

Waterford/Wexford Education and Training Board
and

AGREEMENT TO COLLABORATE FOR PROVISION OF A LOCAL TRAINING INITIATIVE
(Conditions of Agreement)



THIS AGREEMENT is made on

BETWEEN:

Waterford/Wexford Education and Training Board
having its principal place of business at
Ardcavan Business Park, Ardcavan, Wexford
(hereinafter referred to as “the ETB”)

- and –

having its registered office at

(hereinafter referred to as
the “Second Provider”)

RECITALS:

- A. The Second Provider [operates / shall operate] a Local Training Initiative (as hereinafter defined) at:

- B. The Second Provider has agreed to conduct the Training Programme(s) (as hereinafter defined), funded by the ETB as part of the Local Training Initiative, upon and subject to the terms and conditions of this Agreement.

- C. This Agreement (including those documents incorporated by reference as described further below) shall govern the terms and conditions upon which the Second Provider will operate the Local Training Initiative and the Training Programme(s) from the date of execution hereof until the expiry of the Term (as hereinafter defined), to the exclusion of any and all prior agreements between the ETB and the Second Provider in respect of the provision of local training and work experience.

NOW IT IS HEREBY AGREED that in consideration of the mutual covenants, conditions, agreements and payments hereinafter set forth or provided for, the parties hereto respectively covenant with each other as follows:

1. Definitions

1.1 In this Agreement the following expressions shall, unless the context otherwise requires, have the following meanings:

- 1.1.1 **“Appendix of ETB Funding”**, the details of Financial Supports and Conditions contained at Appendix 2 hereto providing details of the Funding and the conditions attaching to the Funding;
- 1.1.2 **“Assistant Co-ordinator”**, the employee of the Project responsible for assisting the Co-ordinator in the co-ordination of all Training Programme(s) and Training Activities as detailed in the Operating Guidelines;
- 1.1.3 **“Award Body”**, QQI and/or any other body providing course certification and which has been approved by the ETB;
- 1.1.4 **“Business Day”**, a day (other than a Saturday or Sunday) upon which clearing banks are open for business in Dublin;
- 1.1.5 **“Commencement Date”**,
- 1.1.6 **“Co-ordinator”**, the employee of the Project responsible for the co-ordination of all Training Programme(s) and Training Activities as detailed in the Operating Guidelines;
- 1.1.7 **“Data Protection Acts”**, the Data Protection Acts 1988 to 2003 as may be amended;
- 1.1.8 **“Equipment”**, plant, machinery, training equipment and other materials used by the Second Provider for the purposes of the Project and/or the Training Programme(s);
- 1.1.9 **“Extended Term”**, any period after the Initial Term for which this Agreement remains in force pursuant to Clause 23.2;
- 1.1.10 **“ETB Application”**, the ETB Application / Renewal for Local Training Initiative contained at Appendix 1 hereto providing details of the Training Programme(s), the Training Activity, training objectives and certification and signed by both the ETB and the Second Provider;
- 1.1.11 **“Funding”**, the funding provided by the ETB to the Second Provider pursuant to this Agreement and contained in the Appendix of ETB Funding as same may be amended from time to time;
- 1.1.12 **“HSA”**, the Health and Safety Authority;

- 1.1.13 “**Initial Term**”, the period of 46 weeks –following the Commencement Date; Finish Date
- 1.1.14 “**IPR**”, intellectual property rights including, without limitation, copyright (present and future), moral rights, patents, trade marks, design rights and database rights (whether or not any of these is registered and including any application for registration of any such rights), know-how, confidential information and trade secrets and all rights or forms of protection of a similar nature or having similar effect to any of these which may exist anywhere in the world;
- 1.1.15 “**Landlord**”, the owner of the Premises;
- 1.1.16 “**Learners**”, those individuals receiving training under the Training Programme(s);
- 1.1.17 “**Operating Guidelines**”, the operating guidelines for Local Training Initiatives as may be published by the ETB from time to time (including without limitation any amendment, variation or supplement to such document(s));
- 1.1.18 “**Personnel**”, the staff of the Second Provider involved in the provision and delivery of the Training Programme as set out in the Operating Guidelines, including the Coordinator and Assistant Coordinator;
- 1.1.19 “**Premises**”, the premises at which the Project operates/is proposed to operate;
- 1.1.20 “**Project**” or “**Local Training Initiative**”, the local training initiative established/to be established by the Second Provider pursuant to which the Training Programme(s) is carried out/is proposed to be carried out;
- 1.1.21 “**Term**”, the period from the date of execution of this Agreement until the expiry of the Initial Term or, if applicable, the Extended Term;
- 1.1.22 “**Training Activity**”, the planned training activity to be undertaken in connection with the Training Programme(s) details in respect of which are set out in the ETB Application;
- 1.1.23 “**Training Programme(s)**”, the project based training and work experience programme(s) funded by the ETB for Learners as part of the Project, conducted in accordance with the terms contained in the ETB Application and as approved by the ETB prior to entering into this Agreement, as may be amended, varied or supplemented from time to time with the written consent of the ETB;

1.1.24 **“Trainer”**, an individual, sole trader, company or other organisation involved in the provision and delivery of the Training Programme(s) as guest instructor, part-time instructor, sub-contractor or in another, similar, capacity; and

1.1.25 **“SHWW Act”**, the Safety, Health and Welfare at Work Acts 2005 and 2010 and its underlying regulations and/or codes of practice.

2. Construction

2.1 Any reference to a document being “in the approved terms” shall mean that such document shall be in a form approved by some or all of the parties hereto (as appropriate) and for the purpose of identification signed or initialled by or on behalf of some or all the parties hereto (as appropriate) on or prior to the date hereof.

2.2 Any reference to any provision of any legislation shall include any modification re-enactment or extension thereof.

2.3 Words such as “hereunder”, “hereto”, “hereof”, and “herein” and other words commencing with “here” shall unless the context clearly indicates to the contrary refer to the whole of this Agreement and not to any particular Section or Clause thereof.

2.4 Save as otherwise provided herein any reference to a Section, Clause, paragraph or sub-paragraph shall be a reference to a Section, Clause paragraph or sub-paragraph (as the case may be) of this Agreement and any reference in a Clause to a paragraph or sub-paragraph shall be a reference to a paragraph or sub-paragraph of the Clause or paragraph in which the reference is contained unless it appears from the context that a reference to some other provision is intended. Any reference in this Agreement to any Governmental Department or State Body (including the ETB) shall be deemed to refer, where appropriate, to the respective assigns and successors in title of such Governmental Department or State Body.

3. Headings and Captions

The Section headings and captions to the Clauses in this Agreement are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of this Agreement.

4. The Project

4.1 The Second Provider hereby agrees that in consideration of the Funding provided by the ETB it shall operate the Project and provide the Training Programme(s) (primarily at the Premises, however some Training Programme(s) and/or Training Activities may be provided off-site) with effect from the Commencement Date.

- 4.2 Subject to Clause 4.3, the Second Provider shall operate the Project and shall provide the Training Programme(s) in the manner set out in the ETB Application and in accordance with the terms and conditions of this Agreement, the Operating Guidelines and the conditions and objectives of the Local Training Initiative as communicated by the ETB to the Second Provider from time to time.
- 4.3 The Second Provider acknowledges that the ETB may from time to time (whether before or after the Commencement Date) amend or vary the Training Programme(s) and/or the Operating Guidelines. All such amendments or variations shall be notified to the Second Provider in writing by the ETB and this Agreement shall be subject to such amendments or variations, which shall be binding on the parties hereto.
- 4.4 The Second Provider shall cooperate with the ETB to implement the Training Programme(s) as agreed.
- 4.5 The Second Provider hereby covenants and agrees that the appointment of all Personnel will be in accordance with the Operating Guidelines. The parties agree that any breach by the Second Provider of the terms of this Clause will constitute a material breach of this Agreement for the purposes of Clause 24.
- 4.6 The Second Provider may in exceptional circumstances with the prior written consent of the ETB (such consent not to be unreasonably withheld) sub-contract any part of the provision of the training in respect of the Training Programme(s) provided always that:
- 4.6.1 the identity, qualifications and experience of each sub-contractor is notified in advance and agreed by the ETB; it is acknowledged that it shall be a pre-requisite to any such appointment of a sub-contractor as Trainer that the appointee meet the ETB's standards and requirements as described in the Operating Guidelines;
 - 4.6.2 the Second Provider undertakes and covenants to adhere to all procurement guidelines as notified to it by the ETB from time to time; and
 - 4.6.3 the Second Provider shall fully indemnify and hold the ETB harmless from and against all and any claims, demands, proceedings, judgements, costs or liabilities of whatsoever nature (including legal costs) arising in relation to the Training Programme(s) made by any sub-contractor(s) in respect of such sub-contracting.

5. Payment

- 5.1 Subject to compliance by the Second Provider with the terms and conditions of this Agreement, the ETB shall pay Funding to the Second Provider for the Initial Term of up to € as set out in the Appendix of ETB Funding, payable monthly in arrears in accordance with the

Operating Guidelines. Funding for any Extended Term shall be as agreed between the ETB and the Second Provider.

- 5.2 Pending full compliance by the Second Provider with the terms of this Agreement, the ETB reserves the right, upon giving 21 days written notice to the Second Provider, to withhold all or part of any payments payable to the Second Provider if, in the sole opinion of the ETB acting reasonably, the Second Provider fails to adequately observe any of the terms or conditions of this Agreement (including the Operating Guidelines).

6. Proof of Incorporation or Registration

- 6.1 The Second Provider shall forward to the ETB a copy of its Certificate of Incorporation or Certificate of Acknowledgment of Registration (in the case of industrial and provident societies) prior to the Commencement Date.

7. Quality Assurance

- 7.1 The Second Provider undertakes to adhere to quality assurance policies and procedures as required by the ETB and any additional Award Body requirements, including in relation (but not limited) to the following policy areas:

7.1.1 communications;

7.1.2 equality;

7.1.3 staff recruitment and development;

7.1.4 access, transfer and progression;

7.1.5 programme development, delivery and review;

7.1.6 fair and consistent assessment of Learners;

7.1.7 protection for Learners;

7.1.8 procuring programme delivery through utilisation of Second Providers;

7.1.9 monitoring; and

7.1.10 evaluation of programmes and services.

- 7.2 The Second Provider hereby agrees to have regard to all reasonable suggestions, observations, comments and requirements of the ETB. The Second Provider shall provide

the ETB, or any entity or person authorised by the ETB, with access to and/or copies of any records which are required as part of the ETB quality assurance policy and procedures.

8. Premises

- 8.1 The Second Provider shall produce to the ETB on demand satisfactory evidence of the title of the Second Provider in relation to the Premises and such other information concerning the Premises and any lease, licence or tenancy agreement in respect thereof as the ETB may request.
- 8.2 The Second Provider shall ensure that the use of the Premises is in compliance with all relevant planning permissions and all provisions of the lease, licence or tenancy agreement which detail the permitted user.
- 8.3 The Second Provider undertakes that it shall be solely responsible to the Landlord or any other person with an interest in the Premises if any claim for improvements, renovations, rectifications or in respect of any damage or loss to the Premises arises from the operation or activities of the Second Provider and/or the Training Programme(s) or howsoever arising and, the Second Provider covenants and undertakes to indemnify the ETB fully in respect of any such claim howsoever arising.

9. Facilities

- 9.1 The Second Provider shall provide the training facilities at the Project, including where deemed necessary by the ETB, Equipment and a proper learning environment for the Learners.
- 9.2 The Second Provider shall also provide appropriate secure storage facilities for all Equipment at the Project.
- 9.3 The Second Provider shall provide suitable toilet and other necessary welfare facilities and amenities so as to fully comply with all current health and safety laws and other relevant laws and regulations relevant to the Project.
- 9.4 The Second Provider shall use all reasonable endeavours to ensure that the facilities at the Project meet the accessibility requirements of current legislation.

10. Learner Recruitment

- 10.1 The ETB has the primary interest in the selection of the Learners. The Second Provider shall however, if requested by the ETB, assist in the interview and selection of the Learners and shall maintain records of the interview and selection process as specified in the Operating Guidelines. The Second Provider shall not invite any applicant for interview or disclose to any person the outcome of any application or interview, unless requested to do so by the ETB.

11. Procurement

11.1 Where goods and/or services are purchased/procured in relation to this Agreement the Second Provider shall at all times comply with Public Procurement guidelines as issued by the National Public Procurement Unit of the Department of Finance and procurement thresholds issued by the ETB and attached at Appendix 3. In this regard the Second Provider hereby confirms that it has familiarised itself with the requirements thereof and undertakes to do so on an ongoing basis by reference to any amendments which may be made thereto, from time to time.

12. Insurance

12.1 The Second Provider shall avail of the Employers' and Public Liability insurance arranged by the ETB's insurers or as specified by the ETB.

12.2 The Second Provider shall ensure that it has at all times adequate insurance cover in respect of its employees and all Learners.

13. Indemnity

13.1 The ETB shall not be liable for any injury, loss or damage whatsoever or to whomsoever caused by any act, default or omission of the Second Provider, its servants, agents or sub-contractors or by a Learner on the Training Programme(s).

13.2 The Second Provider shall fully indemnify and hold SOLAS and the ETB harmless from and against all and any claims, demands, proceedings, judgments, costs of liabilities of whatsoever nature (including legal costs) arising in relation to the Training Programme(s), the Project or in respect of any breach of this Agreement by the Second Provider.

14. Intellectual Property

14.1 Any IPR developed by a Second Provider in connection with the development of the Training Programme(s) or otherwise arising out of this Agreement shall be the sole property of the ETB and shall immediately vest in the ETB. The parties acknowledge and agree that no party (other than the ETB) shall be entitled to exploit such IPR without the prior written consent of the ETB.

14.2 The Second Provider further agrees that at the ETB's request (and cost) it shall do all that may from time to time be required by the ETB to enable the ETB to establish and protect its right to the IPR.

15. Records

15.1 The Second Provider shall securely retain until such time as the ETB directs otherwise:

15.1.1 a detailed financial record of all receipts, expenditure and all expenses arising in respect of the Project and the Training Programme(s);

15.1.2 proper books of account, records of all payments and receipts in respect of the Project and the Training Programme(s), and shall retain all supporting documentation including, but not limited to invoices, statements and bank statements. All books of account shall be kept in such a manner as to provide precise financial details of the Project and the Training Programme(s) at any particular time;

15.1.3 quality assurance records relating to the Training Programme(s) provided under this Agreement, in such form as the ETB may require;

15.1.4 records relating to the recruitment and/or selection and training of Personnel;

15.1.5 detailed records in relation to all health and safety issues arising including, but not limited to, an up-to-date risk assessment and safety statement, any visit made by the HSA and/or any other authorised body, any accident, incident and/or near miss no matter how minor, any notice or direction threatened or served upon it by the HSA or any other authorised body, any claim threatened or made in relation to any alleged loss or damage by any other person to include (but not limited to) Personnel, Learners and/or sub-contractors;

15.1.6 book of attendance in relation to the Learners; and

15.1.7 such other records as the ETB may reasonably determine from time to time.

16. Rights of Access

16.1 The Second Provider shall grant officials of the ETB, SOLAS, Award Bodies, the Department of Education and Skills, the Department of Enterprise, Trade and Innovation, any other government department, the Comptroller and Auditor General's office, the European Commission and the European Court of Auditors, the HSA and/or any other authorised body immediate access to the Premises (together with any other premises at which the Training Programme(s) are provided) or where records are maintained under this Agreement and the right to examine all records, financial and otherwise maintained by the Second Provider in connection with the Training Programme(s), including all notes and materials supplied to the Learners.

16.2 The Second Provider shall reply satisfactorily to any queries submitted by the ETB, SOLAS, Award Bodies, the Department of Education and Skills, the Department of Enterprise, Trade and Innovation, any other government department, the Comptroller and Auditor General, the European Commission, the European Court of Auditors, the HSA and/or any other similar body relating to the activities funded pursuant to this Agreement (“Reply”) provided that the Reply will not constitute a breach of any statutory or contractual obligation of the Second Provider. If third party consent is required prior to the Second Provider issuing the Reply, the Second Provider shall use its best endeavours to obtain the necessary consent from the relevant third party.

16.3 The Second Provider shall use all reasonable efforts to ensure that the Learners will make available to the ETB, if so requested, all training material supplied to them in connection with the Training Programme(s).

17. Data Protection

17.1 The Second Provider hereby agrees that it will comply with all relevant requirements of the Data Protection Acts, or any amendment thereof or any regulations passed pursuant to the provisions thereof insofar as they apply to the Second Provider.

17.2 The Second Provider hereby agrees that it will use its best endeavours to obtain all necessary and relevant consents pursuant to the Data Protection Acts from each Learner to permit any personal data given by such Learner to be processed and stored by the ETB, SOLAS, the Department of Education and Skills, the Department of Enterprise, Trade and Innovation, any other government department, and any body, office or department of the European Union or the European Commission.

18. Freedom of Information

The Second Provider shall, where requested so to do, promptly give to the ETB any record (as such term is defined in the Freedom of Information Acts 1997 and 2003) (“Record”) relating to any matter provided for, arising in respect of, or in connection with, this Agreement.

19. Health and Safety

19.1 It shall be the responsibility of the Second Provider and the Second Provider hereby undertakes to take all necessary steps to secure the safety, health and welfare of all persons attending the Project in accordance with its duties and responsibilities pursuant to the SHWW Act. For the avoidance of any doubt, the steps taken must, as a minimum, be to the same extent and in the same manner as an employer is required to do in relation to employees under the SHWW Act. The Second Provider shall annually carry out self-assessment checks of its

compliance with the foregoing obligations and, on request by the ETB, shall certify such compliance to the ETB.

19.2 The Second Provider covenants and undertakes to fulfil its statutory reporting requirements following any incident or accident resulting in injury or death to any persons.

19.3 Notwithstanding the statutory reporting requirements of the Second Provider, the Second Provider hereby covenants and undertakes to inform the ETB in writing of any incident and/or accident at the first opportunity following the incident and/or accident but in any event no later than 7 days of becoming aware of the occurrence of the accident and/or incident regardless of its severity.

20. Discontinuation of Training

20.1 If the ETB and/or the Second Provider considers that a Learner is no longer willing or has become unable to attend, or if the ETB and/or the Second Provider decides that the Learner should not attend or continue to attend the Training Programme(s), the ETB may, at its absolute discretion, give or confirm notice of that fact to the Second Provider and the ETB shall give immediate notice of such discontinuation to the Learner concerned and that Learner shall cease to be a Learner for the purpose of any provision of this Agreement.

20.2 The Second Provider shall notify the ETB immediately upon suspending a Learner during the period of a Training Programme, it being acknowledged that the ETB has the sole right to dismiss a Learner during such period.

21. Equal Opportunities

The Second Provider hereby covenants and agrees that it shall ensure that neither it nor any of its sub-contractors shall commit or omit to do any act, which may constitute direct or indirect discrimination against any person pursuant to the Employment Equality Acts 1998 and 2004 and/or the Equal Status Acts 2000 to 2004 and/or, if relevant, the Disability Act 2005 and the Second Provider hereby agrees that it shall carry out any specific actions in fulfilment of these obligations as the ETB may deem appropriate from time to time.

22. No Agency

The Second Provider shall not represent itself as the agent or legal representative of the ETB for any purpose whatsoever and shall have no right to create or assume any obligations of any kind (express or implied) for or on behalf of the ETB in any way whatsoever except as herein provided.

23. Term

23.1 This Agreement shall commence on the Commencement Date hereof and shall continue for the Initial Term subject to the terms and conditions of this Agreement including but not limited to Clause 24 hereof.

23.2 Unless terminated on or before the expiration of the Initial Term, this Agreement shall continue in full force and effect thereafter (the "Extended Term") subject to the terms and conditions of this Agreement including but not limited to Clause 24 hereof.

24. Termination of Agreement

24.1 Either party may terminate this Agreement at the expiration of the Initial Term by giving written notice of termination to the other party no later than 20 days before the expiration of the Initial Term.

24.2 If neither party terminates this Agreement in accordance with Clause 24.1, either party may terminate this Agreement at any time during the Extended Term by giving not less than 20 days written notice of termination to the other party of this Agreement.

24.3 Notwithstanding Clauses 24.1 and 24.2 above, the ETB shall have the right by giving written notice to the Second Provider to terminate the Agreement immediately at any time if:

24.3.1 the Second Provider commits a material breach of any of the terms or conditions of this Agreement and such breach is not remedied (if capable of remedy) within 14 days of a written request to do so;

24.3.2 the Second Provider assigns, transfers or novates or attempts to assign, transfer or novate this Agreement without the prior written consent of the ETB;

24.3.3 the Second Provider alters or attempts to alter the terms of this Agreement without the prior written consent of the ETB;

24.3.4 the Project and/or the Training Programme(s) does not sustain the number of positions and/or Learners as outlined in the ETB Application and following notification of this issue by the ETB to the Second Provider, the Second Provider fails to remedy the situation to the reasonable satisfaction of the ETB within 28 days of the ETB issuing the notice to the Second Provider; or

24.3.5 any of the events described in Clause 24.4 occur.

24.4 The Second Provider shall notify the ETB in writing immediately upon the occurrence of any of the following:

- 24.4.1 where the Second Provider is a partnership, any partner in the Second Provider is adjudged a bankrupt;
- 24.4.2 where the Second Provider is a company, a winding-up order is made or a resolution for a voluntary winding up is passed with respect to it (otherwise than for the purpose of a bona fide reconstruction or amalgamation); or
- 24.4.3 a receiver or manager of its undertaking is duly appointed or possession is taken by or on behalf of the holder of any debenture secured by a floating charge of any property of the Second Provider comprised in or subject to the charge.

24.5 Upon the termination of this Agreement for any reason:

- 24.5.1 any rights of action or remedy which shall have accrued or shall thereupon accrue to the ETB shall not be prejudiced or affected;
- 24.5.2 the ETB shall not be required to make any further Funding payments;
- 24.5.3 any monies advanced to the Second Provider (other than such monies used to discharge expenses and other liabilities properly incurred by the Second Provider in respect of the Training Programme(s)) shall immediately be repaid to the ETB (and the parties agree that this repayment obligation shall also apply to any cancelled Training Programme(s), where that Training Programme(s) is cancelled without simultaneous termination of this Agreement); and
- 24.5.4 the Second Provider shall, if requested, immediately give to the ETB any Record relating to this Agreement or any service provided pursuant to this Agreement or any record requested pursuant to Clause 15.

25. Statutory Obligations

- 25.1 The Second Provider shall comply with all relevant statutory provisions relating to the contents of this Agreement.
- 25.2 The Second Provider shall discharge its statutory obligations in respect of PAYE, PRSI, VAT and all other relevant taxation and levies relating to the operation of the Project. A current Tax Clearance Certificate or evidence of Charitable Status as appropriate shall be provided to the ETB prior to the Commencement Date of this Agreement.
- 25.3 The Second Provider shall be responsible for ensuring compliance with Section 121 of the Pensions Act 1990. At a minimum, the Second Provider shall ensure the provision of access to at least one type Standard Personal Retirement Savings Account to Personnel during the operation of the Project.

25.4 The Second Provider shall comply with all European Social Fund requirements and in particular with the specific requirements as set out in Appendix 4.

26. General Provisions

26.1 Binding on Successors

This Agreement shall ensure to the benefit of and be binding upon the respective parties hereto and their respective successors personal representatives and assigns.

26.2 Assignment

The benefit hereof shall not be assignable save with the prior written consent of each party hereto, such consent not to be unreasonably withheld.

26.3 No Partnership

This Agreement shall not be deemed to create any partnership between the parties in relation to the Project or otherwise.

26.4 Waiver

A waiver of any right arising pursuant to this Agreement shall not be enforceable unless given in writing and signed by the party enjoying that right. A waiver by a party of any breach of a provision of this Agreement (or the acquiescence of a party in any act (whether of commission or omission) which but for such acquiescence would be a breach of a provision of this Agreement) shall not constitute a general waiver of any other provision of this Agreement, or a waiver of any subsequent act contrary thereto.

26.5 Acknowledgement of the ETB

The Second Provider hereby acknowledges and agrees that it will at all times and in all publications, materials, signage, application forms or other information, documentation or materials acknowledge the role of the ETB in supporting the Project and/or the Training Programme(s). All acknowledgements made by the Second Provider shall be approved in advance by the ETB and where so approved all publications, materials, application forms, information, documentation and signs should include the ETB logo, and comply with the ETB "Brand Manual and Identity Guidelines" as may apply from time to time.

26.6 Announcements

Without prejudice to Clause 26.5 and save with the consent of the ETB, no announcements, publications, promotional, marketing or sales materials whatsoever relating to the Project or the Training Programme(s) under this Agreement shall be made.

26.7 Counterparts

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which when executed and delivered shall constitute an original all such counterparts together constituting but one and the same instrument.

26.8 Fees and Expenses

Each of the parties agree to bear its own legal costs and other expenses of and incidental to the preparation, negotiation, execution and completion of this Agreement.

26.9 Business Days

If any action or duty to be taken or performed under any of the provisions hereof would, apart from the provisions of this Clause, fall to be taken or performed on a day which is not a Business Day such action or duty shall be taken or performed on the Business Day next following such date.

26.10 Further Assurance

Each of the parties shall (and shall each procure that any other necessary party shall) execute and do all such documents, acts and things as may reasonably be required to implement the provisions of this Agreement.

26.11 Severability

Each of the provisions of this Agreement are separate and severable and enforceable accordingly and if at any time any provision is adjudged by any court or regulatory authority or agency of competent jurisdiction to be void or unenforceable in whole or in part the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. The parties shall use their best efforts to achieve the purpose of the void or unenforceable provision (or part thereof) by a new legally valid stipulation.

26.12 Whole Agreement

This Agreement contains the whole agreement between the parties relating to the matters provided for in this Agreement and supersedes all previous agreements (if any) between the parties in respect of such matters and each of the parties to this Agreement acknowledges that in agreeing to enter into this Agreement it has not relied on any representations or warranties except for those contained in this Agreement.

26.13 Conflict

In the event of any ambiguity, discrepancy or conflict between the provisions of this Agreement and/or the Appendices to this Agreement, and/or the Operating Guidelines, the provisions of this Agreement shall prevail, followed by the provisions of the Operating Guidelines, followed by the ETB quality assurance policies and procedures in particular all aspects thereof applying to Second Providers.

26.14 Disputes

All disputes or differences which may arise from the operation of this Agreement and/or the rights or liabilities of the parties hereto shall in the first instance be fully discussed between the ETB and the Second Provider in an effort to arrive at a mutually agreeable solution. Failing the resolution of the matter within a 3 week period the dispute may be referred to mediation by the mutual agreement of the parties based on terms and conditions to be agreed. Failure to resolve the matter by mediation (including failure to agree on the identity of the mediator and/or failure to agree the terms and conditions of the mediation) within a further 3 week period will result in the parties reverting to alternative remedies available under Clause 26.15 and/or Clause 26.16.

26.15 Governing Law

This Agreement shall in all respects be governed by and construed in accordance with the laws of Ireland. Each of the parties hereby submits to the non-exclusive jurisdiction of the courts of Ireland in relation to any disputes or proceedings arising out of or in connection with this Agreement.

26.16 No Adequacy

Each of the parties acknowledge that monetary damages would be an inadequate remedy for any breach of this Agreement by either of them and that any such breach would cause either party irreparable harm. Accordingly, each of the parties agree that in the event of any breach or threatened breach by either of them of this Agreement having exhausted the process outlined at 26.14 and in addition to any other remedies at law or in equity the other party may have, that party shall be entitled, without proof of special damages, to equitable relief, including injunctive relief and specific performance. Notwithstanding the foregoing the Second Provider acknowledges and agrees that the ETB will not be responsible for or indemnify the Second Provider for any loss of profit, contracts, services arising in respect of or in connection with any breach of the Agreement by the ETB or otherwise.

26.17 Notices

26.17.1 Any notice or other communication required or permitted to be given or made hereunder shall be addressed or sent to a party to his or its address hereinbefore specified to such other postal address as any such party hereto may from time to time notify to the other parties hereto in writing in accordance with the provisions hereof.

26.17.2 Any notice or other communication required or permitted to be given or made hereunder shall be validly given or made if delivered personally or if despatched by pre-paid letter post addressed as aforesaid or if sent by fax message to such fax number (if any) as may be specified as aforesaid and shall be deemed to be given or made:

- (a) if delivered by hand - at the time of delivery;
- (b) if sent by post - forty eight hours after the same shall have been posted;
- (c) if sent by fax - at the time of termination of the fax transmission.

APPENDIX 1

Project Details

Title of Local Training Initiative:

Location:

Sponsor Name: (Full Legal title):

Registered Address of Sponsor:

Course Code:

Number of Training Places:

Name of award being delivered:

BREAKDOWN OF MODULES TO BE DELIVERED

APPENDIX 2

Appendix of ETB Funding

Financial Supports and Conditions

Subject to compliance by the Second Provider with the terms and conditions of this Agreement, the ETB shall pay Funding to the Second Provider of up to **€91,145.76** for the Initial Term for the purpose of running a Local Training Initiative.

Funding for any Extended Term shall be as agreed between the ETB and the Second Provider.

Payment will be made on a monthly basis following submission and approval by the ETB of a monthly claim form (in a format approved by the ETB) and will be in respect of:

1. Staff costs

A budget of up to **€32,915.76** is available to cover the cost of a Coordinator and/or Assistant Coordinator. An initial once-off advance to cover the cost of the first 6 weeks wages of a Coordinator and/or Assistant Coordinator may be payable on the Commencement Date. For the avoidance of doubt any such advance payment will be offset by the non-payment of the wages of a Coordinator and/or Assistant Coordinator in the last 6 weeks of the Project.

2. Running costs

A budget of up to **€58,230** available to cover normal running costs incurred in delivering the Training Programme.

APPENDIX 3

Procurement Thresholds for Local Training Initiatives

Quotation Thresholds Inclusive of VAT		
Threshold	Type of Contract	Procedure
Less than €500	Supplies or Services	A receipt or invoice is required.
≥ €500 & < €1,000	Works, Supplies or Services	At least one written quote * is required.
≥ €1,000 & < €5,000	Works, Supplies or Services	At least two relevant and written quotes* to be solicited.
≥ €5,000 & < €25,000 ** ** See ICT Projects below	Supplies or Services	Three relevant and written quotes * to be solicited.
≥ €5,000 & < €50,000	Works	Five Relevant Quotes * to be solicited.
Tenders Below EU Thresholds Inclusive of VAT		
>€10,000	ICT Projects as per circular 2/09 & 2/11	eTenders
≥ €25,000 up to OJEU Threshold	Supplies or Services	eTenders / Framework / Restricted tendering in exceptional circumstances
≥ €50,000 up to OJEU Threshold	Works	eTenders / Framework
Tenders above EU Thresholds Exclusive of VAT		
Supplies & Services	Works	Procedure
€200,000	€5,000,000	OJEU
* An email is acceptable for receipt of a quote		

Appendix 4

EUROPEAN SOCIAL FUND (ESF) REQUIREMENTS

The Addendum to the LTI 'Agreement to Collaborate' and Supporting Documentation, which came into effect on 18 March 2013, consists of the following ESF requirements:

1. The LTI project must have its own individual bank account. The ETB will grant aid the costs of the coordinator/assistant coordinator and running costs on a vouched reimbursement basis to a dedicated bank account maintained, for each separate project, by the sponsor/project.

2. The LTI will comply with ESF documentation retention requirements as communicated to them by the ETB. Until otherwise notified by the ETB, all LTI documents/records to be retained until December 2022. (LTI documents/records include but are not limited to timesheets, invoices, banks records etc.)

3. The LTI must adhere to the requirements in relation to participant attendance records. Where paper records are maintained, the 'Weekly Attendance Sheet' must be used to ensure compliance.

4. Where funding is received as a contribution towards the running costs of the LTI, either in the form of earned income or secondary grant-aiding, it must be offset as income in the monthly LTI claim. Where such funding is received to fund specific costs, both the costs and the income must be excluded from any claim submitted to the ETB for re-imbursement. All monthly claims must be submitted on the Monthly Claim Form.

5. The LTI must comply with public procurement guidelines when purchasing goods and services. Please refer to <http://www.procurement.ie/> for details and Appendix 3-Procurement Thresholds for LTIs.

6. The LTI must comply with Public Service T&S regulations when reimbursing necessary travel and allowance expenses. All expenses must be recorded on the approved Travel and Subsistence claim form in order to be reimbursed. Please refer to <http://www.finance.gov.ie/> for details of Public Service T&S regulations.

7. The LTI must provide written confirmation, at year end, of the amount of the ETB Float that they have received and that it has been disclosed in their Balance Sheet under Creditors (annual audited company accounts).

8. The LTI must ensure they are adhering to **all** statutory taxation obligations. Full details of these obligations can be found on www.revenue.ie

9. The maximum expenditure reimbursable is as agreed with the ETB. The LTI will **only** be reimbursed actual costs expended under the relevant budget heading and supported by an invoice that has been duly authorised and paid by the LTI. In order to ensure reimbursements can be made, prior written authorisation from the ETB is required for non-routine expenditure to ensure expenditure is allowable and properly coded.

10. In respect of outstanding cheques (paid but not cashed), in addition to the cheque number and amount, the date the cheque was written must also be provided on the bank reconciliation statement. Any outstanding cheques must be written back and deducted from the monthly claim when six months have expired.

IN WITNESS whereof the parties have entered into this Agreement on the date specified above.

SIGNED
on behalf of **Waterford and Wexford** Education
and Training Board
by its authorised signatory
in the presence of:

Witness (Signature)

Print name

Date

Authorised Signatory (Signature)

Print name

Date

SIGNED
on behalf of SECOND PROVIDER
by its authorised signatory
in the presence of:

Witness (Signature)

Print name

Date

Authorised Signatory (Signature)

Print name

Date