

Associate Agreement

Table of Contents

1.	Definitions.....	3
2.	Services	3
3.	Fees.....	4
4.	Expenses	4
5.	Payment Terms.....	4
6.	Status	5
7.	Indemnification and Other Activities	5
8.	Confidentiality	6
9.	Liability.....	7
10.	Intellectual Property	7
11.	Termination.....	9
12.	Other Contractual Terms	10
13.	Code of Ethics	11
14.	Parties	11

1. Definitions

Assignment – An assignment is an education and training sector piece of work that the Education Training Foundation (“ETF”) has identified needs to be done to achieve the aims and objectives of a programme and is to be carried out by an Associate by the provision of services.

Assignment Commencement Date – The date agreed by the parties from which the Associate will be available to begin to provide the services.

Associate – An Associate is an individual, commissioned by the ETF to deliver specialist education and training sector knowledge and support, to complement that of the ETF’s staff. Every Associate will be engaged through the Associate’s business.

Associate’s business – An Associate trading as themselves (i.e., self-employed) or as the proprietor of a business, or the Associate’s service company or the Associate’s employer who is allowing their employee (the Associate) to be on secondment to ETF.

2. Services

The Associate will faithfully and diligently carry out each assignment by providing the services to ETF. The Associate will join the Associate Register from the date of this Agreement until terminated in accordance with clause 11 below. The Associate can reasonably be available to ETF for defined projects, each of which will be identified in writing through a form entitled ‘Schedule 1 – Assignment of Associate’.

The whole of the application to become an Associate and the information provided therein as to the expertise of the Associate shall form part of this Agreement. ETF recognises that the Associate offers specialist expertise in the education and training sector and other services as set out in the application to become an Associate. Therefore, the Associate will determine how the services are to be performed in consultation with the programme lead (who may or not be the ETF representative set out in the table in section 2). The Associate will use its best endeavours to agree with ETF where the services are to be performed and what hours are to be worked on the assignment on the ETF’s premises or elsewhere.

Upon consultation with and appropriate notice given to ETF, the Associate will appoint a suitably qualified and skilled substitute to deliver the defined project should the specific Associate appointed be unable to deliver those services. The substitute shall be required to be bound by the terms contained in the Agreement, including with regard to the code of ethics. Upon skills check, if ETF accepts the proposed substitute, the Associate’s business shall continue to invoice ETF and shall be responsible for the remuneration and any other pay and tax liability of the substitute.

Throughout the term of this Agreement, the Associate shall, when required by ETF, give written or oral advice or information regarding any of the services as it may reasonably require.

Notwithstanding the generality of the above, the Associate will perform all duties:

- (a) in accordance with the ETF’s Code of Ethics (see section 13); and
- (b) with all due care, skill and ability of an experienced professional Associate.

Being on the ETF’s Associate Register does not guarantee future commissioned work. All assignments are based on suitability assessed against evidence given which match the skills criteria, and/or mini-tender competitions which follow separate scoring criteria.

3. Fees

In consideration of the provision of the services, ETF shall pay to the Associate's business, fees in accordance with Schedule 1 hereto being a daily rate per person for each working day (or part thereof) spent by the Associate (or substitute) on the Assignment, whether the services are carried out at ETF's premises or elsewhere.

The ETF pays Associates who join the register at the following rates. There are two rate ranges for Associates as set out in the table below, and the rate will be confirmed on the Schedule of pay at the point of commissioning the assignment.

Serial	Role	Indicative day rate: £ excl. VAT*	Notes
1	Associate (All types)	£200 - 500	Support the design and delivery or assessment of programmes through specialist knowledge
2	Visiting Associate	£500+	Specialist work, with the prior approval of DCEO/CEO.

In the event that at any time after the assignment commencement date, the Associate is not able or willing for whatever reason to continue to provide the services (either itself or by a substitute), ETF will not be required to pay to the Associate's business any further fees or other sums (whether by way of compensation or otherwise) beyond the value of the work already carried out.

4. Expenses

Where expressly permitted by Schedule 1, ETF, in accordance with its Expenses Policy, will reimburse the Associate's business if the Associate properly incurs any necessary and reasonable travel and/or other out-of-pocket expenses in connection with providing the services, any such claim must be receipted and are to be identifiable as a separate item in invoices submitted for payment.

5. Payment Terms

The Associate's business will submit invoices to ETF in respect of fees for the services of the Associate either at the end of the assignment, or monthly in arrears based on the value of work delivered. Except in the case of genuine dispute, these will normally be paid by BACS within 30 (thirty) days of receipt by ETF. To facilitate payment, the Associate must ensure that all invoices quote a valid purchase order number at all times, to be supplied by ETF.

The Associate's business agrees that all its invoices submitted to ETF will be supported by receipted expenditure on all occasions, and activity logs will be provided where requested.

6. Status

The relationship of the Associate's business (and the Associate) to ETF will be that of independent contractor and nothing in this Agreement shall render it (nor the Associate) an employee, worker, agent or partner of the ETF and neither the Associate's business nor the Associate shall hold itself out as such.

This Agreement constitutes a contract for the provision of services and not a contract of employment. The working practices of the Associate, as opposed to an employee of ETF can be defined by the following (but these are not exhaustive):

- a. Mutuality of obligation – The Associate will be commissioned on a project-by-project basis only. There is no obligation by the ETF to continue to offer the Associate a contract once the project they are working on is complete, nor is there an obligation for the Associate to continue to work for ETF once their contract comes to an end.
- b. Substitution – The Associate must put forward a substitute worker for reasons where the Associate themselves is unable to complete the task for which they have been commissioned. Payment of the substitute worker would be by the Associate (see section 3 above for further details).
- c. Supervision, direction, control – The Associate is required to exercise control over how they complete the work (including working hours) for which they have been commissioned. All parties understand that, depending on the nature of the project, the delivery methodology may need to be defined in consultation with ETF.
- d. Equipment – The Associate should use their own with equipment to complete their commissioned work.
- e. Separation – The Associate will not be an integral part of the ETF's business structure, for example: managing, hiring, appraising or dismissing employees, etc. Nor will the Associate receive sickness / holiday / maternity/paternity pay, a workplace pension, or other benefits afforded employees of ETF.
- f. Exclusivity – The Associate can (and for the purposes of HMRC, should) work for more than one client at once, and therefore should not work exclusively for ETF over a prolonged period of time.

7. Indemnification and Other Activities

The Associate's business shall be fully responsible for and shall indemnify ETF for and in respect of:

- (a) 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 Associate in respect of the services, where such recovery is not prohibited by law.
- (b) all reasonable costs, expenses, and any penalty fine or interest incurred or payable by ETF in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arises out of the ETF's negligence or wilful default.
- (c) any liability arising from any employment-related claim, or any claim based on worker status (including reasonable costs and expenses) brought by the Associate or any substitute against ETF arising out of or in connection with the provision of the services.

ETF may, at its option, satisfy such indemnity (in whole or in part) by way of deduction from payments to the Associate's business.

Nothing in this Agreement shall prevent the Associate's business or the Associate from being engaged, concerned, or having any financial interest in any capacity in any other business, trade, profession, or occupation during the Assignment provided that:

- (a) such activity does not cause a breach of any of the Associate's business or the Associate's obligations under this Agreement.
- (b) the Associate's business or the Associate shall not during the term of this Agreement engage in any such activity if it relates to a business which is similar to or in any way competitive with ETF's activities without the prior written consent (such consent not to be unreasonably withheld or delayed).
- (c) the Associate's business and the Associate shall give priority to the provision of the services to ETF over any other business activities undertaken by the Associate's business or the Associate during the assignment.

8. Confidentiality

In accordance with the applicable requirements of the 2018 General Data Protection Regulations (GDPR) and the 2018 Data Protection Act, the Associate's business and the Associate will not (and shall ensure that the personnel identified in Schedule 1 and/or any substitutes shall not) disclose or use or cause to be disclosed or used, at any time during or subsequent to this Agreement, any secret or confidential information of ETF or any of the organisations that the Associate's business or the Associate has access to in the course of the assignment, except as required by ETF in connection with the Associate's assignment or as required by law.

Secret or confidential information includes (without limitation) all and any information about learners, providers of learning, business plans, maturing new business opportunities, research and development assignments, product formulae, processes, inventions, designs, discoveries or know-how, sales statistics, marketing surveys and plans, costs, profit or loss, prices and discount structures, the names, addresses and contact details of customers and potential customers or suppliers and potential suppliers (whether or not recorded in writing or electronic or digital), which ETF, or any associated entity with whom ETF has a relationship, treats as confidential.

At any stage during the assignment at ETF's request or on the termination of this Agreement, all such confidential information in written or electronic or digital form and any copies will be returned forthwith by the Associate's business or the Associate to ETF.

The Associate (or their substitute) shall therefore:

- share personal data only for the agreed purposes and in such a manner, as is necessary for the duration of this Agreement
- not disclose or allow access to the personal data being shared, to anyone other than prior agreed permitted Data Recipients
- take account of the associated risks that are presented by handling personal data, including the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the data
- at the end of each commissioned period of activity or upon request, return all personal data processed for the purposes of the commissioned activity to the ETF, and delete all said personal data their systems, including (but not limited to) files contained on PCs / laptops, email folders, etc.

- immediately report any breach of data to dataprotection@etfoundation.co.uk and notify the appropriate ETF representative (see section 14.).

The Associate's business's (and substitute's) obligations of confidentiality under this clause 8 shall survive the termination or expiry of this Agreement, for whatever reason.

Consent and data retention

By signing and returning the Associate Agreement, Declaration of Interest, Skills Evidence (and Application, if appropriate) forms, you are giving consent for your details to be processed and shared by ETF staff, commissioned contractors and appropriate third parties for the purposes of administering applications and/or commissioning work and the subsequent delivery of the assignment.

We regularly review our data retention policy; if you have not been commissioned for the two years following your inclusion onto the Associate Register, we will remove your information from the Register. You may, however, request to have your data deleted from the Register earlier. However, should you then wish to re-join the Register, you would be required to undertake the full application process.

We are obliged by law to keep some data for a defined period in some instances. For example, we keep all financial transactions for seven years, as outlined by the Companies Act 2006. At the end of specified retention periods, we will dispose of your data securely.

Further information on how we use information about you and your rights can be found in our [Privacy Policy](#).

9. Liability

Other than in respect of the proper payment of the Associate's business fees, ETF shall not be liable to the Associate's business or to the Associate in respect of any losses suffered or incurred by either of them arising out of or in connection with the Assignment. If, however, for whatever reason, any liability shall be found to attach to ETF, any damages or other sums payable shall be limited to the amount of any fees already paid to the Associate's business by ETF as at the date such liability arises.

The Associate's business shall be responsible for taking out full and proper insurance cover in connection with the Associate's provision of the services.

The Associate's business and the Associate shall be liable for any loss, damage or injury to ETF, (or its officers, servants or agents) resulting from their breach of this Agreement or any negligent acts or omissions during the provision of the services (including the negligent acts or omissions of any of the personnel identified in Schedule 1 and/or any substitutes) and shall indemnify and keep indemnified ETF against any third party's claim or claims made in relation to such breach, negligent acts or omissions.

Nothing in this Agreement shall exclude or limit any party's liability for causing death or personal injury by its negligence or for its fraudulent misrepresentation or any circumstances where such exclusion of liability is not permitted by law.

10. Intellectual Property

The Associate's business hereby assigns to ETF all existing and future Intellectual Property Rights and title in the works and all materials embodying these rights to the fullest extent permitted by law. In so far as they do not vest automatically by operation of law or under this Agreement, the

Associate's business and/or the Associate (as the case may be) holds legal title in these rights on trust for ETF

The Associate and the Associate's business undertake to ETF:

- (a) whenever requested to do so by ETF and at the end of the assignment promptly to deliver to ETF all correspondence, documents, papers, and records on all media (and all copies or abstracts of them), recording or relating to any part of the works and the process of their creation which are in their respective possession, custody, or power
- (b) not to register nor attempt to register any of the Intellectual Property Rights in the works, unless requested to do so by the ETF; and to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the works has passed, or will pass, to the ETF.

The Associate and the Associate's business each warrant to the ETF that:

- (a) it has not given and will not give permission to any third party to use any of the works nor any of the Intellectual Property Rights in the works
- (b) it is unaware of any use by any third party of any of the works or Intellectual Property Rights in the works; and the use of the works or the Intellectual Property Rights in the works by the ETF in pursuit of its objectives will not infringe the rights of any third party.

The Associate and the Associate's business jointly and severally agree to indemnify the ETF and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the ETF or for which the ETF may become liable with respect to any intellectual property infringement claim or other claim relating to the works supplied by the Associate and the Associate's business to the ETF during the Assignment. The ETF may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Associate's business.

The Associate and the Associate's business each undertake to execute all documents, make all applications, give all assistance and do all acts and things, at the expense of the ETF and at any time either during or after the Assignment as may, in the opinion of the ETF, be necessary or desirable to vest the Intellectual Property Rights in, and register or obtain patents or registered designs in, the name of the ETF and to defend the ETF against claims that works embodying Intellectual Property Rights infringe third party rights and otherwise to protect and maintain the Intellectual Property Rights in the works.

The rights and obligations set out in this clause 10 shall survive the termination or expiry of this Agreement for whatever reason.

In this clause 10:

- (a) "Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world; and
- (b) "Works" means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software programs, inventions, ideas, discoveries, developments, improvements or innovations and all materials embodying them in whatever form, including but not limited to hard copy and electronic form, prepared by the Associate or the Associate's business in connection with the Assignment.

11. Termination

The ETF may, by written notice, terminate this Agreement at any time if: -

- (a) The Associate or the Associate's business shall have been in breach of any term of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Associate within three days of receipt by the Associate of a written notice from the ETF specifying the breach and requiring its remedy: or
- (b) The Associate or the Associate's business shall have refused or failed within a reasonable time to provide any one or more of the services after being instructed in writing by the ETF
- (c) The Associate, the Associate's business (and/or substitute) shall have conducted themselves in any manner which in the opinion of the ETF has brought or is likely to bring either the ETF or the entities with whom the ETF has a relationship into disrepute or has or is likely to impair the Associate and the Associate's business ability to provide any of the services to the ETF or to do so in any manner or at any time which shall reasonably be required of the Associate
- (d) If the Associate's business shall fail to increase or amend its insurance cover to the ETF's satisfaction in accordance with clause 9 within a reasonable period, the ETF shall have the right to terminate this Agreement forthwith and without further notice (and without any further payment to the Associate other than in respect of any days already worked in connection with the Assignment); or
- (e) If a Force Majeure Event (as defined below) affects the Associate's business or the Associate and the period of delay or non-performance continues for two months
- (f) Where the Associate's business has materially changed (e.g., the Associate has changed employers). Associates are required to promptly inform the ETF of such changes of circumstances and the ETF will inform the Associate if this agreement is to be terminated as a result, with any such decision not to be unreasonably withheld or delayed.

In the event of the ETF cancelling the Assignment prior to the Assignment Commencement Date, reasonable cancellation charges may be claimed by the Associate's business, unless the date can be mutually rescheduled between the Associate's business and the ETF. Such charges are not to exceed what would have been due for the first month of the assignment.

This Agreement shall automatically terminate forthwith in the event that: -

- (a) the ETF, the Associate's business or the Associate passes a resolution or has an order made for its winding-up other than for the purpose of re-construction or amalgamation
- (b) a receiver or administrative receiver is appointed over all or any of the property, assets of the ETF, the Associate's business, or the Associate
- (c) an application is made for the appointment of an administrator (as defined in the Insolvency Act 1986) of the ETF, the Associate or the Associate's business
- (d) the ETF, the Associate's business or the Associate becomes unable to pay its debts within the meaning of Section 123 (2) of the Insolvency Act 1986; or
- (e) the Associate is declared bankrupt or makes any arrangement with or for the benefit of creditors or has a country court administration order made against it.

This Agreement will be annually reviewed by the ETF around the anniversary of the date in Clause 2 above and may be terminated at any time by the ETF, the Associate or the Associate's business by giving to each other not less than one month's written notice. If there is any exemption to this clause, this will be detailed in a Schedule 1.

12. Other Contractual Terms

12.1 Force Majeure

No party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from national emergency or prohibitive governmental regulation or legislation ("**Force Majeure Events**"). In such circumstances, the affected party shall, subject to Clause 11, be entitled to a reasonable extension of time for performing such obligations.

12.2 Entire Agreement

Each party acknowledges that this Agreement contains the entire Agreement between the parties and that neither has relied upon any oral or written presentation made to it by the other party or its employees or agents and has made its own independent investigations into all matters relevant to this Agreement.

12.3 Prior Agreement

For the avoidance of doubt, this Agreement supersedes any prior Agreement between the parties whether written or oral and any such prior Agreements are cancelled as at the date of this Agreement but without prejudice to any rights which may have accrued to either of the parties under or by virtue of any such prior Agreement.

12.4 Notice

Any notice to be served on either of the parties by the other shall be sent in writing to the address of the relevant party, either by letter, facsimile transmission or by electronic mail and shall be deemed to have been received by the addressee within 48 hours of posting the notice by first class post in the manner aforesaid and in a properly addressed envelope or 24 hours after transmission, if sent by facsimile transmission or by electronic mail to the correct facsimile number or electronic mail of the addresses.

12.5 Headings

Headings contained in these terms and conditions are for reference purposed only are not incorporated in this Agreement and should not be deemed to be an indication of the meaning of the clauses to which they relate.

12.6 Joint and Several Liability

The Associate's business and the Associate shall be jointly and severally liable for their obligations under this Agreement.

12.7 Assignments and Other Dealings

This Agreement is personal to the Associate's business and the Associate and neither of them shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of their rights and obligations under this Agreement.

12.8 Cumulative Rights

All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any rights or rights under this Agreement shall restrict or prejudice any other right or rights granted by this Agreement or otherwise available to it.

12.9 Waiver

The failure by a party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be deemed to be a waiver by the party who has failed to enforce the said terms and conditions and shall be without prejudice to such party's right at any time subsequently to enforce all of the terms and conditions of this Agreement.

12.10 Third Party Rights

A person who is not a party to this Agreement shall not have any rights to enforce any term of this Agreement.

12.11 Jurisdiction

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.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

12.12 Privacy policy

By completing and returning the ETF Associate Register refresh forms, you are giving explicit consent for your details to be shared with other ETF staff; fellow commissioned Associates and external, contracted Delivery Partners for the purposes of meeting ETF's contractual requirements with DfE and other appropriate parties.

Further information on how we use information about you and your rights can be found in the ETF's Privacy and Cookie Policy: <https://www.et-foundation.co.uk/terms-of-usage/privacy-cookie-policy/>

13. Code of Ethics

This document derives from the ETF's code of conduct. Those who are engaged to carry out work on behalf of the ETF must regard themselves as bound to conform to the principles published here.

- a. In all work carried out on behalf of the ETF, the Associate must take heed of the Nolan principles for those in public office, namely selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- b. The Associate must recognise his/her obligations to the ETF and must always advise and act in the best interests of the ETF.
- c. The Associate must do nothing to compromise the reputation of the ETF, nor to damage the trust and confidence placed in it by the sector and others it serves.
- d. The ETF demands and maintains the highest ethical standards in carrying out its work on behalf of colleges and others. The Associate must do likewise in connection with the Assignment.
- e. In dealings with individuals the Associate will adhere to the principles of natural justice.
- f. The advice, guidance and work provided by the Associate will be informed by the principles of equal opportunity.
- g. A proper respect for confidentiality will not prevent the Associate from raising legitimate concerns about malpractice with the appropriate authority.
- h. Where issues become known to the Associate which may affect the operation of the ETF, or the service it provides, he/she must, subject to the above principles, inform the relevant ETF Director.

14. Parties

This Agreement is made between Education Training Foundation (Company No. 08540597, Charity No. 1153859) whose registered office is at 157- 197 Buckingham Palace Road London SW1W 9SP ("ETF"), the Associate and Associate's business named below.

ETF may wish to contract the provision of the expertise in the further education and training sector from the Associate through the Associate's business as will be described using Schedule 1 (see Annex A) for each assignment (the "Services").

By signing this Agreement, The Associate confirms that they are willing and able to provide such services and that they hereby accept and agree the terms and conditions of this Agreement.

The Foundation's Representative:	Name:	
	Telephone No:	
	Email	

By signing below the parties hereby accept and agree the terms and conditions of this Agreement.

DECLARATION			
I declare that to the best of my knowledge the information submitted in this form is correct. I understand that the information will be used to assess my initial or ongoing suitability to become an Associate of the ETF. I understand that the ETF may reject my application or be unable to commission future work if there is a failure to answer all relevant questions fully, or if I provide false / misleading information. I further declare that I am in agreement with the standard terms and conditions set out in this Associates Agreement.			
Associate Signature:		ETF Signature:	
Print Name:		Print Name:	
Date:		Date:	
The Associate for and on behalf of The Associate's Business		for and on behalf of Education Training Foundation	

Please sign and return your Associates Agreement to Associates@etfoundation.co.uk

157-197 Buckingham Palace Road, London, SW1W 9SP T: 0203 740 8280

www.etfoundation.co.uk

Education Training Foundation is a company registered in England.

Registered address: 157 -197 Buckingham Palace Road, London, SW1W 9SP.

Company registration number: 08540597