

**THIS DEED IS MADE BY:**

The entity identified in the Schedule of this Agreement (“the Recipient”)

**IN FAVOUR OF:**

**THE STATE OF QUEENSLAND** through the Department of Education, Training and Employment, 30 Mary Street, Brisbane QLD 4000

(“the State”)

**RECITALS:**

- A. The State possesses Confidential Information which it wishes to disclose to the Recipient, so that the Recipient can conduct its business.
- B. To enable the disclosure to occur in relation to the Confidential Information, the State requires the Recipient to enter into this Deed.

**THE PARTIES AGREE AS FOLLOWS:****1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In the interpretation of this Deed unless contrary intention appears or the context otherwise requires or admits, the following expressions shall have the following meanings:

“**Approved Purpose**” means accessing DETConnect and carrying out transactions for Organisations in accordance with the Terms and Conditions on DETConnect and any other guidelines and requirements appearing on DETConnect or issued by the State from time to time.

“**Confidential Information**” means:

- (a) all information submitted or disclosed to the Recipient by the State in connection with the Approved Purpose; and
- (b) all information learned or accessed by the Recipient at any time in connection with the Approved Purpose and includes without limitation:
  - i. Information which at the time of disclosure by the State is identified as being confidential
  - ii. Information which, of implied necessity, is confidential;
  - iii. Information which the Recipient know or ought reasonably be expected to know is confidential;
  - iv. Any agreement, arrangement or understanding relating to the Approved Purposes;
  - v. User Ids and passwords for DETConnect; and
  - vi. Data about individuals and entities accessed through DETConnect,

whether known to the Recipient or existing before or after the commencement of this Deed, but does not include Non-Confidential Information.

“**DETConnect**” means the State’s partner portal extranet named “DETConnect” that will link external training partners such as the Recipient and other Organisations to the State’s internal applications via one login.

**“Non-Confidential Information”** means information that:

- (a) At the time of disclosure by the State to the Recipient or at any time thereafter is identified in writing by the State as such;
- (b) Is in the public domain otherwise than as a result of a breach of the terms of this Deed or any other obligations of confidentiality owed by the Recipient;
- (c) Prior to disclosure by the State was lawfully known to the Recipient and in respect of which the Recipient to whom the information was disclosed is not bound by any other obligations of confidentiality;
- (d) Is developed by the Recipient independently of the disclosure, communication or access from the State;
- (e) Is disclosed or communicated or accessed by the Recipient from a third party under no obligation of confidence to the State in respect of that information; or
- (f) Is found by final and binding court judgment to either not constitute Confidential Information or not otherwise be subject to any obligations under this Deed

**“Organisation”** means an organisation or individual that has a relationship with the Department of Education and Training due to the organisation falling into one or more of the following categories:

- (a) Organisations seeking to deliver training
- (b) Organisations seeking registration
- (c) Enterprise registered training organisations
- (d) Supervising registered training organisations (User Choice)
- (e) Supervising registered training organisations (non User Choice)
- (f) Registered training organisations (RTO) (Contracted excl User Choice) & (Non contracted)
- (g) Schools
- (h) Group training organisations (GTO)
- (i) New apprenticeships centres (NAC)
- (j) Industry Bodies (ACPET) / ITABS
- (k) School Career Education Teachers / Vocational Education and Training Co-ordinators
- (l) Institute of TAFE
- (m) Employee of Department of Education and Training
- (n) Associations, Community based organisations (CBO), and Unions that undertake training activities.

**“Recipient’s Personnel”** means any person being an agent, adviser, sub-contractor, employee, officer or other representative of the Recipient who has access to Confidential Information;

## **2. CONFIDENTIAL INFORMATION**

- 2.1 The Recipient undertakes to keep secret and protect and preserve the confidential nature and secrecy of the Confidential Information. Without limiting this obligation, the Recipient must not:
- (a) use or permit any person to use the Confidential Information for any purpose other than for the Approved Purposes;
  - (b) disclose or in any way communicate to any other person any of the Confidential Information except as authorised by the State;
  - (c) permit unauthorised persons to have access to places where the Confidential Information is displayed, reproduced or stored; or
  - (d) make or assist any person to make unauthorised use of the Confidential Information.
- 2.2 The Recipient must:
- (a) take reasonable steps to enforce the confidentiality obligations imposed by clause 2.1 including diligently prosecuting, at its own cost, any breach or threatened breach of those obligations by a person to whom the Recipient has disclosed the Confidential Information; and
  - (b) co-operate and provide the State with all reasonable assistance, in any action which it may take to protect the confidentiality of the Confidential Information.
- 2.3 Nothing in this Deed restricts the Recipient from disclosing Confidential Information:
- (a) to the extent required by law, provided that the Recipient must use its best endeavours to immediately notify the State prior to the information being disclosed; or
  - (b) to the Recipient's professional advisors for the purpose of obtaining advice in relation to the Recipient's performance of its obligations under this clause 2;

## **3. RECIPIENT'S PERSONNEL**

- 3.1 The Recipient may disclose Confidential Information to the Recipient's Personnel on a need to know basis, solely to assist the Recipient in complying with or carrying out the Approved Purposes and on the condition that the Recipient must:
- (a) ensure that the Recipient's Personnel:
    - i. are fully aware of the confidential nature of all Confidential Information;
    - ii. are aware of, agree to, and comply with the terms of this Deed as if they were the Recipient and with the Terms and Conditions appearing on DETConnect from time to time;
    - iii. do not do or omit to do anything which, if done or omitted to be done by the Recipient, would constitute a breach of its obligations under this Deed; and
  - (b) take all steps to enforce the agreements referred to in clause 3.1(a)(ii), and to assign the benefit of any such agreements to the State, if requested by the State.

#### **4. DISCLAIMER**

##### **4.1 Recipient's Acknowledgement**

The Recipient acknowledges and agrees that:

- (a) neither the State nor any employee or other representative of the State has made or makes any representation or warranty, express or implied, as to the accuracy or completeness of its Confidential Information; and
  - (b) it must make its own assessment of all Confidential Information disclosed to it and satisfy itself as to the accuracy and completeness of the Confidential Information.
- 4.2 To the extent permitted by law, the Recipient releases the State from all liability for any loss or damage (whether foreseeable or not) suffered by any person acting on any Confidential Information whether the loss or damage arises in connection with any negligence, default, lack of care, misrepresentation or any other cause.

#### **5. BREACH AND INDEMNITY**

##### **5.1 Recipient to Notify the State**

The Recipient must immediately notify the State of all information which comes to its attention regarding any actual or potential disclosure or use of Confidential Information other than in accordance with the Deed.

##### **5.2 Indemnity**

The Recipient indemnifies the State against any cost, liability, damage or loss incurred or suffered by the State arising directly or indirectly from or in connection with:

- (a) any breach of the Recipient of this Deed;
- (b) any act or omission of the Recipient's Personnel which, if done or omitted to be done by the Recipient, would constitute a breach of this Deed.

#### **6. TERM**

This Deed becomes effective on the earlier to occur of:

- (a) the date upon which Confidential Information is first provided to, learned or accessed by the Recipient; and
- (b) the date of this Deed;

and continues in force until the later to occur of:

- (c) agreement in writing by both parties; and
- (d) all the Confidential Information is generally available in the public domain.

#### **7. MISCELLANEOUS**

##### **7.1 Variation and Waiver**

A provision of or a right created by this Deed cannot be waived except in writing signed by the State. No variation to or amendment of this Deed can be made without the consent in writing of the State.

##### **7.2 Variation**

No variation to or amendment of this Deed can be made without the consent in writing of the State. The State may vary this Deed from time to time but only to the extent reasonably required for the effective operation and management of DETConnect and the Confidential Information, and compliance with any regulatory requirements, as determined by the State. The current terms of the Deed will be as published on DETConnect from time to time. Any variation will

apply only from the date the Recipient first accesses DETConnect after the varied terms are published on DETConnect.

### 7.3 Governing Law and Jurisdiction

This Deed is governed by and construed in all respects in accordance with the laws of the State of Queensland, Australia and the Recipient hereby submits to the non-exclusive jurisdiction of the courts of the said State of Queensland and any courts empowered to hear appeals therefrom in respect of any proceeding in connection with this Deed.

### 7.4 Costs

The Recipient agrees to bear its own costs (including legal costs) in respect of this Deed.

### 7.5 Terms and Conditions

The Recipient acknowledges that it is bound by the Terms and Conditions on the DETConnect, provided that to the extent of any inconsistency this Deed (as varied in accordance with clause 7.2) will prevail.

### 7.6 Delivery

The Recipient acknowledges that it will be legally bound by this Deed upon execution, whether or not a copy of the Deed is provided to the State. If a copy of this Deed is provided to the State, it will be binding whether provided by facsimile or any other means.

## 8. NOTICES

- 8.1 Any notice, demand, consent, approval or other communication (“a Communication”) in connection with this Deed by the Recipient or the State may (without limitation to any other valid form of execution) be signed by an Authorised Officer of that party, or by any solicitor acting for that party, whose signature may be handwritten or printed or otherwise reproduced by mechanical means.
- 8.2 A Communication in connection with this Deed will be deemed to have been received by the person if sent to the email address, street address or facsimile number nominated in the Schedule or altered by notice in writing to the State:
- (a) if sent via an email, when the State sends the message;
  - (b) if left or delivered personally, on the same day;
  - (c) if sent via post, on the second business day after the date of posting (or if the address is outside of Australia, on the fourth business day after the date of posting); and
  - (d) in the case of a facsimile, on receipt of the facsimile in legible form.

**SCHEDULE – RECIPIENT’S DETAILS**

Organisation Legal Name:	
ABN	
Address:	

**Legally Responsible Person**

(Please ensure you nominate a Responsible Person, who has the authority to sign the confidentiality deed on behalf of your organisation. This person would usually be your organisation’s CEO.)

Position:	
Title:	
First Name:	
Last Name:	
Email Address:	
Daytime Phone Number:	
Facsimile Number	

**EXECUTED AS A DEED BY THE RECIPIENT (use the appropriate signing clause below):**

***[If the Recipient is a company with an ACN]***

**SIGNED** for and on behalf of )  
 )  
 ..... )  
 (*insert name of the Recipient*) in accordance with )  
 section 127 of the *Corporations Act 2001* by ) .....  
 ) (signature)  
 .....(full name) )  
 a director, and by )  
 ) .....  
 .....(full name) ) (signature)  
 a director / the secretary )  
 ) ...../...../.....  
 ) (date)

***[If the Recipient is an incorporated association]***

**THE COMMON SEAL** of )  
 ..... )  
 (*insert name of the Recipient*) ) (affix common seal)  
 was affixed by authority of the Management )  
 Committee in accordance with the Constitution )  
 and signed by ) .....  
 ) (signature)  
 .....(full name) )  
 a member of the Management Committee, and )  
 countersigned by ) .....  
 ) (signature)  
 .....(full name) )  
 the Secretary / a member of the Management ) ...../...../.....  
 Committee ) (date)

***[If the Recipient is another type of entity]***

**SIGNED, SEALED and DELIVERED** on behalf )  
 )  
 of ..... )  
 (*insert name of the Recipient*) by ) .....  
 ) (signature)  
 .....(full name) )  
 who warrants that he or she is authorised to )  
 execute this document on behalf of the Recipient, )  
 its officers and members (if any), in the presence of ) .....  
 ) (signature)  
 ..... )  
 (full name of witness) ) ...../...../.....  
 ) (date)