

Women Returners Programme Conditions **2021-2022** (plus optional 1 year extension period for 2022- 2023)

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1 Defined terms and Interpretation

- 1.1 The content of the Contract Documents, shall be interpreted in accordance with this Condition 1.1. 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 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 WR 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 to writing or written excludes faxes and email. The only exception to this is where any Condition or paragraph in the Contract Documents specifically states that a reference to writing or written has a different meaning, in which event that alternative meaning shall apply in relation to that Condition/paragraph only.
- 1.9 Any obligation in the WR 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 WR 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 WR 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 the WR Contract refers to any document or policy contained on the SDS Provider Web Pages or such alternative website, SDS reserves the right to amend, remove or replace such document or policy, and the reference is to the document or policy as may be amended, removed or replaced by SDS from time to time.
- 1.12 Where there is any conflict or inconsistency between or among the provisions of the WR Contract, such conflict or inconsistency shall be resolved according to the following descending order of priority:-
 - 1.12.1 any and all SDS policy statements relating to the COVID 19 Pandemic issued by SDS from time to time;
 - 1.12.2 any document signed by us strictly in accordance with the terms of the WR Contract, approving any variations or dispensations;
 - 1.12.3 the Letter of Award;
 - 1.12.4 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;
 - 1.12.5 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;

- 1.12.6 any other end user terms and conditions relating to use by you, your staff or agents, of any other software/systems that SDS requires you to use in performing the Services;
 - 1.12.7 the main Conditions;
 - 1.12.8 any attachment to the main Conditions (including Appendices);
 - 1.12.9 the Specification
 - 1.12.10 any attachment to the Specification;
 - 1.12.11 the applicable Contract Schedule;
 - 1.12.12 the ITT;
 - 1.12.13 your ITT Response
- 1.13 Any reference to the words 'include' and 'including' shall be interpreted without limiting the meaning of any of the words set out before it.
- 1.14 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.
- 1.15 Unless we specifically state otherwise, in the event that this WR Contract is extended in accordance with Condition 4.2, when calculating any period referred to in the WR Contract, the period shall be deemed to span continuously across the original contract period and into the extended 12 month period. For the avoidance of doubt, the same applies across periods referred to in any consecutive Contract Schedules.

2 The WR Contract

- 2.1 The WR 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 WR 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 Women Returners Programme standards set out in the WR Contract (including your ITT Response) (subject to any variations agreed under Condition 6) are met at all times.
- 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 NTP pages of 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 Women Returners Programme, details of which are described in the Specification and the Conditions.
- 3.2 You agree and accept that in entering into the WR Contract and by accepting each Contract Schedule:-

- 3.2.1 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
 - 3.2.2 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 WR Contract.
- 3.3 You agree and accept by entering into the WR contract that:
- 3.3.1 the contact details you have provided to SDS will be shared with the Scottish Government in accordance with clause 18.2 and Appendix 2 for the purposes of furthering the Scottish Government's Fair Work First agenda;
 - 3.3.2 that you shall fully engage and co-operate with the Scottish Government if requested to do so in relation to the purposes set out in clause 3.3.1, clause 18.2 and Appendix 2; and
 - 3.3.3 failure to engage with the Scottish Government as set out in this clause 3.3, clause 18.2 and Appendix 2 shall constitute a breach of the WR Contract.

4 Duration of the WR Contract

- 4.1 The WR Contract (including the initial Contract Schedule) shall commence on the commencement date set out in the Letter of Award and apply 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 WR Contract early, in accordance with any of the termination provisions in these Conditions.
- 4.2 SDS may extend the contract term referred to in Condition 4.1 from 31 March 2022 until 31 March 2023. The criteria for awarding volumes in any such extended period are set out in the Specification. Should SDS elect to extend the WR Contract, SDS shall announce such extension in accordance with Condition 6.1.1. In the event that SDS is awarding you volumes of Starts and/or volumes in respect of continuing Participants in an extended period, SDS shall send you its offer to enter into a Contract Schedule for the applicable period, for the volumes of Starts (if any) and continuing Participants (if any) as SDS shall set out in the Contract Schedule. Except as otherwise provided in this WR Contract, the terms and conditions set out in the WR Contract shall apply during any such extended period, subject to such amendments as SDS may apply under the terms of this WR Contract. You shall require to accept the terms of any Contract Schedule you receive from SDS, within such period, and in accordance with such process, as SDS shall specify when it sends you the Contract Schedule offer. If you fail to accept the terms of the Contract Schedule in accordance with the requirements, your offer shall be deemed to have been withdrawn by SDS.
- 4.3 Not used.
- 4.4 Any payments we make to you prior to the commencement date of the WR Contract which are made in anticipation of the WR Contract commencing shall be deemed to have been made under the terms and conditions of the WR Contract.

5 Contract Schedule

- 5.1 Volumes of Starts that are referred to in the Contract Schedule forming part of the WR Contract are allocated for the period referred to in the Contract Schedule and cannot be transferred by you from one Contract Schedule into any subsequent Contract Schedule, . Only we can insert continuing Participants in any subsequent Contract Schedule for any extended duration referred to in Condition 4.2. You are not entitled to add any additional Starts or continuing Participants to those set out in the Contract Schedule.
- 5.2 Subject to any variations we may agree under the variation procedures set out in these Conditions, you shall throughout the period of the WR Contract, provide the Services in the volumes, outputs of activity, financial profiles, minimum delivery rates and quality of delivery to the extent set out in the Contract Documents.

6 Variations

- 6.1 We may amend the WR Contract at any time. The amended contract terms will come into force as follows:-
- 6.1.1 in respect of changes that apply to all WR 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;
 - 6.1.2 in respect of changes solely to any 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:-
- 6.2.1 Participant eligibility criteria;
 - 6.2.2 periodical review of Participants' progress;
 - 6.2.3 financial contributions corresponding to any volume changes;
 - 6.2.4 Participants transferring from other Women Returners Programme service providers;
 - 6.2.5 any additional travel, subsistence and/or lodging allowance we may offer;
 - 6.2.6 evidence requirements, where reasonably required to ensure that SDS can properly monitor provider compliance with the WR Contract;
 - 6.2.7 changes reasonably required as a direct or indirect result of any change in Data Protection Legislation and/or other change in law;
 - 6.2.8 the Participant verification requirements, administrative procedures and information required to be inputted to FIPS;
 - 6.2.9 the terms we use to describe the Women Returners Programme and any of the components,;
 - 6.2.10 any amendments reasonably required as a result of the impact of the Covid-19 pandemic to ensure appropriate continuity of service, including any amendments to operational requirements and processes (which may include amendments to key performance levels, signatures, processes and any evidential requirements);
 - 6.2.11 conditions impacted by policy change required by Scottish Government;
 - 6.2.12 other variations to volumes and/or value deemed appropriate by us in accordance with our rights under the WR Contract, in respect of your failure to meet any delivery rate and/or any other requirement of the WR Contract; and/or
 - 6.2.13 any other areas of potential change identified in the Specification that relate to allocation of volumes for any extended duration of the 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 WR Contract relating to:-
- 6.3.1 the contracted volumes for Participants (which to be clear, includes Starts); and/or
 - 6.3.2 the contracted value set out in the WR 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 WR Contract concerning those parts of the WR Contract that we specify, including the contractual obligations referred to in Conditions 6.3.1 and 6.3.2. 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 WR 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 WR 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 requirements set out in this WR 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:-
 - 7.1.1 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
 - 7.1.2 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 and other SDS software/systems

- 8.1 In carrying out your obligations under the WR Contract, you shall meet all our information technology requirements (including the SDS Information Security Policy for NTP Providers attached at Appendix 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 Women Returners Programme, or complying with your obligations under the WR Contract or any applicable law.
- 8.3 Funding for each Women Returners 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. <https://www.skillsdevelopmentscotland.co.uk/for-training-providers/fips-funding-information-and-processing-system/> this guidance may be amended by us from time to time

- 8.5 In order to use FIPS as set out in the WR Contract, you must maintain a User Permission for each user of the FIPS software for the period of the WR Contract (and any longer period you may require, to process all claims for payment and submit required evidence under the WR 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.
- 8.6 In the event that SDS requires you to use any other software/systems when performing the Services, you shall supply such information to SDS as we may reasonably require to facilitate access to the software/systems. In addition you shall ensure that (i) you promptly notify SDS of any changes where the information is no longer accurate (ii) you, your staff and agents who may have access to the software/systems comply at all times with any end user conditions that may be made available to you in relation to such software/systems, and (iii) you notify SDSQualityAssurance@sds.co.uk immediately in the event of any failure by you, your staff or agents to comply with any such conditions.

9 Claims and Payment Arrangements

- 9.1 Provided always that you have met and continue to meet all your obligations under the WR Contract, and, if required under paragraph 4.5 (Entering an assignment on FIPS) of the Specification, that all the relevant Participant confirmations/validations have been received by us in accordance with our requirements, we will pay you the sums due in accordance with the provisions set out in the WR Contract. All payments made under the WR Contract are inclusive of any VAT that applies.
- 9.2 For each Accounting Period, you shall submit through FIPS (using such form as we shall specify) your claim for payment together with the evidence set out in the Specification. The evidence shall demonstrate in respect of the applicable Accounting Period (i) the Services that you delivered and (ii) the direct staff costs you properly incurred in delivering those Services (which costs must reflect the direct staff costs you set out in your ITT Response). With the exception of payments for the Accounting Period relating largely to the month of March, the Provider shall require to submit the evidence for each Accounting Period no later than 14 days after the expiry of the Accounting Period. For the Accounting Period largely relating to March, you shall require to submit your evidence by such date in March as SDS shall specify. Details of the Accounting Periods are set out in FIPS..
- 9.3 Each claim for payment and supporting evidence must be submitted in accordance with the FIPS requirements.
- 9.4 Where a Provider submits any claim for payment and/or evidence in support of a payment later than the date permitted under Condition 9.2 in addition to all other remedies available to SDS, SDS reserves the right to withhold payment of all or part of the claim, or where the claim (or part of the claim) has been paid, recover all or part of such payment.
- 9.5 Not used
- 9.6 Not used.
- 9.7 Not used.
- 9.8 If we include any travel expenses in the WR Contract, you must not exceed those expenses without our prior written approval. Any approval we give shall only be valid if it is set out in an email from your Contract Executive or confirmed by us within FIPS. Your attention is drawn to paragraph 2.2.2 of the Specification which sets out the period within which all claims for travel must be submitted to SDS.

- 9.9 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 9.9, 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.
- 9.10 You must promptly and without undue delay, obtain and collate all supporting evidence required under the WR Contract, including any and all signatures required on documents. 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. You must submit all claims for payments through FIPS. 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.
- 9.11 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.
- 9.12 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:-
- 9.12.1 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 WR Contract;
- 9.12.2 get any financial and/or other information that you provide to us under the WR Contract certified by an independent accountant or equivalent and provide evidence to us of that certification, or equivalent;
- 9.12.3 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 WR Contract; and
- 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 Women Returners Programme.
- 9.13 Not used.
- 9.14 We do have rights to withhold and recover payments from you. These are set out in Condition 23.2.1
- 9.15 You cannot make any charge of any nature to any Participant or proposed Participant, or former Participant, in respect of the Women Returners Programme, whether before, during or after the individual's participation in the Women Returners 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 Women Returners Programme).

10 Workforce Matters

- 10.1 You shall ensure that you take a positive approach to fair work practices with performing your Services. You shall engage with Scottish Government providing appropriate evidence of your compliance with any and all such Workforce Matters undertakings.

11 Not used.

12 Warranties and Representations

- 12.1 You warrant and represent to us that:-

- 12.1.1 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 WR Contract;
- 12.1.2 the WR Contract (and any ancillary documentation) is executed by your duly authorised representative;
- 12.1.3 in entering into the WR Contract, you have not committed and shall not commit any Fraud;
- 12.1.4 as at the commencement of the WR 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 WR 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;
- 12.1.5 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 WR Contract;
- 12.1.6 you have not caused or induced any person to enter any arrangement referred to in Condition 12.1.5;
- 12.1.7 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 Women Returners Programmes under the WR Contract.
- 12.1.8 you have not committed any offence under the Bribery Act 2010;
- 12.1.9 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 WR Contract;
- 12.1.10 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 WR Contract;
- 12.1.11 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

- 12.1.12 in the three (3) years prior to the date of the WR Contract:-
- 12.1.12.1 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;
 - 12.1.12.2 you have been in full compliance with all applicable securities laws and regulations in the jurisdiction in which you are established; and
 - 12.1.12.3 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 WR Contract.

13 Prevention of Bribery

- 13.1 You:
- 13.1.1 shall not, and shall procure that your employees, consultants, contractors, sub- contractors and agents shall not, in connection with this WR Contract commit a Prohibited Act; and
 - 13.1.2 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 WR Contract or any other contract with a public authority. Where you have provided us with full written details of any specific arrangement before this WR Contract is executed, that arrangement is excluded from this Condition, but only to the extent the information you provided is accurate.
- 13.2 You shall:
- 13.2.1 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
 - 13.2.2 immediately following any request from us, certify to us in writing compliance with this Condition 13 by you and all persons associated with you or other persons who are supplying services in connection with this WR 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.
- 13.3 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.
- 13.4 If you suspect or know of any breach of condition 13.1, you must notify us immediately.
- 13.5 If you notify us that you suspect or know that there may be a breach of condition 13.1, 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.
- 13.6 We may terminate this WR Contract by written notice with immediate effect if you, or any of your employees, consultants, contractors, sub-contractors or agents breaches condition 13.1. This is the case whether or not you were aware of the breach.
- 13.7 Any notice of termination under condition 13.6 must specify:
- 13.7.1 the nature of the Prohibited Act; and
 - 13.7.2 the date on which this WR Contract will terminate

- 13.8 Any dispute relating to:-
- 13.8.1 the interpretation of this Condition 13; or
 - 13.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by us and our decision shall be final and conclusive.
- 13.9 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.

14 Statutory and other Requirements

- 14.1 In performing your obligations under the WR Contract, you shall comply with all relevant requirements of Scots and UK law.
- 14.2 You shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to your performance of the WR Contract.
- 14.3 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 WR Contract you agree that you are confirming that you meet and shall continue to meet for the period of the WR Contract, all legal requirements of the 2007 Act.
- 14.4 Where you did not at the date of submission of your ITT Response but do at any time during the WR 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 WR Contract, you are confirming that all legal requirements of the 2007 Act will be met for the period during the WR Contract when you are undertaking 'regulated work'.
- 14.5 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 Adviser as soon as reasonably practicable that you had cause to make the report.
- 14.6 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 Adviser. If we tell you to provide them to someone else instead, you will provide them to that other person.

15 Signatures, SDS Documents, Forms and Processes

- 15.1 Except where any document, form or process we have provided relating to the Women Returners 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 Adviser 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 Women Returners 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.
- 15.2 Where the WR Contract refers to a requirement for a signature, the signature will require to be made in accordance with paragraph 3.9 of the Specification, which is available on the SDS Provider Web Pages or such alternative website or location we may alert providers to from time to time.

16 Conflicts of Interest

- 16.1 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 WR Contract.
- 16.2 You shall immediately email or write to your assigned Skills Investment Adviser, to provide full details if any conflict referred to in Condition 16.1 above arises or is likely to arise.
- 16.3 We may:-
- 16.3.1 terminate the WR Contract (or any part of the contract) without penalty to us, immediately by giving notice in writing to you; and/or
 - 16.3.2 take any other steps we deem necessary

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 WR 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.

17 Safeguard Against Fraud

- 17.1 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 WR 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 Adviser, 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.

18 Data Protection

- 18.1 Subject to condition 18.2, the parties agree that SDS is the “Data Controller” and the Provider is the “Data Processor” in relation to the collection and processing of all Personal Data (under exception of Data) under the WR Contract (“the Processed Data”). The Provider will act only on SDS’s instructions and ensure that there are appropriate technical and organisational measures in place to ensure the security of all Processed Data in accordance with the Data Protection Principles set out in Data Protection Legislation and shall not use any Processed Data for any other purpose nor shall the Provider disclose the same to any third person. The Provider will comply with the provisions of Appendix 3 to these Conditions (Processed Data) in respect of such Personal Data.
- 18.2 In relation to the collection and processing of Personal Data comprising Data only, the parties agree that they are each a “Data Controller” in terms of the Data Protection Legislation and that any sharing of Personal Data comprised in the Data between the Provider and SDS relating to the Services will be on a Data Controller to Data Controller basis. The Provider shall comply with the provisions of the Data Protection Legislation in relation to the Data and shall ensure that it has obtained all permissions required in relation to the Data Protection Legislation to enable it to comply with the requirements of the WR Contract. The provisions of Appendix 2 to these Conditions (Data Sharing) shall apply in respect of the sharing of any Data in relation to the WR Contract.
- 18.3 The Provider shall, at all times during and after the period of the WR Contract, indemnify SDS and keep SDS indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by SDS arising from any breach of the Provider’s obligations under this Condition 18 (and the corresponding appendices) except and to the extent that such liabilities have resulted directly from SDS’s instructions.

- 18.4 SDS acknowledges that the Provider is reliant on SDS alone for direction as to the extent the Provider is entitled to use and process the Personal Data where the Provider is a Data Processor under the WR Contract. Subject to paragraph 4 of Appendix 3 to these Conditions, the Provider shall be entitled to relief from liability in circumstances where the Data Subject makes a claim or complaint with regards to the Provider's actions to the extent that such actions directly result from instructions received from SDS in connection with the Processed Data.

19 Freedom of Information

- 19.1 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.
- 19.2 The other party shall and shall procure that its sub-contractors and agents shall at its cost:-
- 19.2.1 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;
 - 19.2.2 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
 - 19.2.3 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.
- 19.3 The FOISA Party shall be responsible for determining in its absolute discretion and notwithstanding any other provision in or relating to the WR 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.
- 19.4 In no event shall the other party respond directly to a request for information unless expressly authorised to do so by the FOISA Party.

20 Insurance

- 20.1 You shall have in force and shall require any sub-contractor to have in force for the period of the agreement:
- 20.1.1 employer's liability insurance in accordance with all legal requirements that apply during the period of the agreement, and
 - 20.1.2 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 WR Contract in total.
- 20.2 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.

21 Termination

- 21.1 We may without penalty terminate the WR 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:-

- 21.1.1 where, in our opinion, you have failed to comply with any terms of the WR Contract:-
where, in our opinion, you are unable to perform your obligations in terms of the WR Contract,
 - 21.1.2 in the event that we cease to be engaged in the performance or support of the Women Returners Programme;
 - 21.1.3 not used;
 - 21.1.4 not used;
 - 21.1.5 not used

 - 21.1.6 where any of the circumstances set out in Condition 22 (Reputational Damage) arise;
 - 21.1.7 where an Insolvency Event as described in Condition 38 has occurred in relation to you;
 - 21.1.8 where we terminate any other contract we entered into with you as a consequence of your breach;
 - 21.1.9 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 WR Contract), which breach (or breaches) would entitle (or would have entitled) SDS to terminate the agreement that was breached;
 - 21.1.10 if we reasonably consider that the WR 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);
 - 21.1.11 if you fail to comply with legal obligations in the fields of environmental, social and employment law when performing the WR Contract;
 - 21.1.12 if at any time, we have reasonable cause to believe that at the time of awarding the WR Contract to you, (or, if the WR 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;
 - 21.1.13 if we have reasonable cause to believe that you (or, if the WR 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
 - 21.1.14 if we have reasonable cause to believe that the WR Contract should not have been awarded to you (or, if the WR 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.
- 21.2 We may without penalty terminate the WR Contract by serving one Month's written notice on you at any time.

21.3 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 WR 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 WR 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:-

21.3.1 being notified that a Change of Control has occurred; or

21.3.2 where no notification has been made, the date that we become aware of the Change of Control;

but we cannot terminate under this Condition 21.3 where we approved the Change of Control prior to its implementation, in writing.

21.4 If we terminate the WR Contract (or any part of the WR 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.

21.5 Our rights of termination under this Condition 21 are available to us in addition to any other rights of termination that are set out under the WR Contract or are otherwise available to us.

21.6 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 WR Contract.

21.7 You may without penalty to us, terminate the WR 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 32 (Notices)) prior to that date. Your right to terminate under this condition shall cease on that date, and shall not be extended.

21.8 SDS shall be entitled to require the Provider at any time, to deliver to SDS immediately on demand, all the evidence required under the WR Contract to support all outstanding claims and payments under the WR 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.

22 Termination for Reputational Damage

22.1 We shall be entitled to terminate the WR Contract by written notice with immediate effect if you and/or any of your directors, staff, Permitted Sub-contractors or representatives:-

22.1.1 has committed a crime; or

22.1.2 has become involved in any situation or activity which:-

22.1.2.1 tends in our opinion to have a negative effect on the reputation of SDS, any Scottish Minister or the Women Returners Programme or any aspect of our or any Scottish Minister’s business;

- 22.1.2.2 would expose us, any Scottish Minister or the Women Returners 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;
- 22.1.2.3 reflects unfavourably on the reputation of SDS, any Scottish Minister or the Women Returners Programme or any of our or any Scottish Minister's services, interests or activities; or
- 22.1.2.4 might affect the supply and/or exploitation of the services, activities and interests of SDS, any Scottish Minister or the Women Returners Programme.

22.2 Our decision on all matters arising under this Condition 22 shall be conclusive.

22.3 Examples of acts or conduct considered to be prejudicial to the business of SDS, any Scottish Minister or the Women Returners Programme include:

- 22.3.1 the posting or publishing on social media or elsewhere of any content that promotes bigotry, racism or discrimination based on race, sex, gender reassignment, religion, nationality, disability, sexual orientation or age or any other Protected Characteristics (as defined under the Equality Act 2010);
- 22.3.2 the expression of any political views in a context that could give rise to an association with our or any Scottish Minister's business;
- 22.3.3 the use of, trade in, or other association with, illegal drugs.

23 Other Remedies

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

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

- 23.2.1 If you have received payment from us which you were not due to receive under the terms of the WR 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 WR Contract has been assigned or novated to you by another party, and the assignation or novation identifies that liability under this WR 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.
- 23.2.2 If you fail to provide any part of the Services entirely as set out in the WR Contract, this shall be a breach of the WR 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:-

- 23.2.2.1 suspend any or all payments under the WR 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.
- 23.2.2.2 suspend your appointment under the WR 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. You should note that this would include a right for SDS to suspend issuing any Contract Schedule to you in the event of any extension of the WR Contract;
- 23.2.2.3 suspend your right to access FIPS under the WR 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.
- 23.2.2.4 recover from you up to the full amount of all the funding we have paid to you under the WR Contract, which you shall pay immediately. Any funds we recover shall not be repaid to you;
- 23.2.2.5 permanently withhold any or all future payments which we may otherwise require to pay to you, in respect of each Participant under the WR Contract, and under any other contract you have entered into with us;
- 23.2.2.6 reduce the volume of Starts we awarded to you under the applicable Contract Schedule (in which event you shall require to promptly sign your acceptance of appropriate amendments to the applicable Contract Schedule as we set out);
- 23.2.2.7 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 WR Contract and/or any other contract you have entered into with us (or part of the WR Contract, or any other contract) under Condition 21; and/or

- 23.2.2.8 require you to agree to an action / improvement plan 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 WR Contract and/or any other contract you have with us.
- 23.3 If we confirm that validation of a Participant is required in accordance with paragraph 4.5 (Entering an assignment on FIPS) of the Specification, and a Participant fails for any reason to validate all required information in accordance with the requirements set out in that paragraph 4.2.4 within the timeframe we have specified, we may suspend the Participant's registration as a Start until the validation requirements have been fulfilled. We may require the relevant validation to be completed within an extension period, if we set one. If the relevant validation is not made within the extended period or if we do not consider it appropriate to extend the period for completing the validation, we shall be entitled to cancel the Participant's registration as a Participant. To be clear, we have no obligations to you under the WR Contract in respect of (i) any individual until the individual is registered and (if required pursuant to paragraph 4.5 (Entering an assignment on FIPS) of the Specification) validated as a Participant in terms of the WR Contract, and (ii) any registered Participant whose registration as a Participant has been suspended or cancelled for any reason,. You should be aware that activity you may have provided to any such individual must not be included as supporting evidence of activity you have provided when submitting any reports associated with claims and/or performance of Services to SDS. This is the case even if you have provided activities under the Services description to that individual.
- 23.4 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.
- 23.5 We shall be entitled to deduct from any payments that are due to you under the WR Contract or any other contract you have with us:-
- 23.5.1 any sums you owe us, however and whenever these sums arise; and
- 23.5.2 any sums due to us by any person to whom you have transferred your undertaking;
- or if you are not due to make any further claims, or if we otherwise request, you will immediately repay those sums to us.
- 23.6 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.
- 23.7 Unless we specifically state otherwise in any Condition, each remedy for a breach of the WR 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.
- 23.8 Not used.
- 23.9 Not used
- 23.10 We shall also be entitled to exercise the powers set out in Condition 23.2.2.1 - 23.2.2.3 where we reasonably suspect that you are in breach of the WR Contract.

24 Consequences of Termination and Expiry

- 24.1 When we serve any notice on you terminating the WR Contract (or any part of the WR 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.
- 24.2 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 Adviser that we will make such payments.
- 24.3 Each condition and associated requirement under the WR 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 WR Contract. This includes all provisions entitling us to recover sums paid, Condition 13 (Prevention of Bribery), Condition 17 (Safeguard Against Fraud), Condition 18 (Data Protection), Condition 19 (Freedom of Information), Condition 21 (Termination), Condition 23 (Other Remedies), Condition 24 (Consequences of Termination and Expiry), Condition 25 (Liability), Condition 28 (Records, Audit Access and General Assistance), Condition 29 (Confidentiality), Condition 35 (Marketing, Branding and Publicity), Condition 36 (Intellectual Property Rights) and Condition 37 (Transfer of Undertakings), and in each case, all associated provisions set out in any appendices.
- 24.4 On the expiry or earlier termination of the WR 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 18, 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 WR Contract), so as to facilitate a smooth and swift winding up of business between you and us.
- 24.5 Following expiry or earlier termination of the WR Contract, you shall not represent that you are contracted to provide training under the Women Returners Programme and you shall not, even if previously permitted to do so, use or continue to use any SDS branding.

25 Liability

- 25.1 Except to the extent that we have limited our liability in Condition 25.2, our total liability to you for any costs and/or losses you incur or suffer in relation to the WR Contract shall be capped at the total charges due to you for performing the Services under the relevant Contract Schedule(s) in relation to which the costs and/or losses have arisen.
- 25.2 In no event shall we limit our liability under the WR Contract for:-
- 25.2.1 Death or personal injury caused by the negligence of us or our Staff;
 - 25.2.2 Fraud or fraudulent misrepresentation by us, our staff or representatives.
- 25.3 SDS shall not be liable for any injury, loss or damage whatsoever or to whomsoever caused by any act, default or omission of a Participant relating to the Services except to the extent (if any) that any such injury, loss or damage is caused or contributed to by the negligence of SDS staff. The Provider shall indemnify SDS against any payments which SDS shall be liable to make in respect of any injury, loss or damage caused by an act, default or omission of a Participant relating to the Services for which act, default or omission SDS would not otherwise be liable in terms of this paragraph, provided that the Provider is liable in law for such injury, loss or damage.

- 25.4 SDS shall not be liable for any injury, loss or damage whatsoever suffered by a Participant relating to the Services caused by any act, default or omission of the Provider, the Provider's sub-contractor or agent, whomsoever, except to the extent (if any) that any such injury, loss or damage is caused or contributed to by the negligence of SDS staff. The Provider shall indemnify SDS against any payments which SDS shall be liable to make in respect of any injury, loss or damage caused to a Participant by an act, default or omission of the Provider, the Provider's sub-contractor or agent, for which act, default or omission SDS would not otherwise be liable in terms of this paragraph, provided that the Provider, the Provider's sub-contractor or agent is liable in law for such injury, loss or damage.

26 Severability

- 26.1 If any provision of the WR 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 WR Contract had been agreed with the invalid provision removed.
- 26.2 Where any provision is held to be invalid, and that invalidity prevents the purpose of the WR Contract being properly achieved, the parties shall immediately commence good faith negotiations to rectify the invalidity.

27 Non-Discrimination

- 27.1 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).
- 27.2 You shall take all reasonable steps to ensure that all of your servants, suppliers, employees and sub-contractors engaged in performing the WR Contract comply with Condition 27.1.
- 27.3 This Condition 27 does not cancel or reduce your obligations relating to equality set out in paragraph 3.1 of the Specification.

28 Records, Audit Access and General Assistance

- 28.1 Not used.
- 28.2 Not used.
- 28.3 You shall retain full and accurate records and accounts of your operation of the WR Contract including the Services provided under it, and the amounts we pay you under and in relation to the WR Contract. You will do this from the start date of the WR Contract until the third anniversary of the expiry date of your WR Contract (as extended, if applicable), (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.
- 28.4 Not used.
- 28.5 You shall keep the records, evidence and accounts referred to in this Condition 28 in accordance with good accountancy practice.
- 28.6 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 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 WR Contract. It is anticipated that audit visits will be undertaken as a minimum, once every three months, but the number and frequency of audit visits shall be at the Auditor's discretion. Access shall at the Auditor's entire discretion, be at:-
- 28.6.1 your premises (and/or the premises of your agents or your own auditors, if the records, evidence and/or accounts are ordinarily stored there); or
- 28.6.2 premises identified by the Auditor within Scotland.

- 28.7 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 WR Contract and for the further retention period referred to in Condition 28.3 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.
- 28.8 You shall immediately following the Auditor's request, provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:-
- 28.8.1 providing unlimited access to all information requested by the Auditor;
 - 28.8.2 providing unlimited access to sites you control and to equipment you or your staff or agents use in performing the Services;
 - 28.8.3 providing unlimited access to your staff, agents, representatives, Participants, and proposed and former Participants; and
 - 28.8.4 providing the Auditor with suitable oral or written explanation as requested.
- 28.9 You shall bear your own costs and expenses incurred in respect of your compliance with your obligations under this Condition 28. 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.
- 28.10 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 does not restrict the options available to us and does not prevent or restrict us from exercising any other right or remedy that we may have, including recovering our costs in the event that SDS exercises any rights under this condition as a result of your failure to meet your current (or inability to meet your future) retention obligations under the WR Contract.
- 28.11 Where at any time during the period of the WR Contract, or during the retention period following the expiry of the WR Contract, you are unable to fulfil any of your retention obligations you shall immediately email your SDS assigned Skills Investment Adviser 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 provisions, nor prevents or restricts us from exercising our rights and remedies.
- 28.12 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:-
- 28.12.1 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
 - 28.12.2 assist us and/or the Scottish Ministers (or their representatives) in developing policy for similar programmes.
- 28.13 You shall:-
- 28.13.1 permit our authorised representatives unlimited access to interview Participants and to examine all records and all other supporting documentation which shall include evidence of assessment relating to the delivery of training if referred to in the ITT Response;
 - 28.13.2 provide us with suitable oral or written explanation if requested; and

- 28.13.3 provide us with access to your staff for interviews on matters covered by the WR Contract.
- 28.14 The Auditor is entitled at its entire discretion to request you to either:-
 - 28.14.1 upload/scan (as appropriate) the requested records, evidence and/or accounts onto FIPS in accordance with any instructions the Auditor may make available; or
 - 28.14.2 email the requested records, evidence and/or accounts to the Auditor at an email address provided by the Auditor.
- 28.15 You shall comply with any request referred to in Condition 28.14 promptly, and within any timeframe required by the Auditor.
- 28.16 Your obligation to comply with Condition 28.14 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 28.
- 28.17 Any audit conducted by or on behalf of SDS shall be conducted reasonably and proportionately.
- 28.18 Where any audit or other investigation reveals any breach by you of the WR 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.

29 Confidentiality

- 29.1 You must treat the content of the WR Contract and all associated SDS information and records (“Confidential Information”) as confidential and not disclose any of the Confidential Information unless:-
 - 29.1.1 we give you prior written permission to disclose the information in the form of an email from your SDS assigned Skills Investment Adviser confirming the extent of the permission;
 - 29.1.2 you are required to disclose the information to any court of law or tribunal or other competent authority;
 - 29.1.3 the information has been made publicly available other than as a result of any breach; or
 - 29.1.4 you are disclosing under Condition 29.2.
- 29.2 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.
- 29.3 We shall be entitled to disclose the Confidential Information and any details relating to your performance under the WR Contract to any individuals and organisations, and in such manner, as we consider appropriate.

30 Assignment and Sub-contracting

- 30.1 You shall not assign, novate, sub-contract or otherwise dispose of any of your rights or obligations under the WR 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 Adviser. Any assignment or novation will not become effective until the assignment/novation agreement is signed by and a copy delivered to, all relevant parties.
- 30.2 Where we grant consent to you to sub-contract in accordance with Condition 30.1, 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.
- 30.3 In respect of any sub-contracting we have consented to under Condition 30.1:-

- 30.3.1 you shall ensure that so far as is possible, the terms of the WR 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 WR Contract;
- 30.3.2 you shall include and maintain provisions in a written contract with each Permitted Sub-contractor:-
- 30.3.2.1 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 Adviser setting out the details of the consent provided);
 - 30.3.2.2 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;
 - 30.3.2.3 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;
 - 30.3.2.4 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
 - 30.3.2.5 in the same terms set out in Conditions 30.3.2.3 and 30.3.2.4 and this Condition 30.3.2.5, 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;
- 30.4 We reserve the right to see and approve copies of sub-contracts (which approval shall not to be unreasonably withheld, delayed or conditioned).
- 30.5 No sub-contracting by you whether under this Condition 30 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 WR Contract.
- 30.6 You shall also include in every Permitted Sub-contract:
- 30.6.1 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 WR Contract, contract award despite the existence of exclusion grounds, or a serious infringement of EU obligations) specified in Condition 16 occur;
 - 30.6.2 a requirement that the sub-contractor includes a provision having the same effect as Condition 30.6.1 above in any sub-contract which it awards.
- 30.7 For the purposes of Condition 30.3 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 WR Contract.

- 30.8 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.
- 30.9 We shall be entitled, without the need for your consent, to assign, novate or otherwise dispose of our rights and obligations under the WR 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.
- 30.10 In order to avoid any doubt and without limiting the scope of the preceding provisions of this Condition 30, the requirements of this Condition 30 shall apply even where you intend to delegate or sub-contract any of your rights or obligations under the WR Contract to a Group Company.
- 30.11 We reserve the right to charge an administration charge to reflect our costs incurred in considering, approving and agreeing the terms of any assignment or novation agreed under this Condition 30, 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.

31 Change of Your Name

- 31.1 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 Adviser providing full details of the change.

32 Notices

- 32.1 No notice from either us to you, or you to us, shall be valid under the WR 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.
- 32.2 Subject to any temporary measures put in place to reflect necessary arrangements as a result of the Covid-19 pandemic, and which are expressly set out in the Specification, 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.
- 32.3 For the purposes of Condition 32.2 the respective address for each party shall be as follows:-
- 32.3.1 For notices to us, at our registered address posted on the UK Companies House website as at the date of the notice;
 - 32.3.2 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
 - 32.3.3 For notices to you where you are not a UK registered company, your address set out in our award letter to you for this WR Contract.
- 32.4 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 32.

33 Waiver

- 33.1 The failure of either party to insist upon strict performance of any provision of the WR 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 WR Contract.
- 33.2 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 27 (Notices).
- 33.3 A waiver of any right or remedy arising from a breach of the WR Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the WR Contract.

34 Entire Agreement

- 34.1 Except to the extent any provision contained within the WR Contract clearly states otherwise the WR 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;
- 34.2 You agree that in entering into the WR 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 WR Contract.
- 34.3 Nothing in this Condition 34 shall operate to exclude liability for fraud or fraudulent misrepresentation.

35 Marketing, Branding and Publicity

- 35.1 You must conform to all marketing and brand guidelines and standard marketing literature that we issue in relation to the Women Returners Programme.
- 35.2 You will use only approved programme names in communications with targeted Participants and actual Participants in relation to the Women Returners Programme. You are not permitted to vary the programme naming conventions or use independent branding.
- 35.3 You may only use the SDS branding, trademark and other intellectual property rights for the purposes of the WR Contract and shall not use any of our branding, trademark or other intellectual property after the termination or expiry of the WR Contract.
- 35.4 You must supply case study information if requested by us at any time during the period of the WR Contract.
- 35.5 Not used.
- 35.6 Not used.
- 35.7 Not used.
- 35.8 Unless we direct you otherwise you shall not make any press announcements or publicise the WR Contract in any way without our prior written consent in the form of an email from your SDS assigned Skills Investment Adviser.
- 35.9 We shall be entitled to publicise details of the WR Contract (including any examination of the WR Contract by any Auditor(s) or otherwise).

36 Intellectual Property Rights

- 36.1 All intellectual property rights in any material solely produced by you in the performance and during the currency of the WR 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.

37 TUPE: Transfer of Undertakings (Protection of Employment) Regulations 2006

- 37.1 You undertake (i) to organise the delivery of the Women Returners Programme in such a way that there will be no organised grouping of your employees which has as its principal purpose delivery of the Women Returners 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 WR Contract.
- 37.2 If, on the termination, expiry or reduction in the scope of the WR 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 Women Returners 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:
- 37.2.1 the employment or engagement: and/or
 - 37.2.2 the claimed employment or engagement: and/or
 - 37.2.3 the termination of the employment or engagement: and/or
 - 37.2.4 the claimed termination of employment or engagement
- of any such current or former employee by SDS or any such new provider.
- 37.3 If we ask, you shall promptly enter into an appropriate agreement with any new provider on the same terms as those in Condition 37.2 in order to give effect to Condition 37.2 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 37.2 above.
- 37.4 Nothing in this Condition 37 will give rise to the inference that we accept any liability for any person employed by you.

38 Insolvency

- 38.1 You shall notify us in writing (and email your SDS assigned Skills Investment Adviser and SDS assigned Compliance Officer) immediately in the event that any of the following events ("Insolvency Events") occur during the period of the WR Contract:-
- 38.1.1 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);
 - 38.1.2 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);
 - 38.1.3 where you are a company:-
 - 38.1.3.1 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;

- 38.1.3.2 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);
- 38.1.3.3 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;
- 38.1.3.4 and a receiver, administrative receiver or similar officer is appointed over the whole or any part of your business or assets;
- 38.1.3.5 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;
- 38.1.3.6 and you are or become insolvent within the meaning of Section 123 of the Insolvency Act 1986;
- 38.1.3.7 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
- 38.1.3.8 in relation to your company, any event similar to those listed in Condition 38.1.3.1 to Condition 38.1.3.7 occurs under the law of any other jurisdiction

38.2 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 undertaken, and achievements made. This condition is not exhaustive and does not limit the scope of options available to us in the event of your insolvency.

39 Blacklisting Regulations

39.1 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 WR Contract with immediate effect.

40 Law and Jurisdiction

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

Appendix 1 - Definitions

“Accounting Period”	means each period described as such in FIPS;
“Audit”	means an audit referred to in condition 28 of the Conditions;
“Auditor”	has the meaning set out in condition 28.6 of the Conditions;
“Change of Control”	has the meaning set out in condition 21.3 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, each applicable Contract Schedule, the Letter of Award and any other document properly incorporated by reference into the WR 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 each schedule forming part of the WR Contract, which sets out:- <ul style="list-style-type: none">• the volume of new Starts who shall commence their activities under the Women Returners Programme during the specified contract period (if any);• the volume of Participants already registered as Starts under a previous Contract Schedule, who are continuing with their respective activities under the Women Returners Programme during the specified contract period (if any); and• the Services costs forecast to be paid in accordance with the charging and payment arrangements set out in the Specification;
“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 WR Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the WR Contract, including any Personal Data Breach;
“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);
“Fair Work First”	means the Scottish Government's flagship policy for driving high quality and fair work across the labour market in Scotland.
“FIPS”	means the SDS Funding Information and Processing System portal through which information relating to the Women Returners Programme is recorded by 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 WR 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 38 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 WR Contract, including the ITT response section, the volume bid documentation and all supporting documentation requested by us in the Women Returners 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;
“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 in Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment of that Act;
“Participant”	has the meaning set out in paragraph 4.5 of the Specification;
“Permitted Sub-contractor”	means a party to which you have sub-contracted certain rights and obligations under the WR Contract and where the identity of that sub-contractor and the sub-contracting arrangement has been approved by us in accordance with Condition 30 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;
“Personal Data Breach”	has the meaning set out in the GDPR from time to time;
“Processed Data”	has the meaning set out in Appendix 3 to the Conditions;
“Prohibited Act”	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> • to directly or indirectly offer, promise or give any person working for or engaged by us a financial or other advantage to: <ul style="list-style-type: none"> • induce that person to perform improperly a relevant function or activity; or • reward that person for improper performance of any 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 WR 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 WR 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 an 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 qualification(s) if any (identified by the awarding body qualification number) in the Participant’s Learning Plan / TA
“Reportable Incident”	means any incident or accident impacting a Participant while undergoing the Women Returners Programme which is reportable pursuant to The Reporting of Injuries, Disease and Dangerous Occurrences Regulations 2013 (SI 2013/1471);
“SDS Provider Web Pages”	means the web pages available through www.skillsdevelopmentscotland.co.uk , specifically for providers. As at the commencement date of the WR 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 WR Contract as set out in the Specification;
“Skills Investment Adviser” or “SIA”	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;
“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 WR 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;

“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, you and, where applicable, the Participant’s employer, 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;
“WR 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;

Appendix 2 - Data Sharing

1 The Data

- 1.1. Data has the meaning set out in Appendix 2, Part 1.

2. Sharing of the Data

- 2.1. The Provider agrees to disclose the Data to SDS in accordance with the transfer arrangements detailed in Part 3 of Appendix 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 WR Contract.
- 2.3. The Provider shall make its own privacy notice available to the Data Subject in relation to its own processing activities relating to the Women Returners Programme.

3. SDS's Assurances

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

Appendix 2, Part 1 - The Data

1. For the avoidance of doubt, this Appendix 2 only applies to the Personal Data comprised in the Data. "Data" comprises all of the following:-

Supplier contact details.

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

1. The purpose for sharing the Data is as follows:

The Scottish Government wishes to obtain supplier's contact details from SDS in order to gather information about Fair Work Practices within organisations in order to promote the Scottish Government's Fair Work First policy.

2, The Legal Basis for sharing the data is a Public Task under The Equalities Act 2010

1. Subject to SDS introducing any alternative arrangements, the Data is intended to be transferred from SDS to the Scottish Government in the following manner: -

By secure email from SDS to Scottish Government.

Appendix 3 - Processing of Processed Data

1. For the avoidance of doubt, this Appendix 3 applies to the Personal Data comprised in Processed Data. "Processed Data" comprises all the Personal Data that the Provider processes pursuant to the WR Contract under exception of the Data (if any) set out in Appendix 2.
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 Women Returners Participant Equality Monitoring Form, as soon as you have entered the application to FIPS and the Participant has been confirmed as a Start, 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 WR Contract and such additional instructions as SDS may advise from time to time in writing.
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, at our discretion, include: -
 - 5.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 5.2. an assessment of the necessity and proportionality of the processing operations in relation to the services, or any applicable legal requirements;
 - 5.3. an assessment of the risks to the rights and freedoms of Data Subjects: and
 - 5.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of the Processed Data.
6. You shall, in relation to the Processed Data processed in connection with your obligations under the WR 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 WR 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 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 WR 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 (whether in accordance with Data Protection Legislation) 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 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 WR Contract (or, as applicable, any part of the WR 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 the Women Returners Programme 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 WR 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 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 WR 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 18.2 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 WR Contract).

Appendix 4 - Information Security Policy

SDS Information Security Policy for NTP Providers. Any reference to 'NTP' programmes/providers

in this policy (as may be amended from time to time) shall be deemed to include reference to the Women Returners programme/WR 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 National Training 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 National Training Programme information processed by and on behalf of SDS.

Responsibility

All organisations contracted to deliver National Training 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 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 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.
- 2.4 If a provider in their own specific circumstances cannot access a file with the level of encryption specified in 2.1, they should make their SIA aware so that an alternative means of secure transfer can be arranged. Any exceptional arrangement should only be used upon SDS' prior approval in writing.

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 overlooked.

5 Processing

- 5.1 When a provider processes a 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 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 Participant's personal information must be locked.
- 6.3 Any files containing personal information held electronically must be held securely and in compliance with Data Protection Legislation.
- 6.4 Providers must ensure that, for both hard copy and electronically stored personal information, only colleagues who have a legitimate business purpose to access the personal information of Participants can do so.

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 documents 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 Data Protection Officer (dpo@sds.co.uk).