



Education & Skills
Funding Agency

Contract Type	Advanced Learner Loans Facility Conditions & Loans Bursary Fund Agreement
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	Advanced Learner Loans Facility and Bursary
Contract Number	

ACCEPTANCE BY PROVIDER

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

This Agreement is made on the date the Agreement is digitally signed by the Provider 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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Advanced Learner Loans Facility Conditions and Loans Bursary Fund Agreement

THIS AGREEMENT is made the date the Agreement is digitally signed by the Provider on the Skills Funding Service

BETWEEN:

- (1) The Secretary of State for Education acting through the Education and Skills Funding Agency, an executive agency of the Department for Education, of Cheylesmore House, Quinton Road, Coventry, CV1 2WT (“The ESFA”); and
- (2) (insert provider name) of (insert provider address) (insert Company Number if applicable) (“the Provider”).

BACKGROUND:

- (A) The ESFA is an executive agency of the Department for Education and exercise functions on behalf of the Secretary of State.
- (B) The Advanced Learner Loans (“Loans”) scheme for the years 2018 to 2019 will commence on 14 May 2018 (the Launch Date) for Provision commencing between 1 August 2018 and 31 July 2019.
- (C) The ESFA has determined that the Provider is eligible to offer Loans to learners from the Launch Date, for Provision commencing between 1 August 2018 to 31 July 2019 in accordance with the terms of this Agreement.
- (D) The Student Loans Company (“SLC”) will administer Loans in England.
- (E) Loans are available for Learners aged 19 or over to undertake designated qualifications at Levels 3, 4, 5 or 6 as specified in the Funding Rules, and as listed in the learning aims section of the Hub.
- (F) This Agreement sets out the terms and conditions with which the Provider must comply. Failure to comply with this Agreement will result in the Provider’s eligibility to offer Loans-funded places to learners being withdrawn.

IT IS AGREED as follows;

DEFINITIONS

1 Definitions

“Access Validating Agency” is an organisation licensed by the Quality Assurance Agency for Higher Education (QAA) to develop, approve and monitor Access to HE;

“Adult Apprenticeship Allocation” refers to the value of funding allocated by the ESFA to the Provider, for the delivery of Adult Apprenticeships;

“Adult Education Budget Allocation” refers to the value of funding allocated by the ESFA to the Provider, for the delivery of Adult Skills;

“Agreement” means this Advanced Learner Loans Facility Conditions and Loans Bursary Fund Agreement 2018 to 2019

“Awarding Organisation” is an organisation recognised and regulated by Ofqual to award qualifications on the Regulated Qualifications Framework (RQF);

“Course Directory” means the list of the Provider’s courses eligible to be funded with Loans which must be entered on the Course Directory Portal as detailed in clause 3.4 below;

“Funding Rules” refers to the Advanced Learner Loans Funding and Performance Management Rules 2018 to 2019, as published on the ESFA’s website <https://www.gov.uk/government/publications/advanced-learner-loans-funding-rules-2018-to-2019> which set out the detailed requirements with which the Provider must comply and which form part of this Agreement;

“The Hub” refers to an on-line service that enables the Provider to return Individualised Learner Record (ILR) data to the ESFA and which holds information on qualifications eligible to be funded with a Loan, and maximum Loan amounts;

“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 Office for Students, and the Care Quality Commission (CQC);

“Launch date” is the date that Advanced Learner Loans scheme for 2018 to 2019 will commence – 14 May 2018;

“Learner” refers to someone who is aged 19 or over who is applying for, or who has been approved for, a Loan;

“Learner Files” means any information relating to a Learner generated by the Provider, the Learner or a third party for the purpose of the delivery of the Provision;

“Learning and Funding Information Letter” means the [letter](#) the Provider must issue to the Learner when making the offer of a place on a course, which a Learner may choose to fund with a Loan. The letter must be issued before the Learner applies for a Loan;

“Learning Provider Portal” refers to an interactive web-based service that acts as the main channel of communication between a Provider and the SLC;

“Loans” refers to the money a Learner can borrow from the SLC to fund their qualification;

“Loans Bursary” means funding to help vulnerable and disadvantaged learners who are being funded through a Loan;

“Loan Facility” gives the Provider the authority to access Loans funding from the SLC, up to the value confirmed in Appendix 1, and offer Loans funded learning to Learners;

“OFSTED” means the Office for Standards in Education, Childrens Services and Skills;

“Parties” means the ESFA acting on behalf of the Crown and the Provider;

“Provision” means the qualifications made available to the Learners and funded by Loans under this Agreement, as more particularly set out in the Funding Rules;

“Qualification” is the specific FE Qualification a Learner is studying, funded with a Loan;

“Register of Training Organisations” means the [register](#) maintained by the ESFA of organisations qualified to receive funding from the ESFA

“SLC” refers to the Student Loans Company who administer Advanced Learner Loans in England;

“UKRLP” means the UK Register of Learning Providers, which is a list of all learning providers in the UK.

2 Commencement and Term

2.1 This Agreement commences on the Launch Date (14 May 2018) and ends on 31 July 2019.

3 Contact and Information Requirements

3.1 The ESFA and the Provider will each nominate a contact for the purpose of dealing with queries and issues under this Agreement and advise the other of the relevant contact details.

3.2 The Provider must ensure appropriate members of staff register as users on the user role management system at <https://logon.fasst.org.uk> to enable the Provider to digitally sign and agree the Agreement online. It is the Provider’s responsibility to maintain appropriate user roles on an on-going basis.

3.3 The Provider must be registered on the UKRLP and maintain its registration for the duration of this Agreement.

3.4 The Provider must add details of the Provision eligible to be funded with loans to the Course Directory Portal www.coursedirectoryproviderportal.org.uk in accordance with the

Course Directory data requirements, which can be found at <https://coursedirectoryproviderportal.org.uk/Help>

4 Funding and Payments

- 4.1 The total amount of Loan Facility and Loans Bursary funding available to the Provider is detailed in Appendix 1 - Summary of Education and Skills Funding Agency Funding 2018-19. This funding cannot be vired between the Loans Bursary and Loans Facility and the maximum values of funding available for the period 1 August 2018 – 31 March 2019 and 1 April 2019 – 31 July 2019.
- 4.2 The Loan Facility and Loans Bursary funding cannot be exceeded for any reason except by an agreed variation in writing to this Agreement pursuant to Clause 24.2.
- 4.3 The Loan Facility and Loans Bursary funding for subsequent years is subject to funds being made available and compliance with the terms and conditions set out in this Agreement.
- 4.4 The Provider must repay any funds paid in error by the SLC including where the Provider has not informed the SLC that a Learner has withdrawn from or changed their qualification.
- 4.5 The ESFA will review any request from the Provider to increase the Loans Facility in line with the ESFA's Funding Rules.
- 4.6 The ESFA will forward the Provider's contact and bank details to the SLC. The Provider must keep the ESFA informed of any changes to these, and the ESFA will advise SLC of any changes.
- 4.7 The ESFA may instruct the SLC to stop approving new Loans applications and/or to stop making Loans payments to the Provider, and/or reclaim any Loans payments made, where the Provider exceeds its Loan Facility without agreement, breaches the Agreement or goes into administration or liquidation.

5 Loans Bursary

- 5.1 The Provider is entitled to claim Loans Bursary funding up to a maximum as detailed in Appendix 1.
- 5.2 The conditions of funding, and claiming and earnings methodology for the Loans Bursary Fund are set out in the Funding Rules.
- 5.3 All Loan Bursary payments by the ESFA will be made via BACS.

6 Audit

- 6.1 Where the ESFA carries out a review, investigation or audit of a sample of the evidence which the Provider is required to provide under the Agreement to support the payments made by the SLC or by the

ESFA and identifies errors in that evidence which are deemed material, the ESFA reserves the right to require that the Provider makes repayments to either the SLC or ESFA. Repayments will be calculated based on the error rate identified and the total value of the Agreement. Where errors relate to Loans Bursary payments, such amounts of Loans Bursary may be recovered by making a deduction from sums due to the Provider under this or any other agreement between the ESFA and the Provider or by raising an invoice for payment by the Provider.

7 Data Protection and Freedom of Information

7.1 In this clause 7, 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 Advanced Learner Loans Facility Conditions and Loans Bursary Fund Agreement .

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

- 7.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the ESFA on behalf of the Secretary of State is the Controller and the Provider is the Processor only for the processing set out in Schedule 1. Any other processing of Personal Data undertaken by the Provider will be as a Data Controller and not on behalf of the ESFA. Clauses 7.3 to 7.15 below apply only in relation to the processing of Personal Data on behalf of the ESFA as set out in Schedule 1, and the only processing that the Processor is authorised to do on behalf of the ESFA is listed in Schedule 1 by the ESFA and may not be determined by the Processor.
- 7.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 7.4 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.

- 7.5 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 Schedule 1, 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 Schedule 1);
 - (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.

7.6 Subject to clause 7.7, 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 only;
- (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 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.

7.7 The Processor's obligation to notify under clause 7.6 shall include the provision of further information to the Controller in phases, as details become available.

7.8 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 7.6 (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.

7.9 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.

7.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

7.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

7.12 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 7 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 7.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 7.14 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).
- 7.15 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.
- 7.16 The Parties shall ensure that information acquired by the Parties for the purpose of delivering Provision will at all times comply with the provisions and obligations imposed by the Data Protection Act 2018 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 party from the other shall be returned to the disclosing party on request.
- 7.17 The Provider acknowledges and agrees that the ESFA is subject to legal duties under Freedom of Information Act, which may require the ESFA to disclose on request information relating to this Agreement or otherwise relating to the Provider
- 7.18 Both parties hereby acknowledge that performance of a duty imposed by the Data Protection or Freedom of Information Acts shall not constitute a breach of any obligation in respect of confidentiality which may be owed to the other party

8 Data Returns

- 8.1 The Provider must return data to the SLC in accordance with the SLC's Learning Provider Portal User Guide.
- 8.2 The Provider must fill in and return an ILR for loans funded learners in accordance with the data collection framework set out in the 'ILR specification validation rules and appendices 2018 to 2019' as amended and updated, which is published on the ESFA's website <https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2018-to-2019> and as described in the Funding Rules.

- 8.3 Data collected must be transmitted to the ESFA through the ESFA's web portal <https://www.gov.uk/government/publications/sfa-the-hub>. Access to the ESFA's web portal is restricted and the Provider agrees to comply with the conditions of use regarding the supply of data to the ESFA set out in this clause 8 and in the 'Individualised Learner Record Specification 2018/19 and relevant Provider Support Manual as amended and updated available on the ESFA's web site.
- 8.4 The ESFA reserves the right to require the Provider, at its own cost, to carry out such work as the ESFA deems necessary to improve the quality of data.
- 8.5 ESFA reserves the right to suspend Loans Bursary and Loan Facility payments to the Provider under the Agreement where data quality gives rise to concern about the accuracy of the data provided by the Provider.
- 8.6 Failure to transmit complete and accurate data to the ESFA in accordance with this Clause 8 will constitute a Serious Breach of Agreement in accordance with Clause 17 of this Agreement.

9 Quality of Provision

- 9.1 The Provider must have in place the resources to directly deliver the Provision to an acceptable quality. In particular, the Provider must
- 9.1.1 minimise Learner dropout rates and deliver high completion and achievement rates and appropriate progression;
 - 9.1.2 ensure competent and appropriately qualified staff deliver and assess the Provision;
 - 9.1.3 provide a safe, healthy and supportive environment, which meets the needs of Learners;
 - 9.1.4 meet the minimum quality standards that apply to the Provision funded with Loans. These minimum quality standards and other types of underperformance will be set out by the ESFA;
 - 9.1.5 have direct centre approval and, where appropriate, direct qualification approval, from the appropriate Awarding Organisation for the regulated qualifications being offered;
 - 9.1.6 not rely on accreditation held by a third party;
 - 9.1.7 comply with entry and registration dates and procedures as set and published by the appropriate Access Validating Agency (AVA) or Awarding Organisation to enable Learners to achieve the relevant qualifications. These qualifications must be designated for Loans and the Provider must deliver them in line

with the qualification specification and guidance set out by the Awarding Organisation;

9.1.8 notify the ESFA immediately in writing if it receives any sanction from an Awarding Organisation or AVA. If as a result of receiving any sanction from an Awarding Organisation the Provider is no longer able to deliver the Provision as agreed with the Learner, the Provider must either make alternative arrangements for the Learner to complete the qualification or repay the Loans payments received on behalf of the Learner.

9.2 Failure to materially meet the requirements set out in Clause 9.1 may result in the ESFA assessing the Provider to be in Serious Breach of the Agreement under Clause 17 of the Agreement

Financial Health

9.3 The ESFA will undertake a desk-based assessment of financial health and control. Should the ESFA, at its absolute discretion, consider that the outcome of any financial health and/or control assessment is inadequate, the ESFA may, in its absolute discretion take one or more of the following actions:

9.3.1 require the Provider to, and the Provider shall, accept and comply with additional obligations relating to the improvement of financial health and/or control arrangements;

9.3.2 require the Provider to suspend the recruitment of Learners to the Provision and/or cap any growth in Learner numbers;

9.3.3 give consideration to what changes, if any, are required in its allocations of Loans Facility when finalising the amount of funding in any subsequent Agreement between the Parties; and/or

9.3.4 terminate in accordance with Clause 18.5.2

9.4 Where the Provider fails to comply with requirements imposed under Clauses 9.3.1 and/or 9.3.2, the ESFA shall consider Termination under Clause 18.5.3.

Ofsted Inspection

9.5 The Provision may be subject to inspection by Ofsted. If the Provider receives notification from Ofsted that the Provision is to be inspected, the Provider shall on request provide the ESFA with details of its quality improvement activity, and any other relevant information in accordance with the required timescale of Ofsted. The Provider must notify the ESFA of the date of the meeting at which Ofsted give feedback on the inspection and allow the ESFA's nominated representative to attend the meeting. The Provider must confirm to the

ESFA in writing the outcome of the inspection within 5 working days of receiving the feedback from Ofsted.

- 9.6 Ofsted may, at any time during the period of the Agreement, undertake an inspection of the Provider. The ESFA will consider the outcome of any such inspection as follows:

Inadequate in part

9.6.1 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:

9.6.1.1 require the Provider to accept and comply with additional obligations relating to the improvement of the Provision assessed as inadequate; and/or

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

9.6.1.3 give consideration to the Provision which is assessed as inadequate in its allocations when finalising the amount of funding in any subsequent agreements between the Parties; and/or

9.6.1.4 reduce, suspend or recover payment to the Provider in respect of that part of the Provision assessed as inadequate; and/or

9.6.1.5 terminate in accordance with Clause 18.5.5.

Inadequate overall

9.6.2 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 the following action:

9.6.2.1 require the Provider to accept and comply with temporary additional obligations relating to the improvement of the overall Provision, including but not limited to, requiring the Provider to temporarily suspend the recruitment of Learners and/or temporarily cap any growth in the Provision, which is assessed as inadequate.

9.6.3 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:

- 9.6.3.1 require the Provider to accept and comply with additional obligations relating to the improvement of the overall Provision; and/or
 - 9.6.3.2 require the Provider to suspend the recruitment of Learners to the Provision which is assessed as inadequate; and/or
 - 9.6.3.3 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
 - 9.6.3.4 instruct SLC to, suspend or recover payment to the Provider; and/or
 - 9.6.3.5 terminate this Agreement in accordance with Clause 18.5.5.
- 9.6.4 The failure of the Provider, as assessed by the ESFA, to comply with any requirements of Clauses 9.6.3.1 - 9.6.3.3 inclusive within such timescale as the ESFA may deem reasonable may lead to the ESFA taking such actions as it deems appropriate which where there has been a Serious Breach will include but is not limited to, terminating this Agreement in accordance with Clause 18.5.4.
- 9.6.5 The ESFA will take action based on Ofsted's provisional and confirmed outcomes as in Clauses 9.6.2 - 9.6.3 above. Where the ESFA is made aware that the Provider has made a complaint about the graded outcome of the overall assessment by Ofsted, the ESFA will continue to progress action as it is entitled to do so under Clauses 9.6.2 - 9.6.3 of this Agreement 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.

Minimum standards

- 9.7 The ESFA may, at any time during the period of the Agreement, 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. The ESFA will use data supplied 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 Provider. 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 Provider to accept and comply with additional obligations under this Agreement relating to the improvement of the Provision. These obligations will apply until the Provider can demonstrate the required improvement to the ESFA's absolute satisfaction; and/or

- 9.7.2 require the Provider to inform Learners that the ESFA assesses that the Provision, in whole or in part, falls below the required standards; and/or
 - 9.7.3 require the Provider to suspend the recruitment of Learners to, and/or to cap any growth in, the Provision which is identified as below the required standards; and/or
 - 9.7.4 give consideration to the Provision which is 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 instruct SLC to reduce, suspend or recover payment to the Provider 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 full or that part of the Provision failing to meet the required standards in accordance with Clause 18 (Termination).
- 9.8 The failure of the Provider, as assessed by the ESFA, to comply with any requirements of Clauses 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 will include but is not limited to, terminating this Agreement in accordance with Clause 18.5.6 (Termination).
- 9.9 The Provider shall for those staff delivering the Provision be responsible for their professional development and training and meeting any legal requirements to ensure that they are appropriately qualified and trained.
- 9.10 The Provider 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.
- 9.11 The Provider is responsible to the Learner for the direct delivery of the Provision and will be liable to make any repayment of fees in the event that;
- 9.11.1 the Provider fails to deliver the Provision as agreed with the Learner; or
 - 9.11.2 there is evidence that Learners have not been registered for the qualification or registered within Awarding Organisation guidelines; or
 - 9.11.3 there is evidence that the Provider has not followed an Awarding Organisation's policies and procedures.

10 Equality of Opportunity

- 10.1 The Provider 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 Provision.

11 Access and Monitoring

- 11.1 The ESFA shall give the Provider reasonable advance notice in writing of proposed visits to the Provider, 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.
- 11.2 For monitoring and evaluation purposes, the ESFA or their representatives, the Secretary of State or their representatives, the National Audit Office, 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 Provider's staff during these visits in order to:
- a) examine, audit or take copies of any original or copy documentation, accounts, books and records of the Provider that relate to the Agreement;
 - b) visit, view or assess the design, management and delivery relating to the Agreement at any premises where those operations are carried out and conduct relevant interviews, including interviews with Learners, during these visits at any reasonable time;
 - c) carry out examinations into the economy, efficiency and effectiveness with which the Provider has used the Secretary of State for Education's resources in the performance of the Agreement
- 11.3 The ESFA reserves the right, at any reasonable time, and as it may deem necessary to require the Provider at its own cost to:
- 11.3.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform the Agreement;
 - 11.3.2 provide such assurance as the ESFA may require that the delivery of the Provision complies with the requirements of the Agreement;
 - 11.3.3 obtain a report by an independent accountant of the ESFA's choice on;
 - 11.3.3.1 the financial systems and controls operated by the Provider;
 - 11.3.3.2 the accuracy and regularity of funding claims in respect of payments claimed or received under the Agreement;

11.3.3.3 the evidence held by the Provider to support delivery of the Provision in accordance with the terms of the Agreement.

The Provider 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 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 Provider 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 Provider to publish the final report.

- 11.3.4 provide a copy of The Provider's latest audited Accounts and submit further copies of the audited Accounts as they become available;
 - 11.3.5 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;
 - 11.3.6 provide any additional evidence to support payments made under this Agreement, as the ESFA shall reasonably require.
- 11.4 The Provider shall in performing the Provision comply fully with all relevant rules and regulations of the ESFA in force from time to time especially when on the ESFA's premises.
- 11.5 In addition to the other requirements to provide information set out in this Agreement the ESFA reserves the right to request information from the Provider 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 where appropriate. On occasion, the ESFA will require urgent information from the Provider.
- 11.6 The Provider shall provide the ESFA or agents acting on its behalf with the information it requires under Clause 11.5 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.
- 11.7 Failure to comply with any request for information under Clause 11.5, at all or in the required timescales, will constitute a Minor / Serious Breach of this Agreement.
- 11.8 Where the ESFA has undertaken an investigation or received a report from an independent accountant or otherwise, in relation to the Provider, it may, as a consequence of that investigation or report, impose additional obligations upon the Provider.

- 11.9 The provider must comply with any additional obligations imposed under clause 11.8.
- 11.10 If the ESFA assesses that the provider has failed to comply with any additional obligations imposed under clause 11.8 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 17.5-17.7 Minor Breach or Clause 17.8-17.12 Serious Breach.

12 Prohibited Activities

- 12.1 The Provider shall not offer or give, or agree to give, to any member, employee or representative of the Secretary of State for Education any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or any other contract with The ESFA or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such contract. The Provider's attention is drawn to the criminal offences created by the Bribery Act 2010. Any offence by the Provider or its employees or by anyone acting on its behalf under the Bribery Act 2010 in relation to this Agreement or any contract with the ESFA or Her Majesty's Government shall entitle the ESFA to terminate the Agreement and recover from the Provider the amount of any loss resulting from such termination and/or to recover from the Provider the amount of value of any gift, consideration or commission.
- 12.2 The Provider shall not enter into any contract with any political or religious organisation using any funding provided by the Secretary of State for Education under this Agreement if the effect of that contract would be to promote a particular political or religious point of view.
- 12.3 The Provider shall not hold itself out as acting on behalf of the ESFA without the ESFA's permission.

13 Fraud and Irregularity

- 13.1 The Provider shall notify the ESFA immediately where it becomes aware of any instance of suspected fraud or financial irregularity in relation to Loans or Loans Bursary including, but not limited to, cases of:
- 13.1.1 collusion with members of the staff of the SLC or The ESFA;
 - 13.1.2 computer fraud;
 - 13.1.3 the submission to SLC or the ESFA of inaccurate, incomplete, misleading or falsified information for the purpose of a claim for a Loan or funding;
 - 13.1.4 fraud involving awarding organisations;

provided that nothing in this Clause 13 shall require the Provider to do anything, which may cause it to infringe any law.

- 13.2 Where the ESFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to Loans or Loans Bursary, the ESFA shall have the right of access to the Provider's premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records and to interview the Provider's servants or agents.
- 13.3 Where the ESFA has reasonable cause to suspect that fraud or irregularity has occurred in relation to Loans or Loans Bursary it shall have the right to suspend the Loans Facility, require the Provider to suspend recruitment of Learners and inform the SLC to suspend the approval of any further Loans for the Provision, and/or to stop making Loans payments to the Provider. The Provider must repay any funds received from the SLC and/or ESFA for Provision where fraud or irregularity is proven.
- 13.4 The Parties shall co-operate in the identification of Learners who may have fraudulently obtained a Loan. The ESFA may from time to time brief the Provider as to the co-operation and assistance it reasonably requires including the provision of information regarding fraud by Learners. The ESFA shall provide a named contact or telephone answering machine for receiving such information.
- 13.5 For monitoring and evaluation purposes, the ESFA or its representatives, 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 Provider's staff during these visits in order to:
- i) examine, audit or take copies of any original or copy documentation, accounts, books and records of the Provider and its sub-contractors that relate to the Agreement;
 - ii) visit, view or assess the design, management and delivery relating to the Agreement 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;
- 13.6 The Provider 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>

14 Assignment and Subcontracting

- 14.1 The Provider may not assign any right, duties or obligation under this Agreement.

- 14.2 The Provider must notify the ESFA in writing if there is a change in its name at least one month prior to the change taking effect.
- 14.3 The Provider must notify the ESFA in writing if there is a change in its ownership at least 12 weeks prior to the change taking effect.
- 14.4 The Provider shall not without the prior written consent of the ESFA assign, novate or otherwise dispose of or deal in any other manner with (including by means of a change in ownership of the Provider) any or all of its rights, obligations or liabilities under this Agreement. The Provider shall give the ESFA at least 12 weeks' notice of any such plans. The ESFA reserves the right to take whatever actions it deems necessary, including but not limited to terminating the Agreement if it considers in its absolute discretion that any, or any proposed, assignment, novation, disposal or other dealing, including any change in ownership of the Provider, may or would:
- a. put public funds at risk,
 - b. put at risk the delivery of the Provision to Learners, and/or
 - c. The ESFA has any other material concerns about the proposed assignment, novation, disposal or other dealing.
- 14.5 The Provider must directly deliver the Provision. If there is evidence that the Provider has engaged a subcontractor, partner, associate or any other third party to deliver Loans funded Provision to Loans Learners the ESFA shall be entitled to terminate the Agreement for Serious Breach which cannot be remedied in accordance with Clause 17.12.

15 Complaints

- 15.1 The Provider must have a procedure in place to respond to complaints from Learners. The Provider must ensure that Learners are made aware of its procedure for dealing with complaints.
- 15.2 Where a complaint about a Provider is not resolved to the satisfaction of the complainant the Provider shall advise the complainant of his or her option to complain to the ESFA under its complaints procedure <https://www.gov.uk/government/organisations/skills-funding-agency/about/complaints-procedure> and co-operate with any investigation carried out and act on any recommendations made by the ESFA following the investigation.

16 Additional Obligations

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

17 Breach

- 17.1 For the purpose of this Clause, the following definitions shall have the meanings set out below:
- 17.2 "Minor Breach" shall mean a delay or non-performance by either Party of its obligations under the Agreement which does not materially, adversely or substantially affect the performance or delivery of the Provision or the provision of a safe, healthy and supportive learning environment;
- 17.3 "Serious Breach" shall mean any breach defined as a Serious Breach in the Agreement or any breach or breaches which adversely, materially or substantially affect the performance or delivery of the Provision or compliance with the terms and conditions of the Agreement or the provision of a safe, healthy and supportive learning environment. Failure to comply with legislation, or actions or omissions by The Provider that endanger the Health or Safety of Learners would constitute a Serious Breach.
- 17.4 For the avoidance of doubt:
- a) 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;
 - b) in the event of a breach the Party not in breach may enforce the Clauses in the Agreement relating to breach even if it has not done so in the event of earlier breaches.

Minor Breach

- 17.5 Without prejudice to any other remedy, in the event of a Minor Breach, the Parties shall adopt the following procedure:
- 17.6 The Party not in breach shall be entitled to serve written notice on the Party in breach, giving full details of the Minor Breach and requiring the other Party to remedy the Minor Breach within a specified period.
- 17.7 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Clause 17.6 or such other period as may be agreed between the Parties it shall constitute a Serious Breach by the Party in breach.

Serious Breach

- 17.8 Without prejudice to any other remedy, in the event of a Serious Breach, which is capable of remedy, the Parties shall adopt the following procedure:
- 17.9 The Party not in breach shall be entitled to serve written notice on the other Party giving full details of the Serious Breach and requiring the

Party in breach to remedy the Serious Breach within a specified time period.

- 17.10 Where the ESFA has served a notice of a Serious Breach under clause 17.9 the ESFA has the right to require the Provider to suspend the recruitment of Learners and/or ask SLC to put loan approvals on hold until the ESFA has confirmed that the Serious Breach has been remedied.
- 17.11 In the event that a Serious Breach of the Agreement by the Provider cannot be remedied within the period specified in the notice served under Clause 17.9 or such other period as may be agreed between the Parties the ESFA shall be entitled to cease funding the Provider and ask the SLC to cease funding to the Provider in respect of that part of the Provision to which the Serious Breach relates.
- 17.12 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 17.9 or such other period as may be agreed between the Parties, the Party not in breach may at its sole discretion terminate the Agreement or that part of the Provision to which the Serious Breach relates with immediate effect on notice in writing to the other Party.

18 Termination

- 18.1 The Provider shall notify the ESFA and the SLC in writing immediately upon the occurrence of any of the following events:
- 18.1.1 where the Provider is an individual and if a petition is presented for the Provider's bankruptcy or a criminal bankruptcy order is made against the Provider, or it makes any composition or arrangements with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage their affairs; or
- 18.1.2 where the Provider is not an individual but is a firm; or a number of persons acting together in any capacity; if any event in clauses 18.1.1 or 18.1.3 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Provider to be wound up as an unregistered company; or
- 18.1.3 where the Provider is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or management with its creditors, or an administrator, receiver or manager is appointed by the company, a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 18.2 On the occurrence of any of the events described in Clause 18.1 the ESFA shall be entitled to terminate this Agreement by notice to the Provider with immediate effect.

- 18.3 Where the Provider is an individual, if he or she shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983 the ESFA shall be entitled to terminate this Agreement by notice to the Provider or its representatives with immediate effect.
- 18.4 Either Party may terminate this Agreement with immediate effect in the event that in the reasonable opinion of the Party wishing to terminate this Agreement, the conduct of the other in performing its obligations under this Agreement amounts to a fundamental breach of the Agreement, which is incapable of remedy.
- 18.5 The ESFA reserves the right to terminate this Agreement without liability to the Provider by giving the Provider, or where relevant their representatives, written notice, having effect immediately or after such periods as the ESFA may determine if the Provider;
- 18.5.1 ceases to be on the Register of Training Organisations maintained by the ESFA; and/or
 - 18.5.2 the outcome of any financial health and/or control assessment undertaken in relation to the Agreement is inadequate; and/or
 - 18.5.3 the Provider fails to comply with requirements imposed under Clauses 9.3.1 and/or 9.3.2; and/or
 - 18.5.4 the Provider fails to comply with requirements imposed under Clauses 9.6.3.1, 9.6.3.2 and/or 9.6.3.3 and/or
 - 18.5.5 an Ofsted inspection results in the Provision in whole or part being assessed as inadequate; and/or
 - 18.5.6 the ESFA assesses that the Provision delivered under this Agreement, in whole or part, is below the minimum standards; and/or
 - 18.5.7 where a Provider's Adult Education Budget Allocation and/or Adult Apprenticeship Allocation is removed; and/or
 - 18.5.8 where the Provider exceeds its Loan Facility; and/or
 - 18.5.9 where the Loans Facility is not being used.
- 18.6 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 provided under the Agreement by giving to the other not less than three months' written notice to that effect.

- 18.7 Termination under Clause 18 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.
- 18.8 Where the Provider goes into administration or liquidation, the ESFA must be assumed to be a creditor of the Provider. The Provider must take steps to ensure that the ESFA, the SLC and the Learners are provided with details of the administrator or liquidator and that the ESFA receives notification of any creditors meetings. The ESFA will confirm whether in fact it is a creditor within 8 weeks of being notified that the Provider is in administration or liquidation.
- 18.9 The Provider shall upon termination of the Agreement immediately deliver up to the ESFA all correspondence, documents, specification papers and other property belonging to the ESFA, which may be in its possession or under its control.
- 18.10 Termination of the Agreement under Clause 17 or this Clause 18 shall result in the Provider being removed from the Register of Training Organisations.
- 18.11 The ESFA shall instruct the SLC to stop processing loans applications and/or stop payments for the Provider after notice of termination of the Agreement has been given under Clause 17 or this Clause 18 and the Provider must not recruit any new Learners after such notice has been given. The ESFA will not be liable to make bursary payments in respect of any Learners recruited in breach of this Clause.

19 Transfer of Responsibility on Expiry or Termination

- 19.1 The Parties agree that on termination or expiry of this Agreement for any reason, the continuity of the Provision is of paramount importance. The Provider must inform Learners in writing that the Agreement has been terminated. The Provider 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.
- 19.2 On termination or expiry of this Agreement for any reason the Learner Files shall become the property of ESFA. The Provider shall allow the ESFA, its servants or agent to have access to its premises to remove Learner Files or otherwise comply with a request by the ESFA to transfer Learner Files to any third party nominated by the ESFA.
- 19.3 The Provider shall, at no cost to the ESFA, promptly provide such assistance and comply with such timetable as the ESFA may reasonably require for the purpose of ensuring an orderly transfer of responsibility for delivery of the Provision upon the expiry or other termination of this Agreement. The Provider shall use all reasonable endeavours to ensure that its employees are under a similar obligation.

The ESFA shall be entitled to require the provision of such assistance both prior to and after the expiry or other termination of this Agreement.

19.4 Such assistance may include, (without limitation) delivery of documents and data in the possession or control of the Provider which relate to performance, monitoring, management and reporting of the Programme, including the documents and data, if any, referred to in the Schedules.

19.5 The Provider undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the ESFA to ensure an orderly transfer of responsibility for delivery of the Provision.

20 Public Reputations of the Parties / Press Releases

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

20.2 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 Party which shall not be unreasonably withheld or delayed.

21 Retention of Documents

21.1 The Provider shall maintain original invoices; management information returns and all other documents necessary to verify the delivery of Provision in relation to this Agreement for 6 years from the end of the financial year in which the last payment is made.

21.2 The provisions of this Clause shall apply during the continuance of this Agreement and after its termination howsoever arising.

22 Waiver

22.1 No failure or delay on the part of either Party hereto to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

23 Governing / Jurisdiction

23.1 This Agreement shall be governed by and construed in accordance with English Law.

24 The Agreement

- 24.1 This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and supersedes all previous understandings, commitments, representations, agreements, draft agreements, arrangements, or prior undertakings of any nature made by the Parties, whether written or oral, relating to its subject matter.
- 24.2 This Agreement shall not be varied except by an instrument in writing signed by the Parties.

Schedule 1

Processing, Personal Data and Data Subjects

Description	Details
Subject matter of the Processing	<p>The subject matter is the personal data of Learners on learning funded by Loans 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 Provider will be required to submit the data to the ESFA as set out in Clause 8 Data Returns 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 learning funded by Loans 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 Provider 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>The Provider (and any other data controller) is responsible for determining any further need to process the data, including its retention, prior to secure destruction.</p>