



**CONSTRUCTION INDUSTRY TRAINING BOARD
APPROVED TRAINING ORGANISATION AGREEMENT
STANDARD TERMS**

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CONSTRUCTION INDUSTRY TRAINING BOARD (CITB)
APPROVED TRAINING ORGANISATION AGREEMENT
STANDARD TERMS

1. DEFINITIONS AND INTERPRETATION

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

Achievement (when used in connection with Candidates) means a Candidate's achievement of the requirements of a particular Course.

Agreement means the contract between CITB and the ATO for the delivery of Courses and access and use of the CITB System including the Form of Agreement, these Standard Terms, 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 ATO and/or any other information provided by the ATO when seeking ATO Approval.

Approval Approval of an ATO for the purposes of delivery of Courses and access to CITB System, and "Approve", "Approved" and "Approves" shall be construed accordingly.

ATO the party to this Agreement Approved by CITB. ATO includes the terms Provider, College, Employer and Operator.

ATO Criteria the minimum requirements that the ATO must attain and maintain as set out in the Course and CITB System Documentation.

ATO Obligations delivery of Courses, access to and use of Construction Training Register as set out in clause 2 and the obligations to be performed by the ATO.

ATO Personnel	all employees, staff, other workers, agents and consultants of the ATO and of any peripatetic staff who are engaged in the provision of the ATO Obligations from time to time.
ATO Premises	the premises described as “ATO Location” in the Form of Agreement and any site, premises or location used by the ATO for training testing or assessment in association with the delivery of Courses under this Agreement. ATO Premises also include any premises or location used by the ATO for undertaking administration and/or storage in pursuance of this Agreement.
Authorised Representatives	the persons designated as their authorised representatives by CITB and the ATO respectively, the first such persons 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.
Candidate	includes the term Learner, Applicant, Delegate and Operative wherever they are used in this Agreement or the Course and System Documentation. It means an individual who undertakes a test, assessment, course and/ or qualification for a Course delivered by the ATO.

CITB Policies	those policies created or adopted by CITB from time to time relating to health and safety, security, conduct of suppliers, contractors or individuals, conduct of business or otherwise which CITB requires ATOs to comply with and which are notified in writing and/or published on CITB's website.
CITB System	The system established and operated by CITB comprising the Construction Training Directory and the Construction Training Register.
Construction Training Directory	A directory of (amongst other things) ATOs and Courses.
CITB System Website	www.my.citb.co.uk or such other website or websites as CITB may notify to the ATO from time to time.
Construction Training Register	A register of Achievements of Candidates.
Commencement Date	the date of the Agreement as set out in the Form of Agreement or, if later, the date on which ATO Approval is confirmed in writing by CITB to the ATO.
Controller	shall have the same meaning as the definition of the term provided in the GDPR.
Corrective Actions	actions to be undertaken by the ATO as a result of breaches of the RATO or this Agreement. This includes the terms sanction, action plan and audit plan.
Course	Either (a) A course which CITB has opted to verify or not as meeting the requirements of a particular Standard based on risk based sampling, or, (b) a regulated qualification or non-regulated course offered by an Awarding

	Organisation and approved by CITB for the purpose of the CITB System, and includes the respective parts of that qualification or short course . and which is described or referred to in a Form of Agreement and which the ATO is Approved to deliver.
	For the purposes of this definition, an “Awarding Organisation” or “Awarding Body” is an organisation 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.
Course and System Documentation or Course and System Documents	the rules and requirements for the delivery of Courses 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, RATO and other publications, specifications and requirements issued by CITB at any time.
Data Loss Event	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.
Data Protection Impact Assessment	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Protection Officer	shall have the same meaning as the definition of the term provided in the GDPR.

Data Subject	shall have the same meaning as the definition of the term provided in the GDPR.
Data Protection Legislation	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy including where applicable the guidance and codes of practice issued by the Information Commissioner.
Dispute Resolution Procedure	the procedure set out in clause 11.
DPA 2018	means the Data Protection Act 2018.
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 ATO 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 ATO, the ATO Personnel or any other failure in the ATO's supply chain.
Form of Agreement	the form of agreement agreed between the parties incorporating these Standard Terms.
GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679).
Information	has the meaning given under section 84 of FOIA.
Insolvency Event	where (a) the ATO 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 ATO 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 ATO with one or more other companies or the solvent reconstruction of the ATO; (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 ATO (being a company) other than for the sole

purpose of a scheme for a solvent amalgamation of the ATO with one or more other companies or the solvent reconstruction of the ATO;

- (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 ATO (being a company);
- (e) the holder of a qualifying floating charge over the assets of the ATO (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 ATO or a receiver is appointed over the assets of the ATO;
- (g) the ATO (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the ATO 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 ATO'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 ATO 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, trade marks, 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, enforceable right within the meaning of section 2 of the European Communities Act 1972, 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 ATO is bound to comply.

LED

means Law Enforcement Directive (Directive (EU)2016/680).

Listed Trademarks

the UK registered trademarks listed in the Form of Agreement together with any related applications and associated unregistered trademarks.

Materials

the CITB System and any documentation (in any form of media) supplied or made available by CITB to the ATO in connection with approval of Courses (including, without limitation the Standards) and/or access, inputting to and use of CITB System or otherwise in connection with the performance of the ATO 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 ATO 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 GDPR.
Processor	shall have the same meaning as the definition of the term provided in the GDPR.
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.
RATO	The document or publication known as the Requirement for Approved Training Organisations, setting out the requirements with which ATOs must comply in the performance of this Agreement 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.
Standard	When referring to Courses, means a standard set or approved by CITB for the purposes of the CITB System describing the level of learning or achievement which must be met by a Candidate.
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	the date of expiry or termination of this Agreement.
User terms and conditions	The User terms and conditions referred to in the Form of Agreement setting out the terms and conditions with which the ATO and each individual access the CITB System on the ATO's behalf must comply, as published on the CITB System Website
Working Day	Monday to Friday, excluding any public holidays in England and Wales.
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 RATO; then
 - 1.13.2 Any Special Conditions set out in the Form of Agreement, then
 - 1.13.3 These CITB ATO Agreement Standard Terms ; then
 - 1.13.4 The Form of Agreement.

2. PROVISION OF COURSE

- 2.1 With effect from the Commencement Date CITB: :
 - 2.1.1 Approves the ATO to deliver each Course for the provision of education and training for 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 licence to the ATO to access and use CITB System as set out in the Form of Agreement and RATO subject to terms and conditions of, and for the duration of, the Agreement, but not further or otherwise
- 2.2 The ATO agrees to provide the ATO Obligations and to exercise its rights and perform all its other obligations in accordance with the Agreement.

- 2.3 The ATO Obligations to be provided by the ATO which has been given ATO Authorisation shall:
 - 2.3.1 where the ATO Premises are in Great Britain, be provided for persons employed or intending to be employed in the construction industry; and
 - 2.3.2 where the ATO Premises are outside Great Britain, be provided for persons employed or intending to be employed in the construction industry in Great Britain.
- 2.4 The ATO shall provide Courses, or procure that they are provided:
 - 2.4.1 with due care, skill and diligence;
 - 2.4.2 in accordance with all applicable Laws; and
 - 2.4.3 in accordance with the reasonable instructions of CITB.
- 2.5 The ATO shall access and use CITB System:
 - 2.5.1 To include the ATOs details, (including relevant Courses) in the Construction Training Directory;
 - 2.5.2 To update Candidates' Achievements on successful completion of a Course delivered by the ATO;
 - 2.5.3 To provide such other information as is required by and in accordance with RATO.
- 2.6 CITB may terminate the Agreement with immediate effect by giving written notice to the ATO if the ATO commits a breach of clause 2.4 or 2.5
- 2.7 If the ATO does not comply with the provisions of this Agreement in any way, CITB may, without prejudice to its other rights, require the ATO to take, or to comply with, Corrective Actions.

3. DUE DILIGENCE AND WARRANTIES

- 3.1 The ATO acknowledges and confirms that:
 - 3.1.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Course 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 Course 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 ATO by CITB.
- 3.3 The ATO:
- 3.3.1 warrants and represents that, as at the Commencement Date, all information contained or referred to in the ATO'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 any changes in any information provided by it to CITB.
- 3.4 The ATO warrants and represents that at all times it meets and will meet the ATO Criteria and the ATO Personnel have the necessary skills, expertise and capacity to perform the ATO's obligations and deliver the ATO Obligations.

4. USE OF CITB SYSTEM

- 4.1 The ATO will:
- 4.1.1 provide and/or upload all information reasonably required by CITB for inclusion in the CITB System in a timely manner and without delay.
 - 4.1.2 ensure that all the information that the ATO 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 ATO 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 will keep confidential and personal to the ATO and not to be shared with any third party any passwords, access codes or similar provided by CITB to the ATO in order for the ATO to be able to upload information to the CITB System. The ATO 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 ATO's breach of this clause.
 - 4.1.4 If for reasons beyond its reasonable control the ATO 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 ATO is undertaking to

- rectify the delay and 3) the anticipated length of the delay (if known). CITB will use reasonable endeavours to assist the ATO 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 ATO's behalf complies, at all times with the User terms and conditions.
 - 4.1.7 ensure that throughout the Term of this Agreement, the ATO shall use the latest anti-virus definitions available from an industry accepted anti-virus software vendor to check for and to delete malicious software from the ATOs computer systems, databases and environment ("**ATO's ICT**").
 - 4.1.8 ensure that in the event that malicious software transmitted from the ATO'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 ATO.
 - 4.1.9 be responsible for ensuring that the ATO'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 ATO must not attempt to interfere in any way with the proper working of the CITB System and in particular the ATO 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 the 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-licence, 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 provide the ATO with access to the CITB System in order to enable the ATO to upload the information.
- 4.2.2 use reasonable endeavours to ensure that the ATO has uninterrupted access the CITB System. 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 System 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 Construction Training Register and the Construction Training Directory.

5. **CHANGES TO COURSES AND COURSE AND SYSTEM DOCUMENTATION**

5.1 CITB may at any time

- 5.1.1 update, amend, alter or supplement the Standards appertaining to any Course (a “Change”); or
- 5.1.2 withdraw approval for a Course where the standard appertaining to that Course has been 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 ATO 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, CITB will endeavour to give as much notice as is practicable (up to 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 ATO or its provision of the ATO Obligations, including a change to or withdrawal of a Standard then, unless it is a Mandatory Change, CITB shall provide the ATO with 30 days' notice of the change (a "Change Notice").

5.1.6 If an ATO does not accept the change notified by a Change Notice, the ATO 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 ATO. The Change will not apply during the termination notice period.

5.1.7 Unless the ATO serves notice in accordance clause 5.1.6, or the Change does not have a material adverse effect on the ATO, 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 ATO is advised regularly (and in any event not less than once in each month) to check the CITB System Website for changes to the Courses, the Standards and/or Course and System Documentation.

5.1.9 The ATO shall implement the Change at its own cost.

5.2 CITB will have no other liability to the ATO in respect of a Change,

5.3 The ATO shall not be permitted to alter Courses without CITB's prior written agreement.

6. COMPLIANCE

6.1 The ATO shall ensure that all Necessary Consents are in place to deliver Courses 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 ATO shall perform its obligations under this Agreement (including those in relation to the ATO Obligations) in accordance with:

- 6.2.1 all applicable Law 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 ATO shall (and shall procure that the ATO 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 ATO 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 organisation); and
- 6.3.3 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement. The ATO 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 ATO shall not, and shall procure that ATO Personnel 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 Course(s)
- 7.1.3 act dishonestly in entering details onto CITB System including (without limitation) details of Candidates and their achievement ; or

- 7.1.4 take any actions which, in the reasonable opinion of CITB, bring or are likely to bring CITB's name or reputation into disrepute.
- 7.2 The ATO 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 ATO 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 ATO is in default under clauses 7.1 and/or 7.2, CITB may by notice:
 - 7.4.1 require the ATO to remove from performance of this Agreement any ATO 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 ATO 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 ATO. Notice shall be given by CITB amending the Fees schedule or other provisions in the RATO or published on CITB's website detailing the Fees and may notify the ATO 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 ATO in respect of any Fees paid or payable from time to time.
- 8.5 All payments required to be made by the ATO 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 ATO for Fees incurred and becoming due from time to time, and the ATO 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 ATO defaults in payment, and without prejudice to any other remedy CITB may have, the ATO 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 ATO to quality assure the delivery of Courses, accuracy of records, accuracy and timeliness of entry of Candidate Achievement data to the Construction Training Register, compliance with RATO and performance of this Agreement by the ATO 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 Courses and the inputting of data and to ensure that they are carried out in accordance with the Agreement. ("Quality Assurance Review").
- 9.2 The ATO shall co-operate, and shall procure that the ATO 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 ATO shall ensure that CITB representatives are permitted access to all parts of ATO Premises, and to ATO Personnel, and that all records relating to the ATO Obligations are made available for inspection and copying, and that all information reasonably required by CITB is provided promptly on request.
- 9.4 The ATO 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 ATO to take Corrective Action(s), revoking Approval of the ATO or declining to renew Approval or 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 ATO or decline to renew approval or registration:
 - 9.6.1 pending the outcome of an investigation into any serious breach of the Agreement including the Course and System Documentation; and/or
 - 9.6.2 if the ATO 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 Courses and Course 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 Course 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 ATO disagrees with such decision it may 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 CITB's Director of Products and Services or his/her nominated representative (who shall have authority to resolve the dispute) and the ATO'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.

12. SUB-CONTRACTING AND ASSIGNMENT

12.1 This agreement is personal to the ATO, and the ATO 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 ATO.

13. INDEMNITIES

13.1 The ATO 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 Course, access to, input of data to and /or use of CITB System or the performance or non-performance of any of the ATO'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 ATO shall indemnify CITB in respect of all costs, losses and expenses incurred by CITB in providing (or procuring the provision of) training, assessment and testing of Candidates and reissuing confirmation of such training, assessment and tests, where this is required by reason of the ATO's failure to comply with the RATO or by reason of the ATO's breach of any other provision of this Agreement.

13.3 Within limiting the provisions of clause 13.1 above, CITB losses include the payment (whether to the ATO or to a 3rd party) of a grant which would not otherwise have been payable in respect of a Course where such payment occurred as a result of the ATO's breach of this Agreement (including failure to comply with the CITB Course and System Documentation).

14. LIMITATION OF LIABILITY

14.1 Subject to clause 14.2:

14.1.1 CITB shall not be liable to the ATO, 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 ATO for all claims arising under the Agreement in any period of 12 months shall not exceed the amount of Fees paid by the ATO 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

- 14.1 The ATO 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 of Agreement (the Required Insurance).
- 15.2 The ATO 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 ATO 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 ATO.
- 15.4 The terms of any insurance or the amount of cover shall not relieve the ATO of any liabilities under the Agreement.
- 15.5 The ATO 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 ATO acknowledges that CITB is subject to the requirements of the FOIA and the EIRs. The ATO 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 ATO 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 ATO.

CITB shall take reasonable steps to notify the ATO 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 The Parties acknowledge that for the purposes of the Data Protection Legislation, CITB is the Controller and the ATO is the Processor. The only processing that the ATO is authorised to do in connection with this Agreement is listed in Annex A by CITB and may not be determined by the ATO.
- 17.2 The ATO shall notify CITB immediately if it considers that any of CITB's instructions infringe the Data Protection Legislation.
- 17.3 The ATO shall provide all reasonable assistance to CITB in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of CITB, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.4 The ATO shall, in relation to any Personal Data processed in connection with the ATO's Obligations under this Agreement:

- (a) process that Personal Data only in accordance with Annex A, unless the ATO is required to do otherwise by Law. If it is so required the ATO shall promptly notify CITB before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by CITB as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the ATO Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex A);
 - (ii) it takes all reasonable steps to ensure the reliability integrity of any ATO Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the ATO's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the ATO or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by CITB or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of CITB has been obtained and the following conditions are fulfilled:
 - (i) CITB or the ATO has provided appropriate safeguards in relation to the transfer (whether in

accordance with GDPR Article 46 or LED Article 37) as determined by CITB;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the ATO complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist CITB in meeting its obligations); and

(iv) the ATO complies with any reasonable instructions notified to it in advance by CITB with respect to the processing of the Personal Data;

(e) at the written direction of CITB, delete or return Personal Data (and any copies of it) to CITB on termination of the Agreement unless the ATO is required by Law to retain the Personal Data.

17.5 Subject to clause 17.6, the ATO shall notify CITB immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

- 17.6 The ATO's obligation to notify under clause 17.5 shall include the provision of further information to CITB in phases, as details become available.
- 17.7 Taking into account the nature of the processing, the ATO shall provide CITB with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 17.5 (and insofar as possible within the timescales reasonably required by CITB) including by promptly providing:
- (a) CITB with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by CITB to enable CITB to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) CITB, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by CITB following any Data Loss Event;
 - (e) assistance as requested by CITB with respect to any request from the Information Commissioner's Office, or any consultation by CITB with the Information Commissioner's Office.
- 17.8 The ATO shall maintain complete and accurate records and information to demonstrate its compliance with this clause 17.
- 17.9 The ATO shall allow for audits of its Data Processing activity by CITB or CITB's designated auditor.
- 17.10 The ATO shall designate a data protection officer if required by the Data Protection Legislation.
- 17.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the ATO must:

- (a) notify CITB in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of CITB;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 17 such that they apply to the Sub-processor; and
- (d) provide CITB with such information regarding the Sub-processor as CITB may reasonably require.

- 17.12 The ATO shall remain fully liable for all acts or omissions of any Sub-processor.
- 17.13 CITB may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 17.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. CITB may on not less than 30 Working Days' notice to the ATO amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 17.15 The ATO shall (and shall procure that any of its ATO Personnel involved in the provision of the Agreement shall) comply with the provisions of the User Agreement.
- 17.16 The ATO shall fully indemnify and keep indemnified CITB, its officers, servants or agents against the costs of dealing with any claims, made in respect of information subject to the Data Protection Legislation, which claims would not have arisen but for the act, omission, or negligence of the ATO.

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, provided that clause 16.2 shall apply to any disclosures required under the FOIA or the EIRs;
 - 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 of 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; and
 - 18.2.7 by CITB relating to this Agreement and in respect of which the ATO has given its prior written consent to disclosure.
- 18.3 On or before the Termination Date the ATO shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of CITB's employees, Candidates and recipients of grants paid or payable in respect of Courses, 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 ATO may have under the RATO.

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 ATO a non-exclusive, non-transferable licence to use the Intellectual Property rights in the Materials during the Term in Great Britain solely for the purpose of performing the ATO Obligations in accordance with this Agreement.

- 19.3 The ATO shall notify CITB immediately if it becomes aware of any unauthorised use of the whole or any part of CITB Intellectual Property.
- 19.4 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.
- 19.5 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.
- 19.6 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.
- 19.7 The ATO 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 availability of the ATO Obligations, except to the extent that they have been caused by or contributed to by CITB's acts or omissions.

20. TRADE MARK LICENCE

- 20.1 CITB grants to the ATO a non-exclusive, non-transferable licence to use the Listed Trade Marks in Great Britain in relation to delivery of the Courses and use of CITB System, subject to and in accordance with 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 Trade Marks and is not aware that the Listed Trade Marks 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 Trade Mark outside of Great Britain.
- 20.3 The ATO:
 - 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 Courses, 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 Trade Mark;
- 20.3.5 will not alter, obscure, remove, conceal or otherwise interfere with any marking on the Materials which refers to CITB as author or developer of Materials or otherwise refers to CITB's copyright or other Intellectual Property rights in the Materials; and
- 20.3.6 will immediately bring to the attention of CITB any improper or wrongful use of CITB's Listed Trade Marks, emblems, designs, models or other similar industrial, intellectual or commercial property rights which come to the notice of the ATO 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.

Suspension

21. SUSPENSION

- 21.1 CITB may immediately on notice to the ATO, or without notice in case of emergency, suspend all or any of the rights granted to the ATO under this Agreement:
- 21.2 Any suspension CITB applies will be temporary and as long as reasonably necessary to allow CITB to investigate the cause for suspension.
 - 21.2.1 in accordance with this clause 21;
 - 21.2.2 in accordance with the Course and System Documentation;
 - 21.2.3 where CITB has reasonable grounds for suspecting fraud, misconduct or malpractice on the part of the ATO, ATO Personnel or any Learners;
 - 21.2.4 where in the opinion of CITB the ATO is causing concern in its ability to maintain a satisfactory standard of services to Candidates;
 - 21.2.5 where in the opinion of CITB the ATO failed promptly to take any of the Corrective Actions;
 - 21.2.6 where the ATO, notwithstanding payment of Fees, does not in any period of 12 months deliver any

Courses or record any Candidate Achievements on CITB System;

21.2.7 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;

21.2.8 If, under any other ATO Agreement between CITB and the ATO, delivery of Courses under that agreement is suspended or terminated for any reason; or

21.2.9 if under an ATO Agreement between CITB and any company in the same group of companies as the ATO delivery of Courses is suspended or terminated for any reason.

21.3 Suspension, other than suspension under clause 21.2.7 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 ATO and will be lifted at such time as CITB is fully satisfied that the actions resulting from an investigation instigated in relation to clause 21.2 have been met.

21.4 If this Agreement is suspended by CITB for cause, such suspension shall be at no loss or cost to CITB and the ATO hereby indemnifies CITB against any such losses or costs which CITB may suffer as a result of any such suspension for cause.

Term and Termination

22. TERM

22.1 The Agreement shall come into effect on the Commencement Date and shall continue unless and until terminate 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 ATO in the following circumstances:

23.1.1 if the ATO 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 ATO has failed to remedy such breach within 28 days of receipt of notice from CITB requiring it to do so;

23.1.2 if an ATO fails to pay any amount due under this Agreement on the due date for payment;

23.1.3 the ATO 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 ATO, 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 reasonable grounds for suspecting fraud on the part of the ATO, ATO Personnel or Candidates;

23.1.6 a failure to meet the requirements of CITB to prevent or to remedy malpractice by the ATO or any of the ATO Personnel;

23.1.7 if there is an Insolvency Event;

23.1.8 if there is a change of control of the ATO within the meaning of section 1124 of the Corporation Tax Act 2010;

23.1.9 the ATO (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 ATO suspends or ceases, or threatens to suspend or cease, carrying on delivery of Courses pursuant to the Form of Agreement;

23.1.11 if any other contract between CITB and the ATO for the delivery of CITB products is terminated for any reason;

23.1.12 if the contract between the ATO and an Awarding 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 ATO 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 the CITB

and the ATO 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 ATO shall and shall procure that ATO 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 CITB, anti-bribery, business ethics and anti-fraud Policies (available upon request) and in each case as CITB may update them 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

received by the ATO 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 ATO 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 ATO, compliance with this clause 26 by the ATO and all persons associated with it under clause 26.2 The ATO shall provide such supporting evidence of compliance as CITB may reasonably request.

26.2 The ATO shall ensure that any person associated with the ATO 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 ATO 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 ATO includes but is not limited to any subcontractor of ATO.

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 ATO shall:

27.1.1 immediately cease performance of the ATO Obligations;

27.1.2 return all Materials, any other materials bearing CITB's name and/or trade mark and/or logo; and

27.1.3 where required by CITB to identify if termination of the Agreement may prejudice Candidates and/or CITB's reputation in respect of Courses, provide CITB with details of all future bookings by Candidates, including

contact details for all Candidates (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 Course and all rights granted by this Agreement shall automatically terminate.

27.2 On termination of this Agreement (or where reasonably so required by CITB before such termination) the ATO 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 ATO Obligations), shall be delivered to CITB forthwith and the ATO shall certify full compliance with this clause.

27.3 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).

27.4 Termination howsoever arising shall be without prejudice the accrued rights of the parties as at termination.

27.5 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 ATO 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 ATO, advertising and promotional material which the ATO may use in marketing Course.

33.2 The ATO, 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 ATO agrees to cease use of such materials with immediate effect.

33.4 CITB reserves the rights to seek criminal prosecution of any ATO 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 an ATO 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 ATO 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 ATO, the same may be deducted from any sum then due or which at any time thereafter may become due to the ATO 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 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).