ESF Memorandum of Understanding 2014-2020

Number

Between:

1.1 The Department for Work and Pensions ("DWP") Managing Authority (within DWP European Social Fund Division ("ESFD") operating on behalf of the Secretary of State ("the Managing Authority").

And

1.2

PURPOSE AND SCOPE

2.1 The purpose of this Memorandum of Understanding (MOU) ("the Agreement"), which does not create any legal relations between the parties, is to set out the obligations of the Organisation referred to in 1.2 relating to delivery, performance and compliance requirements in respect of the arrangements for selection and approval of European Social Fund ("ESF") projects that will contribute to the England ESF Operational Programme 2014-2020.

2.2 The Managing Authority (MA) will reimburse the Organisation referred to in 1.2 above for ESF expenditure properly incurred in accordance with the terms of this Agreement.

EFFECTIVE DATE

3.1 This Agreement will commence on [     ] and shall expire on [     ] unless an extension is agreed in writing by the parties.

3.2 The date from which expenditure relating to this Agreement becomes eligible is [     ].

EU AND NATIONAL REQUIREMENTS

4.1 The Organisation referred to in 1.2 above must comply with the relevant European Union (EU) Structural Fund Regulations as issued and updated from time to time by the EU, as well as any relevant guidance or requirements (including National Eligibility Rules) issued by the MA. The following Regulations are particularly relevant.

4.2 Regulation (EU) No 1303/2013 of 17 December 2013 defines common
principles, rules and standards for the implementation of the five European Structural and Investment Funds (ESIF): the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF) and replaces Council Regulation (EC) No 1083/2006.

4.3 Regulation (EU) No 1304/2013 of 17 December 2013 establishes the missions of the European Social Fund (ESF), including the Youth Employment Initiative (YEI), the scope of its support, specific provisions and the types of expenditure eligible for assistance and replaces Council regulation (EC) 1081/2006.


4.5 Where applicable, Directive 2014/24/EU on public procurement, implemented in England, Wales and Northern Ireland by the Public Contracts Regulations 2015 (2015 No. 102) and any amendments or replacements.

4.6 European Community State Aid rules applicable at the date that the Aid is granted to the recipients of the Aid.

4.7 If there are areas of doubt, both parties will seek to agree a common understanding of the requirements of the Regulations.

4.8 The MA will publish information and guidance on the England ESF Operational Programme 2014-2020 via the GOV.UK website (ESF pages).

CHANGES TO GUIDANCE AND RULES

5.1 All amendments, variations or additions made to guidance or the National Eligibility Rules by the MA from time to time, for the distribution and / or payment of monies and / or administration of any ESF provision or programme will be notified to the Organisation via the GOV.UK website (ESF pages). Changes will be effective from the date they are placed on the website unless stated otherwise. The MA will circulate any guidance in advance of publication on the website.

SERVICES TO BE PROVIDED
The Organisation referred to in 1.2 above will:

6.1 Match ESF with eligible domestic funding at Priority level (including transition and less developed areas) in line with published ESF Guidance and Rules and Requirements. (To be eligible, match funding must support activity that is eligible in the Operational Programme (OP) and has been procured in line with applicable EU Regulations). The match funding provided does not need to be provided at Local Enterprise Partnership (LEP) area level.

AND

EITHER
Select and approve projects through a tendering process to deliver ESF activities that meets EU and national Procurement requirements, OR:

Use cash match funding and will award support using competitive grant procedures.

6.2 Comply with all European Union (EU) Structural Fund Regulations, State Aid requirements, public procurement requirements (where applicable) and ESF guidance and rules produced by the MA in delivering ESF priorities.

6.3 Ensure that grant holders delivering and/or providers contracted to deliver ESF provision (as appropriate) are fully aware of the requirements of the EU Structural Fund Regulations, procurement and State Aid requirements for ESF and match funding.

6.4 Use all reasonable endeavours to deliver the outputs and results as specified in Schedule 1 (which is the application for support) in accordance with the terms and conditions set out in this Agreement and Schedules.

6.5 Repay any ESF expenditure that is deemed ineligible in accordance with EU law or the MA’s guidance or National Eligibility Rules.

6.6 Seek to minimise and recover expenditure which is ineligible by virtue of EU law or the MA’s guidance or National Eligibility Rules.

MAXIMUM ESF PAYABLE

The MA will pay ESF:

7.1 Up to the maximum ESF payable according to the Category of Region and as set out in Schedule 1.

7.2 As a contribution towards the total eligible costs of delivering activities set out
in the application for support and using the intervention rate in Schedule 1 (the Application Form).

7.3 Only in respect of actual, eligible expenditure defrayed, subject to the provisions in Schedule 1 (the Application Form). Any expenditure incurred prior to 1 January 2014 will be ineligible.

FINANCIAL ACCOUNTABILITY

8.1 The Organisation referred to in 1.2 above must ensure compliance with the conditions set out in this Agreement in particular they must:

8.1.1 Establish effective procurement (if applicable), monitoring and financial systems, so that the cost of activities, and the results, outputs and indicators generated can be clearly identified and the reliability of profiled payments and handling of ESF can be ensured; this includes the establishment of appropriate document retention systems to ensure and evidence the requirements of the EU Structural Funds Regulations, State Aid and public procurement requirements (where applicable). The Organisation referred to in 1.2 above must retain and be in a position to provide all appropriate data as required by the regulations governing structural fund support. They must also ensure that such data is both accurate and reliable.

8.1.2 Apply appropriate conditions to offers of ESF to third parties to ensure that the support complies with all the terms of this Agreement and associated guidance and National Eligibility Rules.

8.1.3 Immediately notify the MA if any financial irregularity in the use of ESF is suspected and indicate the steps being taken in response. (Irregularity means: infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Communities by charging an unjustified item of expenditure to the Community budget)

8.2 Make documents available and provide reasonable access for:

8.2.1 inspection visits and scrutiny of files by, but not limited to, representatives of the DWP Audit Authority, the MA, the Certifying Authority, Government Departments, the European Commission National Audit Office (NAO),the European Court of Auditors or European Commission;

8.2.2 External audits and reviews of activity and of financial, appraisal and monitoring systems.
8.3 The European Commission, the European Court of Auditors, NAO, DWP Audit Authority and other regulatory bodies as required by or on behalf of DWP will have right of access to the provider for audit and inspection purposes. Certification of results will usually be checked at the Organisation referred to in 1.2 above but auditors may wish to visit providers to verify that participant results claimed have actually been achieved.

PAYMENT ARRANGEMENTS

9.1 Claims will be submitted in respect of this MOU using the standard claim forms provided by the MA showing expenditure defrayed within the Priority. The claim should be sent to the MA in line with the timetable to be agreed with the MA. Incomplete or incorrect claims will be returned.

9.2 Payment of ESF can only be made when these conditions have been met.

9.3 The MA will make payments to the bank account nominated by the Organisation referred to in 1.2 above.

WITHHOLDING AND REPAYMENT OF ESF

10.1 Excluding situations where the events in 10.1.1 to 10.1.8 occur due to the Organisation following the written guidance or advice of the MA, the MA may withhold any or all of the payments and/or require part or all of the ESF to be repaid if it is reasonably considered that:

10.1.1 The Priority level activity is not carried out in accordance with the application;

10.1.2 There is a substantial or material change in the nature, scale, costs, funding or timing of the Priority level activity described in this Agreement and the application for support;

10.1.3 The future of the activity described in the Priority level application is in jeopardy;

10.1.4 There is unsatisfactory progress towards meeting the outputs and results specified in Schedule 1;

10.1.5 Any part of the activity has been funded from other EU funds;

10.1.6 There is material irregularity in the way in which the activities are
carried out;

10.1.7 There is failure to adequately retain information and provide information requested by the MA, the Certifying Authority, the European Commission, the European Court of Auditors, or the Audit Authority.

10.1.8 There is a breach of the European Structural Funds Regulations, the requirements of EU or national procurement requirements, State Aid law or the National Eligibility Rules.

10.2 It is the responsibility of the Organisation named at 1.2 above to notify the MA immediately if any of the above applies.

10.3 Any over-payment of ESF must be repaid to the MA on demand. If the Organisation becomes aware that ESF assistance has been over-paid, you must notify the MA immediately. The MA can recover any monies which are found not to be due by deducting such sums from any subsequent payment.

EXCHANGE RATE FLUCTUATIONS

11.1 The MA will advise the Organisation referred to in 1.2 above if exchange rate fluctuations affect the maximum levels of ESF available.

AUDIT ARRANGEMENTS

12.1.1 Without prejudice to any other provision of this Agreement and the rules governing state aid, the Organisation will ensure that all documents relating to each project and its implementation and financing are retained for a two year period from 31 December following the submission of the accounts in which the final expenditure of the completed project is included, in order that these may be made available to the European Commission and European Court of Auditors upon request in accordance with Article 140 of Regulation 1303.

12.1.2 The Secretary of State shall notify the Organisation of the start date of the two year period referred to in the paragraph above.

12.1.3 Further to paragraph 12.1.1, the Organisation will make available the documents relating to each project and its implementation and financing if and when required to do so by the Secretary of State, the European Court of Auditors, the European Commission auditors, the National Audit Office (and also their respective auditors).

12.1.4 The documents referred to above shall be kept and made available either in
the form of the originals or certified true copies of the originals or [on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only]. Guidance detailing this procedure will be provided by the Managing Authority.

12.1.5 Where documents exist in electronic form only, the computer systems used shall meet accepted security standards. These standards will be provided by the Managing Authority

12.2 Documents and records must be maintained for the purpose of:

12.2.1 The examination and certification of the accounts of the Organisation referred to in 1.2;

12.2.2 Any examination pursuant to the Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Organisation named at 1.2 above has used its resources;

12.2.3 Any form of investigation or audit by the bodies referred to in paragraph 8.2.

12.3 The MA, the Certifying Authority and DWP Audit Authority acting on its own or others behalf and those acting on its behalf may examine such documents connected with European Structural Funds as may reasonably be required which are owned, held or otherwise in the control of the Organisation referred to in 1.2 above and their grant holders or providers, and to require its grant holders or providers to produce oral or written explanations as considered necessary for the purposes of that examination or that certification.

12.4 The Organisation referred to in 1.2 above shall provide (and shall require their grant holders or contractors to provide) access to premises where the relevant documentation is held and all reasonable assistance (including the provision of onsite, photocopying, facsimile, and telecommunications facilities) at all times during the term and for the period outlined in paragraph 12.1 above.

PUBLICITY

13.1 The Organisation referred to in 1.2 above and their grant holders or contractors (and any subcontractors engaged by the Organisation referred to in 1.2 above) must comply with the European Commission and the MA publicity requirements specified in the England 2014-2020 European Structural and Investment Funds Growth Programme Branding and Publicity Requirements (for beneficiaries) published on Gov.uk. In addition they must comply with some additional ESF Co-financing Organisation related Information and Publicity requirements set out in Publicity Schedule 2. The Organisation referred to in 1.2 above is responsible for making sure that EU
funding from ESF is publicised to ESF and match funded participants and the general public.

CROSS CUTTING THEMES

14.1 The Organisation referred to in 1.2 above must comply with the EU and the MA’s requirements on gender equality, equal opportunities and sustainable development as specified in guidance and rules produced by the Managing Authority for the 2014 - 2020 Programme for England.

CHANGES TO THE APPLICATION FOR FUNDING

15.1 All Changes must be approved by the Managing Authority in accordance with the procedure set out in this paragraph prior to the relevant Change being deemed to be effective.

15.2 The Organisation shall request the Change on a Project Change Request Form. The Managing Authority shall either agree to the change request or reject the change request within 60 days of the date of the Project Change Request Form.

15.3 Where the Managing Authority agrees to the change request, he shall issue a written agreement to vary this Agreement (a “Variation Agreement”) which must be signed by both parties before it shall become effective.

15.4 The Managing Authority reserves the right to withdraw agreement to the change request if a Variation Agreement giving effect to the Change is not entered into by the Organisation within one month from the date the Variation Agreement is issued by the Managing Authority.

15.5 Until such time as a Change is made in accordance with this paragraph, the parties shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.

15.6 For the purposes of this paragraph, “Change” means in relation to the particulars in the Application in Schedule 1 any of the following changes:

(a) a change in the Ownership, Control and Nature of Business of the Organisation;
(b) a change in the nature or purpose of the application for funding;
(c) any material change to the total planned Expenditure;
(d) any material change to the Expenditure Profile;
(e) any material change to any of the Key Milestone Dates;
(f) any change to any of the Targets;
any other material change to the application for funding, (that is, more than merely trivial and inconsequential in its consequences).

TERMINATION

16.1 Either party may terminate this Agreement at any time and for any reason on the provision of six months written notice to the other party.

16.2 The MA may terminate this Agreement immediately if any of the events in paragraph 10.1 occur.

I accept the conditions set out in this Memorandum and Schedules:

Signed on behalf of Organisation referred to in 1.2 above
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| Signed on behalf of the Managing Authority |                                           |
| Name                                     |                                           |
| Position                                 |                                           |
| Operational Address                      |                                           |
| Contact Details                          |                                           |
| Date                                     |                                           |
SCHEDULE 1 – Will be the Application Form (by appropriate priority)
SCHEDULE 2 – PUBLICITY

1. The main information and publicity requirements applicable to ESF Co-financing Organisations (as an ESIF funding beneficiary) are set out in the ‘2014 - 2020 European Structural and Investment Funds Growth Programme – Branding and Publicity Requirements’ document published on the Gov.uk website. These set out minimum requirements for ESF (and match) provision, based on the Managing Authority’s interpretation of the Regulations – and set out beneficiaries (and any applicable partners) responsibilities.

2. This Schedule sets out some additional information and publicity requirements that apply only to ESF Co-financing Organisations, related to their unique role as ESF Managing Authority strategic partners, responsible for the procurement and management of the majority of 2014-2020 England ESF Programme funding. These requirements relate to:

   • compliance with specific EU information and publicity regulations that they are in effect discharging on behalf of the Managing Authority; and

   • a range of broader information and publicity measures and activities to be undertaken in collaboration with the ESF Managing Authority to help the Managing Authority develop and effectively carry out the objectives of the 2014-2020 Programme ESIF Communications Strategy – which focuses on meeting wider Commission publicity regulations.

Specific Commission Information and Publicity Regulatory Requirements

3. ESF Co-financing Organisations are required to comply with the following two Commission regulatory requirements to help ensure ESF programme level compliance in support of the Managing Authority:

i) Commission Regulation 1303/2013 Annex XII - 3.1 Information measures for potential beneficiaries:

   1. The managing authority shall ensure, in accordance with the communication strategy, that the operational programme’s strategy and objectives, and the funding opportunities offered through joint support from the Union and the Member State, are disseminated widely to potential beneficiaries and all interested parties, with details of the financial support from the Funds concerned.

   2. The managing authority shall ensure that potential beneficiaries have access to the relevant information, including updated information where necessary, and taking into account the accessibility of electronic or other communication services for certain potential beneficiaries, on at least the following:

      (a) the funding opportunities and the launching of application calls;
(b) the eligibility of expenditure conditions to be met in order to qualify for support under an operational programme;
(c) a description of the procedures for examining applications for funding and of the time periods involved;
(d) the criteria for selecting the operations to be supported;
(e) the contacts at national, regional or local level that are able to provide information on the operational programmes;
(f) the responsibility of potential beneficiaries to inform the public about the aim of the operation and the support from the Funds to the operation in accordance with point 2.2. The managing authority may request potential beneficiaries to propose indicative communication activities, proportional to the size of the operation, in the applications.

ii) Commission Regulation 1303/2013 Chapter 2 Article 115 2) - and Annex XII 1 'List of Operations'. These concern the provision of data to the Managing Authority about the CFO and its providers (and their subcontractors) ESF and match funded activity, for inclusion in the publicly accessible list of beneficiaries (i.e. CFOs and projects).

Collaboration with the Managing Authority

4. ESF Co-financing Organisations are required to work closely with the ESF MA on a range of information and publicity measures and supporting matters. These are to help the effective development and implementation of the ESIF Communications Strategy and include participating in an ESF publicity network of strategic delivery partners that plans, implements, monitors and reviews specific information and publicity measures – and shares effective publicity practice.

5. Examples of likely collaborative information and publicity measures arising from the MA’s ESIF Communication Strategy and Annual Activity Plan and which we need CFO co-operation on include, but are not restricted to:
   a. activity to launch the ESF programme in 2015 and each year to contribute to the MA led ‘annual information activity’;
   b. on-going joint work on website content to ensure users linking from one site to another have good user experiences and can access what they need;
   c. the planning and delivery of other campaigns, events or awards initiatives to publicise ESF;
   d. publicity related requests arising from the national ESF programme committee and/or other ESF/ESIF publicity groups/networks;
   e. on-going support to disseminate/promote MA (and where appropriate other

1 The drawing up and implementation of the ESIF Programme 2014-2020 Communications Strategy and ‘an annual update setting out the information and communication activities to be carried out in the following year’ are EU regulatory requirements (see Commission Regulation 1303/2013, articles 115-117 and Annex XII). The strategy (and any amendment to it) requires Programme Monitoring Committee approval and the Managing Authority must also report on progress in implementing the strategy at least once a year.
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ESF stakeholder) publications, news stories, newsletters, website content, good news stories and various social media outputs;
f. support to compile and/or publish ESF related press releases;
g. the publishing of case studies and other content showcasing activities, outcomes and added value;
h. the organisation and publicising of ESF visits by VIPs such as Government Ministers and representatives of the European Commission;
i. providing evidence of publicity activity to inform the compilation of annual information reports required by the European Commission;
j. the monitoring, review and evaluation of information and publicity activity (expected to be at a high level);
k. integrating cross-cutting themes (gender equalities and equal opportunities and sustainable development) within publicity measures in line with any Managing Authority requests.

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