DEED OF AGREEMENT FOR LICENCE AND USE OF LEARNING AND ASSESSMENT RESOURCES

BETWEEN: Compliant Learning Resources Pty Ltd
ACN: 166777037
Level 1 67 Lytton Rd East Brisbane Qld 4169

AND: <CLIENT BUSINESS NAME>
ABN: <CLIENT ABN>
Address: <CLIENT ADDRESS>

DEED OF AGREEMENT

BETWEEN: Compliant Learning Resources Pty Ltd ACN 166777037 having its registered office at Level 1 67 Lytton Rd East Brisbane Qld 4169 (the "**Licensor**");

AND: <CLIENT BUSINESS NAME>, ABN <CLIENT ABN> having its registered office at <CLIENT ADDRESS> (the "**Licensee**").

RECITALS AND BACKGROUND

A. The Licensee accepts that Licensor is the owner of the copyright in the Learning and Assessment Resources or has obtained the right from a third party to license the Learning and Assessment Resources.

B. The Licensee accepts that for the purposes of the Copyright Act 1968, the Learning and Assessment Resources are original works created by the Licensor.

C. The Licensee intends to use the copyright Learning and Assessment Resources and seeks a licence from the Licensor for the Purpose as defined by this Deed.

D. The Licensor has agreed to grant the licence for the Purpose.

E. The Licensee has agreed to comply with the obligations set out in this Deed and acknowledges that any breach will cause damage and loss to the Licensor for which the Licensor will be liable.

OPERATIVE PART

1. LICENCE

1.1. Upon performance of the obligations set out in clause 2 and subject to the terms of this Deed, the Licensor grants the Licensee a licence to use Learning and Assessment Resources for the Purpose. The Licence is limited to each qualification or unit/s as identified by the Qualification Code (including Qualification Release version) or Unit Code to which the Learning and Assessment Resources apply.

1.2. Where the Licence is provided for use of the Learning and Assessment Resources in electronic form, the Licensee will have the right to make and disseminate unlimited copies for the Purpose.

1.3. The Licensee agrees that the grant of the Licence will not prevent the Licensor from granting further licences to other persons without seeking the permission or consent of the Licensee.

1.4. The Licensee must not assign the Licence to any other person or otherwise sell, charge or encumber the Licence.

1.5. The Licensee must not give third parties permission to copy or distribute the Learning and Assessment Resource and must only use it for the Purpose.

1.6. Subject to Clause 11, the Licence will remain in force for the Term after such time the Licensee agrees to obtain the Licensor's written permission if it intends to continue using the Learning and Assessment Resources.

1.7. Where the Licensee has been provided with a One-Off Licence, during the term, it will have no expectation of being granted a further Licence of those types. To be clear, the Licensor will only grant one Licence of either type per RTO or to an entity that has applied to become an RTO.

1.8. It is a term of the license that One-Off License holders will be entitled to receive from the date of operation any updates, enhancements and improvements. To be clear, this does not include updates for new Qualification Releases, or changes to qualifications resulting in a new Qualification Code.

1.9. It is a term of a One-Off that the Licensee will be entitled to access the "Real World" simulated workplace. To be clear, this intranet website will no longer be accessible 1 year after the qualification is superseded OR updated to a new Qualification Release version.

2. LICENCE FEE AND UPDATES, ENHANCEMENTS AND IMPROVEMENTS

2.1. In consideration for the Licence, the Licensee must pay the Licensor the fee set out in Part C and D of the Schedule.

2.2. The Licensor is not obliged to update and enhance or improve the Learning and Assessment Resources.

3. INTELLECTUAL PROPERTY

3.1. The Licensee acknowledges that the Licensor is the owner of the copyright in the Learning and Assessment Resources and that ownership of the copyright will remain vested with the Licensor after the Date of Operation.

3.2. The Licensee must not alter, remove or obscure any copyright or trademark symbol or legend or other proprietary mark of the Licensor on the Learning and Assessment Resources.

3.3. In the event that the Licensee infringes the intellectual property of the Licensor, the Licensee hereby indemnifies the Licensor for any loss or damage suffered including liability for any legal fees and costs on an indemnity basis.

4. LICENSOR WARRANTY AND GUARANTEE

4.1. The Licensor warrants that the Licensee's use of the Learning and Assessment Resources for the Purpose will not infringe the rights including Intellectual Property Rights and/or moral rights of any third party.

5. LICENSEE OBLIGATIONS, WARRANTIES & ACKNOWLEDGEMENTS

5.1. The Licensee may only use the Learning and Assessment Resources during the Term for the Purpose.

5.2. The Licensee will ensure that all copies of the Learning and Assessment Resources made, printed, published, reproduced or otherwise disseminated by the Licensee including in electronic form will bear whatever proprietary statement is required by the Licensor including the copyright symbol ©.

5.3. The Licensee undertakes to ensure that the Learning and Assessment Resources are not subjected to any treatment that is prejudicial to the reputation of the Licensor or that infringes the moral rights of the author of the Learning and Assessment Resources.

5.4. The Licensee is not permitted to sell, charge, or otherwise encumber the Learning and Assessment Resources except in accordance with the terms of this Deed.

5.5. The Licensee must not permit any other person to copy or sell the Learning and Assessment Resources except with the prior permission of the Licensor and must take such steps as are reasonably necessary to prevent such activity and make such persons aware of the Licensee's obligations under this clause.

5.6. The Licensee is not permitted to claim or hold itself out, engage in any conduct or make any representation the effect of which would suggest that it is the agent of the Licensor.

5.7. During the term of the Licence, the Licensee undertakes to promptly advise the Licensor of any legal proceedings, threat of legal proceedings or claim which may involve the Learning and Assessment Resources including any infringement of Intellectual Property through the provision of the Licence or the use of the Learning and Assessment Resources.

5.8. In the event of a matter arising as contemplated in clause 5.7, if requested by the Licensor, the Licensee undertakes to keep the Licensor fully informed of the progress of any such proceeding or claim.

5.9. The Licensor may at any time in its sole discretion seek to join any proceedings to defend or settle the claim or proceeding.

5.10. The Licensee must not settlement of such proceeding or claim, except with the written consent of the Licensor.

5.11. In the event of a matter arising as contemplated in clause 5.7, at the Licensor's request, the Licensee will provide the Licensor with copies of any and all documents and materials including legal advice relating to such proceeding or claim.

5.12. The Licensee warrants that it has not relied upon any representation made by the Licensor other than as set out in this Deed.

5.13. The Licensee warrants that it is a RTO or has applied and has the intention to become an RTO.

5.14. The Licensee acknowledges that they are responsible for contextualising all learning resources and assessment tools to ensure compliance with the unit of competence requirements and National Standards for RTOs.

5.15. The Licensee acknowledges that it must ensure it validates all learning resources and assessment tools prior to any VET Regulator audit, and where issues in the resources or tools arise from validation, it must advise the Licensor within 7 (seven) days of their validation report findings.

5.16. The Licensee acknowledges that it is solely responsible to ensure compliance with the National Standards for RTOs for both its Training and Assessment Strategy and any associated Training Resources purchased under this agreement. Any non-compliances identified at audit are the responsibility of the Licensee.

6. UPDATES, ENHANCEMENTS AND IMPROVEMENTS

6.1. From time to time the Licensor may prepare improvements to the Learning and Assessment Resources. The Licence provided in clause 1 or the Warranty and Guarantee provided in clause 4 of this Deed does not entitle the Licensee to use the updates, enhancements and improvements unless it is a specific term of the Licence provided to the Licensor.

6.2. The Licensee may of its own volition prepare improvements to the Learning Resources and Assessment Tools. If the Licensee does so, it must continue to recognise the

intellectual property of the Licensor in accordance with clause 5.2 of this Deed. However, the Warranty and Guarantee will no longer apply to the Assessment Resources to which this Deed apply or to the Licensee improvements.

6.3. In the event of Licensee improvements, the Licensee agrees that the Licensee improvements will not be used for any purpose other than the Purpose for which the Licence was granted by under this Deed. In particular, the Licensee agrees that it will not sell, charge, or otherwise encumber Licensee improvements or permit others to do so except in accordance with this Deed.

6.4. Notwithstanding any other clause of this Deed, in order to receive an update for a new Qualification Release the Licensee must apply for a new Licence and surrender any existing current Licence.

7. FEES CHARGED BY LICENSEES

7.1. Despite the prohibitions set out in clauses 5.4, 5.5 and 6.3 of this Deed, the Licensee is permitted to levy a charge for the provision and use of the Learning and Assessment Resources by students.

8. LIMITATION OF LIABILITY AND REMEDY FOR DEFECTS

8.1. To the fullest extent permitted by law, the Licensor expressly disclaims all implied warranties and conditions including without limitation implied warranties as to merchantability and fitness for purpose of the Learning and Assessment Resources.

8.2.

(a) If the Licensee is entitled to seek redress for any failure or breach of Guarantee under the Australian Consumer Law the remedy available to the Licensee is limited the repair or the replacement with an equivalent Learning and Assessment Resource to that supplied to the Licensee. The Licensee will not be entitled to receive a refund of monies paid to the Licensor unless the Licensor is unable to remedy the failure within a reasonable time or the nature of the failure is such that it cannot be remedied by the replacement or repair of the Learning and Assessment Resource supplied to the Licensee (for example as a result of a defect in title).

(b) If the Licensee is not entitled to seek a redress under the Australian Consumer Law, the remedy available to the Licensee for any failure or breach of Guarantee or Warranty for any defect is limited to the repair or the replacement

with an equivalent Learning and Assessment Resource supplied to the Licensee unless such replacement will not cure the failure or defect and in which case the liability of the Licensor will, to the fullest extent permitted by law, be limited to the sum paid by the Licensee to the Licensor for the Learning and Assessment Resource.

8.3. To the fullest extent permitted by law, the Licensor excludes all liability for indirect or consequential loss including loss of revenue, loss of profits, failure to realise expected profits or savings and any other regulatory, commercial or economic loss of any kind arising from the provision of the Licence and the use of the Learning and Assessment Resources by the Licensee or students.

8.4. The Licensor is not liable to the Licensee for any use of the Learning and Assessment Resources by the Licensee or by other persons other than in accordance with the current standards for RTOs under Australia's Vocational Education and Training (VET) System.

9. INDEMNITY

9.1. The Licensee indemnifies and holds harmless the Licensor and promises to keep the Licensor indemnified against any loss, claim, action, settlement, award, judgment, expense or damage that the Licensee might suffer as a result or incidental to the use (including for the Purpose and unauthorised use) of the Learning and Assessment Resources.

10. SEVERANCE

10.1. Any provision or the application of any provision of this Licence, which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

10.2. Where any clause in this Licence is held by a court of law exercising appropriate jurisdiction to be void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Licence.

10.3. Any provision or the application of any provision of this Licence, which is held by a court of law to be void, illegal or unenforceable in any jurisdiction does not affect the validity or legality of the remaining provisions of this Licence in that or any other jurisdiction.

11. TERMINATION

11.1. Either party may terminate the Licence by seven days written Notice if the:

(a) other party breaches a term of this Deed and fails to remedy such breach within fourteen (14) days of being notified of such breach;

(b) other party becomes subject to external administration or being a natural person becomes bankrupt or dies;

(c) Licensee (if a partnership) dissolves or enters a process of dissolution; or

(d) Licensee ceases or notifies of its intention to cease trading as a business.

11.2. The Licence will terminate twelve months after any change or variation to:

(a) the competency requirements for the relevant qualification;

(b) the units of competency; or

(c) a change to the course content necessary to achieve a relevant qualification, applying at the date of operation, that renders the Learning and Assessment Resources out of date or obsolete or deficient for the purposes of passing a VET regulator audit.

11.3. If Notice is given under clause 11.1 or the Licence is terminated by operation of clause 11.2 the Licensee will immediately cease using the Learning and Assessment Resources and if requested by the Licensor will promptly return the Learning and Assessment Resources including any copies and/or derivative materials to the Licensor.

11.4. Following termination, the parties agree that the provisions in clauses 8 and 9 will continue to be binding.

12. NOTICES

12.1. Any Notice given pursuant to this Deed must be given in writing and addressed to the recipient at the address, facsimile number or email address set out in Part E of the Schedule or as a party may from time to time notify in writing to the other.

12.2. A Notice will be deemed given on the same day if hand-delivered with authorised receipt; if posted, then three (3) business days after date of posting; if faxed, upon successful transmission record; and if by email, by return email to the sender informing receipt of the email.

13. GENERAL PROVISIONS

13.1. **(Law and Jurisdiction)** The Provisions contained in this Deed will be governed by and construed in accordance with the laws of Queensland and any claim made by one party against the other in any way arising out of then will be heard in Queensland and the parties submit to the jurisdiction of those Courts.

13.2. **(Relationship)** The Parties do not intend that this Deed will give rise or be deemed to constitute a partnership, joint venture or agency between the parties.

13.3. **(Entire Agreement)** The terms of this Deed constitute the entire agreement between the parties and all understandings, prior representations, arrangements or commitments that are not contained herein have no effect whatsoever and do not bind the parties.

13.4. **(Invalidity)** If any provision of this Deed is invalid under any law that provision will be limited, narrowed, construed or altered as necessary to render it valid, but only to the extent necessary to achieve such validity. If necessary, the invalid provision will be deemed not to bind the parties and the remaining provisions will remain in full force and effect.

13.5. **(Waiver)** No waiver of any right or remedy will be effective unless in writing and will not operate as a waiver of that right or remedy or any other right or remedy on a future occasion. The conduct of the parties will not constitute a waiver of any right or remedy.

13.6. **(Implied Terms)** Any implied term under law that can be excluded is expressly excluded and no term is to be implied as being a term or condition of sale unless by law it cannot be excluded.

13.7. **(Advice)** The Licensee acknowledges and represents that it has had the opportunity to seek and obtain separate and independent legal advice before executing this Deed. If the Licensee has executed without first taking legal advice it has done so at its sole and absolute discretion and it will not be entitled to rely upon the absence of legal advice as a defence to any breach.

14. INTERPRETATION

14.1. Definitions

"Assessment Tools" means that part of the Learning and Assessment Resources designed to assist the RTO's to determine the level of competency a student and includes

Assessment Workbook and Assessor Guides but not any "Real World" simulated workplace on an online intranet website.

"**VET REGULATOR**" means the Australian Skills Quality Authority, Training and Accreditation Council Western Australia WA, Victorian Registration and Qualifications Authority, other official VET regulatory bodies, or their successors.

"Change of Control" means, in relation to a corporation, a change in control of the board of directors, a change of control of more than half the voting rights attaching to shares in the corporation, or a change of control of more than half the issued shares to which voting rights are attached.

"Deed" means these terms of this document including the Schedule and any amendments agreed in writing by both parties and executed as a Deed.

"**Dollars**" means a denominator in the currency of the Commonwealth of Australia.

"Enhancements and improvements" means any changes to the Learning and Assessment Resources made by the Licensor other than Updates.

"**Intellectual Property Rights**" means all rights of the Licensor in copyright, circuit layout, designs, trademarks, patents and all other rights in intellectual property as defined in Article 2 of the World Intellectual Property Organisation (WIPO) Convention whether registrable, registered, patentable or not.

"Learning and Assessment Resources" means the material set out in Part A of the Schedule for each Qualification as identified by the Qualification Code but does not include any Updates to them made by the Licensor after the date of operation.

"Learning Resources" means that part of the Learning and Assessment Resources designed to assist the student to attain a level of competency and includes Learner Guides and any "Real World" simulated workplace on an online intranet website.

"**Licence**" means the licence granted by the Licensor to the Licensee in clause 1.

"**Licensee improvements**" means any improvements to the Assessment Tools made by the Licensee.

"Notice" means a notice in writing in English including those sent by facsimile, letter and email to the party's address for notices set out in Part E of the Schedule.

"**One-Off Licence**" is a licence where the Licensee pays a one-off upfront fee for use of the learning and assessment resources and expires accordance with clause 11.2

"**Purpose**" means the purpose set out in Part B of the Schedule.

"Qualification" means the formal certification, issued by a relevant approved authority, in recognition that the person has satisfactorily completed a course of study.

"Qualification Code" is a unique alpha-numeric code usually of eight characters allocated to a qualification and includes a Training package identifier, a qualification identifier, sequence identifier and version identifier.

"Qualification Release" the number allocated to a qualification which identifies the release version of the qualification.

"Student" means a person who is properly enrolled in a course provide by a NVR Registered Training Organisation.

"**RTO**" means NVR Registered Training Organisation.

"**Tax Invoice**" means an invoice that is GST compliant.

"**Term**" means the period between the Date of Operation and the event specified in clause 11.

"The date of operation" means the date upon the last party executes and delivers this Deed to the other party.

"**Units of competency**" are national standards of skills and knowledge required for the effective performance of a particular job or job function which describe work outcomes expected by industry.

"**Update"** means any changes to the Learning and Assessment Resources made by the Licensor are necessitated by changes to the competency requirements for the relevant qualification or the units of competency or a change to the course content necessary to achieve a relevant qualification.

EXECUTION

This document is executed as **Deed.**

Executed for and on behalf of **Compliant Learning Resources Pty Ltd** (ACN 166777037) by its authorised signatory

Authorised Persons Signature:_____

Authorised Person: _____

Position: _____

Date: _____/_____/_____

Witnessed By:

Witness Signature: _____

Witness Name: _____

Position: _____

Date: _____/_____/_____

Executed for and on behalf of **<CLIENT BUSINESS NAME>** (ABN <CLIENT ABN>) by its authorised signatory

Authorised Persons Signature:_____

Authorised Persons Name: _____

Position: _____

Date: _____/_____/_____

Witnessed By:

Witness Signature: _____

Witness Name: _____

Position: _____

Date: _____/_____/_____

SCHEDULE

PART A – LEARNING AND ASSESSMENT RESOURCES (Definition)

A set of materials (in digital form) prepared by the Licensor to assist students obtain and RTO to assess the competency of students attending a course training and tuition regulated under Australia's Vocational Education and Training (VET) System.

PART B – PURPOSE (Definition)

To enable the Licensee to use and provide the Learning and Assessment Resources to its students and to assess the competency of its students attending a course operated by the Licensee under the VET system as a RTO and training provider.

PART C – LICENCE TERMS (clause 2)

The Licensee must pay the Licence Fee applicable to the relevant format of the Learning and Assessment Resource as specified below:

1. **One-Off Licence**

Subject to any other provisions of these terms and conditions of sale, the Licence Terms applicable where the Licensee seeks a One-Off Licence are:

(a) **Full Resource Bundle** in digital form (inclusive of Learner Guide, Assessment Workbook, Assessor Guide and where applicable a "Real World" simulated workplace on an online intranet website).

(b) **Learner Guide Bundle** in digital form (inclusive of Learner Guides and where applicable a "Real World" simulated workplace on an online intranet website).

(c) **Assessment Tool Bundle** in digital form (inclusive of Assessment Workbook and Assessor Guides and where applicable a "Real World" simulated workplace on-line intranet website).

PART D – SCHEDULE OF FEES (clause 2)

Code	Description	Qualification Release	License Type	Upfront License Fee (including GST)

PART E – NOTICES (clause 12)

Compliant Learning Resources Pty Ltd (**the Licensor**)

of: Level 1 67 Lytton Rd East Brisbane Qld 4169

Attention: Scott Rogers

Phone: 1300 885 484

Facsimile Nº: 1800 008 128

Email: licensing@compliantlearningresources.com.au

<CLIENT BUSINESS NAME> **(the Licensee)**

of: <CLIENT ADDRESS>

Attention: <CLIENT CONTACT NAME>

Tel: <CLIENT CONTACT PHONE>

Email: <CLIENT CONTACT EMAIL>