

EDUCATION AND TRAINING FOUNDATION

- and -

[DELIVERY PARTNER NAME]

CONTRACTED SERVICES AGREEMENT

[ITT REFERENCE NUMBER]

Purchase Order Number:

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PART A - SUMMARY OF KEY COMMERCIAL TERMS

This Agreement is made on [insert 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 2 (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:

Print name:

Job title:

Date:

Signature:

Print name:

Job title:

Date:

Duly authorised to sign for and on behalf of
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.

2.2 The Supplier acknowledges that it has been appointed following a competitive tender process or from one of ETF's tender frameworks and shall comply with all representations made in the Response to Tender.

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 the Extension at its sole discretion, having taken into account the standard of delivery of the Services by the Supplier and the availability of funding. [Delete and insert 'NOT USED' if this contract cannot be extended].

3.4 Any activities additional to the Services which are to be delivered by the Supplier during the Extension shall be agreed by both parties in writing via the Change Control Procedure, prior to the expiry of the Initial Term. [Delete and insert 'NOT USED' if this contract cannot be extended].

4. **The Supplier's Obligations**

4.1 The Supplier shall:

- a) provide the Services in accordance with this Agreement;
- b) ensure that the KPIs 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;
- 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) comply with the Policies (which for the avoidance of doubt shall include ETF's policies on Data Protection, Safeguarding and Equality and Diversity). The Supplier shall also procure that its staff and Sub-Contractors shall conform to the Policies;
 - h) perform its obligations under this Agreement in accordance with:
 - (i) all applicable law in relation to race, sex, gender assignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise;
 - (ii) 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; and
 - i) take all necessary steps, and inform ETF of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal or the Equality and Human Rights Commission (or any successor organisation);
 - 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:
 - (i) use all reasonable endeavours to remove viruses, bugs and other unspecified code from the Deliverable prior to delivery; and
 - (ii) 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; and
 - n) comply with any additional obligations as set out in Appendix 1.
- 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 subcontractors 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 reasonably 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 Term.

7. Supply of the Services

7.1 The Supplier shall provide the Services and present the Deliverables at the Delivery Point.

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.

7.5 If ETF notifies the Supplier that a Deliverable 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 24.8.

7.7 Without prejudice to any other rights of ETF if any Deliverable is not delivered on the due date, and/or is defective, ETF has the right to:

- a) cancel or refuse to accept such Deliverable (or any part of it) or refuse to accept any subsequent delivery of other Deliverables that the Supplier attempts to make;

- b) recover from the Supplier any expenditure reasonably incurred by ETF in obtaining substitute Deliverables 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 on the due date.

8. Change Control Procedure

- 8.1 Where either Party believes the Services or their performance under this Agreement could be improved or amended that Party shall set out in writing the improvements they believe could be made, the rationale for the changes and any potential impact on the Fees. The Parties shall review and discuss the proposal in good faith.
- 8.2 If both Parties are agreed upon the change, they shall complete the Change Control Form at Annex A to this Agreement.
- 8.3 The change shall take effect from the date recorded on the Change Control Form.

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 Schedule 3 and the remainder of this clause 9.
- 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 stated in Schedule 3 the Supplier shall be entitled to invoice for its disbursements and other costs or expenses incurred in performing the Services provided the Supplier provides supporting receipts and invoices to evidence such expenses, such expenses are incurred strictly in accordance with the provisions of Schedule 2 and/or subsequent mutually agreed amendments. The Supplier shall comply with the record keeping requirements specified in Schedule 3.
- 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 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 or any amount set off under clause 9.7) by the due date for payment, the Supplier may charge interest on the amount of any such late payment at the rate of 1% per annum above the base rate from time to time of Barclays Bank, such interest to accrue from the date on which payment was due to the date on which payment is actually made. 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.

9.7 ETF shall be entitled to set off any sum it owes to the Supplier against any sum owing to ETF from the Supplier under this or any other agreement between the Parties.

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, such consent not to be unreasonably withheld.

10.2 The Supplier shall not be given permission to sub-contract this entire Agreement to a Sub-Contractor.

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:
 - (i) ensure compliance with the reasonable industry standards, relevant legislation, regulations, guidance and any of ETF's Policies as per clause 4.1g); and
 - (ii) mirror clause 10.4a) of this Agreement.

10.5 Where the Supplier chooses to sub-contract, such Sub-Contract(s) shall reflect the same terms and conditions in this Agreement and for the avoidance of doubt the Sub-Contract(s) shall not contain any terms which are incompatible and/ or conflict with this Agreement.

11. [TUPE] or NOT USED

The Parties shall comply with Schedule 6.

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 to it by ETF during such due diligence which materially and adversely affects its ability to perform the Services or meet any KPIs;

- c) the Supplier has the capacity and authority to enter into and perform this Agreement;
- d) no part of the Deliverables or their permitted use by ETF in accordance with this Agreement shall infringe any rights whatsoever of any person;
- e) ETF has delivered or provided to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of ETF;
- f) the Services shall conform to all descriptions and specifications provided to ETF by the Supplier, including those set out in the Response to Tender;
- g) 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 by ETF pursuant to this Agreement;
- b) any Liability sustained by ETF or a third party provided that such Liability were 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); or
- c) any defect with any Service or Deliverable.

- 13.2 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.
- 13.3 ETF shall promptly and fully inform the Supplier in writing of any potential third party claim that is subject to clause 13.1.
- 13.4 Subject to clause 13.5, each party's liability under this Agreement shall not extend to indirect or consequential loss.
- 13.5 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.
- 13.6 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 £5,000,000 (five million pounds); and
 - (b) public liability 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 reasonable request, provide ETF with a copy of such policies of insurance.
- 14.3 The Supplier shall, during the Term and after its expiry, 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 Term to enable it to meet its obligations to ETF under any warranties and indemnities given in this Agreement.
- 14.5 The insurance requirements in clause 14.1 may be amended by the written agreement of both Parties.

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; or
 - c) the provision of the Services is delayed, hindered or prevented for more than thirty (30) days due to a Force Majeure Event; or
- 15.2 Failure to meet a KPI, by a measure reasonably considered to be material, shall constitute a breach of this Agreement and shall require the Parties to agree a recovery path as per the Operating Document.
- 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.
- 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 Government, 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 (a **"No Fault Termination Notice"**).
 - b) If ETF does serve a No Fault Termination Notice:
 - (i) ETF shall pay the Supplier such part of the charges as may be then payable, and subject to clause 9 and to the extent not recovered by the Supplier by the payment of such charges, 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;
 - (ii) the Supplier shall, subject to clause 16.2, fully co-operate in any transfer of responsibility for provision of Service(s) to such other person as ETF may reasonably require; and
 - (iii) the 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 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:
- (i) this Agreement has been subject to a substantial modification which would have required a new procurement procedure under the Public Contracts Regulations 2015;
 - (ii) ETF discovers that it should not have entered into this Agreement with the 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) 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; or
 - (iii) this Agreement should not have been entered into with the Supplier in view of a serious infringement of the obligations under the Treaty on European Union and the Treaty on the Functioning of the European Union (“TFEU”) and Directive 2014/24/EU of the European Parliament and of the Council that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

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 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 16.2a), the Supplier shall be responsible for the costs it incurs for providing the handover assistance to ETF.

16.3 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.

17. Intellectual Property

17.1 The Supplier and/or its Sub-Contractors (as the case may be, if any are approved under clause 10) shall retain all Intellectual Property Rights (“IPR”) that are either:

- a) vested in, used, or controlled by the Supplier or its Sub-Contractors prior to this contract award; or
- b) developed by the Supplier during the Initial Term or any Extension of this Agreement and not pursuant to any obligations set out herein.

17.2 ETF will:

- a) retain any IPR owned and/or controlled by ETF prior to the Commencement Date; and
- b) assign to Government all rights, title and interest in and to any IPR in the Deliverables.

17.3 Any materials produced under this Agreement will be made available for the Supplier and ETF to use in accordance with the Open Government Licence (“**OGL**”). The OGL is a simple set of terms and conditions under which information providers in the public sector can license the use and re-use of their information. Provided that ETF and the Supplier comply with the terms of the OGL, both Parties have permission to use information anywhere in the world. The licence is also non-exclusive which means that ETF and the Supplier will not be the only people able to make use of it.

17.4 The Supplier acknowledges that as between the Parties all title to and all IPR in any data, documents or any other information provided to the Supplier by ETF or on its behalf in connection with this Agreement (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.

17.5 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 and Communications

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 the predominantly featured brand shall be ETF's brand unless otherwise agreed with ETF Representative and ETF's Communications Team.

- 18.3 The Supplier shall refer to and follow ETF's brand guidelines - to ensure correct application of the brand.
- 18.4 The Supplier shall create and agree a communications plan in consultation with ETF Representative and ETF's Communications team.
- 18.5 The Supplier shall use the phrase 'Commissioned and funded by the Education and Training Foundation' in all channels and in all media to acknowledge ETF's involvement. No other wording shall be used unless otherwise agreed by the Parties.
- 18.6 The Supplier shall provide press releases to ETF's Communications team for approval at least two weeks before the distribution date. ETF's Communications team shall provide a response within four working days.
- 18.7 The Supplier shall include ETF's boilerplate in the notes to editors of all press releases.

19. Party Representatives and Operating Document

- 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 24.8 or Schedule 5 should be made in writing to the Relevant Director.
- 19.4 The Parties shall comply with the Operating Document in order to work effectively during the Term.
- 19.5 The Parties shall use reasonable endeavours to agree changes to the Operating Document to ensure it remains relevant throughout the Term.

20. Records

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 six (6) years from the End Date and allow ETF or 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. 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, subject to clause 21.2.

- 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, in particular, shall endeavour to agree a solution to the consequences of the matters constituting force majeure.
- 21.3 Should a Force Majeure Event last for longer than thirty (30) days either Party shall be entitled to terminate this Agreement under clause 15.1c) without liability to the other Party.

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

The parties shall comply with Schedule 5.

24. General

- 24.1 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).
- 24.2 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.
- 24.3 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, which shall not be unreasonably withheld.
- 24.4 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.

- 24.5 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.
- 24.6 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.
- 24.7 Survival. Clauses 12.1d), 13, 14, 15.5b) 16, 17, 22, 23, this 24.7, 24.8 and 24.11 of this Agreement shall survive expiry of the Term or earlier termination of this Agreement in so far as necessary in order to give effect to their terms.
- 24.8 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 24.8 shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or an interim remedy is required or sought.
- 24.9 Variations. Any changes to this Agreement and/or the Schedules may only varied in writing signed by duly authorised representatives of the Parties.
- 24.10 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.
- 24.11 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]

1. 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- i.e. compliance with Quality Policy and Quality Assurance Handbook as detailed in the Operating Document
- Deliverables: Will one of the deliverables be a website? If so, consider including a requirement to register the site in the Foundation name and provide us with information re start and expiry date etc.
- Timescales: include overall length of the programme i.e. is there an initial period for delivery with an option to extend for an additional period and value, with a break clause at the end of each financial year, should there be no further funding for this work in the following financial year? NB. Extensions are only possible if they have been mentioned in the ITT.
- Reporting and evaluation requirements e.g. reporting on delivery (of Supplier and any Sub-Contractors), identifying any risks etc.
- Link to KPIs in Schedule 3
- Any project phases

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

2. Marketing and Communications

- 2.1 The Supplier shall be responsible for all the marketing and sales of courses delivered as part of this Agreement and as set out in the Response to Tender. This includes ensuring target numbers and income, as detailed in 3, are recruited and appropriate remedial action is proposed and agreed with ETF, should recruitment fall below the agreed target number of delegates.
- 2.2 ETF shall offer general marketing support to the Supplier where required and requested, however the full responsibility for recruitment remains with the Supplier.
- 2.3 The Supplier shall ensure all marketing and communication materials and resources developed as part of this Agreement adhere to ETF's brand guidelines.
- 2.4 The Supplier shall provide a named contact for the management of communications, and shall provide a draft copy of the relevant communications and marketing plan promptly to the Project Manager and ETF's communications team.

3. Booking System (CPD course development)

The Supplier shall comply with such Booking System requirements set out in the Operating Document.

Schedule 2: KPIs

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
- Programme evaluation

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

Schedule 3: Financial Schedule

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; clause 7.5 states that 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.]

Details	Invoice Date	Total
TUPE/other liability (if applicable)		
Activity, KPIs, funding and payment schedule for the “Extension” to be agreed in line with clause 3.3 [NB. an extension can only be added if written in the ITT/ quick quote document]		Up to a maximum of £
Total (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. [Funding and payments for the “Extension Period” to be agreed and set out in the contract change control for this additional activity and period.]
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 ensure that an ETF purchase order is received prior to any work being started and Supplier invoice being issued. The Supplier 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 Response to Tender

[Include the key statements and representations from the Response to Tender and any subsequent material correspondence to which the Supplier should be held accountable. Including but not limited to:

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

Schedule 5: Data Protection

[Definitions of a data controller and data processor can be found below:

Data controller: is normally an organisation (ETF) which decides why and how personal data are processed. In most circumstances where we're engaging with our delivery partners, SET members, the FE sector workforce etc, ETF is the data controller. We decide and control how any personal data are used (for example, how it's stored, reported, shared). We may engage with another organisation in a 'controller-controller' relationship. For example, when we share SIR data with DfE – DfE will determine how it uses this raw data (in line with a data sharing agreement).

Data processor: is an organisation who processes data on behalf of a data controller. A data processor handles personal data and uses the data in line with instructions from the data controller; they don't make decisions about how the data should be processed (e.g. a processor couldn't decide to share the data with a third party without permission of the controller). A lot of our relationships with delivery partners and other suppliers are controller – processor: we set the terms of how any personal data the organisation holds will be used. For example, we engage CDL to post publicity material to a list of individuals we provide; storage of data on a third party's servers, or appointing a data analytics provider would also fall under this category.

A data processor could be an individual, but in our case it is normally another organisation.

[All contracts have been defaulted to a Controller- Controller relationship. where the relationship between ETF and the Supplier is one of two Data Controllers sharing certain Personal Data. Both parties jointly determine the "purpose for which and the manner in which" any personal data is to be processed.

Where the relationship between ETF and the Supplier is one of two Data Controllers sending / sharing certain Personal Data with the Supplier as a Data Processor, for example, if you are engaging a third party to deal with personal data on your behalf, and they are acting under your overall instruction and control, the 'Controller - Controller Schedule 5' should be deleted and the Controller-Processor Schedule 5 should remain].

For the purposes of this Agreement, and the Data Protection Legislation, the parties shall be joint controllers of the Personal Data held in connection with the Services.

1. CONTROLLER-CONTROLLER CONTRACTS

1.1 For the purposes of this Schedule 5:

1.1.1 the terms "**data subject**", "**personal data breach**" and "**processing**" shall have the meanings given to them in the GDPR;

1.1.2 "**Agreed Purposes**" Shall mean the performance by each Party of its obligations under this Agreement, and the promotion of the Services that form the subject of this Agreement;

1.1.3 "**Permitted Recipients**" shall mean the Parties to this agreement, the employees of each party and any third parties engaged to perform obligations in connection with this agreement.

1.1.4 “**Shared Personal Data**” shall mean the Personal Data to be shared between the parties under paragraph 1.2 of this Schedule 5. Shared Personal Data shall be confined but not limited to the following categories of information relevant to the following categories of data subject:

- (a) ,The data subjects are the practitioners involved in.....type of personal data and category of data subjects it relates to];
- (b) [Personal Data: name; title; date of birth; contact details including address, email and telephone number; employer and job role, and
- (c) [type of personal data].

1.1.5 Other defined terms shall take the meanings given to them in Appendix 1 to this Agreement.

1.2 ETF and Supplier shall each be Data Controllers in respect of any Personal Data shared in connection with the provision of the Services. This Schedule 5 sets out the framework for the sharing of Personal Data between the Parties. Each party acknowledges that one party (the “**Data Discloser**”) will regularly disclose to the other party (the “**Data Recipient**”) Shared Personal Data collected by the Data Discloser for the Agreed Purposes. Each Party shall comply with its obligations under the Data Protection Legislation in relation to the Personal Data, as well as the additional obligations imposed by this Agreement, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.

1.3 **Data Sharing Obligations.** Each Party shall:

1.3.1 ensure that it has all the necessary appropriate consents and notices in place to enable the lawful sharing and transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes for the duration and of this Agreement.

1.3.2 give full information to any data subject whose Personal Data may be processed under this Agreement of the nature of such processing. This includes giving notice that, on the termination of this Agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

1.3.3 process the Shared Personal Data only for the Agreed Purposes;

1.3.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

1.3.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;

1.3.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other Party, to protect against unauthorised or unlawful

processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

- 1.4 **Mutual assistance.** Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each Party shall:
 - 1.4.1 consult with the other Party about any notices given to data subjects in relation to the Shared Personal Data;
 - 1.4.2 promptly inform the other Party about the receipt of any data subject access request;
 - 1.4.3 provide the other Party with reasonable assistance in complying with any data subject access request;
 - 1.4.4 not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
 - 1.4.5 assist the other Party, at the cost of the other Party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 1.4.6 notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation;
 - 1.4.7 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the Personal Data;
 - 1.4.8 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
 - 1.4.9 maintain complete and accurate records and information to demonstrate its compliance with this Schedule 5 and allow for audits by the other Party or the other Party's designated auditor; and
 - 1.4.10 provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the Parties' compliance with the Data Protection Legislation.
- 1.5 The Supplier shall promptly inform ETF if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable other than as a result of ETF's fault. The Supplier shall restore such Personal Data at its own expense. ETF shall determine in its absolute discretion whether any notification shall be made to the Information Commissioner's Office.
- 1.6 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 sent to ETF at the completion of the Services detailed in this Agreement.

- 1.7 In the event that the Services require the processing of Personal Data outside the European Economic Area, the Parties agree to execute 'Set II' of the 'standard contractual clauses for the transfer of personal data to third countries' pursuant to the Commission Decision (2004/915/EC) of 27 December 2004 under the EU Directive 95/46/EC, as may be amended, updated or replaced from time to time.
- 1.8 The Supplier shall not, and shall procure that its Sub-Contractors shall not, store, process or transfer any Personal Data outside of the European Economic Area.
- 1.9 [Not used]
- 1.10 [Not used]
- 1.11 **Indemnity.** The Supplier hereby indemnifies and shall keep ETF indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the ETF arising out of or in connection with the breach of the Data Protection Legislation by the Supplier, its employees or agents, provided that ETF gives to the Supplier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.
- 1.12 Should at any point either Party become the Data Processor for the other, the Parties shall agree measures to comply with Article 28 of the GDPR and enter into a compliant data processor agreement.

OR

For the purposes of this Agreement, and the Data Protection Legislation, the ETF shall be the controllers of the Personal Data held in connection with the Services.

2. Part 1: CONTROLLER-PROCESSOR CONTRACTS

- 2.1 For the purposes of this Schedule 5, the terms “**data subject**”, “**personal data breach**” and “**processing**” shall have the meanings given to them in the GDPR.
- 2.2 ETF shall be the Data Controller of any Personal Data given to the Supplier and to which the Data Protection Legislation applies. To the extent that the Supplier processes Personal Data as part of the provision of Services it shall do so in accordance with this Schedule 5 as a Data Processor.
- 2.3 Both Parties shall comply with all applicable requirements of the Data Protection Legislation. The provisions relating to data protection in this Agreement are in addition to, and do not relieve, remove or replace, a Party’s obligations under the Data Protection Legislation.
- 2.4 Part 2 to this Schedule 5 sets out certain information regarding the Supplier's Processing of the Personal Data as required by article 28(3) of the GDPR. ETF may make reasonable amendments to Part 2 by written notice to the Supplier from time to time as ETF reasonably considers necessary to meet those requirements. Nothing in Part 2 of Schedule 5 (including as amended pursuant to this paragraph 2.4) confers any right or imposes any obligation on any party to this Agreement.
- 2.5 The Supplier shall:
- (a) 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 and shall not process the Personal Data for any other purpose, unless required to do so by Union or Member State law to which the Supplier is subject; 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;
 - (b) 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;
 - (c) 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 in respect of the Personal Data;
 - (d) implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:

- (i) the pseudonymisation and encryption of personal data;
- (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (iii) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

- In assessing the appropriate level of security account shall be taken 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;
- (e) respect the conditions referred to in paragraphs 2.6 and 2.7 for engaging another Data Processor;
 - (f) not transfer any Personal Data to any third parties without the written and signed consent of ETF;
 - (g) taking into account the nature of the processing, assist ETF by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of ETF's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR (rights of the data subject);
 - (h) assist ETF in ensuring compliance with the obligations pursuant to paragraph 2.5 (Article 32), Articles 33 (notification of data breaches the supervisory authority), 34 (communication of a personal data breach to the data subject), 35 (data protection impact assessment) and 36 (prior consultation with the supervisory authority) of the GDPR, taking into account the nature of the processing and the information available to the Supplier;
 - (i) 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 Union or Member State law requires storage of the Personal Data;
 - (j) make available to ETF all information necessary to demonstrate compliance with the obligations laid down in this Part 2 and allow for and (at its own cost) contribute to audits, including inspections, conducted by ETF or another auditor mandated by ETF;

With regard to paragraph 2.5, the Supplier shall immediately inform ETF if, in its opinion, an instruction infringes the GDPR or other Union or Member State data protection provisions.

- 2.6 The Supplier shall not engage another Data 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 Data Processors, thereby giving ETF the opportunity to object to such changes.

- 2.7 Where the Supplier engages another Data Processor, pursuant to paragraph 2.6 for carrying out specific processing activities on behalf of ETF, the same data protection obligations as set out in the contract or other legal act between ETF and the Supplier as referred to in paragraph 2.6 shall be imposed on that other Data Processor by way of a contract or other legal act under Union or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR. Where that other Data Processor fails to fulfil its data protection obligations, the Supplier shall remain fully liable to ETF for the performance of that other Data Processor's obligations.
- 2.8 The Supplier shall promptly comply with any request from ETF requiring the Supplier to amend, transfer or delete the Personal Data, and the requirements in clause 17.6 shall apply equally to Personal Data.
- 2.9 If the Supplier receives any subject access request, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either Party's compliance with the Data Protection Legislation and the data protection principles set out therein, 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.
- 2.10 The Supplier shall promptly inform ETF if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable other than as a result of ETF's fault. The Supplier shall restore such Personal Data at its own expense. ETF shall determine in its absolute discretion whether any notification shall be made to the Information Commissioner's Office.
- 2.11 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 for an appropriate period/specified period].
- 2.12 In the event that the Services involve the processing of Personal Data outside the European Economic Area, the Parties agree to execute the Standard Contractual Clauses for Data Processors established in Third Countries pursuant to the Commission Decision (2010/87/EU) of 5 February 2010 under the EU Directive 95/46/EC, as may be amended, updated or replaced from time to time.
- 2.13 The Supplier shall not, and shall procure that its Sub-Contractors shall not, store, process or transfer any Personal Data outside of the European Economic Area without the prior written consent of ETF.

Contracted Services– [Insert Programme Title]

2.14 The Supplier hereby indemnifies and shall keep ETF indemnified against all Liabilities that ETF may suffer or incur arising out of the Supplier's or any Sub-Contractor's use and/or processing of the Data and Personal Data.

3. Part 2: PERSONAL DATA PROCESSING PURPOSES AND DETAILS

3.1 This Part 2 of Schedule 5 includes certain details of the Processing of Personal Data as required by Article 28(3) GDPR.

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	[Please be as specific as possible, but make sure that you cover all intended purposes. 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.]
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, suppliers, 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]
Approved Sub-processors	[List all approved sub-processors]

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; and
- (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; and
- (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 contract are employees of or engaged by the Supplier (or subcontractors 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 contract including any redundancy liabilities for staff employed by the Supplier to deliver the contract 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:

“Employee Liability Information”

means, in respect of each of the Transferring Employees or Subsequent Transferring Employees:

- 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;

“Existing Supplier”

means ETF or the supplier providing the Services prior to the Commencement Date;

“Interested Party”

means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate 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

Original Agreement Number		ETF Representative:	
Original Purchase Order Number		Supplier Representative:	
Supplier(s)		Supplier address:	
Original Agreement Start Date		Original Agreement End Date:	
Original Agreement Value:	£	Total value of contract	£

Change Control Purchase Order Number	
Title of Change Control:	
Originator of Change Control (tick as appropriate)	ETF <input type="checkbox"/> The Supplier <input type="checkbox"/>
Date:	
Reason for Change Control:	
Summary of Change Control (e.g. specification, finance, contract period):	
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):	

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 and rules of interpretation in this paragraph shall apply throughout this Agreement (unless the context otherwise admits):

"Agreement"	this Agreement, which shall include Part A (Summary of Key Commercial Terms), the Schedules, Appendices and any other document agreed by the Parties in writing as forming part of this Agreement;
"Change Control Procedure"	means the procedure set out in clause 8.1 to be followed by either Party when it 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"	the information referred to in clause 17.4;
"Data Protection Legislation"	means (i) the EU Directive 95/46/EC, as transposed into UK domestic legislation by the Data Protection Act 1998 and as amended, replaced, superseded and supplemented from time to time, including by GDPR and any EEA member state laws implementing or supplementing the GDPR, then (ii) any successor legislation to the GDPR or the Data Protection Act 1998, and (iii) the EU Directive 2002/58/EC, as transposed into domestic legislation in the UK by the Privacy and Electronic Communications (EC Directive) Regulations (2003/2426) and by equivalent legislation in other EEA member states, and as amended, replaced or superseded from time to time.
"Deliverables"	all documents, products and materials developed or provided by the Supplier as part of providing the Services;
"Delivery Point"	the place that the Deliverables 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"	means [insert period by which the Term may be extended, such as 1 year or 2 years] OR [time to complete volume of Deliverables, such as 2 more courses/cohort]. Caution: It is important for public procurement purposes the extension period / deliverables are included in the ITT so that it can be added to the contract.
"Fees"	the charges, fees and / or commission payable under this Agreement to the Supplier as recorded in Schedule 3;
"GDPR"	the General Data Protection Regulation ((EU) 2016/679);
"Initial Term"	Means the period from the Commencement Date until the End Date specified in Part A;
"Intellectual Property"	all trademarks, service marks, logos, design rights (whether registered or not), copyright, database right, rights in domain names, trade or business names, rights in confidential information or other similar rights or obligations, including applications for any of the above rights, that may exist now or in the future in any part of the world;
"KPIs"	key performance indicators expressing deliverables /outcomes as set out in Schedule 2, if any;
"Liabilities"	means all losses, claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
"Operating Document"	means the document provided by ETF which sets out the expected standards of day to day operations under this Agreement and which may be updated from time to time;
"Personal Data"	has the meaning given to it under the Data Protection Legislation;

"Personnel"	all employees, staff, workers, agents, subcontractors and consultants of or to the Supplier (and of or to any subcontractor of the Supplier) who are engaged in the provision of the Services from time to time;
"Policies"	all policies and procedures held by ETF, as amended from time to time, including but not limited to: <ul style="list-style-type: none">• Anti-Bribery• Anti-Slavery and Human Trafficking• Complaints Handling• Conflicts of Interest• Data Protection• Ethics and Informed Consent• Equality and Diversity• Freedom of Information• Health and Safety• Lone Working• Quality Assurance Handbook• Safeguarding;
"Purchase Order"	an order for Services, including the agreed price and total value of the order which shall be issued by ETF to confirm its commitment to the purchase of the Services;
"Purchase Order Number"	a number issued by ETF to confirm a Purchase Order (including the agreed price for that order) which the Supplier must reproduce on all invoices submitted;
"Relevant Director"	means the relevant ETF Director as detailed in Part A to whom notices from the Supplier should be sent as per clause 19.3;
"Response to Tender"	representations made by the Supplier during the tender process and in subsequent correspondence as set out in Schedule 3;
"Services"	the services to be delivered by the Supplier as listed in Schedule 1 and including the Deliverables;
"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;
"Supplier Representative"	the individual nominated by the Supplier as detailed in Part A of this Agreement, including any person nominated as their replacement;

"Term"	the period from the Commencement Date to the End Date;
"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, including EU law 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.

If there is any conflict or inconsistency between the provisions in the main body of this Agreement and the Schedules, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of the main body of this Agreement;
- (b) Annex A of this Agreement;
- (c) Part A of this Agreement;
- (d) Schedule 5;
- (e) the remaining Schedules to this Agreement other than Schedule 44;
- (f) Schedule 4.