



EDUCATION AND TRAINING FOUNDATION
- and -
[SUPPLIER / PARTNER NAME]

CONTRACT PERIOD:

[REFERENCE NUMBER]

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PART A - SUMMARY OF KEY COMMERCIAL TERMS

This Agreement is made on [insert date] (“**Commencement Date**”) between 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 the Supplier named below (the “**Supplier**”), together “the Parties”. It is proposed the Agreement shall end on [DATE] (“**End Date**”)

Where any of the following expressions are used in Part B (Terms and Conditions) they shall have the meanings given in the box below (unless the context otherwise requires).

Supplier:	Name:	
	Company No. and Registered Office (or principal place of business):	
ETF Representative: or such other person with equivalent authority whom the Supplier may notify in writing from time to time	Name:	
	Telephone No:	
	E-mail:	
Supplier Representative: or such other person with equivalent authority whom ETF may notify in writing from time to time	Name:	
	Telephone No:	
	E-mail:	
ETF Relevant Director:	Name:	
	Telephone No:	
	E-mail:	

By signing below, the Parties hereby accept and agree the terms of this Agreement.

Signature:	.....	Signature:	.....
Print name:	.....	Print name:	.....
Job title:	.....	Job title:	.....
Date:	.....	Date:	.....
Duly authorised to sign for and on behalf of the Education and Training Foundation		Duly authorised to sign for and on behalf of The Supplier	

PART B - TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

The definitions and rules of interpretation set out in Appendix 1 shall apply in this Agreement.

2. APPOINTMENT

2.1 ETF appoints the Supplier to provide the Services.

3. TERM

3.1 The Supplier shall provide the Services from the Commencement Date.

3.2 The Supplier shall provide the Services until the End Date unless this Agreement is terminated earlier in accordance with clause 15.

3.3 ETF may extend the Initial Term by an agreed Extension Period.

4. THE SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall:

- a) provide the Services in accordance with this Agreement;
- b) ensure that the Key Performance Indicators, Deliverables and Outputs are achieved;
- c) in providing the Services, exercise all due professional skill and care, to the best of its abilities and in a business-like manner;
- d) use Personnel who are suitably trained, experienced and skilled to a standard expected of persons working in the field relevant to the Services being delivered, and always comply with the obligations and requirements in clause 15.6d) of this Agreement;
- e) declare any conflict of interest to ETF and work with ETF to resolve any issues identified and then manage the process effectively;
- f) comply with all applicable law, any reasonable industry standards, relevant regulations and guidance, having obtained all necessary licences and consents;
- g) ensure there are robust policies and procedures in place (which for the avoidance of doubt shall include policies on Data Protection, Safeguarding and Equality and Diversity) and comply with these policies. The Supplier shall also procure that its Personnel (which includes Sub-Contractors) shall conform to the policies;
- h) perform its obligations under this Agreement in accordance with:

- a) all applicable law in relation to race, sex, gender assignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise;
 - b) any other requirements and instructions which ETF reasonably imposes in connection with any equality obligations imposed on ETF at any time under the applicable equality law;
- i) take all necessary steps, and inform ETF of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal;
- j) where ETF requests this, the Supplier shall undertake specific data collection (relating to the Services and the participants) to be used for ETF's own Equality Impact Assessment activity or for monitoring of how ETF is fulfilling its statutory duties. ETF will meet any reasonable costs associated with such collection, provided that such costs are agreed in advance.
- k) if any Deliverable consists of a software application or source code that is critical to that Deliverable:
- a) use all reasonable endeavours to remove viruses, bugs and other unspecified code from the Deliverable prior to delivery; and
 - b) keep in a safe place any source codes and keep back-up copies of the source codes at a safe and secure site under the Supplier's ownership and control until such time as ETF notifies the Supplier that the source codes are no longer required;
- l) cause the lowest level of disruption to the business of ETF which is consistent with the proper performance of the Services;
- m) not do or omit to do anything which might (in the reasonable opinion of ETF) be expected to damage the reputation of ETF or attract negative publicity;
- n) ensure it places the utmost importance on the need to prevent fraud and irregularity in the delivery of the Agreement, for which the Supplier shall (and shall procure the same from its Personnel and any Sub-Contractor):
- a) have an established system that enables to report inappropriate behaviour by colleagues in respect of contract performance claims relevant or in any way connected to the Services;
 - b) ensure that any performance management systems do not encourage individual staff to make false claims regarding achievement of performance targets that are relevant or in any way connected to the Services;
 - c) ensure an operational segregation of duties between those directly involved in delivering and those reporting achievement of performance of the Services (or any part thereof); and
 - d) ensure that an audit system is implemented to provide periodic checks, as minimum at six (6) monthly intervals, to ensure effective and accurate recording and reporting of performance of the Services (or any part thereof);
- o) comply with any additional obligations as set out elsewhere in this Agreement in Part B (Terms and Conditions), the Schedules, or Appendix 1 (Definitions).

4.2 In complying with its obligations to comply with all relevant legislation and regulations, the Supplier shall provide ETF, at its request, with copies of any relevant documentation relating to any contracted activities undertaken by the Supplier or any Sub-Contractors appointed by the Supplier.

4.3 Notwithstanding the specific requirements of the remainder of this clause 4, the Supplier shall otherwise and generally co-operate with ETF in all matters relating to the Services.

5. ETF'S OBLIGATIONS

5.1 ETF shall:

- a) provide usable and reliable information to the Supplier to assist the Supplier in the provision of the Services as the Supplier may reasonably require;
- b) comply with its obligations and respond to the reasonable enquiries of the Supplier in a timely manner;
- c) operate in a business-like manner in order to facilitate the Supplier's successful provision of the Services in all relevant respects; and
- d) ensure that neither it nor its contractors or agents act in such a way that the Supplier is impeded or delayed in providing the Services (subject at all times to the Supplier informing ETF in good time and accurately of any particular requirements the Supplier needs to perform its obligations under this Agreement).

6. FINANCIAL STABILITY OF THE SUPPLIER

6.1 The Supplier 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 Supplier.

6.2 The Supplier shall promptly notify ETF if there are any material changes to the financial stability of the Supplier during the Initial Term.

6.3 The Supplier shall promptly notify ETF if proposes to undergo a change in Control of the Supplier 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. SUPPLY OF THE SERVICES

7.1 The Supplier shall perform the Services in a timely manner in accordance with the delivery dates stated in the Agreement.

7.2 Time of such provision and delivery shall be of the essence in this Agreement.

7.3 Subject to clause 7.4, neither Party shall make any changes to the Services without complying with the Change Control Procedure.

- 7.4 Should ETF experience any changes in the funding it receives which may materially affect the Services, this shall trigger the Change Control Procedure. The Supplier acknowledges the Services hereby commissioned by the ETF are subject to funding which is variable in nature, and hereby undertakes to comply with accepting any required amendments or reductions to the scope of this Agreement through the Change Control Procedure, such acceptance not to be unreasonably withheld.
- 7.5 If ETF notifies the Supplier that any part of the Services does not meet the expected standard (which it shall use reasonable endeavours to do so within 7 days), the Parties shall discuss in good faith ETF's comments and how best to implement the improvements and alterations desired.
- 7.6 If the Parties are unable to reach agreement on such improvements or alterations, they shall follow the dispute resolution procedure at clause 30.8.
- 7.7 Without prejudice to any other rights of ETF, if any part of the Services is not delivered on the due date, and/or is defective, ETF has the right to:
- a) cancel or refuse to accept such Services (or any part of it);
 - b) recover from the Supplier any expenditure reasonably incurred by ETF in obtaining substitute Services from another supplier; and
 - c) claim damages for any liabilities incurred by ETF that are in any way attributable to the Supplier's failure to deliver the Deliverables and Outputs on the due date.

8. CHANGE CONTROL PROCEDURE

- 8.1 Any activities additional to the Services and / or Initial Term as well as any other variation to any of the terms and conditions of this Agreement shall be agreed by both parties in writing via the Change Control Procedure, using the template form at Annex A to this Agreement.

9. FINANCIAL ARRANGEMENTS

- 9.1 In consideration of receipt of the Services, ETF shall pay the Supplier the Fees which shall be calculated and paid in accordance with the remainder of this clause 9 and Schedule 3 (Financial Details).
- 9.2 Where the Supplier provides additional services not specified in this Agreement nor subsequently agreed by ETF under the Change Control Procedure, the Supplier shall have no right to charge ETF an additional fee for such work.
- 9.3 If the Supplier shall be entitled to invoice for its disbursements and other costs or expenses incurred in performing the Services, this shall be subject in any case to: (i) the Supplier providing the ETF with all supporting receipts and invoices to evidence such expenses; (ii) such expenses are incurred strictly in accordance with the provisions of Schedule 3 (Financial Details) and/or subsequent mutually agreed amendments in writing; and (iii) the Supplier shall comply with the record keeping requirements specified in Clause 20 (Records).

- 9.4 All sums due to the Supplier under this Agreement shall be payable in arrears by ETF within 30 days of receipt of a valid invoice from the Supplier, which shall contain a valid Purchase Order Number.
- 9.5 Unless expressly set out in Schedule 3 (Financial Details) or expressly agreed otherwise by ETF in writing, all sums payable under this Agreement are inclusive of VAT (where applicable) at the applicable rate chargeable in the UK for the time being. It is the Supplier's responsibility to ensure that any applicable VAT is included in any fees, charges or prices communicated to ETF in connection with this Agreement.
- 9.6 If ETF fails to pay any sum properly due and payable (other than any sum disputed in good faith) by the due date for payment, the Supplier may charge interest on the amount of any such late payment at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, such interest to accrue from the date on which payment was due to the date on which payment is actually made. ETF hereby commits to making all reasonable efforts to settle invoices in a timely fashion. The Parties hereby acknowledge and agree that such rate of interest is a substantial remedy for any late payment of any sum properly due and payable.

10. SUB-CONTRACTING

- 10.1 The Supplier shall not sub-contract any of its obligations under this Agreement without the prior written consent of ETF (which in turn requires the prior written approval of the Department for Education).
- 10.2 Should ETF allow the Supplier to sub-contract elements of the Services, this shall be subject to Clauses 10.1 and 10.3 and shall also require such sub-contracted elements and all other relevant information to have been identified and agreed in either Schedule 1 (Services) or Schedule 4 (Supplier's Tender Response) of this Agreement.
- 10.3 The Supplier acknowledges that ETF in allowing the Supplier to sub-contract does not relieve the Supplier of its obligations under this Agreement and the Supplier agrees that it shall be responsible for the acts, defaults and neglect of any Sub-Contractor or any employee, agent or servant of any such Sub-Contractor, as if they were the Supplier's own acts, defaults and negligence.
- 10.4 The Supplier shall, on entering into a Sub-Contract:
- a) pay any valid invoice received from its Sub-Contractor within 30 days following receipt of the relevant invoice payable under the Sub-Contract; and
 - b) include in that Sub-Contract a provision requiring the counterparty to that Sub-Contract to include in any sub-contract which it awards, provisions to:
 - a) ensure compliance with the reasonable industry standards, relevant legislation, regulations, guidance and any policies as per clause 4.1g); and
 - b) mirror clause 10.4a) of this Agreement.
- 10.5 Where the Supplier chooses to sub-contract, such Sub-Contract(s) shall not contain any terms which are incompatible and/ or conflict with this Agreement.

11. TUPE

11.1 The Parties shall comply with terms in Schedule 6 if TUPE applies.

12. WARRANTIES AND REPRESENTATIONS

12.1 The Supplier warrants, represents and undertakes to ETF that:

- a) all information and statements made by the Supplier as a part of ETF's procurement process remain true, accurate and not misleading, save as may have been specifically disclosed in writing to ETF prior to execution of the Agreement;
- b) the Supplier shall promptly notify ETF in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided by it to ETF during such procurement process or any ETF due diligence or similar process, which materially and adversely affects its ability to perform the Services;
- c) the Supplier has the capacity and authority to enter into and perform this Agreement;
- d) no part of the Services or their permitted use by ETF in accordance with this Agreement shall infringe any rights whatsoever of any person;
- e) the Supplier shall not make any representation or give any warranty on behalf of ETF nor create any expense chargeable to ETF.

12.2 ETF warrants, represents and undertakes to the Supplier that:

- a) it has the capacity and authority to enter into this Agreement; and
- b) it shall not make any representation or give any warranty on behalf of the Supplier nor, save where permitted elsewhere in this Agreement, create any expense chargeable to Supplier.

12.3 Each Party warrants that it shall not act in a manner (in particular when acting as an associated person of the other Party) that constitutes a breach of applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010. Each Party warrants that it shall not induce or improperly reward any third party, including any subcontractor or foreign public official, to act improperly. For the purpose of this clause to act improperly shall be interpreted in accordance with the Bribery Act 2010.

12.4 Nothing in this Agreement shall serve to exclude any warranties implied by law in relation to the provision of the Services.

13. RECOVERY OF LOSS AND INDEMNITIES

- 13.1 The Supplier shall indemnify ETF from all liabilities awarded against, or incurred or paid by, ETF as a result of or in connection with:
- a) any alleged or actual infringement, whether or not under English law, of any third party's intellectual property rights or other rights arising out of the provision of the Services or the use of the Deliverables or Outputs by ETF pursuant to this Agreement;
 - b) any liability sustained by ETF or a third party provided that such liability was caused by, relates to or arises from a breach of this Agreement by the Supplier, the Supplier's negligence or wilful default (including that of its Personnel and Sub-Contractors); or
 - c) any defect, breach or failure to supply the Services, Deliverables or Outputs.
- 13.2 The aggregate liability of the Supplier to ETF in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation, tort (including negligence), breach of statutory duty or otherwise shall in no event exceed £1,000,000 in total, per 12-month period.
- 13.3 The Supplier shall have full responsibility for and shall indemnify ETF for and in respect of any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Supplier in respect of the Services, where such recovery is not prohibited by law.
- 13.4 ETF shall promptly and fully inform the Supplier in writing of any potential third party claim that is subject to clause 13.1.
- 13.5 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 circumstances beyond the reasonable control of that party which were not foreseeable on the Commencement Date due to a Force Majeure Event.
- 13.6 Nothing in this Agreement shall serve to limit or exclude either Party's liability for loss that cannot as a matter of law be so excluded, including fraud, fraudulent misrepresentation, personal injury or death.
- 13.7 This clause 13 is without prejudice to any other indemnities provided throughout this Agreement.

14. INSURANCE

- 14.1 The Supplier shall have and maintain in place throughout the Agreement the following insurances with an insurance company or underwriter of repute:
- (a) employer's liability with cover of not less than £1,000,000 (one million pounds); and

- (b) public liability insurance with cover of not less than £1,000,000 (one million pounds) and
 - (c) professional indemnity insurance with cover of not less than £1,000,000 (one million pounds) in respect of any one occurrence or all occurrences of a series consequent on one original cause arising out of or in connection with the event and caused by the Supplier.
- 14.2 The Supplier shall, upon request, provide ETF with a copy of such policies of insurance.
- 14.3 The Supplier shall, during the Initial Term, any Extension Period, and for 6 years after expiry or termination of this Agreement, do nothing to invalidate any existing insurance policy which may prejudice ETF's entitlement thereunder (if any) pursuant to this Agreement.
- 14.4 The Supplier shall maintain sufficient insurance during and after the Initial Term, any Extension Period, and for 6 years after expiry or termination of this Agreement, to enable it to meet its obligations to ETF under any warranties and indemnities given in this Agreement.
- 15. TERMINATION**
- 15.1 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.
- 15.2 ETF may terminate this Agreement immediately upon written notice to the Supplier if the provision of the Services is delayed, hindered or prevented for sixty (60) days or more due to a Force Majeure Event.
- 15.3 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.
- 15.4 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.

15.5 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 Supplier 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:
 - a) ETF shall pay the Supplier such part of the Fees as may be then payable, and subject to clause 9 and to the extent not recovered by the Supplier by the payment of such Fees, shall reimburse the Supplier for any costs reasonably incurred in the normal course of providing the Services prior to the termination date that the Supplier could not reasonably avoid after receipt of the No Fault Termination Notice provided that the Supplier makes all reasonable efforts to mitigate such cost;
 - b) the Supplier shall, subject to clause 16.3, fully co-operate in any transfer of responsibility for provision of Service(s) to such other person as ETF may reasonably require; and
 - c) the Supplier shall within one month after the termination date, submit an invoice for payment and/or reimbursement of any sum due under this clause 15.5b).

15.6 Notwithstanding clause 15.5, 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 Supplier 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:

- a) The acts or omissions of the Supplier 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 Supplier’s obligations under the Agreement; or
- b) There is a change in Control (as defined in clause 6.3 of this Agreement) of the Supplier 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
- c) A conflict of interest of the Supplier 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
- d) The Supplier 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 Supplier 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

- e) Any other circumstance or event that reasonably requires the DfE to request the ETF to terminate this Agreement.

15.7 Termination rights required by law

- a) ETF may terminate this Agreement with immediate effect at any time by providing the Supplier with written notice where:

- a) this Agreement has been subject to a substantial modification which would have required a new procurement procedure under the Public Contracts Regulations 2015;
- b) ETF discovers that it should not have entered into this Agreement with the Supplier because the Supplier (or any member of the administrative, management or supervisory body of the Supplier or any person who has powers of representation, decision or control within the Supplier) 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

16. CONSEQUENCES OF TERMINATION

- 16.1 Following the serving of a notice terminating this Agreement, the Supplier 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.

16.2 ETF shall pay the Supplier such part of the Fees for the Services that have been carried out by the Supplier and shall reimburse the Supplier for any costs reasonably incurred in the normal course of providing the Services prior to the Termination Date that the Supplier could not reasonably avoid after receipt of the Notice to Terminate provided that the Supplier makes all reasonable efforts to mitigate such cost

16.3 In the event that:

- a) The Supplier terminates this Agreement under clause 15.1 (due to an act of default by ETF) or ETF terminates this Agreement under clause 15.5a), ETF shall pay the costs incurred by the Supplier 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 Supplier's then current standard hourly/daily charges).
- b) This Agreement is terminated for any reason other than those described in 16.3a), the Supplier shall be responsible for the costs it incurs for providing the handover assistance to ETF.

16.4 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, including complying with Schedule 6 (Employment).

17. INTELLECTUAL PROPERTY

17.1 All Background Intellectual Property belonging to one Party is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom its right to use the Background Intellectual Property has derived).

17.2 The Supplier shall inform the ETF in writing in advance before providing to the ETF or otherwise using in the provision of the Services, Deliverables or Outputs that are part of this Agreement any materials or systems that incorporate Third Party Intellectual Property. The Supplier shall obtain any third party licences or consents necessary to grant the licence in respect of Third Party Intellectual Property set out in clause 17.3.

17.3 The Supplier hereby grants (and where applicable shall procure the grant) to the ETF a non-exclusive, perpetual, royalty-free, irrevocable, transferable and worldwide licence to use, exploit and sub-license the Background Intellectual Property of the Supplier and the Third Party Intellectual Property as the ETF reasonably considers necessary to enable the ETF (and its sub-licensees) to:

17.3.1 receive and make use of the Services, Deliverables or Outputs produced or developed by the Supplier as part of this Agreement, including use for the same or similar programmes and activities in the future; and

17.3.2 to sub-license others to exercise the rights set out in this clause.

17.4 The Supplier agrees to assign to ETF the copyright, Intellectual Property rights and any related rights for the Arising Intellectual Property originated or developed during the Agreement, 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 Supplier shall do all such things necessary to effect such an assignment.
- 17.5 Arising Intellectual Property from this Agreement shall vest with ETF, who will assign ownership of the Arising Intellectual Property to the Crown and also provide the required licences or sub-licences over Background Intellectual Property or Third Party Intellectual Property as required, including any sub-licences in accordance with clause 17.3 above.
- 17.6 Any Arising Intellectual Property will also be made available for the Supplier and ETF to use in accordance with the Open Government Licence (“**OGL**”), subject to ETF and the Supplier being able to legally comply with the terms of the OGL for such Arising Intellectual Property.
- 17.7 The Supplier agrees that none of this Agreement including without limitation any of the Services, Deliverables or Outputs produced or developed by the Supplier as part of this Agreement 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.
- 17.8 The Supplier 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 17.7.
- 17.9 The provisions of clause 17.7 shall not apply in respect of any material which ETF has supplied to the Supplier or which ETF has specified for use by the Supplier.
- 17.10 Where any claim is made by a third party in respect of any material referred to in clause 17.7 the Supplier 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.
- 17.11 The Supplier shall promptly notify ETF if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property which may affect the Services, Deliverables or Outputs.
- 17.12 Intellectual Property and any related rights vested solely with ETF shall not be reproduced by the Supplier without the express, prior, written permission of ETF.
- 17.13 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 Supplier by ETF pursuant to the Agreement shall remain vested solely in ETF.
- 17.14 The Supplier acknowledges that the Data shall remain with ETF and the Supplier shall only make use of the Data for such purposes as are strictly necessary for the Supplier to carry out its obligations under this Agreement and in accordance with Data Protection Legislation.
- 17.15 At the termination of this Agreement, the Supplier shall return to ETF the Data, which shall remain at all times the property of ETF but shall be at the Supplier's risk so long as it remains in its possession or control.
- 18. BRANDING**
- 18.1 The Supplier shall comply with the branding guidelines of ETF as specified in this clause 18 and ETF hereby grants to the Supplier a non-exclusive, non-transferable licence to use ETF's branding and logos for the purposes of delivering the Services and limited to the duration of this Agreement unless otherwise agreed in writing.

- 18.2 For all Deliverables and Outputs, the predominantly featured brand shall be ETF's brand unless otherwise agreed with the ETF Representative and ETF's Communications and Marketing Department.
- 18.3 The Supplier shall refer to and follow ETF's brand guidelines - <http://www.et-foundation.co.uk/etf-brand-guidelines-templates/> to ensure correct application of the brand.
- 18.4 The Supplier shall use the phrase 'This programme / course / research is delivered by XXXX commissioned by the Education and Training Foundation on behalf of the Department for Education' in all channels and in all media to acknowledge ETF's and DfE's involvement. No other wording shall be used unless otherwise agreed by the Parties.
- 18.5 The Supplier shall provide press releases, media articles and other public relations activities to ETF's Communications and Marketing Department for approval at least two weeks before the distribution date. ETF's Communications and Marketing Department shall provide a response within four working days.
- 18.6 All branding material must be signed off by ETF's Communications and Marketing Department.
- 18.7 All branding must comply with standard accessibility requirements to ensure inclusivity.

19. PARTY REPRESENTATIVES

- 19.1 ETF shall appoint the ETF Representative and the Supplier shall appoint the Supplier Representative (as set out in Part A) and each Party shall notify the other without delay if their respective representative should change.
- 19.2 Each Party shall keep the other regularly updated on progress and require that the ETF Representative and the Supplier Representative, as the case may be, attend such meetings as are requested by ETF and otherwise as may be required.
- 19.3 The ETF Representative and the Supplier Representative shall be the point of contact in the first instance for all aspects of this Agreement and its operation and/or performance, save that any notice given by the Supplier to ETF regarding a potential breach of this Agreement and/or a notice under clause 15, clause 21, clause 28.8 should be made in writing to the ETF Relevant Director (as set out in Part A).

20. RECORDS

- 20.1 In order to allow ETF to meet the requirements of its financial and audit responsibilities, the Supplier shall keep, and make available to ETF, full and accurate records, accounts and statistics of all aspects of its provision of the Services for a period of seven (7) years from the End Date and allow ETF or the ETF Representative to inspect these records, including the accounts, at any time during business hours on providing reasonable prior notice.

21. FORCE MAJEURE

- 21.1 Should a Force Majeure Event frustrate, hinder or delay the Supplier's performance under this Agreement the Supplier 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 21.2, 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.

- 21.2 If the Supplier gives such notice as is referred to in clause 21.1 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.
- 21.3 Should a Force Majeure Event last continuously for sixty days (60) days or longer, ETF shall be entitled to terminate this Agreement under clause 15.2 without liability to the Supplier.

22. CONFIDENTIALITY AND PUBLICITY

- 22.1 Each Party shall maintain secret and confidential all Confidential Information obtained from the other pursuant to, and in the course of and prior to and in contemplation of, this Agreement. The Supplier agrees to disclose such information only to the Personnel who need to know the same and the Supplier shall procure that all such Personnel who have access to such information shall be made aware of and subject to these same obligations. This clause shall survive expiry or termination of this Agreement.
- 22.2 Nothing in this clause 22 shall prevent the receiving Party from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.

23. DATA PROTECTION

- 23.1 The Parties shall comply with Schedule 5.

24. MARKETING AND COMMUNICATIONS

- 24.1 The Supplier shall be responsible for all the marketing, promotion and sales of the Services, Deliverables and Outputs as part of this Agreement. This includes ensuring target numbers and income (if applicable), as detailed in the Services, are recruited and appropriate remedial action is proposed and agreed with ETF, should recruitment fall below the agreed target number of delegates.
- 24.2 ETF shall offer general marketing support to the Supplier where required and requested, however the full responsibility for recruitment remains with the Supplier.
- 24.3 The Supplier shall ensure all marketing and communication materials and resources developed as part of this Agreement adhere to ETF's brand guidelines.

24.4 The Supplier Representative shall provide a draft copy of the relevant communications and marketing plan promptly to the ETF Representative for review by ETF's Marketing and Communications team.

24.5 The Supplier shall include ETF's boilerplate branding in the notes to editors of all press releases.

25. WEBSITE AND SOCIAL MEDIA

25.1 Unless agreed by the ETF Representative, ETF Director of Marketing and Communications, ETF Head of Information Management & Technology and Data Protection Officer and the ETF Director of Business Strategy, the Supplier is not allowed to create a brand new website or social media account specific to the delivery of the Services, Deliverables and Outputs.

25.2 The Supplier must have agreement with ETF's Communications and Marketing Department of any significant planned social media activity.

26. ENVIRONMENTAL, ETHICAL AND SOCIAL RESPONSIBILITIES

26.1 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 Supplier shall regularly seek to identify improvements to the Services which benefit the environment and/or society. The Supplier 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.

26.2 Where requested by ETF, the Supplier shall make available to ETF any documentation demonstrating relevant accreditation or compliance with ethical, environmental or social policies.

27. MODERN SLAVERY

27.1 The Supplier represents and warrants that at the date of this Agreement neither the Supplier nor any of its officers or Personnel:

a) has been convicted of any offences involving slavery and human trafficking;

and

b) 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.

27.2 The Supplier 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.

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 5).
- 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 Notices. Any notice shall be delivered or sent by first class registered post or email to the other Party at the address appearing in Part A of this Agreement or to such other address as notified in writing. Where notice is given by hand or email it shall be deemed to be received on the day served (or where that day is not a Working Day, the next Working Day) provided that no notification is received by the sender that the letter or email was not delivered. Where notice is given by post, it shall be deemed to be received the following day (or where that following day is not a Working Day, the next Working Day).
- 30.2 No Partnership. Nothing in this Agreement shall constitute or be construed as constituting a relationship of employment, partnership or joint venture between the Parties, or shall authorise the Supplier to enter into contractual relationships or incur obligations on ETF's behalf.
- 30.3 Assignment. Neither Party shall assign or licence or attempt to assign or license in whole or in part the benefit of this Agreement or any of its obligations hereunder without the other Party's express prior written consent.
- 30.4 Waiver & Severance. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. Should any term of this Agreement be considered void or voidable under any applicable law then such term shall be severed or amended in such a manner as to render the remainder of this Agreement valid or enforceable, unless the whole commercial object is thereby frustrated.

- 30.5 Third Party Rights. Save for any rights of the Existing Supplier and the Successor (as defined in Schedule 6) where that Schedule applies, notwithstanding any other provision of this Agreement, none of the terms of this Agreement shall be relied upon or enforceable under the Contracts (Rights of Third Parties) Act 1999 by any third party who is not a party to this Agreement.
- 30.6 Entire Agreement. This Agreement and the documents referred to herein contain the entire agreement of the Parties and cancel and supersede all prior agreements between ETF and the Supplier in connection with the same.
- 30.7 Survival. Clauses 12.1d), 13, 14, 15.5b) 16, 17, 22, 23, this clause 30.7, 30.8, and 30.11 of this Agreement shall survive expiry of the Initial Term, any Extension Period, or earlier termination of this Agreement in so far as necessary in order to give effect to their terms.
- 30.8 Dispute Resolution. If a dispute arises out of or in connection with this Agreement or the performance by either Party of their obligations under the Agreement, the Parties shall first attempt in good faith to resolve such dispute between themselves. If for any reason the Parties are unable to resolve the dispute within thirty (30) days of it first arising the dispute shall be subject to mediation, to take place in England. The Parties shall agree in good faith the identity of the mediator and jointly appoint the mediator or, if they fail to do so, the mediator shall be appointed by CEDR. If the mediation fails, the dispute shall be finally settled by reference to the English courts. Nothing in this clause 30.8 shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or an interim remedy is required or sought.
- 30.9 Variations. Any changes to this Agreement and/or the Schedules may only be varied in writing signed by duly authorised representatives of the Parties, in accordance with the Change Control Procedure.
- 30.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.
- 30.11 Governing Laws: This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

SCHEDULE 1: SERVICES

[What **impact** do we hope/intend to achieve through this project in the medium and possibly longer term]

Services: Description / Specification

[Insert description of the service requirements / specification. Ensure it is clear when the delivery of a Deliverable has taken place.]

Include where relevant:

- Content of the services to be provided
- Quality
- - Deliverables / Outputs: Will one of the deliverables be a website? Before committing to do so, please contact the SHAPE Digital Transformation group representatives and the Communications and Marketing department.
- Reporting and evaluation requirements e.g., reporting on delivery, identifying any risks etc.
- Link to Key Performance Indicators, Deliverables and Outputs in Schedule 2
- Any project phases / milestones

Caution: Do not contradict any terms in Parts A or B.]

INCLUDE DETAILS OF ANY REQUIRED QUALITY CONTROL MEASURES AS PER CLAUSE 29

INSERT CUSTOMER MONITORING AND EVALUATION PRACTICES FOR SURVEYS

ETF will provide a range of surveys to your participants as part of this agreement, typically participants will receive a customer's satisfaction survey, an Equality Diversity and Inclusion (EDI) survey and a 'No shows survey'. (This does not apply to Taking Teaching Further)

SCHEDULE 2: KEY PERFORMANCE INDICATORS, DELIVERABLES AND OUTPUTS

KPIs shall be based upon the Response to Tender and agreed with the Supplier prior to executing the Agreement. KPIs shall be drafted to focus on **impact and outcomes** achieved as well as output and satisfaction. KPIs shall include:

- Reach
- Feedback scores – satisfaction and intention to change
- Equality and diversity measures
- Marketing and strategy
- Course content
- Course quality
- Course delivery

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 may be changed to reflect individual contract requirements. For further support an information contact the Regional Quality Assurance Manager

No	Aim	Key Performance Indicator/ Deliverable / Output	Milestones (Date to complete/deliver by)	Outcome / Impact

SCHEDULE 3: FINANCIAL DETAILS

This Schedule must set out any agreed expenses and disbursements and how such fees shall be calculated, recorded and paid.

Link payments to milestones/deliverables/ outputs; ETF has 7 days from the delivery of products/services/resources produced to approve/sign them off, therefore this should be factored in to the payment schedule i.e. leave time to approve before scheduling a payment.]

Deliverable / Output / Key Performance Indicator Details	Milestone Date	Fixed Fee
Total Fixed Fee (inclusive of VAT)		£

Clearly set out method of charging, including (as applicable):

- Fees and/or agreed price for service(s)
- Insert a break clause at the end of each financial year (if applicable).

[NB the main terms and conditions only allow the Supplier to charge for expenses if set out in this schedule. Therefore, do set out what costs / expenses you are prepared to pay, what approvals might be required [e.g. any cost over a certain value must have prior approval], what documents you expect to receive to prove the expenditure etc.]

[NB the terms and conditions oblige the Supplier to keep all financial records and accounts and give you a basic right to inspect those. Expand on these provisions if you require more detailed oversight of budgets etc.]

Payment Schedule

1. Payment shall be made in **x** instalments upon receipt of an invoice as outlined above.
2. The Supplier shall:
 - 2.1 control, manage and monitor the agreed budget above, agreeing any changes with ETF and informing all relevant parties of such changes if they occur;
 - 2.2 keep all financial records and accounts, and ETF has the right to inspect these records at any time.
 - 2.3 shall quote ETF purchase order number on all Supplier invoices to ETF. No Supplier invoice shall be paid by ETF without this information.
 - 2.4 send all invoices to ETF by email to finance@etfoundation.co.uk, quoting the correct purchase order number.

SCHEDULE 4: SUPPLIER'S TENDER RESPONSE

[Include the Supplier's Tender Response as an Appendix / embedded document as part of this Agreement.]

If appropriate include any key statements and representations from the Response to Tender and any subsequent material correspondence to which the Supplier should be held accountable and it is helpful to include here for clear reference. Including but not limited to:

- Content
- Timescales
- Quality
- Marketing strategy and market reach]

**SCHEDULE 5: DATA PROTECTION AND DATA SHARING
(PROCESSOR - SUBPROCESSOR RELATIONSHIP – ETF AS THE PROCESSOR AND
DFE AS THE CONTROLLER)**

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]
Supplier’s approved Sub-Processors	[List all approved Sub-Processors]
Evaluation Partner	[ETF to name Supplier]

1. The Department for Education (DfE) is the overall Controller of Data for this programme of work. The ETF is their Data Processor and the Supplier is ETF's Sub-Processor.
2. The Supplier will process the Data on behalf of the ETF for the purpose(s) of this Agreement.
3. The Agreement for delivery of this programme sets out clear requirements for all Parties to comply with all applicable requirements of the current Data Protection Legislation. The provisions relating to Data protection in this Agreement are to comply with, or are in addition to, but do not relieve, remove or replace a Party's obligations under that legislation.
4. The Supplier shall:
 - i. Process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes and duration of this Agreement and in accordance with ETF's documented instructions from time to time. It shall not process the Personal Data for any other purpose, unless legally required; in such a case, the Supplier shall inform ETF of that legal requirement before processing, unless that law prohibits disclosure of such information on important grounds of public interest.
 - ii. Keep a complete and accurate record of any processing of Personal Data it carries out on behalf of ETF and to demonstrate its compliance with this Schedule 5 and shall make available all information relating to such processing at the request of ETF.
 - iii. Ensure that all Personnel and any others who have access to, or are involved with processing, any Personal Data are subject to a relevant duty of confidentiality; this extends to any others who have access to or are involved with processing any Personal Data.
 - iv. Implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including (but not limited to):
 - the pseudonymisation and encryption of Personal Data;
 - the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
 - a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
 - v. Notify the ETF if the Supplier believes an instruction to hand information to the ETF breaches the Data Protection Legislation;
 - vi. Assess the appropriate level of security, taking account in particular of the risks that are presented by processing; in particular from accidental or unlawful

- destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed;
- vii. Not transfer any Personal Data to any third parties not already associated with this contracted programme of work, without the written and signed consent of ETF;
 - viii. At the written request of ETF, delete or return all the Personal Data to ETF after the end of the provision of services relating to processing, and delete existing copies unless legally required to store the Personal Data;
 - ix. Make available to ETF all information necessary to demonstrate compliance with the obligations laid down in this Agreement and allow for and (at its own cost) contribute to audits, including inspections, conducted by ETF or another auditor mandated by ETF;
 - x. Promptly comply with any request from ETF requiring the Supplier to amend, transfer or delete the Personal Data;
 - o If the Supplier receives any actual or purported subject access request, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data, it shall immediately notify ETF and it shall provide to ETF (at its own cost) full co-operation and assistance in relation to any such complaint, notice or communication.
 - xi. Not engage another Sub-Processor without prior specific or general written authorisation of ETF. In the case of general written authorisation, the Supplier shall inform ETF of any intended changes concerning the addition or replacement of other Sub-Processors, thereby giving ETF the opportunity to object to such changes.
5. Where the Supplier is obtaining information from individuals that may be used by ETF in publicity materials and case studies, the Supplier shall ensure that adequate consent has been obtained from the individual, and that a copy of this consent is retained prior to being sent to ETF at the completion of the Services detailed in this Agreement.
6. The Supplier shall not, and shall ensure that its Sub-Processors shall not, store, process or transfer any Personal Data outside of the European Economic Area without the prior written consent of ETF.
7. **Protocol for use, sharing and storage of Data**
Table 1 explains what Data the Supplier will be handling, why the Supplier will be handling it, how the Supplier will return the Data to ETF and who else will be handling the Data on the Supplier's behalf. It includes certain details of the Processing of Personal Data as required by the Data Protection Legislation.
8. **File protection**
Throughout the duration of this Agreement, all sent files containing sensitive Personal Data are to be password protected as a minimum. Passwords should not be sent in

the body text or title of the email containing the file but shared in a separate message. This protocol applies to all files, including those sent to Sub-Processors, external consultants or for dissemination via communication channels (until such time as a public release has been signed off by the ETF).

9. Secure environment hosting - ETF

Where applicable, a secure SharePoint system will be available on the ETF server. This will require the Supplier (and all its Personnel and Sub-Processors) to provide log in details (individual's job role and email) to ETF. Once access has been granted, the Supplier and all its Personnel and Sub-Processors will have access to the files within the shared storage space. The Supplier and all its Personnel and Sub-Processors will also be given dedicated individual folder access, which can be password protected (although ETF will retain these master passwords to obtain access if needed).

If Data being stored within this system is to contain personal information and Data (e.g. Data sets of learners or teaching staff) it must be additionally password protected. Files with more than 25 such entries are to be logged with the ETF via the Performance Manager (xxxx@etfoundation.co.uk)

10. GDPR and Data breach

It is the responsibility of the Supplier to inform ETF promptly and without undue delay of any known or suspected Data breach, digital security incident or related matter (e.g. loss of infrastructure / equipment, denial of service that may affect Data being processed). The Supplier will also be required to help with reporting to the regulatory authority if necessary. The Supplier shall restore any Personal Data that is lost, destroyed, damaged, corrupted, or rendered unusable other than as a result of ETF's fault at its own expense. ETF shall notify the DfE of any data breach and the DfE shall notify the Information Commissioner's Office as it deems appropriate in its absolute discretion.

Following a breach, the ETF will carry out a further assessment of risk, and future mitigation of a possible further breach. The Supplier will be required to assist the ETF with this assessment.

Any breach of Data should be reported in the first instance to dataprotection@etfoundation.co.uk

11. Indemnity

The Supplier hereby indemnifies and shall keep ETF indemnified against all liabilities that ETF may suffer or incur where the Supplier or its Sub-Processors are at fault where any Data and Personal Data becomes damaged, corrupted, or unusable.

The ETF will report the incident to the DfE who will report the incident to the ICO if deemed necessary to do so. In the event of a fine, from the ICO to the DfE or ETF, as a result of the breach due to fault of the Supplier or one of their Sub-Processors, the Supplier will be responsible for the sum of the fine.

12. Release of Data / materials

Any release of information / Data / research / materials during the Agreement must be agreed with ETF. Suppliers should assume permission will not be withheld without clear reason, unless embargoes are in place or where the release might contravene the Data Protection Legislation or (an)other supplier’s requests. Any communication to the wider sector or public consumer must be discussed with the ETF communications lead through the Performance Manager (xxxx@etfoundation.co.uk).

13. General Data Considerations

ETF requires suppliers to consider the following with regards to Data collection, processing and storage:

- Always store Data such as delegate lists securely and delete once no longer needed.
- Collect or process Personal Data using ETF Approved Systems for use of Personal Data (see paragraph 14 of this Schedule 5).
- Always use BCC to contact delegates.
- Delegates are given access to appropriate ETF T&Cs and Privacy notices.
- Delegates are aware if a session is being recorded, where it will be stored and who will have access to it.
- Any systems used to deliver sessions do not require delegates to register or supply other personal information.
- Check attendance against the delegates list by asking delegates to use a real screen name. For simple data collection Microsoft Forms can be used. For more complex data collection we can develop the ETF Booking System to support collection and processing. This will also mean the Data will be imported into the ETF Customer Relationship Management system (CRM).
- Anonymised Data can be collected, unless it is special category Data. Special category Data should be collected via the ETF Booking System.

14. ETF Approved Systems for the use of Personal Data

ETF Approved Systems
Current ETF CRM (Customer Relationship Management) - Microsoft Dynamics 2011
ETF Booking System - https://booking.etfoundation.co.uk/
ETF Foundation Online - https://www.foundationonline.org.uk/
ETF Professional Development Platform - https://pdp.etfoundation.co.uk/
FutureLearn platform - https://www.futurelearn.com/
New ETF CRM (Customer Relationship Management) - Microsoft Dynamics 365
Applications on the Microsoft 365 platform (including Microsoft Forms)

SCHEDULE 6: EMPLOYMENT

[Paragraphs 7-14 will always apply (as it is not known at the point of entering into the contract whether there will be a TUPE upon exit) and should always be retained.

Paragraphs 1-6 will only apply where a TUPE transfer will occur at the Commencement Date.

Where this is not the case, "Not Used" should be inserted against paragraphs 1-6.

List the names of the transferring employees or remove if not relevant.]

Part 1: Employees

TRANSFER OF EMPLOYEES TO THE SUPPLIER AT THE COMMENCEMENT DATE

1. Application and effect of the Transfer Regulations on Initial Transfer

1.1 ETF and the Supplier believe that the commencement of the Services under this Agreement shall give rise to a relevant transfer as defined in the Transfer Regulations. Accordingly, the contracts of employment of the Transferring Employees shall transfer on the Transfer Date from the Existing Supplier to the Supplier pursuant to the Transfer Regulations.

1.2 The Supplier agrees to accept the Transferring Employees into its employment on the Transfer Date upon the same terms and conditions of employment as they are currently employed by ETF and with full continuity of employment.

1.3 The Supplier's agreement in paragraph 1.1 of Schedule 6 is subject to the right of any employee identified as a Transferring Employee to object to being transferred to the Supplier.

2. Supplier's measures and associated obligations on Initial Transfer

2.1 The Supplier shall¹:

(a) provide ETF with the information required under regulation 13(4) Transfer Regulations to enable consultation to be undertaken in advance of the Transfer Date, and the Supplier shall indemnify ETF in full against any breach of this obligation (including any legal expenses on an indemnity basis);

(b) provide such assistance and information to ETF as it may reasonably request to facilitate a smooth and efficient handover of the Transferring Employees to the Supplier (including attendance at any meetings with Transferring Employees, trade unions and employee representatives); and

¹ This drafting assumes the contact will be executed in advance of TUPE informing and consulting compliance.

- (c) comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any of its employees who are affected by the relevant transfer in accordance with regulation 13 Transfer Regulations.

3. Arrangements leading up to the outsourcing of the Services for Initial Transfer

3.1 The Existing Supplier shall use its reasonable endeavours to procure that they shall on or before the Transfer Date (or in the case of the payments referred to in paragraph 3.1(d) and 3.1(e) of Schedule 6 within 28 days of the Transfer Date):

- (a) pay all wages, salaries and other benefits of the Transferring Employees (including any contributions to retirement benefit schemes) and discharge all other financial obligations (including reimbursement of any expenses) owing to the Transferring Employees in respect of the period before the Transfer Date;
- (b) procure that any loans or advances made to the Transferring Employees before the Transfer Date are repaid to it;
- (c) account to the proper authority for all PAYE tax deductions and national insurance contributions payable in respect of the Transferring Employees in the period before the Transfer Date;
- (d) pay the Supplier the amount which would be payable to each of the Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Transfer Date; and
- (e) pay the Supplier an amount which fairly reflects the progress of each of the Transferring Employees as at the Transfer Date towards achieving any commission, bonus, profit share or other incentive payment payable after the Transfer Date wholly or partly in respect of a period before the Transfer Date.

3.2 The Existing Supplier:

- (a) shall provide the Employee Liability Information to the Supplier regarding each of the Transferring Employees either in writing or by making it available to the Supplier in a readily accessible form;
- (b) confirms the Employee Liability Information contains information as at a specified date not more than 14 days before the date on which the information was provided to the Supplier;
- (c) shall notify the Supplier in writing of any change in the Employee Liability Information since the date on which it was provided; and
- (d) the Employee Liability Information shall be provided not less than 28 days before the Transfer Date.

3.3 The Supplier, to the best of its knowledge, knows of no circumstances which would entitle it to make a claim for compensation under regulation 12 Transfer Regulations.

4. Supplier's indemnities in respect of Transfer

4.1 The Supplier shall indemnify the Existing Supplier in full against all liabilities arising from or in connection with any failure by the Supplier to comply with its obligation pursuant to the Transfer Regulations and anything done by or omitted to be done by the Supplier in respect of any of the Transferring Employees whether before or after the Transfer Date.

5. Supplier's obligations to Supplier's Personnel

5.1 During the currency of this Agreement the Supplier shall promptly provide to ETF any information ETF may reasonably require relating to any individual employed assigned or engaged in providing the Services (subject to the Data Protection Legislation).

6. Pre-existing liabilities relating to Transferring Employees

6.1 ETF shall use its reasonable endeavours to procure that the Existing Supplier shall indemnify the Supplier in full against all liabilities arising out of or connected with any claim or other legal recourse concerning any act or omission of the Existing Supplier prior to the Transfer Date save where such act or omission results from complying with the instructions of the Supplier or from the Supplier failing to comply with its obligations under regulation 13(4) Transfer Regulations but only to the extent that such claim or legal recourse is brought by:

- (a) any of the Transferring Employees (whether on their own behalf or in their capacity as employee representatives); or by
- (b) any trade union, staff association or staff body recognised by the Existing Supplier in respect of any of the Transferring Employees or any employee representatives acting on behalf of any of the Transferring Employees.

EMPLOYMENT EXIT PROVISIONS

7. Application of the Transfer Regulations on a subsequent transfer of the Services

7.1 ETF and the Supplier agree that where a Successor provides the Services or services of the same or similar nature to the Services in immediate or subsequent succession to the Supplier (in whole or part) on expiry or earlier termination of this Agreement (howsoever arising), the Transfer Regulations shall apply. Accordingly the contracts of employment of any Subsequent Transferring Employees shall transfer on the Subsequent Transfer Date to the Successor.

8. Handover procedures in relation to expiry or termination of the contract

8.1 During the period of 6 months preceding the expiry or termination of this Agreement, the Supplier shall, upon receiving a written request from ETF, within 20 days:

- (a) fully and accurately disclose to ETF the Personnel Information; and
- (b) warrant that the Personnel Information is accurate and correct as at the time of its disclosure.

8.2 The Supplier hereby permits ETF to disclose the Personnel Information to any Interested Party on condition that the Personnel Information is kept confidential by such Interested Party.

8.3 Subject to paragraphs 8.4 and 8.5 of Schedule 6, during the period of 6 months preceding the expiry or termination of this Agreement, the Supplier shall not, without the prior written consent of ETF, such consent not to be unreasonably withheld:

- (a) make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier's Personnel; or
- (b) increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier's Personnel;
- (c) replace any of the Supplier's Personnel or increase the total number of employees engaged in the performance of the Services save for fulfilling assignments and projects previously scheduled and agreed with ETF;
- (d) deploy any person other than the Supplier's Personnel to perform the Services;
- (e) terminate or give notice to terminate the employment or arrangements of any of the Supplier's Personnel;
- (f) increase the proportion of working time spent on the Services by any of the Supplier's Personnel; or
- (g) introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier's Personnel.

8.4 Paragraph 8.3 of Schedule 6 shall not prevent the Supplier from taking any of the measures prohibited in that paragraph in circumstances where the Supplier is

required to take such a measure pursuant to any changes in legislation or pursuant to a collective agreement.

- 8.5 Where the obligations on the Supplier under this paragraph 8 of Schedule 6 are subject to the Data Protection Legislation, the Supplier shall use its best endeavours to seek the consent of the relevant worker or employee to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.

9. Information and consultation prior to the Subsequent Transfer Date

- 9.1 In accordance with the Transfer Regulations, the Supplier shall comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by any Subsequent Transfer.

10. The Supplier's obligations in respect of a Subsequent Transfer

- 10.1 The Supplier shall on or before the Subsequent Transfer Date (or in the case of the payments referred to in paragraphs 10.1(d) and 10.1(e) of Schedule 6 within 28 days of the Subsequent Transfer Date):

- (a) pay all wages, salaries and other benefits of the Subsequent Transferring Employees (including any contributions to retirement benefit schemes) and discharge all other financial obligations (including reimbursement of any expenses) owing to the Subsequent Transfer Employees in respect of the period between the Transfer Date and the Subsequent Transfer Date;
- (b) procure that any loans or advances made to the Subsequent Transferring Employees before the Subsequent Transfer Date are repaid to it;
- (c) account to the proper authority for all PAYE tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
- (d) pay any Successor the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
- (e) pay any Successor an amount which fairly reflects the progress of each of the Subsequent Transferring Employees as at the Subsequent Transfer Date towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period before the Subsequent Transfer Date;

- (f) provide the Employee Liability Information to the Successor regarding each of the Transferring Employees either in writing or by making it available to the Successor in a readily accessible form;
- (g) confirm the Employee Liability Information contains information as at a specified date not more than 14 days before the date on which the information was provided to the Successor;
- (h) notify the Successor in writing of any change in the Employee Liability Information since the date on which it was provided;
- (i) the Employee Liability Information shall be provided not less than 28 days before the Transfer Date; and
- (j) deliver complete personnel records relating to the Subsequent Transferring Employees to any Successor (which shall include but not be limited to the information it is required to give by virtue of regulation 11 Transfer Regulations).

11. The Supplier's indemnities in respect of Subsequent Transfer or termination of Agreement

11.1 The Supplier shall indemnify ETF and the Successor in full against all liabilities arising from or in connection with:

- (a) the Supplier's failure to perform and discharge its obligations under this Agreement;
- (b) any act or omission by the Supplier in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date save for where such act or omission results from complying with the instructions of the Successor;
- (c) any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor;
- (d) any emoluments payable to the Supplier's Personnel (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date, or if there is no Subsequent Transfer Date, the date with effect from which this Agreement is terminated;
- (e) any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulations 11 or 13 Transfer Regulations, or in respect of an award of compensation under regulations 12 or 15

Transfer Regulations except to the extent that the liability arises from the Successor's failure to comply with regulation 13(4) Transfer Regulations.

12. ETF's and Successor's indemnities in relation to a Subsequent Transfer

12.1 In the event that the Subsequent Transferring Employees transfer to a Successor (other than ETF) on the Subsequent Transfer Date, ETF shall use its reasonable endeavours to procure that the Successor indemnifies the Supplier in full against all liabilities arising out of or connected with:

- (a) all emoluments and outgoings in respect of the Subsequent Transferring Employees (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) in respect of any period after the Subsequent Transfer Date; and
- (b) any act or omission of the Successor, whether before or after the Subsequent Transfer Date, in respect of any Subsequent Transferring Employees save where such act or omission results from complying with the instructions of the Supplier.

12.2 In the event that the Subsequent Transferring Employees transfer to ETF on the Subsequent Transfer Date, ETF shall indemnify the Supplier in full against all Liabilities arising out of or connected with:

- (a) all emoluments and outgoings in respect of the Subsequent Transferring Employees (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) in respect of any period after the Subsequent Transfer Date; and
- (b) any act or omission of ETF, whether before or after the Subsequent Transfer Date, in respect of any Subsequent Transferring Employees save where such act or omission results from complying with the instructions of the Supplier.

12.3 For the avoidance of doubt, Personnel used by the Supplier in the delivery of this Agreement are employees of or engaged by the Supplier (or Sub-Contractors of the Supplier), and as such ETF has no responsibility for any employment or related liabilities pertaining to these Personnel. In particular, any liabilities arising at the end of the Agreement including any redundancy liabilities for staff employed by the Supplier to deliver the Agreement shall be managed and paid for by the Supplier.

13. Third Party rights

13.1 It is agreed that no person, other than ETF, the Existing Supplier, the Supplier and the Successor, shall be able to enforce any term of this Schedule 6 in his or her own right.

14. Definitions

In this Schedule, the following definitions shall apply:

<p>“Employee Liability Information”</p>	<p>means, in respect of each of the Transferring Employees or Subsequent Transferring Employees:</p> <ul style="list-style-type: none"> a. the identity and age of the Employee; b. those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996; c. information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years; d. information about any court or tribunal case, claim or action either brought by the Employee against the Customer within the previous two years or where the Customer has reasonable grounds to believe that such action may be brought against the Supplier arising out of the Employee's employment with the Customer; and e. information about any collective agreement which shall have effect after the Transfer Date or Subsequent Transfer Date in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations;
<p>“Existing Supplier”</p>	<p>means ETF or the supplier providing the Services prior to the Commencement Date;</p>
<p>“Interested Party”</p>	<p>means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate</p>

	succession to the Supplier and who had confirmed such interest in writing to ETF;
“Measures”	any measures within the meaning of regulation 13(2)(d) of the Transfer Regulations;
“Personnel Information”	means such information as ETF may reasonably request in relation to the Supplier’s Personnel which shall include but which shall not be limited to the same information as the Supplier would be obliged to disclose under regulation 11 Transfer Regulations;
“Subsequent Transfer”	means the relevant transfer taking effect on the Subsequent Transfer Date;
“Subsequent Transfer Date”	means the date on which the Services (or any part of the Services), for whatever reason, transfer from the Supplier to a Successor;
“Subsequent Transferring Employees”	means any of the Supplier’s Personnel who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the provision of the Services, or part thereof, which are to be undertaken by the Successor;
“Successor”	means any person, company, firm or other business entity who provides the Services or services of the same or a similar nature to the Services in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Agreement; whether that person is a replacement supplier or ETF;
“Supplier’s Personnel”	means any employee of the Supplier as the context shall determine who is either partially or fully engaged in the performance of the Services;
“Transfer Date”	means the Commencement Date;
“Transferring Employees”	means those employees listed in Schedule 6, Part 2 to this Agreement;
“Transfer Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Part 2: Transferring Employees

[List the names of the transferring employees or remove if not relevant.]

[List]

ANNEX A: Change Control Form

1. Original Agreement details:

Original Agreement Number		ETF Representative: (update if required)	
Original Purchase Order Number		Supplier Representative: (update if required)	
Supplier(s)		Supplier address:	
Original Agreement Start Date		Original Agreement End Date:	
Original Agreement Value:	£	Total value prior to this Change Control (NB: Include here an updated total value if there has been any subsequent increase via any previous Change Controls. If not, simply state the Original Agreement Value here)	£

2. Change Control details:

Change Control Purchase Order Number	
Title of Change Control:	
Date:	
Reason for Change Control:	
Summary of Change Control: a) What is to change? (e.g. specification, finance, contract period): b) What is to remain in the existing arrangements? c) How will the changes link (or not link) into the existing Deliverables Outputs / KPI's / Services? d) Does this impact on other contracts and how has that been considered?	
Date of Change Control Commencement:	
Date of Change Control End	
Total Value of [increase/reduction] of this Change Control:	£
Payment Profile (if applicable)	
Revised Daily Rate (if applicable)	
Impact on Original Agreement (if applicable):	
Supporting Information (please attach all supporting documentation for this Change Control):	

3. Signatures:

Change Control Agreed	
Authorised to sign for and on behalf of the Education and Training Foundation:	Authorised to sign for and on behalf of the Supplier:
Signature:	Signature:
Name in Capitals:	Name in Capitals:
Position in Organisation:	Position in Organisation:
Date:	Date:

Please note that no works should be undertaken, and no invoices shall be paid until both copies of the Change Control form are signed, returned and counter-signed.

Appendix 1: Definitions

1. The definitions in this paragraph 1 and the rules of interpretation in paragraph 2 of this Appendix shall apply throughout this Agreement (unless the context otherwise admits):

"Agreement"	This Agreement, which shall include Part A (Summary of Key Commercial Terms), Part B (Terms and Conditions), the Schedules, Appendices, Annexes, and any other document agreed by the Parties in writing as forming part of this Agreement
"Arising Intellectual Property"	Means (a) Intellectual Property in items, materials and systems created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates to and amendments of such items; and (b) Intellectual Property in or arising as a result of the performance of the Supplier's obligations under this Agreement and all updates to and amendments of the same, but shall not include the Background Intellectual Property of the Supplier
"Background Intellectual Property"	Means any Intellectual Property that is owned by or licensed to either Party and which is or has been developed independently of this Agreement (whether prior to the Commencement Date or otherwise)
"Change Control Procedure"	Means the procedure when ETF requests a change to the scope or execution of the Services and includes completion of the Change Control Form set out in Annex A
"Commencement Date"	The date of this Agreement as detailed in Part A of this Agreement
"Confidential Information"	Any information of a confidential nature concerning either Party, which shall include (a) the existence and terms of this Agreement; (b) any and all information of a confidential nature relating to the business of the Supplier and/or ETF; (c) any other information that is confidential or proprietary, in each case however conveyed or obtained and whether before or after the date of this Agreement and whether disclosed orally or in recorded form in whatsoever medium created or held (whether now or hereafter invented) and whether marked confidential or not
"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 Agreement
"Data Protection Legislation"	Means the Data Protection Act 2018 and the UK GDPR (General Data Protection Regulation)

“Data Subject”	Has the meaning given to it under the Data Protection Act 2018
"Deliverables"	Outputs, documents, products and materials developed or provided by the Supplier as part of providing the Services in the Agreement
"Delivery Point"	The place that the Deliverables, Outputs are to be provided as set out in the Schedules to this Agreement or as otherwise agreed between the Parties
"End Date"	The later of the End Date specified in Part A and the actual last day that Services are provided under this Agreement
"ETF Representative"	The individual nominated by ETF as detailed in Part A of this Agreement, including any person nominated as their replacement
“Extension Period”	Means a time period that has been agreed that is additional to the terms in this Agreement or a Change Control Form (Annex A)
"Fees"	The charges, fees and / or commission payable under this Agreement to the Supplier
“Force Majeure”	<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);

	<p>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</p> <p>i) interruption or failure of utility service.</p>
“Initial Term”	Means the period from the Commencement Date until the End Date specified in Part A
"Intellectual Property"	<p>Means</p> <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information.</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction</p>
“Key Performance Indicators” or "KPIs"	Key Performance Indicators expressing Deliverables, Outputs and performance measures
“Know-How”	Means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services, Deliverables or Outputs
“Output”	Means any defined Output to be produced by the Supplier in the course of performing the Agreement
"Personal Data"	Has the meaning given to it under the Data Protection Act 2018
“Personal Data Breach”	Has the meaning given to it under the Data Protection Act 2018
"Personnel"	Means all employees, staff, workers, agents, Sub-Contractors and consultants of or to the Supplier (and of or to any Sub-Contractor of the Supplier) who are engaged in the provision of the Services from time to time
“Processing”	Has the meaning given to it under the Data Protection Act 2018
"Services"	Means the supply and / or provision of any Services as specified and included in the Agreement
“Sub-Contract”	Means a contract between two or more suppliers, at any stage of remoteness from ETF in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the

	performance of) the whole or any part of this Agreement
“Sub – Contractor”	Any third party to whom the Supplier sub-contracts the delivery of any part of the Services
“Sub-Processor”	Any third party to whom the Supplier sub-contracts any Data Processing activity under Schedule 5
"Supplier’s Tender Response"	The tender offer and / or representations made by the Supplier during the tender process and in subsequent correspondence as set out in Schedule 4
“Third Party Intellectual Property”	means any Intellectual Property which is not Background Intellectual Property or Arising Intellectual Property
"Working Day"	any working day in England, excluding any weekend or public holiday days

2. Interpretation

In this Agreement, unless expressed to the contrary or the context otherwise requires:

- a) the headings are inserted for convenience only and shall not affect its construction;
- b) references to a "person" include references to any natural person and to any corporate or other bodies with legal personality;
- c) a reference to a statute or statutory provision, is a reference to it as amended, extended or re-enacted from time to time provided that, as between the Parties no such amendment, extension or re-enactment made after the date of this Agreement shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of any Party;
- d) any phrase introduced by the words "including", "includes", "in particular" or "for example" or similar shall be construed as illustrative and shall not limit the generality of the related general words;
- e) words indicating the singular include the plural and vice versa where the context requires;
- f) a reference in this Agreement to any other agreement or a document is a reference to such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time; and
- g) references to clauses, Schedules and Annexes are to the clauses, Schedules and Annexes of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.