



Education & Skills
Funding Agency



European Union
European
Social Fund

Agreement Type Adult Conditions of Funding (Grant)

Funding Period 1 August 2018 to 31 July 2019

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

And

Funding for

Contract Number

ACCEPTANCE BY PROVIDER

By accepting this Agreement via the Skills Funding Service the person taking this action on behalf of the Body represents and warrants that the Body has read and understood this Agreement, the Body agrees to be bound by this Agreement and that he/she is duly authorised to accept this Agreement and legally bind the Body.

This Agreement is made on the date the Agreement is digitally signed by the Body on the Skills Funding Service.

SIGNED FOR AND ON BEHALF OF THE SECRETARY OF STATE FOR EDUCATION

acting through the Education and Skills Funding Agency
by Eileen Milner, Chief Executive of the Education & Skills Funding Agency

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2018/2019

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Conditions of Funding (Grant)

1 Introduction

- 1.1 This Agreement is made 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 organisation] (the Body) regarding the amount of Funding to be paid to the Body for adult education budget, 16-18 traineeships, and Apprenticeships programmes (Provision) for the periods as set out in Appendix 1.
- 1.2 The Funding allocation(s) by the ESFA is made subject to the conditions set out in this Agreement and any documents referred to herein.

2 Definitions

- 2.1 **“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.

“Agreement” means these Conditions of Funding, the attached Appendices to the Conditions of Funding and any documents or parts thereof, policies or guidance specified in this Agreement and any variation to the Agreement agreed in writing and signed by both Parties;

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

“Apprenticeship Programmes” means the Apprenticeships Provision delivered by the Body under this Agreement.

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

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

“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.

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

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

- a) Adult Education budget and 16-18 Traineeships
- b) <https://www.gov.uk/government/publications/adult-education-budget-funding-rules-2018-to-2019> Apprenticeships post May 17
<https://www.gov.uk/government/publications/apprenticeship-funding-rules-2018-to-2019>
- c) Apprenticeships pre May 17
<https://www.gov.uk/government/collections/sfa-funding-rules-2016-to-2017>.

“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 the Office for Students

"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 Body is bound to comply.

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

“Learning Programme” means a programme of education and/or training delivered by the Body under this Agreement.

“Minor Breach” means a delay or non-performance by either Party of its obligations, in part or in full, under the Agreement 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;

“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.

“Office for Students (OfS)” means the government-approved regulatory and competition authority for the higher education sector in England from 1 April 2018

“Parties” means the ESFA and the Body.

“Provision” means the education and training to be delivered by the Body under this Agreement.

“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 other than for Apprenticeships from 1 May 2017.

“Serious Breach” means 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 and includes a breach of security that adversely affects the personal data or privacy of an individual. Serious Breach shall include but not limited to a failure to comply with legislation, or actions or omissions by the Body that endanger the health or safety of Learners.

3 Funding and Payment

- 3.1 The breakdown of funds, which the ESFA agrees to pay to the Body, is set out in Appendix 1 of this Agreement. The 16-18 Apprenticeships Funding and Adult Apprenticeships Funding detailed in Appendix 1 must only be used to fund new Apprenticeship starts.

4 Delivery of Provision

- 4.1 The detailed requirements in respect of each learning programme are set out in the Funding Rules as amended and updated from time to time by THE ESFA and which form part of the terms and conditions of this Agreement.
- 4.2 The maximum value of the Adult Education Budget, or for learning Provision excluded from this budget, as shown in Appendix 1, may not be exceeded for any reason, except by an agreed variation in writing to this Agreement. The ESFA will not be liable to make any payment in excess of the maximum values set out above or as varied in writing. Where the Term of this Agreement is longer than one year, Funding for subsequent years is subject to funds being made available to the ESFA. For Learning Provision that are excluded from the Adult Education Budget, the Body is not permitted to vire Funding between programmes except by way of an agreed variation in writing to this Agreement.
- 4.3 The Maximum Value of each Learning Programme as shown in Appendix 1 of this Agreement 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.
- 4.4 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 Body which all form part of this Agreement.
- 4.5 The ESFA will restrict delivery of Provision under this Agreement against the Funding available up to the 31 July 2019 as detailed in Appendix 1. Appendix 1 confirms the maximum value available up to 31 March 2019. 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 Agreement accordingly.
- 4.6 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.
- 4.7 The ESFA reserves the right to give the Body three months' notice to reduce the overall maximum value for any learning programme without the need to give a reason.

- 4.8 The Body must provide evidence that it has worked in partnership with the LEP and where relevant the Mayoral Combined Authority and /or the Greater London Authority to ensure that the delivery of the Services takes account of the local economic and skills and education priorities.
- 4.9 The Body must ensure appropriate members of staff register as users on the user role management system at IDAMS <https://logon.fasst.org.uk> to enable the Body to digitally sign and agree the Agreement online. It is the Body's responsibility to maintain appropriate user roles on an on-going basis.

5 Sub Contracted Provision

- 5.1 Where the Body sub-contracts or intends to sub-contract any duties or obligations arising out of this Agreement, the Body must provide the ESFA with details of all sub-contractors bi-annually by fully and accurately completing the Declaration of Sub-contractors form in accordance with the deadline set out in the Funding Rules. If the Body is not sub-contracting then a nil return must be received by the deadline date. The Body must notify the ESFA of any within year changes to its sub-contractors. The ESFA reserves the right to require the Body not to enter into or to terminate any sub-contract to deliver the Provision under this Agreement.
- 5.2 The Body must comply with the requirements on sub-contracting delivery of the Provision set out in the ESFA's Funding Rules as amended and updated. Sub-contracting any part of the Agreement shall not relieve the Body of any obligation or duty attributable to them under the Agreement. The Body 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.
- 5.3 The delivery of the Provision under this Agreement may only be sub-contracted to one level unless otherwise specified in the Funding Rules when the Body must obtain the consent of the ESFA in writing.
- 5.4 Where the Body has sub-contracted any duties or obligations arising out of this Agreement, the Body 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 Body enters into a sub-contract for the purpose of performing the Provision, the Body shall ensure that the sub-contract requires the sub-contractor to comply with the conditions of this Agreement and includes any terms specified in the Funding Rules.
- 5.5 The Body shall ensure that any sub-contract entered into for the purpose of delivering the Provision under this Agreement contains a term providing that the ESFA has the right to enforce the terms of the sub-contract.

- 5.6 The Body shall ensure that sub-contractors are selected fairly and have sufficient capacity, capability, quality and financial standing to deliver the Provision
- 5.7 The Body 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 Agreement contains a term giving effect to this requirement.
- 5.8 The Body must notify the ESFA in writing if there is a change in its name and/or ownership at least twelve weeks prior to the change taking effect. The ESFA reserves the right to terminate the Agreement if it considers in its absolute discretion that the change in ownership would prejudice the Body's ability to deliver the Provision.
- 5.9 The Body may not assign any rights, duties or obligations under this Agreement without the consent of the ESFA.
- 5.10 The Body 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>

6 Learner Health, Safety and Welfare

- 6.1 The Body shall ensure, so far as reasonably practicable that learning takes place in safe, healthy and supportive environments, which meet the needs of Learners. The Body shall provide information to the ESFA, as and when specifically requested, to give assurance that adequate arrangements exist for Learner health safety and welfare.
- 6.2 Where part of the learning takes place in an environment outside the direct control of the Body, the Body shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of Learners.
- 6.3 The Body 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 Body in an environment outside the direct control of the Body. In doing so, the Body shall have regard to any guidance published, from time to time, by the Secretary of State for Education, which sets out the expectations in relation to safeguarding practice within further education institutions. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this Agreement, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Agreement.

- 6.4 The Body 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 Body in an environment outside the direct control of the Body. This must include the adoption of safer recruitment procedures. In doing so, the Body 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. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this Agreement, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 6.5 In working with other organisations/bodies, the Body 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.
- 6.6 In providing the Provision, the Body 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.
- 6.7 In providing the Provision, the Body must comply with the general duty on specified authorities in section 26 of the Counter-Terrorism and Security Act 2015 (the Prevent duty) and must have regard to statutory guidance issued under section 29 of the Counter-Terrorism and Security Act 2015. Failure to do so may constitute a Serious Breach of this Agreement.
- 6.8 In providing the Provision, the Body must comply with 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 Agreement.
- 6.9 The Body 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, or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012, 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).

- 6.10 Before employing or engaging a person to carry out teaching work in respect of any Learners under the age of 19 and High Needs 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), the Body shall take reasonable steps to ascertain whether that person is subject to a prohibition order made under section 141B of the Education Act 2002, or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012.
- 6.11 The Body and/or the Body 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.
- 6.12 Where the Body or one of its subcontractors refer:
- a. a safeguarding concern related to sexual violence to Local Authority children's social care/adult social care and/or the police, or
 - b. an allegation of abuse made against a teacher or other member of staff to the designated officer(s) (at the local authority),

The Body must, as soon as practicable, inform the ESFA via email to Enquiries.EFA@education.gov.uk. Such notification must include the name of the institution, a high level summary of the nature of the incident (without sharing personal information about victims or alleged perpetrators) and confirmation of whether it is, or is scheduled to be, investigated by the Local Authority and/or the police.

- 6.13 Where the Body 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 Body shall ensure it notifies the ESFA that a referral has been made.
- 6.14 Where the Body has made a referral or provided information to the Disclosure and Barring Service in compliance with any duties of the Body under the Safeguarding Vulnerable Groups Act 2006, the Body shall ensure that it informs the ESFA that a referral has been made / information has been provided.
- 6.15 The Body shall, in circumstances where it sub-contracts the management and/or delivery of the Provision under this Agreement, ensure that all the clauses in respect of learner health safety and welfare are included in its contract with sub-contractors.

- 6.16 The Body 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 informing the ESFA's representative by telephone or email immediately the Body becomes aware of the event.
- 6.17 The Body shall report all RIDDOR reportable incidents in line with the Regulations, and shall investigate or 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 Body 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.
- 6.18 The Body shall also monitor, and act on, any other harm to Learners to the extent that the Body 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.
- 6.19 The Body shall co-operate with ESFA's representatives 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.

7 Disposal of Assets and Change of Use

- 7.1 In respect of Assets whose value exceeds £2,500 including VAT the following provisions shall apply.
- 7.2 For the purposes of this section:
- (a) 'Asset' shall mean any property, real or personal, tangible or intangible;
 - (b) an Asset shall be considered to have been financed by the ESFA if it has been acquired wholly or partly with funds provided by the ESFA;
 - (c) the use of any Asset shall be considered to have changed if the Body uses it for any purpose other than for the provision or connected with the delivery of the Provision under the Agreement;
 - (d) 'the appropriate proportion thereof' shall be the proportion represented by the amount of Funding provided by the ESFA to acquire, develop or improve an asset in relation to the entire price

paid for its acquisition, or its market value when its development or improvement have been completed.

- 7.3 The Body shall ensure that any Asset financed by the ESFA is adequately insured.
- 7.4 The Body shall inform the ESFA if it proposes to dispose of, or change the use of, any Asset that has been financed by the ESFA.
- 7.5 The Body shall not dispose of any Asset financed by monies provided by the ESFA unless it has first obtained the written consent of the ESFA to such a disposal.
- 7.6 Where the Body disposes of the Asset it shall pay the ESFA whichever is the greater, either the amount of Funding provided by the ESFA in respect of the Asset or the net proceeds of any disposal of an Asset, or the appropriate proportion thereof, to the ESFA unless otherwise agreed with the ESFA.
- 7.7 If the Body changes the use of any such Asset it will be treated as a disposal and the Body shall make a payment to the ESFA in accordance with clause 7.6 above.
- 7.8 In the event of the Body being taken over, merging or going into liquidation, all Assets financed by the ESFA, or the equivalent portion of their market value, will become the property of the ESFA.
- 7.9 The provisions of this clause shall apply during the Term of this Agreement and after its termination howsoever arising. The ESFA reserves the right to decide when interest in Assets financed by the ESFA under the terms of this Agreement shall cease.

8 Equal Opportunities

- 8.1 The Body 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 Body shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Body and all sub-contractors employed in the execution of the Agreement. The Body must comply with the detailed requirements in relation to equality of opportunity set out in clauses 8.2 to 8.4.
- 8.2 The Body must, in delivering the Provision under this Agreement, demonstrate that it has had regard to the duties placed on the ESFA by relevant equality legislation. The Body must take all reasonable steps to ensure the observance of these provisions by all servants, employees or

agents of the Body and all sub-contractors employed to deliver the Provision.

- 8.3 The Body shall ensure that equality of opportunity is built into all aspects of the Provision; the business planning process; and the self-assessment process. The Body 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 Body shall use appropriate, specific and measurable objectives. These must be proportionate, relevant and aligned to the Provision the Body is funded to deliver.
- 8.4 The ESFA shall use a variety of equality information and data to support judgements about quality and eligibility for Funding. These may include, but are not limited to: inspection judgements for equality and diversity, judgements from the Equality and Human Rights Commission, and the success and participation rates of different groups of Learners.

9 Quality Assurance

- 9.1 The Body 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 endeavours;
- 9.1.1 to minimise drop out rates, deliver high completion, achievement and success rates and appropriate progression;
- 9.1.2 to at least meet the minimum quality standards as published by the Department and / or the ESFA that apply to the learning programmes delivered;
- 9.1.3 to ensure competent and appropriately qualified staff deliver and assess learning. The Body 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 any other regulatory authority;
- 9.1.4 to offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
- 9.1.5 to provide a safe, healthy and supportive environment, which meets the needs of Learners;
- 9.1.6 to provide good management and leadership of the learning process;
- 9.1.7 to deliver value for money and financial regularity and probity; and

- 9.1.8 to ensure any sub-contractors delivering the Provision comply with the requirements set out in clauses 9.1.1 to 9.1.7 above.
- 9.2 The Body shall continuously seek to improve the Provision and raise standards to benefit the Learner. The Body 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 Body to provide the ESFA or an Inspectorate evidence to support the quality improvement processes.
- 9.3 The Body 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.
- 9.4 Where appropriate the Body 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 Body must notify the ESFA immediately in writing if it receives any sanction from an awarding organisation.
- 9.5 The Body shall have in place its own quality assurance arrangements that demonstrate that it can meet the terms and conditions of this Agreement and evidence these arrangements if required to do so in a form and subject to any other conditions, as from time to time THE ESFA or the Department may specify.
- 9.6 If requested by THE ESFA, the Body must make available to THE ESFA a report on its own assessment of the quality of the Provision provided by the Body under this Agreement in a form and subject to any other conditions, as from time to time THE ESFA may specify.

Minimum standards

- 9.7 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 on GOV.UK '[Qualification achievement rates and minimum standards](#)'. The ESFA will use data reported in the 2017 to 2018 academic year to measure performance against the national minimum standards for the 2017 to 2018 academic year and will use this as an indicator of the quality and delivery of the Provision by the Body. 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:

- 9.7.1 require the Body to accept and comply with additional conditions of Funding relating to the improvement of the Provision. These conditions will apply until the Body can demonstrate the required improvement to the ESFA's absolute satisfaction; and/or
 - 9.7.2 require the Body to inform the employer of any Apprentice that the ESFA assesses that the Provision, as it relates to Apprenticeships, in whole or in part, fall below the required standards; and/or
 - 9.7.3 require the Body 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
 - 9.7.4 give consideration to the Provision which are below the required standards in its allocations when finalising the amount of Funding in any subsequent Agreements between the Parties; and/or
 - 9.7.5 reduce, suspend or recover payment to the Body in respect of that part of the Provision to which the failure to meet the required standards relate; and/or
 - 9.7.6 terminate this Agreement in accordance with clause 24.2 (Termination) in full, or that part of the Provision failing to meet the required standards.
- 9.8 The failure of the Body, as assessed by the ESFA, to comply with any requirements of 9.7.1-9.7.3 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 24.2 (Termination).

Ofsted Inspection

- 9.9 When the Body receives notification from OFSTED that the Provision is to be inspected, the Body 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 Body 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 Body must confirm to the ESFA in writing the outcome of the inspection within 5 working days of receiving the feedback from OFSTED.
- 9.10 Ofsted may, at any time during the Term, undertake an inspection of the Body. The ESFA will consider the outcome of any such inspection as follows:

Inadequate in part

9.10.1 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:

9.10.1.1 require the Body to accept and comply with additional conditions of Funding relating to the improvement of the Provision assessed as inadequate. These conditions will apply until the Body can demonstrate the required improvement to the ESFA's absolute satisfaction; and/or

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

9.10.1.3 give consideration to the Provision which are assessed as inadequate in its allocations when finalising the amount of Funding in any subsequent Agreements between the Parties; and/or

9.10.1.4 reduce, suspend or recover payment to the Body in respect of that part of the Provision assessed as inadequate.

Inadequate overall

9.10.2 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:

9.10.2.1 require the Body to accept and comply with temporary additional conditions of Funding relating to the improvement of the overall Provision. These conditions will apply until the Body can demonstrate the required improvement to the ESFA's absolute satisfaction; and/or

9.10.2.2 require the Body to temporarily suspend the recruitment of Learners and/or temporarily cap any growth in those Learning Programmes which are assessed as inadequate; and/or

9.10.2.3 commence discussions with the Body and the Local Authority within whose area the Body is located, either with Ofsted or not, as part of considering what actions as specified in clause 9.10.3.3 – 9.10.3.5 inclusive may be taken.

- 9.10.3 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:
- 9.10.3.1 require the Body to accept and comply with additional conditions of Funding relating to the improvement of the overall Provision. These conditions will apply until the Body can demonstrate the required improvement to the ESFA's absolute satisfaction; and/or
 - 9.10.3.2 require the Body to suspend the recruitment of Learners to, and/or to cap any growth in, those Learning Programmes which are assessed as inadequate; and/or
 - 9.10.3.3 give consideration to the assessment of inadequate in its allocations when finalising the amount of Funding in any subsequent Agreements between the Parties; and/or
 - 9.10.3.4 reduce, suspend or recover payment to the Body; and/or
 - 9.10.3.5 terminate this Agreement in accordance with clause 24.2 (Termination).
- 9.10.4 The failure of the Body, as assessed by the ESFA, to comply with any requirements of 9.10.1-9.10.3, 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 24.2 (Termination).
- 9.10.5 ESFA will take action based on Ofsted's provisional and confirmed outcomes as in clause 9.10.2 – 9.10.3 above. Where ESFA is made aware that the Body has made a complaint about the graded outcome of the overall assessment by Ofsted, the ESFA will continue to progress action under clause 9.10.2 - 9.10.3 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.
- 9.10.6 The Body shall for those staff delivering the Provision be responsible for their continuing professional development and training and meeting any legal requirements to ensure that they are appropriately qualified and trained.

10 Information for Learners

- 10.1 As part of the delivery of the Provision, the Body must provide high quality and easily accessible information and advice in helping Learners to

understand the opportunities and support available to them about education, training or connected matters (including employment);

- 10.1.1 Where one of the main objectives of the Provision to be provided under this Agreement is to deliver information and advice, the Body will have to have or attain the matrix Standard accreditation within six months of the Agreement being awarded; and
- 10.1.2 If the information and advice is embedded as part of the delivery of the Provision the Body must work towards achieving the matrix Standard accreditation within 12 months of the start of the Agreement.
- 10.1.3 Where the Provision is delivered by a sub-contractor on behalf of the Body, the requirements set out in clauses 10.1.1 and 10.1.2 must be applied to the sub-contractor. This does not apply where the Body retains responsibility for the delivery of information and advice to the Learners.
- 10.1.4 Once achieved, matrix Standard accreditation is valid for three years. As part of their accreditation, the Body 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.

11 European Funding and Other Sources of Funding

- 11.1 Where notified in writing by the ESFA that the Funding under this Agreement is required to be used as match funding;
 - 11.1.1 The Body must follow the match funding rules that are set out in THE ESFA's Funding Rules, which include the use of the ESF logo.
 - 11.1.2 the Body must not use the Funding paid under this Agreement 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; and
 - 11.1.3 where the Body or any of its sub-contractors has access to other funding streams, the Body or any of its sub-contractors will be required to demonstrate through accounting, management information systems and any other relevant evidence (at 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 the Agreement; and

- 11.1.4 where the ESFA identifies double funding in respect of the Provision, or any part thereof, the Body 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 Body has received funding from another source and the ESFA reserves the right to deduct such sums from any monies owed to the Body under the Agreement or any subsequent agreement; and
 - 11.1.5 the ESFA reserves the right to use payments made under the Agreement as match funding for ESF projects. Where requested to do so in writing by the ESFA, the Body shall provide such information and in the form as the ESFA specifies to enable the ESFA to comply with the requirements of ESF; and
 - 11.1.6 the Body 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; and
- 11.2 The Body must ensure that all Learners are aware of the support of the European Social Fund in respect of the Provision being delivered under this Agreement.

12 Data Collection

- 12.1 The Body 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 2018/19 as amended and updated which is published on the website <https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2018-to-2019> in accordance with the '*Provider Support Manual*' as amended and updated.
- 12.2 The Body must supply the ESFA with data in accordance with the following:
- 12.2.1 in line with agreed audit arrangements;
 - 12.2.2 in adherence with the Data Protection Act;
 - 12.2.3 to support payments received on profile;
 - 12.2.4 to enable reconciliation to take place; and
 - 12.2.5 to support the contract management and allocation processes.
- 12.3 Data collected must be transmitted to the ESFA through the web portal <https://www.gov.uk/government/publications/ESFA-the-hub>. Access to this web portal is restricted and the Body agrees to comply with the conditions of use regarding the supply of data to the SFA set out in 'Individualised

Learner Record (ILR) Specification for 2018/19 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-2018-to-2019>

- 12.4 The Body must ensure that data is received by the ESFA in accordance with the requirements of the 'Individualised Learner Record (ILR) specification for 2018/19' and 'Provider Support Manual 2018/19' as amended and updated.
- 12.5 Where the ESFA is concerned about the quality of the data, including the completeness or accuracy of the data, provided by the Body, the ESFA may require the Body to supply data more frequently for such period as the ESFA shall require.
- 12.6 The ESFA reserves the right to require the Body, at its own cost, to carry out such work as the ESFA deems necessary to improve the quality of data.
- 12.7 The ESFA reserves the right to require the Body to:
 - 12.7.1 review the management reports provided by either the Body's Internal Auditors or by the ESFA's Funding Auditors about the quality and reliability of the Body's Management Information System (MIS) and ILR data;
 - 12.7.2 commission either the Body's Internal Auditors or the ESFA's Funding Auditors to evaluate and support the Body's actions and action plan to address any data quality issues that have been identified in the resulting management letters; and
 - 12.7.3 secure confirmation from the Body that it has been informed of any concerns and secure their commitment to overseeing the timely and accurate return of data in future.
- 12.8 The ESFA reserves the right to suspend payments to the Body under the Agreement where data quality gives rise to concern about the accuracy of the data provided by the Body.
- 12.9 Failure to transmit complete and accurate data to the ESFA in accordance with clause 12.4 above may result in Funding being withheld or recovered.
- 12.10 The Body must update the course information funded by the ESFA at www.coursedirectoryproviderportal.org.uk in accordance with the course directory data requirements, which can be found at <https://coursedirectoryproviderportal.org.uk/Help>.
- 12.11 Where the Body 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 Body. Failure to transmit complete and accurate data under this clause 12.11 will constitute a breach of the conditions of Funding set out in this Agreement and may result in payments for this Provision to be delayed or withheld.

12.12 The Body 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.

12.13 The Body must register with UK Register of Learning Providers (UKRLP) and maintain contact details on an on-going basis (<http://www.ukrlp.co.uk/>).

13 Data Protection and Protection of Personal Data

13.1 In this clause 13, the following words and expressions shall be defined as follows:

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply.

Processor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement.

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018.

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679).

LED: Law Enforcement Directive (Directive (EU) 2016/680).

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in the Terms and Conditions of the Contract.

Sub-processor: any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement.

- 13.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the ESFA on behalf of the Secretary of State for Education is the Controller and the Body is the Processor only for the processing set out in Appendix 2. Any other processing of Personal Data undertaken by the Body will be as a Data Controller and not on behalf of the ESFA. Clauses 13.3 to 13.15 below apply only in relation to the processing of Personal Data on behalf of the ESFA as set out in Appendix 2, and the only processing that the Processor is authorised to do on behalf of the ESFA is listed in Appendix 2 by the ESFA and may not be determined by the Processor.
- 13.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 13.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Provision;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and

- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

13.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Appendix 2, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix 2);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

13.6 Subject to clause 13.7, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request) in relation to processing their data under this Agreement;
- (b) receives a request to rectify, block or erase any Personal Data. Notification in such cases should be given via the ILR;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Funding Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

- (f) becomes aware of a Data Loss Event.
- 13.7 The Processor's obligation to notify under clause 13.6 shall include the provision of further information to the Controller in phases, as details become available.
- 13.8 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 13.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 13.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 13.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

- 13.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 13.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 15 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 13.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 13.14 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 13.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

14 Feedback and Complaints

- 14.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Provision shall rest with the Body. The Body 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.
- 14.2 The Body 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.
- 14.3 The Body shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the ESFA.

14.4 Where a complaint has not been resolved to the satisfaction of the complainant the Body must advise the complainant of his or her right to complain to the ESFA and co-operate with any investigation carried out by the ESFA or their representatives and act on any recommendations made by the ESFA following the investigation.

15 Retention of Documents

15.1 The Body and its sub-contractors shall retain original invoices, management information returns and all other documents necessary to verify the Provision delivered by itself or by its sub-contractors in relation to this agreement 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 Agreement for the Provision have been used as match-funding as notified in writing by the ESFA under Clause 11 for an ESF project, the Body 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 this Agreement to recover funds, the ESFA will be entitled to recover from the Body any sums, which it is required to repay to the European Social Fund as a result of the Body's failure to comply with this Clause.

16 Access and Monitoring

16.1 The ESFA shall give the Body reasonable advance notice in writing of proposed visits to the Body or its sub-contractors, to observe the delivery of the Provision, by any person who has taken or will take no direct part in the delivery or content of the Provision.

16.2 For monitoring and evaluation purposes, the ESFA, the Secretary of State and their agents, the Department, the Department for Work and Pensions (or their Successors), 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 site(s) and view operations relating to the Provision and to inspect relevant documents and interview Learners and the Body's staff during these visits.

- 16.3 The Body shall, and shall ensure that its sub-contractors shall, permit access at any reasonable time to any of the representatives listed at clause 16.2 in order to:
- 16.3.1 examine, audit or take copies of any original or copy documentation, accounts, books and records of the Body and its sub-contractors that relate to the Agreement;
 - 16.3.2 visit, view or assess the design, management and delivery of the Provision at any Premises where those operations are carried out (including those of sub-contractors) and conduct relevant interviews, including interviews with Learners, during these visits at any reasonable time;
 - 16.3.3 carry out examinations into the economy, efficiency and effectiveness with which the Body has used the ESFA's resources in the delivery of the Provision.
- 16.4 Where reasonably required, the Body and its sub-contractors shall provide copies of any relevant documents required by any of the representatives listed at clause 16.2.
- 16.5 The Body shall, if required by any of the representatives stated at clause 16.2 provide appropriate oral or written explanations.
- 16.6 The ESFA reserves the right, at any reasonable time, and as it may deem necessary to require the Body at its own cost to:
- 16.6.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to deliver the Provision;
 - 16.6.2 provide such assurance as the ESFA may require that the delivery of the Provision complies with the requirements of the Agreement;
 - 16.6.3 obtain a report by an independent accountant of the ESFA's choice on the financial systems and controls operated by the Body or the accuracy of Funding claims in respect of payments claimed or received under the Agreement. 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 Body must agree the instructions for the work with the ESFA and this may include the ESFA discussing the terms of reference directly with the independent accountant where necessary. The Body shall provide a copy of any draft report at all stages of reporting and the final report to the ESFA as soon as they are available. The ESFA reserves the right to require the Body to publish the final report;

- 16.6.4 provide a copy of the Body's latest audited Accounts;
- 16.6.5 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.
- 16.7 The Body shall in delivering the Provision comply fully with all relevant rules and regulations of the ESFA in force from time to time especially when on ESFA's premises.
- 16.8 Where the ESFA has undertaken an investigation or received a report from an independent accountant or otherwise, in relation to the Body, it may, as a consequence of that investigation or report, impose additional conditions of funding upon the Body.
- 16.9 The Body must comply with any additional conditions of funding imposed under clause 16.8.
- 16.10 If the ESFA assesses that the Body has failed to comply with any additional conditions of funding imposed under clause 16.8 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 23.3-23.4 Minor Breach or Clause 23.5-23.6 Serious Breach.

17 Review of Performance and Reconciliation of Funding

- 17.1 Where the Body receives profile payments from the ESFA, payments will be reconciled to cash earned by actual delivery of the Provision or the period to the timetable published in the Funding Rules.
- 17.2 Where the Body's actual delivery will result or has already resulted in an overpayment to the Body by the ESFA, the ESFA will either:
 - 17.2.1 withhold future payments; or
 - 17.2.2 raise an invoice for the amount; or
 - 17.2.3 deduct the amount owed from payments due to the Body under the Agreement for current or subsequent months or years accordingly.
- 17.3 Where the Body's actual delivery has resulted in an underpayment to the Body by the ESFA, the ESFA will adjust the amount due to the Body accordingly. This adjustment shall not exceed the overall Maximum Value set out in Appendix 1.
- 17.4 Should there be an under or over payment to the Body, the ESFA may, at its absolute discretion, require a variation to the profile payments.

17.5 A review will take place at the end of the term of this Agreement in respect of the delivery of the Provision. The ESFA will notify the Body of the actual amount of money which has been earned against the Provision delivered and compare this to the total profile payments made and to the overall maximum value specified in Appendix 1. At this stage final cash reconciliation will take place. Any overpayment made to the Body by the ESFA will be repayable within 30 days of receiving an invoice. The ESFA reserves the right to reduce future payments to recover any overpayments. The ESFA will pay any outstanding monies owed, up to the overall Maximum Value specified in Appendix 1 of this Agreement, within 30 days of final reconciliation being completed. Payment will be made via BACS.

17.6 The evidence required in respect of each learning programme is set out in the Funding Rules and the Body must retain such evidence for inspection on demand.

18 Freedom of Information

18.1 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 Agreement or otherwise relating to the Body, 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 clause 18; and

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

18.2 Freedom of Information

18.2.1 The Body acknowledges and agrees that the ESFA is subject to legal duties under FOIA, which may require the ESFA to disclose on request information relating to this Agreement or otherwise relating to the Body.

18.2.2 The Body acknowledges and agrees that the ESFA is required by law to consider each and every request made under FOIA for information.

- 18.2.3 The Body acknowledges and agrees that all decisions made by the ESFA pursuant to a request under FOIA is solely a matter for and at the discretion of the ESFA.
- 18.2.4 Notwithstanding anything in this Agreement to the contrary (including without limitation any obligations of confidentiality), the ESFA 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 shall use reasonable endeavours (but shall not be obliged) to consult the Body and shall not;
- a) confirm or deny that information is held by the ESFA; or
 - b) disclose information requested
- to the extent that in the ESFA's opinion the information is eligible in the circumstances for an exemption and therefore the ESFA may lawfully refrain from doing either of the things described in parts (a) and (b) of this clause.
- 18.2.5 In relation to information relating to the Body or this Agreement which the Body requests should be exempt under the FOIA the Body shall indemnify the ESFA for any and all costs (including legal fees) incurred by the ESFA 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 ESFA to withhold exempt information;
- 18.2.6 The ESFA shall in no event 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 Agreement or otherwise relating to the Body;
- 18.2.7 The Body shall assist the ESFA as reasonably necessary to enable the ESFA to comply with its obligations under FOIA.

19 Confidentiality

“Confidential Information” means any information including Personal Data as defined by the Data Protection Act 2018, and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Parties including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential").

The Body hereby warrants that:

- 19.1 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall treat all Confidential Information belonging to the ESFA as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Agreement; and
- 19.2 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without prior written consent of the ESFA, except where disclosure is otherwise expressly permitted by the Provisions of this Agreement.
- 19.3 it shall take all necessary precautions to ensure that all Confidential Information obtained from the ESFA is treated as confidential and not disclosed (without prior approval) or used other than for the purposes of this Agreement by any of its employees, servants, agents or sub-contractors.
- 19.4 The provisions of clauses 19.1 and 19.2 shall not apply to any information:
 - 19.4.1 which is or becomes public knowledge (other than by breach of this clause 19);
 - 19.4.2 which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
 - 19.4.3 which 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.

- 19.5 Nothing in this clause 20 shall be deemed or construed to prevent the ESFA from disclosing any Confidential Information obtained from the Body:
- 19.5.1 to any other Crown Body;
 - 19.5.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 19.5.3 to any professional adviser, consultant, contractor or other person engaged by the ESFA directly in connection with this Agreement, provided that such information is treated as confidential by the receiving consultant, contractor or any other person;
 - 19.5.4 on a confidential basis to any proposed successor body in connection with any assignment disposal of its rights, obligations or liabilities under this Agreement.
- 19.6 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the course of the delivery of the Provision, the Body undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 19.7 The Body must immediately notify the ESFA of any breach of security in relation to Confidential Information and all data obtained in the course of the delivery of the Provision and must keep a record of such breaches. The Body must use its best endeavours to recover such Confidential Information or data however it may be recorded. The Body must 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 or data.
- 19.8 The Body shall, at its own expense, alter any security systems at any time during the period of the Agreement at the ESFA's request if the ESFA reasonably believes the Body has failed to comply with clause 19.6.
- 19.9 The ESFA reserves the right to publish details of this Agreement and the payments made under it to comply with the Government's transparency requirements.
- 19.10 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 Agreement shall require the approval of each of the Parties which shall not be unreasonably withheld or delayed.

19.11 The provisions of this Clause 19 will apply for the duration of the Agreement and after its termination.

20 State Aid

20.1 The Body should satisfy themselves, if the European rules on State Aid apply to the Provision delivered under this Agreement.

20.2 Where the rules on State Aid apply, the ESFA will supply to the Body details of the records that the Body will need to collect and retain.

20.3 The ESFA reserves the right to require the Body to obtain a contribution towards the cost of the Provision delivered under this Agreement from the employer of any learner. Where a contribution is required, the ESFA will confirm to the Body in writing the exact percentage of the contribution.

20.4 Where the ESFA requires the Body to obtain a contribution towards the cost of the Provision under clause 20.3 of this Agreement, the Body must provide evidence that the contribution has been received.

20.5 In the event that any Funding paid under this Agreement is deemed to constitute unlawful state aid the ESFA reserves the right to require immediate repayment of any such Funding.

21 Dispute Resolution

21.1 Any dispute, difference or question arising between the parties either during the currency of the Agreement or afterwards shall be referred to the nominated contacts for the ESFA and the Body for discussion and review in order to try to resolve the same.

21.2 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 Body'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.

21.3 The Dispute Resolution Panel must meet within 28 days of receiving a request for referral made in accordance with clause 21.2 above.

21.4 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.

21.5 Neither Party may commence court proceedings in relation to any dispute arising out of the Agreement 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.

22 Additional Conditions of Funding

22.1 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 Body, or to ensure that the resources provided by the ESFA are being used effectively and efficiently.

23 Breach

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

23.1.1 "Minor Breach" shall mean a delay or non-performance by either Party, including any Body Related Parties, of its obligations, in part or in full, under this Agreement 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

23.1.2 "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:

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

23.1.2.2 failure to comply with Law, or acts or omissions by the Body that endanger the health or safety of Learners;

23.2 For the avoidance of doubt:

23.2.1 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

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

Minor Breach

- 23.3 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.
- 23.4 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under clause 23.3, 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

- 23.5 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:
- 23.5.1 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.
- 23.5.2 In the event that a Serious Breach of this Agreement by the Body is in the view of the ESFA not, or cannot be, remedied within the period specified in the notice served under clause 23.5.1, or such other period as may subsequently be agreed in writing between the Parties, the ESFA may:
- (a) require the Body to suspend recruitment of Learners, and cap growth of Learning Programmes in future years, to the Provisions 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 Agreement(s) between the Parties;
 - (c) reduce, suspend or recover payment to the Body in respect of that part of the Provision to which the Serious Breach relates;
 - (d) terminate, in accordance with clause 24 (Termination), in full or in respect of that part of the Provision to which the Serious Breach relates.
- 23.6 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 23.5.1 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 Agreement or

that part of the Provision to which the breach relates with immediate effect on notice in writing to the other Party.

24 Termination

- 24.1 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 Agreement, in respect of that part of the Provision to which the Serious Breach relates, by notice to the Body with immediate effect.
- 24.2 The ESFA shall be entitled to terminate this Agreement on written notice in the circumstances as detailed in clause 9 above (Quality Assurance). The period of notice shall be that which, in all the circumstances, the ESFA deems reasonable.
- 24.3 The ESFA shall be entitled to terminate this Agreement on written notice in case of the insolvency, liquidation or dissolution of the Body.
- 24.4 The ESFA shall be entitled to terminate this Agreement on written notice if the Body does not recruit or data returns reveal that no Learners have been enrolled for the academic year to which this Agreement relates. Where the ESFA terminates the Agreement under this clause 24.4, the ESFA will withdraw the allocation of Funding for the academic year and will take action to recover Funds where payments have already occurred.
- 24.5 In addition to the rights of termination under any other clauses of this Agreement, either party shall be entitled to terminate this Agreement in respect of all or part of the Provision delivered under this Agreement by giving to the other not less than three months' notice, in writing, to that effect without the need to give a reason for termination. Where this right is exercised by the Body it shall be implemented at no cost to the ESFA.
- 24.6 Once written notice of termination of this Agreement in whole or in part has been provided, the Body 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.
- 24.7 Termination under this clause 24 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Agreement.
- 24.8 On termination or expiry of this Agreement for any reason, the Body 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 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 Body in complying with this clause 24.7.

- 24.9 The Body shall, within 2 working days of termination of this Agreement 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.
- 24.10 On termination of this Agreement (however arising) the accrued rights and liabilities of the Parties at termination shall survive and continue in full force.

25 Recovery of Funds

- 25.1 The ESFA reserves the right to require the Body 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 Agreement or any previous Agreement between the ESFA or any predecessor body.
- 25.2 The ESFA shall be entitled to recover any sums repayable by the Body by deducting them from payments due to the Body under this Agreement.

26 Provision of Information

- 26.1 In addition to the other requirements to provide information set out in this Agreement the ESFA reserves the right to request information from the Body in order to exercise its responsibilities and/or to fulfill requirements to provide information to the Secretary of State, to account to Parliament and to meet European funding requirements. On occasion, the ESFA will require urgent information from the Body.
- 26.2 The Body shall provide the ESFA or agents acting on its behalf with the information it requires under clause 26.1 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.
- 26.3 Failure to comply with any request for information under clause 26.1, at all or in the required timescales, will constitute a Minor / Serious Breach of this Agreement.

27 The Agreement

- 27.1 This Agreement constitutes the entire agreement between the parties and shall not be varied except by an instrument in writing signed by the parties.

28 Effective Date

- 28.1 The terms and conditions set out in this document will take effect from 1 August 2018 and will be reviewed on or before 31 July 2019 (“the Term”).

APPENDIX 2 PROCESSING, PERSONAL DATA AND DATA SUBJECTS

Description	Details
Subject matter of the Processing	<p>The subject matter is the personal data of Learners on education or training programmes administered by the ESFA that are subject to this Agreement as defined in the ESFA privacy notice and ILR specification and its appendices.</p> <p>https://www.gov.uk/government/publications/esfa-privacy-notice</p> <p>https://www.gov.uk/government/collections/individualised-learner-record-ilr</p>
Duration of the Processing	<p>The duration of the Processing covers the academic year data returns to the ESFA as defined in Appendix A of the ILR specification to enable funding and audit of the learning programmes defined in this Agreement.</p> <p>https://www.gov.uk/government/collections/individualised-learner-record-ilr</p>
Nature and purposes of the Processing	<p>The nature and purposes of the processing is defined in the ESFA privacy notice.</p> <p>https://www.gov.uk/government/publications/esfa-privacy-notice</p> <p>The Body will be required to submit the data to the ESFA as set out in Clause 12 Data Collection of this Agreement.</p>
Type of personal data	<p>The personal data to be processed is defined in the ILR specification.</p> <p>https://www.gov.uk/government/collections/individualised-learner-record-ilr</p>
Categories of data subject	<p>The data subjects are Learners on education or training programmes administered by the ESFA that are subject to this Agreement.</p>

Description	Details
<p>Retention and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>Information on how the data must be supplied to the ESFA is detailed in the ILR specification and its appendices.</p> <p>https://www.gov.uk/government/collections/individualised-learner-record-ilr</p> <p>For the purposes of the DfE as a data controller of the data, the Body is required to retain the data for the funding and audit purposes set out in this Agreement for 6 years from the end of the financial year in which the last payment is made under this Agreement.</p> <p>For the purposes of the Department for Work & Pensions as a data controller, where Learner data is used as match on the 2007-13 ESF programme, the data must be retained securely until at least 31 December 2022 and where Learner data is used as match on the 2014-20 ESF programme, the data must be retained securely until 31st December 2030.</p> <p>The Body (and any other data controller) is responsible for determining any further need to process the data, including its retention, prior to secure destruction.</p>