



Education & Skills
Funding Agency

**2017 to 2018
Conditions of Funding Grant
Agreement**

between

**(i) the Secretary of State for Education
(acting through the Education and
Skills Funding Agency)**

and

(ii) [Local Authority Name]

Part 3:

**Services Delivered by
THE AUTHORITY**

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Conditions of Funding (Local Authority Grant) Part 3

1 Conditions of Funding

- 1.1 The Services to be **delivered** under this Agreement in respect of Part 3 of this Agreement is the delivery of the Learning Programmes as set out in the Appendices of this Agreement. The detailed requirements in respect of each Learning Programme are set out in the Funding Guidance for Young People 2017 to 18 <https://www.gov.uk/16-to-19-education-funding-guidance> as amended from time to time by THE ESFA and which form part of the terms and conditions of this Agreement. The Services subject to the terms and conditions of the Agreement are in respect of delivery of education provision for:
 - a. students aged 16 to 18, and
 - b. high needs students aged 16 to 18, or any young person aged 19 to 25 subject to an Education Health and Care Plan, who requires additional support costing over £6,000 (i.e. additional to education and support that is funded through the published 16-19 standard funding formula) and for whom the relevant local authority provides top-up funding (Element 3).
- 1.2 The maximum value for each Learning Programme as shown in the Appendices may not be exceeded for any reason except by way of a revision as described in clause 15.4 of Part 1 of this Agreement. THE ESFA will not be liable to make any payment in excess of the maximum values set out above or as varied in writing.
- 1.3 THE AUTHORITY is not permitted to vire funding between Learning Programmes except by way of a revision as described in clause 15.5 of Part 1 of this Agreement.
- 1.4 THE AUTHORITY must use THE ESFA's funding solely for the purpose of delivering the Provision agreed in the Appendices of this Agreement.
- 1.5 THE AUTHORITY must meet THE ESFA's reasonable requirements for the provision of information and audit certificates pursuant to clause 9 of Part 1 of this Agreement.
- 1.6 Sub-contracting any part of the delivery shall not relieve THE AUTHORITY of any obligation to comply with the Conditions of Funding as set out in this Agreement and the obligation to ensure the proper delivery of the Services.
- 1.7 Should delivery fail to meet THE ESFA stated minimum standards [16 to 18 minimum standards for 2016 - GOV.UK](#) (where appropriate), THE ESFA reserves the right at its absolute discretion to vary the Agreement accordingly.

- 1.8 THE AUTHORITY understands and agrees that that the following costs are not Eligible Expenditure:- payments that support activity intended to influence or attempt to influence Parliament, government or political parties, or attempting to influence the awarding or renewal of contracts and grants, or attempting to influence legislative or regulatory action.

2 Quality Assurance

- 2.1 THE AUTHORITY represents, warrants and undertakes to THE ESFA that it has the necessary resources, skills and experience to carry out THE AUTHORITY's obligations pursuant to this Agreement.
- 2.2 THE AUTHORITY shall comply and shall ensure that the Authority Related Parties comply with this Agreement and all applicable Laws and the most recent policies which may from time to time be issued by the Department, THE ESFA, Inspectorates and awarding bodies of which THE AUTHORITY is made aware, including but not limited to, being published on the relevant bodies website.
- 2.3 THE AUTHORITY shall ensure that all activities carried out pursuant to this Agreement shall be documented in accordance with the requirements of THE ESFA as notified to THE AUTHORITY in writing from time to time and shall provide such documentation to THE ESFA, as THE ESFA shall request from time to time within any reasonable time period specified by THE ESFA.
- 2.4 THE AUTHORITY shall have in place its own quality assurance arrangements that demonstrate that it can meet the terms and conditions of this Agreement and evidence these arrangements if required to do so in a form and subject to any other conditions, as from time to time THE ESFA or the Department may specify.
- 2.5 If requested by THE ESFA, THE AUTHORITY will make available to THE ESFA a report on its own assessment of the quality of the Services provided by THE AUTHORITY under this Agreement in a form and subject to any other conditions, as from time to time THE ESFA may specify.

Ofsted Inspection

- 2.6 When THE AUTHORITY receives notification from OFSTED that the Services are to be inspected, THE AUTHORITY shall, upon request, provide THE ESFA with a copy of its quality improvement activity, and any other relevant information in accordance with the required timescale of OFSTED. THE AUTHORITY must notify THE ESFA of the date of the meeting at which OFSTED give feedback on the inspection and allow THE ESFA's nominated representative to attend the meeting. THE AUTHORITY must confirm to THE ESFA in writing the outcome of the inspection within 5 working days of

receiving the feedback from OFSTED.

- 2.7 Where the Services delivered under this Agreement is subject to inspection by OFSTED, including the inspection of any residential accommodation provided to children by THE AUTHORITY, and the inspection results in the Services in part or overall being assessed as inadequate, THE ESFA may in its absolute discretion take one or more of the following actions:
- 2.7.1 require THE AUTHORITY to, and THE AUTHORITY shall accept and comply with additional conditions of funding relating to the improvement of the Services;
 - 2.7.2 require THE AUTHORITY to suspend the recruitment of Participants to the Services, and/or cap any growth in Participant numbers;
 - 2.7.3 give consideration to what changes, if any, are required in its application of lagged learner funding when finalising the amount of funding in any subsequent Agreement between the Parties; and/or
 - 2.7.4 Terminate in accordance with Part 1 clause 12.2.3 or Part 1 clause 12.2.5.
- 2.8 Where THE AUTHORITY fails to comply with the requirements imposed under clause 2.7.1 and/or 2.7.2, THE ESFA shall consider Termination under Part 1 clause 12.2.4.

Minimum Standards

- 2.9 THE ESFA may, at any time during the Term, undertake an assessment of the quality and delivery of the Services, which may include analysis of performance against the Minimum Standards, as published by the Department [16 to 18 minimum standards for 2016 - GOV.UK](#) Where THE ESFA assesses that the Services delivered under this Agreement, in whole or part, are below the minimum standards, the ESFA may, in its absolute discretion take one or more of the following actions:
- 2.9.1 require THE AUTHORITY to, and the AUTHORITY shall accept and comply with additional Agreement obligations relating to the improvement of the Services;
 - 2.9.2 require THE AUTHORITY to suspend the recruitment of Participants to, and/or to cap any growth in, those Learning Programmes which are identified as below the minimum standards;
 - 2.9.3 give consideration to the Services which are below the minimum standards in its application of lagged learner funding when finalising the amount of funding in any subsequent Agreement(s) between the Parties;
 - 2.9.4 reduce, suspend or recover payment to The AUTHORITY in respect of

that part of the Services to which the failure to meet the minimum standards relate;

2.9.5 terminate the Agreement in accordance with Part 1 Clause 12.2.6.

2.10 Where THE AUTHORITY fails to comply with requirements imposed under clause 2.9.1 and/or 2.9.2, THE ESFA will consider Termination under Part 1 Clause 12.4.

3. Supply of Data

3.1 THE AUTHORITY must supply to the Education and Skills Funding Agency (ESFA), data on each individual Student, in accordance with the data collections framework set out in the [Individualised Learner Record \(ILR\) Specification 2017 to 2018](#) as amended and updated.

3.2 THE AUTHORITY shall transmit data for each part of the Activities, electronically in a batch file as specified in the [ILR Specification 2017 to 2018](#).

3.3 Data collected must be transmitted to the ESFA's secure online portal: [The Hub](#). The Hub is restricted and THE AUTHORITY confirms it has agreed to comply with the conditions of use regarding the supply of data to the ESFA.

3.4 THE AUTHORITY must ensure that data is received by the ESFA in accordance with the data collection timetable. THE AUTHORITY should refer to the ESFA's [ILR webpage](#) for additional data guidance and information.

3.5 The ESFA reserves the right to require THE AUTHORITY, at its own cost, to carry out such work as the ESFA deems necessary to make a material improvement to the quality of data.

3.6 The ESFA reserves the right to suspend payments to THE AUTHORITY under the Agreement where data quality gives rise to a material impact (in the view of the ESFA) upon the accuracy of the data provided by THE AUTHORITY.

3.7 THE AUTHORITY shall register with [UKRLP](#) and maintain contact details on an on-going basis.

3.8 At times, the ESFA will need to share information with THE AUTHORITY. The ESFA will do this securely via The HUB. By accessing and using this system THE AUTHORITY agrees to the terms and conditions detailed at the site governing how it accesses and use the portal. THE AUTHORITY will need to ensure that it has the right hardware, operating system and browser.

4 Participant Health and Safety and Safeguarding

- 4.1 THE AUTHORITY shall comply with all relevant health and safety legislation and Health and Safety Executive working regulations and good practice and shall ensure that learning takes place in safe, healthy and supportive environments, which meet the needs of Participants. Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 4.2 THE AUTHORITY shall make arrangements for ensuring that the Services are provided with a view to safeguarding and promoting the welfare of children receiving education or training at their institution. In doing so, the AUTHORITY shall have regard to any guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this contract, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 4.3 THE AUTHORITY shall make arrangements for ensuring that the Services are provided with a view to safeguarding and promoting the welfare of High Needs Participants aged 18 to 25 receiving education or training at their institution. In doing so, THE AUTHORITY shall make those arrangements as if such Participants were children and will have regard to any guidance published, from time to time, by the Secretary of State for Education, which sets out the expectations in relation to safeguarding practice within further education institutions as if it applied to those Participants as if they were children. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this Agreement, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 4.4 In providing the Services, the AUTHORITY must ensure it actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs, and promote principles that support equality of opportunity for all.
- 4.5 In providing the Services, the AUTHORITY must comply with the general duty on specified authorities in section 26 of the Counter-Terrorism and Security Act 2015 (the Prevent duty) and the duty on partners of a panel in section 38 of the Counter-Terrorism and Security Act 2015 (the Channel co-operation duty). Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 4.6 Where THE AUTHORITY provides residential accommodation for Students, THE AUTHORITY shall inform THE ESFA of the provision of such residential accommodation and shall comply with the requirements of the national

minimum standards for residential accommodation for children in Colleges published from time to time by the Secretary of State under section 87C of the Children Act 1989 as if it were a College (as defined by section 87(10) of the Children Act 1989). Failure to do so may constitute a Serious Breach of this Funding Agreement.

- 4.7 THE AUTHORITY shall not employ or engage, or continue to employ or engage, any person who is subject to a prohibition order made under section 141B of the Education Act 2002 to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012) in respect of any Students under the age of 19 and High Needs Students aged 19 to 25 (as if those Students were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).
- 4.8 Before employing or engaging a person to carry out teaching work in respect of any Students under the age of 19 and High Needs Students aged 19 to 25 (as if those Students were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), THE AUTHORITY shall take reasonable steps to ascertain whether that person is subject to a prohibition order made under section 141B of the Education Act 2002.
- 4.9 THE AUTHORITY and/or THE AUTHORITY Related Parties must be able to demonstrate that they have robust record-keeping procedures in respect of health, safety and safeguarding through checks on record keeping undertaken. Failure to do so will constitute a Serious Breach.
- 4.10 Where THE AUTHORITY makes a referral to any Local Authority (including referrals to social services) in respect of serious safeguarding concerns (in respect of all Participants up to the age of 18, and High Needs Participants aged 18 to 25), THE AUTHORITY shall ensure that it notifies THE ESFA that a referral has been made.
- 4.11 Where the SFC makes a referral of an individual for the purposes of determining whether that individual should be referred to a panel for the carrying out of an assessment under section 36 of the Counter-Terrorism and Security Act 2015 of the extent to which that individual is vulnerable to being drawn into terrorism, the SFC shall ensure it notifies the ESFA that a referral has been made.
- 4.12 Where THE AUTHORITY has made a referral or provided information to the Disclosure and Barring Service in compliance with any duties of THE AUTHORITY under the Safeguarding Vulnerable Groups Act 2006 in respect of serious safeguarding concerns, THE AUTHORITY shall ensure that it informs THE ESFA that a referral has been made / information has been provided.

5 Review of Agreement Performance

- 5.1 Payments from THE ESFA will be reconciled to the volume of learners delivered and cash earned by actual delivery of the Provision for the period to the timetable published in the Funding Guidance for Young People 2017 to 18 <https://www.gov.uk/16-to-19-education-funding-guidance> Where THE AUTHORITY's actual delivery will result or has already resulted in an overpayment to THE AUTHORITY by THE ESFA, THE ESFA reserves the right to deduct the amount owed from, payments due to THE AUTHORITY under the Agreement or any other Agreement between the Parties, for current or subsequent months or years accordingly.
- 5.2 Where THE AUTHORITY'S actual delivery has resulted in an underpayment to THE AUTHORITY by THE ESFA, THE ESFA is under no obligation to provide additional funding or to adjust the amount due to THE AUTHORITY accordingly. Any adjustment shall not exceed the overall maximum value set out in Appendix 1, which forms part of Appendix 1 of this Agreement.
- 5.3 A review will take place at the end of the period of this Agreement in respect of the Provision specified in Appendix 1 of this Agreement. THE ESFA will notify THE AUTHORITY of the volume of learning and actual amount of money, which has been earned against the Provision, delivered and compare this to the total profile payments made and to the overall maximum value specified in Appendix 1 above. At this stage THE ESFA reserves the right to conduct a final cash reconciliation. Any overpayment made to THE AUTHORITY by THE ESFA will be repayable within 30 days of receiving an invoice. THE ESFA reserves the right to reduce future payments to recover any overpayments. THE ESFA is under no obligation to pay any additional funding above the overall maximum value specified in Appendix 1 of this Agreement.

6 Feedback and Complaints

- 6.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Services shall rest with THE AUTHORITY. THE AUTHORITY shall have procedures in place, which are acceptable to THE ESFA, to gather and act upon feedback and complaints from Participants and/or their representatives and employers and the wider community.
- 6.2 THE Secretary of State may issue guidance for THE AUTHORITY on dealing with feedback and handling complaints, and will set out the minimum standards expected.
- 6.3 THE AUTHORITY shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by THE ESFA.

6.4 Where a complaint has not been resolved to the satisfaction of the complainant THE AUTHORITY will advise the complainant of his or her right to complain to THE ESFA and co-operate with any investigation carried out by THE ESFA.

7 Retention of Documents

7.1 THE AUTHORITY and AUTHORITY Related Parties shall maintain original invoices; management information returns and all other documents necessary to verify the Services provided by itself or by AUTHORITY Related Parties in relation to this Agreement for 6 years from the end of the financial year in which the last payment by is made.