

# **The Skills Development Scotland Co Ltd**

## **Work Able Scotland Programme Rules**

**For public funding of the Work Able Scotland Programme  
2017/19**

Amended 23 May 2017 with immediate effect

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## **Introduction**

This document sets out The Skills Development Scotland Co. Limited (“**SDS**”) rules (“**Rules**”) for the public funding of activity under the transitional employability services programme for 2017/19 (“**the Work Able Scotland Programme**”).

Capitalised terms in this document shall have the same meanings as those given in the glossary set out at Appendix 1

Except insofar as explicitly varied by the Service Provider Contract between SDS and the Service Provider, the Rules will apply in respect of all Work Able Scotland Programme Services.

This document is set out in three parts.

### **Part One – Contract Arrangements**

This contains among other things, the contract period details, details of where to find an up to date version of the Rules, and the overarching payment obligations.

### **Part Two – Operational Requirements**

This sets out the specific operational requirements relating to the Work Able Scotland Programme.

### **Part Three - Terms and Conditions**

This sets out the more general contractual obligations of Service Providers and SDS relating to the Work Able Scotland Programme.

## **PART ONE**

### **CONTRACT ARRANGEMENTS**

#### **1. Contract Arrangements**

- 1.1. The arrangements, definitions, terms and conditions set out in the Rules, as revised and updated from time to time by SDS together with the Invitation to Tender and Service Provider's ITT Response (subject to any amendments thereto in accordance with the terms of the Rules) shall form part of the Service Provider Contract as if such arrangements, terms and conditions and documents were expressly set out in the Service Provider Contract.
- 1.2. The Rules are set out in this document, and are subject to such amendments as are implemented by SDS from time to time. The applicable version can be found by linking through the SDS training Service Providers' website, currently available at [www.skillsdevelopmentscotland.co.uk](http://www.skillsdevelopmentscotland.co.uk) or such alternative address as SDS may use from time to time.

#### **2. Service Provider's Appointment**

- 2.1. SDS appoints the Service Provider as a potential Service Provider of WAS Programme in respect of the WAS Programme, as further described in the Rules and the Service Provider shall be eligible to be considered for the award of Contract Schedules for such services by SDS during the term of the Service Provider Contract.
- 2.2. The Service Provider acknowledges that, in entering into this Service Provider Contract and any Contract Schedule, no form of exclusivity or volume guarantee has been granted by SDS for any services to be performed by the Service Provider.

#### **3. Contract Term**

- 3.1. The Service Provider Contract shall have effect from 1 April 2017 until 15 November 2019 ("**the Contract Term**") subject to earlier termination in accordance with the Rules or on one month's notice in writing by SDS to the Service Provider.
- 3.2. Any payments made by SDS to the Service Provider prior to the date of the Service Provider Contract and made in anticipation of the Service Provider Contract having effect shall be deemed to have been made under the terms and conditions of the Service Provider Contract and the relevant Contract Schedule.

#### **4. Contract Schedule Process**

- 4.1. The Service Provider Contract governs the overall relationship of the parties in relation to the Service Provider's undertakings and sets out the process that SDS shall use to request services from the Service Provider under separate Contract Schedules.
- 4.2. SDS shall be entitled (but not obliged) from time to time to request the provision of Work Able Scotland Programme Activity. Within 10 days of receipt of each such request, the Service Provider shall either (i) notify SDS that it shall not be able to provide the requested services; or (ii) complete and submit to SDS, using such process and any such forms as SDS shall identify, full details of the Starts, Outcomes, applicable local authority region and Start date forecasts in respect of the request, which completed form shall, once acceptable to SDS, form part of the Contract Schedule. All forecasts must be reasonable and objectively

justifiable. A Contract Schedule shall not enter into force, be legally binding or have any other effect unless:-

- 4.2.1. the Contract Schedule contains the information required by SDS;
  - 4.2.2. the Contract Schedule has been signed by the authorised representative of SDS (such execution being entirely at SDS' discretion) and the Service Provider; and
  - 4.2.3. the Contract Schedule has been returned to SDS (or posted on CTS if permitted by, and in accordance with the express instruction of SDS); and
  - 4.2.4. as at the date the Contract Schedule is signed, the Service Provider Contract has not been suspended or terminated.
- 4.3. Each Contract Schedule:-
- 4.3.1. shall be entered into by SDS and the Service Provider;
  - 4.3.2. forms a separate contract between SDS and the Service Provider; and
  - 4.3.3. shall incorporate the Rules.
- 4.4. Subject to earlier termination in accordance with the Rules, each Contract Schedule shall have effect from the commencement date specified therein until the latest date on which the Service Provider is entitled to claim an Outcome payment in accordance with the Rules.

## **5. Variations**

- 5.1. SDS reserves the right to amend the Service Provider Contract including for the avoidance of doubt each Contract Schedule) at any time during its currency with the issue of a revised contract and/or Contract Schedule (as applicable) which will have the effect of superseding all prior agreements (where it affects the Service Provider Contract terms) and in the case of a Contract Schedule, each Contract Schedule that is identified as having been replaced:
- 5.1.1. in respect of the Service Provider Contract, from the date that Service Providers are advised of the changes, and
  - 5.1.2. in respect of each Contract Schedule, on the date SDS advises the Service Provider of the amendment(s), in writing.
- 5.2. Without limitation, SDS anticipates that any such changes may relate to:-
- 5.2.1. the volume of Starts and Outcomes and financial profiles, which may be varied having regard to such matters as the relative demand for the Work Able Scotland Programme services by the Service Provider in the relevant local area in contrast with other Service Providers and other areas; and the performance of the Service Provider;
  - 5.2.2. the administrative procedures and information required to be inputted to CTS;
  - 5.2.3. evidence requirements;
  - 5.2.4. Customer eligibility;
  - 5.2.5. Referral/progression of proposed Customers;
  - 5.2.6. CTS terms and conditions; and/or
  - 5.2.7. Payment terms
- 5.3. The Service Provider must promptly alert SDS in writing (in accordance with such instructions as SDS shall advise from time to time) in the event that the Service Provider has no reasonable prospect of fulfilling any forecast relating to the contracted number of Starts or Outcomes contained in any Contract Schedule. This does not negate the Service Provider's obligation to meet the agreed forecasts, and is without prejudice to SDS' rights and remedies.
- 5.4. SDS may request the Service Provider to submit changes to any Contract Schedule concerning such parts of the Contract Schedule as SDS shall specify, including forecasting information. SDS shall be entitled at its entire discretion to accept or reject any submitted variation. In the event of changes agreed pursuant to this rule 5.4, SDS shall issue a revised Contract Schedule in accordance with rule 5.1.

5.5. Variations to the Service Provider Contract and/or any Contract Schedule which do not meet the requirements of this rule 5 shall not be permitted.

**6. Payment and Achievement Arrangements and Reimbursement of Customer's Travel Costs**

6.1. SDS shall pay the Service Provider for provision of the Work Able Scotland Programme services in accordance with the Rules in respect of the Customers recruited, services performed and Outcomes achieved in accordance with each Contract Schedule in accordance with rules 1.4.1, 1.4.2 and 18 of Part Two of the Rules.

6.2. Subject to any variations made by SDS in accordance with the Service Provider Contract, the Service Provider shall provide the services for the numbers of Starts, and in accordance with the forecasts set out in each Contract Schedule, and to the quality of delivery set out in the Service Provider Contract (including for the avoidance of doubt, the ITT Response).

6.3. The Service Provider shall require to reimburse each Customer for all reasonable travel expenses which are reasonably incurred by the Customer in engaging in the Work Able Scotland Programme, including without limitation, the costs of travel to and from all associated training, health support, work experience, and employment. The Service Provider must ensure that the Customer is at all times aware of the Customer's rights to claim such expenses, and facilitate the Customer in making all such claims through a simple claims process. The Service Provider shall reimburse each such claim within 7 calendar days. For the avoidance of doubt, neither these costs, nor any other costs incurred by the Service Provider are payable by, or can be claimed from, SDS. Where the Customer uses his/her own vehicle, reasonable expenses shall be assumed to be no less than the cost of public transport for the same journey, and, where no equivalent public transport exists, £0.22 per mile travelled.

## **PART TWO      Operating Rules**

### **1. Work Able Scotland Programme Aims and Outcomes**

- 1.1. The aim of the Work Able Scotland Programme is to support Customers into sustainable jobs through the delivery of high quality employment support to defined eligible groups. The Work Able Scotland Programme will create a strong platform for the delivery of a new programme which will replace the Work Able Scotland Programme from April 2018 through working in partnership with stakeholders to build on best practice and establish support that achieves high quality outcomes. The Work Able Scotland Programme will meet the needs of people with health conditions who need more specialised support to find employment or keep a job once they have started work. The Work Able Scotland Programme will be tailored to individual need and provide a voluntary and coherent range of specialist support which responds flexibly and effectively to the needs of individuals and their employers.
- 1.2. The Service Provider shall provide every eligible Customer with an individual programme containing the coaching and support that will enable and encourage progression to sustained employment including a Modern Apprenticeship.
- 1.3. The services provided by the Service Provider pursuant to the Work Able Scotland Programme will be tailored to meet the individual needs of the Customer.
- 1.4. The activities performed by the Service Provider shall be designed to enable each Customer to achieve both of the following Outcomes:-
  - 1.4.1. Job Outcome – the Customer progresses into a job/self employment of at least 16 hours per week, for a consecutive period of at least 6 weeks. The commencement date for such job/self employment (“Outcome Commencement Date”) must occur either (i) during the period the Customer is participating in the programme, or (ii) no later than the date occurring 13 weeks after the date the Customer leaves the programme;
  - 1.4.2. Sustained Job Outcome – the Customer sustains a job/self employment of at least 16 hours per week for at least 26 out of the 30 weeks immediately following the Outcome Commencement Date. Employment/self employment need not be in the same job.
- 1.5. The Service Provider shall require to ensure that the employment/self-employment requirements set out in rule 18 of this Part Two are met.

### **2. Customer Eligibility**

- 2.1. Admission to the Work Able Scotland Programme as a Customer is voluntary.
- 2.2. Subject to rule 3 of this Part Two, a proposed Customer is only eligible to commence the Work Able Scotland activity if, at the commencement date of the activity:-
  - 2.2.1. the Referral form provided by the Department for Work and Pensions (“DWP”) confirms that the proposed Customer is not in employment or self-employment;
  - 2.2.2. the Referral form provided by DWP confirms that the proposed Customer is at least 18 years of age,
  - 2.2.3. not used;
  - 2.2.4. at the referral meeting between the proposed Customer and the Service Provider following the Service Provider’s receipt of the Referral form, the proposed Customer confirms his/her willingness (i) to fully participate in and complete the identified services to be provided by the Service Provider, and (ii) to work; and
  - 2.2.5. the Referral form provided by DWP confirms that the proposed Customer is in receipt of ESA and is within Work Related Activity Group (WRAG) recently assessed by DWP Work Coach as being able to enter work for at least a minimum of 16 hours

per week within a 12 month period or less, or the proposed Customer is in receipt of Universal Credit subject to conditionality level 4 (limited capability for work; ESA WRAG equivalent; those within work preparation regime).

3. A person at the same time on any employment, training or enterprise programme funded by any Government department or by SDS (subject to any exceptions published by SDS from time to time) is not eligible to participate in the Work Able Scotland Programme.
4. SDS Individual Learning Accounts (ILAs) cannot be used by Customers to fund services received as part of the Work Able Scotland Programme or for any elements of the Action Plan. Customers in the Work Able Scotland Programme will be ineligible to apply for SDS ILA funding or to renew an existing account for SDS ILA funding whilst participating in the Work Able Scotland Programme.

#### **5. Service Provider Information for DWP and Service Provider Marketing Activity**

- 5.1. No later than 17 February 2017, the Service Provider must complete and return to the Service Provider's local SDS Skills Investment Adviser a Work Able Scotland Programme Fact Sheet (the template for which is contained in appendix 10) completed in respect of the total volumes of Starts awarded within the Contract Schedule.
- 5.2. SDS Skills Investment Adviser shall, when satisfied with the content of the Service Provider Fact Sheet submitted by the Service Provider, confirm to the Service Provider SDS's approval. In the event that SDS is not satisfied with the content, the Service Provider shall amend and resubmit the Fact Sheet to the SDS Skills Investment Adviser until such time as SDS has approved the content.
- 5.3. The Service Provider must promptly circulate the SDS approved Work Able Scotland Programme Fact Sheet to DWP to alert them to the Work Able Scotland Programme opportunities and to aid suitable referrals.
- 5.4. In the event of any changes to any Contract Schedule, and in the event that the Work Able Scotland Programme Fact Sheet is no longer accurate, the Service Provider shall immediately resubmit a revised Work Able Scotland Programme fact sheet to SDS' Skills Investment Adviser, and the provisions in this rule 5 shall apply until such time as the Fact Sheet is approved.
- 5.5. The Service Provider shall use all reasonable endeavours to keep the local DWP offices fully aware of the Work Able Scotland Programme services provided by the Service Provider, including without limitation, providing appropriate marketing materials for proposed Customers and regularly meeting DWP staff and potential Customers at the DWP offices.

#### **6. Pre Start – DWP Referral**

- 6.1. DWP is the only organisation authorised to submit proposed customer referrals to the Service Provider. Any referral to a Service Provider will require to be in the form of a duly completed Referral form (as set out in Appendix 2), and must be received by the Service Provider from DWP between 3 April 2017 and 22nd December 2017 (inclusive). An individual who is not referred to the Service Provider by DWP, or whose referral is received by the Service Provider outwith the period referred to above, shall not be eligible to participate in the Work Able Scotland Programme, and no funding shall be payable by SDS to the Service Provider for any ineligible participant.
- 6.2. DWP will be responsible for identifying proposed Customers from their eligible ESA and UC caseloads. DWP will determine whether the individual (i) has a reasonable prospect of employment within the period of the Work Able Scotland Programme, and (ii) meets the agreed eligibility criteria set out in rules 2 and 3 of this Part Two. As a volunteer the individual will not be subject to any DWP benefit conditionality.



- 6.3. The Referral form will show the justification for the individual entering the Work Able Scotland Programme and will form the basis of the agreed Action Plan, details of which are set out in rule 10 below.
- 6.4. DWP shall contact the Service Provider to agree a suitable date for the proposed Customer to meet with the designated Case Manager for a referral meeting prior to sending the proposed Customer's Referral form to the Service Provider.
- 6.5. In the event that DWP assesses the Customer as having Multi-Agency Public Protection Arrangements (MAPPA) or Special Customer Status (according to such criteria as DWP shall determine), DWP shall refer the Customer directly to the Nominated Officer.
- 6.6. The Service Provider shall with effect from the date of implementation of this revised rule 6.6, appoint a Nominated Officer who shall be the Nominated Officer for every Customer referred through Multi-Agency Public Protection Arrangements (MAPPA) or Special Customer Status. The Service Provider shall no later than 14 days following the date of (i) implementation of this revised rule 6.6, notify SDS in writing of the details of the relevant Nominated Officer appointed and (ii) any change from time to time in such appointment notify SDS in writing of the full details of such change.

## **7. Pre Start - Service Provider Validation of Eligibility/Suitability and Referral Meeting**

- 7.1. On receipt of a Referral from DWP in accordance with these Rules, the Service Provider shall review the content of the Referral form to ensure that it matches the eligibility requirements set out in rules 2 and 3 of this Part Two.
- 7.2. The Service Provider shall conduct a face to face referral meeting with the proposed Customer to occur no later than 7 calendar days after the Service Provider's receipt of the proposed Customer details in accordance with rule 6.4. In the event that a Customer is unavailable to attend the arranged referral meeting, the Service Provider can rearrange the meeting within the 7 calendar day period. If this is not achievable then the Service Provider must use all reasonable endeavours to agree a revised timescale with DWP and record this agreement on the Customer's Referral form.
- 7.3. In the referral meeting, the Service Provider shall:-
  - 7.3.1. take all reasonable steps to ensure a smooth and effective transition for the proposed Customer between DWP and the Service Provider's case manager appointed to be the dedicated case manager for the proposed Customer, should the proposed Customer commence the programme;
  - 7.3.2. explain to the proposed Customer, all the referral information received from DWP in the Referral form, including but not limited to the identified needs of the proposed Customer, any outcomes of any core skills assessment and/or other diagnostic outcomes already completed through DWP, and obtain verification from the proposed Customer that the he/she considers all the information to be accurate and up to date. (If the proposed Customer does not agree that the content is accurate or up to date, the Service Provider shall follow the procedure set out in rules 7.5 and 7.6 below);
  - 7.3.3. clarify to the proposed Customer the expectations of the Work Able Scotland Programme activity which the proposed Customer would engage in, including without limitation, attendance, travel requirements (including travel expenses) types of support available, frequency of engagements and Customer commitment;
  - 7.3.4. identify all immediate presenting issues in relation to personal and social factors which the Service Provider reasonably considers may affect attendance/participation by the proposed Customer on the Work Able Scotland Programme;
  - 7.3.5. establish any social and underlying health related issues relating to the proposed Customer which are barriers to employment and how these will be overcome;

- 7.3.6. use best endeavours to agree a start date occurring no later than 7 calendar days following the referral meeting. Any individual eligible for the Work Able Scotland Programme who is not offered such a start date must promptly be given an explanation of the reason for this by the Service Provider.(Such explanation does not negate the Service Provider's obligation to meet that timescale); and
- 7.3.7. ensure that the Nominated Officer is present in respect of all Customers referred.
- 7.4. Rules 7.5 through 7.8 shall apply in respect of each Customer Referral received.
- 7.5. Once the outcome of the referral is known (including for the avoidance of doubt, any non attendance by the proposed Customer at any referral meeting) it is the responsibility of the Service Provider to complete Section 9 of the Referral Form and return it to the specified Work Coach/JCP office, as detailed in Section 1, within 5 calendar days of either the referral interview or the start date, which ever is the later.
- 7.6. Any Customer eligible for Work Able Scotland activity who is not offered a start date must promptly be given an explanation of the reason for this by the Service Provider and detailed feedback provided to the DWP Work Coach. There are 2 potential reasons: (1) The Service Provider has no available places on their Work Able Scotland provision or (2) The Service Provider considers that the Customer has not fully understood the commitment required for participation in Work Able Scotland. The Service Provider must try to resolve any misunderstanding on the availability and/or content of their Work Able Scotland programme with the Customer and the DWP Work Coach.
- 7.7. The Service Provider shall not commence any individual on the Work Able Scotland Programme unless the Service Provider is (i) in receipt of a Referral form which complies with the eligibility requirements set out in this Part Two, and (ii) satisfied that, following the referral meeting with the proposed Customer, the proposed Customer has a reasonable prospect of successfully completing the Work Able Scotland Programme and achieving both Outcomes within the respective periods set out in rules 1.4 and 11.1 of Part Two.
- 7.8. The Service Provider must fulfil all of its eligibility and suitability assessment obligations set out in these Rules for each proposed Customer Referral form received and must maintain a full audit trail of each such assessment in accordance with these Rules and is not entitled to reject any referral except as expressly provided in these Rules.
- 7.9. A copy of each Referral form, duly completed and signed as required in this rule 7 must be retained by the Service Provider for audit purposes, regardless of whether the proposed Customer starts on Work Able Scotland or not.
- 7.10. All Referral forms from DWP for those with Multi-Agency Public Protection Arrangements (MAPPA) or Special Customer Status shall be addressed by DWP to the Nominated Officer, and sent by secure means of physical transfer (i.e. Royal Mail Recorded or Special Delivery (tracked), Tracked TNT Courier (where the Service Provider is available on the TNT Network (Orange Polylope), hand delivered or secure fax.

## **8. Entry and Re-entry to the Work Able Scotland Programme Process**

- 8.1. The Service Provider shall before registering an individual as a Start, require to appoint a case manager for each proposed Customer. The case manager shall be the dedicated point of contact for the Customer, and substitutes should only be used in exceptional circumstances.
- 8.2. In respect of each Customer, the Service Provider shall ensure that each Customer deemed eligible and suitable to commence the Work Able Scotland Programme in accordance with the procedures outlined above is provided with a comprehensive induction programme as part of the engagement and planning activity, within the 28 calendar days

immediately following the date the Customer commences the Work Able Scotland Programme so that the Customer understands what is required of him/her and others.

- 8.3. Once the Customer has started on Work Able Scotland it is the responsibility of the Service Provider to complete Section 9 of the Referral Form and return it to the specified Work Coach/JCP office, as detailed in Section 1, within 5 calendar days the start date. A copy of the completed Referral form must be retained by the Service Provider.
- 8.4. Entering Customers on SDS Database System (CTS)
  - 8.4.1. National Insurance (NI) Numbers
    - a. DWP is responsible for confirming the Customer's NI number in the Referral form.
    - b. Subject to rule 8.4.1(d) below to enter a new Start, Service Providers must enter the Customer's NI number on CTS.
    - c. If the Customer's details have already been entered onto CTS, the Service Provider must use the NI number already linked to the Customer. CTS will then highlight when a new assignment is added, if a Customer is already engaged in a Work Able Scotland Programme.
    - d. If the Customer does not have his/her NI number and this has not been provided by the DWP, Service Providers must refer to CTS guidance on generating temporary NI numbers and comply with such guidance.
- 8.5. Training Agreement
  - 8.5.1. To start a Customer on the Work Able Scotland Programme, an accurate assignment must be created on CTS and approved by SDS.
  - 8.5.2. The Service Provider shall accurately enter the Customer's details, together with details of the content of the Work Able Scotland Programme that the Customer will undertake, on CTS.
  - 8.5.3. The Training Agreement must be fully and accurately completed, signed and dated by the Customer and Service Provider within 7 Calendar days of the Customer's start date on the Work Able Scotland Programme before the individual will be regarded as a Customer.
  - 8.5.4. The Service Provider shall ensure that the Training Agreement is kept accurate and up-to-date and amended to reflect any subsequently agreed variation in content, the Training Agreement shall be immediately signed and dated by the Customer and Service Provider.
  - 8.5.5. Where a Training Agreement does not exist, where it is inaccurate, where it remains unsigned, or where it is signed but dated more than 7 days after the Customer's start date, SDS shall be entitled to recover up to the full amount of any payments made in respect of the Customer.
- 8.6. The Service Provide shall complete the relevant equalities monitoring form in accordance with rule 2.4 of Part Three of the Rules.
- 8.7. Re-entry
  - 8.7.1. A Customer who has left the Work Able Scotland Programme shall be entitled to re-enter the programme at any stage. Subject to rules 8.7.2 and 8.7.3, all re-entrants shall be treated as if they are a new Customer, and the full end to end process shall apply to that re-entrant.
  - 8.7.2. The aggregate period for completion of all services to the Customer shall not exceed the total periods set out in rule 11.1. For the avoidance of doubt, the 52 week period referred to in rule 11.1 shall be deemed to commence on the Customer's original Start date, notwithstanding any re-entry into the programme; and
  - 8.7.3. Re-entered Customers shall not be considered new Starts for the purposes of rule 18.5.

## **9. Transfer of a Customer**

- 9.1. If the Service Provider is no longer in a position to provide the suitable Work Able Scotland Programme provision in accordance with the Customer's Action Plan, the Service Provider shall fully co-operate with SDS in the event that SDS seeks to transfer the Customer to another Service Provider. The new Service Provider shall treat the transfer as a new referral and the process commenced in accordance with rule 6 above.
- 9.2. Not used.
- 9.3. The original Service Provider must ensure that the new Service Provider is in receipt of all the necessary documentation to support any follow-on activity and ensure a smooth transition.

## **10. Action Plan**

- 10.1. The Service Provider shall in accordance with this rule 10, agree and complete an Action Plan with each Customer, which shall include the activities to be performed by the Service Provider to meet the Outcomes, the expected engagement of the Customer, and details of the Customer's progress.
- 10.2. The Action Plan must be designed to support the Customer to progress towards and achieve the Outcomes. Service Providers may decide how best to format the Action Plan provided it contains all of the information specified in the Action Plan set out in Appendix 3 and has been confirmed in advance as suitable by their SDS Skills Investment Adviser.
- 10.3. The Action Plan must be drawn up, agreed and signed by the Customer and the Service Provider within the 28 calendar days following the Customer's start date. The Service Provider shall retain this evidence for audit purposes.
- 10.4. The Action Plan must identify health and work related learning to be undertaken in order for the Customer to progress towards the Outcomes. The Action Plan is a working document which must be completed, promptly updated and renewed as the Customer progresses through the Work Able Scotland Programme.
- 10.5. The appropriate support required must be specified depending on the Customer's needs. The Outcomes will be recorded in the Action Plan and the Service Provider shall use these to plan appropriate inputs in discussion with the Customer. The Service Provider must build on existing assessment information and contribute to ongoing identification of needs and ensure that the Action Plan is updated timeously.
- 10.6. In completing the information in the Action Plan, the Service Provider must use the comments/details column to categorise the work related learning being undertaken as personal development, work contextualised core skills, enterprise education and work based learning activity, all as defined in Framework for delivery of Work Related Learning (Appendix 4).
- 10.7. A formal review of progress by each Customer against his/her Action Plan must be carried out by the Service Provider no less than every 28 calendar days and recorded on the Action Plan. Actual review dates must be entered promptly after they have taken place. Progress towards Outcomes and the date on which each Outcome is completed or amended must also be recorded promptly on the Action Plan.

## **11. Work Able Scotland Programme Period and Activity**

- 11.1. The Service Provider shall design each Customer's programme of activity to take place over a full 52 week period, and at an appropriate rate. The 52 week period shall commence on the Customer's Start date.

11.2. The programme of activity to be provided by the Service Provider to each Customer shall require to meet the Outcomes, and shall include each of the following:-

- 11.2.1. Pre Start (as described above)
- 11.2.2. Engagement and Planning
- 11.2.3. Ongoing coaching and engagement
- 11.2.4. Reviews
- 11.2.5. Progression and Sustainment
- 11.2.6. Exit Process

as further described below.

## **12. Engagement and Planning**

12.1. The Service Provider shall within the 28 calendar days immediately following the Start date perform the following engagement and planning activities as part of the Work Able Scotland Programme:-

12.2. engagement with each Customer on a weekly basis. These weekly engagements will include as a minimum, a one hour face to face meeting with the dedicated case manager to enable the development of the coaching relationship with the Customer through assessment and action planning. Other methods of engagement can be used to supplement or replace face to face interactions, where there is a clear rationale for reduced face to face interaction (including without limitation, rural geographical location). Service Providers must give a clear explanation of the methods used in the Action Plan.

12.3. Exploration of the presenting issues of each Customer and the outcomes of any assessments with the Customer. Positive challenge of the Customer perceptions and barriers to establish, agree and design a well structured and achievable customer journey that promotes progression towards, and achievement of the Outcomes.

12.4. Conducting as often as is reasonably required, an appropriate and robust assessment of Customer needs;

12.5. Engagement with each Customer to ensure that the Action Plan at all times contains short, medium and long term goals and actions and details of how these will be achieved and measured. The activities must include but are not limited to:

12.5.1. completion of a quality assessment that is focused on the life circumstances of individual customers, soft skills, employability skills, core skills and an appropriate health related assessment. For the avoidance of doubt, the Service Provider is not required to repeat any such assessment to the extent any such assessment has already been undertaken and referred to in the referral information received from DWP, unless a fresh assessment would be appropriate in the circumstances.

12.5.2. Identification and recording of customer strengths

12.5.3. establishment and agreement of clear goals and aspirations in the short, medium and long term for:-

- a. health and wellbeing
- b. personal and social development
- c. core skills
- d. work related learning (WLR) skills (as defined in Appendix 4) preferably accredited by Scottish Credit and Qualifications Framework (SCQF) and which shall in any event be, quantified in terms of the number of hours delivered;
- e. enterprise education (i.e. self employment)

12.5.4. development and agreement of a personalised Action Plan which adheres to SMART principles (i.e. goals and actions referred to are specific, measurable, achievable, realistic and time-bound), tailored to individual needs and the agreed goals and aspirations, as referenced in rule 10;

- 12.5.5. development of realistic and measurable activities to support progression into work;
- 12.5.6. promotion of better off in work calculations;
- 12.5.7. providing such assistance as the Customer may reasonably require to ensure that any required health related support which should be available to the Customer through other channels, are properly accessible to the Customer. Such activity may include providing assistance to the Customer with information about available services, providing assistance to enable the Customer to arrange and attend appointments, liaising with any external providers of such support (with the consent of the Customer) where appropriate to benefit the Customer's progress under the Work Able Scotland Programme, and/or in relation to the support services being provided to the Customer by such third parties. Examples of the third party support topics may include, without limitation:-
- a. Pain management
  - b. Managing musculoskeletal conditions
  - c. Healthy eating
  - d. Cognitive behavioural therapy
  - e. Managing mood
  - f. Physiotherapy; and
  - g. Occupational therapy

### **13. Ongoing coaching and engagement**

13.1. The Service Provider shall throughout the period of each Customer's programme perform the following activities as part of the ongoing coaching and engagement activities forming part of the Work Able Scotland Programme:-

- 13.1.1. maintenance of weekly contact with each Customer, through appropriate channels, (fortnightly contact only when the Customer is attending learning and training activities or has secured employment). This activity will focus on the delivery of agreed coaching, learning and training interventions and health support/advice and will provide the evidence of progress against the Action Plan, evidence of distance travelled and evidence of Customer achievements (qualifications/certificates/non-accredited learning). This will include without limitation, activities such as:-
- a. ongoing coaching engagement
  - b. reviewing and updating the Customer Action Plan, discussing progress and agreeing future activities and actions
  - c. developing individually tailored vocational guidance and action planning to help identify and address skills barriers
  - d. providing access to appropriate and remedial health support
  - e. providing job search support – advice, job matching of Customers to identified vacancies, active sourcing of suitable jobs, digital job search skills, job placements and advising customers of local labour market opportunities
  - f. providing job application support – including managing disclosure of health information, CV and interview preparation, skills development, advocacy to the employer if needed;
  - g. recording distance travelled by the Customer;
  - h. identifying and referring as appropriate to other services which support progress towards work and tackle barriers which may or may not be employability related;
  - i. providing labour market advice and support including:
    - promoting in work benefits;
    - assisting with tax credit applications;
    - budgeting support to manage finances into and sustaining work; and
    - close working with employers and Customers to help them see beyond perceptions of a person's health issues and help them focus on abilities and strengths.

## 14. Reviews

- 14.1. The Service Provider shall continuously monitor the progression of each Customer. The Service Provider shall carry out a formal face to face review at least once every 28 calendar days throughout the period of the Customer's programme, in accordance with the review dates set out in the Action Plan. Other methods of engagement can be used to supplement or replace face to face interactions, where there is a clear rationale for reduced face to face interaction (including without limitation, rural geographical location). Service Providers must give a clear explanation of the methods used in the Action Plan. The Service Provider must provide and report the Customer's progression and update the Action Plan accordingly.
- 14.2. The Service Provider shall record and retain evidence of the 'distance travelled' by the Customer which must be consistent at all times with the Action Plan. This may be through regular assessment using the tools deployed at initial assessment stage throughout the Customer journey and/or evidence of achievement of learning and training.
- 14.3. The Service Provider shall attend to and complete the agreed work related learning and training interventions outlined in the Action Plan in relation to personal development, work skills (including WRL) and core skills, which shall include without limitation, obtaining regular feedback from third party supporting organisations on Customer's progress and issues, and evaluation by completion of the Assessment of Work Based Learning document a copy of which is contained in appendix 8.

## 15. Progression and Sustainment

- 15.1. The Service Provider shall perform a range of activities as part of the progression and sustainment activities that collectively address all needs of the Customer to enable the Customer to progress into sustained employment. Such activities shall be selected from the following:-
  - 15.1.1. brokerage between employers and the Customer – analysing the support needed with the Customer and employer prior to the support being put into place;
  - 15.1.2. an explanation to both the Customer and the employer of the appropriate types of adjustment or customisation of the workplace and the wider support available;
  - 15.1.3. knowledge of support available within the local labour market that helps the Customer manage his/her personal circumstances which is relevant to his/her job aspirations;
  - 15.1.4. help for Customer wanting to enter self-employment.
- 15.2. For each Customer entering paid employment, the Service Provider must:-
  - 15.2.1. obtain assurance that the Customer has settled into his/her workplace;
  - 15.2.2. ensure that his/her transport arrangements are working;
  - 15.2.3. ensure that he/she is receiving appropriate benefits advice;
  - 15.2.4. with the help of the individual and employer, put into place an agreed Action Plan that indicates how the support the Customer receives will change over time;
  - 15.2.5. work with the Customer and employer to identify the support required to sustain the job. This will include the reviews referred to in rule 14 and ensuring agreed support is in place for the new employee;
  - 15.2.6. help the employer make independent adjustments for the Customer and where appropriate, offer advice to the employer and Customer;
  - 15.2.7. be readily available to provide appropriate advice and support to the Customer with any issue that arises that could foreseeably (directly or indirectly) impact the Customer's ability to benefit fully from the Work Able Scotland Programme and/or achieve both Outcomes. Examples include without limitation, where an unexpected issue occurs related to the Customer's personal financial management or the Customer faces an unexpected housing issue.

## **16. Exit from the Work Able Scotland Programme**

- 16.1. A Customer is regarded as having left the Work Able Scotland Programme on the earlier of:
  - 16.1.1. the end of the day which is specified as the anticipated leaving date on his/her Action Plan (being the date occurring 52 weeks after the Start date);
  - 16.1.2. the end of the day on which the Customer leaves the Work Able Scotland Programme;
- 16.2. The Service Provider shall ensure that the Action Plan of each Customer is suitably updated to include the final review and agreement of completion of the Action Plan and the Customer's leaving date.
- 16.3. The Service Provider shall give each Customer and DWP written notification of the termination of the Customer's Work Able Scotland Programme, specifying the actual end date by completing and delivering to them, the Work Able Scotland Programme Exit Report (Appendix 5) within 5 calendar days of the actual end date.
- 16.4. The leaving details must be entered immediately to CTS by the Service Provider using the leaving codes set out in the Training Agreement.
- 16.5. The Service Provider must follow up each Customer following the Customer's leaving date to ascertain any Outcome achievement.

## **17. Customer Terms and Conditions**

- 17.1. No Customer shall be requested or required to (i) make a financial contribution towards the cost of his/her work experience, training or courses nor (ii) pay any associated fees (such as the fees for obtaining qualifications), in each case, where the activity is referred to in the Action Plan, (even if the Customer leaves the programme early).
- 17.2. Service Providers must ensure that all Customers are timeously supplied with any protective clothing, books and/or equipment that may be necessary for the Customer's participation in the Work Able Scotland Programme at no cost to the Customer.

## **18. Service Fee and Outcomes**

- 18.1. In consideration for the Service Provider performing the services and meeting all requirements in accordance with the Service Provider Contract SDS shall pay the Service Provider the Service Fee payments and Outcome Payments as follows:-
  - 18.1.1. For all of the services being provided in relation to the total number of Starts who are domiciled in:-
    - a. the Highlands and Islands, Dumfries and Galloway and Borders Local Authority regions the total Service Fee is calculated by multiplying the number of permitted Starts set out in the Contract Schedule by £1500 (exclusive of any applicable VAT);
    - b. any other location in Scotland (i.e. any location in Scotland outwith the Highlands and Islands, Dumfries and Galloway, and Borders Local Authority regions), the Service Fee is calculated by multiplying the number of permitted Starts set out in the Contract Schedule by £1250 (exclusive of any applicable VAT).
- 18.2. The applicable total Service Fee shall be paid in 12 equal monthly instalments, in accordance with the accounting periods identified by SDS.
- 18.3. The Outcome payment in respect of each Customer achieving Job Outcome shall be £800 (exclusive of any applicable VAT).



- 18.4. The Outcome payment in respect of each Customer achieving Sustained Job Outcome shall be £1200 (exclusive of any applicable VAT).
- 18.5. In this rule 18, 'Quarter' means each of the first four quarter periods during the Contract Term ending respectively on 30 June 2017, 30 September 2017 and 31 December 2017, and 31 March 2018). In each of the first *three* Quarters SDS shall measure as a percentage, the total number of new Starts properly entered in CTS in that Quarter against the total volume of new Starts forecasted for that Quarter in the Contract Schedule. The Service Provider shall ensure that the number of new Starts properly entered on CTS in the relevant Quarter as a percentage of the total number of new starts forecast for entry on CTS for that Quarter in the Contract Schedule exceeds 75%.
- 18.6. In the event that the Service Provider fails to meet the foregoing requirement in any such Quarter, and fails to provide a rationale for such failure which demonstrates (to SDS' reasonable satisfaction) that the reason for such failure is outwith the control of the Service Provider (and/or its agents and representatives) without prejudice to SDS' other rights and remedies, the following adjustment shall be made to the Service Fee payments:-
- 18.6.1. The total applicable Service Fee shall, subject to any further reduction pursuant to rule 18.6.2, be reduced by the sum equalling the applicable rate (set out in rule 18.1.1) multiplied by the number of Starts overestimated by the Service Provider for that failed Quarter. The remaining monthly payments shall be recalculated by:-
- a. subtracting the Service Fee reduction from the total Service Fee applicable prior to the Service Fee adjustment; then
  - b. deducting the total Service Fee payments made to date, and dividing that balance by the total number of months left in all of the remaining Quarter periods.
- 18.6.2. The revised Service Fee shall be reduced further in accordance with the process set out in 18.6.1 for each subsequent Quarter in which the Service Provider fails to meet the requirements of rule 18.5.
- 18.6.3. Where any Contract Schedule is terminated before any overpayment is recovered through any adjusted Service Fee, SDS shall be entitled to recover such overpayment immediately on demand from the Service Provider.
- 18.6.4. An example of the application of this rule 18 is as follows:-
- Service Provider's Contract Schedule awards 200 Starts in Borders Local Authority region.
  - Service Fee is calculated as  $200 \times £1500 = £300,000$
  - $£300,000 \div 12 = £25,000$  payable in each of the first 12 months.
  - The Contract Schedule forecast 75, 60 and 65 Customers being registered respectively in each of the first three Quarters.
  - As at 30 June 2017, Service Provider has received 3 x £25k payments, totalling £75k
  - During Quarter 1 (1 April 2017 - 30 June 2017), the Service Provider properly registered 65 of the forecasted 75 Starts. This exceeds 75%, so there is no Service Fee adjustment.
  - During Quarter 2 (1 July 2017 – 30 September 2017), the Service Provider properly registered 40 of the forecasted 60 Starts. This is below the 75% requirement.
  - The Service Fee is adjusted as follows:-
    - $60 - 40 = 20$  (number overestimated).  $20 \times £1,500 = £30,000$ .  $£300,000 - £30,000 = £270,000$ .  $£270,000 \div 12 = £22,500$ . At the end of Quarter 2, SDS would have paid  $6 \times £25k = £150,000k$ .  $£150,000k - (6 \times £22,500) = £15,000$ .  $£15,000k \div 6$  (remaining months) = £2,500. The remaining 6 monthly payments shall accordingly be reduced by £2,500, to £22,500.
  - During Quarter 3, the Service Provider properly registers 46 out of the 65 forecasted Starts for that Quarter, which is below the 75% requirement. The Service Fee at the beginning of Q3 is £270k. This is adjusted as follows:-
    - $65 - 46 = 19$  (number overestimated).  $19 \times £1,500 = £28,500$ .  $£270,000 - £28,500 = £241,500$ . At the end of Q3, SDS would have paid  $((6 \times £25k) + (3 \times £22.5k)) = £217,500$ .  $£241,500 - £217,500 = £24,000$ .  $£24,000 \div 3$  (remaining

months)= £8,000. The remaining 3 monthly payments shall accordingly be £8,000 per month.

(All calculations are quoted excluding VAT)

18.6.5. The Service Provider shall provide such reports and rationales as SDS may request from time to time, in order to measure the Service Provider's compliance with the foregoing requirement.

18.7. As set out in rule 3.5 of Part Three of the Rules, Service Providers shall not submit a claim for payment until they are in possession of the required evidence detailed in rule 18.8 below.

18.8. SDS shall not be obliged to make the payments detailed in rules 18.3 and 18.4 unless:

18.8.1. In the case of an Outcome Payment for Job Outcome, where the Customer is in employment, the Service Provider shall provide to SDS a declaration (in the form set out at Appendix 11 and signed by the signatories required in the appendix, one of which is the employer/business. For the avoidance of doubt the employer/business is the organisation that pays the Customer.) The declaration shall confirm the Customer's start date in the job and that he/she has been in the job for a minimum of 16 hours per week for a minimum of 6 consecutive weeks, or, a minimum of 96 hours in total over 6 consecutive weeks. As an alternative to the employer signature, SDS will accept copies of the Customer's wage slips which show the name of the employer and clearly confirms the dates and hours of employment or an email from the employer confirming these details.

18.8.2. In the case of an Outcome Payment for Job Outcome where the Customer is self-employed, the Service Provider shall provide to SDS a declaration in the form set out at Appendix 11, together with at least one of the following in respect of the Customer's business: (i) a completed copy of the form CWF1 as submitted to HMRC; (ii) a certificate of incorporation; (iii) an application to pay class 2 contributions (form CA5601); or (iv) copies of correspondence between the Customer and HMRC (such as a letter of confirmation of registration). In addition, the Service Provider must supply evidence in the form of bank statements covering the 6 week period for the bank account held in the name of the business or for the personal account used for business purposes.

18.9. In the case of an Outcome Payment for Sustained Job Outcome the Service Provider shall provide to SDS a declaration (in the form set out at Appendix 12 and signed by the signatories required in the appendix, one of which is the employer/business. For the avoidance of doubt the employer/business is the organisation that pays the Customer). The Achievement Date to be entered onto CTS must be within the first day after the 26 weeks and the last day of the 30 weeks. The declaration shall confirm the Customer's start date in the job and that he/she has been in the job for a minimum of 16 hours per week. The declaration must cover a total period of 26 full weeks out of the 30 week period. As an alternative to the employer signature, SDS will accept copies of the Customer's wage slips which show the name of the employer and clearly confirms the dates and hours of employment or an email from the employer confirming these details. In the case of an Outcome Payment for Sustained Job Outcome (where the Customer progresses to self-employment), the Service Provider must, by providing a declaration in the form set out at Appendix 12 together with the same evidence referred to in rule 18.8.2 satisfy SDS that the Customer is in self-employment for the required 26 weeks of the 30 weeks immediately following the date they first entered self-employment. Fulfilment may be through more than one job.

18.10. SDS shall be entitled to amend the requirements relating to the evidence which Service Providers must submit to SDS in accordance with this rule 18.

- 18.11. In the event that a Customer has been engaged with more than one Service Provider, only the Service Provider with which the Customer was engaged immediately prior to achieving an Outcome, as confirmed in CTS, shall be entitled to claim an Outcome Payment in respect of that Outcome.
- 18.12. All claims for Outcome payments must be submitted no later than 15 November 2019. All evidence required to support achievement of the relevant Outcome must be held by the Service Provider before submission of a claim.
- 18.13. The Work Able Scotland Programme will not provide support to Customers in achieving a self-employment Outcome in respect of any business which SDS may deem from time to time as likely to bring SDS, the Scottish Ministers or the Work Able Scotland Programme into disrepute.
- 18.14. Value AddedTax, if applicable, will be charged from the commencement date of the Service Provider Contract, at the rate applying at the time of supply.
- 18.15. The Service Provider shall be entitled to claim each Service Fee monthly payment, and each outcome payment claimed in respect of services performed, using CTS.

## **19. Contact with Individuals**

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

## **PART THREE**

### **Part Three Work Able Scotland Programme Terms and Conditions**

#### **Introduction**

This part of the Rules will apply insofar as not otherwise varied in the contract ("Service Provider Contract") between SDS and the Service Provider in respect of the Work Able Scotland Programme services.

Any duties or obligations or requirements of the Service Provider will also apply to any Permitted Subcontractors delivering training, work experience or carrying out any Work Able Scotland Programme activity, or any employer or organisation providing work experience for Customer and it is the Service 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 Service Provider has tangible evidence of this compliance e.g. copies of policies, confirmation of Disclosure Scotland checks being undertaken.

#### **A ITT Response**

##### 1. ITT Response

- 1.1. The Service Provider is responsible for ensuring that the Work Able Scotland Programme activity standards and qualifications conform with the ITT Response at all times, including any amendments agreed in accordance with this rule 1.
- 1.2. The Service Provider may propose amendments to the ITT Response at any time, but no such amendment to the ITT Response shall be valid for any purpose unless SDS has previously agreed to it in writing.
- 1.3. After consultation with the Service Provider, SDS may at any time specify to the Service Provider the nature of any amendment to the ITT Response and the date by which the necessary amendment must be implemented by the Service Provider.

#### **B Before Recruiting Customer**

##### 2. Policies, Procedures and Systems

- 2.1. There are a number of policies, procedures and systems which the Service Provider must have in place prior to recruiting eligible proposed Customer to the Work Able Scotland Programme.

These include:-

- 2.1.1. Disclosure Scotland Checks.
  - 2.1.2. Insurance and Liability
  - 2.1.3. Equal Opportunities policy and procedures
  - 2.1.4. Health and Safety policies, procedures and monitoring systems
  - 2.1.5. IT system to access CTS and to process claims and other information
  - 2.1.6. Handling Information (including data protection, freedom of information and information security)
- 2.2. Disclosure Scotland Checks
    - 2.2.1. The Police Act 1997 introduced Disclosure Scotland checks to promote safer recruitment practices and the Protection of Vulnerable Groups (Scotland) Act 2007 established the PVG Scheme which aims to protect vulnerable people. The Service Provider is expected to promote these schemes to employers and more information can be found at <http://www.disclosurescotland.co.uk/>
    - 2.2.2. The following rules apply to the Work Able Scotland Programme, and as such they apply to any business or organisation where a Customer is placed for work experience or training:-
      - i. The Service Provider shall ensure that the Service Provider and each sub-contractor or agent (if any permitted) has a written policy on disclosure which

complies with the relevant Disclosure Scotland requirements (“Disclosure Policy”) regarding checks on existing staff and all new staff where these staff regularly work with:-

1. young people under 18 years of age
  2. those who could be regarded as vulnerable due to illness, incapacity or disability
- ii. the Disclosure Policy must include, how the Service Provider (or subcontractor or agent, as applicable) will ensure placement and work experience service providers comply with this requirement. The Service Provider/sub-contractor or agent shall comply with the Disclosure Policy.
- iii. The Disclosure Policy must be available on request to SDS staff.

## 2.3. Insurance and Liability

- 2.3.1. The Service Provider must ensure, for the duration of the Service Provider Contract and each Contract Schedule thereunder, that it has in place an appropriate level of cover (to the satisfaction of SDS) of (1) Employers’ Liability Insurance and (2) Public Liability Insurance, except where the Service Provider is a public body or authority or other person which is exempt from Employers’ Liability (Compulsory Insurance) Act 1969.
- 2.3.2. The Service Provider must ensure, for the duration of the Service Provider Contract and each Contract Schedule thereunder, that it has in place any other insurance cover required by law or which would be likely to be considered necessary by a reasonable person.
- 2.3.3. The Service Provider must make insurance certificates available promptly to SDS staff on request. Without prejudice to rules 2.3.1 and 2.3.2, the Service Provider must give SDS 30 days notice of alteration or cancellation of insurance policies.
- 2.3.4. SDS shall not be liable for any injury, loss or damage whatsoever or to whomsoever caused by any act, default or omission of a Customer undertaking an Work Able Scotland Programme activity except to the extent (if any) that any such injury, loss or damage is caused or contributed to by the negligence of SDS staff. The Service Provider shall indemnify SDS against any payments which SDS shall be liable to make in respect of any injury, loss or damage caused by an act, default or omission of a Customer undertaking a Work Able Scotland Programme activity for which act, default or omission SDS would not otherwise be liable in terms of this paragraph, provided that the Service Provider is liable in law for such injury, loss or damage.
- 2.3.5. SDS shall not be liable for any injury, loss or damage whatsoever suffered by a Customer undertaking a Work Able Scotland Programme activity caused by any act, default or omission of the Service Provider, the Service Provider’s sub-contractor or agent, whomsoever, except to the extent (if any) that any such injury, loss or damage is caused or contributed to by the negligence of SDS staff. The Service Provider shall indemnify SDS against any payments which SDS shall be liable to make in respect of any injury, loss or damage caused to a Customer by an act, default or omission of the Service Provider, the Service Provider’s sub-contractor or agent, for which act, default or omission SDS would not otherwise be liable in terms of this paragraph, provided that the Service Provider, the Service Provider’s sub-contractor or agent is liable in law for such injury, loss or damage.

## 2.4. Equal Opportunities

- 2.4.1. 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 Work Able Scotland Programme. SDS is working to broaden participation of under represented groups and to address gender segregation in the Work Able Scotland Programme activity. SDS is required to undertake and publish on the SDS website an equality impact assessment and an action plan to address this. The Service Provider has a key role in broadening participation and must act to ensure equality of opportunity in respect of recruitment of Customer and the provision of the Work Able Scotland Programme activity and shall ensure

that in carrying out the Work Able Scotland Programme activity no acts of discrimination are committed with respect to the EO Act. On request, the Service Provider shall promptly make available to SDS evidence of all promotional and other activity undertaken by or on behalf of the Service Provider to meet its obligations pursuant to this rule 2.4.1.

2.4.2. The Service Provider must:-

- i. have an equal opportunities policy covering both their own staff and Customer, 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 immediately on request. The Service Provider must comply with the policy at all times; and
- ii. no later than 31 July 2017, accurately complete the Training Service Provider Equality and Diversity Action Plan 2017-18, the current template for which is available at SDS' Provider Central website (which template may be replaced or amended by SDS from time to time), and ensure that the plan is accurately and fully updated at regular intervals (and in any event, at least by 30 September 2017 and again by 28 March 2018). The Service Provider shall also retain appropriate evidence of all action undertaken by the Service Provider that is referred to in the plan. A copy of the plan together with the evidence must be available to SDS staff immediately on request.

2.4.3. Prior to a proposed Customer commencing the Work Able Scotland Programme activity, the Service Provider shall make him/her aware of the equal opportunities policy and what to do if the proposed Customer or Customer (as the case may be) feels he or she is being bullied or discriminated against.

2.4.4. Equalities monitoring information as set out in Appendix 7 must be recorded in accordance with the requirements referred to in the appendix.

2.4.5. The Service Provider shall during the period of the Service Provider Contract, provide to SDS such information as SDS may reasonably request on the Service Provider's approach to work practices (the scope of which is more generally described in the statutory guidance published by Scottish Ministers from time to time under section 29 of the Procurement Reform (Scotland) Act 2014) as it applies to the Service Provider's workforce, and any agents and sub-contractors of the Service Provider. SDS may prescribe a timescale and/or template for this purpose, in which event the Service Provider shall comply with such timescale and/or template (as applicable).

## 2.5. Health and Safety

2.5.1. The Service Provider's obligations regarding Health & Safety are set out in detail in SDS' Provider Central website, within the health and safety section for Work Able Scotland Programme. The Service Provider must read these and ensure that it fully complies, including having appropriate documentary evidence.

2.5.2. Service Providers shall have responsibility for the health & safety of Customer as if they were employees of the Service Provider.

2.5.3. Service Providers shall have in place for the duration of the Service Provider Contract and each Contract Schedule thereunder:-

- i. a named, competent person to advise on health and safety issues;
- ii. suitable policies and procedures to meet the detailed obligations described in SDS' Provider Central website regarding health and safety and shall comply with such policies and procedures at all times;
- iii. up to date documentation/evidence of compliance with Health & Safety requirements. These documents and /or other evidence must be available to SDS promptly on request.
- iv. best practice and regularly reviewed health and safety procedures. (Self assessment documents can be found at the health and safety section referred to above).

2.5.4. Reporting and Investigation of Accidents

- i. The Service Provider shall immediately notify all reportable accidents to the relevant authority as required by RIDDOR (Reporting of Injuries Diseases and Dangerous Occurrences Regulations). If an accident occurs whilst a Customer is conducting activities identified in his/her Action Plan or which are relevant to the TES Programme activity, the Service Provider must inform SDS immediately.
  - ii. The Service Provider shall promptly inform SDS in writing:-
    1. immediately of any death of or major injury to, or case of disease of a Customer on Work Able Scotland Programme falling within the scope of any regulations dealing with notification of accidents or cases of disease;
    2. as soon as possible of any other accident resulting in a Customer being absent from the Work Able Scotland Programme activity for seven days or more or resulting in any loss of physical or mental faculty (including disfigurement).
  - iii. 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.
  - iv. The Service Provider shall for the duration of the Service Provider Contract and matters each Contract Schedule, keep in documentary form suitable policies and procedures and shall ensure compliance with such policies and at all times, on the following health and safety matters:-
    1. the supervision of Customer during off the job training, and at work placement locations;
    2. the arrangements to be made to ensure that safety is managed to a high standard both internally and on the premises of work placement locations;
    3. the steps to be taken to initially assess the work experience location prior to the commencement of Placement and thereafter to regularly monitor health and safety at each Placement; this to be completed within 2 weeks of the commencement of the Placement.
    4. locations , machinery or plant that are not to be used by Customer and steps to be taken to record and monitor such prohibitions;
    5. details of the safety literature to be issued to Customer and the means whereby the content is to be brought to their notice and any special provision to inform Customer with learning difficulties;
    6. provision of written safety policies and risk assessments by the Service Provider and work placement where required by law.
- 2.5.5. The Service Provider shall ensure that in matching Customer to Work Able Scotland Programme activities and in ensuring their well-being in Service Provider premises or on Placement, appropriate health monitoring shall be undertaken, including medical examinations, if required.
- 2.5.6. The Service Provider shall take appropriate actions to ensure that all Customers understand the necessity of disclosing medical conditions in order to comply with legislation and to remain safe in the workplace and that their colleagues are also safe in the workplace. Evidence of having done so must be retained in accordance with rule 17 of this Part Three, for the duration of the Service Provider Contract, and made available to SDS staff promptly on request. All information so obtained must be securely stored and disclosed only as appropriate and with the Customer's consent, where appropriate.
- 2.5.7. The Service Provider shall have a separate written contract with the Placement Provider for each Placement where the said Placement is not at a branch of the main Service Provider and include clauses covering:-
- i. The delegation of health, safety and welfare of all elements of the training programmes provided by the Placement Service Provider;
  - ii. Customer induction
  - iii. The requirement that Employers' Liability Insurance is in place at all times;
  - iv. The reporting to the Service Provider of accidents involving Customer;
  - v. Access to work Placement premises for all authorised SDS staff.

- 2.6. SDS Information technology Requirements and Third Party Software
- 2.6.1. In carrying out its obligations in terms of the Service Provider Contract, the Service 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 (and any corresponding licensing terms) in line with the development and updating of its systems. SDS shall endeavour to give the Service Provider reasonable and prior notice, where appropriate.
- 2.7. Online Information System
- 2.7.1. Service Providers who propose to operate their own On-Line System to administer the Work Able Scotland Programme activity shall be required to notify SDS in advance. SDS will advise on timescales for testing and evaluation of the system. In such cases, the Service Provider shall require to meet SDS requirements in relation to the use of an On-Line System.
- 2.8. Funding Information and Processing System (CTS)
- 2.8.1. Funding for the Work Able Scotland Programme activity will be administered through CTS in accordance with SDS requirements.
- 2.8.2. The Service Provider shall record all relevant information on CTS timeously and ensure that all required fields are accurate and up to date at all times.

### **3. My World of Work**

- 3.1. The Service Provider shall use best endeavours to try and persuade all Work Able Scotland Programme Customers 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 their induction to the Work Able Scotland Programme or, where this is not possible, at any other appropriate time. From time to time, SDS will carry out checks to compare the number of Customers registered on CTS against the number registered on My World of Work.

### **4. Handling Customer and Other Information**

- 4.1. In order to perform the Work Able Scotland Programme activity and to demonstrate Service Provider Contract compliance it will be necessary for the Service Provider to hold personal information on Customers to keep Customer records. It will also be necessary to complete and retain forms and information. In addition to the Service Provider's other obligations, the Service Provider shall use all reasonable endeavours to ensure that all such information and records are readily located and identifiable, and are stored safely and securely, and shall promptly make all such information and records available to SDS staff as requested by SDS from time to time.
- 4.2. Information Security (See Appendix 9 for full policy)
- 4.2.1. The Service Provider shall have due regard to the security of information and will comply with SDS Information Security Policy and Procedures set out in Appendix 9, as amended by SDS from time to time, including the encryption of data being transferred electronically.
- 4.3. CTS Passwords
- 4.3.1. The Service 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 Service Provider must submit another form, advising of the new contact(s). The Service Provider shall at all times adhere to the 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 Service Provider must notify the appropriate division of SDS immediately.



#### 4.4. Application of Rules

- 4.4.1. The Service Provider shall provide each Customer recruited with, and only with, a programme of training to which he or she is entitled according to the criteria set out in the Rules. All Work Able Scotland Programme activity shall be provided in a manner acceptable to SDS.
- 4.4.2. The Service Provider shall ensure that every element of the Work Able Scotland Programme activity including any work experience, provided by the Service Provider or carried out on the Service Provider's behalf or at its instance by other persons (referred to in the Service Provider Contract as "sub-contractors"), complies with the Rules.

### **C In Training**

1. Once a Customer has been recruited to and started in an Work Able Scotland Programme activity the following policies and actions shall be addressed by the Service Provider:-
  - 1.1. Service Provider Controls and Assurance
  - 1.2. Payment and Claims
  - 1.3. Quality Management Assessment Process
  - 1.4. Grievance and Disciplinary Procedures
  - 1.5. Trade Union Membership

#### **2. Service Provider Controls and Assurance**

- 2.1. The Service Provider shall at all times have in place controls to ensure that only valid claims against the contract are made. The Service Provider shall at all times maintain an accurate record of their controls in a format determined by SDS, This 'Record of Service Provider Controls' document will record all controls operated by the Service Provider to ensure that only valid claims are made by the Service Provider under the Rules. The Service 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 Service Provider's controls (during and after the period of the Service Provider Contract), (accessing the Service 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 Service 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 Service 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 Service Provider's controls.
- 2.2. The Service Provider shall within the Record of Provider Controls 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 Rules, and (ii) notify SDS of each such change.
- 2.3. The Service 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 such date as SDS shall specify, to confirm that the Service Provider has fully complied since the commencement of the Service Provider Contracts and shall, for the duration of the Service Provider Contract fully comply with, (i) the Rules and (ii) the Record of Provider Controls submitted to SDS in respect of that period (as amended in accordance with this rule 2.3). This is a mandatory document and is attached as Appendix 13 to the Rules. SDS shall not be required to recognise or pay claims in relation to any services that the Service Provider has performed under the Contract Schedule, before the date when SDS receives the duly completed and executed certificate.

### 3. Payments and Claims

- 3.1. A Service 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:-
  - 3.1.1. require the Service Provider to provide such financial and/or other information, including the latest set of the Service Provider's audited accounts, to enable SDS to assess or re-assess the Service Provider's continuing financial viability and its ability to continue to perform its obligations under the Service Provider Contract;
  - 3.1.2. require any financial and/or other information provided by the Service Provider under the Service Provider Contract to be certified by an independent accountant: and/or
  - 3.1.3. call for a report, by an independent accountant, on the financial systems and controls operated by the Service Provider in respect of monies received for the purposes of the Work Able Scotland Programme.
- 3.2. Provided always that the Service Provider has and continues to meet its obligations under the Service Provider Contract, SDS will pay to the Service Provider, as and when required by, and in accordance with the terms of, the Service Provider Contract, such sums as are then due to the Service Provider. All payments made under the Service Provider Contract are exclusive of any applicable VAT.
- 3.3. Without prejudice to SDS' other rights and remedies, where SDS finds overpayment has been made to the Service Provider under the Service Provider Contract or any other agreement between the Service 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 Service Provider will make immediate repayment to SDS.
- 3.4. Without prejudice to SDS' other rights and remedies, where the Service 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) whereupon the Service Provider shall immediately repay the amount demanded.
- 3.5. The Service Provider shall not be entitled to submit a claim for payment in respect of an Outcome until the Service Provider is in possession of all the required evidence as detailed in rule 18 of Part Two of the Rules. All claims for payments must be submitted by the Service Provider through CTS. Where such evidence is not available to SDS (or its agents) on request, and/or such evidence was not in the possession of the Service 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 Rules as support of a claim. Without prejudice to SDS' other rights and remedies, SDS shall be entitled to permanently withhold payment or to recover on demand up to the full amount of all funding already paid in the event that the Service Provider is unable to demonstrate compliance with these terms for any claim. 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.

#### **4. Recovering Monies & Late Claims**

- 4.1. 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.
- 4.2. SDS shall be entitled to deduct from any payments due to the Service Provider in terms of the Service Provider Contract or any other contract between the Service Provider and SDS:-
  - 4.2.1. any sums due by the Service Provider in terms of Service Provider Contract or any other contract between the Service Provider and SDS;
  - 4.2.2. any sums due by the Service Provider howsoever and whensoever arising to SDS; and
  - 4.2.3. any sums due to SDS by any person to whom the undertaking of the Service Provider has been transferred.

#### **5. Signatures on Documentation**

- 5.1. The Service 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 SDS shall be entitled to:-
  - 5.1.1. recover up to the full amount of all funding paid in respect of a Customer and/or under the Service Provider Contract; and/or
  - 5.1.2. terminate the Service Provider Contract and/or any other contract between the Service Provider and SDS, as SDS deems appropriate.

#### **6. Quality Management Assessment Process**

- 6.1. SDS' Quality Standards are designed to help assess the extent to which Service Providers deliver quality Service Provider services which are focused on the needs of Customer and employers. The Service Provider is required to meet the Leadership and Management and the Relationship and Resources minimum standards and take action to achieve improvements, as set out in the SDS Quality Management Framework. (For the avoidance of doubt, the other quality standards do not apply to the Work Able Scotland programme). A copy of the current Quality Management Framework is available on the SDS NTP Provider website. These may be amended from time. Any amended version shall be available on the website.
- 6.2. SDS has with effect from the commencement date of the Work Able Scotland programme, removed the requirement for the Service Provider to submit any self assessment in respect of the applicable quality standards.
- 6.3. The Service Provider shall maintain an action/improvement plan, [the format of which shall be determined and made available by SDS], to evidence Service Provider achievement and planned improvement actions against the applicable SDS Quality Standards referred to within the Quality Management Framework, as amended from time to time. SDS will use the evidence to assess the Service Provider against each of the applicable SDS Quality Standards. SDS may examine a range of evidence as indicated within the relevant sections of the SDS Quality Management Framework. In the event that the Service Provider fails to meet the applicable SDS Quality Standards at any time, this shall be deemed a breach of these Rules. In addition to SDS' other rights and remedies, Service Providers should be aware that performance against the applicable SDS Quality Standards pursuant to this Service Provider Contract may be included as a minimum requirement and/or evaluation criteria in future Work Able Scotland Programme activity service provider contracts.

- 6.4. The Provider shall ensure that it keeps its action/improvement plan up to date at all times, and shall liaise with the SDS Skills Investment Adviser on the progress of the action/improvement plan. Any material changes to the action/improvement plan must be resubmitted immediately to SDS through the Service Provider's appointed Skills Investment Adviser.

## **7. Grievance and Disciplinary Procedures**

- 7.1. The Service Provider must have a written Grievance and Disciplinary Policy and Procedures document. These procedures must operate in such a way so as to ensure that Customers are treated fairly and reasonably. Customers must be notified of these policies and procedures at the commencement of their Work Able Scotland Programme activity and must have access to them at all times.
- 7.2. Where a serious breach of policy occurs (e.g. an act of violence by a Customer) the Provider may expel the Customer from the Work Able Scotland Programme activity immediately without notice. The Service Provider must inform SDS immediately by telephone of the expulsion and the reason for it.

## **8. Trade Union Membership**

- 8.1. Customers may join a trade union, if they are eligible to do so under its rules. The decision to join a trade union is entirely a matter for individual Customers and the Service Provider shall not seek to influence this decision in any way. Any agreed arrangements that the Service Provider, its sub-contractors or agent (if any) have with the trade union and which are relevant to Customers must be explained during induction.
- 8.2. Customers who join a trade union must be treated in the same manner as all other members of that union, (e.g. given time off to attend legitimate union meetings.)

## **D Standard Conditions**

### **1. Interpretation**

- 1.1. Except only to the extent expressly set out in any rule, each rule (in Parts One, Two and Three) shall be interpreted in accordance with this rule 1.
- 1.2. Capitalised terms in these Rules shall have the same meanings as those given in Appendix 1.
- 1.3. Rule, schedule and paragraph headings shall not affect the interpretation of the Service Provider Contract or a Contract Schedule.
- 1.4. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. Words in the singular shall include the plural and vice versa.
- 1.7. A reference to one gender shall include a reference to the other genders.
- 1.8. 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.
- 1.9. A reference to writing or written includes faxes but not email.

- 1.10. Any obligation in the Service Provider Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11. 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.
- 1.12. Where there is any conflict or inconsistency between or among the provisions of the Service Provider Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
  - 1.12.1. any document signed by SDS approving any variations pursuant to rule 5 of Part One;
  - 1.12.2. the letter awarding the Service Provider Contract to the Service Provider, and the acceptance thereof;
  - 1.12.3. Not Used;
  - 1.12.4. Not Used;
  - 1.12.5. terms of the Programme Rules;
  - 1.12.6. the Contract Schedule;
  - 1.12.7. any appendices to any of the documents;
  - 1.12.8. the ITT;
  - 1.12.9. the Service Provider's ITT Response.
  - 1.12.10. Any reference to 'include' and 'including' shall each be construed without limitation to the words preceding;
  - 1.12.11. To the extent not otherwise specified, any right available to SDS shall be exercised at SDS' entire discretion.

## **2. Warranties and Representations**

2.1. The Service Provider warrants and represents to SDS that:-

- 2.1.1. 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 Service Provider Contract;
- 2.1.2. the Service Provider Contract is executed by a duly authorised representative of the Service Provider;
- 2.1.3. in entering into the Service Provider Contract it has not committed and shall not commit any Fraud;
- 2.1.4. as at the commencement of the Contract Term, all information, statements and representations contained in the documents submitted in respect of the ITT Response are true, accurate and not misleading save as may have been specifically disclosed in writing to SDS prior to the execution of the Service Provider Contract 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;
- 2.1.5. it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the conditions on which any tender is made in respect of the Service Provider Contract;
- 2.1.6. it has not caused or induced any person to enter such agreement referred to in the previous paragraph;
- 2.1.7. 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 tender or proposal or proposed tender for services under the Service Provider Contract;
- 2.1.8. it has not committed any offence under the Bribery Act 2010;
- 2.1.9. 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 Service Provider Contract which may be entered into with SDS;

- 2.1.10. 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 Service Provider Contract ;
- 2.1.11. 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 Service 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 Service Provider's assets or revenue; and
- 2.1.12. in the three (3) years prior to the date of the Service Provider Contract:-
  - i. 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;
  - ii. it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
  - iii. it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Service Provider's position as an ongoing business concern or its ability to fulfil its obligations under the Service Provider Contract.

### **3. Corrupt Gifts and Payments of Commission**

- 3.1. The Service 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 the Service 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 Service 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 Service Provider is drawn to the criminal offences under the Bribery Act 2010.
- 3.2. The Service 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.
- 3.3. The Service Provider shall have an anti-bribery policy (which shall be disclosed to SDS) to prevent any staff, sub-contractors or agents (if any) from committing an offence under the Bribery Act 2010.
- 3.4. The Service 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 the Service 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.
- 3.5. If any breach of this rule 3.5 is suspected or known, the Service Provider must notify SDS immediately.
- 3.6. If the Service Provider notifies SDS that it suspects or knows that there may be a breach of this rule 3, the Service 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 Service Provider Contract and each Contract Schedule thereunder.

- 3.7. If the Service Provider, its staff or any person acting on the Service Provider's behalf, engages in conduct prohibited under this rule 3 or commits any offence under the Bribery Act 2010 SDS may:-
- 3.7.1. terminate the Service Provider Contract and any other contract between the Service Provider and SDS with immediate effect by giving notice in writing to the Service Provider and recover from the Service Provider the amount of any loss suffered by SDS resulting from the termination; or
- 3.7.2. recover in full from the Service Provider and the Service 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 Service Provider Contract has been terminated.
- 3.8. Notwithstanding anything to the contrary under the Service Provider Contract, any dispute relating to the interpretation of this rule 3 or the amount or value of any gift, consideration or commission shall be determined by SDS and its decision shall be final and conclusive.
- 3.9. Any termination under this rule 3 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to SDS.

#### **4. Best Practice**

- 4.1. Any document, form and/or guidance made available by SDS relating to the Work Able Scotland Programme shall be considered a Best Practice document, form and/or guidance (as applicable). In performing the services under Contract the Service Provider Contract, the Service 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 Work Able Scotland Programme Rules as mandatory, such information must be provided.

#### **5. Conflicts of Interest**

- 5.1. The Service Provider shall take appropriate steps to ensure that neither the Service 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 Service Provider or staff and the duties owed to SDS under the provisions of the Service Provider Contract or any Contract Schedule.
- 5.2. The Service Provider shall promptly notify and provide full particulars to SDS if such conflict referred to in rule 5.1 above arises or is reasonably foreseeable to arise.
- 5.3. SDS reserves the right to terminate the Service Provider Contract and/or any Contract Schedule immediately by giving notice in writing to the Service 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 Service Provider and the duties owed to SDS under the provisions of the Service Provider Contract or any Contract Schedule. 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.

#### **6. Safeguard Against Fraud**

- 6.1. The Service Provider shall safeguard SDS's funding of the Service Provider Contract and any Contract Schedule against fraud generally and, in particular, fraud on the part of the Service Provider or its staff. The Service Provider shall notify SDS immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

#### **7. Data Protection Act**

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

7.2. The Service Provider shall:

- 7.2.1. process the Personal Data on behalf of SDS, for the purposes only of performing the services pursuant to the Service Provider Contract, and only in accordance with instructions contained in the Service Provider Contract, including the SDS Information Security and Data Handling Requirements contained in appendix 9 (and/or such other instructions given by SDS from time to time), and shall not use the Personal Data for any other purpose;
- 7.2.2. 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;
- 7.2.3. 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 Service Provider for processing Personal Data (within the timescales required by SDS);
- 7.2.4. take reasonable steps to ensure the reliability of any of the Service Provider's Staff who have access to the Personal Data;
- 7.2.5. ensure that only those of the Service 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 Service Provider Contract and all of the Service 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 7;
- 7.2.6. 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;
- 7.2.7. notify SDS (within 7 calendar days) if it receives;
  - i. a request from a Data Subject to have access to that person's Personal Data; or
  - ii. a complaint or request relating to SDS's obligations under the Data Protection Legislation; or
  - iii. any other communication relating directly or indirectly to the processing of any Personal Data in connection with the Service Provider Contract;
- 7.2.8. provide SDS with full co-operation and assistance in relation to any complaint or request made in respect of any Personal Data, including by:
  - i. providing SDS with full details of the complaint or request;
  - ii. 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;
  - iii. 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
  - iv. providing SDS with any information requested by SDS;
  - v. permit SDS or its external advisers (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Service 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 Service Provider is in full compliance with its obligations under this agreement; and
- 7.2.9. 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:
  - i. 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
  - ii. any reasonable instructions notified to it by SDS.



- 7.3. The Service 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 Service Provider Contract and each Contract Schedule in such a way as to cause either SDS or the Service Provider to breach any obligations under the Data Protection Legislation. The Service Provider shall immediately notify SDS in the event that it becomes aware of any breach of the Data Protection Legislation by the Service Provider or any of the Permitted Sub-Contractors in connection with the Service Provider Contract.
- 7.4. The Service Provider shall, at all times during and after the period of the Service 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 Service Provider's obligations under this rule 7 except and to the extent that such liabilities have resulted directly from SDS's instructions.

## **8. Freedom of Information**

- 8.1. The Service 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.
- 8.2. The Service Provider shall, and shall procure that its Permitted Sub-contractors and agents shall, at its cost:-
- 8.2.1. transfer to SDS all Requests for Information that it receives as soon as practicable and in any event within 4 calendar days of receiving a Request for Information;
  - 8.2.2. provide SDS with a copy of all information in its possession, or power in the form that SDS requires within 5 calendar days (or such other period as SDS may specify) of SDS's request; and
  - 8.2.3. 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.
- 8.3. SDS shall be responsible for determining in its absolute discretion and notwithstanding any other provision in or pursuant to the Service 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 Service Provider.
- 8.4. In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by SDS.

## **9. Publicity**

- 9.1. Unless otherwise directed by SDS, the Service Provider shall not make any press announcements or publicise the Service Provider Contract and/or any Contract Schedule in any way without SDS's prior written consent.
- 9.2. SDS shall be entitled to publicise the Service Provider Contract in accordance with any legal obligation upon SDS, including any examination of the Service Provider Contract by the Auditor or otherwise.
- 9.3. The Service Provider shall not do anything which may damage the reputation of or bring into disrepute SDS, any of the Scottish Ministers or the Work Able Scotland Programme.

## 10. Termination

- 10.1. SDS may, without penalty, terminate the Service Provider Contract and/or any Contract Schedule, or part of a Contract Schedule (as specified by SDS in the relevant notice) by serving written notice on the Service Provider with effect from the date specified in such notice:-
- 10.1.1. where, in the opinion of SDS, the Service Provider has failed to comply with any term of the Service Provider Contract (including any Contract Schedule);
  - 10.1.2. where, in the opinion of SDS, the Service Provider is unable to perform its obligations under the Service Provider Contract (including any Contract Schedule);
  - 10.1.3. in the event that SDS ceases to be engaged in the performance or support of the Work Able Scotland Programme activity;
  - 10.1.4. where (in the reasonable opinion of SDS), there is a material detrimental change in the financial standing and/or the credit rating of the Service Provider which adversely impacts on the Service Provider's ability to perform services referred to in the Service Provider Contract (including any Contract Schedule);
  - 10.1.5. where the Service Provider and/or any of its directors, staff, agents or representatives conducts themselves in a manner which brings or is likely to bring SDS, any Scottish Minister or the Work Able Scotland Programme into disrepute. This shall include any instance where the Service 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;
  - 10.1.6. where the Service Provider is a company and an Insolvency Event as described in rule 28 has occurred in respect of the Service Provider;
  - 10.1.7. where SDS reasonably considers that the Service Provider Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of The Public Contracts (Scotland) Regulations 2015 (as may be amended or replaced from time to time);
  - 10.1.8. where the Service Provider fails to comply in the performance of the Service Provider Contract with legal obligations in the fields of environmental, social and employment law;
  - 10.1.9. where SDS has reasonable cause to believe that at the time of contract award, the Service Provider was in one of the situations referred to in regulation 58(1) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure;
  - 10.1.10. where SDS has reasonable cause to believe that the Service Provider has committed an act or engaged in an activity listed in regulation 58(8) of The Public Contracts (Scotland) Regulations 2015, as read with regulation 58 paragraphs (13) – (17), in which case SDS shall also consider and apply any relevant guidelines or policy notes which may be issued by the Scottish Government from time to time (which shall include, but not be limited to, any guidelines or policy notes relating to blacklisting practices); or
  - 10.1.11. where SDS has reasonable cause to believe that the Service Provider Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties (as defined in the European Communities Act 1972) and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union; or
  - 10.1.12. where SDS becomes aware of any breach of any other agreement entered into between SDS and the Service Provider at any time (whether expired or extant, and whether before or after the date of the Service Provider Contract) which breach (or breaches) would entitle (or would have entitled) SDS to terminate such agreement.
- 10.2. The Service Provider shall notify SDS if a third party acquires a Controlling Interest in the Service Provider where such third party does not at the date of the Service Provider Contract hold such a Controlling Interest (but disregarding for this purpose any change in ownership/control of voting share capital, voting rights or powers of appointment/removal

of directors where such change relates to the ultimate holding company or other parent undertaking of the Service Provider) ("Change of Control"). SDS may terminate the Service Provider Contract (and/or each Contract Schedule thereunder (or part thereof) to the extent specified by SDS) by giving notice in writing to the Service Provider with immediate effect within six (6) months of:-

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

10.2.2. where no notification has been made, the date that SDS becomes aware of the Change of Control,

but SDS shall not be permitted to terminate where SDS approved the Change of Control prior to its implementation, in writing

10.3. If SDS terminates the Service Provider Contract (or any part thereof) for breach, it shall be entitled to terminate any other contract between the Service Provider and SDS by serving written notice on the Service Provider with effect from the date specified in such notice.

10.4. SDS' rights of termination under this rule 10 are available to SDS in addition to its other rights of termination provided under the Service Provider Contract.

10.5. For the avoidance of doubt, SDS shall be entitled to rely on any extraneous evidence of the Service Provider's non-compliance with any provision of the Service Provider Contract.

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

10.7. The Service Provider shall be entitled to terminate the Service Provider Contract and any Schedule thereunder by serving written notice on SDS in the event that SDS makes any material change to these terms and conditions pursuant to rule 5 of Part One (which shall be deemed to include any change that increases the costs incurred by the Provider in providing the services). The date of termination shall be the date which SDS confirms as the date on which the relevant change to the terms and conditions takes effect, and the Provider's notice shall require to be given (in accordance with rule 24) prior to such date, failing which the Service Provider's right of termination under this rule 10.7 shall elapse.

## **11. Suspension of Service Provider's Appointment and Breach Notice**

11.1. Where SDS has the right to terminate the Service Provider Contract (and/or any Contract Schedule) under any provision contained in the Service Provider Contract, it shall be entitled, whether as an interim measure prior to termination or as an alternative to termination, to:-

11.1.1. suspend the Service Provider's appointment; and/or

11.1.2. suspend the Service Provider's access to CTS; and/or

11.1.3. suspend payment of any and/or all sums claimed by the Service Provider

under the Service Provider Contract and/or any other contract between SDS and the Service Provider (including any Contract Schedule thereunder) or part thereof, by giving written notice to the Service 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 Service Provider by SDS in writing from time to time.

11.2. In the event of a breach by the Service Provider of any term of the Service Provider Contract giving rise to a right of termination of the Service Provider Contract and/or Contract Schedule thereunder, SDS may as an alternative to immediate termination:-

- 11.2.1. serve a notice on the Service 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 Service Provider Contract and/or any other contract between SDS and the Service Provider (or any Contract Schedule thereunder) (or part thereof) under rule 10 of this Part Three; and/or
- 11.2.2. require the Service Provider to agree to an action/improvement plan setting out remedial actions which the Service 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 Service Provider properly completing the remedial actions within the stated timescale, SDS may then terminate the Service Provider Contract and/or any other contract between SDS and the Service Provider (or Contract Schedule thereunder) (or part thereof) under rule 10 of Part Three.
- 11.3. Adoption by SDS of the option mentioned in this rule 11 shall not prejudice SDS's other rights and remedies arising before or after the adoption of such right.

## **12. Consequences of Termination and Expiry**

- 12.1. Unless otherwise confirmed in writing by SDS, notwithstanding the service of a notice to terminate the Service Provider Contract (and/or any other contract between SDS and the Service Provider (or Contract Schedule thereunder) or part thereof, the Service 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 12.1.
- 12.2. Termination or expiry of the Service Provider Contract shall not cause any Contract Schedules to terminate automatically. For the avoidance of doubt, all Contract Schedules shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 12.3. Termination or expiry of the Service Provider Contract (or any Contract Schedule, or part thereof) shall be without prejudice to any rights, remedies or obligations of either party accrued under the Service Provider Contract prior to such termination or expiry.
- 12.4. SDS shall not be obliged to make payment to the Service Provider for any Start, or Outcome achieved after the date of termination.
- 12.5. Each rule which is either expressed to or by implication is intended to survive termination shall survive the termination or expiry of the Service Provider Contract including all rules entitling SDS to recover monies, rule 7 (Data Protection), rule 8 (Freedom of Information), rule 10 (Termination), rule 12 (Consequences of Termination and Expiry), rule 17 (Records, Audit Access and General Assistance), rule 18 (Confidentiality), rule 26 (Intellectual Property) and rule 27 (Transfer of Undertakings), all in Part Three of these Rules.
- 12.6. On the termination of the Service Provider Contract (and/or any Contract Schedule) or part thereof, as applicable for any reason, the Service Provider shall provide such assistance as SDS may require, including delivery to SDS, or to such person as SDS confirms in writing, all documents and data in the possession, custody or control of the Service Provider relating to the performance of its obligations pursuant to the Service Provider Contract, so as to facilitate a smooth and swift winding up of business between the Service Provider and SDS.
- 12.7. The Service Provider shall not, following termination of the Service Provider Contract or all Contract Schedules thereunder, represent that the Service Provider is contracted to provide training under any of the Work Able Scotland Programme and shall not, if previously permitted to do so, continue to use any SDS branding.

### **13. Liability**

- 13.1. Subject to rule 13.2, SDS's total liability to the Service Provider for any costs and/or losses incurred or suffered by the Service Provider pursuant to the Service Provider Contract shall be capped at the total funding due to the Service Provider for services provided under the Contract Schedule in relation to which the costs and/or losses have arisen.
- 13.2. In no event shall SDS limit its liability pursuant to the Service Provider Contract for:-
- 13.2.1. death or personal injury caused by its negligence, or that of SDS's staff or
  - 13.2.2. fraud or fraudulent misrepresentation by SDS or its staff or representatives.
- 13.3. Except insofar as liability arises from the circumstances set out in rules 13.2.1 and 13.2.2 above, the Service 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 Service Provider Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. This rule shall not apply to the extent that the Service 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.

### **14. Severability**

- 14.1. If any provision of the Service 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 Service Provider Contract had been executed with the invalid provision eliminated.
- 14.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Service Provider Contract, SDS and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

### **15. Statutory and other Requirements**

- 15.1. In the performance of each Contract Schedule, the Service Provider shall comply with any and all relevant requirements of Scots Law and European Community Law.
- 15.2. The Service Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of the Service Provider Contract (and each Contract Schedule).
- 15.3. The Service Provider shall ensure that every element of the Work Able Scotland Programme activity including without limitation any work experience, provided by the Service Provider or carried out on the Service Provider's behalf or at its instance by other persons (referred to in the Service Provider Contract as "sub-contractors"), complies with the Rules.

### **16. Non-Discrimination**

- 16.1. The Service 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).

16.2. The Service Provider shall take all reasonable steps to secure the observance of rule 16.1 of this Part Three by all servants employees or Permitted Sub-contractors of the Service Provider and all suppliers and sub-contractors employed in the execution of the Service Provider Contract.

16.3. This rule 16 is without prejudice to the Service Provider's obligations pursuant to the EO Act set out in Part Two.

## **17. Records, Monitoring and General Assistance**

17.1. The Service Provider shall retain full and accurate records and accounts of the operation of the Service Provider Contract including the services provided pursuant to it, the Contract Schedules entered into with SDS and the amounts paid by SDS for a period of at least 3 years following the expiry or sooner termination of the Service Provider Contract and each Contract Schedule thereunder. Where the Provider Contract is terminated the Service Provider shall immediately forward all such records and supporting documentation to SDS for retention.

17.2. The Service Provider shall keep the records, evidence and accounts referred to in this rule 17 in accordance with good accountancy practice.

17.3. The Service Provider shall afford SDS and/or such representatives and public appointed auditors (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 Service Provider's premises (or the premises of the Service 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.

17.4. The Service Provider shall provide such records, evidence and accounts (together with copies of the Service Provider's published accounts) during the term of the Service Provider Contract and for the period referred to in rule 17.1 of this Part Three to the Auditor promptly on request by Auditor. Such provision shall be made at the Service Provider's premises (or the premises of the Service Provider's agents, if applicable) or, if requested by Auditor, at premises within Scotland.

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

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

17.5.2. providing unlimited access to sites controlled by the Service Provider and to equipment used in the performance of the Work Able Scotland Programme activity;

17.5.3. providing unlimited access to Service Provider staff, agents, representatives, Customers, and proposed and former Customers; and

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

17.6. The Service Provider shall bear its own costs and expenses incurred in respect of compliance with its obligations under this rule 17, unless the audit reveals a material breach by the Service Provider of its obligations in which case the Service Provider shall reimburse SDS for SDS's agents or representatives (as applicable) reasonable costs incurred in relation to the audit.

17.7. Where the Service Provider Contract is terminated prior to 31 March 2018, or SDS otherwise requests, the Service Provider shall forward all related records, evidence, accounts and supporting documentation to SDS for retention.

- 17.8. The Service Provider shall promptly provide such general assistance and information relating to the Service 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 service 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 Work Able Scotland Programme activity.
- 17.9. The Service Provider shall permit duly authorised representatives of SDS unlimited access to interview Customers and/or to examine all records and all other supporting documentation in particular, evidence of assessment relating to the delivery of training. The Service Provider shall provide SDS with suitable oral or written explanation if required and shall provide SDS with access to its staff for interviews on matters covered by the Service Provider Contract.
- 17.10. In the event that SDS and/or any other Auditor wishes access to any of the Service Provider records, evidence and accounts in accordance with this rule 17, if SDS and/or such Auditor requests, the Service Provider shall promptly, and within such timescale as SDS may specify, upload/scan (as appropriate) the requested records, evidence and/or accounts onto CTS in accordance with such instructions as SDS may make available. Any such requirement does not negate the obligation on the Service Provider to (i) retain the original copies of all such evidence, as required under the Rules, and (ii) make such original copies otherwise available in accordance with rule 17.
- 17.11. Without prejudice to SDS' other rights and remedies, SDS will be entitled to suspend all payments claimed, permanently withhold payment or to recover on demand up to the full amount of all funding already paid in the event that the Service Provider fails to comply with any requirements set out in this rule 17.
- 17.12. SDS shall exercise its rights in relation to audit, reasonably and proportionately.

## **18. Confidentiality**

- 18.1. Subject to rule 18.2 of this Part Three, the Service Provider must treat the content of the Service Provider Contract and each Contract Schedule) as confidential and not disclose the information unless:-
- 18.1.1. SDS gives prior written permission to disclose;
- 18.1.2. Service Provider is required to disclose for any court of law or tribunal or other competent authority; or
- 18.1.3. content has been made publicly available not through breach.
- 18.2. SDS permits the Service Provider to disclose to its Permitted Sub-contractors only such information as the Permitted Sub-contractor reasonably requires in order to perform its obligations.
- 18.3. SDS shall be entitled, at its entire discretion, to disclose the content of the Service Provider Contract and each Contract Schedule, and any details relating to the Service Provider's performance thereunder to such parties, and in such manner, as SDS deems appropriate.

## **19. Assignment and Sub-contracting**

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

- 19.2. Where SDS grants consent to the Service Provider to sub-contract in accordance with rule 19.1, 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.
- 19.3. In respect of any such sub-contracting to which SDS has consented in accordance with rule 19.1:
- 19.3.1. the Service Provider shall ensure that so far as is possible the terms of the Service 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 Service Provider under the Service Provider Contract; and
- 19.3.2. the Service 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 Service Provider's consent (and the Service Provider shall not grant that consent without the prior written consent of SDS).
- 19.3.3. SDS reserves the right to see and approve copies of sub-contracts (such approval not to be unreasonably withheld, delayed or conditioned); and
- 19.3.4. no sub-contracting by the Service Provider under this rule 19 or otherwise, and no approval or consent by SDS in relation thereto shall relieve the Service Provider of any liability or obligation under the Service Provider Contract.
- 19.4. For the avoidance of doubt, the Service 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.
- 19.5. SDS shall be entitled, without the need for the consent of the Service Provider, to assign, novate or otherwise dispose of its rights and obligations under the Service 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.
- 19.6. For the avoidance of any doubt and without limitation to the preceding provisions of this rule 19, the requirements of rule 19 shall apply even where the Service Provider intends to delegate or sub-contract any of its rights or obligations under the Service Provider Contract to an Associated Provider.
- 19.7. SDS reserves the right to charge an administration charge to reflect its costs incurred in considering, approving and agreeing the terms of any assignment agreed pursuant to this rule 19.7, which charge shall be payable by the Service Provider within 28 days of request by SDS.

## **20. Change of Service Provider Name**

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

## **21. Cumulative Remedies**

- 21.1. Except as otherwise expressly provided by the Service Provider Contract, all remedies available to either party for breach of the Service 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.



## **22. Waiver**

22.1.1. The failure of either party to insist upon strict performance of any provision of the Service 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 Service Provider Contract.

22.1.2. 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 24 (notices).

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

## **23. Entire Agreement**

23.1. Except to the extent otherwise expressly provided in the Service Provider Contract:-

23.1.1. the Service Provider Contract (including the ITT Response the award letter from SDS, each Contract Schedule and any other document properly incorporated by reference into the Service 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;

23.1.2. the Service Provider agrees that in entering into the Service 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 Service Provider Contract.

23.1.3. Nothing in this rule 23 shall operate to exclude liability for fraud or fraudulent misrepresentation.

## **24. Notices**

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

24.2. Any notice which is to be given by either SDS or the Service Provider 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 24.3 below. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 4 calendar days after the day on which the letter was posted, or sooner where the other party acknowledges receipt of such letters.

24.3. For the purposes of rule 24.2, the address for SDS and the Service Provider shall be as follows:-

24.3.1. for notices to SDS, at SDS' registered address posted on the UK Companies House website as at the date of the notice;

24.3.2. where the Service Provider is a UK registered company, the Service Provider's registered address posted on the UK Companies House website as at the date of the notice; and

24.3.3. where the Service Provider is not a UK registered company, the Service Provider's address set out in the SDS award letter for this Service Provider Contract .

24.4. Where a Service Provider is not a UK registered company, the Service Provider may change its address for service by serving a notice on SDS confirming the change of address, in accordance with this rule 24.

## **25. Marketing and Branding**

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

25.2. The Service Provider will use only approved product and service names in communications with potential Customers and Customers in relation to the Work Able Scotland Programme activity. No variations to the product and service naming conventions will be allowed and nationally available products and services will not be locally branded.

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

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

## **26. Intellectual Property Rights**

26.1. All Intellectual Property Rights in any materials solely produced in the performance and during the currency of the Service Provider Contract and each Contract Schedule) shall vest in the Service Provider. The Service 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.

## **27. TUPE: Transfer of Undertakings (Protection of Employment) Regulations 2006**

27.1. The Service Provider undertakes (i) to organise the delivery of the Work Able Scotland Programme activity in such a way that there will be no organised grouping of the Service Provider's employees which has as its principal purpose the carrying out of the Work Able Scotland Programme activity and (ii) that where such a grouping exists, to ensure that any such employees are redeployed elsewhere within the organisation of the Service Provider (or its subcontractor as the case may be) prior to termination, expiry or any reduction in scope of the Service Provider Contract or any Contract Schedule .

27.2. If, on the termination, expiry or reduction in the scope of the Service Provider Contract or any Contract Schedule, any contract of employment or engagement of any current or former employee of the Service 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 or between any new provider of Work Able Scotland Programme activity and such current or former employee, by operation of TUPE or otherwise, then the Service Provider shall indemnify SDS and any such new provider and keep them indemnified against all and any costs, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought ("Employment Losses") (whenever they are incurred, and whether or not the claims for such Employment Losses are erroneous or unsuccessful) suffered or incurred by SDS or any such new provider arising out of:

27.2.1. the employment or engagement: and/or

27.2.2. the claimed employment or engagement: and/or

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

27.2.4. the claimed termination of employment or engagement,

of any such current or former employee and/or any failure or claimed failure to comply with TUPE, by the Service Provider, SDS or any such new provider.

27.3. If SDS asks, the Service Provider shall promptly enter into an appropriate agreement with any new provider on the same terms as those in rule 27.2 in order to give effect to rule 27.2 and the Service Provider shall indemnify SDS and keep SDS indemnified for and against any losses incurred by SDS which arise from a failure by the Service Provider 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 27.2 above.

27.4. Nothing in this rule 27 will give rise to the inference that SDS accepts any liability for any person employed by the Service Provider.

## **28. Insolvency**

28.1. The Service Provider shall notify SDS in writing immediately upon the occurrence of any of the following events ("Insolvency Events") during a period in which the Service Provider is providing an Work Able Scotland Programme activity pursuant to the Service Provider Contract:-

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

28.1.2. where the Service 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);

28.1.3. where the Service Provider is a company:

- i. 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;
- ii. 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);
- iii. 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;
- iv. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

- v. 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;
- vi. it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;
- vii. 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
- viii. any event similar to those listed in rule i to rule vii occurs under the law of any other jurisdiction.

28.2. 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 Service Provider; the Service Provider must provide to SDS records to support its claims with full details of what has been provided to Customers and what Outcomes have been achieved.

## **29. Blacklisting Regulations**

29.1. The Service 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 Service Provider Contract (including any Contract Schedule) with immediate effect.

## **30. Service Provider Personnel**

30.1. At all times, the Service Provider shall ensure that:-

30.1.1. each of the Service Provider's personnel is suitably qualified, adequately trained and capable of providing the applicable services under the Service Provider Contract in respect of which they are engaged; and

30.1.2. there is an adequate number of Service Provider's personnel to provide the services properly.

30.2. The Service Provider shall remove any of the Service Provider's personnel who SDS reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the services to be provided by the Service Provider.

## **31. Law and Jurisdiction**

31.1. SDS and the Service Provider accept the exclusive jurisdiction of the Scottish courts and agree that the Service Provider Contract and each Contract Schedule is to be governed by and construed according to Scots law