

# Individual Training Accounts

Training Provider Registration Agreement

Version 3.0 July 2020



# Training Provider Registration Agreement

## Training Provider Registration Agreement

between

The Skills Development Scotland Co. Limited

and

(insert name of Training Provider)

(insert date)

# Training Provider Registration Agreement

## Training Provider Registration Agreement

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# Training Provider Registration Agreement

## Training Provider Payment Agreement

between

**THE SKILLS DEVELOPMENT SCOTLAND CO. LIMITED**, a company incorporated in Scotland with Registered Number 202659 and having its registered office at Monteith House, 11 George Square, Glasgow, G2 1DY (“**SDS**”)

and

**THE TRAINING PROVIDER** designated in the Registration Information Form submitted by the applicant in its application to become an ITA Approved Training Provider.

WHEREAS:

- (a) SDS has been designated by the Scottish Ministers as a Training Account Administrator for the purposes of administering the ITA Database and registering Training Providers as ITA registered Training Providers in terms of the Regulations;
- (b) The Training Provider applied to SDS as Training Account Administrator to be registered as an ITA approved Training provider, (including without limitation having its details added to the ITA Database and participating in the Scheme delivering ITA training to Training Account Holders);
- (c) SDS has approved the application by or on behalf of the Training Provider to become an Approved Training Provider; and
- (d) The Training Provider has agreed to provide the training in accordance with this Agreement.

NOW THEREFORE IT IS AGREED as follows:

### 1. Interpretation

- 1.1. In this Agreement, unless the context requires otherwise, the following words and phrases shall have the meanings set opposite them.
  - 1.1.1. “Account Holder’s Year” means the period commencing on the date the Training Account Holder is first verified by any Training Provider through the Verification Procedure as being eligible for ITA funding as a Training Account Holder, and expiring on the first day of the same month in the following year, and each subsequent period of 12 months;
  - 1.1.2. “the Act” means the Education and Training (Scotland) Act 2000;
  - 1.1.3. “Agreement” means these terms and conditions, the Schedule, the Operational Rules and all appendices to those rules, the Marketing Guidelines and all documents formally referenced within this Agreement, as amended from time to time in accordance with these provisions;
  - 1.1.4. “Agreement Year” means the period of twelve months beginning on the last date of execution of this Agreement or any anniversary thereof;

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- 1.1.5. “Approved Training” means each course of study, instruction, education or training (including any distance training or correspondence course) which has been approved by SDS for the purposes of the Scheme and is made available by the Training Provider in terms of the Scheme;
- 1.1.6. “Assessment Criteria” means the criteria which an applicant must satisfy in order to become an ITA Approved Training Provider, which criteria are established by SDS and set out on the SDS Website from time to time;
- 1.1.7. “Auditor” has the meaning in Clause 11.2;
- 1.1.8. “Business Day” means any day on which the Royal Bank of Scotland is open for business in Glasgow;
- 1.1.9. “Change in Law” means the coming into effect on or after the last date of execution of this Agreement of any legislative provision, Order in Council or Directive of a Competent Authority or an amendment to any legislative provision, Order in Council or Directive of a Competent Authority other than a commencement order or other similar Directive which brings into effect legislation enacted prior to the date of this Agreement;
- 1.1.10. “Competent Authority” means any local or national agency, authority, department, inspectorate, minister, official or public or statutory person (whether autonomous or not) of the United Kingdom (or of its government) or (for so long as the United Kingdom remains a member of the European Union) of the European Communities;
- 1.1.11. “Data Protection Legislation” the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003, any other applicable laws and regulations relating to the processing of personal data and privacy in the United Kingdom and shall include the General Data Protection Regulation (2016/679) for so long as it is in force in the United Kingdom;
- 1.1.12. “Directive” means any present or future directive, request, requirement, instruction, direction or rule of any Competent Authority (but only, if not having the force of law, if it is reasonable in all the circumstances for it to be treated as though it had legal force) and includes any modification, extension or replacement thereof then in force;
- 1.1.13. “Individual Training Account” or “ITA” means an individual training account under the Scheme;
- 1.1.14. “Intellectual Property” means any and all intellectual property or industrial rights of any description anywhere in the world (whether registered, unregistered, registerable or not and any applications or rights to apply for registration of any of them) including any patents, trademarks, domain names, registered designs, copyright (including rights in computer software (including object and source code)), rights in the nature of copyright, database rights, semiconductor topography rights, unregistered design rights, rights in and to trade names, business names, product names and logos, inventions, databases, discoveries, specifications, formulae, processes, know how, trade secrets, confidential information and any analogous or similar right in any jurisdiction;

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- 1.1.15. “ITA Approved Training Provider” means an organisation, business or individual that provides Approved Training and/or Approved Training materials with associated Approved Training support which has a current, valid Training Provider Registration Agreement with SDS demonstrating registration as an approved provider of training under the Scheme, and whose registration has not been suspended, cancelled or withdrawn;
- 1.1.16. “ITA Database” means the database of ITA Approved Training Providers and Approved Training, maintained by SDS;
- 1.1.17. “Marketing Guidelines” means the guidelines published by SDS from time to time for marketing Approved Training opportunities and the Training Provider as an ITA Approved Training Provider;
- 1.1.18. “New Supplier Form” means the form containing the bank details specific to the Training Provider’s institution, for receipt of ITA funding submitted by the Training Provider in its application to become an ITA Approved Training Provider, and incorporated into the TPPA;
- 1.1.19. “Online ITA System” means the web based systems maintained by SDS for Training Providers in terms of the Scheme to process all Scheme transactions, sometimes referred to as ‘FIPS’;
- 1.1.20. “Operational Rules” means those rules, as referred to in the Regulations, and as such rules are determined by the Scottish Ministers from time to time in accordance with section 1 (2) (c) of the Act, and notified to the Training Provider by the Scottish Ministers by placing them on the SDS Website;
- 1.1.21. “Quality Standards” means the standards set out in the Schedule and as varied by SDS from time to time in accordance with Clause 24, together with all guidance and guidelines, that must be met and maintained by the Training Provider in terms of Clauses 6.1 and 6.2 of this Agreement;
- 1.1.22. “Registration Information Form” means the completed form submitted by the Training Provider in its application to become an ITA Approved Training Provider and hereby incorporated into this Agreement;
- 1.1.23. “Regulations” means the Individual Training Account (Scotland) Regulations 2011, made by the Scottish Ministers under the Education and Training (Scotland) Act 2000 as the same may be varied, amended or replaced from time to time;
- 1.1.24. “Scheme” means all and any aspects of the Individual Training Account Scheme operated by SDS and the Scottish Ministers in terms of the Regulations;

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- 1.1.25. “SDS Confidential Information” means all information acquired from any source by the Training Provider whether designated confidential or not, relating to SDS, its projects, its business, finances, dealings, transactions and affairs and all designs, drawings, plans, working papers, patent documents, data, methods, processes, techniques, operating procedures, technology and know-how, including all Intellectual Property, of any description relating to SDS and its business but excluding any information relating to SDS which is in the public domain;
- 1.1.26. “SDS Website” means the SDS website currently at <https://www.skillsdevelopmentscotland.co.uk/for-training-providers/sds-individual-training-accounts/> or such replacement website(s) as SDS may introduce from time to time;
- 1.1.27. “Training Account Holder” means means an individual who qualifies and has been registered as a Training Account Holder in terms of the Regulations and whose registration has not been cancelled by the Scottish Ministers;
- 1.1.28. “Training Episode” means each episode of Approved Training requested by a Training Account Holder and accepted and entered into the Online ITA System by the Training Provider in accordance with the Operational Rules;
- 1.1.29. “Training Provider Confidential Information” means all information acquired from any source by SDS whether designated confidential or not, relating to the Training Provider, its projects, its business, finances, dealings, transactions and affairs and all designs, drawings, plans, working papers, patent documents, data, methods, processes, techniques, operating procedures, technology and know-how, including all Intellectual Property, of any description relating to the Training Provider and its business but excluding any information relating to the Training Provider which is in the public domain and excluding also any information which SDS is required to disclose under any Directive;
- 1.1.30. “Training Provider Payment Agreement” or “TPPA” means the agreement between the Training Provider and the Scottish Ministers for the payment of ITA funding under the Scheme;
- 1.1.31. “User Permission” means the terms and conditions applicable to the use by each of the Training Provider’s users, of the Online ITA System, details of which are available on the training provider area of the SDS website for the ITA Scheme, as amended from time to time;
- 1.1.32. “Verification Procedure” means the procedure to establish eligibility for, and maintain registration as, a Training Account Holder as set out in the Operational Rules.

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- 1.2. In this Agreement:
  - 1.2.1. the singular includes the plural and vice versa;
  - 1.2.2. references to gender include references to all genders unless otherwise stated, references to sub-Clauses, Clauses and to the Schedule are to sub-Clauses, Clauses and the Schedule to this Agreement;
  - 1.2.3. the Clause headings are for reference only and shall not affect the construction or interpretation of this Agreement;
  - 1.2.4. the Schedule is incorporated into and forms part of this Agreement;
  - 1.2.5. references to statutes, any statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time; and
  - 1.2.6. the words “include” or “including” are to be construed as meaning without limitation.

## 2. Commencement and Term

- 2.1. This Agreement shall commence on the later of (i) the last date of execution and delivery of this Agreement in accordance with Clause 25 (Counterparts) or (ii) the date of execution and delivery of the Training Provider Payment Agreement in accordance with Clause 24 of the TPPA and shall continue thereafter unless and until terminated in accordance with Clause 15 (Termination).

## 3. Pre-Registration

- 3.1. The Training Provider hereby warrants and undertakes that all the information contained in its corresponding application to become an ITA Approved Training Provider is as at the date of the Training Provider’s execution of this Agreement, true and accurate.

## 4. Training Provider’s details

- 4.1. The Training Provider must:-
  - 4.1.1. notify SDS in writing, of any change in any Quality Standard claimed and evidenced in relation to this Agreement (which includes the application to become an ITA Approved Training Provider), within 5 working days of each such change; and
  - 4.1.2. provide documentary evidence supporting each replacement Quality Standard claimed, to SDS within 3 working days of the notification referred to in Clause 4.1.1.
- 4.2. Each such change must satisfy the Assessment Criteria.
- 4.3. The Training Provider must immediately notify SDS in writing if at any time the information contained in the Registration Information Form ceases to be true and accurate, and shall provide updated information to SDS promptly and in the format requested by SDS.



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- 4.4. The Delegated Authority referenced within the User Permission process shall also be the responsible person for transactions in the Online ITA System on behalf of the Training Provider. The Training Provider will ensure that the individual is a fit and proper person to carry out that particular function.
- 4.5. SDS has the right to request updated information relating to the Training Provider and the Training Provider shall provide such information to SDS promptly and in the format requested by SDS. This Clause 4.5 does not negate the Training Provider's obligations to provide up to date and accurate information under the remaining provisions of this Clause 4, and the annual affirmation under clause 8.2.3.
- 4.6. In the event that the Training Provider is, or any arrangement is entered into or agreed whereby it may be, subject to a change of "control" within the meaning of either Section 416 or Section 840 of the Income and Corporation Taxes Act 1988 or any other material change in its management the Training Provider shall notify SDS immediately in writing.

## 5. **Approved Training**

- 5.1. The Training Provider shall submit such course information to SDS relating to Approved Training and/or any application for Approved Training, as SDS shall request from time to time.
- 5.2. Subject to the Training Provider meeting its obligations under this Agreement in full at all times, SDS shall enter and maintain the Approved Training being provided by the Training Provider, on the ITA Database.

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## 6. Training Provider Status and Performance

- 6.1. The Training Provider shall at all times carry out its obligations and comply with the requirements set out in this Agreement.
- 6.2. The Training Provider shall ensure that it meets the requirements of the Quality Standards at all times.
- 6.3. The Training Provider shall comply with its obligations in a proper, diligent, expeditious and professional manner.
- 6.4. The Training Provider shall procure that its employees and representatives, so far as reasonably practicable:
  - 6.4.1. make themselves available, at all reasonable times and upon reasonable notice, to SDS for the purposes of consultation and advice relating to this Agreement; and
  - 6.4.2. attend meetings as required by SDS.
- 6.5. The Training Provider shall not hold itself out nor permit any person to hold it out as being authorised to bind SDS in any way and will not do any act which might reasonably create the impression that it is so authorised.
- 6.6. The Training Provider shall not do or omit to do anything in relation to this Agreement or the Scheme or other activities which may bring the standing or reputation of SDS, any Scottish Minister or the Scheme into disrepute or attract adverse publicity to SDS, any Scottish Minister or the Scheme.
- 6.7. The Training Provider warrants, confirms and undertakes that:
  - 6.7.1. the Training Provider has full capacity and authority and all necessary licences, permits and consents (including but not limited to, where its circumstances and procedures so require, the consent of its parent company) to enter into and to perform this Agreement;
  - 6.7.2. as at the date hereof there is no material outstanding litigation, arbitration or other disputed matters to which the Training Provider is a party which may have an adverse effect upon the fulfillment of the Training Provider's liabilities, responsibilities and obligations pursuant to this Agreement; and
  - 6.7.3. no meeting has been convened for the winding-up, administration, dissolution or liquidation of the Training Provider; the Training Provider has granted no Trust Deed in favour of its creditors; no such steps are intended by the Training Provider and, so far as the Training Provider is aware, no petition, application or equivalent or analogous procedure under the law of the jurisdiction of its incorporation is outstanding for the sequestration, winding-up, administration, receivership, dissolution or liquidation of the Training Provider.

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## **7. Verification of Training Account Holder eligibility**

- 7.1. The Training Provider shall verify the eligibility of (as applicable):-
  - 7.1.1. each Training Account Holder applicant to become a Training Account Holder in accordance with the Operational Rules; and
  - 7.1.2. each Training Account Holder to remain a Training Account Holder in accordance with the Operational Rules.
- 7.2. The Training Provider must obtain and retain for audit, the relevant evidence referred to in the Operational Rules in order to confirm each Training Account Holder's eligibility to become (or as applicable, remain) a Training Account Holder for an Account Holder's Year.
- 7.3. The Training Provider shall not commence any Training Episode with a Training Account Holder until the Training Provider has fully satisfied all the requirements set out in the Verification Procedure rule(s) contained in the Operational Rules.

## **8. Reports and Review**

- 8.1. SDS shall be entitled, at its sole discretion, to carry out after the end of an Agreement Year, or at any other time, a review of the Training Provider's performance in relation to compliance with this Agreement.
- 8.2. Within the three month period immediately following the expiry of each Agreement Year the Training Provider will provide SDS with an annual report, in a format and covering such content as SDS shall specify, which will contain at least the following:
  - 8.2.1. Training Provider's most recent, audited financial statements, if requested by SDS;
  - 8.2.2. a report on compliance with the Agreement during the previous Agreement Year; and
  - 8.2.3. written affirmation that all details provided to SDS in and pursuant to this Agreement (as amended in accordance with the terms of this Agreement), were for the duration of the Agreement Year kept accurate and up to date at all times.
- 8.3. The requirement in Clause 8.2.3 does not negate any other obligation in this Agreement to advise SDS of any changes to the Training Provider details and/or Approved Training details.
- 8.4. The Training Provider will maintain accurate records of Training Account Holder eligibility, attendance, progression, evaluation and compliance with this Agreement.

## **9. Suspension and Cancellation**

- 9.1. If the Training Provider fails to comply with this Agreement, SDS may without prejudice to its other rights and remedies suspend the Training Provider's status as an ITA

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Approved Training Provider and may (i) mark the status of the Training Provider as an ITA Approved Training Provider as suspended on the ITA Database, (ii) remove all the Training Provider Approved Training courses from all SDS websites, and/or (iii) suspend the Training Provider's access to the Online ITA System. Any such suspension shall entitle the Scottish Ministers (acting through their agent SDS) to immediately suspend any further payments to the Training Provider under the Training Provider Payment Agreement.

- 9.2. Without prejudice to any other rights of SDS contained in this Agreement, or the rights of Scottish Ministers contained in the TPPA, any suspension under this Clause 9 shall continue until the earlier of either:
  - 9.2.1. SDS notifying the Training Provider that it is satisfied that the Training Provider has taken appropriate action to ensure that this Agreement will be complied with in future and that any damage caused by the Training Provider's previous failure to comply has been properly rectified; or
  - 9.2.2. the Training Provider's status as an ITA Approved Training Provider being cancelled in terms of Clause 9.3 or the Agreement terminated in terms of Clause 15.
- 9.3. If any suspension under this Clause 9 continues for more than 6 months or if the cause of the suspension cannot be rectified, or if in SDS's sole opinion, the Training Provider's non-compliance would entitle SDS to terminate the Agreement, SDS may cancel the Training Provider's status as an ITA Approved Training Provider, remove its details and all corresponding Approved Training from the ITA Database and SDS websites, or mark these as being cancelled and/or, at SDS's sole discretion, terminate this Agreement in accordance with Clause 15.
- 9.4. In the event of any dispute between the parties in relation to a suspension or cancellation the parties shall endeavour to resolve the dispute in good faith. Where both parties agree that it may be beneficial they will seek to resolve the dispute through mediation using the services of Core Mediation to facilitate the mediation process but this shall not prejudice a party's right to raise court or other proceedings. The Training Provider shall be entitled to appeal any decision by SDS to suspend or cancel its registration to the Scottish Ministers via the review process provided for in terms of the Regulations.
- 9.5. Following any cancellation in terms of Clause 9.3, the Training Provider shall require to sign a new version of this Agreement with SDS (which version shall replace this Agreement), to submit a new Registration Information Form to SDS to become an ITA Approved Training Provider, and to satisfy SDS that it meets the applicable assessment criteria for such replacement agreement, (and corresponding replacement operational rules and quality standards), if it wishes to be re-considered for registration as an ITA Approved Training Provider. If the Training Provider is re-registered as an ITA Approved Training Provider, then, at SDS' discretion, the Training Provider shall, if requested by SDS to do so, sign a new version of the Training Provider Payment Agreement

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## 10. Access to and Use of Online ITA System

- 10.1. In order to use the Online ITA System as prescribed in the Operational Rules, the Training Provider shall require to obtain a User Permission for each user of the Online ITA System for the period the Training Provider is an ITA Approved Training Provider under this Agreement. All information relating to the User Permission including the applicable terms and conditions, applicable charges and guidance on the process for requesting/granting/amending User Permissions shall be made available by SDS to the Training Provider or, at SDS' discretion, set out in the Training Provider pages referencing 'FIPS: Funding Information and Processing System' (or such alternative pages as SDS may specify from time to time) available through the SDS Website.
- 10.2. The Training Provider shall pay SDS the charge for each User Permission made available to the Training Provider pursuant to clause 10.1. SDS shall be entitled to invoice the Training Provider at any time following the issue of each User Permission to the Training Provider. The Training Provider shall require to pay each such invoice within 30 days of the date of issue of the invoice. In the event that the Training Provider fails to pay any such invoice (or part thereof) in accordance with this clause 10.2, without limiting SDS's other rights and remedies SDS shall be entitled to offset the shortfall against any sums due by SDS to the Training Provider (or where provided for by Scottish Ministers under the TPPA, Scottish Ministers shall be entitled to offset the shortfall against any sums due by Scottish Ministers to the Training Provider under the Scheme).
- 10.3. SDS may at any time withhold from the Training Provider access to the Online ITA System for the purposes of booking training if the Training Provider's approval as an ITA Approved Training Provider has been suspended, withdrawn or cancelled by SDS.

## 11. Audit and Compliance Monitoring

- 11.1. The Training Provider shall keep the records, evidence and accounts referred to in this clause 11 in accordance with good accountancy practice.
- 11.2. The Training Provider shall afford SDS and/or such representatives, public appointed auditors (in any case, "Auditor") as SDS may designate immediate and unlimited access to such records, evidence and accounts as may be requested from time to time. Such access shall be at the Training Provider's premises (or the premises of the Training Provider's agents, if such records, evidence and/or accounts are ordinarily stored there) or, if requested by Auditor, at premises identified by the Auditor within Scotland.
- 11.3. The Training Provider shall provide such records, evidence and accounts during the term of this Agreement and for the period of 6 years following the final claim submitted under this Agreement, to the Auditor promptly on request by Auditor. Such provision shall be made at the Training Provider's premises (or the premises of the Training Provider's agents, if applicable) or, if requested by Auditor, at premises within Scotland.
- 11.4. The Training Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:-

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- 11.4.1. Providing unlimited access to all information requested by the Auditor;
  - 11.4.2. Providing unlimited access to sites controlled by the Training Provider and to equipment used in the performance of the Scheme;
  - 11.4.3. Providing unlimited access to Training Provider staff, agents and representatives, and
  - 11.4.4. Providing the Auditor with suitable oral or written explanation as requested.
- 11.5. The parties shall each bear their own respective costs and expenses incurred in respect of compliance with its obligations under this Clause 11 unless the audit reveals a material breach by the Training Provider of its obligations in which case the Training Provider shall reimburse SDS's or SDS's agents' or representatives' (as applicable) reasonable costs incurred in relation to the audit immediately on demand by SDS.
- 11.6. Where SDS requests, without prejudice to SDS' other rights and remedies and the Training Provider's other obligations the Training Provider shall forward all related records, evidence, accounts and supporting documentation to SDS for retention, and shall complete and sign such documentation as SDS may reasonably require, confirming the details of the records provided. Where any such records are in electronic format, the Training Provider shall (at the Training Provider's expense) procure such licence for SDS (and/or its Auditors) as is required to enable access to the records.
- 11.7. Without prejudice to SDS's other rights and remedies, where during any document retention period following the expiry of this Agreement, the Training Provider is unable to continue performing any of its obligations which survive expiry (including any obligations to retain the records in accordance with this Clause 11), the Training Provider shall promptly email [customer.services@sds.co.uk](mailto:customer.services@sds.co.uk) confirming same.
- 11.8. The Training Provider shall promptly provide such general assistance and information relating to the Training Provider's training and business as SDS and/or any Auditor may reasonably request from time to time which would assist SDS in responding to requests for information relating to Training Providers and/or Training Provider training that may be requested by or on behalf of Scottish Government, and/or assist SDS and/or Scottish Government in developing policy for Individual Training Accounts.
- 11.9. In the event that SDS and/or any other Auditor wishes access to any of the Training Provider records, evidence and accounts in accordance with this Clause 11, if SDS and/or such Auditor requests, the Training Provider shall promptly, and within such timescale as SDS and/or such Auditor may specify, upload/scan (as appropriate) the requested records, evidence and/or accounts onto the Online ITA System in accordance with such instructions as SDS and/or such Auditor may make available or if requested by SDS and/or any such Auditor, email such records, evidence and/or accounts to SDS and/or any such Auditor. Any such requirement does not negate the obligation on the Training Provider to (i) retain the original copies of all such evidence, as required under this Agreement, and (ii) make such original copies otherwise available in accordance with this Agreement.

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- 11.10. Without prejudice to SDS' other rights and remedies, SDS will be entitled to suspend all payments claimed, permanently withhold payment or to recover on demand up to the full amount of all funding already paid in the event that the Training Provider fails to comply with any requirements set out in this Clause 11.
- 11.11. SDS shall exercise its rights in relation to audit, reasonably and proportionately.
- 11.12. Where any such audit or other SDS investigation reveals any breach of this Agreement, and SDS is entitled to recover any sums for any claim accordingly, the Training Provider shall not be entitled to submit any alternative or additional evidence in support of such claim, nor submit a fresh claim for the Training Episode.

## **12. Provision of Approved Training**

- 12.1. The Training Provider shall provide the Approved Training in question to the relevant Training Account Holder in accordance with the terms of this Agreement, and must retain evidence of the Training Account Holder's attendance in accordance with the evidence of attendance requirements set out in the Operational Rules.

## **13. Confidentiality and Freedom of Information**

- 13.1. The Training Provider shall at all times keep secret and confidential all information including SDS Confidential Information, relating to SDS, its projects, its business, finances and affairs and, in particular, but without prejudice to the foregoing generality the Training Provider shall:
  - 13.1.1. hold the SDS Confidential Information secret and confidential on behalf of and for the exclusive benefit of SDS and shall not at any time, unless SDS otherwise decides, remove any tangible material relating to the SDS Confidential Information from the offices of SDS or such other place or places as SDS may from time to time decide as suitable for the storage or safe custody of them;
  - 13.1.2. not use, copy or divulge the SDS Confidential Information to any third party except with the express written consent of SDS, such consent not to be unreasonably withheld or delayed. Any such permitted disclosures shall in no way affect the ownership of such SDS Confidential Information; and
  - 13.1.3. on termination of the Agreement for any reason whatsoever (and notwithstanding any claim of whatever nature it may have against SDS) immediately cease use of and deliver to SDS all tangible materials relating to the SDS Confidential Information including all copies of all relevant documents whether in paper or electronic form in the possession of the Training Provider and shall in addition, if so requested by SDS, disclose to and inform SDS to the fullest extent of all SDS Confidential Information of any description known to it in any way relating to or in connection with such matters and their current state and future proposals or development to enable the same to be continued or developed to their fullest extent.

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- 13.2. Subject to Clauses 13.3 - 13.8, SDS shall at all times keep confidential the Training Provider Confidential Information and, in particular, but without prejudice to the foregoing generality SDS shall:
  - 13.2.1. hold the Training Provider Confidential Information secret and confidential on behalf of and for the exclusive benefit of the Training Provider and shall not at any time, unless the Training Provider otherwise requests, remove any tangible material relating to the Training Provider Confidential Information from the offices of the Training Provider; and
  - 13.2.2. not use, copy or divulge the Training Provider Confidential Information to any third party except with the express written consent of the Training Provider, such consent not to be unreasonably withheld or delayed, except insofar as any such information relates to any of the Schemes. Any such permitted disclosures shall in no way affect the ownership of such Training Provider Confidential Information.
- 13.3. SDS may disclose information relating to the ITA Database and ITA Approved Training Providers at its discretion. Nothing in this Agreement shall prevent SDS from receiving Training Provider Confidential Information from and exchanging Training Provider Confidential Information with the Scottish Ministers and/or any other Scottish Government agency and/or department.
- 13.4. Nothing contained in this Clause 13 shall prevent SDS disclosing any information which requires to be disclosed in order to comply with a legal requirement or a code of practice or other statement or document issued by Her Majesty's Government from time to time on access to official information, or which requires to be disclosed to government departments (including the National Audit Office and Audit Scotland) or to the UK Parliament (and its committees), the Scottish Parliament (and its committees) or the Scottish Government.
- 13.5. The Training Provider acknowledges that SDS is subject to the requirements of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (together "FOISA") and shall assist and cooperate with SDS to enable SDS to comply with its information disclosure obligations.
- 13.6. The Training Provider shall at its cost:-
  - 13.6.1. transfer to SDS 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;
  - 13.6.2. provide SDS with a copy of all information in its possession, or power in the form that SDS requires within 7 calendar days (or such other period as SDS may specify) of SDS's request; and
  - 13.6.3. provide all necessary assistance as reasonably requested by SDS to enable SDS to respond to the request for information within the relevant time for compliance set out in FOISA.



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- 13.7. SDS shall be responsible for determining in its absolute discretion and notwithstanding any other provision in or pursuant to this Agreement 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 Training Provider.
- 13.8. In no event shall the Provider respond directly to a request for information unless expressly authorised to do so by SDS.

## **14. Limitation of Liability**

- 14.1. Neither party excludes or limits liability to the other party for death or personal injury arising from the breach of duty of such party.
- 14.2. Subject always to Clause 14.1, the total liability of SDS to the Training Provider for any and all breaches of this Agreement, or otherwise in relation to the subject matter of this Agreement (including that arising from negligence, delict, or otherwise) shall be limited to £100,000.
- 14.3. Subject always to Clause 14.1, neither party shall be liable to the other party in contract, delict (including negligence) or otherwise arising out of or in connection with this Agreement including by way of indemnity for:
  - 14.3.1. any loss of profits, business, revenue, contracts or anticipated savings;
  - 14.3.2. any loss of goodwill or reputation; or
  - 14.3.3. any special, indirect or consequential losses or damage.
- 14.4. The parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

# Training Provider Registration Agreement

## 15. Termination

- 15.1. SDS shall have the right, at its sole discretion, to terminate this Agreement at any time giving at least six months' written notice to the Training Provider.
- 15.2. SDS shall have the right, at its sole discretion, to terminate this Agreement immediately where the Training Provider has been suspended in terms of Clause 9 and has not been reinstated within 6 months, or where the Training Provider's registration has been cancelled, or where the Training Provider has failed to deliver any Approved Training to any Training Account Holder during any 12 month period during the term of this Agreement.
- 15.3. In addition to, but without prejudice to the whole other rights and remedies of the parties under and in terms of this Agreement, SDS may terminate this Agreement by written notice to that effect served upon the Training Provider, such termination having immediate effect from the date of that notice, in the event that:
  - 15.3.1. the Training Provider fails to perform or comply with any material obligation under this Agreement and either (i) in SDS's sole opinion, the failure is not capable of remedy, or (ii) where such failure is in the sole opinion of SDS remediable it is not remedied to the reasonable satisfaction of SDS within 28 days of notification to the Training Provider of the occurrence thereof, and requiring the same to be remedied;
  - 15.3.2. the Training Provider repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms thereof; or
  - 15.3.3. an administration order is made in respect of the Training Provider or a voluntary arrangement is proposed in respect of the Training Provider or a resolution is passed or an order made for the winding up of either party (other than a resolution or a members' voluntary winding up for the purpose of reconstruction in terms approved by the other party) or a receiver or administrative receiver shall be appointed over the whole or any part of the Training Provider's undertaking or assets or the Training Provider is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986) or shall cease or threaten to cease to pay its debts as they fall due or shall make or seek to make any composition or arrangement with its creditors, or shall become bankrupt, apparently insolvent or shall have a Trustee appointed over any of its assets or, where the Training Provider is a partnership, any of its partners suffers any of the foregoing or shall suffer any analogous event under any jurisdiction to which it is subject;
  - 15.3.4. there is any change of control (as defined in the Income and Corporation Taxes Act 1988) of the Training Provider or any other material change in its management which SDS reasonably believes may adversely affect the operation of any ITA;

# Training Provider Registration Agreement

- 15.3.5. the Training Provider enters into any arrangements with any third party which in SDS's reasonable opinion may prejudice the independence and impartiality of the Training Provider in relation to any ITA;
  - 15.3.6. in SDS's reasonable opinion the Training Provider has acted or omitted to act in a manner tending to bring SDS, Scottish Ministers and/or any part of the Scheme into disrepute;
  - 15.3.7. SDS becomes aware of a fraud or a material inaccuracy in or omission from any application from or Registration Information Form or New Supplier Form (and any accompanying information for either such form) supplied by or in relation to the Training Provider; or
  - 15.3.8. SDS becomes aware of a fraud in relation to any aspect of the Scheme, including but not limited to, the administration or payment of ITA funding to the Training Provider or the attendance or non-attendance of any Training Account Holder at any Training Episode.
- 15.4. SDS may terminate this Agreement if it becomes aware of any breach of any other agreement entered into between SDS and the Training Provider at any time (whether expired or extant, and whether before or after the date of this Agreement), which breach (or breaches) would entitle (or would have entitled) SDS to terminate such agreement.
- 15.5. This Agreement shall terminate automatically upon the expiry or termination of the Training Provider Payment Agreement.
- 15.6. Following any termination of this Agreement SDS shall remove the Training Provider and corresponding Approved Training details from the ITA Database and the Training Provider shall immediately cease to hold itself out as an ITA Approved Training Provider and shall cease to use and shall destroy any marketing or other promotional materials which refer to its status as an ITA Approved Training Provider. The Training Provider shall not be entitled to fulfill any unfulfilled booking except with the prior written consent of SDS, which shall be granted entirely at SDS's discretion. For the avoidance of doubt no payments may be claimed for any unfulfilled bookings following the termination of this Agreement or the Training Provider Payment Agreement.
- 15.7. In addition to, but without prejudice to the whole other rights and remedies of the parties under and in terms of this Agreement, the Training Provider may terminate this Agreement by giving at least 1 month's written notice to that effect to SDS. If the Training Provider serves a notice of termination in accordance with this Clause, it shall either:
- 15.7.1. fulfill all committed bookings; or
  - 15.7.2. cancel those committed bookings and notify each Training Account Holder of such cancellation in reasonable time prior to the proposed date of the Training Episode.

# Training Provider Registration Agreement

- 15.8. SDS shall be entitled to terminate this Agreement immediately on giving the Training Provider written notice where in SDS's reasonable opinion there is a fundamental change in the operation or effect of this Agreement between the parties resulting directly or indirectly by reason of a Change in Law or where the Scottish Ministers suspend or terminate the Training account Scheme established under the Regulations.
- 15.9. Termination of this Agreement in accordance with the terms of this Clause 15 shall be without prejudice to any rights of either party under the provisions of this Agreement existing at the date the Agreement is terminated (including the right of either party to recover all sums due to that party up to such date of termination).
- 15.10. Notwithstanding the provisions of this Clause 15, the provisions of Clauses 1, 3, 6.1, 6.3, 6.4, 6.5, 6.6, 6.7, 7.2, 8, 9, 10.3 11, 13, 14, 15.6, 15.7, 15.9, 16, 17, 18, 19 and 23 shall survive termination of this Agreement for any cause.

## 16. Data Protection

- 16.1. The Scottish Ministers and SDS are the joint data controllers and the Training Provider is the data processor of any personal data which the Training Provider processes on behalf of the Scottish Ministers (or SDS as Training Account Administrator) for the purposes of providing the Training Episode and conducting the Verification Procedures ("Personal Data").
- 16.2. The Training Provider shall:
- 16.2.1. in the performance of this Agreement, comply at all times with the Data Protection Laws;
  - 16.2.2. except as required by law, process the Personal Data only in accordance with the documented instructions from time to time and for no other purpose;
  - 16.2.3. ensure that persons authorised by the Training Provider to process the Personal Data have committed themselves to appropriate confidentiality obligations in respect of the Personal Data;
  - 16.2.4. implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of the processing the Personal Data;
  - 16.2.5. notify SDS (as Training Account Administrator) immediately after becoming suspicious of any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data;
  - 16.2.6. promptly assist the Scottish Ministers (and SDS as Training Account Administrator) in complying with the rights of data subjects and with the Scottish Ministers and SDS obligations relating to data security, data breach notification, data protection impact assessments and related prior consultation procedures taking into account the nature of processing and the information available to the Training Provider;

# Training Provider Registration Agreement

- 16.2.7. on termination of this Agreement return to SDS (as Training Account Administrator) or destroy, at the request of SDS (as Training Account Administrator), all Personal Data in the possession or control of the Training Provider;
- 16.2.8. make available to SDS (as Training Account Administrator) all information necessary to demonstrate the Training Provider's compliance with this clause and allow Scottish Ministers and/or SDS (as appropriate) to audit and inspect the Training Provider's compliance with this clause;
- 16.2.9. immediately inform SDS (as Training Account Administrator) if, in the Training Provider's opinion, a documented instruction from the Scottish Ministers or SDS (as Training Account Administrator) infringes Data Protection Laws; and
- 16.2.10. not transfer the Personal Data to a country outside the European Union without the prior written consent of the Scottish Ministers or SDS (as Training Account Administrator).

16.3. The Training Provider shall not authorise a third party (subcontractor) to process personal data without the prior written permission of the Scottish Ministers or SDS (as Training Account Administrator). If such permission is granted, the subcontractor's contract must (i) incorporate terms which are substantially the same as those set out in this clause; and (ii) terminate automatically on termination of this Agreement for any reason.

16.4. The Training Provider shall at all times indemnify the Scottish Ministers and SDS (as Training Account Administrator) and keep the Scottish Ministers and 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 the Scottish Ministers (and/or SDS as applicable) arising from any breach of the Training Provider's obligations under this Clause 16.

## 17. Force Majeure

- 17.1. Any delay in or failure by either party in performance hereunder in whole or in part shall be excused if and to the extent that such delay or failure is caused by occurrences beyond that party's control including but not limited to acts of God, decrees or restraints of government, strikes, labour disputes, war, fire, riot, sabotage, terrorism and any other cause or causes whether similar or dissimilar to those already specified which cannot be controlled by such party ("Force Majeure").
- 17.2. Performance of any obligation arising under this Agreement shall be so excused for the period during which such inability of the affected party to perform is so caused but for no longer period and shall be remedied as far as possible with all reasonable despatch. Any time period for performance shall be extended by a period equal in duration to any period during which such performance is excused by this Clause 17.

# Training Provider Registration Agreement

## 18. Entire Agreement

- 18.1. This Agreement, the Training Provider Payment Agreement, the Registration Information Form, any other documentation referred to in this Agreement and any other documentation demanded by SDS and submitted by the Training Provider as part of its application process constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any previous understandings, arrangements, representations, negotiations or agreements previously entered into between the parties. Provided that nothing in this Clause 18 shall have effect to exclude the liability of either party for fraud or fraudulent misrepresentation.
- 18.2. This Agreement shall supersede any previous agreement between the parties with respect to the administration of the Scheme, including any "Training Provider Agreement" between SDS and the Training Provider.

## 19. Waiver

- 19.1. Failure, delay or neglect by either party to enforce at any time any provision of this Agreement shall not be construed nor shall be deemed to be a waiver of that party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the party's rights to take subsequent action.

## 20. Severability

- 20.1. If any provision of this Agreement is declared to be void or unenforceable by any judicial or administrative authority in any jurisdiction in which this Agreement is effective, such provision will be deemed to be severable and the parties shall each use their reasonable endeavours in good faith to modify this Agreement so that the intent of this Agreement can be legally carried out.

## 21. Notices

- 21.1. Except as otherwise expressly set out in this Agreement, any notice, consent, confirmation or other information required or authorised by this Agreement to be given by either party to the other may be given by hand (including commercial courier) or sent by first class recorded delivery post to the other party at the address specified in this Agreement or such other address as may from time to time be notified in writing to the party giving such notice or other communication by the party to whom such notice or other communication is given.
- 21.2. Notices shall be deemed given, in the case of notice given by recorded delivery post, two Business Days after the date of posting.
- 21.3. For the purpose of Clause 21.1, the Training Provider shall serve any notice on SDS at the following address:

# Training Provider Registration Agreement

FAO Customer Service Manager,  
The Skills Development Scotland Co. Limited Monteith House,  
11 George Square Glasgow  
G2 1DY

## 21.4 Notices and Covid-19

- 21.4.1 Unless and until SDS confirms otherwise by amending this Clause 21, any notice from either SDS to the Training Provider, or the Training Provider to SDS, shall also be considered valid under this Agreement if:-
- 21.4.1.1 it is sent as an email with the heading 'Notice'; and:-
- 21.4.1.1.1 for notices from SDS to the Training Provider, it is sent from [customerservices@sds.co.uk](mailto:customerservices@sds.co.uk) to the email address provided by the Training Provider in the Training Provider's application to participate in the Scheme; or
- 21.4.1.1.2 for notices from the Training Provider to SDS, it is sent from the email address provided by the Training Provider in the Training Provider's application to participate in the Scheme to [customer.services@sds.co.uk](mailto:customer.services@sds.co.uk).
- 21.4.2 The email will be deemed to have been served immediately if the recorded time for transmission is between 09:00hrs and 17:00hrs on a Working Day, and when sent out with those hours, the email will be deemed to have been served at 9am on the next Working Day following the recorded time for transmission. "Working Day" shall mean Monday to Friday, under exception of Easter Friday, Easter Monday, Christmas Day, Boxing Day, 1st January and 2nd January (and the next following weekday in lieu of that day, where that day falls on a Saturday or Sunday), in any year.
- 21.4.3 In the event that the Training Provider wishes to amend the email address for receiving or submitting notices, from the email address set out above, it shall email [customer.services@sds.co.uk](mailto:customer.services@sds.co.uk) informing SDS of the amended email address. The changed address shall be deemed to apply 72 hours after the time stamp for the email shown on the sender's official records, or sooner where SDS acknowledges receipt of such email.

# Training Provider Registration Agreement

## **22. No Assignment or Sub-contracting**

22.1. The Training Provider shall not be entitled to assign, transfer or sub-contract any of its rights or obligations under this Agreement or purport to do so. SDS shall be entitled to assign, transfer or sub-contract any of its rights or obligations under this Agreement. Any breach of this Clause 22 shall be deemed a non-remediable material breach, which shall entitle SDS to terminate this Agreement under Clause 15.

## **23. Disclaimer of Agency and Partnership**

23.1. This Agreement shall not, unless expressly agreed otherwise, constitute either party as an agent of the other. The parties hereto are independent contractors and shall have no power, nor will either of the parties represent that either has any power, to bind the other party or to assume or to create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name.

23.2. Nothing in this Agreement shall be construed as creating any relationship of partnership between the parties hereto in terms of the Partnership Act 1890 or any similar or analogous legislation in any jurisdiction to which either party is subject.

## **24. Variation**

24.1. This Agreement may be amended by SDS and such variation shall be effective provided that it is in writing and has been notified to the Training Provider by publication on the SDS Website.

24.2. Notwithstanding the foregoing, SDS may amend, vary or expand the Quality Standards and Marketing Guidelines from time to time and the Scottish Ministers and/or SDS may amend, vary or expand the Operational Rules from time to time.

24.3. The Training Provider shall check the SDS Website no less than once a fortnight, to check whether there have been any changes to this Agreement, the Assessment Criteria, the User Permission terms, the Operational Rules, Marketing Guidelines and/or the Quality Standards.

## **25. Counterparts**

25.1. This agreement may be executed in counterparts, each of which when executed and delivered by email to [customer.services@sds.co.uk](mailto:customer.services@sds.co.uk) shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## **26. Applicable Law**

26.1. This Agreement shall be governed by and construed in accordance with Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.



# Training Provider Registration Agreement

IN WITNESS WHEREOF this Agreement comprising this and the previous 18 pages, and the Schedule annexed hereto, is executed in duplicate as follows:

Subscribed for and on behalf of  
**The Skills Development Scotland Co. Limited**

by   
at   
on the  day of  20    
Authorised signatory

in the presence of the following witness:-

Signature   
  
Full Name   
Address

Subscribed for and on behalf of  
**The Training Provider**

by  insert name of signatory  
 insert title of signatory  
at  insert place name  
on the  day of  20    
Authorised signatory

in the presence of the following witness:-

Signature   
  
Full Name   
Address

# Training Provider Registration Agreement

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING AGREEMENT BETWEEN THE SKILLS DEVELOPMENT SCOTLAND CO. LIMITED AND THE TRAINING PROVIDER DESIGNATED IN THE REGISTRATION INFORMATION FORM SUBMITTED BY THE APPLICANT IN ITS APPLICATION TO BECOME AN ITA APPROVED TRAINING PROVIDER**

## SCHEDULE

### Quality Standards

The Quality Standards for training providers delivering SDS ITA Approved Training courses as ITA Approved Training Providers under the Scheme are as follows (Training providers require to meet at least one of the below Quality Standards): -

- The Training Provider must, at the time of the application and for the duration of the Agreement, be an SQA approved centre, by either verification or recognition route;  
Or
- The Training Provider must, at the time of application and for the duration of the Agreement, approved by an SQA Accreditation approved awarding body to deliver qualifications in Scotland;  
Or
- The Training Provider must, at the time of the application and for the duration of the Agreement, have achieved either Quality Scotland Committed to Excellence or Recognised for Excellence awards;  
Or
- The Training Provider must, at the time of the application and for the duration of the Agreement, have an active contract with The Skills Development Scotland Co. Limited to deliver National Training Programme services, which contract has not been suspended or terminated;  
Or
- The Training Provider must, at the time of the application and for the duration of the Agreement be a college or university recognised by the Scottish Funding Council as being in good standing regarding the Quality Assurance Agency for Higher Education and / or recognition of good standing regarding the requirements of Education Scotland.