

Pathway Apprenticeships ("PA")

Programme Conditions

2020 - 2022

Version History

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Table of Contents

1.	Defined terms and Interpretation	4
2.	The PA Contract	5
3.	Provider’s Appointment	6
4.	Duration of the PA Contract	6
5.	Contract Schedule.....	7
6.	Variations.....	7
7.	Provider Personnel	8
8.	FIPS	8
9.	Claims and Payment Arrangements	9
10.	Performance and Award.....	11
11.	Application to Complete PA (or part of PA).....	13
12.	Grievance and Disciplinary Procedures	13
13.	Warranties and Representations.....	13
14.	Prevention of Bribery.....	14
15.	Statutory and other Requirements.....	16
16.	SDS Documents, Forms and Processes	17
17.	Conflicts of Interest	17
18.	Safeguard Against Fraud.....	18
19.	Data Protection.....	18
20.	Freedom of Information	19
21.	Insurance	19
22.	Termination	20
23.	Termination for Reputational Damage.....	22
24.	Other Remedies	23
25.	Consequences of Termination and Expiry	25
26.	Liability.....	26

27.	Severability	26
28.	Non-Discrimination.....	27
29.	Records, Audit Access and General Assistance	27
30.	Confidentiality	30
31.	Assignment and Sub-contracting	30
32.	Change of Your Name	32
33.	Notices	32
34.	Waiver.....	33
35.	Entire Agreement	33
36.	Marketing, Branding and Publicity	34
37.	Intellectual Property Rights	34
38.	TUPE: Transfer of Undertakings (Protection of Employment) Regulations 2006.....	35
39.	Insolvency	35
40.	Blacklisting Regulations	37
41.	Law and Jurisdiction	37
	Appendix 1 - Definitions	38
	Appendix 2 - Data Sharing	44
	Appendix 2 - Part 1 - The Data.....	45
	Appendix 2 - Part 2 - The Purposes and Bases of Sharing.....	45
	Appendix 2 - Part 3 - Data Transfer Arrangements	45
	Appendix 3 - Processing of Processed Data	45
	Appendix 4 - Information Security Policy	50

1. Defined terms and Interpretation

- 1.1 The content of the Contract Documents, shall be interpreted in accordance with this Condition 1. The only exception will be where any individual condition or paragraph states specifically that it should be interpreted differently, in which event that individual condition or paragraph shall be interpreted as specifically stated in that condition or paragraph.
- 1.2 Terms in the Contract Documents that start with a capital letter shall have the same meanings as those set out in Appendix 1 to the Conditions.
- 1.3 Condition, schedule, appendix and paragraph headings shall not affect the interpretation of the PA Contract.
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any applicable legislation made under it that is in force at the relevant time.
- 1.8 A reference in any Condition or paragraph in the Contract Documents to writing or written includes email, unless otherwise indicated.
- 1.9 Any obligation in the PA Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.10 Where any document has been varied or novated under the terms of the PA Contract, any reference to that document will be deemed to be to that document as it has been varied or novated. Any reference to any rights that we have under the PA Contract also applies to any agent of ours that may be exercising the relevant right, and both parties shall construe the provision accordingly.
- 1.11 Where there is any conflict or inconsistency between or among the provisions of the PA Contract, such conflict or inconsistency shall be resolved according to the following descending order of priority:
 - (a) any and all SDS policy statements relating to the COVID 19 Pandemic issued by SDS from time to time;
 - (b) any document signed by us strictly in accordance with the terms of the PA Contract, approving any variations or dispensations;

- (c) the Letter of Award;
- (d) 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 we may alert providers to from time to time;
- (e) 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 we may alert providers to from time to time;
- (f) the main Conditions;
- (g) any attachment to the main Conditions (including Appendices);
- (h) the Specification;
- (i) any attachment to the Specification;
- (j) the Contract Schedule;
- (k) the ITT;
- (l) your ITT Response;

1.12 Any reference to the words 'include' and 'including' shall be interpreted without limiting the meaning of any of the words set out before it.

1.13 Where we have a right to do, accept, approve or agree to something, or a right not to do, accept, approve or agree to something, or any similar right, the decision whether to exercise that right is entirely ours. Any exception to this will be specifically set out in the relevant Condition or paragraph in the Conditions, Specification or ITT.

2. The PA Contract

2.1 The PA Contract is made up of the Contract Documents.

2.2 You will provide the Services to our reasonable satisfaction and you will act at all times in a diligent and professional manner. The Services must fully meet all the requirements set out in the Contract Documents, and where any of the Contract Documents have been varied under the terms of the PA Contract, the Services must fully meet all the requirements set out in the Contract Documents, as they have been varied.

2.3 You must ensure that the PA Programme standards and Qualifications conform to your ITT Response at all times including any variations agreed in accordance with condition 6.

2.4 You will provide the Services on the dates set out in the Contract Documents.

2.5 You are and must at all times act as, an independent contractor. You are not our employee, agent or representative and you have no authority to act on our behalf. You will not act in any way which would give the impression that you are our employee, agent or representative.

2.6 The Conditions are set out in this document and are subject to amendments we may implement from time to time. The version applicable at any given time can be found by linking through the SDS Provider Web Pages or any alternative website we may alert you to.

3. Provider's Appointment

3.1 We appoint you as a provider of Services in respect of the PA Programme, details of which are described in the Specification, the Conditions and the Contract Schedule.

3.2 You agree and accept that in entering into the PA Contract:-

- (a) you have received all the information you require in order to determine whether you are able to provide the Services in accordance with the Contract Documents (as each document may have been formally varied in accordance with the Conditions); and
- (b) you are deemed to have satisfied yourself in relation to all matters connected with the Services and in regard to your ability to meet all requirements of the PA Contract.

4. Duration of the PA Contract

4.1 The PA Contract shall commence on 1 December 2020 (or if we insert a later date in your Letter of Award, that later date) and you shall comply with the terms of the PA Contract for the period until 31 March 2022. The only exceptions to this are (i) as set out in Condition 4.2 below and (ii) where we terminate the PA Contract early, in accordance with any of the termination provisions in these Conditions. Without prejudice to the generality of this Condition 4.1, claims for payment under clause 9 may be submitted to SDS until 31 October 2022.

4.2 In the event of the PA Contract for a Provider terminating for any reason, or expiring, under these Conditions, we may offer to extend the period of the PA Contract for another Provider for such period and on such terms as we shall determine. Any extension shall relate only to those Participants identified in any extension offer we may make, in addition to those who are already entered onto FIPS by you as Starts at the date when the PA Contract would have terminated or expired, but for the extension. You shall require to send us your written acceptance of any extension offer we may make, by the acceptance date stated in the offer. If you fail to do so, the offer will immediately lapse. The terms and conditions set out in the PA Contract, shall apply during any extension period arranged under this Condition 4.2 but we may amend those terms and conditions in whatever way we think is appropriate. This may include SDS transferring the started Participants into any subsequent contract you enter into with us for the provision of PA services, in which event the terms and conditions that apply to that contract shall apply. We shall also retain our right to further amend the terms and conditions during the extension period, in accordance with the general amendment provisions that are set out in the PA Contract.

5. Contract Schedule

- 5.1 Volumes of Starts that are referred to in the Contract Schedule forming part of the PA Contract are allocated for the period of this PA Contract and cannot be transferred by you to any other contract, including any subsequent PA contract you may enter into with us.

6. Variations

- 6.1 We may amend the PA Contract at any time. The amended contract terms will come into force as follows:-

- (a) in respect of changes that apply to all PA contracted providers, from the date that providers are advised of the changes. We may contact you directly to confirm the changes or we may post the changes on the SDS Provider Web Pages;
- (b) in respect of changes solely to the Contract Schedule, on the date we advise you of the changes, in writing, which shall include email.

- 6.2 Without limiting the scope of the provisions that we may change, we anticipate that changes are most likely to relate to:-

- (a) Participant eligibility criteria;
- (b) periodical review of Participants' progress;
- (c) financial contributions corresponding to any volume changes;
- (d) Participants transferring from other PA service providers;
- (e) any additional travel, subsistence and/or lodging allowance we may offer;
- (f) evidence requirements, where reasonably required to ensure that SDS can properly monitor provider compliance with the PA Contract;
- (g) changes reasonably required as a direct or indirect result of any change in Data Protection Legislation and/or other change in law;
- (h) the Participant and service provider verification requirements, administrative procedures and information required to be inputted to FIPS;
- (i) the terms we use to describe the PA programme and any of the components, e.g. 'Participant', 'work based learning', 'modern apprenticeships';
- (j) conditions impacted by policy change required by Scottish Government; and/or
- (k) other variations to volumes and/or value deemed appropriate by us in accordance with our rights under the PA Contract, in respect of your failure to meet any Performance Level and/or any other requirement of the PA Contract.

- 6.3 You must promptly alert an SDS Contract Executive by email in the event that you have no reasonable prospect of fulfilling your undertakings under the PA Contract relating to:-

- (a) the contracted volumes for Participants; and/or

(b) the contracted value set out in the PA Contract.

This does not cancel or reduce your obligations to meet your contracted commitments and does not prevent or restrict us from exercising any of our rights and remedies.

- 6.4 If we request, you shall submit changes to the PA Contract concerning those parts of the PA Contract that we specify, including the contractual obligations referred to in Conditions 6.3(a) and 6.3(b). We shall be entitled to accept or reject any variation you submit. In the event that we agree to any changes in accordance with this condition 6.4, we shall issue a revised PA Contract in accordance with condition 6.1.
- 6.5 You may propose amendments to your ITT Response at any time, but no amendment to your ITT Response shall be valid for any purpose unless we have agreed to it in writing in the form of an email from an SDS procurement manager.
- 6.6 We may at any time after consultation with you, specify the nature of any amendment to your ITT Response and the date by which you must implement the necessary amendment.
- 6.7 Variations to the PA Contract which do not meet the requirements of this condition 6 or the Specification shall not be permitted.
- 6.8 You are responsible for ensuring that the services referenced within your ITT Response meet the standards and Qualifications set out in the PA Contract at all times, including any variations to your ITT Response that have been implemented in accordance with the requirements of this Condition 6 or the Specification (as applicable).

7. Provider Personnel

- 7.1 You shall at all times, ensure that:-
 - (a) each of your personnel is suitably qualified, adequately trained and capable of providing the part(s) of the Services each individual is engaged in; and
 - (b) there is an adequate number of personnel to provide the Services properly.
- 7.2 You shall remove any of your personnel from the provision of any or all parts of the Services that we may specify, where we decide that the individual has failed to carry out their duties with reasonable skill and care. We shall always act reasonably when we consider an individual's performance and conduct. Following the removal of any of your personnel from the delivery of the Services for any reason, you shall ensure that the person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

8. FIPS

- 8.1 In carrying out your obligations under the PA Contract, you shall meet all our information technology requirements (including the SDS Information Security Policy for Providers attached at Appendix Part 4 to these Conditions) for processing claims and other information we specify

from time to time. We may vary our information technology requirements at any time in line with the development and updating of our systems. We aim to give each service provider reasonable notification of any variations on the FIPS pages of the SDS Provider Web Pages, where appropriate.

- 8.2 Where you have an obligation to delete, destroy or dispose of any Personal Data on FIPS relating to a Participant, you shall not attempt to access that Personal Data on FIPS (even if access is available) except to the extent you require for the purposes of administering the PA Programme, or complying with your obligations under the PA Contract or any applicable law.
- 8.3 Funding for each PA Programme will be administered through FIPS in accordance with our requirements.
- 8.4 You must, through duly authorised and appropriately qualified staff, complete and keep up to date, accurate information relating to each Participant required by FIPS. You must also comply at all times with our FIPS guidance which is available on the FIPS pages of the SDS Provider Web Pages. This guidance may be amended by us from time to time.
- 8.5 In order to use FIPS as set out in the PA Contract, you must maintain a User Permission for each user of the FIPS software for the period of the PA Contract (and any longer period you may require, to process all claims for payment and submit required evidence under the PA Contract). We shall provide you with the information relating to User Permissions including the terms and conditions and charges that apply, and guidance on the process for requesting/granting/amending User Permissions through direct communications with you or, if we choose to do so, in the FIPS pages of the SDS Provider Web Pages. Further conditions or guidance may also be set out in your Letter of Award.

9. Claims and Payment Arrangements

- 9.1 We shall pay you for the Services you perform fully in accordance with the terms of the PA Contract. Payments shall be paid in accordance with the Contract Schedule. To the extent that the Contract Schedule is amended at any time under any of the Conditions, each reference to the Contract Schedule within the Contract Documents, and any operational documents referenced within the Contract Documents shall be deemed to be amended accordingly with effect from the date of amendment.
- 9.2 Where we approve the transfer of a Participant under paragraph 8.2 of the Specification (approval to transfer a Participant to a replacement provider), we may adjust the funding model (to a lower rate) and associated Contract Schedule for each activity that can be claimed by the replacement provider during the remainder of the Participant's training. Any adjustment is intended to reflect the extent of Services required to be performed by the replacement provider, relative to the Services already provided by the original provider, to enable the Participant to achieve the relevant activity. To be clear, where you are the replacement Provider under the PA Contract, the rate, as adjusted, shall apply in respect of the remaining activities. Our decision on any such adjustment shall be final.

- 9.3 Subject to any variations we may agree under the variation procedures set out in these Conditions, you shall throughout the period of the PA Contract, provide the Services in the volumes, outputs of activity, financial profiles, minimum achievement rate and quality of delivery set out in the Contract Documents.
- 9.4 You shall ensure that any measures applied to comply with your Workforce Matters obligations are not directly or indirectly detrimental to any Participant in the course of work based learning. We may examine appropriate evidence of your compliance with your Workforce Matters obligations including the activity you undertake to promote the benefits of Workforce Matters to potential employers. You shall make all relevant evidence available to us promptly following any request from us.
- 9.5 Not used.
- 9.6 You shall pay us the charge that applies for each User Permission we make available to you. The charges, terms and conditions, guidance and other information relating to User Permissions are available on the FIPS pages of the SDS Provider Web Pages. (If we change that location, you will be advised by email). We may withdraw FIPS from service temporarily when we need to undertake maintenance or upgrading work. We are entitled to invoice you for each User Permission at any time after we issue the User Permission to you. You must pay each invoice within 30 days of the date of issue of the invoice. If you fail to pay any invoice (or part of any invoice) in accordance with this condition 9.6, we may offset the shortfall against any sums we owe you. This is only one option available to us and does not prevent or restrict us from exercising any other right or remedy that we may have.
- 9.7 You cannot submit any claim until you are in possession of all the evidence set out in the Specification and the Conditions for that claim. For any claims, you must have properly fulfilled all required Services relating to the activity your claim relates to. You must submit all claims for payments through FIPS no more than 90 days from the achievement date of that claim. The reason for claims being submitted after the expiry of this period must be fully explained. Where you have not made all the evidence available to us (or our agents) on request, and/or any of the evidence was not in your possession at the date you submitted the claim on FIPS, we shall not be obliged to pay you for the claim to which that required evidence relates and we may recover any payment that we have made in relation to such a claim. We shall not accept any evidence other than the evidence referred to in the Specification and the Conditions as support of a claim. Where you fail to submit a claim within the 90 day period and do not provide a sufficient explanation for the delay, we shall be entitled to suspend any and all payments under the PA contract.
- 9.8 We shall be entitled to withhold any payment claimed until we are satisfied that the supporting evidence is authentic, accurate and suitable. We may therefore conduct an audit of the supporting evidence. Any audit will be conducted in a manner we believe to be appropriate, and we may use agents. Payment of any claim (whether an audit is undertaken or not) does not mean that we have satisfied ourselves that the supporting evidence is authentic, accurate or suitable. Where we are not satisfied that the evidence meets these requirements you will

be in breach of the Conditions and we reserve our rights (including our right to recover any payments made) in that regard.

- 9.9 You must at all times be a financially viable organisation and have robust financial systems in place. If we ask you at any time, you must:-
- (a) provide all financial and/or other information we may request, which may include the latest set of your audited accounts or such other information as we may reasonably require to enable us to assess your continuing financial viability and your ability to continue to perform your obligations under the PA Contract;
 - (b) get any financial and/or other information that you provide to us under the PA Contract certified by an independent accountant or equivalent and provide evidence to us of that certification, or equivalent;
 - (c) obtain and provide to us, industry recognised credit reports relating to you to enable us to assess your continuing financial viability and your ability to continue to perform your obligations under the PA Contract; and
 - (d) obtain and provide to us a report, by an independent accountant or equivalent, on the financial systems and controls you operate in respect of monies you receive for the purposes of the PA Programme.
- 9.10 Provided always that you have met and continue to meet all your obligations under the PA Contract, we will pay you the sums due in accordance with the provisions set out in the PA Contract. All payments made under the PA Contract are inclusive of any VAT that applies.
- 9.11 We do have rights to withhold and recover payments from you. These are set out in Condition 24.2(a).
- 9.12 You cannot make any charge of any nature to any Participant or proposed Participant, or former Participant, in respect of the PA programme, whether before, during or after the individual's participation in the PA Programme. (To be clear, this means you cannot charge any Participant any charge for, or costs or losses incurred as a result of, a Participant's early departure from their PA programme).

10. Performance and Award

- 10.1 You must adhere to the Quality Standards and meet the minimum Performance Levels set out in Condition 10.5 below when performing the Services. Where you fail to meet any Performance Level, the consequences (if any) set out in Condition 10.5 below shall apply. The consequences set out below represent only one option available to us, and do not prevent or restrict us from exercising any other right or remedy that we may have, (including any reallocation and/or further award under this condition 10).
- 10.2 You shall promptly provide all reports and rationales as we may request from you from time to time, in order to measure your compliance with the Performance Levels.

- 10.3 We will from time to time evaluate the number of Participants that have started under your PA Contract against the number of Participants identified as a Start in the Contract Schedule. Where there is a shortfall we may reallocate the volumes in accordance with the variation provisions within these Conditions.
- 10.4 You shall provide all the records and management reports summarising your achieved Performance Levels that we may request from time to time. You shall do this within the timescales that we state.
- 10.5 The Performance Levels set out in this condition 10.5 apply.
- (a) Performance level Action – Achievement Rates
- (i) You shall ensure that the Achievement Rate of Participants who have left the PA Programme since the commencement of the PA Contract is not less than 75%. To be clear, Achievement Rate is calculated by dividing the total number of those Participants who have, since the commencement of the PA Contract, successfully completed their PA programme, by the total number of Participants who have, since the commencement of the PA Contract, left the PA programme for any reason.
 - (ii) When calculating the number of Participants who have left, you must include Participants who left having completed their PA programme and Participants who left without completing their PA Programme. The start date of each Participant is irrelevant for the calculations under this Performance Level.
 - (iii) If you fail to meet the relevant Performance Level and you fail to provide a rationale for each failure that is acceptable to us, we may require you to enter into an Improvement plan in accordance with Condition 24 (Other Remedies).
- (b) Performance Level Action – Participant Contact Details
- (i) You shall ensure that for 100% of Participants entered on FIPS, email addresses and contact details for the Participant are entered on FIPS and remain accurate at all times.
 - (ii) If you fail to meet this Performance Level and you fail to provide a rationale for each such failure that is acceptable to us, we shall be entitled to suspend any and all payments to you under the PA Contract.
- (c) Performance Level Action – End Dates
- (i) You shall ensure that there are no instances where:-
 - (A) Any FIPS entry entered by you contains inaccurate information relating to (a) any Participant's leaving code, or (b) any Participant's actual end date;
 - (B) A Participant's leaving code has not been accurately entered in to FIPS by you within the 14 day period immediately following the Participant's actual end date;

- (C) Any Participant's expected end date shown on FIPS has expired, and no actual end date has been entered in to FIPS by you within the 14 day period immediately following that expiry date.
- (ii) If you fail to meet this Performance Level and you fail to provide a rationale for each failure that is acceptable to us, we shall be entitled to suspend any and all payments under the PA contract.

11. Application to Complete PA (or part of PA)

- 11.1 We may, in exceptional circumstances, grant written permission to you for a Participant to complete any part of the Participant's PA. You may request permission by submitting written details of the Participant's exceptional circumstances to your assigned Skills Investment Adviser. Any permission that we grant shall be in the form of an email from the SDS assigned Skills Investment Adviser or by our confirmation in FIPS.

12. Grievance and Disciplinary Procedures

- 12.1 You must have a written policy for managing grievance and disciplinary procedures. These procedures must operate in such a way so as to ensure that Participants are treated fairly and reasonably in the course of their work based learning. Participants must be notified of these policies and procedures at the commencement of their Learning Plan and must have access to them at all times.
- 12.2 Where a serious breach of policy occurs (e.g. an act of violence by a Participant) you may exclude the Participant from the PA Programme immediately without notice. You must inform SDS immediately by telephone of the exclusion and the reason for it.

13. Warranties and Representations

You warrant and represent to us that:-

- 13.1 you have full capacity and authority and all necessary consents (including, where your procedures require, the consent of your Parent Company) to enter into and to perform your obligations under the PA Contract;
- 13.2 the PA Contract (and any ancillary documentation) is executed by your duly authorised representative;
- 13.3 in entering into the PA Contract, you have not committed and shall not commit any Fraud;
- 13.4 as at the commencement of the PA Contract, all information, statements and representations contained in the documents submitted in respect of the relevant ITT Response are true, accurate and not misleading except as you may have specifically disclosed in writing to us prior to the execution of the PA Contract and you will promptly advise your SDS assigned Contract Executive in writing of any fact, matter or circumstance of which you may become

aware which would render any of that information, or statement or representation to be false or misleading;

- 13.5 you have not entered into any agreement with any other person with the aim of preventing proposals being made or as to the fixing or adjusting of the conditions on which any proposal is made in respect of the PA Contract;
- 13.6 you have not caused or induced any person to enter any arrangement referred to in Condition 13.5;
- 13.7 you have not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other proposal or proposed proposal for the performance of Services relating to PA Programmes under the PA Contract.
- 13.8 you have not committed any offence under the Bribery Act 2010;
- 13.9 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of your knowledge and belief, pending or threatened against you or any of your assets which will or might affect your ability to perform your obligations under the PA Contract;
- 13.10 you are not required to comply with any contractual obligation, compliance with which is likely to impact your ability to perform your obligations under the PA Contract;
- 13.11 no proceedings or other steps have been taken and not discharged (nor, to the best of your knowledge, are threatened) for your winding up or for your dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of your assets or revenue; and
- 13.12 in the three (3) years prior to the date of the PA Contract:-
- (a) you have conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to you in any country where you file accounts;
 - (b) you have been in full compliance with all applicable securities laws and regulations in the jurisdiction in which you are established; and
 - (c) you have not performed any act or omission with respect to your financial accounting or reporting which could have an adverse effect on your position as an ongoing business concern or your ability to fulfil your obligations under the PA Contract.

14. Prevention of Bribery

14.1 You:

- (a) shall not, and shall procure that your employees, consultants, contractors, sub-contractors and agents shall not, in connection with this PA Contract commit a Prohibited Act; and
- (b) warrant, represent and undertake that you are not aware of any financial or other advantage being given to any person working for or engaged by us, or that an agreement has been reached to that effect, in connection with the execution of this PA Contract or any other contract with a public authority. Where you have provided us with full written details of any specific arrangement before this PA Contract is executed, that arrangement is excluded from this Condition, but only to the extent the information you provided is accurate.

14.2 You shall:

- (a) if requested, provide us with any reasonable assistance to enable us to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) immediately following any request from us, certify to us in writing compliance with this condition 14 by you and all persons associated with you or other persons who are supplying services in connection with this PA Contract. The certification must be signed by a Director or equivalent of your organisation. If we make a reasonable request to you, you shall promptly provide all supporting evidence of compliance to us.

14.3 You shall have an anti-bribery policy to prevent any of your employees, consultants, contractors, sub-contractors and agents from committing a Prohibited Act, which you shall enforce. If we request a copy, you shall disclose it to us immediately.

14.4 If you suspect or know of any breach of condition 14.1, you must notify us immediately.

14.5 If you notify us that you suspect or know that there may be a breach of condition 14.1, you must respond promptly to our enquiries, co-operate with any investigation, and allow us and our representatives to audit books, records and any other relevant documents.

14.6 We may terminate this PA Contract by written notice with immediate effect if you, or any of your employees, consultants, contractors, sub-contractors or agents breaches condition 14.1. This is the case whether or not you were aware of the breach.

14.7 Any notice of termination under condition 14.6 must specify:

- (a) the nature of the Prohibited Act; and
- (b) the date on which this PA Contract will terminate.

14.8 Any dispute relating to:-

- (a) the interpretation of this condition 14; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by us and our decision shall be final and conclusive.

14.9 Termination represents only one option available to us, and does not prevent or restrict us from exercising any other right or remedy we may have.

15. Statutory and other Requirements

15.1 In performing your obligations under the PA Contract, you shall comply with all relevant requirements of Scots and UK law and, for so long as it applies, European Community law.

15.2 You shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to your performance of the PA Contract.

15.3 Where you undertake any work which is 'regulated work' in terms of the Protection of Vulnerable Groups (Scotland) Act 2007 (the 2007 Act) with either 'children' (section 97 of the 2007 Act) or 'protected adults' (section 94 of the 2007 Act), by entering into this PA Contract you agree that you are confirming that you meet and shall continue to meet for the period of the PA Contract, all legal requirements of the 2007 Act.

15.4 Where you did not at the date of submission of your ITT Response but do at any time during the PA Contract undertake any 'regulated work', as referred to in condition 14.3 above, you will inform us within 28 days of doing so. Further, by entering into this PA Contract, you are confirming that all legal requirements of the 2007 Act will be met for the period during the PA Contract when you are undertaking 'regulated work'.

15.5 Where any of your employees who undertakes 'regulated work', as referred to in condition 14.3 above, is the subject of a report made by you to Scottish Ministers (section 5 of the 2007 Act) as the result of allegations of the employee causing 'harm' (section 93 of the 2007 Act), you will advise your Skills Investment Advisor as soon as reasonably practicable that you had cause to make the report.

15.6 Where you undertake work which is 'regulated work', as referred to in condition 14.3 above, you will, if requested by us, immediately make available all of your relevant policies and procedures to your Skills Investment Advisor. If we tell you to provide them to someone else instead, you will provide them to that other person.

15.7 You agree that you:

- (a) shall be responsible for managing the health and safety of Participants;
- (b) will comply with any health and safety guidance issued by the Scottish Government and/or the Health and Safety Executive from time to time, in particular those regarding the risks associated with the Coronavirus;
- (c) have arranged for a suitable and sufficient risk assessment regarding these risks to be undertaken by a competent person; and

- (d) shall immediately notify all reportable accidents to the relevant authority as required by RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations). If an accident occurs whilst a Participant is undertaking activities in their Learning Plan or which are relevant to the Pathway Apprenticeships Programme, you must inform SDS immediately in writing.

15.8 Participants may join a trade union, if they are eligible to do so under its rules. The decision to join a trade union is entirely a matter for individual Participants and you shall not seek to influence this decision in any way. Any agreed arrangements that you, your sub-contractors or agents (if any) have with the trade union and which are relevant to Participants must be explained at the commencement of implementation of the Learning Plan.

15.9 Participants who join a trade union must be treated in the same manner as all other members of that union, (e.g. given time off to attend legitimate union meetings.)

16. SDS Documents, Forms and Processes

16.1 Except where any document, form or process we have provided relating to the PA Programme states on it that it is 'Exemplar', each document, form or process that we make available to you is provided in the format that you must use. This means that you must use the exact document, form or process we have provided and that you must not vary it (unless you have obtained written approval from your assigned Skills Investment Advisor beforehand. In that case, you are entitled to vary the document, form or process only to the extent approved by us.) Where any document, form or process we have provided relating to the PA Programme states on it that it is 'Exemplar', you may use your own alternative document, form or process, provided that the document, form or process you use conforms fully with the minimum requirements set out in the Specification and Conditions, and is presented in a readable format that is satisfactory to us.

17. Conflicts of Interest

17.1 You shall take appropriate steps to ensure that neither you nor any Staff are placed in a position where (in our reasonable opinion) there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of you or Staff and the duties owed to us under the provisions of the PA Contract.

17.2 You shall immediately email or write to your assigned Skills Investment Advisor, to provide full details if any conflict referred to in condition 17.1 above arises or is likely to arise.

17.3 We may:-

- (a) terminate the PA Contract (or any part of the contract) without penalty to us, immediately by giving notice in writing to you; and/or
- (b) take any other steps we deem necessary

- (c) where in our reasonable opinion, there is or may be an actual conflict, or a potential conflict, between your financial or personal interests and the duties owed to us under the provisions of the PA Contract. This is only one option available to us and does not prevent or restrict us from exercising any other right or remedy that we may have.

18. Safeguard Against Fraud

- 18.1 You shall safeguard the funding you claim from us (which includes funding you may receive from us following submission of any declarations) under or in relation to the PA Contract against Fraud generally and, in particular, Fraud on the part of you and your Staff. You shall immediately notify SDS, and email your assigned SDS Skills Investment Advisor, or assigned SDS Compliance Officer, if you have reason to suspect that any Fraud has occurred or is occurring or is likely to occur, providing full details of the suspected, actual or potential Fraud.

19. Data Protection

- 19.1 Subject to condition 19.2, the parties agree that they are each a “Data Controller” in terms of the Data Protection Legislation and that any sharing of Personal Data between you and us relating to the PA programme will be on a Data Controller to Data Controller basis. You shall comply with the Data Protection Legislation and shall ensure that you have obtained all permissions required in relation to the Data Protection Legislation to enable you to comply with the requirements of the PA Contract. Appendix 2 (Data Sharing) applies in respect of all Personal Data that is shared between you and us, (under exception of Processed Data) in relation to the PA Contract.
- 19.2 In relation to the collection and processing of Processed Data only, the parties agree that we shall be the Data Controller and you will be the Data Processor. You will act only on our instructions and ensure that there are appropriate technical and organisational measures in place to ensure the security of the personal data comprised in the Processed Data in accordance with the Data Protection Principles set out in Data Protection Legislation and shall not use any Personal Data comprised in the Processed Data for any other purpose nor shall you disclose the same to any third person. You will comply with the provisions of Appendix 3 (Processed Data) in respect of the Processed Data.
- 19.3 You shall, at all times during and after the PA Contract, indemnify us and keep us indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees and regulatory fines) incurred by, awarded against or agreed to be paid by us arising from any breach of your obligations under this condition 19 (and the corresponding appendices) except and to the extent that such liabilities have resulted directly from our instructions.
- 19.4 We acknowledge that you rely on us alone for direction as to the extent you are entitled to use and process the Personal Data where you are a Data Processor under the PA Contract. Subject to paragraph 4 of Appendix 3 to these Conditions, you shall be entitled to relief from liability in circumstances where the Data Subject makes a claim or complaint with regards to your actions to the extent that such actions directly result from instructions received from us in connection with the Processed Data.

20. Freedom of Information

- 20.1 To the extent that either party ("FOISA Party") is subject to the requirements of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (together 'FOISA') the other party shall assist and cooperate with the FOISA Party to enable the FOISA Party to comply with its Information disclosure obligations.
- 20.2 The other party shall and shall procure that its sub-contractors and agents shall at its cost:-
- (a) transfer to the FOISA Party all requests for Information that it receives as soon as practicable and in any event within four calendar days of receiving a request for Information;
 - (b) provide the FOISA Party with a copy of all Information in its possession or power in the form that the FOISA Party reasonably requires, within 7 calendar days (or such other period as we may specify) of the FOISA Party's request; and
 - (c) provide all necessary assistance as reasonably requested by the FOISA Party to enable the FOISA Party to respond to the request for Information within the relevant time for compliance set out in FOISA.
- 20.3 The FOISA Party shall be responsible for determining in its absolute discretion and notwithstanding any other provision in or relating to the PA Contract or any other agreement, whether the Information and/or any other Information is exempt from disclosure in accordance with the provisions of FOISA, and may at its absolute discretion disclose to a third party any Information relating to or provided by or on behalf of the other party.
- 20.4 In no event shall the other party respond directly to a request for information unless expressly authorised to do so by the FOISA Party.

21. Insurance

- 21.1 You shall have in force and shall require any sub-contractor to have in force for the period of the agreement:
- (a) employer's liability insurance in accordance with all legal requirements that apply during the period of the agreement, and
 - (b) public liability insurance for such sum and range of cover as we may specify in our invitation to tender and/or Specification. If we have not specified any requirements, public liability insurance for the sum and range of cover as you deem to be appropriate, covering as a minimum all matters which are the subject of indemnities or compensation obligations relating to the PA Contract in total.
- 21.2 The policy or policies of insurance referred to in Condition 20.1 shall be shown to us whenever we request, together with satisfactory evidence of payment of all premiums due by the date of our request.

22. Termination

22.1 We may without penalty terminate the PA Contract or any part of the contract (which we will set out in the relevant notice), by serving written notice on you with effect from the date specified in the notice:-

- (a) where, in our opinion, you have failed to comply with any terms of the PA Contract:-
where, in our opinion, you are unable to perform your obligations in terms of the PA Contract;
- (b) in the event that we cease to be engaged in the performance or support of the PA Programme;
- (c) not used;
- (d) where you have any accreditation from any Awarding Body withdrawn (in each case whether temporarily or permanently), or where it is not renewed;
- (e) where you fail to
 - (i) notify us of any hold placed on any accreditation by an Awarding Body;
 - (ii) notify us of any sanction which may impact on a Participant's achievement; or
 - (iii) provide us with a copy of any Awarding Body External Verifier's report containing any action,

in each case, within the timescale required in the Specification;

- (f) where any of the circumstances set out in Condition 23 arise;
- (g) where an Insolvency Event as described in condition 39 has occurred in relation to you;
- (h) where we terminate any other contract we entered into with you as a consequence of your breach;
- (i) where we become aware of any breach of any other agreement we entered into with you at any time (irrespective of whether the agreement has expired or is still in operation, and irrespective of whether the breach occurred before or after the date of the PA Contract), which breach (or breaches) would entitle (or would have entitled) SDS to terminate the agreement that was breached;
- (j) if we reasonably consider that the PA Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of The Public Contracts (Scotland) Regulations 2015 (as may be amended or replaced from time to time);
- (k) if you fail to comply with legal obligations in the fields of environmental, social and employment law when performing the PA Contract;
- (l) if at any time, we have reasonable cause to believe that at the time of awarding the PA Contract to you, (or, if the PA Contract has been assigned or novated to you, the party assigning or novating to you), you (or the assigning or novating party) were in one of the situations referred to in regulation 58(1) of The Public Contracts (Scotland)

Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and that you (or the assigning or novating party) should therefore have been excluded from the procurement procedure;

- (m) if we have reasonable cause to believe that you (or, if the PA Contract has been assigned or novated to you, the party assigning or novating to you), have committed an act or engaged in an activity listed in regulation 58(8) of The Public Contracts (Scotland) Regulations 2015, as read with regulation 58 paragraphs (13) – (17), in which case we shall also consider and apply any relevant guidelines or policy notes which may be issued by the Scottish Government from time to time (which shall include, but not be limited to, any guidelines or policy notes relating to blacklisting practices); or
- (n) if we have reasonable cause to believe that the PA Contract should not have been awarded to you (or, if the PA Contract has been assigned or novated to you, the party assigning or novating to you), in view of a serious infringement of the obligations under the Treaties (as defined in the European Communities Act 1972) and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

22.2 We may without penalty terminate the PA Contract by serving one Month's written notice on you at any time.

22.3 You shall email procurement@sds.co.uk immediately if another individual or body, or individuals or bodies acquire(s) a Controlling Interest in you where they do not at the commencement date of the PA Contract hold that Controlling Interest. For the purpose only of determining Controlling Interest, disregard any change in the ownership / control of voting share capital, voting rights or powers or appointment / removal of directors where that change relates to your ultimate holding company or other parent undertaking of yours) ("**Change of Control**"). We may terminate the PA Contract and/or any other contract we have entered into with you, or any part of any such agreement, (as we may set out), without penalty to us by giving notice in writing to you with immediate effect within six (6) Months of:-

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that we become aware of the Change of Control;
- (c) but we cannot terminate under this condition 22.3 where we approved the Change of Control prior to its implementation, in writing.
- (d) If we terminate the PA Contract (or any part of the PA Contract) for breach, we shall be entitled to terminate any other contract we have entered into with you, without penalty to us, by serving written notice on you with effect from the date we specify in the notice.

22.4 Our rights of termination under this condition 22 are available to us in addition to any other rights of termination that are set out under the PA Contract or are otherwise available to us.

- 22.5 In order to avoid any doubt, we shall be entitled to rely on any evidence that we consider appropriate, acting reasonably, from any source, that you have not complied with any provision within the PA Contract.
- 22.6 You may without penalty to us, terminate the PA Contract by serving written notice on us if we make any material change to these Conditions, or the Specification. Where we make any change that materially increases the costs you incur when providing the Services, this will be considered to be a material change. The date of termination shall be the date which we confirm as the date on which the relevant change to the Conditions (or the Specification) takes effect (or the date occurring 4 weeks after the date on which the date of the relevant change is confirmed, whichever is the later), and you must serve your notice (in accordance with condition 33 (Notices)) prior to that date. Your right to terminate under this condition shall cease on that date, and shall not be extended.
- 22.7 SDS shall be entitled to require the Provider at any time, to deliver to SDS immediately on demand, all the evidence required under the PA Contract to support all outstanding claims and payments under the PA Contract. SDS shall be entitled to satisfy itself, acting reasonably, that all supporting evidence is available, complete and accurate before SDS makes any such payment, in addition to SDS's right to recover any payments made where the required supporting evidence has not been made available.

23. Termination for Reputational Damage

- 23.1 We shall be entitled to terminate the PA Contract by written notice with immediate effect if you and/or any of your directors, staff, Permitted Sub-contractors or representatives:-
- (a) has committed a crime; or
 - (b) has become involved in any situation or activity which:-
 - (i) tends in our opinion to have a negative effect on the reputation of SDS, any Scottish Minister or the PA Programme or any aspect of our or any Scottish Minister's business;
 - (ii) would expose us, any Scottish Minister or the PA Programme or any aspect of our or any Scottish Minister's business to disrepute, scandal, ridicule or contempt, or would tend to shock, insult or offend the public in Scotland;
 - (iii) reflects unfavourably on the reputation of SDS, any Scottish Minister or the PA Programme or any of our or any Scottish Minister's services, interests or activities; or
 - (iv) might affect the supply and/or exploitation of the services, activities and interests of SDS, any Scottish Minister or the PA Programme.

23.2 Our decision on all matters arising under this condition 23 shall be conclusive.

23.3 Examples of acts or conduct considered to be prejudicial to the business of SDS, any Scottish Minister or the PA Programme include:

- (a) the posting or publishing on social media or elsewhere of any content that promotes bigotry, racism or discrimination based on race, gender, religion, nationality, disability, sexual orientation or age;
- (b) the expression of any political views in a context that could give rise to an association with our or any Scottish Minister's business;
- (c) the use of, trade in, or other association with, illegal drugs.

24. Other Remedies

24.1 Our rights and remedies set out throughout the Conditions are not exclusive. Where we exercise any right or remedy relating to the PA Contract, this will not prevent or restrict us from exercising any other right or remedy that we have.

24.2 The following remedies are included within the remedies available to us:-

- (a) If you have received payment from us which you were not due to receive under the terms of the PA Contract or any other agreement you have (or have had) with us, we are entitled to recover up to the full amount of the funding paid to you, from you. We may deduct any sums due to us from any payments you are due to receive from us, or, if we request, you must pay the sums to us immediately following our request. This is only one option available to us and does not prevent or restrict us from exercising any other right or remedy that we may have. To be clear, where the PA Contract has been assigned or novated to you by another party, and the assignation or novation identifies that liability under this PA Contract and any additional contracts (whether extant or expired) entered into between SDS and that party, transfers to you, you shall be liable to SDS for all such overpayments made to that party.
- (b) If you fail to provide any part of the Services entirely as set out in the PA Contract, this shall be a breach of the PA Contract. This shall include any failure by you to provide the required evidence, or any failure by you to demonstrate that you met required timescales set out in the Contract Documents. Where you are in breach, we shall be entitled to:-
 - (i) suspend any or all payments under the PA Contract and any other contract you have entered into with us, until we have concluded a full investigation of your activities. Except where it may not, in our reasonable opinion, be appropriate to do so, we will give you written notice if we are going to suspend payment, and shall set out the date the payment suspension will start. We may also include details of the anticipated duration of the payment suspension in the notice, or advise you about that separately in writing. We may extend the duration of the payment suspension if we have good reason to do so in order to complete a full investigation.
 - (ii) suspend your appointment under the PA Contract and any other contract you have entered into with us. Except where it may not, in our reasonable opinion, be appropriate to do so, we will give you written notice if we are going to suspend your appointment, and shall set out the date the suspension will start.

We may also include details of the anticipated duration of the suspension in the notice, or advise you about that separately in writing. We may extend the duration of the suspension if we have good reason to do so in order to complete a full investigation;

- (iii) suspend your right to access FIPS under the PA Contract and any other contract you have entered into with us, until we have concluded a full investigation of your activities. Except where it may not, in our reasonable opinion, be appropriate to do so, we will give you written notice if we are going to suspend FIPS, and shall set out the date the FIPS suspension will start. We may also include details of the anticipated duration of the payment suspension in the notice, or advise you about that separately in writing. We may extend the duration of the FIPS suspension if we have good reason to do so in order to complete a full investigation.
- (iv) recover from you up to the full amount of all the funding we have paid to you under the PA Contract, which you shall pay immediately. Any funds we recover shall not be repaid to you;
- (v) permanently withhold any or all future payments which we may otherwise require to pay to you, in respect of each Participant under the PA Contract, and under any other contract you have entered into with us;
- (vi) reduce the volume of Starts we awarded to you under the PA Contract (in which event you shall require to promptly sign your acceptance of appropriate amendments to the PA Contract as we set out);
- (vii) serve a notice on you requiring you to fully correct the breach (if it is capable of being fully corrected). The notice will set out the period for fully correcting the breach, which period shall not be longer than 28 calendar days. If the breach has not been fully corrected by the end of the specified period, we may then terminate the PA Contract and/or any other contract you have entered into with us (or part of the PA Contract, or any other contract) under condition 22; and/or
- (viii) require you to agree to an action / improvement plan (or Quality Action Plan, whichever we indicate) setting out corrective actions you require to take, and the required timescale for completing the corrective actions. If the corrective actions have not been properly completed within the required timescale, or if during the specified period, we are of the reasonable opinion that there is no reasonable prospect of you properly completing the corrective actions within the stated timescale, we may terminate the PA Contract and/or any other contract you have with us.

24.3 Not used.

24.4 Where you have submitted a claim before you are entitled to do so, and we have paid the claim, even if the claim subsequently becomes due and we agree that repayment is not required, we shall be entitled to charge interest on the amount of the payment at the rate of

4% per annum above the base rate of the Bank of Scotland from the date we made the payment until the date that it actually fell due.

- 24.5 We shall be entitled to deduct from any payments that are due to you under the PA Contract or any other contract you have with us:-
- (a) any sums you owe us, however and whenever these sums arise; and
 - (b) any sums due to us by any person to whom you have transferred your undertaking;
 - (c) or if you are not due to make any further claims, or if we otherwise request, you will immediately repay those sums to us.
- 24.6 Where we discover that you have submitted any inaccurate claims for payment to us, we shall be entitled, in addition to requiring repayment of those amounts, to apply extrapolation at the rate of inaccuracy identified and to demand repayment of a proportion of claims which are deemed to have been paid erroneously on the basis of the extrapolation.
- 24.7 Unless we specifically state otherwise in any Condition, each remedy for a breach of the PA Contract that is available to you or to us is available independently of any other remedy. Each remedy may therefore be applied alongside any other remedy (or remedies) or separately. If either you or SDS applies any one remedy, that shall not be deemed to be a decision to apply that remedy to the exclusion of other remedies that may be available.
- 24.8 Where we become aware of any breach of any other agreement which we entered into with you at any time for the provision by you of services relating to work based learning or modern apprenticeships, and where we believe that you may be committing a similar breach of your PA Contract, we may require you to agree to an action/improvement plan. The process for that set out in Condition 24.2(b)(viii);
- 24.9 If you were party to any other contract with SDS at any time between 1 April 2019 and 31 March 2020 and an action/improvement plan was in operation or had been requested or otherwise agreed under that contract at the end of that contract, that action/improvement plan undertaking shall continue to apply to you under your current PA Contract, unless you receive an email from your SDS assigned Skills Investment Advisor telling you that the action/improvement plan shall no longer apply.
- 24.10 We shall also be entitled to exercise the powers set out in Condition 24.2(b)(i) - 24.2(b)(iii) where we reasonably suspect that you are in breach of the PA Contract.

25. Consequences of Termination and Expiry

- 25.1 When we serve any notice on you terminating the PA Contract (or any part of the PA Contract), you shall continue to fulfil all of your obligations under the contract until the date of termination that we set out in the notice, or, if we wish you to stop performing any of the Services before the termination date set out in the notice, you shall stop performing those Services on that earlier date.

- 25.2 We shall not require to pay you for activity you perform after the date of termination, unless you have the prior written agreement of your Skills Investment Advisor that we will make such payments.
- 25.3 Each condition and associated requirement under the PA Contract which states specifically or otherwise implies that it is intended to remain in force after the termination/expiry date shall remain in force after the termination or expiry of the PA Contract. This includes all provisions entitling us to recover sums paid, condition 14 (Prevention of Bribery), condition 19 (Data Protection), condition 20 (Freedom of Information), condition 22 (Termination), condition 24 (Other Remedies), condition 25 (Consequences of Termination and Expiry), condition 26 (Liability), condition 29 (Records, Audit Access and General Assistance), condition 30 (Confidentiality), condition 36 (Marketing, Branding and Publicity), condition 37 (Intellectual Property Rights) and condition 38 (Transfer of Undertakings), and in each case, all associated provisions set out in any appendices.
- 25.4 On the expiry or earlier termination of the PA Contract or any part of the contract for any reason, you shall provide all assistance that we request. We may include within our request, a requirement for you to delete and/or deliver to any person we identify all documents and data (including all Personal Data you process as a Data Processor under condition 19, except where applicable UK or EU law requires that you must continue to store the Personal Data in your possession, custody or control relating to the performance of your obligations under the PA Contract), so as to facilitate a smooth and swift winding up of business between you and us.
- 25.5 Following expiry or earlier termination of the PA Contract, you shall not represent that you are contracted to provide training under the PA Programme and you shall not, even if previously permitted to do so, use or continue to use any SDS branding.

26. Liability

- 26.1 Except to the extent that we have limited our liability in condition 26.2, our total liability to you for any costs and/or losses you incur or suffer in relation to the PA Contract shall be capped at the total charges due to you for performing the Services under the PA Contract in relation to which the costs and/or losses have arisen.
- 26.2 In no event shall we limit our liability under the PA Contract for:-
- (a) Death or personal injury caused by the negligence of us or our Staff;
 - (b) Fraud or fraudulent misrepresentation by us, our staff or representatives.

27. Severability

- 27.1 If any provision of the PA Contract is held invalid, illegal or unenforceable for any reason, that provision shall be removed and the remainder of the provisions shall continue in full force and effect as if the PA Contract had been agreed with the invalid provision removed.

27.2 Where any provision is held to be invalid, and that invalidity prevents the purpose of the PA Contract being properly achieved, the parties shall immediately commence good faith negotiations to rectify the invalidity.

28. Non-Discrimination

28.1 You shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, and other Protected Characteristic (as defined in the Equality Act 2010) or otherwise).

28.2 You shall take all reasonable steps to ensure that all of your servants, suppliers, employees and sub-contractors engaged in performing the PA Contract comply with condition 28.1.

28.3 This condition 28 does not cancel or reduce your obligations relating to equality set out in paragraph 3.1 of the Specification.

29. Records, Audit Access and General Assistance

29.1 The European Social Fund (ESF) provides funding to us from time to time. As a condition of this ESF funding, we are required to obtain 'matched' funding from other sources that is proportionate to the ESF funding. You must assume that all sums you receive from us under the PA Contract is 'matched funding'. The only exception to this is set out in condition 28.4 below.

29.2 Unless you are advised under condition 29.4 that your payments are not matched funded payments, you must not use any sums received from us under this PA Contract as funding to 'match' any other activity you are involved in which is funded by ESF.

29.3 You shall retain full and accurate records and accounts of your operation of the PA Contract including the Services provided under it, and the amounts we pay you under and in relation to the PA Contract. You will do this from the start date of the PA Contract until 31 December 2026, (or any later date we may tell you). In order to avoid any doubt, all of these records and accounts shall include the documents, forms and processes that evidence completion of all requirements in the Specification.

29.4 Where we advise you (i) in the form of an email from your SDS assigned Skills Investment Advisor, (ii) through a variation to the Conditions, or (iii) via SDS Provider Web Pages, that any payments we have made or shall make to you in relation to the PA Contract are **not** match funded, the end date for retention of the records, accounts and operation date referred to in Condition 29.3 (i.e. 31 December 2026) shall be deemed to have been amended to the date occurring 3 years after the date of expiry of your PA Contract (or any alternative date that we may tell you when we advise you of the change of date). The amendment shall be deemed to have been effective from the start date of the PA Contract.

- 29.5 You shall keep the records, evidence and accounts referred to in this condition 29 in accordance with good accountancy practice.
- 29.6 You shall allow us and/or (as the case may be) our Auditors (which include our agents and third party auditors, which in turn includes representatives of the European Commission and/or the European Court of Auditors and/or Audit Scotland) immediate and unlimited access to all the records, evidence and accounts the Auditor may request from time to time for the purpose of auditing your compliance with your obligations under the PA Contract. This access shall at the Auditor's entire discretion, be at:-
- (a) your premises (or the premises of your agents or your own auditors, if the records, evidence and/or accounts are ordinarily stored there); or
 - (b) premises identified by the Auditor within Scotland.
- 29.7 You shall at your entire cost, provide the records, evidence and accounts (together with copies of your published accounts) requested by the Auditor, during the term of the PA Contract and for the further retention period referred to in condition 29.3 (or, if applicable, condition 29.4) to the Auditor immediately on request by the Auditor. The provision shall, at the Auditor's entire discretion, be made at your premises (or the premises of your agents, if applicable) or, at such premises within Scotland as the Auditor may specify.
- 29.8 You shall immediately following the Auditor's request, provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:-
- (a) providing unlimited access to all information requested by the Auditor;
 - (b) providing unlimited access to sites you control and to equipment you or your staff or agents use in performing the Services;
 - (c) providing unlimited access to your staff, agents, representatives, Participants, and proposed and former Participants; and
 - (d) providing the Auditor with suitable oral or written explanation as requested.
- 29.9 You shall bear your own costs and expenses incurred in respect of your compliance with your obligations under this condition 29. If the audit reveals a material breach by you of any of your obligations, and if we request, you shall reimburse us and/or our agents' or representatives' (as applicable) all reasonable costs incurred in relation to the audit.
- 29.10 Where we request, you shall forward all related records, evidence, accounts and supporting documentation you are required to retain, to us for retention, and you shall complete and sign any documentation that we may reasonably require, confirming the details of the records provided. Where any of the records are in electronic format, you shall (at your expense) secure any licence for us (and/or our Auditors) that may be required to enable access to the records. Where for any reason, you fail to forward any records, accounts and/or supporting documentation in accordance with any request from us, we shall be entitled to arrange for the transfer and storage directly, and all costs incurred by us in that respect shall be payable by

you immediately on demand. This condition is not the only option available to us and does not prevent or restrict us from exercising any other right or remedy that we may have.

29.11 Where the PA Contract has expired or terminated and you are unable to fulfil any of the obligations that continue to apply after the expiry or termination, (including any obligations to retain the records in accordance with this condition 29), you shall immediately email your SDS assigned Skills Investment Advisor providing a detailed explanation of the provisions you are unable to fulfil, and the reasons why. This neither cancels nor reduces your obligation to comply with these outstanding provisions, nor prevents or restricts us from exercising our rights and remedies.

29.12 You shall promptly provide all general assistance and information relating to the Services and your business that we may reasonably request from time to time which would:-

- (a) assist us in responding to requests for information relating to service providers and/or provider services that the Scottish Ministers (or their agents) may request from time to time; and/or
- (b) assist us and/or the Scottish Ministers (or their representatives) in developing policy for worked based learning or similar programmes.

29.13 You shall:-

- (a) permit our authorised representatives unlimited access to interview Participants and to examine all records and all other supporting documentation in particular, evidence of assessment relating to the delivery of training;
- (b) provide us with suitable oral or written explanation if requested; and
- (c) provide us with access to your staff for interviews on matters covered by the PA Contract.

29.14 The Auditor is entitled at its entire discretion to request you to either:-

- (a) upload/scan (as appropriate) the requested records, evidence and/or accounts onto FIPS in accordance with any instructions the Auditor may make available; or
- (b) email the requested records, evidence and/or accounts to the Auditor at an email address provided by the Auditor.

29.15 You shall comply with any request referred to in condition 29.14 promptly, and within any timeframe required by the Auditor.

29.16 Your obligation to comply with condition 29.14 does not remove or limit your obligation to (i) retain the original copies of all records, evidence and accounts as required under the Conditions, and (ii) make the original copies otherwise available in accordance with this condition 29.

29.17 Any audit conducted by or on behalf of SDS shall be conducted reasonably and proportionately.

29.18 Where any audit or other investigation reveals any breach by you of the PA Contract and we are entitled to recover any sums accordingly, you are not permitted to submit (i) any alternative or additional evidence in support of any claim previously submitted, or (ii) any replacement claim.

30. Confidentiality

30.1 You must treat the content of the PA Contract and all associated SDS information and records (“Confidential Information”) as confidential and not disclose any of the Confidential Information unless:-

- (a) we give you prior written permission to disclose the information in the form of an email from your SDS assigned Skills Investment Advisor confirming the extent of the permission;
- (b) you are required to disclose the information to any court of law or tribunal or other competent authority;
- (c) the information has been made publicly available other than as a result of any breach; or
- (d) you are disclosing under Condition 30.2.

30.2 You may disclose to your Permitted Sub-contractors, those elements of the Confidential Information that your Permitted Sub-contractors reasonably require in order to perform their obligations.

30.3 We shall be entitled to disclose the Confidential Information and any details relating to your performance under the PA Contract to any individuals and organisations, and in such manner, as we consider appropriate.

31. Assignment and Sub-contracting

31.1 You shall not assign, novate, sub-contract or otherwise dispose of any of your rights or obligations under the PA Contract without our prior written consent in the form of an email setting out the details of the consent from your SDS assigned Skills Investment Advisor. Any assignment or novation will not become effective until the assignment/novation agreement is signed by and a copy delivered to, all relevant parties.

31.2 Where we grant consent to you to sub-contract in accordance with condition 31.1, we reserve the right to withdraw our consent where we have reasonable grounds no longer to approve of the Permitted Sub-contractor or the sub-contracting arrangement.

31.3 In respect of any sub-contracting we have consented to under condition 31.1:-

- (a) you shall ensure that so far as is possible, the terms of the PA Contract are properly and reasonably reflected in the terms of each contract you have with a Permitted Sub-contractor and that so far as is possible each Permitted Sub-contractor shall at all

times be bound by obligations equivalent to those that apply to you under the PA Contract;

- (b) you shall include and maintain provisions in a written contract with each Permitted Sub-contractor:-
- (i) which provide that the Permitted Sub-contractor cannot assign the sub-contract to another party without your consent (and you shall not grant that consent without our prior written consent in the form of an email from your SDS assigned Skills Investment Advisor setting out the details of the consent provided);
 - (ii) requiring you to pay the Permitted Sub-contractor all sums due by you to the Permitted Sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements;
 - (iii) stating that where we have paid you in respect of any of the Services and the Permitted Sub-contractor's invoice relates to those Services then, to that extent, the invoice must be treated as valid and provided you are not exercising a right of retention or set-off in respect of a breach of contract by the Permitted Sub-contractor or in respect of a sum otherwise due, payment must be made to the Permitted Sub-contractor without deduction;
 - (iv) which notify the Permitted Sub-contractor that the sub-contract forms part of a larger contract for SDS's benefit and that should the Permitted Sub-contractor have any difficulty in securing timely payment of an invoice, that matter may be referred by the Permitted Sub-contractor to SDS; and
 - (v) in the same terms set out in Conditions (iii) and (iv) and this condition (v), to ensure that similar provisions are included as between Permitted Sub-contractor and further sub-contractor modified to refer to the correct designation of the equivalent party as you and the Permitted Sub-contractor as the case may be;

31.4 We reserve the right to see and approve copies of sub-contracts (which approval shall not to be unreasonably withheld, delayed or conditioned).

31.5 No sub-contracting by you whether under this Condition 31 or otherwise, and no approval or consent by us in relation to any sub-contracting shall relieve you of any liability or obligation under the PA Contract.

31.6 You shall also include in every Permitted Sub-contract:

- (a) a right for you to terminate that Permitted Sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law, or if any of the termination events (involving substantial modification of the PA Contract, contract award despite the existence of exclusion grounds, or a serious infringement of EU obligations) specified in Condition 22 occur;

- (b) a requirement that the sub-contractor includes a provision having the same effect as Condition (a) above in any sub-contract which it awards.

- 31.7 For the purposes of Condition 31.3 only, "Permitted Sub-contract" means a contract between two or more suppliers, at any stage of remoteness from us in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the PA Contract.
- 31.8 In order to avoid any doubt, you cannot substitute or permit the substitution of a Permitted Sub-contractor without our prior written consent and as a condition of giving such consent we can require the incoming sub-contractor to enter into a sub-contract on the same basis.
- 31.9 We shall be entitled, without the need for your consent, to assign, novate or otherwise dispose of our rights and obligations under the PA Contract or any part of the contract to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by us.
- 31.10 In order to avoid any doubt and without limiting the scope of the preceding provisions of this condition 31, the requirements of this condition 31 shall apply even where you intend to delegate or sub-contract any of your rights or obligations under the PA Contract to a Group Company.
- 31.11 We reserve the right to charge an administration charge to reflect our costs incurred in considering, approving and agreeing the terms of any assignation or novation agreed under this Condition 31, which you shall pay within 28 calendar days of our request. Such costs may include the costs of any compliance checks we require to undertake.

32. Change of Your Name

- 32.1 You shall, no later than 10 calendar days following any change in the name of your company, or your trading name, inform us by emailing your SDS assigned Skills Investment Advisor providing full details of the change.

33. Notices

- 33.1 No notice from either us to you, or you to us, shall be valid under the PA Contract unless it is made in writing by or on behalf of the party sending the communication. The only exception to this is where any Condition or paragraph in the Specification or the Conditions specifically states otherwise, in which event that alternative statement shall apply in relation to that paragraph/Condition only.
- 33.2 Any notice which is to be given by either us to you or you to us shall be given by letter (sent by hand, post, registered post or by the recorded delivery service). These letters shall be addressed to the other party in the manner referred to in condition 32.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed

to have been given three calendar days after the day on which the letter was posted, or sooner where the other party acknowledges receipt of such letters.

- 33.3 For the purposes of condition 33.2 the respective address for each party shall be as follows:-
- (a) For notices to us, at our registered address posted on the UK Companies House website as at the date of the notice;
 - (b) For notices to you where you are a UK registered company, your registered address posted on the UK Companies House website as at the date of the notice; and
 - (c) For notices to you where you are not a UK registered company, your address set out in our award letter to you for this PA Contract.
- 33.4 Where you are not a UK registered company, you may only change your address for service of notices by serving a notice on us confirming the change of address, in accordance with this condition 33.

34. Waiver

- 34.1 The failure of either party to insist upon strict performance of any provision of the PA Contract, or the failure of either party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not reduce the obligations established by the PA Contract.
- 34.2 No waiver shall be effective unless it is specifically stated to be a waiver and communicated to the other party in writing in accordance with condition 33 (Notices).
- 34.3 A waiver of any right or remedy arising from a breach of the PA Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the PA Contract.

35. Entire Agreement

- 35.1 Except to the extent any provision contained within the PA Contract clearly states otherwise the PA Contract (comprising the Contract Documents) constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes or cancels out any previous agreement between the parties in relation to such matters;
- 35.2 You agree that in entering into the PA Contract you do not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as specifically stated in the PA Contract.
- 35.3 Nothing in this condition 35 shall operate to exclude liability for fraud or fraudulent misrepresentation.

36. Marketing, Branding and Publicity

- 36.1 You must conform to all marketing and brand guidelines and standard marketing literature that we issue in relation to the PA Programme.
- 36.2 You will use only approved programme names in communications with targeted Participants and actual Participants in relation to the PA Programme. You are not permitted to vary the programme naming conventions or use independent branding.
- 36.3 You may only use the SDS branding, trade mark and other intellectual property rights for the purposes of the PA Contract and shall not use any of our branding, trade mark or other intellectual property after the termination or expiry of the PA Contract.
- 36.4 You must supply case study information if requested by us at any time during the period of the PA Contract.
- 36.5 You shall at all times comply with all European Social Fund delivery partner publicity requirements set out currently at; <https://www.gov.scot/publications/esif-publicity-requirements-2014-2020/> and <https://www.gov.scot/publications/esif-logos/> (or such alternative address as the European Social Fund may use from time to time) together with any additional publicity requirements we may issue from time to time. As part of this you must, when marketing the PA Programme acknowledge SDS and European funding and use the European Social Fund (ESF) logo. The European Social Fund publicity guidelines are updated regularly and you shall ensure that you are at all times compliant with the current version. In addition, where we make any document, form or process available for use by PA programme service providers, containing any European Social Fund reference(s), you shall ensure that you use the most up to date version available at the time you are using or referring to the document, form or process.
- 36.6 You shall use best endeavours to promptly post all PA opportunities on www.apprenticeships.scot.
- 36.7 Not used.
- 36.8 Unless we direct you otherwise you shall not make any press announcements or publicise the PA Contract in any way without our prior written consent in the form of an email from your SDS assigned Skills Investment Advisor.
- 36.9 We shall be entitled to publicise details of the PA Contract (including any examination of the PA Contract by any Auditor(s) or otherwise).

37. Intellectual Property Rights

- 37.1 All intellectual property rights in any material solely produced by you in the performance and during the currency of the PA Contract shall vest in you. You shall grant to us a perpetual,

royalty-free licence to use, copy and modify these materials and shall deliver these materials to us if we request them for such purposes.

38. TUPE: Transfer of Undertakings (Protection of Employment) Regulations 2006

38.1 You undertake (i) to organise the delivery of the PA Programme in such a way that there will be no organised grouping of your employees which has as its principal purpose delivery of the PA Programme and (ii) that where such a grouping exists, to ensure that any such employees are redeployed elsewhere within your organisation (or your subcontractor as the case may be) prior to termination, expiry or any reduction in scope of the PA Contract.

38.2 If, on the termination, expiry or reduction in the scope of the PA Contract, any contract of employment or engagement of any current or former employee of yours has effect, or is claimed by such current or former employee to have effect, as if originally made between SDS and such current or former employee or between any new provider of the PA Programme, and such current or former employee, by operation of TUPE or otherwise, then you shall indemnify us and any such new provider and keep us and them indemnified against all and any Employment Losses (whenever they are incurred, and whether or not the claims for such Employment Losses are erroneous or unsuccessful) suffered or incurred by us or any such new provider arising out of:

- (a) the employment or engagement: and/or
- (b) the claimed employment or engagement: and/or
- (c) the termination of the employment or engagement: and/or
- (d) the claimed termination of employment or engagement
- (e) of any such current or former employee by SDS or any such new provider.

38.3 If we ask, you shall promptly enter into an appropriate agreement with any new provider on the same terms as those in condition 38.2 in order to give effect to condition 38.2 and you shall indemnify us and keep us indemnified for and against any losses incurred by us which arise from a failure by you to do so, including any losses which may arise under any agreement with or undertaking we give to any new provider which would give the new provider the benefit of condition 38.2 above.

38.4 Nothing in this condition 38 will give rise to the inference that we accept any liability for any person employed by you.

39. Insolvency

39.1 You shall notify us in writing (and email your SDS assigned Skills Investment Advisor and SDS assigned Compliance Officer) immediately in the event that any of the following events (“Insolvency Events”) occur during the period of the PA Contract:-

- (a) where you are an individual, if you become apparently insolvent within the meaning of Section 16 of the Bankruptcy (Scotland) Act 1985 as amended (or equivalent in any other jurisdiction);
- (b) where you are a firm or a number of individuals acting together in any capacity, and where such firm or any partner of the firm or any of those persons acting together becomes apparently insolvent within the meaning of Section 16 of the Bankruptcy (Scotland) Act 2016 as amended (or equivalent in any other jurisdiction);
- (c) where you are a company:-
 - (i) and in relation to your company a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, your creditors;
 - (ii) and a shareholders' meeting is convened for the purpose of considering a resolution that you be wound up or a resolution for your winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - (iii) and a petition is presented for your winding up (which is not dismissed within 14 calendar days of its service) or an application is made in relation to your company for the appointment of a provisional liquidator or a creditors' meeting is convened in relation to your company pursuant to applicable winding up legislation in Scotland;
 - (iv) and a receiver, administrative receiver or similar officer is appointed over the whole or any part of your business or assets;
 - (v) and in relation to your company, an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
 - (vi) and you are or become insolvent within the meaning of Section 123 of the Insolvency Act 1986;
 - (vii) and, being a "small company" within the meaning of Section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - (viii) in relation to your company, any event similar to those listed in condition (i) to condition (vii) occurs under the law of any other jurisdiction.

39.2 On the occurrence of an Insolvency Event, a timescale for the final claim will be agreed between the parties; you must provide records to us to support your claims and retain them in a suitable location or pass them to us with full details of the Services you have provided to Participants and details of the activities they have achieved. This condition is not exhaustive and does not limit the scope of options available to us in the event of your insolvency.

40. Blacklisting Regulations

40.1 You must not commit any breach of the Employment Relations Act 1999 (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 us to terminate the PA Contract with immediate effect.

41. Law and Jurisdiction

41.1 Both parties accept the exclusive jurisdiction of the Scottish courts and agree that the PA Contract is to be governed by and interpreted according to Scots law.

Appendix 1 - Definitions

“Achievement Rate”	has the meaning given to it at condition 10.5(a);
“Active Financial Period”	means the applicable active financial period as identified within FIPS or by us on the SDS Provider Web Pages (as we shall determine);
“Activity”	means a measurable and auditable benchmark against which to measure a Participant’s progress towards the achievement of their Learning Plan and which may be referred to as a start, output or outcome, as applicable;
“Appendices”	means the appendices to these Conditions;
“Audit”	means an audit referred to in condition 29 of the Conditions;
“Auditor”	has the meaning set out in condition 29.6 of the Conditions;
“Awarding Body”	means the relevant awarding body for the approved Qualification identified within the Learning Plan;
“Change of Control”	has the meaning set out in condition 22.3 of the Conditions;
“Conditions”	means these SDS terms and conditions for the provision of Services including the appendices and all other documentation referred to in these conditions and appendices, (in each case as may be varied by the Letter of Award);
“Contract Documents”	means the Specification, the ITT, the ITT Response, the Conditions, the Contract Schedule, the Letter of Award and any other document properly incorporated by reference into the PA Contract including for the avoidance of doubt, any and all SDS policy statements relating to the COVID 19 pandemic issued by SDS issued from time to time;
“Contract Executive”	means your SDS allocated point of contact for managing your contract volumes and values;
“Contract Schedule”	means the schedule forming part of the PA Contract, which sets out:- <ul style="list-style-type: none">• the volume of new Starts who shall commence their respective PA programmes during the specified contract period; and• the financial forecasts relating to the volumes specified;
“Controlling Interest”	means: <ul style="list-style-type: none">• the ownership or control (directly or indirectly) of more than fifty per cent (50%) of the voting share capital of the relevant undertaking; or• 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;• 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;
“Data Controller”	has the meaning set out in the Data Protection Legislation from time to time;

“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by you under the PA Contract, and/or actual or potential loss, alteration and/or destruction of Personal Data in breach of the PA Contract;
“Data Processor” or “Processor”	has the meaning set out in the Data Protection Legislation from time to time;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	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;
“Data Subject”	has the meaning set out in the Data Protection Legislation from time to time;
“Employment Losses”	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);
“FIPS”	means our corporate training system or portal through which information relating to the PA Programme is recorded and made available to each of the parties;
“FOISA”	means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and any subordinate legislation made under each such set of provisions from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant Government department in relation to such legislation;
“Fraud”	means any offence under any laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the PA Contract or defrauding or attempting to defraud or conspiring to defraud us;
“GDPR”	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;

“Group Company”	means the employer, its Subsidiaries or Holding Companies from time to time and any Subsidiary of any Holding Company from time to time;
“Information”	has the meaning set out in the Freedom of Information (Scotland) Act 2002;
“Insolvency Event”	means any of the events described in condition 39 of the Conditions;
“Invitation to Tender” or “ITT”	means our invitation to bidders to tender for the Services;
“ITT Response”	means all information you or your agent supplies to us in response to our invitation to tender for the provision of the Services to be provided under the PA Contract, including the ITT response section, the volume bid documentation and all supporting documentation requested by us in the PA Programme procurement process;
“Learning Plan”	means a learning plan which satisfies the minimum content requirements detailed in the Specification;
“Letter of Award”	means the letter issued by us to you containing our offer to contract with you for the provision of Services to us, the signed duplicate copy of which is returned to us;
“Month”	means the period of time between the same dates in successive calendar months;
“National Training Programme” or “NTP”	means the Employability Fund and the Modern Apprenticeship Programme;
“Outcome”	means progression to employment, Modern Apprenticeship, or Graduate Apprenticeship, as the case may be;
“Output”	means achievement of SCQF Level 5 or 6 qualification in the chosen framework;
“Participant”	has the meaning given to it at paragraph 4 of the Specification;
“PA” / “PA Programme”	means the Pathway Apprenticeships programme;
“PA Contract”	means the agreement we have entered into with you by virtue of and subject to the provisions contained within the Contract Documents and any formal variations to any of these documents to the extent only that they are implemented in accordance with the variation provisions set out in the Specification and the Conditions;
“Parent Company”	means any company which is your ultimate Holding Company and which is either responsible directly or indirectly for your business activities or is engaged in the same or similar business as you. The term “Holding Company” shall have the meaning ascribed by Section 1159 of the

Companies Act 2006 or any statutory re-enactment or amendment of that Act;

“Performance Level” means the performance level to which the relevant part of the Services is to be provided, as set out in paragraph 10.5 of the Conditions;

“Permitted Sub-contractor” means a party to which you have sub-contracted certain rights and obligations under the PA Contract and where the identity of that sub-contractor and the sub-contracting arrangement has been approved by us in accordance with condition 31 of the Conditions, and “Permitted Sub-contract” shall be construed accordingly;

“Personal Data” has the meaning set out in the Data Protection Legislation from time to time;

“Processed Data” has the meaning set out in Appendix 3 to the Conditions;

“Prohibited Act” the following constitute Prohibited Acts:

- to directly or indirectly offer, promise or give any person working for or engaged by us a financial or other advantage to:
 - induce that person to perform improperly a relevant function or activity; or
 - reward that person for improper performance of a relevant function or activity;
- 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 PA Contract;
- committing any offence:
 - under the Bribery Act 2010;
 - under legislation creating offences concerning fraudulent acts;
 - at common law concerning fraudulent acts relating to this PA Contract or any other contract with us; or
- defrauding, attempting to defraud or conspiring to defraud us.

“Protective Measures” 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;

“Provider” if used, means the economic operator identified as such in the Letter of Award;

“Qualification” means the qualifications (identified by the awarding body qualification number) in the Participant’s Learning Plan, which will be at SCQF 5 or above;

“Quality Action Plan” has the meaning given to it at clause 24.2(b)(viii);

“Quality Standards”	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 you must meet when performing the Services;
“Quarterly”	means the periods of three calendar months commencing on 1 January, 1 April, 1 July and 1 October respectively;
“Reportable Incident”	means any incident or accident impacting a Participant while undergoing the PA Programme which is reportable pursuant to The Reporting of Injuries, Disease and Dangerous Occurrences Regulations 2013 (SI 2013/1471);
“Review”	means the process whereby you and the Participant review the progress being made against the Learning Plan;
“SDS” “SDS Provider Web Pages”	means The Skills Development Scotland Co Ltd; means the web pages available through www.skillsdevelopmentscotland.co.uk , specifically for providers. As at the commencement date of the PA Contract these are entitled ‘Learning Providers’, but this name may change from time to time;
“Services”	means all services that you are required to perform in relation to the PA Contract as set out in the Specification;
“Skills Investment Advisor”	means your SDS allocated point of contact for delivery;
“Specification”	means the specification of the Services set out, or otherwise referred to in, the Invitation to Tender subject to any specific provision in the Letter of Award;
“SQA”	means the Scottish Qualifications Authority, or any replacement body carrying out the same or similar functions;
“Staff”	means all persons employed by you together with your servants, agents, suppliers and sub-contractors used in the performance of your obligations under the PA Contract;
“Start”	means the entry of a proposed Participant into FIPS and approved by us;
“Sub-processor”	means any third party appointed to process Personal Data on your behalf comprised in Processed Data;
“Subsidiary or Holding Company”	in relation to the employer means “subsidiary” and “holding company” as defined in section 1159 of the Companies Act 2006;
“SVQ”	means ‘Scottish Vocational Qualification’ (or its replacement, as applicable) prescribed from time to time by the Scottish Qualifications Authority (or its functional successor, whomsoever);
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended from time to time;

- “Training Agreement” or “TA”** means a document agreed by the Participant and you on an individual basis at the start of training;
- “User Permission”** means the terms and conditions applicable to the use by each of your users, of FIPS, details of which are available on the FIPS pages of the SDS Provider Web Pages as amended from time to time;
- “VQ”** means vocational qualification.

Appendix 2 - Data Sharing

1. The Data

- 1.1. Data means all Personal Data that is disclosed by one party to the other for the purposes of the delivery of the PA Contract with the exception of the Processed Data. The following table sets out the type of information that is comprised of Personal Data:

Data to be provided by the Provider
Participant home address
Participant date of birth
Participant National Insurance Number
Participant SQA Candidate Number
Participant email address
Participant telephone number
Participant's equalities monitoring information

2. Sharing of the Data

- 2.1. You agree to disclose the Data to us in accordance with the transfer arrangements detailed in Part 3 of Appendix 2.
- 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 PA Contract.
- 2.3. You shall make your own privacy notice available to the Data Subject in relation to your own processing activities relating to the PA Programme.

3. SDS's Assurances

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

Appendix 2 - Part 1 - The Data

1. All Data that you disclose to us in relation to the terms of the PA Contract (with the exception of any Processed Data) - including the Data referred to at paragraph 1.1 of Appendix 2 - and: -
 - 1.1 information about the Participant input by you into FIPS or otherwise made available by you to SDS (under exception of information provided on SDS hard copy forms), that each Participant provides to you about the Participant's personal circumstances including Participant registration information, leaving information and destination and outcome information; and
 - 1.2 information about the Participant input by you into FIPS or otherwise made available by you to SDS (under exception of information provided on SDS hard copy forms), of a Participant's achievements and progress, destination and outcomes from their training.

Appendix 2 - Part 2 - The Purposes and Bases of Sharing

1. The purposes for sharing the Data are as follows: -
 - 1.1. to monitor, audit and evaluate the quality of the training and the PA Programme generally;
 - 1.2. to ensure the Participant's progress and outcomes are properly recorded and assessed for the purposes of awarding body certification;
 - 1.3. for longitudinal research concerning career paths, average salaries and outcomes of Participants generally;
 - 1.4. to monitor your compliance with your funding obligations and your performance including validating your claims for payment; and
 - 1.5. where applicable, to ensure the smooth transition of a Participant to another training provider for the purposes of the Participant completing their PA training.
2. Our rights to process the Data derive from our powers and obligations which include the powers conferred on the Scottish Government by section 2 of the Employment and Training Act 1973.

Appendix 2 - Part 3 - Data Transfer Arrangements

1. Subject to us introducing any alternative arrangements (which may include use of our FIPS portal), the Data is intended to be transferred to us in the following manner: -
 - 1.1. where FIPS is set up to receive the Data, Data must be input by the Controller into FIPS in accordance with the requirements set out in the PA Contract,
 - 1.2. for Data which we require you to deliver, in accordance with the requirements set out in the PA Contract, and/or such additional arrangements as we may advise from time to time.

Appendix 3 - Processing of Processed Data

1. In order to avoid any doubt, this Appendix 3 only applies to the Personal Data comprised in Processed Data. "Processed Data" comprises the Personal Data contained in the following:-

- 1.1. all Personal Data input by you into all SDS hard copy forms that you require to retain under the terms of the PA Contract, for delivery and/or inspection by SDS; and
 - 1.2. all Personal Data input by you into the SDS Equality Monitoring Forms (“Equalities Monitoring Data”).
2. The parties acknowledge that for the purposes of the Data Protection Legislation, we are the Controller and you are the Processor in respect of the Processed Data. The only processing that you are 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 the Specification and Conditions, and where it requires to be delivered to us, to submit the Processed Data to us in accordance with those provisions, including this Appendix 3 and any written guidance or instructions that we may issue from time to time.
3. You shall delete and/or destroy:-
 - 3.1. each populated SDS Equality Monitoring Form, as soon as you have received payment from us in respect of the registration of the relevant Participant as a Start and you 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 PA Contract and such additional instructions as SDS may advise from time to time in writing, but in any event by no later than 31 December 2026.
4. You shall notify us immediately if you consider that any of our instructions infringe the Data Protection Legislation.
5. You shall provide all reasonable assistance to us 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 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. You shall, in relation to the Processed Data processed in connection with your obligations under the PA Contract:
 - 6.1. process that Processed Data only in accordance with the terms of this Appendix 3 to these Conditions, unless you are required to do otherwise by any applicable law. If you are required to do otherwise as a result of any applicable law, you shall promptly notify your Skills Investment Advisor before processing the Processed Data unless you are prohibited by law from doing so;
 - 6.2. ensure that you have in place Protective Measures, which have been reviewed and approved by us 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. your staff, agents and contractors do not process Processed Data except in accordance with the PA Contract (and in particular Appendix Part 4 to these Conditions (SDS Information Security Policy));
 - 6.3.2. you take all reasonable steps to ensure the reliability and integrity of all of your 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 your duties of confidence under this paragraph;
 - 6.3.2.2. are subject to appropriate confidentiality undertakings with you 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 us or as otherwise permitted by the PA 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 you have obtained our prior written consent and the following conditions are fulfilled:
 - 6.4.1. we or you have provided appropriate safeguards in relation to the transfer (in accordance with GDPR Article 46) as determined by us;
 - 6.4.2. the Data Subject has enforceable rights and effective legal remedies;
 - 6.4.3. you comply with your obligations under the 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 your best endeavours to assist us in meeting our obligations); and
 - 6.4.4. you comply with any reasonable instructions we notify to you in advance with respect to the processing of the Processed Data;
- 6.5. on our written direction, delete or return Processed Data (in the relevant forms) (and any copies of it) to your Skills Investment Advisor on termination of the PA Contract (or, as applicable, any part of the PA Contract) unless you are required by applicable law to retain the Processed Data;
- 6.6. draw the Data Subject's attention to our privacy notice relating to PA available at <https://www.skillsdevelopmentscotland.co.uk/about/policies/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 3, you shall notify the SDS Data Protection Officer at dpo@sds.co.uk (or such alternative address as we may advise from time to time) immediately if you:-
 - 7.1. receive a Data Subject Access Request (or purported Data Subject Access Request) in respect of the Processed Data;
 - 7.2. receive a request to rectify, block or erase any Personal Data comprised in the Processed Data;
 - 7.3. receive any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - 7.4. receive any communication from the Information Commissioner or any other regulatory authority in connection with the Processed Data processed under the PA Contract;
 - 7.5. receive 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. Your obligation to notify under paragraph 7 shall include the provision of further information to us in phases, as details become available.
9. Taking into account the sensitive nature of any of the processing relating to the Processed Data, you shall provide us 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 we reasonably require) including by promptly providing:
 - 9.1. us with full details and copies of the complaint, communication or request;
 - 9.2. such assistance as we may reasonably request to enable us to comply with a Data Subject Access Request relating to the Processed Data within the relevant timescales set out in the Data Protection Legislation;
 - 9.3. us, at our request, with any Personal Data you hold in relation to a Data Subject in relation to the Processed Data;
 - 9.4. assistance as we may request following any Data Loss Event relating to the Processed Data;
 - 9.5. assistance as we may request with respect to any request from the Information Commissioner's Office, or any consultation by us with the Information Commissioner's Office in relation to the Processed Data.
10. You shall maintain complete and accurate records and information to demonstrate your compliance with the terms of this Appendix 3 of the PA Contract.
11. You shall allow for audits of your Data Processing activity in relation to this Appendix 3 by us or our designated auditor.
12. You 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, you must:
 - 13.1. notify your Skills Investment Advisor in writing of the intended Sub-processor and processing;
 - 13.2. obtain the prior written consent of SDS from your Skills Investment Advisor;

- 13.3. enter into a written agreement with the Sub-processor which gives effect to the terms set out in Condition 19.2 and Appendix 3 to these Conditions such that they apply to the Sub-processor; and
 - 13.4. provide us with all the information regarding the Sub-processor as we may reasonably require.
14. You shall remain fully liable for all acts or omissions of any Sub-processor.
 15. We may, at any time on not less than 30 days' notice, revise this Appendix 3 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 PA Contract).

Appendix 4 - Information Security Policy

SDS Information Security Policy for Providers

Background and Purpose

The purpose of this document is to outline the required behaviour of Providers when using the Skills Development Scotland (SDS) IT systems and handling SDS's personal data. The rules are defined to protect the interests of SDS, the organisations contracted to deliver programmes on behalf of SDS and the Participants. The intention is not to impose intrusive constraints that are contrary to our established culture of openness, trust and integrity, which SDS recognise as essential contributors to the success of SDS. Information Security is committed to protecting the operation and reputation of SDS in fulfilling its role as the catalyst for real and positive change in Scotland's skills performance. This document applies to all SDS programme information processed by and on behalf of SDS.

Responsibility

All organisations contracted to deliver SDS Programmes are responsible for implementing, enforcing and adhering to the provisions of this policy.

All contract signatories are responsible for ensuring this policy is adhered to.

All company employees are responsible for ensuring visitors are also aware of this policy and are supervised appropriately.

Policy

Any Provider in breach of this policy will be in breach of the Provider Contract with SDS and may have their contract terminated.

Policy Statements

1 SDS IT System Access

- 1.1 The SDS IT systems are accessed using your own individual SDS login id and password. Do not leave clues or evidence of passwords near to your computer. Passwords should be minimum of 8 characters and include at least 3 of the following:
 - Capital letter
 - Small letter
 - Number character
 - Special characters (?\$%&*)
- 1.2 Using another person's login id is not permitted under any circumstances.
- 1.3 Some SDS IT systems require the use of multi factor authentication. This relies on additional security of a separate device / system such as a mobile phone or email account. In the event that the separate system is compromised or the device lost providers must notify SDS.
- 1.4 Passwords must not be saved on any login screen, e.g. do not tick 'Save Password' or 'Remember Me' options if these appear.
- 1.5 Never leave a logged-in computer unattended when using SDS IT systems. Use the Windows (or operating system equivalent) 'Lock Workstation' facility (Windows key + L) or logout.
- 1.6 Protect against accidental compromise of SDS and apprentice/Participant information; ensure information cannot be observed by unauthorised people.
- 1.7 Deliberate, unauthorised entry to SDS IT systems, entry of false data and unauthorised changes to information are strictly forbidden.
- 1.8 Providers must report all security incidents. In the first instance please contact your SDS assigned Skills Investment Advisor who will ensure the correct handling of the incident.

- 1.9 Data extracted or originating from SDS IT systems must be encrypted or transferred in a secure manner when forwarding to SDS.
- 1.10 Providers must promptly inform SDS if they no longer need access to SDS systems.
- 1.11 Providers are required to comply with the terms of the User Permission arrangements in place between them and SDS.

2 Electronic Data Transfer – Mandatory Data Encryption

- 2.1 Data Encryption is a mandatory requirement of SDS where personal data is being transferred from and to third party organisations including Providers. All data transfers between SDS and third parties must use 256 bit AES encryption to encrypt files. Each data transfer will be to an individual's email address by means of an encrypted Zip file using a shared encryption password which must be changed on an annual basis. The password must not be transmitted by the same means as the encrypted data file. For example, if the encrypted data file is sent by email the password should be sent by instant message, text or by telephone call. Data transferred back to SDS must also be encrypted and follow the same process as set out above. If encrypted files are not available, hard-copy documents must be posted by using double envelopes.
- 2.2 The provider must ensure that any portable devices, such as Laptops and Tablets, which are used to store apprentice/Participant's personal information are encrypted.
- 2.3 It is the responsibility of the Provider to provide their own copy of the necessary encryption software.

3 Handling Hardcopy Documents and Electronic Media containing Personal Information

- 3.1 Providers are required to collect and store both personal information and special category personal information as defined by the Data Protection Act. This information must be securely protected to avoid the risk of data loss and unauthorised exposure.

4 Collecting

- 4.1 Personal information particularly special category information must only be gathered from Participants in an environment that respects their privacy and limits the opportunity for the trainees to be over looked.

5 Processing

- 5.1 When a provider processes an Participant's personal data it should be done in a way to limit the opportunity for unauthorised access to the information.
- 5.2 Providers should consider protecting apprentice/Participant's information from unauthorised viewing by:
 - observing a clear desk policy;
 - handling hardcopy in non transparent folder;
 - Ensuring that documents are not left at printers and copiers and
 - Ensuring only authorised staff have access to the information

6 Storage

- 6.1 When not in use hardcopy files with personal information must be stored in lockable filing cabinet or drawers.
- 6.2 At the end of the working day the filing cabinets and drawers containing the apprentice/Participant's personal information must be locked.

7 Sending

- 7.1 The preferred option for transferring personal information between parties is to use encrypted electronic communications as defined above in the section *Electronic Data Transfer – Mandatory Data Encryption*. If this is not available hardcopy documents can be exchanged either be posted using double envelopes or hand delivered.

8 Disposal

- 8.1 Prior to disposal of information providers should check the retention and archiving requirements.
- 8.2 Hardcopy document that are no longer required should be shredded or disposed of via a confidential waste contractor.
- 8.3 For electronic storage media these should be destroyed or overwritten sufficient that the data cannot be retrieved.
 - CD/DVD's shredded
 - Memory sticks – destroyed or formatted in a way that data cannot be recovered.

9 Data Loss or Compromise

- 9.1 Any incident of data being loss or compromise must be reported immediately to SDS Compliance Team.