

1. The Data

1.1. Data has the meaning set out in Appendix 13, Part 1.

2. Sharing of the Data

2.1. The Provider agrees to disclose the Data to SDS in accordance with the transfer arrangements detailed in Part 3 of Appendix 13.

2.2. The parties agree that the nature of the relationship between them is such that the disclosure of Data is on a Data Controller to Data Controller basis. The parties agree that each party is responsible for complying with the obligations incumbent on a Data Controller under the Data Protection Legislation (including responding to Subject Access Requests and other requests from a Data Subject under Data Protection Legislation) in relation to the Data that it Processes and that neither party is liable for any actions of the other party which might breach those obligations. The parties agree that they are not joint data controllers of any of the Personal Data processed under the EF Contract.

2.3. The Provider shall make its own privacy notice available to the Data Subject in relation to its own processing activities relating to the EF Programme.

3. SDS's Assurances

3.1. Without preventing or limiting SDS from processing the Data for any additional purpose, where there is a lawful basis for doing so, and subject to SDS fulfilling its obligations under the Data Protection Legislation in respect of any such additional purpose, SDS shall at all times use the Data solely for the purposes set out in Part 2 to this Appendix 13.

Appendix 13 - Part 1

The Data

1. For the avoidance of doubt, this Appendix 13 only applies to the Personal Data comprised in the Data. "Data" comprises all of the following:-

None. [SDS does not anticipate that there will be any personal data that is to be shared on a Controller to Controller basis. If this is not the case, please advise SDS and a list of the relevant personal data can be inserted in this paragraph 1 as agreed and the remaining parts of this Appendix 13 discussed and agreed. The provisions in this Appendix 13 will apply to the extent that any such personal data is being shared on a Controller to Controller basis].

Appendix 13 - Part 2

The Purposes and Bases of Sharing

1. The purposes for sharing the Data are as follows: -
2. [SDS's rights to process the Data derive from SDS's powers and obligations which include the powers conferred on the Scottish Government by section 2 of the Employment and Training Act 1973.]

Appendix 13 - Part 3

Data Transfer Arrangements

1. Subject to SDS introducing any alternative arrangements (which may include use of []), the Data is intended to be transferred to SDS in the following manner:-

Processing of Processed Data

1. For the avoidance of doubt, this Appendix 14 applies to the Personal Data comprised in Processed Data. “Processed Data” comprises all the Personal Data that the Provider processes pursuant to the EF Contract under exception of the Data (if any) set out in Appendix 13.
2. The parties acknowledge that for the purposes of the Data Protection Legislation, SDS is the Controller and the Provider is the Processor in respect of the Processed Data. The only processing that the Provider is authorised to do in respect of the Processed Data is to process it in accordance with the requirements (including the purpose and manner) set out in SDS’s Invitation to Tender and the Rules, and where it requires to be delivered to SDS, to submit the Processed Data to SDS in accordance with those provisions, including this Appendix 14 and any written guidance or instructions that SDS may issue from time to time.
3. The Provider shall delete and/or destroy:-
 - 3.1. each populated SDS Employability Fund Equality Monitoring Form, as soon as the Provider has received payment from SDS in respect of the registration of the relevant Participant as an EF participant and the Provider shall not retain any copy of the populated form or retain or use any information contained in any such form for any other purpose;
 - 3.2. all other Processed Data in accordance with the terms of the EF Contract and such additional instructions as SDS may advise from time to time in writing.
4. The Provider shall notify SDS immediately if the Provider considers that any of SDS’s instructions infringe the Data Protection Legislation.
5. The Provider shall provide all reasonable assistance to SDS in the preparation of any Data Protection Impact Assessment prior to commencing any processing of any Processed Data, particularly in relation to the Equalities Monitoring Data. Such assistance may, at SDS’s discretion, include: -
 - 5.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 5.2. an assessment of the necessity and proportionality of the processing operations in relation to the services, or any applicable legal requirements;
 - 5.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 5.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of the Processed Data.
6. The Provider shall, in relation to the Processed Data processed in connection with the Provider’s obligations under the EF Contract:
 - 6.1. process that Processed Data only in accordance with the terms of this Appendix 14 to these Rules, unless the Provider is required to do otherwise by any applicable law. If the Provider is required to do otherwise as a result of any applicable law, the Provider shall promptly notify the Provider’s assigned Skills Investment Adviser before processing the Processed Data unless the Provider is prohibited by law from doing so;

- 6.2. ensure that the Provider has in place Protective Measures, which have been reviewed and approved by SDS as appropriate to protect against a Data Loss Event having taken account of the:-
 - 6.2.1. nature of the data to be protected;
 - 6.2.2. harm that might result from a Data Loss Event;
 - 6.2.3. state of technological development; and
 - 6.2.4. cost of implementing any measures;
 - 6.3. ensure that:
 - 6.3.1. the Provider's staff, agents and contractors do not process Processed Data except in accordance with the EF Contract (and in particular Appendix Part 4 to these Rules (SDS Information Security Policy));
 - 6.3.2. the Provider takes all reasonable steps to ensure the reliability and integrity of all of the Provider's staff, agents and contractors who have access to the Processed Data and ensure that they:
 - 6.3.2.1. are aware of and comply with the Provider's duties under this paragraph;
 - 6.3.2.2. are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
 - 6.3.2.3. are informed of the confidential nature of the Processed Data and do not publish, disclose or divulge any of the Processed Data to any third party unless directed in writing to do so by SDS or as otherwise permitted by the EF Contract; and
 - 6.3.2.4. have undergone adequate training in the use, care, protection and handling of personal data; and
 - 6.4. not transfer Processed Data outside of the EU unless the Provider has obtained SDS's prior written consent and the following conditions are fulfilled:
 - 6.4.1. either SDS or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with Data Protection Legislation) as determined by SDS;
 - 6.4.2. the Data Subject has enforceable rights and effective legal remedies;
 - 6.4.3. the Provider complies with the Provider's obligations under Data Protection Legislation by providing an adequate level of protection to any Processed Data that is transferred (or, if it is not so bound, use the Provider's best endeavours to assist SDS in meeting our obligations); and
 - 6.4.4. the Provider complies with any reasonable instructions SDS notifies to the Provider in advance with respect to the processing of the Processed Data;
 - 6.5. on SDS's written direction, delete or return Processed Data (in the relevant forms) (and any copies of it) to the Provider's assigned Skills Investment Adviser on termination of the EF Contract (or, as applicable, any part of the EF Contract) unless the Provider is required by applicable law to retain the Processed Data;
 - 6.6. draw the Data Subject's attention to SDS's privacy notice relating to Employability Fund available at www.sds.co.uk/privacy at the point of collection of any Personal Data comprised in the Processed Data. A copy of the applicable Privacy Notice currently in force at any given time shall be available on that site.
7. Subject to paragraph 8 of this Appendix 14, the Provider shall notify the SDS Data Protection Officer at dpo@sds.co.uk (or such alternative address as SDS may advise from time to time) immediately if the Provider:-
 - 7.1. receives a Data Subject Access Request (or purported Data Subject Access

- Request) in respect of the Processed Data;
- 7.2. receives a request to rectify, block or erase any Personal Data comprised in the Processed Data;
 - 7.3. receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - 7.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with the Processed Data processed under the EF Contract;
 - 7.5. receives a request from any third party for disclosure of Personal Data comprised in the Processed Data where compliance with such request is required or purported to be required by law; or
 - 7.6. become aware of a Data Loss Event relating to the Processed Data.
8. The Provider's obligation to notify under paragraph 7 shall include the provision of further information to SDS in phases, as details become available.
 9. Taking into account the sensitive nature of any of the processing relating to the Processed Data, the Provider shall provide SDS with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 7.3 (and insofar as possible within the timescales SDS reasonably require) including by promptly providing:
 - 9.1. SDS with full details and copies of the complaint, communication or request;
 - 9.2. such assistance as SDS may reasonably request to enable SDS to comply with a Data Subject Access Request relating to the Processed Data within the relevant timescales set out in Data Protection Legislation;
 - 9.3. SDS, at SDS's request, with any Personal Data the Provider holds in relation to a Data Subject in relation to the Processed Data;
 - 9.4. assistance as SDS may request following any Data Loss Event relating to the Processed Data;
 - 9.5. assistance as SDS may request with respect to any request from the Information Commissioner's Office, or any consultation by SDS with the Information Commissioner's Office in relation to the Processed Data.
 10. The Provider shall maintain complete and accurate records and information to demonstrate the Provider's compliance with the terms of this Appendix 14 of the EF Contract.
 11. The Provider shall allow for audits of the Provider's Data Processing activity in relation to this Appendix 14 by SDS or SDS's designated auditor.
 12. The Provider shall designate a Data Protection Officer if required by the Data Protection Legislation.
 13. Before allowing any Sub-processor to process any Personal Data comprised in the Processed Data, the Provider must:
 - 13.1. notify the Provider's assigned Skills Investment Adviser in writing of the intended Sub-processor and processing;
 - 13.2. obtain the prior written consent of SDS from the Provider's assigned Skills Investment Adviser;
 - 13.3. enter into a written agreement with the Sub-processor which gives effect to the terms set out in rule 11.2 of the Rules and this Appendix 14 such that they apply to the Sub-processor; and
 - 13.4. provide SDS with all the information regarding the Sub-processor as SDS may reasonably require.

14. The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
15. SDS may, at any time on not less than 30 days' notice, revise this Appendix 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the EF Contract).