**DATED**

**(1) THE CONSTRUCTION INDUSTRY TRAINING BOARD AND**

**(2) Supplier**

**DPS FRAMEWORK AGREEMENT**

**FOR THE PROVISION OF TRAINING, ASSESSORS SERVICES & COURSE EVALUATIONS**



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**THIS AGREEMENT** is made the 15th day of October 2015

**BETWEEN**

(1) The Construction Industry Training Board, otherwise known as CITB (Registered Charity Numbers. 264289 (England & Wales) and SC044875 (Scotland)) whose principal office is Bircham Newton, King’s Lynn, Norfolk, PE13 6RH (CITB); and

(2) [ ] [(Company Number [ ])] whose [registered office/main place of business] is at [ ] (‘the Supplier’)

**BACKGROUND**

(A) CITB issued a DPS Invitation to Tender (ITT) on 17th August 2015 to invite tenders for the provision of training and assessment services.

(B) The Supplier submitted a Tender in response to the ITT on …………

(C) On the basis of the Tender, CITB selected the Supplier to enter into a framework agreement to provide Services to CITB on a call-off basis in accordance with this Framework Agreement.

(D) This Framework Agreement sets out the award and calling-off ordering procedure for purchasing the Services which may be required by CITB, the main terms and conditions for any Call-Off Contract which CITB may enter into and the obligations of the Supplier during and after the Term of this Framework Agreement.

(E) It is agreed and understood between the Parties’ that there will be no obligation for CITB to award any Call-Off Contracts under this Framework Agreement during its Term.

**IT IS AGREED** as follows:

**1. Interpretation**

In this Framework Agreement the following words and expressions shall have the following meanings unless the context demands otherwise:

**Action Plan** an action plan for improvement by the Supplier established by CITB pursuant to clause 11 (Call-Off Contract Performance)

**Audit** an audit carried out pursuant to clause

15 (Management Information, Records and Audit Access)

**Auditor** the National Audit Office or an auditor appointed by the Audit Commission or any successor body as the context requires or any auditor or inspector appointed by any Regulatory Body

**Award Criteria**

**Award Letter**

the criteria set out in Schedule 2

a Agreement Order Form issued pursuant to clause 5.2 or 5.3

**Award Procedures** the ordering and award procedures

specified in Clause 5

**Call-Off Contract**

**Call-Off Terms and Conditions**

the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between CITB and the Supplier comprising an Award Letter and the Call-Off Terms and Conditions (as may be amended pursuant to Clause 5)

the terms and conditions in Schedule 4

**Commercially Sensitive Information** any Confidential Information comprised of information:-

(a) which is provided in writing by the Supplier to CITB in confidence and designated by the supplier as commercially sensitive information; and/or

(b) that constitutes a trade secret

**Complaint** any formal complaint raised by any third party in relation to the performance of the Framework Agreement or any Call-Off Contract in accordance with Clause 33 (Complaints Handling and Resolution)

**Confidential Information** any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA

**DBS** the Disclosure and Barring Service (and/or the Protection of Vulnerable Groups Scheme managed by Disclosure Scotland)

**Default** any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to this Framework Agreement and in respect of which such Party is liable to the other

**DPA** the Data Protection Act 1998 as amended from time to time and any subordinate legislation made under such 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

**Environmental Information**

**Regulations**

the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in

relation to such regulations

**Expiry Date** [15TH October 2019]

**FOIA** the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under such 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

**Framework Agreement** this agreement and all Schedules to this agreement

**Framework Commencement Date**

**Framework Suppliers**

the date of this Framework Agreement

the suppliers appointed under this

Framework Agreement

**Good Industry Practice** standards, practices, methods and procedures conforming to the applicable law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances

**Grade** a standard of performance of any of the Services awarded pursuant to the Observation of Teaching and Learning

**Information** shall have the meaning given under Section 84 of the Freedom of Information Act 2000 or Regulation 2(1) of the Environmental Information Regulations

2004 as the context may require.

**Intellectual Property Rights** or **IPRs** patents, inventions, trade-marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off

**ITT** has the meaning given to it in the background to this Framework Agreement

**Lot or Lots** any one or more of the lots set out in

Section 3 of the ITT

**Lot Specification** in relation to any Lot, the Specification set out in Section 4 of the ITT in relation to the relevant Lot.

**Material Default** any breach of Clause 5 (Award Procedures), Clause 9 (Safeguard Against Fraud), Clause 10 (Safeguarding), Clause 13 (Statutory Requirements), Clause 14 (Non- Discrimination), Clause 15 (Management Information, Records And Audit Access), Clause 16 (Confidentiality), Clause 17 (Data Protection), Clause 18 (Freedom of Information) and Clause 25 (Transfer and Sub-contracting) and any other fundamental breach of this Framework Agreement

**Month** a calendar month

**Observation of Teaching and Learning** the observation of teaching and learning carried out by or on behalf of CITB in accordance with nationally recognised standards

**Order** an order for Services served by CITB on the Supplier in accordance with clause 5 (Award Procedures)

**Party** CITB and/or the Supplier as the context shall require and “Parties” shall mean both of them

**PCR 2015**

**Planned Services**

The Public Contracts Regulations 2015 as amended from time to time

Services where performance is not required to commence within 5 Working Days or fewer.

**Planned Services Award Criteria** the award criteria to be applied to tenders received through mini- competitions held pursuant to clause 5.3 as set out in Schedule 2

**Price** in relation to any Lot, the price to be charged set out in Schedule 3 or tendered pursuant to clause 5.3

**Requests for Information** a request for information relating to this Framework Agreement or the provision of the Services or an apparent request for such information under the FOIA or the Environmental Information Regulations

**Relevant Awarding Bodies** in relation to any qualification, the body authorised to award such qualification

**Services** the services to be provided by the Supplier as set out in Schedule 1 and as further defined in the relevant Lot Specifications

**Short Notice Services** a requirement for Services where the performance is required to commence within 5 Working Days or fewer

**Staff** all persons employed or engaged by the Supplier, together with the Supplier's servants, agents, suppliers and/or sub- contractors used in the performance of its obligations under this Framework Agreement or any Call-Off Contracts

**SVGA** the Safeguarding Vulnerable Groups Act

2006 and/or the Safeguarding Vulnerable

Groups (Scotland) Act 2006

**Tender** the tender submitted by the Supplier to CITB as set out in the background to this Framework Agreement

**Trainer** a trainer, assessor or course evaluator providing any or all of the Services on behalf of the Supplier and meeting the requirements for assessor or course evaluators set out in the relevant Lot Specification

**Trainers’ Handbook** the handbook issued to Suppliers by CITB from time to time containing details of the procedures and policies required in the provision of the Services and includes the standards of behaviour and conduct expected in the performance of the Services.

**Tender Documents** the documents comprised in the Tender, together with the Lot Specifications.

**Term** the Initial Term together with any Renewal Term as may be agreed pursuant to clause 3

**Working Day** any day other than a Saturday, Sunday or public holiday in England and Wales

1.1. In this Framework Agreement, unless the context otherwise requires:

1.1.1. the singular meaning includes the plural meaning and vice versa;

1.1.2. the words "including", “other”, “in particular”, “for example” and similar words are to be construed as if they were immediately followed by the words "without limitation";

1.1.3. references to any person includes natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

1.1.4. references to any statute, enactment, order, regulation or other similar instrument includes reference to the statute, enactment, order, regulation or instrument as amended, extended, consolidated or re- enacted from time to time;

1.1.5. headings in this Framework Agreement are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;

1.1.6. references in this Framework Agreement to any Clause or Sub-Clause or Schedule are, unless otherwise provided, reference to the Clause or Sub-Clause or Schedule to this Framework Agreement so numbered;

1.1.7. in the event and to the extent only of any conflict between the Clauses and any of the Schedules, the Clauses shall prevail over the Schedules.

**2. Statement of Intent**

2.1. In delivering the Services, the Supplier shall operate at all times in accordance with any and all of CITB's published objectives, policies and procedures and in accordance with following:

2.1.1. The Lot Specifications and other Tender Documents;

2.1.2. the guidance, regulations and codes of conduct issued by Regulatory

Bodies; and

2.1.3. the Trainers’ Handbook.

2.2. The Supplier has been appointed and CITB has entered into this Framework Agreement on the basis of the Supplier’s Tender and, in particular, the representations made by the Supplier to CITB in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.

**PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE**

**3. Term of Framework Agreement**

3.1 This Framework Agreement shall take effect on the Framework Commencement Date and shall continue until the Expiry Date (Initial Term) unless otherwise terminated or extended in accordance with the terms of this Framework Agreement.

3.2 CITB shall have the option of extending the duration of this Framework Agreement for a further period not exceeding one year from the Expiry Date (the Renewal Term), provided it has given notice in writing not less than 3 months prior to the expiry of the Initial Term.

3.3 The total aggregate duration of this Framework Agreement shall not exceed

4 years form the Framework Commencement date.

3.4 The provisions of this Framework Agreement shall apply with the necessary changes having been made during any Renewal Term.

**4. Scope of the Framework Agreement**

4.1. CITB appoints the Supplier as a potential Supplier of the Services and the Supplier shall be eligible to be considered for the award of Orders for such Services by CITB during the Term.

4.2. This Framework Agreement governs the relationship between CITB and the

Supplier in respect of provision of the Services by the Supplier to CITB.

4.3. CITB may at their absolute discretion and from time to time order Services from the Supplier in accordance with the Award Procedures during the Term.

4.4. The Supplier acknowledges that:

4.4.1. there is no obligation for CITB to purchase any Services from the

Supplier during the Term; and

4.4.2. in entering this Framework Agreement, no form of exclusivity has been conferred on the Supplier, nor volume or value guarantee granted by CITB for Services by the Supplier and that CITB is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services.

4.5. No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by CITB in respect of the total quantities or values of the Services to be ordered by it pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise, representation or obligation.

**5. Award Procedures**

5.1. If CITB decides to source Services through this Framework Agreement then it may:

5.1.1. award its Short Notice Services requirements in accordance with the terms laid down in this Framework Agreement without reopening competition; or

5.1.2. award its Planned Services requirements following a mini-competition conducted in accordance with the requirements of this Framework Agreement.

**Short Notice Services (Awards without re-opening Competition)**

5.2. When ordering Short Notice Services under the Framework Agreement CITB

shall:

5.2.1. identify the relevant Lot into which its Short Notice Services requirements fall;

5.2.2. contact Framework Suppliers appointed to this Framework to supply services within the relevant Lot in the order of the geographical proximity of their nearest Trainer in relation to the location at which the Short Notice Services are required; and

5.2.3. award its Short Notice Services requirement to the first Framework Supplier who has a Trainer available to provide the Short Notice Services Requirement at the time and location required;

5.2.4. by way of confirmation of the award, submit a completed Agreement

Order Form to the successful Framework Supplier which:-

5.2.4.1. confirms the Short Notice Services requirements;

5.2.4.2. states the price payable for the Short Notice Services requirements in accordance with the maximum Price set out in Schedule 3 for the relevant Lot; and

5.2.4.3. incorporates the Call-Off Terms and Conditions;

and for the avoidance of doubt, when ordering Short Notice Services, CITB shall not be required to submit an Agreement Order Form prior to commencement of performance by the successful Supplier.

**Planned Services (Awards following Mini-Competitions)**

5.3. When ordering Planned Services under the Framework Agreement CITB shall:-

5.3.1. identify the relevant Lot into which its Planned Services requirements fall;

5.3.2. identify the Framework Suppliers appointed to the Framework to supply services within that Lot and capable of fulfilling the Planned Services requirements;

5.3.3. invite each of the identified Framework Suppliers to submit a tender in writing by a stated deadline for the provision of services meeting the Planned Service requirement;

5.3.4. apply the Planned Services Award Criteria to each compliant tender received within the stated timescale; and

5.3.5. award its Planned Services requirements by serving an Agreement

Order Form on the successful Framework Supplier which:-

5.3.5.1. states the Planned Services requirements;

5.3.5.2. identifies the Lot or Lots under which the award is made;

5.3.5.3. states the price payable for the Planned Services requirements in accordance with the tender submitted by the successful Framework Supplier; and

5.3.5.4. incorporates the Call-Off Terms and Conditions applicable to the relevant Lot or Lots as modified by the Planned Services requirements.

5.4. The Supplier agrees that all tenders submitted by the Supplier in relation to a mini-competition held pursuant to Clause 5.3 shall remain open for acceptance for thirty (30) days (or such other period specified in the invitation to tender issued by CITB in accordance with the Award Procedures).

5.5. Notwithstanding the fact that CITB has followed the procedure set out in this Clause 5, it shall be entitled at all times to decline to make an award for its Service requirements. Nothing in this Framework Agreement shall oblige CITB to place any Order.

**Accepting and Declining Orders**

5.6. Following receipt of an Order, the Supplier shall promptly and in any event within three (3) Working Days) acknowledge receipt of the Order and either notify CITB that it:

5.6.1. declines to accept the Order; or

5.6.2. accepts the Order by signing and returning the copy Agreement Order

Form provided to it for that purpose.

5.7. If the Supplier:

5.7.1. notifies CITB that it declines to accept the Order; or

5.7.2. the time-limit referred to in clause 5.6 has expired,

then the offer from CITB to the Supplier shall lapse and CITB may offer the Order to the Framework Supplier that submitted the next most economically advantageous tender in accordance with the relevant award criteria.

5.8. The Supplier, in agreeing to accept any Order pursuant to Clause 5.6 above, shall enter a Call-Off Contract with CITB for the provision of those Services referred to in that Order. A Call-Off Contract shall be formed on CITB’s receipt of the signed Agreement Order Form provided by the Supplier pursuant to Clause 5.6.

**PART TWO: SUPPLIER'S GENERAL FRAMEWORK OBLIGATIONS**

**6. Warranties and Representations**

6.1. The Supplier warrants and represents to CITB that:

6.1.1. it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Framework Agreement;

6.1.2. this Framework Agreement is executed by a duly authorised representative of the Supplier;

6.1.3. as at the Framework Commencement Date, all information, statements and representations contained in the Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to CITB prior to the execution of the Framework Agreement and it will promptly advise CITB of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

6.1.4. it will remain throughout the duration of this Framework Agreement approved or accredited by all Relevant Awarding Bodies for the provision of the Services;

6.1.5. it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework Agreement;

6.1.6. it has not caused or induced any person to enter any such agreement referred to in Clause 6.1.5 above;

6.1.7. it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for services under the Framework Agreement;

6.1.8. it has not committed any offence under the Prevention of Corruption

Acts 1889 to 1916 or the Bribery Act 2010;

6.1.9. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under the Framework Agreement and any Call-Off Contract which may be entered into with CITB;

6.1.10. it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with CITB;

6.1.11. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and

6.1.12. in the three (3) years prior to the date of this Framework Agreement:-

6.1.12.1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

6.1.12.2. it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an ongoing business concern or its ability to fulfil its obligations under this Framework Agreement.

**7. Corrupt Gifts and Payments of Commission**

7.1. The Supplier shall not offer or give, or agree to give, to any employee, agent, servant or representative of CITB or any other public body or person employed by or on behalf of CITB or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Framework Agreement, any Call-Off Contract or any other contract with CITB or any other public body or person employed by or on behalf of CITB or any other public body (including its award to the Supplier, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract and the attention of the Supplier is drawn to the criminal offences under the Bribery Act 2010, as amended or re-enacted from time to time.

7.2. The Supplier warrants that it has not paid commission nor agreed to pay any commission to CITB or any other public body or any person employed by or on behalf of CITB or any other public body in connection with the Framework Agreement, any Call-Off Contract or any other contract with CITB or any other public body or person employed by or on behalf of CITB or any other public body.

7.3. If the Supplier, its Staff or any person acting on the Supplier's behalf, engages in conduct prohibited by Clauses 7.1 or 7.2 above or commits any offence under the Bribery Act 2010 as amended or re-enacted from time to time, CITB may:-

7.3.1. terminate this Framework Agreement and/or any Call-Off Contract with immediate effect by giving notice in writing to the Supplier and recover from the Supplier the amount of any loss suffered by CITB resulting from the termination; or

7.3.2. recover in full from the Supplier and the Supplier shall indemnify CITB in full from and against any other loss sustained by CITB in consequence of any breach of this Clause, whether or not the Framework Agreement and/or any Call-Off Contract has been terminated.

**8. Conflicts of Interest**

8.1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of CITB) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and/or Staff and the duties owed to CITB under the provisions of this Framework Agreement and/or any Call-Off Contract and the Supplier shall promptly notify and provide full particulars to CITB if any such conflict arises or is reasonably foreseeable.

8.2. Without prejudice to any other right or remedy of CITB, CITB reserves the right to terminate this Framework Agreement and/or any and/or all Call-Off Contracts immediately by giving notice in writing to the Supplier and/or to take such other steps as it deems necessary where, in the reasonable opinion of CITB, there is or may be an actual conflict, or a potential conflict, as described in clause 8.1.

**9. Safeguard Against Fraud**

The Supplier shall safeguard CITB against fraud generally and, in particular, fraud on the part of the Supplier and/or its Staff. The Supplier shall notify CITB immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

**10. Safeguarding Children, Young Persons and Vulnerable Adults**

10.1. The parties acknowledge that where the Supplier is involved in ‘Regulated Activity’ (as defined in the SVGA) the Supplier will have ultimate responsibility for the management and control of the Regulated Activity provided under this Framework Agreement and for the purposes of the SVGA. In particular, the Supplier shall comply at all times and in all respects with any law, enactment, order or regulation relating to the safeguarding of vulnerable groups (as defined in the SVGA), including the SVGA (together the ‘Relevant Legislation’) and with the guidance set out in the Department for Education and Skills: Safeguarding Children and Safer Recruitment in Education 2007.

10.2. The Supplier shall ensure that all individuals engaged in the provision of any

Regulated Activity during the performance of any of the Services are:

10.2.1. subject to a valid enhanced disclosure check undertaken through the Disclosure and barring Service and/or the Protection of Vulnerable Groups Scheme managed by Disclosure Scotland; and

10.2.2. the Supplier shall monitor the level and validity of the checks under this

clause 10.2 for each member of Staff

10.3. The Supplier shall:

10.3.1. maintain and operate a safeguarding policy which complies in all respects with the Department for Education and Skills Safeguarding Children and Safer Recruitment in Education 2007 and the Relevant Legislation, which policy shall be updated as often as is necessary, and the Supplier shall provide evidence of such policy and its operation to CITB on request;

10.3.2. at all times comply with such procedures as CITB may from time to time require for the reporting, investigation and referring of suspicions, allegations or cases of abuse of children and young persons (as defined in the SVGA); and

10.3.3. ensure that all Staff engaged in the provision of the Services receive relevant and appropriate safeguarding training, including updates or refresher training where necessary or appropriate; and

10.3.4. appoint a senior person who shall have responsibility for all issues related to the safeguarding of vulnerable groups (as defined in the SVGA); and

10.3.5. put and maintain in place appropriate controls and/or measures to ensure the safe recruitment and selection of Staff in accordance with the Department for Skills and Education Safeguarding Children and Safer Recruitment in Education 2007; and

10.3.6. maintain a central list as set out in the Department for Skills, and

Education Safeguarding Children and Safer Recruitment in Education

2007 and shall enable CITB to inspect that list on request at any time during normal working hours.

10.4. The Supplier warrants that at all times for the purposes of this Framework

Agreement:

10.4.1. it is appropriately registered in relation to all persons who are or will be employed or engaged by the Supplier in the provision of the Services including, without limitation, Staff, and

10.4.2. it has no reason to believe that any such person is barred from the activity in accordance with the provisions of the Relevant Legislation

and/or any regulations made thereunder, as amended from time to time.

10.5. The Supplier shall immediately provide CITB with any information that CITB reasonably requests to enable it to be satisfied that the obligations under this clause 10 have been met.

10.6. The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out (or withdraws such person from carrying out) any of the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to users of the Service and/or vulnerable groups.

10.7. The Supplier shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out any Regulated Activity or who may otherwise present a risk to users of the Services.

10.8. The Supplier shall comply at all times with such monitoring processes as CITB may from time to time require to ensure compliance with this Clause 10 and the Relevant Legislation. If CITB considers, in its absolute discretion, that the Supplier has not complied in full with this Clause 10 and/or the Relevant Legislation, CITB may serve upon the Supplier an action plan detailing the relevant failures and the remedial actions required (the ‘Safeguarding Action Plan’). The Supplier shall implement any Safeguarding Action Plan so served forthwith and shall provide such evidence of its implementation as CITB may require. In the event of any substantial failure by the Supplier to comply with this Clause 10 and/or any Relevant Legislation, CITB reserves the right to terminate this Framework Agreement forthwith by notice in writing.

**11. Call-Off Contract Performance**

11.1. The Supplier shall perform all Call-Off Contracts entered into with CITB in accordance with:-

11.1.1. the requirements of this Framework Agreement; and

11.1.2. the terms and conditions of the respective Call-Off Contracts.

11.2. CITB shall carry out an Observation of Teaching and Learning within two weeks

of commencement of any Call-Off. Following an Observation of Teaching and Learning, CITB shall apply a Grade to the Supplier between 1 and 4 where: Grade 1 is an outstanding; Grade 2 is good; Grade 3 is Needs Improvement; and Grade 4 is inadequate.

11.3. If the Supplier is awarded a Grade 3 or 4 as the result of any Observation carried out pursuant to Clause 11.2, CITB shall provide to the Supplier an Action Plan detailing the areas in which the Supplier’s performance fell below the level required to attain a Grade 2 and setting out the remedial actions required together with a timescale for implementation of such remedial actions. The Supplier undertakes to implement any remedial actions set out in the Action Plan within the timescales set out in the Action Plan.

11.4. Where an Action Plan has been issued pursuant to Clause 11.3, CITB shall undertake a further Observation of Teaching and Learning no later than four weeks after the date of issue of the Action Plan, or (where the Supplier has completed the Call-Off Contract in respect of which the Action Plan was submitted) within two weeks of commencement of any further Call Off Contract under this Framework Agreement.

11.5. If the Supplier receives a Grade 3 or 4 as the result of any further Observation carried out pursuant to clause 11.4, CITB reserves the right to terminate this Framework Agreement and/or any Call Off Contract.

11.6. CITB may, at the end of each Call-Off, request feedback from learners in the form of a feedback form or questionnaire (‘Feedback’). If, in the reasonable opinion of CITB, the Feedback indicates shortcomings in the standard of teaching or conduct of Trainers provided by the Supplier, CITB shall be entitled to provide to the Supplier an Action Plan detailing the areas in which the Supplier’s performance fell below the standard required by this Framework Agreement or any Call-Off Contract and setting out the remedial actions required together with a timescale for implementation of such remedial actions. The Supplier undertakes to implement any remedial actions set out in the Action Plan within the timescales set out in the Action Plan.

11.7. Where an Action Plan has been issued pursuant to Clause 11.6, CITB shall request further Feedback from learners during or following completion of the next Call-Off Contract undertaken by the Supplier. If such Feedback indicates, in the reasonable opinion of CITB, that no material improvement in the performance of the Services has occurred, CITB reserves the right to terminate this Framework Agreement.

11.8. In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a Call- Off Contract, the terms and conditions of this Framework Agreement shall prevail.

**12. Prices for Services**

12.1. The prices offered by the Supplier to CITB for Short Notice Services shall be the Prices for such Short Notice Services in the relevant Lot or Lots listed in the Schedule 3.

12.2. The prices offered by the Supplier to CITB for Planned Services shall be as tendered in accordance with the requirements of the mini-competition held pursuant to Clause 5 provided always that such price shall not exceed the Prices for Planned Services set out in Schedule 3.

**13. Statutory Requirements**

The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and/or any Call-Off Contract.

**14. Non-Discrimination**

14.1. The Supplier shall not unlawfully discriminate, harass or victimise within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) and shall comply at all times and in all respects with all laws, enactments, orders and regulations relating to discrimination, harassment or victimisation.

14.2. The Supplier shall comply at all times and in all respects with the Single

Equality Scheme as amended from time to time.

14.3. The Supplier shall take all reasonable steps to secure the observance of Clause

14.2 by all Staff employed in the execution of this Framework Agreement and/or in any Call-Off Contract.

**PART THREE: SUPPLIER'S INFORMATION OBLIGATIONS**

**15. Management Information, Records And Audit Access**

15.1. The Supplier shall submit management information to CITB on the last day of every Month in respect of any Call-Off Contract entered into with CITB in such form as CITB may require.

15.2. The Supplier shall keep and maintain until seven (7) years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may otherwise be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Call-Off Contracts entered into with CITB and the amounts paid by CITB.

15.3. The Supplier shall afford CITB and/or the Auditor such access to such records and accounts as may be required from time to time.

15.4. Subject to CITB’s rights of confidentiality, the Supplier shall, on demand, provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:-

15.4.1. all information requested by the Auditor within the scope of the

Audit;

15.4.2. reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Services; and

15.4.3. access to the Staff.

16. **Confidentiality**

16.1. Except to the extent set out in this Clause 16 or where disclosure is expressly permitted elsewhere in this Framework Agreement and/or under any Call-Off Contract, each Party shall:-

16.1.1.treat the other Party's Confidential Information as confidential; and

16.1.2.not disclose the other Party's Confidential Information to any other person without the owner's prior written consent

16.2. Clause 16.1 shall not apply to the extent that: -

16.2.1.such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 18.5

(Freedom of Information) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which CITB has used its resources;

16.2.2.such information was in the possession of the Party making the disclosure without being under obligation of confidentiality prior to that disclosure;

16.2.3.such information was obtained from a third party without obligation of confidentiality;

16.2.4.such information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement and/or any Call-Off Contract; or

16.2.5.such information is independently developed without access to the other

Party's Confidential Information.

16.3. The Supplier may only disclose CITB’s Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

16.4. The Supplier shall not, and shall procure that its Staff do not, use any of CITB’s Confidential Information received otherwise than for the purposes of this Framework Agreement and/or any Call-Off Contract entered into pursuant to it.

16.5. The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Framework Agreement is not Confidential Information of the Supplier. CITB shall be responsible for determining in its absolute discretion whether any of the content of this Framework agreement is exempt from disclosure in accordance with the provisions of the FOIA.

16.6. Notwithstanding any other term of this Framework Agreement, the Supplier hereby gives his consent for CITB to publish this Framework Agreement in its entirety, including from time to time agreed changes to the Framework Agreement to the general public.

16.7. The Supplier shall assist and co-operate with CITB to enable CITB to publish this Framework Agreement.

17. **Data Protection**

17.1. For the purposes of this Clause 17, the terms "Data Controller", “Data Subject”, "Data Processor", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.

17.2. The Supplier shall (and shall procure that all of its Staff shall) comply with any notification requirements under the DPA and both Parties will duly observe all of their obligations under the DPA which arise in connection with this Framework Agreement and/or any Call-Off Contract.

17.3. Notwithstanding the general obligation in Clause 17.2, where the Supplier is

Processing Personal Data as a Data Processor for CITB the Supplier shall:-

17.3.1.process the Personal Data only in accordance with instructions from CITB as set out in this Framework Agreement and/or any Call-Off Contract as appropriate or as otherwise notified by CITB;

17.3.2.comply with all applicable laws;

17.3.3.process the Personal Data only to the extent and in such manner as is necessary for the provision of the Supplier's obligations under this Framework Agreement and/or any Call-Off Contract as appropriate;

17.3.4.implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure;

17.3.5.take reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of Personal Data;

17.3.6.not cause or permit the Personal Data to be transferred outside the

European Economic Area without the prior written consent of CITB;

17.3.7.not disclose the Personal Data to any third parties in any circumstances other than with the written consent of CITB; and

17.3.8.co-operate with CITB to enable CITB to comply with any request under section 7 of the DPA; and

17.3.9.notify CITB within five Working Days if it receives:

17.3.9.1. a request from a Data Subject to have access to that person’s

Personal Data; or

17.3.9.2. a complaint or request relating to CITB’s obligations under the

DPA

17.4. The provisions of this Clause 17 shall apply during the Term and indefinitely after the expiry or earlier termination of this Framework Agreement (as the case may be).

18. **Freedom Of Information**

18.1. The Supplier acknowledges that CITB is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with CITB (at the Supplier’s expense) to enable it to comply with its Information disclosure obligations.

18.2. The Supplier shall (and shall procure that its Staff and/or sub-contractors shall):

18.2.1.transfer to CITB all Requests for Information that it receives (or they receive) as soon as practicable and in any event within [two] Working Days after receiving a Request for Information;

18.2.2.provide CITB with a copy of all Information in its possession, or power in the form that CITB requires within five Working Days (or such other period as CITB may specify) after CITB’s request; and

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

18.3. CITB shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement and/or any Call-Off Contract and/or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information

Regulations.

18.4. In no event shall the Supplier and/or any of its sub-contractors respond directly to a Request for Information unless expressly authorised to do so by CITB.

18.5. The Supplier acknowledges that (notwithstanding the provisions of Clause 18.2) CITB may, be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier, this Framework Agreement, any Call-Off Contract and/or the Services:

18.5.1.in certain circumstances without consulting the Supplier; or

18.5.2.following consultation with the Supplier and having taken its views into account.

19. **Publicity**

19.1. Unless otherwise directed by CITB, the Supplier shall not make any press announcements or publicise its dealing with CITB, this Framework Agreement and/or any Call-Off Contract in any way without CITB's prior written consent.

19.2. The Supplier shall not do anything which may damage the reputation of CITB or bring CITB into disrepute.

**PART FOUR: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION**

20. **Termination**

**Termination on Default**

20.1. CITB may terminate this Framework Agreement by serving written notice on the

Supplier with effect from the date specified in such notice:-

20.1.1.where the Supplier commits a Material Default and:-

20.1.1.1. the Supplier has not remedied the Material Default to the satisfaction of CITB within ten (10) Working Days, or such other period as may be specified by CITB, after issue of a written notice specifying the Material Default and requesting it to be remedied; or

20.1.1.2. the Material Default is not, in the reasonable opinion of CITB,

capable of remedy; or

20.1.2.where CITB upholds a Serious Misconduct Complaint (as defined in clause 34) following an investigation carried out pursuant to clause 34; or

20.1.3.where CITB terminates a Call-Off Contract awarded to the Supplier under this Framework Agreement as a consequence of default by the Supplier.

20.2. CITB may terminate this Framework Agreement, in whole or in part, by written notice to the Supplier with immediate effect if:

20.3. this Framework Agreement has been subject to a substantial modification that constitutes a new award in accordance with regulation 72(9) of The PCR 2015; or

20.4. at the time of award, the Supplier should have been excluded on one of the mandatory exclusion grounds set out in regulation 57(1) PCR 2015, including as a result of the application of regulation 57(2) PCR 2015;

20.4.1.this Framework Agreement should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaty of the European Union, TFEU and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 the Treaty on the Functioning of the European Union (TFEU).

**Termination on Financial Standing and Change of Control**

20.5. CITB may terminate this Framework Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of CITB), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which adversely impacts on the Supplier's ability to supply Services under this Framework Agreement.

20.6. The Supplier shall notify CITB immediately if the Supplier undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**").CITB may terminate the Framework Agreement by giving notice in writing to the Supplier with immediate effect within six (6) Months of:-

20.6.1.being notified that a Change of Control has occurred; or

20.6.2.where no notification has been made, the date that the CITB becomes aware of the Change of Control.

**Termination on Insolvency**

20.7. CITB may terminate this Framework Agreement with immediate effect by notice in writing where the Supplier is a company and in respect of the Supplier:-

20.7.1.a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

20.7.2.a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

20.7.3.a petition is presented for its winding up (which is not dismissed within

14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or

20.7.4.a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

20.7.5.an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

20.7.6.it is or becomes insolvent within the meaning of Section 123 of the

Insolvency Act 1986; or

20.7.7.being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

20.7.8.any event similar to any of those listed in Clause 20.4.1 to Clause 20.4.7 (inclusive) occurs under the law of any other jurisdiction.

**Termination by the CITB**

21. CITB shall have the right to terminate this Framework Agreement or to terminate the appointment of the Supplier to provide any part of the Services at any time by giving not less than one Months prior written notice to the Supplier.

22. **Suspension Of Supplier's Appointment**

Without prejudice to CITB's rights to terminate this Framework Agreement pursuant to Clauses 20-21 above, if such a right to terminate this Framework Agreement arises, CITB may suspend the Supplier's appointment to supply any or all of the Services by

giving notice in writing to the Supplier. If CITB provides notice of suspension to the Supplier in accordance with this Clause 22, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by CITB in writing from time to time.

23. **Consequences Of Termination And Expiry**

23.1. Notwithstanding the service of a notice to terminate this Framework Agreement, the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or earlier termination of this Framework Agreement or such other date as required under this Clause 23.

23.2. Termination or expiry of this Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms and/or CITB shall be entitled to terminate any such Call-Off Contracts pursuant to this Framework Agreement and gives express notice of any such termination(s) under this Framework Agreement.

23.3. Within thirty (30) Working Days after the date of termination or expiry of this Framework Agreement, the Supplier shall return to CITB any data and Confidential Information belonging to CITB in the Supplier's possession, power or control, together with all training manuals and other related documentation, and any other information and all copies thereof owned by CITB.

23.4. Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to such termination or expiry.

23.5. Any provision of this Framework Agreement which either expressly or by implication is intended to come into or continue in force on or after termination of this Framework Agreement, including without limitation clauses 15, 16, 17,

18, 20, 23, 24, 35 and 36, shall survive the termination or expiry of this

Framework Agreement.

**PART FIVE: INSURANCE AND LIABILITY**

24. **LIABILITY**

24.1 The Supplier shall indemnify and keep indemnified CITB in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with this Framework

Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. This Clause 24 shall not apply to the extent that the Supplier is able to demonstrate any that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Default, or the negligence or Default of its Staff or by any circumstances within its or their control.

24.2 CITB shall have no liability to the Supplier for any indirect or consequential loss, damage, cost or expense whatsoever.

25. **INSURANCE**

25.1. The Supplier shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under this Framework Agreement including death or personal injury, or loss of or damage to property.

25.2. The Supplier shall effect and maintain the following insurances for the duration of the Framework Agreement in relation to the performance of the Framework Agreement:

25.2.1.public liability insurance adequate to cover all risks in the performance of this Framework Agreement from time to time;

25.2.2.employers' liability insurance with a minimum limit of indemnity as required by law from time to time; and

25.2.3.professional indemnity insurance with a minimum limit of indemnity of ***minimum £500,000*** for each individual claim or such higher limit as CITB may reasonably require from time to time.

25.3. Any excess or deductibles under such insurance (referred to in Clause 25.1 and

Clause 25.2) shall be the sole and exclusive responsibility of the Supplier.

25.4. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Framework Agreement.

25.5. The Supplier shall produce to CITB, on request, copies of all insurance policies referred to in this Clause 25 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

25.6. If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the Framework Agreement then CITB may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

25.7. The Supplier shall maintain the insurances referred to in Clause 25.1 and Clause 25.2 for a minimum period of six (6) years following the expiry or earlier termination of the Framework Agreement.

**PART SIX: OTHER PROVISIONS**

26. **TRANSFER AND SUB-CONTRACTING**

26.1. The Framework Agreement is personal to the Supplier and the Supplier shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of CITB. The Supplier shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.

26.2. CITB reserves the right to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement and any associated third party licences to any successor body to CITB.

26.3. A change in the legal status of CITB shall not affect the validity of this agreement and this agreement shall be binding on any successor body to CITB howsoever established or incorporated.

26.4. For the purposes of this clause 26, a successor body shall be any body howsoever established or incorporated which acquires or carries on the whole or any substantial part of the business or operations of CITB.

26.5. Without prejudice to the foregoing the Supplier shall ensure that the clauses set out in Schedule 7 of this Framework Agreement are contained within and form part of the terms and conditions of any and all contracts between the Supplier and any individual supplier, servant, agent and/or sub-contractor that performs any part of the Supplier’s obligations under the Framework Agreement or any Call-Off Contract or any part of the Services.

27. **VARIATIONS TO THE FRAMEWORK AGREEMENT**

No variation to this Framework Agreement shall be valid unless made in writing and signed by the authorised representatives of the parties.

28. **RIGHTS OF THIRD PARTIES**

A person who is not party to this Framework Agreement (**Third Party**) has no right to enforce any term of this Framework Agreement.

29. **SEVERABILITY**

If any provision of the Framework Agreement is held to be invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Framework Agreement had been executed with the invalid provision eliminated.

30. **CUMULATIVE REMEDIES**

Except as otherwise expressly provided by the Framework Agreement, all remedies available to either Party for breach of the Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

31. **WAIVER**

31.1. The failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Framework Agreement.

31.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 33.

31.3. A waiver of any right or remedy arising from a breach of the Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Framework Agreement.

32. **ENTIRE AGREEMENT**

32.1. This Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to

such matters.

32.2. Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement. The only remedy available to either Party in respect of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Framework Agreement.

32.3. Nothing in this Clause 32 shall operate to exclude a Party’s liability for fraud or fraudulent misrepresentation.

33. **NOTICES**

33.1. Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.

33.2. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 33.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

33.3. For the purposes of Clause 33.2, the address of each Party shall be

33.3.1. For CITB:- Address: Bircham Newton Kings Lynn

PE31 6RHFor the attention of: Alex Geldard

Tel: 0300 456 7698

Email: [alex.geldard@citb.co.uk](mailto:alex.geldard@citb.co.uk)

33.3.2. For the Supplier:-

[ ]

Address:

For the attention of: Tel:

Fax: Email:

33.4. Either Party may change its address for service by serving a notice in accordance with this Clause 32.

34. **COMPLAINTS HANDLING AND RESOLUTION**

34.1. The Supplier shall notify CITB of any Complaint within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Supplier's plans to resolve such Complaint.

34.2. Without prejudice to any rights and remedies that CITB may have at law, including under this Framework Agreement or any Call-Off Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of this Framework Agreement or any Call-Off Contract, the following provisions shall apply:

34.2.1.if the Complaint includes serious allegations of misconduct in breach of the Trainers’ Handbook or serious allegations that the standard of teaching or conduct falls significantly below the standard required by this Framework Agreement or the Call-Off Contract (‘a Serious Misconduct Complaint’), CITB shall be entitled forthwith to suspend performance of any and/or all Call-Off Contract(s) while it carries out an investigation of the Complaint; and

34.2.2. the Supplier shall afford CITB or its nominated representative access to such Staff, Learners and records as it may require in order to investigate the Complaint, and shall provide all reasonable co-operation and assistance in relation to the investigation; and

34.2.3.if CITB considers the Complaint to be well founded, it reserves the right to terminate forthwith the Framework Agreement and any Call-Off Contract.

35. **DISPUTE RESOLUTION**

35.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Framework Agreement within twenty (20) Working Days after either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons identified in Clause 33 above.

35.2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

35.3. If the dispute cannot be resolved by the Parties pursuant to Clause 35.1, the

Parties shall refer it to mediation pursuant to the procedure set out in Clause

35.5 unless:-

35.3.1.CITB considers that the dispute is not suitable for resolution by mediation; or

35.3.2.the Supplier does not agree to mediation.

35.4. The obligations of the Parties under the Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and its employees, personnel and associates shall comply fully with the requirements of the Framework Agreement at all times.

35.5. The procedure for mediation and consequential provisions relating to mediation are as follows:-

35.5.1.a neutral adviser or mediator (**the Mediator**) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days after any notice given by the Mediation to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (CEDR) to appoint a Mediator; and

35.5.2.if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days after the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

36. **LAW AND JURISDICTION**

Subject to the provisions of Clause 34 and Clause 35, CITB and the Supplier accept the exclusive jurisdiction of the English courts and agree that this Frame\I\/Ork Agreement is to be governed by and construed according to English Law.

**SIGNED** by or on behalf of the Parties on the date which is set out at the beginning of this Framework Agreement

**SIGNED** by ) for and on behalf of The Construction ) Industry Training Board )

)

**SIGNED** by )

) for and on behalf of the Supplier ) (Director/Company Secretary) )

**SCHEDULE 1**

**SERVICES**

The Supplier has been appointed to the following Lots: REGIONS/COURSES – AS PER YOUR TENDER EVALUATION

**SCHEDULE 2**

**AWARD CRITERIA**

Call-Offs shall be awarded in accordance with the procedure set out in clause 5 of this

Framework Agreement and on the basis of the criteria set out below.

**Plant Award Criteria** Availability – 40% Quality – 30%

Cost – 30%

**Tunnelling Award Criteria**

Availability – 40% Quality – 40% Cost – 20%

**Access Award Criteria** Availability – 60% Quality – 20%

Cost – 20%

**LMIS/H&S Award Criteria**

Availability – 70% Cost – 30%

(no wish for the quality aspect)

**Construction and Built Environment**

Availability – 60% Quality – 20% Cost – 20%

**Assessment Services Award Criteria**

Quality – 60% Availability – 20% Cost – 20%

**Training Course Evaluation**

Availability – 40% Quality – 40% Cost – 20%

**SCHEDULE 3**

**PRICING MATRICES**

\*\*Please note that prices supplied in your tender cannot be exceeded in any further competitions against this framework.

**SCHEDULE 4**

**CALL-OFF TERMS AND CONDITIONS**

1. **GENERAL PROVISIONS**

1.1. **Framework Agreement**

Words and expressions defined in the Framework Agreement shall bear the same meaning where used in this Contract unless inconsistent with the context or otherwise expressly stated.

1.2. **Definitions**

In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:-

|  |  |
| --- | --- |
| **Commencement Date** | the date set out in the Award Letter |
| **Commercially Sensitive**  **Information** | the Confidential Information listed in Schedule  5 and information listed in the Award Letter |
| **Contract** | the written agreement between CITB and the Supplier consisting of the Award Letter and these Call-Off Terms and Conditions save that, for the purposes of Clause 1.7.4 only, reference to 'Contract' shall not include the Award Letter |
| **Contract Period** | has the same meaning prescribed to it within  Clause 1.4 |
| **Contract Price** | the price (exclusive of any applicable VAT), payable to the Supplier by CITB, as set out in the Award Letter, for the full and proper performance by the Supplier of its obligations under the Contract |
| **Default** | any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the |

Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other

**Equipment** the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract

**Force Majeure** any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man- made, but excluding:-

(a) any industrial action occurring within the Supplier's or any sub-contractors organisation; or

(b) the failure by any sub-contractors to perform its obligations under any sub- contract

**Framework Agreement** the framework agreement dated 15th October 2015 made between CITB (1) and the Supplier (2) for the provision of training and assessment services

**Key Personnel** any individual identified in the Award Letter as being key personnel

**Pre-Existing IPR** any Intellectual Property Rights vested in or licensed to CITB or the Supplier prior to or independently of the performance by CITB or the Supplier of their obligations under the Contract and in respect of CITB includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs

**Premises** the location(s) where the Services are to be supplied, as set out in the Award Letter

|  |  |  |
| --- | --- | --- |
| **Project Specific IPRs** | (a) | IPRs in items created by the Supplier (or |
|  |  | by a third party on behalf of the Supplier) |
|  |  | specifically for the purposes of the |
|  |  | Contract; and/or |
|  | (b) | IPRs arising as a result of the |

performance of the Supplier's obligations

under the Contract

**Property** the property, other than real property, issued or made available to the Supplier by CITB in connection with the Contract

**Quality Standards** the quality standards set out by the awarding body(ies) (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector with which the Supplier would reasonably and ordinarily be expected to comply (as may be further described in the Award Letter) and any other quality standards set out in the Award Letter

**Replacement Supplier** any third party provider appointed by or at the direction of CITB to supply any services which are the same as or substantially similar to any of the Services and which CITB receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract

**Services** the services to be supplied under this Contract as specified in the Award Letter

**Variation** has the meaning given to it in Clause 6.3 (Variation)

**VAT** value added tax in accordance with the provisions of the Value Added Tax Act 1994

1.3. **Interpretation**

The interpretation and construction of this Contract shall be subject to the provisions set out in clause 1.1 of the Framework Agreement. The Appendices to this Contract shall form part of this Contract and shall have effect as it set out in fully in the body of this

1.4. **Contract Period**

This Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Award Letter, unless it is otherwise terminated in accordance with the provisions of this Contract, or otherwise lawfully terminated.

1.5. **Supplier's Status**

At all times during this Contract Period the Supplier shall be an independent contractor and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Contract.

1.6. **CITB’s Obligations**

Save as otherwise expressly provided, the obligations of CITB under this Contract are obligations of CITB in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain CITB in any other capacity, nor shall the exercise by CITB of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of CITB to the Supplier.

1.7. **Entire Agreement**

1.7.1. This Contract together with the Framework Agreement pursuant to which this contract is entered into, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

1.7.2. Each of the Parties acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract or in the Framework Agreements. The only remedy available to either Party for any such statements,

representation, warranty or understanding shall be for breach of contract under the terms of this Contract.

1.7.3. Nothing in Clauses 1.7.1 or 1.7.2 shall operate to exclude any liability for fraud or fraudulent misrepresentation.

1.7.4. In the event of, and only to the extent of, any conflict between the Award Letter, the Clauses of this Contract and any document referred to in those Clauses, the conflict shall be resolved in accordance with the following order of precedence:-

1.7.4.1. the Award Letter;

1.7.4.2. the Clauses of this Contract; and

1.7.4.3. any other document referred to in the Clauses of this Contract.

1.7.5. The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

1.8. **Notices**

1.8.1. Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.

1.8.2. Any notice or other communication which is to be given by either Party to the other shall be given in accordance with Clause 32 of the Framework Agreement

1.9. **Mistakes in Information**

The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to CITB by the Supplier in connection with the supply of the Services and shall pay CITB any extra costs occasioned by any discrepancies, errors or omissions therein.

1.10. **Conflicts of Interest**

1.10.1. The Supplier shall promptly notify CITB (and provide full particulars to CITB) if any conflict referred to in Clause 8.1 of the Framework Agreement above arises or is reasonably foreseeable.

1.10.2. Any action of CITB pursuant to Clause 8.1 of the Framework Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to CITB.

1.10.3. This Clause 1.10, and in respect of this Call-Off Contract Clause 8 of the Framework Agreement, shall apply during the Contract Period and for a period of two (2) years after expiry of the Contract Period.

1.11. **Prevention of Fraud**

1.11.1. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from CITB.

1.11.2. The Supplier shall notify CITB immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

1.11.3. If the Supplier or its Staff commits any fraud in relation to this Contract and/or any other contract with CITB, CITB may:

1.11.3.1. terminate this Contract with immediate effect by giving the Supplier notice in writing and recover from the Supplier the amount of any loss suffered by CITB resulting from the termination including the cost reasonably incurred by CITB of making other arrangements for the supply of the Services and any additional expenditure incurred by CITB throughout the remainder of the Contract Period; and/or

1.11.3.2. recover in full from the Supplier any other loss sustained by CITB in consequence of any breach of this Clause 1.11.

2. **SUPPLY OF SERVICES**

2.1. **The Services**

2.1.1. In consideration for the payment of the Contract Price, the Supplier shall supply the Services during the Contract Period in accordance with this Contract and the Framework Agreement. CITB may inspect and examine the manner in which the Supplier supplies the Services at the Premises during normal business hours on reasonable notice.

2.1.2. If CITB informs the Supplier in writing that CITB reasonably believes that any part of the Services does not meet the requirements of this Contract or differs in

any way from those requirements, and this is other than as a result of a Default on the part of CITB, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by CITB.

2.1.3. Subject to CITB providing approval in accordance with Clause 2.2.2 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of this Contract, including commencing the supply of the Services within the time agreed or on a specified date.

2.2. **Provision and Removal of Equipment**

2.2.1. Unless otherwise stated in the Award Letter, the Supplier shall provide all the

Equipment necessary for the supply of the Services.

2.2.2. The Supplier shall not deliver any Equipment nor begin any work on the

Premises without obtaining prior approval.

2.2.3. All Equipment brought onto the Premises shall be at the Supplier's own risk and CITB shall have no liability for any loss of or damage to any Equipment. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required all at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Supplier.

2.2.4. The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

2.2.5. The Supplier shall, at CITB's written request, at its own expense and as soon as reasonably practicable:

2.2.5.1. remove from the Premises any Equipment which in the reasonable opinion of CITB is either hazardous, noxious or not in accordance with the Contract; and

2.2.5.2. replace such item with a suitable substitute item of Equipment.

2.2.6. On completion of the Services, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises and/or any property at the Premises (whether that of CITB or of any third party), other than

fair wear and tear, to the extent that it is caused by the Supplier or any Staff.

2.3. **Manner of Carrying Out the Services**

2.3.1. The Supplier shall, at all times, comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards’ authorisation body.

2.3.2. The Supplier shall perform its obligations under the Contract in accordance with law and Good Industry Practice.

2.3.3. The Supplier shall ensure that all Staff providing the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper provision of the Services, including those qualifications required in the relevant Lot Specification.

2.4. **Safeguarding Children, Young Persons and Vulnerable Adults**

2.4.1. The Supplier shall observe and perform its obligations set out in Clause 10 of the Framework Agreement in relation to this Contract and the provision of the Services under it.

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2.4.2. The Supplier shall immediately notify CITB of any information that CITB

reasonably requests to enable it to be satisfied that the obligations of this clause

2.4 have been met.

2.5. **Key Personnel**

2.5.1. The Parties have agreed to the appointment of the Key Personnel. The Supplier shall, and shall procure that any sub-contractor shall, obtain the prior approval of CITB before removing or replacing any Key Personnel during the Contract Period, and, wherever reasonably possible, at least two months' written notice shall be provided by the Supplier of its intention to replace any Key Personnel.

2.5.2. CITB shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Supplier or sub-contractor. CITB shall be entitled to interview the candidates for Key Personnel positions before they are appointed.

2.5.3. The Supplier acknowledges that, where they are specified, the Key Personnel are essential to the proper provision of the Services. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10)

Working Days and that any replacement shall be appointed in compliance with Clauses 2.5.1 and 2.5.2 above and shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the member of the Key Personnel whom he or she has replaced.

2.5.4. CITB shall be entitled to require the Supplier to remove any Key Personnel that CITB considers in any respect unsatisfactory and CITB shall not be liable for any and all costs incurred in and/or connected with any such removal and/or in replacing any Key Personnel.

2.6. **Supplier's Staff**

2.6.1. CITB may, by written notice to the Supplier, refuse to admit onto, or ask to leave, the Premises:-

2.6.1.1. any member of the Staff; or

2.6.1.2. any person employed or engaged by any member of the Staff whose admission or continued presence would, in the reasonable opinion of CITB, be undesirable.

2.6.2. At CITB's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as CITB may reasonably request.

2.6.3. The Staff engaged within the boundaries of the Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises and, without prejudice to the foregoing if CITB shall become aware that such Staff shall not be complying with any such rule, regulation and requirement, it shall be entitled to request the Supplier to procure such compliance.

2.6.4. If the Supplier fails to procure the compliance by its Staff with Clause 2.6.3, within two (2) Months after the date of any request for it so to do. CITB may terminate this Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to CITB.

2.6.5. The decision of CITB as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause 2.6.3 shall be final and conclusive.

2.6.6. The Supplier shall ensure that all Staff comply at all times and in all respects with the Trainers’ Handbook.

2.7. **Inspection of Premises**

Save as CITB may otherwise direct, the Supplier is deemed to have inspected the Premises before submitting the Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

2.8. **Licence to occupy Premises**

2.8.1. Any land or Premises made available from time to time to the Supplier by CITB in connection with the Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

2.8.2. The Supplier shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as CITB may reasonably request.

2.8.3. The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises and conduct of personnel at the Premises as determined by CITB, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

2.8.4. The Parties agree that there is no intention on the part of CITB to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, CITB retains the right at any time to use any Premises owned or occupied by it in any manner it sees fit.

2.9. **Property**

2.9.1. Where CITB issues Property to the Supplier such Property shall be and remain the property of CITB and the Supplier irrevocably licences CITB and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and at all times the Supplier shall possess the Property as fiduciary agent and bailee of CITB. The Supplier shall take all reasonable steps to ensure that the title of CITB to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractor and other appropriate persons and shall, at CITB' request, store the Property separately and ensure that it is clearly identifiable as belonging to CITB.

2.9.2. The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies CITB otherwise within five (5) Working Days after receipt.

2.9.3. The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior approval.

2.9.4. The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with CITB's reasonable security requirements as required from time to time.

2.9.5. The Supplier shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by CITB' Default. The Supplier shall inform CITB within two (2) Working Days after becoming aware of any defects appearing in or losses or damage occurring to, the Property.

2.10. **Offers of Employment**

Throughout the Contract Period and for a period of twelve (12) Months after the expiry or upon termination of the Contract Period neither CITB nor the Supplier shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

3. **PAYMENT AND CONTRACT PRICE**

3.1. **Contract Price**

In consideration of the Supplier's performance of its obligations under the Contract, CITB shall pay the Contract Price in accordance with Clause 3.2 (Payment and VAT).

3.2. **Payment and VAT**

3.2.1. CITB shall pay all valid and undisputed sums due to the Supplier pursuant to this Contract within thirty (30) days of receipt of a valid invoice, submitted in accordance with the payment profile set out in the Award Letter.

3.2.2. The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by CITB to substantiate the invoice.

3.2.3. Each invoice submitted by the Supplier shall be considered and verified by CITB in a timely fashion and any undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed.

3.2.4. Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

3.2.5. The Supplier shall indemnify CITB on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on CITB at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this Clause 3.2.6 shall be paid by the Supplier to CITB not less than five (5) Working Days before the date upon which the tax or other liability is payable by CITB.

3.2.6. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Contract under Clause 8.2 (Termination on Default) for

CITB’ failure to pay undisputed sums of money.

3.3. **Recovery of Sums Due**

3.3.1. Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to CITB in respect of any breach of the Contract), CITB may unilaterally deduct that sum (or part of it) from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with CITB.

3.3.2. Any overpayment by CITB, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable under clause 3.3.1.

3.3.3. The Supplier shall make any payments due to CITB without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by CITB to the Supplier.

3.3.4. All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

4. **STATUTORY OBLIGATIONS AND REGULATIONS**

4.1. **Prevention of Corruption**

The Supplier shall observe and perform its obligations set out in Clause 7 of the

Framework Agreement.

4.2. **Non-Discrimination**

The Supplier shall observe and perform its obligations set up in Clause 14 of the

Framework Agreement.

4.3. **The Contracts (Rights of Third Parties) Act 1999**

A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

4.4. **Environmental Requirements**

The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with CITB's environmental policy as may be notified to the Supplier from time to time, including but not limited to minimising the environmental impact of operations by preventing pollution, reducing energy consumption and the of fuel and by implementing initiatives to reduce waste to landfill.

4.5. **Health and Safety**

4.5.1. The Supplier shall promptly notify CITB of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

4.5.2. CITB shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under the Contract.

4.5.3. While on the Premises, the Supplier shall comply with any health and safety measures implemented by CITB in respect of Staff and other persons working there.

4.5.4. The Supplier shall notify CITB immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

4.5.5. The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

4.5.6. The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to CITB on request.

5. **PROTECTION OF INFORMATION**

5.1. **Data Protection Act**

The Supplier shall observe and perform its obligations set out in Clause 17 of the

Framework Agreement.

5.2. **Confidential Information**

The Parties shall observe and perform (and shall have their respective rights) as set out in Clause 16 of the Framework Agreement.

5.3. **Freedom of Information**

The Parties shall observe and perform (and shall have their respective rights) as set out in Clause 18 of the Framework Agreement.

5.4. **Publicity, Media and Official Enquiries**

The Supplier shall observe and perform its obligations set out in Clause 19 of the

Framework Agreement.

5.5. **Security**

5.5.1. CITB shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Supplier shall comply with all reasonable security requirements of CITB while on the Premises and shall ensure that all Staff comply with such requirements.

5.5.2. CITB shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

5.6. **Intellectual Property Rights**

5.6.1. Save as granted elsewhere under the Contract, neither CITB nor the Supplier shall acquire any right, title or interest in the other's Pre-Existing IPR.

5.6.2. The Supplier shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior approval, use or disclose any CITB Pre-Existing IPR or the Project Specific IPRs to any third party.

5.6.3. All title to and all rights and interest in the Project Specific IPRs shall vest in CITB. The Supplier hereby assigns to CITB, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.

5.6.4. The assignment under Clause 5.6.3 shall either take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.

5.6.5. The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to CITB under the Contract and shall execute all documents and do all such further acts as CITB may require to perfect the assignment under Clause 5.6.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.

5.6.6. CITB hereby grants to the Supplier a non-exclusive, revocable, non-assignable licence to use CITB Pre-Existing IPR and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the Supplier to provide the Services.

5.6.7. Prior to using any third party Intellectual Property Rights, the Supplier shall obtain the approval of CITB. The Supplier shall provide CITB with details of any third party licence required by the Supplier and/or CITB in order for the Supplier to carry out its obligations under the Contract using the third party Intellectual Property Rights. CITB reserves the right to withhold approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.

5.6.8. Where the Supplier is granted approval by CITB to use the third party rights, the Supplier shall procure that the owner of third party rights grants to CITB a licence upon the terms notified by the Supplier to CITB when seeking the approval.

5.6.9. The Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold CITB harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which CITB may suffer or incur as a result of any claim that the performance by the Supplier of the Services and/or the possession or use by CITB of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights (**Claim**) except where the Claim arises from:

5.6.9.1. items or materials based upon designs supplied by CITB; or

5.6.9.2. the use of data supplied by CITB which is not required to be verified by the Supplier under any provision of the Contract.

5.7. **Records and Audit Access**

5.7.1. The Supplier shall keep and maintain until seven (7) years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Call-Off Contracts entered into with CITB and the amounts paid under each Call-Off Contract.

5.7.2. The Supplier shall on request afford CITB, CITB's representatives and/or the Auditor such access to such records and accounts as may be required by CITB from time to time.

5.7.3. Subject to CITB's rights of Confidential Information, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:

5.7.3.1. all information requested by CITB within the scope of the audit;

5.7.3.2. reasonable access to sites controlled by the Supplier and to

Equipment used in the provision of the Services; and

5.7.3.3. access to Staff.

6. **CONTROL OF THE CONTRACT**

6.1. **Transfer and Sub-Contracting**

6.1.1. The Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any of its obligations and/or duties under the Contract.

6.1.2. Notwithstanding Clause 6.1.1, the Supplier shall ensure that the tax arrangement conditions set out in Annex 1 are contained within and form part of the conditions of any and all assignments and/or contracts between the Supplier and any sub-contractor.

6.2. **Waiver**

6.2.1. The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

6.2.2. No waiver shall be effective unless it is expressly stated to be a waiver and

communicated to the other Party in writing in accordance with Clause 1.8 (Notices).

6.2.3. A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

6.3. **Variation**

No variation to this Contract shall be valid unless made in writing and signed by the authorised representatives of the parties.

6.4. **Severability**

If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

6.5. **Monitoring of Contract Performance**

The Supplier shall provide all such assistance as CITB may request in the carrying out of any Observation of Teaching and Learning and shall comply with any such additional monitoring arrangements as CITB may from time to time require, including, but not limited to, providing such information as CITB may require.

6.6. **Remedies in the event of inadequate performance**

6.6.1. Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under the Contract, then CITB shall take all reasonable steps to investigate the complaint. CITB may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 8.2 (Termination on Default) of the Contract.

6.6.2. If CITB is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, then CITB may, without prejudice to its rights under Clause 8.2 (Termination on Default), do any of the following:-

6.6.2.1. without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have

demonstrated to the reasonable satisfaction of CITB that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;

6.6.2.2. without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;

6.6.2.3. terminate, in accordance with Clause 8.2 (Termination on Default), the whole of the Contract; and/or

6.6.2.4. charge the Supplier for and the Supplier shall pay any costs reasonably incurred by CITB (including any reasonable administration costs) in respect of the supply of any part of the Services by CITB or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that CITB uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

6.6.3. If the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then CITB shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days after CITB' instructions or such other period of time as CITB may direct.

6.6.4. If the Supplier:

6.6.4.1. fails to comply with Clause 6.6.3 above and the failure is materially adverse to the interests of CITB or prevents CITB from discharging a statutory duty; or

6.6.4.2. persistently fails to comply with Clause 6.6.3 above;

CITB may terminate the Contract with immediate effect by giving the Supplier notice in writing.

6.7. **Cumulative Remedies**

Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of the Contract are cumulative and may be

exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

7. **LIABILITIES**

7.1. **Liability, Indemnity and Insurance**

7.1.1. Nothing in this Contract shall be construed to limit or exclude either Party's liability for:

7.1.1.1. death or personal injury caused by its negligence;

7.1.1.2. fraud or fraudulent misrepresentation;

7.1.1.3. any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

7.1.1.4. any claim under Clause 7.3; or

7.1.1.5. any claim under the indemnity in Clause 5.6.9.

7.1.2. Subject to Clauses 7.1.4 and 7.1.5 the Supplier shall indemnify and keep indemnified CITB in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under this Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of CITB or by breach by CITB of its obligations under this Contract.

7.1.3. Subject always to Clause 7.1.1 and Clause 7.1.4, all liabilities of CITB arising out of or in connection with this Contract shall be excluded to the fullest extent permitted by law.

7.1.4. Subject to Clause 7.1.1, in no event shall either Party be liable to the other for any indirect or consequential loss or damage.

7.1.5. CITB may, amongst other things, recover as a direct loss:-

7.1.5.1. any additional operational and/or administrative expenses arising from the Supplier's Default;

7.1.5.2. any wasted expenditure or charges rendered unnecessary as a result of the Supplier's Default; and

7.1.5.3. the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier or the loss of profits incurred by CITB where procuring such replacement is not reasonably practicable;

7.1.5.4. loss of or damage to goodwill.

7.1.6. Nothing in the Contract shall impose any liability on CITB in respect of any liability incurred by the Supplier to any other person.

7.1.7. The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

7.1.8. The Supplier shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

7.1.9. The Supplier 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 appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

7.1.10. If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract, CITB may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

7.1.11. The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in Clause 7.1.2.

7.2. **Professional Indemnity**

The Supplier shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this Clause 7.2 and as a minimum, the Supplier shall ensure professional indemnity insurance held by the Supplier and by any agent, sub-contractors or consultant involved in the provision of the Services has a limit of indemnity of not less than ***Minimum £1 million*** for each individual claim [or such higher limit as CITB may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of this Contract.

7.3. **Taxation, National Insurance and Employment Liability**

7.3.1. Where the Supplier and/or any sub-contractor is liable to be taxed in the UK in respect of consideration received under this Contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

7.3.2. Where the Supplier and/or any sub-contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this Contract, it shall at all times comply with the Social Security Contributions and Benefits Act

1992 (SSCBA) and all other statues and regulations relating to NIC’s in respect of that consideration.

7.3.3. CITB may, at any time during the term of this Contract, request the Supplier to provide information which demonstrates how the Supplier and/or any sub- contractor complies with conditions 7.3.1 and 7.3.2 above or why those conditions do not apply to it.

7.3.4. A request under condition 7.3.3 above may specify the information which the Supplier must provide and the period within which that information must be provided.

7.3.5. The Supplier acknowledges that, notwithstanding any other provision of this Contract, CITB may supply any information which it receives under Clause 7.3 of this Contract in respect of the Supplier and/or any sub-contractor to the Commissioners of Her Majesty’s Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible

7.4. **Warranties and Representations**

7.4.1. The Supplier warrants and represents that:-

7.4.1.1. it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Contract;

7.4.1.2. the Contract is executed by a duly authorised representative of the

Supplier;

7.4.1.3. in entering the Contract it has not committed any fraud;

7.4.1.4. as at the Commencement Date, all information, statements and representations contained in the Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to CITB prior to execution of this Contract and it will advise CITB of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

7.4.1.5. it is, and will remain throughout the Contract Period, approved or accredited by Relevant Awarding Bodies for the provision of the Services;

7.4.1.6. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under this Contract;

7.4.1.7. it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under this Contract;

7.4.1.8. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;

7.4.1.9. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Contract;

7.4.1.10. the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and

diligence;

7.4.1.11. in the three (3) years prior to the date of this Contract:

7.4.1.11.1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and

7.4.1.11.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

7.4.1.11.3. it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract.

8. **DEFAULT, DISRUPTION AND TERMINATION**

8.1. **Termination on insolvency and change of control**

8.1.1. CITB may terminate this Contract with immediate effect by giving notice in writing where the Supplier is a company and in respect of the Supplier:

8.1.1.1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors or a moratorium comes into force; or

8.1.1.2. other than for the purposes of a bona fide reconstruction or amalgamation a resolution is passed or a court of competent jurisdiction makes an order for its winding up or dissolution or it is dissolved;

8.1.1.3. an administrator is appointed or an administration order is made or a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

8.1.1.4. it is or becomes insolvent within the meaning of Section 123 of the

Insolvency Act 1986; or

8.1.1.5. it suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

8.1.1.6. any event similar to any of those listed in Clause 8.1.1(1) – 8.1.1(4) (inclusive) occurs under the law of any other jurisdiction.

8.1.2. CITB may terminate this Contract with immediate effect by notice in writing

where the Supplier is an individual or a firm and the individual or any partner in that firm:-

8.1.2.1. shall at any time become bankrupt or have a bankruptcy petition presented against him or shall make any composition or arrangement with or for the benefit of its creditors or shall make any conveyance or assignment for the benefit of this creditors or shall purpose to do so; or

8.1.2.2. a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

8.1.2.3. the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or

8.1.2.4. a creditor or encumbrancer 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 Supplier's assets and such attachment or process is not discharged within 14 days; or

8.1.2.5. he dies or by reason of illness or incapacity (whether mental or physical) becomes incapable of managing his own affairs or becomes a patient under any mental health legislation; or

8.1.2.6. the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

8.1.3. The Supplier shall notify CITB immediately if the Supplier undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). CITB may terminate this Contract by notice in writing with immediate effect.

8.2. **Termination on Default**

8.2.1. CITB may terminate the Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a Default and if:-

8.2.1.1. the Supplier has not remedied the Default to the satisfaction of CITB within ten (10) Working Days, or such other period as may be specified by CITB, after issue of a written notice specifying the Default and requesting it to be remedied; or

8.2.1.2. the Default is not, in the opinion of CITB, capable of remedy; or

8.2.1.3. the Default is a material breach of the Contract.

8.2.2. In the event that through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse CITB in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

8.2.3. If CITB fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify CITB in writing of such failure to pay. If CITB fails to pay such undisputed sums within [ninety (90)] Working Days after the date of such written notice, the Supplier may terminate this Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to CITB exercising its rights under Clause 3.3 (Recovery of Sums Due).

8.2.4. Notwithstanding any other provision of this Contract, CITB may terminate this

Contract if:

8.2.4.1. in the case of a request mentioned in condition 7.3.3 above:

8.2.4.1.1. The Supplier fails to provide information in response to the request within a reasonable time; or

8.2.4.1.2. The Supplier provides information which is inadequate to demonstrate either how the Supplier and/or any sub- contractor complies with Clauses 7.3.1 and 7.3.2 above or why those clauses do not apply to it;

8.2.4.2. in the case of a request mentioned in Clause 7.3.3 above, the Supplier fails to provide the specified information within the specified period; or

8.2.4.3. it receives information which demonstrates that, at any time when Clauses 7.3.1 and 7.3.2apply to the Supplier and/or sub-contractor, the Supplier and/or sub-contractor is not complying with those clauses.

8.3. **Termination – Mandatory Exclusion Grounds**

8.3.1. CITB may terminate this Contract, in whole or in part, by written notice to the Supplier with immediate effect if:

8.3.2. this Contract has been subject to a substantial modification that constitutes a new award in accordance with regulation 72(9) of The PCR

2015; or

8.3.3. at the time of contract award, the Supplier should have been excluded on one of the mandatory exclusion grounds set out in regulation 57(1) PCR 2015, including as a result of the application of regulation 57(2) PCR

2015;

8.3.4. this Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaty of the European Union, TFEU and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article

258 the Treaty on the Functioning of the European Union (TFEU).

8.4. **Break and Course Cancellation**

8.4.1. CITB shall have the right to terminate this Contract at any time by giving not less than [one] Months' written notice to the Supplier.

8.4.2. CITB reserves the right to cancel any course in relation to which an Order has been awarded where it is unable to secure sufficient learner bookings for that course. Where such cancellation occurs more than 14 days prior to the course date, CITB may terminate this Contract without notice insofar as it relates to the cancelled course and shall not be liable to make any payment in relation to such cancellation and termination. Where such cancellation occurs 14 days or fewer prior to the course date, CITB may terminate this Contract without notice insofar as it relates to the cancelled course and shall pay to the Trainer a sum equal to the expenses already incurred by the Trainer for the purposes of this Contract on production of satisfactory evidence of expenditure..

8.5. **Framework Agreement**

CITB may terminate or suspend this Contract by giving written notice to the Supplier with immediate effect if the Framework Agreement is terminated or suspended for any reason whatsoever.

8.6. **Consequences of Expiry or Termination**

8.6.1. Where CITB terminates this Contract under Clause 8.2 (Termination on Default) and then makes other arrangements for the supply of Services, CITB may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by CITB throughout the remainder of the Contract Period. CITB shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under

Clause 8.2 (Termination on Default), no further payments shall be payable by CITB to the Supplier until CITB has established the final cost of making those other arrangements.

8.6.2. Save as otherwise expressly provided in this Contract:-

8.6.2.1. termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

8.6.2.2. Any provision of this Contract which either expressly or by implication is intended to come into or continue in force on or after termination of this Contract shall survive the termination or expiry of this Contract.

8.7. **Disruption**

8.7.1. The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of CITB, its employees or any other Supplier employed by CITB.

8.7.2. The Supplier shall immediately inform CITB of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.

8.7.3. In the event of industrial action by the Staff, the Supplier shall seek CITB' approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Contract.

8.7.4. If the Supplier's proposals referred to in Clause 8.6.3 are considered insufficient or unacceptable by CITB (acting reasonably) then this Contract may be terminated with immediate effect by CITB by notice in writing.

8.7.5. If the Supplier is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business by direction of CITB, an appropriate allowance by way of extension of time will be approved by CITB. In addition, CITB will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

8.8. **Recovery upon Termination**

8.8.1. On the termination of this Contract for any reason, the Supplier shall:

8.8.1.1. immediately return to CITB all Confidential Information, Personal Data and Customer’s Pre-Existing IPR’s and the Project Specific IPR’s in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;

8.8.1.2. immediately deliver to CITB all Equipment and Property (including materials, documents, information and access keys) provided to the Supplier under clauses 2.2 or 2.9. Such Equipment and Property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

8.8.1.3. assist and co-operate with CITB to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress;

8.8.1.4. promptly provide all information concerning the provision of the Services which may reasonably be requested by CITB for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing CITB or the Replacement Supplier to conduct due diligence.

8.8.2. If the Supplier fails to comply with either Clauses 8.7.1.1 and/or 8.7.1.2, CITB may recover possession thereof and the Supplier grants a licence to CITB or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or sub-contractors where any such items may be held.

8.8.3. Where this Contract is terminated due to the Supplier’s Default, the Supplier shall provide all assistance under Clauses 8.7.1.3 and 8.7.1.4 free of charge. Otherwise, CITB shall pay the Supplier’s reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

8.8.4. At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 2.8 shall automatically terminate without the need to serve notice.

8.9. **Suspension**

8.9.1. Without prejudice to the rights and remedies set out in this Contract, CITB

reserves the right to suspend or terminate this Contract pursuant to Clause 34

of the Framework Agreement.

8.10. **Force Majeure**

8.10.1. Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6

Months, either Party may terminate the Contract with immediate effect following the expiry of such period of 6 months by notice in writing.

8.10.2. If either Party becomes aware of a Force Majeure event or occurrence which gives rise to, or is likely to give rise to, any such failure or delay on its part as described in Clause 8.9.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

9. **DISPUTES AND LAW**

9.1. **Governing Law and Jurisdiction**

The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Contract is to be governed exclusively by and construed under English law.

9.2. **Dispute Resolution**

9.2.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Legal Department (or equivalent) of each Party.

9.2.2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

9.2.3. If the dispute cannot be resolved by the Parties pursuant to Clause 9.2.1 the

Parties shall refer it to mediation pursuant to the procedure set out in Clause

9.2.5 unless:

9.2.3.1. CITB considers that the dispute is not suitable for resolution by mediation; or

9.2.3.2. the Supplier does not agree to mediation.

9.2.4. The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.

9.2.5. The procedure for mediation and consequential provisions relating to mediation are as follows:-

9.2.5.1. a neutral adviser or mediator (**the Mediator**) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;

9.2.5.2. if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

**Authorised to sign for and on behalf of The Construction Industry Training Board**

Signature ………………………………………………………………………………... Date ………………………………………………………………………………. Name in Capitals

………………………………………………………………………………...

**Authorised to sign for and on behalf of the Supplier**

Signature ………………………………………………………………………………...

Date

Name in Capitals

**Annex 1**

**Tax Arrangement Conditions**

1. Where [WORKER] is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

2. Where [WORKER] is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statues and regulations relating to NIC’s in respect of that consideration.

3. [SUPPLIER] may, at any time during the term of this contract, request [WORKER] to provide information which demonstrates how [WORKER] complies with Clauses 1 and 2 above or why those Clauses do not apply to it.

4. A request under Clause 3 above may specify the information which [WORKER]

must provide and the period within which that information must be provided.

5. [SUPPLIER] may terminate this contract if:

a. in the case of a request mentioned in Clause 3 above:

i. [WORKER] fails to provide information in response to the request within a reasonable time; or

ii. [WORKER] provides information which is inadequate to demonstrate either how [WORKER] complies with Clauses 1 and

2 above or why those Clauses do not apply to it;

b. in the case of a request mentioned in Clause 4 above, [WORKER] fails to provide the specified information within the specified period; or

c. it receives information which demonstrates that, at any time when Clauses 1 and 2 apply to [WORKER], [WORKER] is not complying with those Clauses.

6. Notwithstanding any other provision of this Contract the [SUPPLIER] may supply any information which it receives under Clause 3 to:

a. The Commissioners of Her Majesty’s Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible; and/or

b. The Construction Industry Training Board who may supply any such information that it receives to The Commissioners of Her Majesty’s Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

**SCHEDULE 5**

**COMMERCIALLY SENSITIVE INFORMATION**

• Course materials

• Lesson plans

• Session plans

• Customer information

• Learner information

**SCHEDULE 6**

**TRAINER’S HANDBOOK**

**National Construction College**

**Contractors Handbook**

**Fairness, Inclusion and Respect**

15 October 2013

**Introduction**

The National Construction College (NCC) seeks to provide a working and learning environment which is fair, inclusive and respectful. We are fully committed to being an equal opportunities training provider and employer, and will seek to ensure that no learner, employee, applicant for employment, customer or supplier of goods and services receives less favourable treatment than any other on the ground of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion/belief, sex (gender), sexual orientation, family care responsibilities, political belief or irrelevant offending background. Furthermore, no learner, employee, applicant for employment or customer should be disadvantaged by conditions or requirements which cannot be shown to be objectively justified.

We recognise that effective policies and procedures will contribute to the long term success of the NCC and seek to embrace these principles and values in all our areas of operation. NCC is committed to the CITB Strategic Equality Plan (SEP) and the achievement of the SEP Action Plan.

**Fairness, Inclusion and Respect**

**Fairness** is about treating everyone equally, without bias or injustice, whilst understanding that at times this may mean some people require extra support.

**Inclusion** is about allowing people to be themselves, valuing difference and letting them know that their contribution is valued, regardless of who they are and what their background is. It’s about developing an environment where no-one feels left out.

**Respect** is ensuring your behaviour towards teams, colleagues, clients or contacts is appropriate and does not cause offence. It’s about treating people how they would expect to be treated and maintaining an environment where individual differences are respected.

**Fairness, Inclusion and Respect Statement**

|  |  |  |
| --- | --- | --- |
| **What we do and why** | **How we do it** | **Play your part** |
| FIR are central to all we do, to ensure all our activities are fair,  inclusive and respectful to everyone | We are embedding fairness, inclusion and respect into all  we do | Treat everyone as they would wish to be  treated |
| We promote all opportunities to  everyone, to ensure our future workforce is representative of the UK | We are proactive in promoting  opportunities in a way which suits the individual | Fairness, inclusion  and respect  **Promote it** |
| We believe in the value of a diverse  workforce and research shows measurable business benefits | We are actively promoting  fairness, inclusion, respect and diversity in the workforce | Diversity in the  workforce  **Celebrate it** |
| We are committed to tackle discrimination, harassment, victimisation and bullying where it  exists, working towards a workforce and industry where people don’t  suffer from diverse workforces | We will seek out discrimination, harassment, victimisation and bullying and  stop it | Discrimination,  harassment, victimisation and bullying  **Report it** |

Andy Walder

Principle, National Construction College

Strategic Equality Plan- attached PDF

**The Equality Act 2010**

**What is the purpose of the Equality Act 2010**

The Equality Act 2010 brings together a number of existing laws into one place so that it is easier to use. It sets out the personal characteristics that are protected by the law and the behaviour that is unlawful. Simplifying legislation and harmonising protection for all of the characteristics covered will help Britain become a fairer society, improve public services, and help business perform well.

**Who is protected by the Act?**

A: Everyone in Britain is protected by the Act. The “protected characteristics” under the

Act are (in alphabetical order):

• Age

• Disability

• Gender reassignment

• Marriage and civil partnership

• Pregnancy and maternity

• Race

• Religion and belief

• Sex (Gender)

• Sexual orientation

**What behaviour is unlawful?**

Under the Act people are not allowed to discriminate, harass or victimise another person because they have any of the protected characteristics. There is also protection against discrimination where someone is perceived to have one of the protected characteristics or where they are associated with someone who has a protected characteristic.

Direct discrimination

Direct discrimination would be if NCC treats one person worse than another because of a protected characteristic

Indirect discrimination

Indirect discrimination would be NCC putting in place a rule, policy or way of doing things that has a worse impact on someone with a protected characteristic than someone without one, when this cannot be objectively justified

Harassment

Harassment includes unwanted conduct related to a protected characteristic which has the purpose or effect or violating someone’s dignity or which creates a hostile, degrading, humiliating or offensive environment for someone with a protected characteristic.

Victimisation

Victimisation is treating someone unfavourably because they have taken (or might be taking) action under the Equality Act or supporting somebody who is doing so.

Discriminatory language

The NCC is committed to the use of non-discriminatory language which is not gender specific in its internal and external documents, official correspondence, publications

and other communications. All learners and staff are expected to ensure that their written and spoken material does not contain racist, sexist or homophobic language or any other language that may cause offence to others. Rather than adopting a prescriptive approach to the use of language, the NCC asks that its learners, staff and contractors exercise good judgement. In particular, they should be aware of inappropriate references to any of the protected characteristics.

**Dignity and Respect Guideline**

The National Construction College (NCC) welcomes the full participation of the UK’s diverse society, and strives to provide a well-resourced, inclusive and pleasant environment for learning. As with any training facility of this size, the NCC requires the full co-operation of all of its learners and employees to ensure that it runs smoothly and provides a pleasant environment for all.

The following guidelines therefore, are designed to enable you and all those who learn and work at NCC to gain maximum benefit from the programmes and facilities on offer.

**Entitlement Statement**

As a learner, you have the right to:-

• be treated fairly with dignity and respect in an inclusive environment

• learn without fear of being discriminated against, bullied, harassed or suffer any other form of detriment

• learn without being distracted by inappropriate behaviour. Such behaviours might include:-

o the use of aggressive, threatening or offensive language

o persistent bad behaviour that interrupts learning

o failure to respect your property.

**What NCC Expects**

We expect learners to act responsibly at all times by adhering to NCC policies and procedures. This includes but is not limited to:-

• respecting our buildings, furniture, equipment and our environment.

• being courteous and respecting the rights of others

• not participating in emotional, verbal or physical bullying

• not discriminating on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation

• not causing offence or disturbance to other learners and employees. For example, by making excessive noise, using bad / abusive language, blocking entrances/exits, or any other discourteous behaviour

• not making sexual remarks, ogling / leering, wolf-whistling or cat calls

• not telling jokes based on gender, race, sexual orientation, religion, disability or age or using offensive language e.g. sexist, homophobic, racist, ageist.

• not displaying pin-ups, pornographic photos, offensive material or creating graffiti

• making unwelcomed physical contact

**Grievances**

If you feel you have been subjected to unfair and/or discriminatory treatment, you may raise a grievance either formally or informally with your instructor or your department’s senior instructor. Your grievance will be dealt with fully and sensitively. In some cases

this may involve initiating disciplinary action against those who do not comply with these guidelines.

All learners and employees are bound under the CITB, Strategic Equality Plan to challenge inappropriate language, behaviour or attitudes. (as attached)

**Contract Instructor’s Dos & Don’ts**

**Do**

**Do** prepare the teaching material.

**Do** prepare the classroom.

**Do** greet learners.

**Do** present yourself as a clean, well-groomed, take-charge instructor.

**Do** be yourself.

**Do** state course objectives.

**Do** make announcements regarding facilities, breaks and schedule.

**Do** begin and end the class sessions on time.

**Do** show enthusiasm.

**Do** acknowledge learners who ask questions.

**Do** be flexible.

**Do** respond positively to the learners even if incorrect answers are given.

**Do** teach the lesson exactly as provided by NCC.

**Do** use humour where appropriate.

**Do** give clear, simple instructions regarding testing.

**Do** thank learners for attention and participation.

**Don’t**

**Don’t** assume anything.

**Don’t** take teaching NCC courses lightly.

**Don’t** assume that every learner wants to be there.

**Don’t** use Abusive, vulgar, or irreverent language.

**Don’t** ever criticise a learner.

**Don’t** ever touch a learner without their permission.

**Don’t** let one learner monopolise all of the questions or all of the answers.

**Don’t** let learners waste valuable teaching time on “What if” questions or personal stories.

**Don’t** assume that you have no people from ethnic minority groups or other

countries in your class.

**Don’t** say anything that would embarrass or offend someone from another

country, culture or who lives an alternative lifestyle.

**Don’t** say anything that would embarrass NCC or yourself.

**Don’t** start late or run overtime.

**Don’t** waste time.

**Don’t** under any circumstance send texts messages or emails, with electronic images or any materials that are abusive, obscene, degrading, racist, sexist or homophobic.

**Don’t** tell racist, sexist, ageist, homophobic or religious jokes or use offensive

language.

**Don’t** lose learner’s respect.

**Don’t** make comments that stress the superiority of the British way of doing things.

**Don’t** generalise or make sweeping allegations about people, countries and

continents in terms of working practices or methods.

**SCHEDULE 7**

**SPECIAL CONDITIONS**

In accordance with clause 26.5, the Supplier shall ensure that the clause set out below is contained within and form part of the terms and conditions of any and all contracts between the Supplier and any individual supplier, servant, agent and/or sub-contractor that performs any part of the Supplier’s obligations under the Framework Agreement or any Call-Off Contract or any part of the Services.

**Assignment and Subcontracting**

1 Any assignment or sub-contract shall be on terms no less onerous than this Contract and shall (a) require payment to be made by the Supplier to the Sub- contractor within a specified period not exceeding 30 days from the receipt of a valid invoice and (b) ensure each invoice submitted by the Sub-contractor to the Supplier be considered and verified by the Supplier in a timely fashion and any undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed. This clause also requires any sub- contractor to include in any subcontract which it in turn awards suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those required by this clause 1