

Financial Memorandum

Part 2

1 August 2011 – 31 July 2014 Revised

May 2012

Of interest to Providers; Local Authorities and Colleges who have funding from the Skills Funding Agency



European Union
European Social Fund
Investing in jobs and skills

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1 Introduction

- 1.1 This Part 2 of the Financial Memorandum records the agreement between the Chief Executive of Skills Funding (the Chief Executive) and [***Name of College***] (the College) regarding the amount of funding to be paid by the Chief Executive to the College for Learning Provision (the Provision) for the periods as set out in Appendix 1
- 1.2 The funding allocation(s) by the Chief Executive is made subject to the general conditions of payment of funds by the Chief Executive to the Governing Body of the College set out in Part 1 of the Financial Memorandum between the Chief Executive and the College and to the conditions set out in this Part 2 and any other documents referred to herein.

2 Funding and Payment

- 2.1 The breakdown of funds which the Chief Executive agrees to pay to the College is set out in Appendix 1 of this Financial Memorandum.

3 Conditions of Funding

- 3.1 The detailed requirements in respect of each learning programme are set out in the Chief Executive's Funding Rules 2012/13 as amended and updated from time to time and which form part of the terms and conditions of this Financial Memorandum.
- 3.2 The maximum value of the Adult Skills Budget or for Learning Provision excluded from this budget, as shown in Appendix 1 and Appendix 2 may not be exceeded for any reason, except by an agreed variation in writing to this Financial Memorandum. The Chief Executive will not be liable to make any payment in excess of the maximum values set out above, or as varied in writing. Where the funding period is longer than one year, funding for subsequent years is subject to funds being made available to the Chief Executive. For Learning Provision that is excluded from the Adult Skills Budget, the College is not permitted to vire funding between Learning Programmes except by way of an agreed variation in writing to this part of the Financial Memorandum.
- 3.3 For the avoidance of doubt the overall maximum values for each Learning Programme at Appendix 1 takes precedence over delivery volumes (if any) in Appendix 2. Where the College considers that the combination of funding rates, as published on the Learning Aims Reference Application and volumes would result in the overall maximum value being exceeded, the College must notify the Chief Executive and the parties will either agree a variation to the volumes, funding rates or to the maximum value for the Learning Programme to ensure the College remains within the agreed maximum value.
- 3.4 The Provision is to be delivered in accordance with any specific requirements of the Chief Executive and delivery profiles and any tender document submitted by the College which all form part of the conditions of funding,

this will include Appendix 1, Appendix 2 and any Funding Appendices of this Financial Memorandum.

- 3.5 With the exception of ESF funding, the Chief Executive will restrict delivery of this Financial Memorandum against the funding available up to the 31 March 2013 as detailed in Appendix 1. Where the delivery within this financial year fails to meet the minimum levels of performance or where the delivery in this period would result in the overall maximum value being exceeded, the Chief Executive reserves the right at its absolute discretion to vary the Financial Memorandum accordingly.
- 3.6 The Chief Executive reserves the right to give the College three months notice to reduce the overall maximum value for any Learning Programme without the need to give a reason.
- 3.7 The College must supply to the Data Service, who collects this information on behalf of the Chief Executive, data on each individual learner, in accordance with the data collections framework set out in the '*Individualised Learner Record (ILR) Specification 2012/13*' as amended and updated which is published on the *information authority's* website (www.theia.org.uk) in accordance with the '*Provider Support Manual*' as amended and updated.
- 3.8 Where the College is delivering the Provision to Learners claiming out of work benefits, it must provide data to the Secretary of State with responsibility for unemployment or their nominated representative in accordance with the requirements notified to the College. Failure to transmit complete and accurate data under this Clause 3.8 will constitute a breach of the conditions of funding set out in this Financial Memorandum and may result in payments for this Provision to be delayed or withheld.
- 3.9 The College must update the course information funded by the Chief Executive at www.coursedirectoryproviderportal.org.uk in accordance with the course directory data collection requirements which can be found at <http://www.coursedirectoryproviderportal.org.uk/datarequirements>.
- 3.10 The Chief Executive will require the College to:
 - 3.10.1 review the management reports provided by either the College Internal Auditors or by the Chief Executive's Funding Auditors about the quality and reliability of the College's MIS and ILR data;
 - 3.10.2 commission either the College's Internal Auditors or the Chief Executive's Funding Auditors to evaluate and support the College's actions and action plan to address any data quality issues that have been identified in the resulting management letters; and
 - 3.10.3 secure confirmation from the Governing Body that it has been informed of any concerns and secure their commitment to overseeing the timely and accurate return of data in future.

- 3.11 The Chief Executive may allocate additional funds to the College under this part of the Financial Memorandum. Where these funds are to be consolidated within the College's FE agreed funding allocation, a revised Appendix 1 will be issued. The terms and conditions of this Financial Memorandum will apply to these funds unless otherwise specified. Where the additional funds are not consolidated, the general terms and conditions of this Financial Memorandum will still apply unless specified otherwise.

4 Sub-contracted Provision

- 4.1 Where the College sub-contracts or intends to sub-contract any duties or obligations arising out of this part of the Financial Memorandum the College must provide the Chief Executive with details of all sub-contractors bi-annually, by fully and accurately completing the Declaration of Subcontractors form in accordance with the deadline set out in the Funding Rules. If the College is not sub-contracting then a nil return must be received by the deadline date. The College must notify the Chief Executive of any within year changes to its sub-contractors. The Chief Executive reserves the right to require the College not to enter into or to terminate any sub-contract to deliver the Provision under this part of the Financial Memorandum.
- 4.2 The College must comply with the requirements on sub-contracting delivery of the Provision set out in the Chief Executive's Funding Rules as amended and updated. Sub-contracting any part of the delivery of the Provision shall not relieve the College of any obligation or duty attributable to it under this part of the Financial Memorandum.
- 4.3 The delivery of the Provision under this part of the Financial Memorandum may only be sub-contracted to one level.
- 4.4 Where the College has sub-contracted any duties or obligations arising out of this part of the Financial Memorandum, the College shall ensure that there is in place a legally binding sub-contract and send copies of the sub-contract to the Chief Executive if requested in writing to do so. Where the College enters into a sub-contract for the purpose of delivering the Provision, the College shall ensure that the sub-contract includes any terms specified in the Funding Rules.
- 4.5 The College shall ensure that any sub-contract entered into for the purpose of delivering the Provision under this part of the Financial Memorandum contains a term providing that the Chief Executive has the right to enforce the terms of the sub-contract.
- 4.6 In performing its obligations under this part of the Financial Memorandum the College shall ensure that the awarding of sub-contracts is based on fair and open competition.
- 4.7 The College must seek the approval of the Chief Executive where it has not previously used sub-contractors and wishes to do so. This approval must be

sought before awarding any services under this contract to a sub-contractor that is new to the College.

- 4.8 The College may not assign any duties or obligations under this part of the Financial Memorandum without the consent of the Chief Executive.

5 Raising Standards

- 5.1 The College shall deliver the Provision to an acceptable standard of quality by using all reasonable endeavours:

5.1.1 to minimise drop out rates, deliver high completion, achievement and success rates and appropriate progression;

5.1.2 to at least meet the minimum quality standards that apply to the Learning Programmes delivered. These minimum quality standards and other types of underperformance will be set out by the Chief Executive;

5.1.3 to ensure competent and appropriately qualified staff deliver and assess learning. The College shall be responsible for the professional development and training of its staff and for meeting any minimum requirements which may be required by OFSTED or other regulatory authority.

5.1.4 to offer equality of access to learning opportunities and close equality gaps in learning and outcomes;

5.1.5 to provide a safe, healthy and supportive environment, which meets the needs of Learners;

5.1.6 to provide good management and leadership of the learning process;

5.1.7 to deliver value for money and financial regularity and probity; and

5.1.8 to ensure any sub-contractors delivering the Provision comply with the requirements set out in Clauses 5.1.1 to 5.1.7 above.

- 5.2 The College must take all reasonable steps to meet the relevant requirements for data gathering for the FE Choices Performance Indicators as outlined currently at <http://fepi.skillsfundingagency.bis.gov.uk/> and in any subsequent updates to these web pages.

- 5.3 Where appropriate the College shall confirm in writing to the Chief Executive that it has formal approval from relevant awarding bodies to deliver the qualifications, which form part of the Provision.

- 5.4 When the College receives notification from OFSTED that the Provision (including leadership and management) is to be inspected, the College shall

provide the Chief Executive with a copy of its quality improvement activity, and any other relevant information in accordance with the required timescale of OFSTED.

- 5.5 The Chief Executive will issue the College with a Notice of Concerns in the following circumstances:
 - 5.5.1 The College receives an inadequate OFSTED inspection rating (including leadership and management)
 - 5.5.2 All or any part of the Provision delivered under this part of the Financial Memorandum falls below the minimum quality standards or other standards which may be set by the Chief Executive.
 - 5.5.3 The College is rated inadequate by the Chief Executive for financial health or financial control.
- 5.6 The Notice of Concerns will set out the reasons for the issue of the Notice of Concerns and the actions the Chief Executive requires the College to take to address the concerns together with the timescales within which that action must be taken. The Notice of Concern may include additional conditions of funding.
- 5.7 The Chief Executive will notify Learning and Skills Improvement Service (LSIS) that a Notice of Concern has been issued and LSIS will provide support to the College to enable it to comply with the Notice of Concern.
- 5.8 The Notice of Concern and any additional funding conditions will be lifted once the College has taken the required action to address the concerns within the timescales set out.
- 5.9 If the College fails to take the actions set out in the Notice of Concern within the timescales set out, the Chief Executive will issue a Notice of Withdrawal of Funding. The Notice of Withdrawal of Funding will require the College to carry out a fundamental review of its structures, leadership and operations to address the concerns set out in the Notice of Concerns. The College will have the option of support from LSIS in carrying out this review.
- 5.10 Where the College develops a robust plan that has the support of stakeholders and has been subject to a transparent and, if appropriate, competitive process, the Chief Executive will lift the Notice of Withdrawal of Funding. The Notice of Concern will remain in place until the plan has been implemented.
- 5.11 In the event that the College fails to comply with the Notice of Withdrawal of Funding, the Chief Executive will issue a Confirmation of Withdrawal of Funding following consultation with the Secretary of State who may choose to exercise his statutory intervention powers.

- 5.12 Once a Confirmation of Withdrawal of Funding has been issued the College will be removed from the Register of Training Organisations and the Chief Executive will secure another training provider to deliver the Provision.
- 5.13 The College shall for those staff delivering the services be responsible for their professional development and training and meeting any legal requirements to ensure that they are appropriately qualified and trained. The College will ensure that its staff are trained in accordance with the Further Education Teachers Qualification (England) Regulations 2007 and the Further Education Teachers Continuing Professional and Registration (England) Regulations 2007 and LLUK Standards.

6 Specific Learner Incident Reporting Requirements

- 6.1 The College shall inform the Chief Executive of the death of any Learner which is as a result of work undertaken whilst in employment and who is undertaking a related Learning Programme.

This shall be done by:

- 6.1.1 informing the Chief Executive's representative by telephone or email immediately The College becomes aware of the event;
- 6.2 The College shall investigate or assess the circumstances of all learner incidents within the scope of RIDDOR and follow HSE guidance 'Investigating Accidents and Incidents: A Workbook for Employers, Unions, Safety Representatives and Safety Professionals' (HSG245) ISBN 0717628272. The College shall only use persons competent to investigate/assess learner incidents with a view to identifying the causes of any incident and lessons to be learned.
- 6.3 The College shall also monitor, and act on, any other harm to learners to the extent that the College could reasonably be expected to do so and/or where the harm could affect the quality of the learning experience. Harm includes (but is not limited to) other incidents that cause absence from learning, any loss to the learner of any physical or mental faculty or any disfigurement, incidents of bullying and harassment.
- 6.4 The College shall co-operate with the Chief Executive and Department for Work and Pensions (DWP) for the purposes of the Analogous Industrial Injuries Scheme in respect to those learners to which it applies.

7 Learner Health, Safety and Welfare

- 7.1 The College shall ensure so far as reasonably practicable that learning takes place in safe, healthy and supportive environments, which meet the needs of learners. The College shall provide information to the Chief Executive, as and when specifically requested, to give assurance that adequate arrangements exist for learner health safety and welfare.

- 7.2 Where part of the learning takes place in an environment outside the direct control of the College, the College shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of learners.
- 7.3 The College shall adopt recruitment processes that comply with the law and will ensure that children and vulnerable adult learners are protected. The College will take all necessary actions to comply with current legal safeguarding requirements. The College must make the necessary checks to ensure that employment that involves regular contact with young people under the age of 18 or other vulnerable learners is not offered to or held by anyone who has been convicted of certain specified offences, or whose name is included on lists of people considered unsuitable for such work held by the Department for Education and the Department of Health. Information should also be sought from the Independent Safeguarding Authority (ISA) Vetting and Barring Scheme. The College must undertake an adequate risk assessment to establish what action is required where their employees have regular contact with learners under 18 or other vulnerable learners.
- 7.4 The College will carry out criminal records bureau checks on all overseas applicants for employment and seek additional information about an applicant's conduct. The College must review its records and be able to demonstrate it has robust record-keeping procedures in relation to the checks it has undertaken and the staff it employs.
- 7.5 In working with other organisations/bodies, the College shall make arrangements to co-ordinate and co-operate effectively for reasons of learner health, safety and welfare. In particular, respective responsibilities shall be clearly identified and documented as appropriate, to ensure understanding.
- 7.6 The College shall, in circumstances where it sub-contracts the management and/or delivery of the services under this Financial Memorandum, ensure that all the clauses in respect of specific learner incident reporting requirements and learner health safety and welfare are included in its agreement with sub-contractors.

8 Equal Opportunities

- 8.1 The College shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010, or any statutory modification or re-enactment thereof or any other statutory provision relating to discrimination in employment or the provision of services. The College shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the College and all sub-contractors employed in the execution of the agreement. The College will comply with the detailed requirements in relation to equality of opportunity set out in clauses 8.2 to 8.4.
- 8.2 The College will, in delivering the Provision under this part of the Financial Memorandum, demonstrate that it has had regard to the duties placed on

the Chief Executive by relevant equality legislation. The delivery of the Provision should comply with the principles set out in the Chief Executive's Single Equality Scheme as amended and updated. The College will take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the College and all sub-contractors employed to deliver the Provision.

- 8.3 The College shall ensure that equality of opportunity is built into all aspects of provision; the business planning process; and the self assessment process. The College shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. The College shall use appropriate, specific and measurable improvement measures. These will be proportionate, relevant and aligned to the provision the College is funded to deliver.
- 8.4 The Chief Executive shall use a variety of equality information and data to support judgements about quality and eligibility for funding. These may include, but are not limited to: inspection grades for equality and diversity, judgements from the Equality and Human Rights Commission, and the success and participation rates of different groups of learners.

9 European Funding and Other Sources of Funding

- 9.1 Where notified in writing by the Chief Executive that the funding under this Financial Memorandum is required to be used as match funding:
- 9.1.1 The College must not use the funding paid under this Financial Memorandum to support bids or claims that will be used to secure funding from any European source, either on its own behalf or on behalf of the Chief Executive, including but not limited to as match funding, without obtaining consent in writing from the Chief Executive, that it may do so (such consent not to be unreasonably withheld).
- 9.1.2 Where the College or any of its sub-contractors has access to other funding streams, the College or any of its sub-contractors will be required to demonstrate through accounting, management information systems and any other relevant evidence (in the sole discretion of the Chief Executive or any other body undertaking the audit or monitoring), to the Chief Executive and any body acting on their behalf that no double funding has occurred in respect of the Provision delivered under this part of the Financial Memorandum .
- 9.1.3 Where the Chief Executive identifies double funding in respect of the provision, or any part thereof, the College will be liable to repay to the Chief Executive any sums paid, or part thereof, by the Chief Executive in respect of the Provision for which the College has received funding from another source and the Chief Executive reserves the right to deduct such sums from any monies owed to the College under this part of the Financial Memorandum.

- 9.1.4 The Chief Executive reserves the right to use payments made under this part of the Financial Memorandum as match funding for European Social Fund Co-Financing Projects. Where requested to do so in writing by the Chief Executive, the College shall provide such information and in the form as the Chief Executive specifies to enable the Chief Executive to comply with the requirements of the European Social Fund.
- 9.1.5 The College shall if requested to do so by the Chief Executive inform learners or others that the Provision delivered has been financed in whole or part by the European Social Fund.
- 9.1.6 General eligibility for European Social Fund participants is set out in the ESF Operational Programme for England and supporting Guidance, from the European Social Fund Division of the Department for Works and Pensions which can be found on <http://www.dwp.gov.uk/esf>. Learners must meet the eligibility criteria defined in the Operational Programme as well as the specific eligibility criteria set out in this Financial Memorandum.
- 9.2 The College will comply with written requests by the Chief Executive to display the 2007/13 European Social Fund logos and emblems on any materials relating to funding by the ESF. The Chief Executive will make available to the College all relevant 2007/13 European Social Fund logos and emblems.
- 9.3 The College must ensure that where it is agreed with the Chief Executive that the use of logos in a document or other form of communication for promotional purposes is not practicable, the following wording is included: "This programme is part funded by the European Union through the European Social Fund".
- 9.4 The College must ensure that all learners are aware of the support of the European Social Fund in respect of the Provision being delivered under this Financial Memorandum.
- 9.5 The College must ensure that where the use of logos in a document or other form of communication for promotional purposes is not practicable, the following wording is included: "This programme is co-financed by the Skills Funding Agency".

10 Retention of Documents

- 10.1 The College and its sub-contractors shall retain original invoices; management information returns and all other documents necessary to verify the Provision delivered by itself or by its sub-contractors in relation to this agreement for 6 years from the end of the financial year in which the last payment is made using monies from the European Social Fund, or where any payments made under this Financial Memorandum for the services have been used as match-funding for a European Social Fund Co-Financing

Project, the College will be required to retain documents until 31 December 2022.

11 Freedom of Information and Confidentiality

11.1 Definitions

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

”FOIA” means the freedom of information act 2000 and all regulations made there under from time to time or any superseding or amending enactment and regulations, and words and expressions defined in the FOIA shall have the same meaning in this clause 11; and

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

11.2 Freedom of Information

11.2.1 the Chief Executive and the College acknowledge and agree that both are subject to legal duties under FOIA, which may require the other to disclose on request information relating to this Financial Memorandum or otherwise relating to the Chief Executive or the College;

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

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

11.2.4 notwithstanding anything in this Financial Memorandum to the contrary (including without limitation any obligations of confidentiality), the Chief Executive and the College shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is exempt information the Chief Executive and the College shall use reasonable

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

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

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

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

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

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

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

11.2.7 the Chief Executive and the College shall assist the other as reasonably necessary to enable the Chief Executive or the College to comply with their obligations under FOIA.

11.3 The Chief Executive reserves the right to share information about the College's performance under this Financial Memorandum with the Department for Business Innovation and Skills and any other government department or government agency or other public body.

11.4 The Chief Executive reserves the right to publish details of this Financial Memorandum and the payments made under it to comply with the Government's transparency requirements.

11.5 The provisions of this clause 11 will apply for the duration of the Financial Memorandum and after its termination.

12 Data Protection and Protection of Personal Data

- 12.1 The College shall ensure that information acquired by the College and its sub-contractors under the delivery of the provision under this part of the Financial Memorandum will at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 and the Data Protection Principles together with any subsequent re-enactment or amendment thereof in storing and processing personal data, and all personal data acquired by either the Chief Executive or the College shall be returned to the disclosing party on request. Both parties hereby acknowledge that performance of a duty imposed by the Act shall not constitute a breach of any obligation in respect of confidentiality which may be owed to the other party. The clause shall not affect the Chief Executive's ability to make a search with a credit reference agency.
- 12.2 With respect to the parties' rights and obligations under this Financial Memorandum the parties agree that the Chief Executive is the Data Controller and the College is the Data Processor within the meaning of the Data Protection Act.
- 12.3 The College shall:
- 12.3.1 process Personal Data only in accordance with the instructions from the Chief Executive (which may be specific instructions or instructions of a general nature as set out in the Financial Memorandum or otherwise notified by the Chief Executive to the College during the term of this part of the Financial Memorandum;
 - 12.3.2 process the Personal Data only to the extent and in such manner as is necessary for the Provision of the Services or as is required by Law or any Regulatory Body;
 - 12.3.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 12.3.4 take reasonable steps to ensure the reliability of any College or Contractor Personnel who have access to the Personal Data;
 - 12.3.5 obtain prior written consent from the Chief Executive in order to transfer the Personal Data to any sub-contractors or other third parties for the delivery of Provision;
 - 12.3.6 ensure that all College Personnel do not publish, disclose or divulge

any of the Personal Data to any third party unless directed in writing to do so by the Chief Executive;

- 12.3.7 notify the Chief Executive within 5 working days if it receives:
 - 12.3.7.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 12.3.7.2 a complaint or request relating to the Chief Executive's obligations under the Data Protection Legislation;
- 12.3.8 provide the Chief Executive with full co-operation and assistance in relation to any complaint or request made, including by:
 - 12.3.8.1 providing the Chief Executive with full details of the complaint or request;
 - 12.3.8.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Chief Executive's instructions;
 - 12.3.8.3 providing the Chief Executive with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Chief Executive); and
 - 12.3.8.4 providing the Chief Executive with any information requested by the Chief Executive.
- 12.3.9 permit the Chief Executive or the Chief Executive's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the College's data Processing activities (and/or those of its agents, subsidiaries, and sub-contractors) and comply with all reasonable requests or directions by the Chief Executive to enable the Chief Executive to verify and/ or procure that the College is in full compliance with its obligations under this Financial Memorandum;
- 12.3.10 provide a written description of the technical and organisational methods employed by the College for processing Personal Data (within the timescales required by the Chief Executive: and
- 12.3.11 not Process Personal Data outside the European Economic Area without the prior written consent of the Chief Executive and, where the Chief Executive consents to a transfer, to comply with:
 - 12.3.11.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data is transferred; and

12.3.11.2 any reasonable instructions notified to it by the Chief Executive

- 12.4 Where the College is delivering the provision to learners claiming out of work benefits, the Secretary of State with responsibility for unemployment is the Data Controller in relation to Personal Data which the College is required to provide to them under any enactment. This clause 12.4 will be enforceable by the Secretary of State with responsibility for unemployment in relation to any Personal Data processed by the College on their behalf.
- 12.5 Where the College is providing the service to learners who are subject to active management by the Offender Manager in respect of an order or licence, the Secretary of State for Justice (or their successor) is the Data Controller in relation to Personal Data which the College is required to provide to the Secretary of State for Justice.

13 Branding and Logos

- 13.1 The College, when receiving funding from the Chief Executive for any Provision, shall comply with the requirements of the endorsement identity, available on the Skills Funding Agency identity guidelines website at, <https://brand.skillsfundingagency.bis.gov.uk/>; on all and any promotional materials or activities in relation to the services. This shall include but not be limited to prospectuses, direct mail advertising, TV and radio advertising, merchandising or any other literature or products.
- 13.1.1 The College shall be given access to any logos and statements, which it is required to use. The College will be required to use logos and statements in accordance with the terms of use and should not alter or amend such logos or statements. Logos and statements are only to be used in relation to the provision under this agreement. The requirements of this clause 13 or the requirements or terms of use of which the College is made aware are a condition of funding, failure to comply could result in the funding being withdrawn.
- 13.1.2 The College may also be required to use logos from other co-branding or co-funding participants and must comply with any terms which apply to the use of such logos.
- 13.2 The College must ensure that the terms of this clause 13 are contained in any sub-contract of the Provision.

14 State Aid

- 14.1 The College should satisfy themselves, if the European rules on State Aid apply to the funding paid under this part of the Financial Memorandum.
- 14.2 Where the rules on State Aid apply, the Chief Executive will supply to the College details of the records that the College will need to collect and retain.

- 14.3 The Chief Executive reserves the right to require the College to obtain a contribution towards the cost of the provision delivered under this Financial Memorandum from the employer of any participant. Where a contribution is required, the Chief Executive will confirm to the College in writing the exact percentage of the contribution.
- 14.4 Where Chief Executive requires the College to obtain a contribution towards the cost of the provision under clause 14.3 above of this part of the Financial Memorandum, the College must provide evidence that the contribution has been received.
- 14.5 In the event that any funding paid under this part of the Financial Memorandum is deemed to constitute unlawful state aid the Chief Executive reserves the right to require immediate repayment of any such funding.

15 Feedback and Complaints

- 15.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the services shall rest with the College. The College shall have procedures in place, which are acceptable to the Chief Executive, to gather and act upon feedback and complaints from learners and/or their representatives and employers and the wider community.
- 15.2 The Chief Executive may issue guidance for the College on dealing with feedback and handling complaints, and will set out the minimum standards expected.
- 15.3 The College shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the Chief Executive.
- 15.4 Where a complaint has not been resolved to the satisfaction of the complainant the College will advise the complainant of his or her right to complain to the Chief Executive and co-operate with any investigation carried out by the Chief Executive.

16 Access and Monitoring

- 16.1 The Chief Executive shall give the College reasonable advance notice in writing of proposed visits to the College or its sub-contractors, to observe the delivery of the provision, by any person who has taken or will take no direct part in the conduct or content of the provision.
- 16.2 For monitoring and evaluation purposes, the Chief Executive, the Secretary of State and their agents, the Department for Business, Innovation and Skills, the Department Education, the Department for Work and Pensions, the National Audit Office, representatives of the European Commission and the European Court of Auditors, the Audit Commission and the Inspectorates shall have the right to visit all or any College site(s), or those of its sub-

contractors and view operations relating to the Provision and to inspect relevant documents and interview learners and staff during these visits.

- 16.3 The College shall, and ensure that its sub-contractors shall, permit access at any reasonable time to any of the representatives listed at clause 16.2 in order to:
 - 16.3.1 examine, audit or take copies of any original or copy documentation, accounts, books and records of the College and its sub-contractors that relate to this Financial Memorandum;
 - 16.3.2 visit, view or assess the design, management and delivery relating to the Provision at any premises where those operations are carried out (including those of sub-contractors) and conduct relevant interviews, including interviews with learners, during these visits at any reasonable time;
 - 16.3.3 carry out examinations into the economy, efficiency and effectiveness with which the College has used the Chief Executive's funding in the delivery of the Provision.
- 16.4 Where reasonably required, the College and its sub-contractors shall provide copies of any relevant documents required by any of the representatives listed at clause 16.2.
- 16.5 The College shall, if required by any of the representatives stated at clause 16.2 provide appropriate oral or written explanations.
- 16.6 The Chief Executive reserves the right, at any reasonable time, and as it may deem necessary to require the College at its own cost to:
 - 16.6.1 provide evidence of financial resources sufficient to enable it to continue to deliver the Provision;
 - 16.6.2 obtain a report by an independent accountant of the Chief Executive's choice on the financial systems and controls operated by the College in respect of funding claimed or received under the Financial Memorandum;
 - 16.6.3 provide a copy of the College's latest audited accounts;
 - 16.6.4 submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the Chief Executive
 - 16.6.5 provide any additional evidence to support payments made under this agreement, as the Chief Executive shall reasonably require
- 16.7 The College shall in performing the services comply fully with all relevant rules and regulations of the Chief Executive in force from time to time.

Appendix 1 Summary of Programme Funding [DN: Supplied by Central Delivery Service].

APPENDIX 2 – SUPPORTING DOCUMENTATION – FUNDING AGREEMENT

FUNDING APPENDIX – Contract Advisors to add as appropriate

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