

**2017 to 2018
Conditions of Funding Agreement
(Sixth Form Colleges)**

between

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

and

(ii) [Sixth Form College Name]

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This Funding Agreement is made on the 1st day of August 2017 between:

INSERT SFC NAME AND ADDRESS SECRETARY OF STATE FOR
EDUCATION
ACTING THROUGH THE EDUCATION
AND SKILLS FUNDING AGENCY
CHEYLESMORE HOUSE
QUINTON ROAD
COVENTRY
CV1 2WT

Hereinafter called
the SFC

Hereinafter called
the ESFA

The ESFA Conditions of Funding set out the terms and conditions by which the ESFA funds Services in SFCs. The ESFA Conditions of Funding is made up of a number of documents, including this Funding Agreement (both part 1 and part 2). A full list of the documents that make up, and are incorporated into the ESFA's Conditions of Funding, is set out in Paragraph 2 to this Agreement.

The Services subject to the terms and conditions of the Conditions of Funding are in respect of the 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).

Background

1. The ESFA is an executive agency of the Department for Education, exercising powers on behalf of the Secretary of State and is acting on behalf of the Crown.
2. The ESFA pays funding to only those SFCs which agree to comply with this Funding Agreement together with:
 - a. the Funding Guidance;
<https://www.gov.uk/16-to-19-education-funding-guidance>

- b. the Capital Transactions Guidance;
<https://www.gov.uk/government/publications/capital-transactions-sixth-form-colleges>
- c. the post-16 audit code of practice:
<https://www.gov.uk/government/publications/post-16-audit-code-of-practice>
- d. the college accounts direction;
<https://www.gov.uk/government/publications/college-accounts-direction>
- e. the Financial Planning Handbook;
<https://www.gov.uk/government/publications/financial-planning-handbook>
- f. the Minimum Standards;
[16 to 18 minimum standards for 2016 - GOV.UK](https://www.gov.uk/government/publications/16-to-18-minimum-standards-for-2016)
- g. Specification of the Individualised Learner Record for 2017 to 2018;
<https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2017-to-2018>
- h. Individualised Learner Record - Provider Support Manual;
<https://www.gov.uk/government/publications/ilr-guides-and-templates-for-2017-to-2018>
- i. Rigour and Responsiveness in Skills (April 2013, DfE/BIS publication);
<https://www.gov.uk/government/publications/rigour-and-responsiveness-in-skills>
- j. Securing independent careers guidance;
<https://www.gov.uk/government/publications/careers-guidance-for-colleges--2>
- k. Traineeships;
<https://www.gov.uk/delivering-traineeships-through-efa-funding>
- l. Full time enrolment of 14 to 16 year olds in Further Education and Sixth Form Colleges;
<https://www.gov.uk/guidance/full-time-enrolment-of-14-to-16-year-olds-in-further-education-and-sixth-form-colleges>
- m. Sub-contracting;
<https://www.gov.uk/government/publications/funding-guidance-for-young-people-sub-contracting-controls>
- n. Further Education Free Meals;
<https://www.gov.uk/guidance/16-to-19-education-financial-support-for-students>

o. published Area Review Guidance;
<https://www.gov.uk/government/collections/post-16-education-and-training-area-reviews>

p. What academies and colleges must publish online;
[What academies, free schools and colleges should publish online - GOV.UK](https://www.gov.uk/government/publications/what-academies-free-schools-and-colleges-should-publish-online)

q. 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;
<https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

r. Special educational needs and disability code of practice: 0 to 25 years;
<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

and, where appropriate

s. National Minimum Standards for Residential Accommodation for children in Colleges (published under section 87C of the Children Act 1989).
<https://www.gov.uk/government/publications/residential-special-schools-national-minimum-standards>

(together the "ESFA Conditions of Funding". These policies were correct at the Commencement Date, but may be updated from time to time.)

3. The ESFA Conditions of Funding shall take effect on and from 1 August 2017 ("Commencement Date").
4. The Funding Agreement will be updated annually.

Part One

1. Preface

- 1.1 As Accounting Officer, the Chief Executive of ESFA is accountable to Parliament for assuring the use of funds which the ESFA receives from the Secretary of State and that the use of funds is consistent with the Secretary of State's statutory remit and any conditions imposed by the Secretary of State. The ESFA is also responsible for the regularity and propriety of expenditure for the use of funds.
- 1.2 The ESFA's Conditions of Funding, including this Funding Agreement, therefore reflect the obligations and responsibilities of the ESFA for monitoring the use of funds allocated to SFCs. However, the ESFA's expectation is that, as independent corporate bodies (subject to their own statutory duties, other obligations and the ESFA's Conditions of Funding), SFCs will take full control of their own financial affairs.

2. Responsibilities of the Governing Body

- 2.1 The Governing Body of the SFC has responsibilities for ensuring that the SFC's funds are used only in accordance with the corporation's powers as set out in the Further and Higher Education Act 1992 ("FHE Act") and the SFC's own statutory duties and other obligations.
- 2.2 The Governing Body is responsible for ensuring the solvency of the SFC and shall inform the ESFA as soon as is reasonable practicable of any transactions that could jeopardise financial viability. The Governing Body is responsible for achieving value for money in all transactions involving public funds.
- 2.3 The Governing Body shall appoint an Accounting Officer with an appropriate separation of duties between executive and non-executive roles and responsibilities. The expectation is that the Accounting Officer will be the Principal of the SFC. The Governing Body shall inform the ESFA in writing of the name and position of the Accounting Officer, and if the Accounting Officer is absent from the SFC for an extended period, as determined by the corporation, the name of the person who will discharge the accounting officer's responsibilities during the absence.
- 2.4 The SFC shall inform the ESFA in writing, as soon as is reasonably practicable, of the vacating or filling of the positions of the Chair of the Governing Body, the Principal and the clerk.

Charitable Regulation

- 2.5 The Secretary of State for Education is the Charitable Regulator for SFCs.
- 2.6 The Governing Body of the SFC is responsible for ensuring it operates in line with its exempt charitable status.
- 2.7 The SFC 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. The SFC'S costs of memberships for their Associations are eligible expenditure.

3. Responsibilities of the Accounting Officer

- 3.1 The Governing Body shall require the Accounting Officer to take personal responsibility, which shall not be delegated, to assure them that there is compliance with the ESFA's Conditions of Funding. The Accounting Officer may be required to appear before the Parliamentary Committee of Public Accounts on matters relating to the SFC's use of funds.
- 3.2 The Accounting Officer shall be responsible for advising the Governing Body in writing if at any time, in his or her opinion, any action or policy under consideration by the Governing Body is incompatible with the ESFA's Conditions of Funding. If the Accounting Officer has evidence that the corporation is acting, or intending to act, in breach of the ESFA's Conditions of Funding, the accounting officer must inform the ESFA's Chief Executive in writing as soon as is reasonably practicable.

4. Allocation of Funds

- 4.1 The amount of funding that the ESFA shall pay each year is set out in Part Two of this Funding Agreement. The ESFA has complete discretion in deciding the amount of funding, in relation to each Learning Programme and/or in total, that shall be paid in each funding year. In exercising this discretion the ESFA shall consider all relevant factors, including but not limited to, the activities of the SFC in so far as they relate (in any way) to ESFA funding and/or the ESFA Conditions of Funding.
- 4.2 The ESFA will reflect Government policy in its funding decisions and arrangements. The ESFA will notify the SFC, in writing, of the allocation of relevant recurrent funds as soon as possible in advance of the academic year to which they relate. This will be at least four months in advance of the academic year, unless there are exceptional circumstances (in the view of the ESFA) that prevent the ESFA from doing so.

5. Payment of Funds

5.1 The ESFA will normally make payments of recurrent funding to the SFC in monthly instalments in accordance with a funding profile for the whole year. Payments of capital funding will be described in the terms and conditions of capital funding particular to the purpose and such terms and conditions of capital funding may be incorporated into the ESFA Conditions of Funding.

5.2 In addition to its statutory health and safety responsibilities, the SFC shall manage and develop its estate to ensure that it manages resources to provide the best possible learning and teaching environments. The SFC will use all appropriate statutory and advisory information provided by relevant agencies. The ESFA will provide on its website reference and signposting information to support SFCs to follow good practices in estate management and development.

6. Non-compliance by SFC

6.1 The SFC is free to spend its ESFA funding as it sees fit providing it complies with the ESFA Conditions of Funding (set out in Background, paragraph 2) and the SFC's own statutory duties and other obligations. In the event that the ESFA believes, in its sole discretion, that the SFC has not complied with the ESFA Conditions of Funding, the ESFA may deduct the value of those funds to which the non-compliance relates from future funds payable to the SFC, require the SFC to repay any funds to which the non-compliance relates or take any other action the ESFA believes to be necessary.

7. Contingent Liabilities

7.1 The SFC shall not give any guarantees or indemnities other than in the normal course of business to the extent that the SFC has the power to do so under the FHE Act.

8. College Companies

8.1 The SFC is free to participate in companies within the limits of the powers imposed by the FHE Act as amended. The Governing Body shall ensure that appropriate arrangements are in place for the governance and management of any companies and the SFC shall inform the ESFA as soon as is reasonably practicable if participation in any company may pose a risk to the solvency of the SFC.

9. Financial Reporting

- 9.1 The ESFA shall specify its requirements as to the information to be contained in the SFC's financial statements and how they should be reported.
- 9.2 The SFC shall provide the ESFA with copies of its audited financial statements. SFCs are required to make their financial statements available to members of the public on request.
- 9.3 The SFC must notify the ESFA as soon as is practicable in writing if, at any time, there is a risk to its solvency and viability. The ESFA may require the SFC to put in place a plan, through financial intervention processes, that will secure a recovery to a specified satisfactory financial position, in the view of the ESFA, and may require the SFC to carry out actions prescribed by the ESFA, including, but not limited to, a strategic options review and/or a financial recovery plan.

10. Audit

- 10.1 The Governing Body shall appoint an audit committee and arrange to provide for financial statements audit, including regularity assurance engagement, in accordance with the post-16 audit code of practice and any other directions drawn up and published by the ESFA in consultation with the SFC. Any mandatory requirements under the Joint Audit Code of Practice shall be a condition of funding under this Funding Agreement.
- 10.2 The SFC shall investigate all significant cases of internal and external fraud or suspected fraud or irregularity and report such instances in accordance with the Department's published policies and procedures. The SFC shall ensure that the ESFA is able to review any investigation undertaken by, or on behalf of, the SFC.

11. Payments to Employees on Termination of Employment

- 11.1 The Governing Body shall demonstrate that payments in respect of termination are regular and secure value for money and avoid spending public funds on settlements where disciplinary action would have been more appropriate. All settlements shall be brought to the attention of the SFC's financial statements auditors.

12. Provision of Information

- 12.1 The ESFA reserves the right to request information from the SFC in order to exercise its responsibilities and to meet European funding requirements (where applicable). On occasion, the ESFA will require, and the SFC shall provide, urgent information from the SFC, usually as a result of requests to the ESFA to fulfill requirements to provide information to the Secretary of State and account to Parliament.

12.2 The SFC shall provide the ESFA on request with a copy of any Asset Deed held in respect of the Premises.

13. Interpretation

13.1 The rights, powers and remedies reserved to the ESFA in the ESFA Conditions of Funding are in addition to any other statutory rights, powers and remedies that it and / or the Secretary of State may hold now or at any time in the future. In the event that the ESFA fails to exercise, or delays in exercising, any of its rights, powers and remedies this will not constitute or operate as a waiver of any of them.

Part Two

1. Introduction

- 1.1 This Funding Agreement, including the Appendices, Annexes and any documents referred to therein, is for the period between 1 August 2017 and 31 July 2018 unless terminated earlier in accordance with Part Two clause 17 (Termination) (the "**Term**").

2. The SFC's Obligations

- 2.1 The SFC shall provide the Services and shall allocate sufficient resources to the Services to enable it to comply with the ESFA Conditions of Funding.
- 2.2 The SFC will perform and will ensure that all SFC Related Parties perform the Services with reasonable skill, care and diligence in accordance with the ESFA Conditions of Funding.
- 2.3 The SFC shall be solely responsible for all acts and omissions of the SFC Related Parties and any persons employed or engaged by any Sub-contractor.

3. Learning Programmes

- 3.1 The SFC shall deliver each of the Learning Programmes as set out in the Appendices and Annexes of this Funding Agreement in accordance with the terms and conditions of this ESFA Conditions of Funding. The detailed requirements in respect of each Learning Programme are set out in the Conditions of Funding, as amended and updated from time to time.
- 3.2 The Maximum Value for a Learning Programme, as separately identified in Appendix 1- Payment Schedule by a deliverable name, must not be exceeded for any reason except by way of a revision to this Funding Agreement made in accordance with Part Two clause 19 (Revision). The ESFA will not be liable to make any payment to the SFC where such payment would result in the total aggregate of payments made to the SFC in respect of the relevant Learning Programme exceeding the Maximum Value for that Learning Programme.
- 3.3 The SFC is not permitted to vire Funding between Learning Programmes except by way of a revision to this Funding Agreement made in accordance with Part Two clause 19 (Revision).

- 3.4 The SFC must use the Funding solely for the purpose of delivering the Services agreed in the Appendices and Annexes of this Funding Agreement, any tender documents submitted by the SFC, or any other requirements set out in this ESFA Conditions of Funding.
- 3.5 The SFC must meet the ESFA's reasonable requirements for the provision of information (in full or as a sample) as may be requested by the ESFA and audit certificates pursuant to Part Two clause 15 (Access and Monitoring).

4. Payment and Review of Performance

- 4.1 In consideration of the SFC's performance of its obligations as set out in the ESFA Conditions of Funding, the ESFA shall pay to the SFC the Funds set out in Appendix 1 – Payment Schedule, or otherwise as specified in the Appendices and Annexes of this Funding Agreement.
- 4.2 All payments by the ESFA will be made via BACS or CHAPS, unless otherwise notified, and will be made on or before the 20th of each month or the prior Working Day.
- 4.3 Payment by the ESFA shall be without prejudice to any claims or rights, which the ESFA may have against the SFC and shall not constitute any admission or acceptance by the ESFA as to the performance by the SFC of its obligations hereunder. Prior to making any such payment, the ESFA shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against the SFC, arising from this Funding Agreement or any other Funding Agreement between the SFC and the ESFA or the Secretary of State.
- 4.4 The overriding principle shall be that lagged funding shall apply other than in exceptional circumstances described in Funding Guidance for young people 2017 to 2018 <https://www.gov.uk/16-to-19-education-funding-guidance> or as otherwise provided for in this Funding Agreement.
- 4.5 Where the ESFA or any other Crown Body acting on behalf of the Secretary of State carries out a review or audit pursuant to Part Two clause 15 (Access and Monitoring), in accordance with the principles set out in the post-16 audit code of practice, of a sample of the evidence which the SFC is required to provide under this Funding Agreement to support the payments made by the ESFA and identifies errors in that evidence resulting in over-claims and over-payments which it deems are material (as defined in the Funding Guidance for young people 2017 to 2018 <https://www.gov.uk/16-to-19-education-funding-guidance>), the ESFA shall be entitled to:

- 4.5.1 recover, in accordance with clause 4.6, in full from the SFC the amount or value of all such errors;
- 4.5.2 assume that the same percentage of monies overpaid have been made in respect of all payments to the SFC since the date of the last Audit or, if no Audit has been conducted previously, since the start of this Funding Agreement, to produce an aggregate value of monies overpaid (the "Aggregate Error Amount");
- 4.5.3 recover, in accordance with clause 4.6, in full from the SFC a sum equal to the Aggregate Error Amount less the sum of any monies recovered by the ESFA pursuant to Part Two clause 4.5.1.
- 4.6 Any amounts including but not limited to those described at clause 4.5, recovered from the SFC will be recovered either by making deductions from future payments due to the SFC under this Funding Agreement or any other Funding Agreement between the Parties, or otherwise through the issue of an invoice. In all such reviews the decision of the ESFA is final.
- 4.7 Where the ESFA determines, as a result of an audit conducted pursuant to Part Two clause 15 (Access and Monitoring), that there has been an underpayment to the SFC, the ESFA shall be under no obligation to provide additional Funds to the SFC accordingly.
- 4.8 The ESFA shall perform a reconciliation at the end of the academic year and shall notify the SFC of the actual number of Students delivered to and the actual amount of money received in respect of the Learning Programmes delivered and compare this to the total Funding paid under this Funding Agreement and to the overall maximum value specified in Appendix 1 – Payment Schedule. Where the ESFA determines, as a result of such review, that there has been an over-payment to the SFC, the ESFA may recover in full from the SFC the amount or value of all such errors and such sum shall be repayable by the SFC to the ESFA within 30 days of receiving an invoice for the same.

5. Quality Assurance

- 5.1 The SFC represents, warrants and undertakes to the ESFA that it has the necessary resources, skills and experience to carry out the SFC's obligations pursuant to the ESFA Conditions of Funding.
- 5.2 The SFC shall comply and shall ensure that the SFC Related Parties comply with the ESFA Conditions of Funding, all applicable Laws and the most recent policies which may from time to time be issued by the Department, ESFA, OFSTED and awarding bodies of which the SFC is made aware, including but not limited to, being published on the relevant bodies website.

- 5.3 The SFC shall ensure that all activities carried out pursuant to this Funding Agreement shall be documented in accordance with the requirements of the ESFA as notified to the SFC 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.
- 5.4 The SFC shall have in place its own quality assurance arrangements that demonstrate that it can comply with the ESFA Conditions of Funding 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.
- 5.5 If the ESFA has concerns in relation to underperformance and / or leadership, management or governance, the ESFA shall, at its discretion, consider referring the matter to the Further Education Commissioner.

Financial health and/or control

- 5.6 The financial health of the SFC is assessed by the ESFA in line with the approach set out in the Financial Planning Handbook. The ESFA will also consider the SFC's financial control arrangements in accordance with the ESFA's published approach. These considerations will be informed by the outcomes of audits undertaken by or reported to the ESFA, and will have regard to compliance with the SFC's Instrument and Articles of Government, post-16 audit code of practice, or other funding or regulatory requirements. Inadequate financial control will include, but is not limited to, a qualified audit opinion from a SFC's external auditors or funding auditors. Should the ESFA, in its sole discretion, consider that the outcome of the financial health assessment and/or the SFC's financial control arrangements is inadequate, the ESFA may, in its absolute discretion take one or more of the following actions:

5.6.1 issue a Financial Notice to Improve, requiring the SFC to, and the SFC shall, accept and comply with additional conditions of funding, relating to the improvement of the SFC's financial health and/or financial controls including the preparation of a financial recovery plan; and/or

5.6.2 require the SFC to suspend the recruitment of Students to, and/or to cap any growth in Student numbers; and/or

5.6.3 in accordance with the 'Rigour and Responsiveness in Skills' policy, the ESFA will write to the SFC to confirm the position and thereafter consult with the SFC governors, principal, local stakeholders. The SFC will comply with the requirements/requests of the Further Education Commissioner. The ESFA will act as single point of contact, acting on behalf of Government before advising and recommending to Ministers on one of the following options:

5.6.3.1 the SFC is treated as being an Administered College

5.6.3.2 the replacement of some or all of the governing body; and/or

5.6.3.3 dissolution of the SFC; and/or

5.6.4 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 Funding Agreement(s) between the Parties; and/or

5.6.5 terminate, in accordance with Part Two clause 17.2.

5.7 The failure of the SFC, as assessed by the ESFA, to comply with the requirements of 5.6.1 to 5.6.3 within such time as the ESFA shall deem reasonable may lead to the ESFA taking such actions as it deems appropriate which may include, but is not limited to, terminating in accordance with clause 17.2 (Termination).

5.8 Where the SFC has obligations to the Secretary of State for Education under any other grant agreement or loan agreement, any default in respect of liabilities under that agreement, including but not limited to defaults in repayments, may lead to the ESFA taking such actions in respect of this Funding Agreement as it deems appropriate which may include, but is not limited to, terminating in accordance with clause 17.2 (Termination).

Minimum standards

5.9 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 national minimum standards, as published by the Department [16 to 18 minimum standards for 2016 - GOV.UK](#)

Where the ESFA assesses that the Services, in whole or in part, fall below the required standards, the ESFA may, in its absolute discretion, take one or more of the following actions:

5.9.1 issue a Notice to Improve, requiring the SFC to, and the SFC shall, accept and comply with additional conditions of funding relating to the improvement of the Services; and/or

5.9.2 require the SFC to suspend the recruitment of Students to, and/or to cap any growth in, those Learning Programmes which are identified as below the required standards; and/or

5.9.3 give consideration to the Services which are below the required standards in its application of lagged learner funding when finalising the amount of funding in any subsequent Funding Agreements between the Parties; and/or

5.9.4 reduce, suspend or recover payment to the SFC in respect of that part of the Services to which the failure to meet the required standards relate; and/or

5.9.5 in accordance with the 'Rigour and Responsiveness in Skills' policy, the ESFA will write to the SFC to confirm the position and thereafter consult with the SFC governors, principal, local stakeholders. The SFC will comply with the requirements/requests of the Further Education Commissioner. The ESFA will act as single point of contact, acting on behalf of Government before advising and recommending to Ministers on one of the following options:

5.9.5.1 the SFC is treated as being an Administered College

5.9.5.2 the replacement of some or all of the governing body; and/or

5.9.5.3 dissolution of the SFC; and/or

5.9.6 terminate this Funding Agreement in accordance with part two clause 17.2 (Termination) in full, or that part of the Services failing to meet the required standards.

5.10 The failure of the SFC, as assessed by the ESFA, to comply with any requirements of 5.9.1-5.9.5 within such time as the ESFA may deem reasonable may lead to the ESFA taking such actions as it deems appropriate which may include, but is not limited to, terminating in accordance with clause 17.2 (Termination).

Ofsted Inspection

5.11 When the SFC receives notification from Ofsted that the Activities are to be inspected, the SFC shall, on 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 SFC 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 SFC must confirm to the ESFA in writing the outcome of the inspection within 5 working days of receiving the feedback from the Inspectorate.

5.12 Ofsted may, at any time during the Term, undertake an inspection of the SFC, including inspection of any residential accommodation for children

provided by the SFC. The ESFA will consider the outcome of any such inspection as follows:

Inadequate in part

5.12.1 Where Ofsted has assessed the Services to be inadequate in any sector specific areas, the ESFA may, in its absolute discretion take one or more of the following actions:

5.12.1.1 issue a Notice to Improve, requiring the SFC to, and the SFC shall, accept and comply with additional conditions of funding relating to the improvement of the Services assessed as inadequate; and/or

5.12.1.2 require the SFC to suspend the recruitment of Students to, and/or to cap any growth in, those Services which are assessed as inadequate; and/or

5.12.1.3 give consideration to the Services which are assessed as inadequate in its application of lagged learner funding when finalising the amount of funding in any subsequent Funding Agreements between the Parties; and/or

5.12.1.4 reduce, suspend or recover payment to the SFC in respect of that part of the Services assessed as inadequate.

Inadequate overall

5.12.2 Where the ESFA is made aware that Ofsted has provisionally assessed the Services to be inadequate overall, the ESFA may, in its absolute discretion take one or more of the following actions:

5.12.2.1 require the SFC to, and the SFC shall, accept and comply with temporary additional conditions of funding relating to the improvement of the overall Services, including but not limited to, requiring the SFC to temporarily suspend the recruitment of Students and/or temporarily cap any growth in those Learning Programmes which are assessed as inadequate.

5.12.2.2 commence discussions with the SFC and the Local Authority within whose area the SFC is located, either with Ofsted or not, as part of considering what actions as specified in clause 5.12.3.3 – 5.12.3.5 inclusive may be taken.

5.12.3 Where Ofsted has confirmed its assessment that the Services are inadequate overall, the ESFA may, in its absolute discretion take one or more of the following actions:

5.12.3.1 issue a Notice to Improve, requiring the SFC to, and the SFC shall, accept and comply with additional conditions of funding relating to the improvement of the overall Services; and/or

5.12.3.2 require the SFC to suspend the recruitment of Students to, and/or to cap any growth in, those Learning Programmes which are assessed as inadequate; and/or

5.12.3.3 give consideration to the assessment of inadequate in its application of lagged learner funding when finalising the amount of funding in any subsequent Funding Agreements between the Parties; and/or

5.12.3.4 reduce, suspend or recover payment to the SFC; and/or

5.12.3.5 in accordance with the 'Rigour and Responsiveness in Skills' policy, the ESFA will write to the SFC to confirm the position and thereafter consult with the SFC governors, principal, local stakeholders. The SFC shall comply with the requirements/requests of the Further Education Commissioner. The ESFA will act as single point of contact, acting on behalf of Government before advising and recommending to Ministers on one of the following options:

5.12.3.5.1 the SFC is treated as being an Administered College;

5.12.3.5.2 the replacement of some or all of the governing body; and/or

5.12.3.5.3 dissolution of the SFC; and/or

5.12.3.5.4 terminate this Funding Agreement in accordance with Part Two clause 17.2 (Termination).

5.12.4 The failure of the SFC, as assessed by the ESFA, to comply with any requirements of 5.12.1-5.12.3 within such time as the ESFA may deem reasonable may lead to the ESFA taking such actions as it deems appropriate which may include, but is not limited to, terminating in accordance with clause 17.2 (Termination).

5.12.5 ESFA will take action based on Ofsted's provisional and confirmed outcomes as in clause 5.12.2 – 5.12.3 above. Where ESFA is made aware that the SFC has made a complaint about the graded outcome of the overall assessment by Ofsted, ESFA will continue to progress action under clause 5.12.2-5.12.3 but will be mindful of the implications arising from the outcome of a complaint. The ESFA will review any decisions made at such time as outcomes of any complaint are made known.

5.12.6 Where the SFC is assessed as overall inadequate by Ofsted, the SFC should not seek to host the induction of newly qualified teachers, from QTS (schools) routes, except where this is already underway, until Ofsted has agreed that the SFC is fit for the purpose of providing supervision and training during an induction period, in line with statutory requirements.

Early intervention

5.13 The ESFA has published a strategy on early intervention, which sets out the triggers for early intervention and how the ESFA will work with SFCs and general further education colleges to put in place actions that assist such colleges to return to sound financial resilience and, where required, improve quality.

5.14 Where, in the ESFA's view, information and data obtained in respect of the SFC indicates that the SFC has met one of the published early intervention triggers, the ESFA will write to the SFC to confirm the ESFA's view.

5.15 The SFC must engage actively with the ESFA to explain why the SFC has met one of the published triggers, what the SFC is already doing to improve and to agree further actions if necessary. If the SFC fails to engage actively with the ESFA, the ESFA may take such action as it deems appropriate which may include, but is not limited to, requiring the SFC to comply with additional conditions of funding.

5.16. The SFC must comply with any additional conditions of funding (either as agreed with the SFC or as imposed under clause 5.15) specified by the ESFA in writing.

5.17 If the ESFA assesses that the SFC has failed to comply with any additional conditions of funding within such time as the ESFA deems reasonable, the ESFA may take such actions as it deems appropriate which may include, but is not limited to, under Part Two Clause 16.3-16.4 Minor Breach or Part Two Clause 16.5-16.6 Serious Breach.

6. Retention of Documents

6.1 The SFC and SFC Related Parties shall maintain original invoices (scanned images are acceptable), management information returns and all other documents necessary to verify the Services provided by itself or by SFC Related Parties in relation to this Funding Agreement for six years from the end of the financial year in which the last payment by is made under this Funding Agreement.

7 Public Reputations of the Parties

7.1 Both Parties recognise their respective public reputations and legal responsibilities. Each Party shall use all reasonable endeavours not to harm or compromise these.

8. Freedom of Information and Confidentiality

8.1 The Parties acknowledge that both are subject to the FOIA and shall comply with their respective obligations under the FOIA, which arise in connection with this Funding Agreement.

8.2 The provisions of Part Two clause 8 shall not apply to any information which is or becomes public knowledge (other than by breach of this Part Two clause 8). This includes information published under Part Two clauses 8 and 10 (Consent to Publication) which;

- (a) was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
- (b) must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act or the Environmental Information Regulations.

8.3 Nothing in this Part Two clause 8 shall be deemed or construed to prevent the ESFA from disclosing any Confidential Information obtained from the SFC:

- (a) to any other Crown Body, including but not limited to, non-departmental public bodies or quasi Government authorities or agencies; and/or,
- (b) to any consultant, SFC, college or other person engaged by the ESFA directly in connection with this Funding Agreement, provided that such information is treated as confidential by the receiving consultant, SFC, college or any other person.

8.4 In order to ensure that no unauthorised person gains access to any Confidential Information or data obtained and/or processed in the course of the delivery of the Services, the SFC undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice in addition to those set out in Part Two clauses 11 and 12.

8.5 The SFC will notify the ESFA as soon as reasonably practicable (and in any event within 24 hours) of its discovery, of any breach of security in relation to Confidential Information and/or Personal Data obtained and/or

processed in the course of the delivery of the Services. The SFC shall use all reasonable endeavours to mitigate the possible adverse impacts of any such breach of security including any intrusion into individuals' privacy. The SFC will keep a record of such breaches a copy of which shall be provided to the ESFA upon request. The SFC will use its best endeavours to recover such Confidential Information and/or Personal Data however it may be recorded. The SFC will co-operate with the ESFA in any investigation that the ESFA considers necessary to undertake as a result of any breach of security in relation to Confidential Information and/or Personal Data.

- 8.6 The SFC shall, at its own expense, alter any security systems and/or processes at any time during the Term at the ESFA's reasonable request if the ESFA reasonably believes the SFC has failed to comply with this Part Two clause 8.
- 8.7 The provisions of this Part Two clause 8 will apply for the duration of this Funding Agreement and after its termination.
- 8.8 The ESFA and the SFC acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Funding Agreement is not Confidential Information.

9. Feedback and Complaints

- 9.1 The SFC shall have primary responsibility for receiving feedback in respect of the Services and shall investigate any complaint in respect of the Services promptly and thoroughly. The SFC shall have procedures in place, which are acceptable to the ESFA, to gather and act upon feedback and complaints from Students and/or their representatives, the wider community and, where relevant, employers.
- 9.2 The Department may issue guidance to the SFC on dealing with feedback and handling complaints, and will set out the minimum standards expected of the SFC. Failure to comply with such guidance shall be deemed to be a Minor Breach.
- 9.3 The SFC shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the Department pursuant to Part Two clause 9.2.

10. Consent to Publication

- 10.1 The Government has set out the need for greater transparency of public data and its commitment to hold public bodies to account over the use of public funds.
- 10.2 In compliance with the Cabinet Office's transparency agenda the ESFA is required to publish information about any payments made to the SFC under this Funding Agreement. Published information shall specifically exclude publication of bank account number and sort code.
- 10.3 The SFC hereby gives its consent for the Department to publish this Funding Agreement in its entirety, including from time to time agreed changes to the allocation, any payments, Funding Agreement and if issued Notices to Improve, to the general public. The Department may consult with the SFC to inform its decision regarding any redactions to this Funding Agreement but the Department shall have the final decision in its absolute discretion.
- 10.4 The SFC shall assist and cooperate with the Department to enable the Department to publish the allocation and any Funding paid or payable to the SFC under this Funding Agreement.
- 10.5 The Department reserves the right to share information about the SFC's performance with any other Crown Body.
- 10.6 The ESFA may disclose information, including the Confidential Information of the SFC:
- (a) on a confidential basis to any Crown Body for any proper purpose of the ESFA or of the relevant Crown Body;
 - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (c) to the extent that the ESFA (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 10.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Funding Agreement;
 - (e) on a confidential basis for the purpose of the exercise any of its rights under this Agreement or

(f) on a confidential basis to anybody to which the ESFA intends to assign, novate or dispose its rights, obligations or liabilities under this Funding Agreement in connection with any such assignment, novation or disposal;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the ESFA under this clause 10.

11. Supply of Data

- 11.1 THE SFC 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.
- 11.2 THE SFC shall transmit data for each part of the Activities, electronically in a batch file as specified in the [ILR Specification 2017 to 2018](#).
- 11.3 Data collected must be transmitted to the ESFA's secure online portal: [The Hub](#). The Hub is restricted and THE SFC confirms it has agreed to comply with the conditions of use regarding the supply of data to the ESFA.
- 11.4 THE SFC must ensure that data is received by the ESFA in accordance with the data collection timetable. THE SFC should refer to the ESFA's [ILR webpage](#) for additional data guidance and information.
- 11.5 The ESFA reserves the right to require THE SFC, at its own cost, to carry out such work as the ESFA deems necessary to make a material improvement to the quality of data.
- 11.6 The ESFA reserves the right to suspend payments to THE SFC 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 SFC.
- 11.7 THE SFC shall register with [UKRLP](#) and maintain contact details on an on-going basis.
- 11.8 At times, the ESFA will need to share information with THE SFC. The ESFA will do this securely via The HUB. By accessing and using this system THE SFC agrees to the terms and conditions detailed at the site governing how it accesses and use the portal. THE SFC will need to ensure that it has the right hardware, operating system and browser.

12. Protection of Personal Data

- 12.1 The SFC shall be registered under the DPA and both Parties will duly observe all of their applicable obligations under the DPA, which arise in connection with the ESFA Conditions of Funding.
- 12.2 The Parties shall at all times comply with their applicable obligations under the DPA and all subordinate and related legislation as enacted from time to time. Both Parties acknowledge that they are Data Controllers in common of the Personal Data collected and held by the SFC in performing the Services.
- 12.3 Notwithstanding the general obligation in Part Two clause 12.1, the SFC shall:
- 12.3.1 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 12.3.2 take reasonable steps to ensure the reliability of any staff who have access to the Personal Data;
 - 12.3.3 ensure that all staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the applicable obligations set out in this ESFA Conditions of Funding;
 - 12.3.4 ensure that none of the staff publish, disclose or divulge any of the Personal Data to any third party unless authorised;
 - 12.3.5 provide the ESFA with full cooperation and assistance in relation to any complaint or request that the ESFA receives about Personal Data, including by:
 - (a) providing the ESFA with any Personal Data it holds in relation to a Data Subject (within the timescales required by the ESFA) to assist the ESFA to respond to a data access request that the ESFA has received; and
 - (b) providing the ESFA with any information requested by the ESFA;
 - 12.3.6 permit the ESFA or the ESFA's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the SFC's Data Processing activities (and/or

those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the ESFA to enable the ESFA to verify and/or procure that the SFC is in full compliance with its obligations under this ESFA Conditions of Funding;

- 12.3.7 provide, if requested in writing by the ESFA, a written description of the technical and organisational methods employed by the SFC for processing Personal Data (within the timescales required by the ESFA);
- 12.3.8 provide Students with clear and comprehensive information about the purposes for which their Personal Data is processed by the SFC and disclosed to the ESFA for further processing, including, where required, obtaining the consent of Students to processing under the DPA;
- 12.3.9 provide the ESFA with a copy of the Personal Data including the Unique Learner Number in a format and specification approved by the ESFA in accordance with the requirements specified at clause 11.5;
- 12.3.10 take reasonable steps to ensure the accuracy of the Personal Data provided to the ESFA and the SFC shall immediately notify the ESFA should it become aware of any errors or omissions in the Personal Data provided to the ESFA;
- 12.3.11 not process Personal Data outside the European Economic Area without the prior written consent of the ESFA and, where the ESFA consents to a transfer, to comply with:
 - (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - (b) any reasonable instructions notified to it by the ESFA.
- 12.4 The SFC shall indemnify and keep indemnified the ESFA in full from and against all claims, proceedings, actions, damages, losses, penalties, fines, levies, costs and expenses arising out of, in respect of or in connection with, any breach by the SFC or SFC Related Parties, of this Part Two clause 12 which causes (either partly or fully) a breach by the ESFA of its obligations under the DPA.
- 12.5 The SFC shall comply at all times with the DPA and shall not perform its obligations under this Funding Agreement in such a way as to cause the ESFA to breach any of its applicable obligations under the DPA.

13. Student Health and Safety and Safeguarding

- 13.1 The SFC 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 Students. Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 13.2 The SFC 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 SFC 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. Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 13.3 The SFC shall make arrangements for ensuring that the Services are provided with a view to safeguarding and promoting the welfare of High Needs Students aged 18 to 25 receiving education or training at their institution. In doing so, the SFC shall make those arrangements as if such Students 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 Students as if they were children. Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 13.4 In providing the Services the SFC 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.
- 13.5 In providing the Services the SFC 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.
- 13.6 Where the SFC provides residential accommodation for Students, the SFC 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. Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 13.7 The SFC 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).

- 13.8 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 SFC shall take reasonable steps to ascertain whether that person is subject to a prohibition order made under section 141B of the Education Act 2002.
- 13.9 The SFC and/or the SFC 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.
- 13.10 Where the SFC makes a referral to any Local Authority (including referrals to social services) in respect of serious safeguarding concerns (in respect of all Students up to the age of 18, and those Students aged 18 to 25 who have an education care and health plan in place / any High Needs Student), the SFC shall ensure that it notifies the ESFA that a referral has been made.
- 13.11 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.
- 13.12 Where the SFC has made a referral or provided information to the Disclosure and Barring Service in compliance with any duties of the SFC under the Safeguarding Vulnerable Groups Act 2006 in respect of serious safeguarding concerns, the SPI shall ensure that it informs the ESFA that a referral has been made / information has been provided.

14 Sub-Contracting

- 14.1 Where the SFC has sub-contracted any duties or obligations arising out of this Funding Agreement, the SFC shall send copies of the sub-contract to the ESFA if requested in writing to do so. Where the SFC enters into a sub-contract for the purpose of performing all or part of the obligations under this Funding Agreement, the SFC shall cause a term to be included in such sub-contract which requires payment to be made to

the supplier or CONTRACTOR within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

- 14.2 Where the SFC fails to apply the necessary management, monitoring and control over sub-contracted delivery, or fails to seek the necessary approval in advance in respect of whole programmes of study delivered at distance, as set out in the sub-contracting control regulations <https://www.gov.uk/government/publications/funding-guidance-for-young-people-sub-contracting-controls> the ESFA may move the student numbers and associated funding away from the directly funded institution and/or also require the institution to discontinue the sub-contracting arrangement either with immediate effect or from the end of the current funding year
- 14.3 The ESFA may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under this Funding Agreement and may subcontract or delegate in any manner any or all of its obligations under the Funding Agreement to any third party or agent.

15. Access and Monitoring

- 15.1 The ESFA shall give the SFC or SFC Related Parties reasonable advance notice in writing of proposed visits to the SFC or SFC Related Parties, to observe the delivery of the Services, by any person, representing the ESFA or acting on behalf of the Secretary of State, who has taken or will take no direct part in the conduct or content of the Services.
- 15.2 For audit, monitoring and evaluation purposes, the ESFA, any person acting on behalf of the Secretary of State, the Department, the Department for Work and Pensions, the National Audit Office, Representatives of the European Commission and the European Court of Auditors (where applicable), its appointed representatives and/or the Inspectorates shall have the right to visit all or any site from which the Services are provided and view operations relating to the Services and to inspect relevant documents and interview Students and the SFC's staff during these visits.
- 15.3 The SFC shall, and shall ensure that its SFC Related Parties, shall, on reasonable advance notice in writing permit access at any reasonable time to any of the representatives listed at Part Two clause 15.2 in order to:
- 15.3.1 examine, audit or take copies of any original or copy documentation, accounts, books and records of the SFC and its SFC Related Parties that relate to this Funding Agreement;

- 15.3.2 visit, view or assess the design, management and delivery relating to the Funding Agreement at any sites where those operations are carried out (including those of SFC Related Parties) and conduct relevant interviews, including interviews with Students, during these visits at any reasonable time; and/or
- 15.3.3 carry out examinations into the economy, efficiency and effectiveness with which the SFC has used the Secretary of State's resources in the performance of this Funding Agreement.
- 15.4 Where reasonably required, the SFC and its SFC Related Parties shall provide copies of any relevant documents required by any of the representatives listed at Part Two clause 15.2.
- 15.5 The SFC shall, if required by any of the representatives stated at Part Two clause 15.2 provide appropriate oral or written explanations.
- 15.6 The ESFA reserves the right, at any reasonable time, and as it may deem necessary to require the SFC at its own cost to:
 - 15.6.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform in accordance with the ESFA Conditions of Funding;
 - 15.6.2 obtain a report by an independent accountant of the ESFA's choice on the financial systems and controls operated by the SFC in respect of payments claimed or received under this Funding Agreement;
 - 15.6.3 provide a copy of the SFC's latest audited Accounts;
 - 15.6.4 submit any claim for payment, or management information provided to support a claim for payment, to be reviewed by an independent accountant chosen by the ESFA;
 - 15.6.5 provide any additional evidence to support payments made under this Funding Agreement, as the ESFA shall reasonably require.

16. Breach

- 16.1 For the purpose of this Clause, the following definitions shall have the meanings set out below:
 - 16.1.1 "Minor Breach" shall mean a delay or non-performance by either Party, including any SFC Related Parties, of its obligations, in part or in full, under this Funding Agreement which does not materially, adversely or substantially affect the performance or delivery of the

Services, in part or in full, or the provision of a safe, healthy and supportive learning environment; and

16.1.2 "Serious Breach" shall mean any breach which adversely, materially and substantially affects the performance or delivery of the Services, in part or in full, or the provision of a safe, healthy and supportive learning environment. Serious breach includes but is not limited to:

16.1.2.1 a breach of security that adversely affects the Personal Data or privacy of an individual;

16.1.2.2 failure to comply with Law, or acts or omissions by the SFC that endanger the health or safety of students;

16.2 For the avoidance of doubt:

16.2.1 neither Party shall be liable for any Minor Breach or Serious Breach under this Clause, which occurs as a direct result of any act or omission by the other Party, its staff or agents; and

16.2.2 in the event of a breach the Party not in breach may enforce the clauses in this Funding Agreement relating to breach even if it has not done so in the event of earlier breaches.

Minor Breach

16.3 Without prejudice to any other remedy, in the event of a Minor Breach, the Party not in breach shall be entitled to serve written notice on the Party in breach, giving full details of the breach and requiring the other Party to remedy the breach within a specified period.

16.4 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Part Two clause 16.3, or such other period as may subsequently be agreed in writing between the Parties, it shall constitute a Serious Breach by the Party in breach.

Serious Breach

16.5 Without prejudice to any other remedy, in the event of a Serious Breach, which in the view of the ESFA is capable of remedy, the Parties shall adopt the following procedure:

16.5.1 The Party not in breach shall be entitled to serve written notice on the other Party giving full details of the breach and requiring the Party in breach to remedy the breach within a specified time period.

16.5.2 In the event that a Serious Breach of this Funding Agreement by the SFC is in the view of the ESFA not, or cannot be, remedied

within the period specified in the notice served under Part Two clause 16.5.1, or such other period as may subsequently be agreed in writing between the Parties, the ESFA may:

- (a) require the SFC to suspend recruitment of Students, and cap growth of learning programmes in future years, to the Services to which the Serious Breach relates;
- (b) give consideration to the Serious Breach in its application of lagged learner funding when finalising the amount of funding in any subsequent Funding Agreement(s) between the Parties;
- (c) reduce, suspend or recover payment to the SFC in respect of that part of the Services to which the Serious Breach relates;
- (d) terminate, in accordance with Part Two clause 17 (Termination), in full or in respect of that part of the Services to which the Serious Breach relates.

16.6 In the event that any Serious Breach cannot be remedied at all or within the period specified in the notice served in accordance with Part Two clause 16.5.1 or such other period as may be agreed in writing between the Parties, the Party not in breach may at its sole discretion terminate this Funding Agreement or that part of the Services to which the breach relates with immediate effect on notice in writing to the other Party.

17. Termination

- 17.1 Without prejudice to any other remedy, on the occurrence of a Serious Breach that is not capable of being remedied the ESFA shall be entitled to terminate this Funding Agreement, in respect of that part of the Services to which the Serious Breach relates, by notice to the SFC with immediate effect.
- 17.2 The ESFA shall be entitled to terminate this Funding Agreement on written notice in the circumstances as detailed in Part Two clauses 5 above (Quality Assurance). The period of notice shall be that which, in all the circumstances, the ESFA deems reasonable.
- 17.3 The ESFA shall be entitled to terminate this Funding Agreement on written notice in case of the insolvency, liquidation or dissolution of the SFC.
- 17.4 The ESFA shall be entitled to terminate this Funding Agreement on written notice if the SFC does not recruit or data returns reveal that no Students have been enrolled for the academic year to which this Funding Agreement relates. Where the ESFA terminates the Funding Agreement under this clause 17.4, the ESFA will withdraw the allocation of Funding for the academic year and will take action to recover Funds where payments have already occurred.
- 17.5 In addition to the rights of termination under any other clauses of this Funding Agreement, either party shall be entitled to terminate this Funding Agreement in respect of all or part of the Services delivered under this Funding Agreement by giving to the other not less than six months' notice, in writing, to that effect without the need to give a reason for termination. Where this right is exercised by the SFC it shall be implemented at no cost to the ESFA.
- 17.6 Termination under Part Two clause 17 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Funding Agreement.
- 17.7 On termination or expiry of this Funding Agreement for any reason, the SFC shall do its utmost to minimise disruption caused to Students and to assist the implementation of any contingency plan proposed by the ESFA either prior to or after the termination or expiry of this Funding Agreement, to deal with the effects of such termination or expiry in so far as it is practicable to do so. The ESFA will not be liable for any costs incurred by the SFC in complying with this clause 17.7.
- 17.8 The SFC shall, within 2 Working Days of termination of this Funding Agreement cease using any marks of the ESFA and deliver up to the ESFA all correspondence, documents, student data relevant to continuation of the Services, specification papers and other property

belonging to the ESFA, which may be in its possession or under its control.

- 17.9 On termination of this Funding Agreement (however arising) the accrued rights and liabilities of the Parties at termination shall survive and continue in full force.

18. Dispute Resolution

- 18.1 Any dispute, difference or question arising between the Parties either during the term of this Funding Agreement or afterwards shall be referred to the relevant ESFA Territorial team who will nominate a member of staff to lead discussion and review with a nominated representative of the SFC in order to try to resolve the same.
- 18.2 In the event that the nominated representatives are unable to resolve the dispute, difference or question, either of the Parties may (subject to Part Two clause 18.4 below), by written notice to the other party, refer the matter to a Dispute Resolution Panel (“the Panel”) to attempt to reach a mutually acceptable resolution. The Panel shall be made up of one of the ESFA’s Territorial Directors and a senior representative (it is envisaged that this would be the Principal, acting Principal or member of the Senior Management Team) from the SFC. The date of reference to the Panel will be agreed by the Panel themselves. The Panel shall meet within 14 days of the date of reference to them and the Panel shall use best endeavours to identify a mutually acceptable resolution.
- 18.3 In the event of the Dispute Resolution Panel failing to identify a mutually acceptable resolution within 28 days of the date of reference, then any dispute, difference or question arising out of or in connection with this Funding Agreement including any question regarding its existence, validity or termination, save for any matter or thing as to which the decision of the ESFA is under this Funding Agreement deemed to be final and conclusive, shall be referred to and settled as far as possible by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
- 18.4 If the Parties agree in writing, the dispute, difference or question that the nominated representatives were unable to resolve may be referred to directly to mediation, in accordance with Part Two clause 18.3 above, without reference to the Panel.
- 18.5 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Funding Agreement until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.
- 18.6 If mediation does not reach a conclusion satisfactory to the Parties the

dispute, difference or question shall be referred to and finally resolved by arbitration and the provisions of the Arbitration Act 1996 (or any statutory modification or re-enactment thereof) shall apply to such arbitration.

- 18.7 The arbitration will be conducted by a sole arbitrator, jointly agreed by the SFC and the ESFA. In the event of the Parties being unable to agree the identity of the arbitrator within 14 days of the service of the Notice of Arbitration, either the SFC or the ESFA may request the Chairman of the Chartered Institute of Arbitrators to make the appointment.
- 18.8 The place of arbitration shall be London, England.

19. Revisions

- 19.1 The ESFA may from time to time revise, revoke or add to this Funding Agreement in whole or in part. The SFC may propose changes to this Funding Agreement but the ESFA shall not be obliged to accept any such changes.
- 19.2 Revisions made by the ESFA to this Funding Agreement pursuant to Part Two clause 19.1 above, shall be confirmed in writing. The SFC shall confirm its acceptance by signing and returning a hardcopy to the address set out in Part Two clause 19.3 below.
- 19.3 The SFC may itself make proposals to the ESFA for such changes. These should be addressed in writing to:

ESFA Contracts Team,
CHEYLESMORE HOUSE
QUINTON ROAD
COVENTRY
CV1 2WT

- 19.4 In response to proposals received the ESFA shall either:

19.4.1 amend the Funding Agreement by way of a variation in accordance with Part Two clauses 19.1 and 19.2. The revision will apply to all SFC's;

19.4.2 consult on the proposal with consideration to amending Funding Agreements for all SFC in 2018/2019 and/or subsequent years; or

19.4.3 confirm that no amendment will be made to the conditions set out in this ESFA Conditions of Funding.

- 19.5 Revisions made by the ESFA to the Appendices and Annexes that form part of this Funding Agreement shall be confirmed in writing. The SFC shall confirm its acceptance by signing and returning a hardcopy to the address at Part Two clause 19.3. Failure to do so may result in non-payment of any increase in funding described in the revision.
- 19.6 The SFC may itself make proposals to the ESFA for changes to the Services set out in the Appendices and Annexes that form part of this Funding Agreement. These should be addressed in writing to the relevant Young People's Territorial Delivery team.

20. The Contract (Rights of Third Parties) Act 1999

- 20.1 A person who is not a Party to this Funding Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on that person, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contract (Rights of Third Parties) Act 1999 and does not apply to the Crown.

21. Governing Law and Jurisdiction

- 21.1 This Funding Agreement shall be governed by and interpreted in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the English courts.

22. Entire Agreement

- 22.1 This Agreement constitutes the entire Agreement between the Parties and shall not be varied except by an instrument signed by the parties or accepted electronically via the Skills Funding Service (SFS).
- 22.2 By accepting this Funding Agreement via the Skills Funding Service (SFS) the person taking this action on behalf of the SFC represents and warrants that the SFC has read and understood this Funding Agreement, the SFC agrees to be bound by this Funding Agreement and that he/she is duly authorised to accept this Funding Agreement and legally bind the SFC.

Please note that the Contract **must be:**
accepted by a member of staff that is authorised to legally bind the SFC;

Contract acceptance via SFS shall bind the SFC as set out in sub-clauses 22.1 and 22.2.

23. Appendices and Annexes (included as appropriate)

Appendix 1 – Payment Schedule

Appendix 2 – Definitions and interpretation

Appendix 3 – Raising the Participation Age (RPA)

Study Programmes, incorporating Traineeships
14 to 16 full-time provision

Annex 1 – 16 to 18 Residential Bursaries

Annex 2 – PE and Sports Grant

Annex 3 – Army Cadets

Annex 4 – Specialist Provision and High Need Students

Annex 5 – Closing Schools

Annex 6 – 16 to 19 Bursary Fund and Free Meals in FE

Annex 7 – Residential Support Scheme

Appendix 2

Definitions and Interpretation

1.1 For the purposes of this Funding Agreement:

"Accounts Direction" means the ESFA's financial reporting requirements published at <https://www.gov.uk/government/publications/college-accounts-direction>

"Administered College" means the SFC is subject to an administrative process that is aimed at delivering the actions necessary to secure improvement and ensure the best outcomes for learners as set out in the Rigour and Responsiveness in Skills policy;

"Asset Deed" means the deed or deeds through which the SFC holds a valid and current estate in land together with the details and up to date official copy entries for any Land Registry title number under which the deed or deeds are held;

"Child" means a person under the age of 18;

"Confidential Information" any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;

"Crown" means the government of the United Kingdom (including Northern Ireland Assembly and the Executive Committee, the Scottish Government and the Welsh Assembly Government);

"Crown Body" means any department, office or agency of the Crown, including OFSTED, the Care Quality Commission, the Charity Commission, any and all Local Authority or Combined Authority bodies;

"Department" means the Department for Education which incorporates its Executive Agency, the ESFA;

"DPA" means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown Body in relation to such legislation;

"Eligible Expenditure" means expenditure solely for the purpose of delivering the Services agreed and set out in the Appendices and Annexes of this Funding Agreement;

"**ESFA**" means the Education and Skills Funding Agency, an Executive Agency of the Department for Education;

"**ESFA Conditions of Funding**" has the meaning given in Background (2);

"**Exempt Information**" means any information or class of information (including but not limited to any document, report, Funding Agreement or other material containing information) relating to this Funding Agreement or otherwise relating to the SFC, which potentially falls within an exemption to FOIA (as set out therein);

"**Financial Notice to Improve**" The ESFA may issue a Financial Notice to Improve to a SFC in those instances where a SFC is assessed to be inadequate for Financial Health and/or Financial Control. The notice will set out the additional conditions of funding that the SFC will be required to fulfil within a set time period in order to make the required improvements and be compliant.

"**Financial Planning Handbook**" means the ESFA's financial planning requirements published at <https://www.gov.uk/government/publications/financial-planning-handbook>

"**FOIA**" means the Freedom of Information Act 2000 and all regulations made there under from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in this Funding Agreement;

"**Funds**" means the monies paid by the ESFA to the SFC pursuant to this Funding Agreement and "**Funding**" shall have the same meaning;

"**Funding Agreement**" means this document as amended from time to time in accordance with Part Two clause 19 (Revisions) including all appendices and annexes, and any other documents expressly incorporated by reference in this document;

"**Funding Guidance for Young People**" means titled Funding Guidance for young people 2017 to 2018 <https://www.gov.uk/16-to-19-education-funding-guidance> as amended from time to time by the ESFA;

"**Further Education Commissioner**" means the individual appointed to provide independent advice to the Minister for Skills and Enterprise ("the Minister") and the Chief Executive of the ESFA in respect of the capacity and capability of the existing governance and leadership of further education and sixth form colleges;

"**High Needs Student**" means a student 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);

“Inspectorates” means one, any or all of the inspectorates: Office for Standards in Education, Children’s Services and Skills (Ofsted), Her Majesty’s Inspectorate for Education and Training in Wales (Estyn) and the Care Quality Commission (CQC);

"Law" means any Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the SFC is bound to comply;

"Maximum Value" means the maximum value of the relevant Learning Programme and which is set out, in respect of each Learning Programme to be delivered by the SFC under this Funding Agreement, in Appendix 1- Payment Schedule;

"Minimum Levels of Performance” means <https://www.gov.uk/government/publications/interim-ks5-minimum-standards> as amended from time to time by the Department;

"Minor Breach" has the meaning given in Part Two clause 16.1.1 (Breach);

“Notice to Improve” The ESFA may issue a Notice to Improve to a SFC in those instances where a SFC is judged to be inadequate by Ofsted in whole or part, or where a SFC fails to meet any minimum standard performance measure set by the DfE. The notice will set out the additional conditions of funding that the SFC will be required to fulfil within a set time period in order to make the required improvements and be compliant.

“OFSTED” means the Office for Standards in Education, Children’s Services and Skills;

"Parties” means the ESFA, on behalf of the Secretary of State, and the SFC;

"Personal Data" shall have the same meaning as set out in the DPA;

“Premises” means the location/s where the Services are to be performed, as detailed in this Funding Agreement;

"Processing" has the meaning given to it under the DPA but, for the purposes of this Funding Agreement, it shall include both manual and automatic processing;

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, pursuant to Law, are entitled to regulate, investigate or influence the matters dealt with in this Funding Agreement or any other affairs of the ESFA and **"Regulatory Body"** shall have the same meaning;

"Secretary of State" means the Secretary of State for Education;

"Serious Breach" has the meaning given in Part Two clause 16.1.2 (Breach);

"Services" means the services to be supplied by the SFC as set out in this Funding Agreement and the SFC's obligations under this Funding Agreement and the ESFA Conditions of Funding;

"SFC Related Parties" means any employee, officer, consultant, agent or any other person whatsoever acting for or on behalf of the SFC or otherwise under the SFC's control and direction (including but not limited to sub-contractors);

"Student" means any persons to whom the SFC is required to deliver any of the Services. This term may be used interchangeably with the term "learner" in this Conditions of Funding (Part One, clause 2);

"Term" has the meaning given in Part Two clause 1.1 (Term); and

"Working Day" means any day (other than a Saturday or Sunday) on which banks in England are open for business.

1.2 The interpretation and construction of this Funding Agreement shall be subject to the following provisions:

1.2.1 reference to any person includes natural persons, partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

1.2.2 the appendices and annexes form part of this Funding Agreement and shall have effect as if set out in full in the body of this Funding Agreement;

1.2.3 words in the singular shall include the plural and vice versa;

1.2.4 words importing the masculine include the feminine and the neuter;

- 1.2.5 a reference to a statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - 1.2.6 a reference to a clause is to the whole of that clause unless stated otherwise; and
 - 1.2.7 where the words "include", "including" or "in particular" are used in this Funding Agreement, they are deemed to have the words without limitation following them. Where the context permits, the words "other" and "otherwise" are illustrative and shall not limit the sense of the words preceding them.
- 1.3 Any obligation in this Funding Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done.
 - 1.4 Headings are included in this Funding Agreement for ease of reference only and shall not affect the interpretation or construction of this document.

Appendix 3

Study Programmes, incorporating Traineeships

To improve the quality of vocational education provision for post-16 students, Professor Alison Wolf recommended that study programmes be introduced to offer students breadth and depth and without limiting their options for future study or work.

From September 2013, new 16 to 19 study programmes were introduced, supported by changes to post-16 funding. All students in full or part-time education aged 16 to 19 are expected to follow a study programme tailored to their individual needs, education and employment goals, including students with learning difficulties and/or disabilities.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/493452/16_to_19_study_programmes_departmental_advice_Jan_2016_update.pdf

For specific detail on Traineeships (Framework for Delivery):

<https://www.gov.uk/government/publications/supporting-young-people-to-develop-the-skills-for-apprenticeships-and-sustainable-employment-framework-for-delivery>

<https://www.gov.uk/delivering-traineeships-through-efa-funding>

14- to 16-year-olds enrolled at colleges

General further education colleges and sixth-form colleges are able to enrol and receive funding from THE ESFA for students aged 14- to 16-years-old. These students complete full-time study programmes that include high-quality vocational qualifications alongside general qualifications, including English and mathematics, within the Key Stage 4 curriculum.

The [programme requirements and advice](#) for participating colleges are published on GOV.UK.

<https://www.gov.uk/guidance/full-time-enrolment-of-14-to-16-year-olds-in-further-education-and-sixth-form-colleges>

Raising Participation Age

The participation age was raised in 2013 and young people are now required to continue in education or training until at least their 18th birthday. Young people can choose to participate through full-time education, a job or volunteering combined with part-time study, or by undertaking an apprenticeship or traineeship.

For further information on Raising the Participation Age (RPA) please see the statutory guidance for local authorities:
www.gov.uk/government/publications/participation-of-young-people-education-employment-and-training - Annex 1 is of particular interest as it provides further detail on the different routes young people can take to meet their duty to participate.