy.

**29.** The Participant's Employer (if it is the Co-contributor) agrees to comply with all obligations under the Privacy Act and State and Territory privacy laws, that apply to it, when dealing with personal information in carrying out its obligations under this Agreement.

**30.** The Participant's Employer (if it is a Co-contributor) acknowledges and agrees that the Provider may be required to disclose information it received from them to the Department.

### GOVERNING LAW

**31.** This Agreement will be governed by, and construed in all respects in accordance with, the law of New South Wales and the Parties agree to submit to the applicable jurisdiction of the courts of New South Wales in respect of all matters arising under, or in relation to, this Agreement.

### PRIVACY STATEMENT - PARTICIPANT

The collection, use and disclosure of personal information is protected by law, including the Privacy Act 1988 (Privacy Act). In the Workforce Australia Privacy Notification and Consent Form, we have provided you with important privacy information about the collection, use and disclosure of your personal information. You should ensure that you have read and understood this information.

More information is available from [dewr.gov.au/privacy](http://dewr.gov.au/privacy) or your Provider. Further information about the Privacy Act is available from the Office of the Australian Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### Public Sector Data

The Department may in future be authorised by law to share 'Public Sector Data' with third parties, including under the Data Availability and Transparency Act 2022 (Cth) (DAT Act). 'Public Sector Data' is defined in the DAT Act to mean "data lawfully collected, created or held by or on behalf of a Commonwealth body..." and therefore includes any data provided to the Department, or collected by your Provider, as part of your receipt of the Agreed Training.