



Education & Skills
Funding Agency

Contract Type Local Authority Conditions of Funding (Grant)

Funding Period 1 August 2018 to 31 July 2019

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

And

Funding for Part 1

Contract Number

ACCEPTANCE BY PROVIDER

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

This Agreement is made on the date the Agreement is digitally signed by THE AUTHORITY 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

Contents

General Terms and Conditions

1	Purpose of the Agreement
2	Definitions and Interpretation
3	Introduction
4	The Authority's Obligations
5	Payment
6	Freedom of Information and Confidentiality
7	Consent to Publication
8	Data Protection and Protection of Personal Data including Student Learner Information
9	Audit and Assurance (including Access and Monitoring)
10	European Funding and Other Sources of Funding
11	Additional Conditions of Funding
12	Breach
13	Termination
14	Assignment and Subcontracting
15	Provision of Information
16	Dispute Resolution
17	Revisions
18	Entire Agreement / Amendments
19	Appendices and Annexes

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

Authority NAME
ADDRESS 1
ADDRESS 2
ADDRESS 3
ADDRESS 4
POSTCODE

SECRETARY OF STATE FOR
EDUCATION
ACTING THROUGH THE EDUCATION
AND SKILLS FUNDING AGENCY
CHEYLESMORE HOUSE
QUINTON ROAD
COVENTRY
CV1 2WT

Hereinafter called
THE AUTHORITY

Hereinafter called
THE ESFA

GENERAL TERMS AND CONDITIONS

1 Purpose of the Agreement

- 1.1 THE ESFA has agreed to purchase, and THE AUTHORITY has agreed to supply, Services on and subject to the terms and conditions of this Agreement. The Services subject to the terms and conditions of the Agreement are in respect 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).
- 1.2 The conditions set out in Part 1 and Part 2 of the Agreement apply to Services **funded** by THE AUTHORITY.
- 1.3 The conditions set out in Part 1 and Part 3 of the Agreement apply to Services **delivered** by THE AUTHORITY.

2 Definitions and interpretation

- 2.1 For the purposes of this Agreement:

- 2.1.1 “**Agreement**” means this document including all appendices and annexes, and any other documents expressly incorporated by reference in this document. Where this Agreement, or any part of therein, has been awarded following an open and competitive tender, any related tender documentation including, but not limited to the Pre-Qualification Questionnaire, Invitation To Tender Questionnaire, Commercial Schedule and Data Security Plan, shall be incorporated within the terms of the Agreement.
- 2.1.2 "**Authority Related Part(y)(ies)**" means any employee, officer, consultant, agent or any other person whatsoever acting for or on behalf of THE AUTHORITY or otherwise under THE AUTHORITY'S control and direction (including but not limited to sub-contractors);
- 2.1.3 “**Child**” means a person under the age of 18;
- 2.1.4 "**Commencement Date**" means 1 August 2018;
- 2.1.5 "**Confidential Information**" means all confidential information of a party, including its business, finances, services, products or affairs, operations, processes, plans or intentions, product information, know-how, software, designs, trade secrets, market opportunities, the terms and conditions of this Agreement and any other information of commercial value, whether disclosed in writing or verbally or by any other means (and which is either expressly stated to be confidential or which is by its nature implicitly confidential);
- 2.1.6 “**Crown**” means Queen Elizabeth II and any successor;
- 2.1.7 “**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;
- 2.1.8 "**Deliverables**" means all reports, documents, works, products, databases, materials and other deliverables brought into existence, created or acquired by THE AUTHORITY in whole or in part using funding provided under this Agreement and/or as a result of the provision of the Services including, but not limited to, Assets and Confidential Information;
- 2.1.9 “**the Department**” means the Department for Education which incorporates its Executive Agency, THE ESFA;
- 2.1.10 “**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;

- 2.1.11 “**ESFA**” means the Education Funding Agency an Executive Agency of the Department for Education;
- 2.1.12 “**Exempt Information**” means any information or class of information (including but not limited to any document, report, Agreement or other material containing information) relating to this Agreement or otherwise relating to THE AUTHORITY, which potentially falls within an exemption to FOIA (as set out therein);
- 2.1.13 “**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 Agreement;
- 2.1.14 “**FOIA notice**” means a decision notice, enforcement notice and/or an information notice;
- 2.1.15 “**Funds**” means the monies paid by the ESFA to the SFC pursuant to this Funding Agreement and “**Funding**” shall have the same meaning;
- 2.1.16 “**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;
- 2.1.17 “**High Needs Participant**” means a Participant 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);
- 2.1.18 “**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);
- 2.1.19 “**Minor Breach**” shall mean a delay or non-performance by either Party of its obligations, in part or in full, under the Agreement which does not materially, adversely or substantially affect the performance or delivery of the Services, in part or in full, or the provision of a safe, healthy and supportive learning environment;
- 2.1.20 “**Ofsted**” means the Office for Standards in Education, Children’s Services and Skills;
- 2.1.21 “**Participant**” means any persons to whom THE AUTHORITY is required to deliver any of the Services;

- 2.1.22 “**Parties**” means THE ESFA, on behalf of the SECRETARY OF STATE, and THE AUTHORITY;
- 2.1.23 “**Premises**” means the location/s where the Services are to be performed, as detailed in the Agreement;
- 2.1.24 “**SECRETARY OF STATE**” means the SECRETARY OF STATE for Education;
- 2.1.25 “**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 and includes a breach of security that adversely affects the personal data or privacy of an individual. Failure to comply with legislation, or actions or omissions by THE AUTHORITY that endanger the health or safety of Participants would constitute a Serious Breach
- 2.1.26 “**Services**” means the provision of 16-19 Education and Training, funded and or delived by THE AUTHORITY in accordance with the Funding Guidance for Young People 2018 to 2019 and THE AUTHORITY's obligations under this Agreement and any Appendices and Annexes contained within this Agreement. <https://www.gov.uk/16-to-19-education-funding-guidance>
- 2.2 Clause, appendix, annex and paragraph headings shall not affect the interpretation of this Agreement.
- 2.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors and permitted assigns].
- 2.4 The appendices and annexes form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the appendices annexes.
- 2.5 Words in the singular shall include the plural and vice versa.
- 2.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 2.7 A reference to **writing** or **written** includes faxes but not e-mail.
- 2.8 Where the words **include(s)**, **including** or **in particular** are used in this 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.

- 2.9 Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done.
- 2.10 References to clauses, appendices and annexes are to the clauses, appendices and annexes of this Agreement

3 Introduction

- 3.1 THE AUTHORITY shall provide the Services to THE ESFA on the terms and conditions of this Agreement.
- 3.2 The Agreement shall commence on 1 August 2018 and shall finish on 31 July 2019 unless this Agreement is terminated in accordance with Clause 13.

4 THE AUTHORITY'S Obligations

- 4.1 THE AUTHORITY shall deliver the Services and shall allocate sufficient resources to the Services to enable it to comply with this obligation.
- 4.2 THE AUTHORITY will perform and will ensure that the Authority Related Parties perform the Services with reasonable skill, care and diligence in accordance with the Agreement.
- 4.3 THE AUTHORITY agrees to comply with the conditions of this Agreement together with:
- a. the Funding Guidance;
<https://www.gov.uk/16-to-19-education-funding-guidance>
 - b. the post-16 audit code of practice;
<https://www.gov.uk/government/publications/post-16-audit-code-of-practice>
 - c. the Minimum Standards for 2018;
<https://www.gov.uk/government/publications/16-to-18-minimum-standards/16-to-18-minimum-standards-for-2017>
 - d. Specification of the Individualised Learner Record for 2018 to 2019;
[https://www.gov.uk/government/collections/individualised-learner-record-ilr#2018-to-2019-individualised-learner-record-\(ilr\)-data](https://www.gov.uk/government/collections/individualised-learner-record-ilr#2018-to-2019-individualised-learner-record-(ilr)-data)
 - e. Individualised Learner Record - Provider Support Manual;
<https://www.gov.uk/government/publications/ilr-specification-validation-rules-and-appendices-2018-to-2019>
 - f. Traineeships;
<https://www.gov.uk/delivering-traineeships-through-efa-funding>

g. Subcontracting;
<https://www.gov.uk/government/publications/funding-guidance-for-young-people-subcontracting-controls>

h. Further Education Free Meals;
<https://www.gov.uk/guidance/16-to-19-education-financial-support-for-students>

i. 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>

j. 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>

k. ESFA post-16: intervention and accountability;
<https://www.gov.uk/guidance/16-to-19-education-accountability>

l. Rigour and responsiveness in skills;
<https://www.gov.uk/government/publications/rigour-and-responsiveness-in-skills>

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

n. Prevent Duty Guidance;
<https://www.gov.uk/government/publications/prevent-duty-guidance>

where appropriate

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

and

p. Industrial placements capacity and delivery fund for 2018/19;
<https://www.gov.uk/guidance/work-placements-capacity-and-delivery-fund-from-april-2018-to-july-2019>

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

5 Payment

5.1 In consideration of the provision of the Services by THE AUTHORITY, THE SECRETARY OF STATE shall pay to THE AUTHORITY the charges set out in the appendices and annexes of this Agreement.

- 5.2 All payments by THE SECRETARY OF STATE will be made via BACS, unless otherwise notified, and will be made on the 20th of each month or the prior working day.
- 5.3 Payment by THE SECRETARY OF STATE shall be without prejudice to any claims or rights, which THE SECRETARY OF STATE may have against THE AUTHORITY and shall not constitute any admission by THE SECRETARY OF STATE as to the performance by THE AUTHORITY of its obligations hereunder. Prior to any such payment, THE SECRETARY OF STATE shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against THE AUTHORITY, arising from this Agreement or any other Agreement between THE AUTHORITY and THE SECRETARY OF STATE.
- 5.4 Where THE ESFA or any other authority acting on THE SECRETARY OF STATE's behalf in accordance with the principles set out in the Joint Audit Code of Practice carries out a review or audit of a sample of the evidence which THE AUTHORITY is required to provide under the Agreement to support the payments made by THE SECRETARY OF STATE and identifies errors in that evidence 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 SECRETARY OF STATE reserves the right to recover from THE AUTHORITY an amount based on the error rate identified and the total value of the Agreement. Such amount may be recovered by making deductions from future payments due THE AUTHORITY under the Agreement or any other Agreement between the Parties. In all such reviews the decision of THE ESFA is final.
- 5.5 Where THE AUTHORITY is in receipt of funding under the industrial placement capacity and delivery fund either in respect of Services funded or delivered by THE AUTHORITY, and 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 fail to be delivered with the allocated capacity delivery fund, the ESFA shall be entitled to:
- 5.5.1 reduce, suspend or recover (by making deductions from future payments due THE AUTHORITY under the Agreement or any other Agreement between the Parties) from THE AUTHORITY a sum equal to the allocation for the number of industrial placements not delivered; and/or
- 5.5.2 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.

6. Freedom of Information and Confidentiality

- 6.1 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 Agreement.
- 6.2 The provisions of part one clause 6 shall not apply to any information which is or becomes public knowledge (other than by breach of this part one clause 6). This includes information published under part one clauses 6 and 7 (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.
- 6.3 Nothing in this part one clause 6 shall be deemed or construed to prevent THE ESFA from disclosing any Confidential Information obtained from THE AUTHORITY:
- (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, contractor, college or other person engaged by THE ESFA directly in connection with this Agreement, provided that such information is treated as confidential by the receiving consultant, contractor, college or any other person.
- 6.4 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 AUTHORITY undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice in addition to those set out in part one clause 8 and part three clause 3.
- 6.5 THE AUTHORITY 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 AUTHORITY shall use all reasonable endeavours to mitigate the possible adverse impacts of any such breach of security including any intrusion into individuals' privacy. THE AUTHORITY will keep a record of such breaches a copy of which shall be provided to THE ESFA upon request. THE AUTHORITY will use its best endeavours to recover such Confidential Information and/or Personal Data however it may be recorded. THE AUTHORITY 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.

- 6.6 THE AUTHORITY 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 AUTHORITY has failed to comply with this part one clause 6.
- 6.7 The provisions of this part one clause 6 will apply for the duration of this Agreement and after its termination.
- 6.8 THE ESFA and THE AUTHORITY acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information

7 Consent to Publication

- 7.1 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.
- 7.2 In compliance with the Cabinet Office's transparency agenda THE ESFA is required to publish information about any payments made to THE AUTHORITY under this Agreement. Published information shall specifically exclude publication of bank account number and sort code.
- 7.3 THE AUTHORITY hereby gives its consent for the Department to publish this Agreement in its entirety, including from time to time agreed changes to the allocation, any payments and this Agreement, to the general public. The Department may consult with THE AUTHORITY to inform its decision regarding any redactions to this Agreement but the Department shall have the final decision in its absolute discretion.
- 7.4 THE AUTHORITY shall assist and cooperate with the Department to enable the Department to publish the allocation and any Funding paid or payable to THE AUTHORITY under this Agreement.
- 7.5 The Department reserves the right to share information about THE AUTHORITY performance with any other Crown Body.
- 7.6 THE ESFA may disclose information, including the Confidential Information of THE AUTHORITY:
- (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 Agreement;

(e) on a confidential basis for the purpose of the exercise any of its rights under this Agreement or

(f) on a confidential basis to any body to which the ESFA intends to assign, novate or dispose of any of its rights, obligations or liabilities under of any of its rights, obligations or liabilities under this 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 7.

7.7 The Parties agree that the text of any press release or other communication to be published by or in the media concerning the subject matter of this Agreement shall require the approval of each of the Parties which shall not be unreasonably withheld or delayed.

8 Data Protection and Protection of Personal Data

8.1 In this clause 8, the following words and expressions shall be defined as follows:

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

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

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

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

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

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

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

DPA 2018: Data Protection Act 2018.

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

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

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

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

- 8.2 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 AUTHORITY is the Processor only for the processing set out in Appendix 2. Any other processing of Personal Data undertaken by THE AUTHORITY will be as a Data Controller and not on behalf of the ESFA. Clauses 8.3 to 8.15 below apply only in relation to the processing of Personal Data on behalf of the ESFA as set out in Appendix 2, and the only processing that the Processor is authorised to do on behalf of the ESFA is listed in Appendix 2 by the ESFA and may not be determined by the Processor.
- 8.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

8.4 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.

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

- (a) process that Personal Data only in accordance with Appendix 2, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Appendix 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.

8.6 Subject to clause 8.7, 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.
- 8.7 The Processor's obligation to notify under clause 8.6 shall include the provision of further information to the Controller in phases, as details become available.
- 8.8 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 8.6 (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.
- 8.9 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.
- 8.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 8.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 8.12 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 8 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.
- 8.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 8.14 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).
- 8.15 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.

9 Audit and Assurance (including Access and Monitoring)

- 9.1 THE AUTHORITY will comply with the post-16 audit code of practice
- 9.2 Under the post-16 audit code of practice THE AUTHORITY will give assurance to THE ESFA over funds paid to them by THE ESFA and subsequently paid to learning providers. THE AUTHORITY will give this assurance through the chief financial officer's annual grant return to THE ESFA. THE AUTHORITY will provide assurance on all funding from THE ESFA at those schools and learning

providers controlled by THE AUTHORITY. The grant return will cover the financial year 1 April 2018 to 31 March 2019.

- 9.3 THE ESFA shall give THE AUTHORITY reasonable advance notice (in the view of THE ESFA) in writing of proposed visits to THE AUTHORITY or its sub-contractors, to observe the delivery of the Services.
- 9.4 For audit, monitoring and evaluation purposes, THE ESFA or any other authority acting on THE SECRETARY OF STATE's behalf being the Department, the Department for Work and Pensions, the National Audit Office, Representatives of the European Commission and the European Court of Auditors and the Inspectorates shall have the right to visit all or any site(s) and view operations relating to the Services and to inspect relevant documents and interview Participants and THE AUTHORITY's staff during these visits.
- 9.5 Notwithstanding the requirements of the post-16 audit code of practice THE AUTHORITY shall, if requested by THE ESFA, at its own cost:
- 9.5.1 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;
- 9.5.2 provide any additional evidence to support payments made under this Agreement, as THE ESFA shall reasonably require.

10 European Funding and Other Sources of Funding

- 10.1 Where notified in writing by THE ESFA that this funding source is required to be used as match funding:
- 10.1.1 THE AUTHORITY must not use the funding paid under this Agreement to support bids or claims that will be used to secure funding from any European source, either on its own behalf or on behalf of THE ESFA, including but not limited to match funding, without obtaining consent in writing from THE ESFA, that it may do so (such consent not to be unreasonably withheld).
- 10.1.2 Where THE AUTHORITY or any of its sub-contractors has access to other funding streams, THE AUTHORITY or any of its sub-contractors will be required to demonstrate through accounting, management information systems and any other relevant evidence (in the sole discretion of THE ESFA or any entity undertaking the audit or monitoring), to THE ESFA and any entity set out in clause 9.4 that no double funding has occurred in respect of the Services delivered under the Agreement.
- 10.1.3 Where THE ESFA identifies double funding in respect of the Services, or any part thereof, THE AUTHORITY will be liable to repay to THE ESFA

any sums paid, or part thereof, by THE ESFA in respect of the Services for which THE AUTHORITY has received funding from another source and THE ESFA reserves the right to deduct such sums from any monies owed to THE AUTHORITY under the Agreement or any subsequent Agreement.

10.1.4 THE ESFA reserves the right to use payments made under the Agreement as match funding for European Social Fund Co-Financing Projects. Where requested to do so in writing by THE ESFA, THE AUTHORITY shall provide such information and in the form as THE ESFA specifies to enable THE ESFA to comply with the requirements of the European Social Fund. THE AUTHORITY shall if requested to do so by THE ESFA inform Learners or others that the Services delivered has been financed in whole or part by the European Social Fund. Any failure to provide such information as specified or to provide such information to learners as specified shall constitute a minor breach of Agreement pursuant to clause 12 of the Agreement.

10.1.5 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. The Operational Programme can be found on www.esf.gov.uk. All Participants receiving the Services specified under this Agreement must meet the eligibility criteria defined in the ESF Operational Programme for England as well as the specific eligibility criteria described in the Agreement.

10.1.6 Marketing and Publicity

10.1.6.1 THE AUTHORITY will comply with written requests by THE ESFA to display the 2007/13 European Social Fund logos and emblems on any materials relating to funding by the ESF. THE EAF will make available to THE AUTHORITY all relevant 2007/13 European Social Fund Logos and emblems.

10.1.6.2 THE AUTHORITY must ensure that where it is agreed with THE ESFA 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”.

10.1.6.3 THE AUTHORITY must ensure that all Participants are aware of the support of the European Social Fund in respect of the Services being delivered under this Agreement.

10.1.6.4 THE AUTHORITY must ensure that where the use of logos in documents or other form of communication for promotional purposes is not practicable, the following wording is included

“This programme is co-financed by the Education and Skills Funding Agency”.

11 Additional Conditions of Funding

11.1 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 either delivered or funded by THE AUTHORITY, or to ensure that the resources provided by the ESFA are being used effectively and efficiently.

12 Breach

12.1 For the avoidance of doubt:

12.1.1 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

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

Minor Breach

12.2 Without prejudice to any other remedy, in the event of a Minor Breach, the Parties will adopt the following procedure:

12.2.1 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.

12.2.2 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Clause 12.2.1, 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

12.3 Without prejudice to any other remedy, in the event of a Serious Breach, which is capable of remedy, the Parties shall adopt the following procedure:

12.3.1 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.

12.3.2 In the event that a Serious Breach of the Agreement by THE AUTHORITY is not, or cannot be, remedied within the period specified in the notice served under Clause 12.3.1, or such other period as may subsequently be agreed in writing between the Parties, THE ESFA may:

12.3.2.1 require THE AUTHORITY to suspend recruitment of Participants to the Services to which the Serious Breach relates;

12.3.2.2 give consideration to the Serious Breach in its application of lagged learner funding when finalising the amount of funding in any subsequent Agreement(s) between the Parties;

12.3.2.3 reduce, suspend or recover payment to THE AUTHORITY in respect of that part of the Services to which the Serious Breach relates;

12.3.2.4 terminate, in accordance with Clause 13, in respect of that part of the Services to which the Serious Breach relates.

12.4 In the event that any Serious Breach cannot be remedied at all or within the period specified in the notice served in accordance with Clause 12.3.1 or such other period as may be agreed in writing between the Parties, the Party not in breach may at its sole discretion terminate the Agreement or that part of the Services to which the breach relates with immediate effect on notice in writing to the other Party.

13 Termination

13.1 Without prejudice to any other remedy, on the occurrence of a Serious Breach THE ESFA shall be entitled to terminate this Agreement, in respect of that part of the Services to which the Serious Breach relates, by notice to THE AUTHORITY with immediate effect.

13.2 The ESFA shall be entitled to terminate this Agreement, by notice in writing to THE AUTHORITY, with immediate effect where:

13.2.1 the outcome of any financial health and/or control assessment is inadequate;

13.2.2 THE AUTHORITY fails to comply with requirements imposed under Part 3 clause 2.7.1 and/or 2.7.2;

13.2.3 an OFSTED inspection results in the Services in part thereof being assessed as inadequate;

13.2.4 THE AUTHORITY fails to comply with requirements imposed under Part 3

clause 2.9.1 and/or 2.9.2;

13.2.5 an OFSTED inspection results in the Services being assessed as overall inadequate;

13.2.6 THE ESFA assesses that the Services delivered under this Agreement, in whole or part, are below the Minimum Standards; or

13.3 THE ESFA shall be entitled to terminate this Agreement on written notice if THE AUTHORITY does not recruit or data returns reveal that no Participants have been enrolled for the academic year to which this Agreement relates. Where THE ESFA terminates the Funding Agreement under this clause 13.3, THE ESFA will withdraw the allocation of Funding for the academic year and will take action to recover Funds where payments have already occurred.

13.4 In addition to the rights of termination under any other clauses of this Agreement, either party shall be entitled to terminate this Agreement in respect of all or part of the Services delivered under the Agreement by giving to the other not less than six months' notice, in writing, to that effect without the need to give a reason for termination. Where this right is exercised by THE AUTHORITY it shall be implemented at no cost to THE ESFA.

13.5 Termination under this Clause 13 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Agreement.

13.6 On termination or expiry of this Agreement for any reason, THE AUTHORITY shall do its utmost to minimise disruption caused to Participants and to assist the implementation of any contingency plan proposed by THE ESFA either prior to or after the termination or expiry of this Agreement, to deal with the effects of such termination or expiry in so far as it is practicable to do so. THE ESFA will not be liable for any costs incurred by THE AUTHORITY in complying with this clause 13.6.

13.7 THE AUTHORITY shall upon termination of the Agreement immediately deliver up to THE ESFA all correspondence, documents, specification papers and other property belonging to THE ESFA, which may be in its possession or under its control.

13.8 On termination of this Agreement (however arising) THE ESFA may withhold any payments due to THE AUTHORITY until such time that final reconciliation of the Parties liabilities are concluded.

13.9 On termination of this Agreement (however arising) the accrued rights and liabilities of the Parties at termination and the following Clauses shall survive and continue in full force: Part 1 clauses 4 – 8 inclusive, 16 and 18.

14 Assignment and Subcontracting

- 14.1 Where THE AUTHORITY fails to apply the necessary management, monitoring and control over sub-contracted delivery, or fails to seek the necessary approval from the ESFA in advance in respect of whole programmes of study delivered at distance, as set out in the subcontracting control regulations <https://www.gov.uk/government/publications/funding-guidance-for-young-people-subcontracting-controls> THE ESFA may move the Participant numbers and associated funding away from the directly funded institution and/or also require the institution to discontinue the subcontracting 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 AUTHORITY has in place.
- 14.2 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 Agreement and may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.
- 14.3 Subcontracting any part of this Agreement shall not relieve THE AUTHORITY of any obligation or duty attributable to him under this Agreement.
- 14.4 Services under this Agreement may only be sub-contracted to one level.
- 14.5 Where THE AUTHORITY has sub-contracted any duties or obligations arising out of this Agreement, THE AUTHORITY shall send copies of the sub-contract to THE ESFA if requested in writing to do so. Where THE AUTHORITY enters into a sub-contract for the purpose of performing the obligations under this Agreement, THE AUTHORITY 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.

15 Provision of Information

- 15.1 In addition to the other requirements to provide information set out in this Agreement, the ESFA reserves the right to request information from THE AUTHORITY 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 AUTHORITY.
- 15.2 THE AUTHORITY shall provide the ESFA or agents acting on its behalf with the information it requires under clause 15.1 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.

15.3. Failure to comply with any request for information under clause 15.1, at all or in the required timescales, will constitute a Minor / Serious Breach of this Agreement.

16 Dispute Resolution

16.1 Any dispute, difference or question arising between the Parties either during the term of this 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 AUTHORITY in order to try to resolve the same.

16.2 In the event that the nominated representatives are unable to resolve the dispute, difference or question, either of the Parties may (subject to clause 16.4 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 from THE AUTHORITY. 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.

16.3 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 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 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.

16.4 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 clause 16.3 above, without reference to the Panel.

16.5 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this 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.

16.6 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.

16.7 The arbitration will be conducted by a sole arbitrator, jointly agreed by THE AUTHORITY 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 AUTHORITY or THE ESFA may request the Chairman of the Chartered Institute of Arbitrators to make the appointment.

16.8 The place of arbitration shall be London, England

17 Revisions

17.1 THE ESFA may from time to time revise, revoke or add to this Agreement in whole or in part. THE AUTHORITY may propose changes to this Agreement but THE ESFA shall not be obliged to accept any such changes.

17.2 Revisions made by THE ESFA to this Agreement pursuant to clause 17.1 above, shall be confirmed in writing. THE AUTHORITY shall confirm its acceptance by adding their electronic signature and returning from the signatories' business email to THE ESFA email box stated on the variation.

17.3 THE AUTHORITY 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

In response to proposals received THE ESFA shall either:

17.4.1 Amend the Agreement by way of a variation in accordance with clauses 17.1 and 17.2. The revision will apply to all Local Authorities

17.4.2 Consult on the proposal with consideration to amending Agreements for all Local Authorities in 2018/19 and/or subsequent years

17.4.3. Confirm that no amendment will be made to the conditions set out in the Agreement

17.5 Revisions made by THE ESFA to the Appendices and Annexes that form part of this Agreement shall be confirmed in writing. THE AUTHORITY shall confirm its acceptance by signing and returning a hardcopy to the address at clause 17.3. Failure to do so may result in non-payment of any increase in funding described in the revision.

17.6 THE AUTHORITY may itself make proposals to THE ESFA for changes to the services set out in the Appendices and Annexes that form part of this Agreement. These should be addressed in writing to the relevant Young People's Territorial Delivery team.

18 Entire Agreement / Amendments

- 18.1 This 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).
- 18.2 By accepting this Agreement via the Skills Funding Service (SFS) the person taking this action on behalf of THE AUTHORITY represents and warrants that THE AUTHORITY has read and understood this Agreement, THE AUTHORITY agrees to be bound by this Agreement and that he/she is duly authorised to accept this Agreement and legally bind THE AUTHORITY.

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

Contract acceptance via SFS shall bind THE AUTHORITY as set out in sub-clauses 18.1 and 18.2.

19 Appendices and Annexes (included as applicable):

Appendix 1 – Payment Schedule

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 – Processing, Personal Data and Data Subjects

Appendix 2 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 Agreement as defined in the ESFA privacy notice and ILR specification and its appendices.</p> <p>https://www.gov.uk/government/publications/esfa-privacy-notice</p> <p>https://www.gov.uk/government/collections/individualised-learner-record-ilr</p>
Duration of the Processing	<p>The duration of the Processing covers the academic year data returns to the ESFA as defined in Appendix A of the ILR specification to enable funding and audit of the learning programmes defined in this Agreement.</p> <p>https://www.gov.uk/government/collections/individualised-learner-record-ilr</p>
Nature and purposes of the Processing	<p>The nature and purposes of the processing is defined in the ESFA privacy notice.</p> <p>https://www.gov.uk/government/publications/esfa-privacy-notice</p> <p>The COLLEGE will be required to submit the data to the ESFA as set out in Part 3 Clause 3 Supply of Data of this Agreement.</p>
Type of personal data	<p>The personal data to be processed is defined in the ILR specification.</p> <p>https://www.gov.uk/government/collections/individualised-learner-record-ilr</p>
Categories of data subject	<p>The data subjects are Participants on education or training programmes administered by the ESFA that are subject to this Agreement.</p>
Description	Details

<p>Retention and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>Information on how the data must be supplied to the ESFA is detailed in the ILR specification and its appendices.</p> <p>https://www.gov.uk/government/collections/individualised-learner-record-ilr</p> <p>For the purposes of the DfE as a data controller of the data, THE AUTHORITY is required to retain the data for the funding and audit purposes set out in this Agreement for 6 years from the end of the financial year in which the last payment is made under this Funding Agreement.</p> <p>THE AUTHORITY (and any other data controller) is responsible for determining any further need to process the data, including its retention, prior to secure destruction.</p>
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