

**GATEWAY MEMORANDUM OF UNDERSTANDING  
2020-2022**

**Between**

**Infrastructure ITO Incorporated (“Connexis”)**

**and**

**(“the School”)**

## **PARTIES**

**INFRASTRUCTURE INDUSTRY TRAINING ORGANISATION INCORPORATED** (“Connexis”) and having its registered address at Level 13, Simpl House, 40 Mercer Street, Wellington 6011

## **AND**

(“the school”), having its registered address at

## **BACKGROUND**

- A. Connexis is recognised as an Industry Training Organisation providing industry standards, training coordination and quality assurance services to the Civil Construction, Electricity Supply, Telecommunications and Water Supply industries.
- B. The Parties wish to enter into an agreement to support the introduction and maintenance of a Connexis Gateway programme, as applied to workplace-based learning. This Agreement and Schedules set out the terms and the scope of the services to be provided by the Parties.

## **IT IS AGREED**

### **1. Definitions and interpretation**

1.1. In this Agreement:

- (a) **Agreement** means this agreement and includes any Schedules and annexures to this agreement;
- (b) **CMRs** means consent and moderation requirements;
- (c) **Confidential Information** means the terms of this Agreement and any information that is not public knowledge and that is obtained from the other Party in the course of, or in connection with, this Agreement;
- (d) **Intellectual Property** includes all rights to and any interest in (i) patents, patent applications, registrations and applications for registration thereof; (ii) trademarks, trade or business names (including, without limitation, domain names, logos, marks or styles), and registrations and applications for registration thereof; (iii) copyrights and registrations and applications for registration thereof; (iv) computer software (including, without limitation, in source and object code), programs, data and documentation; (v) trade secrets and confidential business information, know-how, research and development information, copyrightable works, financial, marketing and business data, pricing and cost information, specifications, designs, marketing plans and customer lists and information or other matter or thing, existing or conceived, used, developed or produced by any person; and (vi) other proprietary rights or forms of intellectual property related to the foregoing.
- (e) **NZQA** means the New Zealand Qualifications Authority;
- (f) **Programme** means a Connexis-approved programme (including products and services) listed in a Schedule;

- (g) **Schedule** means a schedule to this Agreement setting out programmes, products and services agreed between the Parties in accordance with clause 3;
- (h) **TEC** means the Tertiary Education Commission;
- (i) **Working Day** means any day (other than a Saturday, Sunday or a public holiday) in Wellington.

1.2. **Interpretation:** In this Agreement:

- (a) clause and other headings are for ease of reference only and do not affect the interpretation of this Agreement;
- (b) words in the singular include the plural and vice versa;
- (c) a reference to:
  - (i) a party to the Agreement includes that party's permitted assigns;
  - (ii) a person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
  - (iii) "including" and similar words do not imply any limit;
  - (iv) a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them; and
- (d) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

2. **Term**

This Agreement will be in effect for the calendar year of [ ], unless terminated earlier in accordance with clause 7.

3. **Schedules**

- 3.1. From time to time during the Term, the Parties may agree, and record in a Schedule, on Programmes to be provided under this Agreement, pricing for those Programmes and the range of organisations to which the Programmes apply.
- 3.2. Each Schedule shall come into effect on the date it is signed by both Parties or such later date as the Parties agree.
- 3.3. A Schedule shall remain in effect until this Agreement terminates, unless terminated earlier by the Parties.

#### 4. Obligations of the school

The school agrees to:

- (a) Provide a student enrolment form for each student enrolled into the programme. This will include the full name, date of birth and National Student Number (NSN) for each student.
- (b) In advance of the commencement of the programme, advise Connexis in writing, of the details of all students who are scheduled to be assessed.
- (c) Ensure that only Connexis pre-approved learning and assessment material is used for the programme.
- (d) Ensure all verifiers understand their responsibilities to ensure the work been undertaken is the students own work.
- (e) Ensure student assessments are completed and sent to Connexis before the end of October each year to ensure there is enough time for the assessor to mark and report results before 31 December.
- (f) Notify Connexis in writing of anything that might affect the ability to deliver the agreed training and assessment as soon as the issue arises.
- (g) Provide all assessment materials to the assessor for assessment. A copy of this material should be scanned and digital copies to be keep by the school for 12 months.
  - (i) This assessment may be moderated by Connexis or the Standard Setting Body, and if further information or materials are required to validate the assessment the school may need the student to complete this further work for submission.
- (h) Support students in the following ways:
  - (i) Select and support students involved in the programme as per Tertiary Education Commission (TEC) guidelines.
  - (ii) Accept responsibility for the welfare and safety of students in the programme as per TEC guidelines.
  - (iii) Place each student in a suitable workplace that is aligned to the industry context of the programme. The workplace will be responsible for verification and delivery of the workplace component of the programme.
  - (iv) Ensure personal protective equipment or clothing is provided to the student to meet workplace requirements.
  - (v) Ensure each student has completed unit standard 6401 and 6402 before commencing any work placement. These unit standards are not part of the Connexis programme.

- (vi) Provide all students who are enrolled in the programme with a suitable learning environment in accordance with the relevant Connexis CMR.
- (i) Act with transparency and in good faith, on an ongoing basis with Connexis, to enable the effective implementation of this Agreement.

## **5. Obligations of Connexis**

Connexis agrees to:

- (a) Provide a programme that meets the requirements of a Gateway programme, and containing unit standards that can be assessed in a workplace-based environment. The programme will form the basis of the Schedules.
- (b) Notify the school in writing of anything that might affect the ability to support learners.
- (c) Invoice the school for the costs associated with the programme at the time enrolments have been confirmed.
- (d) Support the learning journey of students in the following ways:
  - (i) Provide the school with pre-moderated learning and assessment material.
  - (ii) Provide access to a Connexis Registered Assessor for the marking of student assessments.
  - (iii) Provide confirmation of assessment results (including unit standards not achieved) to the school by 31 December, or as agreed.
  - (iv) Ensure all unit standard results are reported to NZQA within 10 working days of the date of assessment. The Connexis provider code will be used.
  - (v) Connect the school with workplace employers where appropriate.

## **6. Review**

The Parties agree that if there is a change in a Party's organisation structure or operations, or an industry change, that will or could materially affect:

- (a) the terms of this Agreement;
- (b) the quality of the Programmes to be delivered under this Agreement,

the Parties shall meet as soon as practicable to discuss the change and to review the Agreement in light of the change.

## **7. Termination**

- 7.1. The Agreement can be terminated by one Party giving 10 working days written notice to terminate the Agreement to the other Party.
- 7.2. The Agreement will terminate with immediate effect if:
- (a) Any Party to this Agreement breaches the terms of this Agreement, and:
    - (i) the breach is unable to be remedied; or
    - (ii) the breach is not remedied within 10 Working Days of receiving written notice from the non-breaching Party specifying the breach and requesting that it be remedied;
  - (b) Any Party ceases to carry on business;
  - (c) A Party becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
  - (d) A Party is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.
- 7.3. On termination or expiry of this Agreement:
- (a) Each Party shall make all payments due to the other Party under this Agreement for the period up to the date of termination or expiry; and
  - (b) Cease using any property that belongs to the other Party, and where applicable, return such property to the other Party.
- 7.4. Termination or expiry of this Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.

## **8. Confidentiality**

- 8.1. Each Party must, unless it has the prior written consent of the other Party:
- (a) keep confidential at all times the Confidential Information of the other Party;
  - (b) effect and maintain adequate security measures to safeguard the other Party's Confidential Information from unauthorised access or use; and
  - (c) disclose the other Party's Confidential Information to its personnel or professional advisors only on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other Party's Confidential Information is aware of, and complies with, the provisions of this clause 8.

- 8.2. The obligations of confidentiality in clause 8.1 do not apply to any disclosure or use of Confidential Information:
- (a) for the purpose of performing the Agreement or exercising a party's rights under the Agreement;
  - (b) required by law (including the Official Information Act 1982);
  - (c) which is publicly available through no fault of the recipient of the Confidential Information or its personnel; or
  - (d) which was rightfully received by a party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality.
- 8.3. These obligations as to confidentiality shall remain in full force and effect notwithstanding termination or expiry of the Agreement.

## **9. Warranties**

- 9.1. Each Party warrants that it has full power and authority to enter into and perform its obligations under the Agreement which, when signed, will constitute binding obligations on the warranting Party.
- 9.2. The school warrants that it has no direct or indirect pecuniary interest or conflict of interest which will or could reasonably be expected to affect the school's ability to perform its obligations under this Agreement, except for those interests or conflicts disclosed in writing to Connexis.
- 9.3. Where legislation or rule of law implies into the Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in the Agreement. However, the liability of a Party for any breach of that condition or warranty is limited, at that Party's option, to:
- (a) supplying the Services again; and/or
  - (b) paying the costs of having the Services supplied again.

## **10. Dispute Resolution**

- 10.1. A party must use best efforts to resolve any dispute under, or in connection with, the Agreement through good faith negotiations.
- 10.2. If a dispute is not resolved under clause 10.1 within 10 Working Days of one Party notifying the other Party that it considers a dispute has arisen, the dispute shall be referred to arbitration to be carried out in accordance with the current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. The arbitration shall be conducted in Wellington by one arbitrator to be agreed upon by the Parties and if they should fail to agree within twenty-one (21) days from the date upon which the dispute is referred to arbitration then to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.
- 10.3. Each Party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.
- 10.4. This clause 10 does not affect either Party's right to seek urgent interlocutory and/or

injunctive relief.

**11. Force Majeure**

11.1. Neither Party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure (as defined in clause 11.2), provided that the affected Party:

- (a) immediately notifies the other Party and provides full information about the Force Majeure;
- (b) uses best efforts to overcome the Force Majeure; and
- (c) continues to perform its obligations to the extent practicable.

11.2. Force Majeure means an event that is beyond the reasonable control of a Party, excluding:

- (a) an event to the extent that it could have been avoided by a Party taking reasonable steps or reasonable care; or
- (b) a lack of funds for any reason.

**12. Intellectual Property**

12.1. Each Party retains ownership of any Intellectual Property owned by it at the date of this Agreement.

12.2. Any Intellectual Property created, discovered, developed, evolved or prepared by the school in the course of performing its obligations under this Agreement will be the exclusive property of Connexis.

12.3. The school indemnifies Connexis against any claim or proceeding brought against Connexis to the extent that claim or proceeding alleges that Connexis' use of materials delivered by the school under this Agreement constitute an infringement of a third party's Intellectual Property Rights ("**IP Claim**"). The indemnity is subject to Connexis:

- (a) promptly notifying the school in writing of the IP Claim;
- (b) making no admission of liability and not otherwise prejudicing or settling the IP Claim, without the school's prior written consent; and
- (c) giving the school complete authority and information required for the school to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for the school's account.

**13. Liability and Indemnity**

13.1. The school shall at all times indemnify and hold harmless Connexis, its officers and employees against all actions, claims, proceedings, demands or suits howsoever arising including negligence from or in relation to this Agreement and performance of its obligations by the school.

- 13.2. Except in relation to clause 12.3, neither Party is liable to the other under or in connection with this Agreement for any:
- (a) loss of profit, revenue, savings, business, use, data and/or goodwill; or
  - (b) consequential, indirect, incidental or special damage or loss of any kind.
- 13.3. Neither Party will be responsible, liable, or held to be in breach of this Agreement for any failure to perform its obligations under this Agreement or otherwise, to the extent that the failure is caused by the other Party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other Party.
- 13.4. A Party (“**First Party**”) will not be liable to the other Party (“**Second Party**”) in respect of a claim under or in connection with this Agreement unless that claim is notified in writing to the First Party by the Second Party within 12 months of the date that the circumstances giving rise to the claim were reasonably discoverable by the Second Party.
- 13.5. Each Party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other Party under or in connection with this Agreement.

#### **14. General Provisions**

- 14.1. This Agreement will be governed by New Zealand laws and the New Zealand Courts have exclusive jurisdiction.
- 14.2. No person other than the school and Connexis has any right to a benefit under, or to enforce, the Agreement.
- 14.3. This contract may be varied by agreement in writing between Connexis and the school.
- 14.4. To waive a right under this Agreement, that waiver must be in writing and signed by the waiving Party.
- 14.5. Each Party is an independent contractor to the other Party, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under this Agreement.
- 14.6. Any illegality, unenforceability or invalidity of a provision of this Agreement does not affect the legality, enforceability or validity of the remaining provisions of this Agreement.
- 14.7. This Agreement replaces all previous written or oral agreements or understandings between the Parties about the subject matter of this Agreement.
- 14.8. Neither Party may assign or subcontract its obligations under this Agreement to any third party except with the written consent of the other Party.

**Signed for and on behalf of Connexis by:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

**Signed for and on behalf of the school by:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_