

Gateway

Memorandum of Understanding - 2022

Between: Skills4Work Limited trading as Skills4Work
and

Gateway School:

1. Purpose

This memorandum forms the basis of the terms of engagement between the provider Skills4Work Limited trading as Skills4Work (S4W), and Gateway School (“the school”).

2. Term

This agreement will commence on the date of signature and will continue until terminated pursuant to clause 6 of Schedule 2.

3. Payment

Refer Schedule 2, Terms of Trade, Section 3 ‘Payment and Invoicing’.

4. Investment

Refer Schedule 1 for unit standard pricing. Pricing is reviewed on an annual basis. When there are price changes Schedule 1 will be updated and the school will be advised.

There are **no returns or refunds** for materials once they are supplied, as the material has been printed specifically for the school and cannot be used for any other customer.

5. Order Form

The Order Form submitted to S4W must contain the full legal name (and familiar name if different), NZQA number or date of birth, and unit standard(s) required for each individual student.

6. Assessment

S4W will provide assessment marking services and award the unit standard through its internal network of registered assessors. S4W is **not responsible** for the registration of the credits onto the New Zealand Qualifications Framework (“NZQF”) – this is the responsibility of the Gateway school.

The school’s Gateway Advisor/Coordinator will ensure that practical components of any assessments are to be signed off in Industry by a subject matter expert who has managed/supervised the student in the workplace. They will have observed the student to ensure they are competent. If in doubt of the practical sign off requirements, this can be discussed with the Chief Executive Officer at S4W.

An independent trainer charge for delivery of training in the school and the observation of the practical components will apply, as this is an additional cost to the school and is not included in S4W costs outlined in Schedule 1.

If an independent trainer is engaged and to be paid, this is classified by NZQA as a sub-contracting arrangement. In instances where schools are using S4W assessment resources to award unit standards and engaging an independent trainer to deliver the training, prior to any training taking place a sub-contracting arrangement must be set up and agreed to with S4W. The school is responsible to ensure that if they engage an independent trainer that there is a sub-contracting arrangement in place with S4W that meets NZQA requirements.

S4W is responsible for the currency, moderation, and assessment requirements of NZQA and the Standard Setting Body (SSB) for all the assessments provided.

For NZQA purposes, the candidate/school must hold a copy of the completed and awarded assessment and any supporting evidence gathered for a period of 12 months after the unit standard has been registered with NZQA. The completed assessment and evidence may be requested and used for internal and external moderation purposes. The Gateway school is responsible for all stationery needs, hook-on of students to the New Zealand Qualifications Framework (NZQF), cost and registration of credits, supply of any resources, venues, catering, and work placements that is required for the students' learning and assessment achievement.

7 NZQA Reporting

S4W is a private training establishment (PTE) that has been granted registration by the New Zealand Qualifications Authority under Part 4 of the Education and Training Act 2020, who must meet and maintain all legislative obligations to ensure registration and accreditation is always maintained.

While the marking of assessments for students is the responsibility of S4W, the reporting of "Achieved" and "Not Achieved" results and costs of registering credits with NZQA on the NZQF is the responsibility of the Gateway school. This is done by using the S4W **confidential** provider code/EDUMIS 9130 (our district code is 01). The code may **ONLY** be used with the **express permission** of S4W in relation to **Gateway students** enrolled with the school and for resources that are supplied by S4W. Refer Schedule 2, Terms of Trade, Section 4, and 'Confidential Information' for further details.

The school's Gateway Advisor/Coordinator is responsible for the on-going advice and support of the student for the programme undertaken.

8 Ownership of Copyright/Intellectual Property Rights:

The material supplied to the school remains always the intellectual property of S4W. The school agrees that it will not itself or through any subsidiary agent or third party; sell, lease, license, sub-license or otherwise deal with the intellectual property rights or any variations, modifications, copies, releases, versions, or enhancements of the said intellectual property rights.

Refer Schedule 2, Terms of Trade, Section 4, and 'Confidential Information' for further details.

9. Evaluation

If the individual school wishes to give feedback, this is welcomed by S4W and included in the S4W review process.

10. Disputes

Refer Schedule 2, Terms of Trade, Section 7, and 'Dispute Resolution'

11. Other

Refer Schedule 2, for further details on 'Terms of Trade'

Agreement

Signed for and on behalf of:

Skills4Work Limited

Name

Tamai Roff

Signature



Chief Executive Officer
Skills4Work Limited
PO Box 62 561
Greenlane
Auckland 1546

0800 275 455

customerservices@skills4work.org.nz

www.skills4work.org.nz

Date:

(School)

Name

Signature

Designation:

Postal Address:

Phone:

Email:

Date:

Schedule 1: Pricing and/or Services

Prices are valid from 1 January to 31st December of each calendar year.

Single Unit Standard (costs excl GST)

Prices for single unit standard material are determined by the level of the unit and the number of credits contained.

Level 3 Units

The Consent and Moderation Requirements (CMR) for Level 3 units, must have evidence that they are being met. Therefore when offering resources at Level 3 to schools, S4W requires confirmation from the school that they can meet work placement requirements prior to these resources being supplied. This will ensure that the student can achieve the learning outcomes and assessment requirements and avoid assessments not being awarded and returned due to insufficient evidence. If you wish to purchase Level 3 units, please contact us so that we can advise you of our CMR requirements.

A complete list of current Gateway resources is available on our website: <http://www.skills4work.org.nz/> Alternatively, please contact our Customer Care Team on customerservices@skills4work.org.nz for information.

Costs cover the following:

- Learning Material
- Assessment Material
- Marking of assessment (2 x re-sits, if required)
- Administration costs including recording of results, supply of provider code/EDUMIS for NZQA credit reporting

Schedule 2: Terms of Trade for Gateway Schools

1. General

- 1.1 All goods or services supplied by S4W are on the basis set out below unless otherwise agreed in writing. In the event of any conflict between these terms and any subsequent written contract between the parties, the Terms of the subsequent written contract shall prevail.
- 1.2 'School' means the other party in this Memorandum of Understanding. Terms of the subsequent written contract shall prevail.
- 1.3 If the School's Gateway users consist of more than one person, these terms bind them jointly and each of them severally.

2. Performance

- 2.1 S4W will not be liable for any delay or non-performance if it is attributable (directly or indirectly) to circumstances beyond its reasonable control.

3. Payment and Invoicing

- 3.1 Payment for all goods and services is due 14 days following the date of the S4W invoice. S4W may as its option issue an interim monthly invoice for work delivered when the duration of the programme or service exceeds one month. The school must pay the full amount owing.

- 3.2 If the School disputes the amount claimed, or part thereof, on any invoice which S4W issues, the school must report a dispute within 7 days from date of invoice. The school must deal with the dispute in accordance with Clause 7.
- 3.3 The school will render payment of all invoices to S4W to its nominated bank account.
- 3.4 Pricing of products and/or services are GST exclusive and are detailed in Schedule 1. Pricing will be applied from the date the student(s) order has been processed and the material despatched to the school.
- 3.5 Account Collection: S4W may, at its discretion, forward details of any outstanding amounts and/or overdue payments, to a recovery agency of S4W's choosing, for the purpose of effecting collection of any monies owing under this agreement. Should S4W utilise the services of a recovery agent, including but not limited to, a debt collection company, private investigator, legal agent or solicitor, the school undertakes to indemnify and make payment to S4W all costs, whether these costs be on a fixed or contingent basis, regarding the collection of any monies owed by the school. If a decision is made by S4W to recover the costs using legal proceedings, these costs may, at the discretion of S4W, form part of the Statement of Claim, and be added to the amount owed by the school.
- 3.6 If the School is in breach of these Terms or any other contract with S4W, S4W may, without prejudice to its other rights or remedies, terminate the Contract. It may also withhold or suspend supply of goods or services under this or any other contract, and/or withdraw any certification or accreditation issued to the customer under this or any other contract.

4. Confidential Information

- 4.1 The Parties acknowledge that in entering into this agreement and during its operation, each will become aware of information and materials which is or may be confidential and/or sensitive. Both Parties therefore agree to treat all information as strictly confidential and undertake not to disclose such information unless one or more of the following exceptions applies:
 - a) The information is already in the public domain other than by breach of this agreement by the disclosing party, or
 - b) The party to whom the information relates has consented to its release; or
 - c) The information is being disclosed to an employee or professional advisor on a need-to-know basis and that person(s) has agreed to abide by confidentiality provisions of a similar nature to those set out in this agreement; or
 - d) The disclosure is required through the operation of the law.
- 4.2 The Parties acknowledge that the confidentiality requirements shall continue in force for a period of 2 years following termination of this agreement.
- 4.3 On termination and at any other time, at the request of the Discloser, the Recipient must immediately deliver up or destroy (as directed by the Discloser) all forms of the Discloser's Confidential Information in its power, custody or control and provide written confirmation of that delivery or destruction.

5. Warranty, Liability, and Indemnity

- 5.1 S4W warrants that it shall exercise all reasonable skill, care and effort in providing any goods and services to the school pursuant of these Terms.
- 5.2 S4W is not liable for any loss of profits, or any special, indirect, incidental, or consequential damage, loss or injury arising directly or indirectly from any breach of S4W obligations under or in connection with this contract, or from any cancellation of the contract, or from any negligence, misrepresentation or other act or omission on the part of S4W, its servants, agents, or contractors.
- 5.3 S4W and the school agree that any goods supplied under these Terms are for the purposes of a business and hence the statutory guarantees of the Consumer Guarantees Act 1993 do not apply. Should those statutory guarantees apply, these Terms shall be interpreted subject to the Consumer Guarantees Act 1993.
- 5.4 S4W does not warrant that the manufacture or use of goods, information, or methods, developed or provided under these Terms is not an infringement of the intellectual property rights of third parties.

6. Termination

- 6.1 S4W may by notice in writing to the school terminate S4W obligations under the following terms:
 - a) upon the provision of the goods and services to the school and payment of all monies owing by the school under these Terms, or
 - b) if the school commits any act of bankruptcy, enters an arrangement with its creditors, or
 - c) if the School is in breach of the terms of this MoU, or
 - d) upon mutual agreement of the parties.
- 6.2 Termination will not affect the rights of either party in respect of any breach of these Terms in existence prior to termination.

7. Dispute Resolution

- 7.1 Any dispute between the School and S4W will be resolved in accordance with this clause.
- 7.2 If a party considers a dispute has arisen, it must give written notification of the particulars within 24 hours of the dispute to the other party. Within ten (10) business days of receipt of the notification, a senior officer of each party with authority to settle the dispute ("Authorised Officer") must meet to discuss and attempt to resolve the dispute.
- 7.3 If the Authorised Officers of the parties cannot resolve the dispute within ten (10) business days of the meeting, either party may refer the dispute to mediation by a New Zealand Law Society Approved Mediator agreed by the parties or as otherwise agreed by both parties.
- 7.4 The role of any Mediator is to assist in negotiating a resolution of the dispute. A Mediator may not make a decision that is binding on a party unless that party has so agreed in writing. Each party must bear its own costs of and incidental to the mediation and the parties must bear equally the costs of any Mediator engaged.

- 7.5 If the dispute is not resolved with two (2) business days of the commencement of mediation, or such longer period as the parties may agree, either party may then, but not earlier, commence proceedings in any court of competent jurisdiction.
- 7.6 Each party will continue to perform notwithstanding the existence of a dispute or of any proceedings.
- 7.7 Any information or documents disclosed by a party must be kept confidential and may not be used for any purpose other than the settlement of the dispute.

8. Miscellaneous

- 8.1 The school may not assign all/any of its rights or obligations under these Terms without the prior consent of S4W.
- 8.2 All rights, powers, exemptions, and remedies of S4W remain in full force despite any neglect, omission or delay in the enforcement thereof. S4W is not deemed to have waived any provision or right unless the waiver is in writing under signature of S4W or its authorised officer and any such waiver, unless the contrary is expressly stated, applies to and operates only in a particular transaction, dealing or matter.
- 8.3 All notices shall be delivered by hand or be sent by email, fast post or courier. Any notice sent shall be deemed to have been received on the following day in the place of receipt; any notice sent by fast post will be deemed to have been received three business days after posting; and any notice sent by email will be deemed to have been received. Notices shall be given to the parties at the address or email addresses set out in the document attached or such other addresses or email addresses as they may from time to time advise in writing.
- 8.4 These Terms constitute the entire agreement between the school and S4W with respect to matters contemplated in these Terms and supersedes all previous agreements, arrangements, or understandings between the School and S4W.
- 8.5 If any provision of these Terms shall be invalid, void, illegal or unenforceable, then the validity, existence, legality, and enforceability of the remaining provisions shall not be affected.
- 8.6 The Terms shall be governed by the laws of New Zealand, and S4W and the School agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 8.7 All Intellectual Property and S4W produced learning and assessment material will remain the property of S4W.

9. Health & Safety

- 9.1 Both parties to this agreement will ensure they have clear Pandemic (e.g. Covid19) Health and Safety protocols in place with timely communication to ensure safe Gateway delivery to learners.

Learning arrangements under pandemic conditions will be made on a case-by-case basis by all parties to this MoU so as best able to support learners.