

Agreement Type Conditions of Funding Agreement (Colleges)

Funding Period 1 August 2018 to 31 July 2019

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

And

**Funding for
Agreement
Number**

ACCEPTANCE BY COLLEGE

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

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

The Services subject to the terms and conditions of the Conditions of Funding are in respect of the delivery of education provision for:

- a. **students aged 16 to 18, and**
- b. **high needs students aged 16 to 18, or any young person aged 19 to 25 subject to an Education Health and Care Plan, who requires additional support costing over £6,000 (i.e. additional to education and support that is funded through the published 16-19 standard funding formula) and for whom the relevant local authority provides top-up funding (Element 3).**

Background

1. The ESFA is an executive agency of the Department for Education, exercising powers on behalf of the Secretary of State and is acting on behalf of the Crown.
2. The ESFA pays funding to only those COLLEGES which agree to comply with this Funding Agreement together with:
 - a. the Funding Guidance;

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

b. the Capital Transactions Guidance;

<https://www.gov.uk/government/publications/capital-transactions-sixth-form-colleges>

c. the post-16 audit code of practice:

<https://www.gov.uk/government/publications/post-16-audit-code-of-practice>

d. the college accounts direction;

<https://www.gov.uk/government/publications/college-accounts-direction>

e. the Financial Planning Handbook;

<https://www.gov.uk/government/publications/financial-planning-handbook>

f. 16 to 18 minimum standards for 2018

<https://www.gov.uk/government/publications/16-to-18-minimum-standards/16-to-18-minimum-standards-for-2017>

g. Specification of the Individualised Learner Record for 2017 to 2018;

<https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2017-to-2018>

h. Individualised Learner Record - Provider Support Manual;

<https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2018-to-2019>

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. Traineeships;

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

l. Full time enrolment of 14 to 16 year olds in Further Education and Sixth Form Colleges;

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

m. Sub-contracting;

<https://www.gov.uk/government/publications/funding-guidance-for-young-people-sub-contracting-controls>

n. Further Education Free Meals;

<https://www.gov.uk/guidance/16-to-19-education-financial-support-for-students>

o. published Area Review Guidance;

<https://www.gov.uk/government/collections/post-16-education-and-training-area-reviews>

p. What academies and colleges must publish online;

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

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

<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

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

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

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

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

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

t. ESFA post16: intervention and accountability

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

u. National Minimum Standards for Residential Accommodation for children in Colleges (published under section 87C of the Children Act 1989);

<https://www.gov.uk/government/publications/residential-special-schools-national-minimum-standards>

[v. Prevent Duty Guidance](https://www.gov.uk/government/publications/prevent-duty-guidance)

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

[w. Industrial placements capacity and delivery fund](https://www.gov.uk/guidance/work-placements-capacity-and-delivery-fund)

<https://www.gov.uk/guidance/work-placements-capacity-and-delivery-fund-from-april-2018-to-july-2019>

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

3. The ESFA Conditions of Funding shall take effect on and from 1 August 2018 (“Commencement Date”).
4. The Funding Agreement will be updated annually.

Part One

1. Preface

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

2. Responsibilities of the Governing Body

- 2.1 The Governing Body of the COLLEGE has responsibilities for ensuring that the COLLEGE's funds are used only in accordance with the corporation's powers as set out in the Further and Higher Education Act 1992 ("FHE Act") and the COLLEGE's own statutory duties and other obligations.
- 2.2 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.
- 2.3 The Governing Body shall appoint an Accounting Officer with an appropriate separation of duties between executive and non-executive roles and responsibilities. The expectation is that the Accounting Officer will be the Principal of the 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 corporation, the name of the person who will discharge the accounting officer's responsibilities during the absence.
- 2.4 The COLLEGE shall inform the ESFA in writing, as soon as is reasonably practicable, of the vacating or filling of the positions of the Chair of the Governing Body, the Principal and the clerk.

Charitable Regulation

- 2.5 The Secretary of State for Education is the Principal Regulator for further education and sixth form college corporations as exempt charities.
- 2.6 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.

3. Responsibilities of the Accounting Officer

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

4. Allocation of Funds

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

5. Payment of Funds

- 5.1 The ESFA will normally make payments of recurrent funding to the COLLEGE in monthly instalments in accordance with a funding profile for the whole year. Payments of capital funding will be described in the terms and conditions of capital funding particular to the purpose and such terms and conditions of capital funding may be incorporated into the ESFA Conditions of Funding.
- 5.2 In addition to its statutory health and safety responsibilities, the COLLEGE shall manage and develop its estate to ensure that it manages resources to provide the best possible learning and teaching environments. The COLLEGE will use all appropriate statutory and advisory information provided by relevant agencies. The ESFA will provide on its website reference and signposting information to support COLLEGES to follow good practices in estate management and development.

6. Non-compliance by COLLEGE

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

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

8. College Companies

- 8.1 The COLLEGE is free to participate in companies within the limits of the powers provided by the FHE Act as amended. The Governing Body shall

ensure that appropriate arrangements are in place for the governance and management of any companies and the COLLEGE shall inform the ESFA as soon as is reasonably practicable if participation in any company may pose a risk to the solvency of the COLLEGE.

9. Financial Reporting

- 9.1 The ESFA shall specify its requirements as to the information to be contained in the COLLEGE's financial statements and how they should be reported.
- 9.2 The COLLEGE shall provide the ESFA with copies of its audited financial statements. COLLEGES are required to make their financial statements available to members of the public on request.
- 9.3 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:
- 9.3.1 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
- 9.3.2 provide evidence of financial resources sufficient to enable it to continue to deliver the Provision, and
- 9.3.3 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
- 9.3.4 carry out actions, as considered appropriate by the ESFA, including, but not limited to, a strategic options review and/or a financial recovery plan.
- 9.4 Failure to comply with any of the requirements under clause 9.3 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 Part Two Clause 17.3-17.4 Minor Breach or Part Two Clause 17.5-17.6 Serious Breach.
- 9.5 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.

- 9.6 The COLLEGE must comply with any action taken or any additional conditions of funding imposed under clause 9.5.
- 9.7 If the ESFA assesses that the COLLEGE has failed to comply with any action taken or additional conditions of funding imposed under clause 9.5 within such time as the ESFA deems reasonable, the ESFA may take such actions as it deems appropriate which may include, but is not limited to, under Part Two Clause 17.3-17.4 Minor Breach or Part Two Clause 17.5-17.6 Serious Breach.

10. Audit

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

11. Payments to Employees on Termination of Employment

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

12. Provision of Information

- 12.1 In addition to the other requirements to provide information set out in this Agreement, the ESFA reserves the right to request information from the 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 (where applicable). On occasion, the ESFA will require urgent information from the COLLEGE.
- 12.2 The COLLEGE shall provide the ESFA or agents acting on its behalf with the information it requires under clause 12.1 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.

12.3. Failure to comply with any request for information under clause 12.1, at all or in the required timescales, will constitute a Minor / Serious Breach of this Agreement.

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

13. Interpretation

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

Part Two

1. Introduction

- 1.1 This Funding Agreement, including the Appendices, Annexes and any documents referred to therein, is for the period between 1 August 2018 and 31 July 2019 unless terminated earlier in accordance with Part Two clause 17 (Termination) (the "**Term**").

2. The COLLEGE's Obligations

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

3. Learning Programmes

- 3.1 The COLLEGE shall deliver each of the Learning Programmes as set out in the Appendices and Annexes of this Funding Agreement in accordance with the terms and conditions of this ESFA Conditions of Funding. The detailed requirements in respect of each Learning Programme are set out in the Conditions of Funding, as amended and updated from time to time.
- 3.2 The Maximum Value for a Learning Programme, as separately identified in Appendix 1- Payment Schedule by a deliverable name, must not be exceeded for any reason except by way of a revision to this Funding Agreement made in accordance with Part Two clause 20 (Revision). The ESFA will not be liable to make any payment to the COLLEGE where such payment would result in the total aggregate of payments made to the COLLEGE in respect of the relevant Learning Programme exceeding the Maximum Value for that Learning Programme.
- 3.3 The COLLEGE is not permitted to vire Funding between Learning Programmes except by way of a revision to this Funding Agreement made in accordance with Part Two clause 20 (Revision).
- 3.4 The COLLEGE must use the Funding solely for the purpose of delivering the Services agreed in the Appendices and Annexes of this Funding

Agreement, any tender documents submitted by the COLLEGE, or any other requirements set out in this ESFA Conditions of Funding.

- 3.5 The COLLEGE must meet the ESFA's reasonable requirements for the provision of information (in full or as a sample) as may be requested by the ESFA and audit certificates pursuant to Part Two clause 15 (Access and Monitoring).

4. Payment and Review of Performance

- 4.1 In consideration of the COLLEGE's performance of its obligations as set out in the ESFA Conditions of Funding, the ESFA shall pay to the COLLEGE the Funds set out in Appendix 1 – Payment Schedule, or otherwise as specified in the Appendices and Annexes of this Funding Agreement.
- 4.2 All payments by the ESFA will be made via BACS or CHAPS, unless otherwise notified, and will be made on or before the 20th of each month or the prior Working Day.
- 4.3 Payment by the ESFA shall be without prejudice to any claims or rights, which the ESFA may have against the COLLEGE and shall not constitute any admission or acceptance by the ESFA as to the performance by the COLLEGE of its obligations hereunder. Prior to making any such payment, the ESFA shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against the COLLEGE, arising from this Funding Agreement or any other Funding Agreement between the COLLEGE and the ESFA or the Secretary of State.
- 4.4 The overriding principle shall be that lagged funding shall apply other than in exceptional circumstances described in Funding Guidance for young people 2018 to 2019 <https://www.gov.uk/16-to-19-education-funding-guidance> or as otherwise provided for in this Funding Agreement.
- 4.5 Where the ESFA or any other Crown Body acting on behalf of the Secretary of State carries out a review or audit pursuant to Part Two clause 15 (Access and Monitoring), in accordance with the principles set out in the post-16 audit code of practice, of a sample of the evidence which the COLLEGE is required to provide under this Funding Agreement to support the payments made by the ESFA and identifies errors in that evidence resulting in over-claims and over-payments which it deems are material (as defined in the Funding Guidance for young people 2018 to 2019 <https://www.gov.uk/16-to-19-education-funding-guidance>), the ESFA shall be entitled to:

- 4.5.1 recover, in accordance with clause 4.7, in full from the COLLEGE the amount or value of all such errors;
 - 4.5.2 assume that the same percentage of monies overpaid have been made in respect of all payments to the COLLEGE since the date of the last Audit or, if no Audit has been conducted previously, since the start of this Funding Agreement, to produce an aggregate value of monies overpaid (the "Aggregate Error Amount");
 - 4.5.3 recover, in accordance with clause 4.7, in full from the COLLEGE a sum equal to the Aggregate Error Amount less the sum of any monies recovered by the ESFA pursuant to Part Two clause 4.5.1.
- 4.6 Where the COLLEGE is in receipt of funding under the industrial placement capacity delivery fund and fails to deliver a minimum number of industrial placements equivalent to 10% of the number of qualifying students on full time level 2 and/or level 3 vocational and technical programmes in 2015 to 2016 academic year with the allocated capacity delivery fund, the ESFA shall be entitled to
- 4.6.1 reduce, suspend or recover, in accordance with clause 4.7, from the COLLEGE a sum equal to the allocation for the number of industrial placements not delivered; and/or
 - 4.6.2 give consideration to the failure to meet the minimum number of industrial placements when finalising the amount of funding to be provided in respect of the delivery of such placements in any subsequent Funding Agreements between the Parties.
- 4.7 Any amounts including but not limited to those described at clause 4.5 and 4.6, recovered from the COLLEGE will be recovered either by making deductions from future payments due to the COLLEGE under this Funding Agreement or any other Funding Agreement between the Parties, or otherwise through the issue of an invoice. In all such reviews the decision of the ESFA is final.
- 4.8 Where the ESFA determines, as a result of an audit conducted pursuant to Part Two clause 15 (Access and Monitoring), that there has been an underpayment to the COLLEGE, the ESFA shall be under no obligation to provide additional Funds to the COLLEGE accordingly.
- 4.9 The ESFA shall perform a reconciliation at the end of the academic year and shall notify the COLLEGE of the actual number of Students delivered to and the actual amount of money received in respect of the Learning Programmes delivered and compare this to the total Funding paid under this Funding Agreement and to the overall maximum value specified in Appendix 1 – Payment Schedule. Where the ESFA determines, as a result of such review, that there has been an over-payment to the COLLEGE, the ESFA may recover in full from the COLLEGE the amount

or value of all such errors and such sum shall be repayable by the COLLEGE to the ESFA within 30 days of receiving an invoice for the same.

5. Quality Assurance

- 5.1 The COLLEGE represents, warrants and undertakes to the ESFA that it has the necessary resources, skills and experience to carry out the COLLEGE's obligations pursuant to the ESFA Conditions of Funding.
- 5.2 The COLLEGE shall comply and shall ensure that the COLLEGE Related Parties comply with the ESFA Conditions of Funding, all applicable Laws and the most recent policies which may from time to time be issued by the Department, ESFA, OFSTED and awarding bodies of which the COLLEGE is made aware, including but not limited to, being published on the relevant bodies website.
- 5.3 The COLLEGE shall ensure that all activities carried out pursuant to this Funding Agreement shall be documented in accordance with the requirements of the ESFA as notified to the COLLEGE in writing from time to time and shall provide such documentation to the ESFA, as the ESFA shall request from time to time within any reasonable time period specified by the ESFA.
- 5.4 The COLLEGE shall have in place its own quality assurance arrangements that demonstrate that it can comply with the ESFA Conditions of Funding and evidence these arrangements if required to do so in a form and subject to any other conditions, as from time to time the ESFA or the Department may specify.
- 5.5 If the ESFA has concerns in relation to underperformance and / or leadership, management or governance, the ESFA shall, at its discretion, consider referring the matter to the Further Education Commissioner.

Early intervention

- 5.6 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.
- 5.7 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.
- 5.8 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.

- 5.9 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 5.8) specified by the ESFA in writing.
- 5.10 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 Part Two Clause 17.3-17.4 Minor Breach or Part Two Clause 17.5-17.6 Serious Breach.

Financial health and/or control

- 5.11 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:

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

5.11.2 require the COLLEGE to, and the COLLEGE shall, 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

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

5.11.4 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 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:

- 5.11.4.1 the COLLEGE is treated as being an Administered College
- 5.11.4.2 the replacement of some or all of the governing body; and/or
- 5.11.4.3 dissolution of the COLLEGE; and/or

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

5.11.6 terminate, in accordance with Part Two clause 18.2.

5.12 The failure of the COLLEGE, as assessed by the ESFA, to comply with the requirements of 5.11.2 to 5.11.4 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 18.2 (Termination).

5.13 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 18.2 (Termination).

Minimum standards

5.14 The ESFA may, at any time during the Term, undertake an assessment of the quality and delivery of the Services which may include analysis of performance against the national minimum standards, as published by the Department [16 to 18 minimum standards for 2018 - GOV.UK](#). The ESFA will use data reported in the 2017 to 2018 year to measure performance against the national minimum standards for 2018 and will

use this as an indicator of the quality and delivery of the Services by the COLLEGE. Where the ESFA assesses that the Services, in whole or in part, fall below the required standards, the ESFA may, in its absolute discretion, take one or more of the following actions:

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

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

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

5.14.4 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 governors, principal, local stakeholders. The COLLEGE will comply with the requirements/requests of the Further Education Commissioner. The ESFA will act as single point of contact, acting on behalf of Government before advising and recommending to Ministers on one of the following options:

5.14.4.1 the COLLEGE is treated as being an Administered College

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

5.14.4.3 dissolution of the COLLEGE; and/or

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

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

5.14.7 terminate this Funding Agreement in accordance with part two clause 18.2 (Termination) in full, or that part of the Services failing to meet the required standards.

- 5.15 The failure of the COLLEGE, as assessed by the ESFA, to comply with any requirements of 5.14.2-5.14.4 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 18.2 (Termination).

Ofsted Inspection

- 5.16 When the COLLEGE receives notification from Ofsted that the Activities are 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 give 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 the Inspectorate.
- 5.17 Ofsted may, at any time during the Term, undertake an inspection of the COLLEGE, including inspection of any residential accommodation for children provided by the COLLEGE. The ESFA will consider the outcome of any such inspection as follows:

Inadequate in part

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

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

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

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

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

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

Inadequate overall

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

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

5.19.2 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 5.20.2 – 5.20.4 inclusive may be taken.

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

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

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

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

5.20.4 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 governors, principal, local stakeholders. The COLLEGE shall comply with the requirements/requests of the Further Education Commissioner. The ESFA will act as single point of contact, acting on behalf of Government before advising and recommending to Ministers on one of the following options:

5.20.4.1 the COLLEGE is treated as being an Administered College;

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

5.20.4.3 dissolution of the COLLEGE; and/or

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

5.20.6 reduce, suspend or recover payment to the COLLEGE; and/or

5.20.7 terminate this Funding Agreement in accordance with Part Two clause 18.2 (Termination).

- 5.21 The failure of the COLLEGE, as assessed by the ESFA, to comply with any requirements of 5.20.2-5.20.4 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 18.2 (Termination).
- 5.22 ESFA will take action based on Ofsted's provisional and confirmed outcomes as in clause 5.19 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 5.19-5.20 but will be mindful of the implications arising from the outcome of a complaint. The ESFA will review any decisions made at such time as outcomes of any complaint are made known.
- 5.23 Where the COLLEGE is assessed as overall inadequate by Ofsted, the COLLEGE should not seek to host the induction of newly qualified teachers, from QTS (schools) routes, except where this is already underway, until Ofsted has agreed that the COLLEGE is fit for the purpose of providing supervision and training during an induction period, in line with statutory requirements.

Escalation from Further Education Commissioner Diagnostic assessment

- 5.24 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.
- 5.25 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:
- 5.25.1 require the COLLEGE to, and the COLLEGE shall, accept and comply with additional conditions of funding relating to the improvement of

the overall Services. These conditions will apply until the College can demonstrate the required improvement to the ESFA's absolute satisfaction; and/or

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

5.25.3 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 shall comply with the requirements/requests of the Further Education Commissioner. The ESFA will act as single point of contact, acting on behalf of Government before advising and recommending to Ministers on one of the following options:

5.25.3.1 the COLLEGE is treated as being an Administered College;

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

5.25.3.3 dissolution of the COLLEGE; and/or

5.25.4 give consideration to the assessment of the FE Commissioner that the COLLEGE should be placed in formal intervention in its application of lagged learner funding when finalising the amount of funding in any subsequent Funding Agreements between the Parties; and/or

5.25.5 reduce, suspend or recover payment to the COLLEGE; and/or

5.25.6 terminate this Funding Agreement in accordance with Part Two clause 18.2 (Termination).

5.26 The failure of the COLLEGE, as assessed by the ESFA, to comply with any requirements of 5.25.1-5.25.3 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 18.2 (Termination).

Industrial Placement Capacity and Delivery Fund

5.27 Where the COLLEGE is in receipt of funding under the industrial placement capacity delivery fund, if:

5.27.1 the ESFA issues a Notice to Improve under clause 5.11.1, 5.14.1, 5.18.1 or 5.20.1, or

5.27.2 the ESFA, in its sole discretion, considers that the outcome of the financial health assessment and/or the COLLEGE's financial control arrangements is inadequate, or

5.27.3 Ofsted has judged the Services inadequate in part or overall,

the ESFA may, in its absolute discretion, withhold any remaining profiled allocation payments of that fund, and may give consideration of any such matter when finalising the amount of funding to be provided in respect of the delivery of such placements in any subsequent Funding Agreements between the Parties.

6. Retention of Documents

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

7 Public Reputations of the Parties

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

8. Freedom of Information and Confidentiality

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

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

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

Information Regulations.

- 8.3 Nothing in this Part Two clause 8 shall be deemed or construed to prevent the ESFA from disclosing any Confidential Information obtained from the COLLEGE:
- (a) to any other Crown Body, including but not limited to, non-departmental public bodies or quasi Government authorities or agencies; and/or,
 - (b) to any consultant, COLLEGE, college or other person engaged by the ESFA directly in connection with this Funding Agreement, provided that such information is treated as confidential by the receiving consultant, COLLEGE, college or any other person.
- 8.4 In order to ensure that no unauthorised person gains access to any Confidential Information or data obtained and/or processed in the course of the delivery of the Services, the COLLEGE undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice in addition to those set out in Part Two clauses 11 and 12.
- 8.5 The COLLEGE will notify the ESFA as soon as reasonably practicable (and in any event within 24 hours) of its discovery, of any breach of security in relation to Confidential Information and/or Personal Data obtained and/or processed in the course of the delivery of the Services. The COLLEGE shall use all reasonable endeavours to mitigate the possible adverse impacts of any such breach of security including any intrusion into individuals' privacy. The COLLEGE will keep a record of such breaches a copy of which shall be provided to the ESFA upon request. The COLLEGE will use its best endeavours to recover such Confidential Information and/or Personal Data however it may be recorded. The COLLEGE will co-operate with the ESFA in any investigation that the ESFA considers necessary to undertake as a result of any breach of security in relation to Confidential Information and/or Personal Data.
- 8.6 The COLLEGE shall, at its own expense, alter any security systems and/or processes at any time during the Term at the ESFA's reasonable request if the ESFA reasonably believes the COLLEGE has failed to comply with this Part Two clause 8.
- 8.7 The provisions of this Part Two clause 8 will apply for the duration of this Funding Agreement and after its termination.
- 8.8 The ESFA and the COLLEGE acknowledge that, except for any information which is exempt from disclosure in accordance with the

provisions of the FOIA, the content of this Funding Agreement is not Confidential Information.

9. Feedback and Complaints

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

10. Consent to Publication

- 10.1 The Government has set out the need for greater transparency of public data and its commitment to hold public bodies to account over the use of public funds.
- 10.2 In compliance with the Cabinet Office's transparency agenda the ESFA is required to publish information about any payments made to the COLLEGE under this Funding Agreement. Published information shall specifically exclude publication of bank account number and sort code.
- 10.3 The COLLEGE hereby gives its consent for the Department to publish this Funding Agreement in its entirety, including from time to time agreed changes to the allocation, any payments, Funding Agreement and if issued Notices to Improve, to the general public. The Department may consult with the COLLEGE to inform its decision regarding any redactions to this Funding Agreement but the Department shall have the final decision in its absolute discretion.
- 10.4 The COLLEGE shall assist and cooperate with the Department to enable the Department to publish the allocation and any Funding paid or payable to the COLLEGE under this Funding Agreement.

- 10.5 The Department reserves the right to share information about the COLLEGE's performance with any other Crown Body.
- 10.6 The ESFA may disclose information, including the Confidential Information of the COLLEGE:
- (a) on a confidential basis to any Crown Body for any proper purpose of the ESFA or of the relevant Crown Body;
 - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (c) to the extent that the ESFA (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 10.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Funding Agreement;
 - (e) on a confidential basis for the purpose of the exercise any of its rights under this Funding Agreement or
 - (f) on a confidential basis to anybody to which the ESFA intends to assign, novate or dispose its rights, obligations or liabilities under this Funding Agreement in connection with any such assignment, novation or disposal;
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the ESFA under this clause 10.

11. Supply of Data

- 11.1 The COLLEGE must supply to the Education and Skills Funding Agency (ESFA), data on each individual Student, in accordance with the data collections framework set out in the [Individualised Learner Record \(ILR\) Specification 2018 to 2019](#) as amended and updated.
- 11.2 The COLLEGE shall transmit data for each part of the Activities, electronically in a batch file as specified in the [ILR Specification 2018 to 2019](#).

- 11.3 Data collected must be transmitted to the ESFA's secure online portal: [The Hub](#). The Hub is restricted and the COLLEGE confirms it has agreed to comply with the conditions of use regarding the supply of data to the ESFA.
- 11.4 The COLLEGE must ensure that data is received by the ESFA in accordance with the data collection timetable. The COLLEGE should refer to the ESFA's [ILR webpage](#) for additional data guidance and information.
- 11.5 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 a material improvement to the quality of data.
- 11.6 The ESFA reserves the right to suspend payments to the COLLEGE under the Funding Agreement where data quality gives rise to a material impact (in the view of the ESFA) upon the accuracy of the data provided by the COLLEGE.
- 11.7 The COLLEGE shall register with [UKRLP](#) and maintain contact details on an on-going basis.
- 11.8 At times, the ESFA will need to share information with the COLLEGE. The ESFA will do this securely via The HUB. By accessing and using this system the COLLEGE agrees to the terms and conditions detailed at the site governing how it accesses and use the portal. The COLLEGE will need to ensure that it has the right hardware, operating system and browser.
- 11.9 The COLLEGE shall provide ESFA on request with a copy of any Asset Deed held in respect of the Premises.

12. Data Protection and Protection of Personal Data

- 12.1 In this clause 12, 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 Funding 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 Funding Agreement.

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

12.2 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 4. Any other processing of Personal Data undertaken by the COLLEGE will be as a Data Controller and not on behalf of the ESFA. Clauses 12.3 to 12.15 below apply only in relation to

the processing of Personal Data on behalf of the ESFA as set out in Appendix 4, and the only processing that the Processor is authorised to do on behalf of the ESFA is listed in Appendix 4 by the ESFA and may not be determined by the Processor.

- 12.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 12.4 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 Services;
 - (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.
- 12.5 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 4, 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 Appendix 4);
- (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.

- 12.6 Subject to clause 12.7, 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.
- 12.7 The Processor's obligation to notify under clause 12.6 shall include the provision of further information to the Controller in phases, as details become available.
- 12.8 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 12.6 (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.
- 12.9 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.
- 12.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 12.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 12.12 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 12 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.
- 12.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 12.14 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).

- 12.15 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 Funding Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

13. Student Health and Safety and Safeguarding

- 13.1 The COLLEGE shall comply with all relevant health and safety legislation and Health and Safety Executive working regulations and good practice and shall ensure that learning takes place in safe, healthy and supportive environments, which meet the needs of Students. Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 13.2 The COLLEGE shall make arrangements for ensuring that the Services are provided with a view to safeguarding and promoting the welfare of children receiving education or training at their institution. In doing so, the 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.
- 13.3 The COLLEGE shall make arrangements for ensuring that the Services are provided with a view to safeguarding and promoting the welfare of High Needs Students aged 18 to 25 receiving education or training at their institution. In doing so, the COLLEGE shall make those arrangements as if such Students were children and will have regard to any guidance published, from time to time, by the Secretary of State for Education which sets out the expectations in relation to safeguarding practice within further education institutions as if it applied to those Students as if they were children. Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 13.4 In providing the Services the 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.
- 13.5 In providing the Services 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.

- 13.6 In providing the Services, the COLLEGE must comply with the duty on partners of a panel in section 38 of the Counter-Terrorism and Security Act 2015 (the Channel co-operation duty). Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 13.7 Where the COLLEGE provides residential accommodation for Students, the COLLEGE shall inform the ESFA of the provision of such residential accommodation and shall comply with the requirements of the national minimum standards for residential accommodation for children in Colleges published from time to time by the Secretary of State under section 87C of the Children Act 1989. Failure to do so may constitute a Serious Breach of this Funding Agreement.
- 13.8 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, or an interim prohibition order made under regulation 14 of the Teachers' Disciplinary (England) Regulations 2012, to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012) in respect of any Students under the age of 19 and High Needs Students aged 19 to 25 (as if those Students were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012).
- 13.9 Before employing or engaging a person to carry out teaching work in respect of any Students under the age of 19 and High Needs Students aged 19 to 25 (as if those Students were pupils for the purposes of the definition of teaching work in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012), the 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.
- 13.10 The COLLEGE and/or 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.
- 13.11 Where the COLLEGE or one of its subcontractors refer:
- 13.11.1 a safeguarding concern related to sexual violence to Local Authority children's social care/adult social care and/or the police, or
- 13.11.2 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. 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.

13.12 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.

13.13 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 in respect of serious safeguarding concerns, the COLLEGE shall ensure that it informs the ESFA that a referral has been made / information has been provided.

14 Sub-Contracting

14.1 Where the COLLEGE has sub-contracted any duties or obligations arising out of this Funding Agreement, the COLLEGE shall 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 performing all or part of the obligations under this Funding Agreement, the COLLEGE shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

14.2 Where the COLLEGE fails to apply the necessary management, monitoring and control over sub-contracted delivery, or fails to seek the necessary approval from ESFA in advance in respect of whole programmes of study delivered at distance, as set out in the sub-contracting control regulations <https://www.gov.uk/government/publications/funding-guidance-for-young-people-sub-contracting-controls> the ESFA may move the student numbers and associated funding away from the directly funded institution and/or also require the institution to discontinue the sub-contracting arrangement either with immediate effect or from the end of the current funding year. The ESFA may also take this action in respect of other subcontracting arrangements that the COLLEGE has in place.

14.3 The ESFA may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under this Funding Agreement and may subcontract or delegate in any manner any or all of its obligations under the Funding Agreement to any third party or agent.

15. Access and Monitoring

15.1 The ESFA shall give the 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 Services, by any person, representing the ESFA or acting on behalf of the Secretary of State, who has taken or will take no direct part in the conduct or content of the Services.

15.2 For audit, monitoring and evaluation purposes, the ESFA, any person acting on behalf of the Secretary of State, the Department, the Department for Work and Pensions, the National Audit Office, Representatives of the European Commission and the European Court of Auditors (where applicable), its appointed representatives and/or the Inspectorates shall have the right to visit all or any site from which the Services are provided and view operations relating to the Services and to inspect relevant documents and interview Students and the COLLEGE's staff during these visits.

15.3 The COLLEGE shall, and shall ensure that its COLLEGE Related Parties, shall, on reasonable advance notice in writing permit access at any reasonable time to any of the representatives listed at Part Two clause 15.2 in order to:

15.3.1 examine, audit or take copies of any original or copy documentation, accounts, books and records of the COLLEGE and its COLLEGE Related Parties that relate to this Funding Agreement; and/or

15.3.2 visit, view or assess the design, management and delivery relating to the Funding Agreement at any sites where those operations are carried out (including those of COLLEGE Related Parties) and conduct relevant interviews, including interviews with Students, during these visits at any reasonable time; and/or

15.3.3 carry out examinations into the economy, efficiency and effectiveness with which the COLLEGE has used the Secretary of State's resources in the performance of this Funding Agreement.

15.4 Where reasonably required, the COLLEGE and its COLLEGE Related Parties shall provide copies of any relevant documents required by any of the representatives listed at Part Two clause 15.2.

- 15.5 The COLLEGE shall, if required by any of the representatives stated at Part Two clause 15.2 provide appropriate oral or written explanations.
- 15.6 The ESFA reserves the right, at any reasonable time, and as it may deem necessary to require the COLLEGE at its own cost to:
- 15.6.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to perform in accordance with the ESFA Conditions of Funding;
 - 15.6.2 obtain a report by an independent accountant of the ESFA's choice on the financial systems and controls operated by the COLLEGE in respect of payments claimed or received under this Funding Agreement. The COLLEGE must agree the instructions for the work with the ESFA and this may include the ESFA discussing the terms of reference directly with the independent accountant where necessary. The report and the work required in order to produce the report shall be carried out to the satisfaction of the ESFA, and the ESFA must be able to place reliance on it. The 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;
 - 15.6.3 provide a copy of the COLLEGE's latest audited Accounts;
 - 15.6.4 submit any claim for payment, or management information provided to support a claim for payment, to be reviewed by an independent accountant chosen by the ESFA;
 - 15.6.5 provide any additional evidence to support payments made under this Funding Agreement, as the ESFA shall reasonably require.
- 15.7 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.
- 15.8 The COLLEGE must comply with any additional conditions of funding imposed under clause 15.7.
- 15.9 If the ESFA assesses that the COLLEGE has failed to comply with any additional conditions of funding imposed under clause 15.7 within such time as the ESFA deems reasonable, the ESFA may take such actions as it deems appropriate which may include, but is not limited to, under Clause 17.3-17.4 Minor Breach or Clause 17.5-17.6 Serious Breach.

16. Additional Conditions of Funding

16.1 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.

17 Breach

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

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

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

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

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

17.2 For the avoidance of doubt:

17.2.1 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

17.2.2 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

17.3 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.

- 17.4 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Part Two clause 17.3, 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

- 17.5 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:

17.5.1 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.

17.5.2 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 Part Two clause 17.5.1, 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 Students, and cap growth of learning programmes in future years, to the Services to which the Serious Breach relates;
- (b) give consideration to the Serious Breach in its application of lagged learner funding when finalising the amount of funding in any subsequent Funding Agreement(s) between the Parties;
- (c) reduce, suspend or recover payment to the COLLEGE in respect of that part of the Services to which the Serious Breach relates;
- (d) terminate, in accordance with Part Two clause 18 (Termination), in full or in respect of that part of the Services to which the Serious Breach relates.

- 17.6 In the event that any Serious Breach cannot be remedied at all or within the period specified in the notice served in accordance with Part Two clause 17.5.1 or such other period as may be agreed in writing between the Parties, the Party not in breach may at its sole discretion terminate this Funding Agreement or that part of the Services to which the breach relates with immediate effect on notice in writing to the other Party.

18. Termination

- 18.1 Without prejudice to any other remedy, on the occurrence of a Serious Breach that is not capable of being remedied the ESFA shall be entitled

to terminate this Funding Agreement, in respect of that part of the Services to which the Serious Breach relates, by notice to the COLLEGE with immediate effect.

- 18.2 The ESFA shall be entitled to terminate this Funding Agreement on written notice in the circumstances as detailed in Part Two clauses 5 above (Quality Assurance). The period of notice shall be that which, in all the circumstances, the ESFA deems reasonable.
- 18.3 The ESFA shall be entitled to terminate this Funding Agreement on written notice in case of the insolvency, liquidation or dissolution of the COLLEGE.
- 18.4 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 Students have been enrolled for the academic year to which this Funding Agreement relates. Where the ESFA terminates the Funding Agreement under this clause 18.4, the ESFA will withdraw the allocation of Funding for the academic year and will take action to recover Funds where payments have already occurred.
- 18.5 In addition to the rights of termination under any other clauses of this Funding Agreement, either party shall be entitled to terminate this Funding Agreement in respect of all or part of the Services delivered under this Funding Agreement by giving to the other not less than 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.
- 18.6 Termination under Part Two clause 18 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Funding Agreement.
- 18.7 On termination or expiry of this Funding Agreement for any reason, the COLLEGE shall do its utmost to minimise disruption caused to Students and to assist the implementation of any contingency plan proposed by the ESFA either prior to or after the termination or expiry of this Funding Agreement, to deal with the effects of such termination or expiry in so far as it is practicable to do so. The ESFA will not be liable for any costs incurred by the COLLEGE in complying with this clause 18.7.
- 18.8 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 Services, specification papers and other property belonging to the ESFA, which may be in its possession or under its control.

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

19. Dispute Resolution

19.1 Any dispute, difference or question arising between the Parties either during the term of this Funding Agreement or afterwards shall be referred to the relevant ESFA Territorial team who will nominate a member of staff to lead discussion and review with a nominated representative of the COLLEGE in order to try to resolve the same.

19.2 In the event that the nominated representatives are unable to resolve the dispute, difference or question, either of the Parties may (subject to Part Two clause 19.4 below), by written notice to the other party, refer the matter to a Dispute Resolution Panel (“the Panel”) to attempt to reach a mutually acceptable resolution. The Panel shall be made up of one of the ESFA’s Territorial Directors and a senior representative (it is envisaged that this would be the Principal, acting Principal or member of the Senior Management Team) from the COLLEGE. The date of reference to the Panel will be agreed by the Panel themselves. The Panel shall meet within 14 days of the date of reference to them and the Panel shall use best endeavours to identify a mutually acceptable resolution.

19.3 In the event of the Dispute Resolution Panel failing to identify a mutually acceptable resolution within 28 days of the date of reference, then any dispute, difference or question arising out of or in connection with this Funding Agreement including any question regarding its existence, validity or termination, save for any matter or thing as to which the decision of the ESFA is under this Funding Agreement deemed to be final and conclusive, shall be referred to and settled as far as possible by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

19.4 If the Parties agree in writing, the dispute, difference or question that the nominated representatives were unable to resolve may be referred to directly to mediation, in accordance with Part Two clause 19.3 above, without reference to the Panel.

19.5 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Funding Agreement until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.

19.6 If mediation does not reach a conclusion satisfactory to the Parties the dispute, difference or question shall be referred to and finally resolved by arbitration and the provisions of the Arbitration Act 1996 (or any statutory modification or re-enactment thereof) shall apply to such arbitration.

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

20. Revisions

- 20.1 The ESFA may from time to time revise, revoke or add to this Funding Agreement in whole or in part. The COLLEGE may propose changes to this Funding Agreement but the ESFA shall not be obliged to accept any such changes.
- 20.2 Revisions made by the ESFA to this Funding Agreement pursuant to Part Two clause 20.1 above, shall be confirmed in writing. The COLLEGE shall confirm its acceptance by signing and returning a hardcopy to the address set out in Part Two clause 20.3 below.
- 20.3 The COLLEGE may itself make proposals to the ESFA for such changes. These should be addressed in writing to:

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

- 20.4 In response to proposals received the ESFA shall either:
- 20.4.1 amend the Funding Agreement by way of a variation in accordance with Part Two clauses 20.1 and 20.2. The revision will apply to all COLLEGE's;
- 20.4.2 consult on the proposal with consideration to amending Funding Agreements for all COLLEGE in 2018/2019 and/or subsequent years; or
- 20.4.3 confirm that no amendment will be made to the conditions set out in this ESFA Conditions of Funding.
- 20.5 Revisions made by the ESFA to the Appendices and Annexes that form part of this Funding Agreement shall be confirmed in writing. The COLLEGE shall confirm its acceptance by signing and returning a

hardcopy to the address at Part Two clause 20.3. Failure to do so may result in non-payment of any increase in funding described in the revision.

- 20.6 The COLLEGE may itself make proposals to the ESFA for changes to the Services set out in the Appendices and Annexes that form part of this Funding Agreement. These should be addressed in writing to the relevant Young People's Territorial Delivery team.

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

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

22. Governing Law and Jurisdiction

- 22.1 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.

23. Entire Agreement

- 23.1 This Funding Agreement constitutes the entire Agreement between the Parties and shall not be varied except by an instrument signed by the parties or accepted electronically via the Skills Funding Service (SFS).
- 23.2 By accepting this Funding Agreement via the Skills Funding Service (SFS) 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.

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

Contract acceptance via SFS shall bind the COLLEGE as set out in sub-clauses 23.1 and 23.2.

24. Appendices and Annexes (included as appropriate)

Appendix 1 – Payment Schedule
Appendix 2 – Definitions and interpretation
Appendix 3 – Raising the Participation Age (RPA)
Study Programmes, incorporating Traineeships
14 to 16 full-time provision
Appendix 4 - Processing, Personal Data and Data Subjects

Annex 1 – 16 to 18 Residential Bursaries
Annex 2 – PE and Sports Grant
Annex 3 – Army Cadets
Annex 4 – Specialist Provision and High Need Students
Annex 5 – Closing Schools
Annex 6 – 16 to 19 Bursary Fund and Free Meals in FE
Annex 7 – Residential Support Scheme

Appendix 2

Definitions and Interpretation

1.1 For the purposes of this Funding Agreement:

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

"Administered College" means the 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;

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

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

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

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

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

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

"Diagnostic assessment" means an assessment undertaken by the Further Education Commissioner to review a college's financial and educational performance, self-assessment and improvement plans where the college has received an Ofsted RI rating and/or Ofsted RI or Inadequate for apprenticeships or been assessed by the ESFA to be in early intervention for financial health;

"DPA" means the Data Protection Act 2018 and any subordinate legislation made under such Act from time to time together with any

guidance and/or codes of practice issued by the Information Commissioner or relevant Crown Body in relation to such legislation;

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

“ESFA” means the Education and Skills Funding Agency, an Executive Agency of the Department for Education;

“ESFA Conditions of Funding” has the meaning given in Background (2);

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

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

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

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

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

“Funding Agreement” means this document as amended from time to time in accordance with Part Two clause 20 (Revisions) including all appendices and annexes, and any other documents expressly incorporated by reference in this document;

“Funding Guidance for Young People” means titled Funding Guidance for young people 2018 to 2019 <https://www.gov.uk/16-to-19-education-funding-guidance> as amended from time to time by the ESFA;

“Further Education Commissioner” means the individual appointed to provide independent advice to the Minister for Skills and Enterprise (“the Minister”) and the Chief Executive of the ESFA in respect of the capacity

and capability of the existing governance and leadership of further education and sixth form colleges;

“High Needs Student” means a student aged 16 to 18, or any young person aged 19 to 25 subject to an Education Health and Care Plan, who requires additional support costing over £6,000 (i.e. additional to education and support that is funded through the published 16-19 standard funding formula) and for whom the relevant local authority provides top-up funding (Element 3);

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

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

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

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

"Minor Breach" has the meaning given in Part Two clause 17.1.1 (Breach);

“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 DfE. The notice will set out the additional conditions of funding that the COLLEGE will be required to fulfil within a set time period in order to make the required improvements and be compliant.

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

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

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

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

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

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

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

"Serious Breach" has the meaning given in Part Two clause 17.1.2 (Breach);

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

"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);

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

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

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

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

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

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

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

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

Appendix 3

Study Programmes, incorporating Traineeships

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

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

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

For specific detail on Traineeships (Framework for Delivery):

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

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

14- to 16-year-olds enrolled at colleges

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

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

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

Raising Participation Age

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

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

Appendix 4 **Processing, Personal Data and Data Subjects**

Description	Details
Subject matter of the Processing	<p>The subject matter is the personal data of Students 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>https://www.gov.uk/government/publications/esfa-privacy-notice</p> <p>https://www.gov.uk/government/collections/individualised-learner-record-ilr</p>
Duration of the Processing	<p>The duration of the Processing covers the academic year data returns to the ESFA as defined in Appendix A of the ILR specification to enable funding and audit of the learning programmes defined in this Funding Agreement.</p> <p>https://www.gov.uk/government/collections/individualised-learner-record-ilr</p>
Nature and purposes of the Processing	<p>The nature and purposes of the processing is defined in the ESFA privacy notice.</p> <p>https://www.gov.uk/government/publications/esfa-privacy-notice</p> <p>The COLLEGE will be required to submit the data to the ESFA as set out in Part 2 Clause 11 Supply of 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>https://www.gov.uk/government/collections/individualised-learner-record-ilr</p>
Categories of data subject	<p>The data subjects are Students on education or training programmes administered by the ESFA that are subject</p>

	to this Funding Agreement.
Description	Details
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>Information on how the data must be supplied to the ESFA is detailed in the ILR specification and its appendices.</p> <p>https://www.gov.uk/government/collections/individualised-learner-record-ilr</p> <p>For the purposes of the DfE as a data controller of the data, the 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 & Pensions as a data controller, where Learner data is used as match on the 2007-13 ESF programme, the data must be retained securely until at least 31 December 2022 and where Learner data is used as match on the 2014-20 ESF programme, the data must be retained securely until 31st December 2030.</p> <p>The 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>