**This Agreement dated: <Insert Date>**

**is made between:**

**1. The Engineering Construction Industry Training Board** of Kings House Business Centre, Home Park Estate, Station Road, Kings Langley, Hertfordshire, WD4 8LZ **(“ECITB”)**; and

**2. <Insert Company Name>** (company registration number: **<Insert No.>)** whose registered office is at <Insert Register Office Address> **(“the Contractor”)** hereinafter collectively referred to as the “Parties.”

**WHEREAS**

The Contractor has agreed to provide certain research services upon the terms and conditions of this Agreement, developing comprehensive labour market intelligence for the ECI by using web scraping techniques to analyse job advertisements from online platforms.

**NOW IT IS AGREED** as follows:

1. DEFINITIONS

In this Agreement the following expressions shall have the following meanings:

* 1. “Services” means the services to be provided by the Contractor as described in the Schedule.
	2. “Programme” means the programme for the provision of the Services set out in the Schedule.
	3. “Additional Services” means any additional services requested by ECITB to be provided by the Contractor that are not included within the description of the Services.
	4. “Price” means the fixed, all-inclusive price for the provision of the Services as detailed in the Schedule.
	5. “Rates” means the rates payable in respect of the Additional Services as detailed in the Schedule.
	6. “Confidential Information” means all or any written material, documentation, illustrations, photographs, designs, drawings, data, technical, business and similar information of a confidential nature relating to the business of ECITB or its clients including all readable or computer or other machine readable data.
	7. “Intellectual Property” means any patent, registered design, copyright, database right, design right, topography right, trade mark, trade name, application to register any of the aforementioned rights, trade secret, inventions, computer software, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world including without limitation:

* + 1. any renewals, revisions and extensions created or provided by the laws of any country;
		2. all rights of action and remedies in relation to past infringements; and
		3. the right to apply for registration of any such rights in any country of the world.
	1. “Documents” means all records, reports, documents, papers, media and other materials whatsoever created by ECITB or on behalf of ECITB or originated by or upon behalf of the Contractor pursuant to this Agreement.
	2. The Contractor’s Intellectual Property means any documents, records, reports, documents, papers, images, media, software or any other materials created or owned by the Contractor prior to this Agreement.
	3. “Expenses” means the expenses which the Contractor shall be entitled to be paid as set out in the Schedule.
	4. ‘Works’ shall mean any documents, reports and any other materials or media which are produced or created by the Contractor for ECITB.
	5. “Key Personnel” means the person or persons as defined in the Schedule.
	6. ‘Project Manager’ means the person or persons as defined in the Schedule.
	7. “Electronic Signature means the technology that allows a person to electronically affix a signature or its equivalent to an electronic document, as and when agreeing to an online contract, which may include (without limitation) and at ECITB’s discretion:
1. a person typing his or her name into a contract or into an email containing the terms of a contract; or
2. a person electronically pasting his or her signature into an electronic version of the contract in the appropriate place; or
3. a person accessing a contract through a web-based e-signature platform and clicking a tick box to demonstrate agreement or clicking to have his or her name in a typed or handwriting font automatically inserted into the contract in the appropriate place;

1.15 “Contract Term” means a period of **1 Year** from the Commencement Date, plus any Extended Contract Period under clause 8.2, if utilised;

**2. The Contractor’s Work**

2.1 The Contractor shall provide the Services in accordance with the Programme.

2.2 The Contractor shall provide the Additional Services.

2.3 The Contractor shall provide the Services and the Additional Services to ECITB at such times and at such locations as ECITB shall reasonably direct.

2.4 Whilst providing the Services and the Additional Services the Contractor may give the impression that it is a representative of ECITB provided that the Contractor shall not hold him/herself out as being able to bind ECITB.

2.5 The Contractor shall, in the provision of the Services and the Additional Services, liaise with and report to the Project Manager or such other individual nominated by ECITB.

**3. Standard of the Contractor’s Work**

3.1 In the provision of the Services and the Additional Services, the Contractor shall use the skill care and knowledge to be expected of an expert in his/her profession. The Contractor shall undertake any training as deemed necessary by ECITB in order to perform his/her duties.

3.2 The Contractor shall not be entitled to assign any of his/her obligations hereunder, nor to engage the services of any subcontractor to carry out any of his/her obligations hereunder, without the prior written consent of the Project Manager.

3.3 The Contractor shall comply with such conditions, policies and procedures as shall be notified by ECITB to the Contractor from time to time.

3.4 The Contractor shall project a professional image and demonstrate commitment to the work of ECITB at all times.

3.5 If in the reasonable opinion of ECITB there is any unsatisfactory or incomplete work it shall be made good at the Contractor’s own expense and within an agreed timescale.

3.6 The Contractor shall ensure that all of its personnel engaged in the provision of the Services and the Additional Services:

3.6.1 have the necessary skills, expertise, qualifications and diligence to undertake such work and will conform to the professional standards generally observed for similar services; and

3.6.2 comply with the provisions in this Agreement relating to Confidential Information; and

3.7 The Contractor agrees that the Services and the Additional Services will be carried out by the Key Personnel.

3.8 The Contractor agrees that the Key Personnel shall not be replaced before the completion of the Services and the Additional Services without notice to ECITB, unless:

3.8.1 the individual to be replaced is prevented by ill-health from carrying out his or her duties in connection with this Agreement for a significant period;

3.8.2 the individual resigns from employment with the Contractor;

3.8.3 the contract of employment of the individual is terminated; or

3.8.4 ECITB makes a reasonable written request to the Contractor to replace the individual because he has performed unsatisfactorily or has caused a breach of any of the Contractor’s obligations under this Agreement.

3.9 If any such person is replaced, the Contractor shall consult with ECITB about the identity of a suitable replacement.

**4. Payment**

4.1 In consideration of the Contractor providing the Services, ECITB shall pay to the Contractor the Price which shall be invoiced to ECITB upon the achievement of the specified milestones set out in the Programme and subject to the terms set out in clause 5.

4.2 In consideration of any Additional Services, ECITB shall pay to the Contractor the amounts invoiced by the Contractor to ECITB calculated in accordance with the Rates and subject to the terms set out in clause 5.

4.3 The reasonable expenses (whether in respect of travelling or other out-of-pocket expenses) of the Contractor directly incurred in carrying out the Services or the Additional Services shall be payable by ECITB in accordance with the guidelines appearing in the Schedule subject to all such expenses having been approved in writing by ECITB prior to being incurred.

4.4 The Contractor shall maintain records of time spent, and invoices shall be prepared in such detail as ECITB may require, in order to enable ECITB to verify the amount claimed for payment.

**5. Invoicing and Payment**

5.1 The Contractor shall be entitled to submit an invoice on the achievement of the milestones in the Programme.

5.2 The Contractor shall be entitled to submit an invoice on the achievement of the Additional Services in accordance with the Rates.

5.3 The Contractor shall submit such invoices in accordance with the following requirements and any invoice submitted shall not be paid if the following requirements are not met. Invoices must be submitted:

1. in a format and with supporting documentation or reports specified by ECITB; and

(2) by e-mail to the Project Manager.

5.4 ECITB will pay each invoice (a VAT invoice if appropriate) within 30 days of its receipt, subject to ECITB being satisfied as to the quality of the Services provided and the stage of completion of milestones.

5.5 The Services being provided by the Contractor may not be subject to VAT.

5.6 For the avoidance of doubt in the event that the Contractor should fail to submit

 reports and other information to ECITB in accordance with the terms of this

 Agreement, ECITB shall be entitled to withhold any payments to the Contractor

 until such time as the reports and information have been correctly submitted.

**6. Confidentiality and Intellectual Property Rights**

6.1 Each of the parties to this Agreement intends to disclose information (the Confidential Information) to the other party for the purpose of sharing learner information or other confidential information related to the delivery of the contract (the Purpose).

6.2 Each party to this Agreement is referred to as ‘the Recipient’ when it receives or uses the Confidential Information disclosed by the other party.

6.3 The Recipient undertakes not to use the Confidential Information disclosed by the other party for any purpose except the Purpose, without first obtaining the written agreement of the other party.

6.4 The Recipient undertakes to keep the Confidential Information disclosed by the other party secure and not to disclose it to any third party except to its employees and professional advisers who need to know the same for the Purpose, who know they owe a duty of confidence to the other party and who are bound by obligations equivalent to those in clause 6.3 above and this clause 6.4.

6.5 The undertakings in clauses 6.3 and 6.4 above apply to all of the information disclosed by each of the parties to the other, regardless of the way or form in which it is disclosed or recorded but they do not apply to: a) any information which is or in future comes into the public domain (unless as a result of the breach of this Agreement); or b) any information which is already known to the Recipient and which was not subject to any obligation of confidence before it was disclosed to the Recipient by the other party.

6.6 Nothing in this Agreement will prevent the Recipient from making any disclosure of the Confidential Information required by law or by any competent authority.

6.7 The Recipient will, on request from the other party, return all copies and records of the Confidential Information disclosed by the other party to the Recipient and will not retain any copies or records of the Confidential Information disclosed by the other party.

6.8 Neither this Agreement nor the supply of any information grants the Recipient any licence, interest or right in respect of any intellectual property rights of the other party except the right to copy the Confidential Information disclosed by the other party solely for the Purpose.

**7. Status of the Contractor**

7.1 The parties acknowledge that under the terms of this Agreement the Contractor has been engaged as an independent consultant and this Agreement constitutes a contract for the provision of services and not a contract of employment. Accordingly, nothing in this Agreement will make the Contractor an employee, agent or partner of ECITB and the Contractor will not hold itself out as such.

7.2 As the Contractor is not an employee it will not be entitled to receive from ECITB any salary, bonus or sick pay, holiday pay, pension contributions or any other employee benefits.

7.3 Unless a company the Contractor warrants and represents to ECITB that it is a self-employed person for national insurance and tax purposes. The Contractor shall be responsible for all income tax liabilities and national insurance or similar contributions in respect of the fees paid by ECITB in accordance with clause 4.1 herein and ECITB shall not make any deductions from the fees payable to the Contractor unless required to do so by law. The Contractor agrees to indemnify ECITB forthwith against any loss, costs, interest, liability, damages or proceedings howsoever arising out of or in connection with any non-payment by the Contractor of any income tax and/or national insurance liabilities relating to the Services.

7.4 In respect of the Services provided to ECITB, the Contractor agrees that an amount equal to the amount of tax (if any) so assessed by a tax authority and paid by ECITB to the relevant tax authority may be deducted from any fees payable to the Contractor under this Agreement.

7.5 The Contractor will account for any applicable VAT to the appropriate authorities.

7.6 The Contractor shall adhere to the principles of all ECITB’s policies and procedures whilst on ECITB’s business and at all ECITB offices. The Project Manager will be able to advise on these matters. Failure to comply with ECITB’s policies and procedures will result in the termination of the Contractor’s business relationship and contract for Services.

**8. Duration**

8.1 This Agreement will commence on the Commencement Date and continue in full force and effect for the Contract Term unless terminated in accordance with clause 9 (Termination) (the “**Initial Contract Period**”).

8.2 Not used – contract extension option.

**9. Termination**

9.1 Either party shall be entitled to terminate this Agreement. 1 month’s written notice of termination shall be given by either party.

9.2 Either party shall be entitled to terminate this Agreement forthwith if the other party shall be in serious or continued breach of its obligations. Without limitation ECITB may, by notice in writing, immediately terminate this Agreement if the Contractor shall:

 9.2.1 be in breach of any of the terms of this Agreement which in the case of a breach capable of remedy is not remedied by the Contractor within 21 days of receipt by the Contractor of a notice from ECITB specifying the breach and requiring its remedy;

 9.2.2 be incompetent, guilty of gross misconduct and/or serious or persistent negligence in respect of his/her obligations hereunder;

 9.2.3 fail or refuse after written warning to carry out the duties reasonably and properly required of him/her hereunder.

9.3ECITBshall have the right to terminate this Agreement in the event:

9.3.2 that the Contractor breaches the terms of any licence provided under this Agreement;

9.3.3 that the Contractor infringes the intellectual property of ECITB;

9.3.4 that an order is made or a resolution is passed for the winding up of the Contractor, or circumstances arise which entitle a court of competent jurisdiction to make a winding up order of the Contractor; or

9.3.5 that an order is made for the appointment of an administrator to manage the affairs, business and property of the Contractor, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Contractor, or notice of intention to appoint an administrator is given by the Contractor or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

9.3.6 that a receiver is appointed of any of the Contractor’s assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Contractor or if any other person takes possession of or sells the Contractor’s assets; or

* + 1. that the Contractor makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
		2. that the Contractor ceases, or threatens to cease, to trade; or
		3. of any other reason in the reasonable discretion of ECITB.

9.4 Notwithstanding the foregoing, ECITB may not terminate this Agreement solely for the reason of the Contractor’s inability to provide the Services through illness or injury, unless such illness or injury prevents the Contractor providing any Services to ECITB for a consecutive period of six weeks or for an aggregate period of six weeks in any period of 12 calendar months.

# Assignment

10.1 Neither party may assign or otherwise transfer this Agreement without the prior written consent of the other party. In the event that consent for assignment is given, the terms of this Agreement will be binding upon each party’s respective successor.

## 11 Payment on Termination

11.1 If this Agreement shall be terminated because of the default of the Contractor then the Contractor shall indemnify ECITB against costs, losses or damages suffered by ECITB as a result of such default.

1. **Indemnity**

12.1 The Contractor shall indemnify and hold ECITB harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by ECITB as a result of or in connection with:

 (a) any alleged or actual infringement, whether or not under English law, of any third party’s Intellectual Property Rights or other rights arising out of the use or supply of the Services;

 (b) any claim made against ECITB in respect of any liability, loss, damage, death, injury, professional negligence, cost or expense sustained by ECITB’s employees or agents or by any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of this Agreement by the Contractor.

* 1. The Contractor shall insure against the claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs proceedings, damages and expenses (including legal and other professional fees and expenses) described in clause 11.1. hereof.

**13. Notices**

13.1 Any notices sent under this Contract must be in writing and sent by hand, by post or by email. The table below sets out deemed time of delivery and proof of service for each.

|  |  |  |
| --- | --- | --- |
| **Notice delivered** | **Deemed time of delivery** | **Proof of service** |
| By first class post, special delivery or other recorded delivery | 2 Working Days from the date of posting | Proof that the envelope was addressed and delivered into the custody of the postal authorities |
| Email | 09:00 hours on the first Working Day after sending | Dispatched in an emailed pdf to the correct email address without any error message |

13.2 For the purpose of this Clause and calculating receipt all references to time are to local time in the place of receipt.

1. **Changes to the Agreement**
	1. All changes to this Agreement must be approved in writing by authorised officials of both parties and follow the procedure set out in clauses 13.2 to 13.5 of this Agreement.
	2. The party wishing to initiate a change (“the initiator”) must advise the other party (“the recipient”) of the proposed change in writing (by post or by email).
	3. The recipient will consider and assess the proposal and if necessary enter into dialogue with the initiator in order to formulate its response.
	4. The recipient will respond to the initiator’s proposal in writing (by post or by email) and include related information such as variations in fees which may arise as a consequence of the proposed change.
	5. The parties will use their reasonable endeavours to reach agreement concerning the proposed change.
2. **Severability**

15.1 The provisions of this Agreement shall be deemed severable, and the unenforceability of any one of the provisions shall not affect the enforceability of other provisions. In the event that a provision is found to be unenforceable, the parties shall substitute that provision with an enforceable provision that preserves the original intent and position of the parties.

1. **Counterparts and E-Signing**

16.1 This Agreement may be executed in counterparts or duplicates, each of which, when executed and delivered, shall be an original, and such counterparts or duplicates together shall constitute one and the same instrument.

16.2 This Agreement may be executed by Electronic Signature.

1. **Entire Agreement**

17.1 This document constitutes the entire agreement between the parties and supersedes all other prior agreements between the parties for the provision of such services.

1. **Law and Jurisdiction**

18.1 This Agreement shall be governed by and construed in accordance with the law of England and each party agrees to submit to the exclusive jurisdiction of the courts of England.

Signed …………………………………. Signed ………………………………….

for ECITB for the Contractor

Date ……………………………………. Date …………………………………….

Signed ………………………………….

for ECITB

Date …………………………………….

This agreement should be returned within 14 days of the date of issue.

**The Schedule**

1. **Definitions:**

 In this specification the following terms shall have the following meanings:

**“APM”** means the Association for Project Management ([www.apm.org.uk](http://www.apm.org.uk/))

**“ChPP”** is the Chartered Project Professional status & inclusion on the Register of Chartered Project Professionals that is based on the Chartered Project Professional standard which demonstrates attainment of the APMs defined level of technical knowledge, professional practice & ethical behaviour.

<https://www.apm.org.uk/media/35526/the-chartered-project-professional-standard-march-19-web.pdf>

**“Programme”** means a series of activities to be proposed by the tenderer to facilitate a group of around 30 suitable individuals demonstrate that they meet the ChPP standard.

“**ECI**” means the Engineering Construction Industry. For more information on the ECI and the ECITB see: <https://www.ecitb.org.uk/about-us/>

1. **The Services**

The Contractor is to develop, deliver and manage a Programme to enable around 30 candidates to achieve the APM ChPP accreditation. Candidates must be from the Engineering Construction Industry (ECI). Requirements are as detailed within the published Specification.

Embedded here are the Specification and accepted tender response and pricing schedule, which form part of the contract.

**<Embed Specification and Title>**

**<Embed Tender Response and Title>**

**<Embed Pricing Schedule and Title>**

1. **The Programme**

The Programme and the Price agreed by the Parties are set out in the following table, which shows the achievement milestones which must be achieved in order to release payment of the Price.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Milestone**  | **Achievement**  | **By (date):**  | **Subtotal** | **Invoice total** |
| 1 | On completion of recruitment, selection and commencement of a full cohort of learners  |  | 30% of fee |  |
| 2 | On Submission of applications to APM  |  | 30% of fee |  |
| 3 | Upon successful completion of 80% of cohort |  | 40% of fee |  |
| **Total price (subject to VAT at prevailing rate – currently 20%):** | £ | £ |

The Price is inclusive/exclusive of VAT.

1. **The Rates**

Day rates charged by the Contractor for additional services as required:

|  |
| --- |
|  |
| **Rate/Level**  | **Daily rate**  |
| Director  |  |
| Associate Director  |  |
| Research Manager  |  |
| Research Executive  |  |
| Associate  |  |

The Rates are exclusive of VAT.

1. **Key Personnel**

The Key Personnel are:

Name:

Role:

Name:

Role:

1. **Expenses**

Not Used.

This contract is for a fixed, all-inclusive price.

1. The Project Manager is [INSERT NAME]