
**ETF COMMERCIAL AGREEMENT
TERMS AND CONDITIONS**

Background

- (A) ETF wish to provide training and membership services to the Client.
- (B) The Client wishes to engage ETF to provide such services on the terms and conditions as set out in this Agreement.

1. Definitions

The definitions and rules of interpretation set out in Appendix 1 shall apply in this Agreement unless the context requires otherwise.

2. Supply of Services

ETF shall supply the Services on the terms and conditions set out in this Agreement diligently and with reasonable skill and care in accordance with the provisions of the Schedule to this Agreement.

3. Client's Obligations

In consideration for the Services the Client shall:

- 3.1 Pay to ETF the Fee (plus any value added tax) in accordance with the Schedule to this Agreement and within 30 days of receipt of any invoice for them. If the Client fails to pay any amount payable by it under this Agreement without an explanation upon demand, ETF shall be entitled but not obliged to charge the Client statutory interest on the overdue amount, in accordance with the Late Payment Commercial Debts (Interest) Act 1998, from the due date up to the date of actual payment.
- 3.2 Co-operate with ETF so as to facilitate ETF's efficient provision of the Services and shall in particular provide ETF with such information and documentation as it reasonably requires in order to provide the Services; and
- 3.3 Seek written approval in advance when acknowledging the contribution of ETF in any news releases, related marketing or publicity and on any materials created as part of or as a consequence of the Services provided under this Agreement.

4. Protection of Personal Data

- 4.1 Each Party shall comply at all times with all applicable laws in respect of the protection, processing, and privacy of Personal Data including without limitation the Data Protection Act 2018 ("the DP Act") and shall not perform its obligations under this Agreement in such a way as to cause the other Party to breach any of its obligations under the DP Act.
- 4.2 The Client will ensure that it is legally entitled to transfer the personal data to ETF for the duration and purpose of the Contract.
- 4.3 ETF shall, in relation to any Personal Data which it is Processing in connection with the performance of its obligation under this Agreement:
 - 4.3.1 process that Personal Data only on the written instructions of the Data Controller, unless required by applicable laws to Process Personal Data; in such circumstances the Consultant shall, if legally allowed to do so, promptly notify the Data Controller of this before performing the Processing;

- 4.3.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data against accidental loss or destruction of, or damage to, Personal Data. Such measures shall be appropriate to a) the harm that might result from any breach of such protection; and b) the state of technological development and the cost of implementing any measures;
- 4.3.3 ensure that all Staff who have access to and/ or process personal data are obliged to keep the Personal Data confidential;
- 4.3.4 not subcontract the Personal Data without prior written permission of the Data Controller;
- 4.3.5 not transfer any Personal Data outside of the European Economic Area, unless the prior written consent of the Data Controller has been obtained;
- 4.3.6 notify the other Party without undue delay on becoming aware of any breach of the DP Act;
- 4.3.7 on written request and/or termination of the Contract (at the written direction of the Data Controller) delete or return Personal Data and copies thereof to the Data Controller unless required by applicable laws to store the Personal Data; and
- 4.3.8 maintain and complete accurate records and information to demonstrate its compliance with this clause 4 and allow for audits by the Data Controller or their designed auditor.
- 4.4 At the reasonable request of a Party, the other Party shall assist the other in complying with its obligations as Data Controller or Data Processor.
- 4.5 “Personal Data”, “Processor”, “Processing”, “Data Controller”, “Data Processor” shall have the meaning as set out in the DP Act.
- 4.6 The nature of the data processing relationship between the Parties and the subject matter, duration, nature, and purposes of the processing are set out in Part 3 of the Schedule.
- 4.7 Personal Data will be gathered using secure electronic means. In the exceptional circumstance where personal data is required by telephone/ mobile, permission will be expressly requested and recorded.

5. Intellectual Property

- 5.1 ETF and the Client shall each retain ownership of all intellectual property rights in any materials which they owned prior to the commencement of this Agreement.
- 5.2 All intellectual property rights in any materials created pursuant to this Agreement shall vest in ETF from the moment of their creation.

6. Duration and Termination

- 6.1 This Agreement shall remain in force for the Term unless terminated earlier in accordance with this clause.

- 6.2 Without prejudice to other remedies it may have, ETF may terminate this Agreement immediately upon service of written notice upon the Client to that effect if the Client shall:
- 6.2.1 Fail to pay the Fee in accordance with clause 3.1 after being required to do so in writing;
 - 6.2.2 Commit any material breach of any of the material terms of this Agreement; or
 - 6.2.3 Commit any act or threaten to do any act the result of which is to damage or lower or, in the reasonable opinion of ETF, is likely to damage or lower the reputation of ETF.
- 6.3 Without prejudice to other remedies it may have, the Client may terminate this Agreement immediately upon service of written notice upon ETF to that effect if ETF shall commit any material breach of any of the material terms of this Agreement.
- 6.4 Without prejudice to other remedies it may have, the Client may terminate this Agreement immediately upon written notice to ETF if the provision of the Services is delayed, hindered or prevented for sixty (60) days or more due to a Force Majeure Event.
- 6.5 The Client may cancel this Agreement on 30 days' written notice to ETF. The applicable cancellation fee, set out in Part 2 of the Schedule, will be payable within 30 days of the Client issuing such notice to cancel. If delivery of the Services is rescheduled and subsequently cancelled, the applicable cancellation fee will be the higher of either: the cancellation fee based on the number of days' notice of cancellation of the rescheduled training; or the cancellation fee which would have been applicable had the training been cancelled instead of rescheduled, calculated based on the date the rescheduling request was received.
- 6.6 Termination of this Agreement shall be without prejudice to any rights that have accrued under this agreement.

7. Liability and Limitations of Liability

- 7.1 Nothing in these Conditions shall limit or exclude ETF's liability for death or personal injury, caused by its negligence or the negligence of its employees, or fraud or fraudulent misrepresentation.
- 7.2 ETF shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any direct, indirect or consequential loss arising under or in connection with this Agreement.
- 7.3 ETF's total liability to the Client in respect of all losses under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount of Fees paid by the Client under this Agreement.

8. General

8.1 Notices

Any notice to be given by a Party to another under this Agreement may be personally delivered, or sent by recorded delivery to the address of the other Party as set out in

the heading to this Agreement, or as otherwise notified in writing, or by transmission, with due transmission receipt, to a fax number or e-mail address notified in writing for the purpose. Any personally delivered, faxed or e-mailed notice shall be deemed received on the day it was delivered or sent, if it was delivered or sent on a working week day before 5.00pm and otherwise on the next working week day.

8.2 Non-Waiver

No forbearance, delay or indulgence by any party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party, nor shall any waiver of rights in respect of any breach of this Agreement operate as a waiver of any rights in respect of any other breach. No right, power or remedy under this Agreement is exclusive of any other available right, power or remedy and each such right, power or remedy may be cumulative.

8.3 Severability

If one or more of the provisions of this Agreement are or become to any extent invalid or unenforceable under any applicable law then the remainder of this Agreement shall continue in full force and effect. If this happens then the parties shall negotiate in good faith to amend the provision concerned in such a way that as amended, it is valid and enforceable and, to the maximum extent possible, meets the original intention of the parties.

8.4 Entire Agreement and Variation

This Agreement is the exclusive statement of the agreement between the Parties in relation to the Services and the Additional Services and supersedes all previous communications, representations, arrangements and agreements between the Parties in relation to the Services. No variation of this Agreement shall be effective unless agreed in writing signed by or on behalf of the Parties. This Agreement includes the Schedule but if there is any discrepancy between the terms of the Schedule and the terms of the main body of this Agreement, the terms of the main body of this Agreement shall prevail.

8.5 Contracts (Rights of Third Parties) Act 1999

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

9. Governing Law and Jurisdiction

This Agreement is governed by and shall be construed in accordance with the law of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

APPENDIX 1 – DEFINITIONS

Term	Meaning	Term	Meaning
“Additional Services”	Any additional services provided by ETF in accordance with Part 1 of the Schedule	“Force Majeure Event”	Means any circumstance not within a Party’s reasonable control including, without limitation:
“Commencement Date”	Means the date agreed by the Parties in writing or detailed in the Schedule, for the due date the provision of Services is to start;		a) acts of God, flood, drought, earthquake or other natural disaster;
“Confidential Information”	Any information of a confidential nature obtained under this Agreement, or relating to this Agreement, including information of any kind relating to another party’s business activities, practices, finances, strategic plans, ideas, designs and innovations but not including information: - in the public domain (otherwise than by breach of this Agreement) - in the lawful possession of the receiving party before the date of this Agreement (other than through liaison between the parties before and in anticipation of this Agreement and the Confidentiality Agreement) - obtained from a third party free to divulge it - required to be disclosed by a court or other competent authority properly disclosed on a confidential basis to staff, agents or professional advisers of the respective parties, for the purposes of this Agreement		b) epidemic or pandemic;
			c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
			d) nuclear, chemical or biological contamination or sonic boom;
“Data”	Means any data, statistics or information in relation to the Agreement including records of all acts done by the Parties which are generated and kept during the term of the Contract		e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition. For the avoidance of doubt, compliance with UK Government legislation, advice or guidance that is substantially different from that in force as at the Commencement Date, which was not foreseeable on the Commencement Date and which make performance of this Agreement impossible or substantially different or more difficult from that contemplated by the Parties at the Commencement Date, will be deemed to be Force Majeure Event;
“Fee”	The fees payable to ETF in accordance with clause 3 and Part 2 of the Schedule		f) collapse of buildings, fire, explosion or accident; and
			g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
			h) non-performance by ETF or subcontractors (other than by the companies in the same group as the party seeking to rely on this clause); and
			i) interruption or failure of utility service
		“Services”	The services to be provided by ETF as set out in Part 1 of the Schedule