

Glossary - Employability Fund

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

<b>“Accounting Period”</b>	means the Active Financial Period;
<b>“Achieved Performance Level”</b>	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;
<b>“Active Financial Period”</b>	means the applicable active financial period as identified within FIPS or by SDS on the SDS Provider Web Pages (as determined by SDS);
<b>“Approved List”</b>	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 Provider Web Pages;
<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 the form set out in Appendix 6 notifying DWP 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 2020 until 31 March 2021, subject to any extension in accordance with Rule 3.2 and/or 3.5 (as applicable);
<b>“Controlling Interest”</b>	means: <ul style="list-style-type: none"> <li>(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</li> <li>(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;</li> <li>(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;</li> </ul>
<b>“Data Controller” or “Controller”</b>	has the meaning set out in the Data Protection Legislation from time to time;
<b>“Data Loss Event”</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under the EF Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the EF Contract, including any Personal Data Breach;
<b>“Data Processor” or “Processor”</b>	has the meaning set out in the Data Protection Legislation from time to time;
<b>“Data Protection Impact Assessment”</b>	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

<b>“Data Protection Legislation”</b>	means the Data Protection Act 2018, 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 (SI2000/2699), 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 the GDPR; together with any legislation that, in respect of the United Kingdom, replaces, or enacts into United Kingdom domestic law, 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>“EF Contract”</b>	means the agreement entered into between the Provider and SDS by virtue of and subject to the provisions contained within the documents described as forming the contract in SDS’s letter of Award, and any formal variations to any of these documents to the extent only that they are implemented fully in accordance with the variation provisions set out in these documents.
<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>“FIPS”</b>	means the SDS Funding Information and Processing System portal through which information relating to the EF programme is recorded by and made available to each of the parties;
<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>“Information”</b>	has the meaning set out in the Freedom of Information (Scotland) Act 2002;
<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>“Letter of Award”</b>	Means the letter issued by SDS to the Provider containing SDS’s offer to contract with the Provider for the provision of the Employability Fund Services, the signed duplicate copy of which is returned to SDS;
<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 programme;
<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>“Personal Data Breach”</b>	has the meaning set out in the GDPR, from time to time;
<b>“Placement”</b>	means the placement of a Participant on work experience pursuant to the Employability Fund Services;
<b>“Processed Data”</b>	has the meaning set out in Appendix 3 to the Rules;
<b>“Prohibited Act”</b>	the following constitute Prohibited Acts: <ul style="list-style-type: none"> <li>• to directly or indirectly offer, promise or give any person working for or engaged by us a financial or other advantage to: <ul style="list-style-type: none"> <li>- induce that person to perform improperly a relevant function or activity; or</li> <li>- reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>• to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this EF Contract;</li> <li>• committing any offence: <ul style="list-style-type: none"> <li>- under the Bribery Act 2010;</li> <li>- under legislation creating offences concerning fraudulent acts;</li> <li>- at common law concerning fraudulent acts relating to this EF Contract or any other contract with us; or</li> </ul> </li> <li>• defrauding, attempting to defraud or conspiring to defraud us;</li> </ul>
<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 Services, as agreed between the Provider and SDS including any amendments that may be agreed from time to time;
<b>“Protective Measures”</b>	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted by it;

<b>“Provider”</b>	means the body contracted to provide the Employability Fund Services to SDS, as set out in the relevant Letter of Award (and any reference to ‘Providers’ shall refer to each individual Provider);
<b>“Quality Standards”</b>	means the minimum quality standards identified within the SDS Quality Assurance and Improvement Framework available on the SDS Provider Web Pages, (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 Assurance and Improvement Framework;
<b>“Recruitment Payment”</b>	means a payment to be made to a Provider for each Start to the Employability Fund programme 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>“SDS Provider Web Pages”</b>	means the web pages, (currently available through <a href="http://www.skillsdevelopmentscotland.co.uk">www.skillsdevelopmentscotland.co.uk</a> , and as may be varied by SDS from time to time) specifically for learning/training providers. As at the commencement date of the EF Contract these are entitled ‘Learning Providers’, but this name may change from time to time;
<b>“Start”</b>	means the entry of a Participant (who has been registered and approved on FIPS) onto the Employability Fund programme;
<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 Provider Web Pages 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.