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## **PART B - TERMS AND C**



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.**

5.1 ETF shall:

- a) provide usable and reliable inform1.04 Tf1 0 0 1 81.14 3d(an)3(8 re0 0 1 4TQq9u000088(:)]

- 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 comments and how best to implem 0 595.32 842.04 reW\*







### **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 Personnel and Sub-Contractors); or
- c) any defect

- (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 administrativ.32 842.o8(ad)3(m)-3(i)5(ni595.32 842.04 reW\*nBT/F1 11.04 Tf



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

**Convictions**

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)

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

any accrued rights or causes of action. The Supplier shall do all such things necessary to effect such an assignment.

17.5

18.2 For all Deliverables and Outputs, the predominantly featured brand shall be ETF brand unless otherwise agreed with the ETF Representative and ETF Communications and Marketing Department.

18.3 The Supplier shall



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 conse

24.4



- 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 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 a

- 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

## 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 Equality Diversity and

Further)

## **SCHEDULE 2: KEY PERFORMANCE INDICATORS, DELIVERABLES AND OUTPUTS**



### SCHEDULE 3: FINANCIAL DETAILS

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

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 reflected in the scheduling agreement.]

Item / Output / Key Performance Indicator Details	Milestone Date	Fixed Fee





**SCHEDULE 5: DATA PROTECTION AND DATA SHARING  
(PROCESSOR - SUBPROCESSOR RELATIONSHIP ET AL 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



- 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 sent of ETF.**





## **SCHEDULE 6: EMPLOYMENT**

- (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 affected by



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.**

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.

(b)



- (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)



### **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**

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



**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**

**3. Signatures:**

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

Please note that no works should be undertaken, and no invoices should be issued until the change control is agreed.

### **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):



h) non-

