PURPOSE OF REPORT

Greater Manchester has made significant progress in obtaining devolved control over both the Work & Health programme and its ESF 2014-2020 programme allocation – the latter achieved through securing Co-Financing Organisation (CFO) status in March 2016.

CA members will recall at a previous Combined Authority meeting they agreed to submit an ESF bid, under GM’s CFO powers (initially via Trafford Council) for c£10m to match against the first phase of Working Well – the Working Well Pilot and Expansion.

With the recent progress in devolution of the Work and Health programme and the statement by the Chancellor that EU funding contracted before the UK left the EU would be honoured, the opportunity to increase the ESF bid to PART B, to cover the whole of the Work & Health programme up to 2022, has been pursued, in discussion with the relevant Lead portfolio holders and as stated at the June GMCA.

The purpose of this report is to update CA members on the latest developments and to agree a number of key recommendations in order to progress the work to completion.

RECOMMENDATIONS:

CA members are asked to:

- Agree that Trafford Council, in lieu of necessary powers being transferred to GMCA, will be the financial and legal accountable body for:-
  - ESF Co-financing Organisation
  - Work & Health Programme
• Agree that Trafford Council, as the financial and legal accountable body, shall redraft the Inter Authority Agreement to cover the extension to Working Well and Work & Health Programme in order to provide an indemnity to them as lead authority in the event of any claims being made arising out of the agreements.
• Agree that the IAA will be novated from Trafford Council to GMCA, once the relevant powers are in place.
• Agree that the current Working Well referral window be extended until December 2017, thereby ensuring no break in provision before Work & Health programme goes live.
• Agree that Theresa Grant, as appropriate senior officer and in consultation with Richard Paver, signs the Memorandum of Understanding and accompanying grant funding letter for the Work & Health programme.
• Agree that Theresa Grant, as appropriate senior officer and in consultation with Richard Paver, signs the ESF CFO contract.
• Agree that Theresa Grant, as appropriate senior officer and in consultation with Richard Paver, has delegated authority to take the Work & Health Programme to contract award.
• Agree that the Political Oversight Group shall provide scrutiny of the CFO and Work & Health Programme development and keep GMCA appraised of progress.
• Agree that all contracts will be novated to GMCA once it has the requisite legal status to act as a contracting authority in its own right.

CONTACT OFFICERS:
Matthew Ainsworth, Strategic Lead for Employment Initiatives, GM PSR Team
Gemma Marsh, Acting Director for Employment & Skills, New Economy

BACKGROUND PAPERS:
GMCA (29th January 2016) - ESF Co-Financing Organisation Update
GMCA (30th June 2016) - Co-commissioning Work & Health Programme

<table>
<thead>
<tr>
<th>TRACKING/PROCESS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Does this report relate to a Key Decision, as set out in the GMCA Constitution or in the process agreed by the AGMA Executive Board</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXEMPTION FROM CALL IN</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Are there any aspects in this report which means it should be considered to be exempt from call in by the AGMA Scrutiny Pool on the grounds of urgency?</td>
<td>No</td>
</tr>
</tbody>
</table>
1. Background and Overview

1.1 The Working Well programme and the new Work & Health form an integral part of the GM Devolution deal. It has been outlined previously in three distinct phases:

- **Phase 1a – Working Well Pilot** – supporting 5,000 individuals (of whom ESF will support the last 800) who attached to the programme between 1st October 2015 and 31st March 2016.

- **Phase 1b – Working Well Expansion** – supporting 13,500 individuals attached to the programme and receiving support through the Personalised Key Worker Service and referrals to the Mental Health IAPT Talking Therapies service between March 2016 and December 2017.

- **Phase 2a – Work & Health Programme** – supporting c.18,000 individuals attached to the programme between late 2017 / early 2018 and PART B.

1.2 The programme is to be jointly funded from domestic funding and ESF funding. The ESF match funding for the above is as follows:

- Phase 1a/b match funding of £10m is secure and in place - £4m Transformational Challenge Award and £6m from DWP / HM Treasury. The contracts for Phase 1a/b have already been awarded and were procured to allow additional volumes such European funding become available at a later date

- For the Work & Health programme (Phase 2a), DWP match funding of PART B has been identified. This would be subject to a full procurement process.

1.3 GM has successfully negotiated for the full Work & Health programme funding to be devolved to GM. The conditions attached to the funding have also been agreed in principle following intense negotiation (please see section 3). Along with securing a CFO status this is a huge achievement for GM. This will allow GM to design, procure and manage the programme to deliver on a GM footprint, as opposed to the national proposal which was for a single provider delivering across the entire north west region.

1.4 An ESF application for Phase 1a and Phase 1b was already being progressed, under GM’s devolved Co-Financing Organisation (CFO) powers. The Chancellor’s announcement that EU funding contracted before the UK left the EU would be secure, and the potential of devolution of the W&H programme, have led to an opportunity to increase this ESF application to PART B to cover the whole of Working Well (including the Work and Health Programme) up to 2022.

1.5 Due to data-sharing restrictions, as previously reported, it is proposed that Trafford Council would act as the applicant for ESF CFO & W&H funding initially.
1.6 Trafford Council, as the financial and legal accountable body, shall extend the Inter Authority Agreement which will be completed alongside the procurement of the Work & Health Programme in order to provide an indemnity to them as lead authority in the event of any claims being made arising out of the agreements (as outlined in section 3). The agreements will be novated to the CA once it has the requisite legal status to act as a contracting authority in its own right.

2. Working Well – referral window extension until December 2017

2.1 The Working Well Expansion was designed and financed to support 15,000 referrals (10,500 attachments) until March 2017. The assumptions made on the programme were that 70% of those referred would be attached onto the programme, with 20% of those attached securing work and 15% sustaining work for 12 months.

2.2 Referrals onto the programme have been lower than anticipated, as have attachment rates meaning it is highly unlikely that 10,500 attachments will be made by March 2017. However, job starts are higher than expected at this point in the programme.

2.3 The ESF bid includes additional funding to extend the current Working Well expansion contracts to support up to a total of 13,500 attachments until December 2017, without any additional financial requirement from GMCA or HM Treasury. However, if job start performance significantly exceeds our original forecasts (although we have factored a 10 percentage point contingency) GM could: a) stop referrals earlier resulting in fewer than 13,500 attachments and/or b) ask HM Treasury for additional funding as a result of the additional benefit savings realised.

2.4 There is a clause included in the contracts with both Working Well Expansion providers (Ingeus and The Work Company), which allows for an extension. It is recommended that this clause is exercised and the referral window be extended until end of December 2017, which would dovetail into the launch of the Work & Health programme in PART B. PART B it is prudent to have a short window between the last referrals onto Working Well and starting referrals onto Work & Health. It also reduces the risk of individuals being referred onto the wrong provision.

3. Work & Health Programme MoU – risks and mitigation

3.1 A small GM working group has been established to support negotiations with DWP. Alongside GM PSR team and New Economy staff, specialist technical advice has been provided by GMCA Group Finance, GMCA Legal, GMCA Audit, GM Connect and STaR Procurement.

3.2 A non-legally binding letter of intent setting out a clear set of conditions and principles for joint working between DWP and GM has been signed (see Annex 1). The transfer of funding from DWP to GM was contingent on this agreement being reached, which also includes principles underpinning the
Grant Funding arrangements. Signature of this agreement is confirmation that both parties will agree a detailed Memorandum of Understanding (MoU) covering the period up to contract award, implementation and live running of the programme in GM.

3.3 As a co-commissioner of the Work & Health programme, GM does not have full control over its design and management, but it is extremely positive to see that Working Well has significantly influenced national strategy with GM’s preferences around eligible cohorts, referral pathways, payment and integration clear features of the national design.

3.4 However, as it has now been agreed that DWP funding for the programme will be devolved to GM, this means that there is now the options for:-
   a) GM contract package area
   b) Procurement managed by GM
   c) GM-specific service specification
   d) Contracts awarded by GM
   e) Performance managed by GM
   f) Flexibility around cohorts and payment model

3.5 The DWP funding allocation for GM is PART B. GM will therefore build a break clause into provider contracts in case future SR funding is not forthcoming. Although the total programme value could be as high as PART B, it is anticipated that PART B costs will be incurred during the timescale of the current ESF programme. Therefore, GM is able to match PART B DWP devolved funding with PART B ESF up to 2022 (after this point the programme will be funded solely through DWP devolved funding unless alternative domestic funding is obtained).

3.6 The programme will commence early 2018 and one provider\(^1\) (this has been a DWP value for money condition) will be commissioned to accept referrals for up to PART B years, with a further 2 years of on-programme support once the referral window has closed. There is the option to extend the programme for a further PART B, subject to performance and funding availability. The GM programme will be required to end at the same time as the national programme.

3.7 A GM/DWP governance board will be established to support the management of the programme and provide a forum for issue resolution.

3.8 There are a number of identified risks for GM related to the devolution of funding and management of the Work & Health Programme. They are identified below along with options for mitigation.

**Risk 1: Overspend**

\(^1\)One provider could include a consortium, prime contractor with sub-contractors or a single end-to-end provider.
As opposed to the Work Programme, which was funded through DWP’s AME budget (i.e. benefit savings), the Work & Health Programme will be funded through the department’s DEL budget (i.e. programme delivery). The implication of this change is that funding allocation for Work & Health Programme is capped, meaning that GM would be liable for any programme overspends. The primary risk of overspend is through provider over-performance.

**Risk 1: Mitigation**

There are a number of ways in which GM can mitigate against the risk of overspending:

- a) Factor an over-performance contingency into our financial profiles
- b) Reduce provider payments through competitive procurement process
- c) Manage referral volumes via JCP (ceasing referrals if required)

**Risk 2: Cashflow**

Although DWP have agreed to devolve funding to GM on an annual profile paid monthly in advance, ESF can only be drawn down quarterly in arrears based on actual expenditure. In reality there could be as much as a 6-month lag between GM payment to providers and ESF being drawn down. This lag in receiving ESF monies will cause a cashflow concern for GM, especially during the middle stages of the programme. Monthly cashflow profiling has been undertaken and the annual potential scale of the issue is shown below **PART B** (the actual may turn out to be quite different as it is dependent on referral flows, provider performance and outcome payments).

**Risk 2: Mitigation**

Cashflow deficits will be difficult to mitigate against due to the nature of ESF payments, but receiving funding in advance from DWP will be a help. The programme office function that is being established will also ensure that all ESF claims are processed accurately and expediently, reducing the risk of delayed or inaccurate claims. The joint governance board will also have a key role in managing performance.

**Risk 3: ESF Liability**

The entirety of the Work & Health Programme until September 2022 will be classed as an ESF programme i.e. both domestic and European funded elements. As procuring and accountable body, GM will be solely liable for any ESF clawback and it is our responsibility to ensure that the entirety of the programme is ESF compliant.

**Risk 3: Mitigation**
In addition to the regular audits undertaken by Salford City Council’s District Audit team (which have not highlighted any areas of concern), GMCA Audit & Assurance have met with the Programme Office to look at the processes and procedures currently in place for Working Well as well as plans for the Work & Health Programme. The initial meeting was positive and did not highlight any areas of concern (as reported to GM Audit Commission in January) and a full programme assurance check will be undertaken in March, prior to any contracts being awarded.

There are a number of practical ways in which GM can mitigate the risk of ESF clawback.

a) A programme office function will be established to ensure all elements of the programme are ESF compliant.

b) DWP will undertake Provider Assurance Tests for financial viability. This will ensure that provider will be able to repay any money to the GMCA, if required.

c) GMCA audit & assurance has been commissioned to quality assure GM’s processes and procedures for ESF compliance.

d) Back to back agreements will be included in contracts with successful providers to cover any ESF breaches. To expand on this point, the vast majority of payment claims will be in relation to provider invoices and any failure by provider to retain required supporting documents leading to ESF clawback will be passed onto them via a back-to-back contract. However, there will be a residual risk to GMCA relating to:-

- Failure in Programme Office maintaining adequate records
- Failure in Programme Office being able to clawback from a provider

However, these risks will be mitigated by:-

- strong programme office
- financially robust providers

e) DWP will provide access to HMRC real-time information data to validate job start and sustainability outcomes.

**Risk 4: Management & Administration Costs**

A condition of DWP’s devolution of funding to GM is that ‘grant expenditure is only attributed to Work & Health Programme contracted provision’. Therefore, it cannot be used to fund GM programme office costs. This is a condition that has only just come to light.

Subject to approval from the Managing Authority, this is not an issue whilst the programme is match funded with ESF i.e. until October 2022, but it does mean that there is a risk regarding the **PART B** management and administration (M&A) costs we expect to incur between October 2022 and programme end. Furthermore, there is a condition that if DWP decides to extend referrals onto the programme for a further **PART B** then GM would be expected to follow suit. Without ESF being available, there would not be funding for a GM programme office to manage and administer the programme for this extended period.

**Risk 4: Mitigation**
Subject to Managing Authority approving GM’s ESF CFO application, there would be the required funding available to cover M&A costs until October 2022. As funding for the programme as a whole is dependent on future Spending Review decisions, any contracts with providers will have a break clause at the end of the Spending Review 15 period (March 2020). It has been proposed that a coterminous review is also built into the MoU with DWP, and that post-ESF management and administration costs are resolved by this point.

There are a number of options to progress:-
   a) GM negotiates for DWP to allow for devolved funds to be used to cover post-ESF M&A costs
   b) DWP supports GM to access domestic ESF successor funds to cover M&A costs
   c) GM continues to explore additional local funds to build into Work & Health Programme, a proportion of which could support M&A costs.

If no solution is found, then GM could invoke the contract break clause in 2020 and the management of the future programme would be passed to DWP.

Risk 5: Referrals

All referrals to Work & Health Programme will go through a gatekeeper function at Jobcentre Plus. DWP has provided indicative referral volumes onto the programme, which have been used to develop our ESF application, and their annual devolved funding allocations have been based on these volumes. However, DWP will not guarantee referrals either in terms of total volume or flow. There is a risk that if the referral volumes do not materialise then the programme would not deliver to its full capacity, resulting in a potential underspend. Also, if the flow of referrals does not match the original profile established by DWP then the annual expenditure would not match DWP’s agreed allocation, resulting in a potential under/over spend.

Risk 5: Mitigation

There are a number of practical ways in which GM can mitigate against this risk:
   a) Use the Governance Board to manage JCP referral issues/concerns.
   b) Potentially open referral routes/cohorts if expected numbers do not materialise.
   c) Cap/close referral routes if numbers are higher than expected
   d) DWP have provided the ability of GM to carry forward unspent amounts in one year to subsequent years and this can be spent in future years according to the conditions attached to this grant. Subject to GM demonstrating a clear need it may be possible to re-profile to increase payments in earlier years and reduce payments in later years.
Risk 6: Contract novation

The GMCA is not currently recognised as a ‘relevant authority’ in Social Security legislation, which means that it is not able to act as a data controller for data originating from DWP. This means that it is unable to fulfil the requirements of an accountable body for the Work & Health Programme. It is for this reason that Salford City Council and Trafford Council have been the accountable bodies for the two phases of Working Well. Negotiations have been ongoing for some time with both DWP and CLG to give GMCA the required ‘relevant authority’ status in the Devolution Bills, but this has not materialised. Without this legislative change Trafford Council will not be able to novate the Work & Health contracts to GMCA.

Risk 6: Mitigation

We have now received assurance from DWP’s Director General that the ‘relevant authority’ powers will be in place before contract award for Work & Health Programme. There is still some work to do, but this means that GMCA will be able to be the accountable body for the programme.

Risk 7: Capacity

The delivery of an ESF CFO and management of the Work & Health Programme is a significant undertaking for GM, with reputational and financial consequences if it is not managed effectively. There is not latent capacity in the GM system to pick up this work, so there is a real risk of failure if adequate management resources are not put in place.

Risk 7: Mitigation

As part of ESF CFO Arrangements, GM as the accountable body is able to draw down a management fee to ensure the delivery and compliance of all funded contracts and activities. GM intends to allocate a modest 5% of the total programme costs (ESF allows up to 10%) to ensure the additional specialist skills required, including procurement, programme and performance management, compliance, audit and any professional fees, are put in place to deliver the programme. The CFO team (overseen by the Political Oversight Group) will review resourcing requirements on a quarterly basis to ensure they are sufficient to minimise and manage risks to the GMCA.

4. GM Co-Financing Application

4.1 GMCA has proceeded with a PART B ESF application, £10m for Phase 1a/b of Working Well and PART B for Phase 2 (Work & Health). The match funding is in place for this as detailed in section 1.

4.2 The application for CFO is currently undergoing a full DWP appraisal which will approve the eligibility and compliance of the programme both for Working Well and Work & Health.
4.3 GM will need to enter into a Grant Agreement with DWP for ESF as well as an MoU for the Work & Health Programme. A model ESF Grant Agreement has now been received (see Annex 2) as well as the letter of intent that will form the basis of the Work & Health MoU. These have been scrutinised and approved by both Trafford & GMCA Legal & Treasurers. It is not anticipated that there will be any material changes to the final documents.

4.4 As reported to the GMCA in January 2016 there are significant opportunities which arise from GM’s status as an ESF Co-financing Organisation – to procure targeted provision based on robust local evidence of need and demand, and to better evaluate and manage the quality of provision. However there are a number of risks associated with GM being the ESF applicant for PART B, as detailed in section 3.

4.5 These risks need to be minimised and managed, but there will inevitably be some residual risk associated with the devolution of DWP and ESF funding. The Combined Authority will want to assure itself that any residual risks are quantifiable and proportionate before entering into any contracts, as outlined in section 3.

4.6 The Inter Authority Agreement (that has already been signed for Working Well 1a/1b) will be updated to financially indemnify Trafford Council and then the GMCA for the additional new programmes.

4.7 For the Work & Health Programme, the GMCA approved in June 2016 that a political oversight group, chaired by the Portfolio Lead for Skills, Employment and Worklessness, would be established to oversee the commissioning process. This will be built upon to ensure the strong oversight and management of the ESF CFO programme.

5. Next Steps

5.1 If the Combined Authority agrees with the recommendations outlined in this paper the practical next steps will be:-

<table>
<thead>
<tr>
<th>Action</th>
<th>Timescale</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Establish the political oversight group</td>
<td>Feb 17</td>
</tr>
<tr>
<td>2 Create a dedicated ESF CFO / Work &amp; Health Programme Office</td>
<td>Jan – June 17</td>
</tr>
<tr>
<td>3 Trigger Working Well contract extension</td>
<td>Mar 17</td>
</tr>
<tr>
<td>4 Commence Work &amp; Health Programme procurement</td>
<td>Mar 17</td>
</tr>
<tr>
<td>5 Circulate revised IAA for all GM LAs to sign</td>
<td>Apr 17</td>
</tr>
<tr>
<td>6 Update GMCA on progress</td>
<td>Quarterly (April, July, Oct, Jan)</td>
</tr>
</tbody>
</table>
ESF Memorandum of Understanding 2014-2020

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;
(g) 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:

<table>
<thead>
<tr>
<th>Signed on behalf of Organisation referred to in 1.2 above</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
</tr>
<tr>
<td>Position</td>
</tr>
<tr>
<td>Operational address</td>
</tr>
</tbody>
</table>
## 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 Regulation1303/2013, 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.
ESF Memorandum of Understanding 2014-2020

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.