

MEMORANDUM OF UNDERSTANDING

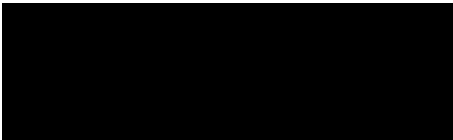
between

The Construction Industry Training Board (CITB)

and

Access & Scaffolding Industry Training Organisation (ASITO)

(Signature)



CITB

Date: 11/11/2022

(Signature)

[Name]

[Position]

Access & Scaffolding Industry

Training Organisation (ASITO)

Date:

This Memorandum of Understanding ("**MoU**") is made on 11th November 2022 by and between

Construction Industry Training Board whose registered office is Sand Martin House, Bittern Way, Fletton Quays, Peterborough PE2 8TY, registered as a charity in England and Wales with charity no.264289 ("**CITB**")

and

Access & Scaffolding Industry Training Organisation (ASITO) ("**National Specialist Training Group**" or "**NSTG**"). NASC, 4th Floor, 12 Bridewell Place, London, EC4V 6AP

Each a "**Party**" and collectively referred to as the "**Parties**".

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this MoU, the following words and expressions have the following meanings unless the context otherwise requires:

"Confidential Information"	Any information however conveyed or presented that relates to the business affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing Party, together with all the information derived by the recipient from any such information and any other information clearly designated by a Party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably to be considered to be confidential.
"Data Protection Legislation"	All applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (EU) 2016/679; the UK General Data Protection Regulation; 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 law 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.
"Key Outcomes"	These are the key objectives as set out in Annex A.

“Force Majeure”	Any event preventing the performance by either Party of its obligations under this Contract which is beyond the reasonable contemplation and control of the Parties including, without limitation, industrial action (whether involving the workforce of either Party or otherwise), acts of God, war or national emergency, an act of terrorism, riot, civil commotion, malicious damage, fire, explosion, flood, storm, pandemic and/or epidemic.
“Intellectual Property Rights”	Means any and all tangible and intangible: (i) rights associated with works of authorship, including copyrights, moral rights, neighbouring rights, and derivative works thereof, (ii) trademark and trade name rights, (iii) trade secret rights, (iv) patents, design rights, and other industrial property rights, and (v) all other intellectual property rights (of every kind and nature however designated) whether arising by operation of law, treaty, contract, licence, or otherwise, together with all registrations, initial applications, renewals, extensions, continuations, division or reissues thereof.
“Project”	Refers to the principal terms and conditions set out in Annex A whereby CITB and the NSTG have agreed to work collaboratively.
“Services”	Means the advice and guidance on mandatory and skill specific training provided by the NSTG to CITB levy registered employers in the construction industry including support to plan training needs and to access high quality cost effective training through CITB’s accredited training organisations, known as Approved Training Organisations.
“Trademark”	Any text or symbol (whether or not officially registered) used by any individual or NSTG, which is intended to uniquely identify them, their product or services.
“National Specialist Training Group” or “NSTG”	means a company, unincorporated association or any other type of business formed with the common purpose of providing the Services.
“NSTG Grant”	Funding provided by CITB to the NSTG of up to a maximum of £28,000 per annum for the delivery costs of the Project.
“Working Day”	Any day other than a Saturday or Sunday or a public or bank holiday in the United Kingdom.

1.2 References to clauses and Annexes are to clauses in and Annexes to this MoU and any references to paragraphs are to paragraphs of the relevant Annexes. All headings are for ease of reference only and shall not affect the construction or interpretation of this MoU.

1.3 The Annexes form part of this MoU and shall have the same force and effect as if set out in

the body of this MoU and any reference to this MoU includes the Annexes.

1.4 Unless the context otherwise requires:

1.4.1 references to a “**person**” include any individual, corporate or unincorporated body (whether or not having separate legal personality);

1.4.2 references to a “**company**” shall include any company, corporation or other body corporate, wherever and however incorporated or established;

1.4.3 references to the singular include the plural and vice versa and references to any gender include every gender;

1.5 References to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

1.6 References to “**in writing**” or “**written**” include email but not other methods of electronic messaging.

1.7 Any obligation on a party not to do or omit to do anything includes an obligation not to allow (whether expressly or by a failure to take reasonable steps to prevent) that thing to be done or omitted to be done by any other person.

1.8 Any words following the words “include”, “includes”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them.

2. **BACKGROUND**

2.1 The NSTG receives funding from CITB to support CITB levy registered employers access high quality cost effective training by working with the CITB Engagement Team to ensure that as many CITB levy registered employers as possible access the support available for their training and funding needs.

2.2 The NSTG has applied for grant funding to provide the Services in accordance with the terms of this MoU. For the avoidance of doubt, the grant does not fund non-training activity, such as careers or standard development.

2.3 The Parties wish to record the basis on which they will collaborate with each other on the Project. This MoU sets out the key outcomes of the Project; the principles of collaboration; the governance structures the Parties will put in place; and the respective roles and responsibilities the Parties will have during the Project.

2.4 This MoU is not exhaustive and is not intended to be legally binding between the Parties except where specifically stated including in clauses 11 (Reporting), 14 (Performance Management), 15 (Copyright and Ownership of Intellectual Property), 17 (Termination and

Consequences of Termination), 18 (Limitation of Liability), 20 (Confidentiality), 21 (Data Protection) and 22 (Freedom of Information), 25 (Indemnity and Insurance) and 28 (Notices).

- 2.5 The Parties acknowledge that this MoU does not restrict agreement on any further terms which may be included in any future understanding or agreement between them.
- 2.6 The NSTG agrees to provide the Services and Deliverables and perform all of its obligations in accordance with this MoU.

3. COMMENCEMENT AND DURATION

- 3.1 This MoU shall commence on the date stated at the beginning of the MoU ("**Commencement Date**") and shall continue for a period of 1 year (the "**Term**").
- 3.2 Subject to the written agreement of both Parties, this MoU may be extended for a further period of 12 months but shall not in any event extend beyond 31st March 2024.

4. PROVISION OF THE SERVICES

- 4.1 The NSTG agrees to provide the Services in accordance with this MoU.
- 4.2 The NSTG itself hereby undertakes and commits to maintain the quality, standards and consistency in delivering the Services.
- 4.3 The NSTG shall ensure that the Services are provided:
 - 4.3.1 with due care, skill, diligence, prudence, efficiency, foresight and timeliness that would be reasonably expected from a leading and expert provider of services;
 - 4.3.2 in accordance with all applicable laws and regulation; and
 - 4.3.3 in accordance with the reasonable instructions of CITB.
- 4.4 CITB may require the NSTG to take corrective actions or may terminate the MoU with immediate effect by giving written notice to the NSTG if the NSTG commits a breach of clause 4.3.

5. KEY OBJECTIVES FOR THE PROJECT

- 5.1 The Parties shall undertake the Project to achieve the Key Outcomes set out in Annex A to this MoU.

6. THE NATURE OF THE RELATIONSHIP

- 6.1 The Parties agree to adopt the following principles when carrying out the Services ("**Principles**"):
 - 6.1.1 Collaborate and co-operate. Establish and adhere to the governance structure as set out in clause 7 to ensure that activities are delivered and actions taken as required;
 - 6.1.2 Be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MoU;

- 6.1.3 Be open. Communicate openly about major concerns, issues or opportunities relating to the Project, including any third party funding;
 - 6.1.4 Learn, develop and seek to achieve its full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
 - 6.1.5 Adopt a positive outlook. Behave in a positive, proactive manner whilst ensuring each party is respectful of the other and behaves in a professional and courteous manner at all times;
 - 6.1.6 Adhere to statutory requirements and best practice. Comply with applicable laws and standards including procurement rules, data protection and freedom of information legislation;
 - 6.1.7 Comply, participate and inform. Comply with the requirements of this MoU and participate in any evaluation and research during and post the term of this MoU;
 - 6.1.8 Act in a timely manner. Recognise the nature of the Project and respond accordingly to requests for support;
 - 6.1.9 Manage stakeholders effectively;
 - 6.1.10 Deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this MoU; and
 - 6.1.11 Act in good faith to support achievement of the Key Outcomes and compliance with these Principles.
- 6.2 This MoU will support the open collaboration, intelligence and data sharing between the Parties which are regarded as necessary or desirable to help achieve the Key Outcomes of the Project.

7. GOVERNANCE

- 7.1 The NSTG must at all times:
- 7.1.1 Be independent of CITB and owned by its memberships;
 - 7.1.2 have a constitution with a recognised committee structure (Chair, Vice Chair, Secretary);
 - 7.1.3 review its structure and effectiveness on a regular basis;
 - 7.1.4 hold a minimum of 2 joint meetings per annum; and
 - 7.1.5 have a Group Training Officer ("**GTO**").
- 7.2 The GTO should:
- 7.2.1 support the NSTG;

- 7.2.2 provide information, advice and support to member companies in the NSTG where appropriate;
 - 7.2.3 have close links and work in collaboration with CITB;
 - 7.2.4 promote the NSTG to develop membership and engage with wider industry; and
 - 7.2.5 communicate with member companies of the NSTG (as appropriate).
- 7.3 In the event that the GTO is, for whatever reason, unable to fulfil their duties, whether this is for a temporary or permanent basis, it is the responsibility of the NSTG to identify a suitable replacement for the GTO in order to provide continuity of the Services to its CITB levy registered employers and to comply with the requirements set out in clauses 7.1 and 7.2 above. The NSTG has sole discretion to determine if the replacement GTO is appointed on a temporary or permanent basis.
- 7.4 The governance structure defined above in this clause 7 provides a structure for the development and delivery of the Project.

8. GUIDING PRINCIPLES

- 8.1 The following guiding principles are agreed. The Project's governance will:
- 8.1.1 provide strategic oversight and direction, where necessary;
 - 8.1.2 be based on clearly defined roles and responsibilities within the NSTG and, where necessary, individual level;
 - 8.1.3 align decision-making authority with the criticality of the decisions required;
 - 8.1.4 leverage existing NSTGs, groups and user interfaces;
 - 8.1.5 provide coherent, timely and efficient decision-making; and
 - 8.1.6 correspond with the key features of the Project governance arrangements set out in this MoU.

9. CITB's OBLIGATIONS

- 9.1 CITB will provide the requisite NSTG Grant as set in clause 13.
- 9.2 CITB will make the final financial decision, at its sole discretion, on the amount of the NSTG Grant received by the NSTG against the achievement of the Key Outcomes set out in Annex A.
- 9.3 CITB shall use reasonable endeavours to meet the timeframes for payment of the NSTG Grant as set out in clause 13.3.
- 9.4 CITB will operate in a supportive manner, sharing best practice, working in collaboration with the NSTG, inviting NSTG staff, executive and members to meetings and events as appropriate

and treating the NSTG, members of staff and all others within their roles with respect and courtesy at all times. CITB will also consider recommendations from the NSTG Chairs Committee.

- 9.5 Where a NSTG is underperforming, or is at risk of underperforming within the applicable reporting quarter, or the NSTG has requested for support and direction, CITB shall use reasonable endeavours to provide the necessary support and direction required to assist the NSTG achieve its purpose and Key Outcomes, such support including but not limited to agreeing an action plan with the NSTG to follow until such time as both parties feel the action plan has addressed the underperformance or the risk of underperformance.

10. NSTG'S OBLIGATIONS

- 10.1 The NSTG shall promptly co-operate with CITB in all matters relating to the Key Outcomes.
- 10.2 The NSTG Grant will be used to support the Key Outcomes set out in Annex A for the benefit of CITBs levy registered employers, with particular focus on the micro and small businesses.
- 10.3 The NSTG must have and operate within a recognised legal and financial structure that will allow CITB to transfer funding to the NSTG as agreed.
- 10.4 The NSTG, executives and members will work in a collaborative and supportive manner, sharing best practice with each other and CITB staff, and invite CITB staff and each other to meetings and events as appropriate.
- 10.5 The NSTG, including its executives and members, will register and declare any conflict of interest and ensure that it complies with the principles as set out in clause 6.
- 10.6 The NSTG and its members will attend and be actively involved in regional meetings, both shaping and contributing to the agenda.
- 10.7 The NSTG shall provide CITB with quarterly progress reports against the Key Outcomes set out in Annex A. These progress reports are to be provided in accordance with the provisions as set out in clause 11, including progress against training support as determined by their members' which align with the Key Outcomes.
- 10.8 The NSTG shall ensure that its behaviours and attitude are consistent with the values of CITB, including but not limited to, being collaborative, responsive, accountable and influential.
- 10.9 The NSTG shall treat CITB, members of staff, other NSTGs and all others they come in to contact with within their roles with respect and courtesy at all times.
- 10.10 The NSTG shall focus on the purpose of the Project and provide the Services in accordance with the Key Outcomes.

11. REPORTING

- 11.1 This clause 11 shall be binding upon the Parties and permitted assigns and successors and references to each Party shall include such assigns and successors.

- 11.2 The NSTG must submit to CITB a progress report completed in accordance with CITB's requirements in relation to its Services as detailed in clause 13.3 below, setting out their achievements in alignment to the Key Outcomes in Annex A, by no later than the 5th Working Day after the end of the previous quarter. The progress report template will be shared with the NSTG in an electronic format, a copy of which is set out in Annex B as amended from time to time.
- 11.3 If the NSTG progress report is not submitted in accordance with CITB's requirements and to CITB's satisfaction, the report will be returned to the NSTG to resubmit as soon as possible but in any event by no later than 30 calendar days from the end of the previous quarter.
- 11.4 In the event that the NSTG fails to submit a progress report within 30 calendar days of the current quarter (for the avoidance of doubt, the quarter following the previous quarter) (the "**Current Quarter**"), CITB will reduce the amount of NSTG Grant the NSTG will receive for the Current Quarter on a daily basis equal to the amount of NSTG Grant due during that quarter divided by the number of calendar days in that quarter.
- 11.5 In the event that the NSTG fails to provide CITB with a progress report to CITB's satisfaction (including a report that has been resubmitted that is not in accordance with CITB's requirements) within the Current Quarter, the NSTG will forfeit the NSTG Grant due to this quarter (the Current Quarter).
- 11.6 CITB may request further information in relation to any aspect of the progress report provided by the NSTG which the NSTG shall provide to CITB as soon as practicable. Delay in providing further information to CITB may have an adverse effect on the amount of NSTG Grant received in the Current Quarter in accordance with clauses 11.4 and 11.5 above.
- 11.7 Nothing in this clause 11, or under any other clause in this MoU, shall prevent CITB from exercising its discretion in withdrawing or reducing the NSTG Grant.

12. COMMUNICATION

- 12.1 Both Parties agree to communicate information about the Project with consistent and appropriate messaging. Standard wording shall be agreed and used wherever possible.
- 12.2 Both Parties agree to be responsible for the handling of requests for information received in relation to the Project within their own NSTG unless appropriate to forward to CITB or other identified persons.

13. FINANCIAL ARRANGEMENTS

- 13.1 This clause 13 shall be binding upon the Parties and permitted assigns and successors and references to each Party shall include such assigns and successors.
- 13.2 The Parties acknowledge that CITB will provide the NSTG Grant for the delivery costs of the Project to the NSTG.

- 13.3 The NSTG Grant will be split into 4 equal payments of up to a maximum of £7,000 to the NSTG which will be processed for payment at the following intervals, subject to receipt of a satisfactory progress report from the NSTG by the 5th Working Day of the relevant quarter in accordance with the requirements of this MoU including the conditions set out in clause 11 (Reporting).

Quarter 1	15 th April 2022 or next Working Day
Quarter 2	15 th July 2022 or next Working Day
Quarter 3	15 th October 2022 or next Working Day
Quarter 4	15 th January 2023 or next Working Day

- 13.4 CITB shall at its sole discretion determine whether the NSTG has complied with the reporting obligations set out in this MoU and whether the NSTG has satisfied the requirements to be entitled to receive the payment each quarter.

14. PERFORMANCE MANAGEMENT (Monitoring and Audit)

- 14.1 This clause 14 shall be binding upon the Parties and permitted assigns and successors and references to each Party shall include such assigns and successors.
- 14.2 Where the NSTG has business premises, CITB may, at its discretion, conduct visits, inspections, and desk based audits to uphold the quality of the delivery of Services and ensure that they are carried out in accordance with the Key Outcomes of the Project within this MoU (each a "Quality Assurance Review"). For any avoidance of doubt, no inspection or visit will be made by CITB to personal premises however, CITB reserves the right to conduct a desk-based audit which would comprise of CITB requesting documents from the NSTG to be provided within the stipulated timeframe as set out in the request. Failure to comply with a request for documents will be considered a material breach of this MoU and CITB reserves the right to terminate this MoU with immediate effect.
- 14.3 The NSTG shall fully co-operate, and shall procure that their personnel fully co-operate with CITB in carrying out the Quality Assurance Review at no charge to CITB.
- 14.4 The NSTG shall ensure that CITB representatives (including any representatives from regulatory bodies) are permitted access to all parts of the NSTGs premises, and to all its personnel, and that all records relating to the NSTGs Principles, including the provision of the Services, are made available for inspection and copying, and that all information reasonably required by CITB is provided promptly on request.
- 14.5 The NSTG and its delivery of the Services pursuant to the Project, shall be subject to review by CITB, at a minimum on a quarterly basis, to ensure the relationship is "fit for purpose" and is meeting the expectations and obligations set out in clause 10 (NSTG's Obligations) and Annex A.
- 14.6 CITB shall use the quarterly reports received from the NSTG as a metric to identify performance against the Deliverables and Key Outcomes set out in Annex A.
- 14.7 Each Deliverable set out in Annex A incorporated within the Key Outcomes will be RAG rated meaning it will be given the rating of either Red, Amber or Green ("**RAG**"). Red indicates the NSTG is not meeting their Deliverables, Amber indicates the NSTG is close to meeting their Deliverables and Green means that the NSTG has with met or exceeded their Deliverables.

- 14.8 CITB will monitor, through the use of progress reports, the NSTGs performance as set out in Annex C. In the event that the NSTG does not perform in accordance with the criteria set out in Annex C, CITB will issue a performance improvement plan (**"Performance Plan"**).

15. COPYRIGHT AND OWNERSHIP OF INTELLECTUAL PROPERTY

- 15.1 This clause 15 shall be binding upon the Parties and permitted assigns and successors and references to each Party shall include such assigns and successors.
- 15.2 The background information shall remain vested in the Party in whom it was vested immediately prior to the Commencement Date.
- 15.3 The Parties intend that any Intellectual Property Rights created in the course of the Project shall vest solely with CITB.
- 15.4 Where any Intellectual Property Right vests with CITB in accordance with the intention set out in clause 15.3 above, CITB shall grant a licence to the NSTG to use that intellectual property for the purposes of the Project as required.
- 15.5 All Intellectual Property Rights which may be created in connection with this MoU on or after the Commencement Date shall vest in CITB. CITB hereby grants to the NSTG a non-exclusive, royalty free licence for the Term to use the foreground information for the purpose only of performance of the Project.

16. ADVERTISING AND PUBLICITY

- 16.1 Both Parties shall ensure that, where appropriate, publicity is given to the Project and the fact that both parties are financially supporting the Project. In acknowledging the contributions made by each Party, the NSTG must comply with any guidance on publicity provided by CITB.
- 16.2 Unless CITB notifies the NSTG otherwise, all publicity generated by the NSTG referring to the Project must comply with the CITB brand guidelines as provided by the CITB NSTG Manager and, as updated from time to time.
- 16.3 Except as otherwise provided under clauses 16.1 and 16.2 above, the NSTG shall not use any trading relationship between it and CITB, CITB's name or trading style or any Intellectual Property Rights belonging to CITB for any marketing or advertising purposes without the prior consent in writing of CITB.
- 16.4 Save as provided in this clause 16, the NSTG shall not make, or permit any person to make any press announcements or publicise this MoU or its contents in any way without the prior consent in writing of CITB.

17. TERMINATION AND CONSEQUENCES OF TERMINATION

- 17.1 This clause 17 shall be binding upon the Parties and permitted assigns and successors and references to each Party shall include such assigns and successors.
- 17.2 Without affecting any other right or remedy available to it, either Party may terminate this MoU at any time by providing 30 calendar days written notice to the other Party. The Party exercising its rights under this clause 17.2 shall not incur any liability to the other Party by reason thereof.

- 17.3 CITB may, at its sole discretion, terminate this MoU, in whole or in part, by written notice to the NSTG with immediate effect if after at least 2 consecutive quarterly reviews the NSTG continues to underperform against the Key Outcomes, does not improve its RAG rating and CITB considers that this underperformance cannot be remedied during the remainder of the Term of the MoU.
- 17.4 In the event that the NSTG has made a decision to dissolve the NSTG in whole or in part pertaining to the Project, CITB will construe this dissolution as NSTG providing notice to terminate this MoU with immediate effect.
- 17.5 If the GTO has been on long term sick and no interim GTO has been appointed or the GTO has resigned and the post remains vacant or the NSTG has not adequately completed the quarterly report as per the guidance issued by CITB (such guidance found within the quarterly report template) and this has impacted the performance of the NSTG against the Key Outcomes, CITB may, at its sole discretion, be entitled to terminate this MoU at any time by providing 14 calendar days written notice to the NSTG or as otherwise agreed.
- 17.6 On termination or expiry of this MoU, the NSTG shall immediately pay to CITB any unused NSTG Grant.
- 17.7 Termination or expiry of this MoU shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry.

18. LIMITATION OF LIABILITY

- 18.1 This clause 18 shall be binding upon the Parties and permitted assigns and successors and references to each Party shall include such assigns and successors.
- 18.2 Subject to clause 18.3, CITB shall not be liable to the NSTG for any and all claims arising under or in connection with this MoU.
- 18.3 Notwithstanding any other provision of the MoU, neither Party limits or excludes its liability for:
- 18.3.1 death or personal injury caused by its negligence; or
 - 18.3.2 fraud or fraudulent misrepresentation; or
 - 18.3.3 breach of any obligation as to title implied by statute; or
 - 18.3.4 any other act or omission, liability for which may not be limited or excluded by law.
- 18.4 The Parties acknowledge and agree that the limitations contained in this clause are reasonable in light of all the circumstances

19. PROCEDURE FOR DISPUTE

- 19.1 If any dispute arises under or in connection with the MoU, the authorised representative of the Parties shall meet as soon as practicable to resolve the same.
- 19.2 Where the NSTG has raised a dispute concerning CITB's decision to reduce or withdraw the NSTG Grant or the decision to terminate this MoU, the NSTG shall follow the appeals process as set out in Annex D.

20. CONFIDENTIALITY

- 20.1 This clause 20 shall be binding upon the Parties and permitted assigns and successors and references to each Party shall include such assigns and successors for the Term of the MoU and for a period of five years following termination.
- 20.2 The NSTG shall not disclose to any third party and shall not use for any purpose other than the performance of its obligations under this MoU any confidential information relating to CITB. For the purpose of this condition, confidential information means any information of a confidential nature, whether in writing or otherwise, including information relating to the business, affairs, properties, assets, practices, Intellectual Property Rights, know-how, personnel, customers and suppliers of CITB.
- 20.3 Each Party may disclose the other Party's confidential information:
- 20.3.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of the MoU. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 20; and
 - 20.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

21. DATA PROTECTION

- 21.1 This clause 21 shall be binding upon the Parties and permitted assigns and successors and references to each Party shall include such assigns and successors for the term of the MoU.
- 21.2 The NSTG shall procure that its employees, sub-contractors and agents shall:
- 21.2.1 Act only on CITB's instructions in relation to data that is or includes personal data within the meaning of the applicable Data Protection Legislation;
 - 21.2.2 Operate sufficient and appropriate technical and organisational measures in accordance with all applicable data protection legislation to protect against unauthorised or unlawful processing if such data and against accidental loss or destruction of, or damage to, the data, and shall provide evidence of such measures to CITB; and
 - 21.2.3 Comply with all obligations imposed on it under the applicable Data Protection Legislation.
- 21.3 The NSTG shall fully indemnify and keep indemnified CITB, its officers, servants or agents against the cost of dealing with any claims made in respect of information subject to the applicable Data Protection Legislation which claims would not have arisen but for the act, omission or negligence of the NSTG, its sub-contractors, agents or staff.

22. FREEDOM OF INFORMATION

- 22.1 This clause 22 shall be binding upon the Parties and permitted assigns and successors and references to each Party shall include such assigns and successors.

22.2 The NSTG acknowledges that CITB is subject to the Freedom of Information Act 2000 (“**FOIA**”) and the Environmental Information Regulations 2004 (“**EIRs**”) and shall assist and cooperate with CITB (at the NSTG’s expense) to enable CITB to comply with its information disclosure requirements under the FOIA and EIRs.

22.3 The NSTG shall:

22.3.1 transfer to CITB all requests for information relating to this MoU that it receives as soon as practicable and in any event within 2 Working Days of receiving a request;

22.3.2 provide CITB with a copy of all information (as defined in s84 of the FOIA) belonging to CITB requested in a 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

22.3.3 provide all necessary assistance as reasonably requested by CITB to enable CITB to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA, or regulation 5 of the EIRs.

22.4 CITB shall take reasonable steps to notify the NSTG 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 MoU) 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.

22.5 In no event shall the NSTG respond directly to a request for information unless expressly authorised in writing to do so by CITB.

22.6 The NSTG acknowledges that CITB at its own discretion may disclose information without consulting with the NSTG.

23. SUB-CONTRACTING AND ASSIGNMENT

23.1 The NSTG shall not assign, transfer, subcontract or otherwise dispose of any or all of its rights and obligations under the MoU, nor shall it attempt to do so, without the prior written consent of CITB.

24. STATUS OF MOU

24.1 Subject to clause 2.4, this MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Parties from the MoU. The Parties enter into the MoU intending to honour all their obligations.

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

24.3 This MoU does not give rise to any rights for a third party to enforce any of its terms.

25. INDEMNITY AND INSURANCE

- 25.1 This clause 25 shall be binding upon the Parties and permitted assigns and successors and references to each Party shall include such assigns and successors.
- 25.2 The NSTG shall indemnify and keep indemnified CITB against all costs (including legal costs) expenses, liabilities, claims, proceedings, actions, damages however arising, directly or indirectly incurred due to the actions of the culpable Party or the employees of the culpable Party.
- 25.3 The NSTG shall effect and maintain with reputable insurance companies policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the NSTG arising out of the NSTG's performance of the Project and shall provide evidence of the same on request by CITB.
- 25.4 If upon request of the insurance policies, CITB determines that the NSTG is not maintaining an adequate level of cover, CITB shall promptly inform the NSTG of this in writing setting out the minimum level of cover they require to be deemed as adequate cover. The NSTG will have 2 weeks to remedy this upon which point, if no adequate level of insurance cover is put in place, CITB has the right to terminate this MoU with immediate effect.

26. VARIATION

- 26.1 This MoU, including the Annexes, may only be varied by written agreement of the Parties.

27. CHARGES AND LIABILITIES

- 27.1 Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU.
- 27.2 Both Parties shall remain liable for any losses or liabilities incurred due to their own or their employee's actions and neither Party intends that the other Party shall be liable for any loss it suffers as a result of this MoU.

28. NOTICES

- 28.1 This clause 28 shall be binding upon the Parties and permitted assigns and successors and references to each Party shall include such assigns and successors for the term of the MoU.
- 28.2 Any notice or other communication given to a Party under or in connection with this MoU shall be in writing and shall be delivered by hand or by pre-paid registered post or other next business day delivery service and shall be duly given or sent to the relevant addressee as follows:
- 28.2.1.1 where the notice is to be given or sent to CITB: FAO: Training Groups Partnership Manager, CITB, Sand Martin House, Bittern Way, Fletton Quays, Peterborough, PE2 8TY; and
- 28.2.1.2 where the notice is to be given or sent to the NSTG: FAO: Chair and Group Training Officer, Access & Scaffolding Access & Scaffolding Industry Training Organisation (ASITO), NASC, 4th Floor, 12 Bridewell Place, London, EC4V 6AP

28.3 Any notice shall be deemed to have been received:

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

28.3.2 if sent by pre-paid first-class post or other next business day delivery service, at 9.00 am on the second business day after posting or at the time recorded by the delivery service; and

28.3.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 28.3.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

28.4 This clause does not apply to the service of any proceedings or any documents in any legal action.

29. FORCE MAJEURE

29.1 Neither Party shall be in breach of this MoU nor liable for delay in performing, or failure to perform, any of its obligations under the MoU if such delay or failure results from a 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 if the period of delay or non- performance continues for 6 months, either Party may terminate this MoU by giving 14 calendar days' written notice to the other Party.

30. GOVERNING LAW AND JURISDICTION

30.1 This MoU shall be governed by and interpreted in accordance with the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

ANNEX A: THE PROJECT DELIVERABLES

Key Outcome	Deliverables	Amber RAG rating	Frequency of submission	Review period
Increase recruitment of new entrants	Youth (schools, colleges etc) engagement and careers events - To participate in a minimum of 4 careers events for schools and/or colleges with a minimum of 1 a quarter Pre-employment training - To provide 1- or 2-week work placement opportunities for 50 young people through the NASC network of employer via Pre-Employment Training Schemes (PETS). Aiming for 12 a quarter but this is contingent on availability of funding via key stakeholders and the efficiency of the T-Level referral arrangements Targeted Armed Forces engagement - To recruit 10 veterans from the Armed Forces and to develop relationship with key Armed Forces organisations(s) that give access to veterans and Armed Forces personnel that are leaving the military Careers website - To share the NASC Scaffolding Careers website with 8 new stakeholders (2 stakeholders a quarter); to ensure the content on Go Construct is reflective if the NASC's website Engaging returning citizens (ex-offenders) - To offer roles to 20 returning citizens (5 a quarter). Deliver 1 webinar or presentations to each region of NASC employers to educate on the recruitment of returning citizens		Quarterly	Quarterly and end of term
Upskilling current workforce	CISRS Funded CPD courses - Delivering funded CPD courses for 200 existing employees (50 a quarter) Seek additional funding for upskilling programmes - 10 to 20 candidates progressing from part 2 to Advanced Scaffolder		Quarterly	Quarterly and end of term

Improve the training provision infrastructure	Increase training capacity - Seek to create an extra centre in Surrey or Farnborough		Quarterly	Quarterly and end of term
Improve the standards and/or quality of training content	Development of Trailblazer standards - Work with identified employers and stakeholders including CITB and the IFA		Quarterly	Quarterly and end of term
Increase the supply / availability of trainers	Identify and train a new generation of trainers - Bid for funding with CITB to support training providers in recruiting and training 20 new trainers Work with Training Providers to secure funding to increase training capacity		Quarterly	Quarterly and end of term
Influence and / or broker services	Facilitate collaborative working between training providers to ensure maximise coverage of provision - Canvas NASC members twice yearly for information on courses required		Quarterly	Quarterly and end of term

ANNEX B: PROGRESS REPORT TEMPLATE

National Specialist Training Group Grant			
2022-23 Quarterly Progress Report			
Notes for completion 1. Complete all sections in full 2. Submit via email to your Customer Engagement Manager 3. Quarterly reports are due for submission by the 5th working day of the month following the end of quarter (April, July, October, January) 4. NSTG Grant payment will be processed by CITB on the 15th (or next working day) of the month following the end of the quarter (April, July, October, January)			
National Specialist Training Group :			
GTO name:			
GTO email:			
Declaration (please check below)			
I confirm all details are correct to the best of my knowledge:		☐	
I confirm all sections have been fully updated to provide a complete record of delivery undertaken in the preceding quarter:		☐	
Signed upon completion (electronic signature acceptable):			
Date of submission Q1:	dd/mm/yyyy		
Date of submission Q2:	dd/mm/yyyy		
Date of submission Q3:	dd/mm/yyyy		
Date of submission Q4:	dd/mm/yyyy		

ANNEX C: PERFORMANCE MANAGEMENT AND PERFORMANCE PLAN

The NSTG will be measured against the Key Outcomes as set out in Annex A.

The performance management process is to allow CITB to support the NSTG if they have not achieved the Key Outcomes.

Performance will be RAG rated.

For any NSTG that has not achieved performance against one or more of the agreed metrics at the end of a quarter, the expectations for improvement on the NSTG would be as follows:

- A NSTG with a RAG rating of Red must improve to at least Amber by end of the next quarter. If not, funding would be withdrawn.
- A NSTG with a RAG rating of Amber must improve to Green by end of the next quarter.
- A NSTG that remains in Amber for a second quarter but are able to demonstrate that they are close to meeting their Key Outcomes and progressing to Green will be given one further quarter to improve performance. This would allow CITB to focus on supporting the NSTG improve performance to meet the Key Outcomes. However, if the NSTG remains in Amber for 3 quarters, then funding would be withdrawn.
- Some activities may necessitate Deliverables that can only be reviewed annually and where this is the case, it will be agreed at the beginning of the Term, and clearly marked in Annex A as reviewed at the end of term.

For demonstration purposes only, below is an example summary of the performance management process CITB will employ.

	Q1	Q2	Q3	Q4	Outcome
NSTG Performance	Green	Red	Amber	Green	Funding continues
	Red	Amber	Amber	Green	Funding continues
	Amber	Amber	Green	Green	Funding continues
	Red	Red			Funding withdrawn after Q2
	Amber	Amber	Amber		Funding withdrawn after Q3
	Green	Red	Red		Funding withdrawn after Q3
	Red	Amber	Amber	Amber	Funding withdrawn after Q4
	Green	Red	Amber	Red	Funding withdrawn after Q4

Except as otherwise provided in clause 29 (Force Majeure), where a NSTG is unable to achieve the Performance Plan and the Key Outcomes for reasons beyond their control, the NSTG will inform CITB of these issues with supporting evidence. Examples of such instances may include geographical restrictions or a lack of specialist training provision.

Where CITB accepts the evidence illustrating the underperformance, CITB will work with the NSTG to adjust the Key Outcomes accordingly.

CITB Support

Where there are any areas of underperformance identified by CITB against the Key Outcomes, CITB will work with the NSTG to develop a Performance Plan that will focus on the area of underperformance. CITBs Customer Engagement Managers will support the NSTG to develop their delivery in the required area(s).

ANNEX D: APPEALS PROCESS

1. Objective of the appeal process

- 1.1 The appeals process define how the NSTG MoU appeals shall be managed by CITB. This process promotes efficiency, fairness and consistency in determining any appeals submitted under this MoU.

2. Time to appeal

- 2.1 Appeals are only allowed in respect of any concerns that arise during the Term of this MoU.
- 2.2 Appeals must be received within 30 calendar days from the date of receipt of the notification of the communications the NSTG has a concern with or as otherwise agreed by CITB in writing ("**First Appeal**").
- 2.3 Where a further appeal ("**Second Appeal**") is submitted by the NSTG, this must be received within 30 calendar days from the date of receipt of the notification of the outcome of the First Appeal.

3. How to appeal

- 3.1 Appeals must be submitted in writing setting out in details the concern, the grounds of appeal together with all supporting documentation and send via email to [REDACTED] or as notified otherwise.
- 3.2 Further information may be requested by CITB in order to progress the appeal.

4. First Appeal

- 4.1 Appeals shall be considered and concluded within 30 calendar days of receipt of the written submissions and supporting documentation provided by the NSTG. There shall be no representation in person and the NSTG shall be notified of the outcome of the First Appeal within this timeframe.
- 4.2 At this stage, the appeal shall be reviewed by an independent CITB Customer Engagement Manager unaware to the that has been raised by the NSTG.
- 4.3 If the appeal is successful, CITB will rescind the decision.
- 4.4 CITB reserves the right to withhold the NSTG Grant during the period in which the NSTG had a pending appeal.

5. Second Appeal

- 5.1 If the NSTG is not satisfied with the outcome of the First Appeal, they have the right to submit a Second Appeal.

- 5.2 The Second Appeal must be made in writing setting out in detail further information together with supporting documentation that the NSTG wants CITB to consider that is new and was not submitted as part of the First Appeal.
- 5.3 At this stage, the Second Appeal shall be reviewed by the CITB Training Group Manager, the CITB Engagement Director for Wales or such other independent CITB manager as appointed by the CITB Training Group Manager.
- 5.4 The Second Appeal shall be reviewed within 30 calendar days of receipt of the further submission by the NSTG. There shall be no representation in person and the NSTG shall be notified of the outcome of the Second Appeal within this timeframe.
- 5.5 The outcome of the Second Appeal shall be final.
- 5.6 If the appeal is successful, CITB will rescind the decision.
- 5.7 CITB reserves the right to withhold the NSTG Grant during the period in which the NSTG had a pending grant appeal.