Modern Apprenticeship
Programme Rules
2015 to 2016
Modern Apprenticeships 2015/16

General Guidance

This document contains the Modern Apprenticeship Programme Rules that apply in relation to the provision of Modern Apprenticeship services by providers (“you”) between 1 April 2015 and 31 March 2016.

When you are awarded a contract to provide Modern Apprenticeship services which are publically funded by Skills Development Scotland (“we”, “us” or “our”), you agree to provide these services in accordance with all of the documents referred to in your contract award letter, including our Invitation to Tender, your response to our Invitation to Tender, your proposal and the MA Programme Rules. You must ensure that your organisation and each additional body that you use to provide the services are familiar with:-

1. all of the requirements set out in the MA Programme Rules;
2. all of the requirements set out in the other documents forming part of the contract; and
3. the principles that sit behind the publically funded support and the guidance for providers, which are set out in this General Guidance.

You must operate within all of the terms and conditions of your contract, including the MA Programme Rules.

**IF YOU BREAK ANY OF YOUR OBLIGATIONS UNDER YOUR CONTRACT, INCLUDING ANY OF THE MA PROGRAMME RULES, YOU ARE IN BREACH OF (HAVE BROKEN) THE CONTRACTUAL ARRANGEMENTS WITH SKILLS DEVELOPMENT SCOTLAND. SKILLS DEVELOPMENT SCOTLAND WILL BE ENTITLED TO TAKE ACTION AGAINST YOU, WHICH MAY INCLUDE RECOVERING SUMS PAID TO YOU, WITHHOLDING PAYMENTS ClaimED BY YOU, WITHDRAWING VOLUMES AWARDED TO YOU, AND/OR SUSPENDING OR TERMINATING YOUR CONTRACT WITH US.**

If you wish to discuss anything contained within the MA Programme Rules or any of the other documents, you should contact your assigned Skills Development Scotland Skills Investment Advisor.

We may update the MA Programme Rules from time to time during 2015/16, and if we do we will advise all providers. We do not expect there to be any significant changes.

Modern Apprenticeships - Context

Contracting Strategy and MA Funding Contribution Rates

The SDS MA Contracting Strategy sets out our priorities for NTPs and the MA Funding Contribution Rates for 2015/16. Copies of these can be found at Skill’s Development Scotland’s Provider Central website (at the time of printing, available at http://www.skillsdevelopmentscotland.co.uk/our-services/provider-central/). These are each in line with Scottish Government policy.

Modern Apprenticeships

Modern Apprenticeship training packages offer participants in paid employment the opportunity to develop and learn new skills at craft, technician and management levels.
Stakeholders

Sector Skills Councils (SSCs) in conjunction with employers and key stakeholders in their industry develop MA frameworks to meet the skills needs of employers. Awarding Bodies such as the Scottish Qualification Authority provide competency based qualifications, which are an integral part of an MA training package.

Modern Apprenticeships Frameworks

In Scotland there are over 70 different MA frameworks and they are each designed to provide a training package that meets minimum standards of competence as defined by licensed Sector Skills Councils or Standards Setting Organisations officially recognised by UK Commission for Employment and Skills (UKCES), following consultation with employers. They each contain 3 key components:-

- A relevant SVQ or alternative competency based qualification
- Core skills (except for technical and Professional Apprenticeships where this component is referred to as ‘Career Skills’)
- Industry linked training

The Modern Apprenticeship Group

The Modern Apprenticeship Group (MAG) is responsible for approving the publically funded MA frameworks in Scotland. Only those approved will be deemed eligible MAs for the purposes of Skills Development Scotland MA Provider Contracts. Details of MAG approved MAs are available at our Provider Central website.

MA Provider Services

Provider Services cover four main areas:

- identifying and starting eligible employees onto approved MAs which meet the needs of both the employer and the employee
- taking steps to ensure each MA participant receives the necessary training to meet the requirements of his/her MA Framework
- providing advice and guidance to support each MA participant to achieve his/her MA
- ensuring that the administrative requirements of the Awarding Bodies and Sector Skills Councils are met

1. Principles of Funding

Skills Development Scotland administers the Scottish Government’s public funding contribution towards the cost of MA provider services.

Our priorities for funding decisions for 2015/16 are in line with Scottish Government policy imperatives, and at the time of publication are as follows:

- maximising jobs with training opportunities for young people by providing a contribution to meeting
employer demand for 16\(^1\) - 24 year olds, with a focus on level 3 where at all possible;

- maximising opportunities for the wider availability of higher-level MAs including those delivered at SCQF Levels 8 (VQ4), 9 (VQ5) and Level 10 (VQ6) as these are approved;
- for those aged 25+: supporting the Scottish Government’s key sectors and other frameworks; and
- addressing occupational segregation issues.

In addition, each MA participant must have a demonstrable need to acquire significant new knowledge and skills to fulfil his/her job role and the MA framework selected for him/her must be the most appropriate learning programme generally available to him/her that will provide that knowledge and skills.

2. **Principles of Quality Assurance**

SDS Quality Standards have been in place since 2010/11 and were developed to help assess the extent to which each provider maintains capacity and capability to successfully support the delivery of provider services throughout the period of the contract. It is important that your senior management team accept ownership for the planning and delivery of your contract with Skills Development Scotland. This includes ensuring your services meet the needs of the employers you are working with and are developed in a way that provides each participant with the support he/she requires to achieve his/her MA.

You are required to complete a Self Assessment which demonstrates how you meet each of the nine SDS Quality standards. Our Assessor will review your Self Assessment and supporting evidence and identify strengths and any priority Areas for Improvement. Any priority Areas for Improvement identified either by you or our Assessor will be carried forward to an action/improvement plan.

The Quality Standards are designed to focus on continuous improvement and specifically to ensure each MA participant receives training in line with the requirements of his/her MA Framework. Failure to meet any of our Quality Standards at any time will be considered to be a breach of our rules and in addition to enforcement action, may impact on renewal of MA Provider Contracts.

3. **Principles of Evidence**

Our rules require you to make evidence available to us, (and/or our agents and auditors). The purpose of the evidence is to provide the necessary assurance that you have delivered your services in accordance with the terms of your contract, including our Invitation to Tender, your response to our Invitation to Tender, your proposal, our Contracting Strategy, the MA Programme Rules and the SDS Quality Standards.

You must hold and make available for inspection, suitable evidence to demonstrate that you are meeting all the requirements set out in your contract, which will include providing evidence that:

- each MA participant exists.
- We may consider a variety of evidence. As a minimum, evidence will include participant declarations, Training Agreements, participant interviews and/or portfolios;
- the MA participant is eligible for the programme.

\(^{1}\) 15, provided the participant has met the statutory school leaving age that applies in Scotland
We may consider a variety of evidence. As a minimum, evidence will include participant declarations and initial assessment;

- the training being delivered is within the scope of the MA frameworks that have been awarded to you under your contract.
  - We may consider a variety of evidence. As a minimum, evidence will include External Verifier Reports;
- the training is taking place, or has taken place.
  - We may consider a variety of evidence. As a minimum, evidence will include Quarterly Progress Reviews, Summary of Achievement Records, participant portfolios and interview findings;
- the outcomes achieved are correctly certificated by the relevant body.
  - We may consider a variety of evidence. As a minimum, evidence will include Awarding Body certification and External Verifier Reports.
- each of the nine SDS Quality Standards has been and continues to be met.
  - We may consider a variety of evidence. As a minimum, evidence will include the quality of evidence available against the evidence referenced within your Self Assessment;
- you have made appropriate progress in accordance with any action/improvement plan to address areas for improvement;
  - We may consider a variety of evidence. As a minimum, evidence will include your updated Self Assessments and Action Plan.

3. Action/Improvement Plans

Where you have an outstanding action/improvement plan from us relating to previous MA programme services provided by you, that action/improvement plan shall continue to apply to the Services to be provided by you under any Contract Schedule awarded to you for any period between 1 April 2015 and 31 March 2016 - unless we write to you confirming anything different.

Details of the evidence required to be made available/retained for inspection (as applicable) are contained within the MA Programme Rules.

We may also undertake independent investigations to verify the accuracy of evidence made available by you, including contacting participants and other third parties, and we may also ask you for additional evidence to demonstrate that you have fulfilled your obligations under your contract with us, where we think this is appropriate.

This General Guidance section is intended to provide guidance only and does not form part of the Modern Apprenticeship Programme Rules 2015/16.
The Modern Apprenticeship Programme Rules 2015/16

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Introduction

This document sets out The Skills Development Scotland Co. Ltd ("SDS") programme rules for the provision of MA services during the period 1 April 2015 to 31 March 2016 ("the MA Programme Rules").

The MA Programme Rules will apply insofar as not otherwise varied in the contract ("MA Provider Contract") between (i) SDS and (ii) learning providers (each "the Provider") in respect of the Modern Apprenticeship programme ("the MA Programme").

This document is set out in two parts. Part One contains the specific operational rules relating to the MA Programme. Part Two sets out the more general contractual obligations of Providers and SDS relating to the MA Programme.

Your attention is drawn to the provisions on how to interpret the MA Programme Rules, which provisions are contained in rule 4 of Part Two.

Any duties or obligations or requirements of a Provider will also apply to any Permitted Sub-contractors delivering training and it is the Provider’s responsibility to ensure these Permitted Sub-contractors, employers and/or organisations are aware of and are obliged to comply with SDS requirements and that the Provider has tangible evidence of this compliance e.g. copies of policies etc.
PART ONE

1. Eligibility Criteria for Public Funding

1.1. To be eligible to participate in an approved MA framework, a Participant must satisfy the criteria set out in rules 1.2 (domicile), 1.3 (age), 1.4, (demonstrable need) and 1.5 (employment) (and/or any other additional or alternative criteria as may be advised from time to time under to rule 1.7), and not be excluded under rule 1.6 (exclusions).

1.2. Domicile

A Participant must be domiciled in Scotland at his/her Start date, or be a Participant who is not domiciled in Scotland but whose main employment and normal working premises are located in Scotland.

1.3. Age

At the commencement of his/her MA a Participant must have reached the Scottish statutory minimum School leaving age and be:

1.3.1 an individual aged 15-24 who intends to follow an approved MA framework; or

1.3.2 an individual aged 25 or over who intends to follow an approved MA framework in any of the specified sectors listed in the Contracting Strategy.

1.4. Demonstrable Need

The proposed Participant must have a demonstrable need to acquire significant new knowledge and skills to fulfil his/her job role and the modern apprenticeship framework selected for the proposed Participant must be the most appropriate learning programme generally available to that individual, providing such knowledge and skills.

1.5. Employment

1.5.1 Each Participant must at all times during the period of his/her MA, be employed by an employer:-

(a) for whom he or she is working as an employee to consolidate the skills acquired during his or her MA framework;

(b) by whom the Participant is directly managed whilst performing his or her apprenticeship tasks on a daily basis with the apprenticeship tasks being undertaken as part of the Participant’s employment during working hours; and

(c) under a contract of employment relevant to the MA referred to in
1.5.2 SDS may, in exceptional circumstances, and entirely at SDS’s discretion, authorise completion of any part of a Participant’s MA, in the event that the Participant’s employment status changes. Any such authorisation shall require to be in writing. The Provider may apply to SDS for such authorisation by submitting written details of the Participant’s exceptional circumstances to the designated SDS Skills Investment Adviser.

1.5.3 Participants following a Modern Apprenticeship framework must be subject to the same policies and procedures as other employees of the organisation with which they are employed and the Provider must use all reasonable endeavours to ensure that each Participant is informed by his or her employer of their rights as an employee, including those relating to the national minimum wage.

1.5.4 For the avoidance of doubt, a Participant cannot be self-employed.

1.6 Exclusions

If any of the following apply to an individual at any time, the individual shall not be eligible to commence or continue (as applicable) the MA:

1.6.1 the individual is not eligible to hold a UK passport and is subject to an employment restriction and/or to a time limit on his/her stay in Great Britain (other than a Refugee or an Asylum Seeker);

1.6.2 the individual is in custody as a prisoner or on remand in custody.

1.7 In determining eligible persons for recruitment to the MA Programme, the Provider shall apply such additional and/or alternative eligibility criteria (as applicable) as SDS may advise from time to time, either in writing, or on its website.

1.8 SDS Individual Learning Accounts (ILAs) cannot be used by Participants to fund training that forms part of the Participant’s MA framework or for any elements of the Individual Training Plan (ITP). Further, individuals participating in the MA Programme will be ineligible to apply for SDS ILA funding.

1.9 The Provider shall use all reasonable endeavours to ensure that the Participant meets all the eligibility criteria as set out in this rule 1.

2 Programme Entry

2.1 Initial Assessment
2.1.1 Within the first two weeks of becoming a Start, the Provider shall ensure that each proposed Participant (including for the avoidance of doubt a re-entrant) undergoes an Initial Assessment ("IA") and completes a meaningful Individual Training Plan ("ITP"). The purpose of the IA is to demonstrate that the proposed Participant has good prospects of success in completing the selected Modern Apprenticeship, with the appropriate training and support from the employer and the Provider. The IA should take account of the proposed Participant's job role and the employer's requirements for skills development. During the IA the Provider shall utilise relevant evidence (e.g. from aptitude and/or skills test, interview, application form, CTS (for re-entrants), report from SDS work/careers coach or other agency worker). The Provider shall share the results of the IA with the proposed Participant and the employer and use the outcome results to develop the ITP.

2.1.2 All re-entrants to the MA Programme must follow the normal process for programme entry. Re-entry and any financial adjustments required in line with current SDS funding policy and budget availability are subject to the prior written approval of SDS.

2.1.3 During IA the Provider shall ascertain if the proposed Participant has previously completed all accreditations required for any Milestone claim. Details of all such accreditations must be fully and accurately reflected in the ITP.

2.1.4 When a Participant has previously undertaken accreditations required to complete all requirements for a Milestone claim, the Provider shall not be entitled to submit a Milestone claim for the duplicate Milestone, (whether in respect of the training, skills or accreditation already completed/attained, or in respect of the Provider performing services to repeat the completion of such training or skills, or attainment of such accreditation). Where the Provider has been paid by SDS in respect of such a Milestone, without prejudice to SDS' other rights and remedies, SDS shall be entitled to recover such funding from the Provider on demand.

2.1.5 Should the IA assessment process identify that the proposed Participant requires additional specialist equipment or support in order to undertake the training then the Provider shall advise the proposed Participant to apply through Job Centre Plus (JCP) for support through the Access to Work funds (or equivalent). The level of funding/support will depend on the size of the employer.

2.2 Individual Training Plan (ITP)

2.2.1 The Provider must ensure that an Individual Training Plan (ITP) is drawn up within 2 weeks of the proposed Participant starting the MA Programme, either in accordance with the SDS Best Practice ITP or using the Provider's alternative plan, in each case, in accordance with section 2.2.4 below.
2.2.2 Without prejudice to SDS' other rights and remedies failure to have an ITP in place strictly in accordance with these MA Programme Rules shall entitle SDS to recover all funding paid in respect of the individual.

2.2.3 When establishing the ITP the Provider shall ensure the following:-

2.2.3.1 the proposed Participant has a reasonable prospect of completing the MA successfully;

2.2.3.2 the proposed Participant’s prior learning and assessed needs are adequately reflected;

2.2.3.3 a duration is specified which is reasonable in light of the proposed Participant’s assessed needs; and

2.2.3.4 the support provided, and the nature and level of any Qualification aimed at are specified;

in each case to correspond to the findings of the IA.

2.2.4 A Best Practice ITP is attached at appendix 2a (guidance on completion is also attached at appendix 2b). However, Providers may use their own document, providing it captures all the necessary information as set out in the Best Practice ITP. The ITP must be signed by the Provider, the proposed Participant and the employer, and retained by the Provider.

2.3 Training Agreement, Eligibility Declaration, Information Exchange and Co-operation Statement, and CTS

2.3.1 Completion of all the mandatory information on CTS for a proposed Participant shall generate the Participant’s Training Agreement (TA). Completion of the TA for signature may be undertaken manually or by printing off a TA that has been completed on CTS. Providers shall not be permitted to use any form of training agreement other than the form of TA made available by SDS. The TA must be fully completed and agreed between the Participant and Provider, signed and dated by both and details entered onto CTS within two weeks of the proposed Participant’s Start date before the proposed Participant will be regarded as a ‘Participant’. For the avoidance of doubt, SDS shall have no obligations to the Provider in relation to a proposed Participant who is not registered as a Participant in accordance with this rule, notwithstanding that the Provider (i) has provided training to that proposed Participant and/or (ii) the proposed Participant is registered as a Participant after the date required under this rule. The TA, which is generated through CTS, must also be kept up to date at all times by the Provider, and each amended version signed immediately by the Participant and the Provider. Copies of each TA must be retained by the Provider for audit purposes.

2.3.2 When an individual agrees to join an MA Programme, s/he will sign the Training Agreement (TA/Start Form) which will include:-
(i) a declaration consenting to the sharing of relevant information; and

(ii) an undertaking to co-operate with SDS and/or SDS’ agents following any request for information from SDS and/or its agents concerning the individual’s training,

data as specified in the Information Exchange and Co-operation Statement section of the TA/Start form.

The Provider must advise each proposed Participant of the requirement for the proposed Participant to provide his/her consent to share relevant information and provide the co-operation undertaking described above.

2.3.3 When entering the proposed Participant’s details onto CTS the Provider is required to select a box that states “information exchange compliance?” (or similar). By selecting this box the Provider confirms that the proposed Participant has signed the TA undertaking, confirming that he/she is aware of the content of the Information Exchange and Co-operation Statement.

2.3.4 No later than the ‘Start’ date of each Participant, the Provider shall:-

2.3.4.1 fully and properly explain the eligibility criteria to the proposed Participant;

2.3.4.2 ensure that the Participant completes, signs and dates the Participant declaration contained in appendix 5, and retain it; and

2.3.4.3 complete, print and sign the Provider declaration contained in Appendix 5, and retain it.

Any financial obligation on SDS in respect of the individual in terms of the MA Provider Contract and any Contract Schedule will not arise prior to the individual being properly entered as a ‘Start’ on CTS in accordance with these MA Programme Rules.

2.3.5 The Provider shall prohibit any proposed Participant commencing an MA programme where that proposed Participant has not completed the required declaration referred to in rule 2.3.4.2.

2.3.6 Providers must, through duly authorised and appropriately qualified staff, at all times timeously complete and keep up to date, all information relating to each Participant required by the CTS, and comply with SDS CTS guidance (as amended from time to time).

2.3.7 Where a Participant is registered as a Start with the Provider within 56
days of the Participant leaving training under any MA with a former provider, the Provider shall not, without the prior written approval of SDS be entitled to a Start payment in respect of that Participant. Irrespective of whether or not such a payment is approved, the Participant shall not be considered a Start for the purposes of Performance Level 1 (Delivery of volume of contracted Starts) set out in Appendix 10 to the MA Programme Rules. Requests for such a Start payment should be submitted to the SDS Skills Investment Advisor.

2.3.8 A proposed Participant shall not become a 'Participant' until such time as the TA, the Information Exchange and Co-operation statement and certificate, and each declaration referred to in rule 2.3.4 have been duly signed.

2.3.9 When registering an eligible proposed Participant on CTS who is aged 15-19 years at the commencement date of his/her MA Programme, the Provider shall select the geographical area based upon the home address of the individual regardless of the employer's location.

2.3.10 When registering a proposed Participant on CTS who is aged 20 or over at the commencement date of his/her MA Programme, the Provider shall select the geographical area based upon the location of the employer regardless of the proposed Participant’s home address.

2.4 Registration with the Awarding Body/Sector Skills Council/Organisation

2.4.1 The Provider shall register each Participant with an Awarding Body, and with the appropriate Sector Skills Council/Body (SSC/B), identifying which Qualification the Participant will work towards during the period of his/her training, before any Milestone claims are made. The Participant must be entered for the group award as well as the relevant units for the Qualification. Unit registration alone is not acceptable. A Scottish Candidate Number (SCN) is also required to be entered onto the Participant agreement/record. For SQA Qualifications the SCN must be entered prior to claiming the first Milestone.

2.4.2 Staged registration may be acceptable for the VQ where this is in line with the approved MA framework provided the Participant is registered with the SSC/B as a Modern Apprentice.

2.4.3 Formal evidence of registration/entry, from the Awarding Body/SSC/B, including confirmed date, shall be held by the Provider on file prior to making a claim and retained for audit purposes. This can be verified by SDS through information made available by SQA, but this does not negate the Provider’s obligation to retain the evidence.

2.4.4 Without prejudice to SDS’ other rights and remedies, failure to register a Participant with either the Awarding Body or SSC/B, as applicable within the requisite timescale, or provide suitable evidence of registration to SDS in accordance with this rule 2.4 shall entitle SDS to recover all
funding paid in respect of the Participant on demand, and withhold any and all future payments otherwise payable in respect of the Participant, which sums shall not be (re)payable to the Provider.

2.5 **Induction**

2.5.1 **Roles and Responsibilities.**

The Provider shall ensure that the Participant, employer and where relevant any third party involved in the delivery of the MA Programme are aware of the responsibilities of all parties, and the role of SDS including details of financial contribution by SDS.

2.5.2 **Contact with Individuals.**

The Provider shall use its best endeavours to request and encourage full co-operation (and attendance, as applicable) by a Participant (or proposed Participant as applicable) in/at any meeting, online correspondence, survey and/or telephone call with SDS (or its agents) concerning the operation of the MA Programme as may be requested by or on behalf of SDS from time to time.

**Programme Delivery**

3.1 **Participant Review**

3.1.1 The Provider must comply with the SDS Quality Standards referred to in rule 3.3.9.1 in Part Two below. In order to demonstrate compliance with the SDS Quality Standards, the Provider shall focus on the needs of each Participant and provide the necessary support to achieve the objectives of each Participant’s ITP. When planning the programme delivery for each Participant, the Provider must demonstrate how they will work with the Participant and ensure that:

3.1.1.1 the planned support required to address each individual need of the Participant identified in the IA is mapped in the ITP;

3.1.1.2 delivery of all such support is fully reported in each Review (as described below); and

3.1.1.3 the Participant’s portfolio properly and accurately reflects the progress of the Participant in accordance with the ITP.

3.1.2 The Participant’s progress must be regularly reviewed and assessed. The Provider must carry out formal Reviews every 13 weeks as a minimum for the duration of the MA until the final Milestone is achieved. The Participant Progress Review contained in appendix 6 contains the minimum mandatory information required for each such Review. This will be checked by SDS. Additional rules apply to certain Milestone claims for specific occupational areas, which provisions are set out in rule 3.2.

3.1.3 Core Skills progress must be recorded as part of this process.
3.1.4 The Review record must be signed and dated by the Participant, Provider and the employer of the Participant (note that for block release Participants it is not necessary for the employer to countersign each Review, however, the employer must countersign a minimum of one per calendar year). A copy of each completed Participant Progress Review must be provided by the Provider to the Participant and the Participant’s employer (for the employer’s information) no later than 6 working days after each Review. The Provider shall (i) retain a copy of each Review record for the purposes of audit and (ii) use all reasonable endeavours to ensure that the employer shall retain a copy of each Review record for the purposes of audit.

3.1.5 A Best Practice Participant Progress Review form is provided at appendix 6 and the information contained in it is mandatory and therefore must be included in any alternative Review form.

3.1.6 All Awarding Body External Verifiers Reports must be made available to SDS immediately on demand for quality monitoring purposes.

3.2 Participant Progression

3.2.1 The Payment Plans are set against the Vocational Qualification listed in the MA framework, each using the listed Vocational Qualification Reference number. The details of all Payment Plans are contained within CTS and set out the programme requirements to make a Milestone claim.

3.2.2 Milestone payments can be claimed when the Provider has fully complied with its obligations in relation to the Participant under the MA Provider Contract and Contract Schedule, and each part of the Qualification, as broken down in the Payment Plan, is achieved in accordance with all the Awarding Body requirements. Evidence of achievement must be held in advance of the Provider making a claim, and retained for compliance. A claim may only be made by the Provider after the Start date entered on CTS. Any variation from the Payment Plan shall require the prior written agreement of SDS, to be granted entirely at SDS’ discretion. No deviation from the Payment Plan shall be permitted without such prior written agreement.

3.2.3 In addition to all other obligations set out in these MA Programme Rules, prior to submitting a claim for a Milestone payment, the Provider must satisfy the requirements, hold the evidence and meet the ‘additional information’ requirements set out in the Payment Plan Table below, and as more fully explained in rules 3.2.4 - 3.2.9. Where the Payment Plan Table and/or any of the rules under this rule 3.2 refer to an appendix, such appendix contains a Best Practice document; it contains the minimum mandatory information required for the Provider. The Provider must either use this form as evidence for making claims for Milestones, or provide the mandatory information in an alternative format acceptable.
to SDS.
<table>
<thead>
<tr>
<th>Requirements</th>
<th>Evidence to be held before claim can be made</th>
<th>Additional information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Payment Plans aligned to IT &amp; Telecommunications MA framework</strong></td>
<td>Achievement of credits in line with the requirements of vocational qualification signed off by recognised assessor</td>
<td>Completion of Summary of Achievement Record (SOAR) – appendix 3</td>
</tr>
<tr>
<td>Claims are based on a minimum number of assessments required to achieve all 8 units – 18 assessments to take place over the length of the MA frameworks</td>
<td>Each payment point sets out the required number of assessments to make a claim. Completion of Summary of Achievement Record (SOAR) – appendix 3 (or equivalent) – also required</td>
<td>Evidence of assessments must be available for inspection on request by SDS</td>
</tr>
<tr>
<td>Achievement of Performance Indicators as set out within the Payment Plan on CTS</td>
<td>Completion of Summary of Achievement Record (SOAR) – appendix 3</td>
<td>The awarding bodies Candidates Portfolio of Evidence must reflect the achievements as detailed in the SOAR and be available for inspection on request by SDS</td>
</tr>
<tr>
<td>Payment Point Claims must be supported by evidence set out within the Record of Progress document</td>
<td>Completion of Record of Progress document – appendix 4</td>
<td></td>
</tr>
<tr>
<td>Achievement of the unit is in line with the requirements of the Awarding Body, signed off by qualified subject assessor</td>
<td>Completion of Summary of Achievement Record (SOAR) – appendix 3</td>
<td>The awarding bodies Candidates Portfolio of Evidence must reflect the achievements as detailed in the SOAR and be available for inspection on request by SDS</td>
</tr>
<tr>
<td>Quarterly reviews to be completed in line with details contained within the Payment Plan</td>
<td>Completion of quarterly review and if detailed achievement of any unit requirements set out within the Payment Plan – appendix 6</td>
<td>Employer must sign the quarterly review</td>
</tr>
</tbody>
</table>
| **Construction Craft Model** | Quarterly reviews containing the minimum mandatory requirements | Completion of quarterly review as set out in CTS | Employer must sign the quarterly review

**Exceptions to employer signature**

Participants are at College/Training Centre (block release) during period of review – College or Training Centre representative may sign if this occurs on behalf of the employer |

3.2.4 For motor vehicle claims, Appendix 4 (or its equivalent) is required as an alternative to Appendix 3.

3.2.5 The Summary of Achievement Record (or, as applicable) Motor Vehicle Record of Progress documents submitted to SDS (whether in the form of the relevant appendix or Provider template) shall be signed and dated by the Participant and for the Provider by a qualified subject assessor. Progression recorded on the SOAR (or equivalent) shall reflect achievements detailed in the Participant portfolio.

3.2.6 In order to ensure that Awarding Body records of Participants’ results are up-to-date and accurate, Provider must enter unit achievement to the appropriate Awarding Body database/system as soon as reasonably practicable after completion by a Participant of each Milestone, and additionally, when a Participant leaves, no later than four weeks after the Participant’s leaving date. Without prejudice to SDS’ other rights and remedies, failure to update the Awarding Body database/system with results within this timescale shall entitle SDS to recover on demand all funding paid in respect of each such Milestone for that Participant, and withhold any and all future payments otherwise payable in respect of each such Milestone for that Participant, which sums shall not be (re)payable to the Provider.

3.2.7 The Participant Progress Review contained in appendix 6 contains the minimum mandatory information required for making Milestone claims based on Quarterly progress reviews for the specifically identified
occupational areas set out in the Payment Plan (or otherwise confirmed in writing by SDS). During the six week period commencing three weeks before and ending three weeks after the last date of each Quarterly period during the period of the MA Provider Contract, for each Participant, the Provider must complete this form (or equivalent) to claim the relevant Milestone. Claims must only be submitted where the required Milestone progress has been completed. Where Participants, in the first 26 weeks of training are participating in full-time off the job training, SDS may in exceptional circumstances accept the signature of an independent representative involved in the delivery of the off the job training, e.g. a college on behalf of the employer. The Provider must obtain the prior written consent of SDS in order to rely on such an exception. This rule 3.2.7 applies in addition to the provisions contained in the Participant Review provisions set out in rule 3.1. Without prejudice to SDS’ other rights and remedies, failure to provide the information referred to in this rule 3.2.7 immediately on demand and accurately showing the relevant achievement as having occurred prior to the date of the relevant claim, and the Quarterly review having been completed in accordance with the required timescale, shall entitle SDS to recover on demand all funding paid in respect of the Participant for that Milestone and withhold any and all future payments otherwise payable in respect of the Participant for that Milestone, which sums shall not be (re)payable to the Provider.

3.2.8 For each Participant undertaking Construction Craft Level 3 MAs (as confirmed in the Payment Plan), claims must only be submitted where the required Milestone progress has been completed. Without prejudice to SDS’ other rights and remedies, failure to provide this information immediately on demand and accurately showing the relevant achievement as having occurred prior to the date of the relevant claim, and the review having been completed in accordance with the required timescale, shall entitle SDS to recover on demand all funding paid in respect of the Participant for that Milestone and withhold any and all future payments otherwise payable in respect of the Participant for that Milestone, which sums shall not be (re)payable to the Provider.

3.2.9 The Participant portfolio must be made available immediately on request by SDS.

4 Completion of the MA Programme

4.1 The Provider must hold evidence of achievement of the full MA from the SSC/B including evidence of achievement of the full VQ or competency based qualification from the Awarding Body, prior to submission of a claim to SDS for output based funding. This must be formal SSC/B evidence. Without prejudice to SDS’ other rights and remedies, failure to provide suitable information to SDS on demand accurately demonstrating such achievement prior to the date of submission of the Milestone claim shall entitle SDS to recover on demand all funding paid in respect of that Milestone for that Participant, and withhold any and all future payments otherwise payable in respect of that Milestone for that Participant, which sums shall not be (re)payable to the Provider. Without prejudice to SDS’s other rights and remedies, Participants will remain on the
relevant MA Programme until all of the documentation required to make an application for the final MA Qualification has been collated, and an application made, in line with the framework.

4.2 Subject to rule 4.3, the final claim can only be made on achievement of the full MA Qualification as set out in the ITP.

4.3 For Payment Plan types based on quarterly review models and construction craft models (as outlined in the Payment Plan Table above), the final claim can only be made on achievement of the full Modern Apprenticeship Qualification as set out in the ITP.

5. Exit /Temporary Interruptions /Transfer

5.1 Exit from /Temporary Interruptions of Training

5.1.1 A Participant is regarded as having left the MA Programme:

- 5.1.1.1 if the aim of the ITP has been achieved and all supporting evidence of the MA outcome has been received by the Provider; or

- 5.1.1.2 if all supporting evidence of the MA outcome has been collated and certification applied for; or

- 5.1.1.3 if theParticipant states they have left the MA Programme; or

- 5.1.1.4 if the Participant ceases his/her employment with his/her employer for any reason, except when, following notification from the employer that the Participant has been made redundant, the Participant is engaged in a period of formal training at college in which case the period may be extended at SDS discretion and subject to the written approval of SDS.

5.1.2 The leaving details must be entered immediately to CTS by the Provider using the leaving codes in appendix 7.

5.1.3 The Provider must inform SDS immediately in writing (via an email to the Skills Investment Advisor) if a Participant’s training is interrupted temporarily for any reason (e.g. extended sick leave, suspension, extended compassionate leave) and update CTS records immediately. Whilst the training for any Participant on maternity/paternity leave shall be considered by SDS to be temporarily interrupted (and for the avoidance of doubt, the Participant shall not be considered to have left the training), Providers must enter the relevant code contained in appendix 7 to identify the status of the Participant as on maternity/paternity leave.

5.2 Transfer of a Participant

5.2.1 Subject to rule 5.2.3 of this Part One and without prejudice to SDS’s
other rights and remedies, if the Provider is materially failing to provide the training in accordance with the Participant’s ITP, the Provider shall co-operate fully with SDS should SDS determine that the Participant shall transfer to another provider. The original Provider must ensure that the organisation to which the Participant transfers is timeously provided with all necessary documentation to support any follow-on activity and ensure a smooth transition. All relevant documentation to support the training delivered up to the transfer date must be retained by the original Provider and provided immediately to SDS (or SDS’ nominee) on request.

5.2.2 In addition, where Participants have been made redundant, the Provider shall use its best endeavours to support the Participant in a search to secure alternative employment with training. This must include working with relevant Sector Skills Councils to identify alternative opportunities.

5.2.3 All transfer arrangements are subject to SDS’s prior written agreement on an individual basis.

6. **Performance and Award**

6.1 The Provider shall ensure that it meets the minimum Performance Levels set out in Appendix 10 to these MA Programme Rules when performing the services under the MA Provider Contract and each Contract Schedule. Where the Provider fails to meet any Performance Level, without prejudice to any other rights and remedies available to SDS under the MA Provider Contract (including any reallocation and/or further award under this rule 6), the consequences (if any) set out in Appendix 10 shall apply.

6.2 The Provider shall provide such reports and rationales as SDS may request from time to time, in order to measure the Provider’s compliance with the Performance Levels.

6.3 SDS will from time to time during the period of a Contract Schedule, evaluate the achievements of each Provider by assessing the Achieved Performance Levels that the Provider has delivered against those delivered by other providers. For the avoidance of doubt, assessment of Achieved Performance Levels shall take account of rationales for failed performance, made available to SDS by the Provider.

6.4 SDS will from time to time during the MA Provider Contract, evaluate the number of Participants that have been Started under each Contract Schedule by each Provider against the number of Participants that it was contracted to Start measured across all the Provider’s Contract Schedules. Where there is a shortfall, SDS may decide to reallocate the remaining number of Participant places awarded under the relevant Contract Schedules among other providers by amending the relevant Contract Schedules and/or placing an additional Contract Schedule, as applicable. SDS shall consider the achievements of each provider when making any reallocation.

6.5 Where SDS determines that a Contract Schedule is to be varied in accordance
with this rule 6, such variation shall be undertaken in accordance with Clause 5 of the front end of the MA Provider Contract (Variations). Where any additional volumes are allocated to a Provider pursuant to this rule 6, these shall be allocated as an additional Contract Schedule, in accordance with Clause 4 of the front end of the MA Provider Contract (Contract Schedule Process).
Part Two

A Proposal

1. Proposal

1.1. The Provider is responsible for ensuring that the MA Programme standards and Qualifications conform to the Proposal at all times including any variations thereto agreed in accordance with this rule 1 of this Part Two.

1.2. The Provider may propose amendments to the Proposal at any time, but no such amendment to the Proposal shall be valid for any purpose unless SDS has at its entire discretion, previously agreed to it in writing.

1.3. After consultation with the Provider, SDS may at any time specify to the Provider the nature of any amendment to the Proposal and the date by which the necessary amendment must be implemented by the Provider.

B Before Recruiting Participants

1. Policies, Procedures and Systems

1.1. There are a number of policies, procedures and systems which the Provider must have in place prior to recruiting eligible proposed Participants to the MA Programme and comply with at all times. These include:-

2.1.1. Equal Opportunities policy and procedures

2.1.2. Health and Safety policies, procedures and monitoring systems

2.1.3. IT system to access CTS and to process claims and other information

2.1.4. Handling Information (including data protection, freedom of information and information security)

2.2. Equal Opportunities

2.2.1. Under the Equality Act 2010 (“EO Act”), SDS as a public sector body is required to promote equality of opportunity in the products and services SDS is responsible for, including the MA Programme. SDS is working to broaden participation of under represented groups and to address gender segregation in the MA Programme. SDS is required to undertake and publish on the SDS website an Equality
Impact Assessment and an Action Plan to address this. The Provider has a key role in broadening participation and must act to ensure equality of opportunity in respect of recruitment of Participants and the provision of the MA Programme and shall ensure that in carrying out the MA Programme no acts of discrimination are committed with respect to the EO Act or any amendments modifying or replacing it. On request, the Provider shall promptly make available to SDS evidence of all promotional and other activity undertaken by or on behalf of the Provider to meet its obligations pursuant to this rule 2.2.1.

2.2.2. The Provider must have an equal opportunities policy covering both its own staff and also Participants, ensuring equality with respect to all the protected characteristics in the EO Act. The policy must show how it will be monitored and implemented. A copy of the policy must be available to SDS staff on request. The Provider must comply with the policy at all times.

2.2.3. Prior to the Participant commencing the MA Programme, the Provider shall make each Participant aware of the equal opportunities policy and what to do if the proposed Participant or Participant (as the case may be) feels he or she is being bullied or discriminated against.

2.2.4. Equalities monitoring information must be recorded in accordance with CTS requirements created by or on behalf of SDS from time to time.

2.3. Health and Safety

2.3.1. Reporting and Investigation of Incidents

2.3.1.1. The Provider shall immediately notify all Reportable Incidents to the relevant authority as required by RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations). If a Reportable Incident occurs whilst a Participant is conducting activities identified in his/her Individual Training Plan or which are relevant to the MA Programme the Provider must ensure that SDS is informed immediately.

2.3.1.2. These conditions are without prejudice to any statutory duty of any person to make notification of a death, injury, case of disease or dangerous occurrence.

2.4. SDS Information Technology Requirements

2.4.1. In carrying out its obligations in terms of the MA Provider Contract, the Provider shall conform to SDS information technology requirements
for the processing of claims and other information specified by SDS from time to time. SDS reserves the right to vary its information technology requirements in line with the development and updating of its systems. SDS shall endeavour to give the Provider reasonable and prior notification on its website, where appropriate.

2.4.2. Online Information System

2.4.2.1. Providers who propose to operate their own Online System to administer the MA Programme shall be required to notify SDS in advance. SDS will advise on timescales for testing and evaluation of the system. In such cases, the Provider shall require to meet SDS requirements in relation to the use of an Online System, if used by the Provider.

2.4.3. Corporate Training System (CTS)

2.4.3.1. Funding for each MA Programme will be administered through CTS in accordance with SDS requirements.

2.4.3.2. The Provider shall record all relevant information on CTS timeously and ensure that all required fields are accurate and up to date at all times.

2.4.4. The National Learning Opportunities Database (NLOD)

2.4.4.1. The NLOD is a comprehensive database of learning opportunities available in Scotland. Skills for Scotland: A Lifelong Skills Strategy established it as an effective national resource for all to use with a remit to become the single national source of learning information in Scotland. The NLOD is continually being developed and expanded to effectively underpin the services provided by SDS.

2.4.4.2. The NLOD is administered via PROMT (Provider Opportunity Management Tool) software. All Providers shall register by downloading and using the PROMT software to maintain the MA Programme course information on the NLOD. The Provider must upload onto NLOD all relevant details of MA frameworks it is authorised to provide, and keep such details up to date at all times. To the extent only that a Provider is providing training to Participants whom the Provider employs, the Provider is exempt from keeping details of the MA frameworks of those Participants on NLOD.

2.4.5. My World of Work

2.4.5.1. The Provider shall use best endeavours to persuade each
Participant to register on the SDS My World of Work web service at http://www.myworldofwork.co.uk/ (or such alternative address as SDS may use from time to time) during the Participant’s induction to the MA Programme and if unsuccessful at that time, during the Participant’s training. From time to time, SDS shall carry out checks to compare the number of each Provider’s Participants registered on CTS against the number registered on My World of Work.

2.5. Handling Participant and Employer Information

2.5.1. In order to perform the MA Programme and to demonstrate MA Provider Contract compliance it will be necessary for the Provider to hold personal information on Participants and Participants' employers and to keep Participant records. It will also be necessary to complete and retain SDS forms. The Provider shall promptly make all such information and records available to SDS staff as requested by SDS from time to time.

2.5.2. Information Security (See appendix 8 for full policy)

2.5.2.1. The Provider shall have due regard to data protection and the security of information and will comply with SDS Information Security and Data Handling Requirements as stated in Appendix 8, as amended by SDS from time to time, including the encryption of data being transferred electronically.

2.5.3. CTS Passwords

2.5.3.1. The Provider shall complete a CTS ID & Password Delegated Authority form at the request of SDS on an annual basis. Should the named person(s) on the form submitted change during the contract period, the Provider must promptly submit another form on CTS, advising of the new contact(s). The Provider shall at all times adhere to the security guidance issued by SDS and ensure that CTS passwords are reviewed regularly and updated for changes in staff and/or contacts. When a named member of staff leaves, the Provider must notify the appropriate division of SDS immediately.

2.5.4. MA Programme Rules

2.5.4.1. The Provider shall provide each Participant recruited with, and only with, a programme of training to which he or she is entitled according to the criteria set out in the MA Programme Rules. No dispensation from the MA Programme Rules shall be made unless approved in writing by SDS. No local dispensation will be allowed. Each MA Programme shall be provided in a manner acceptable to SDS.
C  In Training

3. In Training

3.1. Once a Participant has been recruited to and Started in an MA Programme the following policies and actions shall be addressed by the Provider:

3.1.1. Provider Controls and Assurance

3.1.2. Payment and Claims

3.1.3. Quality Assurance Process

3.2. Provider Controls and Assurance

3.2.1. The Provider shall at all times have in place controls to ensure that only valid claims against the contract are made. The Provider shall at all times maintain an accurate record of their controls in a format determined by SDS. This ‘Record of Provider Controls’ document will record all controls operated by the Provider to ensure that only valid claims are made by the Provider under the MA Programme Rules. The Provider shall submit a copy of their completed Record of Provider Controls to SDS promptly on request. SDS shall be entitled at all times to assess the Provider’s controls (during and after the period of the Provider Contract), (accessing the Provider’s and any sub-contractor premises as deemed appropriate by SDS) and take such action as SDS deems appropriate to establish the extent to which the controls are (or were, as appropriate) operating satisfactorily. The Provider shall co-operate fully with SDS in each such assessment and/or action. Without prejudice to SDS’ other rights and remedies, if required by SDS, the Provider shall prepare and implement an action/improvement plan to address areas for improvement recommended by SDS. SDS shall be entitled to require (without limitation) any action/improvement plan to include actions to address any improvement SDS deems appropriate following any review by SDS of the Provider’s controls.

3.2.2. The Provider shall promptly (i) update any changes to systems, organisation and staffing structure reasonably required to ensure that at all times only valid claims are made which comply with the MA Programme Rules, and (ii) notify SDS of each such change.

3.2.3. Without prejudice to rules 3.2.1 and 3.2.2 above, and to SDS’ rights and remedies:

3.2.3.1. prior to an SDS monitoring visit, the Provider will receive from
SDS a ‘Confirmation of Provider Controls Statement’ for completion. The Provider shall review the last version of the ‘Record of Provider Controls’ submitted to SDS (which may relate to a period prior to the period of the Provider Contract) and prior to the monitoring visit, confirm in writing if controls remain the same or if changes have been made; and

3.2.3.2. if there have been any changes the updated ‘Record of Provider Controls’ shall promptly be submitted to SDS clearly indicating which changes have been made and when.

3.2.4. The Provider shall complete a ‘Provider Annual Certificate of Assurance’ in a format determined by SDS. This must be completed and signed by the Chief Executive/Contract Signatory or equivalent and be submitted to SDS by 1 April 2015 to confirm that the Provider shall for the duration of the Provider Contract fully comply with (i) the MA Programme Rules and (ii) the Record of Provider Controls submitted to SDS in respect of that period (as amended in accordance with this rule 3.2). This is a mandatory document and is attached as Appendix 14. SDS shall not be required to recognise or pay claims in relation to any services that the Provider has performed under any Contract Schedule, before the date when SDS receives the duly completed and executed certificate.

3.2.5 In the event that:-

(i) the Provider had an agreement with SDS to deliver MA Programme services (or equivalent) at any time during the period between 1 April 2014 and 31 March 2015 (“2014/15 Agreement”); and

(ii) SDS issued the Provider with an action/improvement plan in relation to the services to be performed by the Provider under the 2014/15 Agreement (which would include any action/improvement plan that may have been issued to the Provider by SDS before the 2014/15 Agreement, where such plan had not been updated or replaced under the 2014/15 Agreement)

unless SDS advises you otherwise in writing, each such action/improvement plan shall continue to apply to the Services to be provided by you under any Contract Schedule awarded under this MA Provider Contract.
3.3. Payments and Claims

3.3.1. A Provider shall require to be a financially viable organisation and have robust financial systems in place. SDS reserves the right, at any time and as it may deem necessary to:-

3.3.1.1. require the Provider to provide such financial and/or other information, including the latest set of the Provider’s audited accounts, to enable SDS to assess the Provider’s continuing financial viability and its ability to continue to perform its obligations under the MA Provider Contract and each Contract Schedule;

3.3.1.2. require any financial and/or other information provided by the Provider under the MA Provider Contract to be certified by an independent accountant; and/or

3.3.1.3. call for a report, by an independent accountant, on the financial systems and controls operated by the Provider in respect of monies received for the purposes of the MA Programme.

3.3.2. Provided always that the Provider has and continues to meet its obligations under the MA Provider Contract and each Contract Schedule, SDS will pay to the Provider, as and when required by, and in accordance with the terms of, the MA Provider Contract and each Contract Schedule, such sums as are then due to the Provider according to the relevant Contract Schedule. All payments made under the MA Provider Contract and each Contract Schedule are inclusive of any applicable VAT.

3.3.3. Without prejudice to SDS’ other rights and remedies, where SDS finds overpayment has been made to the Provider under the MA Provider Contract or any other agreement between the Provider and SDS (whether expired or otherwise), SDS shall be entitled to deduct the amount of overpayment from the next payment claim, or if there are no further claims to be made, (or if otherwise requested by SDS), the Provider will make immediate repayment to SDS.

3.3.4. Without prejudice to SDS’ other rights and remedies, where the Provider has been requested to provide documentation in support of a claim for payment and has failed to provide it, SDS shall be entitled to permanently withhold payment of the claim (or such proportion not supported by satisfactory documentation) or where the claim has been paid by SDS, to demand immediate repayment of the claim (or such proportion not supported by satisfactory documentation) where upon the Provider shall immediately repay the amount demanded.
3.3.5. Providers shall not be entitled to submit any Milestone claim until the Provider is in possession of all the evidence specified in these MA Programme Rules. All claims for payments must be submitted by the Provider through CTS no later than the end of the second Accounting Period after the end of the Accounting Period in which the entitlement to payment arises. Where such evidence is not available to SDS (or its agents) on request, and/or such evidence was not in the possession of the Provider at the date of submission of the claim on CTS, payment will be at the sole discretion of SDS. SDS shall not accept any evidence other than the evidence referred to in these MA Programme Rules as support of a claim. Without prejudice to SDS’ other rights and remedies, SDS will be entitled to permanently withhold payment or to recover funding already paid in the event that the Provider is unable to demonstrate compliance with these terms for any claim.

3.3.6 SDS shall be entitled to withhold any payment claimed until such time as SDS (or SDS’ agent) has satisfied itself as to the authenticity, accuracy and/or suitability of the evidence available to support the claim, and in pursuit of such right, shall be entitled to conduct such audit of the supporting evidence as SDS (or SDS’ agents) may deem appropriate. Payment of any claim (whether with or without any audit) does not mean that SDS has satisfied itself as regards the authenticity, accuracy and/or suitability of the evidence, and SDS reserves its rights in that regard.

3.3.7. Recovering Monies and Late Claims

3.3.7.1. Without prejudice to SDS’ other rights and remedies, where a claim has been made and paid by SDS before it has become due but has subsequently become due and SDS has agreed repayment is not required, SDS shall be entitled to charge interest on the amount of the payment at the rate of four per centum per annum above the base rate of the Bank of Scotland from the date of payment until the date that it actually fell due.

3.3.7.2. SDS shall be entitled to deduct from any payments due to the Provider in terms of the MA Provider Contract (including any Contract Schedule) or any other contract between SDS and the Provider:-

(i) any sums due by the Provider howsoever and whensoever arising to SDS; and

(ii) any sums due to SDS by any person to whom the undertaking of the Provider has been transferred.
3.3.8. Signatures on Documentation

3.3.8.1. The Provider shall ensure that all systems and processes are robust with key controls in place to ensure that all signatures on documentation (whether electronic or in hard copy) are genuine. Where irregularities are found in any contract between the Provider and SDS, SDS shall be entitled to:-

3.3.8.1.1. recover all funding paid in respect of the Participant and/or under the MA Provider Contract (including for the avoidance of doubt, each Contract Schedule); and/or

3.3.8.1.2. terminate the MA Provider Contract (including for the avoidance of doubt, any or all Contract Schedules) and/or any other contract between the Provider and SDS, as SDS deems appropriate.

3.3.9. Quality Standards

3.3.9.1. SDS’ Quality Standards (contained within the SDS Quality Assurance Framework) are designed to help assess the extent to which Providers maintain capacity and capability to successfully support the delivery of their services throughout the period of the MA Contract. The Provider is required to meet the SDS Quality Standards. A copy of the current SDS Quality Standards is available at the SDS Provider Central website, currently available as follows, and as amended from time to time:-


3.3.9.2. The Provider shall submit to SDS, at such time(s) as SDS shall specify, for the duration of the MA Provider Contract and each Contract Schedule thereunder, a Self Assessment and Action Plan, the format of which shall be determined and made available by SDS to evidence Provider achievement and planned improvement actions against the SDS Quality Standards available on Provider Central, as amended from time to time. SDS staff shall periodically visit the Provider to review supporting evidence held by the Provider.

3.3.9.3. SDS will use the Self Assessment submitted by the Provider and additional appropriate evidence, to assess the Provider against each of the SDS Quality Standards. SDS may examine a range of evidence as indicated within the SDS Quality Assurance Framework available on Provider Central (as may be amended from time to time). In the event that the Provider fails to
meet the SDS Quality Standards at any time, this shall be deemed a breach of these Programme Rules. In addition to SDS’ other rights and remedies, Providers should be aware that compliance with the SDS Quality Standards pursuant to the MA Provider Contract may be included as a minimum requirement and/or evaluation criteria in future MA provider contracts.

3.4. Lodging Allowance

3.4.1. For those Participants resident in the specified local authority areas, rule 3.5 shall apply. For all other Participants, this rule 3.4.1 shall apply. Lodging Allowance may be applied for and will be considered individually. Written approval must be sought from SDS in advance. To claim this allowance the Provider must have in place in accordance with the MA Provider Contract:

3.4.1.1. the completed lodgings authorisation form duly signed by the Provider (which template SDS shall supply on request);

3.4.1.2. Training Agreement; and

3.4.1.3. Lodgings address and length of stay

3.5. Travel and Subsistence Policy for Participants Resident in Specified Local Authority Areas

3.5.1 Where Participants, resident in specified local authority areas of SDS North Region (i.e. Argyll &Bute; Western Isles (Eilean Siar); Highland; Moray; Orkney and Shetland), are required as part of his/her MA Programme to attend structured and formal off the job training (which is not conducted by or on behalf of the Participant’s employer or any Group Company of the employer) necessitating travel and/or overnight accommodation, then support is available in accordance with the process and policy set out in appendix 9 to these MA Programme Rules. Written approval must be sought from SDS in advance, using the form set out in appendix 9a.

3.6 Without prejudice to SDS’ other rights and remedies, failure by the Provider to comply with the respective requirements contained in rules 3.4.1 or 3.5.1 within the requisite timescale, shall entitle SDS to recover on demand all sums paid by SDS under the respective rule in respect of the relevant Participant, and withhold any and all future payments otherwise payable in respect of the Participant under the respective rule, which sums shall not be (re)payable to the Provider.
D  Standard Conditions

4. Standard Conditions

4.1. Interpretation

4.1.1. Capitalised terms in this document shall have the same meanings as those given in Appendix 1.

4.1.2. Rule, schedule and paragraph headings shall not affect the interpretation of the MA Provider Contract or a Contract Schedule.

4.1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

4.1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

4.1.5. Words in the singular shall include the plural and vice versa.

4.1.6. A reference to one gender shall include a reference to the other genders.

4.1.7. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

4.1.8. A reference to writing or written includes faxes.

4.1.9. Any obligation in the MA Provider Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.

4.1.10. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.

4.1.11. Where there is any conflict or inconsistency between or among the provisions of the MA Provider Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

4.1.11.1. the terms of the Spine Contract

4.1.11.2. the terms of the MA Programme Rules;

4.1.11.3. any schedules/appendices to any of the documents.
4.1.12 Any reference to ‘include’ and ‘including’ shall each be construed without limitation to the words preceding;

4.1.13 To the extent not otherwise specified, any right available to SDS shall be exercised at SDS’s entire discretion.

5. Warranties and Representations

5.1. The Provider warrants and represents to SDS that:-

5.1.1. it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under the MA Provider Contract and each Contract Schedule;

5.1.2. the MA Provider Contract and each Contract Schedule is executed by a duly authorised representative of the Provider;

5.1.3. in entering into the MA Provider Contract it has not committed and shall not commit any Fraud;

5.1.4. as at the commencement of the MA Provider Contract, all information, statements and representations contained in the documents submitted in respect of the relevant ITT Response and any Proposal thereafter are true, accurate and not misleading save as may have been specifically disclosed in writing to SDS prior to the execution of the MA Provider Contract and each Contract Schedule and it will promptly advise SDS of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

5.1.5. it has not entered into any agreement with any other person with the aim of preventing proposals being made or as to the fixing or adjusting of the conditions on which any proposal is made in respect of the MA Provider Contract;

5.1.6. it has not caused or induced any person to enter such agreement referred to in the previous paragraph;

5.1.7. it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other proposal or proposed proposal for the performance of services relating to MA Programmes under the MA Provider Contract;

5.1.8. it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916;
5.1.9. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under the MA Provider Contract;

5.1.10. it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under the MA Provider Contract or any Contract Schedule;

5.1.11. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider’s assets or revenue; and

5.1.12. in the three (3) years prior to the date of the MA Provider Contract:-

5.1.12.1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

5.1.12.2. it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and

5.1.12.3. it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider’s position as an ongoing business concern or its ability to fulfil its obligations under the MA Provider Contract and each Contract Schedule.

6. Corrupt Gifts and Payments of Commission

6.1. The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of SDS or any other public body or person employed by or on behalf of SDS or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this MA Provider Contract, any Contract Schedule or any other contract with SDS or any other public body or person employed by or on behalf of SDS or any other public body (including its award to the Provider, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Provider is drawn to the criminal offences under the Bribery Act 2010.
6.2. The Provider shall, if requested, provide SDS with any reasonable assistance, at SDS’ reasonable cost, to enable SDS to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.

6.3. The Provider shall have an anti-bribery policy (which shall be disclosed to SDS) to prevent any staff, Permitted Sub-contractors and agents (if any) from committing an offence under the Bribery Act 2010.

6.4. The Provider warrants that it has not paid commission nor agreed to pay any commission to SDS or any other public body or any person employed by or on behalf of SDS or any other public body in connection with this MA Provider Contract, any Contract Schedule or any other contract with SDS or any other public body or person employed by or on behalf of SDS or any other public body.

6.5. If any breach of this rule 6 is suspected or known, the Provider must notify SDS immediately.

6.6. If the Provider notifies SDS that it suspects or knows that there may be a breach of this rule 6, the Provider must respond promptly to SDS’s enquiries, co-operate with any investigation, and allow SDS to audit books, records and any other relevant documentation. This obligation shall continue for 3 years following the expiry or termination of the MA Provider Contract and each Contract Schedule thereunder.

6.7. If the Provider, its staff or any person acting on the Provider's behalf, engages in conduct prohibited under this rule 6 or commits any offence under the Bribery Act 2010 SDS may:-

6.7.1. terminate the MA Provider Contract and any other contract between the Provider (including a Contract Schedule) or part thereof, and SDS with immediate effect by giving notice in writing to the Provider and recover from the Provider the amount of any loss suffered by SDS resulting from the termination; or

6.7.2. recover in full from the Provider and the Provider shall indemnify SDS in full from and against any other loss sustained by SDS in consequence of any breach of this rule, whether or not the MA Provider Contract has been terminated.

6.8. Notwithstanding anything to the contrary under the MA Provider Contract, any dispute relating to the interpretation of this rule 6 or the amount or value of any gift, consideration or commission shall be determined by SDS and its decision shall be final and conclusive.

6.9. Any termination under this rule 6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to SDS.
7. Best Practice

7.1. Any document, form and/or guidance made available by SDS relating to the MA Programme shall be considered a Best Practice document, form and/or guidance (as applicable). In performing the services under each Contract Schedule, the Provider shall ensure that any process and/or format used shall comply in all material respects with Best Practice. Where any form and/or guidance contains information which is identified either in the form/guidance or the MA Programme Rules as mandatory, such information must be provided.

8. Compliance

8.1. In the performance of each Contract Schedule, the Provider shall comply with all relevant requirements of Scots law and European Community law.

8.2. The Provider shall ensure that every element of the MA Programme to be performed by the Provider or carried out on the Provider’s behalf or at its instance by other persons, complies with the MA Programme Rules.

9. Conflicts of Interest

9.1. The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of SDS) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to SDS under the provisions of the MA Provider Contract.

9.2. The Provider shall promptly notify and provide full particulars to SDS if such conflict referred to in rule 9.1 of this Part Two above arises or is reasonably foreseeable to arise.

9.3. SDS reserves the right to terminate the MA Provider Contract between SDS and the Provider (or any Contract Schedule thereunder) (or part thereof) without penalty to SDS, immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of SDS, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to SDS under the provisions of the MA Provider Contract. The action of SDS pursuant to this rule shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to SDS.

10. Safeguard Against Fraud

10.1. The Provider shall safeguard SDS’s funding of the MA Provider Contract against Fraud generally and, in particular, Fraud on the part of the
Provider or its Staff. The Provider shall notify SDS immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

11. Contract Schedule Performance

11.1. The Provider shall perform all Contract Schedules entered into with SDS in accordance with:-

11.1.1. the requirements of the MA Provider Contract; and

11.1.2. the terms and conditions of the respective Contract Schedules.

12. Data Protection Act

12.1 In respect of the Personal Data, the Provider and SDS agree that SDS is the Data Controller and that the Provider is the Data Processor.

12.2 The Provider shall:

12.2.1 process the Personal Data only on behalf of SDS, only for the purposes of performing the services pursuant to the MA Provider Contract, and only in accordance with instructions contained in the MA Provider Contract, including the SDS Information Security and Data Handling Requirements contained in appendix 8 (and/or such other instructions given by SDS from time to time);

12.2.2 not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised in writing by SDS;

12.2.3 at all times comply with the provisions of the Seventh Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 and, in so doing, 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, and if and when requested, provide a written description of the technical and organisational methods employed by the Provider for processing Personal Data (within the timescales required by SDS);

12.2.4 take reasonable steps to ensure the reliability of any of the Provider's Staff who have access to the Personal Data;

12.2.5 ensure that only those of the Provider's Staff who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of the services pursuant to the MA Provider Contract and all of the Provider's Staff required to access the Personal Data are informed of the confidential nature of
the Personal Data and comply with the obligations set out in this rule 12;

12.2.6 not publish, disclose or divulge any of the Personal Data to any third party (including for the avoidance of doubt the Data Subject itself) unless directed to do so in writing by SDS;

12.2.7 notify SDS (within five Working Days) if it receives:

12.2.7.1 a request from a Data Subject to have access to that person's Personal Data; or

12.2.7.2 a complaint or request relating to SDS's obligations under the Data Protection Legislation; or

12.2.7.3 any other communication relating directly or indirectly to the processing of any Personal Data in connection with the MA Provider Contract;

12.2.8 provide SDS with full co-operation and assistance in relation to any complaint or request made in respect of any Personal Data, including by:

12.2.8.1 providing SDS with full details of the complaint or request;

12.2.8.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation but strictly in accordance with SDS's instructions;

12.2.8.3 providing SDS with any Personal Data it holds in relation to a Data Subject making a complaint or request within the timescales required by SDS; and

12.2.8.4 providing SDS with any information requested by SDS;

12.2.9 permit SDS or its external advisers (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Provider's data processing activities and those of its agents, subsidiaries and sub-contractors and comply with all reasonable requests or directions by SDS to enable SDS to verify and procure that the Provider is in full compliance with its obligations under this agreement; and

12.2.10 not transfer Personal Data outside the European Economic Area without the prior written consent of SDS and, where SDS consents to such transfer, to comply with:

12.2.10.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and

12.2.10.2 any reasonable instructions notified to it by SDS.
12.3 The Provider shall, and the Provider shall use all reasonable endeavours to ensure that each of the Permitted Sub-Contractors shall, comply at all times with the Data Protection Legislation and shall not perform its obligations under the MA Provider Contract and each Contract Schedule in such a way as to cause either SDS or the Provider to breach any obligations under the Data Protection Legislation. The Provider shall immediately notify SDS in the event that it becomes aware of any breach of the Data Protection Legislation by the Provider or any of the Permitted Sub-Contractors in connection with the MA Provider Contract.

12.4 The Provider shall, at all times during and after the period of the MA Provider Contract (including each Contract Schedule), indemnify SDS and keep SDS indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by SDS arising from any breach of the Provider's obligations under this rule 12 except and to the extent that such liabilities have resulted directly from SDS's instructions.

13. Freedom of Information

13.1. The Provider acknowledges that SDS is subject to the requirements of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (together “FOISA”) and shall assist and cooperate with SDS to enable SDS to comply with its Information disclosure obligations.

13.2. The Provider shall and shall procure that its Permitted Sub-contractors shall at its cost:

13.2.1. transfer to SDS all requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a request for Information;

13.2.2. provide SDS with a copy of all Information in its possession, or power in the form that SDS requires within five Working Days (or such other period as SDS may specify) of SDS’s request; and

13.2.3. provide all necessary assistance as reasonably requested by SDS to enable SDS to respond to the request for Information within the relevant time for compliance set out in FOISA.

13.3. SDS shall be responsible for determining in its absolute discretion and notwithstanding any other provision in or pursuant to the MA Provider Contract or any other agreement, whether the Information and/or any other Information is exempt from disclosure in accordance with the provisions of FOISA, and may at its absolute discretion disclose to a third
party any Information relating to or provided by or on behalf of the Provider.

13.4. In no event shall the Provider respond directly to a request for Information unless expressly authorised to do so by SDS.

14. Publicity

14.1. Unless otherwise directed by SDS, the Provider shall not make any press announcements or publicise the MA Provider Contract in any way without SDS’s prior written consent.

14.2. SDS shall be entitled to publicise details of the MA Provider Contract and each Contract Schedule (including any examination of the MA Provider Contract and/or any Contract Schedule by the Auditor or otherwise).

14.3. The Provider shall not do anything which may damage the reputation of SDS, any Scottish Minister, or the MA Programme, or bring SDS any Scottish Minister or the MA Programme into disrepute.

15. Termination

15.1. SDS may without penalty terminate the MA Provider Contract and/or any Contract Schedule, or part thereof (as specified by SDS in the relevant notice), by serving written notice on the Provider with effect from the date specified in such notice:-

15.1.1. where in the opinion of SDS, the Provider has failed to comply with any term of the MA Provider Contract (including any Contract Schedule);

15.1.2. where, in the opinion of SDS, the Provider is unable to perform its obligations in terms of the MA Provider Contract (including any Contract Schedule),

15.1.3. in the event that SDS ceases to be engaged in the performance or support of the MA Programme;

15.1.4. where (in the reasonable opinion of SDS), there is a material detrimental change in the financial standing and/or the credit rating of the Provider which adversely impacts on the Provider’s ability to perform services referred to in the MA Provider Contract (including any Contract Schedule);

15.1.5. where the Provider has any accreditation from any Awarding Body withdrawn or it is not renewed (in each case whether temporarily or otherwise);
15.1.6. where the Provider fails to notify SDS of any hold placed on any accreditation by an Awarding Body or any sanction which may impact on a Participant achievement;

15.1.7. where any quality accreditation or recognition of the Provider is withdrawn or not renewed (in each case whether temporarily or otherwise);

15.1.8. where the Provider and/or any of its directors, staff, Permitted Sub-contractors or representatives conducts themselves in a manner which brings or is likely to bring SDS, any Scottish Minister, or the MA Programme into disrepute. This shall include any instance where the Provider and/or any of its directors, staff, Permitted Sub-contractors or representatives is charged with any criminal offence deemed to be a serious criminal offence by SDS, at SDS’ entire discretion,

15.1.9. where the Provider is a company and an Insolvency Event as described in rule 34.1 of Part Two to the MA Programme Rules has occurred in respect of the Provider;

15.1.10. where SDS terminates any other contract between the Provider and SDS as a consequence of breach on the part of the Provider, or

15.1.11. where SDS becomes aware of any breach of any other agreement entered into between SDS and the Provider at any time (whether expired or extant, and whether before or after the date of the MA Provider Contract), which breach (or breaches) would entitle (or would have entitled) SDS to terminate such agreement.

15.2. The Provider shall notify SDS immediately if a third party acquires a Controlling Interest in the Provider where such third party does not at the date of the MA Provider Contract hold such a Controlling Interest (but disregarding for this purpose any change in the ownership/control of voting share capital, voting rights or powers or appointment/removal of directors where such change relates to the ultimate holding company or other parent undertaking of the Provider) (“Change of Control”). SDS may terminate the MA Provider Contract and/or any other contract between the Provider and SDS (or any Contract Schedule), or part thereof to the extent specified by SDS, without penalty to SDS by giving notice in writing to the Provider with immediate effect within six (6) months of:-

15.2.1. being notified that a Change of Control has occurred; or

15.2.2. where no notification has been made, the date that SDS becomes aware of the Change of Control;
but shall not be permitted to terminate where SDS approved the Change of Control prior to its implementation, in writing.

15.3. SDS may terminate the MA Provider Contract and/or any other contract between the Provider and SDS (or any Contract Schedule), or part thereof where SDS terminates a Contract Schedule awarded to the Provider under this MA Provider Contract as a consequence of default by the Provider.

15.4. if SDS terminates the MA Provider Contract in accordance with rule 3.3.8.1.2, rule 6.7.1, rule 9.3 or this rule 15 (all in Part Two), it shall be entitled to terminate any other contract between the Provider and SDS, without penalty, by serving written notice on the Provider with effect from the date specified in such notice.

15.5. SDS’s rights of termination under this rule 15, are available to SDS in addition to its other rights of termination provided under the MA Provider Contract.

15.6 For the avoidance of doubt, SDS shall be entitled to rely on any extraneous evidence of the Provider’s non-compliance with any provision within the MA Provider Contract.

15.7 Where SDS has a right of termination or partial termination, such right shall include a right to reduce any volumes awarded under any Contract Schedules agreed with the Provider.

16. Suspension of Provider’s Appointment and Breach Notice

16.1. Where SDS has a right to terminate the MA Provider Contract under this MA Provider Contract, it shall be entitled, whether as an interim measure prior to termination or as an alternative to termination, to

(i) suspend the Provider’s appointment;

(ii) suspend the Provider’s access to CTS; and/or

(iii) suspend payment of any and/or all sums claimed by the Provider

under the MA Provider Contract and/or any other contract between SDS and the Provider, (and/or any Contract Schedule thereunder) or part thereof, by giving written notice to the Provider with effect from the date specified in such notice for the period set out in the notice or such other period notified to the Provider by SDS in writing from time to time.

16.2. In the event of a breach by the Provider of any term of the MA Provider Contract giving rise to a right of termination of the MA Provider Contract and/or Contract Schedule thereunder, SDS may as an alternative to immediate termination serve a notice on the Provider
requiring the breach to be remedied (if capable of remedy) within a period specified in the notice, not being longer than 28 days. If the breach has not been remedied by the expiry of the specified period, SDS may then terminate the MA Provider Contract and/or any other contract between SDS and the Provider (or Contract Schedule thereunder) (or part thereof) under rule 15 of this Part Two.

16.3. Where the Provider has breached the MA Provider Contract SDS may as an alternative to its immediate termination rights require the Provider to agree to an action/improvement plan setting out remedial actions which the Provider requires to take, and a timescale within which such remedial actions must be taken. If the remedial actions have not been properly completed by the expiry of the specified period, or if SDS is, during the notice period of the reasonable opinion that there is no reasonable prospect of the Provider properly completing the remedial actions within the stated timescale, SDS may then terminate the MA Provider Contract and/or any other contract between SDS and the Provider (or Contract Schedule thereunder) (or part thereof) under rule 15.1 of Part Two.

16.4 In the event that SDS exercises any of its suspension or termination rights under this MA Provider Contract, SDS shall be entitled to require the Provider to deliver to SDS immediately on demand, all the evidence required under the MA Programme Rules to support all outstanding claims for payment. SDS shall be entitled to satisfy itself, acting reasonably, that all supporting evidence is available, complete and accurate before SDS makes any payment in respect of any such claim.

16.5 Adoption by SDS of any option mentioned in rules 16.1, 16.2, 16.3 or 16.4 (as applicable) of this Part Two shall not prejudice SDS’s other rights and remedies arising before or after the adoption of such right.

17. Consequences of Termination and Expiry

17.1. Unless otherwise confirmed in writing by SDS, notwithstanding the service of a notice to terminate the MA Provider Contract and/or any other contract between SDS and the Provider (or Contract Schedule thereunder) or part thereof, the Provider shall continue to fulfil its obligations under the relevant contract until the date of expiry or termination of the relevant contract as referred to in the notice, or such other date as required under this rule 17.1.

17.2. Termination or expiry of the MA Provider Contract and/or other contract or Contract Schedule (or part thereof), as applicable, shall be without prejudice to any rights, remedies or obligations of either party accrued under the relevant contract prior to such termination or expiry.
17.3. SDS shall not be obliged to make payment to the Provider for any Milestone, achieved after the date of termination or expiry.

17.4. Each rule which is either expressed to or by implication is intended to survive termination shall survive the termination or expiry of the MA Provider Contract, including all rules entitling SDS to recover monies, rule 12 (Data Protection), rule 13 (Freedom of Information), rule 15 (Termination), rule 17 (Consequences of Termination and Expiry), rule 22 (Records, Audit Access and General Assistance), rule 23 (Confidentiality), rule 32 (Intellectual Property) and rule 33 (Transfer of Undertakings), all in Part Two of these MA Programme Rules.

17.5. On the termination of the MA Provider Contract or Contract Schedule, or part thereof (as applicable), the Provider shall provide such assistance as SDS may require, including delivery to SDS, or to such person as SDS confirms in writing, of all documents and data in the possession, custody or control of the Provider relating to the performance of its obligations pursuant to the MA Provider Contract, so as to facilitate a smooth and swift winding up of business between the Provider and SDS.

17.6. The Provider shall not, following termination of the MA Provider Contract or Contract Schedule, or part thereof (as applicable), represent that the Provider is contracted to provide training under the MA Programme and shall not, even if previously permitted to do so, use or continue to use any SDS branding.

18. Liability

18.1. Subject to rule 18.2 of this Part Two, SDS’s total liability to the Provider for any costs and/or losses incurred or suffered by the Provider pursuant to the MA Provider Contract shall be capped at the total funding due to the Provider for performing the MA Programme under the Contract Schedule in relation to which the costs and/or losses have arisen.

18.2. In no event shall SDS limit its liability pursuant to the MA Provider Contract for:-

18.2.1. death or personal injury caused by its negligence, or that of SDS’s Staff; or

18.2.2. fraud or fraudulent misrepresentation by SDS or its staff or representatives.

18.3. The Provider shall indemnify and keep indemnified SDS in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the MA Provider Contract including in respect of any death or personal injury, loss of or damage to property, financial loss
arising from any information given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. Without prejudice to SDS’ other rights and remedies, this rule shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or by any circumstances within its or their control.

19. Severability

19.1. If any provision of the MA Provider Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the MA Provider Contract had been executed with the invalid provision eliminated.

20. Statutory Requirements

20.1. The Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of the MA Provider Contract.

21. Non-Discrimination

21.1. The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, and other Protected Characteristic (as defined in the Equality Act 2010), or otherwise).

21.2. The Provider shall take all reasonable steps to secure the observance of rule 21.1 of this Part Two by all servants employees or Permitted Sub-contractors of the Provider and all suppliers and sub-contractors employed in the execution of the MA Provider Contract.

21.3. This rule 21 is without prejudice to the Provider’s obligations pursuant to the EO Act set out in Part One.

22. Records, Audit Access and General Assistance

22.1. As SDS funding may be used to match fund European Social Fund monies, the Provider shall keep and maintain until at least 31 December 2023 full and accurate records, supporting evidence and accounts of the operation of the MA Provider Contract and each Contract Schedule thereunder including the performance of the MA Programme pursuant to it and the amounts paid by SDS.

22.2. The Provider shall keep the records, evidence and accounts referred to
in this rule 22 in accordance with good accountancy practice.

22.3. The Provider shall afford SDS and/or such representatives, public appointed auditors (including representatives of the European Commission or the European Court of Auditors) (as applicable) (in any case, “Auditor”) immediate and unlimited access to such records, evidence and accounts as may be requested from time to time. Such access shall be at the Provider’s premises (or the premises of the Provider’s agents, if such records, evidence and/or accounts are ordinarily stored there) or, if requested by Auditor, at premises identified by the Auditor within Scotland.

22.4. The Provider shall provide such records, evidence and accounts (together with copies of the Provider’s published accounts) during the term of the MA Provider Contract and for the period referred to in rule 22.1 of this Part Two to the Auditor promptly on request by Auditor. Such provision shall be made at the Provider’s premises (or the premises of the Provider’s agents, if applicable) or, if requested by Auditor, at premises within Scotland.

22.5. The Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:-

22.5.1. providing unlimited access to all information requested by the Auditor;

22.5.2. providing unlimited access to sites controlled by the Provider and to equipment used in the performance of the MA Programme;

22.5.3. providing unlimited access to Provider staff, agents, representatives, Participants, and proposed and former Participants; and

22.5.4. providing the Auditor with suitable oral or written explanation as requested.

22.6. The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this rule 22, unless the audit reveals a material breach by the Provider of its obligations in which case the Provider shall reimburse SDS for SDS’s agents or representatives (as applicable) reasonable costs incurred in relation to the audit.

22.7. Where the MA Provider Contract or any Contract Schedule is terminated prior to 31 March 2016, or SDS otherwise requests, the Provider shall forward all related records, evidence, accounts and supporting documentation to SDS for retention.
22.8 The Provider shall promptly provide such general assistance and information relating to the Provider’s services and business as SDS may reasonably request from time to time which would assist SDS in responding to requests for information relating to providers and/or provider services that may be requested by or on behalf of Scottish Government, and/or assist SDS and/or Scottish Government in developing policy for modern apprenticeships.

23. Confidentiality

23.1. Subject to rule 23.2 of this Part Two, the Provider must treat the content of the MA Provider Contract and each Contract Schedule as confidential and not disclose the information unless:-

23.1.1. SDS gives prior written permission to disclose;

23.1.2. Provider is required to disclose for any court of law or tribunal or other competent authority; or

23.1.3. content has been made publicly available not through breach.

23.2. SDS permits the Provider to disclose to its Permitted Sub-contractors only such information as the Permitted Sub-contractor reasonably requires in order to perform its obligations.

23.3. SDS shall be entitled, at its entire discretion, to disclose the content of the MA Provider Contract and each Contract Schedule, and any details relating to the Provider’s performance thereunder to such parties, and in such manner, as SDS deems appropriate.

24. Performance Levels

24.1. In performing its obligations under the MA Provider Contract, the Provider shall:-

24.1.1. perform the services in such a manner as will ensure that the Achieved Performance Level in respect of that performance is equal to or higher than the Performance Levels set out in Appendix 10 to the MA Programme Rules; and

24.1.2. provide such records of and management reports summarising the Achieved Performance Levels as SDS may specify from time to time, and within such timescales as may be advised by SDS.

24.2. In the event that any Achieved Performance Level falls short of the relevant Performance Level, without prejudice to SDS’s other rights and remedies, the consequences set out in Appendix 10 shall apply.
25. Assignation and Sub-contracting

25.1. The Provider shall not assign, novate, sub-contract or otherwise dispose of any of its rights or obligations under the MA Provider Contract or any Contract Schedule without the prior written consent of SDS (which consent shall be given entirely at the discretion of SDS).

25.2. Where SDS grants consent to the Provider to sub-contract in accordance with rule 25.1, SDS reserves the right to withdraw its consent to any Permitted Sub-contractor where it has reasonable grounds no longer to approve of the Permitted Sub-contractor or the sub-contracting arrangement;

25.3. In respect of any such sub-contracting to which SDS has consented in accordance with rule 25.1:

25.3.1. the Provider shall ensure that so far as is possible the terms of the MA Provider Contract are properly and reasonably reflected in the terms of any contract with the Permitted Sub-contractor and that so far as is possible each one of them shall at all times be bound by obligations equivalent to the obligations of the Provider under the MA Provider Contract; and

25.3.2. the Provider shall include and maintain provisions in a written contract with each Permitted Sub-contractor, in terms suggested by or acceptable to SDS, which provide that the Permitted Sub-contractor cannot assign the sub-contract to a third party without the Provider’s consent (and the Provider shall not grant that consent without the prior written consent of SDS).

25.3.3. SDS reserves the right to see and approve copies of sub-contracts (such approval not to be unreasonably withheld, delayed or conditioned); and

25.3.4. no sub-contracting by the Provider under this rule 25 or otherwise, and no approval or consent by SDS in relation thereto shall relieve the Provider of any liability or obligation under the MA Provider Contract.

25.4. For the avoidance of doubt, the Provider cannot substitute or permit the substitution of a Permitted Sub-contractor without SDS’s consent and as a condition of giving such consent SDS can require the incoming sub-contractor to execute a sub-contract on the same basis.

25.5. SDS shall be entitled, without the need for the consent of the Provider, to assign, novate or otherwise dispose of its rights and obligations under the MA Provider Contract or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by SDS.
25.6. For the avoidance of any doubt and without limitation to the preceding provisions of this rule 25, the requirements of rule 25 shall apply even where the Provider intends to delegate or sub-contract any of its rights or obligations under the MA Provider Contract and/or any Contract Schedule to a Group Company.

25.7 SDS reserves the right to charge an administration charge to reflect its costs incurred in considering, approving and agreeing the terms of any assignation or novation agreed pursuant to this rule 25, which charge shall be payable by the Provider within 28 days of request by SDS.

26. Change of Provider Name

26.1. The Provider shall not change its company name or its trading name without obtaining the prior written approval of SDS.

27. Cumulative Remedies

27.1. Except as otherwise expressly provided by the MA Provider Contract, all remedies available to either party for breach of the MA Provider Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

28. Waiver

28.1. The failure of either party to insist upon strict performance of any provision of the MA Provider Contract, or the failure of either party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the MA Provider Contract.

28.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with rule 30 of this Part Two (Notices).

28.3. A waiver of any right or remedy arising from a breach of the MA Provider Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the MA Provider Contract.

29. Entire Agreement

29.1. Except to the extent otherwise expressly provided in the MA Provider Contract:-

29.1.1. the MA Provider Contract (including the ITT Response, the
Proposal, the award letter from SDS, each Contract Schedule and other documents submitted by the Provider in respect of the tender, and any other document properly incorporated by reference into the MA Provider Contract) constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the parties in relation to such matters;

29.1.2. each of the parties acknowledges and agrees that in entering into the MA Provider Contract and each Contract Schedule it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the MA Provider Contract.

29.2. Nothing in this rule 29 shall operate to exclude liability for fraud or fraudulent misrepresentation.

30. Notices

30.1. Except as otherwise expressly provided within the MA Provider Contract, no notice from one party to the other shall have any validity under the MA Provider Contract unless made in writing by or on behalf of the party sending the communication.

30.2. Any notice which is to be given by either party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service). Such letters shall be addressed to the other party in the manner referred to in rule 30.3 of this Part Two. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or sooner where the other party acknowledges receipt of such letters.

30.3. For the purposes of rule 30.2 of this Part Two, the address of each party shall be the address set out where the parties are designed in the MA Provider Contract (“the Spine”).

30.4. The Provider may change its address for service by serving a notice in accordance with this rule 30. SDS may notify any changes to its address on its website.

31. Marketing and Branding

31.1. The Provider must conform to all marketing and brand guidelines issued by SDS and use standard marketing literature issued by SDS.

31.2. The Provider will use only approved product and service names in
communications with potential Participants and Participants in relation to the MA Programme. No variations to the product and service naming conventions will be allowed and nationally available products and services will not be locally branded.

31.3. The Provider may only use the SDS branding, trade mark and other intellectual property rights for the purposes of the MA Provider Contract and shall not use the same after the termination or expiry of the MA Provider Contract or Contract Schedule (as applicable).

31.4. The Provider shall be obliged to supply case study information as required by SDS.

31.5. The Provider shall at all times comply with all European Social Fund delivery partner publicity requirements set out currently at: http://www.gov.scot/Topics/Business-Industry/support/17404/2007-2013PublicityInfo/PublicityGuidancefor2014-2020/esfpublicityrequirements, (or such alternative address as the European Social Fund may use from time to time) together with any additional publicity requirements SDS may issue from time to time. Included within such publicity requirements is the requirement for the Provider, when marketing the MA Programme to acknowledge SDS and European funding and use the European Social Fund (ESF) logo. The European Social Fund publicity guidelines are updated regularly and the provider shall ensure that it is at all times compliant with the current version. In addition, where SDS makes available any template or best practice document for use by the Provider, containing any European Social Fund reference(s), the Provider shall ensure that each such reference is included within the version used by the Provider.

32. Intellectual Property Rights

32.1. All intellectual property rights in any materials solely produced by the Provider in the performance and during the currency of the MA Provider Contract and each Contract Schedule (other than those provided by or on behalf of SDS) shall vest in the Provider. The Provider shall grant to SDS a perpetual, royalty-free licence to use, copy and modify such materials and shall deliver such materials to SDS if so requested for such purposes.

33. TUPE: Transfer of Undertakings (Protection of Employment) Regulations
33.1. The Provider shall indemnify and so free and relieve SDS of all liability for the Provider’s staff or former staff to which SDS may be liable in terms of TUPE consequent upon the termination of the MA Provider Contract and each Contract Schedule.

33.2. The Provider will organise the delivery of the MA Programme in such a way that there will be no organised grouping of the Provider’s employees which has as its principal purpose delivery of the MA Programme.

33.3. If, on the termination, expiry or reduction in the scope of the MA Provider Contract or any Contract Schedule, any contract of employment or engagement of any current or former employee of the Provider has effect, or is claimed by such current or former employee to have effect, as if originally made between SDS and such current or former employee and/or any new provider and such current or former employee, by operation of TUPE or otherwise, then the Provider shall pay SDS and any new provider the Employment Losses (whenever they are incurred, and whether or not the claims for such Employment Losses are erroneous or unsuccessful) arising out of:

33.3.1. the employment or engagement: and/or

33.3.2. the claimed employment or engagement: and/or

33.3.3. the termination of the employment or engagement: and/or

33.3.4. the claimed termination of employment or engagement

of any such current or former employee prior to the date of a relevant transfer for the purpose of TUPE.

33.4. If SDS asks, the Provider shall promptly enter into an appropriate agreement with any new provider on the same terms as those in rule 33.3 in order to give effect to rule 33.3 of this Part Two and the Provider shall pay SDS the amount of any losses which arise from a failure to do so, including any losses which may arise under any agreement with or undertaking SDS gives to any new provider which would give the new provider the benefit of rule 33.3.

33.5. Nothing in this rule 33 will give rise to the inference that SDS accepts any liability for any person employed by the Provider.

34. Insolvency

34.1. The Provider shall notify SDS in writing immediately upon the occurrence of any of the following events (“insolvency events”) during a period in which
the Provider is providing an MA Programme pursuant to the MA Provider Contract:-

34.1.1. where the Provider is an individual, if the Provider becomes apparently insolvent within the meaning of Section 7 of the Bankruptcy (Scotland) Act 1985 as amended (or equivalent in any other jurisdiction);

34.1.2. where the Provider is a firm or a number of individuals acting together in any capacity, if such firm or any partner of the firm or any of those persons acting together becomes apparently insolvent within the meaning of Section 7 of the Bankruptcy (Scotland) Act 1985 as amended (or equivalent in any other jurisdiction);

34.1.3. where the Provider is a company:-

34.1.3.1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

34.1.3.2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

34.1.3.3. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986;

34.1.3.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

34.1.3.5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

34.1.3.6. it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;

34.1.3.7. being a "small company" within the meaning of Section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

34.1.3.8. any event similar to those listed in rule 34.1.3.1 to rule 34.1.3.7 occurs under the law of any other jurisdiction.
34.2. Without prejudice to SDS’ other rights and remedies, on the occurrence of an insolvency event, a timescale for the final claim will be agreed by SDS and the Provider; the Provider must provide to SDS records to support its claims and retain them in a suitable location or pass them to SDS with full details of what has been provided to Participants and details of what Milestones have been achieved.

35. European Funding

35.1. In respect that payments by SDS to the Provider pursuant to the MA Provider Contract (“SDS Payments”) may have been made out of monies provided by the European Union, the Provider shall not, without the prior written approval of SDS, make any separate application for European Union Funding for any project where the European Union requires the Provider to receive other public sector funding for the project.

36. Blacklisting Regulations

36.1 The Provider must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this rule is a material default which shall entitle SDS to terminate the MA Provider Contract (including any Contract Schedule) with immediate effect.

37. Law and Jurisdiction

37.1. SDS and the Provider accept the exclusive jurisdiction of the Scottish courts and agree that the MA Provider Contract (and for the avoidance of doubt, each Contract Schedule thereunder) is to be governed by and construed according to Scots law.