



Education & Skills  
Funding Agency



**European Union**  
European  
Social Fund

**Financial Memorandum  
Further Education Colleges**

**between**

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

**and**

**(ii) [Provider Name]**

Financial Memorandum (Further Education Colleges) 2017 to 2018  
Adult Education Budget, 16-18 Traineeships, and Apprenticeships Programmes

Education and Skills Funding Agency  
[www.gov.uk/esfa](http://www.gov.uk/esfa).

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2017/2018

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## 1 Purpose

- 1.1 This Financial Memorandum records the agreement between the Secretary of State for Education acting through the Education and Skills Funding Agency (the ESFA), an executive agency of the Department for Education and [Name of College] (the College) regarding the amount of funding to be paid by the ESFA to the College for adult education budget, 16-18 traineeships, and apprenticeships programmes (the Provision) for the periods as set out in Appendix 1 and sets out the terms and conditions upon which that funding is provided.

## 2 Definitions

- 2.1 **“Administered College”** means the College 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;

**“Adult education budget”** means the Adult Education Budget (AEB) combines all ESFA participation and support funding that is not European Social Fund (ESF), advanced learner loans or apprenticeships.

**“Apprenticeship”** means the training and (where applicable) end point assessment for an employee as part of a job with an accompanying skills development programme.

**“Child”** means a person under the age of 18.

**“College”** means the Further Education Corporation and the educational institution conducted by that Further Education Corporation named in clause 1.1.

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

**“Combined Authority”** means a legal structure comprising two or more local authorities to undertake certain statutory or delegated functions.

**“Crown Body”** means any department, office or agency of the Crown, including OFSTED, the Care Quality Commission, the Charity Commission, the Office for Students, any and all Local Authority or Combined Authority bodies.

**“Department”** means the Department for Education which incorporates its Executive Agency, the ESFA;

**“Devolution Agreement”** means the agreement between the Government and the Combined Authority devolving certain function to the Combined Authority.

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

**“Funds”** means the monies paid by the ESFA to the College pursuant to this Financial Memorandum and **“Funding”** shall have the same meaning;

**“Funding Rules”** means the documents which set out the detailed requirements with which the College must comply in respect of each Learning Programme delivered under this Financial Memorandum and which form part of this Financial Memorandum as may be amended by the ESFA from time to time, as follows:

- a) Adult Education budget and 16-18 traineeships  
<https://www.gov.uk/government/publications/adult-education-budget-funding-and-performance-management-rules-2017-to-2018>
- b) Apprenticeships post May 17  
<https://www.gov.uk/government/publications/apprenticeship-funding-and-performance-management-rules-2017-to-2018>
- c) Apprenticeships pre May 17  
<https://www.gov.uk/government/collections/sfa-funding-rules-2016-to-2017>

**“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.

**“Governing Body”** means the further education corporation responsible for conducting the College.

**“High Needs Learner”** means a Learner aged 16 to 18, or any young person aged 19 to 25 subject to an Education Health and Care Plan, who requires additional support.

**“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), the Quality Assurance Agency for Higher Education, the Care Quality Commission (CQC) and(CQC) and the Higher Education Funding Council for England (HEFCE).

**“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 College is bound to comply.

**“Learner”** means any third party including any student, apprentice, trainee or similar to whom the College is required to deliver the Provision.

**“Learner Files” / “Evidence Packs”** means any information relating to a Learner generated by the College, the Learner or a third party for the purpose of the delivery the Learning Programme.

**“Learning Programme”** means a programme of education and/or training delivered by the College under this Financial Memorandum.

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

**“Offender Manager”** means an officer from the National Offender Management Service who is working directly with an offender serving their sentence in the community.

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

**“Parties”** means the ESFA and the College.

**“Principal”** means the Chief Executive Officer of the College appointed by the Governing Body.

**“Provision”** means the education and training to be delivered by the College under this Financial Memorandum.

**“Public Funds”** for the purposes of regularity, means all of a College’s income and receipts from the ESFA and from the Higher Education Funding Council for England (HEFCE).

**“Register of Apprenticeship Training Providers”** means the register maintained by the ESFA of organisations qualified to receive funding from the ESFA to deliver Apprenticeships from 1 May 2017

**“Register of Training Organisations”** means the register maintained by THE ESFA of organisations qualified to receive funding from THE ESFA.

### **3 Responsibilities of the Governing Body**

- 3.1 The Governing Body of the College has responsibilities for ensuring that the College’s funds are used only in accordance with the College’s powers as set out in the Further and Higher Education Act 1992 and the College’s own statutory duties and other obligations.
- 3.2 The Governing Body is responsible for ensuring the solvency of the College and shall inform the ESFA of any transactions that could jeopardise financial viability. The Governing Body is responsible for achieving value for money in all transactions involving Public Funds.
- 3.3 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 College. 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 College for an extended period as determined by the College, the name of the person who will discharge the accounting officer’s responsibilities during the absence.
- 3.4 The College shall inform the ESFA in writing of the vacating or filling of the positions of chair of the Governing Body and Principal and the clerk.
- 3.5 The College must notify the ESFA in writing if there is a change in its Corporation name.

- 3.6 The Secretary of State for Education is the Charitable Regulator for further education college corporations. The Governing Body of the College is responsible for ensuring it operates in line with its exempt charitable status.

#### **4 Responsibilities of the Accounting Officer**

- 4.1 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 Financial Memorandum and all other terms and conditions of funding. The accounting officer may be required to appear before the Parliamentary Committee of Public Accounts on matters relating to the College's use of Public Funds.
- 4.2 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 Financial Memorandum. If the accounting officer has evidence that the Governing Body is acting in breach of the Financial Memorandum or any other terms and conditions of funding the accounting officer shall inform the ESFA in writing.

#### **5 Provision of Information**

- 5.1 In addition to the other requirements to provide information set out in this Financial Memorandum the ESFA reserves the right to request information from the College in order to exercise its responsibilities and to meet European funding requirements. On occasion, the ESFA will require urgent information from the College.
- 5.2 The College shall provide the ESFA or agents acting on its behalf with the information it requires at the times and in the formats specified. This information shall be of sufficient quality to meet the purposes for which it has been requested.

#### **6 Funding and Payment**

- 6.1 The breakdown of Funds which the ESFA agrees to pay to the College is set out in Appendix 1 of this Financial Memorandum. The 16-18 Non-Levy Apprenticeships funding and Adult Non-Levy Apprenticeships funding detailed in Appendix 1 and must only be used to fund new apprenticeship starts from 1 May 2017 to non-levy paying employers.

6.2 The College is free to spend its Funding as it sees fit providing it fulfills the conditions of funding imposed by the ESFA. The College shall ensure that Public Funds are not used for the purpose of delivering learning provision in respect of which the College has already received other funding, public or otherwise, unless the ESFA so specifies. In the event that the ESFA identifies that the College has used Public Funds in a way not specified it may deduct the value of such funding from the Funds it pays to the College or require it to be repaid.

## **7 Delivery of Provision**

7.1 The detailed requirements in respect of each Learning Programme are set out in the Funding Rules as amended and updated from time to time and which form part of the terms and conditions of this Financial Memorandum.

7.2 The maximum value of each Learning Programme as shown in Appendix 1 of this Financial Memorandum may not be exceeded for any reason. The ESFA will not be liable to make any payment in excess of the Maximum Value of each Learning Programme unless this has been agreed and evidenced by a variation in writing.

7.3 Where the Funding period is longer than one year, Funding for subsequent years is subject to funds being made available to the ESFA. For learning provision that is excluded from the Adult Education Budget, the College is not permitted to vire Funding between Learning Programmes except by way of an agreed variation in writing to this Financial Memorandum.

7.4 The Provision is to be delivered in accordance with any specific requirements of the ESFA and delivery profiles and any tender document submitted by the College which all form part of the conditions of funding, this will include Appendix 1, and any Funding Appendices of this Financial Memorandum.

7.5 The ESFA will restrict delivery of this Financial Memorandum against the Funding available up to the 31 July 2018 as detailed in Appendix 1. Appendix 1 confirms the maximum value available up to 31 March 2018. Where the delivery within this financial year fails to meet the minimum levels of performance or where the delivery in this period would result in the overall maximum value being exceeded, the ESFA reserves the right at its absolute discretion to vary the Financial Memorandum accordingly.

- 7.6 The ESFA may allocate additional Funds to the College under this Financial Memorandum. Where these Funds are to be consolidated within the College's Further Education agreed Funding allocation, a revised Appendix 1 will be issued. The terms and conditions of this Financial Memorandum will apply to these Funds unless otherwise specified. Where the additional Funds are not consolidated, the general terms and conditions of this Financial Memorandum will still apply unless specified otherwise.
- 7.7 In delivering the Provision to Learners starting onto an Apprenticeship on or after 1 May 2017 the ESFA reserves the right to give at least 8 weeks' notice in writing of its intention to cease Funding for any new Apprentices recruited on an Apprenticeship from the date specified in the notice. The ESFA will not be liable to make payments in respect of any Apprentices recruited after the date specified in the notice.
- 7.8 The ESFA reserves the right to give the College three months' notice to reduce the overall maximum value for any Learning Programme without the need to give a reason.
- 7.9 The College must provide evidence that it has worked in partnership with the Local Enterprise Partnership (LEP) to ensure that the delivery of the Provision takes account of the LEP's local economic and skills priorities. Where the College is delivering in an area covered by a Devolution Agreement, the College must work with the Combined Authority and the delivery of Provision must take account of the Combined Authority's priorities for education and skills.
- 7.10 The College must ensure appropriate members of staff register as users on the user role management system at [https://secure2.imservices.org.uk/self\\_registration/](https://secure2.imservices.org.uk/self_registration/) to enable the College to digitally sign and agree the Financial Memorandum online. It is the College's responsibility to maintain appropriate user roles on an on-going basis.

## **8 Submission of Learner Data**

- 8.1 The College must supply the ESFA data on each individual Learner in accordance with the data collections framework set out in the 'ILR specification, validation rules and appendices 2017 to 2018' as amended and updated which is published on the website <https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2017-to-2018> and in accordance with the Provider Support Manual as amended and updated.

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- 8.2 Data collected must be transmitted to the ESFA through the ESFA's web portal <https://www.gov.uk/government/publications/esfa-the-hub> Access to the ESFA's web portal is restricted and the College agrees to comply with the conditions of use regarding the supply of data to the ESFA set out in 'Individualised Learner Record (ILR) Specification 2017/2018 and relevant Provider Support Manual as amended and updated available on the web site <https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2017-to-2018>
- 8.3 The ESFA reserves the right to require the College at its own cost to carry out such work as the ESFA deems necessary to make material improvements to the quality of the data.
- 8.4 The ESFA reserves the right to suspend payments to the College where the data quality gives rise to a material impact on the accuracy of the data provided by the College.
- 8.5 The College must register with UK Register of Learning Providers (UKRLP) and maintain contact details on an on-going basis (<http://www.ukrlp.co.uk/>).
- 8.6 Where the College is delivering the Provision to Learners claiming out of work benefits, it must provide data to the Secretary of State with responsibility for unemployment or their nominated representative in accordance with the requirements notified to the College. Failure to transmit complete and accurate data under this Clause 8.6 may constitute a Serious Breach of the conditions of funding set out in this Financial Memorandum and may result in payments for this Provision to be delayed or withheld.
- 8.7 The College must update the course information funded by the ESFA at [www.coursedirectoryproviderportal.org.uk](http://www.coursedirectoryproviderportal.org.uk) in accordance with the course directory data collection requirements which can be found at <https://coursedirectoryproviderportal.org.uk/Help>.
- 8.8 The College must submit data about any member of its workforce delivering GCSE English and Maths in the format and to the timescales as required by the ESFA.

## **9 Sub-contracted Provision**

- 9.1 Where the College sub-contracts or intends to sub-contract any duties or obligations arising out of this Financial Memorandum the College must provide the ESFA with details of all sub-contractors bi-annually,

by fully and accurately completing the Declaration of Subcontractors form in accordance with the deadline set out in the Funding Rules. If the College is not sub-contracting then a nil return must be received by the deadline date. The College must notify the ESFA of any within year changes to its sub-contractors. The ESFA reserves the right to require the College not to enter into or to terminate any sub-contract to deliver the Provision under this Financial Memorandum.

- 9.2 The College must comply with the requirements on sub-contracting delivery of the Provision set out in the Funding Rules as amended and updated. Sub-contracting any part of the delivery of the Provision shall not relieve the College of any obligation or duty attributable to them under this Financial Memorandum. The College is responsible for all the actions of its sub-contractors connected to or arising out of the delivery of the Provision which it sub-contracts.
- 9.3 The delivery of Provision under this Financial Memorandum may only be sub-contracted to one level unless otherwise specified in the Funding Rules when the College must obtain the consent of the ESFA in writing.
- 9.4 Where the College has sub-contracted any duties or obligations arising out of this Financial Memorandum, the College shall ensure that there is in place a legally binding sub-contract and send copies of the sub-contract to the ESFA if requested in writing to do so. Where the College enters into a sub-contract for the purpose of delivering the Provision, the College shall ensure that the sub-contract requires the sub-contractor to comply with the conditions of this Financial Memorandum and includes any terms specified in the Funding Rules.
- 9.5 The College shall ensure that any sub-contract entered into for the purpose of delivering the Provision under this Financial Memorandum contains a term providing that the ESFA has the right to enforce the terms of the sub-contract.
- 9.6 The College shall ensure that subcontractors are selected fairly and have sufficient capacity, capability, quality and financial standing to deliver the Provision.
- 9.7 The College shall make payment to any sub-contractor within 30 days of receiving a valid claim for payment and ensure that any sub-contract entered into for the purpose of delivering the Provision under this Financial Memorandum contains a term giving effect to this requirement.
- 9.8 Where the College enters into sub-contracts for the purpose of delivering the Provision under this Financial Memorandum with an

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aggregate value of £100,000 or more in any one year, it must obtain an annual report from its external auditors which provides assurance on the arrangements that the College has in place to manage and control its sub-contractors. The report must comply with the guidance issued from time to time by the ESFA. The College must supply the ESFA with a certificate signed by its external auditors and an authorised signatory confirming it has received a report providing satisfactory assurance. The ESFA reserves the right to require the College to provide a copy of the full report and any associated action plan resulting from recommendations made by their external auditor.

- 9.9 The College may not assign any duties or obligations under this part of the Financial Memorandum without the consent of the ESFA.
- 9.10 The College must consider the criteria set out in the Funding higher-risk organisations and subcontractors document which is published on the ESFA's website  
<https://www.gov.uk/government/publications/sfa-financial-assurance-higher-risk-providers-and-subcontractors#history>.

## **10 Quality assurance**

- 10.1 The College shall deliver the Provision to an acceptable standard of quality, comply with the Funding Rules published by the ESFA as amended from time to time and use all reasonable endeavors:
- 10.1.1 to minimise dropout rates, deliver high completion, achievement and success rates and appropriate progression;
  - 10.1.2 to meet the minimum quality standards published by the Department and / or the ESFA that apply to the Learning Programme delivered;
  - 10.1.3 to ensure competent and appropriately qualified staff deliver and assess learning. The College shall be responsible for the continuing professional development and training of its staff and for meeting any minimum requirements which may be required by OFSTED or other regulatory authority;
  - 10.1.4 to offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
  - 10.1.5 to provide a safe, healthy and supportive environment, which meets the needs of Learners;

- 10.1.6 to provide good management and leadership of the learning process;
  - 10.1.7 to deliver value for money and financial regularity and probity; and
  - 10.1.8 to ensure any sub-contractors delivering the Provision comply with the requirements set out in Clauses 10.1.1 to 10.1.7 above.
- 10.2 The College shall continuously seek to improve the Provision and raise standards to benefit the Learner. The College shall have the primary responsibility for improving standards and will need to demonstrate to the ESFA satisfaction that it has an effective quality assurance system based on the implementation of its own quality improvement process. The ESFA reserves the right to require The College to provide the ESFA or an Inspectorate evidence to support the quality improvement processes.
- 10.3 The College must take all reasonable steps to meet the relevant requirements for data gathering for the FE Choices Performance Indicators as outlined currently at : <https://www.gov.uk/government/collections/fe-choices-information-for-providers> and in any subsequent updates to these web pages.
- 10.4 Where appropriate the College shall confirm in writing to the ESFA that it has formal approval from relevant awarding organisations to deliver the qualifications which form part of the Provision. The College must notify the ESFA immediately in writing if it receives any sanction from an awarding Organisations.
- 10.5 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**

- 10.6 The financial health of the College is assessed by the ESFA in line with the approach set out in the Financial Planning Handbook. The ESFA will also consider the College'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 College'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 College'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 College's financial control arrangements is inadequate, the ESFA may, in its absolute discretion take one or more of the following actions:

- 10.6.1 Issue a Financial Notice to Improve, requiring the College to accept and comply with additional conditions of funding, relating to the improvement of the College's financial health and/or financial controls including the preparation of a financial recovery plan; and/or
  - 10.6.2 require the College to suspend the recruitment of Learners to, and/or to cap any growth in Learner numbers; and/or
  - 10.6.3 in accordance with the 'Rigour and Responsiveness in Skills' policy, the ESFA will write to the College to confirm the position and thereafter consult with the College's governors, principal, and local stakeholders. The College 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:
    - 10.6.3.1 the College is treated as being an Administered College
    - 10.6.3.2 the replacement of some or all of the governing body; and/or
    - 10.6.3.3 dissolution of the College; and/or
  - 10.6.4 give consideration to what changes, if any, are required in its allocations when finalising the amount of Funding in any subsequent Financial Memorandum(s) between the Parties; and/or
  - 10.6.5 terminate, in accordance with clause 26.2.
- 10.7 The failure of the College, as assessed by the ESFA, to comply with the requirements of 10.6.1 to 10.6.3 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 26.2 (Termination).

10.8 Where the College 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 Financial Memorandum as it deems appropriate which may include, but is not limited to, terminating in accordance with clause 26.2 (Termination).

### **Minimum standards**

10.9 The ESFA may, at any time during the Term, undertake an assessment of the quality and delivery of the Provision which may include analysis of performance against the minimum quality standards, as published by the Department and / or the ESFA. Where the ESFA assesses that the Provision, in whole or in part, falls below the required standards, the ESFA may, in its absolute discretion, take one or more of the following actions:

10.9.1 Issue a Notice to Improve, requiring the College to, and the College shall, accept and comply with additional conditions of funding relating to the improvement of the Provision; and/or

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

10.9.3 give consideration to the Provision which are below the required standards in its allocations when finalising the amount of Funding in any subsequent Financial Memorandums between the Parties; and/or

10.9.4 reduce, suspend or recover payment to the College in respect of that part of the Provision to which the failure to meet the required standards relate; and/or

10.9.5 in accordance with the 'Rigour and Responsiveness in Skills' policy, the ESFA will write to the College to confirm the position and thereafter consult with the College's governors, principal, and local stakeholders. The College 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:

10.9.5.1 the College is treated as being an Administered College

10.9.5.2 the replacement of some or all of the governing

body; and/or

10.9.5.3 dissolution of the College; and/or

10.9.6 terminate this Financial Memorandum in accordance with clause 26.2 (Termination) in full, or that part of the Provision failing to meet the required standards.

10.10 The failure of the College, as assessed by the ESFA, to comply with any requirements of 10.9.1-10.9.5 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 26.2 (Termination).

### **Ofsted Inspection**

10.11 When the College receives notification from OFSTED that the Provision is to be inspected, the College 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 College must notify the ESFA of the date of the meeting at which OFSTED gives feedback on the inspection and allow the ESFA's nominated representative to attend the meeting. The College must confirm to the ESFA in writing the outcome of the inspection within 5 working days of receiving the feedback from OFSTED.

10.12 Ofsted may, at any time during the Term, undertake an inspection of the College. The ESFA will consider the outcome of any such inspection as follows:

#### **Inadequate in part**

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

10.12.1.1 Issue a Notice to Improve, requiring the College to, and the College shall, accept and comply with additional conditions of funding relating to the improvement of the Provision assessed as inadequate; and/or

10.12.1.2 require the College to suspend the recruitment of Learners to, and/or to cap any growth in, the Provision which is assessed as inadequate; and/or

- 10.12.1.3 give consideration to the Provision which are assessed as inadequate in its allocations when finalising the amount of Funding in any subsequent Financial Memorandums between the Parties; and/or
- 10.12.1.4 reduce, suspend or recover payment to the College in respect of that part of the Provision assessed as inadequate.

### **Inadequate overall**

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

- 10.12.2.1 require the College to, and the College shall, accept and comply with temporary additional conditions of funding relating to the improvement of the overall Provision, including but not limited to, requiring the College to temporarily suspend the recruitment of Learners and/or temporarily cap any growth in those Learning Programmes which are assessed as inadequate.
- 10.12.2.2 commence discussions with the College and the Local Authority within whose area the College is located, either with Ofsted or not, as part of considering what actions as specified in clause 10.12.3.3 – 10.12.3.5 inclusive may be taken.

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

- 10.12.3.1 issue a Notice to Improve, requiring the College to, and the College shall, accept and comply with additional conditions of funding relating to the improvement of the overall Provision; and/or
- 10.12.3.2 require the College to suspend the recruitment of Students to, and/or to cap any growth in, those Learning Programmes which are assessed as inadequate; and/or
- 10.12.3.3 give consideration to the assessment of inadequate in its allocations when finalising the

amount of Funding in any subsequent Financial Memorandums between the Parties; and/or

10.12.3.4 reduce, suspend or recover payment to the College; and/or

10.12.3.5 in accordance with the 'Rigour and Responsiveness in Skills' policy, the ESFA will write to the College to confirm the position and thereafter consult with the College's governors, principal, local stakeholders. The College 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:

10.12.3.5.1 the College is treated as being an Administered College;

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

10.12.3.5.3 dissolution of the College; and/or

10.12.3.5.4 terminate this Financial Memorandum in accordance with clause 26.2 (Termination).

10.12.4 The failure of the College, as assessed by the ESFA, to comply with any requirements of 10.12.1-10.12.3 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 26.2 (Termination).

10.12.5 ESFA will take action based on Ofsted's provisional and confirmed outcomes as in clause 10.12.2 – 10.12.3 above. Where ESFA is made aware that the College has made a complaint about the graded outcome of the overall assessment by Ofsted, ESFA will continue to progress action under clause 10.12.2-10.12.3 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.

## **Early intervention**

- 10.13 The College has published a strategy on early intervention, which sets out the triggers for early intervention and how the ESFA will work with sixth-form colleges 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.
- 10.14 Where, in the ESFA's view, information and data obtained in respect of the College indicates that the College has met one of the published early intervention triggers, the ESFA will write to the College to confirm the ESFA's view.
- 10.15 The College must engage actively with the ESFA to explain why the College has met one of the published triggers, what the College is already doing to improve and to agree further actions if necessary. If the College 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 College to comply with additional conditions of funding.
- 10.16 The College must comply with any additional conditions of funding (either as agreed with the College or as imposed under clause 10.15) specified by the ESFA in writing.
- 10.17 If the ESFA assesses that the College 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 clause 25.3-25.4 Minor Breach or clause 25.5-25.6 Serious Breach.

## **11 Information for Learners**

- 11.1 As part of the delivery of the Provision, the College must provide high quality and easily accessible information and advice in helping individuals to understand the opportunities and support available to them about education, training or connected matters (including employment);
- 11.1.1 Where one of the main objectives of the Provision to be provided under this Financial Memorandum is to deliver information and advice, the College will have to have or attain the matrix Standard accreditation within six months of the Financial Memorandum being awarded; and
- 11.1.2 If the information and advice is embedded as part of the delivery of the Provision the College should work towards

achieving the matrix Standard accreditation within 12 months of the start of the Financial Memorandum.

- 11.1.3 Where the Provision is delivered by a sub-contractor on behalf of the College, the requirements set out in clauses 11.1.1 and 11.1.2 must be applied to the sub-contractor. This does not apply where the College retains responsibility for the delivery of information and advice to the Learners.
- 11.1.4 Once achieved, matrix Standard accreditation is valid for three years. As part of their accreditation, the College is required to successfully demonstrate their continuous improvement activities to their matrix Assessor through the use of the online Self Reflection Tool on an annual basis.

## **12 Learner Health, Safety and Welfare**

- 12.1 The College shall ensure so far as reasonably practicable that learning takes place in safe, healthy and supportive environments, which meet the needs of Learners. The College shall provide information to the ESFA, as and when specifically requested, to give assurance that adequate arrangements exist for learner health, safety and welfare. Failure to do so may constitute a Serious Breach of this Financial Memorandum.
- 12.2 Where part of the learning takes place in an environment outside the direct control of the College, the College shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of Learners.
- 12.3 The College shall make arrangements for ensuring that the Provision is provided with a view to safeguarding and promoting the welfare of children receiving education or training at the institution or under the auspices of the College in an environment outside the direct control of the College. This must include the adoption of safer recruitment procedures. In doing so, the College 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 Financial Memorandum.
- 12.4 The College shall make arrangements for ensuring that the Provision is provided with a view to safeguarding and promoting the welfare of High Needs Learners aged 18 to 25 receiving education or training at their institution or under the auspices of the College in an environment outside the direct control of the College. This must include the adoption

of safer recruitment procedures. In doing so, the College shall make those arrangements as if such Learners 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 Learners as if they were children. Failure to do so may constitute a Serious Breach of this Financial Memorandum.

- 12.5 The College must carry out appropriate Disclosure and Barring Service (DBS) checks on all overseas applicants for employment where such applicants would be employed to work in regulated activity relating to children or vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) if successful, and must seek additional information about an applicant's conduct.
- 12.6 In working with other organisations/bodies, the College shall make arrangements to co-ordinate and co-operate effectively for reasons of learner health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding.
- 12.7 In providing the Provision, the College 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.
- 12.8 In providing the Provision, the College 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). In doing so, the College will act in accordance with any guidance issued by the Secretary of State in respect of these duties. Failure to do so may constitute a Serious Breach of this Financial Memorandum.
- 12.9 The College 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 Learners under the age of 19 and High Needs Learners aged 19 to 25 (as if those Learners were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).
- 12.10 Before employing or engaging a person to carry out teaching work in

respect of any Learners under the age of 19 and High Needs Students aged 19 to 25 (as if those Learners were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), the College shall take reasonable steps to ascertain whether that person is subject to a prohibition order made under section 141B of the Education Act 2002.

- 12.11 The College, and the College 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.
- 12.12 Where the College makes a referral to any Local Authority (including referrals to social services) in respect of serious safeguarding concerns (in respect of all Learners up to the age of 18 and High Needs Learners aged 19 to 25), the College shall ensure that it notifies the ESFA that a referral has been made.
- 12.13 Where the College 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 College shall ensure it notifies the ESFA that a referral has been made.
- 12.14 Where the College has made a referral or provided information to the Disclosure and Barring Service in compliance with any duties of the College under the Safeguarding Vulnerable Groups Act 2006, the College shall ensure that it informs the ESFA that a referral has been made / information has been provided.
- 12.15 The College shall, in circumstances where it sub-contracts the management and/or delivery of the Provision under this Financial Memorandum, ensure that all the clauses in respect of specific learner incident reporting requirements and learner health, safety and welfare are included in its agreement with sub-contractors.
- 12.16 The College shall inform the ESFA of the death of any Learner which is as a result of work undertaken whilst in employment and who is undertaking a related Learning Programme. This shall be done by:
  - 12.16.1 informing the ESFA's representative by telephone or email immediately the College becomes aware of the event.
- 12.17 The College shall report all RIDDOR reportable incidents in line with the Regulations, and shall investigate and assess the circumstances of

all Learner incidents within the scope of RIDDOR and follow HSE guidance 'Investigating Accidents and Incidents: A Workbook for Employers, Unions, Safety Representatives and Safety Professionals' (HSG245) ISBN 0717628272. The College shall only use persons competent to investigate/assess learner incidents with a view to identifying the causes of any incident and lessons to be learned.

- 12.18 The College shall also monitor, and act on, any other harm to Learners to the extent that the College could reasonably be expected to do so and/or where the harm could affect the quality of the learning experience. Harm includes (but is not limited to) other incidents that cause absence from learning, any loss to the Learner of any physical or mental faculty or any disfigurement, incidents of bullying and harassment.
- 12.19 The College shall co-operate with the ESFA and Department for Work and Pensions (DWP) for the purposes of the Industrial Injuries Disablement Benefit (IIDB) in respect to those Learners to which it applies.

### **13 Equal Opportunities**

- 13.1 The College shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010, or any statutory modification or re-enactment thereof or any other statutory provision relating to discrimination in employment or the delivery of the Provision. The College shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the College and all sub-contractors employed in the execution of the agreement. The College will comply with the detailed requirements in relation to equality of opportunity set out in clauses 13.2 to 13.4.
- 13.2 The College will, in delivering the Provision under this Financial Memorandum, demonstrate that it has had regard to the duties placed on the ESFA by relevant equality legislation. The College will take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the College and all sub-contractors employed to deliver the Provision.
- 13.3 The College shall ensure that equality of opportunity is built into all aspects of Provision; the business planning process; and the self-assessment process. The College shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. The College shall use appropriate, specific

and measurable objectives. These will be proportionate, relevant and aligned to the Provision the College is funded to deliver.

- 13.4 The ESFA shall use a variety of equality information and data to support judgments about quality and eligibility for Funding. These may include, but are not limited to: inspection judgements for equality and diversity, judgments from the Equality and Human Rights Commission, and the success and participation rates of different groups of Learners.

## **14 European Funding and Other Sources of Funding**

- 14.1 Where notified in writing by the ESFA that the Funding under this Financial Memorandum is required to be used as match funding:
- 14.1.1 The College must follow the match funding rules that are set out in the ESFA's Funding Rules which include the use of the ESF logo.
  - 14.1.2 The College must not use the Funding paid under this Financial Memorandum to support bids or claims that will be used to secure funding from any European source, either on its own behalf or on behalf of the ESFA, including but not limited to as match funding.
  - 14.1.3 Where the College or any of its sub-contractors has access to other funding streams, the College or any of its sub-contractors will be required to demonstrate through accounting, management information systems and any other relevant evidence (in the sole discretion of the ESFA or any other body undertaking the audit or monitoring), to the ESFA and anybody acting on their behalf that no double funding has occurred in respect of the Provision delivered under this Financial Memorandum.
  - 14.1.4 Where the ESFA identifies double funding in respect of the Provision, or any part thereof, the College will be liable to repay to the ESFA any sums paid, or part thereof, by the ESFA in respect of the Provision for which the College has received funding from another source and the ESFA reserves the right to deduct such sums from any monies owed to the College under this Financial Memorandum.
  - 14.1.5 The ESFA reserves the right to use payments made under this Financial Memorandum as match funding for ESF Projects. Where requested to do so in writing by the ESFA, the College shall provide such information and in the form as

the ESFA specifies to enable the ESFA to comply with the requirements of ESF.

14.1.6 The College shall, if requested to do so by the ESFA, inform Learners or others that the Provision delivered has been financed in whole or part by ESF.

14.2 The College must ensure that all Learners are aware of the support of the European Social Fund in respect of the Provision being delivered under this Financial Memorandum.

## **15 Retention of Documents**

15.1 The College and the College Related Parties shall retain original invoices; management information returns and all other documents necessary to verify the Provision delivered by itself or by its College Related Parties in relation to this Financial Memorandum for 6 years from the end of the financial year in which the last payment is made.

15.2 Where any payments made under this Financial Memorandum for the Provision have been used as match-funding as notified in writing by the ESFA under clause 14 for an ESF project, the College will be required to retain all documents necessary to verify the delivery of the Provision by itself or by its sub-contractors. Documents to support claims must be retained for a minimum of three years after the European Commission has made its final payment. For the 2007-13 ESF Programme this is expected to be until at least 31 December 2022 and for the 2014-20 ESF Programme until at least 31 December 2030.

15.3 Confirmation of the document destroy date will be notified in writing by the ESFA. Without prejudice to any of the other rights under the Financial Memorandum to recover Funds, the ESFA will be entitled to recover from the College any sums which it is required to repay to the European Social Fund as a result of the College's failure to comply with this Clause.

## **16 Freedom of Information and Confidentiality**

16.1 Definitions

**“Exempt Information”** means any information or class of information (including but not limited to any document, report, contract or other material containing information) relating to this Financial Memorandum or otherwise

Financial Memorandum (Further Education Colleges) 2017 to 2018  
Adult Education Budget, 16-18 Traineeships, and Apprenticeships Programmes

Education and Skills Funding Agency

[www.gov.uk/esfa](http://www.gov.uk/esfa).

relating to the College, which potentially falls within an exemption to FOIA (as set out therein);

**“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 clause 16;

**“FOIA notice”** means a decision notice, enforcement notice and/or an information notice.

## 16.2 Freedom of Information

- 16.2.1 the ESFA and the College acknowledge and agree that both are subject to legal duties under FOIA, which may require the other to disclose on request information relating to this Financial Memorandum or otherwise relating to the ESFA or the College;
- 16.2.2 the ESFA and the College acknowledge and agree that both are required by law to consider each and every request made under FOIA for information;
- 16.2.3 the ESFA and the College acknowledge and agree that all decisions made by the other pursuant to a request under FOIA is solely a matter for and at the discretion of the ESFA or the College;
- 16.2.4 notwithstanding anything in this Financial Memorandum to the contrary (including without limitation any obligations of confidentiality), the ESFA and the College shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is exempt information the ESFA and the College shall use reasonable endeavours (but shall not be obliged) to consult the other and shall not:
- a) confirm or deny that information is held; or
  - b) disclose information requested.

to the extent that in the ESFA or College's opinion the information is eligible in the circumstances for an exemption and therefore the ESFA or College may lawfully refrain from doing either of the things described in parts (a) and (b) of this clause;

16.2.5 in relation to information relating to the ESFA or College or the Financial Memorandum which the ESFA or College requests should be exempt under the FOIA the ESFA or the College shall indemnify the ESFA for any and all costs (including legal fees) incurred by the other in:

- a) assessing the application of any exemption under FOIA; and/or
- b) responding to any FOIA notice; and/or
- c) lodging any appeal against a decision of the information commissioner in relation to disclosure.

where such costs are incurred pursuant to efforts by the other to withhold exempt information;

16.2.6 neither the ESFA or the College shall be liable for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the disclosure under FOIA of any exempt information or other information whether relating to this Financial Memorandum or otherwise relating to the ESFA or the College;

16.2.7 the ESFA and the College shall assist the other as reasonably necessary to enable the ESFA or the College to comply with their obligations under FOIA.

16.3 The ESFA reserves the right to share information about the College;

16.3.1 with any other Crown Body;

16.3.2 with Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

16.3.3 with any professional adviser, consultant, contractor or other person engaged by the ESFA directly in connection with this Financial Memorandum, provided that such information is treated as confidential by the receiving consultant, contractor or any other person;

- 16.3.4 on a confidential basis with any body to which the ESFA intends to assign, novate or dispose its rights, obligations or liabilities under this Financial Memorandum in connection with any such assignment, novation or disposal.
- 16.4 The ESFA reserves the right to publish details of this Financial Memorandum and the payments made under it to comply with the Government's transparency requirements.
- 16.5 The Parties agree that the text of any press release or other communication to be published by or in the media concerning the subject matter of this Financial Memorandum shall require the approval of each of the Parties which shall not be unreasonably withheld or delayed.
- 16.6 The provisions of this clause 16 will apply for the duration of this Financial Memorandum and after its termination.

## **17 Data Protection and Protection of Personal Data**

- 17.1 The College shall ensure that information acquired by the College and its sub-contractors under the delivery of the Provision under this part of the Financial Memorandum will at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 and the Data Protection Principles together with any subsequent re-enactment or amendment thereof in storing and processing personal data, and all personal data acquired by either the ESFA or the College shall be returned to the disclosing party on request. Both Parties hereby acknowledge that performance of a duty imposed by the Act shall not constitute a breach of any obligation in respect of confidentiality which may be owed to the other party. The clause shall not affect the ESFA's ability to make a search with a credit reference agency.
- 17.2 With respect to the Parties' rights and obligations under this Financial Memorandum the parties agree that the ESFA is the Data Controller and the College is the Data Processor within the meaning of the Data Protection Act.
- 17.3 The College shall:
- 17.3.1 process Personal Data only in accordance with the instructions from the ESFA (which may be specific instructions or instructions of a general nature) as set out in the Financial

Memorandum or otherwise notified by the ESFA to the College during the Term of this Financial Memorandum;

- 17.3.2 process the Personal Data only to the extent and in such manner as is necessary for the delivery of the Provision or as is required by Law or any Regulatory Body;
- 17.3.3 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;
- 17.3.4 take reasonable steps to ensure the reliability of any College or Contractor Personnel who have access to the Personal Data;
- 17.3.5 obtain prior written consent from the ESFA in order to transfer the Personal Data to any sub-contractors or other third parties for the delivery of Provision;
- 17.3.6 ensure that all College Personnel do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the ESFA;
- 17.3.7 notify the ESFA within 5 working days if it receives:
  - 17.3.7.1 a request from a Data Subject to have access to that person's Personal Data; or
  - 17.3.7.2 a complaint or request relating to the ESFA's obligations under the Data Protection Legislation;
- 17.3.8 provide the ESFA with full co-operation and assistance in relation to any complaint or request made, including by:
  - 17.3.8.1 providing the ESFA with full details of the complaint or request;
  - 17.3.8.2 complying with a data access request within the relevant timescales set out in the Data Protection

Legislation and in accordance with the ESFA's instructions;

- 17.3.8.3 providing the ESFA with any Personal Data it holds in relation to a Data Subject (within the timescales required by the ESFA); and
  - 17.3.8.4 providing the ESFA with any information requested by the ESFA.
- 17.3.9 permit the ESFA or the ESFA's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the College'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 College is in full compliance with its obligations under this Financial Memorandum;
- 17.3.10 provide a written description of the technical and organisational methods employed by the College for processing Personal Data (within the timescales required by the ESFA):
- 17.3.11 provide the ESFA with information about how the Learner Files are stored including details of the location where the Learner Files are kept and the arrangements for their security. The College is required to notify the ESFA of any changes to this information. This clause applies to current Learner Files and those which the College is required to retain in accordance with clause 15;
- 17.3.12 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:
- 17.3.12.1 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 is transferred; and
  - 17.3.12.2 any reasonable instructions notified to it by the ESFA.

- 17.4 Where the College is delivering the Provision to Learners claiming out of work benefits, the Secretary of State for Work and Pensions (or their successor) is the Data Controller in relation to Personal Data which the College is required to provide to the Secretary of State for Work and Pensions. This clause 17.4 will be enforceable by the Secretary of State for Work and Pensions in relation to any Personal Data processed by the College on their behalf.
- 17.5 Where the College is providing the Provision to Learners who are subject to active management by the Offender Manager in respect of an order or licence, the Secretary of State for Justice (or their successor) is the Data Controller in relation to Personal Data which the College is required to provide to the Secretary of State for Justice.

## **18 Branding and Logos**

- 18.1 The College, when receiving Funding from the ESFA for any Provision, shall comply with the requirements of the endorsement identity, available on the Education and Skills Funding Agency identity guidelines website at, <https://brand.skillsfundingagency.bis.gov.uk/>; on all and any promotional materials or activities in relation to the Provision. This shall include but not be limited to prospectuses, direct mail advertising, TV and radio advertising, merchandising or any other literature or products.
- 18.2 The College shall be given access to any logos and statements, which it is required to use. The College will be required to use logos and statements in accordance with the terms of use and should not alter or amend such logos or statements. Logos and statements are only to be used in relation to the Provision under this Financial Memorandum. The requirements of this clause 18 or the requirements or terms of use of which the College is made aware are a condition of funding, failure to comply could result in the Funding being withdrawn.
- 18.3 The College may also be required to use logos from other co-branding or co-funding participants and must comply with any terms which apply to the use of such logos.
- 18.4 The College must ensure that the terms of this clause 18 are contained in any sub-contract of the Provision.

## **19 State Aid**

- 19.1 The College must satisfy themselves if the European rules on State Aid apply to the Funding paid under this part of the Financial Memorandum.
- 19.2 Where the rules on State Aid apply, the ESFA will supply to the College details of the records that the College will need to collect and retain.
- 19.3 The ESFA reserves the right to require the College to obtain a contribution towards the cost of the Provision delivered under this Financial Memorandum from the employer of any participant. Where a contribution is required, the ESFA will confirm to the College in writing the exact percentage of the contribution.
- 19.4 Where the ESFA requires the College to obtain a contribution towards the cost of the Provision under clause 18.3 above of this part of the Financial Memorandum, the College must provide evidence that the contribution has been received.
- 19.5 In the event that any Funding paid under this part of the Financial Memorandum is deemed to constitute unlawful State Aid the ESFA reserves the right to require immediate repayment of any such Funding.

## **20 Feedback and Complaints**

- 20.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Provision shall rest with the College. The College shall have procedures in place, which are acceptable to the ESFA, to gather and act upon feedback and complaints from Learners and/or their representatives and employers and the wider community.
- 20.2 The College must ensure that Learners are made aware of its procedure for dealing with complaints and that the procedure is clear and accessible to Learners who wish to complain.
- 20.3 The College shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the ESFA.
- 20.4 Where a complaint has not been resolved to the satisfaction of the complainant the College 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 and act on any recommendations made by the ESFA following the investigation.

## **21 Access and Monitoring**

- 21.1 The ESFA shall give the College or College Related Parties reasonable advance notice in writing of proposed visits to the College or College Related Parties, to observe the delivery of the Provision, by any person who has taken or will take no direct part in the conduct or content of the Provision.
- 21.2 For monitoring and evaluation purposes, the ESFA, the Secretary of State and their agents, the Department, the Department for Work and Pensions, the Ministry of Justice, the National Audit Office, representatives of the European Commission and the European Court of Auditors, , the Inspectorates and HM Treasury shall have the right to visit all or any College site(s), or those of its sub-contractors and view operations relating to the Provision and to inspect relevant documents and interview Learners and staff during these visits.
- 21.3 The College shall, and ensure that the College Related Parties shall, permit access at any reasonable time to any of the representatives listed at clause 21.2 in order to:
- 21.3.1 examine, audit or take copies of any original or copy documentation, accounts, books and records of the College and the College Related Parties that relate to this Financial Memorandum;
  - 21.3.2 visit, view or assess the design, management and delivery relating to the Provision at any premises where those operations are carried out (including those of the College Related Parties) and conduct relevant interviews, including interviews with Learners, during these visits at any reasonable time;
  - 21.3.3 carry out examinations into the economy, efficiency and effectiveness with which the College has used the ESFA's Funding in the delivery of the Provision.
- 21.4 Where reasonably required, the College and the College Related Parties shall provide copies of any relevant documents required by any of the representatives listed at clause 21.2.

- 21.5 The College shall, if required by any of the representatives stated at clause 21.2 provide appropriate oral or written explanations.
- 21.6 The College must notify the ESFA immediately in writing if at any time there is a risk to its solvency and viability. In order to continue to receive Funding the ESFA may require the College to provide information to demonstrate to its satisfaction the College's ability to continue to meet the needs of Learners and discharge its responsibilities in relation to its solvency and safeguarding of assets and provide evidence of financial resources sufficient to enable it to continue to deliver the Provision.
- 21.7 The ESFA reserves the right, at any reasonable time, and as it may deem necessary to require the College at its own cost to:
- 21.7.1 provide such assurance as the ESFA may require that the delivery of the Provision complies with the requirements of the Financial Memorandum;
  - 21.7.2 obtain a report by an independent accountant of the ESFA's choice on:
    - 21.7.2.1 the financial systems and controls operated by the College or its subcontractors;
    - 21.7.2.2 the accuracy and regularity of Funding claims in respect of payments claimed or received under this Financial Memorandum;
    - 21.7.2.3 the evidence held by the College or its subcontractors to support delivery of the Provision in accordance with the terms of this Financial Memorandum;
  - 21.7.3 submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the ESFA
  - 21.7.4 provide any additional evidence to support payments made under this Financial Memorandum, as the ESFA shall reasonably require.
- 21.8 The College must agree the instructions for the work with the ESFA. The report and the work required in order to produce the report shall be carried out to the satisfaction of the ESFA, and the ESFA must be able

to place reliance on it. The College shall provide a copy of the interim and final report to the ESFA as soon as they are available. The ESFA reserves the right to require the College to publish the report.

## **22 Financial Reporting and Audit**

- 22.1 The ESFA shall specify its requirements as to the information to be contained in the College's financial statements and how they should be reported in accordance with best practice in the further education sector.
- 22.2 The College shall appoint an audit committee and arrange to provide for financial statements audit, including regularity audit, in accordance with the post-16 audit code of practice and any best practice guidance drawn up and published by the ESFA in consultation with colleges. Any mandatory requirements under the post-16 audit code of practice shall be a condition of funding under this Financial Memorandum.
- 22.3 The College shall provide the ESFA with copies of its audited financial statements within 5 months of the College's year end and publish a copy on its website. As a charity, the College is expected to make its financial statements available to members of the public on request.
- 22.4 The College shall demonstrate that any payments made in respect of the termination of employment are regular secure value for money and have not been made where disciplinary action would have been justified. All such payments shall be brought to the attention of the College's financial statements auditors.
- 22.5 The College must ensure that it has an effective policy of risk management.
- 22.6 The College shall notify the ESFA immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Provision including but not limited to fraud involving subcontractors. The College shall investigate and report to the ESFA all significant cases of internal and external fraud or suspected fraud or irregularity (as defined in the post-16 audit code of practice). The ESFA reserves the right to review the College's fraud investigation files.

## **23 Capital Transactions**

- 23.1 The College shall properly manage and develop its property with regard to good practice guidance in the further education sector and

ensure that it maintains premises which are properly equipped in order to deliver the education and training for which it is funded by the ESFA.

- 23.2 Where the College proposes to dispose of, lease or rent land and/or buildings which have been acquired, developed and/or refurbished or modernised with the help of capital grants from the ESFA and predecessor bodies the ESFA should be notified in writing of such transactions and reserves the right to require repayment of some, or all, of the associated grant.

## **24 Additional Conditions of Funding**

- 24.1 The ESFA reserves the right to impose additional conditions of funding where it considers it is necessary to do so to secure the delivery of education and training of a reasonable quality by the College, or ensure that the resources provided by the ESFA are being used effectively and efficiently or to require the College to address concerns about its financial viability.

## **25. Breach**

- 25.1 For the purpose of this Clause, the following definitions shall have the meanings set out below:

25.1.1 "Minor Breach" shall mean a delay or non-performance by either Party, including any College Related Parties, of its obligations, in part or in full, under this Financial Memorandum which does not materially, adversely or substantially affect the performance or delivery of the Provision, in part or in full, or the provision of a safe, healthy and supportive learning environment; and

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

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

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

- 25.2 For the avoidance of doubt:

25.2.1 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

25.2.2 in the event of a breach the Party not in breach may enforce the clauses in this Financial Memorandum relating to breach even if it has not done so in the event of earlier breaches.

***Minor Breach***

25.3 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.

25.4 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under clause 25.3, 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***

25.5 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:

25.5.1 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.

25.5.2 In the event that a Serious Breach of this Financial Memorandum by the College is in the view of the ESFA not, or cannot be, remedied within the period specified in the notice served under clause 25.5.1, or such other period as may subsequently be agreed in writing between the Parties, the ESFA may:

- (a) require the College to suspend recruitment of Learners, and cap growth of Learning Programmes in future years, to the Provision to which the Serious Breach relates;
- (b) give consideration to the Serious Breach in its allocations when finalising the amount of Funding in any subsequent Financial Memorandum(s) between the Parties;

- (c) reduce, suspend or recover payment to the College in respect of that part of the Provision to which the Serious Breach relates;
- (d) terminate, in accordance with clause 26 (Termination), in full or in respect of that part of the Provision to which the Serious Breach relates.

25.6 In the event that any Serious Breach cannot be remedied at all or within the period specified in the notice served in accordance with clause 25.5.1 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 Financial Memorandum or that part of the Provision to which the breach relates with immediate effect on notice in writing to the other Party.

## **26 Termination**

26.1 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 Financial Memorandum, in respect of that part of the Provision to which the Serious Breach relates, by notice to the College with immediate effect.

26.2 The ESFA shall be entitled to terminate this Financial Memorandum on written notice in the circumstances as detailed in clause 10 above (Quality Assurance). The period of notice shall be that which, in all the circumstances, the ESFA deems reasonable.

26.3 The ESFA shall be entitled to terminate this Financial Memorandum on written notice in case of the insolvency, liquidation or dissolution of the College.

26.4 The ESFA shall be entitled to terminate this Financial Memorandum on written notice if the College does not recruit or data returns reveal that no Learners have been enrolled for the academic year to which this Financial Memorandum relates. Where the ESFA terminates the Financial Memorandum under this clause 26.4, the ESFA will withdraw the allocation of Funding for the academic year and will take action to recover Funds where payments have already occurred.

26.5 In addition to the rights of termination under any other clauses of this Financial Memorandum, either party shall be entitled to terminate this Financial Memorandum in respect of all or part of the Provision delivered under this Financial Memorandum 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 College it shall be implemented at no cost to the ESFA.

- 26.6 Once written notice of termination of this Financial Memorandum in whole or in part has been provided, the College will be removed from the Register of Training Organisations and the Register of Apprenticeship Training Providers maintained by the ESFA and the ESFA will secure another training provider to deliver the Provision.
- 26.7 Termination under this clause 26 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Financial Memorandum.
- 26.8 On termination or expiry of this Financial Memorandum for any reason, the College shall do its utmost to minimise disruption caused to Learners and to assist the implementation of any contingency plan proposed by the ESFA either prior to or after the termination or expiry of this Financial Memorandum, 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 College in complying with this clause 26.8.
- 26.9 The College shall, within 2 working days of termination of this Financial Memorandum cease using any marks of the ESFA and deliver up to the ESFA all correspondence, documents, student data relevant to continuation of the Provision, specification papers and other property belonging to the ESFA, which may be in its possession or under its control.
- 26.10 On termination of this Financial Memorandum (however arising) the accrued rights and liabilities of the Parties at termination shall survive and continue in full force.

## **27 Dispute Resolution**

- 27.1 Any dispute, difference or question arising between the Parties either during the currency of the Financial Memorandum or afterwards shall be referred to the nominated contacts for the ESFA and the College for discussion and review in order to try to resolve the same.
- 27.2 In the event of the nominated contacts being unable to resolve the relevant issue, either Party may request in writing that the matter is referred to the ESFA's nominated representative and the College's representative nominated for this purpose (jointly "the Dispute Resolution Panel") for formal review and consideration. Any request

for referral to the Dispute Resolution Panel must include details of the dispute and any proposals to resolve it.

- 27.3 The Dispute Resolution Panel will meet within 28 days of receiving a request for referral made in accordance with clause 27.2 above.
- 27.4 In the event of the Dispute Resolution Panel failing to identify a mutually acceptable resolution within 28 days of the date of reference, then the dispute 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.
- 27.5 Neither Party may commence court proceedings in relation to any dispute arising out of the Financial Memorandum until they have attempted to settle it by mediation, any such mediation may be terminated by either Party at any time of such Party wishing to commence court proceedings.

## **28 Repayment of Funds**

- 28.1 The ESFA reserves the right to require the College to repay all or part of the Funds provided by it in the event of a breach of the terms and conditions of funding set out in this Financial Memorandum or any previous Financial Memorandum between the ESFA or any predecessor body.
- 28.2 The ESFA shall be entitled to recover any sums repayable by the College by deducting them from payments due to the College under this Financial Memorandum.

## **29 Interpretation**

- 29.1 Nothing in this Financial Memorandum shall require the College to act in a manner which would cause it to lose its charitable status.
- 29.2 No failure to exercise or delay in exercising by the ESFA any of its rights, powers and remedies shall operate as a waiver of any of them.

## **30 Governing Law and Jurisdiction**

- 30.1 This Financial Memorandum 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.

## **31 Effective Date**

- 31.1 The terms and conditions set out in this document will take effect from 1 August 2017 and will be reviewed on or before 31 July 2018 (“the Term”).