

Individual Training Accounts

Training Provider Payment Agreement

Version 3.0 July 2020



Training Provider Payment Agreement

Training Provider Payment Agreement

between

The Scottish Ministers (c/o Scottish Government Directorate for Fair Work, Employability and Skills,
6th Floor, 5 Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU)

and

(insert name of Training Provider)

(insert date)

Training Provider Payment Agreement

Training Provider Payment Agreement

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Training Provider Payment Agreement

Training Provider Payment Agreement

between

THE SCOTTISH MINISTERS (c/o Scottish Government Directorate for Fair Work, Employability and Skills, 6th Floor, 5 Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU) (“Scottish Ministers”)

and

THE TRAINING PROVIDER designated in the Registration Information Form (“Training Provider”).

WHEREAS:

1. The Training Provider applied to SDS as Training Account Administrator to be registered as an ITA Approved Training Provider;
2. SDS as Training Account Administrator, has approved the application by or on behalf of the Training Provider to become an ITA Approved Training Provider and the parties have accordingly entered into a Training Provider Registration Agreement; and
3. It is a condition of payment of ITA funding under the Scheme that the Training Provider enters into this Training Provider Payment Agreement with the Scottish Ministers.

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 out below.
 - 1.1.1. **“Account Holder’s Year”** means the period commencing on the date the Training Account Holder is verified by the 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 Operational Rules and all appendices to those rules, 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;
 - 1.1.5. **“Approved Training”** means each course of study, instruction, education or training 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. **“Auditor”** has the meaning in Clause 10.2;
 - 1.1.7. **“Business Day”** means any day on which the Royal Bank of Scotland is open for business in Glasgow;

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- 1.1.8. **"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;
- 1.1.9. **"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;
- 1.1.10. **"Data Protection Legislation"** the Data Protection Act 2018, 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;
- 1.1.11. **"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;
- 1.1.12. **"Individual Training Account"** or "ITA" means an individual training account under the Scheme;
- 1.1.13. **"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;
- 1.1.14. **"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;

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- 1.1.15. **“ITA Database”** means the database of ITA Approved Training Providers and Approved Training, maintained by SDS;
- 1.1.16. **“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 hereby incorporated into this Agreement;
- 1.1.17. **“Online ITA System”** means the web based systems maintained by or on behalf of Scottish Ministers for Training Providers in terms of the Scheme to process all Scheme transactions;
- 1.1.18. **“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;
- 1.1.19. **“Quality Standards”** means the standards set out in the Schedule to the Training Provider Registration Agreement and as varied by SDS from time to time in accordance with the Training Provider Registration Agreement;
- 1.1.20. **“Registration Information Form”** means the completed form submitted by the Training Provider in its application to become an ITA Approved Training Provider and incorporated into the Training Provider Registration Agreement;
- 1.1.21. **“Regulations”** means the Individual Learning Account (Scotland) Regulations 2011, made by the Scottish Ministers under the Education and Training (Scotland) Act 2000 as amended by the Individual Learning Account (Scotland) Amendment Regulations 2017, as may be varied, amended or replaced from time to time;
- 1.1.22. **“Scheme”** means all and any aspects of the Individual Training Account Scheme operated by SDS and the Scottish Ministers in terms of the Regulations;
- 1.1.23. **“Scottish Ministers’ Confidential Information”** means all information acquired from any source by the Training Provider whether designated confidential or not, relating to the Scottish Ministers, their projects, their 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 Scottish Ministers and their business but excluding any information relating to the Scottish Ministers which is in the public domain;
- 1.1.24. **“SDS”** means 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;

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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/> or such replacement website(s) as SDS may introduce from time to time;
- 1.1.27. **“Training Account Administrator”** means SDS which has been designated by the Scottish Ministers in terms of section 1(4) and (5) of the Act.
- 1.1.28. **“Training Account Holder”** 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.
- 1.1.29. **“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;
- 1.1.30. **“Training Provider Confidential Information”** means all information acquired from any source by the Scottish Ministers or their agent, 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 the Scottish Ministers or their agent SDS are required to disclose under any Directive;
- 1.1.31. **“Training Provider Registration Agreement”** or **“TPRA”** means the agreement between the Training Provider and SDS as the Training Account Administrator specifying certain other obligations of the parties relating to the Scheme, including maintenance of the Quality Standards; and
- 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.

1.3. In this Agreement, any right, entitlement or benefit of the Scottish Ministers may be exercised by SDS as the Training Account Administrator designated by the Scottish Ministers in terms of section 1(4) and (5) of the Act and any act to be undertaken or permission to be given or request to be made by the Scottish Ministers may be undertaken, given or made by SDS as the Training Account Administrator designated by the Scottish Ministers in terms of section 1 (4) and (5) of the Act.

2. Training Provider’s details

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 24 (Counterparts) or (ii) the date of execution and delivery of the Training Provider Registration Agreement in accordance with Clause 25 of the TPRA and shall continue thereafter unless and until terminated in accordance with Clause 14 (Termination).

3. Pre-Registration

3.1 The Training Provider hereby confirms 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.

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4. Training Provider's details

- 4.1. The Training Provider shall inform the Training Account Administrator, of any change to its bank details. The Training Provider shall ensure that it complies with any additional security information reasonably requested by the Training Account Administrator for this purpose, and allows sufficient time for the details to be amended on the SDS systems.
- 4.2. The Scottish Ministers and the Training Account Administrator have the right to request updated information relating to the Training Provider and the Training Provider shall provide such information promptly and in the format requested. This Clause 4.2 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 6.2.3.
- 4.3. 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 as agent of Scottish Ministers immediately in writing.

5. Training Provider Status and Performance

- 5.1. The Training Provider shall at all times carry out its obligations and comply with the requirements set out in the Act, the Regulations, any matter determined by Ministers in accordance with the Regulations, the Operational Rules and this Agreement.
- 5.2. The Training Provider shall comply with its obligations in a proper, diligent, expeditious and professional manner.
- 5.3. Payments received by the Training Provider pursuant to this Agreement must not exceed 40% of the Training Provider's turnover in any financial year
- 5.4. The Training Provider shall procure that its employees and representatives, so far as reasonably practicable:
 - 5.4.1. make themselves available, at all reasonable times and upon reasonable notice, to the Scottish Ministers for the purposes of consultation and advice relating to this Agreement; and
 - 5.4.2. attend meetings as required by the Training Account Administrator or the Scottish Ministers.

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- 5.5. The Training Provider shall not hold itself out nor permit any person to hold it out as being authorised to bind the Scottish Ministers in any way and will not do any act which might reasonably create the impression that it is so authorised.
- 5.6. 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.
- 5.7. The Training Provider warrants, confirms and undertakes that:
 - 5.7.1. 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;
 - 5.7.2. 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
 - 5.7.3. 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.

6. Reports and Review

- 6.1. The Scottish Ministers shall be entitled, at their 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.
- 6.2. Within the three month period immediately following the expiry of each Agreement Year the Training Provider will provide the Scottish Ministers (or if requested, the Training Account Administrator) with an annual report, in a format and covering such content as the Scottish Ministers (or the Training Account Administrator) shall specify, which will contain at least the following:
 - 6.2.1. Training Provider's most recent, audited financial statements, if requested by the Scottish Ministers (or SDS);
 - 6.2.2. a report on compliance with the Agreement during the previous Agreement Year;
 - 6.2.3. written affirmation that all details provided to the Scottish Ministers and the Training Account Administrator 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.

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- 6.3. The requirement in Clause 6.2.3 does not negate any other obligation in this Agreement to advise the Scottish Ministers (or where required, the Training Account Administrator) of any changes to the Training Provider details and/or Approved Training details.

7. Suspension and Cancellation

- 7.1. If the Training Account Administrator suspends the Training Provider's status as an ITA Approved Training Provider in accordance with the Regulations it 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 to immediately suspend any further payments to the Training Provider under this Agreement.
- 7.2. Following any cancellation in terms of the Regulations, the Training Provider shall require to sign a new version of this Agreement with the Scottish Ministers (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 as Training Account Administrator that the Training Provider meets the applicable assessment criteria for a Training Provider Registration Agreement, (and corresponding replacement operational rules and quality standards), if it wishes to be re-considered for registration as an ITA Approved Training Provider.

8. Claims for Payment

- 8.1. The Training Provider shall be entitled to submit, via the Online ITA System, each individual claim for payment of ITA funds in respect of each Training Episode for a Training Account Holder provided in accordance with the Training Provider Registration Agreement, on or after the date on which the Training Episode started but not later than 10 working days after the date on which the Training Episode Started.
- 8.2. The Training Provider shall not submit a claim for payment in respect of a Training Episode before the Training Account Holder has paid or secured the making of payment to the Training Provider of the full balance of the cost of the Approved Training course advertised on the ITA Database, after deducting the SDS ITA funding. The advertised cost cannot be reduced by the application of any discount, promotional code, voucher or similar.
- 8.3. The Scottish Ministers may require the Training Provider to provide such information or documentation in order for the Scottish Ministers to determine whether the claim is valid in terms of this Agreement and may reject the claim unless such information or documentation is provided.

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- 8.4. A claim for payment by the Training Provider shall be approved for payment only if the Scottish Ministers are satisfied that:
- 8.4.1. the Training Provider is approved by SDS as an ITA Approved Training Provider and that approval has not been withdrawn, suspended or cancelled;
 - 8.4.2. the Training Episode in respect of which a claim for funds has been made constituted Approved Training at the time of the Verification Procedure;
 - 8.4.3. the Individual Training Account in respect of which the claim has been made is currently open and has not been applied for any other Training Episode (whether provided by the Training Provider or any other ITA Approved Training Provider) in the Training Account Holder's Account Holder's Year;
 - 8.4.4. the Training Provider has fully satisfied the requirements of the Verification Procedure; and
 - 8.4.5. the Training Provider has duly confirmed that the Training Account Holder has commenced the Training Episode.
- 8.5. Clause 8.4 is without prejudice to the Scottish Ministers' other rights and remedies, including without limitation, the Scottish Ministers' rights under Clause 11.1.

9. Payment of Claims

- 9.1. Subject to the Scottish Ministers being satisfied that a claim is valid in accordance with clause 8 the Scottish Ministers shall use reasonable endeavours to pay ITA funding duly claimed to the account specified in the New Supplier Form no later than 28 days after the Scottish Ministers have received and validated a claim. For the avoidance of doubt, no decision or action by or on behalf of the Training Provider shall commit the Scottish Ministers to make payments of any given amount. In addition, nothing in this Agreement shall oblige the Scottish Ministers at any time to pay ITA funding in excess of the sum at credit at the time that the claim is determined in the Individual Training Account in respect of which the claim has been made.
- 9.2. The Scottish Ministers may make payments through the Training Account Administrator.

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10. Audit and Compliance Monitoring

- 10.1. The Training Provider shall keep the records, evidence and accounts referred to in this clause in accordance with good accountancy practice.
- 10.2. The Training Provider shall afford the Scottish Ministers and/or such representatives and/or public appointed auditors (in any case, "Auditor") as the Scottish Ministers 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 the Auditor, at premises identified by the Auditor within Scotland.
- 10.3. 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.
- 10.4. The Training Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:-
 - 10.4.1. Providing unlimited access to all information requested by the Auditor;
 - 10.4.2. Providing unlimited access to sites controlled by the Training Provider and to equipment used in the performance of the Scheme;
 - 10.4.3. Providing unlimited access to Training Provider staff, agents and representatives, and
 - 10.4.4. Providing the Auditor with suitable oral or written explanation as requested.
- 10.5. The parties shall each bear their own respective costs and expenses incurred in respect of compliance with its obligations under this Clause 10 unless the audit reveals a material breach by the Training Provider of its obligations in which case the Training Provider shall reimburse the Scottish Ministers' or the Scottish Ministers' agents or representatives (as applicable) reasonable costs incurred in relation to the audit immediately on demand by the Scottish Ministers.
- 10.6. Where the Auditor requests, without prejudice to the Scottish Ministers' 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 the Scottish Ministers or other such Auditor as may be specified for retention, and shall complete and sign such documentation as the Scottish Ministers or such Auditor (as applicable) 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 the Scottish Ministers (and/or its Auditors) as is required to enable access to the records.

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- 10.7. Without prejudice to the Scottish Ministers' 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 10), the Training Provider shall promptly email customer.services@sds.co.uk confirming same.
- 10.8. The Training Provider shall promptly provide such general assistance and information relating to the Training Provider's training and business as the Scottish Ministers and/or any other Auditor may reasonably request from time to time.
- 10.9. In the event that the Scottish Ministers and/or any other Auditor wishes access to any of the Training Provider's records, evidence and accounts in accordance with this Clause 10, if the Scottish Ministers and/or such Auditor requests, the Training Provider shall promptly, and within such timescale as the Scottish Ministers 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 the Scottish Ministers and/or any such Auditor may make available or if requested by the Scottish Ministers and/or any such Auditor, email such records, evidence and/or accounts to the Scottish Ministers and/or any other 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.
- 10.10. Without prejudice to the Scottish Ministers' other rights and remedies, the Scottish Ministers 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 10.
- 10.11. The Scottish Ministers shall exercise their rights in relation to audit, reasonably and proportionately.
- 10.12. Where any such audit or other investigation reveals any breach of this Agreement, and the Scottish Ministers are 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.

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11. Funding Claims: Default

- 11.1. The Scottish Ministers may, at any time both before and after all or any part of a claim for ITA funding has been paid, reassess, vary, make a deduction from, withhold, set off or require repayment of any and all ITA funding or any part thereof in the event of there arising any one or more of the following:
- 11.1.1. either the Scottish Ministers or the Training Account Administrator 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;
 - 11.1.2. the Training Provider fails to comply with any of the terms and conditions specified in this Agreement;
 - 11.1.3. the relevant Training Account Holder does not commence the Training Episode in question;
 - 11.1.4. any information given to the Scottish Ministers or the Training Account Administrator by or on behalf of the Training Provider in connection with an application for or payment of ITA funding or otherwise in terms of this Agreement, considered as a whole, is false or misleading in any material respect, whether such information is provided before or after the payment of any ITA funding is made;
 - 11.1.5. 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;
 - 11.1.6. the Training Provider is in breach of the Training Provider Registration Agreement;
or
 - 11.1.7. the Training Provider Registration Agreement is terminated or expires.

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- 11.2. In the event that the Training Provider becomes bound to pay any sum to the Scottish Ministers in terms of the preceding Clause 11.1, the Training Provider shall pay the Scottish Ministers the appropriate sum within 28 days of a written demand for it being given by or on behalf of the Scottish Ministers to the Training Provider. In the event that the Training Provider fails to pay such sum within the said period of 28 days, the Scottish Ministers shall be entitled to interest on the said sum at the rate of 4 per cent per annum above the base lending rate or the equivalent of the Royal Bank of Scotland plc prevailing at the time of the written demand, from the date of the written demand until payment in full of the said sum and interest.
- 11.3. Notwithstanding the foregoing provisions in the event that the Training Provider is in breach of any of the clauses or conditions specified in this Agreement, the Scottish Ministers may, provided that the breach is capable of a remedy, postpone the exercise of its rights to recover any sum from the Training Provider in terms of the said clause or condition for such period as it sees fit, and may give written notice to the Training Provider requiring it to remedy the breach within such period as may be specified in such notice, and in the event of the Training Provider failing to remedy the said breach within the period specified, the Training Provider shall be bound to pay the said sum to the Scottish Ministers in accordance with the provisions of this Clause.

12. Confidentiality and Freedom of Information

- 12.1. The Training Provider shall at all times keep secret and confidential all information including the Scottish Ministers' Confidential Information and the SDS Confidential Information, and, in particular, but without prejudice to the foregoing generality the Training Provider shall:
- 12.1.1. hold the Scottish Ministers' Confidential Information and the SDS Confidential Information secret and confidential on behalf of and for the exclusive benefit of the Scottish Ministers or SDS (as appropriate) and shall not at any time, unless the Scottish Ministers otherwise decide, remove any tangible material relating to the Scottish Ministers' Confidential Information or, unless SDS otherwise decides, remove any tangible material relating to the SDS Confidential Information from the offices of the Scottish Ministers or SDS or such other place or places as the Scottish Ministers or SDS (as appropriate) may from time to time decide as suitable for the storage or safe custody of them;
- 12.1.2. not use, copy or divulge Scottish Ministers' Confidential Information or the SDS Confidential Information to any third party except with the express written consent of the Scottish Ministers or SDS (as appropriate), such consent not to be unreasonably withheld or delayed. Any such permitted disclosures shall in no way affect the ownership of such Scottish Ministers' Confidential Information or the SDS Confidential Information; and

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- 12.1.3. on termination of the Agreement for any reason whatsoever (and notwithstanding any claim of whatever nature it may have against the Scottish Ministers) immediately cease use of and deliver to SDS all tangible materials relating to the Scottish Ministers' Confidential Information and/or the SDS Confidential Information (as appropriate) 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 the Scottish Ministers or SDS (as appropriate), disclose to and inform the Scottish Ministers and/or SDS (as appropriate) to the fullest extent of all Scottish Ministers' Confidential Information and 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.
- 12.2. Subject to Clauses 12.3 - 12.9, the Scottish Ministers shall at all times keep confidential the Training Provider Confidential Information and, in particular, but without prejudice to the foregoing generality the Scottish Ministers shall:
- 12.2.1. 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
- 12.2.2. 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 the Scheme. Any such permitted disclosures shall in no way affect the ownership of such Training Provider Confidential Information.
- 12.3. The Scottish Ministers may disclose information relating to the ITA Database and ITA Approved Training Providers at its discretion. Nothing in this Agreement shall prevent the Scottish Ministers from receiving Training Provider Confidential Information from and exchanging Training Provider Confidential Information with SDS and/or any other Scottish Government agency and/or department.
- 12.4. Nothing contained in this Clause 12 shall prevent the Scottish Ministers or 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.

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- 12.5. The Training Provider acknowledges that Scottish Ministers and SDS are 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 the Scottish Ministers and/or SDS (as applicable) to enable Scottish Ministers and/or SDS (as applicable) to comply with its information disclosure obligations.
- 12.6. To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Scottish Ministers publish an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Training Provider should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of grant) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.
- 12.7. The Training Provider shall at its cost:-
- 12.7.1. transfer to Scottish Ministers and/or SDS (as applicable) 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;
- 12.7.2. provide Scottish Ministers and/or SDS (as applicable) with a copy of all information in its possession, or power in the form that Scottish Ministers and/or SDS (as applicable) requires within 7 calendar days (or such other period as Scottish Ministers and/or SDS (as applicable) may specify) of Scottish Ministers’ and/or SDS’s (as applicable) request; and
- 12.7.3. provide all necessary assistance as reasonably requested by Scottish Ministers and/or SDS (as applicable) to enable Scottish Ministers and/or SDS (as applicable) to respond to the request for information within the relevant time for compliance set out in FOISA.
- 12.8. Scottish Ministers and/or SDS (as applicable) shall be responsible for determining in its absolute discretion and notwithstanding any other provision in or pursuant to 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.
- 12.9. In no event shall the Provider respond directly to a request for information unless expressly authorised to do so by Scottish Ministers and/or SDS (as applicable).

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13. Limitation of Liability

- 13.1. Neither party excludes or limits liability to the other party for death or personal injury arising from the breach of duty of such party.
- 13.2. Subject always to Clause 13.1, the total liability of the Scottish Ministers 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.
- 13.3. Subject always to Clause 13.1, 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:
 - 13.3.1. any loss of profits, business, revenue, contracts or anticipated savings;
 - 13.3.2. any loss of goodwill or reputation; or
 - 13.3.3. any special, indirect or consequential losses or damage.
- 13.4. 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.

14. Termination

- 14.1. The Scottish Ministers shall be entitled to terminate this Agreement forthwith in the event that the Training Provider's approval has been withdrawn or cancelled by the Training Account Administrator or where the relevant Training Provider Registration Agreement expires.
- 14.2. This Agreement shall terminate automatically upon the expiry or termination of the Training Provider Registration Agreement.
- 14.3. For the avoidance of doubt, no payments may be claimed for any unfulfilled bookings following any termination of this Agreement.
- 14.4. 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 3 month's written notice to that effect to the Scottish Ministers.
- 14.5. The Scottish Ministers shall be entitled to terminate this Agreement immediately on giving the Training Provider written notice where in the Scottish Ministers' 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 Scheme established under the Regulations.

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- 14.6. Termination of this Agreement in accordance with the terms of this Clause 14 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).
- 14.7. Notwithstanding the provisions of this Clause 14, the provisions of Clauses 1, 4.1, 5.1, 5.3, 5.4, 5.5, 6.1, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 shall survive termination of this Agreement for any cause.

15. Data Protection

- 15.1. The Scottish Ministers and the Training Account Administrator 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 the Training Account Administrator) for the purposes of administering the payment of ITA funding under the Scheme (“Personal Data”).
- 15.2. The Training Provider shall:
- 15.2.1. in the performance of this Agreement, comply at all times with the Data Protection Laws;
 - 15.2.2. 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;
 - 15.2.3. 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;
 - 15.2.4. implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of the processing of the Personal Data;
 - 15.2.5. notify the Training Account Administrator immediately after becoming suspicious of any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data;
 - 15.2.6. promptly assist the Scottish Ministers and the Training Account Administrator in complying with the rights of data subjects and with their 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;
 - 15.2.7. on termination of this Agreement return to the Training Account Administrator or destroy, at the request of the Scottish Ministers, all Personal Data in the possession or control of the Training Provider;

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- 15.2.8. make available to the Training Account Administrator all information necessary to demonstrate the Training Provider's compliance with this clause and allow the Scottish Ministers to audit and inspect the Training Provider's compliance with this clause;
 - 15.2.9. immediately inform SDS if, in the Training Provider's opinion, a documented instruction from the Scottish Ministers infringes Data Protection Laws; and
 - 15.2.10. not transfer the Personal Data to a country outside the European Union without the prior written consent of the Scottish Ministers.
- 15.3. The Training Provider shall not authorise a third party (subcontractor) to process personal data without the prior written permission of the Scottish Ministers. 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.
- 15.4. The Training Provider shall at all times indemnify the Scottish Ministers and the Training Account Administrator and keep the Scottish Ministers and the Training Account Administrator 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 15.

16. Force Majeure

- 16.1. 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").
- 16.2. 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 16.

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17. Entire Agreement

- 17.1. This Agreement, the Training Provider Registration Agreement, the Registration Information Form, and any other documentation demanded by Scottish Ministers (or SDS as their agents) 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 17 shall have effect to exclude the liability of either party for fraud or fraudulent misrepresentation.
- 17.2. For the avoidance of doubt, the Training Provider Agreement made available by SDS as part of the ITA Training Provider application pack prior to 1 October 2017 has been superseded in full by the Training Provider Payment Agreement and the Training Provider Registration Agreement.

18. Waiver

- 18.1. 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.

19. Severability

- 19.1. 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.

20. Notices

- 20.1. 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.
- 20.2. Notices shall be deemed given, in the case of notice given by recorded delivery post, two Business Days after the date of posting.
- 20.3. For the purpose of Clause 20.1, the Training Provider shall serve any notice on the Scottish Ministers and the Training Account Administrator at the following address:

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

Training Provider Payment Agreement

20.4 Notices and Covid-19

20.4.1 Unless and until the Training Account Administrator confirms otherwise by amending this Clause 20, any notice from either Scottish Ministers (or the Training Account Administrator) to the Training Provider, or the Training Provider to Scottish Ministers (or the Training Account Administrator), shall also be considered valid under this Agreement if:-

20.4.1.1 it is sent as an email with the heading 'Notice'; and: -

20.4.1.1.1 for notices from Scottish Ministers (or the Training Account Administrator) to the Training Provider, it is sent from customer.services@sds.co.uk to the email address provided by the Training Provider in the Training Provider's application to participate in the Scheme; or

20.4.1.1.2 for notices from the Training Provider to Scottish Ministers (or the Training Account Administrator), 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.

20.4.2 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.

20.4.3 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 informing the Training Account Administrator 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 the Training Account Administrator acknowledges receipt of such email.

Training Provider Payment Agreement

21. No Assignment or Sub-contracting

21.1. 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. The Scottish Ministers shall be entitled to assign, transfer or sub-contract any of their rights or obligations under this Agreement. Any breach of this Clause 21 shall be deemed a non-remediable material breach, which shall entitle the Scottish Ministers to terminate this Agreement under Clause 14.

22. Disclaimer of Agency and Partnership

22.1. This Agreement shall not, unless expressly agreed otherwise, constitute either the Scottish Ministers or the Training Provider as an agent of the other. The parties hereto are independent contractors and shall have no power, nor will either of the Scottish Ministers or the Training Provider represent that either has any power, to bind the other 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.

22.2. Nothing in this Agreement shall be construed as creating any relationship of partnership between the Scottish Ministers and the Training Provider in terms of the Partnership Act 1890 or any similar or analogous legislation in any jurisdiction to which either party is subject.

23. Variation

23.1. This Agreement may be amended by the Scottish Ministers 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.

23.2. 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,

24. Counterparts

24.1. This Agreement shall be executed in counterparts, each of which when executed and delivered by email to customer.services@sds.co.uk shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

Training Provider Payment Agreement

25. Applicable Law

25.1. 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.

IN WITNESS WHEREOF this Agreement comprising this and the previous 24 pages is executed in duplicate as follows:

Subscribed for and on behalf of

The Scottish Ministers (c/o Scottish Government Directorate for Fair Work, Employability and Skills, 5th Floor, 5 Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU

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 Payment 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.