



**CONSTRUCTION INDUSTRY TRAINING BOARD
TRAINING PROVIDER NETWORK AGREEMENT
STANDARD TERMS**

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CONSTRUCTION INDUSTRY TRAINING BOARD (CITB)
TRAINING PROVIDER NETWORK AGREEMENT
STANDARD TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Assured	a Provider delivering their own products that have been mapped against the appropriate CITB short duration standard.
Achievement	(when used in connection with Learners) means a Learner's achievement of the requirements of a particular Course.
Agreement	means the contract between CITB and the Provider for the delivery of Services pursuant to the Training Provider Network and CITB Products and access and use of the CITB System/s including the Form of Agreement for engaging a Provider, these Standard Terms, the applicable Course and System Documentation and all documents and materials referred to in the Form of Agreement.
Appeal	the appeal procedure referred to in clause 11
Application Form	the application form submitted to CITB by the Provider and/or any other information provided by the Provider when seeking Approval.
Approval	approval of a Provider to be a member of the Training Provider Network, and "Approve", "Approved" and "Approves" shall be construed accordingly.
Authorised Premises	the premises approved by CITB in its sole discretion, described as "Provider Location" in the Form of Agreement and any site, premises or location used by the Provider for administration, assessment, storage, training, testing and or testing in association with the delivery of Services and Standards under this Agreement.
Authorised Representative(s)	the persons designated as their authorised representative(s) by CITB and the Provider respectively, the first such persons representing the Provider being set out in the Form of Agreement.
Branding Guidelines	the branding guidelines set out or referred to in

the Form of Agreement.

Bribery Act	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
CITB Policies	those policies created or adopted by CITB from time to time including policies relating to health and safety, security, conduct of suppliers, contractors or individuals, conduct of business or otherwise which CITB requires Providers to comply with and which are notified in writing and/or published on CITB's website.
CITB System(s)	the system established and operated by CITB including Awards Online, the CITB portal, the CITB Customer Relationship Management System (CRM), the Construction Training Directory, the Construction Training Register and any other system procured for the purpose of providing the Services.
CITB System Website	www.my.citb.co.uk or such other website or websites as CITB may notify to the Provider from time to time.
Construction Training Directory	a directory of (amongst other things) Providers and their services.
Construction Training Register	a register of Achievements of Learners.
Commencement Date	the date that the Form of Agreement is signed by a CITB representative.
Controller	shall have the same meaning as the definition of the term provided in the Data Protection Legislation.
Corrective Actions	actions to be undertaken by the Provider as a result of breaches of the Training Provider Network Provider Handbook and any publication relating to the Quality Assurance Requirements for specific schemes, or this Agreement. This includes the terms corrective action required (CAR), immediate action required (IAR), action plan, observation (OBS) and information advice and guidance (IAG).

Course/s	<p>means either</p> <p>(a) A course (including all course content) which CITB has opted to verify (or not) as meeting the requirements of a particular Standard based on risk-based sampling, or</p> <p>(b) a regulated qualification or non-regulated course (including all course content) offered by a third-party recognised organisation and approved by CITB for the purpose of the CITB System and includes the respective parts of that qualification or short course,</p> <p>as described or referred to in a Form of Agreement and which the Provider is approved to deliver.</p> <p>For the purposes of this definition, a third-party recognised organisation may include an “Awarding Body” regulated by Office of Qualifications and Examinations Regulation (Ofqual), the Scottish Qualifications Authority (SQA) or Qualifications Wales to assure quality of delivery of training meeting National Occupational Standards and non-regulated organisations such as competence card schemes, plant schemes and other industry specific schemes.</p>
Documentation or Documents	<p>means documents:</p> <ul style="list-style-type: none"> • pertaining to Services and delivery of Tests and/or access to and use of CITB System and otherwise as set out or referred to in the Form of Agreement including, as applicable to each Course and/or the CITB System, Requirements Documents and other publications, specification and requirements issued by CITB at any time; and/or • the rules and requirements for the delivery of CITB Products and otherwise as set out or referred to in the Form of Agreement including, as applicable to each CITB Product, the Scheme Booklet, Scheme Rules, or other publications and specifications issued by CITB at any time.
Data Loss Event	<p>means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.</p>
Data Protection Impact Assessment	<p>means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.</p>
Data Protection Office	<p>shall have the same meaning as the definition of the term provided in the GDPR.</p>

Data Subject	shall have the same meaning as the definition of the term provided in the GDPR.
Data Protection Legislation	means all applicable data protection and privacy legislation in force from time to time in the United Kingdom including the General Data Protection Regulation ((EU) 2016/679) (the gdpr); the UK General Protection Regulation (the UK gdpr), the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other United Kingdom or European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and any other legislation relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union; and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party ;
Dispute Resolution Procedure	the procedure set out in clause 11.
Endorsed	a Provider who offers products that support the construction industry including manufacturing and soft skills training (e.g. Information Communication Technology, management, back-office training etc). These will not be supported by a CITB short duration standard.
EIRs	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
Fees	the fees, charges and other sums payable by the Provider to CITB under the Form of Agreement and as published on the CITB System Website from time to time.

FOIA	the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
Force Majeure	any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Provider, the Provider Personnel or any other failure in the Provider's supply chain.
Form of Agreement	the form of agreement agreed between the parties incorporating these Standard Terms.
Insolvency Event	<p>where</p> <ul style="list-style-type: none"> (a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply; (b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider; (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider; (d) an application is made to court, or an order

is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);

- (e) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- (g) the business (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);

Intellectual Property

any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Law	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Provider is bound to comply.
Learner	means an individual who undertakes an assessment, course, test and/ or is awarded a qualification for a Course (approved by CITB) delivered by the Provider and includes the term, Applicant, Apprentice, Candidate, Delegate and Operative wherever they are used in this Agreement or the Course and/or Documentation.
Licensed	a Provider that is delivering a CITB product (e.g. Site Safety Plus or health safety and environment tests through an Internet Test Centre)
Materials	the CITB System and any documentation (in any form of media) supplied or made available by CITB to the Provider including in connection with approval of Services (including, without limitation the Standards) and/or access, inputting to and use of CITB System or otherwise in connection with the performance of the Providers Obligations, and the exercise of rights and performance of obligation by CITB under or pursuant to the Agreement, including those made available online or electronically.
Necessary Consents	all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Provider's Obligations including without limitation all appropriate planning permission necessary to operate from all its accredited facilities.
Personal Data	means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Personal Data Breach	shall have the same meaning as the definition of the term provided in the Data Protection Legislation.
Premises	means premises used by the Provider for the administration of the Provider's business and/or the delivery of the Provider's Services.
Processor	shall have the same meaning as the definition of the term provided in the Data Protection Legislation.
Product Areas	means pursuant to the Training Provider Network categories of Approval including Assured, Endorsed, Licensed and Recognised, or any other product areas Approved by CITB from time to time
Protective Measures	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
Provider	the party to this Agreement Approved by CITB. Provider includes the terms College, Employer, Federation, Product Manufacturer, Trade Federation, Training Groups, Training Providers, University and any other organisation or person Approved by CITB.
Provider Criteria	the minimum requirements that the Provider must attain and maintain as set out in the applicable Standard, Course and/or Documentation.
Provider Obligations	delivery of Services or Tests, access to and use of the CITB Systems and the obligations to be performed by the Provider under these standard terms
Provider Personnel	all employees, persons and staff including unpaid staff, volunteers, other workers, agents, consultants and subcontractors of the Provider and of any peripatetic staff who are engaged in the provision of the Provider's Obligations and/or Services from time to time.
Recognised	means a Provider that is delivering third-party products either supported by a CITB short duration standard or apprenticeships, N/SVQs and/or other construction qualifications

Requirements Documents	the document or publication known as the Training Provider Network Provider Handbook and any publication relating to the Quality Assurance Requirements for specific schemes setting out the requirements with which Providers must comply in the performance of this Agreement and any other documents required to deliver the Services and including any additions or changes to those requirements made by CITB from time to time, as published on the CITB System Website.
Request for Information	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.
Scheme Rules	means the rules and requirements which apply to each specific Product Area.
Services	means: (i) assessments involving the assessment of Learners undertaking CITB approved training; and/or (ii) the training of CITB approved Courses; and/or (iii) the testing of Learners taking a CITB approved test; and/or (iv) any other Product Areas that CITB may approve from time to time.
Standard	when referring to Services, means a standard developed by CITB setting out requirements that the Course must be mapped against detailing the level of learning or achievement which must be met by a Learner.
Sub-processor	means any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement.
Term	has the meaning given in clause 22.
Termination Date	means the date of termination of this Agreement in accordance with the terms of this Agreement.
Trademarks	means the UK registered trademarks listed in the Form of Agreement together with any wordmarks, related applications and associated unregistered trademarks.
Training Provider Network	means a group of Providers who have met and agreed to the requirements of membership of, and have joined, the network.
User Terms and Conditions	means the User Terms and Conditions referred to in the Form of Agreement setting out the terms and

conditions with which the Provider and each individual access the CITB System on the Provider's behalf must comply, as published on the CITB System Website.

Working Day

Monday to Friday, excluding any public holidays in England, Scotland and Wales as applicable.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 Any schedule to the Agreement forms part of it and shall have effect as if set out in full in the body of this Agreement and 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 a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes e-mail.
- 1.10 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 If there is any conflict or inconsistency in or between the documents comprising the Agreement, the order of priority of the documents shall be:
 - 1.13.1 Requirements Documents; then
 - 1.13.2 These CITB Training Provider Network Agreement Standard Terms ; then
 - 1.13.3 The Form of Agreement.

2. PROVISION OF Services

- 2.1 With effect from the Commencement Date CITB:
 - 2.1.1 Approves the Provider to deliver the Services to persons employed or intending to be employed in the construction industry subject to and in accordance with the provisions of this

Agreement, but only for as long as this Agreement continues in force; and

- 2.1.2 approves and grants a licence to the Provider to access and use CITB systems as set out in the Form of Agreement and Requirements Documents subject to terms and conditions of, and for the duration of, the Agreement, but not further or otherwise.
- 2.2 The Provider agrees to comply with the Provider's Obligations and to exercise its rights and perform all its other obligations in accordance with the Agreement.
- 2.3 The Provider Obligations will be delivered by an Approved Provider where:
 - 2.3.1 the Authorised Premises used for the administration and /or delivery of the Services, have been approved by CITB in its sole discretion as being fit for purpose; and
 - 2.3.2 the Authorised Premises are located in Great Britain; and
 - 2.3.3 the Services will be delivered to persons employed or intending to be employed in the construction industry in Great Britain.
- 2.4 The Provider shall provide the Services, or procure that they are delivered:
 - 2.4.1 with due care, skill and diligence; and
 - 2.4.2 in accordance with all applicable Laws; and
 - 2.4.3 in accordance with the reasonable instructions of CITB.
- 2.5 The Provider shall access and use CITB Systems, commensurate with their approval, as applicable:
 - 2.5.1 to include the Provider's details, (including relevant Courses) in the Construction Training Directory;
 - 2.5.2 to update Learners' Achievements and/or attendance following completion of a Service delivered by the Provider (to enable CITB to update the Construction Training Register);
 - 2.5.3 to update the CITB portal and other CITB Systems;
 - 2.5.4 to provide such other information as is required by and in accordance with the Requirements Documents;
 - 2.5.5 to provide such further information as CITB may require from time to time.
- 2.6 CITB may terminate the Agreement with immediate effect by giving written notice to the Provider if the Provider commits a breach of clause 2.4 or 2.5 as determined by CITB in its sole discretion.
- 2.7 If the Provider does not comply with the provisions of this Agreement in any way, CITB may, without prejudice to its other rights, require the Provider to take, or to comply with, Corrective Actions.

3. DUE DILIGENCE AND WARRANTIES

- 3.1 The Provider acknowledges and confirms that:
 - 3.1.1 it has had an opportunity to carry out a thorough due diligence

exercise in relation to the Services and has asked CITB all the questions it considers to be relevant, and has received all information requested by it from CITB, for the purpose of establishing whether it is able to deliver the Services in accordance with the terms of this Agreement;

- 3.1.2 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of CITB; and
- 3.1.3 it has entered into this Agreement in reliance on its own due diligence.
- 3.2 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed given by CITB in respect of any information which is provided to the Provider by CITB.
- 3.3 The Provider:
 - 3.3.1 warrants and represents that, as at the Commencement Date, all information contained or referred to in the Provider's Application Form remains true, accurate and not misleading, save as may have been specifically disclosed in writing to CITB prior to execution of the Agreement; and
 - 3.3.2 shall promptly notify CITB in writing of any changes in any information provided by it to CITB.
- 3.4 The Provider warrants and represents that at all times it meets and will meet the Provider Criteria and the Provider Personnel have the necessary skills, expertise and capacity to perform the Provider's obligations and deliver the Provider Obligations.
- 3.5 The Provider warrants and undertakes that it will notify CITB of (i) any change in the information provided to CITB as part of the Provider's application and/or (ii) any subsequent material changes to any applicable quality assurance requirements documents and/or Scheme Rules.

4. USE OF CITB SYSTEM

- 4.1 The Provider will:
 - 4.1.1 provide and/or upload all information reasonably required by CITB for inclusion in the CITB System as specified in any applicable Requirements Documents.
 - 4.1.2 ensure that all the information that the Provider provides is accurate, up-to-date, complete and in a form reasonably acceptable to CITB. For the avoidance of doubt, it is a condition of this Agreement that the Provider will not provide any inaccurate, misleading or false information to CITB and/or upload any inaccurate, misleading or false information to the CITB System.
 - 4.1.3 keep confidential and personal to the Provider and will not share with any third party any passwords, access codes or similar material provided by CITB to the Provider in order for the Provider to be able to upload information to the CITB System including access to Training Provider Network member only

systems. The Provider further agrees that it will be solely responsible for and will indemnify CITB against any consequences including the compromise, loss, disclosure, modification or unauthorised use of the CITB System which arise from the Provider's breach of this clause.

- 4.1.4 if for reasons beyond its reasonable control the Provider is unable to upload information to the CITB System, notify CITB of the same in writing and provide details as to 1) why it is unable to provide the information requested, 2) actions that the Provider is undertaking to rectify the delay and 3) the anticipated length of the delay (if known). CITB will use reasonable endeavours to assist the Provider to gain access to the CITB System.
- 4.1.5 not use information gained from the CITB System for commercial gain.
- 4.1.6 comply, and shall procure that each individual authorised to access the CITB System (or any part of it) on the Provider's behalf complies, at all times with the User Terms and Conditions.
- 4.1.7 ensure that throughout the Term of this Agreement, the Provider shall use the latest anti-virus protection available from an industry accepted anti-virus software vendor to check for and to delete malicious software from the Providers computer systems, databases and environment ("**Provider's ICT**").
- 4.1.8 ensure that in the event that malicious software transmitted from the Provider's ICT causes loss of operational efficiency or loss of or corruption of data held on the CITB System, the parties will assist each other to mitigate any losses and to restore the CITB System to its desired operating efficiency. All costs reasonably incurred in doing so shall be borne by the Provider.
- 4.1.9 be responsible for ensuring that the Provider's ICT meets all relevant technical specifications necessary to use the CITB System, is compatible with the CITB System and is capable of running the CITB System content. The Provider must not attempt to interfere in any way with the proper working of the CITB System and in particular the Provider must not attempt to circumvent security, tamper with, hack into, or otherwise disrupt any computer system, server, website, router, or any other internet connected device.
- 4.1.10 not store, distribute or transmit any material through the CITB System that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- 4.1.11 limit access to the CITB System to those of its employees who are required, and to the extent so required, to use the CITB System in the performance of their roles;
- 4.1.12 not use the CITB System for any purpose contrary to any law or

regulation or any regulatory code, guidance or request;

- 4.1.13 not extract, reutilise, use, exploit, redistribute, disseminate, copy or store data or information held in the CITB System for any purpose not expressly permitted by the Agreement;
- 4.1.14 except to the extent permitted by any applicable law, not copy, modify, decompile, reverse engineer or create derivative works from the Software; and
- 4.1.15 will not share, sub-contract, sub-license, assign, transfer or in any other manner deal with its right to access and use the CITB System except as expressly set out in the Agreement.

4.2 CITB will

- 4.2.1 give the Provider access to the CITB Systems in order to enable the Provider to upload and access as applicable the information.
- 4.2.2 use reasonable endeavours to ensure that the Provider has uninterrupted access to the CITB Systems. However, CITB gives no warranty in relation to the same and will not accept any liability in relation to service disruptions or downtime.
- 4.2.3 endeavour to maximise the quality of information held on the CITB Systems but CITB will not be liable for any errors, omissions, inaccurate or corrupt information, including but not limited to, the transmission of information over electronic networks.
- 4.2.4 be responsible for the maintenance and upkeep of the CITB Systems.

5. **CHANGES TO Services AND SYSTEM DOCUMENTATION**

5.1 CITB may at any time

- 5.1.1 update, amend, alter or supplement the Standards appertaining to any Service (a "Change"); or
- 5.1.2 withdraw approval for a Service where the standard appertaining to that Service has been amended or withdrawn;
and the following provisions shall apply:
- 5.1.3 CITB will publish the changes to the Standard and/or the Course and CITB System Documentation published on its website and where practicable endeavour to notify the Provider of the change.
- 5.1.4 Where the change is a mandatory change, being a change where the substantive reason for the change is to comply and/or to ensure future compliance with Law (a "Mandatory Change"), CITB will endeavour to give as much notice as is practicable (but no less than 30 days' notice) according to the nature of the change and the requirement of the Law necessitating the change.
- 5.1.5 If a change will have a material adverse effect on the Provider or its provision of the Provider Obligations, including a change to or withdrawal of a Service including a Standard then, unless it is a Mandatory Change, CITB shall provide the Provider with 30

days' notice of the change (a "Change Notice").

- 5.1.6 If a Provider does not accept the change notified by a Change Notice, the Provider may, before expiry of the Change Notice, give notice to CITB in writing of that fact and this Agreement shall automatically and without requirement for further notice terminate 90 days after the date of the service of that notice by the Provider. The Change will not apply during the termination notice period.
- 5.1.7 Unless the Provider serves notice in accordance clause 5.1.6, or the Change does not have a material adverse effect on the Provider, the Change will and for all purposes shall be deemed to be effective from the expiry of the Change Notice or, where a Change Notice is not required to be issued, 30 days after the changes to the CITB System Website have been made.
- 5.1.8 The Provider is advised regularly (and in any event not less than once in each month) to check the CITB System Website for changes to the Services including the Standards, and/or CITB System Documentation.
- 5.1.9 The Provider shall implement the Change at its own cost.
- 5.2 CITB will have no other liability to the Provider in respect of a Change,
- 5.3 The Provider shall not be permitted to alter Services without CITB's prior written agreement.

6. COMPLIANCE

- 6.1 The Provider shall ensure that all Necessary Consents are in place to deliver Services and shall at all times comply with all conditions and other provisions relative to each Necessary Consent and ensure that each Necessary Consent remains current and valid throughout the Term of this Agreement.
- 6.2 The Provider shall perform its obligations under this Agreement (including those in relation to the Provider Obligations) in accordance with:
 - 6.2.1 all applicable Law including all laws regarding health and safety;
 - 6.2.2 CITB Policies and Necessary Consents; and
 - 6.2.3 all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.
- 6.3 Without limiting the general obligation set out in clause 2, the Provider shall (and shall procure that the Provider Personnel shall):
 - 6.3.1 perform its obligations under this Agreement in accordance with:
 - (a) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise); and
 - (b) CITB's equality and diversity policy as provided or made available to the Provider from time to time;
 - 6.3.2 take all necessary steps, and inform CITB of the steps taken, to

prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor Provider); and

- 6.3.3 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement. The Provider shall also undertake, or refrain from undertaking, such acts as CITB requests so as to enable CITB to comply with its obligations under the Human Rights Act 1998.

7. PREVENTION OF FRAUD

- 7.1 The Provider shall not, and shall procure that Provider Personnel and/or the Provider's Learners do not, during the term of this Agreement:
 - 7.1.1 defraud, attempt to defraud or conspire to defraud CITB;
 - 7.1.2 act dishonestly in the delivery of the Services;
 - 7.1.3 act dishonestly in entering details onto CITB System including (without limitation) details of Learners and their achievements and/or claiming grant for such achievements; or
 - 7.1.4 take any actions which, in the reasonable opinion of CITB or which gives CITB cause to believe, bring or are likely to bring CITB's name or reputation into disrepute.
- 7.2 The Provider shall during the term of this Agreement establish, maintain and enforce policies and procedures which are adequate to ensure compliance with clause 7.1.
- 7.3 The Provider shall immediately notify CITB in writing if it becomes aware of any breach of clause 7.1 and/or 7.2.
- 7.4 If the Provider is in default under clauses 7.1 and/or 7.2, CITB may by notice:
 - 7.4.1 require the Provider to remove from performance of this Agreement any Provider Personnel whose acts or omissions have caused the default;
 - 7.4.2 immediately suspend this Agreement in accordance with clause 21; or
 - 7.4.3 immediately terminate this Agreement.

8. FEES AND PAYMENT

- 8.1 The Provider shall pay the Fees set out or referred to in the Form of Agreement. Unless otherwise specifically stated, all Fees shall be exclusive of Value Added Tax or any other sales tax applicable in any jurisdiction, which shall be payable in addition.
- 8.2 CITB reserves the right to vary the Fees at any time on notice in writing to the Provider. Notice shall be given by CITB amending the Fees schedule or other provisions in the Requirements Documents or published on CITB's website detailing the Fees and may notify the Provider of such change by notice on its website, in writing or by e-mail, or by any other means it deems appropriate.
- 8.3 Approval for any period during the continuance of this Agreement shall be subject to due and prompt payment of Fees.

- 8.4 Unless otherwise expressly stated, refunds will not be provided to the Provider in respect of any Fees paid or payable from time to time.
- 8.5 All payments required to be made by the Provider pursuant to the Agreement shall be made in GBP and shall be subject to, and made in accordance with, this invoicing and payments section in these Standard Terms and/or the Form of Agreement as updated from time to time.
- 8.6 CITB will invoice the Provider for Fees incurred and becoming due from time to time, and the Provider shall pay CITB any sums due under such an invoice no later than a period of 30 days from the date of the invoice. If the Provider defaults in payment, and without prejudice to any other remedy CITB may have, the Provider shall pay interest on any monies overdue for payment at the rate prescribed by the Late Payment of Commercial Debts Regulations 2013 (SI 2013/395) as amended or replaced from time to time.
9. **QUALITY ASSURANCE (MONITORING AND AUDIT)**
- 9.1 CITB will monitor and audit the Provider to quality assure the delivery of Services, accuracy of records, accuracy and timeliness of entry of Learner Achievement data to the appropriate CITB Systems, compliance with Requirements Documents and performance of this Agreement by the Provider and may, at its absolute discretion, conduct unannounced visits, inspections, desk based audits and mystery shops, in addition to its general rights of audit to uphold the quality of the delivery of Services and the inputting of data and to ensure that they are carried out in accordance with the Agreement. ("Quality Assurance Review").
- 9.2 The Provider shall co-operate, and shall procure that the Provider Personnel co-operate, with CITB in carrying out the Quality Assurance Review referred to in clause 9.1 at no additional charge to CITB.
- 9.3 The Provider shall ensure that CITB representatives are permitted unhindered access to all parts of Authorised Premises, and to Provider Personnel, and that all records relating to the Provider Obligations are made available for inspection and copying, and that all information reasonably required by CITB is provided promptly on request.
- 9.4 The Provider shall from time to time submit such documents as are requested by CITB within reasonable timescales to facilitate desk- based auditing.
- 9.5 CITB shall act on the outcome(s) of its Quality Assurance Review under this clause 9 and shall take any action as it deems reasonably necessary, including requiring the Provider to take Corrective Action(s), revoking Approval of the Provider or declining to renew the Agreement, provided always that CITB acts in accordance with any processes specified in the Agreement.
- 9.6 CITB retains the right to revoke or suspend Approval of the Provider or decline to renew approval or registration:
- 9.6.1 pending the outcome of an investigation into any breach of the Agreement including the Course and System Documentation; and/or
- 9.6.2 if the Provider does not fully comply with the requirements of this clause 9.

10. **VARIATION**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their Authorised Representatives). For the avoidance of doubt, this clause does not apply to changes to the Services and Services and System Documentation, or Fees, which shall automatically be incorporated into this Agreement in accordance with clause 5 or clause 8 (as the case may be).

11. **APPEALS AND DISPUTE RESOLUTION**

11.1 Where and in so far as the Services and System Documentation also includes an Appeal procedure then, in relation to any decision made by CITB to which that Appeal procedure applies, if the Provider disagrees with such decision it may only appeal that decision in the manner set out in the Appeal procedure but not otherwise.

11.2 If a dispute to which clause 11.1 above does not apply arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

11.2.1 either party shall give to the other written notice of the Dispute within 30 days of the event or action giving rise to the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt promptly and in good faith to resolve the Dispute;

11.2.2 if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a member of the CITB executive committee or a nominated representative (who shall have authority to resolve the dispute) and the Provider's Managing Director or his/her nominated representative (who shall have authority to resolve the dispute) who shall attempt in good faith to resolve it.

11.3 In the event of a dispute, the Provider is required to exhaust the full appeals procedure before taking any legal action.

12. **SUB-CONTRACTING AND ASSIGNMENT**

12.1 This agreement is personal to the Provider, and the Provider shall not assign, transfer, subcontract or otherwise dispose of any or all of its rights and obligations under this Agreement, nor shall it attempt to do so, without the prior written consent of CITB.

12.2 CITB shall be entitled to novate the Agreement or assign its rights and transfer its obligations under the Agreement or otherwise in any deal with the Agreement in any manner without the prior written consent of the Provider.

13. **INDEMNITIES**

13.1 The Provider shall indemnify and keep indemnified CITB against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation) and all penalties, legal costs and other reasonable professional costs and expenses

suffered or incurred by CITB as a result or in connection with any claim made against CITB by a third party arising out of, or in connection with, the delivery and/or supply of any Service, access to, input of data to and /or use of CITB System or the performance or non-performance of any of the Provider's obligations under or in connection with the Agreement, save to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by CITB.

- 13.2 The Provider shall indemnify CITB in respect of all costs, losses and expenses incurred by CITB in providing (or procuring the provision of) additional training, assessment and testing of Learners and reissuing confirmation of such training, assessment and tests, where this is required by reason of the Provider's failure to comply with the Requirements Documents or by reason of the Provider's breach of any other provision of this Agreement.
- 13.3 The Provider shall indemnify CITB in respect of all costs, losses and expenses incurred by CITB in investigating any malpractice, maladministration or fraud which leads to the termination of the Provider in accordance with this Agreement.
- 13.4 Within limiting the provisions of clause 13.1 above, CITB losses include the payment (whether to the Provider or to a 3rd party) of a grant which would not otherwise have been payable in respect of a Service where such payment occurred as a result of the Provider's breach of this Agreement (including failure to comply with the CITB Services and System Documentation).

14. LIMITATION OF LIABILITY

14.1 Subject to clause 14.2:

14.1.1 CITB shall not be liable to the Provider, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement, for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, loss of use or corruption of software, data or information, any indirect or consequential loss; and

14.1.2 CITB's maximum aggregate liability to the Provider for all claims arising under the Agreement in any period of 12 months shall not exceed the amount of Fees paid by the Provider in the 12 months preceding the event giving rise to the claim.

14.2 Notwithstanding any other provision of this Agreement neither party limits or excludes its liability for:

14.2.1 death or personal injury caused by its negligence; or

14.2.2 breach of any obligation as to title implied by statute; or

14.2.3 any other act or omission, liability for which may not be limited under any applicable law.

14.3 The parties acknowledge and agree that the limitations contained in this clause are reasonable in light of all the circumstances.

15. INSURANCE

- 15.1 The Provider shall at its own cost effect and maintain with a reputable insurance company the policies of insurance providing as a minimum the levels of cover set out in the Form/s of Agreement (the "Required Insurance").
- 15.2 The Provider shall give CITB, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 15.3 If the Provider fails to give effect to and maintain the Required Insurances, CITB may make reasonable alternative arrangements to protect its interests and shall be entitled to recover the costs of such arrangements from the Provider.
- 15.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Agreement.
- 15.5 The Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the Agreement.

16. FREEDOM OF INFORMATION

- 16.1 The Provider acknowledges that CITB is subject to the requirements of the FOIA and the EIRs. The Provider shall:
 - 16.1.1 provide all necessary assistance and cooperation as reasonably requested by CITB to enable CITB to comply with its obligations under the FOIA and EIRs;
 - 16.1.2 transfer to CITB all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 16.1.3 provide CITB with a copy of all Information belonging to CITB requested in the Request For Information which is in its possession or control in the form that CITB requires within 5 Working Days (or such other period as CITB may reasonably specify) of CITB's request for such Information; and
 - 16.1.4 not respond directly to a Request For Information unless authorised in writing to do so by CITB.
- 16.2 The Provider acknowledges that CITB may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Provider. CITB shall take reasonable steps to notify the Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) CITB shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

17. DATA PROTECTION

- 17.1 In this clause, "**controller**", "**processor**", "**data subject**", "**personal data**", "**processing**" (and "**process**") **personal data breach, processing and appropriate technical and organisational measures** shall have the meanings given in the Data Protection Legislation.
- 17.2 In this clause, **Shared Personal Data** is the personal data to be shared between the parties, the **Data Discloser** is the party that discloses Shared Personal Data to the other party for the purposes of this Agreement (the "**Agreed Purposes**").
- 17.3 Both parties acknowledge that CITB and the Provider are each a controller in respect of the Shared Personal Data that is the subject of this Agreement and that they are not joint controllers (as defined within Data Protection Legislation) save where a specific agreement is made to that effect between the parties.
- 17.4 This clause 17 sets out the framework for the sharing of personal data between the parties as controllers. CITB controller status is set out in accordance with Annex A. Any processing of Shared Personal Data outside of Annex A is the responsibility of the Provider who will comply with all its obligations under the Data Protection Legislation.
- 17.5 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 17.6 The Parties shall:
- 17.6.1 ensure that they have all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data for the Agreed Purposes;
 - 17.6.2 give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by the applicable Party;
 - 17.6.3 process the Shared Personal Data only for the Agreed Purposes;
 - 17.6.4 not disclose or allow access to the Shared Personal Data to anyone other than the permitted recipients;
 - 17.6.5 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;

- 17.6.6 not transfer any personal data received from the Data Discloser outside the United Kingdom unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.
- 17.7 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- 17.7.1 consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
 - 17.7.2 promptly inform the other party following the receipt of any data subject rights request;
 - 17.7.3 provide the other party with reasonable assistance in complying with any data subject rights request;
 - 17.7.4 not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other party wherever possible;
 - 17.7.5 assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
 - 17.7.6 notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
 - 17.7.7 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless the Shared Personal Data is held to fulfil a statutory purpose or the party is required by law to store the Shared Personal Data;
 - 17.7.8 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
 - 17.7.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 17 and allow for audits by the other party or the other party's designated auditor; and

17.7.10 provide the other party with contact details of the Data Protection Officer or any other designated person confirmed in writing as the point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

17.8 The Provider shall fully indemnify and keep indemnified CITB, its officers, servants or agents against all claims, awards, costs, professional fees and disbursements etc. of dealing with any claims made in respect of information subject to Data Protection Legislation which claims would not have arisen but for the act, omission or negligence of the Provider or its Staff, agents or contractors or Sub-contractors.

17.9 The provisions of this clause shall apply during the term of the Contract and indefinitely (to the extent allowed by law) after its expiry or termination.

18. CONFIDENTIALITY

18.1 Subject to clause 18.2, the parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

18.2 Clause 18.1 shall not apply to any disclosure of information:

18.2.1 required by any applicable law, including any disclosures required under the FOIA or the EIRs in accordance with clause 16 of this Agreement;

18.2.2 that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Agreement;

18.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 18.1;

18.2.4 by CITB if any document to which it is a party and which the parties to this Agreement have agreed contains no commercially sensitive information;

18.2.5 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

18.2.6 by CITB to any other department, office or agency of the Government;

18.2.7 by CITB in relation to any information arising out of a malpractice, maladministration or fraud investigation which has resulted in a termination of this agreement;

18.2.8 by CITB in relation to any disclosure in accordance with clause 27.2;

18.2.9 by CITB in relation to revocation of a qualification, achievement or test, to notify any third-party organisation who would rely on that qualification, achievements or test;

18.2.10 by CITB relating to this Agreement and in respect of which the Provider has given its prior written consent to disclosure.

- 18.3 On or before the Termination Date the Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of CITB's employees, Learners and recipients of grants paid or payable in respect of Services, are delivered up to CITB or, at CITB's request, securely destroyed. This obligation is in addition, and without prejudice, to any obligation which the Provider may have under the Requirements Documents.

19. INTELLECTUAL PROPERTY

- 19.1 The Materials are and shall remain the property of CITB and shall not be:
- 19.1.1 reproduced or disseminated other than as expressly permitted in this Agreement; or
 - 19.1.2 used either for the purpose of developing any further materials or any other purposes whatsoever without prior consultation with and the written permission of CITB.
- 19.2 CITB grants the Provider a non-exclusive, non-transferable licence to use the Intellectual Property rights in the Materials during the Term in Great Britain (or where the Services are delivered outside Great Britain, for persons employed or intending to be employed in the construction industry in Great Britain) solely for the purpose of performing the Provider Obligations in accordance with this Agreement. The Provider shall notify CITB immediately if it becomes aware of any unauthorised use of the whole or any part of CITB Intellectual Property.
- 19.3 CITB shall have no liability for any claim resulting from the use of the Materials in combination with any materials not supplied (or approved) by CITB or any variation of any item of the Materials by a party other than CITB or its authorised agent.
- 19.4 CITB shall have no liability for any claim resulting from the use of the Materials (whether or not in combination with any other materials) outside of Great Britain.
- 19.5 CITB does not give any warranty, representation or undertaking that use of the Materials or the exercise of any of the rights granted under this Agreement will not infringe any other Intellectual Property Rights or other rights of any person.
- 19.6 The Provider shall indemnify CITB against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property right by the Provider, except to the extent that they have been caused by or contributed to by CITB's acts or omissions.

20. TRADEMARK LICENCE

- 20.1 CITB grants to the Provider a non-exclusive, non-transferable licence to use the Listed Trademarks in Great Britain (or where the Services are delivered outside Great Britain, for persons employed or intending to be employed in the construction industry in Great Britain) in relation to

delivery of the Services and use of CITB System, subject to and in accordance with the Form/s of Agreement and the provisions of this Agreement, for the Term of this Agreement but not further or otherwise. For the avoidance of doubt, the licence granted in this clause 20.1 cannot be sub-licensed.

20.2 CITB warrants that it is the proprietor of the Listed Trademarks and is not aware that the Listed Trademarks or the use of them infringes, or will infringe the rights of any third party provided that CITB shall have no liability for any claim resulting from the use of the Listed Trademark outside of Great Britain.

20.3 The Provider:

20.3.1 shall comply with the Branding Guidelines at all times;

20.3.2 shall not without CITB's prior written consent use the Listed Trademark unless it is accompanied by wording prescribed by CITB from time to time to link the Listed Trademark to the CITB System, the Construction Training Directory, the Construction Training Register or the Services, as appropriate;

20.3.3 shall not without CITB's prior written consent use the Listed Trademark to show any general association with or endorsement or approval by CITB;

20.3.4 shall on all authorised copies made of the Materials, faithfully reproduce the copyright symbol, legend or clause or, in the absence of the same, insert the Listed Trademark;

20.3.5 will immediately bring to the attention of CITB any improper or wrongful use of CITB's Listed Trademarks, emblems, designs, models or other similar industrial, intellectual or commercial property rights which come to the notice of the Provider and will in the performance of its duties under this Agreement use every effort to safeguard the property rights and interests of CITB and take all steps required by CITB to defend such rights.

21. **SUSPENSION**

CITB may immediately on notice to the Provider, or without notice in case of emergency, suspend all or any of the rights granted to the Provider under this Agreement.

21.1 Any suspension CITB applies will be temporary and as long as reasonably necessary to allow CITB to investigate the cause for suspension.

21.1.1 in accordance with this clause 21;

21.1.2 in accordance with the Services and CITB System Documentation;

21.1.3 where CITB has reasonable grounds for suspecting fraud, misconduct, maladministration or malpractice on the part of the Provider, Provider Personnel or any Learners;

21.1.4 where in the opinion of CITB the Provider is causing concern in its ability to maintain a satisfactory standard of services to Learners;

- 21.1.5 where in the opinion of CITB the Provider failed promptly to take any of the Corrective Actions;
- 21.1.6 where the Provider, notwithstanding payment of Fees, does not in any period of 12 months deliver any Services or record any Learner Achievements on CITB System;
- 21.1.7 where CITB becomes entitled under any other term of this Agreement, except termination under clause 24, to suspend this Agreement, whether with or without notice;
- 21.1.8 if, under any other Provider Agreement between CITB and the Provider, delivery of Services under that agreement is suspended or terminated for any reason; or
- 21.1.9 if, under a Provider Agreement between CITB and any company in the same group of companies as the Provider, delivery of Services is suspended or terminated for any reason.
- 21.2 Suspension, other than suspension under clause 21.1.7 if alternative provisions apply, shall be for such period as is reasonably necessary for CITB to investigate the circumstances giving rise to suspension and/or to ensure that appropriate corrective action is taken by the Provider and will be lifted at such time as CITB is fully satisfied that the actions resulting from an investigation instigated in relation to clause 21.1 have been met.
- 21.3 If this Agreement is suspended by CITB for cause, such suspension shall be at no loss or cost to CITB and the Provider hereby indemnifies CITB against any such losses or costs which CITB may suffer as a result of any such suspension for cause.

22. TERM

- 22.1 The Agreement shall come into effect on the Commencement Date and shall continue unless and until terminated by either party in accordance with the provisions of this Agreement.

23. TERMINATION

- 23.1 CITB may terminate this Agreement in whole or part with immediate effect by the service of written notice on the Provider in the following circumstances:
 - 23.1.1 if the Provider is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, CITB may only terminate this Agreement under this clause 23.1 if the Provider has failed to remedy such breach within 28 calendar days of receipt of notice from CITB requiring it to do so;
 - 23.1.2 if the Provider fails to pay any amount due under this Agreement on the due date for payment;
 - 23.1.3 if the Provider repeatedly breaches the terms of this Agreement or persistently or repeatedly breaches the same term of this Agreement notwithstanding that any one breach may not of itself be a breach of a material obligation;
 - 23.1.4 any action by the Provider, in relation to the Agreement which, in the reasonable opinion of CITB's Authorised Representative, has or may cause significant harm to the reputation of CITB;

- 23.1.5 CITB has cause to believe or reasonable grounds for suspecting fraud on the part of the Provider, Provider Personnel or Learners;
- 23.1.6 a failure to meet the requirements of CITB to prevent or to remedy malpractice by the Provider or any of the Provider Personnel;
- 23.1.7 if there is an Insolvency Event;
- 23.1.8 if there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010;
- 23.1.9 the Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical) is incapable of managing his own affairs or becomes a patient under any mental health legislation;
- 23.1.10 the Provider suspends or ceases, or threatens to suspend or cease, carrying on delivery of Services pursuant to the Form of Agreement;
- 23.1.11 if any other contract between CITB and the Provider for the delivery of CITB products is terminated for any reason;
- 23.1.12 if the contract between the Provider and a Recognised Organisation, referred to in the Form of Agreement, is suspended or terminated for any reason; or
- 23.1.13 if any contract between CITB and any company in the same group of companies as the Provider for the delivery of CITB products is terminated for any reason.
- 23.2 If this Agreement is terminated by CITB otherwise than pursuant to clause 24 such termination shall be at no loss or cost to CITB and the Provider hereby indemnifies CITB against any such losses or costs which CITB may suffer as a result of any such termination for cause.

24. TERMINATION ON NOTICE

Without affecting any other right or remedy available to it, either party may terminate this Agreement at any time by giving 3 months' written notice to the other party. The party exercising its right under this clause shall not incur any liability to the other party by reason thereof.

25. FORCE MAJEURE

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control (Force Majeure), and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that the period of delay or non- performance continues for 6 months, the party not affected may terminate this Agreement by giving 14 days' written notice to the other party.

26. PREVENTION OF CORRUPTION AND CONFLICTS

- 26.1 The Provider shall and shall procure that Provider Personnel, persons associated with it or other persons who are performing services or providing goods in connection with this Agreement shall:

- 26.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
 - 26.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 26.1.3 comply with the CITB anti-fraud, malpractice and maladministration policy (available online and which may be updated by CITB from time to time) and such other policies as CITB may determine as being necessary from time to time (**Relevant Policies**);
 - 26.1.4 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 26.1.2, and will enforce them where appropriate;
 - 26.1.5 promptly report to CITB any request or demand for any undue financial or other advantage of any kind offered or received in connection with the performance of this Agreement;
 - 26.1.6 immediately notify CITB (in writing) if a foreign public official becomes an officer or employee of the Provider or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as officers or employees at the date of this Agreement);
 - 26.1.7 annually certify to CITB in writing signed by an officer of the Provider, compliance with this clause 26 by the Provider and all persons associated with it under clause 26.2 and the Provider shall provide such supporting evidence of compliance as CITB may reasonably request.
- 26.2 The Provider shall ensure that any person associated with the Provider who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 26 (**Relevant Terms**). The Provider shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to CITB for any breach by such persons of any of the Relevant Terms.
- 26.3 Breach of this clause 26 shall be deemed a material breach entitling CITB to terminate this Agreement.
- 26.4 For the purpose of this clause 26, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 26, a person associated with the Provider includes but is not limited to any subcontractor of Provider.

27. CONSEQUENCES OF TERMINATION

- 27.1 On the expiry of the Term or if this Agreement is terminated in whole or in part for any reason the Provider shall:
- 27.1.1 immediately cease performance of the Provider Obligations;
 - 27.1.2 return all Materials, any other materials bearing CITB's name and/or trademark and/or logo;
 - 27.1.3 provide CITB with details of all future bookings by Learners, including contact details for all Learners (if instructed by CITB to do so) and CITB may require these details to be provided before termination (where notice to terminate has been served by either party);
 - 27.1.4 immediately cease to display or otherwise use any Intellectual Property Rights or systems connected with Services and all rights granted by this Agreement shall automatically terminate.
- 27.2 In the event of termination of this Agreement for malpractice, maladministration, or fraud including under clauses 23.1.4 to 23.1.6, CITB reserves the right to publicise (including notifying other third-party organisations) the outcome of any CITB investigation that leads to a Provider being terminated. This action would only be undertaken when the appeal procedure has been exhausted or the time period for lodging any appeal against a termination decision has expired.
- 27.3 On termination of this Agreement (or where reasonably so required by CITB before such termination) the Provider shall procure that all data and other material belonging to CITB (and all media of any nature containing information and data belonging to CITB or relating to the Provider Obligations), shall be delivered to CITB forthwith and the Provider shall certify full compliance with this clause.
- 27.4 CITB may at any time and from time to time within 12 months following termination or expiry of this Agreement exercise its rights set out in clause 9 (Monitoring and Audit).
- 27.5 Termination howsoever arising shall be without prejudice the accrued rights of the parties as at termination.
- 27.6 The provisions of clause 7 (Prevention of fraud), clause 13 (Indemnities), clause 15 (Insurance), clause 16 (Freedom of Information), clause 17 (Data Protection), clause 18 (Confidentiality), and this clause 27 (Consequences of termination) shall survive termination or expiry of this Agreement.

General provisions

28. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

29. SEVERABILITY

- 29.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 29.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
30. **PARTNERSHIP OR AGENCY**
- Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
31. **THIRD PARTY RIGHTS**
- Except as expressly provided in the Course and System Documentation, no one other than a party to this Agreement shall have any right to enforce any of its terms.
32. **PUBLICITY**
- 32.1 Save as provided in clause 33, the Provider shall not make, or permit any person to make:
- 32.1.1 any press announcements or publicise this Agreement or its contents in any way; or
- 32.1.2 use CITB's name or logo in any promotion or marketing or announcement of orders.
33. **REFERENCES TO CITB**
- 33.1 CITB may develop and provide from time to time at no charge to the Provider, advertising and promotional material which the Provider may use in marketing a Course.
- 33.2 The Provider, when marketing Course, may only use or publish those advertising materials provided by or on behalf of or approved in advance by CITB in writing and which comply with the Branding Guidelines.
- 33.3 CITB reserves the right at any time to withdraw its approval of any such materials and the Provider agrees to cease use of such materials with immediate effect.
- 33.4 CITB reserves the rights to seek criminal prosecution of any Provider who seeks to use CITB's name, logo, material or Trademarks for unlawful purposes and, where appropriate, will take action within the civil courts against a Provider using CITB's name, logo, material or Trademarks for unauthorised or unlawful purposes.
34. **NOTICES**
- 34.1 Any notice given to a party under or in connection with this Agreement

shall be in writing and shall be:

34.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

34.1.2 sent by email to the individual identified by the Provider as its Authorised Representative or primary contact.

34.2 Any notice shall be deemed to have been received:

34.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

34.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; or

34.2.3 if sent by email, at 9.00 a.m. on the next Working Day after transmission.

34.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

34.4 Any notice to be served under this Agreement shall be marked for the attention of the Authorised Representative of the party on whom the notice is being served.

35. FURTHER ASSURANCES

Each party shall do all things and execute all further documents necessary to give full effect to this Agreement.

36. SET OFF

Whenever under this Agreement, any sum of money shall be recoverable from or payable by the Provider, the same may be deducted from any sum then due or which at any time thereafter may become due to the Provider under this or any contract with CITB. Exercise by CITB of its rights under this clause 36 shall be without prejudice to any other rights or remedies available to CITB under the Agreement or otherwise.

37. GOVERNING LAW

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 laws of England and Wales.

38. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Annex A

Data Processing Services

Processing Data and Data Subjects

1. The Provider must comply with any further written instructions with respect to processing by the Data Controller.
2. Any such further instructions shall be incorporated into this Annex.

Description	Details
Subject matter of the processing	
Duration of the processing	<i>Duration of Contract as per schedule 1 including any variation and extension period</i>
Nature and purposes of the processing	
Type of Personal Data	
Categories of Data Subject	
Retention requirements	<i>In accordance with CITB's retention policy and for purposes connected with CITB's role as an Industrial Training Board under the Industrial Training Act 1982.</i>