

COVID-19 RELIEF GRANT TERMS AND CONDITIONS

1. Definitions and Interpretation

- 1.1 In the Agreement (as defined below), unless the context otherwise requires, the following expressions will have the following meanings assigned to them:-
- 1.1.1 **“Active Financial Period”** means each accounting period that occurs under the Programme Contract during the Covid-19 Relief Period, as set out in FIPS;
- 1.1.2 **“Aggregate Payments”** shall have the meaning given to it in Clause 9.1;
- 1.1.3 **“Agreement”** means the binding agreement comprising the various documents set out in the Letter of Award, and the Recipient’s acceptance thereof, as varied or novated (in each case, other than in breach of the provisions of the Agreement) from time to time.
- 1.1.4 **“Applications”** means the applications for the Contribution submitted by the Recipient to SDS (as clarified in writing, if applicable) setting out how the Contribution (in total and each specific payment) is to be used and how it will provide the Recipient with relief and help reduce the adverse effects of Covid-19 Related Hardship.
- 1.1.5 **“Application Activity”** means the activity which the Recipient sets out it will undertake during the Covid-19 Relief Period, more particularly detailed in the Recipient’s completed Applications and in Clause 4.1.1 of this Agreement.
- 1.1.6 **“Commencement Date”** means the date of SDS’s receipt of the email from the Recipient’s authorised signatory, in which the authorised signatory confirms on behalf of the Recipient, the Recipient’s acceptance (in accordance with SDS’s instructions) of the terms of the initial Letter of Award issued by SDS to the Recipient,.
- 1.1.7 **“Confidential Information”** means information of the Parties from time to time (in whatever medium stored or whether disclosed orally) including, but without limitation, all business, financial, operational, customer and marketing information, intellectual property rights, know-how and trade secrets in relation to the business of those Parties and all information in respect of which those Parties are bound by an obligation of confidence to a third party.
- 1.1.8 **“Contribution”** means a grant of up to the maximum set out in the Letter of Award for each Active Financial Period, with the actual grant due being calculated in respect of each of those Active Financial Periods as the lesser of:-
- a) ((Annual value of Recipient’s Programme Contract as at 1 April 2020 ÷ 12) less payments due to the Recipient under the Programme Contract in respect of valid claims submitted by the Recipient during that Active Financial Period) X 40%; and
- b) the Recipient’s total Eligible Costs incurred for the Active Financial Period less payments due to the Recipient under the Programme Contract in respect of valid claims submitted by the Recipient during that Active Financial Period.
- 1.1.9 **“Controller”, “Data Controller”, “Data Subject”, “Personal Data”**, take the meaning given in the Data Protection Legislation.
- 1.1.10 **“Control Sheet”** means the control sheet for submission of the data referred to in clause 4.1.1.(c), which shall be in such form as SDS shall prescribe;
- 1.1.11 **“Covid-19 Related Hardship”** means that as a result of the Covid-19 pandemic the Recipient’s ability to meet its contractual obligations under the

Programme Contract have been adversely affected and the Recipient's income and liquidity has been significantly reduced.

- 1.1.12 “**Covid-19 Relief Grant Instructions for MA and EF Providers**” means the document published by SDS which sets out, among other things, eligibility requirements, the purpose of the Contribution and the grant Applications process, as amended from time to time.
- 1.1.13 “**Covid-19 Relief Period**” means the period commencing on the first day of the April 2020 Active Financial Period until the last day of the August 2020 Active Financial Period, unless extended by notice in writing issued by SDS
- 1.1.14 “**Data**” has the meaning set out in Part 2 to the Schedule;
- 1.1.15 “**Data Subject Access Request**” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
- 1.1.16 “**Data Protection Legislation**” means (i) the GDPR, the LED and any applicable national implementing laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable law about the processing of personal data and privacy;
- 1.1.17 “**DPA 2018**” means the Data Protection Act 2018;
- 1.1.18 “**DP Purposes**” means the purposes set in SDS's Privacy Notice published on its website;
- 1.1.19 “**Disclose**” includes permitting a person to access the Data or imparting the Data orally or by demonstration and "disclosure" and "disclosed" will be interpreted accordingly;
- 1.1.20 “**EF Participant**” means an Employability Fund participant registered on FIPS as having started their employability fund learning activity, and who has not completed or otherwise left the course;
- 1.1.21 “**EF Programme**” means the Employability Fund programme managed by SDS, the details of which are set out in the Programme Contract for Employability Fund and as published on the SDS website.
- 1.1.22 “**Eligible Costs**” means the costs described as such in the Covid-19 Relief Grant Instructions for MA and EF Providers;
- 1.1.23 “**Employer**” means the employer of a Modern Apprentice;
- 1.1.24 “**FIPS**” means the SDS corporate training system or portal through which information relating to the Programme Contract is recorded by and made available to each of the parties.
- 1.1.25 “**GBER**” means the General Block Exemption Regulation (Commission Regulation (EU) No 651/2014 of 17 June 2014 as amended by Commission Regulation (EU) 2017/1084 on 14 June 2017 (OJEU L 156/1 of 20.6.2017))
- 1.1.26 “**GDPR**” means the General Data Protection Regulation (Regulation (EU) 2016/679);
- 1.1.27 “**MA Programme**” means the Modern Apprentice programme managed by SDS, the details of which are set out in the Programme Contract for Modern Apprenticeships, and as published on the SDS website.
- 1.1.28 “**Modern Apprentice**” means a modern apprentice registered on FIPS as having started their apprenticeship, and who has not completed or otherwise left the apprenticeship;
- 1.1.29 “**Insolvency Event**” means the occurrence of any of the following events (or any event in a jurisdiction other than Scotland or England and Wales that has an equivalent effect to any of the following) in relation to the relevant entity:-
- (a) a liquidator (including an interim liquidator or provisional liquidator),

administrator, receiver or administrative receiver is appointed to the Recipient or if a moratorium is obtained in respect of the Recipient's indebtedness or if the Recipient is made bankrupt enters into a company voluntary arrangement within the meaning of section 1 of the Insolvency Act 1986 or if the Recipient commences negotiations with its creditors to reschedule its debts.

- (b) if the Recipient is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or stops payments or ceases or threatens to cease to carry on its business.
- (c) if any diligence, distress, execution or similar process is levied, enforced or affected on or against any of the Recipient's property or assets and is not satisfied or discharged within 7 days.
- (d) if any of the Recipient's indebtedness, present or future, becomes repayable before maturity by reason of default on the part of the Recipient or is not repaid when due or within any period of grace.
- (e) any analogous procedure or step is taken in any relevant jurisdiction.

1.1.30 "**LED**" means Law Enforcement Directive (Directive (EU) 2016/680);

1.1.31 "**Letter of Award**" means SDS' formal offer of funding to support the Recipient in respect of the Relief Purposes, incorporating these terms and conditions and such other documents as are referred to in the letter, as the same may be amended by agreement in writing between SDS and the Recipient;;

1.1.32 "**Meaningful Engagement**" means the meaningful two-way engagement between the Recipient and (i) for the MA Programme Contract, the Modern Apprentice or as applicable, the Employer, or (ii) for the EF Programme Contract, the EF Participant, further details of which are included within the Covid-19 Relief Grant Instructions for MA and EF Providers;

1.1.33 "**Open Book Data**" means the complete and accurate financial and non-financial information which is required by SDS to enable SDS to understand all COVID-19 related relief, grants, interventions or other measures received by the Recipient from the UK Government and other public sector bodies and to verify the amounts paid or the amounts which would have been paid during the Covid-19 Relief Period, including:

- (a) the Recipient's costs broken down against each milestone under the Programme Contract, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software.
- (b) operating expenditure relating to the provision of the Services and expenditure relating to the maintenance of the Recipient's ability and capacity to deliver the Services after the Covid-19 Relief Period, including an analysis showing:
 - i. the unit costs and quantity of consumables and bought in services
 - ii. staff costs broken down into the number and grade/role of all [supplier personnel] together with a list of agreed rates against each manpower grade
 - iii. reimbursable expenses
 - iv. overheads
 - v. all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services
 - vi. full details of the payment of employee wages and any grants

applied for and/or received under the UK Government's Job Retention Scheme in respect of those employee wages.

vii. full details of the payment to sub-contractors.

- 1.1.34 **"Payment Cap"** shall have the meaning given to it in Clause 9.1;
- 1.1.35 **"Programme Contract"** means the contract for Services entered into between SDS and the Recipient under which the Recipient provides services to SDS in relation to either the MA Programme, or the EF Programme (whichever is referred to in the Letter of Award) for the financial year commencing 1 April 2020 until 31 March 2021.
- 1.1.36 **"Public Sector Contribution"** means any contribution to the Relief Purposes either in cash or in kind from any public sector body (including the European Union, any government body, local authority, statutory undertaking or other body wholly or substantially funded by public money), other than the Contribution.
- 1.1.37 **"Relief Purposes"** means the use of the Contribution by the Recipient to relieve Covid-19 Related Hardship, to support its cash flow position during the Covid-19 Relief Period and to maintain the ability and capacity of the Recipient to continue to deliver Services to (i) Modern Apprentices under the MA Programme Contract or (ii) EF Participants under the EF Programme Contract, as applicable, during and after the Covid-19 Relief Period, all as further specified in the Covid-19 Relief Grant Instructions for MA and EF Providers and the Applications.
- 1.1.38 **"Schedule"** means the Schedule in 4 parts, annexed to these terms and conditions.
- 1.1.39 **"Services"** has the meaning set out in the Programme Contract;
- 1.1.40 **"Supporting Documentation"** means the Open Book Data and all records, evidence, accounts and supporting documentation relevant to the delivery of the Relief Purposes, but excluding any records of work of the Modern Apprentices, the EF Participants, the Modern Apprentices' and EF Participants' coursework/ portfolios, and any Confidential Information belonging to the Employers.
- 1.1.41 **"UK Temporary Framework State Aid Scheme"** means the COVID-19 Temporary Framework for UK authorities approved state aid scheme (SA.56841(2020/N)), as the same may be amended from time to time.
- 1.1.42 **"User Permission"** means the terms and conditions applicable to the use by each of the Recipient's users, of FIPS, details of which are available on the training provider area of the SDS website at <http://www.skillsdevelopmentscotland.co.uk/for-training-providers/fips-funding-information-and-processing-system/> as amended from time to time;
- 1.1.43 **"VAT"** means value added tax chargeable under the Value Added Tax Act 1994 or under the Sixth Council Directive of the Council of the European Communities (77/388/EC) or under any rule, regulation, order or instrument authorised to be made by that Act or by that Directive or any identical or substantially similar tax which may replace such Value Added Tax.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of the Agreement.

- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assignees.
- 1.4 The Schedule forms part of the Agreement and shall have effect as if set out in full in the body of the Agreement. Any reference to the Agreement includes the Schedule.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to any party shall include that party's personal representatives, successors and permitted assignees.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.11 A reference to writing or written excludes e-mail.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14 Any reference to 'approval' or 'consent' (or similar) shall mean that such approval or consent (or similar), as applicable, shall be given entirely at the discretion of the relevant party.
- 1.15 References in these terms and conditions to a clause or condition shall, unless the context otherwise requires, be a reference to a clause or condition of these terms and conditions.
- 1.16 Where there is any conflict or inconsistency between or among the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following descending order of priority:
 - 1.16.1 any document signed by SDS strictly in accordance with the terms of the Agreement, confirming or approving any variations or dispensations;
 - 1.16.2 the Letter of Award;
 - 1.16.3 the Microsoft licensing terms and conditions that apply to each User Permission set out in the FIPS pages of the SDS Provider Web Pages or such alternative website or location SDS may alert Recipients to from time to time;
 - 1.16.4 the remaining terms of the FIPS Software User Permission terms and conditions set out in the FIPS pages of the SDS Provider Web Pages or such alternative website or location SDS may alert Recipients to from time to time;
 - 1.16.5 the main Conditions;
 - 1.16.6 any attachment to the main Conditions (including Appendices);

- 1.16.7 the Covid-19 Relief Grant Instructions for MA and EF Providers;
- 1.16.8 the Recipient's Applications (including all required associated documents and information).

2 Purposes and use conditions of the Contribution

- 2.1 The Contribution shall be used by the Recipient solely for the purpose of meeting the reasonably incurred Eligible Costs in connection with the Relief Purposes, and strictly as outlined in the Applications and for no other purpose whatsoever.
- 2.2 The Recipient shall not make any changes to the Relief Purposes without the prior written approval of SDS.
- 2.3 No part of the Contribution shall be used to fund any activity or material which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.
- 2.4 The Contribution shall not include VAT and no VAT shall be added to the Contribution.
- 2.5 The Recipient shall not, without the prior written consent of SDS, dispose of any asset funded, in whole or in part, with any part of the Contribution.

3 Preconditions for the advance of the Contribution

- 3.1 SDS shall be entitled to withhold the advance of the whole or any part of the Contribution until the following preconditions have been satisfied:-
 - 3.1.1 SDS is satisfied that:-
 - (a) the Recipient has obtained sufficient funding to enable it to achieve the objectives of the Relief Purposes; and
 - (b) the Recipient (whether on its own or in conjunction with any other party or as a member of a partnership) is not and has not been in breach of any other agreement with SDS;
 - (c) the Recipient has submitted to SDS in accordance with SDS's requirements confirmation that:
 - i. the Contribution will not result in the Recipient receiving, or being entitled to receive, funding under the UK Temporary Framework State Aid Scheme exceeding the threshold specified in the UK Temporary Framework State Aid Scheme; and
 - ii. the Recipient, if an undertaking, is not an undertaking in difficulty, as that term is defined in the GBER allowing for the exemptions introduced through the third amendment to the Temporary Framework (2020/C 218/03).
 - (d) the Recipient is affected by a Covid-19 Related Hardship;
 - (e) the Recipient has exhausted all other sources of public funding to relieve the Covid-19 Related Hardship;
 - (f) the Recipient has demonstrated need for the Contribution to relieve the Covid-19 Related Hardship.
- 3.2 The conditions contained in the foregoing clause 3.1 are for the sole benefit of SDS who shall be entitled (but not obliged) to waive any or all of the conditions at any time by giving written notice to the Recipient to that effect.
- 3.3 If each of the preconditions contained in clause 3.1 has not been purified or waived by SDS by the date falling four weeks after the date of (i) acceptance of the Agreement; and/or (ii) any notice issued by SDS to the Recipient or agreement

entered into between SDS and the Recipient, to extend the duration of the Covid-19 Relief Period or to increase the amount of the Contribution (whichever is the later), SDS will be entitled to withdraw from the Agreement without penalty at any time thereafter by giving written notice to the Recipient; in that event, the Recipient shall repay to SDS immediately on demand any part of the Contribution which has already been advanced.

- 3.4 The payment by SDS of any part of the Contribution shall not of itself imply an acknowledgement that any of the preconditions have been satisfied or waived.

4 Payment of the Contribution

- 4.1 The following provisions apply as regards the advance of the Contribution:-

4.1.1 Subject to the provisions of clause 3, the Contribution will be advanced in accordance with the Covid-19 Relief Grant Instructions for MA and EF Providers on satisfactory achievement of each of the following:

- (a) regarding the first instalment of the Contribution for the April 2020 Active Financial Period, that the Recipient has within the April 2020 Active Financial Period made at least one valid claim through FIPS for payment under the Programme Contract;
- (b) regarding the second instalment of the Contribution for the May 2020 Active Financial Period in 2020, that the Recipient has within the May 2020 Active Financial Period made at least one valid claim through FIPS for payment under the Programme Contract;
- (c) regarding the third instalment of the Contribution for the June 2020 Active Financial Period (and any subsequent instalment made for any subsequent Active Financial Period following any extension of the Covid-19 Relief Period, each calendar month forming part of any extension of the Covid-19 Relief Period being regarded as an Active Financial Period), that, within each such Active Financial Period:-
 - i. the Recipient has made at least one valid claim through FIPS for payment under the Programme Contract; and
 - ii. the Recipient has achieved Meaningful Engagement with:-
 - a) in relation to the MA Programme Contract, no less than 60% of the total number of the Recipient's Modern Apprentices in respect of whom no claim has been submitted on FIPS as described in clause 4.1.1(c)(i), and no less than 60% of available Employers of all the Recipient's Modern Apprentices in respect of whom no claim has been submitted on FIPS as described in clause 4.1.1(c)(i), or (as applicable)
 - b) in relation to the EF Programme Contract no less than 60% of the total number of the Recipient's EF Participants in respect of whom no claim has been submitted on FIPS as described in clause 4.1.1(c)(i),
- (d) the Recipient continues to satisfy the terms of the Agreement, including the provision of such Supporting Evidence as SDS may reasonably

in each case as recorded by the Recipient as at the last day of the relevant Active Financial Period, with a view to keeping each of the said apprentices/participants/employers engaged on at least a monthly basis. The Recipient shall also require to submit to SDS in accordance with such submission requirements as SDS shall advise, the details required in the Control Sheet, no later than the last day of the relevant Active Financial Period.

- require to demonstrate that the Recipient has completed the Application Activity and applied the funding for the Relief Purposes;
- (e) the Recipient has provided SDS with such Open Book Data as SDS may require from the Recipient to demonstrate the Recipient's Covid-19 Related Hardship and its continued need for the Contribution to achieve the objectives of the Relief Purposes; and
- (f) the Recipient has paid all its staff and the Recipient's contract supply chain who are working on deliverables to be provided under or in connection with the Programme Contract, when due.

4.1.2 In respect of each claim submitted by the Recipient to SDS for payment of an instalment of the Contribution, the Recipient shall:

- (a) at SDS's request (which shall include any post claim reconciliation referred to in the Covid-19 Relief Grant Instructions for MA and EF Providers or which SDS may otherwise wish to conduct), promptly provide a certificate of costs which sets out the Recipient's actual costs, expenses, cash flow and profits of carrying out the Relief Purposes and delivering Services under the Programme Contract over the Active Financial Period to which the claim relates.
- (b) ensure that each payment of the Contribution (or part of it) is promptly and solely applied to the purposes for which they are paid.
- (c) immediately make available to SDS upon request at any time, any information and/or evidence (including the Open Book Data) which SDS requests in order to:
 - i. verify and assure that the Recipient has applied the Contribution, including copies of accounts, ledgers, cash-flow forecasts and statements, balance sheets, profit and loss accounts and any other documentary evidence strictly for the Relief Purposes
 - ii. verify and assure that monies intended for Recipient staff carrying out activities in relation to the Programme Contract, have been properly and promptly paid
 - iii. verify and assure that the Recipient has paid invoices submitted by the Recipient's sub-contractors and supply chain when due
 - iv. verify and assure that the Contribution is applied to costs and expenses which have not been met by payments under the Programme Contract or any other relief.
- (d) maintain full records and a written audit trail of all payments of the Contribution and Relief Purposes activity (and such records shall be made available promptly to SDS on reasonable request).

4.1.3 The Recipient shall not be entitled:

- (a) to apply the Contribution to any mark up, profit or surplus element of the Relief Purposes.
- (b) to combine the Contribution with any other public sector Covid-19 related relief, grant, intervention or other measure which results in the Recipient receiving more than one benefit/relief for the same underlying cash-flow issue; for the avoidance of doubt, this provision does not prevent the Recipient from making a claim under the UK Government's Job Retention Scheme, but does mean that it cannot apply the Contribution to the same costs which are met by that scheme.

4.2 Subject to clause 4.3, SDS shall be entitled to advance any part or parts of the

Contribution by means of a direct payment to any consultant or provider employed by the Recipient in connection with the Relief Purposes to the extent that the Relief Purposes have been carried out by the relevant consultant or provider. The Recipient acknowledges the terms of this clause and agrees that any payment to the Recipient under the Agreement will be reduced accordingly.

- 4.3 In connection with any decision of SDS to advance any part of the Contribution by means of a direct payment to a consultant or provider employed by the Recipient in connection with the Relief Purposes as specified in clause 4.2, SDS shall have regard to any representations made by the Recipient to SDS, including, for example, that the relevant consultant or provider is in breach of contract.
- 4.4 SDS shall not be obliged to advance or procure the advance of, and the Recipient shall have no claim against SDS in respect of, any unpaid part of the Contribution claimed on or after the last day of the Covid-19 Relief Period.
- 4.5 SDS shall not be obliged to advance such part of the Contribution which would result in the Aggregate Payments exceeding the Payment Cap.
- 4.6 The Recipient is only entitled to submit a FIPS claim if the Recipient is holding and able to provide to SDS immediately on demand, all Supporting Evidence that SDS may require to validate the claim in accordance with the requirements of the MA Contract (or EF Contract, as applicable).
- 4.7 For Recipients submitting claims through FIPS for Young Persons Allowance on behalf of any EF Participants ("YPA Claims"), the provisions set out in this clause 4 shall apply, subject to the following:-
 - 4.7.1 any such YPA Claim submitted in an Active Financial Period shall be deemed to be a claim for the purposes of clauses 4.1.1(a), 4.1.1(b) or 4.1.1(c)i (as applicable). The value of any such YPA Claim shall not however be deducted when calculating the value of the Contribution payable for that Active Financial Period (i.e. with reference to the definition of 'Contribution' the value of the YPA Claim shall not constitute a payment due to the Recipient under the Programme Contract in respect of valid claims submitted by the Recipient during that Active Financial Period); and
 - 4.7.2 the obligations in clause 4.1.1(c)ii(b) shall be wholly replaced with an obligation on the Recipient to achieve Meaningful Engagement with all of the EF Participants in respect of whom the Recipient has submitted a YPA Claim during the Active Financial Period as recorded by the Recipient as at the last day of the relevant Active Financial Period, with a view to keeping each of the said participants engaged on at least a monthly basis. For the avoidance of doubt, the Recipient shall require to submit a Control Sheet in respect of such activity as otherwise set out in these Conditions.

5 Public Sector Funding

- 5.1 Without prejudice to SDS's other rights and remedies, if the Recipient should receive any Public Sector Contribution, SDS shall be entitled to reduce the Contribution by the amount of the Public Sector Contribution and if the amount already advanced by SDS in terms of the Agreement should exceed the Contribution as so reduced the Recipient shall repay to SDS immediately on demand the amount of such excess.
- 5.2 The Recipient undertakes to comply with the following notification procedures:-
- (a) The Recipient shall notify SDS by email at ntpcontracts@sds.co.uk immediately if:-
- i. it shall make an application for any Public Sector Contribution (including any additional Public Sector Contribution) not already disclosed to SDS within the Applications; or
 - ii. it receives notification that it will receive or receives an offer of any Public Sector Contribution not already disclosed to SDS within the Applications; or
 - iii. any Public Sector Contribution is received by the Recipient that is not already disclosed to SDS within the Applications.
- 5.3 Such notification shall give full details of the Public Sector Contribution applied for, offered or received as the case may be.

6 Default and Recovery

- 6.1 The occurrence of any of the following shall be an event of default:
- 6.1.1 any information given to SDS by the Recipient is found to be false or misleading;
 - 6.1.2 the occurrence of an Insolvency Event;
 - 6.1.3 the Recipient harms the reputation of SDS in its dealings, publicity or communications, or where the Recipient and/or any of its directors, staff, sub-contractors or representatives conducts themselves in a manner which, in the reasonable opinion of SDS, brings or is likely to bring SDS, any Scottish Minister, or the funding scheme operated by SDS into disrepute. This shall be deemed to include (without limitation) any instance where the Recipient and/or any of its directors, staff, sub-contractors or representatives is charged with any criminal offence deemed to be a serious criminal offence by SDS, at SDS' entire discretion;
 - 6.1.4 the Recipient is in breach of its obligations to SDS in terms of the Agreement, or the Programme Contract, or otherwise;
 - 6.1.5 in the reasonable opinion of SDS, the objectives of the Relief Purposes are unlikely to be, or have not been, met by the Recipient during the Covid-19 Relief Period;
 - 6.1.6 in the reasonable opinion of SDS, the Recipient's progress in carrying out the Relief Purposes is not satisfactory; or
 - 6.1.7 in the reasonable opinion of SDS, the Recipient
 - (a) takes undue advantage of the offer of relief; or
 - (b) fails to act with integrity in relation to the relief.

- 6.2 In the event of default, and at SDS' entire discretion:-
- 6.2.1 SDS shall be entitled to suspend and/or terminate the Agreement (or any part thereof) and any other contract the Recipient has with SDS, immediately on notice; and/or
 - 6.2.2 SDS shall be entitled to demand that the Recipient repay the Contribution, or such proportion thereof as SDS may reasonably determine, to SDS within 14 days of demand; or
 - 6.2.3 SDS may as an alternative give the Recipient written notice confirming details of the default, giving the Recipient a period of time as SDS may reasonably determine within which the Recipient is to remedy the default. In such circumstances, if the Recipient shall fail to remedy the default within such period of time, SDS shall be entitled to rely on any or all of the remedies referred to in clauses 6.2.1 and 6.2.2.
- 6.3 SDS shall be entitled to deduct from any payments due to the Recipient under this Agreement, any sums due to SDS by the Recipient howsoever and whensoever arising, and any sums due to SDS by any person to whom the undertaking of the Recipient has been transferred.
- 6.4 In the event that either party is in material breach of its respective data protection obligations contained in clause 11.9 or the Schedule, the party not in breach shall (without prejudice to its other rights and remedies) be entitled to terminate the Agreement immediately on notice.
- 6.5 Without prejudice to SDS's other rights and remedies, the Recipient must immediately inform NTP Contracts by email (ntpcontracts@sds.co.uk) in the event that there is any material change in the Recipient's circumstances, including without limitation, circumstances:-
- 6.5.1 where the Recipient ought reasonably to be aware that the information provided in its Applications submitted to SDS, was inadequate, incomplete or materially misleading or inaccurate, or is no longer adequate, complete, representative, accurate or likely to be fulfilled;
 - 6.5.2 which are likely to impact the Recipient's ability to perform any of the requirements of the Agreement;
- providing all detail that SDS may reasonably require.

7 Interest

Interest will accrue and be payable by the Recipient to SDS on all sums due to SDS in terms of the Agreement at the rate of four per centum per annum above the Base Rate or Rates for the time being of the Bank of Scotland plc from the date of demand until payment is made in full.

8 Publicity and Confidentiality

- 8.1 All publicity and marketing materials to be used by SDS or the Recipient which refer to the other party to the Agreement or contain any of the logos, trade marks or other intellectual property of the other party, shall be submitted to the other Party for prior approval. Approval may be given in advance of release and the parties shall not require approval for each subsequent use of the approved materials. All such materials shall be accurate and shall not contain inappropriate or misleading comparisons with other third party programmes, derogatory statements about third parties, misleading statements or advice about recognition of academic awards and/or statements that could reasonably bring either of the parties into disrepute.

- 8.2 Each party shall immediately cease to use in any manner whatsoever such materials and the logos, trade marks or other intellectual property of the other Party upon termination or expiry of the Agreement for any reason.
- 8.3 Each party shall not, during the term of the Agreement or at any time thereafter, disclose to any third party any Confidential Information of the other party or their partners or make use of any such confidential information except as necessary to fulfil its obligations under this agreement. This Clause 8.3 shall not apply to any information which: (i) becomes generally known to the public, other than by reason of an act or omission of the recipient; (ii) is required to be disclosed pursuant to any applicable laws or to any competent governmental, statutory or supervisory body to which the relevant Party is subject; (iii) is required to be disclosed pursuant to any court order; or (iv) is disclosed by a Party to its professional advisers.

9 Repayment of the Contribution

- 9.1 The Recipient acknowledges and agrees that the aggregate of (a) the amount of Contribution paid by SDS to the Recipient; and (b) the amount paid or due by SDS to the Recipient under the Programme Contract (the “**Aggregate Payments**”) shall not exceed the maximum value of the Programme Contract for the period 1 April 2020 to 31 March 2021, as that maximum value may, from time to time, be varied by SDS in accordance with the provisions of the Programme Contract (the “**Payment Cap**”).
- 9.2 Where a payment is paid or due to the Recipient under the Programme Contract which results or would result in the Aggregate Payments being greater than the Payment Cap, the Recipient shall repay to SDS such amount of the Contribution as is required to ensure that the Aggregate Payments do not exceed the Payment Cap.
- 9.3 In respect of any amount of the Contribution which is to be repaid by the Recipient to SDS under this Agreement, SDS shall (without prejudice to its other rights under the Agreement) be entitled to deduct the amount of such repayment from any payments due to the Recipient under any other contract the Recipient entered into with SDS, including the Programme Contract.
- 9.4 Where SDS and the Recipient agree a reduction in the maximum value of the Programme Contract for the period 1 April 2020 to 31 March 2021 which has the immediate and direct consequence of the Aggregate Payments exceeding the Payment Cap, without prejudice to SDS’s other rights and remedies under the Agreement and the Programme Contract, the Recipient shall not be obliged to repay the Contribution under Clause 9.2.
- 9.5 Without prejudice to SDS’s other rights and remedies, where the Recipient submits a claim for Services under the Programme Contract, which is thereafter at any time, deemed to be invalid by SDS, and where:-
- 9.5.1 the claim was the only claim for Services under the Programme Contract during that Active Financial Period, the Recipient shall require to repay the full funding paid by SDS in respect of that Active Financial Period;
- 9.5.2 the Recipient submitted at least one other valid claim for Services under the Programme Contract during the same Active Financial Period, the sums payable to the Recipient shall not be adjusted upwards, and no additional grant funding shall accordingly be due or payable by SDS to the Recipient.

10 Freedom of Information

- 10.1 Each party shall assist the other party without charge in meeting (within a reasonable time) any requests for information in relation to the Agreement which are made to

the other party by any third party in connection with the Freedom of Information (Scotland) Act 2002 (FOISA) or the Environmental Information (Scotland) Regulations 2004 (“the EIRs”) or any related guidelines or codes of practice.

- 10.2 Each party acknowledges that the other party may be required to release information relating to the Agreement in response to a request under FOISA, the EIRs or any related guidelines or codes of practice.

11 Monitoring, Audit, Evaluation and Data Protection

- 11.1 The Recipient shall retain the Open Book Data and full and accurate records and accounts of the operation of the Agreement including details of the Relief Purposes undertaken by the Recipient and the amounts paid by SDS until the date occurring 3 years after the date of the last payment made to the Recipient by SDS under the Agreement.
- 11.2 The Recipient shall keep the Open Book Data, records, evidence and accounts referred to in this clause 11 in accordance with good accountancy practice.
- 11.3 The Recipient shall afford SDS and/or such representatives, public appointed auditors (including representatives of the European Commission, the European Court of Auditors or the Competition and Markets Authority) (as applicable) (in any case, “Auditor”) immediate and unlimited access to the Open Book Data and such Supporting Documentation as may be requested from time to time. Such access shall be at the Recipient’s premises (or the premises of the Recipient’s agents, if such Supporting Documentation are ordinarily stored there) or, if requested by Auditor, at premises identified by the Auditor within Scotland. For the avoidance of doubt, Auditors may require to access Supporting Documentation containing personal data of employees, and the Recipient’s financial information.
- 11.4 The Recipient shall provide such Supporting Documentation (together with copies of the Recipient’s published accounts) during the term of the Agreement and for the relevant period referred to in clause 11.1 (as applicable) to SDS and/or the Auditor promptly on request by SDS or the Auditor (as applicable). Such provision shall be made at the Recipient’s premises (or the premises of the Recipient’s agents, if applicable) or, if requested by Auditor, at premises within Scotland.
- 11.5 The Recipient shall on demand provide SDS and the Auditor with all reasonable co-operation and assistance in relation to each review / audit, including:-
- 11.5.1 providing unlimited access to the Open Book Data and all Supporting Documentation as requested by SDS and/or the Auditor including the names and designated contact details (either an applicable telephone number or email address) of any staff or other personnel performing any part of the Services before, during and after the Covid-19 Relief Period for the purposes of enabling SDS (or an SDS agent) to verify relevant claims made by the Recipient under the Agreement.
- 11.5.2 providing unlimited access to sites controlled by the Recipient and to any equipment used in the performance of the Relief Purposes;
- 11.5.3 providing SDS and the Auditor with unlimited access to Recipient staff, agents, representatives; and
- 11.5.4 providing SDS and the Auditor with suitable oral or written explanation as requested.
- 11.6 The Recipient shall bear its own costs and expenses incurred in respect of compliance with its obligations under this clause 11.

- 11.7 Where the Agreement is terminated prior to the last date for submission of claims for payment of the Contribution, or SDS otherwise requests, the Recipient shall immediately forward to SDS the Open Book Data together with full and accurate records and accounts of the operation of the Agreement including details of the Relief Purposes undertaken by the Recipient and the amounts paid by SDS.
- 11.8 Without prejudice to the preceding and subsequent generality, the Recipient acknowledges that the Contribution is paid under the UK Temporary Framework State Aid Scheme and is subject to the terms and conditions of that scheme. Non-compliance with the requirements of the UK Temporary Framework State Aid Scheme may, without prejudice to any rights of SDS under the Agreement, result in the Recipient being under a legal obligation to repay the Contribution to SDS together with interest.
- 11.9 SDS and the Recipient agree that they are each a “Data Controller” in terms of the Data Protection Legislation and that any sharing of Personal Data between them relating to this Agreement and the Relief Purposes will be on a Data Controller to Data Controller basis. The Recipient shall comply with the provisions of the Data Protection Legislation and shall ensure that it has obtained all permissions required pursuant to the Data Protection Legislation to enable it to comply with the requirements of the Agreement. The provisions in the Schedule (Data Sharing) shall apply in respect of the sharing of any Personal Data pursuant to the Agreement.
- 11.10 The Recipient agrees to co-operate with SDS and Scottish Ministers and to provide such additional information as SDS and/or Scottish Ministers may request relating to the Agreement, any and all claims and the use of the payments made, promptly on request and no later than one working day following any request.

12 Software

- 12.1 In order to use FIPS as prescribed in the Agreement, the Recipient shall require to obtain a User Permission for each user of the FIPS software. Each User Permission is for a minimum period of 12 months, notwithstanding the expiry date of the Agreement. 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 Recipient 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 Recipient Letter of Award.
- 12.2 The Recipient shall pay SDS the charge for each User Permission made available to the Recipient pursuant to condition 12.1 SDS shall be entitled to invoice the Recipient at any time following the issue of each User Permission to the Recipient. The Recipient shall require to pay each such invoice within 30 days of the date of issue of the invoice. In the event that the Recipient fails to pay any such invoice (or part thereof) in accordance with this condition 12.2, without prejudice to SDS’ other rights and remedies, SDS shall be entitled to offset the shortfall against any sums due by SDS to the Recipient.

- 12.3 To the extent that the Recipient holds a valid User Permission for a specific individual for the purpose of the Programme Contract, such User Permission shall be valid for use of FIPS as prescribed in the Agreement, by the said individual.

13 Notices

- 13.1 Any notice from either SDS to the Recipient, or the Recipient to SDS, shall be considered valid under the Agreement if:-
- (a) it is sent in email format;
 - (b) (for notices from SDS to the Recipient), it is sent from NTP Contracts (ntpcontracts@sds.co.uk) to the email address for correspondence provided by the Recipient in the Applications;
 - (c) (for notices from the Recipient to SDS), it is sent from the email address for correspondence provided by the Recipient in the Applications, to NTP Contracts (ntpcontracts@sds.co.uk).
- 13.2 The email will be deemed to have been served 72 hours after the time stamp for the email shown on the sender's official records, or sooner where the other party acknowledges receipt of such email.
- 13.3 In the event that the Recipient wishes to amend the email address for receiving or submitting notices, from the email address set out above, it shall email ntpcontracts@sds.co.uk informing SDS of the amended email address. The changed address shall be deemed to apply 72 hours after the time stamp for the email shown on the sender's official records, or sooner where SDS acknowledges receipt of such email.

14 Information Sharing

- 14.1 The Recipient agrees and accepts that SDS may require to share some or all of the Recipient's records and information (or information relating to such records and information) relating to the Covid-19 Relief Grant, with other bodies that may at any time be providing any Covid-19 relief, grant, intervention or other measures to the Recipient.

15 Variations

- 15.1 SDS and Scottish Ministers have responded quickly to implement measures to ensure where possible, continuity of service for apprentices and EF participants, whilst maintaining proper accountability for public expenditure, in both the short and long term. As the implications of Covid-19 are dynamic, SDS, working with Scottish Ministers, accordingly requires to ensure that its contracts and policies are reviewed and updated on an ongoing basis. SDS therefore reserves the right to review/amend these Conditions or any other part or parts of the Agreement from time to time, and/or implement further variations as required.

16 Law

- 16.1 The Agreement shall be governed by and construed in accordance with the laws of Scotland.
- 16.2 The parties hereby submit to the exclusive jurisdiction of the Scottish courts in relation to any dispute or claim arising out of or in connection with the Agreement or in relation to its existence or validity.

17 Entire Agreement

- 17.1 The Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 17.2 Each party acknowledges that, in entering into the Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Agreement. The Recipient accepts that SDS has relied on the Recipient's Applications in agreeing to make the offer of Contribution, and the Recipient hereby warrants the accuracy of such Applications.

18 Assignment

- 18.1 The Recipient shall not be entitled to assign its rights or obligations under the Agreement to any other party without the prior written consent of SDS. SDS shall be entitled to assign its rights and obligations in terms of the Agreement to any body.

19 Corrupt Gifts and Payments of Commission

- 19.1 The Recipient warrants that it has not and 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 the Agreement 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 funding to the Recipient, 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 Recipient is drawn to the criminal offences under the Bribery Act 2010.

20 Waiver

- 20.1 Any failure by SDS or the Recipient to seek redress for breaches, or to insist on strict performance, of any terms, conditions or provisions of the Agreement, or the failure of SDS or the Recipient to exercise any right or remedy to which it is entitled in terms of the Agreement shall not constitute a waiver thereof.
- 20.2 A waiver of any default shall not constitute a waiver of any subsequent default.

21 Blacklisting Regulations

- 21.1 The Recipient 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 2018 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this condition is a material default which shall entitle SDS to terminate the Agreement with immediate effect.

**This is the Schedule referred to in the preceding
COVID-19 Relief Grant Terms and Conditions**

Schedule

Part 1 - Data Sharing

1. The Data

- 1.1 Data means all Personal Data that is disclosed by one party to the other exclusively for the purposes of the delivery of the Agreement and the Relief Purposes. For the avoidance of doubt, Personal Data may still be exchanged pursuant to the terms of the Programme Contract during the Covid-19 Relief Period.

2. Sharing of the Data

- 2.1 The Recipient agrees to disclose to SDS the Data in accordance with the transfer arrangements detailed in Part 4 of the Schedule.
- 2.2 The parties agree that the nature of the relationship between them is such that the disclosure of Personal 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 Personal 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 neither joint data controllers nor data controllers in common.
- 2.3 Without prejudice to the generality of paragraph 2, SDS shall make available a privacy notice to the Data Subjects following the disclosure of any Personal Data from the Recipient to SDS.
- 2.4 The Recipient shall make its own privacy notice available to the Data Subject in relation to its own processing activities in respect of the delivery of the Relief Purposes and the Agreement.

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 DP Purposes.

Part 2 - The Data

All Data that the Recipient discloses to SDS pursuant to the terms of the Agreement including all personal data comprised in the 'Open Book Data' as defined in the Agreement, which shall include:-

- information about costs (including salaries, expenses and other remuneration) relating to staff, consultants and directors, information about time spent by staff, consultants and directors performing activities relating to the Relief Purposes; information about staff, consultants and directors whose remuneration from the Recipient was, at any time during the Covid-19 Relief Period paid in whole or in part by any publicly funded arrangement;
- To the extent that any financial data constitutes personal data, any and all financial data relating to the Recipient, including bank statements relating to the operations of the Recipient, details and copies of loan documents, other relief agreements, expenditure, accruals, income and other costs.

For the avoidance of doubt, information exchanged within the scope of the Programme Contract shall continue to be subject to the terms of that contract. This shall include information exchanged relating to any contact between the Recipient and any Modern Apprentice, EF Participant and any Employer which may be referred to in this Agreement. Further details of SDS's uses of such personal data are available in the relevant Privacy Notice available on the SDS web pages.

Part 3 - The Purposes and Bases of Sharing

The Purposes and the legal bases for sharing are set out in SDS's Privacy Notice relating to the Relief Purposes and derive from SDS's powers and obligations which include the powers conferred upon the Scottish Government by section 2 of the Employment and Training Act 1973.

Part 4 - Data Transfer Arrangements

Subject to SDS introducing any alternative or additional arrangements the Data is intended to be transferred to SDS in the following manner:-

- where FIPS is set up to receive the Data, Data must be input by the Recipient into FIPS in accordance with the specific requirements set out in the Agreement or other instructions issued by SDS from time to time, or where no such specific requirements or instructions are provided, in accordance with the requirements under the Programme Contract
- for Data which SDS requires the Recipient to deliver, in accordance with the requirements set out in this Agreement, and/or such additional arrangements as SDS may advise from time to time.