



CONTRACT FOR THE ~~XX~~

CONTRACT PERIOD: ~~XXXXXXXXXXXXXXXXXXXX~~

THIS AGREEMENT is made on **XXXXXXXXXXXXXXXXXX**

BETWEEN:

(1) **The Education and Training Foundation** (Company No. 08540597, Charity No. 1153859) whose registered office is at 157- 197 Buckingham Palace Road London SW1W 9SP ("ETF")

and

(2) **[Inset company name]**, whose registered address is at **[Insert company registered address]** (the "Contractor")

Collectively ETF and the Contractor are known as the Parties or individually as a Party.

AGREEMENT PERIOD: **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

WHEREBY IT IS AGREED:

1. DEFINITIONS

"Approved" and "Approval"	means the written Approval of the ETF representative for any Deliverables or Services;
"Commencement Date"	means the date agreed by the Parties in writing or detailed in Schedule 1, for the due date the provision of Services is to start;
"Confidential Information"	means information marked or otherwise identified by a Party as proprietary or confidential, which the parties designate as proprietary or confidential at the time of disclosure
"ETF Representative"	means a person designated by ETF to act as the authorised representative of the ETF for all purposes connected with the Contract as set out in Schedule 1
"Contractor Representative"	means a person designated by the Contractor to act as the authorised representative of ETF for all purposes connected with the Contract as set out in Schedule 1
"Contract"	means the Contract between the above named parties consisting of this Contract document, the schedules and any other documents (or parts thereof) specified in the Contract
"Data"	means any data, statistics or information in relation to the Agreement including records of all acts done by the Parties which are generated and kept during the term of the Contract
"Deliverables"	means any identified requirement to be produced by the Contractor in the course of performing the Contract

"Documentation"	means any material and information provided by ETF to the Contractor to enable the Contractor to perform the Services.
"Force Majeure Event"	<p>means any circumstance not within a Party's reasonable control including, without limitation:</p> <ul style="list-style-type: none"> a) acts of God, flood, drought, earthquake or other natural disaster; b) epidemic or pandemic; c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; d) nuclear, chemical or biological contamination or sonic boom; e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition. For the avoidance of doubt, compliance with UK Government legislation, advice or guidance that is substantially different from that in force as at the Commencement Date, which was not foreseeable on the Commencement Date and which make performance of this Agreement impossible or substantially different or more difficult from that contemplated by the parties at the Commencement Date will be deemed to be Force Majeure Event; f) collapse of buildings, fire, explosion or accident; and g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and i) interruption or failure of utility service.
"Intellectual Property Rights"	means patents, trademarks, service marks, trade and service names, copyrights, database rights and design rights (whether or not any of them are registered and including applications for registration of

	them), moral rights and trade secrets; all forms of protection of a similar nature or having similar or equivalent effect to any of them which may subsist now or in the future anywhere in the world
“Offer”	means the proposal received from the Contractor, that will form part of the Contract
“Order”	means the purchase order document(s) issued by ETF to the Contractor by electronic means, post or fax
“Output”	means any defined Output to be produced by the Contractor in the course of performing the Contract
“Premises”	means land or buildings owned or occupied by the ETF where the Services are to be performed pursuant to or in connection with the Contract
“Services”	means the supply and / or provision of Services as specified and included in the Contract
“Specification”	means the Services specification provided in the Schedule 1
“Tender”	means the Tender submitted by the Contractor to ETF, in response to ETF issuing an Invitation to Tender for the Contract
“Third Party Material”	means any literary, dramatic, artistic or musical material and any library or other film or sound recording or other material in which Intellectual Property Rights subsist and which is incorporated into or otherwise forms part of or is used in or in connection with the Data, a Deliverable and / or Output

2. OBLIGATIONS OF THE CONTRACTOR

2.1 The Contractor shall ensure the Services are performed:

2.1.1 with all due care, skill and diligence;

2.1.2 in co-operation with ETF in all matters relating to the Services and comply with all ETF’s instructions;

2.1.3 in accordance with good industry practice;

2.1.4 in accordance with any data provided by the ETF;

2.1.5 by Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor’s obligations are fulfilled in accordance with the Contract;

2.1.6 in full compliance with all statutory, local authority, ETF rules and regulations and any other legal regulations applicable to the Services or any Deliverables.

2.2 The Contractor shall perform the Services in a timely manner in accordance with the delivery dates stated in the Contract.

2.3 Time shall be of the essence in relation to the Contractor’s timely delivery of the Services.

- 2.4 Without prejudice to any other rights which the ETF may have under the Contract any alterations to stipulated deadlines and delivery dates must be approved by ETF in advance and in writing.

3. OBLIGATIONS OF ETF

- 3.1 Subject to clause 3.2 ETF shall use its reasonable endeavours to supply the Contractor with answers to queries and any requisite information which may be reasonably requested by the Contractor to enable or facilitate the proper performance by the Contractor of its obligations under this Contract.
- 3.2 ETF shall not at any time during the Term of the Contract, be under any obligation to supply any information which it deems, in its sole opinion, to be contrary to the interests of the ETF.
- 3.3 ETF shall allow the Contractor access to the Premises at all reasonable times for such purpose (subject to ETF's security procedures) provided always that ETF shall have the right to refuse access to or remove from the Premises, any person.

4. INVOICING AND PAYMENT

- 4.1 The Contract Price shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services.
- 4.2 The Contractor shall invoice ETF as specified in the Contract. Invoices shall include supporting information required by ETF including the PO number and Services/Deliverables breakdown for the invoice period.
- 4.3 The invoice submitted by the Contractor must quote the Order number sent by ETF and the Services / Deliverables breakdown for the invoice period. Failing to quote the correct purchase order number may delay payment.
- 4.3.1 All invoices must have the following declaration (not necessary for limited companies): *"I confirm that payment received from ETF in connection with this invoice will be declared to the Inland Revenue via my Self-Assessment form."*
- 4.3.2 If the Contractor is registered for VAT the invoice must include the VAT registration number.
- 4.4 Subject to satisfactory performance by the Contractor of its obligations under the Contract, payment shall be made within thirty (30) days after receipt of the invoice.
- 4.5 Where the Contractor enters into a sub-contract with a supplier or contractor for the purposes of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due to the Contractor to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice.
- 4.6 If there is a dispute between the Parties as to the amount invoiced, ETF shall pay the undisputed amount. The Contractor shall not suspend the Services unless it is entitled to terminate the Contract in accordance with clause 8.1. Disputed amounts shall be resolved through the dispute resolution procedure in clause 16.
- 4.7 If any sum of money is recoverable from the Contractor under the Contract, that sum may be deducted unilaterally by ETF from any sum then due, or which may come due, to the Contractor under the Contract.
- 4.8 If ETF fails to pay any amount payable by it under this Contract without an explanation upon demand, the Contractor shall be entitled but not obliged to charge the ETF interest on the overdue amount from the due date up to the date of actual payment at the rate of two per cent per annum above the current base rate at the Bank of England. This remedy is the

Contractors' sole remedy and is in substitution for any statutory rights under the Late Payment Commercial Debts (Interest) Act 1998.

5. INTELLECTUAL PROPERTY RIGHTS INCLUDING COPYRIGHT

- 5.1 The Contractor agrees that none of the Services will infringe any patent, trademark, trade name, service mark, design right (whether registrable or not), copyright, database right or other right in the nature of industrial and / or intellectual property of any third party in any country including but not limited to the UK.
- 5.2 The Contractor shall indemnify ETF against all actions, suits, claims, demands, losses, charges, costs and expenses which ETF may suffer or incur as a result of or in connection with any breach or alleged breach of clause 5.1.
- 5.3 The provisions of clause 5.1 shall not apply in respect of any material which ETF has supplied to the Contractor or which ETF has specified for use by the Contractor or for delivery to ETF.
- 5.4 Where any claim is made by a third party in respect of any material referred to in clause 5.1 the Contractor shall have the right to conduct, or take over the conduct of, the defence to the claim and to any proceedings or action brought by the third party.
- 5.5 The Contractor shall promptly notify ETF if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right which may affect the Services.
- 5.6 The Contractor agrees to assign to ETF the copyright, intellectual property rights and any related rights for the Data, Deliverables and Outputs originated or developed during the performance of the Services, for the full term of such copyright or other intellectual property rights (including any extensions, revivals or renewals) throughout the world, together with any accrued rights or causes of action. The Contractor shall do all such things necessary to effect such an assignment.
- 5.7 The Contractor agrees to grant to ETF a free of charge, irrevocable licence for use of any proprietary Confidential Information that they had produced prior to the start of this Contract, which supports the Services of this Contract.
- 5.8 Copyright, intellectual property rights and any related rights vested with ETF shall not be reproduced by the Contractor without the express, prior, written permission of ETF.
- 5.9 All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patterns, models, designs, photographs, images or other material provided to or made available to the Contractor by ETF pursuant to the Contract shall remain vested solely in ETF.

6. FINANCIAL STABILITY OF THE SUPPLIER

- 6.1 The Contractor shall provide on request by ETF, such financial information (such as a copy of its latest financial statements) as may reasonably be required to enable ETF to assess the financial stability of the Contractor.
- 6.2 The Contractor shall promptly notify ETF if there are any material changes to the financial stability of the Contractor during the Initial Term.
- 6.3 The Contractor shall promptly notify ETF if proposes to undergo a change in Control of the Contractor during the Initial Term, for which the ETF will need to inform and seek approval in writing from the DfE. For these purposes "Control" means the possession by a person, directly or indirectly of the power to direct or cause the direction of management and/or policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controlled" shall be construed accordingly.

7. STATUS OF THE PARTIES

- 7.1 Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between ETF and the Contractor.

8. TERMINATION

- 8.1 Either Party may terminate this Agreement immediately upon written notice if the other Party:

- (a) commits a material or persistent breach of its obligations which if capable of remedy shall not have been remedied within 14 days of written notice to do so; or
- (b) is unable to pay its debts as they fall due or is the subject of a bankruptcy petition or enters into compulsory or voluntary liquidation or compounds with or convenes a meeting of its creditors or has a receiver, manager, administrator or administrative receiver appointed of its assets (or is subject to a similar event or set of circumstances in the country where it principally carries on business) or ceases for any reason to carry on business.

- 8.2 ETF may terminate this Agreement immediately upon written notice to the Contractor if the provision of the Services is delayed, hindered or prevented for sixty (60) days or more due to a Force Majeure Event.

- 8.3 Where a recovery path cannot be agreed to or fails, the Party not at fault may terminate this Agreement immediately upon written notice to the other Party.

- 8.4 The termination of this Agreement, however arising, shall be without prejudice to:

- (a) the rights and obligations of either Party accrued prior to termination; and
- (b) the operation of provisions of this Agreement which expressly or impliedly have (and continue to have) effect after termination.

- 8.5 No Fault Termination

- (a) The Parties acknowledge that, as a result of the nature of grant funding received from the Department for Education ("**DfE**"), ETF may be required to terminate this Agreement at any time by providing the Contractor with one month's written notice. This will only be invoked where ETF considers that continuing with this Agreement is or shall become economically unviable because of the cessation of ETF's funding for this Agreement (a "**No Fault Termination Notice**").

- (b) If ETF does serve a No Fault Termination Notice:

- (i) ETF shall pay the Contractor such part of the Fees as may be then payable, and subject to clause 9 and to the extent not recovered by the Contractor by the payment of such Fees, shall reimburse the Contractor for any costs reasonably incurred in the normal course of providing the Services prior to the termination date that the Contractor could not reasonably avoid after receipt of the No Fault Termination Notice provided that the Contractor makes all reasonable efforts to mitigate such cost;
- (ii) the Contractor shall, subject to clause 9.3, fully co-operate in any transfer of responsibility for provision of Service(s) to such other person as ETF may reasonably require; and

- (iii) the Contractor shall within one month after the termination date, submit an invoice for payment and/or reimbursement of any sum due under this clause 8.5(b).

8.6 Notwithstanding clause 8.5, the Parties acknowledge that, as a result of the nature of grant funding received from the DfE, ETF may be reasonably required by the DfE to terminate this Agreement at any time by providing the Contractor with one month's written notice, for reasons other than a No Fault Termination Notice. Such other reasons shall not be exercised unreasonably, frivolously or vexatiously and will be limited to any of the following events:

- (i) The acts or omissions of the Contractor have caused or materially contributed to bring the DfE into disrepute and/or diminished the trust the public places in the DfE, regardless of whether or not such act or omission is related to the Contractor's obligations under the Agreement; or
- (ii) There is a change in Control (as defined in clause 6.3 of this Agreement) of the Contractor which is not pre-approved in writing by the DfE and which the DfE believes shall have a materially adverse impact on the delivery of this Agreement, or any of the Services, Deliverables or Outputs; or
- (iii) A conflict of interest of the Contractor arises in connection with the delivery of this Agreement to which no mitigation acceptable to the DfE and the ETF can be promptly identified; or
- (iv) The Contractor fails to ensure any of its staff or persons performing any of the relevant Services, Deliverables or Outputs under this Agreement who may reasonably be expected in the course of performing any of such Services, Deliverables or Outputs under this Agreement to have access to or come into contact with children or vulnerable persons (and/or access to data or information relating to children or vulnerable persons) are, to the extent permitted by law, questioned regarding their Convictions and are required to obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) where required by law, before the Contractor engages the potential staff or persons in the provision of the Services, Deliverables or Outputs under this Agreement and to keep such disclosures up to date. For these purposes, "**Convictions**" means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that act); or
- (v) Any other circumstance or event that reasonably requires the DfE to request the ETF to terminate this Agreement.

8.7 Termination rights required by law

- (a) ETF may terminate this Agreement with immediate effect at any time by providing the Contractor with written notice where:
 - (i) this Agreement has been subject to a substantial modification which would have required a new procurement procedure under the Public Contracts Regulations 2015;
 - (ii) ETF discovers that it should not have entered into this Agreement with the Contractor because the Contractor (or any member of the administrative, management or supervisory body of the Contractor or any person who has powers of representation, decision or control within

the Contractor) has been convicted of any of the following offences (each as further described in the Public Contracts Regulations 2015):

- (aa) conspiracy;
- (bb) corruption;
- (cc) bribery;
- (dd) fraud;
- (ee) terrorism;
- (ff) money laundering;
- (gg) dealing with the proceeds of criminal conduct;
- (hh) trafficking people for exploitation;
- (ii) trafficking people for sexual exploitation;
- (jj) slavery; or
- (kk) drug trafficking

9. CONSEQUENCES OF TERMINATION

- 9.1 Following the serving of a notice terminating this Agreement, the Contractor shall continue to provide and/or procure the provision of the Services and shall ensure that there is no degradation in the standards of the Services, until the expiry of the notice period.
- 9.2 ETF shall pay the Contractor such part of the Fees for the Services that have been carried out by the Contractor and shall reimburse the Contractor for any costs reasonably incurred in the normal course of providing the Services prior to the Termination Date that the Contractor could not reasonably avoid after receipt of the Notice to Terminate provided that the Contractor makes all reasonable efforts to mitigate such cost
- 9.3 In the event that:
- (a) The Contractor terminates this Agreement under clause 1 (due to an act of default by ETF) or ETF terminates this Agreement under clause 8.5(a), ETF shall pay the costs incurred by the Contractor for providing the handover assistance, provided that such costs are reasonable, properly incurred and approved in advance by ETF (such approval not to be unreasonably withheld, and shall not be withheld if such costs are consistent with, and based upon, the Contractor's then current standard hourly/daily charges).
 - (b) This Agreement is terminated for any reason other than those described in 9.3(a), the Contractor shall be responsible for the costs it incurs for providing the handover assistance to ETF.
- 9.4 The Parties shall cooperate with one another in good faith to ensure a smooth transition of the Services or a managed winding down of the Services as appropriate following a notice of termination.

10. PUBLICITY

- 10.1 The Contractor must not advertise or make any statement relating to the contents, existence, performance or any results/research relating to the Services or any Deliverables under this Contract without ETF's prior Approval.

11. RIGHT OF AUDIT

- 11.1 The Contractor shall keep secure and maintain until two (2) years after the final payment of all sums due under the Contract, full and accurate records of the Services, all expenditure reimbursed by ETF and all payments made by ETF.

- 11.2 The Contractor shall grant to ETF, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.

12. CONFIDENTIALITY

- 12.1 The Parties shall:

12.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it without the prior written permission of the disclosing Party; and

12.1.2 protect such Confidential Information from unauthorised use, access or disclosure in the same manner that it protects its own similar Confidential Information, but in no event with less care than a reasonably prudent business would exercise; and

12.1.3 to promptly notify the other Party of any actual or potential unauthorised access to or use of Confidential Information; and

12.1.4 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract.

- 12.2 Notwithstanding clause 12.1, a Party may disclose Confidential Information which it receives from the other Party where disclosure is required by law or for regulatory requirements

- 12.3 Notwithstanding clause 12.1, ETF may disclose Confidential Information:

12.3.1 on a confidential basis to the employees, agents, consultants and contractors of ETF; or

12.3.2 to the extent that the ETF that it is necessary in the course of carrying out public functions as part of its charitable purpose.

13. PROTECTION OF PERSONAL DATA

- 13.1 Each Party shall comply at all times with all applicable laws in respect of the protection and privacy of Personal Data including without limitation to the Data Protection Act 2018 ("the DP Act") and shall not perform its obligations under this Contract in such a way as to cause the other Party to breach any of its obligations under the DP Act.

- 13.2 ETF will ensure that it is legally entitled to transfer the personal data to the Contractor for the duration and purposes of the Contract.

- 13.3 The Contractor shall, in relation to any Personal Data which it is Processing in connection with the performance of its obligation under this Contract:

13.3.1 process that Personal Data only on the written instructions of the Data Controller or Data Processor, unless required by applicable laws to Process Personal Data; in such circumstances the Contractor shall, if legally allowed to do so, promptly notify the Data Controller or Data Processor of this before performing the Processing;

13.3.2 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data against accidental loss or destruction of, or damage to, Personal Data. Such measures shall be appropriate to a) the harm that might result from any breach of such protection; and b) the state of technological development and the cost of implementing any measures;

- 13.3.3 ensure that all Staff who have access to and/or process personal data are obliged to keep the Personal Data confidential;
 - 13.3.4 not subcontract the Personal Data without prior written permission of the Data Controller or Data Processor;
 - 13.3.5 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Data Controller or Data Processor has been obtained;
 - 13.3.6 notify the other Party without undue delay on becoming aware of any breach of the DP Act;
 - 13.3.7 on written request and/or on termination of the Contract (at the written direction of the Data Controller) delete or return Personal Data and copies thereof to the Data Controller or Data processor unless required by applicable laws to store the Personal Data; and
 - 13.3.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits by the Data Controller or Data Processor or their designated auditor.
- 13.4 At the reasonable request of a Party, the other Party shall assist the other in complying with its obligations as Data Controller or Data Processor.
 - 13.5 "Personal Data", "Processor", "Processing", "Data Controller", "Data Processor" shall have the meaning as set out in the DP Act.
 - 13.6 The nature of the data processing relationship between the Parties and the subject matter, duration, nature, and purposes of the processing are set out in Schedule 4.

14. INFORMATION SECURITY

- 14.1 To the extent the Contractor has access to ETF's premises or Data, the Contractor shall have in place a comprehensive information technology security policy and shall provide the ETF with a copy upon reasonable request.
- 14.2 The Contractor shall ensure that its Staff do not access or store any ETF Data or the ETF related data from or on personal devices.
- 14.3 The Contractor acknowledges that its Staff are granted only the level of access required in order to fulfil the function agreed to by ETF. Access to internal destinations, protocols and/or systems beyond those specially agreed is explicitly prohibited. As soon as it becomes aware of any unauthorised access, the Contractor shall immediately report such access and provide full details to ETF.
- 14.4 The Contractor shall have in place and enforce a third-party management policy and process to ensure its own risk is suitably assessed and managed.
- 14.5 When handling ETF Data (whether or not Personal Data), the Contractor shall, at its own cost, ensure the security of the data is maintained in line with the security requirements of ETF (copy available on request).
- 14.6 The Contractor shall indemnify ETF for any loss, cost or damage caused by a breach or a potential breach by the Contractor of this clause 14.

15. LIABILITIES, INDEMNITIES AND INSURANCE

- 15.1 The Contractor shall indemnify and keep indemnifying ETF, its servants, employees, and agents against all loss, damage or liability (whether civil or criminal), claims, demands, costs and expenses incurred by or made against ETF, its servants, employees, or agents in respect of any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by any act of neglect or the other wrongful act of the Partner, their servants or agents.
- 15.2 The aggregate liability of the Contractor to ETF in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Contract, the supply or failure to supply of the Services, misrepresentation, tort (including negligence), breach of statutory duty or otherwise shall in no event exceed £5,000,000.00.
- 15.3 The Contractor shall effect and maintain appropriate policies of insurance covering public liability, product liability, professional indemnity, employee liability and any other liabilities of the Contractor which may arise in connection with the Contract with the minimum liability coverage stated in clause 15.2. The Contractor shall produce evidence of such policy or policies to the ETF on request.
- 15.4 Nothing in this Contract shall be constructed to limit or exclude the Parties liability for:
- 15.4.1 death or personal injury caused by its negligence
 - 15.4.2 fraud or fraudulent misrepresentation
 - 15.4.3 any other matter which by law, may not be excluded or limited

16. DISPUTE RESOLUTION

- 16.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 16.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 16.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator ("Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 16.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator's appointment, either Party may exercise any remedy it has under applicable law.

17. ASSIGNMENT, SUB-CONTRACTING & KEY PERSONNEL

- 17.1 The Contractor shall not without the prior written consent of ETF assign the benefit or burden of this Contract or any part thereof.
- 17.2 The Contractor shall not without the prior written consent of ETF sub-contract this Contract or any part thereof.
- 17.3 No sub-contracting by the Contractor shall in any way relieve the Contractor of any of its responsibilities under this Contract.
- 17.4 Where the ETF has consented to the placing of subcontracts, the Contractor shall, if requested by ETF, send copies of each subcontract, as soon as is reasonably practicable. The Contractor shall procure that any subcontract should contain terms at least as onerous as the terms contained in this agreement.

- 17.5 Notwithstanding clause 17.4 above, where the Contractor enters into a subcontract it shall include a provision requiring the Contractor to pay for those goods or services within 30 days of the Contractor receiving a correct invoice from the third Party regardless if it has received payment from ETF.

18. ENVIRONMENTAL, ETHICAL AND SOCIAL RESPONSIBILITIES

- 18.1 ETF is committed to environmental sustainability and seeks to build strong relationships with similarly minded organisations. ETF is committed to supporting innovation where there are environmental and social benefits. The Contractor shall regularly seek to identify improvements to the Services which benefit the environment and/or society. The Contractor shall seek to implement organisational controls to control and reduce harmful emissions to the environment and, on request by ETF, shall identify the key environmental impacts of the Services.
- 18.2 Where requested by ETF, the Contractor shall make available to ETF any documentation demonstrating relevant accreditation or compliance with ethical, environmental or social policies.

19. MODERN SLAVERY

- 19.1 The Contractor represents and warrants that at the date of this Contract neither the Contractor nor any of its officers or employees:
- 19.1.1 has been convicted of any offences involving slavery and human trafficking; and
- 19.1.2 having made reasonable enquires, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 19.2 The Contractor shall implement due diligence procedures for its own suppliers, subcontractors, agents and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

20. CONTRACT MANAGEMENT

- 20.1 The ETF Representative and Contractor Representative shall attend regular progress meetings to ensure the smooth running of the Contract. Any issues around timescales of Deliverables or the quality of the Deliverables/Services should be raised in these meetings and if applicable, the ETF Representative may vary the Services/Deliverables in accordance with clause 2.4.
- 20.2 The Contractor will submit progress reports at the frequency and times and in the format as may be specified by the ETF Representative from time to time. The submission and acceptance of progress reports shall not prejudice the rights of ETF under any other condition of the Contract.

21. NON-EXCLUSIVITY AND CONFLICT DECLARATION

- 21.1 The ETF may at any time engage other persons to provide services of the same type as the Services.
- 21.2 Without prejudice to clause 21.3 below, the Contractor shall at all times be free to provide services of the same type as the Services to any other person.

21.3 Unless the Contractor notifies the ETF in writing before entering into this Agreement, the Contractor agrees that, during this Agreement with ETF, it will not undertake any activity that could reasonably give rise to a conflict of interest with ETF. The Contractor warrants to inform the ETF, in writing of any conflict of interest that occurs during the Agreement.

22. PROPERTY, EQUIPMENT & ACCESS

22.1 The Contractor will be required to adhere to all appropriate Health and Safety standards required by statute law and by ETF. In the event of non-compliance the Contractor will not be granted access to the ETF and the ETF will have the right to terminate the Contract and reclaim consequential costs incurred.

22.2 Where any access to the Premises is necessary in connection with the Services, the Contractor shall at all times comply with the reasonable requirements of the ETF Representative and ETF policies and procedures.

22.3 If necessary, the ETF may provide the Contractor with reasonable access to ETF's Premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the ETF's premises by the Contractor is at the Contractor's risk.

22.4 The ETF may inspect and examine any Services being performed at the ETF's premise at any reasonable time or, where the Services are being performed on premises other than ETF's, on reasonable notice to the Contractor.

22.5 The Contractor and its Staff must comply with all access, security and health and safety requirements and policies when accessing the ETF's Premises. (copies available upon request).

22.6 Any equipment provided by the ETF for the purposes of the Contract remains the property of the ETF and shall be used by the Contractor only for the purpose of carrying out the Contract. Such equipment shall be returned promptly on Contract expiry or termination.

22.7 The Contractor shall reimburse the ETF for loss or damage to equipment (other than normal wear and tear). Equipment supplied by the ETF shall be deemed to be in a good condition when received by the Contractor unless the ETF is notified otherwise in writing within 5 Working Days.

23. FORCE MAJEURE

23.1 Should a Force Majeure Event frustrate, hinder or delay the Contractor's performance under this Agreement the Contractor shall give notice to ETF immediately upon becoming aware of the Force Majeure Event, giving details of the nature and extent of the circumstances in question and the length of time for which it is expected that such circumstances shall subsist. Subject to clause 23.2, neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from a Force Majeure Event and the time for performance of any obligation prevented or delayed by the Force Majeure Event shall be extended by the period for which such Force Majeure Event continues to prevent or delay performance of the Agreement.

23.2 If the Contractor gives such notice as is referred to in clause 23.1 it shall attempt (using its best endeavours) to mitigate the effect of the matters referred to in such notice and the Parties shall negotiate in good faith and endeavour to agree a solution to the consequences of the matters constituting the Force Majeure Event, including any reasonable variations to this Agreement using the Change Control Procedure to reasonably accommodate such force majeure circumstances.

23.3 Should a Force Majeure Event last continuously for sixty days (60) days or longer, ETF shall be entitled to terminate this Agreement under clause 8.2 without liability to the Contractor.

24. WAIVER

24.1 Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be deemed to be a waiver of ETF's rights or prejudice its rights to take subsequent action in pursuit of remedy.

25. GOVERNING LAW

25.1 This Contract shall be governed by and contrasted in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

26. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

26.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties do not confer or purport to confer on any third party any benefit or any right to enforce any term of the Contract under the Contracts (Rights of Third Parties) Act 1999 (save where it may be expressly stated otherwise in the Contract).

27. NOTICES

27.1 Any notices given by either party to the other under or pursuant to this Contract shall be in writing delivered by hand or sent by post or registered post or transmitted by facsimile or email, resulting in the receipt of a written communication in permanent form, and if so sent or transmitted to the registered address of the other party at the head of this Contract (or to such other address as the party may by notice to the other have substituted from time to time) and marked for the attention of the relevant Representative, shall be deemed effectively served; (a) immediately, if delivered by hand;(b) 48 hours after posting if posted; or (c) on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours, if emailed.

28. CUSTOMER SURVEY INFORMATION

28.1 Participant satisfaction surveys will be provided by ETF and participants will receive the standard ETF satisfaction survey once delivery has occurred and participant attendance has been confirmed via the ETF booking system by the Supplier. The results of participant satisfaction surveys will be shared with the Supplier monthly via the ETF linked contact (Performance Manager).

28.2 ETF may decide to use additional surveys (e.g. base-line and post course outcome surveys) to evaluate the programme. These surveys will be provided by ETF and participants will receive them either as part of their registration/joining instructions or once the participant attendance has been confirmed via the ETF booking system by the Supplier. ETF will require the Supplier to communicate the importance and value of these surveys with participants. ETF will provide the Supplier with information that can be shared with participants regarding the purpose of these surveys. In designing these surveys, ETF will offer the Supplier the opportunity to give feedback on the draft survey questions. ETF will consider any requests the Supplier makes for questions to be included in the evaluation surveys or for amendments to be made to the survey questions. However, ETF cannot guarantee that Supplier questions will be included. ETF will provide a response to the Supplier should it be decided not to include the Supplier's proposed question or change(s) to ETF's questions be made.

- 28.3 ETF will require the Supplier to assist in the identification of FE providers and/ or participants to invite to be case studies. ETF will supply the Supplier with information relating to case study eligibility criteria and requirements and will seek to mutually agree with the Supplier a list of FE providers/ participants to invite to be case studies. Where appropriate, ETF will provide all relevant case study documentation to the Supplier to assist in the recruitment of case studies.
- 28.4 The Supplier must only conduct its own surveys for the purposes of a contract if prior agreement is given by ETF. Should ETF agree for the Supplier to conduct a survey(s) as part of a contract, the Supplier must comply with UK GDPR obligations. The Supplier must inform ETF of any technical or process issues that affect the distribution of ETF surveys to the target audience and share all information with the ETF upon request.
- 28.5 Any data processing carried out as part of a survey agreed by ETF must comply with the details set out in the Data Sharing Agreement (see Schedule 4).
- 28.6 The Supplier must engage and participate in any independent evaluation of its deliver (as defined by the contract) that is commissioned by ETF and/ or DfE.

29. QUALITY ASSURANCE

- 29.1 The Supplier shall implement and perform relevant quality control (user-testing, retesting, validation, stability, audits, delivery monitoring, sampling activity) as required by the contract and set out in Schedule 1 against such specifications and other quality assurance and control procedures as are set out or required by ETF.
- 29.2 Upon request the Supplier will grant ETF or its authorised agents access to such records as ETF may reasonably require in order to check supplier quality assurance activity in accordance with the contract.
- 29.3 Within thirty (30) working days of the Commencement Date the Supplier shall submit to ETF a draft Quality Assurance Plan, designed to review every element of the design and delivery of the deliverables, provide assurance of their quality, and improve the provision of these deliverables. The Quality Assurance Plan must include, as a minimum, activity to:
- a) review any deliverables at the design stage to ensure that they align with the ETF's principles of Continuous Professional Development (CPD), Leadership Framework and professional standards as applicable;
 - b) support the user testing of products and act upon the feedback obtained; and
 - c) conduct a periodic review of the deliverable through appropriate quality assurance processes to include observations of delivery, analysis of survey results and relevant audits.
- 29.4 ETF shall notify the Supplier of its approval or rejection of the proposed Quality Assurance Plan, or any updates to it, within twenty (20) working days of receipt. If it is rejected then the Supplier shall, within ten (10) working days of receipt of notice of rejection, submit a revised Quality Assurance Plan reflecting the changes required.
- 29.5 The Supplier shall update the Quality Assurance Plan as and when required, but as a minimum every six (6) months.

30. GENERAL

- 30.1 Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between ETF and the Contractor.

31. ENTIRE AGREEMENT

31.1 This Contract constitutes the entire agreement between the parties and shall not be varied except in writing and signed by the parties.

31.2 This Agreement shall comprise of the following:

- ETF’s Standard Terms and Conditions of Contract for Services
- Schedule 1 – Specification
- *Schedule 2 – Contractor Proposal dated xx/xx/xxxx*
- Schedule 3 – Financial Details
- Schedule 4 – Data Protection and Data Sharing
(Processor – Sub-Processor relationship – Department for Education (“DfE”) as the Controller, ETF as the Processor, Contractor as Sub-Processor)

The Parties agree to execute this Form of Agreement:

ON BEHALF OF THE CONTRACTOR:	ON BEHALF OF ETF:
Full Name:	Full Name:
Position:	Position:
Signature:	Signature:
Date:	Date:

SCHEDULE 1: SPECIFICATION

Suggested headings, these can be added to or deleted. From a contractual viewpoint defined outcomes are very important to give the agreement some 'weight'.

Purpose

Mention the statement of purpose, to give a precise yet clear description of expectations. You may also justify the reason behind the work.

Background

How the work came into being and the benefits of this.

The Project

Need to clearly define the project.

Roles and Responsibilities

Need to clearly define the work ETF and Contractor has responsibility for and how this will operate.

Outcomes

This is what the parties should achieve through the contract. This should include any outcomes and needs to focus on specific areas. If there are many outcomes it may be helpful to split these into essential and desirable outcomes, to help ensure focus of effort.

Consider what does success look like? How will this assist ETF or wider community in the short / medium / longer term?

Timetable

Schedule of events, which have completion dates.

Representatives and Contacts

ETF and Contractor representative details

Arbitration

A methodology for resolution of issues, between the parties should a dispute arise. Could be a joint meeting between senior representatives at the respective institutions.

Evaluation

Important that a methodology is agreed at the start of the project to measure the impact of the project. It may be necessary to revisit the impact of a longer period of time. This is linked to the Outcomes and 'what success looks like'.

Contract Management

Set up of review meetings and measures to assess how the contract is progressing to the agreed work schedule. Reviews should be linked to making payment and that satisfactory performance has taken place.

Quality KPI's to be added to the contracts by the Performance managers

The link below details the quality KPI's available for Performance Managers to use when building the annex 1 & 2 of new contracts. The KPIs are a guide and wording maybe changed to reflect individual contract requirements. For further support an information contact the Regional Quality Assurance Manager

[Quality Generic KPIs.xlsx](#)

SCHEDULE 2: CONTRACTORS PROPOSAL

(copy or embed accepted contractor proposal / quotation here)

SCHEDULE 3: FINANCIAL DETAILS

Contract Price: £xxxxxxx exclusive of VAT which will become payable by the ETF upon satisfactory completion of the Deliverables/Services and in accordance with the below payment structure.

(Must only include one option – please delete as applicable)

Option 1 - FIXED PRICE

The above Contract Price is a fixed price which will become payable upon the satisfactory delivery of the final Deliverable / Output.

Option 2 - FIXED PRICE WITH MILESTONES

The above Contract Price is a fixed price which will become payable at the below milestones:

*£xxxxxx upon delivery of Deliverable / xxxxx
£xxxxxx upon delivery of Deliverable / xxxxxx
£xxxxxx upon delivery of Final Deliverable / xxxxxx*

Option 3 - MAXIMUM PRICE WITH MILESTONES

The above Contract Price is the maximum amount the ETF is entitled to pay the Contractor under this Agreement. Payments will become payable at the below milestones:

*£xxxxxx upon delivery of Deliverable / xxxxx
£xxxxxx upon delivery of Deliverable / xxxxxx
£xxxxxx upon delivery of Final Deliverable / xxxxxx*

Option 4 - MAXIMUM VALUE WITH VARIABLE DELIVERABLES

Payments will be made to the Contractor subject to the satisfactory completion of the Deliverables / Outputs in the Contract. The Contractor will invoice the ETF on a monthly basis. Each invoice will include an itemised breakdown of the work undertaken during that month.

**SCHEDULE 4: DATA PROTECTION AND DATA SHARING
(PROCESSOR – SUB-PROCESSOR RELATIONSHIP – DEPARTMENT FOR EDUCATION
AS THE CONTROLLER, ETF AS PROCESSOR, CONTRACTOR AS SUB-PROCESSOR)**

TABLE 1: SUPPLIER DATA HANDLING

Description	Details
Subject matter of the processing	[This should be a high level, short description of what the processing is about i.e. its subject matter]
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.]</p>
Purposes of the processing	[The purpose might include: employment processing, statutory obligation, recruitment assessment etc]
Personal Data Categories	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents and temporary workers), customers/clients, Partners, patients, students/pupils, members of the public, users of a particular website] etc
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[Describe how long the data will be retained for, how it be returned or destroyed]
Contractor's approved Sub-Processors	[List all approved sub-processors]
Evaluation Partner	[ETF to name Contractor]