



Education & Skills  
Funding Agency



European Union  
European  
Social Fund

<b>Agreement Type</b>	Conditions of Funding Agreement (Colleges)
<b>Funding Period</b>	1 August 2018 to 31 July 2019
<b>Between</b>	the Secretary of State for Education (acting through the Education and Skills Funding Agency)
<b>And</b>	
<b>Funding for</b>	
<b>Contract Number</b>	

#### **ACCEPTANCE BY PROVIDER**

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

This Funding Agreement is made on the date the Funding Agreement is digitally signed by the College 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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This Funding Agreement is made on the date the Funding Agreement is digitally signed by the College on the Skills Funding Service between:

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**INSERT College NAME AND ADDRESS**

SECRETARY OF STATE FOR  
EDUCATION

ACTING THROUGH THE  
EDUCATION AND SKILLS FUNDING  
AGENCY

CHEYLESMORE HOUSE

QUINTON ROAD

COVENTRY

CV1 2WT

Hereinafter called  
the College

Hereinafter called  
the ESFA

**The ESFA Conditions of Funding set out the terms and conditions by which the ESFA funds Learning Programmes in Colleges. The ESFA Conditions of Funding are made up of a number of documents, including this Funding Agreement. A full list of the documents that make up, and are incorporated into the ESFA's Conditions of Funding, is set out in Clause 2 to this Funding Agreement.**

## **1 Background**

1. The ESFA is an executive agency of the Department for Education, exercising powers on behalf of the Secretary of State and is acting on behalf of the Crown.
2. The ESFA pays funding to only those Colleges which agree to comply with this Funding Agreement together with:
  - a. the Funding Guidance;  
<https://www.gov.uk/government/collections/sfa-funding-rates>
  - b. the Capital Transactions Guidance;  
<https://www.gov.uk/government/publications/capital-transactions-sixth-form-colleges>

- c. the post-16 audit code of practice:  
<https://www.gov.uk/government/publications/post-16-audit-code-of-practice>
- d. the college accounts direction;  
<https://www.gov.uk/government/publications/college-accounts-direction>
- e. the Financial Planning Handbook;  
<https://www.gov.uk/government/publications/financial-planning-handbook>
- f. 19+ education and training, and all age apprenticeship minimum standards  
<https://www.gov.uk/government/publications/qualification-achievement-rates-2017-to-2018>
- g. Specification of the Individualised Learner Record for 2018 to 2019;  
<https://www.gov.uk/government/collections/individualised-learner-record-ilr>
- h. Individualised Learner Record - Provider Support Manual;  
<https://www.gov.uk/government/collections/individualised-learner-record-ilr>
- i. Rigour and Responsiveness in Skills (April 2013, DfE/BIS publication);  
<https://www.gov.uk/government/publications/rigour-and-responsiveness-in-skills>
- j. Careers guidance for colleges  
<https://www.gov.uk/government/publications/careers-guidance-for-colleges--2>
- k. Sub-contracting;  
<https://www.gov.uk/guidance/sfa-funding-rules#to-2018-funding-year>
- l. Further Education Free Meals;  
<https://www.gov.uk/guidance/16-to-19-education-financial-support-for-students>
- m. published Area Review Guidance;  
<https://www.gov.uk/government/collections/post-16-education-and-training-area-reviews>

n. What academies and colleges must publish online;

[What academies, free schools and colleges should publish online - GOV.UK](#)

o. guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions;

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

p. Special educational needs and disability code of practice: 0 to 25 years;

<https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

q. FE colleges: intervention policy and the FE Commissioner role

<https://www.gov.uk/government/publications/fe-colleges-intervention-policy-and-the-fe-commissioner-role>

r. ESFA post-16: intervention and accountability

<https://www.gov.uk/guidance/16-to-19-education-accountability>

and

s. Prevent Duty Guidance

<https://www.gov.uk/government/publications/prevent-duty-guidance>

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

## 2 Definitions

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

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

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

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

**“College”** means the Further Education Corporation, sixth form college corporation, or legal entity conducting an institution designated as being within the further education sector under section 28 of the Further and Higher Education Act 1992 and the educational institution conducted by that body, named in clause 1.1.

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

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

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

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

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

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

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

- a) Adult Education budget and 16-18 traineeships  
<https://www.gov.uk/government/publications/adult-education-budget-funding-rates-and-formula-2018-to-2019>

b) 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>

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

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

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

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

**"Inspectorates"** means one, any or all of the inspectorates: Office for Standards in Education, Children's Services and Skills (OFSTED), Her Majesty's Inspectorate for Education and Training in Wales (Estyn), the Quality Assurance Agency for Higher Education, the Care Quality Commission (CQC) and 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 College is bound to comply.

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

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

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

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

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

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

**“Office for Students”** 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 College.

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

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

**“Public Funds”** for the purposes of regularity, means all of a College’s income and receipts from the ESFA and from the Office for Students.

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

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

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

- 3.1 The Governing Body of the College has responsibilities for ensuring that the College’s funds are used only in accordance with the College’s powers as set out in the Further and Higher Education Act 1992 and the College’s own statutory duties and other obligations.

- 3.2 The Governing Body is responsible for ensuring the solvency of the College. The Governing Body is responsible for achieving value for money in all transactions involving Public Funds.
- 3.3 The Governing Body shall appoint an accounting officer with an appropriate separation of duties between executive and non-executive roles and responsibilities. The expectation is that the accounting officer will be the Principal of the College. The Governing Body shall inform the ESFA in writing of the name and position of the accounting officer and if the accounting officer is absent from the College for an extended period as determined by the College, the name of the person who will discharge the accounting officer's responsibilities during the absence.
- 3.4 The College shall inform the ESFA in writing of the vacating or filling of the positions of chair of the Governing Body and Principal and the clerk.
- 3.5 The College must notify the ESFA in writing if there is a change in its Corporation name.
- 3.6 The Secretary of State for Education is the Principal Regulator for further education and sixth form college corporations as exempt charities. The Governing Body of the College (save where the College is an institution designated under section 28 of the Further and Higher Education Act 1992) is responsible for ensuring it operates in line with its exempt charitable status.

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

- 4.1 The Governing Body shall require the accounting officer to take personal responsibility, which shall not be delegated, to assure them that there is compliance with the Funding Agreement and all other terms and conditions of funding. The accounting officer may be required to appear before the Parliamentary Committee of Public Accounts on matters relating to the College's use of Public Funds.
- 4.2 The accounting officer shall be responsible for advising the Governing Body in writing if at any time, in his or her opinion, any action or policy under consideration by the Governing Body is incompatible with the Funding Agreement. If the accounting officer has evidence that the Governing Body is acting in breach of the Funding Agreement or any other terms and conditions of funding the accounting officer shall inform the ESFA in writing.

## **5 Provision of Information**

- 5.1 In addition to the other requirements to provide information set out in this Funding Agreement the ESFA reserves the right to request information from the College 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 College.
- 5.2 The College shall provide the ESFA or agents acting on its behalf with the information it requires under clause 5.1 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.
- 5.3 Failure to comply with any request for information under clause 5.1, at all or in the required timescales, will constitute a Minor / Serious Breach of this Agreement.

## **6 Funding and Payment**

- 6.1 The breakdown of Funds which the ESFA agrees to pay to the College is set out in Appendix 1 of this Funding Agreement. The 16-18 Apprenticeships funding and Adult Apprenticeships funding detailed in Appendix 1 must only be used to deliver apprenticeships and must not be used to fund new apprenticeship starts.
- 6.2 The College is free to spend its Funding as it sees fit providing it fulfills the conditions of funding imposed by the ESFA. The College shall ensure that Public Funds are not used for the purpose of delivering learning provision in respect of which the College has already received other funding, public or otherwise, unless the ESFA so specifies. In the event that the ESFA identifies that the College has used Public Funds in a way not specified it may deduct the value of such funding from the Funds it pays to the College or require it to be repaid.
- 6.3 The College understands and agrees that the following costs are not Eligible Expenditure:- payments that support activity intended to influence or attempt to influence Parliament, government or political parties; or attempting to influence the awarding or renewal of contracts and grants; or attempting to influence legislative or regulatory action. The College's costs of memberships for their Associations are eligible expenditure.

## **7 Delivery of Provision**

- 7.1 The detailed requirements in respect of each Learning Programme are set out in the Funding Rules as amended and updated from time to time and which form part of the terms and conditions of this Funding Agreement.
- 7.2 The maximum value of each Learning Programme as shown in Appendix 1 of this Funding 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.
- 7.3 Where the Funding period is longer than one year, Funding for subsequent years is subject to funds being made available to the ESFA. For learning provision that is excluded from the Adult Education Budget, the College is not permitted to vire Funding between Learning Programmes except by way of an agreed variation in writing to this Funding Agreement.
- 7.4 The Provision is to be delivered in accordance with any specific requirements of the ESFA and delivery profiles and any tender document submitted by the College which all form part of the conditions of funding, this will include Appendix 1, and any Funding Appendices of this Funding Agreement.
- 7.5 The ESFA will restrict delivery of this Funding 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 Funding Agreement accordingly.
- 7.6 The ESFA may allocate additional Funds to the College under this Funding Agreement. Where these Funds are to be consolidated within the College's Further Education agreed Funding allocation, a revised Appendix 1 will be issued. The terms and conditions of this Funding Agreement will apply to these Funds unless otherwise specified. Where the additional Funds are not consolidated, the general terms and conditions of this Funding Agreement will still apply unless specified otherwise.

- 7.7 The ESFA reserves the right to give the College three months' notice to reduce the overall maximum value for any Learning Programme without the need to give a reason.
- 7.8 The College must provide evidence that it has worked in partnership with the Local Enterprise Partnership (LEP) to ensure that the delivery of the Provision takes account of the LEP's local economic and skills priorities. Where the College is delivering in an area covered by a Devolution Agreement, the College must work with the Combined Authority and the delivery of Provision must take account of the Combined Authority's priorities for education and skills.
- 7.9 The College must ensure appropriate members of staff register as users on the user role management system at <https://logon.fasst.org.uk> to enable the College to digitally sign and agree the Funding Agreement online. It is the College's responsibility to maintain appropriate user roles on an on-going basis.

## **8 Submission of Learner Data**

- 8.1 The College must supply the ESFA data on each individual Learner in accordance with the data collections framework set out in the 'ILR specification, validation rules and appendices 2018 to 2019' 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> and in accordance with the Provider Support Manual as amended and updated.
- 8.2 Data collected must be transmitted to the ESFA through the ESFA's web portal <https://www.gov.uk/government/publications/esfa-the-hub>. Access to the ESFA's web portal is restricted and the College agrees to comply with the conditions of use regarding the supply of data to the ESFA set out in 'Individualised Learner Record (ILR) Specification 2018 to 2019 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>
- 8.3 The ESFA reserves the right to require the College at its own cost to carry out such work as the ESFA deems necessary to make material improvements to the quality of the data.
- 8.4 The ESFA reserves the right to suspend payments to the College where the data quality gives rise to a material impact on the accuracy of the data provided by the College.

- 8.5 The College must register with UK Register of Learning Providers (UKRLP) and maintain contact details on an on-going basis (<http://www.ukrlp.co.uk/>).
- 8.6 Where the College is delivering the Provision to Learners claiming out of work benefits, it must provide data to the Secretary of State with responsibility for unemployment or their nominated representative in accordance with the requirements notified to the College. Failure to transmit complete and accurate data under this Clause 8.6 may constitute a Serious Breach of the conditions of funding set out in this Funding Agreement and may result in payments for this Provision to be delayed or withheld.
- 8.7 The College must update the course information funded by the ESFA at [www.coursedirectoryproviderportal.org.uk](http://www.coursedirectoryproviderportal.org.uk) in accordance with the course directory data collection requirements which can be found at <https://coursedirectoryproviderportal.org.uk/Help>.
- 8.8 The College must submit data about any member of its workforce delivering GCSE English and Maths in the format and to the timescales as required by the ESFA.

## **9 Sub-contracted Provision**

- 9.1 Where the College sub-contracts or intends to sub-contract any duties or obligations arising out of this Funding Agreement the College must provide the ESFA with details of all sub-contractors bi-annually, by fully and accurately completing the Declaration of Subcontractors form in accordance with the deadline set out in the Funding Rules. If the College is not sub-contracting then a nil return must be received by the deadline date. The College must notify the ESFA of any within year changes to its sub-contractors. The ESFA reserves the right to require the College not to enter into or to terminate any sub-contract to deliver the Provision under this Funding Agreement.
- 9.2 The College must comply with the requirements on sub-contracting delivery of the Provision set out in the Funding Rules as amended and updated. Sub-contracting any part of the delivery of the Provision shall not relieve the College of any obligation or duty attributable to them under this Funding Agreement. The College is responsible for all the actions of its sub-contractors connected to or arising out of the delivery of the Provision which it sub-contracts.
- 9.3 The delivery of Provision under this Funding Agreement may only be sub-contracted to one level unless otherwise specified in the Funding Rules when the College must obtain the consent of the ESFA in writing.

- 9.4 Where the College has sub-contracted any duties or obligations arising out of this Funding Agreement, the College shall ensure that there is in place a legally binding sub-contract and send copies of the sub-contract to the ESFA if requested in writing to do so. Where the College enters into a sub-contract for the purpose of delivering the Provision, the College shall ensure that the sub-contract requires the sub-contractor to comply with the conditions of this Funding Agreement and includes any terms specified in the Funding Rules.
- 9.5 The College shall ensure that any sub-contract entered into for the purpose of delivering the Provision under this Funding Agreement contains a term providing that the ESFA has the right to enforce the terms of the sub-contract.
- 9.6 The College shall ensure that subcontractors are selected fairly and have sufficient capacity, capability, quality and financial standing to deliver the Provision.
- 9.7 The College shall make payment to any sub-contractor within 30 days of receiving a valid claim for payment and ensure that any sub-contract entered into for the purpose of delivering the Provision under this Funding Agreement contains a term giving effect to this requirement.
- 9.8 Where the College enters into sub-contracts for the purpose of delivering the Provision under this Funding Agreement with an aggregate value of £100,000 or more in any one year, it must obtain an annual report from its external auditors which provides assurance on the arrangements that the College has in place to manage and control its sub-contractors. The report must comply with the guidance issued from time to time by the ESFA. The College must supply the ESFA with a certificate signed by its external auditors and an authorised signatory confirming it has received a report providing satisfactory assurance. The ESFA reserves the right to require the College to provide a copy of the full report and any associated action plan resulting from recommendations made by their external auditor.
- 9.9 The College may not assign any duties or obligations under this part of the Funding Agreement without the consent of the ESFA.
- 9.10 The College must consider the criteria set out in the Funding higher-risk organisations and subcontractors document which is published on the ESFA's website <https://www.gov.uk/government/publications/sfa-financial-assurance-higher-risk-providers-and-subcontractors>.

## **10 Quality assurance**

- 10.1 The College shall deliver the Provision to an acceptable standard of quality, comply with the Funding Rules published by the ESFA as amended from time to time and use all reasonable endeavors:
- 10.1.1 to minimise dropout rates, deliver high completion, achievement and success rates and appropriate progression;
  - 10.1.2 to meet the minimum quality standards published by the Department and/or the ESFA that apply to the Learning Programme delivered;
  - 10.1.3 to ensure competent and appropriately qualified staff deliver and assess learning. The College shall be responsible for the continuing professional development and training of its staff and for meeting any minimum requirements which may be required by OFSTED or other regulatory authority;
  - 10.1.4 to offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
  - 10.1.5 to provide a safe, healthy and supportive environment, which meets the needs of Learners;
  - 10.1.6 to provide good management and leadership of the learning process;
  - 10.1.7 to deliver value for money and financial regularity and probity; and
  - 10.1.8 to ensure any sub-contractors delivering the Provision comply with the requirements set out in Clauses 10.1.1 to 10.1.7 above.
- 10.2 The College shall continuously seek to improve the Provision and raise standards to benefit the Learner. The College shall have the primary responsibility for improving standards and will need to demonstrate to the ESFA satisfaction that it has an effective quality assurance system based on the implementation of its own quality improvement process. The ESFA reserves the right to require The College to provide the ESFA or an Inspectorate evidence to support the quality improvement processes.
- 10.3 The College must take all reasonable steps to meet the relevant requirements for data gathering for the FE Choices Performance Indicators as outlined currently at :

<https://www.gov.uk/government/collections/fe-choices-information-for-providers> and in any subsequent updates to these web pages.

- 10.4 Where appropriate the College shall confirm in writing to the ESFA that it has formal approval from relevant awarding organisations to deliver the qualifications which form part of the Provision. The College must notify the ESFA immediately in writing if it receives any sanction from an awarding Organisations.
- 10.5 If the ESFA has concerns in relation to underperformance and/or leadership, management or governance, the ESFA shall, at its discretion, consider referring the matter to the Further Education Commissioner.

### **Early intervention**

- 10.6 The ESFA has published a strategy on early intervention, which sets out the triggers for early intervention and how the ESFA will work with colleges to put in place actions that support and assist such colleges to return to sound financial resilience and, where required, improve quality. This could include referral for a Further Education Commissioner-led Diagnostic assessment.
- 10.7 Where, in the ESFA's view, information and data obtained in respect of the College indicates that the College has met one of the published early intervention triggers, the ESFA will write to the College to confirm the ESFA's view.
- 10.8 The College must engage actively with the ESFA to explain why the College has met one of the published triggers, what the College is already doing to improve and to agree further actions if necessary. Actions include the implementation of the recommendations from a Further Education Commissioner-led Diagnostic assessment. If the College fails to engage actively with the ESFA or to comply with a recommendation from a Further Education Commissioner-led Diagnostic assessment, the ESFA may take such action as it deems appropriate which may include, but is not limited to, requiring the College to comply with additional conditions of funding.
- 10.9 The College must comply with any additional conditions of funding (either as agreed between the College and the ESFA or as imposed by the ESFA under clause 10.8) specified by the ESFA in writing.
- 10.10 If the ESFA assesses that the College has failed to comply with any additional conditions of funding within such time as the ESFA deems reasonable, the ESFA may take such actions as it deems appropriate

which may include, but is not limited to, under Clause 24.3-24.4 Minor Breach or Clause 24.5-24.6 Serious Breach.

### **Financial health and/or control**

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

10.11.1 issue and publish a Financial Notice to Improve; and/or

10.11.2 require the College to accept and comply with additional conditions of funding, relating to the improvement of the College's financial health and/or financial controls including the preparation of a financial recovery plan. These conditions will apply until the College can demonstrate the required improvement to the ESFA's absolute satisfaction; and/or

10.11.3 require the College to suspend the recruitment of Learners to, and/or to cap any growth in Learner numbers; and/or

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

10.11.4.1 the College is treated as being an Administered College

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

10.11.4.3 dissolution of the College; and/or

10.11.5 give consideration to what changes, if any, are required in its allocations when finalising the amount of Funding in any subsequent Funding Agreement(s) between the Parties; and/or

10.11.6 terminate, in accordance with clause 25.2.

10.12 The failure of the College, as assessed by the ESFA, to comply with the requirements of 10.11.2 to 10.11.4 within such time as the ESFA shall deem reasonable may lead to the ESFA taking such actions as it deems appropriate which may include, but is not limited to, terminating in accordance with clause 25.2 (Termination).

10.13 Where the College has obligations to the Secretary of State for Education under any other grant agreement or loan agreement, any default in respect of liabilities under that agreement, including but not limited to defaults in repayments, may lead to the ESFA taking such actions in respect of this Funding Agreement as it deems appropriate which may include, but is not limited to, terminating in accordance with clause 25.2 (Termination).

### **Minimum standards**

10.14 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 national 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 College. Where the ESFA assesses that the Provision, in whole or in part, falls below the required standards, the ESFA may, in its absolute discretion, take one or more of the following actions:

10.14.1 issue and publish a Notice to Improve; and/or

10.14.2 require the College to, and the College shall, accept and comply with additional conditions of funding relating to the improvement of the Provision. These conditions will apply until the College can demonstrate the required improvement to the ESFA's absolute satisfaction; and/or

10.14.3 require the College 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

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

10.14.5 in accordance with the [‘ESFA post-16: intervention and accountability’](#), [‘Rigour and Responsiveness in Skills’](#) and [‘FE colleges: intervention policy and the FE Commissioner role’](#) policies, the ESFA will write to the College to confirm the position and thereafter consult with the College’s governors, principal, and local stakeholders. The College must comply with the requirements/requests of the Further Education Commissioner. The ESFA will act as single point of contact, acting on behalf of Government before advising and recommending to Ministers on one of the following options:

10.14.5.1 the College is treated as being an Administered College

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

10.14.5.3 dissolution of the College; and/or

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

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

10.14.8 terminate this Funding Agreement in accordance with clause 25.2 (Termination) in full, or that part of the Provision failing to meet the required standards.

10.15 The failure of the College, as assessed by the ESFA, to comply with any requirements of 10.14.2-10.14.4 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 25.2 (Termination).

### **Ofsted Inspection**

10.16 When the College receives notification from OFSTED that the Provision is to be inspected, the College shall, on request, provide the ESFA with a copy of its quality improvement activity, and any other relevant information in accordance with the required timescale of OFSTED. The College must notify the ESFA of the date of the meeting at which

OFSTED gives feedback on the inspection and allow the ESFA's nominated representative to attend the meeting. The College must confirm to the ESFA in writing the outcome of the inspection within 5 working days of receiving the feedback from OFSTED.

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

#### **Inadequate in part**

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

- 10.17.1.1 issue and publish a Notice to Improve; and/or
- 10.17.1.2 require the College to, and the College shall, accept and comply with additional conditions of funding relating to the improvement of the Provision assessed as inadequate. These conditions will apply until the College can demonstrate the required improvement to the ESFA's absolute satisfaction; and/or
- 10.17.1.3 require the College to suspend the recruitment of Learners to, and/or to cap any growth in, the Provision which is assessed as inadequate; and/or
- 10.17.1.4 give consideration to the Provision which are assessed as inadequate in its allocations when finalising the amount of Funding in any subsequent Funding Agreements between the Parties; and/or
- 10.17.1.5 reduce, suspend or recover payment to the College in respect of that part of the Provision assessed as inadequate.

#### **Inadequate overall**

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

- 10.17.2.1 require the College to, and the College shall, accept and comply with temporary additional conditions of funding relating to the improvement

of the overall Provision, including but not limited to, requiring the College to temporarily suspend the recruitment of Learners and/or temporarily cap any growth in those Learning Programmes which are assessed as inadequate.

10.17.2.2 commence discussions with the College and the Local Authority within whose area the College is located, either with Ofsted or not, as part of considering what actions as specified in clause 10.17.3.3 – 10.17.3.4 inclusive may be taken.

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

10.17.3.1 issue and publish a Notice to Improve; and/or

10.17.3.2 require the College to, and the College shall, accept and comply with additional conditions of funding relating to the improvement of the overall Provision. These conditions will apply until the College can demonstrate the required improvement to the ESFA's absolute satisfaction; and/or

10.17.3.3 require the College to suspend the recruitment of Learners to, and/or to cap any growth in, those Learning Programmes which are assessed as inadequate; and/or

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

10.17.3.4.1 the College is treated as being an Administered College;

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

10.17.3.4.3 dissolution of the College; and/or

10.17.3.5 give consideration to the assessment of inadequate in its allocations when finalising the amount of Funding in any subsequent Funding Agreements between the Parties; and/or

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

10.17.3.7 terminate this Funding Agreement in accordance with clause 25.2 (Termination).

10.17.4 The failure of the College, as assessed by the ESFA, to comply with any requirements of 10.17.3.2-10.17.3.4 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 25.2 (Termination).

10.18 ESFA will take action based on Ofsted's provisional and confirmed outcomes as in clause 10.17 above. Where ESFA is made aware that the College has made a complaint about the graded outcome of the overall assessment by Ofsted, ESFA will continue to progress action under clause 10.17 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.

### **Escalation from Further Education Commissioner Diagnostic assessment**

10.19 The Further Education Commissioner may at any time during the Term undertake a Diagnostic assessment of the College where the College meets the triggers for such an assessment in accordance with the 'FE colleges: intervention policy and the FE Commissioner role' policy.

10.20 Where the Further Education Commissioner considers that, following a Diagnostic assessment, the College should be placed in formal intervention, the ESFA may, in its absolute discretion, take one or more of the following actions:

10.20.1 require the College to, and the College shall, accept and comply with additional conditions of funding relating to the improvement of the overall Provision; and/or

10.20.2 require the College to suspend the recruitment of Learners to, and/or to cap any growth in Learner numbers; and/or

10.20.3 in accordance with the 'Rigour and Responsiveness in Skills' and 'FE colleges: intervention policy and the FE Commissioner

role' policies, the ESFA will write to the College to confirm the position and thereafter consult with the College governors, principal, local stakeholders. The College must comply with the requirements/requests of the Further Education Commissioner. The ESFA will act as single point of contact, acting on behalf of Government before advising and recommending to Ministers on one of the following options:

10.20.3.1 the College is treated as being an Administered College;

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

10.20.3.3 dissolution of the College; and/or

10.20.4 give consideration to the assessment of the FE Commissioner that the College should be placed in formal intervention in its to what changes, if any, are required in its allocations when finalising the amount of Funding in any subsequent Funding Agreement(s) between the Parties; and/or

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

10.20.6 terminate this Funding Agreement in accordance with clause 25.2 (Termination).

10.21 The failure of the College, as assessed by the ESFA, to comply with any requirements of 10.20.1-10.20.3 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 25.2 (Termination).

## **11 Information for Learners**

11.1 As part of the delivery of the Provision, the College must provide high quality and easily accessible information and advice in helping individuals to understand the opportunities and support available to them about education, training or connected matters (including employment);

11.1.1 Where one of the main objectives of the Provision to be provided under this Funding Agreement is to deliver information and advice, the College will have to have or attain the matrix Standard accreditation within six months of the Funding Agreement being awarded; and

- 11.1.2 If the information and advice is embedded as part of the delivery of the Provision the College must work towards achieving the matrix Standard accreditation within 12 months of the start of the Funding Agreement.
- 11.1.3 Where the Provision is delivered by a sub-contractor on behalf of the College, the requirements set out in clauses 11.1.1 and 11.1.2 must be applied to the sub-contractor. This does not apply where the College retains responsibility for the delivery of information and advice to the Learners.
- 11.1.4 Once achieved, matrix Standard accreditation is valid for three years. As part of their accreditation, the College is required to successfully demonstrate their continuous improvement activities to their matrix Assessor through the use of the online Self Reflection Tool on an annual basis.

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

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

outside the direct control of the College. This must include the adoption of safer recruitment procedures. In doing so, the College shall make those arrangements as if such Learners were children and must have regard to any guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions as if it applied to those Learners as if they were children. Failure to do so may constitute a Serious Breach of this Funding Agreement.

- 12.5 The College must carry out appropriate Disclosure and Barring Service (DBS) checks on all overseas applicants for employment where such applicants would be employed to work in regulated activity relating to children or vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) if successful, and must seek additional information about an applicant's conduct.
- 12.6 In working with other organisations/bodies, the College shall make arrangements to co-ordinate and co-operate effectively for reasons of learner health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding.
- 12.7 In providing the Provision, the College must ensure it actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs, and promote principles that support equality of opportunity for all.
- 12.8 In providing the Provision, the College must comply with the general duty on specified authorities in section 26 of the Counter-Terrorism and Security Act 2015 (the Prevent duty) and 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 Funding Agreement.
- 12.9 In providing the Provision, the College must comply with the duty on partners of a panel in section 38 of the Counter-Terrorism and Security Act 2015 (Channel co-operation duty). Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 12.10 The College shall not employ or engage, or continue to employ or engage, any person who is subject to a prohibition order made under section 141B of the Education Act 2002 to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012, in respect of any Learners under the age of 19 and High Needs Learners aged 19 to 25 (as if those Learners were pupils for the

purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).

- 12.11 Before employing or engaging a person to carry out teaching work in respect of any Learners under the age of 19 and High Needs Students aged 19 to 25 (as if those Learners were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), the College shall take reasonable steps to ascertain whether that person is subject to a prohibition order made under section 141B of the Education Act 2002, or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012.
- 12.12 The College, and the College Related Parties, must be able to demonstrate that they have robust record-keeping procedures in respect of health, safety and safeguarding through checks on record keeping undertaken. Failure to do so will constitute a Serious Breach.
- 12.13 Where the College or one of its subcontractors refer:
- 12.13.1 a safeguarding concern related to sexual violence to Local Authority children's social care/adult social care and/or the police, or
  - 12.13.2 an allegation of abuse made against a teacher or other member of staff to the designated officer(s) (at the local authority),
- the College must, as soon as practicable, inform the ESFA via email to [Enquiries.EFA@education.gov.uk](mailto: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.
- 12.14 Where the College makes a referral of an individual for the purposes of determining whether that individual should be referred to a panel for the carrying out of an assessment under section 36 of the Counter-Terrorism and Security Act 2015 of the extent to which that individual is vulnerable to being drawn into terrorism, the College shall ensure it notifies the ESFA that a referral has been made.
- 12.15 Where the College has made a referral or provided information to the Disclosure and Barring Service in compliance with any duties of the College under the Safeguarding Vulnerable Groups Act 2006, the College shall ensure that it informs the ESFA that a referral has been made / information has been provided.

- 12.16 The College shall, in circumstances where it sub-contracts the management and/or delivery of the Provision under this Funding Agreement, ensure that all the clauses in respect of specific learner incident reporting requirements and learner health, safety and welfare are included in its agreement with sub-contractors.
- 12.17 The College shall inform the ESFA of the death of any Learner which is as a result of work undertaken whilst in employment and who is undertaking a related Learning Programme. This shall be done by informing the ESFA's representative by telephone or email immediately the College becomes aware of the event.
- 12.18 The College shall report all RIDDOR reportable incidents in line with the Regulations, and shall investigate and assess the circumstances of all Learner incidents within the scope of RIDDOR and follow HSE guidance 'Investigating Accidents and Incidents: A Workbook for Employers, Unions, Safety Representatives and Safety Professionals' (HSG245) ISBN 0717628272. The College shall only use persons competent to investigate/assess learner incidents with a view to identifying the causes of any incident and lessons to be learned.
- 12.19 The College shall also monitor, and act on, any other harm to Learners to the extent that the College could reasonably be expected to do so and/or where the harm could affect the quality of the learning experience. Harm includes (but is not limited to) other incidents that cause absence from learning, any loss to the Learner of any physical or mental faculty or any disfigurement, incidents of bullying and harassment.
- 12.20 The College shall co-operate with the ESFA and Department for Work and Pensions (DWP) for the purposes of the Industrial Injuries Disablement Benefit (IIDB) in respect to those Learners to which it applies.

### **13 Equal Opportunities**

- 13.1 The College shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010, or any statutory modification or re-enactment thereof or any other statutory provision relating to discrimination in employment or the delivery of the Provision. The College shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the College and all sub-contractors employed in the execution of the agreement. The College must comply with the detailed requirements in relation to equality of opportunity set out in clauses 13.2 to 13.4.

- 13.2 The College must, in delivering the Provision under this Funding Agreement, demonstrate that it has had regard to the duties placed on the ESFA by relevant equality legislation. The College must take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the College and all sub-contractors employed to deliver the Provision.
- 13.3 The College shall ensure that equality of opportunity is built into all aspects of Provision; the business planning process; and the self-assessment process. The College shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. The College shall use appropriate, specific and measurable objectives. These must be proportionate, relevant and aligned to the Provision the College is funded to deliver.
- 13.4 The ESFA shall use a variety of equality information and data to support judgments about quality and eligibility for Funding. These may include, but are not limited to: inspection judgements for equality and diversity, judgments from the Equality and Human Rights Commission, and the success and participation rates of different groups of Learners.

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

- 14.1 Where notified in writing by the ESFA that the Funding under this Funding Agreement is required to be used as match funding:
- 14.1.1 The College must follow the match funding rules that are set out in the ESFA's Funding Rules which include the use of the ESF logo.
- 14.1.2 The College must not use the Funding paid under this Funding 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.
- 14.1.3 Where the College or any of its sub-contractors has access to other funding streams, the College or any of its sub-contractors will be required to demonstrate through accounting, management information systems and any other relevant evidence (in the sole discretion of the ESFA or any other body undertaking the audit or monitoring), to the ESFA and anybody acting on their behalf that no double funding has occurred in respect of the Provision delivered under this Funding Agreement.

- 14.1.4 Where the ESFA identifies double funding in respect of the Provision, or any part thereof, the College will be liable to repay to the ESFA any sums paid, or part thereof, by the ESFA in respect of the Provision for which the College has received funding from another source and the ESFA reserves the right to deduct such sums from any monies owed to the College under this Funding Agreement.
- 14.1.5 The ESFA reserves the right to use payments made under this Funding Agreement as match funding for ESF Projects. Where requested to do so in writing by the ESFA, the College shall provide such information and in the form as the ESFA specifies to enable the ESFA to comply with the requirements of ESF.
- 14.1.6 The College shall, if requested to do so by the ESFA, inform Learners or others that the Provision delivered has been financed in whole or part by ESF.
- 14.2 The College must ensure that all Learners are aware of the support of the European Social Fund in respect of the Provision being delivered under this Funding Agreement.

## **15 Retention of Documents**

- 15.1 The College and the College Related Parties shall retain original invoices, management information returns and all other documents necessary to verify the Provision delivered by itself or by its College Related Parties in relation to this Funding 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 Funding Agreement for the Provision have been used as match-funding as notified in writing by the ESFA under clause 14 for an ESF project, the College will be required to retain all documents necessary to verify the delivery of the Provision by itself or by its sub-contractors. Documents to support claims must be retained for a minimum of three years after the European Commission has made its final payment. For the 2007-13 ESF Programme this is expected to be until at least 31 December 2022 and for the 2014-20 ESF Programme until at least 31 December 2030.
- 15.3 Confirmation of the document destroy date will be notified in writing by the ESFA. Without prejudice to any of the other rights under the Funding Agreement to recover Funds, the ESFA will be entitled to recover from the College any sums which it is required to repay to the European Social Fund as a result of the College's failure to comply with this Clause.

## 16 Freedom of Information and Confidentiality

### 16.1 Definitions

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

**”FOIA”** means the Freedom of Information Act 2000 and all regulations made there under from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in this clause 16;

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

### 16.2 Freedom of Information

16.2.1 the ESFA and the College acknowledge and agree that both are subject to legal duties under FOIA, which may require the other to disclose on request information relating to this Funding Agreement or otherwise relating to the ESFA or the College;

16.2.2 the ESFA and the College acknowledge and agree that both are required by law to consider each and every request made under FOIA for information;

16.2.3 the ESFA and the College acknowledge and agree that all decisions made by the other pursuant to a request under FOIA is solely a matter for and at the discretion of the ESFA or the College;

16.2.4 notwithstanding anything in this Funding Agreement to the contrary (including without limitation any obligations of confidentiality), the ESFA and the College shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is exempt information the ESFA and the College shall use

reasonable endeavours (but shall not be obliged) to consult the other and shall not:

- a) confirm or deny that information is held; or
- b) disclose information requested.

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

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

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

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

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

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

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

16.3.1 with any other Crown Body;

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

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

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

- 17.1 In this clause 17, 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 Funding Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Funding 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 Funding Agreement.

- 17.2 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 College is the Processor only for the processing set out in Appendix 2. Any other processing of Personal Data undertaken by the College will be as a Data Controller and not on behalf of the ESFA. Clauses 17.3 to 17.15 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.

- 17.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 17.4 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.
- 17.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Funding 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 Funding Agreement (and in particular Schedule 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 Funding 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 Funding Agreement unless the Processor is required by Law to retain the Personal Data.

17.6 Subject to clause 17.7, 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 Funding 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.

17.7 The Processor's obligation to notify under clause 17.6 shall include the provision of further information to the Controller in phases, as details become available.

17.8 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 17.6 (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.
- 17.9 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.
- 17.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 17.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 17.12 Before allowing any Sub-processor to process any Personal Data related to this Funding 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.

- 17.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 17.14 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 Funding Agreement).
- 17.15 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.

## **18 State Aid**

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

## **19 Feedback and Complaints**

- 19.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Provision shall rest with the College. The College shall have procedures in place, which are acceptable to the ESFA, to gather and act upon feedback and complaints from Learners and/or their representatives and employers and the wider community.

- 19.2 The College must ensure that Learners are made aware of its procedure for dealing with complaints and that the procedure is clear and accessible to Learners who wish to complain.
- 19.3 The College shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the ESFA.
- 19.4 Where a complaint has not been resolved to the satisfaction of the complainant the College 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 and act on any recommendations made by the ESFA following the investigation.

## **20 Access and Monitoring**

- 20.1 The ESFA shall give the College or College Related Parties reasonable advance notice in writing of proposed visits to the College or College Related Parties, to observe the delivery of the Provision, by any person who has taken or will take no direct part in the conduct or content of the Provision.
- 20.2 For monitoring and evaluation purposes, the ESFA, the Secretary of State and their agents, the Department, the Department for Work and Pensions, the Ministry of Justice, the National Audit Office, representatives of the European Commission and the European Court of Auditors, the Inspectorates and HM Treasury shall have the right to visit all or any College site(s), or those of its sub-contractors and view operations relating to the Provision and to inspect relevant documents and interview Learners and staff during these visits.
- 20.3 The College shall, and ensure that the College Related Parties shall, permit access at any reasonable time to any of the representatives listed at clause 20.2 in order to:
- 20.3.1 examine, audit or take copies of any original or copy documentation, accounts, books and records of the College and the College Related Parties that relate to this Funding Agreement;
  - 20.3.2 visit, view or assess the design, management and delivery relating to the Provision at any premises where those operations are carried out (including those of the College Related Parties) and conduct relevant interviews, including interviews with Learners, during these visits at any reasonable time;

- 20.3.3 carry out examinations into the economy, efficiency and effectiveness with which the College has used the ESFA's Funding in the delivery of the Provision.
- 20.4 Where reasonably required, the College and the College Related Parties shall provide copies of any relevant documents required by any of the representatives listed at clause 20.2.
- 20.5 The College shall, if required by any of the representatives stated at clause 20.2 provide appropriate oral or written explanations.
- 20.6 The College must notify the ESFA in writing, within 1 working day, if, at any time, there is a risk to its solvency and viability or any transactions could jeopardise its solvency or financial viability. The ESFA may require the College, within such time as the ESFA deems reasonable, to:
- 20.6.1 provide information to demonstrate to the ESFA's satisfaction the College's ability to continue to meet the needs of Students and to discharge its responsibilities in relation to its solvency and safeguarding of assets, and
- 20.6.2 provide evidence of financial resources sufficient to enable it to continue to deliver the Provision, and
- 20.6.3 put in place a plan, through financial intervention processes, that will secure a recovery to a specified satisfactory financial position, in the view of the ESFA, and
- 20.6.4 carry out actions, as considered appropriate by the ESFA, including, but not limited to, a strategic options review and/or a financial recovery plan.
- 20.7 Failure to comply with any of the requirements under clause 20.6 within such time as the ESFA deems reasonable, may result in the ESFA taking such actions as it deems appropriate, which may include, but is not limited to, action under Clause 24.3-24.4 Minor Breach or Clause 24.5-24.6 Serious Breach.
- 20.8 Where, in the ESFA's view, information obtained in respect of the College, either as a result of an assessment undertaken by the ESFA in line with the approach set out in the Financial Planning Handbook or otherwise, indicates that there is, or in the foreseeable future there is likely to be, a risk to the solvency or financial viability of the College, the ESFA may take such action as it deems appropriate, which may include, but is not limited to, requiring the College to comply with additional conditions of funding.

- 20.9 The College must comply with any action taken or any additional conditions of funding imposed under clause 20.8.
- 20.10 If the ESFA assesses that the College has failed to comply with any action taken or additional conditions of funding imposed under clause 20.9 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 24.3-24.4 Minor Breach or Clause 24.5-24.6 Serious Breach.
- 20.11 The ESFA reserves the right, at any reasonable time, and as it may deem necessary to require the College at its own cost to:
- 20.11.1 provide such assurance as the ESFA may require that the delivery of the Provision complies with the requirements of the Funding Agreement;
  - 20.11.2 obtain a report by an independent accountant of the ESFA's choice on:
    - 20.11.2.1 the financial systems and controls operated by the College or its subcontractors;
    - 20.11.2.2 the accuracy and regularity of Funding claims in respect of payments claimed or received under this Funding Agreement;
    - 20.11.2.3 the evidence held by the College or its subcontractors to support delivery of the Provision in accordance with the terms of this Funding Agreement;
  - 20.11.3 submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the ESFA
  - 20.11.4 provide any additional evidence to support payments made under this Funding Agreement, as the ESFA shall reasonably require.
- 20.12 The College must agree the instructions for any report to be obtained under clause 20.11.2 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 College 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 College to publish the final report.

- 20.13 Where the ESFA has undertaken an investigation or received a report from an independent accountant or otherwise, in relation to the College, it may, as a consequence of that investigation or report, impose additional conditions of funding upon the College.
- 20.14 The College must comply with any additional conditions of funding imposed under clause 20.13.
- 20.15 If the ESFA assesses that the College has failed to comply with any additional conditions of funding imposed under clause 20.13 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 24.3-24.4 Minor Breach or Clause 24.5-24.6 Serious Breach.

## **21 Financial Reporting and Audit**

- 21.1 The ESFA shall specify its requirements as to the information to be contained in the College's financial statements and how they must be reported in accordance with best practice in the further education sector.
- 21.2 The College shall appoint an audit committee and arrange to provide for financial statements audit, including regularity audit, in accordance with the post-16 audit code of practice and any best practice guidance drawn up and published by the ESFA in consultation with colleges. Any mandatory requirements under the post-16 audit code of practice shall be a condition of funding under this Funding Agreement.
- 21.3 The College shall provide the ESFA with copies of its audited financial statements by December 31 each year end and publish a copy on its website. As a charity, the College is expected to make its financial statements available to members of the public on request.
- 21.4 The College shall demonstrate that any payments made in respect of the termination of employment are regular secure value for money and have not been made where disciplinary action would have been justified. All such payments shall be brought to the attention of the College's financial statements auditors.
- 21.5 The College must ensure that it has an effective policy of risk management.

21.6 The College shall notify the ESFA immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Provision including but not limited to fraud involving subcontractors. The College shall investigate and report to the ESFA all significant cases of internal and external fraud or suspected fraud or irregularity (as defined in the post-16 audit code of practice). The ESFA reserves the right to review the College's fraud investigation files.

## **22 Capital Transactions**

22.1 The College shall properly manage and develop its property with regard to good practice guidance in the further education sector and ensure that it maintains premises which are properly equipped in order to deliver the education and training for which it is funded by the ESFA.

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

## **23 Additional Conditions of Funding**

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

## **24. Breach**

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

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

24.1.2 "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:

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

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

24.2 For the avoidance of doubt:

24.2.1 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

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

### ***Minor Breach***

24.3 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.

24.4 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under clause 24.3, 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***

24.5 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:

24.5.1 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.

24.5.2 In the event that a Serious Breach of this Funding Agreement by the College is in the view of the ESFA not, or cannot be, remedied within the period specified in the notice served under clause 24.5.1, or such other period as may subsequently be agreed in writing between the Parties, the ESFA may:

- (a) require the College to suspend recruitment of Learners, and cap growth of Learning Programmes in future years, to the Provision to which the Serious Breach relates;
- (b) give consideration to the Serious Breach in its allocations when finalising the amount of Funding in any subsequent Funding Agreement(s) between the Parties;
- (c) reduce, suspend or recover payment to the College in respect of that part of the Provision to which the Serious Breach relates;
- (d) terminate, in accordance with clause 25 (Termination), in full or in respect of that part of the Provision to which the Serious Breach relates.

24.6 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 24.5.1 or such other period as may be agreed in writing between the Parties, the Party not in breach may at its sole discretion terminate this Funding Agreement or that part of the Provision to which the breach relates with immediate effect on notice in writing to the other Party.

## **25 Termination**

- 25.1 Without prejudice to any other remedy, on the occurrence of a Serious Breach that is not capable of being remedied the ESFA shall be entitled to terminate this Funding Agreement, in respect of that part of the Provision to which the Serious Breach relates, by notice to the College with immediate effect.
- 25.2 The ESFA shall be entitled to terminate this Funding Agreement on written notice in the circumstances as detailed in clause 10 above (Quality Assurance). The period of notice shall be that which, in all the circumstances, the ESFA deems reasonable.
- 25.3 The ESFA shall be entitled to terminate this Funding Agreement on written notice in case of the insolvency, liquidation or dissolution of the College.
- 25.4 The ESFA shall be entitled to terminate this Funding Agreement on written notice if the College does not recruit or data returns reveal that no Learners have been enrolled for the academic year to which this Funding Agreement relates. Where the ESFA terminates the Funding Agreement under this clause 25.4, the ESFA will withdraw the allocation of Funding for the academic year and will take action to recover Funds where payments have already occurred.

- 25.5 In addition to the rights of termination under any other clauses of this Funding Agreement, either party shall be entitled to terminate this Funding Agreement in respect of all or part of the Provision delivered under this Funding 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 College it shall be implemented at no cost to the ESFA.
- 25.6 Once written notice of termination of this Funding Agreement in whole or in part has been provided, the College will be removed from the Register of Training Organisations and the Register of Apprenticeship Training Providers maintained by the ESFA and the ESFA will secure another training provider to deliver the Provision.
- 25.7 Termination under this clause 25 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Funding Agreement.
- 25.8 On termination or expiry of this Funding Agreement for any reason, the College shall do its utmost to minimise disruption caused to Learners and to assist the implementation of any contingency plan proposed by the ESFA either prior to or after the termination or expiry of this Funding Agreement, to deal with the effects of such termination or expiry in so far as it is practicable to do so. The ESFA will not be liable for any costs incurred by the College in complying with this clause 25.8.
- 25.9 The College shall, within 2 working days of termination of this Funding Agreement cease using any marks of the ESFA and deliver up to the ESFA all correspondence, documents, student data relevant to continuation of the Provision, specification papers and other property belonging to the ESFA, which may be in its possession or under its control.
- 25.10 On termination of this Funding Agreement (however arising) the accrued rights and liabilities of the Parties at termination shall survive and continue in full force.

## **26 Dispute Resolution**

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

Resolution Panel”) for formal review and consideration. Any request for referral to the Dispute Resolution Panel must include details of the dispute and any proposals to resolve it.

- 26.3 The Dispute Resolution Panel must meet within 28 days of receiving a request for referral made in accordance with clause 26.2 above.
- 26.4 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.
- 26.5 Neither Party may commence court proceedings in relation to any dispute arising out of the Funding 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.

## **27 Repayment of Funds**

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

## **28 Interpretation**

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

## **29 Governing Law and Jurisdiction**

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

## **30 Effective Date**

- 30.1 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 Funding Agreement as defined in the ESFA privacy notice and ILR specification and its appendices.</p> <p><a href="https://www.gov.uk/government/publications/esfa-privacy-notice">https://www.gov.uk/government/publications/esfa-privacy-notice</a></p> <p><a href="https://www.gov.uk/government/collections/individualised-learner-record-ilr">https://www.gov.uk/government/collections/individualised-learner-record-ilr</a></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 Funding Agreement.</p> <p><a href="https://www.gov.uk/government/collections/individualised-learner-record-ilr">https://www.gov.uk/government/collections/individualised-learner-record-ilr</a></p>
Nature and purposes of the Processing	<p>The nature and purposes of the processing is defined in the ESFA privacy notice.</p> <p><a href="https://www.gov.uk/government/publications/esfa-privacy-notice">https://www.gov.uk/government/publications/esfa-privacy-notice</a></p> <p>The College will be required to submit the data to the ESFA as set out in Clause 8 Submission of Learner Data of this Funding Agreement.</p>
Type of personal data	<p>The personal data to be processed is defined in the ILR specification.</p> <p><a href="https://www.gov.uk/government/collections/individualised-learner-record-ilr">https://www.gov.uk/government/collections/individualised-learner-record-ilr</a></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 Funding 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><a href="https://www.gov.uk/government/collections/individualised-learner-record-ils">https://www.gov.uk/government/collections/individualised-learner-record-ils</a></p> <p>For the purposes of the DfE as a data controller of the data, the College is required to retain the data for the funding and audit purposes set out in this Funding Agreement for 6 years from the end of the financial year in which the last payment is made under this Funding Agreement.</p> <p>For the purposes of the Department for Work &amp; 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 31<sup>st</sup> December 2030.</p> <p>The College (and any other data controller) is responsible for determining any further need to process the data, including its retention, prior to secure destruction.</p>