

DATE OF 2016

**AGREEMENT RELATING TO THE PROVISION OF THE
ECITB INTRODUCTION TO ENGINEERING CONSTRUCTION PROGRAMME
2016.**

between

ENGINEERING CONSTRUCTION INDUSTRY TRAINING BOARD

And

XXXXXXXXXXXXXXXXXX

THIS AGREEMENT is dated

2015

PARTIES

- (1) **ENGINEERING CONSTRUCTION INDUSTRY TRAINING BOARD** a body corporate governed by the Industrial Training Act 1982 and having its head office at Blue Court, Church Lane, Kings Langley, Hertfordshire, WD4 8JP ("**ECITB**").
- (2) **XXXXXXXXXXXXXXXXXX**, incorporated and registered in **XXXXXX** with number **XXXX** whose registered office is at **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**, (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 skills training and knowledge to Learners in the Industry.
- (C) This agreement records the terms and conditions under which the Training Provider shall provide skills training and knowledge of Learners.

AGREED TERMS

1 INTERPRETATION

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

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 6;

Awarding Body means the awarding body or bodies responsible for the award of the relevant knowledge qualifications.

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

Cohort means the intake of Learners who are registered against the relevant knowledge qualifications.

Commencement Date means the date the cohort commences its Training;

Commencement Year means the year set out in Schedule 1;

ECITB Contact means the person identified in Schedule 5 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 in relation to the required skills training and delivery of the CCNSG Safety Passport to each Learner within the cohort as set out in Schedule 4 (which is in addition to the Funding Contract Contribution which the Training Provider receives for delivery of the knowledge qualification);

Employer means the person or organisation that potentially could employ each Learner as an Apprentice at the end of the programme;

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

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 Knowledge Qualification;

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 the educational qualification a Learner must attain certifying their knowledge of the fundamental aspects of the discipline;

Learner means any individual who is undertaking the ECITB Introduction to Engineering Construction Programme.

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 Programme;

Programme Framework means the programme framework set out in Schedule 2;

Programme means the content of the ECITB Introduction to Engineering Construction Programme;

Service Levels means the performance standards set out in Schedule 3 in accordance with which the Training Provider is to provide the Training;

Skills Training means the programme of practical skills training of each Learner by the Training Provider leading to potential progression onto an Apprenticeship or Employment;

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 Learner in the Cohort has:

- (1) successfully completed all parts of the Programme so that each has been awarded all necessary qualifications;
- (2) ceased to engage in the Programme for whatever reason;

3 TRAINING PROVIDER'S OBLIGATIONS

3.1 The Training Provider shall provide delivery of the Programme from the Commencement Date in accordance with Programme Framework.

3.2 The Training Provider shall use all reasonable endeavours to ensure that the Programme 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 Learner 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 Learner and ECITB may then exercise its right to terminate in accordance with clause 14.2(3).
- 3.4 In providing the Skills Training, the Training Provider shall at all times:
- 3.3.1 provide the Skills Training in accordance with best practice prevailing in the training industry from time to time;
 - 3.3.2 provide the Skills 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 Skills Training;
 - 3.3.4 allocate sufficient resources to provide the Skills 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 Skills Training shall, if required by ECITB, attend such meetings as may be reasonably requested by ECITB.
- 3.5 The Training Provider shall deliver the Programme 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.
 - (2) Registration
 - a) Within four weeks of each Learner commencing the Programme the Training Provider shall register the Learner on the identified Knowledge Qualification with the relevant Awarding Body.
 - b) 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 each Pre-apprentice is registered under a Funding Contract and that each Learner continues to be registered under a Funding Contract for the duration of the programme.
 - (3) Induction
 - a) The Training Provider shall provide each Learner with a thorough induction in accordance with any induction requirements set out by the ECITB and shall permit the ECITB to be involved in carrying out the induction.

(4) Programme requirements

- a) The Training Provider shall provide each Learner with the skills and knowledge required to:
 - i Enable the Learner to achieve the Knowledge Qualification and the CCNSG Safety Passport.
 - ii Have a broad based understanding of the relevant practical skills.
- b) The Training Provider shall keep ECITB informed as to the progress and conduct of each Learner in relation to the Programme Framework and shall submit to ECITB periodic reports and other information as determined from time to time by the ECITB including but not limited to:
 - i records of each Learners attendance whilst at the Training Provider's establishment;
 - ii details of each Learners progress whilst at the Training Provider's establishment;
- c) For the avoidance of doubt time shall be of the essence in the submission to ECITB of the reports and other information described in clause 3.5(4)(b) above.
- d) The Training Provider shall notify ECITB as soon as possible of any actual or possible impediment to each Learners successful completion of all elements under the Programme Framework.

(5) Completion of the Programme;

- a) On successful completion by each Learner of the Programme, the Training Provider shall apply to the relevant Awarding Body for the Knowledge Qualification certificate in respect of each Pre-apprentice.

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 Programme Framework.
- 4.2 ECITB shall work with the Training Provider in the delivery of the Programme with particular reference to the following:

(1) Selection & Recruitment

- a) ECITB shall work with the Training Providers in the selection of Learners.

- b) ECITB shall work with Employers and the Training Provider to identify Work Placements and potential Employment for each Learner.

(2) Review meetings

- a) ECITB shall convene periodic meetings and attend such meetings with the Training Provider to discuss and review the progress of each Learner.

(3) 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 Programme.

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 delivery of the Programme 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 monitor and review the performance of this Agreement, the achievement of the Service Levels and the provision of the Programme.
- 6.6 Prior to each periodic meeting referred to in clause 6.5 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 Pre-apprentice registered against the Programme Framework to the Training Provider in the instalments described in Schedule 2.
- 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 Learner remains enrolled with, and is continuing the Programme with the Training Provider;
 - (2) The Learner continues to be registered against the relevant Knowledge Qualification;
 - (3) The Learner continues to be registered on the Funding Contract for the completion of the relevant Knowledge Qualification;
 - (4) The Learner has a satisfactory attendance record as determined by ECITB; and
 - (5) 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 Learner at the times and at the rates set out in Schedule 2.

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 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.

- 8.4 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 Programme 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.

- 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 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.

- 9.4 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.

- 9.5 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) 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.

- 9.6 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).

- 9.7 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.

- 9.8 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.

- 9.9 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 thirty thousand pounds (£30,000) 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 Pre-apprentice who has not successfully completed all parts of the Programme and,

- (2) ensure that there is no degradation in the standards of the Training.

16 DATA PROTECTION

16.1 The Training Provider shall take all necessary steps to ensure that data or information belonging to ECITB which comes into its possession or control in the course of providing the Training is protected in accordance with ECITB's security policies and in particular the Training Provider shall not:

- (1) use the data or information nor reproduce the data or information in whole or in part in any form except as may be required by this Agreement; or
- (2) disclose the data or information to any third party or persons not authorised by ECITB to receive it, except with the prior written consent of ECITB; or
- (3) alter, delete, add to or otherwise interfere with the data or information (save where expressly required to do so by the terms of this Agreement).

16.2 To the extent that the Training Provider processes any personal data on behalf of ECITB or processes any personal data belonging to ECITB, within the meaning of the Data Protection Act 1998 ("**Act**"), the Training Provider warrants that it will:

- (1) process such data and information only in accordance with ECITB's instructions and for the purposes of performing this Agreement;
- (2) not transmit such data and information to a country or territory outside the European Economic Area without ECITB's express consent;
- (3) not otherwise modify, amend or alter the contents of the personal data or disclose or permit the disclosure of any of the personal data to any third party unless specifically authorised in writing by ECITB; and
- (4) take such technical or organisational measures against unauthorised or unlawful processing of such data and information and against accidental loss or destruction of, or damage to, such data and information as are appropriate to ECITB as data controller.

16.3 The Training Provider will indemnify ECITB against all breaches of the said Act and the provisions of this clause 17 by the Training Provider.

17 ANTI-BRIBERY

17.1 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**").

17.2 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.

- 17.3 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.
- 17.4 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.
- 17.5 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.
- 17.6 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.
- 17.7 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.
- 17.8 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.
- 17.9 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.

18 CHANGES

- 18.1 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**").
- 18.2 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.
- 18.3 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.

18.4 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.

18.5 The Training Provider shall not vary the Training without the prior written agreement of ECITB.

19 FORCE MAJEURE.

19.1 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.

19.2 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.

19.3 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.

20 NO PARTNERSHIP OR AGENCY

20.1 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.

21 FURTHER ASSURANCE

21.1 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.

22 ASSIGNMENT AND OTHER DEALINGS PROHIBITED

22.1 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.

22.2 Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.

23 ENTIRE AGREEMENT

- 23.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 23.2 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.
- 23.3 Nothing in this clause shall limit or exclude any liability for fraud.

24 VARIATION

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

25 SEVERANCE

- 25.1 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.
- 25.2 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.

26 NOTICE

- 27 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.

- 27.1 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.
- 27.2 A notice or other communication required to be given under this Agreement shall not be validly given if sent by e-mail.
- 27.3 The provisions of this Clause 27 shall not apply to the service of any proceedings or other documents in any legal action.

28 WAIVER

- 28.1 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.

29 COUNTERPARTS

- 29.1 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.

30 THIRD PARTY RIGHTS

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

31 GOVERNING LAW AND JURISDICTION

- 31.1 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.
- 31.2 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 2016

SCHEDULE 2

ECITB PRE-APPRENTICESHIP PROGRAMME FRAMEWORK

Table 1 - Programme Outcomes

Knowledge Qualification	This qualification must be achieved during the Pre-Apprenticeship programme and must meet the requirements of the knowledge requirements of an Advanced/Modern Apprentice Framework; BTEC Level 3 Subsidiary Diploma in Engineering – 500/7841/0 C&G Level 3 Diploma in Engineering Construction - 600/2639/X National Certificate (NC) in Engineering Systems – SQA G9CC 46 Higher National Certificate (HNC) in Electrical Engineering – SQA G7TA 15 Higher National Certificate (HNC) in Measurement and Control – SQA G88N 15 Higher National Certificate (HNC) in Mechanical Engineering – SQA G84O 15 Other relevant Knowledge Qualifications to be agreed with the ECITB The delivery of this qualification must be funded through a Funding Contract.
Skills Training	A period of practical skills training which will prepare the learner for progress onto a work based Advanced/Modern Apprenticeship. This practical skills training will be dictated by prospective employer requirements and could be in any of the following Pathways; • Welding • Fabrication • Pipefitting • Plating • Steel Erecting • Mechanical Fitting • Mechanical Maintenance • Electrical Maintenance • Engineering Design The delivery of this component of the programme will be funded by the ECITB.
Work Placement	A period of work experience spent with a prospective employer.
CCNSG Safety Passport	To be delivered by an ECITB Licenced CCNSG Provider.

SCHEDULE 3
SERVICE LEVELS

- (a) The Training Provider will ensure that the timekeeping and attendance of learners in the cohort are consistently maintained at a minimum of 90%.
- (b) The Training Provider will ensure that a minimum of 80% of learners in the Cohort will successfully pass the relevant Knowledge Qualification.
- (c) The Training Provider will submit monthly progress reports in respect of each learner in the format requested by the ECITB.

SCHEDULE 4

ECITB CONTRIBUTION

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

Pre-Apprentice Cohort Size	1 st instalment payable following the submission of the 1 st monthly report.	2 nd instalment payable following the completion of the Knowledge Qualification.	3 rd instalment payable following the completion of the ECITB Pre-apprentice Programme Framework	Total ECITB Contribution
6	£	£	£	£
7				
8				
9				
10				
11				
12				
13 to 18				
18 to 24				

SCHEDULE 5
CONTACT DETAILS

The ECITB Contact is:

Martin Eatough – Head of Apprentice Programmes

Martin.eatough@ecitb.org.uk

07795 236454

SCHEDULE 6

APPROVED SUB-CONTRACTORS

XXXXXXXXXXXXXX

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

Name:

.....

and

Director

Name:

.....

Date:

Director/Secretary

Executed as a deed Forth Valley College
by acting by

Name:

.....

Director/Authorised Signatory

(delete as appropriate)

and

Name:

.....

Director/Secretary/ Authorised Signatory

(delete as appropriate)

Date: