

**AGREEMENT RELATING TO THE PROVISION OF
TRAINING & ASSESSMENT SERVICES**

OGTAP

ELECTRICAL MAINTENANCE

MECHANICAL MAINTENANCE

INSTRUMENT AND CONTROL MAINTENANCE

between

ENGINEERING CONSTRUCTION INDUSTRY TRAINING BOARD

And

XXXXXXXXXXXXXX

THIS AGREEMENT is dated

2022

PARTIES

- (1) **ENGINEERING CONSTRUCTION INDUSTRY TRAINING BOARD** a body corporate governed by the Industrial Training Act 1982 and having its head office at Office Suite KD3 First Floor, KD Tower, Cotterells, Hemel Hempstead, HP1 1FW ("**ECITB**").
- (2) **XXXXXXXXXXXX** whose registered office is at XXXXXXXXXXXXXXXXXXXX (the "**Training Provider**").

BACKGROUND

- (A) ECITB oversees the training of apprentices in the engineering construction industry (the "**Industry**").
- (B) The Training Provider has agreed to provide training to and assessment of Apprentices in the Industry.
- (C) This agreement records the terms and conditions under which the Training Provider shall provide training to and assessment of Apprentices.

AGREED TERMS

1 INTERPRETATION

1.1 The following definitions and rules of interpretation in this clause apply in this agreement:

Apprentice means any individual employed by an Employer to undertake the Training who is in the Cohort and whose identity has been notified to the Training Provider by ECITB in accordance with clause 4.2(1)(b);

Approved Sub-contractor means any party identified in Schedule 8 and approved by ECITB as a party to which the Training Provider may sub-contract the performance of the services also identified in Schedule 8;

Awarding Body means the awarding body or bodies responsible for the award of the qualifications under the Relevant Apprenticeship Framework;

Business Day means Monday to Friday excluding any public holidays in England and Wales;

Cohort means the intake of Apprentices who are registered against the Relevant Apprenticeship Framework who commence their Training in the Commencement Year;

Commencement Date means the date the cohort commences its Training;

Commencement Year means the year set out in Schedule 1;

Competence Qualification means the qualification an Apprentice must attain and which attests his or her ability to do a job of work to the standards recognised in the Relevant Apprenticeship Framework. In most cases the Apprentice will complete the Competence Qualification through On-the-job-Training and Assessment having previously attained the Knowledge Qualification;

Data Protection Legislation means the Data Protection Act 2018, the UK GDPR as defined in and amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended) and The Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended), in each case as amended, re-enacted or replaced from time to time and any other applicable laws in any jurisdiction relating to the processing or security of personal data or the privacy of natural persons;

ECITB Assessment Strategy for Craft and Technician Vocational Qualifications means the publication providing guidance to Training Providers and Apprentices on the assessment of each Competence Qualification;

ECITB Contact means the person identified in Schedule 7 or any replacement person appointed by ECITB as the person responsible for managing the relationship with the Training Provider on behalf of ECITB;

ECITB Contribution means the base sum payable by ECITB to the Training Provider by way of sponsorship for each Apprentice completing a Relevant Apprenticeship Framework, including accommodation during the off the job phase as set out in Schedule 6 (which is in addition to the Funding Contract Contribution which the Training Provider receives under the Funding Contract);

Employer means the person or organisation that employs each Apprentice as an employee;

Employment means the contract of employment between the Employer and each Apprentice;

Employment Costs means all costs, claims, demands, liabilities and expenses arising from any employment related claims (including without limitation) claims by or on behalf of employees for redundancy, unfair dismissal, breach of contract, unlawful discrimination, unlawful deductions from wages, breach of regulations 13 or 14 of the Transfer Regulations or breach of legislation relating to consultation with employees;

Force Majeure means any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), unavailability of raw materials, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm;

Funding Contract means the contract between the Training Provider and the relevant governmental body for the provision of the Funding Contract Contribution;

Intellectual Property means any patent, registered design, copyright, database right, design right, topography right, trade mark, trade name, application to register any of the aforementioned rights, trade secret, inventions, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world including without limitation any renewals, revisions and extensions created or provided by the laws of any country; all rights of action and remedies in relation to past infringements; and the right to apply for registration of any such rights in any country of the world;

Knowledge Qualification means all the educational qualifications an Apprentice must attain certifying the Apprentice's knowledge of the fundamental aspects of their discipline, underpinning the Competence Qualification. This qualification will be achieved through Off- the-job Training;

Off-the-job Training means the training which takes place away from the Apprentice's Employment, predominately at the Training Provider's or an Approved Sub-contractor's facilities leading to the completion of the Knowledge Qualification and is set out in Schedule 3;

On-the-job Training and Assessment means the training and assessment which takes place predominantly at the Employer's workplaces leading to the completion of the Competence Qualification and is set out in Schedule 4;

Plan means the plan for resolution of the Training Provider's failure to meet any of the Service Levels;

Personnel means any individual engaged by the Training Provider who is involved in the delivery of the Training;

Procedures means the operating and administrative procedures of ECITB relating to the Training and its delivery, as amended from time to time including, but not limited to, the **Quality Assurance Procedures Manual**;

Relevant Apprenticeship Framework means the apprenticeship framework set out in Schedule 2;

Service Levels means the performance standards set out in Schedule 5 in accordance with which the Training Provider is to provide the Training;

Terminating Employees means employees of the Training Provider wholly or mainly engaged in the provision of the Training prior to the Termination Date;

Termination Date means the date on which this Agreement expires or terminates;

Training means the entire programme of training and assessment of each Apprentice by the Training Provider leading to the completion of all aspects of the Relevant Apprenticeship Framework and the attainment of all qualifications including, but not limited to, the Knowledge Qualification and Competence Qualification, and the completion of all training including, but not limited to, the Off-the-job Training and On-the-job Training and Assessment and any other training required by ECITB in accordance with the terms of this Agreement;

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time.

1.2 Clause and schedule 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) and that person's personal representatives, successors or permitted assigns.

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 Words in the singular shall include the plural and vice versa.

1.7 A reference to one gender shall include a reference to the other genders.

1.8 A reference to any party shall include that party's personal representatives, successors or permitted assigns.

1.9 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts

1.10 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.11 A reference to **writing** or **written** includes faxes but not e-mail.

1.12 References to clauses and schedules are to the clauses and schedules of this agreement.

1.13 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2 TERM

2.1 This Agreement shall commence on the date hereof and shall apply to the Cohort. This Agreement shall continue, unless terminated earlier in accordance with the provisions of clause 7.5 or 14, until each Apprentice in the Cohort has:

- (1) successfully completed all parts of the Training so that each such Apprentice has been awarded all necessary qualification certificates including, without limit, the Knowledge Qualification and Competence Qualification;
- (2) ceased either to engage in the Training or follow the Relevant Apprenticeship Framework for whatever reason; or
- (3) terminated his contract of Employment or had his contract of Employment terminated by his Employer.

3 TRAINING PROVIDER'S OBLIGATIONS

3.1 The Training Provider shall provide the Training to each Apprentice from the Commencement Date in accordance with the Relevant Apprenticeship Framework and the Procedures and such other policies and procedures as may be notified by ECITB to the Training Provider from time to time. The Training Provider acknowledges that it has received a copy of the Relevant Apprenticeship Framework and the Procedures.

3.2 The Training Provider shall use all reasonable endeavours to ensure that the Off-the-job Training occurs at venues or training centres which meet the standards of, and are approved by, the Awarding Body.

3.3 The Training Provider shall enter into, and shall maintain and comply with the terms of, a Funding Contract in respect of each Apprentice throughout the term of this Agreement and the Training Provider shall notify ECITB immediately in the event that it is unable for any reason to enter into a Funding Contract or ceases to be party to a Funding Contract in respect of any Apprentice and ECITB may then exercise its right to terminate in accordance with clause 14.2(3).

3.4 In providing the Training, the Training Provider shall at all times:

- 3.3.1 provide the Training in accordance with best practice prevailing in the training industry from time to time;
- 3.3.2 provide the Training in accordance with all applicable laws, regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Training;

- 3.3.3 obtain, maintain and comply with all consents, permissions, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for the provision of the Training;
 - 3.3.4 allocate sufficient resources to provide the Training in accordance with the terms of this Agreement; and
 - 3.3.5 ensure that any of the Training Provider's personnel who are engaged in the provision of any of the Training shall, if required by ECITB, attend such meetings as may be reasonably requested by ECITB.
- 3.5 The Training Provider shall provide the Training in accordance with the following:
- (1) Selection & Recruitment
 - a) If requested, the Training Provider shall assist ECITB in the selection and recruitment of the Cohort prior to the Cohort, commencing its Training, including reviewing applications and conducting and assisting with interviews.
 - b) The Training Provider shall carry out such initial assessments and aptitude tests as form part of the Training Provider's quality assurance procedures or Funding Contract requirements.
 - (2) Registration
 - a) Within four weeks of each Apprentice commencing the Training, the Training Provider shall register the Apprentice on the Relevant Apprenticeship Framework with the relevant Awarding Body .
 - b) In the event that the Training Provider registers an Apprentice on the Relevant Apprenticeship Framework when the ECITB is not the relevant Awarding Body the Training Provider shall provide ECITB with details of the registration as soon as the registration has occurred and in a manner prescribed by ECITB.
 - c) Subject to clause 3.3, the Training Provider shall ensure that within four weeks of commencing the Training, each Apprentice is registered under a Funding Contract and that each Apprentice continues to be registered under a Funding Contract for the duration of that Apprentice's Training.
 - (3) Induction
 - a) The Training Provider shall provide each Apprentice with a thorough induction in accordance with any induction requirements set out in the Off-the-job Training and, to the extent that the ECITB Contact requests, shall permit the ECITB Contact and the Employer to be involved in carrying out the induction.
 - (4) Off-the-job Training requirements
 - a) The Training Provider shall provide each Apprentice with the Off-the-job Training to the standards required to:

- i Meet the requirements of the Relevant Apprenticeship Framework; and
 - ii Enable the Apprentice to achieve the Knowledge Qualification and any other necessary qualification.
- b) The Training Provider shall keep ECITB and the Employer informed as to the progress and conduct of each Apprentice in relation to the Off-the-job Training and the Relevant Apprenticeship Framework and shall submit to ECITB and the Employer periodic reports and other information as determined from time to time by ECITB in accordance with any timescales set out in this Agreement or in the Procedures, including but not limited to:
 - i records of each Apprentice's attendance whilst at the Training Provider's establishment;
 - ii details of all relevant certificates relating to each Apprentice's educational achievement; and
 - iii all other information to be provided under the Procedures.
- c) The Training Provider shall submit to ECITB and the Employer monthly reports relating to the progress of each Apprentice in a format prescribed by ECITB.
- d) For the avoidance of doubt time shall be of the essence in the submission to ECITB and the Employer of the reports and other information described in clause 3.5(4)(b) and (c) above.
- e) The Training Provider shall notify ECITB and the Employer as soon as possible of any actual or possible impediment to each Apprentice's successful completion of all elements of training under the Relevant Apprenticeship Framework.
- f) The Training Provider shall if requested attend periodic meetings (to be held no more frequently than every three months commencing on the Commencement Date) with ECITB and/or ECITB's representatives and the Employer, at ECITB's discretion, to discuss and review the Off-the-job Training requirements, agree and carry out actions.

(5) On-the-job Training and Assessment requirements:

- a) The Training Provider shall attend each Apprentice's workplace and assess their skills, knowledge and progress in accordance with the ECITB Assessment Strategy for Craft and Technician Vocational Qualifications.
- b) The Training Provider shall regularly review each Apprentice's progress in accordance with the requirements of the Relevant Apprenticeship Framework.
- c) The Training Provider shall submit to ECITB and the Employer quarterly reports, on the final working day of October, January, April and July, relating to the progress of each Apprentice in relation to the

work based assessment element of the programme. The reports will be in a format prescribed by ECITB.

- d) The Training Provider shall notify ECITB and the Employer as soon as possible of any actual or possible impediment to an Apprentice's successful completion of any element of training under the Relevant Apprenticeship Framework, or the relevant Competence Qualification.
- e) The Training Provider shall if requested attend periodic meetings (to be held no more frequently than every three months commencing on the commencement of the On-the-job Training and Assessment) with ECITB representatives and the Employer to discuss and review the Training, agree and carry out actions.

(6) Third Party Auditing

- a) The Training Provider shall promptly provide ECITB with full results and records of all quality and health and safety audits relating to the Training or the assessment of each Apprentice to the extent that it affects or could affect the welfare or health and safety of each Apprentice at any time during the Training.
- b) The Training Provider shall assist and cooperate with ECITB to resolve any issues arising in connection with the quality and health and safety audits relating to the Training or the assessment of each Apprentice.

(7) Disciplinary issues

- a) If the Training Provider is of the opinion that disciplinary action is required in relation to an Apprentice, the following provisions shall apply:
 - i in the case of any Apprentice who is party to a training agreement with ECITB, the Training Provider shall refer the matter to ECITB who will have the sole right to take such disciplinary action as ECITB deems appropriate or to require the Training Provider to take such disciplinary action as ECITB deems appropriate;
 - ii in the case of any Apprentice who is in Employment, the Training Provider shall refer the matter to the Employer who will have sole right to take such disciplinary action as the Employer deems appropriate and the Training Provider shall notify the ECITB Contact of the same.
- b) For the avoidance of doubt the Training Provider shall not suspend the Apprentice from the Training or terminate the whole or any part of the Apprentice's training or be entitled so to do unless the Training Provider has the prior written consent of ECITB and, if applicable, the Employer to do so.

(8) Completion of the Training

- a) Within two (2) weeks of the successful completion by each Apprentice of the Training, the Training Provider shall apply to the Awarding Body for the relevant qualification certificate in respect of each Apprentice. In the event that the Training Provider applies to an Awarding Body which is not ECITB for a qualification certificate, the Training Provider shall provide ECITB with details of the relevant application.
- 3.6 If the Training Provider needs access to documents, training courses, safety passports or specifications or any other materials of ECITB in order to perform its obligations under this Agreement, the Training Provider must enter into a separate agreement with ECITB for the supply and/or use of those materials. The terms of this Agreement will not affect the terms of any such other agreement and in particular will not affect the Training Provider's obligations to pay any fees or charges to ECITB under those other agreements.

4 ECITB'S OBLIGATIONS

- 4.1 ECITB shall provide the Training Provider with a copy of the ECITB Apprenticeship Framework and the Procedures and any other relevant documents.
- 4.2 ECITB shall work with the Training Provider in the training of Apprentices with particular reference to the following:

(1) Selection & Recruitment

- a) ECITB shall work with Employers and, if necessary, the Training Providers in the selection and recruitment of Apprentices, including reviewing applications and conducting and assisting with interviews. ECITB's determination in respect of the selection and recruitment of Apprentices is final.
- b) ECITB shall notify the Training Provider of the identity of each Apprentice in writing prior to the commencement of the Training or at such other times as and when changes to any of the Apprentices or Cohort occurs.

(2) Off-the-job Training review meetings

- a) ECITB shall convene periodic meetings (to be held no more frequently than every three months commencing on the Commencement Date) and attend such meetings with the Training Provider and the Employer to discuss and review the Off-the-job Training of each Apprentice.

(3) On-the-job Training and Assessment review meetings

- a) ECITB shall convene periodic meetings (to be held no more frequently than every three months commencing on the commencement of the On-the-job Training and Assessment) and attend such meetings with the Training Provider and the Employer to discuss and review the On-the-job Training and Assessment of each Apprentice.

(4) Third Party Auditing

- a) ECITB shall work with the Training Provider to resolve any issues arising in connection with quality and health and safety audits relating to the training or assessment of Apprentices.

5 WARRANTIES

5.1 Each party warrants, represents and undertakes that:

- (1) it has full capacity and authority to enter into and to perform this Agreement;
- (2) this Agreement is executed by a duly authorised representative of that party;
- (3) there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement; and
- (4) once duly executed, this Agreement will constitute its legal, valid and binding obligations;

5.2 The Training Provider undertakes warrants and represents on an on-going basis that:

- (1) it is able to and will carry out the Training in accordance with the standards set out in this Agreement;
- (2) the Training Provider will perform and procure the performance of its obligations under this Agreement in compliance with all applicable laws and the requirements of any relevant Awarding Body and will comply with any sanctions imposed;
- (3) it has, and will continue to hold, all consents and regulatory approvals necessary to provide the Training;
- (4) it shall discharge its obligations under this Agreement using personnel of required skill, experience and qualifications and with all due skill, care and diligence including in accordance with best industry practice;

5.3 Both parties agree that the warranties set out in this clause 5 are in lieu of and exclude all other terms, conditions or warranties implied by statute, law or otherwise as to the merchantability, satisfactory quality of fitness for any particular purpose of the Training to the fullest extent permitted by law.

6 SERVICE LEVELS

6.1 The Training Provider shall ensure that the provision of the Training meets or exceeds the Service Levels at all times from the date of signature of this Agreement.

6.2 The Training Provider shall provide ECITB with a monthly report detailing its performance in respect of each of the Service Levels in a format specified by ECITB.

6.3 If there is a failure by the Training Provider to meet any of the Service Levels, the Training Provider shall:

- (1) notify ECITB immediately of the failure to meet the Service Level;
- (2) provide ECITB with a Plan;

- (3) deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the failure to meet the Service Level from recurring; and
 - (4) carry out all actions outlined in the Plan.
- 6.4 Where the Training Provider fails to meet any of the Service Levels ECITB shall be entitled to withhold payment of the whole of, or any instalment of, the ECITB Contribution until such failure is fully rectified.
- 6.5 The parties shall have periodic meetings (to be held no more frequently than every three months commencing on the Commencement Date) to monitor and review the performance of this Agreement, the achievement of the Service Levels and the provision of the Training.
- 6.6 Prior to each periodic meeting referred to in clause 6.6 above, each party shall notify the other party of any problems relating to the provision of the Training for discussion at the meeting and the parties shall agree a plan to address such problems.
- 6.7 ECITB shall review the Service Levels from time to time and reserves the right to vary the Service Levels by notice in writing to the Training Provider during the course of this Agreement if this is necessary to fulfil its statutory and other obligations or at any other time using the change procedure at clause 19 of this Agreement.

7 CONSIDERATION

- 7.1 ECITB shall, subject to the terms and conditions of this Agreement, pay the ECITB Contribution for each Apprentice registered against a Relevant Apprenticeship Framework to the Training Provider in the instalments described in clause 7.3 below.
- 7.2 Payment of the ECITB Contribution is subject to the requirement that at the time each instalment is due, each of the following conditions have been met:
 - (1) The Apprentice remains enrolled with, and is continuing the Training with the Training Provider;
 - (2) The Apprentice continues to be registered against the Relevant Apprenticeship Framework;
 - (3) The Apprentice continues to be registered on the Funding Contract for the completion of the Relevant Apprenticeship Framework;
 - (4) The Apprentice continues to be in Employment;
 - (5) The Apprentice has a satisfactory attendance record as determined by ECITB; and
 - (6) The Training Provider has submitted all reports required by ECITB.
- 7.3 Subject to clause 7.2 above, ECITB shall make the instalments of the ECITB Contribution to the Training Provider in respect of each Apprentice at the times and at the rates set out in Schedule 6.
- 7.4 ECITB shall only reimburse the reasonable travel expenses of the Training Provider that are properly incurred through the provision of the On-the-job Training and Assessment in relation to visiting an Apprentice at his Employer's workplace:

- (1) where the Employer's workplace is located outside a 50 mile radius of the Training Provider's main premises; and
 - (2) subject to receipt by ECITB of all relevant supporting documentation, for example, valid VAT receipts, tickets and invoices and a valid invoice from the Training Provider; and provided that
 - (3) ECITB shall not reimburse the first 50 miles of any journey (where a journey is a single trip to or from an Apprentice's Employer's workplace and the Training Provider's main premises), each way, undertaken by the Training Provider by road.
- 7.5 Any road mileage costs which ECITB will pay shall be reimbursed by ECITB at the rate of 45 pence per mile. All rail fares shall only be reimbursed at standard class travel rate.
- 7.6 In the event that overnight accommodation is required through the provision of the On-the-job Training and Assessment where the circumstances set out in clause 7.6 above apply, ECITB shall reimburse the reasonable costs of accommodation provided that such arrangements are agreed with the ECITB Contact before any expenditure is incurred and, subject to receipt by ECITB of all relevant supporting documentation, for example, valid VAT receipts, tickets and invoices and a valid invoice from the Training Provider.

8 PAYMENT

- 8.1 The Training Provider shall submit separate invoices in respect of each instalment of the ECITB Contribution due under this Agreement 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:
- (1) in a format and with supporting documentation specified by ECITB; and
 - (2) to the ECITB head office address at Blue Court, Church Lane, Kings Langley, Hertfordshire, WD4 8JP.
- 8.2 Payment shall be made to the Training Provider after the value of the invoice has been approved by ECITB. Every effort is made to pay within 30 days of the receipt of a correct invoice with supporting documentation. If an invoice is not correct ECITB will make every effort to contact the Training Provider within 14 days from receipt of the invoice to request a correct invoice.
- 8.3 The Training Provider shall not suspend the provision of the Training if any payment is overdue unless it is entitled to terminate this Agreement under clause 14 for failure to pay undisputed charges.
- 8.4 To the extent that payments to be made under the Agreement may attract Value Added Tax (VAT), the proper amount of such tax shall be shown as a separate item on the prescribed form of tax invoice.
- 8.5 For the avoidance of doubt in the event that the Training Provider 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 Training Provider until such time as the reports and information have been correctly submitted.

9 THE TRAINING PROVIDER'S STAFF

- 9.1 The Training Provider will employ suitably qualified individuals with proven industrial backgrounds and training experience to deliver the Training in accordance with any requirements of ECITB notified to the Training Provider. The Training Provider shall provide training for the Personnel so as to ensure that the Training is provided at all times and in all respects in accordance with this Agreement. Additionally, if relevant to the Training, Personnel must be qualified to the required standard for assessment of National Vocational Qualifications and the Relevant Apprenticeship Framework or any other appropriate standard notified by ECITB from time to time.
- 9.2 The Training Provider warrants that all Personnel and other persons who will provide the Training on behalf of the Training Provider are not legally precluded from working with children and that it has carried out all appropriate checks, including but not limited to CRB checks, on its Personnel and other persons who will provide the Training to satisfy itself and, where requested by ECITB, ECITB that this warranty statement is true.
- 9.3 The Training Provider shall maintain records of qualifications and experience, and provide ECITB with copies of such records and Curricula Vitae, of all Personnel in order to demonstrate suitable qualifications.
- 9.4 If ECITB is of the reasonable opinion that any of the Personnel is acting or has acted in a manner which is in breach of this Agreement or is unable to deliver the Training to ECITB's required standards, ECITB shall identify such person to the Training Provider and provide to it all relevant information in its possession about such person. The Training Provider shall promptly investigate the matter and take any appropriate disciplinary action. The Parties will discuss and agree whether it is possible and necessary to remove any such person from carrying out any part of the Training whilst the disciplinary investigation is taking place. In the case of gross misconduct and if, as a result of the disciplinary action misconduct is proven against such person then, where ECITB has reasonable grounds to request their removal (and confirms such request in writing), the Training Provider shall immediately remove such person from providing the Training and shall as soon as is reasonably practicable, provide a substitute for such person. Such requests will not be made unreasonably and will be submitted in writing with reasons. If applicable, ECITB may terminate the Agreement on 30 days' notice in writing in the event that any such person is not removed accordingly.
- 9.5 The Training Provider shall not without ECITB's prior consent in writing (such consent not to be unreasonably withheld or delayed) in the six months prior to the expiry or termination of this Agreement, or, where notice is given less than six months prior to the termination, in the period starting on when such notice is given and ending on termination:
- (1) vary or purport or promise to vary, the terms and conditions of employment of any of the personnel involved in the performance of the Training, where such a contract would be materially different in any respect from their existing terms and conditions of employment; or
 - (2) increase the number of the Personnel engaged in the provision of the Training unless required by the Training Provider due to changes in ECITB's requirements for the Training.
- 9.6 The Training Provider shall not without ECITB's prior consent in writing (such consent not to be unreasonably withheld or delayed) in the six months prior to the expiry or termination of this Agreement, or, where notice is given less than six months prior to

the termination, in the period starting on when such notice is given and ending on termination:

- (1) assign, replace or re-deploy any of the Personnel to other duties wholly unconnected with the Training; or
- (2) dismiss any of the Personnel who are assigned to the Training save on the grounds of gross misconduct except where the Training Provider is entitled to do so under such person's contract of employment; or
- (3) effect any redundancies of the Personnel

if the effect of the Training Provider doing so would adversely affect the Training Provider's ability to perform its obligations under this Agreement.

- 9.7 To enable ECITB to give its consent under clause 9.5 and 9.6 above, the Training Provider shall provide such information concerning the Personnel which the Training Provider proposes to make redundant as ECITB shall reasonably require including but not limited to the information set out in clause 13.9. The Training Provider shall comply with any obligations to consult with such employees (whether collectively, individually or both).
- 9.8 The parties agree that nothing contained in this Agreement shall constitute any employee of the Training Provider being an employee of ECITB and the Training Provider shall be responsible for the employment and cost of employment of all the Personnel including without limitation, the payment of all wages, bonuses, commission, PAYE, employer's NI contributions, holiday pay, sick pay, pension contributions and expenses.
- 9.9 The Training Provider shall assume full responsibility for the actions and omissions of any of the Personnel in the performance of the Training and shall, save as expressly provided in this Agreement, be solely responsible for their supervision, daily direction and control.
- 9.10 The Training Provider acknowledges that ECITB may wish, prior to or after the termination or expiry of this Agreement, to invite persons who may include the Training Provider to tender for the right to provide some or all of the Training.

10 CONFIDENTIALITY

- 10.1 Neither of the parties shall use or disclose any information, (whether verbal or in writing or in any other media) which it obtains in the course of this Agreement which relates to the Training or any other information the parties, acting reasonably, identify as being confidential or any information relating to the other party's marketing or business development, business operations, associations, transactions, financial arrangements or in relation to any of its other activities ("**Confidential Information**") and each party shall treat the other party's Confidential Information as confidential.
- 10.2 Such Confidential Information or any part thereof may only be disclosed to, reproduced or used by persons (such as employees, advisers, sub-contractors or agents) authorised to receive such Confidential Information who need to know the same for the purposes of performing obligations under this Agreement. Each party shall procure that such persons are made aware of and comply with substantially similar obligations of confidentiality and non-disclosure as set out in this Agreement. The disclosing party shall be responsible for any breach of such obligations.

- 10.3 Clause 10.1 shall not apply to the disclosure of Confidential Information to the extent that it is:
- (1) required by law or by any governmental or other regulatory authority acting within the scope of its powers to be disclosed;
 - (2) becomes part of the public domain through no fault of the receiving party;
 - (3) known to the receiving party prior to the disclosure by the disclosing party without an obligation to keep such Confidential Information confidential;
 - (4) subsequently obtained by the receiving party from a third party without breach of any obligation of confidentiality owed to any third party or the disclosing party;
 - (5) independently developed by the receiving party or a company within the receiving party's group without any breach of this Agreement; or
 - (6) approved for public release by the disclosing party and the disclosing party shall give prior written notification of such disclosure to the other party where practicable.
- 10.4 Both parties agree that monetary damages would be an insufficient remedy in the event that either party is in breach of this Clause 10 and so the disclosing party will be entitled to seek any legal remedy or relief to prevent any breach, or anticipated breach, by the receiving party. This right shall be in addition to the disclosing party's other rights in law or in equity.
- 10.5 Each party shall indemnify the other party against any loss, damages, costs, expenses or other claims arising from its breach of clauses 10.1 and/or 10.2.

11 INTELLECTUAL PROPERTY

- 11.1 Subject to the rights of the Training Provider and/or any third party licensor in respect of any pre-existing materials which are used by the Training Provider in order to provide the Training and any other materials arising out of the provision of the Training and which were not developed solely for ECITB ("**Existing Materials**"), ECITB shall be entitled to all property, copyright and other Intellectual Property in any item or materials arising out of the provision of the Training ("**ECITB Materials**"), which property, copyright and other Intellectual Property the Training Provider hereby, as beneficial owner, assigns with full title guarantee (and by way of present assignment of future copyright) absolutely to the fullest extent possible to ECITB who shall have the right to use such ECITB Materials for any purpose without further payment.
- 11.2 The Training Provider shall procure that, where relevant, all moral rights in respect of the ECITB Materials are waived by the relevant third parties and at the request and reasonable expense of ECITB, the Training Provider shall do and/or shall procure that its consultants, employees, agents, contractors and sub-contractors shall do all such things and sign all such documents or instruments necessary in the opinion of ECITB to enable ECITB to obtain, defend and enforce its rights in the ECITB Materials.
- 11.3 The Training Provider hereby grants to ECITB a perpetual, irrevocable, non-exclusive, world-wide and royalty free licence to use any Existing Materials incorporated in any ECITB Materials to such extent as is necessary to enable ECITB to make use of the ECITB Materials.
- 11.4 ECITB hereby grants to the Training Provider a non-exclusive, revocable, non-transferable licence to use the ECITB Materials for the purpose of providing the Training in accordance with the terms of this Agreement.
- 11.5 ECITB agrees that the Training Provider shall be entitled to use any know-how, ideas, methods, processes or techniques which relate to any developments arising out of the provision of the Training for the purposes of the Training Provider's business from time to time provided that the Training Provider does not use any Confidential Information belonging to ECITB for that purpose.
- 11.6 The provisions of this clause 11 shall survive the expiry or termination of this Agreement.

12 LIABILITY

- 12.1 This clause 12 sets out the entire financial liability of ECITB to the Training Provider in respect of any breach of this Agreement by ECITB.
- 12.2 Neither party's liability for any of the following is excluded or limited by this Agreement (even if any other term of the Agreement would suggest otherwise):
- (1) death or personal injury caused by that party's negligence or the negligence of its employees, agents or sub-contractors;
 - (2) fraud or fraudulent misrepresentation; or
 - (3) any liability which cannot be legally excluded or limited.
- 12.3 Subject to clause 12.2, ECITB shall not be liable under or in relation to this Agreement (whether such liability arises due to negligence, breach of contract,

misrepresentation or otherwise) for any indirect, consequential or pure economic loss or damage including any loss of income or profits, costs damages, charges or expenses.

- 12.4 Subject to clause 12.2 and without prejudice to the provisions of clause 12.3, ECITB's total liability in contract, misrepresentation, tort, restitution or otherwise arising in connection with the performance of this Agreement shall be limited to fifty thousand pounds (£50,000) being the estimated value of the ECITB Contribution payable in respect of an average Cohort.

13 INDEMNITY

- 13.1 The Training Provider undertakes to defend ECITB and shall indemnify and hold ECITB harmless from and against any claim or action and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by ECITB as a result of or in connection with:

- (1) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property rights or other rights arising out of the whole or any part of the Training, Existing Materials or ECITB Materials;
- (2) any claim made against ECITB in respect of any liability, loss, damage, death, injury, cost or expense sustained by ECITB's employees or agents or by any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Training as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of this Agreement by the Training Provider or any act or omission by the Training Provider in relation to the Training.

- 13.2 For the purposes of this clause 13 "third party" shall mean any person who is not an employee of either ECITB or the Training Provider, and includes but is not limited to any ECITB learner, trainee or the Apprentice.

- 13.3 The Training Provider will fully indemnify ECITB and/or any successor training provider against all Employment Costs which ECITB and/or any successor training provider incurs or suffers arising directly or indirectly out of or in connection with:

- (1) the employment or termination of employment by the Training Provider of any of the Terminating Employees (whether or not terminated by notice and, if so terminated, whenever that notice expires) on or before the Termination Date; and
- (2) any act or omission by or on behalf of the Training Provider or any other event or circumstance in respect of the Terminating Employees which occurred on or before the Termination Date or was incurred at any time by, on behalf or at the instruction of, the Training Provider.

- 13.4 During the term of this Agreement and for a period of one year thereafter, the Training Provider shall maintain in force with reputable insurance company insurance for the sum of £10,000,000 per event, including the following risks:

- (1) employers' liability insurance in respect of all persons involved in delivery of the Training and performance of this Agreement;

- (2) public liability insurance to cover against any suit or action, claims or demands brought or made by any person injured or suffering loss or damage in connection with the carrying out of the Training and performance of this Agreement; and
 - (3) business interruption in the event that the Training Provider is unable to perform the Training.
- 13.5 The Training Provider shall on ECITB's request, produce a copy of the insurance certificate giving details of cover and the receipt for the current year's premium or alternative confirmation as agreed by ECITB.
- 13.6 The provisions of this clause 13 shall survive termination of this Agreement, however arising.

14 TERMINATION

- 14.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may terminate this Agreement without having any liability to the other immediately, by giving written notice to the other party:
- (1) if the other party commits a material breach of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or
 - (2) if the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or
 - (3) if the other party is the subject of winding up, insolvency, administration or liquidation proceedings or is unable to pay its debts as they fall due; or
 - (4) in accordance with clause 20.
- 14.2 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, ECITB may terminate this Agreement without liability to the Training Provider, immediately by giving written notice to the Training Provider if:
- (1) the Training Provider fails to rectify any Service Level failure within a period of 14 days; or
 - (2) there is a change of control of the Training Provider; or
 - (3) the Training Provider fails to enter into a Funding Contract or the Training Provider's Funding Contract ceases for any reason.
- 14.3 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, ECITB may terminate this Agreement without notice and without having any liability to the Training Provider prior to the commencement of the Training of any forthcoming Cohort if ECITB becomes unable or does not have the authority, at any time or for any reason, to raise a levy under the Industrial Training Act 1982 in the succeeding calendar year.

15 CONSEQUENCES OF EXPIRY AND TERMINATION

- 15.1 Following the service of a notice of termination of this Agreement for any reason, the Training Provider shall for the duration of the notice period and up until the date of termination:
- (1) continue to provide the Training to the required Service Levels for any Apprentice who has not successfully completed all parts of the Training and attained all relevant qualification certificates including, without limit, the Knowledge Qualification and Competence Qualification unless ECITB instructs the Training Provider otherwise; and,
 - (2) ensure that there is no degradation in the standards of the Training.

16 AUDITS

- 16.1 The Training Provider shall allow ECITB and any auditors of or other advisers to ECITB to access any of the Training Provider's premises, personnel and relevant records as may be reasonably required in order to:
- (1) fulfil any legally enforceable request by any relevant regulatory body;
 - (2) undertake verifications of the number of Apprentices registered against a Relevant Apprenticeship Framework;
 - (3) undertake verification that the Training is being provided, and all obligations of the Training Provider are being performed, in accordance with this Agreement;
 - (4) undertake verification that the Training Provider is meeting the requirements of the Awarding Body and, in particular, the standards set by the relevant governmental authority for the delivery of qualifications under the relevant qualification and curriculum framework; or
 - (5) undertake verification that the Relevant Apprenticeship Framework is being used by the Training Provider in accordance with terms and conditions of this Agreement.
- 16.2 ECITB shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Training Provider or suspend the provision of the Training and that, where possible, individual audits are co-ordinated with each other to minimise any disruption.
- 16.3 Subject to ECITB's obligations of confidentiality, the Training Provider shall provide ECITB (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 16.4 ECITB shall provide at least 10 Business Days' notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.
- 16.5 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 16, unless the audit identifies a material breach by the Training Provider, in which case ECITB shall reimburse the Training Provider for all its reasonable costs incurred in the course of the audit.
- 16.6 If an audit identifies that:

- (1) the Training Provider has failed to perform its obligations under this Agreement or failed to meet the requirements of the relevant Awarding Body, then, without prejudice to the other rights and remedies of ECITB, the Training Provider shall take the necessary steps to comply with its obligations at no additional cost to ECITB; and
 - (2) ECITB has overpaid any of the ECITB Contribution, or that there are fewer Apprentices undertaking the Training than were registered against a Relevant Apprenticeship Framework, the Training Provider shall pay to ECITB the amount overpaid within 14 days from the date of receipt of an invoice or notice to do so.
- 16.7 ECITB may increase the extent to which it monitors the provision of the Training if the Training Provider fails to fulfil its obligations under this Agreement. ECITB shall give the Training Provider prior notification of its intention to increase the level of its monitoring. The Training Provider shall bear its own costs in complying with ECITB in relation to any monitoring which is conducted by ECITB pursuant to this clause 16.

17 DATA PROTECTION AND FREEDOM OF INFORMATION

- 17.1 In this clause 17 and Schedule 7, the following expressions shall have the following meanings:
- (1) "Controller", "Processing", "Processor", "Data Subject", "Personal Data" and "Personal Data Breach" shall have the meaning given to them (and terms used for similar concepts) in Data Protection Legislation;
 - (2) "FOIA" means the Freedom of Information Act 2000;
 - (3) "Shared Data" means the Personal Data described in the Sharing Particulars;
 - (4) "Sharing Particulars" means the information set out in Schedule 7; and
 - (5) "Supervisory Authority" means any supervisory authority or regulator that is responsible for enforcing compliance with the Data Protection Legislation from time to time.
- 17.2 The parties shall disclose to each other the Shared Data in accordance with the Sharing Particulars.
- 17.3 The parties acknowledge and agree that for the purposes of Data Protection Legislation, each party is a separate and independent controller (as defined in Data Protection Legislation). Each party agrees to comply with its obligations under the Data Protection Legislation.
- 17.4 Notwithstanding the roles set out in clause 17.2, if any court, Supervisory Authority or other competent body declares that any Processing by the Training Provider is Processing for which the Training Provider has a different role under Data Protection Legislation, the Training Provider shall ensure that it complies with its obligations as a Controller, Processor or joint Controller (as applicable) and that it takes all such steps as reasonably required by ECITB in writing, in each case, in respect of such Processing.
- 17.5 The parties acknowledge and agree that:
- (1) the Training Provider determines, in its sole discretion the purposes for which it Processes the Shared Data, the means of that Processing and the lawful basis for that Processing as described in the Training Provider's privacy policy, statement or other notice containing the mandatory provisions required under Data Protection Laws ("Training Provider Notice");
 - (2) ECITB determines, in its sole discretion the purposes for which it Processes the Personal Data it receives from the Training Provider under this DPA, the means of

that Processing and the lawful basis for that Processing, as described in the ECITB's Privacy Policy;

- (3) the Training Provider has no control over the contents of the ECITB's Privacy Policy nor does it have any control over the ECITB's continuing use of the Shared Data after the ECITB receives that data; and
- (4) ECITB has no control over the contents of the Training Provider Notice nor the Training Provider's continuing use of the Shared Data (except insofar as certain parts of that data are ECITB's Confidential Information).

17.6 The Training Provider shall (and shall procure its personnel shall):

- (1) within two (2) calendar days of the ECITB's written request, provide a then-current copy of the Training Provider Notice to the ECITB;
- (2) notify ECITB in writing fourteen (14) calendar days prior to its publication or disclosure of any changes to the Training Provider Notice where that change relates to the lawful basis on which the Training Provider relies to receive, collect or share with ECITB any Shared Data, together with a written explanation for all such changes;
- (3) ensure that it has valid consent to collect, receive and disclose to ECITB the Shared Data (and maintains a written record of evidence for all such consent in accordance with Data Protection Laws ("Consent Record")) or another appropriate and valid lawful basis for that Processing that complies with Data Protection Legislation and that, without prejudice to the foregoing, the Training Provider does not supply any Shared Data to ECITB in relation to any Learner to whom the Training Provider Notice has not been provided at the time the Shared Data was collected from that Data Subject;
- (4) provide to ECITB within seven (7) calendar days of its written request: (a) a copy of any consent statement(s) on which the Training Provider relies to obtain consent to Process the Shared Data; (b) a copy of the Training Provider's Consent Record; and (c) any assessment or professional opinion or advice obtained or produced relating to the validity of any lawful basis relied on by the Training Provider for the Processing of the Shared Data;
- (5) ensure that a copy of the Training Provider Notice is provided to all applicable Data Subjects at the point of collection of the Shared Data;
- (6) ensure that a hyperlink to the ECITB's Privacy Policy or that policy itself (as specified by ECITB in writing to the Training Provider) provided to Learners when collecting any Shared Data;
- (7) promptly (at the Training Provider's sole cost) provide co-operation and assistance to the ECITB, any Supervisory Authority and/or any Data Subject, as requested by the ECITB in writing in connection with the ECITB's obligations, or such authority or Data Subject's rights, under Data Protection Legislation (including in relation to any data protection impact, data transfer or other assessment and/or by entering into such additional contractual terms as ECITB may require from time to time);
- (8) not cause, by act or omission, the ECITB to breach any Data Protection Legislation;
- (9) ensure that the Shared Data disclosed to the ECITB is accurate and complete and shall correct and resupply any inaccurate or otherwise defective Shared Data promptly following the ECITB's written request;
- (10) shall promptly after becoming aware, notify the ECITB if any Shared Data in its possession or control is affected by a Personal Data Breach and take all reasonable steps to remedy such breach;
- (11) not cause the ECITB or Training Provider to transfer Personal Data to a location where such transfer causes either party to breach Data Protection Legislation and shall enter into all any standard contractual or other clauses issued by a competent body pursuant to Data Protection Legislation, provide all relevant notices and conduct all assessments, in each case, as required by ECITB in writing, to ensure

that such transfers comply with all such laws.

- 17.7 The Training Provider shall take all necessary steps to ensure that data or information belonging to the ECITB which comes into its possession or control in the course of providing the Programme is protected in accordance with ECITB's information security and other policies as notified by the ECITB to the Training Provider in writing from time to time. Each party acknowledges that the other party is subject to the requirements of the Data Protection Legislation, the FOIA and the Environmental Information Regulations 2004, all as amended or replaced from time to time.
- 17.8 If a party is required to disclose information received from the other party pursuant to a FOIA request, it shall:
- (1) give prompt written notice to the other party where such notice shall give details of the information, and in particular Confidential Information, received hereunder that may be disclosed. The other party shall endeavour to respond with comments within ten (10) working days of receiving such notice and shall provide assistance in determining whether or not an exemption the FOIA applies to the FOIA request;
 - (2) give to other party a copy of its response to such request where such response contains any Confidential Information; and
 - (3) not incur a breach of the non-disclosure and confidentiality obligations of this Deed by the disclosure of Confidential Information provided that such disclosure is only to the extent necessary to comply with the requirements of the FOIA.
- 17.9 The Training Provider will indemnify ECITB against any breach of the provisions of this clause 17 by the Training Provider.

18 ANTI-BRIBERY

- 18.1 The Training Provider (which for the purposes of this clause 18 shall include all of the Training Provider's employees, agents, representatives, affiliates and any person employed by or acting on behalf of the Training Provider) agrees with ECITB that it will not, in connection with the goods or services to be supplied under this Agreement, bribe or attempt to bribe (which shall include without limitation, any offer of any form of payment, gift or other form of inducement, reward or advantage (whether of money or anything of value)) ECITB or any of ECITB's employees, agents, representatives, affiliates or persons employed by or acting on behalf of ECITB, any public or government officials or employees, public international organisations, political parties, or private individuals or other entities ("**Relevant Party**").
- 18.2 The Training Provider represents and warrants to ECITB that it has not, prior to the date of this Agreement, bribed or attempted to bribe any Relevant Party in order to secure and/or retain any business with ECITB whether in connection with this Agreement or otherwise.
- 18.3 The Training Provider acknowledges and agrees that it is familiar with and will abide by the anti-bribery and anti-money laundering laws in all the countries in which it is incorporated or established and in which it does business.
- 18.4 The Training Provider agrees that it will not take or knowingly permit any action to be taken that would cause ECITB to be in violation of any applicable anti-bribery or anti-money laundering laws.
- 18.5 The Training Provider agrees that its books, records and all accounts shall accurately reflect any and all payments in respect of transactions of the Training Provider whether under this Agreement or otherwise, and ECITB (and ECITB's authorised representatives) shall have the right to inspect, audit and to take copies of the Training Provider's books, records and accounts at any time on prior written notice.

- 18.6 If the Training Provider discovers that it has or may have violated any of the provisions in this clause 18, the Training Provider shall immediately notify ECITB and cooperate with any investigations by ECITB into such matters.
- 18.7 Without prejudice to the generality of clauses 18.1 to 18.6 inclusive, the Training Provider covenants with ECITB to establish and at all times maintain and implement adequate procedures designed to prevent its associated persons (namely any party who performs services for or on behalf of the Training Provider) from bribing or attempting to bribe another person for the benefit of the Training Provider and to ensure compliance with all applicable anti-bribery or anti-money laundering laws.
- 18.8 The Training Provider agrees that in addition to ECITB's termination rights set out elsewhere in this Agreement, ECITB may immediately terminate this Agreement in the event of a breach of this clause 18 by the Training Provider.

- 18.9 ECITB shall not be required to make any payments to the Training Provider that might otherwise be due from ECITB if such payments are related to a transaction in connection with which the Training Provider has breached this clause 18.

19 CHANGES

- 19.1 ECITB may request changes and/or additions to the Training and/or the Service Levels in accordance with clause 6.7 by informing the Training Provider, in writing, of the desired change ("**Change Request**"). Within 5 Business Days or such additional time as may be agreed between the parties, following receipt of the Change Request, the Training Provider shall provide ECITB with a written response to the request ("**Change Request Response**").
- 19.2 If the work required to review a Change Request will result in material additional cost for the Training Provider the parties shall agree in writing to the Training Provider's reimbursement for the additional cost before additional work on the Change Request is performed.
- 19.3 The Change Request Response shall specify the cost to effect the change. Any change, which will result in increased costs or timescales, will require ECITB's acceptance in writing. The Training Provider shall not initiate any such change until it receives ECITB's written acceptance.
- 19.4 So far as is possible, the Training Provider shall implement approved changes so as to ensure that there are no interruptions or delays to the Training or breaches of the terms of this Agreement.
- 19.5 The Training Provider shall not vary the Training without the prior written agreement of ECITB.

20 FORCE MAJEURE.

- 20.1 If either party is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure, that party shall forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall, subject to service of such notice and to clause 20.3, have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, taking all steps as are necessary, to recommence its affected operations in order for it to perform its obligations.
- 20.2 If either party is prevented by Force Majeure from performance of its obligations for a continuous period in excess of six months, the other party may terminate this Agreement forthwith on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 20.3 The party claiming to be prevented or delayed in the performance of any of its obligations under this Agreement by reason of the Force Majeure shall take all steps as are necessary to bring the Force Majeure to a close or to find a solution by which the Agreement may be performed despite the continuance of the Force Majeure.

21 NO PARTNERSHIP OR AGENCY

- 21.1 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.

22 FURTHER ASSURANCE

- 22.1 At its own expense, each party shall and shall use all reasonable endeavours to procure that any necessary third party shall promptly execute such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.

23 ASSIGNMENT AND OTHER DEALINGS PROHIBITED

- 23.1 The Training Provider shall not assign, novate, sub-contract or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of ECITB except to the extent that the Training Provider is sub-contracting to an Approved Sub-contractor.
- 23.2 Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.

24 ENTIRE AGREEMENT

- 24.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 24.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement.
- 24.3 Nothing in this clause shall limit or exclude any liability for fraud.

25 VARIATION

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

26 SEVERANCE

- 26.1 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 26.2 If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

27 NOTICE

28 Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice at its address as set out at the head of this Agreement or as otherwise agreed between the parties in writing.

28.1 Any notice or other communication shall be deemed to have been duly received:

- (1) if delivered personally, when left at the address and for the contact referred to in this clause; or
- (2) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- (3) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

28.2 A notice or other communication required to be given under this Agreement shall not be validly given if sent by e-mail.

28.3 The provisions of this Clause 27 shall not apply to the service of any proceedings or other documents in any legal action.

29 WAIVER

29.1 The failure to exercise wholly or partially or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any continuing breach or of any other breach or default and shall not affect the other terms of this Agreement. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation. The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law. Any waiver, to be effective, must be in writing.

30 COUNTERPARTS

30.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

31 THIRD PARTY RIGHTS

31.1 A person who is not a party to this Agreement shall not have any rights under or in connection with it.

32 GOVERNING LAW AND JURISDICTION

32.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

- 32.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

This document is executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1
THE COMMENCEMENT YEAR

The Commencement Year is 2022

SCHEDULE 2
RELEVANT APPRENTICESHIP FRAMEWORK

THE MODERN APPRENTICESHIP IN ENGINEERING CONSTRUCTION

ISSUED JUNE 2011

SCHEDULE 3
OFF-THE-JOB TRAINING

The Training Provider will deliver the training specified in the induction and training sections of the Relevant Apprenticeship Framework and will ensure that each Apprentice is trained in the appropriate pathway.

In addition the Training Provider shall provide training of the Apprentices on such other topics as are required by ECITB, the Employer, the Funding Contract or such other regulatory body. This additional training shall include the following requirements and courses:-

1. The Training Provider must train and coach all Apprentices in all the fundamental and discipline-specific skills of their chosen trades during the Off-the-Job Training. This means that as part of the Off-the-Job Training the Training Provider must ensure that all Apprentices receive training in and gain experience of the types of facilities, processes, apparatus, plant and equipment which they are likely to encounter when they progress to the On-the-Job Training stage of the Training at the Employer's places of work. The Training Provider must ensure that the Apprentices can transfer and apply their skills in such real working environment at a level 3 or equivalent standard. For the avoidance of doubt it is not sufficient for the Training Provider merely to train Apprentices to a level 2 or equivalent standard in general engineering skills.
2. Basic Offshore Safety Induction & Emergency Training course (BOSIET) (for those Apprentices working in an offshore environment).
3. National Certificate (NC) in Engineering Systems.
4. Higher National Certificate (HNC) in relevant discipline.
5. SVQ Process Operations: Hydrocarbons Level 1.
6. Hydrocarbon Theory Training.
7. Discipline-specific skills training in accordance with ECITB tender specification.
8. Minimum Industry Safety Training (MIST).

SCHEDULE 4

ON-THE-JOB TRAINING AND ASSESSMENT

The Training Provider will deliver the training and assessment specified in the on-the-job work based assessment section of the Relevant Apprenticeship Framework and will ensure that each Apprentice is assessed against the appropriate pathway.

SCHEDULE 5

SERVICE LEVELS

Off-the-Job Training

- (a) The Training Provider will ensure that a minimum of 90% of Apprentices in the Cohort complete the Off-the-Job Training.
- (b) The Training Provider will ensure that the timekeeping and attendance rates of Apprentices in the Cohort are consistently maintained at a minimum of 90%.
- (c) The Training Provider will ensure that a minimum of 90% of Apprentices in the Cohort will successfully pass the knowledge qualification of the Relevant Apprenticeship Framework.

On-the-Job Training

- (d) The Training Provider will ensure that each Apprentice is visited by an assessor at a minimum of 6 weekly intervals while such Apprentices are working at the Apprentice's Employer's workplace.
- (e) The Training Provider will ensure that that a minimum of 93% of Apprentices in the Cohort successfully achieve the Relevant Apprenticeship Framework.
- (f) The Training Provider will ensure that that a minimum of 90% of Apprentices in the Cohort successfully complete the Relevant Apprenticeship Framework within the period of 42 months from commencement.

Review Meetings

- (a) Quarterly operational meetings to be held to discuss progress of learners and delivery of specification in terms of quality and progress.
- (b) Bi-Annual contract meetings to be held to discuss outcome of operational meetings and the progress against contract and service levels within the contract.

SCHEDULE 6 ECITB CONTRIBUTION

Training Fees

The ECITB Contribution payable to the Training Provider in respect of each Apprentice and the timing and amount of the instalments of the ECITB Contribution are set out in the table below.

2022 OGTA Payment Schedule (Training Fees)		within 4 weeks of starting	on submission of 6 monthly reports	on completion of 12 months	on completion of 18 months	on completion of all off-the-job components	
Pathway	Number of Learners	Oct-22	Apr-23	Sep-23	Mar-24	Sep-24	Total Fee

Accommodation (If Applicable)

The ECITB Monthly Contribution payable to the Training Provider in respect of each Apprentice's accommodation during the **off the job** phase of the programme and the timing and amount of the instalments of the ECITB Contribution are set out in the table below.

SCHEDULE 7
CONTACT DETAILS

The ECITB Contact is:

Adrian Wookey – Head of New Entrants

Adrian.Wookey@ecitb.org.uk

07971 860102

SCHEDULE 8

APPROVED SUB-CONTRACTORS

SCHEDULE 9 DATA SHARING PARTICULARS

Personal Data shared and types of Data Subject to whom it relates	<u>Personal Data shared by ECITB with the Training Provider</u> [insert]	<u>Personal Data shared by the Training Provider with ECITB</u> Name, contact details, date of birth, gender, job title, photograph and training and attendance records including details of training allowance, skills, experience, achievements, status, qualifications and comments. The Personal Data above relates to Learners.
Method of sharing	<u>Personal Data shared by ECITB with the Training Provider</u> [insert]	<u>Personal Data shared by the Training Provider with ECITB</u> Spreadsheet file sent securely via email or via the ECITB's portal
Third parties involved in the data sharing and reasons for sharing with them	<u>Personal Data shared by ECITB with the Training Provider</u> [insert]	<u>Personal Data shared by the Training Provider with ECITB</u> [insert]
The lawful bases for the sharing the Personal Data between the Parties	Each party shall disclose and Process the Shared Data on the basis that it is required to perform the applicable contract for training services to the Learner or, where such Processing is not necessary to fulfil any contractual obligations to Learners, on the basis that the Processing is necessary to pursue the party's legitimate interests, namely to fulfil the objectives of the Programme and the party's related mandate as a training provider or qualifications body (as applicable).	
Procedures for complying with Data Subject rights	Each party shall fulfil any Data Subject rights requests it receives expect where it reasonably believes that the relevant Controller in relation to the request is the other party (in which case it shall notify the relevant Data Subject in writing accordingly).	
Governance arrangements	Each party shall retain the Shared Data it receives in accordance with its own data retention policy. [insert any other governance arrangements]	
The necessity and aims of the sharing of the Personal Data	The sharing of the Shared Data is necessary as it is required by the ECITB to facilitate and administer the Programme.	
Benefits of the data sharing to the Data Subjects	The data sharing permits allows Learners to receive training as envisaged by the Programme to support their professional development.	
Data protection officer (or equivalent)	<u>For ECITB</u> [insert name and contact details of the DPO or equivalent e.g. data protection manager or head of compliance]	<u>For the Training Provider</u> [insert name and contact details of the DPO or equivalent e.g. data protection manager or head of compliance]

Executed as a deed by ENGINEERING
CONSTRUCTION INDUSTRY TRAINING
BOARD acting by

Name:

.....

and

Director

Name:

.....

Date:

Director/Secretary

Executed as a deed XXXXXXXXXXXX by
acting by

Name:

.....

Director/Authorised Signatory

(delete as appropriate)

and

Name:

.....

Director/Secretary/ Authorised Signatory

(delete as appropriate)

Date: