



Skills Funding
Agency



European Union
European
Social Fund

DRAFT Conditions of Funding (Grant)

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Conditions of Funding (Grant)

1 Introduction

- 1.1 This Agreement is made 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 organisation] (the Body) regarding the amount of funding to be paid to the Body for Learning Provision (Provision) for the periods as set out in Appendix 1.
- 1.2 The funding allocation(s) by the SFA is made subject to the conditions set out in this Agreement and any documents referred to herein.

2 Funding and Payment

- 2.1 The breakdown of funds which the SFA agrees to pay to the Body is set out in Appendix 1 of this Agreement.
- 2.2 The SFA may, by giving written notice to the Body extend the Agreement annually for a further period of up to two years (subject to the Body's performance, continuing availability of funding and changes resulting from the implementation of Devolution Agreements).

3 Conditions of Funding

- 3.1 The detailed requirements with which the Body must comply in respect of each learning programme delivered under this Agreement and which form part of this Agreement are set out in the following Funding and performance-management rules as amended from time;
- 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
 - Apprenticeship funding rules for higher education institutions 2016 to 2017 version 1

- 3.2 The maximum value of the Adult Education Budget, or for learning provision excluded from this budget, as shown in Appendix 1 and Appendix 2, may not be exceeded for any reason, except by an agreed variation in writing to this Agreement. The SFA will not be liable to make any payment in excess of the maximum values set out above or as varied in writing. Where the term of this Agreement is longer than one year, funding for subsequent years is subject to funds being made available to the SFA. For Learning Provision that are excluded from the Adult Education Budget, the Body is not permitted to vire funding between programmes except by way of an agreed variation in writing to this Agreement.
- 3.3 The Maximum Value of each Learning Programme as shown in Appendix 1 of this Agreement 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.
- 3.4 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 Body which all form part of this Agreement.
- 3.5 The SFA will restrict delivery of Provision under this Agreement 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 terms of this Agreement accordingly.
- 3.6 The SFA reserves the right to give the Body three months' notice to reduce the overall maximum value for any learning programme without the need to give a reason.
- 3.7 The Body must provide evidence that it has worked in partnership with the LEP to ensure that the delivery of the Provision takes account of the LEP's local economic and skills priorities. Where the Body is delivering in an area covered by a Devolution Agreement, the Body must work with the Combined Authority and the delivery of Provision must take account of the Combined Authority's priorities for education and skills.
- 3.8 The Body 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 Body to digitally sign and agree the Agreement online. It is the Body's responsibility to maintain appropriate user roles on an on-going basis.

4 Sub Contracted Provision

- 4.1 The SFA reserves the right to require the Body not to enter into or to terminate any sub-contract to deliver the Provision under this Agreement.
- 4.2 The Body 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 Body of any obligation or duty attributable to them under the Agreement. The Body 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.
- 4.3 Where the Body has sub-contracted any duties or obligations arising out of this Agreement, the Body 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 Body enters into a sub-contract for the purpose of delivering the provision, the Body shall ensure that the sub-contract includes any terms specified in the Funding and performance-management rules.
- 4.4 The Body shall ensure that sub-contractors are selected fairly following an open and competitive tendering process and have sufficient capacity, capability, quality and financial standing to deliver the provision.
- 4.5 The Body shall ensure that any sub-contract entered into for the purpose of delivering the provision under this Agreement contains a term providing that the SFA has the right to enforce the terms of the sub-contract.
- 4.6 The Body 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 Agreement contains a term giving effect to this requirement.
- 4.7 The Body must notify the SFA in writing if there is a change in its name and/or ownership at least one month prior to the change taking effect. The SFA reserves the right to terminate the Agreement if it considers in its absolute discretion that the change in ownership would prejudice the Body's ability to deliver the Provision.
- 4.8 The Body may not assign any rights, duties or obligations under this Agreement without the consent of the SFA.
- 4.9 The Body 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>

5 Learner Health, Safety and Welfare

- 5.1 The Body shall ensure, so far as reasonably practicable that learning takes place in safe, healthy and supportive environments, which meet the needs of learners. The Body shall provide information to the SFA, as and when specifically requested, to give assurance that adequate arrangements exist for learner health safety and welfare.
- 5.2 Where part of the learning takes place in an environment outside the direct control of the Body, the Body shall take all reasonable steps to ensure that adequate arrangements are in place to ensure the health and safety of learners.
- 5.3 The Body shall adopt recruitment processes that comply with the law and will ensure that children and vulnerable adult learners are protected. The Body will take all necessary actions to comply with current legal safeguarding requirements. The Body must make the necessary checks to ensure that employment that involves regular contact with young people under the age of 18, or other vulnerable learners, is not offered to or held by anyone who has been convicted of certain specified offences, or whose name is included on lists of people considered unsuitable for such work held by the Department for Education and the Department of Health. Information should also be sought from the Disclosure and Barring Service. The Body must undertake an adequate risk assessment to establish what action is required where their employees have regular contact with learners under 18 or other vulnerable learners.
- 5.4 The Body will carry out disclosure and barring service checks on all overseas applicants for employment and seek additional information about an applicant's conduct. The Body 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.
- 5.5 In working with other organisations/bodies, the Body 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.
- 5.6 The Body shall, in circumstances where it sub-contracts the management and/or delivery of the services under this Agreement, ensure that all the clauses in respect of learner health safety and welfare are included in its contract with sub-contractors.
- 5.7 The Body 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:

- 5.7.1 informing the SFA's representative by telephone or email immediately the Body becomes aware of the event.
- 5.8 The Body shall report all RIDDOR reportable incidents in line with the Regulations, and shall investigate or assess the circumstances of all learner incidents within the scope of RIDDOR and follow HSE guidance 'Investigating Accidents and Incidents: A Workbook for Employers, Unions, Safety Representatives and Safety Professionals' (HSG245) ISBN 0717628272. The Body 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.
- 5.9 The Body shall also monitor, and act on, any other harm to learners to the extent that the Body 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.
- 5.10 The Body shall co-operate with SFA's representatives 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.
- 5.11 The Body 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 s26 of the Counter-Terrorism and Security Act 2015 and the guidance published by the Secretary of State.

6 Disposal of Assets and Change of Use

- 6.1 In respect of Assets whose value exceeds £2,500 including VAT the following provisions shall apply.
- 6.2 For the purposes of this section:
- (a) 'Asset' shall mean any property, real or personal, tangible or intangible;
 - (b) an Asset shall be considered to have been financed by the SFA if it has been acquired wholly or partly with funds provided by the SFA;
 - (c) the use of any Asset shall be considered to have changed if the Body uses it for any purpose other than for the provision or connected with the Provision of services under the Agreement;
 - (d) 'the appropriate proportion thereof' shall be the proportion represented by the amount of funding provided by the SFA to

acquire, develop or improve an asset in relation to the entire price paid for its acquisition, or its market value when its development or improvement have been completed.

- 6.3 The Body shall ensure that any Asset financed by the SFA is adequately insured.
- 6.4 The Body shall inform the SFA if it proposes to dispose of, or change the use of, any Asset that has been financed by the SFA.
- 6.5 The Body shall not dispose of any Asset financed by monies provided by the SFA unless it has first obtained the written consent of the SFA to such a disposal.
- 6.6 Where the Body disposes of the Asset it shall pay the SFA whichever is the greater, either the amount of funding provided by the SFA in respect of the Asset or the net proceeds of any disposal of an Asset, or the appropriate proportion thereof, to the SFA unless otherwise agreed with the SFA.
- 6.7 If the Body changes the use of any such Asset it will be treated as a disposal and the Body shall make a payment to the SFA in accordance with clause 6.6 above.
- 6.8 In the event of the Body being taken over, merging or going into liquidation, all Assets financed by the SFA, or the equivalent portion of their market value, will become the property of the SFA.
- 6.9 The provisions of this clause shall apply during the term of this Agreement and after its termination howsoever arising. The SFA reserves the right to decide when interest in Assets financed by the SFA under the terms of this Agreement shall cease.

7 Equal Opportunities

- 7.1 The Body 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 Body shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Body and all sub-contractors employed in the execution of the Agreement. The Body will comply with the detailed requirements in relation to equality of opportunity set out in clauses 7.2 to 7.4.
- 7.2 The Body will, in delivering the Provision under this Agreement, demonstrate that it has had regard to the duties placed on the SFA by relevant equality legislation. The Body will take all reasonable steps to ensure the observance of these provisions by all servants, employees or

agents of the Body and all sub-contractors employed to deliver the Provision.

- 7.3 The Body shall ensure that equality of opportunity is built into all aspects of the Provision; the business planning process; and the self assessment process. The Body 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 Body shall use appropriate, specific and measurable objectives. These will be proportionate, relevant and aligned to the provision the Body is funded to deliver.
- 7.4 The SFA shall use a variety of equality information and data to support judgements about quality and eligibility for funding. These may include, but are not limited to: inspection judgements for equality and diversity, judgements from the Equality and Human Rights Commission, and the success and participation rates of different groups of learners.

8 Raising Standards

- 8.1 The Body 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;
- 8.1.1 to minimise drop out rates, deliver high completion, achievement and success rates and appropriate progression;
- 8.1.2 to at least meet the minimum quality standards that apply to the learning programmes delivered. These minimum quality standards will be set out by the SFA;
- 8.1.3 to ensure competent and appropriately qualified staff deliver and assess learning. The Body 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;
- 8.1.4 to offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
- 8.1.5 to provide a safe, healthy and supportive environment, which meets the needs of learners;
- 8.1.6 to provide good management and leadership of the learning process;
- 8.1.7 to deliver value for money and financial regularity and probity; and

- 8.1.8 to ensure any sub-contractors delivering the provision comply with the requirements set out in clauses 8.1.1 to 8.1.7 above.
- 8.2 The Body 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.
- 8.3 Where appropriate the Body 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 Body must notify the SFA immediately in writing if it receives any sanction from an awarding organisation.
- 8.4 When the Body receives notification from OFSTED that the Provision is to be inspected, the Body 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 Body 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 Body must confirm to the SFA in writing the outcome of the inspection within 5 working days of receiving the feedback from OFSTED.
- 8.5 The SFA will issue the Body with a Notice of Concern in the following circumstances:
- 8.5.1 the Body receives an inadequate OFSTED inspection rating;
- 8.5.2 all or any part of the provision delivered under this part of the Agreement falls below the minimum quality standards or other standards which may be set by the SFA;
- 8.5.3 the Body 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 a qualified auditors' report on its final 19+ Apprenticeship and Adult Education Budget funding claim.
- 8.6 The Notice of Concern will set out the reasons for the issue of the Notice of Concern and the actions the SFA requires the Body 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.
- 8.7 Where the SFA has served a Notice of Concern the SFA has the right to require the Body to suspend the recruitment of Learners until the Notice of Concern is lifted.

- 8.8 The Notice of Concern and any additional funding conditions will be lifted once the Body has taken the required action to address the concerns within the timescales set out.
- 8.9 If the Body 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.
- 8.10 In the event that the Body fails to comply with the Notice of Withdrawal of Funding, the SFA will issue a Confirmation of Withdrawal of Funding.
- 8.11 Once a Confirmation of Withdrawal of Funding has been issued the Body will be removed from the Register of Training Organisations and the SFA will secure another training provider to deliver the Provision.
- 8.12 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 interest of Learners or where the Body's financial health or financial controls put public funds at risk.
- 8.13 The Body shall for those staff delivering the services be responsible for their professional development and training and meeting any legal requirements to ensure that they are appropriately qualified and trained.
- 8.14 As part of the delivery of the provision, the Body 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);

9 European Funding and Other Sources of Funding

- 9.1 Where notified in writing by the SFA that the funding under this Agreement is required to be used as match funding;
- 9.1.1 The Body 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.
- 9.1.2 the Body 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 SFA, including but not limited to as match funding; and
- 9.1.3 where the Body or any of its sub-contractors has access to other funding streams, the Body or any of its sub-contractors will be required to demonstrate through accounting, management

information systems and any other relevant evidence (at 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 the Agreement; and

9.1.4 where the SFA identifies double funding in respect of the provision, or any part thereof, the Body 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 Body has received funding from another source and the SFA reserves the right to deduct such sums from any monies owed to the Body under the Agreement or any subsequent agreement; and

9.1.5 the SFA reserves the right to use payments made under the Agreement as match funding for ESF projects. Where requested to do so in writing by the SFA, the Body shall provide such information and in the form as the SFA specifies to enable the SFA to comply with the requirements of ESF; and

9.1.6 the Body 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; and

9.2 The Body must ensure that all learners are aware of the support of the European Social Fund in respect of the Provision being delivered under this Agreement.

10 Data Collection

10.1 The Body 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 2017/18' as amended and updated which is published on the SFA's website and in accordance with the *'Provider Support Manual'* as amended and updated.

10.2 The Body must supply the SFA with data in accordance with the following:

10.2.1 in line with agreed audit arrangements;

10.2.2 in adherence with the Data Protection Act;

10.2.3 to support payments received on profile;

10.2.4 to enable reconciliation to take place; and

10.2.5 to support the contract management and allocation processes.

- 10.3 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 this web portal is restricted and the Body agrees to comply with the conditions of use regarding the supply of data to the SFA set out in 'Individualised Learner Record (ILR) Specification for 2017/18' and relevant 'Provider Support Manual' as amended and updated available on the SFA's web site.
- 10.4 The Body must ensure that data is received by the SFA in accordance with the requirements of the 'Individualised Learner Record (ILR) specification for 2017/18' and 'Provider Support Manual 2017/18' as amended and updated.
- 10.5 Where the SFA is concerned about the quality of the data, including the completeness or accuracy of the data, provided by the Body, the SFA may require the Body to supply data more frequently for such period as the SFA shall require.
- 10.6 The SFA reserves the right to require the Body, at its own cost, to carry out such work as the SFA deems necessary to improve the quality of data.
- 10.7 The SFA reserves the right to require the Body to:
- 10.7.1 review the management reports provided by either the Body's Internal Auditors or by the SFA's Funding Auditors about the quality and reliability of the Body's Management Information System (MIS) and ILR data;
 - 10.7.2 commission either the Body's Internal Auditors or the SFA's Funding Auditors to evaluate and support the Body's actions and action plan to address any data quality issues that have been identified in the resulting management letters; and
 - 10.7.3 secure confirmation from the Body that it has been informed of any concerns and secure their commitment to overseeing the timely and accurate return of data in future.
- 10.8 The SFA reserves the right to suspend payments to the Body under the Agreement where data quality gives rise to concern about the accuracy of the data provided by the Body.
- 10.9 Failure to transmit complete and accurate data to the SFA in accordance with Clause 10.4 above may result in funding being withheld or recovered.
- 10.10 The Body must update the course information funded by the SFA at www.coursedirectoryproviderportal.org.uk in accordance with the course directory data requirements which can be found at <https://coursedirectoryproviderportal.org.uk/Help>.

- 10.11 Where the Body is delivering the Provision to Learners claiming out of work benefits, it must provide data to the Secretary of State with responsibility for unemployment or their nominated representative in accordance with the requirements notified to the Body. Failure to transmit complete and accurate data under this clause 10.11 will constitute a breach of the conditions of funding set out in this Agreement and may result in payments for this provision to be delayed or withheld.
- 10.12 The Body 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.

11 Data Protection and Protection of Personal Data

- 11.1 The Body shall ensure that information acquired by the Body and its sub-contractors under the delivery of this funding agreement 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 party from the other 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.
- 11.2 With respect to the parties' rights and obligations under this Agreement the parties agree that the SFA is the Data Controller and the Body is the Data Processor within the meaning of the Data Protection Act.
- 11.3 The Body shall:
- 11.3.1 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 Agreement or otherwise notified by the SFA to the Body during the term of the Agreement);
 - 11.3.2 process the Personal Data only to the extent and in such manner as is necessary for the delivery of the Provision or as is required by Law or any Regulatory Body;
 - 11.3.3 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;

- 11.3.4 take reasonable steps to ensure the reliability of any contractor personnel who have access to the Personal Data;
- 11.3.5 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 the Provision;
- 11.3.6 ensure that all 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;
- 11.3.7 notify the SFA within 5 working days if it receives:
 - 11.3.7.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 11.3.7.2 a complaint or request relating to the SFA's obligations under the Data Protection Legislation;
- 11.3.8 provide the SFA with full co-operation and assistance in relation to any complaint or request made, including by:
 - 11.3.8.1 providing the SFA with full details of the complaint or request;
 - 11.3.8.2 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;
 - 11.3.8.3 providing the SFA with any Personal Data it holds in relation to a Data Subject (within the timescales required by the SFA); and
 - 11.3.8.4 providing the SFA with any information requested by the SFA;
- 11.3.9 permit the SFA or the SFA's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Body'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 Body is in full compliance with its obligations under this Agreement;

- 11.3.10 provide a written description of the technical and organisational methods employed by the Body for processing Personal Data (within the timescales required by the SFA); and
- 11.3.11 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:
 - 11.3.11.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - 11.3.11.2 any reasonable instructions notified to it by the SFA.
- 11.4 Where the Body is delivering the provision to learners claiming out of work benefits, the Secretary of State with responsibility for unemployment is the Data Controller in relation to Personal Data, which the Body is required to provide to the Secretary of State under any enactment. This clause 11.4 will be enforceable by the appropriate Secretary of State in relation to any Personal Data processed by the Body on their behalf. Failure to transmit complete and accurate data under this clause 11.4 will constitute a breach of the conditions of funding set out in this Agreement and may result in payments for this Provision to be delayed or withheld.
- 11.5 Where the Body is providing the provision 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 Body is required to provide to the Secretary of State for Justice.

12 Branding and Logos

- 12.1 The Body, when receiving funding from the SFA 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 Provision. This shall include but not be limited to prospectuses, direct mail advertising, TV and radio advertising, merchandising or any other literature or products.
- 12.2 The Body shall be given access to the current SFA logos and statements, which it is required to use. The Body will be required to use logos and statements in accordance with the terms of use and should not alter or amend such logos or statements. Logos and statements are only to be used in relation to the provision under this Agreement. Any breach of this clause 12 or the requirements or terms of use of which the Body is made

aware are a condition of funding, failure to comply could result in the funding being withdrawn.

- 12.3 The Body 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.
- 12.4 The Body must ensure all the terms of clause 12 are applied to the Body's sub-contractors in carrying out its responsibilities under this Agreement.

13 Feedback and Complaints

- 13.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the provision shall rest with the Body. The Body 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.
- 13.2 The Body 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.
- 13.3 The Body shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the SFA.
- 13.4 Where a complaint has not been resolved to the satisfaction of the complainant the Body 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 or their representatives and act on any recommendations made by the SFA following the investigation.

14 Retention of Documents

- 14.1 The Body and its sub-contractors shall retain original invoices, management information returns and all other documents necessary to verify the provision delivered by itself or by its sub-contractors in relation to this agreement for 6 years from the end of the financial year in which the last payment is made.
- 14.2 Where any payments made under this Agreement for the Provision have been used as match-funding as notified in writing by the SFA under Clause 9 for an ESF project, the Body 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 this Agreement to recover funds, the SFA will be entitled to recover from the Body any sums which it is required to repay to the European Social Fund as a result of the Body's failure to comply with this Clause.

15 Access and Monitoring

- 15.1 The SFA shall give the Body reasonable advance notice in writing of proposed visits to the Body 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 delivery or content of the provision.
- 15.2 For monitoring and evaluation purposes, the SFA, the Secretary of State and their agents, the Department for Education, the Department for Work and Pensions (or their Successors), the National Audit Office, Representatives of the European Commission and the European Court of Auditors, the Inspectorate and HM Treasury shall have the right to visit all or any site(s) and view operations relating to the provision and to inspect relevant documents and interview learners and the Body's staff during these visits.
- 15.3 The Body shall, and shall ensure that its sub-contractors shall, permit access at any reasonable time to any of the representatives listed at Clause 15.2 in order to:
- 15.3.1 examine, audit or take copies of any original or copy documentation, accounts, books and records of the Body and its sub-contractors that relate to the Agreement;
 - 15.3.2 visit, view or assess the design, management and delivery of 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;
 - 15.3.3 carry out examinations into the economy, efficiency and effectiveness with which the Body has used the SFA's resources in the delivery of the Provision.
- 15.4 Where reasonably required, the Body and its sub-contractors shall provide copies of any relevant documents required by any of the representatives listed at clause 15.2.

- 15.5 The Body shall, if required by any of the representatives stated at clause 15.2 provide appropriate oral or written explanations.
- 15.6 The SFA reserves the right, at any reasonable time, and as it may deem necessary to require the Body at its own cost to:
- 15.6.1 provide evidence of financial resources and the level of turnover sufficient to enable it to continue to deliver the Provision;
 - 15.6.2 provide such assurance as the SFA may require that the delivery of the Services complies with the requirements of the Agreement;
 - 15.6.3 obtain a report by an independent accountant of the SFA's choice on the financial systems and controls operated by the Body or the accuracy of funding claims in respect of payments claimed or received under the Agreement. 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 Body must agree the instructions for the work with the SFA and the Body 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 Body to publish the report;
 - 15.6.4 provide a copy of the Body's latest audited Accounts;
 - 15.6.5 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.
- 15.7 The Body shall in delivering the Provision comply fully with all relevant rules and regulations of the SFA in force from time to time especially when on SFA's premises.

16 Review of Performance and Reconciliation of Funding

- 16.1 Where the Body receives profile payments from the SFA, payments will be reconciled to cash earned by actual delivery of the Provision or the period to the timetable published in the Funding and performance-management rules.
- 16.2 Where the Body's actual delivery will result or has already resulted in an overpayment to the Body by the SFA, the SFA will either:
- 16.2.1 withhold future payments; or
 - 16.2.2 raise an invoice for the amount; or
 - 16.2.3 deduct the amount owed from payments due to the Body under the Agreement for current or subsequent months or years accordingly.

- 16.3 Where the Body's actual delivery has resulted in an underpayment to the Body by the SFA, the SFA will adjust the amount due to the Body accordingly. This adjustment shall not exceed the overall Maximum Value set out in Appendix 1.
- 16.4 Should there be an under or over payment to the Body, the SFA may, at its absolute discretion, require a variation to the profile payments.
- 16.5 A review will take place at the end of the term of this Agreement in respect of the delivery of the provision. The SFA will notify the Body of the actual amount of money which has been earned against the provision delivered and compare this to the total profile payments made and to the overall maximum value specified in Appendix 1. At this stage final cash reconciliation will take place. Any overpayment made to the Body by the SFA will be repayable within 30 days of receiving an invoice. The SFA reserves the right to reduce future payments to recover any overpayments. The SFA will pay any outstanding monies owed, up to the overall Maximum Value specified in Appendix 1 of this Agreement, within 30 days of final reconciliation being completed. Payment will be made via BACS.
- 16.6 The evidence required in respect of each learning programme is set out in the Funding and performance-management rules and the Body must retain such evidence for inspection on demand.

17 Freedom of Information

17.1 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 Agreement or otherwise relating to the Body, 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 clause 17; and

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

17.2 Freedom of Information

- 17.2.1 The Body acknowledges and agrees that the SFA is subject to legal duties under FOIA, which may require the SFA to disclose on request information relating to this Agreement or otherwise relating to the Body.
- 17.2.2 The Body acknowledges and agrees that the SFA is required by law to consider each and every request made under FOIA for information.
- 17.2.3 The Body acknowledges and agrees that all decisions made by the SFA pursuant to a request under FOIA is solely a matter for and at the discretion of the SFA.
- 17.2.4 Notwithstanding anything in this Agreement to the contrary (including without limitation any obligations of confidentiality), the SFA 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 shall use reasonable endeavours (but shall not be obliged) to consult the Body and shall not;
- a) confirm or deny that information is held by the SFA; or
 - b) disclose information requested
- to the extent that in the SFA's opinion the information is eligible in the circumstances for an exemption and therefore the SFA may lawfully refrain from doing either of the things described in parts (a) and (b) of this clause.
- 17.2.5 In relation to information relating to the Body or this Agreement which the Body requests should be exempt under the FOIA the Body shall indemnify the SFA for any and all costs (including legal fees) incurred by the SFA 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 SFA to withhold exempt information;
- 17.2.6 The SFA shall in no event 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 Agreement or otherwise relating to the Body;

17.2.7 The Body shall assist the SFA as reasonably necessary to enable the SFA to comply with its obligations under FOIA.

18 Confidentiality

“Confidential Information” means any information including Personal Data as defined by the Data Protection Act 1998, and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Parties including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential").

The Body hereby warrants that:

- 18.1 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall treat all Confidential Information belonging to the SFA as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Agreement; and
- 18.2 any person employed or engaged by it (in connection with this Agreement in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without prior written consent of the SFA, except where disclosure is otherwise expressly permitted by the provisions of this Agreement.
- 18.3 it shall take all necessary precautions to ensure that all Confidential Information obtained from the SFA is treated as confidential and not disclosed (without prior approval) or used other than for the purposes of this Agreement by any of its employees, servants, agents or sub-contractors.
- 18.4 The provisions of clauses 18.1 and 18.2 shall not apply to any information:
 - 18.4.1 which is or becomes public knowledge (other than by breach of this clause 18.4.1);
 - 18.4.2 which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;

- 18.4.3 which 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.
- 18.5 Nothing in this Clause 18 shall be deemed or construed to prevent the SFA from disclosing any Confidential Information obtained from the Body:
- 18.5.1 to any other Central Government Body, Non-Departmental or Quasi Government body or agency, central or local;
 - 18.5.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 18.5.3 to any professional adviser, consultant, contractor or other person engaged by the SFA directly in connection with this Agreement, provided that such information is treated as confidential by the receiving consultant, contractor or any other person;
 - 18.5.4 on a confidential basis to any proposed successor body in connection with any assignment disposal of its rights, obligations or liabilities under this Agreement.
- 18.6 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the course of the delivery of the Provision, the Body undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 18.7 The Body will immediately notify the SFA of any breach of security in relation to Confidential Information and all data obtained in the course of the delivery of the provision and will keep a record of such breaches. The Body will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Body will co-operate with the SFA in any investigation that the SFA considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 18.8 The Body shall, at its own expense, alter any security systems at any time during the period of the Agreement at the SFA's request if the SFA reasonably believes the Body has failed to comply with clause 18.7.
- 18.9 The SFA reserves the right to publish details of this Agreement and the payments made under it to comply with the Government's transparency requirements.

18.10 The provisions of this Clause 18 will apply for the duration of the Agreement and after its termination.

19 State Aid

19.1 The Body should satisfy themselves, if the European rules on State Aid apply to the provision delivered under this Agreement.

19.2 Where the rules on State Aid apply, the SFA will supply to the Body details of the records that the Body will need to collect and retain.

19.3 The SFA reserves the right to require the Body to obtain a contribution towards the cost of the Provision delivered under this Agreement from the employer of any learner. Where a contribution is required, the SFA will confirm to the Body in writing the exact percentage of the contribution.

19.4 Where the SFA requires the Body to obtain a contribution towards the cost of the provision under clause 19.3 of this Agreement, the Body must provide evidence that the contribution has been received.

19.5 In the event that any funding paid under this Agreement is deemed to constitute unlawful state aid the SFA reserves the right to require immediate repayment of any such funding.

20 Dispute Resolution

20.1 Any dispute, difference or question arising between the parties either during the currency of the Agreement or afterwards shall be referred to the nominated contacts for the SFA and the Body for discussion and review in order to try to resolve the same.

20.2 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 Body'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.

20.3 The Dispute Resolution Panel will meet within 28 days of receiving a request for referral made in accordance with clause 20.2 above.

20.4 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.

20.5 Neither Party may commence court proceedings in relation to any dispute arising out of the Agreement until they have attempted to settle it by mediation. Any such mediation may be terminated by either Party at any time of such Party wishing to commence court proceedings.

21 Recovery of Funds

21.1 The SFA reserves the right to require the Body 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 Agreement or any previous Agreement between the SFA or any predecessor body.

21.2 The SFA shall be entitled to recover any sums repayable by the Body by deducting them from payments due to the Body under this Agreement.

22 The Agreement

22.1 This Agreement constitutes the entire agreement between the parties and shall not be varied except by an instrument in writing signed by the parties.