

EXECUTION VERSION

CAPABILITY BUILDING CONTRACT

DATED NOVEMBER 2016

COLLEGES OF EXCELLENCE COMPANY

and

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT FOUNDATION

and

AL KHALEEJ TRAINING AND EDUCATION CORPORATION

**for the enhancement of performance output at technical and vocational colleges
in the Kingdom of Saudi Arabia**

ALLEN & OVERY

Allen & Overy LLP

0109473-0000004 DB:10637474.3

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THIS AGREEMENT is made on -- November 2016

BETWEEN:

- (1) **COLLEGES OF EXCELLENCE COMPANY**, a limited liability company incorporated under the laws of Saudi Arabia whose registered office is at Granada Oasis Business Park, Building A4, 9th Floor, P.O. Box 2646, Riyadh 13241-7180 (the **Procurer**), a wholly owned government entity and a subsidiary of the Technical and Vocational Training Corporation (**TVTC**);
- (2) **RANCHO SANTIAGO COMMUNITY COLLEGE FOUNDATION**, a United States tax-exempt educational corporation organized and existing under the laws of the State of California, whose registered office is at 2323 North Broadway, Santa Ana, California, US 92706 (**Rancho**); and
- (3) **AL KHALEEJ TRAINING AND EDUCATION CORPORATION**, a public joint stock company organized and existing under the laws of Saudi Arabia with its principal business office located at Burj AlKhaleej Training and Education, Olaya Street, 5th Floor, Riyadh, Kingdom of Saudi Arabia (**Al Khaleej**),

(**Rancho and Al Khaleej together constitute the Training Provider**),

WHEREAS:

- (A) The Procurer is a limited liability company which has been established by Takamol (as defined below) and TVTC for the purpose of promoting training and vocational colleges in Saudi Arabia.
- (B) The Procurer aims to improve the standards of training and vocational colleges in Saudi Arabia and the Training Provider wishes to carry out the services necessary to achieve such aims.
- (C) This Agreement sets out the terms agreed between the Procurer and the Training Provider for the provision of the Services (as defined below).

NOW IT IS AGREED as follows:

1. GENERAL PROVISIONS

1.1 Definitions

In this Agreement, the following words and expressions shall have the meanings set out below, except where expressly set out otherwise.

Academic Year means (i) in respect of the initial period from 5 February 2017 to 20 July 2017 (second semester of 2016-17); (ii) in respect of the first Academic Year, from September 2017 to June 2018; (iii) in respect of the second Academic Year from September 2018 to June 2019 and (iv) in respect of the final period from September 2019 to January 2020, the actual dates to be notified by the Procurer at least ninety (90) days prior to the start of each Academic Year.

ACCET means the Accreditation Council for Continuing Education and Training.

ACCET Accreditation means the accreditation process carried out in respect of each of the Colleges by ACCET pursuant to Clause 17.3.

Actual Base Payment means the aggregate of the actual Base Payments payable to the Training Provider at the end of each Academic Year following deduction of any amounts in accordance with Clause 6.3 and Schedule 4.

Advance Base Payment means the estimated Base Payment paid in advance to the Training Provider pursuant to Clause 6.2.

Advance Payment Bond means the bond to be provided by the Training Provider in accordance with Clause 8(a).

Affiliate means, with respect to any person, any other person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such person. For the purposes of this definition, **control** means direct or indirect ownership of one hundred per cent (100%) of the issued share capital.

Ancillary Services means the services listed in Schedule 12, and such other services as may be agreed between the Training Provider and the Procurer from time to time.

Annual Budget has the meaning set out in Schedule 7.

Annual Performance Report has the meaning set out in Schedule 7.

Annual Report has the meaning given to that term in Clause 6.5(b).

Applicable Laws means all published laws, treaties, regulations, standards, decrees, rules, decisions, judgments, orders, injunctions, authorisations, directives, permits, licences or authorisations, which are now, or may in the future become, applicable to the performance of the Services and the operation of the Colleges.

Authorisations means the Training Provider's Authorisations and the Procurer's Authorisations.

Base Payment has the meaning set out in Schedule 4.

Bond Amount has the meaning given to that term in Clause 9.2(a).

Business Day means any day that is not a Friday or Saturday, during which banks are generally open for business in Saudi Arabia.

Capital Expenditure has the meaning given to that term in Clause 4.5

Change in Control means a direct or indirect change in Control of a Party (whether through merger, spin-off, sale of shares or other equity interests, or otherwise) through a single transaction or series of related transactions.

Change in Law means any change in the Applicable Laws of Saudi Arabia (including the introduction of new Applicable Laws and/or the repeal or modification of existing Applicable Laws) or the NOSS after the Effective Date.

Colleges means the training and vocational Colleges and any relevant branches listed in Schedule 1 and **College** means any one of them.

College Assessment has the meaning given to that term in Schedule 7.

College Assessment and Improvement Plan means the overall Deliverable set out in Schedule 7.

College Board has the meaning given to that term in Clause 5(b).

College Dean means the person appointed to the role of Dean in each of the Colleges by TVTC.

College Improvement Plan has the meaning given to that term in Schedule 7.

Confidential Information has the meaning given to that term in Clause 30.1.

Control means the ownership directly or indirectly of fifty percent (50%) or more of the voting rights in a legal entity.

Cost means all expenditure reasonably incurred (or to be incurred) by the Training Provider including overheads and similar charges, but does not include profit.

Curricula Improvement Plan has the meaning given to that term in Schedule 7.

Deliverables means the Service Reports and the Performance Reports.

Dispute has the meaning given to that term in Clause 33.2.

Disputed Amount has the meaning given to that term in Clause 7.2(a).

Effective Date has the meaning given to that term in Clause 2.1(b).

Equivalent Qualifications means international qualifications agreed in writing by the Procurer from time to time.

Fee means the total fees payable by the Procurer to the Training Provider in respect of all Colleges over the course of the Initial Term as set out in Schedule 4.

Good Industry Practice means the exercise of that degree of skill, diligence and prudence that would reasonably and ordinarily be expected from a skilled, prudent and experienced international education provider applying the standards generally adopted by a skilled, prudent and experienced international education provider performing services of a similar scope and nature as the Services under this Agreement.

Governmental Authority means any government whether federal, state, provincial or municipal, or any ministry, department, court, commission, board, branch, agency, institution or similar authority of any such government.

Initial Cost has the meaning given to that term in Clause 6.1.

Initial Term means the period ending on the last day of the third full Academic Year following the Effective Date, being a date no later than 31 January 2020.

Institutional Review means the annual institutional review carried out in respect of each College pursuant to Clause 17.1 in accordance with the assessment framework developed by SSS and/or TVTC.

Institutional Review Grade means the grade awarded to the College following an Institutional Review.

Intellectual Property means all intellectual and industrial property, including any patent, patent application, trade mark, trade mark application, registered design, registered design application, trade name, trade secret, business name, discovery, invention, process, formula, know-how, rights of

confidence, improvement, technique, copyright, rights in computer software, unregistered design rights, technical information or drawings, database rights, and rights in the nature of unfair competition and rights to sue in passing off, and including in each case any pending applications or rights to apply for registration of any of these rights, and any analogous rights to any of these rights, wherever in the world arising.

JV Leader has the meaning given to that term in Clause 2.3(b).

Key Personnel means those Personnel agreed between the Parties to be nominated to the key positions listed in Schedule 9 by the respective deadlines set out therein, as such list may be updated from time to time following agreement between the Parties.

KPI Payment has the meaning given to that term in Schedule 4.

Milestone means the milestones listed in Schedule 4.

Milestone Payment has the meaning given to that term in Schedule 4.

NOSS means the national occupational skills standards which are developed by SSS as may be updated from time to time.

Other Force Majeure has the meaning given to that term in Clause 21.1(a).

One-Year Employment Rate means the number of College graduates who are employed on a full-time basis twelve (12) months following the date of graduation.

Parent Company Guarantee has the meaning given to that term in Clause 10(a).

Parties means the Procurer and the Training Provider and **Party** means either of them as the context so requires.

Performance Bond has the meaning given to that term in Clause 9.2.

Performance Payment has the meaning given in Schedule 4.

Performance Reports means the reports set out in Schedule 7.

Persistent Breach means: (i) the submission of three consecutive Deliverables more than four weeks after the due date for submission set out in Schedule 4; or (ii) where performance does not meet the Starting Level for two consecutive Academic Years; or (iii) where the Training Provider fails to comply with the same TVTC Operational KPI in two successive Semesters.

Personnel means:

- (a) the Training Provider's Representative;
- (b) the Key Personnel; and
- (c) all other staff, labour and other employees of the Training Provider.

Personnel Quota means the number of Personnel guaranteed by the Training Provider for the purposes of the Training Quota as set out in Part 2 of Schedule 11.

Project means the improvement of performance of the Colleges through the provision of the Services by the Training Provider.

Prohibited Activities means the activities listed in Schedule 8.

Political Force Majeure has the meaning given to that term in Clause 19.1(a).

Procurer's Authorisations means all licences, consents, permits, authorisations and other approvals which may be required under any Applicable Laws in order for the Training Provider to provide the Services, and which are legally required to be in the name of the Procurer and/or can only be applied for by the Procurer.

Procurer's Representative has the meaning given to that term in Clause 14(b).

Proposal means the proposal submitted as part of the Training Provider's technical bid dated 5 December 2014, including all clarifications and amendments.

RFP means the request for proposal issued by the Procurer on 16 October 2014 in respect of the provision of the Services.

SAR means Saudi Arabian Riyals, the lawful currency of the Kingdom of Saudi Arabia.

Saudi Skills Standards or **SSS** means Saudi Skills Standards LLC, a limited liability company organised and existing under the laws of the Kingdom of Saudi Arabia whose office is at Granada Oasis Business Park, Building A4, 6th Floor, Riyadh, or any successor established or appointed to act as a regulator of technical and vocational training in the Kingdom of Saudi Arabia.

Scope of Services means the document set out in Schedule 2 as may be updated from time to time in accordance with this Agreement.

Semester means, in respect of the first Semester from 5 February 2017 to 20 July 2017 and in respect of all other Semesters, the dates to be notified by the Procurer at least ninety (90) days prior to the start of each Academic Year as being the start date and end date for each Semester for that Academic Year.

Semester Performance Report has the meaning set out in Schedule 7.

Services means the services set out in the Scope of Services and any and all work and/or services reasonably incidental thereto to be performed by the Training Provider.

Service Reports means the reports set out in Schedule 7.

Signing Date means the date on which this Agreement is signed by both Parties.

SSS Qualifications means the official trainer qualifications developed and awarded by SSS.

Start-Up Period means the period prior to the Signing Date during which period the Training Provider will develop the College Assessment and Improvement Plan.

Starting Level means the minimum performance level for the purposes of calculating the KPI Payment as set out in Schedule 4.

Suitable Replacement has the meaning set out in Clause 13.2(f).

Takamol (previously known as Hadaf Holding Company for Business Services Ltd), means Takamol Holding Company for Business Services Ltd., a limited liability company incorporated in Saudi Arabia wholly owned by TVTC and the HRDF.

Term has the meaning given to that term in Clause 3.2.

Total Contract Value shall mean SAR 54,533,124 (Saudi Riyals fifty four million, five hundred and thirty three thousand, one hundred and twenty four only), being the maximum value of all payments payable by the Procurer to the Training Provider pursuant to Clause 6 of this Agreement.

Training Provider Head means the person appointed to that role in Schedule 9, as such person may be replaced from time to time in accordance with the terms of this Agreement.

Training Provider's Authorisations means all licences, consents, permits, authorisations and other approvals which may be required under any Applicable Laws in order for the Training Provider to provide the Services and perform its obligations herein and which are legally required to be in the name of the Training Provider and/or can only be applied for by the Training Provider.

Training Provider's Proposal has the meaning

given to that term in Clause 18.2(a).

Training Provider's Representative has the meaning given to that term in Clause 14(a).

Training Quota has the meaning given to that term in Clause 13.3.

Training Requirements means the minimum training requirements and standards to be implemented and maintained by the Training Provider, as more specifically set out in Schedule 11.

TVTC Operational KPIs means the KPIs set out in Schedule 13.

Variation means any change to the Scope of Services or this Agreement which is instructed or approved as a variation under Clause 18.

1.2 Interpretation

In this Agreement, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word **agree**, **agreed** or **agreement** require the agreement to be recorded in writing;
- (d) references to a **person** (or to a word importing a person) shall be construed so as to include that person's successors in title and assigns or transferees, and also be construed as including an individual, firm, partnership, trust, joint venture, company, unincorporated body, associated organisation, any government or state or any agency of a government or state, or any local or municipal authority or other government body (whether or not in each case having separate legal personality);
- (e) **written** or **in writing** means handwritten, typewritten, printed or electronically made, and resulting in a permanent record;
- (f) **include**, **including** and **included** (or similar words or expressions) shall be deemed to be followed by the expression "without limitation" or "but not limited to" whether or not they are followed by such phrases or words of like import;

- (g) **day** means a calendar day and **year** means 12 calendar months;
- (h) references to this Agreement or to any other document shall be construed as references to this Agreement or that other document, as amended, varied, novated, supplemented or replaced from time to time;
- (i) references to Clauses and Schedules are to Clauses of and Schedules to this Agreement;
- (j) if an obligation of either Party falls on a day that is not a Business Day, the due date for the performance of the obligation will be the immediately subsequent Business Day;
- (k) a reference to any thing is a reference to the whole and each part of it; and
- (l) headings and recitals are for convenience only and shall not be taken into consideration in the interpretation of this Agreement.

1.3 Priority of Documents

For the purposes of interpretation, in the event of any ambiguity, inconsistency or conflict between the documents listed below, the priority of documents shall be as in accordance with the following sequence:

- (a) Clauses 1 to 35 (inclusive) of this Agreement;
- (b) the Scope of Services;
- (c) all other Schedules;
- (d) the RFP;
- (e) the Proposal; and
- (f) other documents (if any) expressly stated to form part of this Agreement.

2. EFFECTIVENESS

2.1 Effective Date

- (a) Subject to Clause 2.1(c), this Agreement shall enter into full force and effect on the Signing Date.
- (b) Within fifteen (15) days of receipt of the relevant items referred to in Clause 2.2(a), the Procurer shall provide a written notice to the Training Provider confirming that each of the conditions precedent set out in Clause 2.2(a) have been satisfied or waived (the **Effective Date**).
- (c) Until the occurrence of the Effective Date, Clauses 6.2 to 6.5 of this Agreement shall not enter into force.

2.2 Conditions Precedent

- (a) The conditions precedent are receipt by the Procurer of:
 - (i) the Parent Company Guarantee, duly executed by the guarantor, to the extent required pursuant to Clause 9.1(a)(i);

- (ii) the Performance Bond duly executed by the issuing financial institution; and
 - (iii) evidence of the Training Provider having obtained the Authorisations which it is required to obtain under Clause 16.1.
- (b) On and from the Signing Date, the Training Provider shall, as soon as practicable, satisfy or procure the satisfaction of each condition precedent to the Effective Date under this Clause 2.

2.3 Joint and Several Liability

- (a) To the extent that the Training Provider constitutes a consortium of two or more persons (each being a **Member**), the Members of the Training Provider are each in their individual capacity jointly and severally liable to the Procurer for the performance or non-performance of all obligations and duties to be performed by the Training Provider under the terms and conditions of this Agreement.
- (b) The Members hereby appoint Rancho as their leader (the **JV Leader**). The JV Leader has sole authority to bind the Training Provider and each of the Members for all matters related to this Agreement. Rancho's appointment as JV Leader may not be revoked without the prior written consent of the Procurer.

3. APPOINTMENT OF THE TRAINING PROVIDER AND THE TERM

3.1 Appointment of the Training Provider

The Procurer appoints the Training Provider to provide, and the Training Provider agrees to provide, the Services pursuant to and in accordance with the terms of this Agreement.

3.2 Term

Subject to Clause 2, unless terminated earlier in accordance with Clause 23, this Agreement shall commence on the Signing Date and continue in full force and effect until the later of the last day of:

- (a) the Initial Term; and
 - (b) any extension to the term granted in accordance with Clause 3.3,
- (the **Term**).

3.3 Extension of Term

- (a) Not later than six (6) months prior to the expiry of the current Term, the Procurer may notify the Training Provider in writing of its desire to extend the Term by an additional period of one (1) year starting from the expiry date of the current Term, together with the terms on which such extension will be granted, including any change to the Fee.
- (b) The Training Provider shall have thirty (30) days from the date of any notice from the Procurer pursuant to Clause 3.3(a) to either accept or reject the extension. If the Training Provider fails to accept or reject such extension within the thirty (30) day period, the Term shall be deemed to have been extended in accordance with the Procurer's notice.

3.4 The Role of TVTC

- (a) The Training Provider acknowledges and agrees that TVTC is the existing operator of the Colleges and employs the College staff. As such, the Procurer will refer all decisions regarding the operation of the Colleges, management of the College staff (including performance reward schemes) and any material Capital Expenditures to TVTC for approval.
- (b) The Procurer will be solely responsible for administering this Agreement and making all payments set out in this Agreement. The Procurer will also be the beneficiary of all security posted by the Training Provider in accordance with the terms of this Agreement.

4. SERVICES

4.1 General

On and from the Signing Date, the Training Provider shall provide the Services in respect of each College in accordance with this Agreement.

4.2 Standard of Performance

- (a) The Training Provider shall perform the Services:
 - (i) in a safe and reliable manner;
 - (ii) in accordance with the Scope of Services, the Training Requirements, the Proposal, the NOSS, all Applicable Laws, all applicable TVTC policies and procedures (including but not limited to the TVTC Operational KPIs) and Good Industry Practice;
 - (iii) in accordance with any national values and beliefs in Saudi Arabia;
 - (iv) to safeguard the integrity and service life of each College;
 - (v) to ensure that all relevant safety policies and procedures are implemented to ensure the health and safety of each student, the College staff and the Personnel;
 - (vi) so as not to cause a breach of any Authorisations;
 - (vii) in co-operation with any relevant Governmental Authority, including local and national education authorities; and
 - (viii) in accordance with the Deliverables.
- (b) If at any time the Procurer is of the opinion that the Training Provider is not performing the Services in accordance with Clause 4.2(a), the Procurer shall so notify the Training Provider providing details of such non-compliance and the Training Provider shall immediately take such steps as are required in order to remedy such non-compliance.
- (c) The Training Provider shall not carry on any Prohibited Activities and, to the extent it becomes aware of any Prohibited Activities being carried on at the College, shall notify the Procurer of such Prohibited Activities immediately upon becoming so aware.

4.3 Deliverables

- (a) The Training Provider shall prepare the Service Plans and the Performance Reports in accordance with Schedule 7 (the **Deliverables**).

- (b) The Training Provider shall submit full and proper versions of the Deliverables by no later than the respective deadlines set out in Schedule 4. The Procurer shall consider each proposed Deliverable and, within 5 business days of receipt, either accept or reject the proposed Deliverable as having been properly submitted. If the Procurer neither accepts nor rejects the submission of a Deliverable within five (5) business days of receipt, the Deliverable shall be deemed to be submitted at the end of that five (5) business day period. A Milestone shall be deemed achieved for the purposes of Schedule 4 on the date on which the Procurer accepts the relevant Deliverable as having been properly submitted.
- (c) Within forty five (45) days of the date on which the Procurer accepts a Deliverable as having been properly submitted in accordance with Clause 4.3(b), the Procurer shall consider the proposed Deliverable and shall have the right to request amendments to be made. During such 45-day period, the Training Provider shall promptly provide to the Procurer all supplemental information as may be reasonably requested by the Procurer and, at the request of the Procurer, shall meet with the Procurer to explain and discuss the proposed Deliverables.
- (d) If the Procurer requests amendments to a proposed Deliverable, the Training Provider shall, within thirty (30) days after receipt of such request, submit to the Procurer the revised Deliverable incorporating the amendments requested by the Procurer except those which, in the reasonable and professional opinion of the Training Provider acting in accordance with Good Industry Practice (i) would prevent the Training Provider from performing its obligations in accordance with Clause 4.2, or (ii) would cause the Training Provider to be in breach of any other provision of the Agreement. When submitting the amended Deliverables to the Procurer, the Training Provider shall identify any amendments requested by the Procurer which have not been incorporated in the amended Deliverables, together with reasons for their omission. The Procurer shall then either approve or request further amendments to the Deliverables which the Training Provider shall be obliged to incorporate.

4.4 Changes to Deliverables

- (a) The Training Provider shall be entitled at any time during the course of an Academic Year to propose adjustments to any Deliverables if there has been a change in circumstances requiring an adjustment to the relevant Deliverable or because, in the reasonable opinion of the Training Provider, the proposed adjustment would assist the Training Provider in achieving the strategic objectives set out in Clause 4.2.
- (b) The Training Provider shall apply to the Procurer in writing for approval to such adjustments, setting out:
 - (i) details of the proposed adjustment;
 - (ii) the reasons for proposing the adjustment; and
 - (iii) any increase or reduction in costs resulting from such adjustment.
- (c) No adjustment shall be made to any Deliverable without the prior written consent of the Procurer.

4.5 Capital Expenditure

- (a) The level and type of capital expenditures to be implemented for each College shall be included in the College Improvement Plan and Annual Budget for that College which are to be submitted on an annual basis in accordance with Schedule 7 (**Capital Expenditures**).

- (b) The level and type of Capital Expenditures shall be reviewed and approved annually by the Training Provider and the Procurer.
- (c) The Training Provider is responsible for implementing all Capital Expenditures subject to receiving the prior written consent of the Procurer in respect of all such Capital Expenditures, including the following activities to the extent set out in Schedule 2:
 - (i) the procurement of materials and equipment;
 - (ii) hiring and supervising contractors and related personnel;
 - (iii) payment of suppliers and contractors in accordance with contract terms; and
 - (iv) monitoring project and budget execution to ensure that projects are implemented within the approved timetable and Annual Budget.

4.6 Training Provider's Acceptance of the Colleges

Subject to the terms of this Agreement, the Training Provider acknowledges and agrees that it has been given access to each College and has fully acquainted itself, and is or will, at the Signing Date, be satisfied with all local, regional and national conditions which could affect its performance of the Services including, the following:

- (a) the location of each College;
- (b) the equipment, facilities and resources needed for the performance of the Services;
- (c) the Applicable Laws, local customs, health and safety at work requirements, fiscal and social legislation and practices; and
- (d) generally, all and any other local conditions and/or other conditions of each College and their location that affect or may affect the performance of the Services and any other obligations of the Training Provider under this Agreement,

and the Training Provider therefore accepts all responsibility for having properly evaluated, as of the Signing Date, all costs and contingencies for successfully performing the Services and satisfying all other obligations of the Training Provider under this Agreement and agrees to bear all and any consequences resulting from any improper evaluation.

4.7 Ancillary Services

- (a) The Training Provider shall be responsible for the Ancillary Services, including the management of existing service contracts and the procurement of new service providers where, in the reasonable opinion of the Training Provider, new service providers are required.
- (b) No later than the day falling thirty (30) days after the end of each Semester, the Training Provider shall submit to the Procurer an invoice for all reasonable and substantiated Costs incurred in respect of the Ancillary Services for the relevant Semester. Any profit margin payable in respect of the Ancillary Services shall be agreed in advance with the Procurer.

5. COLLEGE MANAGEMENT

- (a) The College Dean for each College and the Training Provider Head will together constitute the senior management team for each College (**the Senior Management Team**). The Senior

Management Team will be responsible for the overall direction of the management of the College in accordance with the College Improvement Plan and the Annual Budget. The Senior Management Team will use all reasonable endeavours to resolve any issues that arise in respect of the operation of the College and shall only escalate matters to the College Board as a last resort.

- (b) The Senior Management Team shall within two months of the Effective Date establish a college board with a minimum of eight members, including the College Dean and the Training Provider Head (the **College Board**). Each of the College Dean and the Training Provider Head will be entitled to appoint an equal number of representatives to the College Board. The maximum number of members of the College Board will be agreed with the Procurer. Representatives of the Procurer and TVTC may be required to attend meetings of the College Board to assist in relation to the deliberations of the College Board from time to time on a non-voting basis. The College Board shall be the forum whereby any matter relating to the operation of the College can be discussed with the intention of ensuring the efficient operation of the College and avoiding disputes.
- (c) Any member of the Senior Management Team or the College Board may call a meeting of the College Board at any time after the Effective Date (as, when and where necessary) but in any case no less than two times per Semester, and such meeting must take place no later than seven (7) days after being called. If no matters have been referred by the Senior Management Team for resolution by the College Board, the Senior Management Team shall provide the College Board with an update on College operations.
- (d) Decisions of the College Board shall be determined by a majority vote of members participating in a meeting provided at least one representative of the Training Provider is in attendance. Members may designate an alternate representative who shall have full voting powers and members, or such alternates, may attend by videoconference or by conference phone facility.
- (e) A decision signed by all of the members of the College Board shall be as valid and effectual as if it had been passed at a meeting of the College Board and may be contained in one or several documents each signed and approved by one or more members. A duly signed decision of the College Board shall be provided by the Training Provider to the Procurer within seven days of the decision being passed. The language of meetings shall be English.
- (f) The chairman of the College Board shall be the College Dean. The Training Provider Head shall have a casting vote in all decisions of the College Board. The Procurer shall be notified each time the casting vote is used by the Training Provider Head.

6. PAYMENT

6.1 Initial Cost

No later than the day falling thirty (30) days after the Signing Date, the Training Provider shall submit to the Procurer an invoice for the total amount of all reasonable and substantiated Costs incurred by the Training Provider during the Start-Up Period in respect of the preparation of the College Assessment and Improvement Plan for each College (the **Initial Cost**). Such invoice shall be payable in accordance with Clause 6.6.

6.2 Base Payment

- (a) No later than the day falling thirty (30) days after the Effective Date in respect of the first Semester and no later than the day falling thirty (30) days prior to the start date of each

subsequent Semester, the Training Provider shall submit to the Procurer an invoice for the total estimated Base Payment (the **Advance Base Payment**) for the relevant Semester.

- (b) Subject to Clause 7.2, the Procurer shall pay the Training Provider the Advance Base Payment in accordance with the invoice submitted pursuant to Clause 6.2(a) provided that the Training Provider has provided the Procurer with the Advance Payment Bond in accordance with the requirements of Clause 8.
- (c) If the Training Provider does not provide the Procurer with the Advance Payment Bond in accordance with the requirements of Clause 8, the Training Provider shall not be entitled to payment of the Advance Base Payment and shall submit to the Procurer an invoice for the total Base Payment for the relevant Semester no later than the day falling thirty (30) days after the end of the relevant Semester.

6.3 Actual Base Payment

No later than the day falling thirty (30) days after the end date of each Academic Year, the Training Provider shall submit to the Procurer:

- (a) a report identifying the number of the Personnel Quota who have complied with the Training Quota for each College; and
- (b) an invoice for the Actual Base Payment for the relevant Semester, which shall be calculated in accordance with Schedule 4 on the basis of the information which has been provided pursuant to Clause 6.3(a).

6.4 Reconciliation

Following receipt of the report by the Procurer in accordance with Clause 6.3, if the aggregate of the Base Payments paid to the Training Provider in accordance with Clause 6.2 over the course of the Academic Year is more than the Actual Base Payment for the relevant Academic Year, then:

- (a) the Training Provider shall refund the Procurer an amount equal to the difference between the Base Payment and the Actual Base Payment within thirty (30) days of receipt of the report by the Procurer pursuant to Clause 6.3 (the **Reconciliation Amount**); or
- (b) the Procurer shall off-set the Reconciliation Amount against future Base Payments payable to the Training Provider until the amount of the Reconciliation Amount has been repaid in full to the Procurer.

6.5 Performance Payment

- (a) The Training Provider shall perform the Services with the aim of achieving payment of the full Performance Payment for each College.
- (b) On or before the last day of the Academic Year, the Training Provider shall submit to the Procurer a report (the **Annual Report**) summarising the Training Provider's assessment of its performance of the Services for that Academic Year with reference to the Milestone Payments and the KPI Payments for each College. The Annual Report shall identify the following:
 - (i) in respect of the Milestone Payment, the number of instances where the Training Provider failed during the course of the Academic Year to comply with the Milestones and the resulting percentage that the Procurer is entitled to deduct from the Milestone Payment in accordance with Schedule 4;

- (ii) in respect of the KPI Payment:
 - (A) the SSS Institutional Review Grade;
 - (B) the total number of College training staff employed at each College at the end of the Academic Year together with the number of those College training staff who hold SSS Qualifications or Equivalent Qualifications; and
 - (C) the One Year Employment Rate.
- (c) Following receipt of the Annual Report, the Procurer shall, in respect of each College, proceed to determine the Performance Payments due to the Training Provider.
- (d) As soon as reasonably practicable following the end of the Academic Year, and in any event no later than sixty (60) days after the end of the Academic Year, the Procurer shall, in respect of each College, notify the Training Provider of the Performance Payments due in accordance with Schedule 4.
- (e) Following notification by the Procurer pursuant to Clause 6.5(d), the Training Provider shall submit to the Procurer an invoice for the amount of the aggregate of the Performance Payments for each College (broken down on a College-by-College basis).
- (f) If the Training Provider disagrees with a determination of the Procurer as to the appropriate Performance Payment payable pursuant to this Clause 6.5, such disputed amount shall be resolved in accordance with the provisions of Clause 7.2.

6.6 Total Contract Value

Notwithstanding this Clause 6, or any other terms of this Agreement, the sum of the payments due and payable by the Procurer to the Training Provider in accordance with the terms of this Agreement during the Initial Term shall not exceed the Total Contract Value.

7. INVOICING AND PAYMENT

7.1 Payment

Subject to Clause 7.2, any invoices received by a Party pursuant to Clause 6 shall be paid by the relevant Party within thirty (30) days of receipt.

7.2 Disputed Amounts

- (a) If the Procurer reasonably disputes the Training Provider's entitlement to any part of the amount invoiced by the Training Provider pursuant to Clause 6, the Procurer shall notify the Training Provider as soon as reasonably practicable of the amount which is in dispute (the **Disputed Amount**).
- (b) The Procurer may withhold payment of any Disputed Amount pending agreement or determination of the Training Provider's entitlement to the Disputed Amount, but shall pay any undisputed amounts on the due date in accordance with Clause 7.1.
- (c) Within twenty (20) days of receipt by the Training Provider of any notice served by the Procurer pursuant to Clause 7.2(a), the Training Provider shall respond by notifying the Procurer as to whether or not it agrees with the statements made in that notice and if:

- (i) the Training Provider indicates that it does agree, or if the Training Provider fails to make such a response within the time limit, the Procurer shall be entitled to retain, on a permanent basis, any Disputed Amounts; or
 - (ii) the Training Provider responds that it does not agree with all or any of the statements in the notice served by the Procurer pursuant to Clause 7.2(a), the matter or matters in dispute shall be determined by an independent expert appointed in accordance with Clause 33.1.
- (d) If the determination of any dispute conducted pursuant to Clause 7.2(c)(ii) shows that the Procurer has withheld any amount that the Training Provider was entitled to be paid, the Procurer shall promptly, and in any event no later than thirty (30) days after such determination, pay such amount to the Training Provider.

7.3 Set-off

- (a) The Training Provider shall not be entitled to retain or set off any amount due to the Procurer by it under this Agreement.
- (b) The Procurer may retain or set off any amount owed to it by the Training Provider against any amounts due to the Training Provider under this Agreement.

7.4 Audit

Pursuant to Clause 17.2, the Procurer shall have the right to, and may from time to time designate any responsible person to:

- (a) carry out inspection and audit tasks of a financial, technical or other nature in relation to the provision of Services, provided that such inspections and audits shall be carried out during normal business hours and shall not be disruptive to the students, the day to day operations of each College or the Training Provider's performance of its obligations pursuant to this Agreement; and
- (b) discuss the affairs, finances and accounts of the Training Provider which relate to this Agreement or are otherwise relevant to performance of the Services with the Training Provider's officers and staff at such time as may reasonably be requested.

8. ADVANCE PAYMENT BOND

- (a) As security for the payment of each Advance Base Payment, the Training Provider shall provide the Procurer with an unconditional and irrevocable on demand bond (the **Advance Payment Bond**) in amounts and currencies equal to the sum of the Advance Base Payment payable in respect of the relevant Semester issued by a bank approved by the Procurer and in the form set out in Schedule 5.
- (b) The Training Provider shall ensure that the Advance Payment Bond is valid and enforceable until the expiry of the relevant Semester for which the Advance Base Payment is made. If the expiry date of the Advance Payment Bond is likely to occur before the expiry of the relevant Semester, then not less than twenty-eight (28) days prior to the expiry of the relevant Semester, the Training Provider shall extend the validity of the Advance Payment Bond until the expiry of the relevant Semester.
- (c) If the Training Provider does not extend the validity of the Advance Payment Bond as required under Clause 8(b), then the Procurer shall be entitled to call in the full amount of the Advance

Payment Bond and hold it as cash security until such time as the Training Provider supplies a replacement Advance Payment Bond acceptable to the Procurer. The Procurer will then return the cash retained as security to the Training Provider less such amounts as are required to cover the costs incurred by the Procurer as a result of such failure by the Training Provider.

- (d) The Procurer shall return the Advance Payment Bond to the Training Provider within twenty-one (21) days after the expiry of the relevant Semester.

9. SECURITY

9.1 Security Options

- (a) As security for the performance of its obligations under this Agreement, the Training Provider may, subject to Clause 9.1(b), elect to provide either of the following forms of security package:
 - (i) an unconditional and irrevocable bond in the amount of ten per cent (10%) of the sum of the Base Payment and Performance Payment payable during the Initial Term, being an amount of SAR 4,859,500.00, in accordance with Clause 9.2, together with a parent company guarantee in accordance with Clause 10; or
 - (ii) an unconditional and irrevocable bond in the amount of twenty per cent (20%) of the sum of the Base Payment and Performance Payment payable during the Initial Term, being an amount of SAR 9,719,000.00, in accordance with Clause 9.2, with no parent company guarantee.
- (b) The Training Provider shall be obliged to:
 - (i) provide the form of security set out in Clause 9.1(a)(ii) if, in the opinion of the Procurer, the financial standing of the entity providing the parent company guarantee is not acceptable to the Procurer (as evidenced by the last three (3) years of audited financial accounts); or
 - (ii) replace the form of security set out in Clause 9.1(a)(i) with the form set out in Clause 9.1(a)(ii) if, during the course of the Initial Term, the financial standing of the entity providing the parent company guarantee is reduced to a level which is not acceptable to the Procurer (as evidenced by the last three (3) years of audited financial accounts).

9.2 Provision of Performance Bond

As security for the performance of its obligations under this Agreement, the Training Provider shall, at its own cost, obtain and deliver to the Procurer as a condition precedent to the Effective Date, a performance bond (the **Performance Bond**) that is:

- (a) an unconditional and irrevocable bond in the amount set out in Clause 9.1(a)(i) or Clause 9.1(a)(ii) (as applicable) (the **Bond Amount**);
- (b) in the form as set out in Schedule 6;
- (c) valid and enforceable until the expiry of the Term; and
- (d) issued by a bank established and authorised to carry out business in Saudi Arabia and approved by the Procurer.

9.3 Replacement of Performance Bond

- (a) The Training Provider shall ensure that the Performance Bond is valid and enforceable until the expiry of the Term. If the expiry date of the Performance Bond is likely to occur before the expiry of the Term, then not less than twenty-eight (28) days prior to the expiry of the Term, the Training Provider shall extend the validity of the Performance Bond until the expiry date of the Term.
- (b) If the Training Provider does not extend the validity as required under this Clause 9.3, the Procurer shall be entitled to call in the full amount of the Performance Bond and hold it as cash security until such time as the Training Provider supplies a replacement Performance Bond acceptable to the Procurer. The Procurer will then return the cash retained as security to the Training Provider less such amounts as are required to cover the costs incurred by the Procurer as a result of such failure by the Training Provider.

9.4 Return of Performance Bond

The Procurer shall return the Performance Bond to the Training Provider on the later of:

- (a) twenty-one (21) days after the expiry or termination of this Agreement; or
- (b) the date on which the Procurer confirms that the Training Provider has satisfied all of its obligations under and in connection with this Agreement (including but not limited to all obligations arising in connection with the expiry or termination of this Agreement).

9.5 Call on the Performance Bond

- (a) The Procurer shall not be entitled to make a call on the Performance Bond unless:
 - (i) the Procurer has served a notice of default on the Training Provider in accordance with Clause 23.1(a); and
 - (ii) the Training Provider has failed to remedy the default in accordance with the requirements of Clause 23.1(b).
- (b) If the Procurer makes a call on the Performance Bond, the Training Provider shall promptly, and in any event within ten (10) days of any such call, deliver a replacement Performance Bond to the Procurer to ensure that the Performance Bond is of an amount equal to the Bond Amount.

9.6 Improper call of the Performance Bond

If the Procurer makes a call on the Performance Bond when it is not entitled to do so, or in an amount in excess of that which it is entitled to call on, the Procurer will immediately advise the entity providing the Performance Bond and return to the Training Provider the amount improperly claimed and indemnify the Training Provider for any costs it may have incurred as a result of any improper call.

10. PARENT COMPANY GUARANTEE

- (a) To the extent the Training Provider elects to provide a parent company guarantee in accordance with Clause 9.1(a)(i), the Training Provider shall, at its own cost, obtain and deliver to the Procurer as a condition precedent to the Effective Date a duly executed parent company guarantee (the **Parent Company Guarantee**) substantially in the form set out in Schedule 10.

- (b) Prior to making a claim under the Parent Company Guarantee, the Procurer shall notify the Training Provider stating the nature of the breach or default for which the claim is to be made.

11. OBLIGATIONS OF THE TRAINING PROVIDER

11.1 Reports

- (a) The Training Provider shall provide the Procurer with such reports, and in such format, as may be requested by the Procurer and shall comply with all reporting requirements prescribed by any Applicable Laws.
- (b) In addition, the Training Provider shall, to the extent that it is aware or should be aware, acting as a reasonable and prudent operator in accordance with Good Industry Practice, provide the Procurer with prompt written notice and copies of:
 - (i) any litigation or claims, disputes or actions, threatened or filed, concerning any College or the Services; and
 - (ii) any refusal or threatened refusal to grant, renew or extend, or any action pending or threatened that might affect the granting, renewal or extension of, any Training Provider's Authorisations.

11.2 Books and Records

The Training Provider shall maintain complete, accurate and up-to-date books, receipts and records which are pertinent to the performance of the Training Provider's obligations under this Agreement as well as expenses and costs incurred under this Agreement and payment thereof. The Training Provider shall ensure that such books and records are kept separate from its own books and records. The Training Provider shall retain all such books and records for five (5) years or, if longer, the relevant period required by Applicable Laws.

12. OBLIGATIONS OF THE PROCURER

- (a) The Procurer shall procure that TVTC grants the Training Provider the right to access and use the Colleges for the purpose of providing the Services.
- (b) On or prior to the Effective Date, and for the duration of the Term, the Procurer shall provide (at no extra cost to the Training Provider) the services described in Schedule 3. The Training Provider shall be relieved from the performance of any its obligations under this Agreement to the extent that performance of any such obligations is prevented as a direct result of a breach by the Procurer of this Clause 12(b), but shall not be entitled to additional Costs incurred by it as a direct result of any breach of this Clause 12(b) by the Procurer.

13. PERSONNEL

13.1 General

- (a) The Training Provider shall employ Personnel at the Colleges and shall be responsible for the supervision and management of all Personnel, including the recruitment, dismissal and removal of all Personnel at the Colleges until the termination or expiry of this Agreement.
- (b) The Training Provider shall ensure that, in the reasonable opinion of the Procurer, it has sufficient numbers of Arabic speaking Personnel in the Colleges to ensure that the Services can be provided in accordance with the requirements of this Agreement.

- (c) The Training Provider shall implement and operate training courses for all Personnel at the Colleges to ensure that all such staff are adequately trained to perform their duties.
- (d) The Training Provider shall ensure that whilst any of the Personnel are at the Colleges, they shall observe and comply with all Applicable Laws and applicable rules and regulations relating to health, safety and security.
- (e) Subject to Clause 13.2, the Procurer shall be entitled to request in writing and obtain, at its discretion, the removal and replacement of any of the Personnel, at the Training Provider's expense, provided that the Procurer shall not exercise this right unreasonably.
- (f) The Training Provider warrants to the Procurer that all of the Personnel shall:
 - (i) be properly qualified, competent and sufficiently experienced to carry out the Services; and
 - (ii) comply at all times with the Training Requirements.

13.2 Key Personnel

- (a) The Training Provider must appoint and mobilise all Key Personnel as soon as reasonably possible following the Signing Date and in any event by no later than the respective deadlines set out in Schedule 9.
- (b) With effect from the Signing Date, the Training Provider shall provide the Procurer with a weekly status report regarding the employment and mobilisation of Key Personnel until such time as all Key Personnel have been employed and mobilised or the Procurer notifies the Training Provider in writing that such status reports are no longer necessary (whichever occurs first).
- (c) The Training Provider undertakes that each of the Key Personnel will devote the whole of his or her time, attention and skill to the performance of the Services and will not engage in any other employment. The Training Provider shall ensure that all Key Personnel are physically present at the College for at least forty five weeks per Academic Year.
- (d) The Training Provider shall ensure it appoints a sufficient number of Key Personnel to fill the Training Quota and the positions identified in the College Improvement Plan. The Training Provider shall notify the Procurer prior to revoking the appointment or accepting the resignation of any Key Personnel or appointing replacements.
- (e) If, in the reasonable opinion of the Procurer, the performance or conduct of any of the Key Personnel has been unsatisfactory, then the Procurer may issue a written warning notice to the Training Provider in respect of that person. If the Training Provider receives two written warning notices in respect of the same person, then the Training Provider shall promptly, and in any event within thirty (30) days of receipt of the second written warning notice, remove that person and shall appoint a replacement in accordance with the process set out in Clauses 13.2(f) and (g), unless otherwise agreed with the Procurer.
- (f) In the event that any member of the Key Personnel leaves his employment on the Project, then the Training Provider shall endeavour to arrange for a replacement by a person of comparable competence and experience (a **Suitable Replacement**) not later than 14 days prior to the original person leaving the Project, and in any event shall ensure that a Suitable Replacement is employed within thirty (30) days of the original person leaving the Project.

- (g) Not later than fourteen (14) days prior to appointing any member of the Key Personnel or a replacement member of the Key Personnel to perform any part of the Services, the Training Provider shall notify the Procurer and if so requested by the Procurer, submit the curriculum vitae of the proposed appointee to the Procurer for review. Where the Procurer has an objection to, or requires further information in respect of, the proposed appointee, the Training Provider will propose an alternative appointee or provide the further information requested, which shall include providing the Procurer with an opportunity to interview the proposed appointee.

13.3 Training Quota

The Training Provider guarantees that the Personnel Quota will be provided on a full time equivalent basis of:

- (a) twenty-one (21) weeks for the Initial Period;
- (b) thirty-nine (39) weeks for the first Academic Year;
- (c) thirty-nine (39) weeks for the second Academic Year; and
- (d) eighteen (18) weeks for the Final Period, (the **Training Quota**).

13.4 Visas

- (a) The Training Provider shall, at its own expense:
 - (i) ensure that all non-Saudi Personnel have the required visas and work permits; and
 - (ii) hold all authorisations, rights and licences required to properly provide the Services.
- (b) If the Training Provider is, or shall, be prevented from performing any of its obligations under this Agreement due to an inability to obtain the required visas or work permits in respect of any non-Saudi Personnel then, provided the Training Provider has made applications in a timely and proper fashion, the Training Provider shall be relieved from the performance of its obligations under this Agreement to the relevant extent until such time as the Training Provider is able to obtain the relevant visas and work permits.

13.5 Accommodation

The Training Provider shall be responsible for providing, at its own expense, residential accommodation for its Personnel.

14. REPRESENTATIVES

- (a) The Training Provider shall appoint a properly qualified, competent and experienced person to act as the Training Provider's representative (the **Training Provider's Representative**) in connection with the provision of the Services. The Training Provider shall ensure that the Training Provider's Representative is authorised and empowered to act for and on behalf of the Training Provider in all matters concerning this Agreement and the performance of the Training Provider's obligations under this Agreement.
- (b) The Procurer shall appoint an individual (the **Procurer's Representative**) to act as the representative of the Procurer. Subject to Clause 14(c), the Procurer shall ensure that the Procurer's Representative is authorised and empowered to act for and on behalf of the Procurer

in all matters concerning this Agreement and the performance of the Procurer's obligations under this Agreement.

- (c) The Training Provider acknowledges and agrees that the Procurer's Representative is not authorised by the Procurer to agree any amendments or variations to this Agreement or any change to the Deliverables in accordance with Clause 4.4, and any such request by the Training Provider should be submitted to the Procurer in accordance with the notice provisions set out in Clause 35.

15. SAUDI CONTENT

In cases where goods or services required for the performance of the Services are available from both Saudi and non-Saudi suppliers, the Training Provider shall, and shall cause its subcontractors to, ensure that Saudi suppliers are invited to participate in the bidding or contracting process and, when the goods or services of such Saudi suppliers are reasonably equivalent in cost, quality and delivery time to the non-Saudi supplier goods or services, acquire such goods or services from such Saudi suppliers.

16. AUTHORISATIONS

16.1 Training Provider's Authorisations

- (a) The Training Provider shall be responsible for procuring, obtaining and maintaining (at its own cost) all of the Training Provider's Authorisations.
- (b) The Procurer shall provide the Training Provider with assistance, advice and co-operation in obtaining and maintaining all of the Training Provider's Authorisations.

16.2 Procurer's Authorisations

- (a) The Procurer shall be responsible for procuring, obtaining and maintaining (at its own cost) all of the Procurer's Authorisations.
- (b) The Training Provider shall provide the Procurer with assistance, advice and co-operation in obtaining and maintaining all of the Procurer's Authorisations.

17. INSPECTIONS

17.1 Inspections by SSS

- (a) The Training Provider acknowledges and agrees that SSS shall carry out inspections at the Colleges to assess whether the Colleges are performing in accordance with the requirements of SSS for the purposes of the SSS Institutional Review. The Procurer shall ensure that the SSS representatives shall have, at all reasonable times and upon giving reasonable notice, the right to enter any of the Colleges in order to inspect the performance of the Services.
- (b) The Procurer shall pay any fees which are due to SSS in relation to the inspections. The Procurer and the Training Provider shall provide (free of charge) all reasonable assistance to the representatives of SSS during the performance of any inspections.
- (c) If for any reason SSS is prevented from, or delayed in, carrying out inspections at the Colleges for the purposes of the Institutional Review pursuant to Clause 17.1(a), the Procurer may appoint any other person to carry out such inspection in accordance with the assessment framework developed by SSS and/or TVTC, provided that such person has the technical and regulatory competency to carry out such inspections and is approved by the Training Provider.

The provisions of Clauses 17.1(a) and 17.1(b) apply to any inspections carried out pursuant to this Clause 17.1(c).

17.2 Inspections by the Procurer

- (a) The Training Provider shall ensure that the Procurer, or any agent, representative, consultant or adviser of the Procurer shall have the right to enter any of the Colleges in order to inspect the performance of the Services and to ascertain whether they are being properly executed and to monitor compliance by the Training Provider with its obligations under this Agreement.
- (b) The Training Provider shall procure that all contracts, books, records and documents relating to the Services, including attendance records and supporting documentation relating to such attendance, are at all times open to inspection by the Procurer and its agent, representative, consultant or adviser and allow the same to be copied, as reasonably requested.
- (c) The cost of the inspection shall be borne by the Procurer. The Training Provider shall give (free of charge) all reasonable assistance to the Procurer, or any agent, representative, consultant or adviser of the Procurer, during the performance of any inspections.

17.3 ACCET Accreditation

- (a) The Training Provider acknowledges and agrees that ACCET shall carry out institutional inspections at the College to assess whether the College is performing in accordance with the requirements of the ACCET Accreditation and the Training Provider shall ensure that ACCET representatives shall have, at all reasonable times and upon giving reasonable notice, the right to enter the College in order to inspect the performance of the Services.
- (b) The Procurer shall procure that TVTC pays any fees which are due to ACCET in relation to the inspections and the Procurer and the Training Provider shall provide (free of charge) all reasonable assistance to the representatives of ACCET during the performance of any inspections.

18. VARIATIONS

18.1 Right to Vary by the Procurer

Variations may be initiated by the Procurer, at any time during the Term, by a written request for the Training Provider to submit a proposal.

18.2 Right to Vary by the Training Provider

- (a) The Training Provider may, at any time, submit to the Procurer a written proposal (the **Training Provider's Proposal**) which (in the Training Provider's opinion) will, if adopted:
 - (i) reduce the costs to the Procurer of maintaining or operating the Colleges;
 - (ii) improve the efficiency or value to the Procurer or the Colleges; or
 - (iii) otherwise be of benefit of the Procurer.
- (b) The Training Provider's Proposal shall be prepared at the cost of the Training Provider and shall include the items listed in Clause 18.3(a).

- (c) The Procurer shall either reject the Training Provider's Proposal (and may not thereafter instruct the same proposal as a Variation other than pursuant to this Clause 18.2) or shall instruct a Variation reflecting the Training Provider's Proposal and the provisions of Clause 18.3 of this Agreement shall apply.

18.3 Variation Procedure

- (a) If the Procurer instructs a Variation pursuant to Clause 18.1, the Training Provider shall respond in writing within 14 days (or such other period as may be agreed between the Parties) of the Procurer's request, either by giving reasons why it cannot comply (if this is the case) or by submitting:
 - (i) a description of the increased or reduced Services to be performed as a result of such Variation and a revised programme for execution of the Services; and
 - (ii) the Training Provider's estimate of the cost or cost savings generated by implementing the Variation (the proposal shall include a quantification and justification of all labour hours, materials, equipment and other items relevant to the adjustment, with supporting documentation, and shall be inclusive of all Costs of executing the proposed Variation).
- (b) The Procurer shall, as soon as practicable after receiving such proposal from the Training Provider under this Clause 18.3, respond in writing with either:
 - (i) an order to execute the Variation; or
 - (ii) disapproval or comments on the proposal.

The Training Provider shall not delay the performance of any Services whilst awaiting a response.

- (c) No instruction to execute a Variation pursuant to Clause 18.3(a) shall be of any force and effect unless specifically authorised in writing by the Procurer in accordance with Clause 18.3(b)(i).
- (d) On receipt of an order to execute a Variation in accordance with Clause 18.3(b)(i), the Training Provider shall proceed to promptly carry out the Variation and shall be bound by this Agreement as if such Variation was stated in this Agreement.
- (e) Upon instructing a Variation pursuant to Clause 18.3(a), the Parties shall proceed to agree the appropriate adjustment to the Base Payment for each College affected by the Variation. The Training Provider shall not be entitled to any adjustment to the Base Payment for each College affected by the Variation to the extent the relevant Variation has arisen out of or in connection with any breach, default or other omission by the Training Provider. If the Parties cannot agree the appropriate adjustment to the Base Payment for each College affected by the Variation within thirty (30) days, the rates shall be determined by an independent expert appointed in accordance with Clause 33.1. These adjustments shall take account of the Training Provider's submission pursuant to Clause 18.3(a).
- (f) Unless the relevant instruction to execute a Variation expressly so requires, in no event shall the Training Provider undertake any Variations until and unless an adjustment to the Base Payment for each College affected by the Variation (or the basis for such adjustment) has been agreed or determined in accordance with this Clause 18.3.

- (g) In any case where the Training Provider is instructed and expressly required to proceed with a Variation prior to the agreement of the adjustment to the Base Payment for each College affected by the Variation (or other basis of payment) for such Variation, the Training Provider shall keep detailed records of the Cost of executing the Variation and of time expended thereon.

19. POLITICAL FORCE MAJEURE

19.1 Definition of Political Force Majeure

- (a) In this Clause 19, **Political Force Majeure** means an exceptional event or circumstance:
 - (i) which is beyond a Party's control;
 - (ii) which such Party could not reasonably foresee before entering into this Agreement;
 - (iii) which, having arisen, such Party could not reasonably have avoided or overcome;
 - (iv) which is not substantially attributable to the other Party; and
 - (v) which, in the case of Political Force Majeure affecting performance of the Training Provider's obligations, directly affects the Colleges, the Personnel or the Services.
- (b) Political Force Majeure may include exceptional events or circumstances of the kind listed below, so long as the conditions in Clause 19.1(a) are satisfied:
 - (i) war, hostilities (whether war be declared or not), invasion or acts of foreign enemies, in each case occurring in Saudi Arabia;
 - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, in each case occurring in Saudi Arabia;
 - (iii) any boycott, suspension, embargo, penalty or other restriction imposed directly in Saudi Arabia by a Governmental Authority; and
 - (iv) any action or failure to act by a Governmental Authority in Saudi Arabia, including a failure that results in any Authorisations ceasing to remain in full force and effect or not being issued or renewed.
- (c) Notwithstanding the above, Political Force Majeure shall not include any of the events or circumstances listed below:
 - (i) travel restrictions, advisories or warnings by countries (including Saudi Arabia) on travel to the relevant part of Saudi Arabia;
 - (ii) strike or lockout by the Personnel or other employees of the Training Provider and its subcontractors which is not a result of a general strike or lockout in Saudi Arabia;
 - (iii) acts, omissions or failures of any Personnel or subcontractor;
 - (iv) sandstorms, heavy rainfall and poor visibility due to fog or dust storms;
 - (v) shortage of subcontractors, labour or materials;

- (vi) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by the Training Provider;
- (vii) any failure by the Training Provider to obtain and/or maintain a Training Provider's Authorisations; or
- (viii) risks which are expressly assumed by the Training Provider pursuant to this Agreement.

19.2 Notice of Political Force Majeure

- (a) If a Party is, or will be, prevented from performing any of its obligations under this Agreement by a Political Force Majeure event, then it shall give notice to the other Party specifying the nature of the Political Force Majeure event and the obligations whose performance are or will be prevented. The notice shall be given within fourteen (14) days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Political Force Majeure.
- (b) Notwithstanding any other provision of this Clause 19.2, Political Force Majeure shall not apply to obligations of either Party to make payments to the other Party under this Agreement.

19.3 Duty to Minimise Delay

Each Party shall at all times use reasonable endeavours to minimise any delay in the performance of this Agreement as a result of Political Force Majeure. A Party shall give notice to the other Party when it ceases to be affected by the Political Force Majeure.

19.4 Consequences of Political Force Majeure

Subject to Clauses 19.2 and 19.3:

- (a) a Party shall be relieved from performance of its obligations under this Agreement to the extent that performance of any such obligations are prevented by any event of Political Force Majeure arising after the Signing Date; and
- (b) if the Training Provider incurs (or will incur) additional Cost as a direct result of any event of Political Force Majeure, the Training Provider shall give notice to the Procurer and shall be entitled, subject to Clause 31, to payment of such Cost, which shall be included in the next invoice issued by the Training Provider in accordance with Clause 6.6.

20. CHANGE IN LAW

- (a) The Training Provider shall use reasonable endeavours to ensure that, following any Change in Law, the Services are performed in accordance with the terms of this Agreement.
- (b) If the Training Provider incurs (or will incur) additional Cost as a direct result of any Change in Law, the Training Provider shall give notice to the Procurer and shall be entitled, subject to Clause 31, to payment of such Cost, which shall be included in the next invoice issued by the Training Provider and payable by the Procurer in accordance with Clause 6.6.

21. OTHER FORCE MAJEURE

21.1 Definition of Other Force Majeure

- (a) In this Clause 21, **Other Force Majeure** means an exceptional event or circumstance:
 - (i) which is not an event of Political Force Majeure or an event listed in Clause 19.1(c);
 - (ii) which is beyond a Party's control;
 - (iii) which such Party could not reasonably foresee before entering into this Agreement;
 - (iv) which, having arisen, such Party could not reasonably have avoided or overcome;
 - (v) which is not substantially attributable to the other Party; and
 - (vi) which, in the case of Other Force Majeure affecting performance of the Training Provider's obligations, directly affects the Colleges, the Personnel or the Services.
- (b) Other Force Majeure may include exceptional events or circumstances of the kind listed below, so long as the conditions in Clause 21.1(a) are satisfied:
 - (i) natural catastrophes such as earthquake, hurricane, typhoon, floods or volcanic activity; or
 - (ii) any plague or epidemic.
- (c) Notwithstanding the above, Other Force Majeure shall not include any of the events or circumstances listed below:
 - (i) sandstorms, heavy rainfall and poor visibility due to fog or dust storms;
 - (ii) acts, omissions or failures of any Personnel or subcontractor;
 - (iii) shortage of subcontractors, labour or materials;
 - (iv) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by the Training Provider; or
 - (v) any failure by the Training Provider to obtain and/or maintain a Training Provider's Authorisations, unless such failure is as a result of an event of Other Force Majeure.

21.2 Notice of Other Force Majeure

- (a) If a Party is, or will be, prevented from performing any of its obligations under this Agreement by an Other Force Majeure event, then it shall give notice to the other Party specifying the nature of the Other Force Majeure event and the obligations whose performance is or will be prevented. The notice shall be given within fourteen (14) days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Other Force Majeure.
- (b) Notwithstanding any other provision of this Clause 21, Other Force Majeure shall not apply to obligations of either Party to make payments to the other Party under this Agreement.

21.3 Duty to Minimise Delay

Each Party shall at all times use reasonable endeavours to minimise any delay in the performance of this Agreement as a result of an event of Other Force Majeure. A Party shall give notice to the other Party when it ceases to be affected by the Other Force Majeure.

21.4 Consequences of Other Force Majeure

- (a) Subject to Clauses 21.2 and 21.3, a Party shall be relieved from performance of its obligations under this Agreement to the extent that performance of any such obligations is prevented by any event of Other Force Majeure arising after the Signing Date.
- (b) If the Training Provider incurs (or will incur) additional Cost as a direct result of any event of Other Force Majeure, the Training Provider shall not be entitled to payment of such Costs.

22. SUSPENSION

22.1 Suspension of Services

- (a) The Procurer may, at any time, instruct the Training Provider to suspend the performance of the Services in respect of any College.
- (b) During any period of suspension, the Training Provider shall not remove any items from the suspended Colleges without the prior written consent of the Procurer.
- (c) The Training Provider shall resume any suspended Services at any time upon receipt of the Procurer's instruction or permission to resume the suspended Services.

22.2 Consequences of Suspension

- (a) Except to the extent that the suspension was instructed as a result of negligence or breach of this Agreement by the Training Provider:
 - (i) the Training Provider shall be entitled to:
 - (A) retain any Advance Base Payment which has been paid by the Procurer pursuant to Clause 6.2 for the Semester in respect of which the suspension has been instructed; or
 - (B) payment of that part of the Base Payment for each suspended College which is payable in respect of the Services performed as of the date of suspension,provided that the Training Provider shall not be entitled to receive any further Base Payments in respect of the suspended Colleges during the period of the suspension; and
 - (ii) if the Training Provider incurs Costs from complying with the Procurer's suspension instructions under Clause 22.1 (including from its continued performance under Clause 22.1(a)) and/or from resuming the Services, the Training Provider shall notify the Procurer and shall be entitled, subject to Clause 31, to payment of such Costs, which shall be included in the next invoice issued by the Training Provider and payable by the Procurer in accordance with Clause 6.6.
- (b) Notwithstanding Clause 22.2(a), the Training Provider shall not be entitled to payment of the Cost incurred in making good the consequences of the Training Provider's failing to provide

the Services in accordance with this Agreement or of the Training Provider's failure to comply with Clause 22.1.

23. TERMINATION

23.1 Termination by the Procurer for default by the Training Provider

- (a) Without prejudice to any other right or remedy under this Agreement, if the Training Provider:
- (i) has abandoned performance of the Services or repudiated this Agreement;
 - (ii) has failed to commence the Services or has suspended the Services (except to the extent permitted under this Agreement) for a period in excess of fourteen (14) days from the Effective Date or any other timeframe specified in the Scope of Services;
 - (iii) fails to replace or top-up the Advance Payment Bond or Performance Bond in accordance with the requirements of this Agreement;
 - (iv) has provided materially inaccurate or misleading information in performing its obligations under this Agreement;
 - (v) fails to comply with Applicable Laws or any Authorisations; or
 - (vi) is otherwise in material breach of its obligations under this Agreement,

then the Procurer may give notice to the Training Provider requiring the Training Provider to remedy the default within sixty (60) days of the date of such notice or, if not remediable within sixty (60) days, to submit a reasonable remedial plan for approval by the Procurer within sixty (60) days of the date of such notice.

- (b) If the Training Provider fails to remedy the default or submit a reasonable remedial plan that is approved by the Procurer within sixty (60) days or fails to comply with any remedial plan approved by the Procurer, the Procurer may terminate this Agreement on giving written notice to the Training Provider and the date of termination shall be the date specified in such written notice.
- (c) Without prejudice to any other right or remedy under this Agreement, the Procurer may immediately terminate this Agreement on giving written notice to the Training Provider if:
- (i) the Training Provider is bankrupt or insolvent;
 - (ii) the Training Provider assigns or transfers this Agreement or any right or interest therein without the Procurer's prior written consent;
 - (iii) the Training Provider or its Personnel, subcontractors, consultants, suppliers, representatives or agents unlawfully offer, promise, give, accept or receive any commission, advantage, gift or bribe or commit fraud of any kind; or
 - (iv) a Persistent Breach has occurred.

23.2 Termination by the Training Provider for default by the Procurer

Without prejudice to any other right or remedy under this Agreement, if:

- (a) the Procurer has not paid an undisputed amount which has remained due and payable under this Agreement for forty (40) days or is otherwise in material breach of its obligations under this Agreement; and
- (b) the Training Provider has given notice to the Procurer requiring the Procurer to remedy such event or circumstance within thirty (30) days and the Procurer has failed to remedy such default,

then the Training Provider may immediately terminate this Agreement on giving written notice to the Procurer.

23.3 Termination for prolonged Other Force Majeure, Political Force Majeure, Change in Law, failure to achieve Conditions Precedent

- (a) The Procurer may immediately terminate this Agreement on giving written notice to the Training Provider if:
 - (i) a Political Force Majeure event or Other Force Majeure event continues for a period of one hundred and eighty (180) days; or
 - (ii) in the opinion of the Procurer, the Training Provider is unable to perform the Services, in whole or part, for a period of one hundred and eighty (180) days as a result of a Change in Law.
- (b) The Procurer may immediately terminate this Agreement on giving written notice to the Training Provider if the Training Provider fails to satisfy the conditions precedent under Clause 2.2 prior to the start of the second Semester, except to the extent such delay is caused by or attributable to any Governmental Authority in the Kingdom of Saudi Arabia, in which case the period referred to in this Clause 23.3(b) shall be extended by the period of delay caused by or attributable to that Governmental Authority.

23.4 Termination for Convenience

The Procurer shall have the right to terminate this Agreement at any time for convenience on giving six (6) months' written notice to the Training Provider.

23.5 Consequences of Termination

- (a) If this Agreement is terminated by:
 - (i) the Procurer for convenience in accordance with Clause 23.4;
 - (ii) the Procurer in accordance with Clause 23.3(a); or
 - (iii) the Training Provider in accordance with Clause 23.2,

the Procurer shall pay the Training Provider:

- (A) that part of the Base Payment for each College which is payable in respect of the Services performed as of the date of termination; and
- (B) subject to the provision of satisfactory documentary evidence, Costs, losses and damages, including demobilisation costs, incurred by the Training Provider as a direct result of the termination provided for in Clause 23.4.

- (b) If this Agreement is terminated by the Procurer in accordance with Clauses 23.1 or 23.3(b), the Procurer shall not be obliged to pay any further instalments of the Base Payment or the Actual Base Payment for each College to the Training Provider or any Costs, losses and damages, including demobilisation costs, incurred by the Training Provider as a direct result of termination under this Clause 23.5(b) and the Training Provider shall be obliged to pay the Procurer any costs incurred or damages suffered by the procurer as a result of the Training Provider's breach.
- (c) Subject to Clause 23.5(a), on expiry or termination of this Agreement, the Training Provider shall, at its own cost, demobilise.

24. INDEMNITIES

- (a) The Training Provider shall indemnify the Procurer and its directors, officers, employees, representatives and agents against all claims, costs, expenses, losses and liabilities suffered or incurred in respect of:
 - (i) death or personal injury;
 - (ii) loss or damage to any third party property;
 - (iii) subject to Clause 25, infringement or alleged infringement of any Intellectual Property; and
 - (iv) third party actions, claims, demands, costs, charges and expenses,

arising out of or in connection with the performance of the Services or caused by the default of the Training Provider or its Personnel, subcontractors, consultants, suppliers, representatives and agents, other than to the extent such claims, costs, expenses, losses and liabilities are contributed to by the gross negligence or wilful default of the Procurer or its personnel.

- (b) The Procurer shall indemnify the Training Provider and its directors, officers, employees, representatives and agents against all claims, costs, expenses, losses and liabilities suffered or incurred in respect of:
 - (i) death or personal injury;
 - (ii) loss or damage to any third party property;
 - (iii) subject to Clause 25, infringement or alleged infringement of any Intellectual Property; and
 - (iv) third party actions, claims, demands, costs, charges and expenses,

arising out of or in connection with the performance of the Procurer's obligations under this Agreement, other than to the extent such claims, costs, expenses, losses and liabilities are contributed to by the gross negligence or wilful default of the Training Provider or its Personnel, subcontractors, consultants, suppliers, representatives and agents.

25. INTELLECTUAL PROPERTY

- (a) The Training Provider assigns to the Procurer all rights, title and interests to all Intellectual Property in the Deliverables and any other documents, reports, data, databases, programs, materials, systems, methodologies, processes, information, concepts or techniques created

and/or developed by or on behalf of the Training Provider (whether individually, collectively or jointly with the Procurer and/or TVTC on whatever media) in connection with the performance of its obligations under this Agreement (before the Effective Date and thereafter) (together, the **Developed IPR**). The Training Provider agrees, at its expense, to promptly execute all assignments and any other documents and do all such things that may be required by the Procurer in order to give effect to this Clause 25. However, all Training Provider IPR shall continue to be exclusively owned by the Training Provider in perpetuity and shall not be assigned to the Procurer.

- (b) The Training Provider irrevocably and unconditionally waives all moral rights in connection with the authorship of the Developed IPR wherever in the world enforceable. The Procurer grants to the Training Provider a royalty free, non-exclusive and revocable licence to use the Developed IPR for the purpose of carrying out its obligations under this Agreement. This licence shall terminate on termination of this Agreement for any reason.
- (c) The Training Provider acknowledges that the Procurer may require the right to use certain Intellectual Property created or owned by the Training Provider or its subcontractors (if any) prior to the Effective Date, and/or created otherwise than pursuant to the Training Provider's obligations under the Agreement (together, the **Training Provider IPR**) in order to be able to fully utilise the Developed IPR and Intellectual Property which is otherwise owned by the Procurer in accordance with the terms of this Agreement. The Training Provider grants, and shall ensure that each of its subcontractors (if any) grants, a perpetual, irrevocable, freely assignable, royalty free and non-exclusive licence to the Procurer to use such Training Provider IPR for the purposes of utilising the Developed IPR and other Intellectual Property described above, and to use all computer software, programs or information technology platforms provided by the Training Provider for the purposes of the Project, provided that such Training Provider IPR has been identified in writing and signed off by both Parties prior to any such licence being provided by the Training Provider or its subcontractors (if any) to the Procurer.
- (d) The Training Provider shall indemnify the Procurer against all loss incurred or suffered by the Procurer or for which the Procurer will become liable and which arises out of or in relation to any third party claim in respect of infringement of rights in Intellectual Property arising in connection with:
 - (i) the use or possession of the Developed IPR;
 - (ii) the use of any computer software, programs or information technology platforms provided by the Training Provider;
 - (iii) the operation and maintenance of any computer software, programs or information technology platforms provided by the Training Provider;
 - (iv) the performance of the Training Provider's obligations under this Agreement; or
 - (v) any wrongful act or omission, breach of contractual obligation to any person or breach of Applicable Laws by the Training Provider.
- (e) If any claim is made or legal proceedings instituted against the Procurer to which the above indemnity applies, the Procurer shall:
 - (i) notify the Training Provider of such claim as soon as reasonably practicable upon becoming aware of the same;

- (ii) allow the Training Provider sole conduct of any claim (including the prosecution, defence or settlement of any such proceedings) at the Training Provider's own expense;
 - (iii) not admit liability or otherwise settle or compromise or attempt to settle or compromise such claim except upon the express instructions of the Training Provider; and
 - (iv) act in accordance with the Training Provider's reasonable instructions and permit copies to be taken of any materials, records or documents as the Training Provider may require in order to take action under Clause 25(e)(ii).
- (f) Where any claims or legal proceedings to which the indemnity in Clause 25(d) applies are based upon a third party assertion that an Intellectual Property right created and/or developed by the Training Provider infringes the third party's Intellectual Property or other rights and the Procurer is prevented from using such Intellectual Property right pending the outcome of the claim or legal proceeding, the Training Provider must either secure for the Procurer the right to use such Intellectual Property right pending the outcome of the claim or legal proceeding or reimburse the Procurer for any consequential or indirect losses or damages suffered by it. If any such Intellectual Property right is held to infringe the third party Intellectual Property or other rights and the use by the Procurer thereof is permanently prevented, within sixty (60) days of the relevant judgment or decision, the Training Provider shall at its expense and option:
- (i) obtain for the Procurer the right to use the third party Intellectual Property or other rights; or
 - (ii) where appropriate, replace the infringing Intellectual Property with non-infringing Intellectual Property of an equal or higher quality; or
 - (iii) modify the Intellectual Property so that it does not infringe the third party's Intellectual Property or other rights or adversely affect the Project.

26. TAXATION

The payments to be made to the Training Provider pursuant to this Agreement are inclusive of all taxes, duties, levies, charges and the like payable now or in the future in connection with this Agreement. All taxes on or calculated by reference to the Training Provider's profits or deemed profits shall be borne by the Training Provider.

27. CONSEQUENTIAL LOSSES

Except where expressly stated elsewhere in this Agreement, a Party shall not be liable to the other Party for any indirect or consequential losses arising out of or in connection with this Agreement or any loss of profit, loss of revenue, loss of contract or loss due to business interruption.

28. SUBCONTRACTING

- (a) The Training Provider may subcontract any part of the Services to be provided by it under this Agreement, provided that it obtains the prior written consent of the Procurer, such consent not to be unreasonably withheld or delayed.
- (b) If the Training Provider does subcontract any part of the Services, the Procurer shall not be relieved from any liability or obligation under this Agreement and the Training Provider shall

continue to be responsible for the acts, omissions and defaults of any subcontractor as fully as if they were the acts, omissions or defaults of the Training Provider, its officers, employees or agents.

29. ASSIGNMENT

- (a) The Training Provider shall not be entitled to assign, transfer, novate and/or charge any of its rights or obligations under this Agreement without the prior written approval of the Procurer; such approval may be withheld by the Procurer acting at its sole discretion.
- (b) The Procurer may, at any time assign, transfer, novate and/or charge the benefit of this Agreement and/or any of the Procurer's present or future rights, interests and/or benefits under this Agreement to any other person, provided that necessary amendments are made to take account of the assignment, transfer, novation or change. The Training Provider shall, upon the request of the Procurer, execute any documents necessary to perfect any assignment, transfer, novation or charge made in accordance with this Clause 29(b).
- (c) The Training Provider, or each Member of the Training Provider to the extent applicable, may not undergo a Change in Control without the prior written consent of the Procurer, which consent may not be unreasonably withheld or delayed. Any breach of this Clause 29(c) shall constitute a material breach of this Agreement by the Training Provider for the purposes of Clause 23.1.
- (d) The Training Provider shall procure that for the duration of the Term there shall be no change in the ownership of the shares of the Training Provider without the prior written consent of the Procurer, which consent may not be unreasonably withheld or delayed. Any breach of this Clause 29(d) shall constitute a material breach of this Agreement by the Training Provider for the purposes of Clause 23.1.

30. CONFIDENTIALITY

30.1 Confidential Information

Subject to Clause 30.2, a Party shall keep confidential all information relating to the Services and this Agreement and all information received from the other Party which is designated as confidential or the receiving Party ought reasonably expect the disclosing Party would consider to be confidential (**Confidential Information**), and will not make any disclosure, and shall use reasonable endeavours to ensure that its directors, officers, employees, subcontractors and agents do not make any disclosure, to any person of any Confidential Information.

30.2 Exceptions

The confidentiality obligations under Clause 30.1 shall not apply to the following:

- (a) information that a disclosing Party can demonstrate, to the reasonable satisfaction of the other Party, to be generally available in the public domain at the time of disclosure other than as a result of a breach of Clause 30.1 by a Party; or
- (b) any disclosure which may reasonably be required:
 - (i) for the performance by the disclosing Party of its obligations under this Agreement including to any professional advisers of the disclosing Party;
 - (ii) to ensure the disclosing Party complies with its statutory obligations; or

(iii) for the purposes of legal proceedings.

30.3 Further Undertaking

A Party further undertakes:

- (a) to use the Confidential Information solely for the purpose of fulfilling its obligations under this Agreement;
- (b) to limit access to Confidential Information to those directors, officers, employees, subcontractors and agents who reasonably require the same in order to ensure the satisfactory performance of its obligations under this Agreement;
- (c) to inform each of the directors, officers, employees, subcontractors and agents to whom Confidential Information is disclosed of the restrictions as to the use and disclosure of Confidential Information under Clause 30.1 and to use all reasonable endeavours to ensure that all such persons observe such restrictions; and
- (d) upon receipt of a written request from the other Party and in any event upon completion of the Services or earlier termination of this Agreement, to return to the other Party all documents, papers, computer programs, software or records containing Confidential Information of such other Party.

31. PROCESS FOR TRAINING PROVIDER'S CLAIMS

31.1 Notice of Training Provider's Claims

If the Training Provider considers itself to be entitled to any payment of any Cost under this Agreement, the Training Provider shall give notice to the Procurer, describing the event or circumstance giving rise to the claim. The Training Provider shall give such notice as soon as practicable and, in any event, not later than twenty-eight (28) days after the Training Provider became aware, or should have become aware, of the event or circumstance.

31.2 Consequences of failure to notify

If the Training Provider fails to:

- (a) give notice of a claim within such period of twenty-eight (28) days; and/or
- (b) comply with the requirements set out in Clause 31.3,

then the Training Provider shall not be entitled to additional payment, and the Procurer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Clause 31 shall apply.

31.3 Submission of supporting evidence

The Training Provider shall submit any other notices which are required by this Agreement, together with such supporting particulars for the claim as may be reasonably requested by the Procurer to substantiate the claim, all as relevant to such event or circumstance.

31.4 Claim process

- (a) Within thirty (30) days of the Training Provider becoming aware of the event or circumstance giving rise to the claim or such other period as may be agreed between the Parties, the Training Provider shall send to the Procurer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
 - (i) this fully detailed claim shall be considered as interim;
 - (ii) the Training Provider shall send further interim claims at monthly intervals, giving the accumulated amount claimed, and such further particulars as the Procurer may reasonably require; and
 - (iii) the Training Provider shall send a final claim within thirty (30) days after the end of the effects resulting from the event or circumstance or such other period as may be agreed between the Parties.
- (b) Within thirty (30) days after receiving a claim or any further particulars supporting a previous claim or such other period as may be agreed between the Parties, the Procurer shall respond with approval, or with disapproval and detailed comments. The Procurer may also request any necessary further particulars, but shall nevertheless give its response on the principles of the claim within such time.
- (c) Each interim payment shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of this Agreement.
- (d) Until the particulars supplied are sufficient to substantiate the whole of the claim, the Training Provider shall only be entitled to payment for such part of the claim as it has been able to substantiate.
- (e) The Procurer shall determine the additional payment (if any) to which the Training Provider is entitled under this Agreement. If the Training Provider disagrees with a determination of the Procurer as to the additional payment (if any) to which the Training Provider is entitled under this Agreement, such dispute shall be determined in accordance with Clause 33.1.
- (f) The requirements of this Clause 31 are in addition to those of any other Clause which may apply to a claim. If the Training Provider fails to comply with this or another Clause in relation to any claim, any additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under Clause 31.2.

31.5 Exclusion of liabilities

For the avoidance of doubt and notwithstanding anything else in this Agreement to the contrary or otherwise in Applicable Laws, the Training Provider shall have no entitlement under this Agreement to additional payment of any Costs except where it has complied with its obligations under this Clause 31.

32. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of Saudi Arabia.

33. DISPUTE RESOLUTION

33.1 Expert Determination

- (a) Where this Agreement refers to the appointment of an expert, the Parties shall agree in writing upon the identity of a qualified expert of international reputation and standing or, if the Parties are unable to agree on the identity of the expert within thirty (30) Business Days or if the person appointed is unable or unwilling to act, an appropriate approved expert shall be appointed by a representative of the relevant institutional body, for example the Chairman of the Institute of Chartered Accountants of England and Wales or the Chairman of the Institution of Civil Engineers.
- (b) The Parties shall co-operate in good faith to do everything necessary to procure the effective appointment of the expert. The Parties shall agree terms of engagement with the expert as soon as reasonably practicable after the expert is nominated and shall not withhold or delay their consent to such terms if they are reasonable and consistent with the provisions of this Agreement. The Parties shall counter-sign the terms of appointment as soon as they are agreed. All costs incurred in relation to the appointment of the expert will be for the account of the Party who loses the dispute.
- (c) The Parties acknowledge and agree that the decision of an expert appointed in accordance with this Clause 33.1 shall be final and binding on the Parties.

33.2 Amicable Resolution

In the event that the Senior Management Team and the College Board for each College are unable to resolve any dispute arising out of or in connection with this Agreement (each, a **Dispute**), the Parties shall attempt in good faith to resolve any Dispute promptly through negotiations between the respective senior executives of the Parties and TVTC who have authority to settle such Dispute within thirty (30) days of such Dispute arising.

33.3 Board of Grievances

Any Dispute arising out of, or in connection with, this Agreement (including any question regarding its existence, validity or termination) which is not resolved in accordance with Clause 33.2, shall be finally settled by:

- (a) the Board of Grievances in Saudi Arabia; or
- (b) where the Board of Grievances in Saudi Arabia (or such other body in Saudi Arabia as may replace it from time to time) does not accept jurisdiction, another Saudi Arabian court with jurisdiction.

34. MISCELLANEOUS

34.1 Entire Agreement and Amendment

- (a) This Agreement constitutes the entire agreement between the Parties concerning the subject matter of this Agreement and supersedes and replaces any previous agreement between the Parties or any representation made by one Party to the other (whether oral or written) concerning the subject matter of this Agreement.

- (b) To the extent permitted by Applicable Laws, the Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein, provided that nothing in this Clause 34.1 shall limit a Party's liability for fraud.
- (c) No changes, amendments, waivers or modifications of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by both Parties.

34.2 Representations, Warranties and Undertakings

Each Party represents, warrants and undertakes to the other Party that:

- (a) it has the requisite power and authority to enter into and perform its obligations under this Agreement;
- (b) this Agreement has been duly authorised and executed by it, and this Agreement constitutes legal, valid and binding obligations on it enforceable in accordance with their terms;
- (c) neither the execution nor the delivery of this Agreement, nor the exercise of any rights or performance of any obligations under this Agreement by it will result in or constitute:
 - (i) a breach of any agreement, deed or instrument to which it is a party;
 - (ii) a breach of any provision of its constitutional documents; or
 - (iii) a violation of any lien, lease, law, order, judgment, award, injunction, decree, ordinance or regulation or any other restriction of any kind or character by which it is bound; and
- (d) no further consent, approval or authorisation of any Governmental Authority or other person is required by it for the entry into and the performance of its obligations under this Agreement.

34.3 Partnership

Nothing contained in this Agreement shall create an association, joint venture or partnership between the Parties or impose any partnership liability on any Party. Neither Party shall have any right, power or authority to enter into any agreement or commitment or act on behalf of or otherwise bind the other Party without that other Party's prior written consent, except where expressly provided herein.

34.4 Effect of Invalid Provisions

If any term, condition or provision of this Agreement is held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement. The Procurer and the Training Provider hereby agree to attempt to substitute, for any invalid or unenforceable term, condition or provision, a valid or enforceable term, condition or provision, which achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.

34.5 Waiver

No term, condition, right, obligation, non-compliance or breach of this Agreement shall be waived or be deemed to have been waived unless such waiver is in writing and addressed to the other Party. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms or conditions of this Agreement unless expressly stipulated in such waiver. Waiver of one term, condition, right, obligation, non-compliance or breach shall not constitute waiver of any subsequent

or other term, condition, right, obligation, non-compliance or breach, unless otherwise specifically stated in writing and addressed to the other Party.

34.6 Execution in Counterparts

This Agreement may be executed in any number of counterparts and by the different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be as effective as delivery of a manually executed counterpart of this Agreement.

34.7 Survival

The provisions of the following Clauses 5, 6, 6.6, 8, 9, 10, 23, 24, 25, 27, 30, 32, 33, 34 and 35 and Schedule 7 shall survive the termination of or expiry of this Agreement. This Clause 34.7 is without prejudice to any accrued rights and obligations of the Parties as of the date of any termination of this Agreement.

35. NOTICES, ADDRESSES AND LANGUAGE

35.1 Notice and Addresses

Except where otherwise expressly provided for in this Agreement, every certificate, notice, instruction, direction, order, consent or decision to be given under this Agreement shall be given in writing to the address and/or addressee specified below, in respect of each Party (or to such other address and/or addressee as a Party may specify in writing) and shall be effective when received and shall be deemed to be received if:

- (a) delivered personally, upon delivery;
- (b) sent by post, upon certified receipt;
- (c) sent by a courier service, upon receipt;
- (d) sent by facsimile transfer, when dispatched but only if sender's transmission report shows the entire facsimile to have been received by the recipient; or
- (e) sent by electronic mail or facsimile on the first working day at the recipient address following the date of sending.

If to the Procurer:

COLLEGES OF EXCELLENCE COMPANY

Dr. Ahmad Alfuhaid
Chairman of COE Board of Directors
P.O. Box: 2646, Riyadh 13241
A-4, 9th Floor, Granada Business Park,
Eastern Ring Road,
Riyadh, Kingdom of Saudi Arabia

Tel: +966-11-250 4500

If to the Training Provider:

RANCHO SANTIAGO COMMUNITY COLLEGE FOUNDATION

Raul Rodriguez
2323 North Broadway, Santa Ana, California, US 92706
Tel: 001 714 480 7450
Email: Rodriguez_Raul@rsccd.edu

Enrique Perez, J.D.
2323 North Broadway, Santa Ana, California, US 92706
Tel: 001 714 480 7460
Email: Perez_Enrique@rsccd.edu

35.2 English Language

The Training Provider shall prepare all documents, and the Parties shall conduct all communications in connection with the Services, in English. Any documentation received by the Procurer in any other language will not be accepted and must be resubmitted in English unless required by Applicable Laws in which case it must be accompanied by an approved legal English translation procured by the Training Provider at its cost.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

SCHEDULE 1

COLLEGES

| Name of College | City | Region | GPS co-ordinates (latitude) | GPS co-ordinates (longitude) |
|-------------------------------|-------------|------------------|------------------------------------|-------------------------------------|
| Al-Baha College of Technology | Al-Baha | Al-Baha Province | 20.10 | 41.59 |

SCHEDULE 2

SCOPE OF SERVICES

1. COLLEGE ASSESSMENT AND IMPROVEMENT

1.1 College Assessment:

The Training Provider shall prepare a detailed College Assessment in respect of each College, setting out a baseline assessment of current College performance. The College Assessment will be based on the following elements:

(a) **Assessment of trainer coaching needs**

The Training Provider shall assess each member of the College training staff on content knowledge, teaching ability, technical knowledge, “will” (dedication to the job), and any other dimensions deemed relevant by the Training Provider.

To establish an understanding of the baseline quality of the College training staff, the Training Provider shall:

- (i) observe the College training staff in normal classroom / workshop settings;
- (ii) interview the College training staff regarding their own performance; and
- (iii) interview students about their College training staff.

This assessment of the College training staff’s strengths and coaching needs will serve as the basis for a personalised coaching program to be developed for each trainer and to be delivered by the Personnel.

(b) **Assessment of leader and administrator coaching needs**

The Training Provider shall:

- (i) assess College leadership and administrative staff on the dimensions of: competency, efficiency and work ethic, “will” (dedication to the job), and content knowledge (overall school management for the College Dean, relevant school service for administrative staff); and
- (ii) identify whether the College leadership staff are adequately fulfilling the responsibilities of their positions and whether any changes need to be made to their daily routine.

To better evaluate the competence of College leadership and administrative staff, the Training Provider shall identify the expected or best-practice roles and responsibilities of all College leadership and administrative staff positions and compare its analysis to the actual roles and responsibilities being filled by the current occupants of each position.

Personnel shall shadow College leadership and administrative staff in the course of their day-to-day activities to evaluate their adherence to best-practice behaviours for their positions. This assessment of the College leadership and administrative staff’s strengths and coaching needs will serve as the basis for a personalised coaching program to be developed for each College leader and administrative staff member, to be delivered by the Personnel.

(c) Assessment of readiness for change

The Training Provider shall:

- (i) assess the enthusiasm of College leadership administrative and training staff for their own professional development and overall College improvement through interviews with College leadership and training staff and on-the-ground observations; and
- (ii) make a reasonable effort to gain the buy-in of College leadership administrative and training staff for professional development initiatives and continue to manage the change throughout the duration of the capability-building initiative.

(d) Assessment of student attitudes

The Training Provider shall interview select students (either individually or in groups) with the aim of understanding student perspectives on College training staff quality and other elements of College performance.

The Training Provider may also run school-wide surveys to gain a quantitative understanding of student attitudes and perceptions.

(e) Assessment of college budget and budgetary requirements

The Training Provider shall:

- (i) analyse the College's budget to identify opportunities for cost savings or efficiencies (e.g., strategic sourcing), as well as any additional spending needs (e.g., training, equipment) to facilitate College improvement initiatives; and
- (ii) develop a plan to implement a sustainable budget-planning process.

(f) Assessment of current programs and curricula

The Training Provider shall:

- (i) examine the College's programs, courses, and curricula and compare these to best-practice examples as well as the NOSS produced by SSS to identify potential improvements; and
- (ii) identify any new programs or courses they would like to introduce as well as any programs or courses currently offered that they believe should be discontinued. As the Training Provider implements new curricula, courses, and programs, it shall ensure that these programs:
 - (A) continue to be taught in Arabic¹; and
 - (B) are aligned with the most recent NOSS.

(g) Assessment of training supplies and equipment

The Training Provider shall:

¹ In exceptional cases, some curricula may be taught in English. This decision would be reached in collaboration with the College, TVTC, and the Procurer.

- (i) verify the inventory of supplies and equipment at each College and ensure all equipment is in proper working order and is being used appropriately for training purposes (e.g., to ensure equipment could not be better used for training purposes at another college); and
- (ii) identify any equipment that needs to be repaired and any new supplies or equipment needed as part of the College improvement initiatives.

(h) Assessment of college facilities

The Training Provider shall:

- (i) assess the quality of College facilities (classrooms, workshops, offices, public areas, toilets, grounds, etc.) to ensure that they are in appropriate working condition and are well-maintained;
- (ii) identify any facilities in urgent need of repair or renovation and budget the expense of making the necessary renovations; and
- (iii) assess the quality of current maintenance and cleaning services and identify the need for improved maintenance and cleaning services if required.

(i) Assessment of performance management process

The Training Provider shall assess the current performance management process to establish a baseline for the development of a transparent and systematic review system.

(j) Assessment of procurement process

The Training Provider shall:

- (i) assess the effectiveness and efficiency of the current procurement process (e.g., for classroom equipment and materials);
- (ii) ensure that the procurement process seeks cost-effective solutions without compromising on service and/or product quality; and
- (iii) review the background of current service provider relationships to identify contracts that may need to be retendered as part of the college improvement initiative.

(k) Assessment of IT systems

The Training Provider shall:

- (i) review the current status of the College's IT infrastructure including connectivity (e.g., wireless hotspots, speed), network security, computer labs and software; and
- (ii) identify any platforms and/or equipment that are in need of repair or replacement and any new equipment required as part of the College improvement initiative.

1.2 College Improvement Plan:

Based on the College Assessment, the Training Provider shall create a detailed College Improvement Plan for each College. The College Improvement Plan should address each of the factors listed in section 1.1 separately and should contain clear targets, actions, terms, points of responsibility and due

dates. The College Improvement Plan should also include overall performance improvement initiatives and should serve as a guide for the capability-building process over the Term of the Agreement, with a focus on the Initial Term. The College Improvement Plan will be developed in conjunction with the College Dean and will be verified and approved by the Procurer and TVTC. The College Improvement Plan will be used as a basis for the performance management of the Training Provider.

2. LEADER, TRAINER AND ADMINISTRATIVE STAFF COACHING

2.1 College Dean Coaching:

Personnel shall:

- (a) observe each College Dean on a daily basis by attending meetings and other functions with them;
- (b) train each College Dean on leadership and management skills, people management, task management, work-planning, and work ethics;
- (c) ensure that each College Dean is fulfilling his/her expected roles and responsibilities for his/her position and shall identify any expectation that is not being met;
- (d) identify the relevant training programs for each College Dean based on their skill level and training requirements;
- (e) assess leader progress against key performance indicators on a Semester basis and share findings with each College Dean and the Procurer; and
- (f) identify College leadership staff who are not progressing or not showing willingness to change so that such individuals can be referred to the Procurer.

The Training Provider shall also appoint a “Training Provider Head” in respect of each College who will share day-to-day operational responsibility and management authority with the College Deans.

Each Training Provider Head shall:

- (i) have his/her own line position in the college organisation and will be involved in all Senior Management Team decisions;
- (ii) be specifically responsible for procurement, Personnel, and curricular decisions;
- (iii) personally coach the College Dean on problem-solving strategies and frameworks, leadership qualities, public speaking skills, and task management; and
- (iv) be the primary assessor of the College Dean, and will regularly report progress to the Procurer.

2.2 College Training Staff Coaching

The Personnel shall:

- (a) observe the College training staff in their classrooms and workshops and train the College training staff on topics including: technical content knowledge, teaching technique, presentation skills, lesson planning, and innovative methods for engaging students;

- (b) work with only a limited number of teachers at a time and dedicate multiple hours of one-on-one coaching time weekly to each College training staff member;
- (c) recommend specific training programs for each College training staff member based on their skill level and training requirements;
- (d) assess College training staff members progress against key indicators on a Semester basis and share findings with the Procurer; and
- (e) identify College training staff who are not progressing or not showing willingness to change so that these trainers can be referred to the Procurer.

The Training Provider shall maintain the desired ratio of 1 Personnel member for every 10 College training staff members throughout the Term of the Agreement.

2.3 Coaching of College Leadership and Administrative Staff:

The Training Provider shall bring in Personnel to improve the capabilities of College leadership and administrative staff. The Personnel shall:

- (a) assess administrative staff content knowledge, work ethics, and effectiveness in fulfilling the responsibilities of their position;
- (b) train the administrative staff on subject knowledge for services they provide, technical skills, time management, and any other relevant areas indicated by the coach;
- (c) assess the progress of the administrative staff against key performance indicators on a Semester basis; and share findings with the College Dean and the Procurer; and
- (d) identify administrative staff members who are not progressing or not showing willingness to change.

Where necessary services are lacking or very weak, the Training Provider shall deliver those services in the short term while preparing College administrative staff to deliver these services in the future.

The Training Provider shall maintain the desired ratio of 1 Personnel member for every 10 College administration staff members throughout the Term of the Agreement and 1 Personnel member for every 5 College Leadership staff.

3. OVERALL COLLEGE PERFORMANCE IMPROVEMENT

3.1 Regular Assessment of College Performance:

The Training Provider shall develop and institute a process by which College administrative and leadership staff meet regularly to assess College performance. This process should include the KPIs to measure and analyse on a semester basis the meeting schedule, composition of the performance assessment group, and a framework for evaluating College performance and responding to performance trends.

3.2 Performance Management of Leader, Trainers and Administrative Staff:

The Training Provider shall institute a process to regularly assess College training staff on their performance and quality improvement, in accordance with Saudi Civil Service Law. Performance management shall:

- (a) include both qualitative and quantitative assessments of College training staff performance;
- (b) be used to identify performance bonus allocations, potential interventions, and potential career progression opportunities; and
- (c) be established as a sustainable process that can be conducted by a College employee without the help of Personnel.

The Training Provider shall:

- (d) institute a system of performance management that incorporates student surveys and an observation/assessment conducted by the College training staff member's peers and seniors based on an objective framework to be developed by the Training Provider;
- (e) prepare the student survey and peer assessment framework to be used on an ongoing basis; and
- (f) develop a performance-based incentive system with an objective method for calculating a trainer's performance rating and bonus based on transparent KPIs.

The Training Provider shall institute a process to regularly assess College leadership staff and College administrative staff on their performance and the improvement in their delivery of quality work. The Training Provider shall ensure that this performance management:

- (A) includes qualitative and quantitative assessments of the performance of College leadership staff and College administrative staff;
- (B) is capable of being used to identify performance bonus allocations, potential interventions, and potential career progression opportunities; and
- (C) is a sustainable performance management process that can be conducted by a College employee without the help of Personnel.

The Training Provider shall institute a system whereby College leadership staff is regularly assessed by one or more peers based on an objective framework. The Training Provider shall develop a performance-based incentive system with an objective method of calculating a leader's performance rating and bonus based on transparent KPIs.

3.3 Improvement of Training Programs:

(a) Refinement of foundation program

The Training Provider shall coach College training staff for the foundation program alongside all other College training staff, but the Training Provider shall also be expected to evaluate and improve the core design of the foundation program. The Training Provider shall:

- (i) observe and assess the course quality, improve the course curriculum and daily lesson plans, and train the course trainers to better deliver the program; and
- (ii) explore the possibility of expanding the foundation program to two semesters for students requiring additional support.

(b) Introduction of new programs and courses

The Training Provider shall:

- (i) assess college program and course offerings and, if necessary, identify new programs to be introduced at the College (based on local employment needs and relevant NOSS);
- (ii) develop detailed course plans and curricula for the introduction of the program; and
- (iii) discontinue programs and/or courses as deemed necessary.

(c) **Curriculum redevelopment and refinement**

The Training Provider shall: review the College's curricula and adjust it if necessary to better adhere to NOSS and meet international best practices. The Training Provider may change training plans, course syllabi, lesson timelines, learning materials, or any other element of the curricula increase effectiveness.

(d) **Blended learning**

Blended Learning is an approach to developing and delivering curricula that seeks to increase education quality by leveraging new education technologies (e.g., e-learning modules) (**Blended Learning**). The Training Provider shall integrate Blended Learning into the curriculum over the management contract period.

Given the lead-time required to develop the relevant IT infrastructure, the Training Provider is not expected to begin integrating Blended Learning in the first Academic Year; however, the Training Provider is encouraged to identify key enablers needed (e.g., IT equipment) in their College Improvement Plan in-line with the Blended Learning initiative.

(e) **Female initiatives**

The Training Provider shall develop curricula and delivery mechanisms relevant for overcoming challenges specific to females (e.g., e-learning modules for home-based vocations). Given that incorporating a female initiative component will likely impact curricula, incorporating these changes is not expected during the first Academic Year.

(f) **Entrepreneurship**

The Training Provider shall develop programs (which may or may not leverage these current programs and modules) to encourage entrepreneurship among students and to give them the core skills required to succeed as entrepreneurs. Entrepreneurship programs can be combined with other initiatives, such as Blended Learning. Providers are not expected to include this initiative during the first Academic Year.

3.4 **Improvement and Expansion of College Services and Processes:**

The Training Provider shall assess services that are currently provided to the College by TVTC and shall help the College develop the capability to perform them autonomously.

(a) **Procurement**

The Training Provider shall procure new contractors to carry out any Ancillary Services which are, in the opinion of the Training Provider, not being delivered properly under existing arrangements. The Training Provider shall develop a sustainable procurement process and train College administrative staff on best practices for procuring and managing contractors.

The Training Provider shall identify new equipment and learning materials in need of procurement and institute a process for regularly updating equipment in a cost-efficient manner. In the short term, the Training Provider will be expected to obtain TVTC approval for significant capital outlays.

The Training Provider shall develop a sustainable procurement process and train College administrative staff on best practices for procuring and managing contractors. The Procurer and TVTC will disclose to the Training Provider all related service contracts during the college turnaround plans phase.

(b) Employer engagement

The Training Provider shall assess the College employer engagement function and develop an employer engagement office if one does not already exist. This function should include a formal outreach process to local employers with the goal of providing information on the College, building relationships, creating official on-the-job training programs, and encouraging local employers to hire graduates from the College. The employer engagement office should also help organise trainee site visits to local employers to allow trainees to develop relationships and observe potential careers first-hand.

(c) Career guidance and non-academic services

The Training Provider shall develop career guidance for College students that involves having counselors who offer personalised advice to College students on their education and career paths. Career guidance counselors should help College students select their majors, find work placements, and eventually find full-time employment after graduation. Career guidance should also include teaching trainees “soft skills,” including but not limited to interview preparation, resume writing, work habits, and personal finance, to help them find and retain jobs.

The Training Provider may develop other services for the benefit of College students such as extra-curricular activities, recreational and educational trips, and onsite health clinics.

(d) Budgeting process

The Training Provider shall design and implement a best-practice budgeting process to analyse the College budget and identify wasteful expenses, project budgetary requirements, and prepare budgets for future years. The process shall include a budgeting plan to guide the budgeting process each Academic Year with key actions, deadlines, and points of responsibility.

The Training Provider shall identify College Personnel responsible for budgeting and train these College personnel on the budgeting process in order to prepare them to manage the process independently in the future.

(e) IT services

The Training Provider shall:

- (i) develop the College’s ability to integrate IT based platforms in to the learning environment in addition to basic IT service capabilities such as maintenance, equipment renewal and security; and
- (ii) identify College Personnel responsible for managing college IT infrastructure and to train them to fulfill their duties in supporting desired learning outcomes through technology.

(f) Student Services

The Training Provider shall develop a College student services platform (e.g. admissions, registration, co-op training, career fairs) to improve the overall student experience from pre-admission interest to

post-graduate employment. The Training Provider shall identify Personnel responsible for managing student services and train them appropriately in order to transfer best-in-class career services capabilities to the College.

SCHEDULE 3

PROCURER'S OBLIGATIONS

The Procurer shall, amongst other things:

- (a) pay all sums due to the Training Provider under and in accordance with this Agreement;
- (b) promote technical and vocational education across Saudi Arabia to make it an attractive option to students;
- (c) at the request of the Training Provider, provide reasonable administrative support to assist the Training Provider in the operation of the Colleges which will typically include the following:
 - (i) Pre-opening
 - (A) support for visa issuance for Personnel and families and arranging for the shipment of belongings, when required;
 - (B) support for corporate bank account opening, including issuing non-objection letters; and
 - (C) providing in-person visits and handover of colleges and housing units;
 - (ii) On-going support
 - (A) support with payment processing and funding issues;
 - (B) providing a list of potential contractors for Ancillary Services;
 - (C) facilitating contacts and networks with local employers;
 - (D) assisting with student affairs (e.g. punctuality, misconduct, disputes and public relations issues); and
 - (E) processing student stipends.
- (d) provide guidance to the Training Provider.

SCHEDULE 4

FEE

1. THE INITIAL COST

The Initial Cost is the cost incurred by the Training Service Provider for the activities involving the preparation of the College Improvement Plan activities and the maximum cost payable by the Procurer to the Training Provider is SAR 2,969,062 (Saudi Riyals two million, nine hundred and sixty nine thousand, sixty two only).

2. BASE PAYMENT

The base payment for each College is the average annual operating cost for that College (**The Base Payment**). The base payment for each college is as set out below:

| College | Initial Period(2 nd Semester of 2016-17) | Academic Year 1 (2017-18) | Academic Year 2 (2018-19) | Final Period (1 st Semester of 2019-20:) |
|-------------------------------|---|---------------------------|---------------------------|--|
| Al-Baha College of Technology | SAR 6,915,000 | SAR 14,252,000 | SAR 14,174,000 | SAR 6,915,000 |

(Note: The contract duration for the initial term will be for a total of six (6) semesters)

The Base Payment will be fixed for the Initial Term (subject to inflation in accordance with the US Consumer Price Index starting from the second academic year) and will be payable to the Training Provider in equal instalments in respect of each Semester.

The Procurer shall reduce the Base Payment for each College on a proportionate basis for each member of the Personnel Quota who fails to achieve the Training Quota.

The above mentioned amounts of base payment include the tax component applicable to Rancho. However, the actual tax component will be reimbursed upon production of receipts issued by the concerned department / ministry of the Kingdom of Saudi Arabia with a cap of SR 1.5 million per year.

3. PERFORMANCE PAYMENT

The performance payment for each College is as set out below (the **Performance Payment**):

| College | Performance Payment Academic Year 1 | Performance Payment Academic Year 2 | Performance Payment Academic Year 2 |
|-------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| Al-Baha College of Technology | SAR 2,075,000 | SAR 2,138,000 | SAR 2,126,000 |

The Performance Payment will be fixed for the Initial Term (subject to inflation in accordance with the US Consumer Price Index starting from the second academic year). The Performance Payment will be paid to the Training Provider based on Milestone and KPI achievements as follows:

- (a) Percentage Index per Academic Year

| | Academic Year 1 Percentage Index | Academic Year 2 Percentage Index | Academic Year 3 Percentage Index |
|--------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| Base Payment | 100% | 100% | 100% |
| Milestone Payment | 100% | 75% | 50% |
| KPI Payment | 0% | 25% | 50% |

(b) Milestone Payments

| Academic Year 1 | | | |
|---|---|--|--|
| Milestone | Submission Deadline | Deliverables Value (as percentage of total Milestone Payment) | Delay Impact for each business day of delay (as percentage of Deliverables Value) |
| College Assessment and Improvement Plan | 15 May 2015 | 20% | 5% |
| Annual Budget | 31 March 2017 | 10% | 5% |
| Personalised Training Programs | 30 April 2017 | 10% | 5% |
| Curricula Improvement Plan | 30 April 2017 | 10% | 5% |
| Semester Reports | Within 14 days after the last day of each Semester | 30% | 5% |
| Annual Report | Within 14 days after the last day of each Academic Year | 20% | 5% |

| Academic Years 2 and 3 | | | |
|-------------------------------|---|--|--|
| Milestone | Submission Deadline | Deliverables Value (as percentage of total Milestone Payment) | Delay Impact for each business day of delay (as percentage of Deliverables Value) |
| Semester Reports | Within 14 days after the last day of each Semester | 60% | 5% |
| Annual Report | Within 14 days after the last day of each Academic Year | 40% | 5% |

The Milestone Payment will be multiplied by the Percentage Index for the relevant Academic Year set out above.

(c) KPI Payments

| KPI | Starting Level (0% KPI Payment) | Impact | Maximum Impact |
|---------------------------------------|--|---|-----------------------|
| SSS Institutional Review Grade | Starting Level, to be notified by the Procurer to the Training Provider by no later than 30 April 2017 | The full 15% will be awarded if: (i) the College's SSS Institutional Review Grade increases a level from the Starting Level; or (ii) the College maintains its SSS Institutional Review Grade at the top level ("4"). | 15% |
| TVTC Operational KPIs | Starting Level, to be notified by the Procurer to the Training Provider by no later than 30 April 2017 | The full 15% will be awarded if the College achieves the Starting Level for all of the TVTC Operational KPIs. 1% will be deducted for each TVTC Operational KPI that the College fails to achieve. A further 1% will be deducted if the College fails to achieve a TVTC Operational KPI by more than 10%. | 15% |
| SSS Qualifications | Starting Level, to be notified by the Procurer to the Training Provider by no later than 30 April 2017 | The full 30% will be awarded if: (i) the College increases the number of teachers with SSS Qualifications or Equivalent Qualifications by 20% or more above the Starting Level; or (ii) the College maintains the percentage of teachers with SSS Qualifications or Equivalent Qualifications above 90%. | 30% |
| One-Year Employment Rate | Starting Level, to be notified by the Procurer to the Training Provider by no later than 30 April 2017 | 4% for every 1% above the Starting Level. The full 40% will be awarded if the College maintains a One-Year Employment Rate above 95%. | 40% |

If in any Academic Year the Training Provider achieves a higher performance level than the minimum performance level, the minimum performance level for the following Academic Year will be increased to the actual performance level achieved by the Training Provider in the preceding Academic Year.

The KPI Payment will be multiplied by the Percentage Index for the relevant Academic Year set out above.

SCHEDULE 5

FORM OF ADVANCE PAYMENT BOND

00/00/0000

COLLEGES OF EXCELLENCE COMPANY
Granada Oasis Business Park
Building A4
9th Floor

2646 Riyadh 13241-7180

Since you have awarded our clients messrs(the **Contractor**) a contract for the provision of capability building services at certain colleges in Saudi Arabia dated [●] (the **Contract**).

We, [●], (the **Guarantor**) hereby irrevocably and unconditionally guarantee the payment to you of **SAR. ----**
----.00 (SAUDI RIYALS ----- ONLY) being (--%) of the value of the capability building contract and accordingly covenant and agree as follows:

- (e) The Guarantor shall forthwith on demand made by you in writing and notwithstanding any objection by the Contractor pay you such amount of amounts as you shall require not exceeding in aggregate the above mentioned amount of . -----00 (-----Only) by transfer to an account in you name at such bank in Saudi Arabia as you shall stipulate or in such other manner as shall be acceptable to you.
- (f) Any payment made hereunder shall be made free and clear of, and without deduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.
- (g) The covenants herein contained constitute unconditional and irrevocable direct primary obligations of the Guarantor. No alteration in the terms of the Contract and no modification or extension of the Contract or in the extent or nature of the work to be performed hereunder and no indulgence, allowance of time by you or other forbearance or concession or any other act or omission by you which but for this provision might exonerate or discharge the Guarantor shall in any way release the Guarantor from any liability hereunder.
- (h) This guarantee shall remain valid and in full force and effect up to the end of the --- day of the month of ---- of the year ----- provided that it is a condition of this guarantee that, in the event you give the Guarantor on or prior to the said expiry date of this guarantee (or any subsequent extension of that expiry date in accordance with this proviso) signed written notification requesting an extension, the Guarantor will:
 - (i) automatically extend this guarantee for such period (not exceeding 365 days) from that expiry date or extension as you may specify in that notification, or
 - (ii) pay the amount of the guarantee.
- (i) The Guarantor represents and warrants that the amount of the guarantee herein contained does not exceed 20 per cent of the total paid up Capital and Reserves of the Guarantor.
- (j) This guarantee is governed by and shall be construed in accordance with the laws and regulations of the Kingdom of Saudi Arabia.

SCHEDULE 6

FORM OF PERFORMANCE BOND

COLLEGES OF EXCELLENCE COMPANY
Granada Oasis Business Park
Building A4, 9th Floor
PO Box 2646 Riyadh 13241-7180

Since you have awarded our clients messrs(the **Contractor**) a contract for the provision of capability building services at certain colleges in Saudi Arabia dated [●] (the **Contracts**).

We, [●], (the **Guarantor**) hereby irrevocably and unconditionally guarantee the payment to you of **SAR. ----**
-----.00 (SAUDI RIYALS ----- ONLY) being (--%) of the value of the Contract and accordingly covenant and agree as follows:

- (a) The Guarantor shall forthwith on demand made by you in writing and notwithstanding any objection by the Contractor pay you such amount or amounts as you shall require not exceeding in aggregate the above mentioned amount of **SAR. -----.00 (SAUDI RIYALS ----- ONLY)** by transfer to an account in your name at such bank in Saudi Arabia as you shall stipulate or in such other manner as shall be acceptable to you.
- (b) Any payment made hereunder shall be made free and clear of, and without deduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or with holdings of any nature whatsoever and by whomsoever imposed.
- (c) The covenants herein contained constitute unconditional and irrevocable direct primary obligations of the Guarantor. No alteration in the terms of the Contracts and no modification or extension of the Contracts or in the extent or nature of the work to be performed thereunder and no indulgence, allowance of time by you or other forbearance or concession or any other act or omission by you which but for this provision might exonerate or discharge the Guarantor shall in any way release the Guarantor from any liability hereunder.
- (d) This guarantee shall remain valid and in full force and effect up to the end of the -- day of the month of --- of the year ----- provided that it is a condition of this guarantee that, in the event you give the Guarantor on or prior to the said expiry date of this guarantee (or any subsequent extension of that expiry date in accordance with this proviso) signed written notification requesting an extension, the Guarantor will:
 - (i) automatically extend this guarantee for such period (not exceeding 365 days) from that expiry date or extension as you may specify in that notification, or
 - (ii) pay the amount of the guarantee.
- (e) The Guarantor represents and warrants that the amount of the guarantee herein contained does not exceed 20 per cent of the total of the paid up Capital and Reserves of the Guarantor.
- (f) This guarantee is governed by and shall be construed in accordance with the laws and regulations of the Kingdom of Saudi Arabia.

Trade Finance Operation

Riyadh – KSA

SCHEDULE 7

SERVICE PLANS AND PERFORMANCE REPORTS

Separate Service Plans and Performance Reports will be prepared in respect of each College.

| SERVICE PLAN | DETAIL | SUBMISSION DEADLINE |
|---|--|----------------------|
| <p>College Assessment and Improvement Plan</p> | <p><i>College Assessment</i></p> <p>The Training Provider must submit a detailed assessment report with quantitative and qualitative analysis of College performance. The report should include College performance across key metrics (drop-out rate, trainee satisfaction, trainer satisfaction and employment rate). The report should also include written qualitative assessment of the quality and performance of trainers, administrators and leaders (with individual comment on each employee); the quality of College services offered; the quality of facilities and equipment; the quality of curriculum; the quality of basic administrative processes (budgeting, procurement, etc.); and the willingness to change the College faculty.</p> <p><i>College Improvement Plan</i></p> <p>The Training Provider must submit a detailed improvement plan based on the findings of the College Assessment. The plan should clearly state the initiatives and actions to improve College performance on each component of the College Assessment and should offer clear KPIs that measure the desired outcomes (i.e., satisfaction scores, drop-out rates, etc.). Each initiative should have a clear timeline and set of actions, and each action should have a deadline and an action owner.</p> | <p>15 May 2015</p> |
| <p>Annual Budget</p> | <p>The Training Provider should submit an annual budget for the Academic Year for approval by the Procurer. The Training Provider must justify any new Capital Expenditures included in the proposed annual budget by reference to the College Improvement Plan. The proposed annual budget must identify specific mechanisms for further cost reduction.</p> | <p>31 March 2017</p> |
| <p>Personalised Training Programs</p> | <p>The Training Provider must submit a personalised training program for each trainer, leader and administrator in the College. The program should be written as a vertical text document and should include an assessment of employee performance (including key strengths and weaknesses) and a set of initiatives to improve the employee's capabilities (including how many hours per week the coach will dedicate to the</p> | <p>30 April 2017</p> |

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|-----------------------------------|--|---------------|
| | employee, training topics that will be covered, methods of training, and the schedule of any proposed external training programs). | |
| Curricula Improvement Plan | <p>If the Training Provider decides to introduce new programs to the College, the Training Provider must submit a detailed plan for the new program. The plan should include rationale for introducing the program, including evidence of labour market demand / employer need; the courses and modules that would be offered in the new program; draft curricula for these courses; and an assessment of how the curricula correlate to the program NOSS.</p> <p>The Training Provider must also submit an updated program plan for each foundation program.</p> <p>The Training Provider must also submit any revisions to the curricula for courses in existing programs.</p> | 30 April 2017 |

| PERFORMANCE REPORT | DETAIL | SUBMISSION DEADLINE |
|------------------------------------|--|--|
| Semester Performance Report | <p>The Training Provider must submit a College performance report at the end of each Semester, which should include a written qualitative assessment of overall College performance, including a summary of key changes and improvements and status updates for the various improvement initiatives outlined in the College Improvement Plan. The report must also include the following sections:</p> <p><i>General performance</i></p> <p>The college performance report should also include updated numbers for the following key metrics: financial performance (actual costs against the Annual Budget); drop-out rates of college students; graduation rates; student attendance rates; and student performance in SSS Institutional Reviews.</p> <p><i>Trainers</i></p> <p>The Semester performance report must also include a summary of key trainings and topics covered with the coach and an assessment of the trainer/leader's performance, with a focus on specific improvements and continued areas of strength or weakness. The Training Provider shall also submit the number of trainers/leaders employed at the College.</p> | Within 14 days after the last day of each Semester |

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| <p>Annual Performance Report</p> | <p>The Training Provider must submit a more detailed College performance report at the end of each Academic Year, including an assessment of the College’s performance, final levels for the purposes of calculating the KPI Payment, and an overall forward-looking strategy. The annual performance report must also include the following sections:</p> <p><i>Review of training activities</i></p> <p>The Training Provider must submit a more detailed performance management report for each trainer/leader covering how they progressed against expectations / targets and outlining improvement targets for the following Academic Year.</p> <p><i>Review of Improvement Plan</i></p> <p>The Training Provider must submit a detailed review of the College Improvement Plan with any changes or updates from the original College Improvement Plan.</p> <p><i>Review of Budget</i></p> <p>The Training Provider must submit a budget review comparing the actual financial performance of the College to the Annual Budget, with explanations for significant deviations.</p> <p><i>Proposed Next Year Budget</i></p> <p>The report should also include a proposed annual budget for the following Academic Year for approval by the Procurer. The Training Provider must justify any new Capital Expenditures included in the proposed annual budget by reference to the College Improvement Plan. The proposed annual budget must identify specific mechanisms for further cost reduction.</p> | <p>Within 14 days after the last day of each Academic Year</p> |
|---|---|--|

SCHEDULE 8

PROHIBITED ACTIVITY

2. Activities which are prohibited by Applicable Laws.
3. Activities which are likely to expose persons to a significant risk to their health, safety or welfare.
4. Activities which might expose students to the risk of high pressure sales or marketing campaigns.

SCHEDULE 9
KEY PERSONNEL

| AlBaha College of Technology | | |
|-------------------------------------|-------------|----------------------------|
| Role | Name | Date of Appointment |
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SCHEDULE 10

PARENT COMPANY GUARANTEE

THIS PARENT COMPANY GUARANTEE is made on _____

BETWEEN:

- (1) [●] a corporation incorporated under the laws of [●] whose registered office is at [●] [(**Parent Company 1**)]/[(**Guarantor**)];
- (2) [●] a limited liability company incorporated under the laws of [●] whose registered office is at [●] (**Parent Company 2**),

(Parent Company 1 and Parent Company 2 are each, a **Guarantor**, and collectively, the **Guarantors**);]
[Delete as appropriate]² and
- (3) **COLLEGES OF EXCELLENCE COMPANY**, a limited liability company incorporated under the laws of Saudi Arabia whose registered office is at P.O. Box: 7823 Riyadh 11472, Al Murabba Area, King Fahad Cross, Al Washim Street, Riyadh, Kingdom of Saudi Arabia (the **Procurer**).

WHEREAS:

- (A) By an agreement dated [●] (the Contract, which term includes all amendments to, variations of or supplements to it from time to time in force) the Procurer has agreed to engage [●] (the **Training Provider**) to provide capability building services for training and vocational colleges in Saudi Arabia (the **Project**).
- (B) It is a condition of the Contract that the Training Provider procures the execution of and delivery to the Procurer of a guarantee in respect of the [joint and several] obligations of the Training Provider from one or more parent companies of the Training Provider suitable to the Procurer in the form of this Parent Company Guarantee.
- (C) The [Guarantors have agreed to jointly and severally]/[Guarantor has agreed to] guarantee the due performance of the Contract by the Training Provider.

IT IS AGREED as follows:

1. (a) In consideration of the Procurer entering into the Contract with the Training Provider, and subject to the limitations set forth in this Parent Company Guarantee, [the Guarantor]/[each of the Guarantors acting on a joint and several basis]:
 - (i) as primary obligor guarantees to the Procurer the due and punctual performance by the Training Provider of each and every obligation, warranty, duty and undertaking of the Training Provider under and pursuant to the Contract when and if such obligations, warranties, duties and undertakings shall become due and performable according to the terms of such Contract;
 - (ii) agrees, in addition to its obligations set out in Clause 1(a)(i) above, to indemnify the Procurer against all losses, damage, costs and/or expenses which the Procurer may incur by reason of any breach by the Training Provider of its obligations, warranties, duties and undertakings under and pursuant to the Contract save that, subject to the other provisions of this Parent Company Guarantee (including without limitation

2 Delete depending on how many parent companies are applicable to the Training Provider.

Clause 2) this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Training Provider under the Contract; and

(iii) indemnifies the Procurer on demand against any loss or liability suffered by it if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Training Provider's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

(b) Notwithstanding anything to the contrary set forth in Clause 1(a)(i) above or elsewhere in this Parent Company Guarantee, under no circumstances shall the Guarantor[s] be obligated for any amounts in excess of [30%] of Fee payable during the entirety of the Initial Term, being an amount of SAR [●] (the **Guarantee Maximum Amount**). Any capitalized term used in this Clause 1(a)(b) 1(b) and not defined in this Parent Company Guarantee shall have the meaning given to such term in the Contract.

2. [The]/[Each] Guarantor agrees that it shall not in any way be released from liability under this Parent Company Guarantee by any act, omission, matter or other thing and whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this Parent Company Guarantee including, without limitation and whether or not known to the Guarantor:

- (a) any arrangement made between the Training Provider and the Procurer; or
- (b) any alteration in the obligations undertaken by the Training Provider whether by way of any addendum or variation referred to in Clause 3 below or otherwise; or
- (c) any waiver or forbearance by the Procurer whether as to payment, time, performance or otherwise; or
- (d) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Training Provider or any other person; or
- (e) any unenforceability, illegality or invalidity of any of the provisions of the Contract or any of the Training Provider's obligations under the Contract, so that this Parent Company Guarantee shall be construed as if there were no such unenforceability, illegality or invalidity; or
- (f) any legal limitation, disability, incapacity or other circumstances relating to the Training Provider, or any other person; or
- (g) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Training Provider or any other person.

3. [The]/[Each] Guarantor, by this Parent Company Guarantee, authorises the Training Provider and the Procurer to make any addendum or variation to the Contract, the due and punctual performance of which addendum and variation shall be likewise [jointly and severally] guaranteed by the Guarantor[s] in accordance with the terms of this Parent Company Guarantee.

4. This Parent Company Guarantee shall be a primary obligation of [the]/[each] Guarantor and accordingly the Procurer shall not be obliged before enforcing this Parent Company Guarantee to take any action in any court or arbitral proceedings against the Training Provider, to make any claim against or any demand of the Training Provider, to enforce any other security held by it in respect of the

obligations of the Training Provider under the Contract or to exercise, levy or enforce any distress, diligence or other process of execution against the Training Provider. In the event that the Procurer brings proceedings against the Training Provider, [the]/[each] Guarantor will be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.

5. This Parent Company Guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Training Provider, the Guarantor[s] or any other person) until the earlier to occur of: (a) all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Training Provider under the Contract shall have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Procurer may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security; and (b) the Guarantor[s] having paid an aggregate amount equal to the Guarantee Maximum Amount.
6.
 - (a) Until all amounts which may be or become payable under the Contract or this Parent Company Guarantee have been irrevocably paid in full, [the]/[each] Guarantor agrees that it shall not as a result of this Parent Company Guarantee or any payment or performance under this Parent Company Guarantee be subrogated to any right or security of the Procurer or claim or prove in competition with the Procurer against the Training Provider or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Procurer.
 - (b) [The]/[Each] Guarantor agrees that it shall not hold any security from the Training Provider in respect of this Parent Company Guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Procurer.
 - (c) Until all amounts which may be or become payable under the Contract or this Parent Company Guarantee have been irrevocably paid in full, if (notwithstanding the provisions of Clauses 6 and 6(b)), the [Guarantor has]/[Guarantors have] any rights of subrogation against the Training Provider or any rights to prove in a liquidation of the Training Provider, [the]/[each] Guarantor agrees to exercise such rights in accordance with the directions of the Procurer.
7.
 - (a) [The]/[Each] Guarantor shall procure that, during the term of this Parent Company Guarantee, there shall be no change in the control of the Training Provider.
 - (b) There is a change in the control of the Training Provider for the purposes of this Parent Company Guarantee whenever any person has control of the Training Provider who did not have control of the Training Provider when the Contract was executed and the change in control shall have taken place without the prior consent of the Procurer, which consent may not be unreasonably withheld or delayed.
8.
 - (a) Each payment to be made by the Guarantor[s] under this Parent Company Guarantee shall be made in Saudi Riyals, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor[s] will pay that additional amount which is necessary to ensure that the Procurer receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
 - (b) The Guarantor[s] shall pay interest on any amount due under this Parent Company Guarantee from the date of demand until the date of payment in full (as well after as before any judgment)

calculated on a daily basis at the rate of based on LIBOR plus 2%. LIBOR shall mean the London Interbank Offered Rate for three month USD deposits as published by the *Financial Times* on the day immediately preceding the due date for the relevant payment.

9. The Guarantor[s] will reimburse the Procurer for all legal and other costs (including taxes) incurred by the Procurer in connection with the enforcement of this Parent Company Guarantee.
10. The Procurer may appropriate any sum paid by the Training Provider, the Guarantor[s] or any other person or recovered or received on account of the obligations the subject of this Parent Company Guarantee as it sees fit, whether or not towards those obligations.
11. Any settlement or discharge between the Procurer and the Training Provider and/or the Guarantor[s] shall be conditional upon no settlement with security or payment to the Procurer by the Training Provider or the Guarantor[s] or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the Procurer's other rights hereunder) the Procurer shall be entitled to recover from the Guarantor[s] as if such settlement or discharge had not occurred, the value which the Procurer has placed upon such settlement or security or the amount of any such payment.
12. [The]/[Each] Guarantor warrants that this Parent Company Guarantee is its legally binding obligation, enforceable in accordance with its terms, and that all necessary governmental and other consents and authorisations for the giving and implementation of this Parent Company Guarantee have been obtained.
13. The Procurer shall be entitled by notice in writing to the Guarantor[s] to assign the benefit of this Parent Company Guarantee at any time to any person without the consent of the Guarantor[s] being required, including to the Procurer's lenders to the Project. Any such assignment shall not release the Guarantor[s] from liability under this Parent Company Guarantee.
14. Any and all notices provided for herein, or communications bearing upon the obligation of the Parties, shall be given in writing and delivered by:
 - (a) hand (against receipt), sent by courier, sent by facsimile, or transmitted by email or other electronic communication. Notices sent by fax transmission, email or other electronic communication shall be valid provided that a confirmation copy shall have been delivered by hand, or by courier service or registered mail within seven days of the transmission; and
 - (b) delivered, sent or transmitted to the representative at the address for the recipient's communications as stated below.
 - (c) If directed to the Procurer:

COLLEGES OF EXCELLENCE COMPANY

Dr. Ahmed Alfuhaid
Chairman of CoE Board of Directors
P.O. Box: 2646, Riyadh 13241
A-4, 9th Floor, Granada Business Park,
Eastern Ring RoadRiyadh, Kingdom of Saudi Arabia

Tel: +966-11-2504500

- (d) If directed to the Guarantor[s]:

[●]

15. Any change of address for communication shall take effect when notice thereof is given to the other Party.
16. A notice shall be received and effective or deemed to be received and effective in accordance with the following:
 - (a) if sent by fax transmission, upon the earlier of the date and the time sent, provided that the sending machine issues a written confirmatory report that the message has been sent to the recipient's facsimile number before the recipient's close of business on a Business Day; or
 - (b) by 10am on the next occurring Business Day if the sending machine does not issue such confirmatory report on the date sent, provided, however, that any facsimile given under this Contract shall only become effective notice if legibly received; in the event that a facsimile is not legibly received, the receiving Party shall use its best endeavours to notify the sending Party of that fact by return facsimile or by telephone without delay, failing which, it shall be deemed to have been legibly received; or
 - (c) if delivered by hand (including by courier):
 - (i) at the time delivered, if before the recipient's close of business on a Business Day; or
 - (ii) at 10am on the next occurring Business Day if otherwise delivered.
17. If transmitted by email or other electronic communication unless a later time is specified in it, from the time it is actually received.
18. For the purposes of this Parent Company Guarantee Business Day means a day other than a Thursday or Friday or declared national holiday in Saudi Arabia.
19.
 - (a) No delay or omission of the Procurer in exercising any right, power or privilege under this Parent Company Guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Procurer provided for in this Parent Company Guarantee are cumulative and not exclusive of any rights or remedies provided by law.
 - (b) A waiver given or consent granted by the Procurer under this Parent Company Guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.
 - (c) A waiver by the Procurer shall not constitute a continuing waiver and shall not prevent the Procurer from subsequently enforcing any of the provisions of this Parent Company Guarantee.
20. The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Parent Company Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Parent Company Guarantee.
21.
 - (a) This Parent Company Guarantee is governed by and shall be construed in accordance with the laws of the Kingdom of Saudi Arabia.

(b) [The]/[Each] Guarantor submits to the jurisdiction of the Board of Grievances of Saudi Arabia for all purposes relating to this Parent Company Guarantee and the Guarantor[s] irrevocably appoint[s] [●] as [its]/[their] agent for service of process.

22. For the avoidance of doubt, the Parent Company Guarantee is not intended to confer any legally enforceable rights on any person other than the parties, their successors in title and their assignees, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

IN WITNESS WHEREOF this Parent Company Guarantee has been executed on the day and year first above written.

Signed for and on behalf of

[●]

By: _____

Name:

Title:

Signed for and on behalf of

COLLEGES OF EXCELLENCE COMPANY

By: _____

Name:

Title:

SCHEDULE 11

TRAINING REQUIREMENTS

1. PERSONNEL QUALIFICATIONS

| Al-Baha College of Technology | | |
|--------------------------------------|---|--|
| Role | Education Qualification (or recognised equivalent) | Experience |
| Provider Head | Minimum PhD and above | Minimum 15 years' experience in leading and overseeing college operations as principle or dean |
| Senior Management Coach (Several) | Minimum Master's degree and above | Minimum 10 years of developed country experience |
| Trainer Coaches (Several) | Minimum Master's degree and above | Minimum 5 years of developed country experience in STEM environments |

Appointment of Personnel holding qualifications lower than those stated in this Schedule 11 will be subject to approval by the Procurer.

2. PERSONNEL QUOTA

| Personnel Type | Unit | AlBaha College of Technology for Boys |
|---------------------------|---|--|
| Classroom Trainer Coaches | Minimum FTE | 8 |
| | Provider Coach to College Personnel Ratio | 1 to 9.1 |
| Admin Personnel Coaches | Minimum FTE | 2 |
| | Provider Coach to College Personnel Ratio | 1 to 8 |
| Senior Management Coaches | Minimum FTE | 5 |
| | Provider Coach to College Personnel Ratio | 1 to 4 |
| Provider Head | Minimum FTE | 1 |
| | Provider Coach to College Personnel Ratio | 1 to 1 |

SCHEDULE 12

ANCILLARY SERVICES

Details of Ancillary Services will be incorporated in the Agreement by mutual agreement of the Parties at a later date.

SCHEDULE 13

TVTC OPERATIONAL KPIS

1. Admission Rate
2. On Time Graduation Rate
3. Employment rate of graduates after six (6) months
4. Percentage of Capacity Achieved
5. Dropout Rate
6. Trainee Satisfaction Rate
7. Trainee – Trainer Ratio in Lab / Class
8. Percentage of Trainees Receiving Development Programmes
9. Trainer Teaching Hours
10. Overall Performance Indicator

SIGNATORIES

Signed for and on behalf of

COLLEGES OF EXCELLENCE COMPANY

By: _____

Name:

Title:

Signed for and on behalf of

RANCHO SANTIAGO COMMUNITY COLLEGE FOUNDATION

Name:

Title:

Signed for and on behalf of

AL KHALEEJ TRAINING AND EDUCATION CORPORATION

By: _____

Name:

Title:

ADDENDUM TO
CAPABILITY BUILDING CONTRACT

DATED ____ NOVEMBER 2016

COLLEGES OF EXCELLENCE COMPANY

and

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT FOUNDATION

and

ALKHALEEF TRAINING AND EDUCATION CORPORATION

**for the enhancement of performance output at technical and vocational colleges
in the Kingdom of Saudi Arabia**

1. The parties are concurrently entering into a Capability Building Contract dated _____ 2016 concerning the enhancement of performance output of technical and vocational colleges in the Kingdom of Saudi Arabia, as the same may hereafter be amended or modified in accordance with its terms, and including all Schedules, Exhibits and Addenda which are or may hereafter be attached thereto (the "Agreement"). This Addendum is intended to clarify and confirm the agreement of the Parties with respect to certain provisions of the Capability Building Contract, to satisfy the requirements of Section 34.1 as an agreed modification to its terms, and to be applied as fully as if the same were written in the Agreement itself. Capitalized terms used but not otherwise defined in this Addendum shall have the respective meanings given to them in the Agreement.
2. Reference is hereby made to Section 1.1 of the Agreement, Definitions. Specifically each Party, by executing the Addendum, hereby acknowledges to and agrees with the other as follows:
 - a) the definition of Applicable Laws set forth in said Section 1.1 means, and shall for all purposes be interpreted to mean "all published laws, treaties, regulations, standards, decrees, rules, decisions, judgments, orders, injunctions, authorisations, directives, permits, licences or authorisations of every relevant jurisdiction, including the laws of the Kingdom of Saudi Arabia and the laws of the United States of America, including without limitation its state, municipal and local political subdivisions and their respective governmental agencies (collectively, "US Law"), as the same are now, or may in the future become, applicable to the Training Provider and the operation of the Colleges by the Procurer.
 - b) the definition of Change in Law set forth in said Section 1.1 means, and shall for all purposes be interpreted to mean "any change in the Applicable Laws of Saudi Arabia (and, with respect to the Training Provider, US Law), including the introduction of new Applicable Laws and/or the repeal or modification of existing Applicable Laws) or the NOSS after the Effective Date.
3. Reference is made to Section 4.2(b) of the Agreement. The Parties understand and agree that notwithstanding the provisions of Section 4.2, or any other portion of the Agreement, nothing therein is intended to, nor shall it be deemed to, require the Training Provider to take any action, make any statement, or refrain from doing either, which would constitute a violation of any Applicable Law (including without limitation US Law), or which would cause the Rancho Santiago Community College District Foundation, existing under the laws of the State of California and of the United States of America (the "Foundation"), to be in violation of any of its legal governing documents, or the administrative statutes to which it is subject, or which would jeopardize its status as a United States tax exempt educational corporation or to lose any of the rights and benefits of such designation under applicable US Law (any and all of such circumstances being referred to herein collectively, as a "US Violation").
4. In the event that the Applicable Laws of Saudi Arabia shall ever be interpreted or deemed to conflict with US Law, the Parties hereby agree that (a) to the extent that it may still be able to provide Services under the Agreement without causing a US Violation, the Foundation shall be excused from only that portion of the Services which would, in its good-faith determination, cause a US Violation; and (b) to the extent that the Foundation is unable to perform any further Services under the Agreement without causing a US Violation, in its good faith determination, or if the Procurer determines in good faith that the Services which the Foundation may still be able to perform without causing a US Violation are not of sufficient value to the Procurer to warrant its continuation under this Agreement, then in all such cases and without exception of any kind the Foundation shall be excused from performing any Services which it determines in its good-faith discretion would cause or create a US Violation, and the same shall not constitute a breach, default or violation of the

Agreement, nor subject the Foundation to any liability, claim, damages or penalty of any kind under the Agreement or otherwise.

5. All Parties acknowledge and agree that this Addendum, once executed by all Parties, shall constitute a part of the fully-integrated Agreement for purposes of Section 34.1 of the Agreement.

IN WITNESS WHEREOF, the Parties have caused this Addendum to be executed as of the day and year first above written.

SIGNATORIES

Signed for and on behalf of

COLLEGES OF EXCELLENCE COMPANY

By: _____

Name:

Title:

Signed for and on behalf of

RANCHO SANTIAGO COMMUNITY COLLEGE FOUNDATION

Name:

Title:

Signed for and on behalf of

AL KHALEEJ TRAINING AND EDUCATION CORPORATION

By: _____

Name:

Title: