

(1) THE ENGINEERING CONSTRUCTION INDUSTRY TRAINING BOARD

and

(2) <INSERT SUPPLIER>

HOSTING SERVICES AGREEMENT

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THIS AGREEMENT is made on

BETWEEN

- (1) **THE ENGINEERING CONSTRUCTION INDUSTRY TRAINING BOARD** a body corporate governed by the Industrial Training Act 1982 whose head office is at Office F15, Kings House Business Centre, Home Park Estate, Station Road, Kings Langley, Herts, WD4 8LZ (“**ECITB**”)
- (2) **<Insert Name>** incorporated and registered in England and Wales with company number **<Insert No.>** whose registered office is at **<Insert Address>** (“**Supplier**”)
- (each a “**Party**” and together the “**Parties**”).

BACKGROUND

- (A) ECITB is the standards and qualifications body for the development of the engineering construction workforce of Great Britain.
- (B) ECITB has three websites:
- ECITB’s UK Website - <https://www.ecitb.org.uk/>
 - ECITB’s Global Website - <https://www.ecitb.com/>
 - Connected Competence - <https://connectedcompetence.co.uk>
- (C) The purpose of these websites is to showcase the products and services of the ECITB to its wide range of stakeholders.
- (D) ECITB wishes to use the Supplier’s services for the following:
- The hosting and maintenance of all 3 websites above.
 - Change of structure and functionality of the UK Website and migration of Global Website.
 - Minimise the use of plug-ins.
 - Improve the design and user journey on the UK and Global websites through templates.
 - Migration of content from existing hosting arrangements into new templates for both Global and UK websites.
- (E) The Supplier has agreed to provide and ECITB has agreed to take and pay for the Supplier's services subject to the terms and conditions of this Agreement.

The Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context requires otherwise, the following definitions apply:

“Additional Services”	means any additional services requested by ECITB to be provided by the Supplier that are not included within the description of the Services, as described in Schedule 1.
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“Applicable Laws”	means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law;
“Authorised Users”	those employees and independent contractors of the ECITB and any other person nominated by the ECITB who are authorised to use the hosting services or access specific features, functionalities or content associated with the Websites;
“Business Day”	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
“Confidential Information”	means all confidential information (however recorded or preserved) disclosed by a Party to the other including but not limited to any written material, documentation, illustrations, photographs, designs, drawings, data, technical, business, any information that would be regarded as confidential by a reasonable business person and similar information of a confidential nature relating to the business of ECITB or its clients including all readable or computer or other machine readable data;
“Documents”	means all records, reports, documents, papers, media and other materials whatsoever created by ECITB or on behalf of ECITB or originated by or upon behalf of the Supplier pursuant to this Agreement;
“ECITB Data”	the data inputted onto the Websites, by Authorised Users, or by the Supplier on ECITB's behalf or other data relating to ECITB communicated to or processed or generated by the Supplier including but not limited to files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through the Websites including, but not limited to, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, email or other messages, meta tags, domain names, software, text and registered domain names provided by ECITB or registered on its behalf ;
“ECITB Privacy Policy”	a notice which states ECITB’s policy in connection with the retention, use and disclosure of Attendees’

		personal information and training and qualification details for prescribed purposes as set out in the ECITB's website (www.ecitb.org.uk);
"Effective Date"		the date of this Agreement;
"Fees"		the fees payable to the Supplier, as described in Schedule 2;
"Good Industry Practice"		the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;
"Hosting Services"		the services that the Supplier provides to ECITB to allow ECITB and all Authorised Users to use the Website Hosting Platform in order to access the Websites, including hosting set-up and ongoing services, as described in Schedule 3;
"Incident"		any Vulnerability, Virus or security incident which <ul style="list-style-type: none"> (a) may affect the Website Hosting Platform or the Services; (b) may affect the Supplier's network and information systems such that it could potentially affect ECITB or the Website Hosting Platform or the Services; or (c) is reported to the Supplier by ECITB;
"Intellectual Rights"	Property	patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and rights in domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
"Known Vulnerability"		any Vulnerability that has either

- (a) been assigned a Common Vulnerabilities and Exposures (CVE) number;
- (b) been disclosed on the National Vulnerability Database available at the website operated by the US National Institute of Standards and Technology (NIST) from time to time; or
- (c) been disclosed on the internet, or any [open] public database, such that it would be revealed by reasonable searches conducted in accordance with Good Industry Practice;

“Latent Vulnerabilities” any instances of typical classes of Vulnerability. For example, buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection;

“Maintenance and Support” any error corrections, updates and upgrades services that the Supplier may provide or perform with respect to the Website Hosting Platform and Hosting Services, as well as any other support or training services provided to ECITB under this Agreement, all as described in Schedule 4;

“Mandatory Policies” the ECITB's business policies listed in Schedule 5 and as amended by notification to the Supplier from time to time;

“Mitigate” the taking of such reasonable steps that would be taken by a prudent supplier in accordance with Good Industry Practice to mitigate against the Incident in question, which may include reasonable security governance, oversight and management procedures in respect of the Website Hosting Platform and Hosting Services, (in the case of a Vulnerability) coding changes, but could also include specification changes (for example, removal of affected protocols or functionality in their entirety), provided these are approved by the ECITB in writing in advance, and the terms **Mitigated** and **Mitigation** shall be interpreted accordingly;

“Normal Business Hours” 8.00 am to 6.00 pm local UK time, each Business Day;

“Personal Data” shall have the meaning given to it in the UK Data Protection Laws;

“Service Level Failure”	means a failure by the Supplier to supply the Services in accordance with the requirements of this Agreement and any other incident which this Agreement deems to be a Service Failure (including a failure to achieve an agreed timeframe);
“Service Level”	means the service levels to be achieved by the Supplier as set out in clause 5;
“Services”	the Hosting Services, the Website Development Services and/or Maintenance and Support as applicable, and all other obligations of the Supplier;
“Term”	the term of this Agreement as set out in clause 17.1;
“Uptime Availability”	the required uptime of the Website Hosting Platform as defined in clause 2.2;
“Virus”	<p>any “back door”, “time bomb”, “trojan horse”, worm”, “drop dead device”, “malware”, “virus” or other computer software routine which may</p> <ul style="list-style-type: none"> (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (b) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
“Vulnerability”	<p>a weakness in an IT system that can be exploited by an attacker to deliver a successful attack. They can occur through flaws, features or user error and attacks will look to exploit any of them, and the term Vulnerabilities shall be interpreted accordingly.</p>
“Websites”	means ECITB’s websites that the Supplier is hosting for ECITB and refers to all parts of the website including but not limited to, component files, including any error corrections, updates, upgrades, modifications and enhancements to the websites, provided to the ECITB under this Agreement;

“Website Development Services” the services provided by the Supplier to create and develop ECITB’s Websites as specified in Schedule 1.

“Website Hosting Platform” means the platform provided by the Supplier to host the Websites.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.7 A reference to writing or written excludes email.
- 1.8 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision and is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.11 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

2 HOSTING SERVICES, MAINTENANCE AND SUPPORT

- 2.1 For the duration of the Term the Supplier shall perform the Hosting Services and Maintenance and Support services in accordance with the terms of this Agreement.
- 2.2 In providing the Hosting Services, the Supplier shall use its reasonable endeavours to ensure that the services are provided to the ECITB on a constant, uninterrupted basis throughout the Term of this Agreement, via the internet and shall ensure such access to Websites is available 99.9% of the time in any 24-hour period (the **“Uptime Availability”**).
- 2.3 The Supplier shall supply the Services so as to attain the Service Levels described in clause 5.
- 2.4 In relation to the ECITB Data, the Supplier shall cooperate fully with ECITB and shall update, amend or modify any ECITB Data hosted on the Website Hosting Platform in accordance with ECITB’s reasonable instructions;

2.5 In relation to Authorised Users:

- 2.5.1 ECITB's access to the Website Hosting Platform shall not be limited to a number of individual Authorised Users,
- 2.5.2 the Supplier shall ensure that ECITB has full access and permissions to add any additional Authorised Users to the Website Hosting Platform at any time without notice, during the Term; and

2.6 In relation to the Website Hosting Platform:

- 2.6.1 the Supplier shall provide the Website Hosting Platform and the Hosting Services and shall in accordance with the Uptime Availability, make the Websites publicly available the Websites Hosting Platform provided by the Supplier online;
- 2.6.2 the Supplier shall host the Websites on the Website Hosting Platform;
- 2.6.3 the Supplier shall ensure the Website Hosting Platform is compatible with the current and last three major releases or update of:
 - a) Chrome, Safari, Edge, Opera and FireFox browsers;
 - b) Android and IOS; and
 - c) Google Chrome and Windows OS.

For the avoidance of doubt, the Supplier shall ensure the Website Hosting Platform is compatible with the latest major release or update of such software, program or device referred to, at a - c above, provided always that the Supplier has had reasonable time to update the Website Hosting Platform, system following such release or update. Should complications arise with any major release or update of such software, program referred to, at a-c above, the Supplier shall manage and monitor these on a case by case basis and shall inform ECITB, as required.

- 2.6.4 the Supplier shall ensure that personnel approved by ECITB are provided with the necessary access permissions to use the Website Hosting Platform without restrictions. Such access shall include, but not be limited to permission to create new Authorised Users; edit details of any Authorised User; remove Authorised Users; view and extract reports and make recommendations and/or requests to amend any parameters applied to the Websites and the ECITB Data (the **"Super User Access"**). The Supplier shall, upon request from ECITB, use its best endeavours to provide any assistance and support required regarding the Super User Access.

3 WEBSITE DEVELOPMENT SERVICES AND ADDITIONAL SERVICES

- 3.1 In relation to the Proctoring Services:
- 3.2 The Supplier shall provide the Services in accordance with the Schedule 1.
- 3.3 The Supplier shall provide the Additional Services in accordance with Schedule 1.

4 SUPPLIER'S OBLIGATIONS

- 4.1 The Supplier undertakes that:
 - 4.1.1 it will perform all the Services and the Additional Services with all reasonable skill and care, using appropriately qualified and experienced staff;

- 4.1.2 it shall supply the Services and the Additional Services in accordance with all reasonable instructions and directions given by ECITB;
- 4.1.3 it will ensure that, when supplying the Services and the Additional Services, it does not interfere with the activities of ECITB or their respective employees, agents, suppliers or customers;
- 4.1.4 it will avoid conflicts of interest arising and promptly notify ECITB of any that do arise; and
- 4.1.5 it shall obtain and maintain in full force all necessary consents, approvals, authorisations, licences and permissions which are required for it to perform its obligations under this Agreement.
- 4.2 The Supplier undertakes that it will at the written request of ECITB at any time or up until six months after termination of this Agreement, howsoever arising, return to ECITB without further charge and in the format stipulated by ECITB a copy of the ECITB Data residing on the hosting equipment.
- 4.3 Subject to clause 11.3, this Agreement shall not prevent the Supplier from:
 - 4.3.1 entering into similar agreements with third Parties or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this Agreement; or
- 4.4 The Supplier shall:
 - 4.4.1 take reasonable precautions to preserve the integrity of any ECITB Data or other data which it processes and to prevent any corruption or loss of such data;
 - 4.4.2 make a backup copy of such data every week and record the copy on media from which the data can be reloaded if there is any corruption or loss of the data; and
 - 4.4.3 in such event and if attributable to any default by the Supplier, promptly restore the data at its own expense or, at the ECITB's option, promptly reimburse the ECITB for any reasonable expenses it incurs in having the data restored by a third Party.

5 SERVICE STANDARD AND SERVICE LEVELS

- 5.1 The Supplier shall supply the Services and the Additional Services:
 - 5.1.1 so as to attain the Service Levels (as defined below);
 - 5.1.2 in a timely, professional and efficient manner; and
 - 5.1.3 in accordance with:
 - a) all Applicable Laws; and
 - b) Good Industry Practice.
- 5.2 The Supplier shall promptly notify ECITB of any complaint or other matter which comes to its attention and which might reasonably give rise to ECITB incurring any liability or which may result in any adverse publicity for ECITB.

5.3 ECITB rights under this Agreement are in addition to any terms implied in its favour by any statute or other Applicable Laws.

5.4 The Supplier shall use all its best endeavours to ensure:

5.4.1 it keeps any downtime to a minimum and provides at least the Uptime Availability. Uptime Availability does not include scheduled maintenance (in accordance with clause 5.4.3), ECITB-caused outages or disruptions or outages or disruptions to force majeure events within the meaning of clause 18;

5.4.2 in the event of any disruption (other than scheduled maintenance to the system) to the Website Hosting Platform, it will ensure a suitably qualified individual is working on the problem in accordance with technical support is provided in accordance with Schedule 4 Paragraph 3;

5.4.3 where possible it provides ECITB with 5 Business Days' notice prior to any scheduled maintenance of the Website Hosting Platform. In the event 5 Business Days notice is not possible it shall inform ECITB as soon as reasonably practicable in advance of the maintenance; and

5.4.4 provides the technical support to ECITB in accordance with paragraph 3 of Schedule 4.

each a ("**Service Level**") and together (the "**Service Levels**").

5.5 A Service Failure shall be deemed to have occurred where the Supplier, in ECITB's opinion (acting reasonably) has failed to achieve any Service Level and has failed to remedy such failure within 2 Business Days of being notified of such failure by ECITB.

5.6 If there is a Service Failure, or it is reasonably foreseeable that there may be one, the Supplier shall immediately notify ECITB of the nature of the Service Failure and the action that it has taken or proposes to take to minimise its adverse effects. Such notification shall be in writing or, if given orally, shall be confirmed in writing as soon as reasonably practicable.

5.7 The Supplier shall minimise the impact of any Service Failure and resume normal supply of the Services and the Additional Services as soon as possible.

5.8 The Supplier may not charge ECITB for any work carried out by it in connection with remedying a Service Failure or for the Services or for the Additional Services which are not supplied properly because of a Service Failure.

6 ECITB'S OBLIGATIONS

6.1 ECITB shall:

6.1.1 provide the Supplier with:

a) all necessary co-operation reasonably required in relation to this Agreement; and

b) all necessary access to such information as may reasonably be required by the Supplier

in order to render the Services and the Additional Services, security access information and software interfaces to ECITB's other business applications;

- 6.1.2 be responsible for administering and updating the ECITB Data;
- 6.1.3 comply with all Applicable Laws and regulations with respect to its activities under this Agreement; and
- 6.2 ECITB shall own all rights, title and interest in and to all of the ECITB Data. Except as expressly stated herein, this Agreement does not grant the Supplier any rights to, or in, any Intellectual Property Rights or any other rights or licences in respect of the ECITB Data.

7 WARRANTIES

- 7.1 The Supplier represents, warrants and undertakes to ECITB that:
 - 7.1.1 the Services and the Additional Services shall be supplied in such a way as not to cause any:
 - a) error, fault, malfunction or deterioration in the Website Hosting Platform; or
 - b) interruption to the business processes of ECITB (other than any agreed and unavoidable interruption which is required in order to supply the Services and the Additional Services in a proper and efficient manner);
 - 7.1.2 the Services and the Additional Services shall be free from defects in design, materials and workmanship and suitable for the purposes indicated in or to be reasonably inferred from this Agreement;

8 SUSPENSION OF ACCESS

- 8.1 The Supplier shall not be permitted to suspend the provision of the Website Hosting Platform, the Services and the Additional Services during the Term unless it is entitled to and until such time as this Agreement is terminated pursuant to clause 17.

9 CHARGES AND PAYMENT

- 9.1 ECITB shall pay the amounts set out in the Fees Schedule 2.
- 9.2 All amounts and Fees stated or referred to in this Agreement are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 9.3 The Supplier shall submit such invoices in accordance with the following requirements and any invoice submitted shall not be paid if the following requirements are not met. Invoices must be submitted:
 - 9.3.1 in a format and with supporting documentation or reports specified by ECITB; and
 - 9.3.2 by e-mail to the relevant individual designate by ECITB and notified to the Supplier.
- 9.4 ECITB will pay each invoice (a VAT invoice if appropriate) within 30 days of its receipt, subject to ECITB being satisfied as to the quality of the Services and the Additional Services provided and the stage of completion of milestones.
- 9.5 For the avoidance of doubt in the event that the Supplier should fail to submit reports and other information to ECITB in accordance with the terms of this Agreement, ECITB shall be entitled to withhold any payments to the Supplier until such time as the reports and information have been correctly submitted.

10 CHANGE CONTROL

- 10.1 All changes to this Agreement must be approved in writing by authorised officials of both Parties and follow the procedure set out in clauses 10.2 to 10.5 of this Agreement.
- 10.2 The Party wishing to initiate a change (“the initiator”) must advise the other Party (“the recipient”) of the proposed change in writing (by post or by email).
- 10.3 The recipient will consider and assess the proposal and if necessary enter into dialogue with the initiator in order to formulate its response.
- 10.4 The recipient will respond to the initiator’s proposal in writing (by post or by email) and include related information such as variations in fees which may arise as a consequence of the proposed change.
- 10.5 The Parties will use their reasonable endeavours to reach Agreement concerning the proposed change.

11 PROPRIETARY RIGHTS

- 11.1 ECITB acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Website Hosting Platform. Except as expressly stated herein, this Agreement does not grant the ECITB any Intellectual Property Rights, or any other rights or licences in respect of the Website Hosting Platform.
- 11.2 The Supplier represents, warrants and undertakes that it has all the rights in relation to the Website Hosting Platform that are necessary to grant all the rights it purports to grant and perform all the obligations it agrees to perform under, and in accordance with, the terms of this Agreement.
- 11.3 The ownership of and copyright in the ECITB Data and any associated Documents, transcripts or reports, or data in any form which the Supplier may prepare during the provision of the Services and the Additional Services, shall belong to ECITB and shall not be reproduced or disclosed by the Supplier.
- 11.4 The Supplier shall not without the prior written consent of ECITB:
 - 11.4.1 Sell, hire rent or otherwise deal with, part with possession of or distribute the ECITB Data and any associated documents, transcripts or reports in any form which the Supplier may prepare during the provision of the Services and the Additional Services;
 - 11.4.2 Permit the ECITB Data and any associated Documents, transcripts or reports in any form which the Supplier may prepare during the provision of the Services and the Additional Services to be copied or made available to any third Party other than in accordance with the written instructions of ECITB; and
 - 11.4.3 Use the ECITB Data and any associated Documents, transcripts or reports in any form which the Supplier may prepare during the provision of the Services and the Additional Services to create any derivative works or other works therefrom.

12 CONFIDENTIALITY

- 12.1 The Supplier shall secure and keep safe any Confidential Information which it may obtain or create during the course of providing the Services and the Additional Services relating to

ECITB's business or activities and shall not, during the course of this Agreement or any time thereafter, disclose such information or the existence of this Agreement to any other person.

- 12.2 On the ending of the Agreement the Supplier shall return to ECITB all Confidential Information, the Documents and any other Documents, data in whatever form, or drawings with which it may have been supplied by ECITB and any copies of the same which it may have made during the course of providing the Services and the Additional Services.
- 12.3 The obligations of confidence referred to in Clause 12.1 shall not apply to any Confidential Information or documents or any other information which:
- 12.3.1 is in the possession of and is at the free disposal of the Supplier, or is published or is otherwise in the public domain prior to the date of this Agreement;
- 12.3.2 is, or becomes, publicly available on a non-confidential basis through no fault of the Supplier;
- 12.3.3 is received in good faith by the Supplier from a third Party who, on reasonable enquiry by the Supplier, claims to have no obligations of confidence to ECITB in respect of it and who imposes no obligations of confidence upon the Supplier.
- 12.4 The Parties acknowledge that Personal Data will be processed in relation to the provision of Services and the Additional Services under this Agreement and such processing of Personal Data shall be governed in accordance with the Data Protection Addendum to this Agreement.
- 12.5 This clause 12 shall survive termination of this Agreement, however arising.

13 ANTI-CORRUPTION AND MODERN SLAVERY

- 13.1 Neither Party nor any of its officers, employees or representatives ("**Associated Parties**") shall, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in Agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of this Agreement which:
- 13.1.1 would violate anti-corruption or bribery legislation in the UK or European Union (including the Bribery Act 2010); or
- 13.1.2 a reasonable person would otherwise consider to be unethical, illegal or improper, (in this Clause 13, a "Corrupt Act").
- 13.2 Each Party represents, warrants and undertakes that it and its Associated Parties have not engaged in any Corrupt Act prior to the Effective Date.
- 13.3 The Supplier agrees with ECITB that it shall, and that it shall procure that the Supplier personnel and any other person who performs services and/or supplies goods within the Supplier's supply chain for the Supplier in relation to this Agreement shall:
- 13.3.1 comply with all Applicable Laws relating to slavery and human trafficking (Anti-Slavery Requirements) including the Modern Slavery Act 2015;
- 13.3.2 not take or knowingly permit any action to be taken that would or might cause or lead ECITB to be in violation of any Anti-Slavery Requirements; and

13.3.3 at ECITB's request and cost, provide ECITB with any reasonable assistance to enable it to perform any activity required by any regulatory body for the purpose of complying with Anti-Slavery Requirements.

13.4 The Supplier shall indemnify ECITB from and against any and all losses suffered or incurred by ECITB or for which the ECITB may become liable arising out of or in connection with any breach of this Clause 13, whether or not this Agreement has been terminated.

14 CRIMINAL FINANCES

14.1 The Supplier shall, and shall procure that persons associated with it or other persons who are performing services in connection with this Agreement shall:

14.1.1 not engage in any activity, practice or conduct which would constitute either:

14.1.2 a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or

14.1.3 a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017; and

14.1.4 promptly report to ECITB any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of this Agreement.

14.2 ECITB shall not be required to make any payment to the Supplier that might otherwise be due from the Customer in respect of this Agreement if the Supplier has breached this clause 14.

14.3 The Supplier shall indemnify the ECITB from and against all liabilities arising as a result of or in connection with any breach of this clause 14, whether or not this Agreement has expired or been terminated.

14.4 Without prejudice to the rights of ECITB to be indemnified under clause 14.3 ECITB shall not be required to make any payment to the Supplier that might otherwise be due from ECITB if such payment is related to a transaction in connection with which the Supplier has breached this clause 14.

15 INDEMNITY

15.1 The Supplier shall indemnify ECITB against all claims, actions, proceedings, liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by ECITB arising out of or in connection with any claim made against ECITB for actual or alleged infringement of a third Party's Intellectual Property Rights arising out of or in connection with the Website Hosting Platform or Services and the Additional Services, their use or otherwise in relation to them.

15.2 If any third Party makes a claim, or notifies an intention to make a claim, against ECITB which may reasonably be considered likely to give rise to a liability under this indemnity (a **Claim**), ECITB shall:

15.2.1 as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

- 15.2.2 not make any admission of liability, Agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
 - 15.2.3 give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of ECITB, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
 - 15.2.4 subject to the Supplier providing security to ECITB to ECITB's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 15.3 In the defence or settlement of any Claim, the Supplier may:
- 15.3.1 obtain for ECITB the right to continue using the Website Hosting Platform
 - 15.3.2 replace or modify the Website Hosting Platform so that it becomes non-infringing provided that:
 - a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and function of the original item;
 - b) there is no additional cost to ECITB; and
 - c) the terms of this Agreement shall apply to the modified or replaced items; or
 - 15.3.3 Subject to having used reasonable endeavours to remediate in accordance with sub-clauses 15.3.1 to 15.3.2c), terminate this Agreement by written notice to ECITB.
- 15.4 The Supplier shall have no liability if the alleged infringement is based on:
- 15.4.1 a material modification of the Website Hosting Platform by anyone other than the Supplier; or
 - 15.4.2 ECITB's use of the Website Hosting Platform in a manner directly contrary to the written instructions given to ECITB by the Supplier.

16 LIMITATION OF LIABILITY

- 16.1 The following provisions set out the entire financial liability of either Party (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the other in respect of:
 - 16.1.1 any breach of this Agreement howsoever arising;
 - 16.1.2 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with this Agreement.
- 16.2 Nothing in this Agreement shall limit or exclude the either Party's liability:

- 16.2.1 for death or personal injury caused by that Party's negligence;
- 16.2.2 for fraud or fraudulent misrepresentation;
- 16.2.3 in respect of an obligation in this Agreement to indemnify a Party or any other person;
- 16.2.4 for any act, omission or matter, liability for which may not be excluded or limited under any Applicable Law; or
- 16.2.5 for any breach by the Supplier of clauses 11 (Proprietary Rights) 12 (Confidentiality), 13 (Anti-Corruption and Modern Slavery) Schedule 7 (Data Processing Addendum), .
- 16.3 Subject to clause 16.2 and except as expressly provided to the contrary in this Agreement, neither Party will be liable to the other for any indirect, special or consequential loss or damage.
- 16.4 Subject to clause 16.2 the Supplier's total liability arising under or in connection with this Agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise howsoever, shall in all circumstances be limited in aggregate to up to and not exceeding a value of two hundred and fifty thousand pounds sterling (£10,000,000)
- 16.5 Subject to clause 16.2 ECITB's total liability arising under or in connection with this Agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise howsoever, shall in all circumstances be limited in aggregate:
 - 16.5.1 in respect of the non-payment of Fees due and payable, to the amount unpaid; and
 - 16.5.2 in respect of any other type of liability, up to and not exceeding a value of two hundred and fifty thousand pounds sterling (£10,000,000)

17 TERM AND TERMINATION

- 17.1 This Agreement shall commence on the Effective Date and shall continue for the period of three (3) years, unless otherwise terminated as provided in this clause 17. After three (3) years, this Agreement shall automatically terminate unless the parties first agree otherwise in writing.
- 17.2 Without affecting any other right or remedy available to it, ECITB may terminate this Agreement for convenience at any time on giving the Supplier not less than 6 months prior written notice.
- 17.3 Without affecting any other right or remedy available to it, ECITB may terminate this Agreement with immediate effect by giving written notice to the Supplier if the Supplier:
 - 17.3.1 commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified to do so;
 - 17.3.2 is incompetent, guilty of gross misconduct and/or serious or persistent negligence in respect of his/her obligations hereunder;
 - 17.3.3 fails or refuses after written warning to carry out the duties reasonably and properly required of him/her hereunder.
 - 17.3.4 the Supplier infringes the Intellectual Property Rights of ECITB;

- 17.4 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- 17.4.1 the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 17.4.2 the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
 - 17.4.3 the other Party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - 17.4.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
 - 17.4.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other Party (being a company, partnership or limited liability partnership);
 - 17.4.6 the holder of a qualifying floating charge over the assets of that other Party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - 17.4.7 a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
 - 17.4.8 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within [14] days;
 - 17.4.9 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.4.1 to clause 17.4.8 (inclusive);
 - 17.4.10 the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - 17.4.11 the other Party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or
 - 17.4.12 there is a change of control of the other Party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 17.5 On termination of this Agreement for any reason:
- 17.5.1 all licences granted under this Agreement shall immediately terminate;

- 17.5.2 each Party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party;
- 17.5.3 the Supplier shall immediately (at no cost to ECITB) return to ECITB all ECITB Data including all other relevant data in its most recent form (whether or not backed up) and all other property of the ECITB then in its possession and copies of it in such format as ECITB may require and shall within 90 days of termination securely and irrevocably erase all ECITB Data, such erasure shall be by means of an data sanitation mechanism agreed by the Parties;
- 17.5.4 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 17.6 If this Agreement shall be terminated because of the default of the Supplier then the Supplier shall indemnify ECITB against costs, losses or damages suffered by ECITB as a result of such default.

18 FORCE MAJEURE

Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 weeks the Party not affected may terminate this Agreement by giving 30 days' written notice to the affected Party.

19 WAIVER

- 19.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 19.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

20 RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21 SEVERANCE

- 21.1 The provisions of this Agreement shall be deemed severable, and the unenforceability of any one of the provisions shall not affect the enforceability of other provisions. In the event that a provision is found to be unenforceable, the Parties shall substitute that provision with an enforceable provision that preserves the original intent and position of the Parties.

22 ENTIRE AGREEMENT

- 22.1 This document constitutes the entire Agreement between the Parties and supersedes all other prior agreements between the Parties for the provision of such services.

23 ASSIGNMENT

- 23.1 Neither Party may assign or otherwise transfer this Agreement without the prior written consent of the other Party. In the event that consent for assignment is given, the terms of this Agreement will be binding upon each Party's respective successor.

24 NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

25 VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

26 THIRD PARTY RIGHTS

This Agreement does not confer any rights on any person or Party (other than the Parties to this Agreement and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

27 COUNTERPARTS

- 27.1 This Agreement may be executed in counterparts or duplicates, each of which, when executed and delivered, shall be an original, and such counterparts or duplicates together shall constitute one and the same instrument.

- 27.2 This Agreement may be executed by Electronic Signature.

28 NOTICES

- 28.1 Any notice to be given under this Agreement shall be in writing and shall be deemed to be sufficiently served by one Party on the other if it is either delivered personally or is sent by prepaid first class post and addressed to the Party to whom it is to be given, in the case of the Supplier at the last known residence of the Supplier and in the case of ECITB at its head office, and any such notice so posted shall be deemed to have been served on the date (excluding Sundays and public holidays) following that on which it was posted.

29 LAW AND JURISDICTION

- 29.1 This Agreement shall be governed by and construed in accordance with the law of England and each Party agrees to submit to the exclusive jurisdiction of the courts of England.

SCHEDULE 1 WEBSITE DEVELOPMENT SERVICES AND ADDITIONAL SERVICES

SCHEDULE 2 FEES

SCHEDULE 3: HOSTING SERVICES

1. Hosting

- 1.1 The Supplier shall ensure that that the Website Hosting Platform will only be hosted in an environment that is compliant with ISO270001 (or any equivalent standard which may replace the ISO270001 from time to time).
- 1.2 ECITB acknowledges that the Website Hosting Platform may be provided on a permanent basis through the cloud by a third party such as Amazon Web Services EMEA SARL, Azure or any other hosting provider ("**Third Party Hosting Provider**").
- 1.3 Prior to the Effective Date, or in any event prior to the provision of the Hosting Services, the Supplier shall confirm to the ECITB the identity of such Third Party Hosting Provider. For the avoidance of doubt, the Website Hosting Platform shall not be hosted by a Third Party Hosting Provider until such time as ECITB has approved the use of such Third Party Hosting Provider in writing and the engagement of the Third Party Hosting Provider shall be subject to such reasonable conditions as ECITB may require.

SCHEDULE 4: MAINTENANCE AND SUPPORT

1. Training

The Supplier shall provide training to the Authorised Users upon request from such Authorised User to the Supplier from time to time.

2. Updates

- 2.1 The Supplier and ECITB shall work collaboratively to review and update the content of the Websites every 12 months from the Effective Date. The Supplier may reasonably charge the ECITB for updates to the ECITB Data at a commercial rate, on agreement of both Parties in writing.
- 2.2 The Supplier shall cooperate with ECITB fully and make any updates or amendments to the content of the Websites , as requested by ECITB from time to time.

3. Technical support services

- 3.1 The Supplier shall provide the ECITB with technical support services. The ECITB personnel shall be authorised to contact the Supplier for technical support services. The Supplier shall provide the Supplier support engineers (**SSEs**) who are assigned to the ECITB account. The SSEs shall handle support calls from the ECITB's personnel and shall maintain continuity of knowledge of the ECITB account history. The Supplier shall use all reasonable commercial endeavours to provide continuity of SSEs.
- 3.2 The Supplier shall issue ECITB identification numbers (**CINs**) to the ECITB Personnel, which will allow those ECITB Personnel to access Supplier technical support. Supplier technical support shall accept voicemail, email and web form-based incident submittal from ECITB Personnel with valid CINs 24 hours a day, seven days a week. The Supplier technical support call centre shall accept calls for English language telephone support during Normal Business Hours. The Supplier shall use all reasonable commercial endeavours to process support requests, issue trouble ticket tracking numbers if necessary, determine the source of the problem and respond to the ECITB. The Supplier technical support call centre shall respond to all support requests from ECITB Personnel with valid CINs within the time periods specified below, according to priority.
- 3.3 The ECITB Personnel and Supplier technical support shall jointly determine the priority of any defect, using one of following priorities:

Priority	Description	Response time	Target resolution time
Priority 1	The entire Service is "down" and inaccessible. Priority 1 incidents shall be	Within two Normal Business Hours.	Four Normal Business Hours. Continuous effort after initial

	reported by telephone only.		response and with ECITB co-operation.
Priority 2	Operation of the Services is severely degraded, or major components of the Service are not operational and work cannot reasonably continue. Priority 2 incidents shall be reported by telephone only.	Within four Normal Business Hours.	Within two Business Days after initial response.
Priority 3	Certain non-essential features of the Service are impaired while most major components of the Service remain functional.	Within 12 Normal Business Hours.	Within seven Business Days after initial response.
Priority 4	Errors that are non-disabling or cosmetic and clearly have little or no impact on the normal operation of the Services.	Within 24 Normal Business Hours.	Next release of the Website Hosting Services.

- 3.4 If no progress has been made on a Priority 1 or Priority 2 incident within the relevant target resolution time specified in the table set out in paragraph 3.3, the incident shall be escalated to the [Manager of Supplier Technical Services If the incident is not resolved, then after each successive increment of the relevant target resolution time (for example, four Business Hours for a Priority 1 incident, two Business Days for a Priority 2 incident), the incident shall be escalated to the Director of Supplier Technical Services or other relevant persons followed by the person responsible for Supplier Technical Services, followed by the President or CEO.
- 3.5 The Supplier shall provide monitoring of its Hosting Services as described in Schedule 3 24 hours a day seven days a week. The Supplier shall directly notify the Customer Service Representative (CSR) of Maintenance Events (as defined in **Error! Bookmark not defined.****Error! Reference source not found.**) that may affect the availability of the Hosting Services.
- 3.6 The ECITB shall provide front-line support to Authorised Users who are not the designated CSRs. However, the ECITB's designated CSRs may contact Supplier technical support in order

to report problems from Authorised Users that the ECITB's designated CSRs cannot resolve themselves after they have performed a reasonable level of diagnosis.

- 3.7 Before the Supplier or the ECITB makes changes to integration interfaces between the Website Hosting Services and the ECITB's internal data stores or systems, the Supplier or the ECITB shall provide notice to the other in order to ensure the continued operation of any integration interfaces affected by such changes. The Supplier shall provide the CSRs, or the ECITB shall provide the SSEs, with at least [60] days' advance notice of such changes. Such notice shall include at least the new interface specifications and a technical contact to answer questions on these changes. The Supplier or the ECITB (as applicable) shall also provide up to [15] days of integration testing availability to ensure smooth transition from the previous interfaces to the new interfaces and the ECITB shall pay for all such services relating to integration testing carried out by the Supplier at the Supplier's then current daily fee rates.

SCHEDULE 5: MANDATORY POLICIES

The Mandatory Policies are:

SCHEDULE 6: SUPPLIER'S NETWORK AND INFORMATION SYSTEMS SECURITY

1. Information Security and Governance:

1.1 The Supplier shall:

- (a) Ensure that all data relating to the Services is stored either in EU based servers or in servers in a jurisdiction agreed in advance in writing by ECITB.
- (b) Ensure that data at rest will be stored on servers with at least AES 256 bit encryption.
- (c) Ensure that all data in transit is securely transmitted with either TLS 1.2 or better encryption, or by other secure media where relevant.
- (d) Ensure that no 'Special Category' data shall be stored.
- (e) Ensure that indelible deletion of all data occurs within 90 days upon termination of the Agreement, at ECITB's request and transfer of data upon termination of the Agreement by secure means to ECITB.
- (f) At all times ensure it is ISO270001 compliant.
- (g) Provide independent Pen Test certification annually upon request by ECITB.
- (h) Maintain staff policies and training around data privacy and information security.
- (i) Manage access controls on a least privilege principle and ensure that user accounts are maintained to be up to date.
- (j) Maintain an Information Security risk register.
- (k) Provide to ECITB details of named individual responsible and accountable for technical security governance and management and of the Data Protection Officer or equivalent.
- (l) Perform scheduled back-ups, provide routine and emergency data recovery, and manage the archiving process. The back-up obligations shall include at least weekly full back-ups and daily incremental back-ups. In the event of data loss, the Supplier shall provide recovery services to try to restore the most recent back-up. The Supplier shall retain 30 days of incremental back-ups at any one time and shall retain all cold back-ups.
- (m) Provide a right of inspection or the appropriate evidence of the above to ECITB.

2. Security of systems and facilities

2.1 A description or mapping of the Supplier's information system insofar as it relates to the ECITB and any policies the Supplier has in place for managing information security, including risk

analysis, human resources, security of operations, security architecture, secure data and system life cycle management and, where applicable, encryption and its management.

- 2.2 The Supplier's measures to protect the security of its network and information systems from damage using an all-hazards risk-based approach, addressing for instance system failure, human error, malicious action or natural phenomena.
- 2.3 The Supplier's measures including any policies to ensure the accessibility and traceability of critical supplies used in the provision of the Services.
- 2.4 Any measures to ensure that the physical and logical access to network and information systems, including administrative security of network and information systems, is authorised and restricted based on business and security requirements.

3. Incident handling

- 3.1 The Supplier's detection processes and procedures for ensuring timely and adequate awareness of anomalous events and details of the ways in which it maintains and tests these processes and procedures.
- 3.2 The Supplier's processes and policies on reporting incidents and identifying weaknesses and vulnerabilities in its information systems.
- 3.3 The Supplier's procedures for assessing the severity of a security incident, documenting knowledge from incident analysis which may serve as evidence and support a continuous improvement process.

4. Business continuity management

- 4.1 The Supplier's contingency procedures for ensuring business continuity for the websites its Suppliers and details of the ways in which it regularly assesses and tests these.
- 4.2 The Supplier's disaster recovery capabilities and details of the ways in which these are regularly assessed and tested.

5. Monitoring, auditing and testing

- 5.1 The Supplier's policies and the maintenance of such policies on:
- 5.2 Conducting planned sequences of observations or measurements to assess whether network and information systems are operating as intended.
- 5.3 Inspection and verification to check whether a standard or set of guidelines is being followed, records are accurate, and efficiency and effectiveness targets are being met.

- 5.4 A process (including technical processes and personnel involved in the operation flow) intended to reveal flaws in the security mechanisms of a network and information system that protect data and maintain functionality as intended.

SCHEDULE 7

This Data Processing Addendum (“**Addendum**”) forms part of the agreement between The Engineering Construction Industry Training Board (“**ECITB**”) and **<Insert Name>** (“**Supplier**”) for the provision of hosting services by the **Supplier** to **ECITB** (the “**Agreement**”).

This Addendum shall apply to all Processing of ECITB Personal Data (as defined below) from the earlier of the date of signature of the Agreement or the date on which the Supplier starts Processing ECITB Personal Data as part of the Services delivered pursuant to the Agreement.

The Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Except as modified below, the terms of the Agreement shall remain in full force and effect.
- 1.2 In the event of any conflict between any term of the Agreement, the terms of this Addendum and the Standard Contractual Clauses or any other analogous international transfer provisions (collectively “**International Clauses**”), the following order of precedence shall apply: (1) International Clauses; (2) this Addendum; (3) the Agreement.
- 1.3 The terms used in this Addendum shall have the meanings set forth in this Addendum. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Agreement.

“**Adequacy Decision**” means an “adequacy regulation” made pursuant to Part 3, Schedule 21 of the Data Protection Act 2018 (as amended), including those issued by the UK Secretary of State pursuant to sub-paragraph 4(3), Part 3, Schedule 21 of that Act;

“**Applicable Data Protection Laws**” means (i) the GDPR and (ii) the UK Data Protection Laws; and, (iii) all Applicable Laws relating to personal data in any jurisdiction where any Data Subject may reside, and in each case; all laws that supplement, supersede, replace, amend or re-enact the Applicable Laws;

“**Approved Sub-processor**” means any third party appointed by or on behalf of the Supplier in accordance with clause 6;

“**Controller**”, “**Processor**”, “**Data Subject**”, “**ECITB Personal Data**”, “**ECITB Personal Data Breach**”, “**Process**” and “**Processing**” shall have the respective meanings given to them (and equivalent expressions) in Applicable Data Protection Laws;

“**ECITB Personal Data**” all ECITB Personal Data which is owned, controlled or processed by ECITB and which is provided by or on behalf of it or any member of its group of companies to the Supplier or which comes into the possession of, or is created, generated or processed by, the Supplier or any of its Approved Sub-

	Processors, or its systems as a result of or in connection with the supply of the Services;
ECITB Privacy Policies	means all policies relating to ECITB's Processing of ECITB Personal Data and which ECITB makes available to the Supplier from time to time;
"Description of Processing"	the description of Processing as set out at Appendix 1 of this Agreement;
"EEA"	means the European Economic Area;
"GDPR"	means EU General Data Protection Regulation 2016/679;
"Good Industry Practice"	the exercise of that degree of skill, diligence, prudence, foresight and operating practice which, at the relevant time, would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same or a similar business;
"International Transfer"	<p>means any of the following transfers of ECITB Personal Data between the Supplier and ECITB, the Supplier and any Approved Sub-processor, any two Approved Sub-processors:</p> <ul style="list-style-type: none"> (i) a transfer from the EEA to the UK; (ii) a transfer from the UK to the EEA; (iii) a transfer from the UK or EEA to another country, territory or jurisdiction outside the UK and EEA; (iv) a transfer to a country, territory or jurisdiction outside the UK and EEA by a transferor outside the UK and EEA that is directly subject to the GDPR in relation to that transfer; and, (v) a transfer from any country outside the EEA and UK and to which international transfer restrictions apply.
"Processor Personnel"	any of the Supplier's employees, staff, workers, agents or consultants;
"Restricted Transfer"	means an International Transfer where the country to which the ECITB Personal Data is transferred to or in

which the ECITB Personal Data is Processed is not subject to a valid Adequacy Decision in force at the time of that transfer or at a time after that transfer or any other safeguard (excluding Standard Contractual Clauses) approved by the Supervisory Authorities from time to time;

“Standard Contractual Clauses” means the Standard Contractual Clauses (Controller-to-Processor) for the transfer of ECITB Personal Data from the EEA to Processors established in non-EEA countries that do not provide an adequate level of data protection approved by EC Commission Decision of 5 February 2010, as attached herein as Attachment 2, as amended from time to time, to reflect any change (including any replacement) made in accordance with Data Protection Laws (i) by the European Commission or of the equivalent contractual clauses approved by the European Commission or any successor legislation or (ii) by an equivalent competent authority or of any equivalent contractual clauses approved by it or another competent authority under Applicable Data Protection Laws. The parties agree to amend the Standard Contractual Clauses if required in accordance with a relevant European Commission decision or guidance or Applicable Data Protection Laws;

“Supervisory Authority” means an independent public authority which is established under applicable Member State law and which concerns itself with the Processing of ECITB Personal Data;

"UK Data Protection Laws" means the GDPR as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 ("UK GDPR"), together with the Data Protection Act 2018, the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 and other data protection or privacy legislation in force from time to time in the United Kingdom.

2. DATA PROTECTION

- 2.1 The Parties acknowledge and confirm that ECITB is the Data Controller, and that the Supplier is the Data Processor for the purposes of Processing ECITB Personal Data pursuant to the Agreement.
- 2.2 The Parties acknowledge and agree that the Description of Processing is an accurate description of the Processing undertaken by the Supplier pursuant to the Agreement.
- 2.3 Both Parties will agree appropriate and suitable wording, including any applicable data privacy notices which should be provided to the Data Subjects for the purpose of obtaining the Data Subject's consent to the Processing of their ECITB Personal Data.

3. SUPPLIER OBLIGATIONS:

- 3.1 The Supplier shall (and shall procure all Processor Personnel shall):
 - 3.1.1 implement appropriate technical and organisational measures for the fulfilment of Customer's obligation to respond to requests from individuals for exercising Data Subjects' rights;
 - 3.1.2 promptly provide such information and assistance (at no cost to ECITB) to ECITB in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Applicable Data Protection Laws with respect to security, breach notifications, impact assessments, audits and consultations with supervisory authorities and/or regulators. In no event shall the Supplier respond directly to any such request or correspondence without ECITB's prior written consent unless and to the extent required by law;
 - 3.1.3 provide reasonable assistance to ECITB with any data protection impact assessments, required by Applicable Data Protection Laws, in each case solely in relation to Processing of the ECITB Personal Data by, and taking into account the nature of the Processing and information available to, the Supplier;
 - 3.1.4 ensure that all Processor Personnel who have access to and/or Process ECITB Personal Data are subject to legally binding and enforceable obligations to keep the ECITB Personal Data confidential;
 - 3.1.5 ensure that all access to the ECITB Personal Data is strictly limited to those individuals who need to access the relevant ECITB Personal Data, as strictly necessary for the purposes of fulfilling the Services as set out in the Agreement in the context of that individual's duties to the Supplier;
 - 3.1.6 maintain complete and accurate records (and promptly provide any information requested by ECITB in writing) to demonstrate its compliance with this Addendum and allow for audits by ECITB or ECITB's designated auditors (at such time as ECITB may request);
 - 3.1.7 immediately inform ECITB if, in the Supplier's reasonable opinion, an instruction infringes any Applicable Data Protection Laws;
 - 3.1.8 only process the ECITB Personal Data for the purposes of supplying the Services (and for no other purpose whatsoever) and only in accordance with ECITB's documented instructions from time to time (including in relation to any overseas transfers of data), the Description of Processing, the ECITB Privacy Policies, any IT, security or other of ECITB's policies notified to the Supplier by ECITB from time to time, Good Industry Practice and all Applicable Data Protection Laws; and
 - 3.1.9 notify ECITB without undue delay if it has any reason to believe that any laws or legislation applicable to Supplier is likely to have a substantial adverse effect on the

obligations set out in this Addendum. In such event, ECITB shall be entitled to suspend all transfers of ECITB Personal Data to the Supplier on written notice.

3.2 The Supplier warrants and represents that it:

3.2.1 will at all times comply with the Applicable Data Protection Laws applicable whilst such ECITB Personal Data is in its control and not cause ECITB to breach any obligation under the Applicable Data Protection Laws;

3.2.2 shall only Process the ECITB Personal Data:

a) for the limited purposes of providing the Services under the Agreement and the performance of its obligations under the Agreement, such purposes as set out in the Description of Data Processing; or

b) otherwise on ECITB's documented instructions.

3.3 In respect of all ECITB Personal Data that is Processed by the Supplier for which consent is relied on as the relevant lawful basis for the Processing, the Supplier warrants that:

3.3.1 prior to Processing the ECITB Personal Data, it has communicated to the Data Subjects all necessary consent statements and privacy notices which have been approved by ECITB, including the ECITB Privacy Policies;

3.3.2 the Data Subject has consented to the Processing on the basis of that information supplied; and

3.3.3 the Supplier has a written and auditable documentary record of the Data Subject's consent.

4. SECURITY AND AUDIT

4.1 The Supplier shall implement and maintain appropriate technical and organisational security measures protect the ECITB Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage or disclosure. Such measures include, without limitation, the security measures set out in Appendix 2

4.2 Upon ECITB's written request, the Supplier shall make available to ECITB all information reasonably necessary to demonstrate compliance with the obligations set out in this Addendum, which may include any available independent third-party security audit report(s). If ECITB is not reasonably satisfied with the provided independent audit report(s), upon ECITB's written request, which shall include a reasonably detailed explanation of why ECITB is not so satisfied the Supplier will allow for and contribute to audits, including inspections, conducted by ECITB or another auditor mandated by ECITB and notified to the Supplier. Notwithstanding the foregoing, the Supplier shall make ECITB aware of any material deficiencies, incidents or compliance gaps identified within an audit report, including the Supplier's proposed rectification plan to address the same.

5. DATA BREACH

5.1 The Supplier shall immediately (and in any event within 24 hours) notify ECITB in writing, on becoming aware of any suspected, threatened or actual or reasonably suspected or "near miss" ECITB Personal Data Breach affecting or that may affect any ECITB Personal Data that Supplier Processes or any breach of security affecting the ECITB Personal Data (in each case whether or not such breach occurred during the term of the Agreement) and shall provide ECITB with full particulars of such breach and any additional information and detail that ECITB may reasonably request.

- 5.2 Where the Supplier notifies ECITB in accordance with clause 5.1, it shall provide ECITB with details about:
- 5.2.1 the nature of the ECITB Personal Data Breach;
 - 5.2.2 the categories and approximate number of Data Subjects and ECITB Personal Data records concerned; and
 - 5.2.3 any measures proposed to be taken to address the ECITB Personal Data Breach and to mitigate its possible adverse effects.
- 5.3 For the avoidance of doubt, the Supplier will not, and will procure that any Sub-processors will not, make or permit any announcement in respect of the ECITB Personal Data Breach which refers to ECITB (either directly or indirectly) to any person without ECITB's prior written consent.

6. USE OF SUB-PROCESSORS

- 6.1 To the extent that ECITB has authorised the Supplier to engage any third party as a Sub-processor to Process the ECITB Personal Data under this Addendum the terms of this clause 6 shall apply.
- 6.2 The Supplier shall not appoint any Sub-processor to Process the ECITB Personal Data until ECITB has given prior authorisation. ECITB reserves the right to authorise the use of certain Approved Sub-processors or categories of Approved Sub-processors on a specific or general basis (including the location of the relevant establishment of the Approved Sub-processor(s) and of any Processing they perform), the details of which will be as set out in Appendix 1 of this Addendum.
- 6.3 Save in respect of a Restricted Transfer and subject to clause 6.6, where ECITB provides the Supplier with general authorisation to appoint Sub-processors, the Supplier may use any of the Sub-processors as notified to ECITB in List 1 set out in in Appendix 1 of this Addendum.
- 6.4 The Supplier shall provide ECITB with at least 60 days prior notice of any intended changes concerning the addition or replacement of Sub-processor(s) and provide ECITB with all information required to assess the proposed change. ECITB reserves the right, in its absolute discretion (acting reasonably), to approve or reject the proposed change.
- 6.5 If ECITB objects to the use of the Sub-processor, the Parties will come together in good faith to discuss a resolution and the Supplier may choose: (i) not use the Sub-processor and find a suitable alternative to provide the services; or (ii) to take any corrective steps that may be requested by ECITB in order to meet its reasons for objection, and, having done so, use the Sub-processor. If neither of these options is reasonably possible and ECITB continues to object for a legitimate reason, ECITB may terminate the Agreement on thirty (30) days' written notice.
- 6.6 The Supplier shall:
- 6.6.1 enter into a written contract with each Sub-processor (prior to such Approved Sub-processor processing any ECITB Personal Data) that imposes the same, or equivalent, obligations as those in this Addendum;
 - 6.6.2 ensure that the Sub-processor's Processing of ECITB Personal Data automatically ceases on termination or expiry of the Agreement for any reason;

- 6.6.3 ensure that ECITB's audit rights conferred under clause 4.2 extend to any Sub-processor contracts entered into by the Supplier; and,
 - 6.6.4 ensure that Sub-processors are assessed by, or where appropriate, on behalf of, the Supplier to ensure their reliability, and conduct sufficient due diligence on proposed Sub-processors, and obtain sufficient guarantees that such Sub-processor shall implement appropriate technical and organisational measures and perform all relevant risk assessments in such a manner that the Processing shall meet the requirements of the Applicable Data Protection Laws and ensure the protection of the rights of the Data Subject.
- 6.7 Notwithstanding ECITB's authorisation of any Sub-processor in accordance with this clause 6, the Supplier remains fully liable for the acts and omissions of all Sub-processors and, for the avoidance of doubt, will be deemed to be in breach of this Addendum if ECITB suffers or incurs any losses, damages or costs arising from such acts or omissions.

7. INTERNATIONAL TRANSFERS OF PERSONAL DATA

- 7.1 To the extent that the Supplier, either by itself or by virtue of it engaging or authorising any Approved Sub-processor, engages in an International Transfer of ECITB Personal Data and such a transfer is a Restricted Transfer then the conditions of this clause 7 shall apply.

Restricted Transfers

- 7.2 To the extent that any Restricted Transfer of ECITB Personal Data by the Supplier or an Approved Sub-processor takes place the Parties agree that the Standard Contractual Clauses will apply in respect of that Processing and the Supplier will enter into these as 'data exporter' and the Approved Sub-processor as the 'data importer'.
- 7.3 Subject to clause 7.4 and any specific terms of authorisation as specified in Appendix 1, the Standard Contractual Clauses may be varied or terminated only as specifically set out in them. In the event of inconsistencies between the Standard Contractual Clauses and this Addendum or other agreements between the Parties, the Standard Contractual Clauses shall take precedence.
- 7.4 Where the Supplier enters into Standard Contractual Clauses with an Approved Sub-processor pursuant to Restricted Transfers of ECITB Personal Data the following shall apply:
- (i) The docking clause shall not be included;
 - (ii) The audit rights granted to the Supplier under clause 8.9 shall not be restricted in any way; and
 - (iii) The right of the Supplier to claim back compensation under clause 12(d) of the Standard Contractual Clauses shall not be subject to any limitation of liability.

Where any Restricted Transfer involves a transfer of ECITB Personal Data regulated by the UK Data Protection Laws, such a transfer shall be subject to the Standard Contractual Clauses in conjunction with the UK's International Data Transfer Addendum ("**UK Addendum**") available at <https://ico.org.uk/media/for-organisations/documents/4019535/addendum-international-data-transfer.docx> (collectively, the "**UK SCCs**"), which are hereby incorporated with the following clarifications:

Additional Safeguards.

- 7.5 To the extent that the Supplier transfers ECITB Personal Data to any country outside the EEA (including the UK), the Supplier warrants and represents that it has no reason to believe that

the laws in any third-country of destination applicable to the Processing of ECITB Personal Data, including requirements to disclose ECITB Personal Data or measures authorising access by public authorities, prevent the Supplier from fulfilling its obligations under this Addendum and warrants and represents the same with regard to any onward transfers initiated by a Sub-processor.

- 7.6 Prior to initiating any such transfers, including in respect of any onward transfers initiated by a Sub-processor, the Supplier shall and, in respect of any onward transfers initiated by a Sub-processor procure that the Sub-processor shall, conduct a data protection impact assessment which covers the following:
- 7.6.1 details of the intended data importer and any other parties with whom ECITB Personal Data shall be shared;
 - 7.6.2 the proposed ECITB Personal Data which will be transferred and Processed;
 - 7.6.3 the proposed country or countries to which the ECITB Personal Data will be transferred;
 - 7.6.4 details of the proposed transfer, including without limitation duration, scale and regularity of the transfer, the length of any processing chain and the number of actors involved and the transmission channels;
 - 7.6.5 extracts of all relevant laws or practices applicable to the transfer in the importing country(ies) that may impinge on the effectiveness of the safeguards and the objectives set out, as applicable, in Article 23 (1) of the GDPR or Article 23 (1) of the UK Data Protection Laws ("**Local Adequacy**");
 - 7.6.6 details of any government access requests made to the data importer or those third parties with whom the data importer may/shall share ECITB Personal Data; and
 - 7.6.7 details of all alternate organisational and technical safeguards which will be implemented to ensure compliance with the Applicable Data Protection Laws and Local Adequacy requirements.
- 7.7 Where the Supplier or the Sub-processor (as applicable), determine, acting reasonably, that the requirements of clause 7.5 or 7.6 cannot be met, no transfer of ECITB Personal Data shall be permitted.

Onward Transfers

- 7.8 If, following an International Transfer of the ECITB Personal Data, either the Supplier or an Approved Sub-processor engages in further International Transfers of ECITB Personal Data ("**Onward Transfer**") the Supplier warrants that it shall ensure the recipient of such data has entered into a written that imposes the same, or equivalent, obligations as those in this Addendum.

8. PERSONAL DATA PRODUCTION REQUEST

- 8.1 In respect of transfers of ECITB Personal Data where the Supplier receives a mandatory request, order, demand, notice or direction from any Holding Company or any government department, body or agency, public authority to disclose any ECITB Personal Data whether or not in writing or identifying any specific Data Subjects ("**Data Production Request**"), it shall handle that ECITB Personal Data Production Request in accordance with the following principles:

- 8.1.1 The Supplier shall not disclose ECITB Personal Data in response to a ECITB Personal Data Production Request unless either (i) it is under a compelling legal obligation to make such disclosure; or (ii) taking into account the circumstances and the privacy rights of any affected individuals, there is an imminent risk of serious harm that merits disclosure in any event (for example, in order to protect individuals' vital interests);
- 8.1.2 Where it is considered that disclosure of ECITB Personal Data is required in response to a ECITB Personal Data Production Request, the Supplier's policy is that ECITB should have the opportunity to protect the ECITB Personal Data requested given that ECITB has the greatest interest in opposing or may be in a better position to comply with or respond to the ECITB Personal Data Production Request;
- 8.1.3 Unless legally prohibited or where the imminent risk of serious harm prohibits prior notification, the Supplier shall:
- a) after assessing the nature, urgency, scope, and validity of the ECITB Personal Data Protection Request, promptly notify ECITB in writing setting out the details of the ECITB Personal Data Production Request prior to disclosing any ECITB Personal Data;
 - b) consult with the relevant Supervisory Authority in respect of the ECITB Personal Data Production Request. The Supplier shall at all times cooperate with the Supervisory Authority and ECITB to deal with and address the ECITB Personal Data Production Request; and
 - c) put the ECITB Personal Data Production Request on hold in order to notify and consult with ECITB and/or relevant Supervisory Authority.
- 8.1.4 where the Supplier is prohibited from notifying the relevant Supervisory Authority and suspending a ECITB Personal Data Production Request, the Supplier shall use its reasonable endeavours (taking into account the nature, urgency, scope and validity of the ECITB Personal Data Production Request) to inform the requesting law enforcement or government authority about its obligations under Applicable Data Protection Laws and to obtain the right to waive this prohibition. This includes asking the requesting law enforcement or government authority to put the ECITB Personal Data Production Request on hold so the Supplier can consult with the Supervisory Authority, which in appropriate circumstances, may include seeking a court order to this effect. The Supplier shall keep written records relating to its efforts it takes;
- 8.1.5 The Supplier will assess whether it can continue to comply with its obligations under the Standard Contractual Clauses before further Processing ECITB Personal Data under this Addendum; and
- 8.1.6 to the extent Applicable Data Protection Laws require a higher standard of protection for ECITB Personal Data than is required by this clause 8, the Supplier shall comply with the relevant requirements of Applicable Data Protection Laws.

9. DATA SECURITY

9.1 The Supplier shall at all times:

- 9.1.1 preserve so far as possible the security of ECITB's Data and the ECITB Personal Data and prevent any loss, disclosure, theft, manipulation or interception of ECITB's Data and the ECITB Personal Data;
- 9.1.2 ensure that its anti-malware controls are deployed and maintained in accordance with Good Industry Practice and all of the Supplier's IT policies, check for and delete any

malicious materials from its systems and not intentionally or negligently transfer any malicious materials onto any of ECITB's IT systems or onto any media containing the ECITB Personal Data and the ECITB Personal Data; and

- 9.1.3 ensure that all the ECITB Personal Data and the ECITB Personal Data is kept (physically and logically) separate from all other data.
- 9.2 The Supplier shall at all times comply with ISO/IEC27001 or otherwise comply with good industry practice relating to data protection, and implementation and maintenance of back-up systems.
- 9.3 The Supplier shall at all times ensure that its IT systems are fit for the purpose of securing ECITB's Data and the ECITB Personal Data in accordance with good industry practice and this Addendum and are regularly maintained and, if necessary, upgraded to ensure this.

10. RETURN AND DELETION

- 10.1 At ECITB's option, upon termination or expiration of the Agreement the Supplier shall delete or return to ECITB all ECITB Personal Data as provided in the Agreement, and Supplier will delete all existing copies of ECITB Personal Data in accordance with its standard data retention and deletion practices, unless Supplier is under a legal obligation to require storage of that data and in which case the Supplier may retain such ECITB Personal Data to the extent and for such period as required by said legal obligation, provided that Supplier shall ensure (i) the confidentiality of all such ECITB Personal Data is retained and (ii) that such ECITB Personal Data is only Processed for the purpose(s) specified in such law; and, (iii) that all such ECITB Personal Data is promptly deleted once those purposes come to an end.
- 10.2 With regard to any sensitive ECITB Personal Data which is processed for the purpose of providing the Proctoring Services (as more particularly described in the Description of Data Processing) the Supplier warrants that it shall ensure that all such data (including any copies thereof) is deleted no later than 6 months after such ECITB Personal Data has been collected.

11. INDEMNITY AND LIABILITY

- 11.1 The Supplier shall indemnify ECITB (including its affiliates, officers, directors, employees, and agents) and hold it and each of them harmless against any:
 - 11.1.1 losses, damage, costs, charges, expenses and liabilities (including reasonable legal fees, consultant fees, forensic expert fees and disbursements);
 - 11.1.2 fines;
 - 11.1.3 monetary penalties; and
 - 11.1.4 all amounts paid or payable by ECITB to a third party which would not have been paid or payable if Supplier's breach of this Addendum (and/or that of any Sub-processor as applicable) had not occurred.

in each case, as incurred or suffered by it or arising out of or in connection with any breach by the Supplier of this Addendum including for the avoidance of doubt any breach by the Supplier which arises out of the actions or omissions of any of its Sub-processors. In clause 11.1 above, where the Supplier's breach then places ECITB in breach or subject to regulatory action, the Parties agree that this is foreseeable and a direct loss.

- 11.2 For the avoidance of doubt, the liability of the Supplier for any breach of this Addendum and in respect of the indemnity at clause 11.1 will be subject to any cap(s) or limitation(s) as may be set out in the Agreement.

12. DURATION AND TERMINATION

12.1 This Addendum, shall continue until either:

12.1.1 ECITB gives written notice of termination; or

12.1.2 the Services rendered by the Supplier comes to an end, whether through effluxion of time, its termination or otherwise.

12.2 Any obligation imposed on the Supplier under this Addendum in relation to the Processing of ECITB Personal Data shall survive any termination or expiration of this Addendum or the Agreement.

13. GENERAL

13.1 This Addendum becomes a part of the Agreement and is subject to its terms, which are incorporated herein by reference, subject to clause 13.2 below.

13.2 Except as modified by this Addendum, the terms of the Agreement shall remain in full force and effect. In the event of any conflict between this Addendum and any privacy-related provisions regarding ECITB Personal Data in the Agreement, the terms of this Addendum will prevail.

Signature:

Name:

Date:

Position:.....

Party: **The Engineering and Construction
Industry Training Board**

Signature:

Name:

Date:

Position:.....

Party: **<Insert Name>**

Signature:

Name:

Date:

Position:.....

Party: **The Engineering and Construction Industry Training Board**

APPENDIX 1

DESCRIPTION OF PROCESSING

Scope of ECITB Personal Data

This Appendix 1 forms part of the Agreement and describes the Processing that the Supplier will perform on behalf of ECITB in connection with the Services.

General Services

Data subjects

The ECITB Personal Data concerns the following categories of Data Subjects:

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Categories of ECITB Personal Data

The ECITB Personal Data Processed fall within the following categories:

General Services

Special or sensitive categories of ECITB Personal Data (if applicable)

The ECITB Personal Data Processed fall within the following special categories of ECITB Personal Data/Article 10 data:

N/A

APPENDIX 2
SUB-PROCESSORS

General Authorisation

As set out in the Addendum, ECITB has provided General Authorisation to the use of the following Sub-processors for all Services supplied under the Agreement excluding the Proctoring Services

FULL COMPANY NAME	COUNTRY/STATE OF INCORPORATION	REGISTERED COMPANY ADDRESS	COMPANY REGISTRATION NUMBER	SUBJECT MATTER / PURPOSE OF PROCESSING	LOCATION(S) OF PERSONAL DATA PROCESSED BY SUB-PROCESSOR	FREQUENCY OF RESTRICTED TRANSFER OF PERSONAL DATA TO SUB-PROCESSOR (IF APPLICABLE)

- 1.1 The Supplier shall ensure the Sub-processor shall adhere to the Questionnaire completed by the Sub-processor and annexed below at all times during the course of this Agreement.
- 1.2 The Supplier shall provide ECITB with not less two months' advanced written notice to that the agreement between the Supplier and the abovementioned Sub-processor will terminate, where it is not possible to provide two months' notice, the Supplier shall inform ECITB as soon as reasonably practicable. ECITB reserves the right in its absolute discretion to approach or reject any proposed replacement Sub-processor and shall communicate its decision within 30 days.

Signed

By: Name:

 Title:

 Date:

Signed

By: Name:

 Title:

 Date:

Duly authorised for
and on behalf of

The Engineering and Construction Industry Training Board

Signed

By: Name:

 Title:

 Date:

Duly authorised for
and on behalf of

The Supplier