Licence Agreement

BETWEEN:

eSkilled Pty Ltd A.C.N. 635 775 656

AND:

_____ A.C.N. _____

Date

The _____ day of _____, _____ .

<table>
<tr><td>Day</td><td>Month</td><td>Year</td></tr>
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The Parties

ESKILLED PTY LTD A.C.N. 635 775 656

of the address referred to in Item 1 of Schedule 1

("Licensor")

AND

_____

of the address referred to in Item 2 of Schedule 1

("Licensee")

Recitals

A.   The Licensee is a training organisation and provides vocational education and training to students enrolled in its courses.

B.   The Licensor is the owner of the LMS or has obtained the right from a third party to license the LMS.

C.   The Licensee seeks to access and use the LMS to deliver training and assessment for its students.

D.   The Licensor agrees to grant a non-exclusive licence to the Licensee to access the LMS on the terms of this Agreement.

Operative Part

1.   Definitions and Interpretation

1.1.   In this agreement, unless context otherwise requires, the following words have the corresponding meanings:

a.   *Active Users* means the total number of unique users that have logged into or otherwise accessed the Licensee's LMS during one calendar month.

b.   *Agreement* means this Licence Agreement as amended pursuant to Clause 10 and including the Recitals and Schedules to it.

c.   *ASQA* means the Australian Skills Quality Authority.

d.   *Australian Consumer Law* means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

e.   *Business Day* means a day, other than a Saturday, Sunday or gazetted public holiday in Brisbane in the State of Queensland, Australia.

f.   *Commencement Date* means the date specified in Item 3 of Schedule 1.

g.   *Course* means an area in the LMS with resources and activities for students to complete. It might be a simple page with downloadable documents, or it might be a complex set of tasks where the learner progresses through interaction with the learning resources and activities.

h.   *Data* means any data belonging to the Licensee or that the Licensee is permitted to use, that the Licensee inputs into the LMS or otherwise provides to the Licensor for the purpose of the Licence.

i.   *Data Storage Limit* is the maximum amount of Data that can be stored under the terms of this agreement, as set out in Item 7 of Schedule 1, counted as the highest recorded Data Usage on any day a calendar month. Data storage usage is rounded up to the nearest Gigabyte.

j.   *Excess Data Storage Fee* means the sum of money in Item 9 of Schedule 1, being the sum payable per calendar month for storage of data in excess of the Data Storage Limit. The Excess Data Storage Fee is payable monthly. Unless otherwise specified, the Excess Data Storage Fee includes GST.

k.   *Extra Active Users Fee* means the sum of money in item 10 of Schedule 1, being the sum payable per calendar month for Active Users in excess of the Maximum Number of Active Users limit. The Extra Active Users Fee is payable monthly. Unless otherwise specified, the Extra Active Users Fee includes GST.

l.   *Fee* means the sum of money in Item 5 of Schedule 1, being the sum payable for the Licence for the Term. The Fee is payable monthly or annually, as specified in Item 5 of Schedule 1. Unless otherwise specified, the Fee includes GST.

m.   *Force Majeure Event* means:

i.   a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;

ii.   riot, civil commotion, war, invasion or a terrorist act;

iii.   interruptions to access to the Website or LMS, due to failure of the internet or third-party software or an emergency or planned outage; or

iv.   an imminent threat of an event in paragraphs i to iii.

n.   Gigabyte means one gigabyte or one billion bytes of Data as reported by the LMS control panel.

o.   *GST* means goods and services tax under the *A new Tax System (Goods and Services Tax) Act* 1999 (Cth) and other related legislation.

p.   *Intellectual Property Rights* means any rights of the Licensor or other person in any trademarks, patents, logos, designs and copyright material, software and any other forms, documents, improvements, trade secrets, technical data, computer programs and data bases associated with the LMS.

q.   *Licence* means the non-exclusive licence granted to the Licensee by Clause 2 of this Agreement to access the LMS for the purpose of delivering VET services to Students.

r.   *Licensee* means the entity in Item 2 of Schedule 1.

s.   *Licensor* means eSkilled Pty Ltd A.C.N. 635 775 656.

t.   *LMS* or *Learning Management System* means all hosted systems and application software including all upgrades and versions at the internet site at the domains lms.eskilled.com.au, www.eskilled.com.au or any other domain operated by the Licensor.

u.   *Notifiable Data Breaches Scheme* means the scheme established under the *Privacy Act* 1988 (Cth) requiring the reporting of eligible data breaches to affected individuals and/or the Office of the Australian Information Commissioner.

v.   *Maximum Number of Active Users* describes the maximum number of Active Users the Licensee is permitted to have in their LMS in one calendar month, as set out in Item 6 of Schedule 1.

w.   *Other Fees* means the sum of money in Schedule 2, being the sum payable for any other product or service requested by the Licensee. Unless otherwise specified, Other Fees includes GST.

x.   *Onboarding Training* means a two-hour live, interactive webinar which provides an overview of:

i.   the key functions and features of the LMS;

ii.   how to insert the Licensee's name and logo into the LMS;

iii.   how to enrol Students;

iv.   how to access user guides;

v.   course structure set up and editing process;

vi.   how to access student results and completion reports; and

vii.   using email templates through the LMS.

y.   *Resources* means the learning materials, assessments and other related information and documents which form a Course.

z.   *RTO* means Registered Training Organisation registered by ASQA to deliver VET services.

aa.   *Setup Fee* means the sum of money in Item 8 of Schedule 1, being the sum payable for initial setup of the LMS. Unless otherwise specified, the Setup Fee includes GST.

bb. *Student* means a student of the Licensee, who is or is intended to be given access to the LMS for the purpose of undertaking training.

cc. *Support Policy* means the document titled 'eSkilled Support Policy' as amended from time to time and published on the Website at the following address: https://eskilled.com.au/eskilled-lms-support-policy/.

dd. *Term* means the period between the Commencement Date and the Termination Date.

ee. *Termination Date* means the date that is 12 months from the Commencement Date, or such earlier date as may be agreed between the Parties and specified in Item 4 of Schedule 1.

ff. *User* means a student, trainer, assessor, contractor, or any other person provided access to the LMS by the Licensee.

gg. *VET* means Vocational Education and Training.

hh. *Website* means the internet site at the domain www.eskilled.com.au.

1.2. Unless the context otherwise provides:

a. The singular includes the plural and vice versa and words of one gender include the other gender;

b. Where two or more persons are named as a party to this Agreement, the representations, warranties, covenants, obligations and rights given, entered into or conferred (as the case may be), bind them jointly and each of them severally;

c. A reference to any party to this Agreement or any other document or arrangement includes that party's successors, substitutes, permitted assigns, executors and administrators;

d. A reference to any agreement or document is to that agreement or document (and where applicable, any of its provisions) as varied, amended, novated, supplemented, or replaced from time to time;

e. If the day on or by which a person must do something under this Agreement is not a Business Day, the person must do it on the next Business Day;

f. A reference to "dollars" or "$" in this Agreement means the currency of Australia;

g. A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision. Any general reference to "Statute" or "Statutes" includes any regulations or orders made under the Statute or Statutes;

h. The meaning of general words is not to be limited by the meaning of accompanying specific words;

i. A reference to an individual or person includes a company, corporation, partnership, firm, joint venture, association (whether incorporated or not), body, authority, trust, state, or government and vice versa; and

j. Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

2. Licence

2.1. In consideration for the Fee, the Licensor grants the Licence to the Licensee.

2.2. The License is a non-exclusive licence to:

a. access the LMS;

b. add Resources and Courses to the LMS;

c. add users to the LMS,

d. have Active Users in the LMS, up to the Maximum Number of Active Users;

for the Term and on the terms and conditions set out in this Agreement.

3. Licensor's Obligations, Warranties and Guarantees

3.1. The Licensor will:

a. provide the Licensee with access to the LMS;

b. provide the Onboarding Training to the Licensee;

c. take reasonable steps to maintain appropriate protections for any Data provided to it by the Licensee; and

d. comply with the Notifiable Data Breaches Scheme, where necessary.

3.2. The Licensor warrants that the Licensee's use of the LMS to deliver VET services to Students will not infringe the rights, including Intellectual Property Rights and/or moral rights, of any third party.

4. Licensee's Obligations

The Licensee must:

a. pay the Fee, Setup Fee, and any Other Fees to the Licensor;

b. comply with any policies published by the Licensor on the Website, including those relating to privacy, use of confidential information or use of the LMS;

c. upload, install of otherwise set up any Resources or Courses in the LMS.

d. protect the LMS against unauthorised access, use or damage, including by:

i. advising employees, officers, Students and any other person authorised to access the LMS not to share their password with any other person;

e. not assign the Licence to any other person, or otherwise transfer, sell, charge or encumber the Licence, except that the Licensee may charge a fee to Students that are users of the LMS for the purpose of receiving VET services;

f. not post or transmit any material through the LMS or related websites that:

i. is unlawful, abusive, defamatory, threatening, obscene, or breaches, limits or infringes upon a person's privacy or other rights;

ii. encourages the commission of an offence;

iii. creates or gives rise to a civil liability;

iv. violates any law of the Commonwealth of Australia or of any State or Territory of Australia;

g. not use the LMS in a way that prevents any other person from utilising the LMS;

h.   not generate unsolicited emails or advertisements or engage in religious, political or other solicitation.

i.   not transmit or upload a virus, worm, trojan horse or any other malicious software or harmful code;

j.   not gain or attempt to gain access to parts of the LMS that the Licensee is not authorised or entitled to access;

k.   not claim it is, hold itself out as, or engage in any conduct or make any representation the effect of which would suggest that it is, the agent of the Licensor;

l.   ensure that the LMS is not subjected to any treatment that is prejudicial to the reputation of the Licensor;

m.   if the Licensee becomes aware of any legal proceedings, threat of legal proceedings or claim which may involve the LMS,

    i.   advise the Licensor of the proceedings, threat or claim;

    ii.   keep the Licensor fully informed of the progress of any such proceedings, threat or claim;

    iii.   provide the Licensor with copies of any and all documents, including legal advice, the Licensor requests from the Licensee relating to the proceedings, threat or claim;

    iv.   not oppose any steps taken by the Licensor to join or respond to the proceedings, threat or claim;

    v.   not settle such proceeding, threat or claim without the consent of the Licensor;

5.   Licensee's Acknowledgements and Warranties

5.1.   The Licensee acknowledges that:

a.   the Licence is a non-exclusive licence, which means that the Licensor may grant further licences to other persons without seeking permission or consent of the Licensee;

b.   the Licensor will not provide technological support to the Licensee, except in accordance with the Support Policy;

c.   the Licensor will not assist the Licensee with transferring or inputting any Data to the LMS;

d.   the Licensor will not assist the Licensee with transferring or inputting any Resources or Courses to the LMS;

e.   any suspected fraudulent, abusive or unlawful activity may be disclosed to an appropriate authority;

f.   there are inherent risks in transmitting data and dealings over the internet, and that from time to time, access to the LMS may be interrupted, including because of a Force Majeure Event; and

g.   utilising the LMS involves the transmission of Data to and by the Licensor over networks not owned by the Licensor, and that the Licensor is not responsible for any data loss, alteration, interception or other failure of any sort.

       h.   if the Licensee exceeds the Maximum Data Limit for a month, they must pay the Excess Data Storage Fee for that month.

       i.   if the Licensee exceeds the Maximum Number of Active Users for a month, they must pay the Extra Active Users Fee for that month.

5.2.   The Licensee warrants that:

       a.   it has not relied upon any representation made by the Licensor other than as set out in this Agreement;

       b.   it is solvent;

       c.   the contact information in Item 2 of Schedule 1 is accurate;

       d.   it has independently verified that it has all relevant technology systems required to utilise the LMS; and

       e.   it has obtained all necessary rights and permissions to provide Data to the Licensor, and that the provision of the Data to the Licensor does not violate any law or rights of any third party, including intellectual property rights or rights to privacy.

       f.   it has obtained all necessary rights and permissions to use all Resources, and that the addition of the Resources to the LMS does not violate any law or rights of any third party, including intellectual property rights.

6.   Limitation of Liability & Indemnity

6.1.   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 LMS.

6.2.   To the fullest extent permitted by law, the Licensor excludes all liability for indirect or consequential loss including loss of revenue, loss of profits, loss of goodwill, failure to realise expected profits or savings and any other commercial or economic loss of any kind arising from the grant of the Licence, the access to the LMS.

6.3.   The Licensor is not liable for use of the LMS by the Licensee that is not in accordance with the *Standards for Registered Training Organisations (RTOs) 2015* as amended or replaced from time to time.

6.4.   The Licensor will not be responsible for any interruption to access or use of the LMS or any loss of Data as a result of a Force Majeure Event or action of a third party, including data loss caused by malicious software or viruses, or unauthorised access or use of the Data or LMS by a third party.

6.5.   The Licensee indemnifies, and promises to keep indemnified, the Licensor against any loss, claim, action, settlement, award, judgment, expense or damage that the Licensor might suffer as a result of or incidental to the Licensee's use (whether or not such use is authorised) of the LMS.

6.6.   The Licensor is not liable for the use of any Resources or Courses in the LMS.

7.   Suspension, Cancellation and Termination of the Licence

7.1.   The Licensor may immediately suspend the Licensee's access to the LMS or any parts thereof if the Licensor suspects or finds:

       a.   that the Licensee or any of its Students is using the LMS in a way that poses a risk to the use and enjoyment of the LMS by any other person;

b. that providing access to the LMS to the Licensee has become unlawful;

c. that the Licensee or any of its Students has breached any clause of this Agreement;

d. a resolution is passed for the winding up, dissolution, official management or administration of the Licensee;

e. the Licensee enters into any arrangement or composition with its creditors; or

f. the Licensee is deemed to be insolvent or a receiver, receiver and manager, official manager or provisional liquidator is appointed with respect to the Licensee or any of its assets.

g. the Licensee has reached 30 days in arrears on LMS license fees or any other fees, without a prior arrangement agreed in writing by the Licensor.

7.2. The Licensor must give notice to the Licensee of the suspension, and, if the Licensee does not remedy the issue giving rise to the suspension within 14 days of receiving the notice, the Licensor may terminate the Licence.

7.3. The Licensor may terminate the Licensee's access to the LMS if:

a. the Licensee breaches Clause 4 of this Agreement; or

b. a Warranty given by the Licensee in Clause 5.2 of this Agreement is or becomes inaccurate.

7.4. The Licensee may terminate the Licence:

a. if the Licensor breaches Clause 3.1 of this Agreement, and the breach is not remedied within 30 days of the Licensee providing notice of the breach in writing to the Licensor; or

b. by giving 30 days written notice.

7.5. Unless otherwise terminated under this Clause, the Licence will terminate on the Termination Date.

7.6. The Parties acknowledge and agree that no refund or credit for unused Active Users or any part of the Fee will be given if the Licence is terminated prior to the Termination Date.

7.7. Upon termination the Licensee must immediately cease using the LMS.

7.8. The Licensor will provide the Licensee with a copy of the Data within 30 days after termination.

8. Force Majeure

8.1. A Party is not liable for a breach of this Agreement, to the extent that the breach is a consequence of a Force Majeure Event.

8.2. If a Party becomes aware that it will be unable to comply with its obligations under this Agreement because of a Force Majeure Event it must immediately notify the other Party of the existence of the Force Majeure Event, the obligations with which it will be unable to comply, and the likely period of the Force Majeure Event.

8.3. When the Party is no longer prevented from complying with its obligations under this Agreement by the Force Majeure Event, then the Party must immediately notify the other Party of that fact.

9. Notices

9.1.   Any Notice given pursuant to this Deed must be given in writing and addressed to the recipient at the address or email address in Item 1 or 2 of Schedule 1.

9.2.   A Notice will be deemed given:

a.   if hand delivered, on the same day;

b.   if posted, then three (3) business days after date of posting; or

c.   if by email, on receiving notification of successful transmission of the email, a read receipt or a reply email confirming receipt, whichever is first.

However, if the notice is deemed to be received on a day which is not a Business Day or after 5pm, it is deemed to be received at 9am on the next Business Day.

10.   Amendments

10.1.   The Parties acknowledge that the Licensor may amend this Agreement from time-to-time and to the extent permitted at law. The Amendment must not vary the Fee or maximum number of Active Users.

10.2.   The Licensor will provide the amended Agreement to the Licensee at the email address specified in Item 2 of Schedule 1.

10.3.   The Licensee agrees to be bound by the Agreement as amended from the date notice is given in accordance with this Clause.

11.   Governing Law

11.1.   The Parties agree that this Agreement was made and entered into in the State of Queensland, Australia.

11.2.   This Agreement will be governed by and construed in accordance with the laws of the State of Queensland, Australia.

11.3.   Any claim made by one party against the other in any way arising out of this Agreement will be heard in a court in Queensland and the parties submit to the jurisdiction of those Courts.

12.   Relationship between the Parties

The Parties do not intend that this Agreement will give rise or be deemed to constitute a partnership, joint venture or agency between the parties.

13.   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.

14.   Independent Legal Advice

The Parties agree that they have had the opportunity to obtain independent legal advice on the terms, effect and operation of this Agreement.

15.   Invalidity or Severance

15.1.   If any provision of this Agreement is invalid under any law then 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.

15.2.   Any provision which cannot be construed in a way that is valid and enforceable will be severed from this Agreement and the remaining provisions will remain in full force and effect.

16.   Dispute

16.1.   No Party may commence proceedings in relation to any dispute arising out of this Agreement whatsoever unless it has first complied with this Clause 16.

16.2.   The aggrieved party must notify the other Party in writing of the:

a.   nature of the dispute

b.   outcome they are seeking; and

c.   action they consider will settle the dispute.

16.3.   If the dispute is not resolved within 10 Business Days, it will be referred to mediation with a mediator nominated by the President of the Queensland Law Society, unless the parties agree to appoint a particular mediator within a further 3 Business Days.

16.4.   If the Dispute is unable to be resolved through formal mediation within 3 months of the date the aggrieved party notified the other of the dispute, then either party may commence court proceedings.

16.5.   This Clause survives the termination of this Agreement.

17.   Waiver

17.1.   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.

17.2.   The conduct of the parties will not constitute a waiver of any right or remedy.

18.   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.

19.   Execution of Agreement

19.1.   Each person signing this Agreement:

a.   as attorney, by so doing warrants to the other parties that, as at the date of signing, the signatory has not received notice or information of the revocation of the power of attorney appointing that person; and

b.   as an authorised representative, agent or trustee of a party, by so doing warrants to the other parties that, as at the date of signing, the signatory has full authority to execute this Agreement on behalf of that party.

Execution Page

Executed as a Deed

Signed, Sealed and Delivered by)
_____ on)
behalf of eSkilled Pty Ltd A.C.N 635 775 656)
in accordance with s 126 of the Corporations)   _____
Act 2001 (Cth))
Date: _____

Signed, Sealed and Delivered by)
_____ as)
Director/Secretary of _____)
A.C.N _____ in accordance with s 127)   _____
of the Corporations Act 2001 (Cth))

Date: _____

Signed, Sealed and Delivered by)
_____ as)
Director/Secretary of _____)
A.C.N _____ in accordance with s 127)   _____
of the Corporations Act 2001 (Cth))

Date: _____

Schedule 1

Item 1	**Licensor Details**	eSkilled Pty Ltd A.C.N. 635 775 656 Level 19 / 288 Edward Street Brisbane QLD 4000 (P) (E)
Item 2	**Licensee Details**	Name: A.C.N.: Address: (P) (E)
Item 3	**Commencement Date**	
Item 4	**Termination Date**	
Item 5	**Fee**	[Select one:] $XXX per month for the Term $XXXX one-off fee for the Term
Item 6	**Maximum Number of Active Users**	XXX
Item 7	**Data Storage Limit**	XX GB
Item 8	**Setup Fee**	$XXX
Item 9	**Excess Data Storage Fee**	$2 per Gigabyte of Data per calendar month
Item 10	**Extra Active Users Fee**	$X per Active User per Month

Schedule 2: Extra Products & Services

Product/Service Description	Fee