

## Third-Party Agreement

This Agreement is made and entered into between:

**Binnacle Training College Pty Ltd** (RTO Code: 31319; ABN: 96 115 517 952; ACN: 115 517 952), a Registered Training Organisation duly registered under the *National Vocational Education and Training Regulator Act 2011* (Cth), with its principal place of business at Suite 2, 318 Junction Road, Clayfield, QLD, 4011 (hereinafter referred to as "**RTO**");

**AND**

**Insert Third Party Legal Name** (ABN: Insert Third Party ABN), with its principal place of business at Insert Third Party Address (hereinafter referred to as "**Third Party**").

### 1 Purpose of the Agreement

This Agreement sets forth the terms and conditions under which the Third Party will deliver specific VET products and related services on behalf of the RTO to its students.

The parties agree to collaborate for the purpose of facilitating learning and the acquisition of competencies in relation to the Training Product(s) on the RTO's scope of registration, as further detailed in this Agreement.

### 2 RTO's Obligations

Subject to clause 7, the RTO is responsible for ensuring that the RTO and any third parties are adhering to the RTO Standards and the VET Quality Framework, including but not limited to:

- (a) approving students for enrolment in a Training Product;
- (b) managing the enrolment of students throughout the Training Product(s);
- (c) approving and providing the TAS prior to its implementation;
- (d) ensuring that all applicable learning, human, and physical resources required to deliver the Training Products are fit-for-purpose, suitable, and sufficient;
- (e) issuing AQF Certification Documentation to students; and
- (f) advising the ASQA of the commencement and termination or expiry of this Agreement.

The RTO will continuously monitor this Agreement and the services delivered by the Third Party to ensure ongoing compliance with all applicable Laws. The RTO will provide all reasonably required support to the Third Party in relation to the delivery of the Training Product(s) and any associated legal or regulatory requirements.

### 3 Scope of Services

The Third Party agrees to deliver the specific Training Product(s) and associated services as listed on the RTO's current scope of registration on the National Register located at the RTO Overview Webpage.

The Third Party must deliver training and/or assessment services on behalf of the RTO in relation to the Training Product(s), in accordance with the requirements of the relevant Training Package(s) or VET Accredited Course(s) and the RTO's approved TAS.

### 4 General Responsibilities

#### 4.1 Third Party's General Responsibilities

In relation to the following areas of responsibility, the Third Party will:

**(a) Marketing and Recruitment:**

- (i) Submit all marketing and advertising materials which are related to the Training Product(s) to the RTO for prior approval before any publication or dissemination of those materials.
- (ii) Use only RTO-approved marketing and advertising materials to recruit students for approved Training Product(s) through subject selection processes or other methods as agreed between the parties to this Agreement.
- (iii) Ensure all information provided to prospective students is clear, accurate, current and transparently identifies the RTO as the provider of the nationally recognised training.
- (iv) Ensure that all marketing materials prominently display the RTO's registration code or a link to its entry on the National Register.

**(b) Enrolment:**

- (i) Assist students with the RTO's online enrolment application process, including the collection of required documentation and Unique Student Identifiers.
- (ii) Review prospective students' skills and prior competencies, including LLND proficiency, and provide advice on course suitability prior to formal enrolment by the RTO.
- (iii) Assist with obtaining parent/guardian permission for student participation in a Training Product(s).
- (iv) Immediately notify the RTO of any student withdrawals or other significant changes to a student's enrolment status.

**(c) Training and Assessment:**

- (i) Provide training and assessment services in accordance with the RTO's approved TAS and course materials, ensuring high quality and adherence to the requirements of the Training Product(s).

- (ii) Ensure an adequate number of appropriately qualified and skilled trainers and assessors are available for each Training Product the Third Party is approved to deliver, as determined by the RTO.
- (iii) Conduct rigorous assessment processes using the approved assessment tools designed by the RTO, ensuring the requirements of the Training Product(s) are met.
- (iv) Submit all completed student assessments and assessment outcomes to the RTO in a timely and accurate manner for moderation, validation, and record-keeping.
- (v) Provide and maintain all necessary physical resources (facilities and equipment) for students to access for training and assessment purposes, ensuring they are fit-for-purpose, safe, and sufficient.

**(d) Student Support:**

- (i) Collaborate with the RTO on student support plans and implement relevant support strategies to assist student progress throughout the Training Product(s).
- (ii) Ensure students have access to support services, trainers and assessors, and other support staff.
- (iii) Implement reasonable adjustments for students with disabilities where appropriate, in accordance with the RTO's policies and assessment processes.
- (iv) Foster a safe and inclusive learning environment, including a culturally safe learning environment for First Nations people, that promotes and supports the diversity of students.
- (v) Provide wellbeing support services to students in accordance with general third-party protocols, including advising students of available support services and guiding them on how to access these support services as appropriate.

**(e) Compliance:**

- (i) Comply with all requirements outlined in the Third-Party Handbook provided by the RTO.
- (ii) Cooperate fully with the VET Regulator where the VET Regulator conducts any audit or monitoring activity of the RTO's operations, and provide accurate and factual responses to requests for information from the VET Regulator which are relevant to the services provided by the Third Party.
- (iii) Comply with all applicable Laws relevant to the services delivered under this Agreement, including those related to privacy, child safeguarding, and work health and safety.
- (iv) Maintain current public liability insurance in the amount of \$20,000,000.
- (v) Comply with all RTO approval processes for Training Product(s), marketing materials, physical resources (facilities & equipment), and trainer & assessor requirements as detailed in the Third-Party Handbook.

- (vi) Comply with all RTO monitoring processes for training, assessment, student support, learning environments, wellbeing, and trainer/assessor management as detailed in the Third-Party Handbook.
- (vii) Promptly notify the RTO of any material changes or events that may significantly affect the Third Party's ability to comply with its obligations under this Agreement or the RTO Standards.
- (viii) Maintain accurate records of all activities undertaken in relation to the delivery of Training Product(s) and provide these records to the RTO upon its reasonable request.
- (ix) Keep parents/guardians of students informed with respect to their child's course selection, enrolment, induction, and course progression, in accordance with the Third Party's internal protocols and RTO requirements.

## 4.2 RTO's General Responsibilities

For the following areas of responsibility, the RTO will:

### (a) Marketing and Recruitment:

- (i) Develop and provide approved marketing and advertising guidelines and materials for the promotion of the Training Product(s).
- (ii) Review and approve all Third Party marketing materials prior to their publication or dissemination.

### (b) Enrolment:

- (i) Provide and maintain the online enrolment application system and manage the formal enrolment approval process.
- (ii) Provide guidance and tools for reviewing prospective students' skills and competencies (including LLND screening) for the purpose of providing course suitability advice.
- (iii) Manage the reporting of Unique Student Identifiers to the relevant authorities.

### (c) Training and Assessment:

- (i) Develop, approve, and maintain current TAS and course materials for all Training Product(s).
- (ii) Design and approve all assessment tools, ensuring they meet the requirements of the Training Product(s) and the principles of assessment and rules of evidence.
- (iii) Conduct ongoing industry engagement to ensure the currency and relevance of the Training Product(s), TAS, and assessment practices.
- (iv) Define and communicate the qualification, industry skills, and professional development requirements for all trainers and assessors.

- (v) Manage the monitoring and approval process for the number of trainers and assessors being provided by the Third Party.
  - (vi) Manage the monitoring and approval process for initial applications and ongoing profiles of Third Party trainers and assessors.
  - (vii) Provide quality professional development for Third Party trainers and assessors in order to keep their profile current.
  - (viii) Implement and manage moderation and validation processes for assessment outcomes.
  - (ix) Manage all processes for RPL and credit transfers.
  - (x) Manage the monitoring and approval process for facilities and equipment provided by the Third Party, ensuring they are fit-for-purpose, safe, and sufficient for the delivery of the Training Product(s).
- (d) Student Support:**
- (i) Develop and provide policies, resources, and guidance for student support services, including reasonable adjustments for students with disabilities, inclusive learning environments, and wellbeing support.
  - (ii) Provide access to RTO support staff and resources to assist students and Third Party personnel with queries and support needs.
- (e) Student Completions:**
- (i) Manage the finalisation of student results and the overall completion process for Training Product(s).
  - (ii) Issue AQF Certification Documentation to qualifying students in a timely manner.
  - (iii) Report student results and data to relevant state training authorities and national bodies (e.g., the National Centre for Vocational Education Research) as required by law.
  - (iv) Review student assessment submissions and outcomes for quality assurance, moderation, and validation purposes.
- (f) Compliance:**
- (i) Maintain its RTO registration, including the scope of registration with the VET Regulator.
  - (ii) Comply with all applicable Laws, including those related to privacy, child safeguarding, and work health and safety.
  - (iii) Conduct systematic monitoring and audits of the Third Party's operations to ensure compliance with this Agreement and the RTO Standards.
  - (iv) Manage all data reporting to relevant state training authorities and ASQA.

- (v) Maintain and update its policies and provide guidance to the Third Party as required.
- (vi) Manage the RTO's complaints and appeals system, ensuring procedural fairness and the timely resolution of complaints.

## **5 Prohibitions**

The Third Party must not:

- (a) make any verbal or written guarantees that a student will successfully complete a Training Product, can complete a Training Product in a manner inconsistent with RTO requirements, or will obtain a particular employment outcome where this is outside the RTO's or Third Party's control;
- (b) issue or purport to issue any AQF Certification Documentation to a student for any Training Product;
- (c) use the NRT logo in the marketing or advertising of the approved Training Product(s);
- (d) use the RTO's branding including the RTO IP;
- (e) engage in any conduct that may mislead a current or prospective student in relation to the relationship between the RTO and the Third Party, or the nature of the Training Product(s); and
- (f) represent itself as being an agent, employee, or direct representative of the RTO.

## **6 Warranties**

### **6.1 Mutual warranties**

Each party warrants to the other party that:

- (a) it is duly organised, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated or constituted;
- (b) it has the power and authority and the legal right to enter into this Agreement and to perform its obligations under this Agreement;
- (c) it has taken all necessary action on its part to authorise the execution and delivery of this Agreement and the performance of its obligations under this Agreement;
- (d) this Agreement has been duly executed and delivered on behalf of the party, and constitutes a legal, valid, binding obligation, enforceable against the party in accordance with its terms;
- (e) the execution and delivery of this Agreement and the performance of the party's obligations under this Agreement:
  - (i) do not conflict with or violate any requirement of applicable Laws; and

- (ii) do not conflict with, or constitute a default under, any contractual obligation of the party.

## **7 Indemnity and Liability**

### **7.1 Third Party Indemnity**

The Third Party indemnifies RTO and its officers, employees and agents, against any Claim or proceeding, and against any Liability, Loss or expense (including legal costs on a full indemnity basis) caused by the Third Party or anyone for whom the Third Party is responsible arising out of:

- (a) any negligence by the Third Party or anyone for whom the Third Party is responsible in connection with the provision of the VET products;
- (b) any infringement of Intellectual Property Rights or other rights of any third party arising in connection with the provision of the VET products;
- (c) any unauthorised use by the Third Party or anyone for whom the Third Party is responsible of the Intellectual Property Rights in the RTO IP;
- (d) any Claims for payments of Taxes related to the provision of the services; or
- (e) any breach of this Agreement.

### **7.2 Exclusion of liability**

The Third Party is not liable for any Claim or proceeding, and against any Liability, Loss or expense caused by an act or omission by RTO or a person for whom RTO is liable.

## **8 Duration and Termination**

### **8.1 Term of Agreement**

This Agreement will commence on Commencement Date and will continue until End Date, unless terminated earlier in accordance with the provisions of this clause.

### **8.2 Termination for Convenience**

Either party may terminate this Agreement for convenience by providing 90 calendar days written notice to the other party. Any financial adjustments will be made in accordance with clause 9.

### **8.3 Termination for Cause**

Either party may terminate this Agreement immediately by written notice to the other party if:

- (a) the other party commits a material breach of this Agreement that is not capable of remedy;
- (b) the other party commits a material breach of this Agreement that is capable of remedy but fails to remedy that breach within 14 calendar days of receiving written notice of the breach which includes all particulars of the breach and a requirement to remedy the breach within the specified period; and

- (c) the other party suffers an Insolvency Event.

#### **8.4 Effect of Termination**

Upon termination or expiry of this Agreement for any reason:

- (a) the Third Party must immediately cease all delivery of Training Product(s) and related services on behalf of the RTO;
- (b) the Third Party must promptly return to the RTO all RTO-owned materials, resources, and documentation related to the Training Product(s);
- (c) the RTO must issue all required AQF Certification Documentation to qualifying students within 30 calendar days of the effective date of termination or expiry, provided all student requirements have been met;
- (d) the parties must cooperate to ensure that all student records and assessment evidence are transferred or made accessible to the RTO in a timely manner; and
- (e) termination or expiry of this Agreement will not affect any accrued rights or remedies of either party.

#### **8.5 Transition following termination**

If termination is effected pursuant to clause 8.2 or 8.3, the parties will endeavour to work together to ensure a transition of all students enrolled at the time of termination.

### **9 Financial Arrangements**

#### **9.1 Fees and Invoicing**

The RTO will invoice the Third Party for the agreed-upon Training Product(s) and participant fees, in accordance with the fee schedule provided on the Pricing Webpage. All invoices will be paid by the Third Party in accordance with the payment terms specified in the Third-Party Handbook. The Third Party will ensure all invoices are paid promptly by the due date as specified on the invoice.

#### **9.2 Additional Services**

The RTO's fee structure also includes a Program Fee to cover the cost of services provided directly to the Third Party to support the delivery of Training Product(s), such as professional development for Third Party trainers and assessors.

The RTO reserves the right to implement a tiered-pricing structure for Training Product(s), wherein fees may vary based on the services provided directly by the RTO compared to those delivered by the Third Party. Any such fees and pricing structures will be provided in the fee schedule on the Pricing Webpage.

#### **9.3 Funding Arrangements**

The parties acknowledge and agree that certain Training Product(s) may be eligible for government funding (e.g., Career Ready - VETIS). Any such funding arrangements and their impact on fees will be detailed in the Third-Party Handbook or a dedicated Funding Schedule Appendix. The Third Party agrees



to cooperate with the RTO in fulfilling all requirements related to such funding.

## **9.4 Refunds**

In the event of student withdrawal or termination of this Agreement, refunds for fees paid to the RTO will be processed in accordance with the refund policy, as detailed in the Third-Party Handbook.

The Third Party acknowledges that it is responsible for the management of its own subject fees which are charged to students, independent of the RTO's financial arrangements with the Third Party.

## **10 Intellectual Property**

### **10.1 Ownership**

All Intellectual Property Rights in the Training Product(s), course materials, assessment tools, online learning platforms (LMS/SMS), and all associated documentation ("**RTO IP**") will remain the sole and exclusive property of the RTO.

### **10.2 License to Use**

The RTO grants the Third Party a non-exclusive, non-transferable, non-sublicensable license to use the RTO IP solely for the purpose of delivering the Training Product(s) on behalf of the RTO, strictly in accordance with the terms of this Agreement and the Third-Party Handbook. This license is granted for the duration of the term of this Agreement only.

### **10.3 Prohibition on Unauthorised Use**

The Third Party must not copy, reproduce, modify, distribute, sell, sublicense, or otherwise exploit the RTO IP, or any part thereof, for any purpose other than as expressly permitted by this Agreement. The Third Party will take all reasonable steps to protect the RTO IP from unauthorised use, reproduction, or disclosure.

### **10.4 Third Party IP**

Any and all intellectual property owned by the Third Party prior to or independently of this Agreement ("**Third Party IP**") will remain the sole and exclusive property of the Third Party. The Third Party grants the RTO a non-exclusive, royalty-free license to use the Third Party IP solely as necessary for the RTO to fulfill its obligations under this Agreement.

## **11 Confidential Information**

### **11.1 Obligations of confidentiality**

- (a) Each party acknowledges that information disclosed by the Disclosing Party in connection with this Agreement is proprietary, Confidential Information or a trade secret of the Disclosing Party.
- (b) With respect to the information disclosed by the Disclosing Party, the other party agrees and acknowledges that it must:

- (i) not use the Disclosing Party's information other than for the purpose of performing its obligations under this Agreement or as otherwise expressly authorised in writing by the Disclosing Party; and
  - (ii) inform the Disclosing Party immediately upon becoming aware or suspecting that an unauthorised person has become aware of any Confidential Information.
- (c) Except as stated in this Agreement, the Receiving Party must not, and must not permit any of its officers, employees, agents, contractors or Associated Entities to, use or to disclose any of the Confidential Information to any other person without the prior written consent of the Disclosing Party.

## **11.2 Exclusions**

This clause does not apply to any information which:

- (a) is generally available to the public (other than as a result of the wrongful disclosure by the Receiving Party); or
- (b) is required to be disclosed by law.

## **12 Privacy and Data Protection**

### **12.1 Compliance with Privacy Laws**

Both the RTO and the Third Party acknowledge and agree to comply with the Privacy Act and the Australian Privacy Principles, in respect to the collection, use, storage, disclosure, and management of all Personal Information exchanged or accessed under this Agreement.

### **12.2 Handling of Personal Information**

Each party will :

- (a) use Personal Information only for the purposes of performing its obligations under this Agreement or as required by Law;
- (b) take all reasonable steps to protect Personal Information from misuse, interference, loss, unauthorised access, modification, or disclosure;
- (c) immediately notify the other party upon becoming aware of any actual or suspected data breach or any breach of the Privacy Laws affecting Personal Information exchanged or accessed under this Agreement; and
- (d) not disclose Personal Information to any third party without the prior written consent of the other party, unless required by law.

### **12.3 Data Access and Security**

The Third Party will ensure that access to any RTO system (e.g., LMS/SMS) containing Personal Information is restricted to authorised personnel only and that all such personnel are aware of their privacy obligations. The Third Party will implement and maintain appropriate technical and organisational security measures to protect any and all Personal Information in its possession or control.

## **12.4 RTO's Privacy Policy**

- (a) The Third Party acknowledges that it has access to, and understands the Privacy Policy and agrees to comply with its relevant provisions.
- (b) The Third Party must not, and the Third Party warrants and represents to RTO that it will not, process or otherwise do or omit to do anything in relation to Personal Information that would cause RTO to contravene any Privacy Law.
- (c) The Third Party must cooperate with RTO to resolve any complaint or inquiry made under any Privacy Law, or in relation to any request for access to Personal Information.

## **13 Child Safety**

### **13.1 Commitment to Child Safety**

Both the RTO and the Third Party are committed to ensuring the safety and wellbeing of all students, particularly those under 18 years of age, who are involved in the delivery of Training Product(s) under this Agreement. Both parties acknowledge their respective obligations to comply with all applicable Laws and regulations.

### **13.2 Working with Children Checks**

The Third Party will ensure that all of its personnel who are involved in the delivery of services to students hold current Working with Children Checks (or equivalent as legally recognised for teacher registration in their respective jurisdiction) as required by relevant state/territory legislation. The Third Party will provide evidence of such checks to the RTO upon its reasonable request.

### **13.3 Safeguarding Policies and Procedures**

The Third Party will implement and maintain its own comprehensive child safeguarding policies and procedures, consistent with the National Principles for Child Safe Organisations, and will ensure its personnel are aware of and comply with these policies. The Third Party will provide a copy of these policies to the RTO upon its reasonable request.

### **13.4 Incident Reporting**

The Third Party must immediately notify the RTO of any child protection concerns, incidents, or allegations that arise in connection with the delivery of the Training Product(s) under this Agreement, in accordance with its own child protection policies and relevant legal requirements.

The Third Party will cooperate fully with any investigation conducted by the RTO or any other relevant authority.

### **13.5 RTO's Child Safety Obligations**

The RTO acknowledges its own obligations under applicable child protection laws and its commitment to the National Principles for Child Safe Organisations. The RTO will provide any specific guidance and support to the Third Party with respect to child safety matters which are relevant to the delivery of the Training Product(s).

## **14 Dispute Resolution**

### **14.1 Contact Persons**

Each party will nominate a primary contact person for the purpose of resolving any disputes or concerns arising under this Agreement. The contact persons will be specified in clause 18 and 19 of this Agreement.

### **14.2 Good Faith Negotiations**

In the event of any dispute or disagreement between the parties concerning this Agreement, the parties will first attempt to resolve the matter amicably through good faith negotiations between their nominated contact persons.

### **14.3 Escalation**

If a dispute cannot be resolved through good faith negotiations within 14 days of one party notifying the other of the dispute, either party may escalate the dispute to senior management representatives of both the RTO and the Third Party for further negotiation.

### **14.4 Mediation**

If the dispute remains unresolved following the escalation to senior management in accordance with clause 14.3, either party may, by written notice to the other, refer the dispute to mediation. The mediation will be conducted by a mutually agreed-upon independent mediator, or in the absence of agreement, a mediator appointed by the Chair of the Resolution Institute, or the Chair's designated representative, to be conducted in accordance with the Resolution Institute Mediation Rules. Each party must pay its own internal and legal costs in relation to complying with this clause, and the costs of the mediation (including mediator costs) will be borne equally by both parties.

### **14.5 Legal Proceedings**

No party will commence legal proceedings in relation to any dispute arising out of this Agreement until it has first attempted to resolve the dispute in accordance with this clause, unless urgent interlocutory relief is sought.

### **14.6 Continued Performance**

Despite the existence of a dispute, both parties will continue to perform their respective obligations under this Agreement to the extent possible, without prejudice to their rights and remedies.

## **15 GST**

This clause applies if a party to this Agreement is, or becomes, liable to pay GST regarding any Supply of goods, services or anything else under this Agreement.

## **15.1 Definitions**

Capitalised expressions which are not defined in this Agreement but which have a defined meaning in the GST Act have the same meaning in this clause.

## **15.2 GST payable in addition to consideration**

If a party (**Supplier**) makes a Taxable Supply under this Agreement, then the Recipient of the Taxable Supply, must pay the Supplier the GST payable on the Taxable Supply in addition to the Consideration for the Supply.

## **15.3 Tax Invoice**

Within seven days of a Supply being made under this Agreement, the Supplier must provide to the Recipient a Tax Invoice or other documentation that complies with the requirements for a valid Tax Invoice under the GST Act.

## **15.4 Payment of GST**

Subject to the Supplier issuing a Tax Invoice to the Recipient as required under clause 5, the Recipient must pay the GST on the Taxable Supply under this Agreement to the Supplier at the same time as the Recipient pays the Consideration for the Supply to the Supplier.

## **15.5 Reimbursement or indemnity**

Despite any other provision of this Agreement, if the whole or part of any Consideration under this Agreement is a reimbursement or an indemnity to one party of an expense, loss, outgoing or liability incurred or to be incurred by the other party, the Consideration excludes any GST included in such expense, loss, outgoing or liability incurred or to be incurred for which the other party can claim an Input Tax Credit. The other party will be assumed to be entitled to a full Input Tax Credit unless it can establish otherwise.

## **15.6 Adjustment Events**

If an Adjustment Event occurs regarding a Supply under this Agreement, the Supplier must issue to the Recipient an Adjustment Note regarding the Adjustment Event within seven days of the Supplier becoming aware of the Adjustment Event.

## **15.7 Additional amount**

If the Adjustment Note gives effect to an Increasing Adjustment, the Recipient must pay to the Supplier the GST component of the Increasing Adjustment not later than the fourteenth business day of the month following the month in which the Adjustment Note is issued to the Recipient.

## **15.8 Credit or refund**

If the Adjustment Note gives effect to a Decreasing Adjustment, the Supplier must pay to the Recipient the GST component of the Decreasing Adjustment not later than the fourteenth business day of the month following the month in which the Adjustment Note is issued to the Recipient.

## 16 Force Majeure

### 16.1 Force Majeure occurrence

- (a) If a party (**Affected Party**) is prevented or hindered by a Force Majeure Event from fully or partly complying with any obligation (except for the payment of money) under this Agreement, that obligation is suspended for the duration of such Force Majeure Event.
- (b) If the Affected Party wishes to claim the benefit of this clause, it must give prompt written notice of the Force Majeure Event to the other party including reasonable details of:
  - (i) the Force Majeure Event;
  - (ii) the effect of the Force Majeure Event occurrence on the performance of the Affected Party's obligations under this Agreement; and
  - (iii) the likely duration of the delay in performance of those obligations.
- (c) The Affected Party must use its best endeavours to remove the cause and/or effect of the Force Majeure Event.

### 16.2 Termination

- (a) If a Force Majeure Event substantially prevents, hinders or delays performance of the Agreement, for a period in excess of 5 Business Days then RTO may, at its option, immediately terminate this Agreement in whole or in part by written notice to the recipient and the rights and obligations of the parties will be treated in the same manner as if the Agreement had been terminated by RTO under clause 8.3.
- (b) The Third Party will not be relieved from performance of its obligations under this agreement following the occurrence of a Force Majeure Event if such obligations could have been performed.

## 17 General Provisions

### 17.1 Governing Law

This Agreement will be governed by and construed in accordance with the laws applicable in the State of Queensland, Australia. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Queensland, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### 17.2 Entire Agreement

This Agreement constitutes the entire agreement between the parties concerning its subject matter and supersedes all prior agreements, understandings, and negotiations, whether written or oral, between the parties.

### **17.3 Severability**

If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such provision will be severed from this Agreement, and the remaining provisions will continue in full force and effect.

### **17.4 Amendment and Waiver**

No amendment or waiver of any provision of this Agreement will be effective unless it is in writing and signed by both parties. A waiver of any right or remedy under this Agreement will not be construed as a waiver of any other right or remedy.

### **17.5 Assignment**

Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld.

### **17.6 Relationship of Parties**

Nothing in this Agreement will be construed as creating a partnership, joint venture, agency, or employment relationship between the parties. The Third Party acts as an independent contractor delivering services on behalf of the RTO.

### **17.7 Counterparts**

This Agreement may be executed in any number of counterparts, each of which will constitute an original, and all of which together will constitute one and the same instrument. Electronic signatures will be deemed original for all purposes.

### **17.8 Amendment**

This Agreement may only be varied or replaced by a written agreement executed by both parties.

### **17.9 Waiver and exercise of rights**

- (a) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (c) A waiver by one party does not prejudice its rights in respect of any subsequent breach of this Agreement by the other party.
- (d) A party does not waive its rights under this Agreement because it grants an extension or forbearance to the other party.
- (e) A waiver is not effective unless it is in writing.

## 18 Third Party Contacts

### 18.1 Primary Contact

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Primary Contact Name

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Primary Contact Position

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Primary Contact Email Address

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Primary Contact Phone Number

### 18.2 Secondary Contact

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Secondary Contact Name

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Secondary Contact Position

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Secondary Contact Email Address

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Secondary Contact Phone Number

## 19 RTO Contacts

### 19.1 Primary Contact (Binnacle Training)

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**Kerrie Morrison**

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Primary Contact Name

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**Performance Officer**

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Primary Contact Position

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**thirdparty.compliance@binnacletraining.com.au**

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Primary Contact Email Address

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**0412 894 693**

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Primary Contact Phone Number

### 19.2 Secondary Contact (Binnacle Training)

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**Justine Scott**

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Secondary Contact Name

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**VET Support Manager**

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Secondary Contact Position

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**programs@binnacletraining.com.au**

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Secondary Contact Email Address

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**1300 303 715**

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Primary Contact Phone Number



## 20 Definitions and Interpretations

### 20.1 Definitions

In this Agreement, unless the context otherwise requires:

- (a) **Affected Party** has the meaning set out in clause 16.1 of this Agreement.
- (b) **Agreement** means this agreement made between the RTO and the Third Party.
- (c) **AQF Certification Documentation** means the set of official documents which confirm that an AQF Qualification or Statement of Attainment has been issued to an individual by an NVR registered training organisation or any other entity authorised to do so. **AQF Qualification** means an AQF qualification type endorsed in a Training Package or accredited in a VET Accredited Course.
- (d) **ASQA** means the Australian Skills Quality Authority.
- (e) **Associated Entity** means any associated entity of RTO as defined by the *Corporations Act 2001* (Cth).
- (f) **Australian Privacy Principles** means the 13 set of standards that govern how organisations and agency must handle personal information.
- (g) **Business Day** means:
  - (i) for the purposes of receiving a notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the Notice is to be received; and
  - (ii) for any other purposes, a day on which the banks are open for business in Brisbane, Queensland other than a Saturday, Sunday, public holiday or bank holiday in Brisbane, Queensland.
- (h) **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, Loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement.
- (i) **Commencement Date** means the date this Agreement is fully executed by both parties.
- (j) **Compliance Requirements** means the National Vocational Education and Training Regulator (Compliance Standards for *NVR Registered Training Organisations and Fit and Proper Person Requirements*) Instrument 2025 (Cth).
- (k) **Confidential Information** means all information that is directly or indirectly disclosed by the Disclosing Party to the Receiving Party (whether before or after the Commencement Date) in connection with this agreement including, all proprietary information, but does not include any Excluded Information.
- (l) **Credential Policy** means an enforceable policy that operates alongside the Standards

and outlines the credentials required for delivering training and assessments and undertaking validation of assessment.

- (m) **Disclosing Party** means a party which discloses, communicates or gives access to its Confidential Information, to the Receiving Party.
- (n) **End Date** means 31 December in the calendar year that is five (5) years after the Commencement Date, unless terminated earlier in accordance with this Agreement.
- (o) **Excluded Information** means information that the recipient establishes
  - (i) it is in the public domain, unless it came into the public domain by a breach of confidentiality;
  - (ii) it is already known by the recipient at the time this Agreement is entered into; or
  - (iii) it is obtained lawfully from a third party without any breach of confidentiality.
- (p) **Force Majeure Event** means an event:
  - (i) which is outside of the reasonable control of the party claiming that the event has occurred; and
  - (ii) the adverse effects of which could not have been prevented or mitigated against by that party by reasonable diligence or reasonable precautionary measures,  
and includes natural disasters, acts of terrorism, riots, revolutions, civil commotion, pandemic or epidemic.
- (q) **Funding Schedule Appendix** means an appendix that may be attached to this Agreement if the Training Product(s) delivered under this Agreement become eligible for government funding. The appendix, if executed by both parties, will specify the relevant funding program(s), the applicable eligibility criteria, the allocation and payment arrangements, and any additional reporting, audit, or compliance obligations associated with the funded delivery.
- (r) **GST** means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.
- (s) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (t) **GST Law** has the same meaning as in the GST Act.
- (u) **Insolvency Event** means the occurrence of any one or more of the following events regarding any party to this Agreement:
  - (i) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of that party;
  - (ii) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the court, or other person of similar function has been appointed regarding all or any material asset of the party;

- (iii) a security holder, mortgagee or chargee has taken attempted or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or chargor; or
- (iv) an event has taken place with respect to the party which would make, or deem it to be, insolvent under any Law applicable to it.
- (v) **Intellectual Property Rights** means any and all intellectual and industrial property rights throughout the world including rights in respect of, or in connection with any Confidential Information, copyright (including future copyright and rights in the nature of, or analogous to, copyright), performers' protection, moral rights, trade marks, service marks, designs, circuit layouts, patents, know-how, inventions, processes, technology, knowledge, techniques, methods of use, whether or not now existing and whether or not registered or registrable, and includes any right to apply for the registration of such rights and includes all renewals, revivals and extensions.
- (w) **Law** means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.
- (x) **Liability** means any liability or obligation (whether actual, contingent or prospective) including any Loss, irrespective of when the acts, events or things giving rise to the liability or obligation occurred.
- (y) **LLND** means language, literacy, numeracy, and digital literacy.
- (z) **Loss** includes any loss, damage, cost, charge liability (including Tax liability) or expense (including legal costs and expenses).
- (aa) **National Principles for Child Safe Organisations** means the principles developed by the Australian Government to create child safe environments.
- (bb) **National Register** means training.gov.au, the national register of VET.
- (cc) **NRT Logo** means the Nationally Recognised Training Logo as specified in the NRT Logo Conditions of Use policy.
- (dd) **Outcome Standards** means the *National Vocational Education and Training Regulator (Outcome Standards for Registered Training Organisations) Instrument 2025* (Cth).
- (ee) **Personal Information** has the meaning given to that term in the Privacy Act. **Pricing Webpage** means the webpage located at <https://www.binnacletraining.com.au/for-schools/pricing/>
- (ff) **Privacy Act** means the *Privacy Act 1988* (Cth) as amended from time to time.
- (gg) **Privacy Policy** means the policy located at <https://www.binnacletraining.com.au/privacy/>, that may be amended from time to time.
- (hh) **Program Fee** means the fee charged by the RTO to the Third Party for services provided

directly to support the delivery of the Training Product(s) under this Agreement. This may include, without limitation, professional development for Third Party trainers and assessors, access to RTO systems and resources, administrative and compliance support, and any other services or materials provided by the RTO in connection with the approved Training Product(s). The applicable Program Fee, if any, will be specified on the Pricing Webpage or otherwise notified in writing by the RTO from time to time.

- (ii) **Receiving Party** means a party who receives the Confidential Information of the Disclosing Party.
- (jj) **RPL** means Recognition of Prior Learning.
- (kk) **RTO IP** has the meaning given in clause 10.1
- (ll) **RTO Overview Webpage** means [https://training.gov.au/organisation/details/31319/scope\\_overview](https://training.gov.au/organisation/details/31319/scope_overview).
- (mm) **RTO Standards** means the Outcome Standards, the Compliance Requirements, and the Credential Policy.
- (nn) **Statement of Attainment** means a statement issued to an individual confirming that they have satisfied the requirements of the Unit(s) specified in that statement.
- (oo) **TAS** means Training and Assessment Strategy.
- (pp) **Tax or Taxes** means all forms of taxes, duties, imposts, charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition.
- (qq) **Third Party IP** has the meaning given in clause 10.4
- (rr) **Third-Party Handbook** means the operational handbook provided by the RTO to the Third Party, detailing policies, procedures, and guidelines relevant to the delivery of Training Product(s) under this Agreement, as amended from time to time.
- (ss) **Training Package or Training Package(s)** means the knowledge and skills required by individuals to perform effectively in the workplace, expressed in units of competency. Training Packages also detail how units of competency can be packaged into nationally recognised and portable qualifications that comply with the Australian Qualifications Framework.
- (tt) **Training Product** means an AQF qualification, a skill set, a unit of competency, accredited short course or module.
- (uu) **Unique Student Identifier** has the same meaning as in the Student Identifiers Act 2014 (Cth).
- (vv) **VET** means vocational education and training.
- (ww) **VET Accredited Course** means a course accredited by ASQA in accordance with the

Standards for *VET Accredited Courses 2012* (Cth).

- (xx) **VET Quality Framework** has the meaning given in the *National Vocational Education and Training Regulator Act 2011* (Cth).
- (yy) **VET Regulator** means the Australian Skills Quality Authority or a State or Territory VET Regulator.
- (zz) **VETIS** means Vocational Education and Training in Schools.
- (aaa) **Working with Children Checks** means a check or clearance required by relevant state/territory legislation for individuals working with children.

## 20.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression referring to a person includes any company, partnership, joint venture, association, corporation, or other body corporate and any government agency;
- (e) a reference to a section, subsection, clause, or subclause is a reference to a section, subsection, clause, or subclause of this Agreement;
- (f) 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;
- (g) a reference to an agreement or document is a reference to that agreement or document as amended, novated, supplemented, or replaced from time to time;
- (h) "including" and similar expressions are not words of limitation.

**Executed** as an agreement

**Executed by Binnacle Training College Pty Ltd**  
ACN 115 517 952 in accordance with section  
127 of the *Corporations Act 2001* (Cth):

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Director

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Name of Director

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Execution Date

**Executed by [insert name of Third Party]**  
[insert ACN] in accordance with section 127 of  
the *Corporations Act 2001* (Cth):

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Principal

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Name of Principal

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Execution Date