

Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

**“Accounting Period”**

means the applicable accounting period from the following list (which list may be amended from time to time, as advised by SDS):-

Accounting Period Identifier	Accounting Period Start Date	Accounting Period End Date	Accounting Period
Apr 18	01/04/2018	27/04/2018	201801
May 18	28/04/2018	25/05/2018	201802
Jun 18	26/05/2018	29/06/2018	201803
Jul 18	30/06/2018	27/07/2018	201804
Aug 18	28/07/2018	31/08/2018	201805
Sep 18	01/09/2018	28/09/2018	201806
Oct 18	29/09/2018	26/10/2018	201807
Nov 18	27/10/2018	30/11/2018	201808
Dec 18	01/12/2018	28/12/2018	201809
Jan 19	29/12/2018	25/01/2019	201810
Feb 19	26/01/2019	22/02/2019	201811
Mar 19	23/02/2019	31/03/2019	201812

**“Achieved Performance Level”**

means in respect of the relevant part of the services in any measurement period, the standard of performance actually achieved by the Provider in the performance of that part of the service in the measurement period in question (calculated and expressed in the same way as the Performance Level for that part of the service is calculated and expressed in rule 23 of Part Three of the Rules.

**“Approved List”**

means the list of approved qualifications (as amended by SDS from time to time) which is published on Public Contracts Scotland and thereafter will be available on the SDS website

<b>“Associated Provider”</b>	means any company which at the relevant time is (i) a holding company of the Provider; or (ii) a subsidiary or subsidiary undertaking of the Provider; or (iii) a subsidiary or subsidiary undertaking (other than the Provider itself) of any such holding company, the expressions “holding company”, “subsidiary” and “subsidiary undertaking” shall have the same meaning as is given to them by section 1162 of the Companies Act 2006 (as amended).
<b>“Audit”</b>	means an audit carried out pursuant to Rule 21 of Part Three of the Rules
<b>“Auditor”</b>	has the meaning set out in rule 21.4 of Part Three of the EF Programme Rules;
<b>“Best Practice”</b>	means in relation to the performance of the relevant obligation, the recommended process or format (as applicable) made available by SDS, to be used by the Provider
<b>“Bribery Act”</b>	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation
<b>“Care Experienced”</b>	means the individual has been formally looked after by a local authority, or elsewhere with support from social services or a social worker, (for example, in the family home, in foster care, residential/secure care or kinship care (with family or friends))
<b>“Change of Circumstance Form”</b>	means form set out in Appendix 6 notifying JCP of a change in a Participant’s circumstances
<b>“Change of Control”</b>	has the meaning set out in Rule 14.2 of Part Three of the Rules
<b>“Contract Schedule”</b>	means the contract entered into between SDS and the Provider when SDS requests services from the Provider
<b>“Contract Term”</b>	means the period from 1 April 2017 until 31 March 2018

**“Controlling Interest”**

means:

(a) the ownership or control (directly or indirectly) of more than fifty per cent (50%) of the voting share capital of the relevant undertaking; or

(b) the ability to direct the casting of more than fifty per cent (50%) of the votes exercisable by the partners, members or shareholders of the relevant undertaking;

(c) the right to appoint or remove directors of the relevant undertaking holding a majority of the voting rights at meetings of the board on all, or substantially all, matters

**“CTS/FIPS”**

means the SDS corporate training system or portal through which information relating to the EF Programme is recorded by and made available to each of the parties. For Participants historically registered as Starts on the Corporate Training System (CTSs), CTS shall continue to be the operable system/portal in relation to those Participants. For all other Participants, the Funding Information and Processing System (FIPS) shall be the operable system/portal and “CTS” and “FIPS” shall be construed accordingly.

**“Data Controller”**

has the meaning set out in the Data Protection Legislation from time to time

**“Data Processor” or “Processor”**

has the meaning set out in the Data Protection Legislation from time to time

<b>“Data Protection Legislation”</b>	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended or succeeded by the proposed Regulation on Privacy and Electronic Communications); and from 25 May 2018, the GDPR; together with any legislation that, in respect of the United Kingdom, replaces, or enacts into United Kingdom domestic law, the GDPR or the proposed Regulation on Privacy and Electronic Communications and all applicable laws and regulations relating to processing of personal data and privacy whether as a consequence of the United Kingdom leaving the European Union or not, including where applicable the guidance and codes of practice issued by the Information Commissioner;
<b>“Data Subject”</b>	has the meaning set out in the Data Protection Legislation from time to time;
<b>“DWP”</b>	means Department for Work and Pensions or its functional successor whomsoever;
<b>“Eligibility Confirmation”</b>	has the meaning set out in Rule 2.3 of Part Two of the Rules
<b>“Employment Losses”</b>	means actions, proceedings, liabilities, costs, losses, damages, claims, demands and expenses (including, without limitation, all legal and professional fees and expenses, on a full indemnity basis)
<b>“FOISA”</b>	means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and any subordinate legislation made under each such Act from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant Government department in relation to such legislation
<b>“Funding Model”</b>	means the funding model set out in Appendix 1 of the Rules.
<b>“GDPR”</b>	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC

<b>“Group A, B or C Qualifications”</b>	means the qualifications that are categorised as such on the Approved List
<b>“Individual Training Plan”</b>	has the meaning set out in Rule 5.1 of Part Two of the Rules
<b>“Intellectual Property Rights”</b>	means copyright, patents, trade marks, service marks, design rights (whether registered or unregistered), trade secrets and other similar property rights
<b>“ITT Response”</b>	means all information supplied to SDS by or on behalf of the Provider in response to SDS’ invitation to tender for the provision of the activity to be provided pursuant to the Provider Contract, including the ITT response section, the volume bid documentation and all supporting documentation required pursuant to SDS’ invitation to tender.
<b>“LEP”</b>	means Local Employability Partnership
<b>“Modern Apprenticeship”</b>	means paid employment through the SDS Modern Apprenticeship Programme combined with the opportunity to train for jobs at craft, technician and management level
<b>“National Training Programmes”</b>	means the Employability Fund and the Modern Apprenticeship Programme
<b>“Outcome”</b>	means all achievements classed as outcomes in respect of which a Provider will receive a payment in terms of the Funding Model
<b>“Outcome Payment”</b>	means a payment to be made to a Provider in respect of an Outcome
<b>“Output”</b>	means all outputs for which a Provider will receive a payment in terms of the Funding Model
<b>“Output Payment”</b>	means a payment to be made to a Provider in respect of an Output
<b>“Parent Company”</b>	means any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. The term “Holding Company” shall have the meaning ascribed by Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto

<b>“Participant”</b>	means an individual who has been approved and registered on the Employability Fund Activity
<b>“Performance Level”</b>	means the performance level to which the relevant part of the activity is to be provided, as set out in Rule 23 of Part Three of the Rules
<b>“Permitted Sub-contractor”</b>	means a party to which the Provider has sub-contracted certain rights and obligations under the Provider Contract and/or Contract Schedule and where the identity of that sub-contractor and the sub-contracting arrangement has been approved by SDS in accordance with Rule 24 of Part Three of the Rules.
<b>“Personal Data”</b>	has the meaning set out in the Data Protection Legislation from time to time
<b>“Placement”</b>	means the placement of a Participant on work experience pursuant to the Employability Fund Activity
<b>“Proposal”</b>	means the Provider’s written proposal in response to SDS’ request for a proposal contained within the invitation to tender which forms part of the contract, specifying details of the Employability Fund Activity, as agreed between the Provider and SDS including any amendments that may be agreed from time to time
<b>“Quality Standards”</b>	means the minimum quality standards identified within the SDS Quality Management Framework available on the SDS NTP Provider website, (as may be amended by SDS from time) which the Provider must meet when performing the Services, and includes the SDS quality standards, and any optional alternative quality standards that may be expressly referenced in the SDS Quality Management Framework
<b>“Recruitment Payment”</b>	means a payment to be made to a Provider for each Start to the Employability Fund Activity in terms of the Funding Model
<b>“Referring Organisation”</b>	has the meaning set out in Rule 4.1 of Part Two of the Rules
<b>“Requests for Information”</b>	means a request for information or an apparent request under the FOISA.
<b>“Start”</b>	means the entry of a Participant (who has been registered and approved on CTS/FIPS) onto the Employability Fund Activity.

<b>“Strategic Skills Pipeline”</b>	has the meaning set out in Rule 1.1 of Part Two of the Rules.
<b>“Training Agreement”</b>	has the meaning set out in Rule 6.2 of Part Two of the Rules
<b>“Training Allowance”</b>	means the payments identified as such and received by certain Participants from the DWP
<b>“TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended from time to time.
<b>“User Permission”</b>	means the terms and conditions applicable to the use by each of the Provider’s users, of FIPS, details of which are available on or sign posted through the training provider area of the SDS website for Employability Fund, as amended from time to time;
<b>“Working Day”</b>	means any day other than a Saturday, Sunday or public holiday in Scotland
<b>“Young Persons Allowance”</b>	has the meaning set out in Rule 7.1 of Part Two of the Rules