Modern Apprenticeship Programme Rules 2017 to 2018
Modern Apprenticeships 2017/18

General Guidance

This document contains the Modern Apprenticeship Programme Rules that apply in relation to the provision of Modern Apprenticeship services by providers (“you”) between 1 April 2017 and 31 March 2018.

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

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

You must operate within all of the terms and conditions of your contract, including the MA Programme Rules. **IF YOU BREAK ANY OF YOUR OBLIGATIONS UNDER YOUR CONTRACT, INCLUDING ANY OF THE MA PROGRAMME RULES, YOU ARE IN BREACH OF (HAVE BROKEN) THE CONTRACTUAL ARRANGEMENTS WITH SKILLS DEVELOPMENT SCOTLAND. SKILLS DEVELOPMENT SCOTLAND WILL BE ENTITLED TO TAKE ACTION AGAINST YOU, WHICH MAY INCLUDE RECOVERING SUMS PAID TO YOU, WITHHOLDING PAYMENTS CLAIMED BY YOU, WITHDRAWING VOLUMES AWARDED TO YOU, AND/OR SUSPENDING OR TERMINATING YOUR CONTRACT WITH US.**

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

We may update the MA Programme Rules from time to time during 2017/18, and if we do we will advise all providers. We do not expect there to be any significant changes.

Modern Apprenticeships – Context

Service Delivery Policy Statement and MA Funding Contribution Rates

The SDS MA Service Delivery Policy Statement sets out our priorities for MAs and the MA Funding Contribution Rates for 2017/18. Copies of these can be found at SDS’s NTP Provider website. These are each in line with Scottish Government policy. Please note that SDS has an expectation that Providers shall (a) not charge any MA Participant for any of the MA Provider Services, and (b) include the full time spent by the MA Participant in off the job apprenticeship training as time spent at work.

Modern Apprenticeships

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

Effective 1 April 2017
Stakeholders

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

Modern Apprenticeships Frameworks

In Scotland there are over 75 different MA frameworks and they are each designed to provide a training package that meets minimum standards of competence as defined by licensed Sector Skills Organisations or Standards Setting Organisations officially recognised by UK Commission for Employment and Skills (UKCES) (or its successors), following consultation with employers. They each contain 3 key components:-

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

The Modern Apprenticeship Group

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

MA Provider Services

Provider Services cover four main areas:

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

1. Principles of Funding

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

Our priorities for funding decisions for 2017/18 are in line with Scottish Government policy imperatives, and at the time of publication are as follows:

Effective 1 April 2017
• maximising jobs with training opportunities for young people by providing a contribution to meeting employer demand for 16\(^1\) - 24 year olds, with a focus on level 3 where at all possible;
• maximising opportunities for STEM areas and the wider availability of higher-level MAs;
• for those aged 25+: supporting the Scottish Government’s key sectors and other frameworks; and
• Increasing the participation of individuals from under-represented groups including the Black and Minority Ethnic population, people with disabilities and care leavers.

SDS may amend these from time to time, in the event that priorities change.

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

2. Principles of SDS Quality Management Framework

The SDS Quality Standards that apply to this MA provider Contract are set out at the training provider area of the SDS website for Modern Apprenticeships. SDS is currently reviewing these Quality Standards to consolidate and remove duplication, where appropriate. It is intended that the revised standards will remove the need for a separate Equality and Diversity Action Plan by embedding the requirement for providers to address under-representation of targeted equality groups, ensuring that actions and impact are measured within the Quality Standards, the Provider Self Assessment and action/improvement plan.

Individual providers undergoing an assessment by SDS may be offered an opportunity to pilot the revised Quality Standards, and any references to Quality Standards set out in these Rules, shall in such circumstances, be to the revised Quality Standards made available under the pilot. Providers offered an opportunity to participate in any such pilot shall not be obliged to participate. Where such a provider elects not to participate in the pilot, the Quality Standards set out at the training provider area of the SDS website for Modern Apprenticeships shall apply.

The Quality Standards will continue to assess the extent to which each provider maintains capacity and capability to successfully deliver quality provider services throughout the period of the contract. It is important that your senior management team accept ownership of the SDS Quality Management Framework and for the planning and delivery of your contract with Skills Development Scotland.

You are required to complete a Self Assessment which demonstrates how you meet each of the SDS Quality standards. An SDS Quality Assessor will review your Self Assessment and identify strengths and any priority areas for improvement prior to undertaking a formal assessment. During the formal assessment, your supporting evidence and feedback from interviews carried out will be considered and any additional areas for improvement agreed. Any priority areas for improvement identified either by you or our Quality Assessor should be included in your action/improvement plan.

1 15, provided the participant has met the statutory school leaving age that applies in Scotland

Effective 1 April 2017
During the period of this MA Provider Contract, SDS will introduce a new approach to how we conduct the quality assessment visit. Quality assessments will be undertaken by a team led by a qualified Quality Assessor and supported by ‘associate assessors’ drawn from our Skills Investment Advisor team. As before, the assessment will review evidence from a range of sources including staff feedback and review of documentation and will now be supported by observation of practice, targeted apprentice and employer sampling, representative of provision delivered across the geographical areas in which the Provider is delivering services. Providers will continue to receive detailed verbal feedback and a written report from the findings from the visit as well as a quality score and overall grade.

Following any assessment by SDS, your SDS assigned Skills Investment Advisor will work with you to support your efforts to identify and implement improvements, providing focus and constructive challenge throughout the process.

Failure to meet any of the Quality Standards at any time or to implement improvement actions will be considered to be a breach of our rules and in addition to enforcement action, may impact on renewal of MA Provider contracts.

3. Principles of Evidence

Our rules require you to make evidence available to us, (and/or our agents and auditors). The purpose of the evidence is to provide the necessary assurance that you have delivered your services in accordance with the terms of your contract, including our Invitation to Tender, your ITT Response, the MA Programme Rules and the SDS Quality Standards. You must hold and make available for inspection, suitable evidence to demonstrate that you are meeting all the requirements set out in your contract, which will include providing evidence that:

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

Please note that SDS has upgraded the Corporate Training System (CTS), which has been replaced by a system (Funding Information and Processing System) “FIPS” and shall be used for all new ‘Starts’. CTS will continue to be used for participants who were originally registered on CTS. The replacement system streamlines information sharing between providers and SDS. As such, Providers now require to use SDS designated FIPS software for applicable Participants in order to record required information on FIPS. The software used by SDS at the time of issuing the Invitation to Tender is provided by Microsoft, although this may change. Use of the software is subject to the licensor terms and conditions which apply to SDS and which SDS shall in part pass through to the providers when using the software in the form of an assignation and associated user obligations (“User Permission”). Details of the User Permission terms and conditions shall be available on our website. The costs of each User Permission require to be met by the providers. Details of the costs of each User Permission are available on the training provider area of the SDS website for Modern Apprenticeships. Details of the Microsoft terms and conditions currently applicable to SDS are available at –
Where any existing Participant is registered on CTS, all references to FIPS shall be to CTS, unless and until otherwise advised by SDS.

Signatures on Documents

SDS is currently reviewing requirements for signatures as a means of confirmation, acknowledgement and/or acceptance. Individual providers may be offered an opportunity to pilot alternative methods of confirmation, acknowledgement and/or acceptance (as applicable) of specific information which the provider requires to retain or submit as evidence under the MA Programme Rules. Providers shall be advised of any associated rule changes when offered the opportunity of participating in any such pilot. Providers offered an opportunity to participate in any such pilot shall not be obliged to participate.

4. Action/Improvement Plans

Where you have an outstanding action/improvement plan from us relating to previous MA programme services provided by you, that action/improvement plan shall continue to apply to the Services to be provided by you under any Contract Schedule awarded to you for any period between 1 April 2017 and 31 March 2018 - unless we write to you confirming anything different.

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

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

Effective 1 April 2017
This General Guidance section is intended to provide guidance only and does not form part of the Modern Apprenticeship Programme Rules 2017/18.
The Modern Apprenticeship Programme Rules 2017/18

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Effective 1 April 2017
Introduction

This document sets out The Skills Development Scotland Co. Ltd (“SDS”) programme rules for the provision of MA services during the period 1 April 2017 to 31 March 2018 (“the MA Programme Rules”).

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

This document is set out in three parts. Part One contains among other things, the process for awarding Contract Schedules for Starts, the contract period details, details of where to find an up to date version of the MA Programme Rules, and the overarching payment obligations. Part Two sets out the specific operational rules relating to the MA Programme. Part Three sets out the more general contractual obligations of Providers and SDS relating to the MA Programme.

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

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

1. **Operating Rules**

1.1. The arrangements, definitions, terms and conditions set out in the MA Programme Rules, as revised and updated from time to time by SDS together with the Invitation to Tender, Provider's ITT Response (subject to any amendments thereto in accordance with the terms of the MA Programme Rules) shall form part of the MA Provider Contract as if such arrangements, terms and conditions and documents were expressly set out in the MA Provider Contract.

1.2. The MA Programme 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 NTP providers’ website.

2. **Provider's Appointment**

2.1. SDS appoints the Provider as a potential provider of services in respect of the MA Programme, as further described in the MA Programme Rules and the Provider shall be eligible to be considered for the award of Contract Schedules for such services by SDS during the term of the Provider Contract.

2.2. The Provider acknowledges that, in entering into the MA 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 Provider.

3. **Operative Period**

3.1. Subject to rule 3.3 below, the MA Provider Contract shall have effect from 1 April 2017 until 31 March 2018 subject to earlier termination in accordance with the MA Programme Rules or on one month’s notice in writing by SDS to the Provider.

3.2. Any payments made by SDS to the Provider prior to the date of the MA Provider Contract and made in anticipation of the MA Provider Contract having effect shall be deemed to have been made under the terms and conditions of the MA Provider Contract and the relevant Contract Schedule.

3.3. SDS may extend the period of the Provider Contract until 31 March 2019, in respect of some or all Participants already entered by the Provider onto FIPS as Starts as at 31 March 2018, subject to the written agreement of the Provider. Except as otherwise provided in this MA Provider Contract, the terms and conditions set out in the MA Provider Contract, and the relevant Contract Schedules shall apply during any such extended period.

4. **Contract Schedule Process**

4.1. The MA Provider Contract governs the overall relationship of the parties in relation to the Provider’s undertakings and sets out the process that SDS shall use to request services from the Provider under separate Contract Schedules.

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4.2. SDS shall be entitled (but not obliged) from time to time to request the provision of MA Programme services by submitting to the Provider details of the volume of starts and related financial forecasts SDS requires using such process and any such forms as SDS shall identify. Within 10 calendar days of receipt of each such request, the Provider shall either (i) email the SDS assigned Skills Investment Advisor to confirm to SDS that it shall not be able to provide the requested services, or (ii) sign its acceptance of the request in the format advised by SDS from time to time, and submit the acceptance to SDS in accordance with such instructions as SDS shall specify. Each document containing the Provider’s acceptance in the format prescribed by SDS shall form part of the Contract Schedule. 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 Provider;
4.2.3. the Contract Schedule has been returned to SDS (or posted on FIPS, 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 MA Provider Contract has not been suspended or terminated.

4.3. Each Contract Schedule:-

4.3.1. shall be entered into by SDS and the Provider;
4.3.2. forms a separate contract between SDS and the Provider; and
4.3.3. shall incorporate the terms of the MA Provider Contract (including for the avoidance of doubt, the terms and conditions set out in the MA programme Rules).

4.4. Subject to earlier termination in accordance with the MA Programme Rules, under exception of any additional Contract Schedules agreed pursuant to rule 4.5, the Contract Schedule shall have effect from the commencement date specified therein until 31 March 2018.

4.5. In the event that SDS extends the period of the MA Provider Contract in accordance with rule 3.3 above, the provisions of rules 4.1, 4.2 and 4.3 shall apply in respect of such extended period, under exception of all references to ‘Starts’ (which shall not be included within the process, or any Contract Schedule agreed pursuant to the process). Subject to earlier termination in accordance with the MA Programme Rules, any Contract Schedule agreed for the extended period shall have effect from the commencement date specified therein until 31 March 2019.

5. Variations

5.1. SDS reserves the right to amend the MA Provider Contract and/or any 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

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agreements (where it affects the MA 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 MA Provider Contract, from the date that providers are advised of the changes, and

5.1.2. in respect of each Contract Schedule, on the date SDS advises the Provider of the amendment(s), in writing.

5.2. Without limitation, SDS anticipates that any such changes may relate to:-

5.2.1. Participant eligibility criteria;

5.2.2. Periodical review of Participants’ progress;

5.2.3. volumes, financial contributions and profiles;

5.2.4. re-entry or transfer of Participants;

5.2.5. travel, lodging, subsistence and/or lodging allowance;

5.2.6. evidence requirements;

5.2.7. the introduction of any pilot referred to in the MA Programme Rules (which amendments shall only apply to those providers participating in the pilot); and/or

5.2.8. the administrative procedures and information required to be inputted to CTS/FIPS.

5.3. The Provider must promptly alert an SDS Contract Executive by email in the event that the Provider has no reasonable prospect of fulfilling any forecast relating to the contracted number of Starts and/or spend, contained in any Contract Schedule. This does not negate the Provider’s obligation to meet the agreed forecasts, and is without prejudice to SDS’ rights and remedies.

5.4. SDS may request the Provider to submit changes to the 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 MA Provider Contract and/or any Contract Schedule which do not meet the requirements of this rule 5 or rules 2.7.1 and 3.2.1 of Part B of Part Three, shall not be permitted.

6. Payment and Achievement Arrangements

6.1. SDS shall pay the Provider for provision of the MA Programme services in accordance with the MA Programme Rules in respect of the Participants recruited (and approved, where applicable) and Milestones achieved in accordance with the relevant Contract Schedule, at the applicable rates published by SDS from time to time in the ‘operational
guidance’ section of the NTP providers’ website.

6.2. Subject to any variations made by SDS in accordance with the MA Provider Contract, the Provider shall provide services in the volumes, outputs of activity and financial profiles set out in each Contract Schedule, and to the quality of delivery set out in the MA Provider Contract (including for the avoidance of doubt, the ITT Response). In addition, the Provider shall provide the services to meet the minimum achievement rate set out in the Contract Schedule at all times.

6.3. Expenses (if any) shown in the Contract Schedule must not be exceeded without prior written approval from SDS, (at SDS’s entire discretion) in the form of either an email from SDS or confirmation by SDS within FIPS.

6.4. The Provider shall pay SDS the charge for each User Permission made available to the Provider pursuant to rule 2.4.3.3 of Part Three. SDS shall be entitled to invoice the Provider at any time following the issue of each User Permission to the Provider. The Provider shall require to pay each such invoice within 30 days of the date of issue of the invoice. In the event that the Provider fails to pay any such invoice (or part thereof) in accordance with this rule 6.4, without prejudice to SDS’ other rights and remedies, SDS shall be entitled to offset the shortfall against any sums due by SDS to the Provider.

6.5. In the event that any Participant is disabled and/or care experienced (the criteria for which are set out in Appendix 13 to the Programme Rules), and the Participant agrees to complete and sign the statement set out in Appendix 13 confirming which of the applicable criteria apply, the Provider shall be eligible to receive enhanced funding, as set out in the Appendix 13. In order to claim such enhanced funding for any Participant, the Provider shall require to obtain the duly completed and signed statement from the Participant. The completed and signed statement must be held by the Provider on file prior to making a claim and retained for audit purposes. Completion of and signature to any such statement must be voluntary. The Provider shall not coerce or bribe any Participant into completing and/or signing any such statement.

6.6. Without prejudice to SDS’ other rights and remedies, failure to provide the evidence set out above when requested by SDS or its agents, or in the event that the statement was not provided in compliance with rule 6.5 above, shall entitle SDS to recover on demand, up to the full amount of all funding paid in respect of the Participant, and withhold any and all future payments otherwise payable in respect of the Participant, which sums shall not be (re)payable to the Provider.

Effective 1 April 2017
Part Two

1. Eligibility Criteria for Public Funding

1.1 To be eligible to participate in an approved MA framework, a Participant must satisfy the criteria set out in rules 1.2 (domicile), 1.3 (age), 1.4, (demonstrable need) and 1.5 (employment) (and/or any other additional or alternative criteria as may be advised from time to time under rule 1.7), and not be excluded under rule 1.6 (exclusions). The Provider shall use all reasonable endeavours to ensure that the Participant meets all the eligibility criteria as set out in this rule 1.

1.2 Domicile

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

1.3 Age

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

1.3.1 an individual aged 16\(^2\) - 24 who intends to follow an approved MA framework; or
1.3.2 an individual aged 25 or over who intends to follow an approved MA framework in any of the specified sectors listed in the Contracting Strategy.

1.4 Demonstrable Need

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

1.5 Employment

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

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

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

\(2\) 15, provided the participant has met the statutory school leaving age that applies in Scotland

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1.5.1.3 under a contract of employment relevant to the MA referred to in the Training Agreement.

1.5.2 SDS may, in exceptional circumstances, and entirely at SDS’s discretion, authorise completion of any part of a Participant’s MA, in the event that the Participant’s employment status changes. The Provider may apply to SDS for such authorisation by submitting written details of the Participant’s exceptional circumstances to the SDS assigned Skills Investment Adviser. Any such authorisation shall be in the form of an email from the SDS assigned Skills Investment Advisor or confirmation in FIPS.

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

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

1.6 Exclusions

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

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

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

1.7 Additional Criteria

In determining eligible persons for recruitment to the MA Programme, the Provider shall apply such additional and/or alternative eligibility criteria (as applicable) as SDS may advise from time to time, either by email from the SDS assigned Skills Investment Advisor or on the training provider area of the SDS website for Modern Apprenticeships.

1.8 Individual Learning Accounts

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

2 Programme Entry

2.1 Initial Assessment

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

2.1.2 All re-entrants to the MA Programme must follow the normal process for programme entry. Re-entry and any financial adjustments required in line with current SDS funding policy and budget availability are subject to the prior approval of SDS, which shall, if given, be confirmed in CTS/FIPS.

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

2.1.4 When a Participant has previously fulfilled activity for a Milestone, the Provider shall not be entitled to submit a claim in respect of the Milestone. For clarity, the Provider is not entitled to claim in respect of the activity fulfilled previously, or any activity which the Provider may choose to repeat. Where the Provider has been paid by SDS in respect of such a claim, without prejudice to SDS’ other rights and remedies, SDS shall be entitled to recover up to the full amount of such funding from the Provider on demand.

2.1.5 In addition, the Provider shall not be entitled to submit any claim for payment in respect of any progress review the Provider may have conducted with a Participant, where SDS has already paid the full contribution for the progress review (irrespective of whether it was conducted by another party or not) in accordance with the norm plan in FIPS. Where the Provider has been paid by SDS in respect of such a Milestone or progress review (as applicable), without prejudice to SDS’ other rights and remedies, SDS shall be entitled to recover up to the full amount of such funding from the Provider on demand.

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

2.2 Individual Training Plan (ITP)

2.2.1 The Provider must ensure that an Individual Training Plan (ITP) is drawn up after the Participant started the MA Programme, either in accordance with the
2.2.2 Without prejudice to SDS’ other rights and remedies, failure to have an ITP in place strictly in accordance with these MA Programme Rules shall entitle SDS to recover up to the full amount of all funding paid in respect of the individual.

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

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

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

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

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

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

2.2.4 A Best Practice ITP is attached at appendix 2a (guidance on completion is also attached at appendix 2b). However, Providers may use their own document, providing it captures all the necessary information as set out in the Best Practice ITP. The ITP must be signed by the Provider, the proposed Participant and the employer no later than the date on which the Provider submits a claim for the first Milestone payment (following the claim for the Start payment). The Provider must retain the ITP.

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

2.3.1 For each Participant, the Provider must fully and accurately complete and sign the TA (a copy of which is available at appendix 12 to these Programme Rules). Providers shall not be permitted to use any form of training agreement other than the form of TA made available by SDS. Within four weeks of the proposed Participant’s Start date, the TA must be fully completed and agreed between the Participant and Provider, signed and dated by the Participant, the Provider and the employer. Thereafter, the Participant details required in FIPS must be completed by the Provider, including without limitation, the mobile telephone number or email address of the Participant, and the employer email address. SDS shall be entitled to contact the Participant (using the mobile telephone number or email address provided), requesting the Participant to validate (i) his/her registration as an MA participant, and (ii) any other information (provided by the Provider to SDS) that SDS requests. Failure by the Participant to validate all required information to SDS within such timeframe as SDS shall
specify, shall entitle SDS to suspend the registration of the Participant as a Start until such time as confirmation is received (within such extended timescales as SDS may specify), failing which the registration may be cancelled by SDS. For the avoidance of doubt, SDS shall have no obligations to the Provider in relation to a proposed Participant who is not registered as a Participant in accordance with this rule, (or whose registration is suspended or cancelled) notwithstanding that the Provider (i) has provided training to that proposed Participant and/or (ii) the proposed Participant is registered as a Participant after the date required under this rule, and shall be entitled to recover on demand up to the full amount of all payments made by SDS in respect of each such individual which sums shall not be (re)payable to the Provider. In the event that any of the information contained in the TA requires to be amended the Provider must ensure that each such amended version is signed at the next Review due by the Participant and the Provider. Where any such change relates to qualification, the amended TA must also be signed by such Review date by the employer. Copies of each version of each TA must be retained by the Provider for audit purposes.

2.3.2 When an individual agrees to join an MA Programme, s/he will require to sign the Training Agreement (TA/Start Form) which will include:-

(i) a declaration consenting to the sharing of relevant information; and

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

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

The Provider must advise each proposed Participant of the requirement for the proposed Participant to provide his/her consent to share relevant information and provide the co-operation undertaking described above. The Information Exchange and Co-operation Statement must also be signed by the Provider and the employer.

2.3.3 Not used.

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

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

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

2.3.4.3 complete, print and sign the Provider declaration contained in appendix 5).

The Provider shall retain each signed declaration for audit purposes. Any financial obligation on SDS in respect of the individual in terms of the MA
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Provider Contract and any Contract Schedule will not arise prior to the individual being properly entered as a ‘Start’ on FIPS in accordance with these MA Programme Rules.

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

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

2.3.7 Where a Participant is registered as a Start with the Provider within 56 calendar days following the Participant leaving training under any MA with a former provider, the Provider shall not, without the prior approval of SDS in the form of an email from the SDS assigned Contract Executive, be entitled to a Start payment in respect of that Participant. Requests for such a Start payment should be submitted to the SDS assigned Skills Investment Advisor.

2.3.8 A proposed Participant shall not become a ‘Participant’ until such time as the Provider has properly completed all of its obligations in relation to the Participant set out in this rule 2.3.

2.3.9 The Provider shall not register any proposed Participant as a Start on FIPS unless the Provider is holding a current accreditation relevant to the proposed Participant’s MA, from the relevant Awarding Body.

2.4 Registration with the Awarding Body/Sector Skills Organisation

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

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

2.4.3 Formal evidence of registration/entry, from the Awarding Body/SSO, including confirmed date, shall be held by the Provider on file prior to making a claim and retained for audit purposes.

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

2.5 Induction

2.5.1 Roles and Responsibilities.

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

2.5.2 Contact with Individuals

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

3. Programme Delivery

3.1 Participant Review

3.1.1 The Provider must comply with the SDS Quality Standards referred to in rule 3.3.9 in Part Three below. In order to demonstrate compliance with the SDS Quality Standards, the Provider shall focus on the needs of each Participant and provide the necessary support to achieve the objectives of each Participant’s ITP. When planning the programme delivery for each Participant, the Provider must demonstrate how they will work with the Participant and ensure that:-

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

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

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

3.1.2 The Participant’s progress must be regularly reviewed and assessed. The Provider must carry out formal Reviews every 13 weeks as a minimum for the duration of the MA until the final Milestone is achieved. A Best Practice Participant Progress Review record is provided at appendix 6 and the information contained in it is mandatory and therefore must be included in any alternative Review form. This will be checked by SDS. Additional rules apply to certain Milestone claims for specific occupational areas, which provisions are

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set out in rule 3.2 below.

3.1.3 Not used.

3.1.4 All Participant Progress Review records referred to in these rules 3.1 and 3.2 must be signed and dated by the Participant and Provider on completion, and the Provider must obtain the Participant’s employer’s signature thereto at least once during the period of this MA Provider Contract. A copy of each completed Participant Progress Review must be provided by the Provider to the Participant and the Participant’s employer (for the employer’s information) no later than 8 calendar days after each Review. The Provider shall (i) retain a copy of each Review record for the purposes of audit and (ii) use all reasonable endeavours to ensure that the employer shall retain a copy of each Review record for the purposes of audit.

3.1.5 Not used.

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

3.2 Participant Progression

3.2.1 The Payment Plans are set against the VQ listed in the MA framework, each using the listed VQ Reference number. The Payment Plan details are contained within CTS/FIPS and in this rule 3.2, and together, set out the programme requirements to make a Milestone claim.

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

3.2.3 In addition to all other obligations set out in these MA Programme Rules, prior to submitting a claim for a Milestone payment, the Provider must satisfy the requirements, hold the evidence and meet the ‘additional information’ requirements set out in the payment plan table in CTS/FIPS, and as more fully explained in rules 3.2.4 - 3.2.9. Where the payment plan table in CTS/FIPS and/or any of the rules under this rule 3.2 reference a Best Practice document, such document contains the minimum mandatory information required from the Provider. The Provider must either use this form as evidence for making claims for Milestones, or provide the mandatory information in an alternative format acceptable to SDS.
3.2.4 The Summary of Achievement Record (or, as applicable) Motor Vehicle Record of Progress documents submitted to SDS (whether in the form of appendix 3 or Provider template) shall be signed and dated by the Participant and for the Provider by a qualified subject assessor. Progression recorded on the SOAR (or equivalent) shall reflect achievements detailed in the Participant portfolio.

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

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

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

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

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

3.2.10 Following receipt of each claim for payment from the Provider, SDS shall be entitled to contact the Participant (using the mobile telephone number or email address provided by the Provider on CTS/FIPS pursuant to the MA Programme Rules), requesting the Participant to confirm such information relating to the Participant’s training as SDS considers appropriate to validate the claim. Failure by the Participant to confirm all required information to SDS within such timeframe as SDS shall specify, shall entitle SDS to suspend payment of the claim until such time as confirmation is received (within such extended timescales as SDS may specify), failing which SDS shall be entitled to reject the claim. Where payment has already been made, SDS shall be entitled to recover on demand up to the full amount of the claim which sums shall not be (re)payable to the Provider. SDS shall also be entitled to suspend the Provider’s access to CTS/FIPS in respect of the Participant, which suspension shall only be lifted in the event that SDS is satisfied that the Provider has complied with, and continues to comply with its obligations under the MA Programme Rules.

4. Completion of the MA Programme

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

5. **Exit /Temporary Interruptions /Transfer**

5.1 **Exit from /Temporary Interruptions of Training**

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

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

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

5.1.1.3 the Participant states they have left the MA Programme; or

5.1.1.4 the Participant ceases his/her employment with his/her employer for any reason, except when, following notification from the employer that the Participant has been made redundant, the Participant is engaged in a period of formal training at college in which case the period may be extended at SDS discretion and subject to the written approval of SDS in the form of either an email from the SDS appointed Sills Investment Advisor and/or as confirmed by SDS on FIPS.

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

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

5.2 **Transfer of a Participant**

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

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

5.2.3 All transfer arrangements are subject to SDS’s prior written agreement to be provided at SDS’s entire discretion, on an individual basis in the form of an email from the SDS assigned Skills Investment Advisor.

6. Performance and Award

6.1 The Provider shall ensure that it meets the minimum Performance Levels set out in rule 23.3 of Section D of Part Three to these MA Programme Rules when performing the services under the MA Provider Contract and each Contract Schedule. Where the Provider fails to meet any Performance Level, without prejudice to any other rights and remedies available to SDS under the MA Provider Contract (including any reallocation and/or further award under this rule 6), the consequences (if any) set out in rule 23.3 of Section D of Part Three shall apply.

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

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

6.4 SDS will from time to time during the MA Provider Contract, evaluate the number of Participants that have been Started under each Contract Schedule by each Provider against the number of Participants that it was contracted to Start measured across all the Provider’s Contract Schedules. Where there is a shortfall, SDS may without prejudice to its other rights and remedies, decide to reallocate the remaining number of Participant places awarded under the relevant Contract Schedules among other providers by amending the relevant Contract Schedules and/or placing an additional Contract Schedule, as applicable. SDS shall consider the achievements of each provider when making any reallocation.

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

A ITT Response

1. ITT Response

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

1.2. The Provider may propose amendments to the Provider’s ITT Response at any time, but no such amendment to the Provider’s ITT Response shall be valid for any purpose unless SDS has at its entire discretion, previously agreed to it in writing in the form of an email from the SDS assigned Skills Investment Advisor.

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

B Before Recruiting Participants

2. Policies, Procedures and Systems

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

2.1.1. Equal Opportunities policy and procedures

2.1.2. Health and Safety policies, procedures and monitoring systems

2.1.3. IT systems and CTS/FIPS

2.1.4. NLOD, My World of Work and Apprenticeships.Scot

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

2.2. Equal Opportunities

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

2.2.2. The Provider must:-

2.2.2.1. in respect of the Provider and each sub-contractor (in each case, only where the applicable body employs at least five members of staff) ensure that each such body has an equal opportunities policy covering both its own staff and also Participants, ensuring equality with respect to all the protected characteristics in the EO Act. Each policy must show how it will be monitored and implemented. A copy of each such policy must be available to SDS staff immediately on request. The Provider must comply with the policy at all times and ensure that each sub-contractor complies with its respective policy at all times; and

2.2.2.2. accurately complete the Training Provider Equality and Diversity Action Plan 2017-18 to accurately and fully reflect the requirements set out in the Invitation to Tender, the current template for which is available at the training provider area of the SDS website for Modern Apprenticeships (which template may be replaced or amended by SDS from time to time), and ensure that it complies with same for the duration of the MA Provider Contract. A copy of the completed plan must be provided to the SDS assigned Skills Investment Advisor no later than 26 May 2017. The Provider must ensure that the plan is accurately and fully updated at regular intervals (and in any event, no later than 30 November 2017 and again by 31 March 2018). The Provider shall also retain appropriate evidence of all action undertaken by the 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.

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

2.2.4. Equalities monitoring information as set out in appendix 11 must be recorded in accordance with the requirements set out in the appendix.

2.3. Health and Safety

2.3.1. Reporting and Investigation of Incidents

2.3.1.1. The Provider shall immediately notify all Reportable Incidents to the relevant authority as required by RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations). If a Reportable Incident occurs whilst a Participant is conducting activities identified in his/her Individual Training Plan or which are relevant to the MA Programme the Provider must ensure that SDS is informed immediately by contacting the SDS assigned Skills Investment Advisor by telephone (leaving a message containing brief details, if unanswered,) and email, and in each case, if re-directed to an alternative contact, by advising such contact.

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

2.4. IT System to access CTS/FIPS etc

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

2.4.2. Online Information System

2.4.2.1. Providers who propose to operate their own Online System to administer the MA Programme shall be required to notify SDS in advance by emailing the SDS assigned Skills Investment Advisor or SDS assigned Compliance Officer. SDS will advise on timescales for testing and evaluation of the system. In such cases, the Provider shall require to meet SDS requirements in relation to the use of an Online System, if used by the
2.4.3. **Corporate Training System (CTS/FIPS)**

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

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

2.4.3.3. In order to use FIPS as prescribed in this MA Provider Contract, the Provider shall require to obtain a User Permission for each user of the FIPS software for the period of the MA Provider Contract. All information relating to the User Permission including the applicable terms and conditions, applicable charges and guidance on the process for requesting/granting/amending User Permissions shall be made available by SDS to the Provider or, at SDS’ discretion, set out in the Training Provider pages of the SDS website available through https://www.skillsdevelopmentscotland.co.uk/for-training-providers/fips-funding-information-and-processing-system. Further conditions or guidance may also be set out in the Provider letter of award for the MA Provider Contract.

2.5. **The National Learning Opportunities Database (NLOD), My World of Work and apprenticeships.scot**

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

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

2.5.3.1. The Provider shall use best endeavours to:-

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

2.5.3.1.2. promptly post all MA vacancies on [www.apprenticeships.scot](http://www.apprenticeships.scot).

2.6. **Handling Participant and Other Information**

2.6.1. In order to perform the MA Programme and to demonstrate MA Provider Contract compliance it will be necessary for the Provider to hold personal information on Participants to keep Participant records. It will also be necessary to complete and retain forms and information. In addition to the Provider’s other obligations, the 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 (in a watertight environment), and shall promptly make all such information and records available to SDS staff as requested by SDS from time to time.

2.6.2. **Information Security** *(See appendix 8 for full policy)* and CTS/FIPS Passwords

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

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

2.7.1. The Provider shall provide each Participant recruited with, and only with, a programme of training to which he or she is entitled according to the criteria set out in the MA Programme Rules. No dispensation from the MA Programme Rules shall be made unless approved in writing by SDS in the form of an email from the SDS assigned Skills Investment Advisor. Each MA Programme shall be provided in a manner acceptable to SDS.

2.7.2. The Provider shall ensure that every element of the MA Programme services comply with the MA Programme Rules.

### In Training

3. **In Training**

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

- 3.1.1. Provider Controls and Assurance
- 3.1.2. Payment and Claims
- 3.1.3. Quality Management Assessment

3.2. **Provider Controls and Assurance**

3.2.1. The Provider shall at all times have in place controls to ensure that (a) the quality of services meets the needs of the Participants' employers and is developed in a way that provides each Participant with the support he/she needs to achieve his/her MA qualification, and (b) only valid claims against the contract are made. The Provider shall at all times maintain an accurate record of their controls in a format determined by SDS, and ensure that the Record of Provider Controls reflects at all times, any dispensations agreed by SDS in accordance with rule 2.7.1 of Part B above. This ‘Record of Provider Controls’ document will record all controls operated by the Provider to ensure that quality processes [and data security measures] are effective, and only valid claims are made by the Provider under the MA Programme Rules. The Provider shall submit a copy of their completed Record of Provider Controls to SDS promptly on request. SDS shall be entitled at all times to assess the Provider’s controls (during and after the period of the Provider Contract), (accessing the Provider’s and any subcontractor premises as deemed appropriate by SDS) and take such action as SDS deems appropriate to establish the extent to which the controls are (or were, as appropriate) operating satisfactorily. The Provider shall co-operate fully with SDS in each such assessment.
and/or action. Without prejudice to SDS’ other rights and remedies, if required by SDS, the Provider shall prepare and implement an action/improvement plan to address areas for improvement recommended by SDS. SDS shall be entitled to require (without limitation) any action/improvement plan to include actions to address any improvement SDS deems appropriate following any review by SDS of the Provider’s controls.

3.2.2. The Provider shall within the Record of Provider Controls promptly (i) update any changes to quality processes, systems, organisation and staffing structure reasonably required to ensure that at all times only valid claims are made which comply with the MA Programme Rules, and (ii) notify SDS of each such change in the form of an email to the SDS assigned Skills Investment Advisor or SDS assigned Compliance Officer.

3.2.3. The Provider shall complete a ‘Provider Annual Certificate of Assurance’ in a format determined by SDS. This must be completed and signed by the Chief Executive/ Contract Signatory or equivalent and be submitted to SDS by such date as SDS shall specify, to confirm that the Provider has fully complied since the commencement of the Provider Contract with, and shall, for the duration of the Provider Contract (which shall include for the avoidance of doubt, any applicable record retention period) fully comply with, (i) the MA Programme Rules and (ii) the Record of Provider Controls submitted to SDS in respect of that period (as amended in accordance with this rule 3.2). This is a mandatory document and (except as provided in rule 3.2.3A) is attached as appendix 10. SDS shall not be required to recognise or pay claims in relation to any services that the Provider has performed under any Contract Schedule, before the date when SDS receives the duly completed and executed certificate.

3.2.3A In the event that the Provider is no longer providing training or assessment services to Participants, and has no outstanding claims for payment under the terms of the MA Provider Contract, the Provider shall for the duration of the remaining retention period set out in rule 21 of Part Three of the Rules, require to complete such alternative Record of Provider Controls document as SDS shall publish on the training provider area of the SDS website for Modern Apprenticeships.

3.2.4. In the event that:

3.2.4.1. the Provider had an agreement with SDS to deliver MA Programme services (or equivalent) at any time during the period between 1 April 2016 and 31 March 2017 (“2016/17 Agreement”); and
3.2.4.2. SDS issued the Provider with an action/improvement plan in relation to the services to be performed by the Provider under the 2016/17 Agreement (which would include any action/improvement plan that may have been issued to the Provider by SDS before the 2016/17 Agreement, where such plan had not been updated or replaced under the 2016/17 Agreement) unless SDS advises the Provider otherwise in writing in the form of an email from the SDS assigned Skills Investment Advisor, each such action/improvement plan shall continue to apply to the Services to be provided by the Provider under any Contract Schedule awarded under this MA Provider Contract.

3.3. Payment and Claims

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

3.3.1.1. require the Provider to provide such financial and/or other information, including the latest set of the Provider’s audited accounts, to enable SDS to assess the Provider’s continuing financial viability and its ability to continue to perform its obligations under the MA Provider Contract and each Contract Schedule;  
3.3.1.2. require any financial and/or other information provided by the Provider under the MA Provider Contract to be certified by an independent accountant; and/or  
3.3.1.3. call for a report, by an independent accountant, on the financial systems and controls operated by the Provider in respect of monies received for the purposes of the MA Programme.

3.3.2. Provided always that the Provider has and continues to meet its obligations under the MA Provider Contract and each Contract Schedule, and that the relevant Participant confirmation/validation referred to in rules 2.3.1 and 3.2.10 (as applicable) has been received by SDS, SDS will pay to the Provider, as and when required by, and in accordance with the terms of, the MA Provider Contract and each Contract Schedule, such sums as are then due to the Provider according to the relevant Contract Schedule. All payments made under the MA Provider Contract and each Contract Schedule are inclusive of any applicable VAT.

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

3.3.4. Without prejudice to SDS’ other rights and remedies, where the Provider has been requested to provide documentation in support of a claim for payment and has failed to provide it, SDS shall be entitled to permanently withhold payment of the claim (or such proportion not supported by satisfactory documentation) or where the claim has been paid by SDS, to demand immediate repayment of the claim (or such proportion not supported by satisfactory documentation) where upon the Provider shall immediately repay the amount demanded.

3.3.5. Providers shall not be entitled to submit any Milestone claim until the Provider is in possession of all the evidence specified in these MA Programme Rules. All claims for payments must be submitted by the Provider through CTS/FIPS. Where such evidence is not available to SDS (or its agents) on request, and/or such evidence was not in the possession of the Provider at the date of submission of the claim on CTS/FIPS, payment will be at the sole discretion of SDS. SDS shall not accept any evidence other than the evidence referred to in these MA Programme Rules as support of a claim. Without prejudice to SDS’ other rights and remedies, SDS will be entitled to permanently withhold payment or to recover on demand up to the full amount of all funding already paid in the event that the Provider is unable to demonstrate compliance with these terms for any claim.

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

3.3.7. Recovering Monies and Late Claims

3.3.7.1. Without prejudice to SDS’ other rights and remedies, where a claim has been made and paid by SDS before it has become due but has subsequently become due and SDS has agreed repayment is not required, SDS shall be entitled to charge interest on the amount of the payment at the rate of four per centum per annum above the base rate of the Bank of Scotland from the date of payment until the date that it actually fell due.
3.3.7.2. SDS shall be entitled to deduct from any payments due to the Provider in terms of the MA Provider Contract (including any Contract Schedule) or any other contract between SDS and the Provider:-

3.3.7.2.1. any sums due by the Provider howsoever and whenever arising to SDS; and
3.3.7.2.2. any sums due to SDS by any person to whom the undertaking of the Provider has been transferred.

3.3.8. Signatures on Documentation

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

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

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

3.3.8A SDS is currently reviewing requirements for signatures as a means of confirmation, acknowledgement and/or acceptance. Individual providers may be offered an opportunity to pilot alternative methods of confirmation, acknowledgement and/or acceptance (as applicable) of specific information which the provider requires to retain or submit as evidence under the MA Programme Rules. Providers shall be advised of any associated rule changes when offered the opportunity of participating in any such pilot. Providers offered an opportunity to participate in any such pilot shall not be obliged to participate.

3.3.9. Quality Management Assessment Process

3.3.9.1. SDS’ Quality Standards are designed to help assess the extent to which Providers deliver quality services which are focused on the needs of the Participants and employers. The Provider is required to meet minimum standards and take action to achieve year on year improvements, as set out in the SDS Quality
Management Framework. A copy of the current SDS Quality Management Framework is available on the SDS NTP Provider website. These may be amended from time by SDS. Any amended version shall be available on the website. SDS is currently reviewing these Quality Standards to consolidate and remove duplication, where appropriate. Individual providers undergoing an assessment by SDS may be offered an opportunity to pilot the revised Quality Standards (which shall not be substantively different), and any references to Quality Standards set out in these Programme Rules, shall in such circumstances, be to the revised Quality Standards made available under the pilot. Providers offered an opportunity to participate in any such pilot shall not be obliged to participate. Where such a provider elects not to participate in the pilot, the Quality Standards set out at the SDS Provider website shall apply.

3.3.9.2. The Provider shall submit to SDS, at such time(s) as SDS shall specify, for the duration of the MA Provider Contract and each Contract Schedule thereunder, a self assessment and action/improvement plan, the format of which shall be determined and made available by SDS, to evidence Provider achievement and planned improvement actions against the SDS Quality Standards referred to within the Quality Management Framework. SDS staff shall periodically visit the Provider to review supporting evidence held by the Provider.

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

3.3.9.4. The Provider shall ensure that it keeps its Self Assessment and action/improvement plan up to date at all times, and shall liaise with the SDS assigned Skills Investment Adviser on the progress of the action/improvement plan. Any material changes to either the Self Assessment or action/improvement plan must be resubmitted immediately to SDS through the SDS Quality Management mailbox, details of which can be provided by SDS on request.
3.4. **Rural Uplift**

3.4.1. Where any Participant who registers as a Start during the period of the MA Contract, is residing in Aberdeenshire, Argyll and Bute, Highland, Isle of Arran, Moray, Orkney, Perth and Kinross, Shetland, Western Isles (Eilean Siar), Dumfries and Galloway or Scottish Borders, an additional contribution shall be payable by SDS to the Provider as set out in Table 1 below:-

<table>
<thead>
<tr>
<th>Total number of milestones for Participant MA Framework as set out in each MA VQ Payment Plan</th>
<th>Trigger for Contribution</th>
<th>Additional Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>No less than 12 (which shall be deemed to include all MA Frameworks for Oil and Gas and Electrical Engineering, irrespective of the total number of milestones set out in the corresponding MA VQ Payment Plan)</td>
<td>Where Participant completes the first year of his/her MA during the period of the MA Contract in accordance with the Participant’s Training Agreement</td>
<td>£250</td>
</tr>
<tr>
<td></td>
<td>Where Participant completes the second year of his/her MA during the period of the MA Contract in accordance with the Participant’s Training Agreement</td>
<td>£250</td>
</tr>
<tr>
<td></td>
<td>Where Participant completes the third year of his/her MA during the period of the MA Contract in accordance with the Participant’s Training Agreement</td>
<td>£250</td>
</tr>
<tr>
<td></td>
<td>Where the Provider is legitimately claiming output based funding during the period of the MA Contract</td>
<td>£250</td>
</tr>
<tr>
<td>No less than 6 and no more than 11</td>
<td>Where Participant completes the first year of his/her MA during the period of the MA Contract in accordance with the Participant’s Training Agreement</td>
<td>£250</td>
</tr>
<tr>
<td></td>
<td>Where the Provider is legitimately claiming output based funding during the period of the MA Contract</td>
<td>£250</td>
</tr>
<tr>
<td>No less than 2 and no more than 5</td>
<td>Where the Provider is legitimately claiming output based funding during the period of the MA Contract</td>
<td>£250</td>
</tr>
</tbody>
</table>

Each payment may be claimed in accordance with such process as shall be set out in FIPS and/or otherwise detailed in the training provider area of the SDS website for Modern Apprenticeships.
3.5. **Travel and Subsistence Policy for Participants Resident in Specified Areas**

3.5.1. For all Starts registered on FIPS from 1 April 2017, where a Participant, resident in the following areas:-

3.5.1.1. Isle of Arran;
3.5.1.2. The local authority area of Argyll and Bute;
3.5.1.3. The local authority area of Highland;
3.5.1.4. The local authority area of Moray;
3.5.1.5. The local authority area of Orkney;
3.5.1.6. The local authority area of Shetland; or
3.5.1.7. The local authority area of Western Isles (Eilean Siar);

is required as part of his/her MA Programme to attend structured and formal off the job training (which is not conducted by or on behalf of the Participant’s employer or any Group Company of the employer) necessitating travel and/or overnight accommodation, then support is available in accordance with the process and policy set out in appendix 9 to these MA Programme Rules. Approval must be sought from SDS in advance, using the form set out in appendix 9a or by request through CTS/FIPS. Any such approval shall be confirmed by SDS in CTS/FIPS.

3.5.2. For all Participants registered previously as a Start on CTS/FIPS (i.e. prior to 1 April 2017), where such Participant is resident in specified local authority areas of SDS North Region (i.e. Argyll & Bute; Western Isles (Eilean Siar); Highland; Moray; Orkney and Shetland), and is required as part of his/her MA Programme to attend structured and formal off the job training (which is not conducted by or on behalf of the Participant’s employer or any Group Company of the employer) necessitating travel and/or overnight accommodation, then support is available in accordance with the process and policy set out in appendix 9 to these MA Programme Rules. Approval must be sought from SDS in advance, using the form set out in appendix 9a or by request through CTS/FIPS. Any such approval shall be confirmed by SDS in CTS/FIPS.

3.5.3. Without prejudice to SDS’ other rights and remedies, failure by the Provider to comply with the respective requirements contained in rules 3.5.1 or 3.5.2 (as applicable) within the requisite timescale, shall entitle SDS to recover on demand up to the full amount of all sums paid by SDS under the respective rule in respect of the relevant Participant, and withhold any and all future payments otherwise payable in respect of the Participant under the respective rule, which sums shall not be (re)payable to the Provider.

**D Standard Conditions**

4. **Standard Conditions**
4.1. Interpretation

4.1.1. 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 4.1.

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

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

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

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

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

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

4.1.8. 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.

4.1.9. Except to the extent expressly provided in these Rules, a reference to writing or written includes faxes but not email.

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

4.1.11. 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.

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

4.1.12.1. Any document signed by SDS approving any variations or dispensations pursuant to rule 5 of Part One or rule 2.7.1 of Part Three;
4.1.12.2. the letter awarding the Provider Contract to the Provider, and the acceptance thereof:
4.1.12.3. the Microsoft terms and conditions pertaining to each User Permission set out in the Training Provider pages of the SDS website available through https://www.skillsdevelopmentscotland.co.uk/for-training-providers/fips-funding-information-and-processing-system.
4.1.12.4. the remaining terms of the FIPS Software User Permission terms and conditions set out in the Training Provider pages of the SDS website available through https://www.skillsdevelopmentscotland.co.uk/for-training-providers/fips-funding-information-and-processing-system.
4.1.12.5. the terms of the Programme Rules;
4.1.12.6. the Contract Schedule;
4.1.12.7. any appendices to any of the documents;
4.1.12.8. the ITT;
4.1.12.9. the Provider’s ITT Response.

4.2. Any reference to ‘include’ and ‘including’ shall each be construed without limitation to the words preceding;

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

5. **Warranties and Representations**

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

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

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

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

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

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

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

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

5.1.8. it has not committed any offence under the Bribery Act 2010;

5.1.9. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under the MA Provider Contract;

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

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

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

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

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

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

6. **Corrupt Gifts and Payments of Commission**

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

6.2. The Provider shall, if requested, provide SDS with any reasonable assistance, at SDS’ reasonable cost, to enable SDS to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.

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

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

6.5. If any breach of this rule 6 is suspected or known, the Provider must notify SDS immediately and email the SDS assigned Skills Investment Advisor.

6.6. If the Provider notifies SDS that it suspects or knows that there may be a breach of this rule 6, the Provider must respond promptly to SDS’s enquiries, co-operate with any investigation, and allow SDS to audit books, records and any other relevant documentation. This obligation shall continue for 3 years following the expiry or termination of the MA Provider Contract and each Contract Schedule thereunder.
6.7. If the Provider, its staff or any person acting on the Provider's behalf, engages in conduct prohibited under this rule 6 or commits any offence under the Bribery Act 2010 SDS may:-

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

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

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

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

7. Best Practice

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

8. Conflicts of Interest

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

8.2. The Provider shall promptly email or write to the SDS assigned Skills Investment Advisor, to provide full particulars to SDS if such conflict referred
to in rule 8.1 of this Part Three above arises or is reasonably foreseeable to arise.

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

9. Safeguard Against Fraud

9.1. The Provider shall safeguard SDS’s funding of the MA Provider Contract against Fraud generally and, in particular, Fraud on the part of the Provider or its Staff. The Provider shall immediately notify SDS, and email the assigned SDS Skills Investment Advisor or assigned SDS Compliance Officer, if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur, providing details of same.

10. Contract Schedule Performance

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

10.1.1. the requirements of the MA Provider Contract; and

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

11. Data Protection Act

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

11.2. The Provider shall:

11.2.1. process the Personal Data only on behalf of SDS, only for the purposes of performing the services pursuant to the MA Provider Contract, and only in accordance with instructions contained in the MA Provider Contract, including the SDS Information Security and Data Handling Requirements contained in appendix 8 (and/or such other instructions given by SDS from time to time);
11.2.2. 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 in the form of an email from the SDS assigned Skills Investment Advisor;

11.2.3. at all times comply with the provisions of the Seventh Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 and, in so doing, implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, and if and when requested, provide a written description of the technical and organisational methods employed by the Provider for processing Personal Data (in accordance with such process and timescales set out by SDS from time to time);

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

11.2.5. ensure that only those of the Provider's Staff who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of the services pursuant to the MA Provider Contract and all of the Provider's Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this rule 11;

11.2.6. 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;

11.2.7. email the SDS assigned Skills Investment Advisor (within 7 calendar days) if it receives;

11.2.7.1. a request from a Data Subject to have access to that person's Personal Data; or
11.2.7.2. a complaint or request relating to SDS's obligations under the Data Protection Legislation; or
11.2.7.3. any other communication relating directly or indirectly to the processing of any Personal Data in connection with the MA Provider Contract;

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

11.2.8.1. providing SDS with full details of the complaint or request;
11.2.8.2. complying with a data access request within the relevant timescales set out in the Data Protection Legislation but strictly in accordance with SDS’s instructions;

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

11.2.8.4. providing SDS with any information requested by SDS;

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

11.2.10. not transfer Personal Data outside the European Economic Area without the prior written consent of SDS in the form of an email from either the assigned SDS Skills Investment Advisor or SDS’s Information Security officer; and, where SDS consents to such transfer, to comply with:

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

11.2.10.2. any reasonable instructions confirmed in an email from either the SDS assigned Skills Investment Advisor, or SDS’s Information Security officer.

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

11.4. The Provider shall, at all times during and after the period of the MA Provider Contract (including each Contract Schedule), indemnify SDS and keep SDS indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by SDS arising from any breach of the Provider’s obligations under this rule 11 except and to the extent that such liabilities have resulted directly from SDS’s instructions.
12. **Freedom of Information**

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

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

   12.2.1. transfer to SDS all requests for Information that it receives as soon as practicable and in any event within four calendar days of receiving a request for Information;
   
   12.2.2. provide SDS with a copy of all Information in its possession, or power in the form that SDS requires within 7 calendar days (or such other period as SDS may specify) of SDS’s request; and
   
   12.2.3. 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.

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

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

13. **Publicity**

13.1. Unless otherwise directed by SDS, the Provider shall not make any press announcements or publicise the MA Provider Contract in any way without SDS’s prior written consent in the form of an email from the SDS assigned Skills Investment Advisor.

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

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

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

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

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

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

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

14.1.5. where the Provider has any accreditation from any Awarding Body withdrawn or it is not renewed (in each case whether temporarily or otherwise);

14.1.6. where the Provider fails to notify SDS of any hold placed on any accreditation by an Awarding Body or any sanction which may impact on a Participant achievement;

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

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

14.1.9. where the Provider is a company and an Insolvency Event as described in rule 33 of Part Three to the MA Programme Rules has occurred in respect of the Provider;
14.1.10. where SDS terminates any other contract between the Provider and SDS as a consequence of breach on the part of the Provider, or

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

14.1.12. if SDS reasonably considers that the MA 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);

14.1.13. if the Provider fails to comply in the performance of the MA Provider Contract with legal obligations in the fields of environmental, social and employment law;

14.1.14. if SDS has reasonable cause to believe that at the time of contract award, the 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;

14.1.15. if SDS has reasonable cause to believe that the 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

14.1.16. if SDS has reasonable cause to believe that the MA Provider Contract should not have been awarded to the 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.

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

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

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

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

14.3. If SDS terminates the MA Provider Contract (or any part thereof) for breach, it shall be entitled to terminate any other contract between the Provider and SDS, without penalty, by serving written notice on the Provider with effect from the date specified in such notice.

14.4. SDS’s rights of termination under this rule 14, are available to SDS in addition to its other rights of termination provided under the MA Provider Contract.

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

14.6. 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 Provider.

14.7. The Provider shall be entitled to terminate the MA 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 5.1 of Part One (which shall be deemed to include any change that increases the costs incurred by the Service 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 29) prior to such date, failing which the Provider’s right of termination under this rule 14.7 shall elapse.

15. Suspension of Provider’s Appointment and Breach Notice
15.1. Where SDS has a right to terminate the MA Provider Contract (and/or any Contract Schedule) under this MA Provider Contract, it shall be entitled, whether as an interim measure prior to termination or as an alternative to termination, to

15.1.1. suspend the Provider’s appointment;

15.1.2. suspend the Provider’s access to CTS/FIPS; and/or

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

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

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

15.2.1. serve a notice on the Provider requiring the breach to be remedied (if capable of remedy) within a period specified in the notice, not being longer than 28 calendar days. If the breach has not been remedied by the expiry of the specified period, SDS may then terminate the MA Provider Contract and/or any other contract between SDS and the Provider (or Contract Schedule thereunder) (or part thereof) under rule 14 of this Part Three; and/or

15.2.2. require the Provider to agree to an action/improvement plan setting out remedial actions which the Provider requires to take, and a timescale within which such remedial actions must be taken. If the remedial actions have not been properly completed by the expiry of the specified period, or if SDS is, during specified period of the reasonable opinion that there is no reasonable prospect of the Provider properly completing the remedial actions within the stated timescale, SDS may then terminate the MA Provider Contract and/or any other contract between SDS and the Provider (or Contract Schedule thereunder) (or part thereof) under rule 14.1 of Part Three.

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

15.4. Adoption by SDS of any option mentioned in this rule 15 shall not prejudice SDS’s other rights and remedies arising before or after the adoption of such right.

16. **Consequences of Termination and Expiry**

16.1. Unless otherwise confirmed in writing by SDS, notwithstanding the service of a notice to terminate the MA Provider Contract and/or any other contract between SDS and the Provider (or Contract Schedule thereunder) or part thereof, the Provider shall continue to fulfil its obligations under the relevant contract until the date of expiry or termination of the relevant contract as referred to in the notice, or such other date as required under this rule 16.1.

16.2. Termination or expiry of the MA 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.

16.3. Termination or expiry of the MA Provider Contract and/or other contract or Contract Schedule (or part thereof), as applicable, shall be without prejudice to any rights, remedies or obligations of either party accrued under the relevant contract prior to such termination or expiry.

16.4. SDS shall not be obliged to make payment to the Provider for any Milestone, achieved after the date of termination.

16.5. Each rule which is either expressed to or by implication is intended to survive termination shall survive the termination or expiry of the MA Provider Contract, including all rules entitling SDS to recover monies, rule 2.6.2.1 (security of information), rule 11 (Data Protection Act), rule 12 (Freedom of Information), rule 14 (Termination), rule 16 (Consequences of Termination and Expiry), rule 21 (Records, Audit Access and General Assistance), rule 22 (Confidentiality), rule 31 (Intellectual Property) and rule 32 (Transfer of Undertakings), all in Part Three of these MA Programme Rules.

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

16.7. The Provider shall not, following termination of the MA Provider Contract or all Contract Schedules represent that the Provider is contracted to provide training under the MA Programme and shall not, even if previously permitted to do so, use or continue to use any SDS branding.

17. Liability

17.1. Subject to rule 17.2 of this Part Three, SDS’s total liability to the Provider for any costs and/or losses incurred or suffered by the Provider pursuant to the MA Provider Contract shall be capped at the total funding due to the Provider for performing the MA Programme under the Contract Schedule in relation to which the costs and/or losses have arisen.

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

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

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

17.3. Except insofar as liability arises from the circumstances set out in rules 17.2.1 and 17.2.2 above the Provider shall indemnify and keep indemnified SDS in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the MA Provider Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any information given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. This rule shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or by any circumstances within its or their control.

18. Severability

18.1. If any provision of the MA Provider Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the MA Provider Contract had been executed with the invalid provision eliminated.
18.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the MA Provider Contract, SDS and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

19. **Statutory and other Requirements**

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

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

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

20. **Non-Discrimination and fair work practices**

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

20.2. The Provider shall take all reasonable steps to secure the observance of rule 20.1 of this Part Three by all servants employees or Permitted Sub-contractors of the Provider and all suppliers and sub-contractors employed in the execution of the MA Provider Contract.

20.3. This rule 20 is without prejudice to the Provider’s obligations pursuant to the EO Act set out in Part Two.

20.4. The Provider shall during the period of the MA Provider Contract, provide to SDS such information as SDS may reasonably request on the 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 Provider’s workforce, and any agents and sub-contractors of the Provider. SDS may prescribe a timescale and/or template for this purpose, in which event the Provider shall comply with such timescale and/or template (as applicable).

21. **Records, Audit Access and General Assistance**

21.1. Subject to rule 21.3 below, SDS funding may be used to match fund European Social Fund (ESF) monies and, the Provider shall assume that all payments made by SDS to the Provider under the MA Provider Contract are
ESF funded. As such, the Provider may not use any amount which it is paid under the MA Programme as match funding for any other ESF bid, and the Provider shall retain full and accurate records and accounts of the operation of the MA 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 final payment on the ESF Programme. Unless otherwise advised by SDS, this date is expected to be 31 December 2024 (meaning providers shall retain the information until 31 December 2027).

21.2. In the event, and to the extent only, that SDS advises the Provider ((i) in the form of an email from the SDS assigned Skills Investment Advisor, (ii) through a variation to the MA Programme Rules, or (iii) via the training provider area of the SDS website for Modern Apprenticeships), that any payments made by SDS to the Provider are not ESF funded, the Provider shall only require to retain the information referred to in rule 21.1 until the expiry of (3) years after the date of expiry of the Provider Contract (or as long a period as may be specified by SDS in said email, rule variation or website, as applicable.

21.3. The Provider shall keep the records, evidence and accounts referred to in this rule 21 in accordance with good accountancy practice.

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

21.5. The Provider shall provide such records, evidence and accounts (together with copies of the Provider's published accounts) during the term of the MA Provider Contract and for the period referred to in rule 21.1 of this Part Three to the Auditor promptly on request by Auditor. Such provision shall be made at the Provider's premises (or the premises of the Provider's agents, if applicable) or, if requested by Auditor, at premises within Scotland.

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

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

21.6.2. providing unlimited access to sites controlled by the Provider and to equipment used in the performance of the MA Programme;
21.6.3. providing unlimited access to Provider staff, agents, representatives, Participants, and proposed and former Participants; and

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

21.7. The Provider shall bear its own costs and expenses incurred in respect of compliance with its obligations under this rule 21 unless the audit reveals a material breach by the Provider of its obligations in which case the Provider shall reimburse SDS for SDS's agents or representatives (as applicable) reasonable costs incurred in relation to the audit.

21.8. Where SDS requests, without prejudice to SDS' other rights and remedies (including SDS' rights pursuant to rule 21.12), and the Provider's other obligations the Provider shall forward all related records, evidence, accounts and supporting documentation to SDS for retention, and shall complete and sign such documentation as SDS may reasonably require, confirming the details of the records provided. Where any such records are in electronic format, the Provider shall (at the Provider's expense) procure such licence for SDS (and/or its Auditors) as is required to enable access to the records.

21.9. Where during any document retention period following the expiry of the MA Provider Contract or any Contract Schedule, the Provider is unable to continue performing any of its obligations which survive expiry (including any obligations to retain the records in accordance with this rule 21), the Provider shall promptly email the SDS assigned Skills Investment Advisor confirming same.

21.10. The Provider shall promptly provide such general assistance and information relating to the Provider's services and business as SDS may reasonably request from time to time which would assist SDS in responding to requests for information relating to providers and/or provider services that may be requested by or on behalf of Scottish Government, and/or assist SDS and/or Scottish Government in developing policy for modern apprenticeships.

21.11. The Provider shall permit duly authorised representatives of SDS unlimited access to interview Participants and/or to examine all records and all other supporting documentation in particular, evidence of assessment relating to the delivery of training. The Provider shall provide SDS with suitable oral or written explanation if requested and shall provide SDS with access to its staff for interviews on matters covered by the MA Provider Contract.

21.12. In the event that SDS and/or any other Auditor wishes access to any of the Provider records, evidence and accounts in accordance with this rule 21, if SDS and/or such Auditor requests, the Provider shall promptly, and within such timescale as SDS may specify, upload/scan (as appropriate) the requested records, evidence and/or accounts onto FIPS in accordance with such instructions as SDS may make available or if requested by SDS, email
such records, evidence and/or accounts to SDS. Any such requirement does not negate the obligation on the Provider to (i) retain the original copies of all such evidence, as required under the MA Programme Rules, and (ii) make such original copies otherwise available in accordance with rule 21.

21.13. 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 Provider fails to comply with any requirements set out in this rule 21.


21.15. Where any such audit or other SDS investigation reveals any breach of the MA Programme Rules and SDS is entitled to recover any sums for any Milestone claim accordingly, the Provider shall not be entitled to submit any alternative or additional evidence in support of such claim, nor submit a fresh claim for the said Milestone

22. Confidentiality

22.1. Subject to rule 22.2 of this Part Three, the Provider must treat the content of the MA Provider Contract and each Contract Schedule as confidential and not disclose the information unless:-

22.1.1. SDS gives prior written permission to disclose in the form of an email from the SDS assigned Skills Investment Advisor confirming same;

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

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

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

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

23. Performance Levels

23.1. In performing its obligations under the MA Provider Contract, the Provider shall:-
23.1.1. perform the services in such a manner as will ensure that the Achieved Performance Level in respect of that performance is equal to or higher than the Performance Levels set out rule 23.3 below; and

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

23.2. In the event that any Achieved Performance Level falls short of the relevant Performance Level, without prejudice to SDS’s other rights and remedies, the consequences set out in rule 23.3 shall apply.
23.3. The Performance Levels set out in this rule 23.3 shall apply. For the purposes of this rule 23.3 the following terms shall have the following meanings:-

'Month' shall mean each calendar month occurring during the period of each Contract Schedule, and ‘Monthly’ shall be construed accordingly.

Any reference to ‘Contract Schedule’ in this rule, 23.3 is a reference to the Contract Schedule as amended in accordance with the MA Provider Contract from time to time.

<table>
<thead>
<tr>
<th>Title of Performance Level</th>
<th>How Performance Level will be measured</th>
<th>Period Measured (Note that the measurement will be made on the last day of the last Accounting Period within each period measured)</th>
<th>Performance Level</th>
<th>Failure by Provider to meet Performance Level - Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Fulfilment of contracted starts</td>
<td>Measure as a percentage, the number of new Starts properly entered in FIPS in each measurement period against total volume of new Starts forecasted for that period in the Contract Schedule.</td>
<td>Each of the periods covered by the following Accounting Periods:-(i) Accounting Periods 1-3 (inclusive)(ii) Accounting Periods 4-5 (inclusive)(iii) Accounting Periods 6-7 (inclusive)(iv) Accounting Period 8 (v) Accounting Periods 9-10 (inclusive)(vi) Accounting Period 11</td>
<td>Provider shall ensure that the number of new Starts properly entered on FIPS in the relevant Period as a percentage of the total number of new starts forecast for entry on FIPS for that Period in the Contract Schedule, exceeds 95%.</td>
<td>In the event that the Provider fails to meet this Performance Level in any Period, and fails to provide a rationale for such failure which is acceptable to SDS (at SDS’ entire discretion), SDS shall be entitled to remove volumes of potential starts awarded under any Contract Schedule which are not registered as ‘Starts’ under FIPS.</td>
</tr>
</tbody>
</table>
|   | Fulfilment of contracted spend | Measure as a percentage, the total payments properly claimed by the Provider under the MA Provider Contract in each measurement period against total forecasted payments for that period set out in the Contract Schedule. | Each of the periods covered by the following Accounting Periods: -
(vii) Accounting Periods 1-3 (inclusive)
(viii) Accounting Periods 4-5 (inclusive)
(ix) Accounting Periods 6-7 (inclusive)
(x) Accounting Period 8
(xi) Accounting Period 9
(xii) Accounting Period 10
(xiii) Accounting Period 11
(xiv) Accounting Period 12 | The Provider must ensure that the total value of payments properly claimed in the Period measured as a percentage of the total value of payments forecast to be claimed for that Period in the Contract Schedule exceed 95%. | In the event that the Provider fails to meet this Performance Level in any Period, and fails to provide a rationale for such failure which is acceptable to SDS (at SDS’ entire discretion), SDS shall be entitled to reduce the Contract Value set out in the Contract Schedule. |
| 3 | Achievement Rates – Modern Apprenticeships | Measure percentage of Provider's actual achievement rate against the minimum achievement rate set out in the Contract Schedule | Not applicable | Provider must deliver at the minimum achievement rate set out in the Contract Schedule at all times. | In the event that the Provider fails to meet this Performance Level at any time, and fails to provide a rationale for such failure which is acceptable to SDS (at SDS’ entire discretion), SDS shall be entitled to remove volumes of potential starts awarded under any contract schedule agreed with the Provider for the provision of training for Modern Apprenticeships (or replacement scheme if applicable) awarded by SDS where such starts have not been entered as starts under CTS/FIPS or equivalent). |
| 4 | Claims progress and Corporate Training System/FIPS records accuracy. | Measure (i) percentage of Participants in respect of whom the Provider has not properly submitted a claim for a payment for 12 months (under exception of Participants in respect of whom claims were not identified as due within that period in the relevant CTS/FIPS assignment), and (ii) percentage of end dates | Monthly | The Provider must ensure:-  
(i) the number of Participants in respect of whom the Provider has not properly submitted a claim for a payment for 12 months (under exception of those Participants in respect | In the event that the Provider fails to meet either Performance Level in any Monthly period, and fails to provide a rationale for such failure which is acceptable to SDS (at SDS’s entire discretion), SDS shall be entitled to remove volumes of potential starts awarded under any Contract Schedule which are not registered as ‘Starts’ |
forecast in CTS/FIPS which are not properly confirmed in CTS/FIPS as actual end dates by the forecasted end date.

| of whom claims were not identified as due within that period in the relevant FIPS assignment), as a percentage of the total number of Participants properly entered in FIPS (under exception of Participants in respect of whom claims were not identified as due within that period in the relevant FIPS assignment), does not exceed 10%; and |
| (ii) the number of actual Participant MA end dates occurring and entered into FIPS in that Month as a percentage of the number of Participant MA end dates forecast in CTS/FIPS to occur in that Month exceeds 90%.

| under CTS/FIPS. |
| Measure in relation to the Training Provider Equality and Diversity Action Plan 2017-18, whether Provider has:--

(i) Accurately completed the plan in accordance with Rule 2.2.2.2 of Part Two as at 30 June 2017;

(ii) updated the plan at each of the required intervals;

(iii) properly completed all actions set out in the plan by the dates specified in the plan; and

(iv) provided immediately on request, all appropriate evidence of the actions stated within the plan (as at the date of SDS’ request) as having been undertaken.

| (i) 1 April 2017 - 31 August 2017
August 2017 – 30 November 2017

(ii) 1 December 2017 – 31 March 2018 |
| Provider shall ensure that it has fully complied with the requirements. |
| In the event that the Provider fails to meet this Performance Level in the Period, and fails to provide a rationale for such failure which is acceptable to SDS (at SDS’ entire discretion), SDS shall be entitled to suspend and/or terminate the MA Provider Contract, and/or any Contract Schedule, or part thereof. |
24. **Assignation and Sub-contracting**

24.1. The Provider shall not assign, novate, sub-contract or otherwise dispose of any of its rights or obligations under the MA Provider Contract or any Contract Schedule without the prior written consent of SDS (which consent shall be given entirely at the discretion of SDS, and shall require to be in the form of an email confirming same from the SDS assigned Skills Investment Advisor).

24.2. Where SDS grants consent to the Provider to sub-contract in accordance with rule 24.1, 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;

24.3. In respect of any such sub-contracting to which SDS has consented in accordance with rule 24.1:

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

24.3.2. the Provider shall include and maintain provisions in a written contract with each Permitted Sub-contractor, in terms suggested by or acceptable to SDS, which provide that the Permitted Sub-contractor cannot assign the sub-contract to a third party without the Provider’s consent (and the Provider shall not grant that consent without the prior written consent of SDS in the form of an email confirming same from the SDS assigned Skills Investment Advisor).

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

24.3.4. no sub-contracting by the Provider under this rule 24 or otherwise, and no approval or consent by SDS in relation thereto shall relieve the Provider of any liability or obligation under the MA Provider Contract.

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

24.5. SDS shall be entitled, without the need for the consent of the Provider, to assign, novate or otherwise dispose of its rights and obligations under the
MA Provider Contract or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by SDS.

24.6. For the avoidance of any doubt and without limitation to the preceding provisions of this rule 24, the requirements of rule 24 shall apply even where the Provider intends to delegate or sub-contract any of its rights or obligations under the MA Provider Contract and/or any Contract Schedule to a Group Company.

24.7. SDS reserves the right to charge an administration charge to reflect its costs incurred in considering, approving and agreeing the terms of any assignation or novation agreed pursuant to this rule 24, which charge shall be payable by the Provider within 28 calendar days of request by SDS.

25. **Change of Provider Name**

25.1. The Provider shall, no later than 10 calendar days following any change in the name of its company, or its trading name, inform SDS of same by emailing the SDS assigned Skills Investment Advisor providing full details of the change.

26. **Cumulative Remedies**

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

27. **Waiver**

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

27.2. 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 29 of this Part Three (Notices).

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

28. **Entire Agreement**

28.1. Except to the extent otherwise expressly provided in the MA Provider Contract:-
28.1.1. the MA Provider Contract (including the ITT Response, the award letter from SDS, each Contract Schedule and any other document properly incorporated by reference into the MA Provider Contract) constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the parties in relation to such matters;

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

28.2. Nothing in this rule 28 shall operate to exclude liability for fraud or fraudulent misrepresentation.

29. **Notices**

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

29.2. Any notice which is to be given by either SDS or the 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 29.3 of this Part Three. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given three calendar days after the day on which the letter was posted, or sooner where the other party acknowledges receipt of such letters.

29.3. For the purposes of rule 29.2 of this Part Three, the address for SDS and the Provider shall be as follows:-

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

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

29.3.3. where the Provider is not a UK registered company, the Provider’s address set out in the SDS award letter for this MA Provider Contract.

29.4. Where a Provider is not a UK registered company, the Provider may change its address for service by serving a notice on SDS confirming the change of address, in accordance with this rule 29.
30. **Marketing and Branding**

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

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

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

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

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

31. **Intellectual Property Rights**

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

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

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

32.2. If, on the termination, expiry or reduction in the scope of the MA Provider Contract or any Contract Schedule, any contract of employment or engagement of any current or former employee of the Provider has effect, or is claimed by such current or former employee to have effect, as if originally made between SDS and such current or former employee or between any new provider of the MA Programme, and such current or former employee, by operation of TUPE or otherwise, then the Provider shall indemnify SDS and any such new provider and keep them indemnified against all and any 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:

32.2.1. the employment or engagement: and/or
32.2.2. the claimed employment or engagement: and/or
32.2.3. the termination of the employment or engagement: and/or
32.2.4. the claimed termination of employment or engagement

of any such current or former employee by SDS or any such new provider.

32.3. If SDS asks, the Provider shall promptly enter into an appropriate agreement with any new provider on the same terms as those in rule 32.2 in order to give effect to rule 32.2 of this Part Three and the Provider shall indemnify SDS and keep SDS indemnified for and against any losses incurred by SDS which arise from a failure by the 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 32.2 above.

32.4. Nothing in this rule 32 will give rise to the inference that SDS accepts any liability for any person employed by the Provider.

33. Insolvency

33.1. The Provider shall notify SDS in writing (and email the SDS assigned Skills Investment Advisor and SDS assigned Compliance officer) immediately upon the occurrence of any of the following events ("insolvency events") during a period in which the Provider is providing an MA Programme pursuant to the MA Provider Contract:-

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

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

33.1.3. where the Provider is a company:-

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

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

33.1.3.3. a petition is presented for its winding up (which is not dismissed within 14 calendar 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;

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

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

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

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

33.1.3.8. any event similar to those listed in rule 33.1.3.1 to rule 33.1.3.7 occurs under the law of any other jurisdiction.

33.2. Without prejudice to SDS' other rights and remedies, on the occurrence of an insolvency event, a timescale for the final claim will be agreed by SDS
and the Provider; the Provider must provide to SDS records to support its claims and retain them in a suitable location or pass them to SDS with full details of what has been provided to Participants and details of what Milestones have been achieved.

34. **Blacklisting Regulations**

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

35. **Provider Personnel**

35.1. At all times, the Provider shall ensure that:

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

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

35.2. The Provider shall remove any of the Provider's personnel who SDS reasonably decides has failed to carry out his/her duties with reasonable skill and care. Following the removal of any of the Provider's personnel for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

36. **Law and Jurisdiction**

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