



European Union
European Social Fund
Investing in jobs and skills



Leading learning and skills

Financial Memorandum

Part 2

Adults in Custody

The Manchester College
Contract No SE90008692

Contents

Section

General Terms and Conditions

Appendix 1 Service Specification

Appendix 2 Finance, Volume and Data Capture

Appendix 3 Special Conditions

Financial Memorandum Part 2

- 1 Introduction and definitions
- 2 Commencement of Continuation
- 3 Conditions of Funding
- 4 Partnership Provision
- 5 Raising Standards
- 6 Specific Learner Incident Reporting Requirements
- 7 Learner Health, Safety and Welfare
- 8 Equal Opportunities
- 9 European Funding and Other Sources of Funding
- 10 Retention of Documents
- 11 Freedom of Information and Confidentiality
- 12 Data Protection and Protection of Personal Data
- 13 Branding and Logos
- 14 Feedback and Complaints
- 15 Access and Monitoring
- 16 Breach
- 17 Termination
- 18 Transfer of Responsibility



European Union
European Social Fund
Investing in jobs and skills



Leading learning and skills

Introduction

- 1.1 This section of the Financial Memorandum records the agreement between the Learning and Skills Council (the Council) and Strode College (the College) regarding the amount of funding to be paid by the Council to the College for Provision for the period commencing 1 August 2009 to 31 July 2014.
- 1.2 The funding allocation(s) by the Council is made subject to the general conditions of payment of funds by the Council to the governing body of the College set out in Part 1 of the Financial Memorandum between the Council and the College and to the conditions set out in this Part 2 and any other documents referred to therein.

It is agreed as follows.

Definitions

- 1.3 “Contract” means the Contract between the above named parties consisting of these General Terms and Conditions, the specification and any other documents (or parts thereof) specified in the Contract and any variations to the Contract agreed in writing and signed by both Parties.
- 1.4 “HMPS” means Her Majesty’s Prison Service.
- 1.5 “Inspectorates” means the Office for Standards in Education (Ofsted) and HM Inspectorate of Prisons.
- 1.6 LA/s means Local Authority/ies
- 1.7 “Learner” means any third party including any student, apprentice, trainee or similar to whom The College is required to deliver any of the Services.
- 1.8 “NPS” means National Probation Service
- 1.9 “OLASS” means the Offender Learning and Skills Service to be provided under this Contract.

- 1.10 "Parties" means The Council and The College.
- 1.11 "Premises" means the location where the Services are to be performed, as detailed in the Contract.
- 1.12 "Services" means the services to be provided as specified in the Contract.
- 1.11 "Specification" means the documents setting out THE Council's requirements for the Services to be provided under this Contract.
- 1.13 YJB means Youth Justice Board
- 1.14 YOTS means Youth Offending Teams
- 1.15 Young People or Young Offenders means 'all young people in Youth Justice Board (YJB) custodial provision aged 15 to 17 years old', including young people on remand.

2 Commencement and Continuation

- 2.1 The Contract shall commence on the date on which the provision of Services under this Contract commences as provided in Appendix 1 and shall finish on the date on which the Services provided under the Contract finish as provided for in Appendix 1 or as otherwise provided in the Contract.
- 2.2 Subject to the passage of the Apprenticeships, Skills, Children and Learning Bill The Council will be dissolved in April 2010. The legislation may provide for The Council's rights and liabilities under this Financial Memorandum to transfer to the Secretary of State, the Chief Executive of Skills Funding, the Young People's Learning Agency, a Local Authority or any other person specified in an order made by the Secretary of State.

3 Funding and Payment

- 3.1 The total amount of funds which The Council agrees to pay to the College is set out in the **Appendix 2** which is attached to and forms part of this Financial Memorandum.
- 3.2 The teaching hours covered by this Financial Memorandum are set out in Appendix 2, annex 1.
- 3.3 The Council will make payments of funding to the College against a monthly payment profile.

4 Conditions of Funding

- 4.1 Not Applicable

- 4.2 The detailed requirements in respect of each learning programme are set out in the Council's Funding Guidance 2009/10 as amended from time to time by the Council and which form part of the Financial Memorandum.
- 4.3 The Provision is to be delivered in accordance with any specific regional requirements and delivery profiles and any tender document submitted by the College which all form part of the conditions of funding, as set out in Appendix 1.
- 4.4 Not Applicable
- 4.5 The College must supply to the Council's Data Service data on each individual learner, in accordance with the data collections framework set out in the '*Specification of the Individualised Learner Record 2009/10* as amended and updated which is published on the Information Authority's website (www.theia.org.uk) and in accordance with the '*Provider Support Manual 2009/10*' as amended and updated.
- 4.6 The Council will require the College to:
- 4.6.1 review the management reports provided by either the College Internal Auditors or by the Council's Funding Auditors about the quality and reliability of the College's MIS and ILR data;
 - 4.6.2 commission either the College's Internal Auditors or the Council's Funding Auditors to evaluate and support the college's actions and action plan to address any data quality issues that have been identified in the resulting management letters; and
 - 4.6.3 secure confirmation from the Governing Body that it has been informed of any concerns and secure their commitment to overseeing the timely and accurate return of data in future.
- 4.7 The Council may allocate additional funds to the College during the course of this agreement. Where these funds are to be consolidated within the college's FE 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.

5 Partnership Provision

- 5.1 The College must make an annual self-declaration of the partners with whom they are or will be working on the standard form published in the *LSC's ILR Funding Claims and Audit Returns* as amended and updated (see paragraph 28 of that document). Information to be provided includes:
- Details of who the partners are.

- Details of what Provision the partners are providing, and how it fits into priorities.
 - Details of the levels of funding the College is retaining and the services it provides to its partners for this funding.
 - Details of out-of-area Provision and confirmation of agreement from the local Council involved.
- 5.2 The College should comply with the detailed advice on partnership Provision as set out in Section 3 of the *LSC's ILR Funding Compliance Advice and Audit Guidance for Providers* as amended and updated.
- 5.3 The College should comply with the ILR data guidance and information on the Information Authority website www.theia.org.uk as amended and updated. .
- 6 Raising Standards**
- 6.1 The College shall deliver the Services to an acceptable standard of quality as defined by The Council and shall take all reasonable steps to:
- 6.1.1 minimise drop out rates and deliver high completion and achievement rates, and appropriate progression;
 - 6.1.2 at least meet the minimum levels of performance that apply to the appropriate Services purchased. These minimum levels of performance and other types of underperformance will be set out on an annual basis by The Council;
 - 6.1.3 meet the requirements of inspection criteria, as assessed by the Ofsted;
 - 6.1.4 ensure competent and appropriately qualified staff deliver and assess learning;
 - 6.1.5 offer equality of access to learning opportunities and close equality gaps in learning and outcomes;
 - 6.1.6 provide a safe, healthy and supportive environment, which meets the needs of Learners;
 - 6.1.7 provide good management and leadership of the learning process;
 - 6.1.8 deliver value for money and financial probity; and
 - 6.1.9 ensure all sub-contractors delivering Services under the Financial Memorandum on behalf The College comply with the requirements set out in 8.1.1 to 8.1.8 above.

- 6.2 The College shall continuously seek to improve the Services and raise standards to benefit the Learner. The College shall have the primary responsibility for improving standards and will need to demonstrate to The Council's satisfaction that it has an effective quality assurance system based on annual self-assessment and the implementation of its own quality improvement process. The College must provide evidenced continuous improvement. Failure to demonstrate improvement in the quality of the Services may result in The Council assessing The College to be at serious risk of failing to deliver the Services.
- 6.3 The College shall conduct continuous self-assessment of the Services against the quality requirements shown in Quality improvement and self-assessment (May 2005) and Appendix 3 of Planning for Success (which includes the requirements under the Common Inspection Framework published by Ofsted). The College shall annually submit their self-assessment reports electronically onto the Provider Gateway by a specified date and where required, evidence shall be provided to The Council and/or to Ofsted in support of statements made in the self-assessment report.
- 6.4 If The Council assesses The College to be at serious risk of failure to deliver the Services under this Financial Memorandum following The Council may:
- 6.4.1 require The College to meet improvement indicators to improve the quality of its Services. The Council will meet with The College to discuss and reach agreement on implementation of these actions and improvement indicators and to agree arrangements for monitoring and reviewing progress. In such cases reviews will take place at the frequency specified by The Council and in agreement with The College;
 - 6.4.2 agree detailed improvement plans and measures that set out clearly the expected timescale for improvement;
 - 6.4.3 agree arrangements for more frequent monitoring of quality improvement plans;
 - 6.4.4 cease funding all or part of the Services in respect of which planned improvement is not achieved or is at an unacceptable rate, or where the Services fails to meet minimum levels of performance or other quality criteria set out by The Council or Ofsted;
 - 6.4.5 terminate the Financial Memorandum in respect of this part of the Services on 31 July in the Financial Memorandum year in which the outcome of any review of performance by The Council judges The College to be at serious risk of failure to deliver the Services.; and
 - 6.4.6 If The Council judges that The College is failing to deliver the actions agreed under 5.4.2 above it shall constitute a serious breach under Clause 18 of the General Terms and Conditions of this Contract.

- 6.5 The Council may at its discretion agree a programme of support for The College to assist it in taking action to improve the quality of the Services.
- 6.6 When The College receives notification from Ofsted that its Services (including leadership and management) is to be inspected, The College shall provide The Council with details of its quality improvement activity, and any other relevant information in accordance with the required timescale of Ofsted. The Council will refer in turn to The College's latest self-assessment report using the Provider Gateway.
- 6.7 Following any inspection by Ofsted of the Services provided under this Contract, The College will set out in writing to The Council how it will develop the strengths and address the areas for improvement identified in the inspection. The College will update and agree with The Council revisions to any current action plans setting out how it intends to implement its quality improvement actions.
- 6.8 Where all or any part of the Services (including leadership and management) delivered under this part of the Financial Memorandum is assessed by the Inspectorates as inadequate, The Council will regard The College as being at serious risk of failure to deliver the Services, and the provisions set out at Clause 5.4 will apply.
- 6.9 Where it is identified that the Services delivered is not meeting the minimum levels of performance, The Council will regard The College as being at serious risk of failure to deliver the Services, and the provisions set out at paragraph 5.4 will apply.
- 6.10 Where appropriate, The College shall confirm in writing to The Council that their Centre Approval Status is still current. The written statement will need to confirm approved centre status for the specific National Vocational Qualification titles and levels, including awarding body name(s).
- 6.11 The College shall ensure that appropriately qualified and trained staff will deliver the Services. The College shall be responsible for the professional development and training of its staff and for meeting any minimum requirements of The Council for the proportion of its staff to be appropriately qualified. The College will ensure that its staff are trained in accordance with the Further Education Teachers Qualification (England) Regulations 2007 and the Further Education Teachers Continuing Professional and Registration (England) Regulations 2007 and LLUK Standards.

7 Specific Learner Incident Reporting Requirements

- 7.1 The College shall inform the Council of injuries and diseases to learners within the scope of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995 and fatal road traffic accidents. This shall be done by:

- 7.1.1 in the case of fatal accidents and 'major injuries' (as defined in RIDDOR) - informing the Council by telephone or fax immediately the College becomes aware of the event; and
 - 7.1.2 all RIDDOR events - sending to the Council a completed learner incident record form within 10 days of the College becoming aware of the event.
- 7.2 The College shall investigate or assess the circumstances of all learner incidents within the scope of RIDDOR and follow HSE guidance 'Investigating Accidents and Incidents: A Workbook for Employers, Unions, Safety Representatives and Safety Professionals' (HSG245) ISBN 0717628272. The College shall only use persons competent to investigate/assess learner incidents with a view to identifying the causes of any incident and lessons to be learned.
- 7.3 The College shall also monitor, and act on, any other harm to learners to the extent that the College could reasonably be expected to do so and/or where the harm could affect the quality of the learning experience. Harm includes (but is not limited to) other incidents that cause absence from learning, any loss to the learner of any physical or mental faculty or any disfigurement, incidents of bullying and harassment.
- 7.4 The College shall co-operate with the Council and Department for Works and Pensions (DWP) for the purposes of the Analogous Industrial Injuries Scheme in respect to those learners to which it applies.

8 Learner Health, Safety and Welfare

- 8.1 The College shall co-operate with and provide information to the Council, as requested, to give assurance that adequate arrangements exist for learner health and safety, to enable the Council to review learner incidents, and to assist the Council with regard to its policy on learner health and safety.
- 8.2 The College shall ensure that learning takes place in safe, healthy and supportive environments, which meet the needs of learners, and in doing so shall:
 - 8.2.1 operate an effective health and safety management system, which continually seeks to raise standards. The Council will use Health and Safety Executive (HSE) publication HSG65 'Successful Health and Safety Management' as a benchmark when evaluating the arrangements of the College. Where the College is required to carry out self-assessment of the quality of learning provided, learner health and safety shall be included in accordance with the requirements of the Council and the Common Inspection Framework;
 - 8.2.2 promote good practice and, and in particular, the concept of the 'safe learner'. This includes learners, through the quality of their learning, gaining an understanding of health and safety, the identification and

control of risk, and developing a set of safe behaviours;

- 8.2.3 where part of the learning takes place in an environment outside the direct control of the College, for example, with another employer, the College shall make an informed judgement about health and safety suitability prior to learning being delivered with that employer/in that environment. To be suitable, employers and environments shall at least meet the Council's health and safety procurement standard for learner health and safety. The College shall periodically review suitability as an integral part of the quality of the learning being delivered;
 - 8.2.4 the College ensure it has access to persons sufficiently competent in health and safety and the occupational area to meet its obligations in respect of learner health safety and welfare and in particular to be able to make the informed judgement of health and safety suitability under clause 7.2.3;
 - 8.2.5 maintain adequate records in relation to learner health and safety including; assessments of employer/environment suitability; agreements or commitments on health and safety with employers and learners; information relating to harm to learners; and records of assessments, monitoring and reviews of learner health and safety understanding/capabilities;
 - 8.2.6 take account of relevant Health and Safety Executive guidance and other sources of good practice;
 - 8.2.7 ensure learners receive effective and timely, information, instruction and training and effective supervision based on an assessment of risk. In the case of learners below the minimum school leaving age, learners under 18 and/or learners with special needs, the environment in which the learning is delivered should be such that risks have been reduced to the lowest level practicable;
 - 8.2.8 ensure that learners' health and safety understanding and practical capabilities are periodically assessed based on an assessment of risk.
- 8.3 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 register with the criminal records bureau where their employees may have regular contact with learners under 18 or other vulnerable learners and 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 Children, Schools and Families and the Department of Health. The College will carry out criminal records bureau checks on all overseas applicants for employment and seek additional information about an applicant's conduct.

The College must review its records and be able to demonstrate that they have robust record-keeping procedures through checks on record keeping undertaken.

- 8.4 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.
- 8.5 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 contract with Sub-contractors.

9 Equal Opportunities

- 9.1 The College will in delivering Provision under this Financial Memorandum demonstrate that it has had regard to the duties placed on the Council by the Learning and Skills Act 2000, (sections 13 and 14) and relevant equality legislation. Legislation, regulation and policy provide a framework within which the Council will strive to deliver equality of opportunity for all learners, irrespective of their age, race, gender, religion, or belief, sexual orientation, physical or learning abilities. The delivery of Provision should comply with the principles set out in the Council's National Single Equality Scheme 2007/10. 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.
- 9.2 The College shall ensure that equality of opportunity is built into all aspects of Provision; the business planning process; the self assessment process and that its strategic plan identifies SMART priorities in this area.
- 9.3 The College shall use analysis of data to inform future planning to improve the participation and success of underrepresented groups and challenge stereotyping. The College shall use appropriate SMART improvement measures. These will be proportionate, relevant and aligned to the Provision the College is funded to deliver.
- 9.4 The College shall use analysis of data to inform future planning to improve the representation participation and success of under-represented and discriminated groups and challenge gender stereotyping.

10 European Funding and Other Sources of Funding

- 10.1 The College must not use the funding from this Financial Memorandum to make bids or claims from any European source of funding on its own behalf or on behalf of the Council without obtaining consent in writing from the Council, any such consent will not be unreasonably withheld.

- 10.2 Where the College or any of its Sub-contractors has access to other funding streams, the College will be required to demonstrate that no double funding has occurred in respect of the Provision delivered under this Financial Memorandum. Where the Council identifies double funding in respect of the Provision the College will be liable to repay to the Council any sums paid by the Council in respect of the Provision for which the College has received funding from another source and the Council reserves the right to deduct such sums from any funding payable to the College under this Financial Memorandum.
- 10.3 The Council reserves the right to use funding paid under this Financial Memorandum as match funding for European Social Fund Co-Financing projects. Where requested to do so in writing by the Council, the College shall provide such information in the form needed by the Council to enable the Council to comply with the requirements of the European Social Fund. The College shall, if requested to do so by the Council, inform learners or others that the services provided have been financed in whole or part by the European Social Fund.

11 Retention of Documents

- 11.1 The College and its Sub-contractors shall retain original invoices; management information returns and all other documents necessary to verify the Provision delivered by itself or by its Sub-contractors in relation to this agreement for 6 years from the end of the financial year in which the last payment is made using monies from the European Social Fund, or where any payments made under this Financial Memorandum for the services have been used as match-funding for a European Social Fund Co-Financing Project, the College will be required to retain documents until 31 December 2022.

12 Freedom of Information and Confidentiality

12.1 Definitions

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

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

"FOIA notice"

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

12.2. Freedom of Information

12.2.1 the Council 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 Council or the College;

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

12.2.3 the Council 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 Council or the College;

12.2.4 notwithstanding anything in this Financial Memorandum to the contrary (including without limitation any obligations of confidentiality), the Council 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 Council 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 Council or College's opinion the information is eligible in the circumstances for an exemption and therefore the Council or College may lawfully refrain from doing either of the things described in parts (a) and (b) of this clause.;

12.2.5 in relation to information relating to the Council or College or the Financial Memorandum which the Council or College requests should be exempt under the FOIA the Council or the College shall indemnify The Council 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;

12.2.6 neither the Council 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 Council or the College;

12.2.7 the Council and the College shall assist the other as reasonably necessary to enable the Council or the College to comply with their obligations under FOIA.

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

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

13 Data Protection and Protection of Personal Data

13.1 The College shall ensure that they at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 and the Offender Management Act 2008, 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 Council 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 Council's ability to make a search with a credit reference agency.

13.2 With respect to the parties' rights and obligations under this Financial Memorandum the parties agree that The Council is the Data Controller and the College is the Data Processor within the meaning of the Data Protection Act.

13.3 The College shall:

13.3.1 Process Personal Data only in accordance with the instructions from the Council (which may be specific instructions or instructions of a general nature as set out in the Financial Memorandum or otherwise notified by the Council to The College during the term of this part of the Financial Memorandum;

13.3.2 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;

- 13.3.3 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;
- 13.3.4 take reasonable steps to ensure the reliability of any College or College Personnel who have access to the Personal Data;
- 13.3.5 obtain prior written consent from the Council in order to transfer the Personal Data to any Sub-contractors or other third parties for the Provision of the Services;
- 13.3.6 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 Council;
- 13.3.7 notify the Council within 5 working days if it receives:
 - 13.3.7.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 13.3.7.2 a complaint or request relating to the Council's obligations under the Data Protection Legislation;
- 13.3.8 provide the Council with full co-operation and assistance in relation to any complaint or request made, including by:
 - 13.3.8.1 providing the Council with full details of the complaint or request;
 - 13.3.8.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions;
 - 13.3.8.3 providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and
 - 13.3.8.4 providing the Council with any information requested by the Council
- 13.3.9 permit the Council or the Council'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 Council to enable the Council

to verify and/ or procure that the College is in full compliance with its obligations under this Financial Memorandum;

13.3.10 provide a written description of the technical and organisational methods employed by the College for processing Personal Data (within the timescales required by the Council) and

13.3.11 not Process Personal Data outside the European Economic Area without the prior written consent of the Council and, where the Council consents to a transfer, to comply with:

13.3.11.1. The obligations of a Data Controller under the Eighth Data Protection Principle set out in Annex1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data is transferred; and

13.3.11.2 any reasonable instructions notified to it by the Council

14 Branding and Logos

14.1 The College shall, when receiving funding from the Council for any Provision, meet the requirements of the endorsement branding guidelines, available on the Council's brand website, on all and any promotional materials or activities. This shall include but not be limited to prospectuses, direct mail advertising, TV and radio advertising, merchandising or any other literature or products.

14.1.1 the College shall be given access to the current Council logos and statements, which are to be used. This requirement may include but not subject to the use of logos from other co-branding or co-funding participants. Details will be available from the Council's website or communications team;

14.1.2 this access when granted shall be limited to the use of the current logos and statements and under no circumstances will the College be allowed to amend or alter the logo on statements, nor use it for anything not covered by this Financial Memorandum. Failure to meet with this requirement could lead to a reduction in the amount of funding given.

14.2 All the terms of this clause 13 shall also apply to the College's Sub-contractors in delivering any Provision funded under this Financial Memorandum.

15 Feedback and Complaints

15.1 The primary responsibility for receiving feedback and investigating complaints promptly and thoroughly in respect of the services shall rest with the College. The College shall have procedures in place, which are acceptable to the

Council, to gather and act upon feedback and complaints from learners and/or their representatives and employers and the wider community.

- 15.2 The Council may issue guidance for the College on dealing with feedback and handling complaints, and will set out the minimum standards expected.
- 15.3 The College shall be responsible for resolving complaints in accordance with its own procedures and any guidance issued by the Council.
- 15.4 Where a complaint has not been resolved to the satisfaction of the complainant the College will advise the complainant of his or her right to complain to the Council and co-operate with any investigation carried out by the Council.

16 Access and Monitoring

- 16.1 The Council shall give the College reasonable advance notice in writing of proposed visits to the College or its Sub-Contractors to observe the delivery of the Provision, by any person who has taken or will take no direct part in the conduct or content of the Provision.
- 16.2 For monitoring and evaluation purposes, the Council, the Secretary of State and his agents, the Department for Innovation, Universities and Skills, the Department for Children, Families and Schools, the Department for Work and Pensions, the National Audit Office, representatives of the European Commission and the European Court of Auditors, the Audit Commission and the Inspectorates shall have the right to visit all or any College site(s), or those of its Sub-Contractors and view operations relating to the Provision and to inspect relevant documents and interview learners and staff during these visits.
- 16.3 The College shall, and ensure that its Sub-Contractors shall, permit access at any reasonable time to any of the representatives listed at clause 15.2 in order to:
 - 16.3.1 examine, audit or take copies of any original or copy documentation, accounts, books and records of the College and its Sub-Contractors that relate to the agreement;
 - 16.3.2 visit, view or assess the design, management and delivery relating to the Provision at any premises where those operations are carried out (including those of Sub-Contractors) and conduct relevant interviews, including interviews with learners, during these visits at any reasonable time;
 - 16.3.3 carry out examinations into the economy, efficiency and effectiveness with which the College has used the Council's funding in the delivery of the Provision.

- 16.4 where reasonably required, the College and its Sub-Contractors shall provide copies of any relevant documents required by any of the representatives listed at clause 15.2.
- 16.5 The College shall, if required by any of the representatives stated at clause 15.2 provide appropriate oral or written explanations.
- 16.6 The Council reserves the right, at any reasonable time, and as it may deem necessary to require the College at its own cost to:
- 16.6.1 provide evidence of financial resources sufficient to enable it to continue to deliver the Provision;
- 16.6.2 obtain a report by an independent accountant of the Council's choice on the financial systems and controls operated by the College in respect of funding claimed or received under the Financial Memorandum;
- 16.6.3 provide a copy of the College's latest audited accounts;
- 16.6.4 submit any claim for payment or management information provided to support a claim for payment to be audited by an independent auditor chosen by the Council.
- 16.7 The College shall in performing the services comply fully with all relevant rules and regulations of the Council in force from time to time.

17 Breach

- 17.1 For the purpose of this Clause, the following definitions shall have the meanings set out below:
- 17.2 "Minor Breach" shall mean a delay or non-performance by either Party of its obligations under the Financial Memorandum which does not materially, adversely or substantially affect the performance or delivery of the Service or the provision of a safe, healthy and supportive learning environment;
- 17.3 "Serious Breach" shall mean any breach defined as a Serious Breach in the Financial Memorandum or any breach which adversely, materially and substantially affects the performance or delivery of the Service or the provision of a safe, healthy and supportive learning environment. Failure to comply with legislation, or actions or omissions by The College that endanger the health or safety of Learners would constitute a Serious Breach.
- 17.4 For the avoidance of doubt:
- a) neither Party shall be liable for any Minor Breach or Serious Breach under this Clause, which occurs as a direct result of any act or omission by the other Party, its staff or agents;

- b) in the event of a breach the party not in breach may enforce the Clauses in the Financial Memorandum relating to breach even if it has not done so in the event of earlier breaches.

Minor Breach

- 17.5 Without prejudice to any other remedy, in the event of a Minor Breach, the Parties will adopt the following procedure:
- 17.6 The Party not in breach shall be entitled to serve written notice on the Party in breach, giving full details of the breach and requiring the other Party to remedy the breach within a specified period.
- 17.7 If the Party in breach fails to remedy the Minor Breach within the time specified in notice served under Clause 16.6 or such other period as may be agreed between the Parties it shall constitute a Serious Breach by the Party in breach.

Serious Breach

- 17.8 Without prejudice to any other remedy, in the event of a Serious Breach, which is capable of remedy, the Parties shall adopt the following procedure:
- 17.9 The Party not in breach shall be entitled to serve written notice on the other Party giving full details of the breach and requiring the Party in breach to remedy the breach within a specified time period.
- 17.10 In the event that a Serious Breach of the Financial Memorandum by The College cannot be remedied within the period specified in the notice served under Clause 16.9 or such other period as may be agreed between the Parties The COUNCIL may:
 - a) require The College to suspend recruitment of Learners to the Service to which the Serious Breach relates;
 - b) suspend payment to The College in respect of that part of the Service to which the Serious Breach relates.
- 17.11 In the event that any Serious Breach cannot be remedied at all or within the period specified in the notice served in accordance with Clause 16.9 or such other period as may be agreed between the Parties, the Party not in breach may at its sole discretion terminate the Financial Memorandum or that part of the Service to which the breach relates with immediate effect on notice in writing to the other Party.

18 Termination

- 18.1 The College shall notify The COUNCIL in writing immediately upon the occurrence of any of the following events:

- 18.2 Either Party may terminate this Financial Memorandum with immediate effect in the event that in the reasonable opinion of the Party wishing to terminate this Contract, the conduct of the other in performing its obligations under this Financial Memorandum amounts to a fundamental breach of the Contract, which is incapable of remedy.
- 18.3 For the purposes of this Financial Memorandum during the last twelve months of this Financial Memorandum a notice period of six months for both parties is required.
- 18.6 In addition to the rights of termination under any other clauses of this Contract, either party shall be entitled to terminate this Financial Memorandum in respect of all or part of the Service provided under the Financial Memorandum by giving to the other not less than three months notice to that effect without the need to give a reason for termination.
- 18.7 Termination under clauses 17 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Parties under this Contract.
- 18.8 The College shall upon termination of the Financial Memorandum immediately deliver up to The COUNCIL all correspondence, documents, specification papers and other property belonging to The COUNCIL, which may be in its possession or under its control.
- 18.9 The College following termination of the Financial Memorandum shall retain responsibility for completing the cycle of returns as set out in Appendix 2 of this financial memorandum contract.

19 Transfer of Responsibility on Expiry or Termination

- 19.1 The Parties agree that if upon termination of this Financial Memorandum or any part of the Service being provided under the Contract, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 are applicable, the Parties shall in good faith co-operate with each other in the disclosure of information and the provision of other assistance and comply with the provisions of Clause 6 in Appendix 3 of the Financial Memorandum so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties.
- 19.2 The Parties agree that on termination or expiry of this Financial Memorandum for any reason, the continuity of the Services is of paramount importance. The College shall do its utmost to minimise disruption caused to Learners and to assist the implementation of any contingency plan proposed by The Council either prior to or after the termination or expiry of this Contract, to deal with the effects of such termination or expiry in so far as it is practicable to do so.
- 19.3 The College shall, at no cost to The Council, promptly provide such assistance and comply with such timetable as The Council may reasonably

require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or its equivalent) upon the expiry or other termination of this Contract. The College shall use all reasonable endeavours to ensure that its employees and its sub-contractors are under a similar obligation. The Council shall be entitled to require the provision of such assistance both prior to and after the expiry or other termination of this Contract.

19.4 Such assistance may include, (without limitation) delivery of documents and data in the possession or control of The College or its sub-contractors, which relate to performance, monitoring, management and reporting of the Programme, including the documents and data, if any, referred to in the Appendices.

19.5 The College undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of The Council to ensure an orderly transfer of responsibility for provision of the Services.

**Authorised Signatory for and
on behalf of the Learning and Skills Council**

.....
Signature Position

Name (print).....

Date:

**Authorised Signatory for and
on behalf of The Manchester College**

.....
Signature Position

Name (print).....

Date:.....