APPENDIX 6 – DATA PROCESSING AGREEMENT

THIS DATA PROCESSING AGREEMENT ("DPA") IS DATED THE DATE IT IS SIGNED BY BOTH PARTIES AND IS BETWEEN:

(1) **IBEC COMPANY LIMITED BY GUARANTEE TRADING AS IFS SKILLNET** with company number 8706 and registered address Confederation House, 84/86 Lower Baggot Street, Dublin 2, Dublin, D02H720 **("IBEC")**; and

(2) **[SUPPLIER]** [a company registered in […] with company number [ ]] whose registered office is at [ ] (the **"Trainer"**),

individually a "**Party**" and collectively the "**Parties**".

BACKGROUND:

A. The Trainer provides training services to IBEC.
B. Those services involve the processing of certain personal data by the Trainer.
C. The Trainer processes this personal data as IBEC's processor.
D. The Parties have therefore agreed, arising from Article 28 of the GDPR, to enter into this data processing agreement.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

Within this DPA:

1.1 **"Agreement"** means the agreement in place between the Parties pursuant to which the Trainer provides the Services;

1.2 **"Data Protection Incident"** means any incident resulting in Personal Data disclosed by IBEC or any IBEC service recipient to the Trainer, or otherwise obtained or accessed by the Trainer, being subject to any accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access;

1.3 "**Data Protection Legislation**" means:

i. the Irish Data Protection Acts 1988 to 2018;

ii. the European Communities (Electronic Communications Networks & Services) (Privacy & Electronic Communications) Regulations 2011;

iii. the EU ePrivacy Directive 2002/58/EC (as amended) (the "**ePrivacy Directive**");

iv. the General Data Protection Regulation (Regulation (EU) 2016/679) (the "**GDPR**"); and

v. any relevant transposition of, or successor or replacement to the legislation set out above (including, when it comes into force, the successor to the ePrivacy Directive),

together with all other equivalent legislation in Ireland or any other applicable jurisdiction;

1.4 **"Services"** means the training services which the Trainer provides to IBEC (and IBEC service recipients) from time to time;

1.5 "**Trainer Personnel**" means all employees, staff, other workers, agents and consultants, of the Trainer, its affiliates and/or any sub-contractor, who are engaged in the provision of the Services; and

1.6 **"Controller"**, **"Processor"**, **"Data Subject"**, **"Personal Data"**; **"Processing", "Processor"** and **"Special Category Data"** shall have the same meanings as in the Data Protection Legislation and **"Processed"** and **"Process"** shall be construed in accordance with the definition of **"Processing".**

2. PROCESSING ACTIVITIES

2.1 The Parties acknowledge that the factual arrangement between them dictates the classification of each Party in respect of the Data Protection Legislation. Without prejudice to the above, the Parties anticipate that, for the purposes of the Services, the Trainer will Process Personal Data on behalf of IBEC as a Processor.

2.2 Each of the Parties acknowledges and agrees that the: (i) subject matter and duration of the Processing; (ii) the nature and purpose of the Processing; (iii) the type of Personal Data being Processed; and (iv) the categories of Data Subjects, as required pursuant to Article 28(3) of the GDPR, are specified in Schedule 1 to this Agreement and/or in an future statement of works the Parties may agree.

3. PROCESSOR

3.1 Where Personal Data is Processed by the Trainer or Trainer Personnel under or in connection with the Agreement on behalf of IBEC as a Processor, the Trainer shall, and shall procure that the Trainer Personnel shall:

3.1.1 only Process the Personal Data to the extent required to provide the Services in accordance with the terms of this Agreement or otherwise in accordance with instructions from IBEC from time to time;

3.1.2 unless prohibited by law, notify IBEC immediately (and in any event within twenty-four (24) hours of becoming aware thereof) if it considers, in its opinion (acting reasonably) that it is required by Data Protection Legislation to act other than in accordance with IBEC's instructions, including where it believes that any of IBEC's instructions infringes any of the Data Protection Legislation;

3.1.3 not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised to do so in writing by IBEC;

3.1.4 implement and ensure that the Trainer Personnel implement appropriate technical and organisational measures to protect Personal Data including but not limited to against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure;

3.1.5 not disclose the Personal Data to a third party (including a sub-contractor) in any circumstances without IBEC's prior written consent, save in relation to a request from a governmental or regulatory authority where the Trainer is prohibited by law or regulation from notifying IBEC, in which case it shall use reasonable endeavours to advise IBEC in advance of such disclosure and in any event as soon as practicable thereafter;

3.1.6 sub-contract the Processing of any Personal Data under this DPA only in accordance with this DPA and the Agreement;

3.1.7 ensure that all Trainer Personnel engaged in the provision of the Services have entered into a confidentiality agreement or non-disclosure agreement with the Trainer and shall further ensure that such Trainer Personnel are made aware of and observe the Trainer's obligations under this DPA with regard to the confidentiality, security and protection of Personal Data;

3.1.8 Process the Personal Data in accordance with the Data Protection Legislation (as applicable) and not do or permit anything to be done which might cause IBEC in any way to be in breach of the Data Protection Legislation;

3.1.9 cooperate as requested by IBEC to enable IBEC to comply with any exercise of rights by a Data Subject under the Data Protection Legislation in respect of Personal Data processed by the Trainer under the Agreement and shall implement and maintain appropriate technical and organisational measures to assist IBEC in responding to such requests or comply with any assessment, enquiry, notice or investigation under the Data Protection Legislation which shall include the provision of all data requested by IBEC within the timescale specified by IBEC in each case;

3.1.10 notify IBEC as soon as reasonably practicable and in any event within forty-eight (48) hours of its receipt of any request from a Data Subject or a regulator and shall: (i) not respond to, nor disclose any Personal Data in response to, any request from a Data Subject or a regulator without IBEC's prior written consent; and (ii) provide IBEC with all reasonable co-operation and assistance required IBEC in relation to any request from a Data Subject or a regulator;

3.1.11 without prejudice to IBEC's other audit rights provided for in the Agreement (if applicable), within fourteen (14) calendar days of a request from IBEC, allow its data processing facilities, procedures and documentation to be submitted for scrutiny, inspection or audit by IBEC (and/ or its representatives, including its appointed auditors) in order to ascertain compliance with the terms of this Agreement and provide reasonable information, assistance and co-operation to IBEC, including access to relevant Trainer Personnel and / or, on IBEC's request, provide IBEC with written evidence of its compliance with the requirements of this DPA;

3.1.12 provide IBEC with all resources and assistance as are required by IBEC for IBEC to discharge its duties pursuant to Articles 35 and 36 of GDPR including, but not limited to, promptly at the request of IBEC providing information in respect of any Data Protection Impact Assessment which IBEC conducts;

3.1.13 not process or transfer the Personal Data anywhere outside the EEA unless the Trainer has first obtained IBEC's prior written consent;

3.1.14 comply with the obligations imposed upon a Processor under the Data Protection Legislation;

3.1.15 maintain a record of its Processing activities conducted for and on behalf of IBEC. Such record shall contain: (i) the name and contact details of the Trainer and the name and contact details of IBEC; (ii) the categories of Processing carried out on behalf of IBEC; (iii) details of the technical and organisational measures the Trainer has put in place to ensure the security of Personal Data;

3.1.16 use all reasonable endeavours, in accordance with good industry practice, to assist IBEC to comply with the obligations imposed on IBEC by the Data Protection Legislation, including: (i) compliance with the Data Protection Security Requirements; and (ii) obligations relating to notifications required by the Data Protection Legislation to the regulator and / or any relevant Data Subjects; and

3.1.17 subject to the requirements of any applicable exit provisions in the Agreement and applicable law, cease Processing the Personal Data immediately upon the termination or expiry of the Agreement or the Services and at the election of IBEC, either (i) return to IBEC, or (ii) delete, destroy or make permanently unusable all the Personal Data and any copies, records, analysis of it or of the information it contains and the Trainer shall confirm in writing that this paragraph has been complied with in full.

3.2 The Trainer shall notify IBEC as soon as reasonably practicable and in any event within forty-eight (48) hours of:

3.2.1 any legally binding request for disclosure of Personal Data by a law enforcement or other competent authority unless prohibited by law from doing so; and/or

3.2.2 any request received directly from a Data Subject without responding to that request, unless required by Laws or it has been otherwise authorised by IBEC to do so.

3.3 Without prejudice to any other provision of the Agreement, IBEC may, on reasonable notice, request a detailed written description of the technical and organisational methods employed by the Trainer and its sub-contractors for the Processing of Personal Data. Within ten (10) days of receipt by the Trainer of IBEC's written request (which shall include a detailed description of IBEC's reasonable requirements), the Trainer shall deliver a written report to IBEC in sufficient detail that IBEC can reasonably determine whether or not any applicable Personal Data is being or has been processed in compliance with the Data Protection Legislation.

3.4 Without prejudice to the other provisions of this DPA, the Trainer or any member of the Trainer Personnel shall promptly upon becoming aware of any Data Protection Incident (and in any event within twenty-four (24) hours of such discovery) notify IBEC by telephone and by email of such a Data Protection Incident. The Trainer shall provide IBEC with all resources and assistance as are required by IBEC to (i) notify the Data Protection Commission of a Data Protection Incident; (ii) provide such reports or information as may be requested in relation to such Data Protection Incident; and/or (iii) notify the relevant Data Subjects of such Data Protection Incident, as applicable.

IN WITNESS of which this DPA has been duly executed by the Parties.

SIGNED for and on behalf of

IBEC COMPANY LIMITED BY GUARANTEE T/A IFS SKIKLLNET

Signature: .....

Full Name: .....

Position: .....

Date: .....

SIGNED for and on behalf of

[SUPPLIER]

Signature: .....

Full Name: .....

Position: .....

Date:

Schedule 1

Data Protection Particulars

The subject matter, nature and purpose and duration of the Processing is that the Processing is of IBEC receiving the Services from the Supplier and the processing shall last for as long as the Services are provided.

The type of Personal Data being Processed and the categories of Data Subjects are:

1. Learner Details which may include:
    1.1. Name
    1.2. Email
    1.3. Gender
    1.4. Age
    1.5. PPS Number
    1.6. Qualification Level
    1.7. Phone number
    1.8. Employer company
    1.9. Additional learning needs
2. Employer (Member company details)
3. Assessment Scripts
4. Assessment Results
5. Attendance Records
6. Learner Logbooks
7. Workplace Task Records