Darling Downs Health

Restrictive Licence Agreement

for

Use of Material

Learning materials and assessment tools provided to support Cunningham Centre educational activities

Between

The Supplier

Darling Downs Hospital and Health Service

and

The Customer

Client enrolled in any Cunningham Centre activity

Queensland Government

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Restrictive Licence Agreement

for

Use of Material

Main Part

Parties

This Agreement is made between

The Supplier (see details in Part A of the Schedule)

and

The Customer (see details in Part A of the Schedule)

Recitals

A. The Supplier agrees to provide access to and the rights to use the Material on the terms and conditions set out in this Agreement. The Material to be supplied is identified in Part C of the Schedule.

B. The Customer agrees to access and use the Material only in accordance with the terms and conditions in this Agreement.

C. The Certificate III in Sterilisation course where referred to in this Agreement will include all documents pertaining to the delivery of the course as supplied by the Supplier.

The Parties agree as follows:

1. Definitions and interpretation

1.1. In this Agreement the following definitions apply, except where the context otherwise requires:

"Access Date" means the Commencement Date or the date upon which the Supplier receives payment of the Fee (or if more than one Fee is payable, the first Fee), whichever is later.

"Additional Conditions" means the additional conditions, if any, included in Part M of the Schedule.

"Agreement" means the terms and conditions set out in this document and all schedules and any annexures to it, including any amendments made in accordance with this Agreement.

"Australian Intellectual Property Rights" means copyright, trade mark, design, patent, semiconductor or circuit layout rights, trade, or other proprietary rights, or any rights to registration of such rights existing in Australia, or protected by statute in Australia from time to time, whether created before, on or after the Commencement Date, but excludes Moral Rights.

"Business Day" means between 9am and 5pm (Australian Eastern Standard Time) on any day, other than a Saturday, Sunday or public holiday, on which the banks are open for business at the location set out in the address for the Supplier as set out in Part A of the Schedule.

"Commencement Date" means the date specified as such in Part B of the Schedule, or if no date is so specified, the date on which this Agreement is executed by the Parties, or if not executed by the Parties on the same date, the date of execution by the second Party.

"Confidential Information" -

(a) means the information specified as Confidential Information in Part H(i) of the Schedule and also all information that is confidential by nature or circumstance, and

(b) includes all information passing from one Party to the other relating to the business or operations of the first mentioned Party (including, but not limited to, trade secrets, drawings, know-how, technical and financial information, source and object code, business and marketing plans, projections, and other information of whatever description and in whatever form),

except that –

(c) "Confidential Information" does not include information which a recipient Party (that is, a Party who would be bound by a duty of confidentiality under this Agreement in relation to the information if it were "Confidential Information") can reasonably demonstrate:

- is already in the public domain, or after the date of this Agreement becomes part of the public domain, other than as a result of an unauthorised disclosure by the recipient Party; or
- is, or becomes, available to the recipient Party from a third party lawfully in possession of that information and who has the lawful power to disclose such information to the recipient Party; or
- was known to the recipient Party before its disclosure under this Agreement, or is independently developed by the recipient Party during the term of this Agreement.

"Contractor" means an individual engaged by the Customer for a specific project(s).

"Counterparts' - This Agreement may be executed in any number of counterparts, and if so, the counterparts taken together constitute one document.

"Customer" means the individual or other entity named as the Customer in Part A of the Schedule.

"Customer's Authorised Unit" means -

(a) that part of the Customer (for example an organisational, operational, functional or administrative unit of the Customer) which is specified as the Customer's Authorised Unit in Part A of the Schedule; or

(b) if there is no part of the Customer so specified, the Customer.

"Data" means information compiled as datasets which may be collected from diverse sources and be in different formats and includes metadata.

"Direct Marketing" means one to one marketing using personal details (e.g. name, address, email address), normally supported by a database, which uses one or more advertising media to effect a measurable response and/or transaction from a person and includes, but is not limited to, telemarketing, bulk email messaging (spam), postal canvassing and list brokering.

"Dispute Notice" - see Clause 22 (Dispute Resolution).

"Executive Representative" of a Party means the Executive Representative specified in Part N of the Schedule.

"Fee" means the fee, if any, specified in Part D of the Schedule.

"GST" has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Information Standard" means an information standard referred to in the Financial Management Standard 1997 (Qld) (the Financial Management Standard being made under the Financial Administration and Audit Act 1977 (Qld)). (For further information, see Queensland Government Information Standards, at <htto://www.qgcio.qld.gov.au/02 infostand/index.htm>.)

"Intellectual Property Rights" includes copyright, trade mark, design, patent, semiconductor or circuit layout rights, trade, or other proprietary rights, or any rights to registration of such rights protected by

statute from time to time, whether created before, on or after the Commencement Date, but excludes Moral Rights.

"Material" means the Data, copyright work, or other copyright subject matter which is specified as the Material in Part C of the Schedule.

"Moral Rights" means the right of integrity of authorship, the right of attribution of authorship and the right to not have authorship falsely attributed, more particularly as conferred by the Copyright Act 1968 (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the Commencement Date.

"Nominated Representative" of a Party, means the Nominated Representative specified in Part N of the Schedule.

"Party" means a party to this Agreement. "Parties" shall be similarly construed.

"Personal Information" means –

(a) any information or opinion which is specified as Personal Information in Part H(ii) of the Schedule, and
(b) any other information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

"Privacy Laws" means any legislation enacted by Federal or State governments in relation to privacy and includes the Privacy Act 1988 (Cth), and where the Supplier is a government agency, any government standard (for example, an Information Standard) or policy on privacy which is binding on or applicable to the Supplier.

"Schedule" means the schedule attached to, and forming part of, this Agreement.

"Supplier" means the individual or other entity named as the Supplier in Part A of the Schedule.

"Term" means the period during which the Agreement operates, as specified in Part B of the Schedule, subject to earlier termination.

1.2. In this Agreement, unless the contrary intention appears:

(a) monetary values refer to Australian dollars ($A);
(b) a reference to a Clause, subclause, paragraph or schedule is a reference to a Clause, subclause, paragraph or schedule in this Agreement;
(c) a reference to a subclause is a reference to the relevant subclause in the Clause where the reference is made, and a reference to a paragraph is a reference to the relevant paragraph of the subclause in which the reference is made;
(d) the Clause and subclause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
(e) a cross-reference to a Clause number is a reference to all its subclauses;
(f) words in the singular number include the plural and vice versa;
(g) the word "including" means "including, but not limited to" and the word "includes" means "includes without limitation";
(h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
(i) a reference to this Agreement or any other instrument includes any variation, supplement to, or replacement or novation of this Agreement or other instrument;
(j) a reference to a person includes an individual, a company, partnership, joint venture, association, corporation or other body corporate and a governmental agency;
(k) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, by novation) and permitted assigns; and
(l) a reference to legislation includes any amendments to that legislation, and consolidation or replacement of it, and any subordinate legislation made under it.

1.3. To avoid any doubt, the definitions of "Confidential Information" and "Personal Information" in Clause 1.1 apply according to their terms, even if Part C of the Schedule states that the Material contains no Confidential Information or Personal Information.

2. Commencement and Duration of Agreement

2.1. This Agreement will commence on the Commencement Date.

2.2. Except for any provisions which are expressed to survive the termination or expiry of this Agreement, this Agreement will, subject to earlier termination, terminate on the date specified in Part B of the Schedule under the heading "End of Agreement".

3. Material to be Provided

3.1. The supplier will provide to the Customer the Material specified in Part C of the Schedule, under the terms of this Agreement

4. Payment

4.1. The customer will pay to the Supplier the Fee in accordance with the provisions in Part D of the Schedule.

4.2. The Fee is exclusive of GST.

4.3. If the Supplier is required to pay GST to the Australia Taxation Office as a result of any supply under this Agreement, the Customer will pay to the Supplier an amount which is equivalent to the GST paid or payable by the Supplier.

5. Intellectual Property Warranty

5.1. The Supplier warrants that it owns the Australian Intellectual Property Rights in the Material or has the right to license the Material in Australia and the Australian Intellectual Property Rights in the Material, under this Agreement.

5.2. The Customer acknowledges that except as provided in Clause 5.1, the Supplier does not warrant that it owns any Intellectual Property Rights in the Material or has any right to license the Material or the Intellectual Property Rights in the Material.

5.3. If this Agreement licenses the Customer to use or do any other act in relation to the Material outside Australia, then –

(a) the Customer acknowledges that it may be necessary for the Customer to obtain further licences, from third parties, in relation to such use or other act outside Australia; and

(b) the Customer agrees to obtain any such necessary third party licences.

6. Licences

Licensed use

6.1. The Supplier grants to the Customer a licence to use the Material in Australia and such other places (if any) as are specified in Part E of the Schedule in accordance with this Agreement from the Access Date until the end of the Term.

Licensed acts (Non-Confidential Information, Non-Personal Information)

6.2.

(a) In Respect of that part of the Material (if any) which is neither Confidential Information nor Personal Information, the Supplier grants to the Customer a licence (subject to paragraph (c))

to do the acts which are specified in any operative provision(s) contained in Part F of the Schedule, but only in accordance with those provisions and this Agreement.

(b) For the purposes of paragraph (a), the expression "operative provision" refers to a provision in Part F of the Schedule which is indicated in that Part F as being operative, for example by selection of the word "Yes".

(c) Unless otherwise expressly provided in Part F of the Schedule, the licence granted in paragraph (a) applies only in relation to acts which are done between the Access Date and the end of the Term, for the Customer's own internal purposes, and in Australia and such other places (if any) as are specified in Part E of the Schedule.

(d) If the Customer is an individual, the expression "for the Customer's own internal purpose" in paragraph (c) shall be taken to mean "Personally by the Customers".

6.3. To avoid any doubt, this Agreement does not license the Customer to use the Material or to do any other act comprised in the Intellectual Property Rights in the Material or any part of the Material, except as expressly stated in this Agreement.

6.4.

(a) Any provision of this Agreement which grants a licence or permission to use or disclose the Material (or any part of it) is to be read subject to any Clause which restricts the use or disclosure of the Material (or part of it) unless expressly stated to the contrary in this Agreement.

(b) Without limiting paragraph (a), any provision of this Agreement which grants permission to use or do any act in relation to the Material is to be read as granting permission to use the Material or do the act only -

(i) during the Term;

(ii) for the internal purposes of the Customer's Authorised Unit; and

(iii) in Australia and such other places (if any) as are specified in Part E of the Schedule,

unless expressly stated to the contrary in this Agreement.

(c) If the Customer is an individual, the expression "for the internal purposes of the Customer's Authorised Unit" in subparagraph (b) (ii) shall be taken to mean personally".

7. General Restrictions on Use, Copying etc of the Material

7.1. The Customer will use the Material provided only in accordance with the terms of this Agreement.

7.2. Unless expressly authorised by another provision of this Agreement the Customer shall use the Material only during the Term.

7.3. Unless expressly authorised by another provision of this Agreement –

(a) if the Customer is an individual, the Customer shall only use the Material himself or herself, and not authorise any other person to use the Material; and

(b) if the Customer is not an individual, the Customer shall use the Material only for the internal purposes of the Customer's Authorised Unit.

7.4. Unless expressly authorised by another provision of this Agreement, the Customer shall use the Material only in Australia and such other places (if any) as are specified in Part E of the Schedule.

7.5. The Customer must not –

(a) copy the Material or any part of the Material,

(b) make the Material or any part of the Material available online,

(c) electronically transmit the Material or any part of the Material, or

(d) do any other act comprised in the Intellectual Property Rights in the Material or any part of the Material,

except as expressed permitted by this Agreement.

7.6. This Clause 7 survives termination or expiry of this Agreement.

8. Disclosure and Distribution

8.1. The Customer must not disclose or distribute the Material, either in whole or in part (whether or not incorporated with other data or information), except as provided in Clauses 6.2, 8.2, 8.3 and 8.4.

8.2.

(a) If it is stated in Part G of the Schedule that Part G applies, the Customer may, during the Term, disclose or distribute the Material to a Contractor in Australia or such other place (if any) as is specified in Part E of the Schedule whose name and business address is specified in Part G of the Schedule, in accordance with that Part G.

(b) If the Customer discloses or distributes the Material to a Contractor pursuant to paragraph (a), the Customer must -

(i) enforce the obligations in the Agreement between the Customer and the Contractor which are listed in Part G of the Schedule; and

(ii) immediately advise the Supplier in writing if the Customer becomes aware that the Contractor has breached any of those obligations.

(c) Paragraph (b) survives termination or expiry of this Agreement.

8.3. To avoid any doubt, Clause 8.1 does not prevent the Customer from disclosing the Material, on a confidential basis, to an employee of the Customer who –

(a) is employed in the Customer's Authorised Unit, if any, specified in Part A or the Schedule;

(b) is in Australia or such other place (if any) as is specified in Part E of the Schedule; and

(c) needs to access or know the Material (as part of the employee's employment with the Customer) in order for the Customer to be able to use the Material in accordance with this Agreement.

8.4. If any Additional Conditions expressly provide that the Customer may disclose or dispute the Material, the Customer may disclose or distribute the Material during the Term in accordance with that Additional Condition.

8.5. Clause 8.1 survives termination or expiry of this Agreement.

9. Confidential Information

9.1.

(a) Each Party will ensure that Confidential Information of the other Party is treated as confidential and will not, without the prior written consent of the other Party, disclose or permit it to be disclosed to any other person, unless authorised or required by law.

(b) To avoid any doubt, paragraph (a) does not prevent a Party from disclosing Confidential Information of the other Party, on a confidential basis, to an employee of the first mentioned Party who –

(i) is in Australia or such other place (if any) as is specified in Part E of the Schedule; and

(ii) needs to know the Confidential Information (as part of the employee's employment with the first mentioned Party) in order for the first mentioned Party to be able to use the Confidential Information in accordance with this Agreement or to exercise any right of the first mentioned Party arising under this Agreement.

(c) Paragraph (a) of this Clause 9.1 survives termination or expiry of this Agreement

9.2.

(a) Subject to any other provision of this Agreement which may have the effect of restricting use of Confidential Information, the Supplier agrees that the Customer may, during the Term, use Confidential Information which is contained in the Material in accordance with any operative provision(s) contained in Part H(iii) of the Schedule (headed "Permitted Uses and Restrictions applicable to all Confidential Information contained in the Material ... and all Personal Information contained in the Material ... "), but only in accordance with those provisions. The Customer agrees not to use such Confidential Information except in accordance with those provisions.

(b) For the purposes of paragraph (a), the expression "operative provision" refers to a provision in Part H(iii) of the Schedule which is indicated in that Part H(iii) as being operative, for example by selection of the word "Yes".

(c) To avoid any doubt, this Agreement does not authorise the Customer to do anything with any Confidential Information except as allowed by paragraph (a) of this Clause 9.2, Clause 8.2(a) or Clause 8.4.

9.3.
(a) The Customer will immediately notify the Supplier upon becoming aware of any breach of this Clause 9
(b) Paragraph (a) of this Clause 9.3 survives termination or expiry of this Agreement.

10. Privacy and Disclosure of Personal Information

10.1.
(a) Where the Supplier provides Personal Information or access to Personal Information, to the Customer under this Agreement, the Customer agrees
  (i) to use the Personal Information solely for the permitted uses (if any) specified in the operative provision(s) (if any) contained in Part H(iii) of the Schedule (headed "Permitted Uses and Restrictions applicable to all Confidential Information contained in the Material and all Personal Information contained in the Material"), and solely in accordance with the restrictions specified in those operative provisions, unless otherwise authorised or required by law; and
  (ii) to maintain any confidentiality attaching to the Personal Information.
(b) For the purposes of paragraph (a), the expression "operative provision" refers to a provision in Part H(iii) of the Schedule which is indicated in that Part H(iii) as being operative, for example by selection of the word "Yes".
(c) To avoid any doubt, paragraph (a) does not restrict the operation of Clause 8.2 or Clause 8.4.

10.2. Each Party will immediately notify the other Party upon becoming aware of any breach of Clause 10.1.

10.3. This Clause 10 survives termination or expiry of this Agreement. (To avoid any doubt, this Clause 10 does not authorise the Customer to use the Personal Information after the termination or expiry of this Agreement.)

11. Legislative and Regulatory Requirements and Related Conditions

11.1. The Customer agrees to comply with –
(a) all legislation binding on the Customer;
(b) any statutory obligations specified or set out in Part I(i) of the Schedule (Part I being headed "Specified Legislative and Regulatory Requirements and Related Conditions") regardless of whether the Customer would, apart from this Agreement, be bound by those obligations; and
(c) any other provisions set out under the heading "Other conditions" in Part I(ii) of the Schedule.

11.2. This Clause 11 survives termination or expiry of this Agreement.

12. Direct Marketing / Privacy

12.1. Without limiting any other provision of this Agreement, the Customer –
(a) must not use the Material or any information contained in the Material for Direct Marketing or with the intention of encroaching upon the privacy of an individual;
(b) must not supply the Material (whether or not combined with any other Material or information), or any record or copy of the Material, or any information contained in the Material, or any other product or work made using the Material, to any of its consultants, contractors or business partners for Direct Marketing; and
(c) must comply with the Privacy Laws.

12.2. This Clause 12 survives termination or expiry of this Agreement.

13. Moral Rights

13.1. The Customer agrees not to infringe any Moral Rights in the Material.

14. Exclusion of Implied Warranties etc.

14.1. Clause 14.2 applies if it is specified in Part J of the Schedule (Exclusion of Implied Warranties, etc.) that it applies.

14.2. If this Clause 14.2 applies, the Parties exclude from this Agreement all conditions, warranties and terms implied by statute, general law or custom, except any implied condition or warranty the exclusion of which is not legally possible, or would contravene any statute or cause this Clause to be void.

14.3. If Clause 14.2 applies, it survives termination or expiry of this Agreement.

15. Exclusion of Liability

15.1. Clause 15.2 applies if it is specified in Part K of the Schedule (Exclusion of Liability) that it applies.

15.2. If this Clause 15.2 applies, then –

(a) to the full extent permitted by applicable law in no event will the Supplier be liable to the Customer on any legal theory (including, without limitation, negligence) for any loss or damage whatsoever, including (without limitation) loss of production or operation time; loss, damage or corruption of data or records; or loss of anticipated savings, opportunity, revenue, profit or goodwill, or other economic loss; or any special, incidental, consequential, punitive or exemplary damages arising out of or in connection with this Agreement or the use of the Material, even if the Supplier has been advised of the possibility of such damages; and

(b) if applicable legislation implies warranties or conditions on the part of the Supplier, or imposes obligations or liability on the Supplier in respect of this Agreement that cannot be wholly or partly excluded, restricted or modified, the Supplier's liability is limited, to the full extent permitted by the applicable legislation, at its option, to:

(i) in the case of goods, any one or more of the following:

A. the replacement of the goods or the supply of equivalent goods;

B. the repair of the goods;

C. the payment of the cost of having the goods repairs; or

(ii) in the case of services:

A. the supplying of the services again; or

B. the payment of the cost of having the services supplied again.

15.3. If Clause 15.2 applies, it survives termination or expiry of this Agreement.

16. Indemnity

16.1. The Parties agree that if Part L of the Schedule specifies that Indemnity Option 1 applies, then the provisions set out under Indemnity Option 1 will apply. The Parties agree that if Part L of the Schedule specifies that Indemnity Option 2 applies, then the provisions set out under Indemnity Option 2 will apply.

16.2. This Clause 16, and any provisions in Part L of the Schedule which apply because of this Clause, survive termination or expiry of this Agreement.

17. Force Majeure

17.1. If by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Supplier or the Customer, either is unable to perform in whole or in part any obligations under this Agreement,

that Party is relieved of that obligation under this Agreement to the extent and for the period that it is so unable to perform and is not liable to the other Party in respect of such inability.

18. Additional Conditions

18.1. The Parties agree that any additional conditions set out in Part M of the Schedule will apply.

18.2. Unless expressly provided to the contrary in the Additional Conditions, the Additional Conditions will be read subject to –
(a) Clause 9 (Confidential Information),
(b) Clause 10 (Privacy and Disclosure of Personal Information), and
(c) Clause 11 (Legislative and Regulatory Requirements and Related Conditions).

18.3. An Additional Condition will survive termination or expiry of this Agreement if it is capable of doing so, unless the context otherwise requires.

19. Termination

19.1. If a Party is in breach or default of its obligations under this Agreement ("the Defaulting Party"), the other Party to the Agreement may give the Defaulting Party a notice in writing to remedy the breach.

19.2. If the breach or default is not remedied within 14 days after receipt of such notice, or such other period of time as may be agreed between the Parties, the other Party may terminate this Agreement at any time by giving notice in writing to the Defaulting Party specifying when the termination is to take effect.

19.3. If the Customer is in default of its obligations under Clause 8 (Disclosure and Distribution), 9 (Confidential Information), 10 (Privacy and Disclosure of Personal Information) or 11 (Legislative and Regulatory Requirements and Related Conditions), the Supplier may terminate this Agreement at any time by giving notice in writing to the Customer specifying when the termination is to take effect. To avoid any doubt, Clauses 19.1 and 19.2 do not limit Clause 19.3.

20. Termination by Supplier

20.1. This Clause 20 only applies if it is specified in Part B of the Schedule that it applies.

20.2. Despite anything else in this Agreement, and in addition to any other rights the Supplier has under this Agreement, the Supplier may terminate the Agreement at any time by giving written notice to the Customer at any time specifying the date from which the Agreement is terminated (not being a date before the notice is given). The Agreement shall be terminated as from the date so specified in the notice.

20.3. The Customer agrees that if the Supplier terminates this Agreement under Clause 20.2 (Termination by Supplier), the Customer will have no claim against the Supplier arising out of the termination.

21. Upon termination or expiry of this Agreement

21.1. Immediately upon the expiry or earlier termination of this Agreement, the Customer must –
(a) stop using the Material;
(b) as far as practicable, erase and destroy any copies of the Material (including copies of any part of the Material) in the Customer's possession or under the Customer's control or that may have been loaded onto any of the Customer's computers; and
(c) upon request by the Supplier, certify in writing to the Supplier that the Customer has complied with this Clause 21.1.

22. Dispute Resolution

22.1. If any dispute arises in relation to this Agreement, either Party may give written notice to the other Party that it has a complaint about the performance of the other Party

and

setting out the nature of the complaint ("the Dispute Notice").

22.2. Upon service of the Dispute Notice, the Nominated Representatives of each Party are to meet and to endeavour to expeditiously resolve the complaint.

22.3. If the Nominated Representatives are unable to resolve the complaint, the complaint will be referred to the Executive Representatives of each Party who are to meet and to endeavour to expeditiously resolve the complaint.

22.4. If the representatives referred to in Clauses 22.2 and 22.3 (Dispute Resolution) are unable to resolve the complaint within 14 days of the date of service of the Dispute Notice, the complaint must be referred to an expert for determination of the complaint. Where the Parties cannot agree on the appointment of an expert, the expert must be appointed by the person specified in Part N of the Schedule. Where the parties cannot agree on the venue for, or the rules to be applied in the determination, those matters are to be determined by the expert.

22.5. The determination of the expert is final and binding on the Parties.

22.6. Each Party will bear its own costs of endeavouring to resolve the complaint pursuant to this Clause 22 and will share equally the costs of the expert.

22.7. Nothing in this Clause 22 prevents a Party from instituting proceedings for the purpose of obtaining injunctive relief or specific performance to restrain any breach or prevent or compel performance under, or declaratory relief in relation to, this Agreement.

22.8. This Clause 22 survives termination or expiry of this Agreement.

23. Jurisdiction

23.1. Subject to subclause 23.3, this Agreement will in all respects be construed as an agreement made in the State of Queensland, Australia and subject to the laws of that State.

23.2. Subject to subclause 23.4, the Parties hereby agree to submit to the non-exclusive jurisdiction of the courts of the State of Queensland, Australia.

23.3. Where Part O of the Schedule specifies a jurisdiction other than the State of Queensland for the purposes of this subclause 23.3, then this Agreement will in all respects be construed as an agreement made in that jurisdiction and subject to the laws of that jurisdiction.

23.4. Where Part O of the Schedule specifies a place other than the State of Queensland for the purposes of this subclause 23.4, the Parties hereby agree to submit to the non-exclusive jurisdiction of the courts of that place and all courts competent to hear appeals from those courts.

23.5. This Clause 23 survives termination or expiry of this Agreement.

24. Agency Representation

24.1. Neither Party will represent itself as an agent of the other Party in discussions or any other communications with third parties unless approved in writing by the other Party to do so.

24.2. This Clause 24 survives termination or expiry of this Agreement.

25. Entire Agreement

25.1. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement.

26. Waiver

26.1. No omission by either Party to require the performance by the other of any of the terms and conditions of this Agreement, nor any forbearance or indulgence shown by a Party to the other, will in any manner affect or prejudice the rights of a Party at any time to require strict and full performance by the other Party of any or all of the terms and conditions of this Agreement.

27. Variation

27.1. The Parties may vary any of the terms of this Agreement but any variation will be effective only if evidenced in writing signed by the Parties.

28. Assignment

28.1. The Customer must not assign this Agreement in whole or in part, and must not grant any sub-licence in respect of the Material or any part of the Material, without the prior written consent of the Supplier, which consent may be given or withheld in the absolute discretion of the Supplier.

29. Notices

29.1.
(a) Subject to (b), any notice to be given by either Party will be in writing and forwarded to the other Party either by hand, post, facsimile transmission or electronic mail.
(b) A notice to remedy breach, or a notice of termination, under Clause 19 (Termination), or a notice of termination under Clause 20.2 (Termination by Supplier) must be in writing and forwarded to the other Party either by hand, post, facsimile transmission or electronic mail.

29.2. Notices will be deemed to be given:
(a) two days after deposit in the mail with postage prepaid;
(b) immediately upon delivery by hand;
(c) immediately upon successful facsimile transmission of the entire notice being noted by the sender's transmitter, prior to 5pm on any Business Day, or if after 5pm the notice will be deemed to be given at 9am on the following Business Day; or
(d) in the case of notice given by electronic mail, immediately upon receipt by the recipient's information system prior to 5pm on any Business Day, or if after 5pm the notice will be deemed to be given at 9am on the following Business Day.

29.3. The address for notices to each Party is the address of the Party as specified in Part A of the Schedule, or as subsequently notified in writing by that Party to the other Party.

30. Severability

30.1. In the event that any or any part of the terms or conditions of this Agreement shall be determined as being invalid, unlawful or unenforceable wholly or to any lesser extent, such term or condition to the extent that it is invalid, unlawful or unenforceable shall be severed from the remaining terms and conditions and the remaining terms and conditions shall continue to be valid and enforceable to the fullest extent permitted by law.

Signing

The Parties have executed this Agreement as follows:

Executed by Supplier

SIGNED for the **DARLING DOWNS HOSPITAL AND HEALTH SERVICE**
ABN 64 109 516 141

Signature of officer

Signature of witness

Name of officer (print) Hayley Farry

Haylie Briese.
Name of witness (print)

Office held by officer Executive Director Workforce

25/7/19
Date of signature by officer

Executed by Customer/Client

Enrolment in the Cunningham Centre activity is subject to agreement to the terms of this Restrictive Licence.

Schedule

The Schedule is an essential part of the Agreement as it provides details for many of the terms and conditions in the Main Part of the Agreement.

Part A – The Parties and the Customer's Authorised Unit

The Supplier

Darling Downs Hospital and Health Service, ABN: 64 109 516 141 in the State of Queensland
Addresses for notices to Supplier:

Delivery by hand: Penrose Unit, Baillie Henderson Hospital, Cnr Hogg & Tor Streets, Toowoomba QLD 4350
Postal: PO Box 405 Toowoomba Qld 4350
Email: DDHHS-Workforce@health.qld.gov.au

The Customer

As per enrolled client of the activity

The Customer's Authorised Unit

N/A

Part B – Term of this Agreement (Clause 2)

Is the Commencement Date (i.e. the date on which the Agreement starts) the date on which the second party signs?
~~Yes~~ / No

If the Commencement Date is not the date on which the second party signs, then specify here the Commencement Date.
Commencement date is the date the client accepts the terms and conditions of the agreement prior to accessing the learning content online.

End of Agreement:
This Agreement will come to an end when the client has been issued with the relevant certification on completion of the activity, or has been withdrawn from the activity prior to completion.

Does Clause 20 "Termination by Supplier" apply?
Yes / ~~No~~

Part C – The Material (Clause 3)

Material	Metadata to be provided	Does the Material contain Confidential Information	Does the Material contain Personal Information	Security classification of the Material	Format for Release of Material
Online learning materials Hard copy assessment tools such as log books, RPL tools and assessment checklists	~~Yes~~ / No	~~Yes~~ / No	~~Yes~~ / No	N/A	May be electronic or hard copy

Course Name	Certificate III in Sterilisation Services

Pact D – Fee (Clause 4)

State here whether any fee is payable: Yes / ~~No~~

Insert provisions referring to payment of fee(s).

Fee per student Approved enrolment fee for the course as advertised on the Cunningham Centre website.	Specify details: The cost of the materials for the course is covered in the enrolment fee. No additional fee is required.

Part E – Places outside Australia (referred to in Clauses 5.3, 6.1, 6.2(c), 6.4(b)(iii), 7.4, 8.2(a), 8.3(b) and 9.1(b)(i), and Part G (ii(b)) of this Schedule)

The places outside Australia (if any) which are specified for the purposes of Clauses 5.3, 6.1, 6.2(c), 6.4(b)(iii), 7.4, 8.2(a), 8.3(b) and 9.l(b)(i), and for Part G (ii.(b)) of this Schedule, are:
None

Part F – Material which is neither Confidential Information nor Personal Information (Clause 6.2)

In this part of the Schedule, the expression "Other Material" means such part of the Material (if any) which is neither Confidential Information nor Personal Information.

Permitted Uses (and Restrictions) applicable to Other Material

(see Clause 6.2)

Make an unlimited number of digital copies of the Other Material:
¥es-/ No
Make an unlimited number of hard copies of the Other Material:
¥es / No
Make the Other Material available online (including for viewing and downloading) within the Customer's own organisation:
¥es-/ No
Make the Other Material available online (including for viewing and downloading) outside the Customer's own use:
¥es-/ No
Electronically transmit the Other Material (e.g. by email) within the Customer's own organisation:
¥es / No
Electronically transmit the Other Material (e.g. by email) outside the Customer's own organisation:
¥es / No
Distribute hard copies of the Other Material within the Customer's own organisation:
¥es / No
Distribute hard copies of the Other Material outside the Customer's own organisation:
¥es / No

Other operative provisions for the purpose of Clause 6.2:
Dissemination of the materials by hard copy or online is solely for the client enrolled in the stated Cunningham Centre activity.

Part G – Disclosure and Distribution to Contracts (Clause 8)

State here whether this Part G applies: ¥es / No

The Customer may distribute the Material during the Term to a Contractor whose name and business address is specified in this Part G of this Schedule as a Contractor to whom this Part applies, but only if that Contractor-

a. is engaged by the Customer for a specific project; and

b. has also agreed in writing with the Customer -

(i) to treat the Material as confidential, and not to use it except for the project;

(ii) not to use the Material except in Australia and such other places (if any) which are specified in Part E of this Schedule;

(iii) to immediately stop using the Material and to return or destroy any copy or record of the Material when the project is finished, or upon the expiry or earlier termination of this Agreement (between the Supplier and the Customer), whichever is the earlier;

(iv) to access and use any Confidential Information contained in the Material only in accordance with the permitted uses and restrictions set out in Part H(iii) of this Schedule;

(v) to use any Personal Information contained in the Material solely for the permitted uses (if any) specified in Part H(iii) of this Schedule ("Permitted Uses and Restrictions applicable to all Confidential Information contained in the Material ... and all Personal Information contained in the Material ... "), and solely in accordance with the restrictions specified in that Part H(iii);

(vi) to comply with -

A. all legislation binding on the Contractor;

B. all legislation binding on the Customer regardless of whether the Contractor would otherwise be bound by that legislation;

C. any statutory obligations specified or set out in Part I(i) of this Schedule (Part I being headed "Specified Legislative and Regulatory Requirements and Related Conditions") regardless of whether the Contractor would otherwise be bound by those obligations; and

D. any other provisions set out under the heading "other conditions" in Part I(ii) of this Schedule; and

(vii) not to copy the Material in whole or part, or do any other act comprised in the Intellectual Property Rights in the Material.

Part H – Confidential Information and Personal Information

(i) Specified Confidential Information

(see definition of "Confidential Information" in Clause 1.1)

None.

(ii) Specified Personal Information

(see definition of "Personal Information" in Clause 1.1)

None.

(iii) Permitted Uses and Restrictions applicable to:

- all Confidential Information contained in the Material (not only Confidential Information which is specified above in section (i))

  and

- all Personal Information contained in the Material (not only Confidential Information which is specified above in section (ii))

(see Clause 9 and 10)

Standard rights:
If resources received electronically, able to make one hard copy, and protect with measures appropriate to maintain its confidentiality:
Yes / ~~No~~

Further rights:
View the material on a password protected USB, and use for analysis without making a digital copy on the hard drive:
~~Yes~~ / ~~No~~ Not applicable

Make one digital copy on a non-networked and password protected computer making the material available for processing analysis, and modelling) by an individual:
~~Yes~~ / No

Make one digital copy on a secure network drive with password protection making the material available for processing, analysis and modelling by a group of users:
~~Yes~~ / No

Make a limited number of digital copies available to one or more groups for specific use (e.g. economic modelling), where the identification variable (e.g. business name) has been removed:
~~Yes~~ / No

Other operative provisions for the purpose of Clause 9.2(a) and Clause 10.l(a):
The client will be supplied with the resources and no further copies are required.

Part I – Specified Legislative and Regulatory Requirements and Related Conditions (Clause 11)

(i) Statutory Obligations (see Clause 11.1(b))

Definitions
Not Applicable

Specify or set out here the statutory obligations referred to in Clause 11.1(b) of the Agreement:
None

(ii) Other conditions (see Clause 11.1 (c))

None

Part J – Exclusion of Implied Warranties etc (Clause 14)

State here whether Clause 14.2 applies: Yes / ~~No~~

Part K – Exclusion of Liability (Clause 15)

State here whether Clause 15.2 applies: Yes / ~~No~~

Part L – Indemnity (Clause 16)

Customer to Indemnify Supplier

(a) The Customer agrees to continually indemnify -
   i. the Supplier and its officers and employees (including, without limitation, if the Supplier is a government, any department of the Supplier through which this Agreement is entered into, and the officers and employees of such department), against –
   ii. any loss, cost, expense, damage and liability of any kind (including consequential damage and liability in negligence and reasonable legal costs and expenses) incurred by any of those indemnified –

   where –

   iii. the loss, cost, expense, damage or liability arises directly or indirectly from or is related to any claim, demand, suit, action or proceeding by any person (including the Customer) against any of those indemnified, and
   iv. such claim, demand, suit, action or proceeding is in relation to, or arising out of, in connection with, or in respect of -
      A. the Material (or any information contained in the Material), or any other product made using the Material, or
      B. any breach by the Customer of this Agreement.

(b) This indemnity will be granted irrespective of whether legal proceedings are instituted and the means, manner or nature of any settlement, compromise or determination.

(c) A person or other legal entity which is indemnified by the Customer under this section may recover a payment from the Customer under this indemnity before it makes the payment in respect of which the indemnity is given.

(d) If this indemnity provision ((a), (b) and (c)) applies, it survives the termination or expiry of this Agreement.

Part M – Additional Conditions (Clause 18)

State here whether there are any Additional Conditions: ~~Yes~~ / No

Obligations of the Supplier

Nil

Obligations of the Customer

Nil

Part N – Nominated and Executive Representatives for Dispute Resolution (Clause 22)

Also include the specified person who is to nominate an exert if the Parties cannot agree on the appointment as referred to in Clause 22.4 (Dispute Resolution)

Nominated Representatives (each Party to insert details)

Supplier: Darling Downs Hospital and Health Service

Nominated Representative: Hayley Farry, Executive Director, Workforce

Customer: Enrolled client of Cunningham Centre, Darling Downs Hospital and Health Service

Nominated Representative: To be advised as needed

Executive Representatives (each Party to insert details)

Supplier: As above

Nominated Representative: As above

Customer: As above

Nominated Representative: As above

Nominated person to appoint the expert as referred to in Clause 22.4 (Dispute Resolution):

President of the Queensland Law Society

Part O – Jurisdiction (Clause 23)

Laws:

The jurisdiction (if any) which is specified for the purpose of Clause 23.3 is:

None

Schedule 1

Learning materials and assessment tools, including:

- All learning components provided on the Moodle platform
- Any additional hard or soft copy learning materials provided in workshops, or for any other activities;
- Any assessment tools such as RPL guides, On-the-job logbooks, checklists or third party reports.