



Skills Funding
Agency



European Union
European
Social Fund

DRAFT

**DRAFT Financial Memorandum
Further Education Colleges**

Contents

- 1 Purpose
- 2 Definitions
- 3 Responsibilities of the Governing Body
- 4 Responsibilities of the Accounting Officer
- 5 Provision of Information
- 6 Funding and Payment
- 7 Conditions of Funding
- 8 Submission of Learner Data
- 9 Sub-contracted Provision
- 10 Raising Standards
- 11 Learner Health, Safety and Welfare
- 12 Equal Opportunities
- 13 European Funding and Other Sources of Funding
- 14 Retention of Documents
- 15 Freedom of Information and Confidentiality
- 16 Data Protection and Protection of Personal Data
- 17 Branding and Logos
- 18 State Aid
- 19 Feedback and Complaints
- 20 Access and Monitoring
- 21 Financial Reporting and Audit
- 22 Capital Transactions
- 23 Additional Conditions of Funding

- 24 Dispute Resolution
- 25 Repayment of Funds
- 26 Interpretation
- 27 Governing Law and Jurisdiction
- 28 Effective Date

Appendix 1 Summary of Programme Funding 2017/2018

Appendix 2 Funding Agreement(s)

Funding and performance-management rules

Funding Appendices To be added as appropriate

1 Purpose

- 1.1 This Financial Memorandum records the agreement between the Secretary of State for Education, acting through the Skills Funding Agency (the SFA), an executive agency of the Department for Education and [Name of College] (the College) regarding the amount of funding to be paid by the SFA to the College for learning provision (the Provision) for the periods as set out in Appendix 1 and sets out the terms and conditions upon which that funding is provided.

2 Definitions

- 2.1 “Apprenticeship” means a job with an accompanying skills development programme.

“College” means the Further Education Corporation and the educational institution conducted by that Further Education Corporation named in clause 1.1.

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

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

“Funding and performance-management rules” means the following documents as amended from time to time which set out the detailed requirements with which the College must comply in respect of each Learning Programme delivered under this Financial Memorandum and which form part of this Financial Memorandum;

- Adult education budget funding and performance-management rules 2017 to 2018
- Skills Funding Agency: common funding and performance management rules 2016 to 2017 version 3
- Apprenticeships: common funding and performance management rules 2016 to 2017 version 4
- Apprenticeship frameworks funding and AGE performance management rules 2016 to 2017 version 4
- Apprenticeship standards funding rules 2016 to 2017 version 2

“Governing Body” means the body responsible for conducting the College.

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

“Learner Files” means any information relating to a Learner generated by the College, the Learner or a third party for the purpose of the delivery of the Learning Programme.

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

“Local Enterprise Partnership/Panel (LEP)” means a formalised partnership between local authorities to determine local economic priorities and lead economic growth and job creation within its area.

“OFSTED” means the Office for Standards in Education.

“PARTIES” means the Secretary of State for Education, acting through the Skills Funding Agency, an executive agency of the Department for Education and the College.

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

“Provision” means the education and training to be delivered by the College under this Financial Memorandum.

“Public Funds” for the purposes of regularity, means all of a College’s income and receipts from the SFA and from the Higher Education Funding Council for England (HEFCE).

3 Responsibilities of the Governing Body

- 3.1 The Governing Body of the College has responsibilities for ensuring that the College’s funds are used only in accordance with the College’s powers as set out in the Further and Higher Education Act 1992 and the College’s own statutory duties and other obligations.
- 3.2 The Governing Body is responsible for ensuring the solvency of the College and shall inform the SFA of any transactions that could jeopardise financial viability. The Governing Body is responsible for achieving value for money in all transactions involving Public Funds.
- 3.3 The Governing Body shall appoint an accounting officer with an appropriate separation of duties between executive and non-executive roles and responsibilities. The expectation is that the accounting officer will be the Principal of the College. The Governing Body shall inform the SFA in writing of the name and position of the accounting officer and if the accounting officer is absent from the College for an extended period as determined by the College, the name of the person

who will discharge the accounting officer's responsibilities during the absence.

- 3.4 The College shall inform the SFA in writing of the vacating or filling of the positions of chair of the Governing Body and Principal and the clerk.
- 3.5 The College must notify the SFA in writing if there is a change in its Corporation name.

4 Responsibilities of the Accounting Officer

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

5 Provision of Information

- 5.1 In addition to the other requirements to provide information set out in this Financial Memorandum the SFA reserves the right to request information from the College in order to exercise its responsibilities and to meet European funding requirements. On occasion, the SFA will require urgent information from the College.
- 5.2 The College shall provide the SFA or agents acting on its behalf with the information it requires 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.

6 Funding and Payment

- 6.1 The breakdown of funds which the SFA agrees to pay to the College is set out in Appendix 1 of this Financial Memorandum.
- 6.2 The College is free to spend its funding as it sees fit providing it fulfills the conditions of funding imposed by the SFA. The College shall ensure that public funds are not used for the purpose of delivering learning provision in respect of which the College has already received other funding, public or otherwise, unless the SFA so specifies. In the

event that the SFA identifies that the College has used public funds in a way not specified it may deduct the value of such funding from the funds it pays to the College or require it to be repaid.

7 Conditions of Funding

- 7.1 The detailed requirements in respect of each Learning Programme are set out in the Funding and performance-management rules as amended and updated from time to time and which form part of the terms and conditions of this Financial Memorandum.
- 7.2 The maximum value of each Learning Programme as shown in Appendix 1 of this Financial Memorandum may not be exceeded for any reason. The SFA will not be liable to make any payment in excess of the Maximum Value of each Learning Programme unless this has been agreed and evidenced by a variation in writing.
- 7.3 Where the funding period is longer than one year, funding for subsequent years is subject to funds being made available to the SFA. For learning provision that is excluded from the Adult Education Budget, the College is not permitted to vire funding between Learning Programmes except by way of an agreed variation in writing to this Financial Memorandum.
- 7.4 The Provision is to be delivered in accordance with any specific requirements of the SFA 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.
- 7.5 The SFA will restrict delivery of this Financial Memorandum against the funding available up to the 31 July 2018 as detailed in Appendix 1. Appendix 1 confirms the maximum value available up to the financial year ending 31 March 2018. 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 SFA reserves the right at its absolute discretion to vary the Financial Memorandum accordingly.
- 7.6 The SFA may allocate additional funds to the College under this Financial Memorandum. Where these funds are to be consolidated within the College's Further Education agreed funding allocation, a revised Appendix 1 will be issued. The terms and conditions of this 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.

- 7.7 The SFA reserves the right to give the College three months' notice to reduce the overall maximum value for any Learning Programme without the need to give a reason.
- 7.8 The College must provide evidence that it has worked in partnership with the Local Enterprise Partnership (LEP) to ensure that the delivery of the Provision takes account of the LEP's local economic and skills priorities. Where the College is delivering in an area covered by a Devolution Agreement, the College must work with the Combined Authority and the delivery of Provision must take account of the Combined Authority's priorities for education and skills.
- 7.9 The College must ensure appropriate members of staff register as users on the user role management system at https://secure2.imservices.org.uk/self_registration/ to enable the College to digitally sign and agree the Financial Memorandum online. It is the College's responsibility to maintain appropriate user roles on an on-going basis.

8 Submission of Learner Data

- 8.1 The College must supply the SFA data on each individual Learner, in accordance with the data collections framework set out in the 'ILR specification, validation rules and appendices 2017 to 2018' as amended and updated which is published on the SFA's website and in accordance with the 'Provider Support Manual' as amended and updated.
- 8.2 Data collected must be transmitted to the SFA through the SFA's web portal <https://www.gov.uk/government/publications/sfa-the-hub>. Access to the SFA's web portal is restricted and the College agrees to comply with the conditions of use regarding the supply of data to the SFA set out in 'Individualised Learner Record (ILR) Specification 2017/2018' and relevant 'Provider Support Manual' as amended and updated available on the SFA's web site.
- 8.3 The SFA reserves the right to require the College at its own cost to carry out such work as the SFA deems necessary to make material improvements to the quality of the data.
- 8.4 The SFA reserves the right to suspend payments to the College where the data quality gives rise to a material impact on the accuracy of the data provided by the College.
- 8.5 The College shall register with UK Register of Learning Providers (UKRLP) and maintain contact details on an on-going basis (<http://www.ukrlp.co.uk/>).
- 8.6 Where the College is delivering the Provision to Learners claiming out of work benefits, it must provide data to the Secretary of State with

Financial Memorandum (Further Education Colleges) 2017 to 2018

www.gov.uk/sfa.

responsibility for unemployment or their nominated representative in accordance with the requirements notified to the College. Failure to transmit complete and accurate data under this Clause 8.6 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.

8.7 The College must update the course information funded by the SFA at www.coursedirectoryproviderportal.org.uk in accordance with the course directory data collection requirements which can be found at <https://coursedirectoryproviderportal.org.uk/Help>.

8.8 The College must submit data about any member of its workforce delivering GCSE English and Maths in the format and to the timescales as required by the SFA.

9 Sub-contracted Provision

9.1 The SFA reserves the right to require the College not to enter into or to terminate any sub-contract to deliver the Provision under this Financial Memorandum.

9.2 The College must comply with the requirements on sub-contracting delivery of the Provision set out in the Funding and performance-management 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 Financial Memorandum. The College is responsible for all the actions of its sub-contractors connected to or arising out of the delivery of the Provision which it sub-contracts.

9.3 Where the College has sub-contracted any duties or obligations arising out of this 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 SFA 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 and performance-management rules.

9.4 The College shall ensure that subcontractors are selected fairly following an open and competitive tendering process and have sufficient capacity, capability, quality and financial standing to deliver the Provision.

9.5 The College shall ensure that any sub-contract entered into for the purpose of delivering the Provision under this Financial Memorandum contains a term providing that the SFA has the right to enforce the terms of the sub-contract.

9.6 The College shall make payment to any sub-contractor within 30 days of receiving a valid claim for payment and ensure that any sub-contract

entered into for the purpose of delivering the Provision under this Financial Memorandum contains a term giving effect to this requirement.

- 9.7 The College may not assign any duties or obligations under this part of the Financial Memorandum without the consent of the SFA.
- 9.8 The College must consider the criteria set out in the Funding higher-risk organisations and subcontractors document which is published on the SFA's website

<https://www.gov.uk/government/publications/sfa-financial-assurance-higher-risk-providers-and-subcontractors#history>

10 Raising Standards

- 10.1 The College shall deliver the Provision to an acceptable standard of quality, comply with the Funding and performance-management rules published by the SFA as amended from time to time and use all reasonable endeavours:
 - 10.1.1 to minimise drop out rates, deliver high completion, achievement and success rates and appropriate progression;
 - 10.1.2 to at least meet the minimum quality standards that apply to the Learning Programme delivered. These minimum quality standards will be set out by the SFA;
 - 10.1.3 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;
 - 10.1.4 to offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
 - 10.1.5 to provide a safe, healthy and supportive environment, which meets the needs of Learners;
 - 10.1.6 to provide good management and leadership of the learning process;
 - 10.1.7 to deliver value for money and financial regularity and probity; and
 - 10.1.8 to ensure any sub-contractors delivering the Provision comply with the requirements set out in Clauses 10.1.1 to 10.1.7 above.

- 10.2 The College must take all reasonable steps to meet the relevant requirements for data gathering for the FE Choices Performance Indicators as outlined currently at :
<https://www.gov.uk/government/collections/fe-choices-information-for-providers> and in any subsequent updates to these web pages.
- 10.3 Where appropriate the College shall confirm in writing to the SFA that it has formal approval from relevant awarding organisations to deliver the qualifications which form part of the Provision. The College must notify the SFA immediately in writing if it receives any sanction from an awarding organisation.
- 10.4 When the College receives notification from OFSTED that the Provision is to be inspected, the College shall provide the SFA with a copy of its quality improvement activity, and any other relevant information in accordance with the required timescale of OFSTED. The College must notify the SFA of the date of the meeting at which OFSTED give feedback on the inspection and allow the SFA's nominated representative to attend the meeting if requested. The College must confirm to the SFA in writing the outcome of the inspection within 5 working days of receiving the feedback from OFSTED.
- 10.5 The SFA has access to considerable information relating to the financial position of the College and can use that information, along with other sources of information, to forecast trends in the financial performance of the College. If from this information the SFA considers there to be a significant risk that the College may become financially inadequate over a three year period it will invite the College to respond and discuss the information. Following this, or in the absence of any, or in the SFA's view, any adequate response from the College, the SFA may take action, including but not limited to:
- 10.5.1 request the College to undertake a financial review to identify potential cost reductions and give proper consideration to implementing the findings, in whole or part, of such a review;
 - 10.5.2 request the College to undertake a structural review with the aim of ensuring sustainable provision and give proper consideration to implementing the findings, in whole or part, of such a review.

The SFA will, if and to the extent agreed with the College, make the request/s in Clauses 10.5.1 and 10.5.2 additional conditions of funding. If the SFA assesses that the College has failed to comply with any additional conditions of funding within such time as the SFA may deem reasonable, the SFA may take such actions as it deems appropriate which may include, but is not limited to issuing a Notice of Concern under clause 10.6 or a Notice of Withdrawal of Funding in clause 10.12,

- 10.6 The SFA will issue the College with a Notice of Concern in the following circumstances:
- 10.6.1 The College receives an inadequate OFSTED inspection rating
 - 10.6.2 All or any part of the Provision delivered under this Financial Memorandum falls below the minimum quality standards or other standards which may be set by the SFA.
 - 10.6.3 The College is rated inadequate by the SFA for financial health or financial control including but not limited to receipt of an adverse opinion as the result of an Accountability Review, internal or external audit, or qualified auditors' report on its final 19+ Apprenticeship and Adult Education Budget funding claim.
- 10.7 The Notice of Concern will set out the reasons for the issue of the Notice of Concern and the actions the SFA 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. This may include a requirement to suspend starting new Learners on a Learning Programme.
- 10.8 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.
- 10.9 If the College fails to take the actions set out in the Notice of Concern within the timescales set out, the SFA reserves the right to amend the Notice of Concern and add additional funding conditions or issue a Notice of Withdrawal of Funding.
- 10.10 In the event that the College fails to comply with the Notice of Withdrawal of Funding, the SFA will issue a Confirmation of Withdrawal of Funding following consultation with the Secretary of State who may choose to exercise his statutory intervention powers.
- 10.11 Once a Confirmation of Withdrawal of Funding has been issued the College will be removed from the Register of Training Organisations and the SFA will secure another training provider to deliver the Provision.
- 10.12 The SFA reserves the right to proceed straight to issuing a Notice of Withdrawal of Funding without first issuing a Notice of Concern where it considers that urgent action needs to be taken to improve the quality of the Provision to protect the interests of Learners or where the College's financial health or financial controls put public funds at risk.

- 10.13 As part of the delivery of the Provision, the College must provide high quality and easily accessible information and advice in helping individuals to understand the opportunities and support available to them about education, training or connected matters (including employment);
- 10.13.1 Where one of the main objectives of the Provision to be provided under this Financial Memorandum is to deliver information and advice, the College will have to have or attain the matrix Standard accreditation within six months of the Financial Memorandum being awarded; and
- 10.13.2 If the information and advice is embedded as part of the delivery of the Provision the College should work towards achieving the matrix Standard accreditation within 12 months of the start of the Financial Memorandum.
- 10.13.3 Where the Provision is delivered by a sub-contractor on behalf of the College, the requirements set out in clauses 10.13.1 and 10.13.2 must be applied to the sub-contractor. This does not apply where the College retains responsibility for the delivery of information and advice to the Learners.
- 10.13.4 Once achieved, matrix Standard accreditation is valid for three years. As part of their accreditation, the College is required to successfully demonstrate their continuous improvement activities to their matrix Assessor through the use of the online Self Reflection Tool on an annual basis.

11 Learner Health, Safety and Welfare

- 11.1 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 SFA, as and when specifically requested, to give assurance that adequate arrangements exist for learner health, safety and welfare.
- 11.2 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.
- 11.3 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 vulnerable groups' legislation and safeguarding requirements and will register with the Disclosure and Barring Service (DBS); where the College's employees may have regular contact with Learners under the age of 18 or other vulnerable Learners. The College will make the appropriate 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.

- 11.4 The College will carry out DBS 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.
- 11.5 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.
- 11.6 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.
- 11.7 The College shall inform the SFA 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:
 - 11.7.1 informing the SFA's representative by telephone or email immediately the College becomes aware of the event.
- 11.8 The College shall report all RIDDOR reportable incidents in line with the Regulations, and shall investigate and assess the circumstances of all Learner incidents within the scope of RIDDOR and follow HSE guidance 'Investigating Accidents and Incidents: A Workbook for Employers, Unions, Safety Representatives and Safety Professionals' (HSG245) ISBN 0717628272. The College shall only use persons competent to investigate/assess learner incidents with a view to identifying the causes of any incident and lessons to be learned.
- 11.9 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.

- 11.10 The College shall co-operate with the SFA and Department for Work and Pensions (DWP) for the purposes of the Industrial Injuries Disablement Benefit (IIDB) in respect to those Learners to which it applies.
- 11.11 The College shall ensure that it complies with its duty to have due regard to the need to prevent Learners from being drawn into terrorism in accordance with the Government PREVENT agenda s26 of the Counter-Terrorism and Security Act 2015 and the guidance published by the Secretary of State.

12 Equal Opportunities

- 12.1 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 12.2 to 12.4.
- 12.2 The College will, in delivering the Provision under this Financial Memorandum, demonstrate that it has had regard to the duties placed on the SFA by relevant equality legislation. 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.
- 12.3 The College shall ensure that equality of opportunity is built into all aspects of provision; the business planning process; and the self assessment process. The College shall use analysis of data to inform future planning to improve the representation, participation and success of underrepresented and underachieving groups and challenge stereotyping. The College shall use appropriate, specific and measurable objectives. These will be proportionate, relevant and aligned to the provision the College is funded to deliver.
- 12.4 The SFA shall use a variety of equality information and data to support judgments about quality and eligibility for funding. These may include, but are not limited to: inspection judgments for equality and diversity, judgments from the Equality and Human Rights Commission, and the success and participation rates of different groups of Learners.

13 European Funding and Other Sources of Funding

- 13.1 Where notified in writing by the SFA that the funding under this Financial Memorandum is required to be used as match funding:

- 13.1.1 The College must follow the match funding rules that are set out in the Funding and performance-management rules which include the use of the ESF logo.
- 13.1.2 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 SFA, including but not limited to as match funding.
- 13.1.3 Where the College or any of its sub-contractors has access to other funding streams, the College or any of its sub-contractors will be required to demonstrate through accounting, management information systems and any other relevant evidence (in the sole discretion of the SFA or any other body undertaking the audit or monitoring), to the SFA and anybody acting on their behalf that no double funding has occurred in respect of the Provision delivered under this Financial Memorandum.
- 13.1.4 Where the SFA identifies double funding in respect of the Provision, or any part thereof, the College will be liable to repay to the SFA any sums paid, or part thereof, by the SFA in respect of the Provision for which the College has received funding from another source and the SFA reserves the right to deduct such sums from any monies owed to the College under this Financial Memorandum.
- 13.1.5 The SFA reserves the right to use payments made under this Financial Memorandum as match funding for ESF Projects. Where requested to do so in writing by the SFA, the College shall provide such information and in the form as the SFA specifies to enable the SFA to comply with the requirements of ESF.
- 13.1.6 The College shall, if requested to do so by the SFA, inform Learners or others that the Provision delivered has been financed in whole or part by ESF.
- 13.2 The College must ensure that all Learners are aware of the support of the European Social Fund in respect of the Provision being delivered under this Financial Memorandum.

14 Retention of Documents

- 14.1 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 Financial Memorandum for 6 years from the end of the financial year in which the last payment is made.

- 14.2 Where any payments made under this Financial Memorandum for the Provision have been used as match-funding as notified in writing by the SFA under Clause 13 for an ESF project, the College will be required to retain all documents necessary to verify the delivery of the Provision by itself or by its sub-contractors. Documents to support claims must be retained for a minimum of three years after the European Commission has made its final payment. For the 2007-13 ESF Programme this is expected to be until at least 31 December 2022 and for the 2014-20 ESF Programme until at least 31 December 2030.
- 14.3 Confirmation of the document destroy date will be notified in writing by the SFA. Without prejudice to any of the other rights under the Financial Memorandum to recover funds, the SFA will be entitled to recover from the College any sums which it is required to repay to the European Social Fund as a result of the College's failure to comply with this Clause.

15 Freedom of Information and Confidentiality

15.1 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 15;

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

15.2 Freedom of Information

15.2.1 the SFA 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 SFA or the College;

- 15.2.2 the SFA and the College acknowledge and agree that both are required by law to consider each and every request made under FOIA for information;
- 15.2.3 the SFA 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 SFA or the College;
- 15.2.4 notwithstanding anything in this Financial Memorandum to the contrary (including without limitation any obligations of confidentiality), the SFA 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 SFA 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 SFA or College's opinion the information is eligible in the circumstances for an exemption and therefore the SFA or College may lawfully refrain from doing either of the things described in parts (a) and (b) of this clause;

- 15.2.5 in relation to information relating to the SFA or College or the Financial Memorandum which the SFA or College requests should be exempt under the FOIA the SFA or the College shall indemnify the SFA 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;

- 15.2.6 neither the SFA 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 SFA or the College;

- 15.2.7 the SFA and the College shall assist the other as reasonably necessary to enable the SFA or the College to comply with their obligations under FOIA.
- 15.3 The SFA reserves the right to share information about the College;
- 15.3.1 with any other Central Government Body, Non-Departmental or Quasi Government body or agency, central or local;
 - 15.3.2 with Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 15.3.3 with any professional adviser, consultant, contractor or other person engaged by the SFA directly in connection with this Contract, provided that such information is treated as confidential by the receiving consultant, contractor or any other person;
 - 15.3.4 on a confidential basis with any proposed successor body in connection with any assignment disposal of its rights, obligations or liabilities under this Contract.
- 15.4 The SFA reserves the right to publish details of this Financial Memorandum and the payments made under it to comply with the Government's transparency requirements.
- 15.5 The provisions of this clause 15 will apply for the duration of this Financial Memorandum and after its termination.

16 Data Protection and Protection of Personal Data

- 16.1 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 SFA 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 SFA's ability to make a search with a credit reference agency.
- 16.2 With respect to the Parties' rights and obligations under this Financial Memorandum the parties agree that the SFA is the Data Controller and

the College is the Data Processor within the meaning of the Data Protection Act.

16.3 The College shall:

- 16.3.1 process Personal Data only in accordance with the instructions from the SFA (which may be specific instructions or instructions of a general nature) as set out in the Financial Memorandum or otherwise notified by the SFA to the College during the term of this Financial Memorandum;
- 16.3.2 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;
- 16.3.3 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;
- 16.3.4 take reasonable steps to ensure the reliability of any College or Contractor Personnel who have access to the Personal Data;
- 16.3.5 obtain prior written consent from the SFA in order to transfer the Personal Data to any sub-contractors or other third parties for the delivery of Provision;
- 16.3.6 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 SFA;
- 16.3.7 notify the SFA within 5 working days if it receives:
 - 16.3.7.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 16.3.7.2 a complaint or request relating to the SFA's obligations under the Data Protection Legislation;
- 16.3.8 provide the SFA with full co-operation and assistance in relation to any complaint or request made, including by:
 - 16.3.8.1 providing the SFA with full details of the complaint or request;

- 16.3.8.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the SFA's instructions;
 - 16.3.8.3 providing the SFA with any Personal Data it holds in relation to a Data Subject (within the timescales required by the SFA); and
 - 16.3.8.4 providing the SFA with any information requested by the SFA.
- 16.3.9 permit the SFA or the SFA'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 SFA to enable the SFA to verify and/or procure that the College is in full compliance with its obligations under this Financial Memorandum;
- 16.3.10 provide a written description of the technical and organisational methods employed by the College for processing Personal Data (within the timescales required by the SFA):
- 16.3.11 provide the SFA with information about how the Learner Files are stored including details of the location where the Learner Files are kept and the arrangements for their security. The College is required to notify the SFA of any changes to this information. This clause applies to current Learner Files and those which the College is required to retain in accordance with clause 14;
- 16.3.12 not Process Personal Data outside the European Economic Area without the prior written consent of the SFA and, where the SFA consents to a transfer, to comply with:
- 16.3.12.1 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
 - 16.3.12.2 any reasonable instructions notified to it by the SFA.
- 16.4 Where the College is delivering the provision to Learners claiming out of work benefits, the Secretary of State for Work and Pensions (or their successor) is the Data Controller in relation to Personal Data which the Financial Memorandum (Further Education Colleges) 2017 to 2018

College is required to provide to the Secretary of State for Work and Pensions. This clause 16.4 will be enforceable by the Secretary of State for Work and Pensions in relation to any Personal Data processed by the College on their behalf.

- 16.5 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.

17 Branding and Logos

- 17.1 The College, when receiving funding from the SFA 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.
- 17.2 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 Financial Memorandum. The requirements of this clause 17 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.
- 17.3 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.
- 17.4 The College must ensure that the terms of this clause 17 are contained in any sub-contract of the Provision.

18 State Aid

- 18.1 The College must satisfy themselves if the European rules on State Aid apply to the funding paid under this part of the Financial Memorandum.
- 18.2 Where the rules on State Aid apply, the SFA will supply to the College details of the records that the College will need to collect and retain.
- 18.3 The SFA 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 SFA will confirm to the College in writing the exact percentage of the contribution.

- 18.4 Where the SFA requires the College to obtain a contribution towards the cost of the provision under clause 18.3 above of this part of the Financial Memorandum, the College must provide evidence that the contribution has been received.
- 18.5 In the event that any funding paid under this part of the Financial Memorandum is deemed to constitute unlawful State Aid the SFA reserves the right to require immediate repayment of any such funding.

19 Feedback and Complaints

- 19.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the Provision shall rest with the College. The College shall have procedures in place, which are acceptable to the SFA, to gather and act upon feedback and complaints from Learners and/or their representatives and employers and the wider community.
- 19.2 The College must ensure that Learners are made aware of its procedure for dealing with complaints and that the procedure is clear and accessible to Learners who wish to complain.
- 19.3 The College shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the SFA.
- 19.4 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 SFA and co-operate with any investigation carried out by the SFA and act on any recommendations made by the SFA following the investigation.

20 Access and Monitoring

- 20.1 The SFA 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.
- 20.2 For monitoring and evaluation purposes, the SFA, the Secretary of State and their agents, the Department for Education, the Department for Work and Pensions, the National Audit Office, representatives of the European Commission and the European Court of Auditors, the Inspectorates and HM Treasury shall have the right to visit all or any College site(s), or those of its sub-contractors and view operations

relating to the Provision and to inspect relevant documents and interview Learners and staff during these visits.

- 20.3 The College shall, and ensure that its sub-contractors shall, permit access at any reasonable time to any of the representatives listed at clause 20.2 in order to:
- 20.3.1 examine, audit or take copies of any original or copy documentation, accounts, books and records of the College and its sub-contractors that relate to this Financial Memorandum;
 - 20.3.2 visit, view or assess the design, management and delivery relating to the Provision at any premises where those operations are carried out (including those of sub-contractors) and conduct relevant interviews, including interviews with Learners, during these visits at any reasonable time;
 - 20.3.3 carry out examinations into the economy, efficiency and effectiveness with which the College has used the SFA's funding in the delivery of the Provision.
- 20.4 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 20.2.
- 20.5 The College shall, if required by any of the representatives stated at clause 20.2 provide appropriate oral or written explanations.
- 20.6 The College must notify the SFA immediately in writing if at any time there is a risk to its solvency and viability. In order to continue to receive funding the SFA may require the College to provide information to demonstrate to its satisfaction the College's ability to continue to meet the needs of Learners and discharge its responsibilities in relation to its solvency and safeguarding of assets and provide evidence of financial resources sufficient to enable it to continue to deliver the Provision.
- 20.7 The SFA reserves the right, at any reasonable time, and as it may deem necessary to require the College at its own cost to:
- 20.7.1 provide such assurance as the SFA may require that the delivery of the Provision complies with the requirements of the Financial Memorandum;
 - 20.7.2 obtain a report by an independent accountant of the SFA's choice on:
 - 20.7.2.1 the financial systems and controls operated by the College or its subcontractors;

- 20.7.2.2 the accuracy and regularity of funding claims in respect of payments claimed or received under this Financial Memorandum;
 - 20.7.2.3 the evidence held by the College or its subcontractors to support delivery of the Provision in accordance with the terms of this Financial Memorandum;
 - 20.7.3 submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the SFA
 - 20.7.4 provide any additional evidence to support payments made under this Financial Memorandum, as the SFA shall reasonably require.
- 20.8 The College must agree the instructions for the work with the SFA. The report and the work required in order to produce the report shall be carried out to the satisfaction of the SFA, and the SFA must be able to place reliance on it. The College shall provide a copy of the interim and final report to the SFA as soon as they are available. The SFA reserves the right to require the College to publish the report.

21 Financial Reporting and Audit

- 21.1 The SFA shall specify its requirements as to the information to be contained in the College's financial statements and how they should be reported in accordance with best practice in the further education sector.
- 21.2 The College shall appoint an audit committee and arrange to provide for internal and financial statements audit, including regularity audit, in accordance with the *Joint Audit Code of Practice* and any best practice guidance drawn up and published by the SFA in consultation with colleges. Any mandatory requirements under the *Joint Audit Code of Practice* shall be a condition of funding under this Financial Memorandum.
- 21.3 The College shall provide the SFA with copies of its audited financial statements within 5 months of the College's year end and publish a copy on its website. As a charity, the College is expected to make its financial statements available to members of the public on request.
- 21.4 The College shall demonstrate that any payments made in respect of the termination of employment are regular secure value for money and have not been made where disciplinary action would have been justified. All such payments shall be brought to the attention of the College's financial statements auditors.

- 21.5 The College must ensure that it has an effective policy of risk management.
- 21.6 The College shall notify the SFA immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Provision including but not limited to fraud involving subcontractors. The College shall investigate and report to the SFA all significant cases of internal and external fraud or suspected fraud or irregularity (as defined in the *Joint Audit Code of Practice*). The SFA reserves the right to review the College's fraud investigation files.

22 Capital Transactions

- 22.1 The College shall properly manage and develop its property with regard to good practice guidance in the further education sector and ensure that it maintains premises which are properly equipped in order to deliver the education and training for which it is funded by the SFA.
- 22.2 Where the College proposes to dispose of, lease or rent land and/or buildings which have been acquired, developed and/or refurbished or modernised with the help of capital grants from the SFA and predecessor bodies the SFA should be notified in writing of such transactions and reserves the right to require repayment of some, or all, of the associated grant.

23 Additional Conditions of Funding

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

24 Dispute Resolution

- 24.1 Any dispute, difference or question arising between the Parties either during the currency of the Financial Memorandum or afterwards shall be referred to the nominated contacts for the SFA and the College for discussion and review in order to try to resolve the same.
- 24.2 In the event of the nominated contacts being unable to resolve the relevant issue, either Party may request in writing that the matter is referred to the SFA's nominated representative and the College's representative nominated for this purpose (jointly "the Dispute Resolution Panel") for formal review and consideration. Any request for referral to the Dispute Resolution Panel must include details of the dispute and any proposals to resolve it.

- 24.3 The Dispute Resolution Panel will meet within 28 days of receiving a request for referral made in accordance with clause 24.2 above.
- 24.4 In the event of the Dispute Resolution Panel failing to identify a mutually acceptable resolution within 28 days of the date of reference, then the dispute shall be referred to and settled as far as possible by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
- 24.5 Neither Party may commence court proceedings in relation to any dispute arising out of the Financial Memorandum until they have attempted to settle it by mediation, any such mediation may be terminated by either Party at any time of such Party wishing to commence court proceedings.

25 Repayment of Funds

- 25.1 The SFA reserves the right to require the College to repay all or part of the funds provided by it in the event of a breach of the terms and conditions of funding set out in this Financial Memorandum or any previous Financial Memorandum between the SFA or any predecessor body.
- 25.2 The SFA shall be entitled to recover any sums repayable by the College by deducting them from payments due to the College under this Financial Memorandum.

26 Interpretation

- 26.1 Nothing in this Financial Memorandum shall require the College to act in a manner which would cause it to lose its charitable status.
- 26.2 No failure to exercise or delay in exercising by the SFA any of its rights, powers and remedies shall operate as a waiver of any of them.

27 Governing Law and Jurisdiction

- 27.1 This Financial Memorandum shall be governed by and interpreted in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the English courts.

28 Effective Date

- 28.1 The terms and conditions set out in this document will take effect from 1 August 2017 and will be reviewed on or before 31 July 2018.
- 28.2 The SFA may, by giving written notice to the College extend the Financial Memorandum annually for a further period of up to two years (subject to the College's performance, continuing availability of funding and changes resulting from the implementation of Devolution Agreements).