

CLAUSE NO.	DETAILS OF CLARIFICATION/AMENDMENT (ALL CHANGES HIGHLIGHTED IN YELLOW)	REASON FOR AMENDMENT
<p>Please note any agreement for variation to the EF Programme Rules must be submitted for review on an annual basis. Any agreements currently in place will run to 31 March 2020 only, subject to review.</p>		
Throughout	<p>Dates have been updated</p>	
Introduction	<p>From April 2019 all Employability Fund activity will be processed via the Funding Information and Processing System "FIPS". FIPS streamlines information sharing between Providers and SDS. As such, Providers are required 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 assignment 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 FIPS, currently available at http://www.skillsdevelopmentscotland.co.uk/for-training-providers/fips-funding-information-and-processing-system/</p> <p>Details of the Microsoft terms and conditions currently applicable to SDS are available at – http://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentTypeId=53&Language=1</p>	Updated
<p>PART 2</p>		
Part 2 2 Eligibility	<p>2.5.5 An overseas national who is subject to any funding restriction which would apply to the Employability Fund</p>	New
Part 2 6.2 Training Agreement and Equalities Monitoring Form	<p>Training Agreement and Equalities Monitoring Form</p>	New heading
Part 2 6.2 Training Agreement and Equalities Monitoring Form	<p>6.2.1 To start a Participant on the Employability Fund Activity, an accurate assignment must be created on FIPS and approved by SDS. An assignment cannot be created on FIPS before a Training Agreement has been fully and accurately completed, signed and dated by the Participant and Provider.</p>	Reviewed and updated
Part 2 6.2 Training Agreement and Equalities Monitoring Form	<p>6.2.2 The Provider shall accurately enter the Participant's details, including without limitation, the email address of the Participant, together with details of the content and duration of the Employability Fund Activity that the Participant will undertake, on FIPS.).</p>	Reviewed and updated

PROTOCOL COMMUNICATION

REF NO. : PR/EF/1920/01

ALL AMENDMENTS ARE INCLUDED IN THE 2019/20 EF PROGRAMME RULES AND ARE EFFECTIVE FROM 1 APRIL 2019

<p>Part 2 6.2 Training Agreement and Equalities Monitoring Form</p>	<p>6.2.3 For each Participant, the Training Agreement available on the training provider area of the SDS website, must be fully and accurately completed, and signed and dated by the Participant and Provider within 9 calendar days of the Participant’s start date on the Employability Fund Activity before the individual will be regarded as a Participant. Before obtaining the signature of the Participant, the Training Provider shall make a copy of SDS’s then current Privacy Notice (available on the same website), available to the Participant and ensure the Participant has an appropriate opportunity to consider its contents.</p>	<p>Clarification</p>
<p>Part 2 6.2 Training Agreement and Equalities Monitoring Form</p>	<p>6.2.6 The Equality Monitoring Form as set out in paragraph 2.4.4 of Part 3 of these Rules must be given to all Participants at the same time as the TA.</p>	<p>New</p>
<p>Part 2 8 Recruitment, Outputs and Outcomes</p>	<p>8.3.3 In the case of all Outputs, copy certificates are acceptable as evidence for monitoring purposes. Where SQA is the awarding body, evidence of “entry status code 5”, meaning a certificated result with date of certification, is acceptable as evidence for monitoring purposes.</p>	<p>Clarification</p>
<p>Part 2 8 Recruitment, Outputs and Outcomes</p>	<p>8.3.11 In the case of an Outcome Payment for a Participant progressing to a form of learning with minimum Output levels that are: - 8.3.11.1 higher than the minimum Output levels for the Stage of Employability Fund activity from which the Participant has progressed, or 8.3.11.2 the same or higher than the minimum Output level for the Stage of Employability Fund activity from which the Participant has progressed, for vocational provision; the Provider shall, provide to SDS no later than (i) the intake date for the course first occurring after the date that the Participant left the Employability Fund Activity, or (ii) 6 months after the date that the Participant left the Employability Fund Activity, whichever date is the later, evidence confirming the university or college, the session date and the course that the Participant has been enrolled on. The evidence can take the form of either (i) a letter or an email from the university or college confirming the course that the Participant has been enrolled on and the date on which the Participant started the course or (ii) a copy of the Participants student card signed by the Participant with the session date and course title clearly identified.</p>	<p>Reviewed and updated</p>
<p>Part 2 10 Exit from the Employability Fund Activity</p>	<p>10.5 Once a Participant has left the EF, the leaving details must be entered immediately to FIPS by the Provider using the leaving codes set out in Appendix 13.</p>	<p>Clarification</p>
<p>Part 2 11 Contact with Individuals</p>	<p>11.1 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 observation, visit, meeting, online correspondence, survey and/or telephone call with SDS (or its agents) concerning the operation of the Employability Fund as may be requested by or on behalf of SDS from time to time.</p>	<p>Clarification</p>
<p>PART 3</p>		
<p>Part 3</p>	<p>2.4.1. Under the Equality Act 2010, SDS has a Public Sector Equality Duty to promote equality of opportunity in its products and services, including the Employability Fund. The Provider must ensure that in delivering the</p>	<p>Reviewed and updated</p>

<p>2 Policies, procedures and Systems</p>	<p>Employability Fund no acts of discrimination take place (as defined within the Equality Act 2010), and that they take steps to ensure equality of opportunity with respect to the recruitment and achievement of different customer groups.</p>	
<p>Part 3 2 Policies, procedures and Systems</p>	<p>2.4.2. The Provider must: -</p> <p>2.4.2.1. and its sub-contractors must have, and comply with, an equal opportunities policy covering its own staff and its Participants (where there are at least 5 staff members). Providers must be able to demonstrate how the policy is implemented and monitored. Providers must make all Participants aware of the policy prior to commencing the programme, and ensure they understand how to raise any concerns about bullying and/or harassment</p> <p>2.4.2.2. include equality actions within their quality action plan which outline how they intend to improve the diversity of their EF programme, for example through their recruitment process; by providing staff with relevant development in equality topics; by supporting the needs of Participants; or through taking positive action targeting specific customer groups. The Provider should seek to continuously improve their equality outcomes via this action plan. The actions identified should be based on evidence such as:</p> <ul style="list-style-type: none"> • SDS Apprenticeship Equality Action Plan https://www.skillsdevelopmentscotland.co.uk/publications-statistics/publications/?page=1&area[]=8&topic[]=8-4&order=date-desc • Sectoral data regarding characteristics of the workforce (e.g. via Skills Investment Plans https://www.skillsdevelopmentscotland.co.uk/what-we-do/skills-planning/skills-investment-plans • Data on local demographics (e.g. Local Authority Equality Summaries https://www.skillsdevelopmentscotland.co.uk/publications-statistics/publications/?page=1&area[]=8&topic[]=8-4&order=date-desc • Provider equality monitoring data (either from SDS or their own equality data) • Any other relevant research/evidence 	<p>Reviewed and updated</p>
<p>Part 3 2 Policies, Procedures and Systems</p>	<p>2.6 Funding Information and Processing System</p>	<p>Change of title</p>
<p>Part 3 2 Policies, Procedures and Systems</p>	<p>2.7, 2.7.1, 2.7.2 NLOD no longer relevant. Paragraphs removed</p>	<p>Paragraphs removed</p>
<p>Part 3 2 Policies, Procedures and Systems</p>	<p>2.8 My World of Work</p> <p>2.8.1 The Provider shall use best endeavours to encourage each Participant to register on the SDS My World of Work web service at http://www.myworldofwork.co.uk/ (or such alternative address as SDS may use from time to time) during the Participant’s induction to the Programme and if unsuccessful at that time, during the</p>	<p>Reviewed and updated</p>

	<p>Participant’s training. From time to time, SDS shall carry out checks to compare the number of each Provider’s Participants registered on FIPS against the number registered on My World of Work.</p> <p>2.8.2 My World of Work hosts a database of learning opportunities available in Scotland. If a Provider wishes to add any of their courses to this database they must do this using the SDS Course management tool available on the training provider area of the SDS website.</p>	
Part 3 2 Policies, Procedures and Systems	<p>2.9.1 The Provider shall use best endeavours to inform Participants of SDS’ Modern Apprenticeship and Graduate Apprenticeship schemes as potential alternative career pathways, where appropriate including signposting to https://www.apprenticeships.scot/</p>	Reviewed and updated
Part3 3 In training	<p>3.1.3 and 3.4 Formal Quality Assessment Process</p>	Change of terminology
Part 3 3.2 Provider Controls and Assurance	<p>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 properly complete the Employability Fund activity, 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. 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 Rules. The Provider shall submit a copy of their completed Record of Provider Controls to SDS promptly on request. SDS shall be entitled at all times to assess the Provider’s controls (during and after the period of the Provider Contract), (accessing the Provider’s and any sub-contractor premises as deemed appropriate by SDS) and take such action as SDS deems appropriate to establish the extent to which the controls are (or were, as appropriate) operating satisfactorily. The Provider shall co-operate fully with SDS in each such assessment and/or action. Without prejudice to SDS’ other rights and remedies, if required by SDS, the Provider shall prepare and implement an action/improvement plan to address areas for improvement recommended by SDS. SDS shall be entitled to require (without limitation) any action/improvement plan to include actions to address any improvement SDS deems appropriate following any review by SDS of the Provider’s controls.</p>	Reviewed and updated
Part 3 3.2 Provider Controls and Assurance	<p>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 Rules, and (ii) notify SDS of each such change in accordance with such instructions as SDS provides with the Record of Controls.</p>	Reviewed and updated
Part 3 3.2 Provider Controls and Assurance	<p>3.2.4 The Provider shall complete a ‘Provider Annual Certificate of Assurance’ attached as Appendix 17. 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 Contracts 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 Rules and (ii) the Record of Provider Controls in respect of that period (as amended in accordance with this rule 3.2). This is a mandatory document</p>	Clarification

	and (except as provided in rule 3.2.4A) is attached as Appendix 17 to the Rules. 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.	
Part 3 3.4 Formal Quality Assessment Process	3.4.1 The Quality Assurance and Improvement Framework sets out standards which 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. A copy of the current SDS Quality Assurance and Improvement Framework is available on the SDS website https://www.skillsdevelopmentscotland.co.uk/for-training-providers/quality-assurance-framework/ . The Quality Assurance and Improvement Framework may be amended from time to time by SDS. Any amended version shall be available on the SDS website.	Reviewed and updated
Part 3 3.4 Formal Quality Assessment Process	3.4.2 The Provider shall submit to SDS no later than 30th April 2019 , a self assessment and Quality Action Plan for review and acceptance by SDS, the format of which shall be determined and made available by SDS, to evidence Provider achievement and planned improvement actions against the Quality Standards referred to within the Quality Assurance and Improvement Framework . Subject to any alternative arrangements which SDS may advise in writing, SDS staff shall periodically visit the Provider to review supporting evidence held by the Provider.	Reviewed and updated
Part 3 3.4 Formal Quality Assessment Process	3.4.3 Except where otherwise confirmed by SDS under paragraph 3.4.2 , SDS will use each of the Provider’s Self Assessment(s) submitted by the Provider and additional appropriate evidence, to assess the Provider against each of the Quality Standards. SDS may examine a range of evidence as indicated within the SDS Quality Assurance and Improvement Framework . SDS will routinely monitor Providers on an ongoing basis in relation to the Quality Standards. SDS will also undertake formal reviews of Providers using a risk based approach. SDS may not formally review all Providers during the period of this Provider Contract. SDS will publish its findings on each such review, including its applicable grade for the review, on the SDS website.	Reviewed and updated.
Part 3 3.4 Formal Quality Assessment Process	3.4.5 In the event that the Provider fails to meet the Quality Standards at any time (whether established through SDS’s own examination, or through such alternative quality standard assessment), this shall be deemed a breach of the Provider Contract. This includes failure to submit a self assessment and quality action plan which is acceptable to SDS. In addition to SDS’ other rights and remedies, Providers should be aware that performance against the Quality Standards pursuant to the Provider Contract may be included as a minimum requirement and/or evaluation criteria in future Provider contracts.	Reviewed and updated
Part 3 5: Warranties and Representations	5.1.4 as at the commencement of the Contract Term, 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 Provider Contract and it will promptly advise their assigned SDS Contract Executive in writing 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;	Clarification

<p>Part 3 11 Data protection Act</p>	<p>11.2.4 at all times comply with the provisions of the Sixth Data Protection Principle set out in Chapter 2 of Part 4 of the Data Protection Act 2018 and, Article 32 of the GDPR, 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) and the Provider shall provide reasonable assistance to SDS in implementing its own technical and organisational measures;</p>	<p>Reviewed and updated</p>
	<p>11.2.14.1 – 11.2.14.2</p>	<p>Renumbered as one paragraph has been removed</p>
<p>Part 3 11 Data protection Act</p>	<p>11.2.15 immediately notify SDS if it considers that SDS’s instructions are in breach of the Data Protection Legislation; and 11.2.16 keep a written record of all such processing activities which shall include the information required to be kept under Article 30(2) of the GDPR;</p>	<p>New</p>
<p>Part 3 11 Data protection Act</p>	<p>11.3 – 11.6</p>	<p>Renumbered</p>
<p>Part 3 11 Data protection Act</p>	<p>11.7 SDS acknowledges that the Provider is reliant on SDS alone for direction as to the extent the Provider is entitled to use and process the Personal Data where the Provider is a Data Processor pursuant to the Provider Contract. Subject to paragraph 11.2.15 of Part 3 of these Rules, the Provider shall be entitled to relief from liability in circumstances where a Data Subject makes a claim or complaint with regards to the Provider's actions to the extent that such actions directly result from instructions received from SDS.</p>	<p>New</p>
<p>Part 3 23 Performance Levels</p>	<p>23.3.1 Performance Level 1 – Fulfilment of contracted starts</p> <p>How Performance Level will be measured Measure as a percentage, the number of new Starts properly entered in FIPS a percentage of total volume of new Starts forecasted for that period in the Contract Schedule.</p> <p>Performance Level Action/ Measurement Period Provider shall ensure that at the expiry of each of the following Periods, the number of new Starts properly entered onto FIPS as at that date, measured as a percentage of the total volume of new Starts forecasted for that period in the Contract Schedule exceeds 95%.</p> <p>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)</p>	<p>Reviewed.</p>

	<p>(iv) Accounting Period 8 (v) Accounting Periods 9 -10 (inclusive) (vi) Accounting Period 11</p> <p>Failure by Provider to meet Performance Level - Consequences If 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</p>	
<p>Part 3 23 Performance Levels</p>	<p>23.3.2 Performance Level 2 – Fulfilment of contracted spend</p> <p>How Performance Level will be measured Measure as a percentage, the total payments properly claimed by the Provider under the Provider Contract as a percentage against total forecasted payments set out in the Contract Schedule.</p> <p>Performance Level Action/ Measurement Period Provider must ensure that at the expiry of each of the following Periods, the total value of payments properly claimed as at that date, measured as a percentage of the total value of payments forecast to be claimed for that Period in the Contract Schedule exceed 95%.</p> <p>Each of the periods covered by the following Accounting Periods: -</p> <p>(i) Accounting Periods 1-3 (inclusive) (ii) Accounting Periods 4-5 (inclusive) (iii) Accounting Periods 6-7 (inclusive) (iv) Accounting Period 8 (v) Accounting Period 9 (vi) Accounting Period 10 (vii) Accounting Period 11 (viii) Accounting Period 12</p> <p>Failure by Provider to meet Performance Level - Consequences If 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.</p>	<p>Reviewed</p>

<p>Part 3 23 Performance Levels</p>	<p>23.3.3 Performance Level 3 – Claims progress and FIPS records accuracy</p> <p>How Performance Level will be measured Measure as a percentage, the number of end dates forecast in FIPS which are not properly confirmed in FIPS as actual end dates by the forecasted end date.</p> <p>Performance Level Action/ Measurement Period On a monthly basis, the Provider must ensure that the number of actual end dates occurring and entered into FIPS in that Month as a percentage of the number of end dates forecast in FIPS to occur in that Month exceeds 90%.</p> <p>Failure by Provider to meet Performance Level - Consequences If the Provider fails to meet the 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’ under FIPS</p>	<p>Reviewed</p>
<p>APPENDICES</p>		
<p>All</p>	<p>Dates have been updated</p>	
<p>Appendix 11 Progression to employment/self employment declaration</p>	<p>The personal data collected in this form is required for evidence to support an outcome claim by the named EF training provider. The EF training provider will store this information for this purpose, and SDS will have access to this information for the purposes of audit and compliance. These records will be held in line with the Employability Fund retention policy until 31 December 2029. If this date changes, SDS will inform training providers of this and will update this in the SDS privacy policy, found at www.sds.co.uk/privacy. Please visit this page on the SDS website for any other information you may require, such as your rights as an individual under Data Protection law, or how to get in contact with us for further information.</p>	<p>GDPR Statement added</p>
<p>Appendix 11 Progression to employment/self employment declaration</p>	<p>The declaration has been reviewed and updated</p>	
<p>Appendix 12 Progression to sustained employment/self-employment declaration</p>	<p>The personal data collected in this form is required for evidence to support an outcome claim by the named EF training provider. The EF training provider will store this information for this purpose, and SDS will have access to this information for the purposes of audit and compliance. These records will be held in line with the Employability Fund retention policy until 31 December 2029. If this date changes, SDS will inform training providers of this and will update this in the SDS privacy policy, found at www.sds.co.uk/privacy. Please visit this page on the SDS website for any other information you may require, such as your rights as an individual under Data Protection law, or how to get in contact with us for further information.</p>	<p>GDPR Statement added</p>