

### 3. Copies of Service Level Agreement

SOLAS and Education and Training Boards enter into an “Agreement to Collaborate” with individual STP centres, including NLN centres. Two examples of the “Agreement to Collaborate”, one each for 2011 and for 2012, are attached.

**Training Standards System**

**AN FORAS ÁISEANNA SAOTHAIR**

and

**National Learning Network**

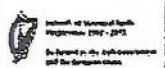
**AGREEMENT TO COLLABORATE FOR PROVISION OF A  
SPECIALIST TRAINING CENTRE**

(Conditions of Agreement)

William Fry  
Solicitors  
Fitzwilton House  
Wilton Place  
Dublin 2  
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010558.0001.SOD/GJL



THIS AGREEMENT is made on 14<sup>th</sup> Day of June 2011

BETWEEN:

AN FORAS ÁISEANNA SAOTHAIR  
having its principal place of business at  
27-33 Upper Baggot Street, Dublin 4  
(hereinafter referred to as "FÁS")

- and -

National Learning Network  
having its registered office at  
Roslyn Park, Beach Road, Sandymount Dublin 4.  
(hereinafter referred to as  
the "Second Provider")

RECITALS:

- A. The Second Provider operates a Specialist Training Centre (as hereinafter defined) at Grafton Court, Longford.
- B. The Second Provider has agreed to conduct certain training programme(s), funded by FÁS at the Specialist Training Centre, 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 Specialist Training Centre 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 FÁS and the Second Provider in respect of the provision of specialist training at the Specialist Training Centre.

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 “**Award Body**”, each of FETAC, HETAC and/or any other body providing course certification and which has been approved by FÁS;

1.1.2 “**Business Day**”, a day (other than a Saturday or Sunday) upon which clearing banks are open for business in Dublin;

1.1.3 “**Centre**” or “**Specialist Training Centre**”, the specialist training centre established/to be established by the Second Provider at which the Training Programme(s) is carried out/is proposed to be carried out;

1.1.4 “**Commencement Date**”, 3<sup>rd</sup> January 2011;

1.1.5 “**Data Protection Acts**”, the Data Protection Acts 1988 to 2003 as may be amended;

1.1.6 “**Equipment**”, plant, machinery, training equipment and other materials used by the Second Provider for the purposes of the Centre and/or the Training Programme(s);

1.1.7 “**Extended Term**”, any period after the Initial Term for which this Agreement remains in force pursuant to Clause 22.2;

1.1.8 “**FÁS Schedule of Agreement**”, the schedule of information signed by both FÁS and the Second Provider which sets out the Training Activity and the Funding and as contained at Appendix I hereto;

1.1.9 “**Funding**”, the funding provided by FÁS to the Second Provider pursuant to this Agreement as same may be amended from time to time;

1.1.10 “**HSA**”, the Health and Safety Authority;

1.1.11 “**Initial Term**”, the period of 12 months following the Commencement Date;



- 1.1.12 “**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;
- 1.1.13 “**Landlord**”, the owner of the Premises;
- 1.1.14 “**Learners**”, those individuals receiving training under the Training Programme(s);
- 1.1.15 “**Operating Standards**”, the Operating Standards for the Specialist Training Centre, as may be amended, varied or supplemented by FÁS from time to time;
- 1.1.16 “**Personnel**”, the staff of the Second Provider involved in the provision and delivery of the Training Programme as set out in the Operating Standards, including the General Manager, Instructors, Trainers and Clerical Officer;
- 1.1.17 “**Premises**”, the premises at which the Centre operates/is proposed to operate;
- 1.1.18 “**Term**”, the period from the date of execution of this Agreement until the expiry of the Initial Term or, if applicable, the Extended Term;
- 1.1.19 “**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 FÁS Schedule of Agreement;
- 1.1.20 “**Training Allowances**”, the training allowances and other costs incurred in respect of the Learners as determined by FÁS and set out in further detail in the Operating Standards;
- 1.1.21 “**Training Programme(s)**”, the training programme(s) funded by FÁS for Learners at the Centre, conducted in accordance with the terms contained in

the FÁS Schedule of Agreement and as approved by FÁS prior to entering into this Agreement, as may be amended, varied or supplemented from time to time with the written consent of FÁS;

1.1.22 "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

1.1.23 "2005 Act", the Safety, Health and Welfare at Work Act 2005 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 FÁS) 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 Centre

- 4.1 The Second Provider hereby agrees that in consideration of the Funding provided by FÁS it shall operate the Centre and shall provide the Training Programme(s) at the Centre with effect from the Commencement Date.
- 4.2 Subject to Clause 4.3, the Second Provider shall operate the Centre and shall provide the Training Programme(s) in the manner set out in the FÁS Schedule of Agreement and in accordance with the terms and conditions of this Agreement, the Operating Standards and the conditions and objectives of the Specialist Training Centre as communicated by FÁS to the Second Provider from time to time.
- 4.3 The Second Provider acknowledges that FÁS may from time to time (whether before or after the Commencement Date) amend or vary the Training Programme(s) and/or the Operating Standards. All such amendments or variations shall be notified to the Second Provider in writing by FÁS 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 co-operate with FÁS 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 Standards. 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 23.
- 4.6 The Second Provider may in exceptional circumstances with the prior written consent of FÁS (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 FÁS; it is acknowledged that it shall be a prerequisite to any such appointment of a sub-contractor as Trainer that the appointee meet FÁS' standards and requirements as described in the Operating Standards;
- 4.6.2 the Second Provider undertakes and covenants to adhere to all procurement guidelines as notified to it by FÁS from time to time; and
- 4.6.3 the Second Provider shall fully indemnify and hold FÁS 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, FÁS shall pay Funding to the Second Provider for the Initial Term of up to €702,932.00 as set out in the FÁS Schedule of Agreement, payable monthly in arrears in accordance with the Operating Standards. Funding for any Extended Term shall be as may be agreed between FÁS and the Second Provider.
- 5.2 Pending full compliance by the Second Provider with the terms of this Agreement, FÁS 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 FÁS acting reasonably, the Second Provider fails to adequately observe any of the terms or conditions of this Agreement (including the Operating Standards).

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## **6. Proof of Incorporation or Registration**

- 6.1 The Second Provider shall forward to FÁS 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.
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## 7. Quality Assurance

7.1 The Second Provider undertakes to adhere to quality assurance policies and procedures as required by FÁS 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 FÁS. The Second Provider shall provide FÁS, or any entity or person authorised by FÁS, with access to and/or copies of any records which are required as part of the FÁS quality assurance policy and procedures.

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## 8. Premises

8.1 The Second Provider shall produce to FÁS 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 FÁS 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 FÁS fully in respect of any such claim howsoever arising.

## **9. Facilities**

9.1 The Second Provider shall provide the training facilities at the Centre, including where deemed necessary by FÁS, 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 Centre.

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 Centre.

9.4 The Second Provider shall use all reasonable endeavours to ensure that the facilities at the Centre meet the accessibility requirements of current legislation.

## **10. Learner Recruitment**

10.1 FÁS has the primary interest in the selection of the Learners. The Second Provider shall however, if requested by FÁS, assist in the interview and selection of the Learners and shall maintain records of the interview and selection process as specified in the Operating Standards. 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 FÁS.

## 11. Insurance

The Second Provider hereby agrees that at all times there shall be in force adequate policies of all insurances appropriate to the employment of people, the supply of services, professional indemnity or any other matters arising out of this Agreement in respect of all Learners on the Training Programme(s), irrespective of whether the Learners receive training from the Second Provider or from sub-contractors.

## 12. Indemnity

12.1 FÁS 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).

12.2 The Second Provider shall fully indemnify and hold harmless FÁS 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 Centre or in respect of any breach of this Agreement by the Second Provider.

## 13. Intellectual Property

13.1 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 FÁS and shall immediately vest in FÁS. The parties acknowledge and agree that no party (other than FÁS) shall be entitled to exploit such IPR without the prior written consent of FÁS.

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

## 14. Records

14.1 The Second Provider shall securely maintain:

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

- 14.1.2 proper books of account, records of all payment and receipts in respect of the Centre 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 Centre and the Training Programme(s) at any particular time;
- 14.1.3 quality assurance records relating to the Training Programme(s) provided under this Agreement, in such form as FÁS may require;
- 14.1.4 records relating to the recruitment and/or selection and training of Personnel;
- 14.1.5 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;
- 14.1.6 book of attendance in relation to the Learners; and
- 14.1.7 such other records as FÁS may reasonably determine from time to time.

**15. Rights of Access**

- 15.1 The Second Provider shall grant officials of FÁS, 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.



15.2 The Second Provider shall reply satisfactorily to any queries submitted by FÁS, 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 and 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.

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

## 16. Data Protection

16.1 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.

16.2 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 FÁS, 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.

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## 17. Freedom of Information

The Second Provider shall, where requested so to do, promptly give to FÁS 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.

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**18. Health and Safety**

- 18.1 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 Centre in accordance with its duties and responsibilities pursuant to the 2005 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 2005 Act. The Second Provider shall annually carry out self-assessment checks of its compliance with the foregoing obligations and, on request by FÁS, shall certify such compliance to FÁS.
- 18.2 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.
- 18.3 Notwithstanding the statutory reporting requirements of the Second Provider, the Second Provider hereby covenants and undertakes to inform FÁS 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.

**19. Discontinuation of Training**

- 19.1 If FÁS and/or the Second Provider considers that a Learner is no longer willing or has become unable to attend, or if FÁS and/or the Second Provider decides that the Learner should not attend or continue to attend the Training Programme(s), FÁS may, at its absolute discretion, give or confirm notice of that fact to the Second Provider and FÁS 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.
- 19.2 The Second Provider shall notify FÁS immediately upon suspending a Learner during the period of a Training Programme, it being acknowledged that FÁS has the sole right to dismiss a Learner during such period.



**20. 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 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 FÁS may deem appropriate from time to time.

**21. No Agency**

The Second Provider shall not represent itself as the agent or legal representative of FÁS 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 FÁS in any way whatsoever except as herein provided.

**22. Term**

22.1 This Agreement shall commence on the date of execution hereof and shall continue for the Initial Term subject to the terms and conditions of this Agreement including but not limited to Clause 23 hereof.

22.2 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 23 hereof.

**23. Termination of Agreement**

23.1 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 30 days before the expiration of the Initial Term. If neither party terminates this Agreement in accordance with Clause 23.1, either party may terminate this Agreement at any time during the Extended Term by giving not less than 30 days written notice of termination to the other party of this Agreement.

23.2 Notwithstanding Clauses 23.1 above, FÁS shall have the right by giving written notice to the Second Provider to terminate the Agreement immediately at any time if:

23.2.1 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;

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

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

23.2.4 the Centre and/or the Training Programme(s) does not sustain the number of positions and/or Learners within the time outlined in the Operating Standards and/or the FÁS Schedule of Agreement, provided that FÁS has given the Second Provider four weeks' notice in writing of its intention to terminate on this ground; or

23.2.5 any of the events described in Clause 23.3 occur.

23.3 The Second Provider shall notify FÁS in writing immediately upon the occurrence of any of the following:

23.3.1 where the Second Provider is a partnership, any partner in the Second Provider is adjudged a bankrupt;

23.3.2 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

23.3.3 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.

23.4 Upon the termination of this Agreement for any reason:

- 23.4.1 any rights of action or remedy which shall have accrued or shall thereupon accrue to FÁS shall not be prejudiced or affected;
- 23.4.2 FÁS shall not be required to make any further Funding payments;
- 23.4.3 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 FÁS (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
- 23.4.4 the Second Provider shall, if requested, immediately give to FÁS any Record relating to this Agreement or any service provided pursuant to this Agreement or any record requested pursuant to Clauses 15.

## **24. Statutory Obligations**

- 24.1.1 The Second Provider shall comply with all relevant statutory provisions relating to the contents of this Agreement.
- 24.1.2 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 Centre. A current Tax Clearance Certificate or evidence of Charitable Status as appropriate shall be provided to FÁS prior to the Commencement Date.
- 24.1.3 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 of Standard Personal Retirement Savings Account to Personnel during the operation of the Centre.

## **25. General Provisions**

### **25.1 Binding on Successors**



relating to the Centre or the Training Programme(s) under this Agreement shall be made.

#### 25.7 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.

#### 25.8 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.

#### 25.9 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.

#### 25.10 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.

#### 25.11 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.

#### 25.12 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.

#### 25.13 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 Standards, the provisions of this Agreement shall prevail, followed by the provisions of the Operating Standards, followed by FÁS quality assurance policies and procedures in particular all aspects thereof applying to Second Providers.

#### 25.14 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 FÁS 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 25.15 and/or Clause 25.16.

#### 25.15 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.



25.16 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 25.14 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 FÁS 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 FÁS or otherwise.

25.17 Notices

25.17.1 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.

25.17.2 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.

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

SIGNED  
on behalf of AN FORAS ÁISEANNA  
SAOTHAIR  
by its authorised signatory  
in the presence of:

Marion McDonnell  
Witness (Signature)

Marion McDonnell  
Print name

FAS, Beggot St  
Print address

[Signature]  
Authorised Signatory (Signature)

DENIS RUWAN 24/6/11  
Print name

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

[Signature]  
Witness (Signature)

VICKY O GRADY  
Print name

cb RENASCENCE SANDYMOUNT, DK  
Print address

[Signature]  
Authorised Signatory (Signature)

KEITH POOLE  
Print name

## FÁS Schedule of Agreement

**Specialist Training Centre**

**Ref. No. 2011/STP/AT05S/A1**

**1 Provider's Details**

**Name** National Learning Network

**Address** Roslyn Park

Beach Road

Sandymount Dublin 4

**2 Centre Location(s)**

Grafton Court	Longford

**3 Training Places**

Level(s)	Number of learners
Employer Based Training	12
Fresh Start	10
Catering	12
Horticulture	13
<b>Total No. of Training Places</b>	<b>47</b>

**4 Training Activity**

An agreed Training Programme Specification (TS) must be attached for all programmes specified below.

Programme Title <sup>1</sup>	Certification level)	Duration (weeks)	Training Days (No.)	Programme Delivery Type (e.g. EBT, CBT or DL)
Employer Based Training	FETAC	52	3,132	EBT
Fresh Start	FETAC ECDL	52	2,610	CBT

<sup>1</sup> As per Programme Title on agreed TS

Catering	FETAC	52	3,132	CBT
Horticulture	FETAC (Teagasc)	52	3,393	CBT

5 Training Outcomes

	IST	SST
% Placement	20	50
% Progression	60	35
% Attainment of Certification	80	80

6 Funding

- a. Funding, under this Agreement, will commence 3<sup>rd</sup> January, 2011 and terminate 31<sup>st</sup> December, 2011
- b. FÁS will fund this Programme up to a maximum of €702,932.00 as follows:

	euro
ALLOCATION PER TRAINING PLACE	14956
TOTAL ALLOCATION	47

7 Ratio of learners to Trainers:

<i>Employer based training (EBT)</i>	12:1
<i>In Centre based training (CBT)</i>	12:1
<i>Distance learning (DL)</i>	

8 Contact Person

Name	Mr. Tom Flanagan
Title	National Learning Network Manager
Address	6 Grafton Court Longford
Telephone Number	043 42255
Fax Number	043 42255
E-mail Address	longford@nln.ie



AN FORAS ÁISEANNA SAOTHAIR  
and  
NATIONAL LEARNING NETWORK  
KILDARE

**AGREEMENT TO COLLABORATE FOR PROVISION OF A  
SPECIALIST TRAINING CENTRE**

(Conditions of Agreement)



THIS AGREEMENT is made on 24<sup>th</sup> May 2012

BETWEEN:

AN FORAS ÁISEANNA SAOTHAIR  
having its principal place of business at  
27-33 Upper Baggot Street, Dublin 4  
(hereinafter referred to as "FÁS")

- and -

NATIONAL LEARNING NETWORK, LONGFORD  
having its registered office at  
ROSLYN PARK, BEACH RAOD, SANDYMOUNT, DUBLIN  
4  
(hereinafter referred to as  
the "Second Provider")

RECITALS:

- A. The Second Provider operates a Specialist Training Centre (as hereinafter defined) at 1st Floor, Naas Shopping Centre, Naas, Co Kildare.
- B. The Second Provider has agreed to conduct certain training programme(s), funded by FÁS at the Specialist Training Centre, 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 Specialist Training Centre 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 FÁS and the Second Provider in respect of the provision of specialist training at the Specialist Training Centre.

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 “**Award Body**”, each of FETAC, HETAC and/or any other body providing course certification and which has been approved by FÁS;

1.1.2 “**Business Day**”, a day (other than a Saturday or Sunday) upon which clearing banks are open for business in Dublin;

1.1.3 “**Centre**” or “**Specialist Training Centre**”, the specialist training centre established/to be established by the Second Provider at which the Training Programme(s) is carried out/is proposed to be carried out;

1.1.4 “**Commencement Date**”, 2<sup>nd</sup> January 2012

1.1.5 “**Data Protection Acts**”, the Data Protection Acts 1988 to 2003 as may be amended;

1.1.6 “**Equipment**”, plant, machinery, training equipment and other materials used by the Second Provider for the purposes of the Centre and/or the Training Programme(s);

1.1.7 “**Extended Term**”, any period after the Initial Term for which this Agreement remains in force pursuant to Clause 22.2;

1.1.8 “**FÁS Schedule of Agreement**”, the schedule of information signed by both FÁS and the Second Provider which sets out the Training Activity and the Funding and as contained at Appendix 1 hereto;

1.1.9 “**Funding**”, the funding provided by FÁS to the Second Provider pursuant to this Agreement as same may be amended from time to time;

1.1.10 “**HSA**”, the Health and Safety Authority;

1.1.11 “**Initial Term**”, the period of 12 months following the Commencement Date;

- 1.1.12 “**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;
- 1.1.13 “**Landlord**”, the owner of the Premises;
- 1.1.14 “**Learners**”, those individuals receiving training under the Training Programme(s);
- 1.1.15 “**Operating Standards**”, the Operating Standards for the Specialist Training Centre, as may be amended, varied or supplemented by FÁS from time to time;
- 1.1.16 “**Premises**”, the premises at which the Centre operates/is proposed to operate;
- 1.1.17 “**Term**”, the period from the date of execution of this Agreement until the expiry of the Initial Term or, if applicable, the Extended Term;
- 1.1.18 “**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 FÁS Schedule of Agreement;
- 1.1.19 “**Training Allowances**”, the training allowances and other costs incurred in respect of the Learners as determined by FÁS and set out in further detail in the Operating Standards;
- 1.1.20 “**Training Programme(s)**”, the training programme(s) funded by FÁS for Learners at the Centre, conducted in accordance with the terms contained in the FÁS Schedule of Agreement and as approved by FÁS prior to entering into this Agreement, as may be amended, varied or supplemented from time to time with the written consent of FÁS;



1.1.21 “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

1.1.22 “2005 Act”, the Safety, Health and Welfare at Work Act 2005 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 FÁS) 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 Centre**

- 4.1 The Second Provider hereby agrees that in consideration of the Funding provided by FÁS it shall operate the Centre and shall provide the Training Programme(s) at the Centre with effect from the Commencement Date.
- 4.2 Subject to Clause 4.3, the Second Provider shall operate the Centre and shall provide the Training Programme(s) in the manner set out in the FÁS Schedule of Agreement and in accordance with the terms and conditions of this Agreement, the Operating Standards and the conditions and objectives of the Specialist Training Centre as communicated by FÁS to the Second Provider from time to time.
- 4.3 The Second Provider acknowledges that FÁS may from time to time (whether before or after the Commencement Date) amend or vary the Training Programme(s) and/or the Operating Standards. All such amendments or variations shall be notified to the Second Provider in writing by FÁS 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 co-operate with FÁS to implement the Training Programme(s) as agreed.
- 4.5 The Second Provider hereby covenants and agrees that the appointment of all Trainers will be in accordance with the Operating Standards. 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 23.
- 4.6 The Second Provider may in exceptional circumstances with the prior written consent of FÁS (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 FÁS; it is acknowledged that it shall be a pre-requisite to any such appointment of a sub-contractor as Trainer that the appointee meet FÁS' standards and requirements as described in the Operating Standards;
- 4.6.2 the Second Provider undertakes and covenants to adhere to all procurement guidelines as notified to it by FÁS from time to time; and
- 4.6.3 the Second Provider shall fully indemnify and hold FÁS 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, FÁS shall pay Funding to the Second Provider for the Initial Term of up to €702,932 as set out in the FÁS Schedule of Agreement, payable monthly in arrears in accordance with the Operating Standards. Funding for any Extended Term shall be as may be agreed between FÁS and the Second Provider.
- 5.2 Pending full compliance by the Second Provider with the terms of this Agreement, FÁS 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 FÁS acting reasonably, the Second Provider fails to adequately observe any of the terms or conditions of this Agreement (including the Operating Standards).

## **6. Proof of Incorporation or Registration**

- 6.1 The Second Provider shall forward to FÁS 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 FÁS 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 FÁS. The Second Provider shall provide FÁS, or any entity or person authorised by FÁS, with access to and/or copies of any records which are required as part of the FÁS quality assurance policy and procedures.

## **8. Premises**

8.1 The Second Provider shall produce to FÁS 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 FÁS 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 FÁS fully in respect of any such claim howsoever arising.

## **9. Facilities**

9.1 The Second Provider shall provide the training facilities at the Centre, including where deemed necessary by FÁS, 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 Centre.

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 Centre.

9.4 The Second Provider shall use all reasonable endeavours to ensure that the facilities at the Centre meet the accessibility requirements of current legislation.

## **10. Learner Recruitment**

10.1 FÁS has the primary interest in the selection of the Learners. The Second Provider shall however, if requested by FÁS, assist in the interview and selection of the Learners and shall maintain records of the interview and selection process as specified in the Operating Standards. 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 FÁS.

## **11. Insurance**

The Second Provider hereby agrees that at all times there shall be in force adequate policies of all insurances appropriate to the employment of people, the supply of services, professional indemnity or any other matters arising out of this Agreement in respect of all Learners on the Training Programme(s), irrespective of whether the Learners receive training from the Second Provider or from sub-contractors.

## **12. Indemnity**

12.1 FÁS 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).

12.2 The Second Provider shall fully indemnify and hold harmless FÁS 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 Centre or in respect of any breach of this Agreement by the Second Provider.

## **13. Intellectual Property**

13.1 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 FÁS and shall immediately vest in FÁS. The parties acknowledge and agree that no party (other than FÁS) shall be entitled to exploit such IPR without the prior written consent of FÁS.

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

## **14. Records**

14.1 The Second Provider shall securely maintain:

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



- 14.1.2 proper books of account, records of all payment and receipts in respect of the Centre 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 Centre and the Training Programme(s) at any particular time;
- 14.1.3 quality assurance records relating to the Training Programme(s) provided under this Agreement, in such form as FÁS may require;
- 14.1.4 records relating to the recruitment and/or selection and training of personnel and Trainers;
- 14.1.5 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, Trainers, Learners and/or sub-contractors;
- 14.1.6 book of attendance in relation to the Learners; and
- 14.1.7 such other records as FÁS may reasonably determine from time to time.

## **15. Rights of Access**

- 15.1 The Second Provider shall grant officials of FÁS, 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.

15.2 The Second Provider shall reply satisfactorily to any queries submitted by FÁS, 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 and 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.

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

## **16. Data Protection**

16.1 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.

16.2 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 FÁS, 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.

## **17. Freedom of Information**

The Second Provider shall, where requested so to do, promptly give to FÁS 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.



**18. Health and Safety**

- 18.1 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 Centre in accordance with its duties and responsibilities pursuant to the 2005 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 2005 Act. The Second Provider shall annually carry out self-assessment checks of its compliance with the foregoing obligations and, on request by FÁS, shall certify such compliance to FÁS.
- 18.2 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.
- 18.3 Notwithstanding the statutory reporting requirements of the Second Provider, the Second Provider hereby covenants and undertakes to inform FÁS 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.

**19. Discontinuation of Training**

- 19.1 If FÁS and/or the Second Provider considers that a Learner is no longer willing or has become unable to attend, or if FÁS and/or the Second Provider decides that the Learner should not attend or continue to attend the Training Programme(s), FÁS may, at its absolute discretion, give or confirm notice of that fact to the Second Provider and FÁS 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.
- 19.2 The Second Provider shall notify FÁS immediately upon suspending a Learner during the period of a Training Programme, it being acknowledged that FÁS has the sole right to dismiss a Learner during such period.



**20. 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 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 FÁS may deem appropriate from time to time.

**21. No Agency**

The Second Provider shall not represent itself as the agent or legal representative of FÁS 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 FÁS in any way whatsoever except as herein provided.

**22. Term**

22.1 This Agreement shall commence on the date of execution hereof and shall continue for the Initial Term subject to the terms and conditions of this Agreement including but not limited to Clause 23 hereof.

22.2 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 23 hereof.

**23. Termination of Agreement**

23.1 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 30 days before the expiration of the Initial Term. If neither party terminates this Agreement in accordance with Clause 23.1, either party may terminate this Agreement at any time during the Extended Term by giving not less than 30 days written notice of termination to the other party of this Agreement.

- 23.2 Notwithstanding Clauses 23.1 above, FÁS shall have the right by giving written notice to the Second Provider to terminate the Agreement immediately at any time if:
- 23.2.1 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;
  - 23.2.2 the Second Provider assigns, transfers or novates or attempts to assign, transfer or novate this Agreement without the prior written consent of FÁS;
  - 23.2.3 the Second Provider alters or attempts to alter the terms of this Agreement without the prior written consent of FÁS;
  - 23.2.4 the Centre and/or the Training Programme(s) does not sustain the number of positions and/or Learners within the time outlined in the Operating Standards and/or the FÁS Schedule of Agreement, provided that FÁS has given the Second Provider four weeks' notice in writing of its intention to terminate on this ground; or
  - 23.2.5 any of the events described in Clause 23.3 occur.
- 23.3 The Second Provider shall notify FÁS in writing immediately upon the occurrence of any of the following:
- 23.3.1 where the Second Provider is a partnership, any partner in the Second Provider is adjudged a bankrupt;
  - 23.3.2 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
  - 23.3.3 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.
- 23.4 Upon the termination of this Agreement for any reason:

- 23.4.1 any rights of action or remedy which shall have accrued or shall thereupon accrue to FÁS shall not be prejudiced or affected;
- 23.4.2 FÁS shall not be required to make any further Funding payments;
- 23.4.3 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 FÁS (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
- 23.4.4 the Second Provider shall, if requested, immediately give to FÁS any Record relating to this Agreement or any service provided pursuant to this Agreement or any record requested pursuant to Clauses 15.

## **24. Statutory Obligations**

- 24.1.1 The Second Provider shall comply with all relevant statutory provisions relating to the contents of this Agreement.
- 24.1.2 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 Centre. A current Tax Clearance Certificate or evidence of Charitable Status as appropriate shall be provided to FÁS prior to the Commencement Date.
- 24.1.3 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 of Standard Personal Retirement Savings Account to personnel during the operation of the Centre.

## **25. General Provisions**

- 25.1 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.

25.2 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.

25.3 No Partnership

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

25.4 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.

25.5 Acknowledgement of FÁS

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 FÁS in supporting the Centre and/or the Training Programme(s). All acknowledgements made by the Second Provider shall be approved in advance by FÁS and where so approved all publications, materials, application forms, information, documentation and signs should include the FÁS logo, and comply with the FÁS "Brand Manual and Identity Guidelines" as may apply from time to time.

25.6 Announcements

Without prejudice to Clause 25.5 and save with the consent of FÁS, no announcements, publications, promotional, marketing or sales materials whatsoever

relating to the Centre or the Training Programme(s) under this Agreement shall be made.

#### 25.7 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.

#### 25.8 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.

#### 25.9 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.

#### 25.10 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.

#### 25.11 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.

#### 25.12 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.

#### 25.13 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 Standards, the provisions of this Agreement shall prevail, followed by the provisions of the Operating Standards, followed by FÁS quality assurance policies and procedures in particular all aspects thereof applying to Second Providers.

#### 25.14 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 FÁS 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 25.15 and/or Clause 25.16.

#### 25.15 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.



25.16 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 25.14 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 FÁS 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 FÁS or otherwise.

25.17 Notices

25.17.1 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.

25.17.2 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.

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

SIGNED  
on behalf of AN FORAS ÁISEANNA  
SAOTHAIR  
by its authorised signatory  
in the presence of:

Ray Kelly  
Witness (Signature)  
Ray Kelly  
Print name  
Ray Kelly  
Print address

[Signature]  
Authorised Signatory (Signature)  
NENI ROWAN 8/6/12  
Print name

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

[Signature]  
Witness (Signature)  
VICKY O GRADY  
Print name  
C/O REOLAS GROUP, SANDYMOUNT, DU  
Print address

[Signature]  
Authorised Signatory (Signature)  
KEITH POOLE  
Print name

## APPENDIX 1

### FÁS Schedule of Agreement

**Specialist Training Centre**

**Ref. No. 2012/STP/ATO2S/S6**

**1 Provider's Details**

Name	National Learning Network
Address	Roslyn Park
	Beach Road
	Sandymount, Dublin 4

**Centre Location(s)**

1 <sup>st</sup> Floor Shopping Centre,	Naas, Co Kildare

**3 Training Places**

Level(s)	Number of learners
Employer Based Training	12
Fresh Start	11
JobStart	12
IT & Business Skills	12
<b>Total No. of Training Places</b>	<b>47</b>

**4 Training Activity**

An agreed Training Programme Specification (TS) must be attached for all programmes specified below.

	Programme Title <sup>1</sup>	Certification level)	Duration (weeks)	Training Days (No.)	Programme Delivery Type (e.g. EBT, CBT or DL)
	Employer Based Training	FETAC ✓	52	3132	EBT
	Fresh Start	FETAC ECDL ✓	52	2871	CBT

<sup>1</sup> As per Programme Title on agreed TS



JobStart	FETAC	78	52	3132	CBT
IT & Business Skills	FETAC & ECDL	104	52	3132	CBT

5 Training Outcomes

	IST	SST
% Placement	20	50
% Progression	60	35
% Attainment of Certification	80	80

6 Funding

- a. Funding, under this Agreement, will commence 2<sup>nd</sup> January 2012 and terminate 31<sup>st</sup> December 2012
- b. FÁS will fund this Programme up to a maximum of € 702,932 as follows:

	euro
ALLOCATION PER TRAINING PLACE	14,956
TOTAL ALLOCATION	47

7 Ratio of learners to Trainers:

*Employer based training (EBT)* 10:1  
*In Centre based training (CBT)* 12:1  
*Distance learning (DL)*

8 Contact Person

Name	Mr Vincent Kelly
Title	National Learning Network
Address	Area Manager
	1 <sup>st</sup> Floor Shopping Centre
	Naas
	Co Kildare
Telephone Number	045 988400
Fax Number	045 437600
E-mail Address	<a href="mailto:kildare@nlm.ie">kildare@nlm.ie</a>

