Skills Development Scotland

Modern Apprenticeship Programme Conditions– 2026-2027

Version History

Version	Revision(s)	Approved by	Date
1	First Publication for PCS	Fiona Stewart	20/11/23
2	Second Publication Reviewed and updated. • Appendix 4 Information Security Policy	Fiona Stewart	01/04/24
	Third Publication	Fiona Stewart	01/06/24
3	Clarification • Contract Schedules and Contribution Rates (5.3) and new paragraph added (5.6) Review and updated. • Appendix 1 - Definitions added (Care Experienced, Disabled, Ethnic Intersectionality Incentive (EII) Application form, EII Additional Payment, EII Scheme, Protected Characteristics and Targeted Groups) • Appendix 2 – new bullet point added (1.9)		
4	Fourth Publication Clarification • Appendix 2 (Part 1) Removal of wording ‘approved by your Skills Investment Adviser’ (1.1) • Appendix 3 -Removal of wording ‘approved by your Skills Investment Adviser ‘(1.1) • Appendix 4- Section 2 Electronic Data Transfer Mandatory Encryption- New wording added. Section 3- New wording added ‘UK GDPR’ (3.1) and Section 7 – New wording add ‘all data’ (7.1)	Fiona Stewart	23/12/24

5	Fifth Publication Review and update • Duration of Contract (4.2) -dates changed • Statutory and other Requirements - updated bullet points (14.3,14.4 &14.5) • Signatures, SDS Documents, Forms and Processes – updated bullet point (15.1) • Assignation and contracting – updated bullet point (30.6.1) & additional wording added (30.9) • Insolvency – updated bullet point (38.1.1) • Blacklisting Regulations- updated bullet point (39.1) • Appendix 1- Definitions updated –'SDS Web pages'& 'SVQ'	Fiona Stewart	17/04/25
6	Sixth Publication Review and update 1. Appendix 2 - Rewording of Appendix 2 to align and reflect the updated MA Privacy notice	Fiona Stewart	29/04/25
7	Seventh Publication Updated • Contract Schedules and Contribution Rates (5.6) New wording added 'New Scots Incentive Additional Payment Scheme' & in the relevant section of the Specification' • Notices (32.5) Change of contact details to NTPContracts@sds.co.uk • Appendix 1 Definitions – Removal of wording 'EII Application Form' -New definition added New Scots & Ethic Intersectionality Incentive (EII) Application Form, updated definition of Targeted groups • Appendix 3 Processing of the Processed data (1.3) New wording added New Scots and Ethnic Intersectionality Incentive (EII) Application Form	Fiona Stewart	1/07/25

8	Eighth Publication Updated • Definition of SDS", "Skills Development Scotland","we", "us" or "our" (Appendix 1)	Fiona Stewart	15/12//25
9	Ninth Publication Updated • Title page – date update 2026 -2027 • Duration of MA Contract (4.1) dates updated and (4.2) text removed and paragraph updated • Contract Schedules and Contribution rates (5.4 & 5.5) paragraphs updated • FIPs and other SDS software systems (8.2) new paragraph added • Assignation and sub-contracting (30.9) paragraph updated • Appendix 1 – Definitions 'SQA' changed to 'QA' Qualifications Scotland • All reference to SDS webpages have been updated to Apprenticeships.scot	Fiona Stewart	01/04/2026

Table of Contents

1 Defined terms and Interpretation. 7
2 The MA Contract 8
3 Provider's Appointment 9
4 Duration of the MA Contract 9
5 Contract Schedules and Contribution Rates 9
6 Variations 10
7 Provider Personnel 12
8 FIPS and other SDS software/systems 12
9 Claims and Payment Arrangements 13
10 Performance and Award 15
11 Application to Complete MA (or part of MA) 19
12 Warranties and Representations 19
13 Prevention of Bribery and Anti-Slavery and Human Trafficking Laws and Offences 20
14 Statutory and other Requirements 21
15 Signatures, SDS Documents, Forms and Processes 22
16 Conflicts of Interest 22
17 Safeguard Against Fraud 23
18 Data Protection 23
19 Freedom of Information 23
20 Insurance 24
21 Termination 24
22 Business Continuity 26
23 Other Remedies 26
24 Consequences of Termination and Expiry 29
25 Liability 29
26 Not used 29
27 Equal Opportunities 29
28 Records, Audit Access and General Assistance 30
29 Confidentiality 32
30 Assignation and Sub-contracting 332
31 Change of Your Name 34
32 Notices 34
33 General 36
34 Entire Agreement 36
35 Marketing, Branding and Publicity 36

36 Intellectual Property Rights 376
37 TUPE: Transfer of Undertakings (Protection of Employment) Regulations 2006 37
38 Insolvency.....37
39 Blacklisting Regulations 38
40 Law and Jurisdiction 38

Appendix 1 - Definitions 39
Appendix 2, Data Sharing and Part 1 - The Data 46
Appendix 2, Part 2 - The Purposes and Bases of Sharing.....47
Appendix 2, Part 3 - Data Transfer Arrangements 48
Appendix 3 - Processing of Processed Data 49
Appendix 4 - Information Security Policy 52

1 Defined terms and Interpretation.

1.1 The content of the MA Contract shall be interpreted in accordance with this Condition 1.1. The only exception will be where any individual condition or paragraph states specifically that it should be interpreted differently, in which event that individual condition or paragraph shall be interpreted as specifically stated in that condition or paragraph.

1.2 Terms in the MA Contract starting with a capital letter shall have the same meanings as those set out in Appendix 1 to the Conditions;

1.3 Condition, schedule, appendix and paragraph headings shall not affect the interpretation of the MA Contract.

1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Words in the singular shall include the plural and vice versa.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any applicable legislation made under it that is in force at the relevant time.

1.8 A reference to writing or written excludes faxes and email. The only exception to this is where any Condition or paragraph in the MA Contract specifically states that a reference to writing or written has a different meaning, in which event that alternative meaning shall apply in relation to that Condition/paragraph only.

1.9 Any obligation in the MA Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.10 Where any document has been varied or novated under the terms of the MA Contract, any reference to that document will be deemed to be to that document as it has been varied or novated. Any reference to any rights that we have under the MA Contract also applies to any agent of ours that may be exercising the relevant right, and both parties shall construe the provision accordingly.

1.11 Where the MA Contract refers to any document or policy contained on Apprenticeships.scot or such alternative website, SDS reserves the right to amend, remove or replace such document or policy, and the reference is to the document or policy as may be amended, removed or replaced by SDS from time to time.

1.12 Where there is any conflict or inconsistency between or among the provisions of the MA Contract, such conflict or inconsistency shall be resolved according to the following descending order of priority:-

1.12.1 not used;

1.12.2 any document signed by us strictly in accordance with the terms of the MA Contract, approving any variations;

1.12.3 the Letter of Award;

1.12.4 the Microsoft licensing terms and conditions that apply to each User Access set out in the FIPS pages on Apprenticeships.scot;

1.12.5 the remaining terms of the FIPS Software User Access terms and conditions set out in the FIPS pages on Apprenticeships.scot ;

1.12.6 any other end user terms and conditions relating to use by you or your Staff of any other software/systems that SDS requires you to use in performing the Services;

1.12.7 the main Conditions;

1.12.8 any attachment to the main Conditions (including Appendices);

1.12.9 the Specification;

1.12.10 any attachment to the Specification;

1.12.11 the applicable Contract Schedule;

1.12.12 the ITT;

1.12.13 your ITT Response.

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

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

1.15 Unless we specifically state otherwise, where a Provider holds consecutive contract schedules for modern apprenticeship services with SDS whether under this MA Contract, and/or immediately preceding and/or following this MA Contract, when calculating any period referred to in the MA Contract, the period shall be deemed to span continuously across respective contract schedules (e.g. quarterly review periods as detailed in the Specification will continue uninterrupted from one contract schedule to the next contract schedule).

2 The MA Contract

2.1 The MA Contract is made up of the Contract Documents and each Contract Schedule (if any).

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

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

2.4 You will provide the Services on the dates set out in the MA Contract and, unless we specifically state differently in the Contract Documents, time of delivery or performance shall be of the essence of the Contract.

2.5 You are and must at all times act as, an independent contractor. You are not our employee, agent or representative and you have no authority to act on our behalf. You will not act in any way which would give the impression that you are our employee, agent or representative and will not incur any liability on our behalf nor enter into any contracts or agreements on our behalf. Save to the extent specifically provided in the MA Contract, you specifically acknowledge that you are not the exclusive provider of Services to us nor are we your exclusive client.

2.6 The Conditions are set out in this document and are subject to amendments we may implement from time to time. The version applicable at any given time can be found by linking through the Learning Provider pages on Apprenticeships.scot.

2.7 You acknowledge that we rely on your skill and judgment in the supply of the Services and your obligations under the MA Contract.

3 Provider's Appointment

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

3.2 You agree and accept that in entering into the MA Contract (including your acceptance of each Contract Schedule forming part of the MA Contract):-

3.2.1 you have received all the information you require in order to determine whether you are able to provide the Services in accordance with the MA Contract (as each document may have been formally varied in accordance with the Conditions); and

3.2.2 you are deemed to have satisfied yourself in relation to all matters connected with the Services and in regard to your ability to meet all requirements of the MA Contract.

3.2.3

4 Duration of the MA Contract

4.1 The MA Contract (including the initial Contract Schedule) shall commence on 1 April 2026 (or if we insert a later date in your Letter of Award, that later date) and apply for the period until 31 March 2027.

4.2 In accordance with Condition 5.1, each Contract Schedule shall expire at the date referred to in the Contract Schedule (or sooner if the MA Contract is terminated) and shall not therefore extend with any extension of the MA Contract under this Condition 4.2. Condition 5 below applies in relation to Contract Schedules.

5 Contract Schedules and Contribution Rates

5.1 Each Contract Schedule shall expire at the date referred to in the Contract Schedule (or sooner if the MA Contract is terminated earlier) and shall not be extended under any circumstances, including under Condition 4.2. The criteria for awarding volumes of new Starts in any new Contract Schedule in any extension period under Condition 4.2 are set out in the ITT. In the event that SDS is awarding you volumes of Starts and/or value in respect of Starts and/or Apprentices who are In-training Apprentices in any extended period of the MA Contract referred to in Condition 4.2, we shall send you our offer to enter into a Contract Schedule for the applicable period.

5.2 Volumes of Starts and or value that are referred to in each Contract Schedule agreed pursuant to the MA Contract are allocated for the period referred to in the Contract Schedule and cannot be transferred by you from one Contract Schedule into any subsequent Contract Schedule, or to any other contract, including any Contract Schedule under any subsequent MA contract you may enter into with us. Only we can insert Start volumes, expenses value and overall contract value in any subsequent Contract Schedule awarded.

5.3 The contribution rates payable for Starts and In-training Apprentices are set out in Appendix 1. Those applicable rates shall accordingly be the rates we consider when we calculate the value payable to you in relation to each individual Apprentice who is a Start under a Contract Schedule and who becomes an In-training Apprentice under any subsequent Contract Schedule(s). The contribution rates for apprentices already registered on FIPS prior to the commencement of a Contract Schedule shall be paid at the contribution rates applicable at the date the apprentice was registered as a Start on FIPS. As such, different contribution rates may require to be taken into consideration when we calculate the value payable to you under the same Contract Schedule for the same MA framework. For the avoidance of doubt, to the extent that any enhanced funding rate (referred to in 2.9 of the Specification) has been approved by SDS under any Contract Schedule, this does not mean that the enhanced funding rate shall continue to apply in any subsequent contract schedule, and the standard rate contribution may be applied. Your attention is also drawn to SDS's right to partially/wholly withdraw or otherwise amend the enhanced funding rate at any time, as set out in 2. 9 of the Specification.

5.4 On the expiry of this MA Contract on 31 March 2027, it is anticipated that certain functions of SDS (including the functions that are the subject matter of this MA Contract) will transfer to the Scottish Funding Council pursuant to the Tertiary Education and Training (Funding and Governance) (Scotland) Act. Subject to you remaining compliant at all times with the terms of the MA Contract, we (or as applicable our said functional successors) shall offer you a further Contract Schedule (or Contract Schedules, as applicable) which shall be effective from the expiry or sooner termination of each Contract Schedule awarded under this MA Contract (or any replacement MA contract we (or, as applicable, our said functional successors) may introduce on the expiry or sooner termination of this MA Contract) in respect only of each In-training Apprentice. (This does not affect your rights to apply for any volumes of new start apprentices under any new award procedure that we (or as applicable, our said functional successors) may be operating at any time). Other than our undertaking to maintain the same contribution rate for the duration of an Apprentice's MA framework set out in Condition 5.3, the terms and conditions that apply in respect of the Contract Schedules for In-training Apprentices shall be the general MA contract terms that prevail during the period of each such Contract Schedule, whether under the current MA Contract or any replacement MA contract we (or, as applicable, our said functional successors) may introduce in respect of the period immediately following the expiry or sooner termination of this MA Contract.

5.5 You shall require to accept the terms of any Contract Schedule you receive from us (or as applicable, our said functional successors), within such period, and in accordance with such process, as we (or as applicable, our said functional successors) shall specify when we (or as applicable, our said functional successors) send you the Contract Schedule offer. If you fail to accept the terms of the Contract Schedule in accordance with the requirements, your offer shall be deemed to have been withdrawn by us (or as applicable, our said functional successors).

5.6 Where any Ethnicity Intersectionality Incentive (EII) or New Scots Incentive Additional Payment has been approved (and approval has not been withdrawn), payment of the increased rate of an additional amount as set out in the relevant section of the Specification shall be paid to you in accordance with that section of the Specification.

6 Variations

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

6.1.1 in respect of changes that apply to all MA contracted providers, from the date that providers are advised of the changes. We may contact you directly to confirm the changes or we may post the changes on the Learning Provider pages on Apprenticeships.scot;

6.1.2 in respect of changes solely to any Contract Schedule, on the date we advise you of the changes, in writing, which shall include email.

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

6.2.1 Apprentice eligibility criteria;

6.2.2 periodical review of Apprentices' progress;

6.2.3 financial contributions corresponding to any volume changes;

6.2.4 Apprentices transferring from other MA service providers;

6.2.5 travel, subsistence and/or lodging allowance we may offer;

6.2.6 evidence requirements, where reasonably required to ensure that SDS can properly monitor provider compliance with the MA Contract;

6.2.7 changes reasonably required as a direct or indirect result of any change in Data Protection Legislation and/or other change in law;

6.2.8 the Apprentice and employer verification requirements, administrative procedures and information required to be inputted to FIPS;

6.2.9 the terms we use to describe the MA Programme and any of the components, e.g. 'apprenticeship', 'modern apprentice', modern apprenticeship';

6.2.10 not used;

6.2.11 conditions impacted by policy change required by Scottish Government, and/or adjustments in budget available to SDS;

6.2.12 other variations to volumes and/or value deemed appropriate by us in accordance with our rights under the MA Contract, in respect of your failure to meet any Performance Level and/or any other requirement of the MA Contract; and/or

6.2.13 any other areas of potential change identified in the ITT that relate to allocation of volumes for any extended duration of the contract.

6.2.14 Any such variation to any MA Contract provision may include whole or partial additions, omissions (withdrawal), replacements or alterations of such provision.

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

6.3.1 the contracted volumes for Starts; and/or

6.3.2 the contracted value set out in the MA Contract.

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

6.4 Not used.

6.5 You may propose amendments to your ITT Response at any time, but no amendment to your ITT Response shall be valid for any purpose unless we have agreed to it in writing in the form of an email from an SDS Procurement Manager.

6.6 Not used.

6.7 Variations to the MA Contract which do not meet the requirements of this Condition 6 or the Specification shall not be permitted.

6.8 You are responsible for ensuring that the services referenced within your ITT Response meet the standards and Qualifications set out in this MA Contract at all times, including any variations to your ITT Response that have been implemented in accordance with the requirements of this Condition 6 or the Specification (as applicable).

7 Provider Personnel

7.1 You shall at all times, ensure that:-

7.1.1 each of your personnel is suitably qualified, adequately trained and capable of providing the part(s) of the Services each individual is engaged in; and

7.1.2 there is an adequate number of personnel to provide the Services properly.

7.2 You shall remove any of your personnel from the provision of any or all parts of the Services that we may specify, where we decide that the individual has failed to carry out their duties with reasonable skill and care. We shall always act reasonably when we consider an individual's performance and conduct. Following the removal of any of your personnel from the delivery of the Services for any reason, you shall ensure that the person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

8 FIPS and other SDS software/systems

8.1 In carrying out your obligations under the MA Contract, you shall meet all our information technology requirements (including the Information Security Policy attached at Appendix 4 to these Conditions) for processing claims and other information we specify from time to time. We may vary our information technology requirements at any time in line with the development and updating of our systems. Any such changes will be circulated in accordance with Condition 6.1

8.2 We may require you to complete our security questionnaire from time to time. If requested by us, you shall complete and return each such security questionnaire in such format and within such timeframe as we may reasonably require.

8.3 Funding for each MA Programme will be administered through FIPS in accordance with our requirements.

8.4 You must at all times, through duly authorised and appropriately qualified staff, complete and keep up to date, accurate information relating to each Apprentice required by FIPS. Without prejudice to any other timeframe expressly referenced in the Specification and/or Conditions, you will be in breach of this condition 8.4 where any required FIPS input (or required update, as applicable) has not been made within 28 days. You must also comply at all times with our FIPS guidance which is available on the FIPS pages of Apprenticeships.scot. This guidance may be amended by us from time to time.

8.5 In order to use FIPS as set out in the MA Contract, you must maintain a User Access for each user of FIPS for the period of the MA Contract (and any longer period you may require, to process all claims for payment and submit required evidence under the MA Contract). We shall provide you with the information relating to User Access including the terms and conditions and charges that apply, and guidance on the process for requesting/granting/amending User Access through direct communications with you or, if we choose to do so, in the FIPS pages of Apprenticeships.scot .Further conditions or guidance may also be set out in your Letter of Award.

8.6 In the event that SDS requires you to use any other software/systems when performing the Services, you shall supply such information to SDS as we may reasonably require to facilitate access to the software/systems. In addition you shall ensure that (i) you promptly notify SDS of any changes where the information is no longer accurate (ii) you and your Staff who may have access to the software/systems comply at all times with any end user conditions that may be made available to you in relation to such software/systems, and (iii) you notify immediately in the event of any failure by you and your Staff to comply with any such conditions.

9 Claims and Payment Arrangements

9.1 We shall pay you for the Services you perform fully in accordance with the terms of the MA Contract. Payments for Services shall be paid in accordance with the Payment Plan, and for expenses and any applicable rural uplift, in accordance with the relevant arrangements set out in the Specification. We shall only be required to pay you up to the total values for respectively, Services and permitted expenses, that are set out in the Contract Schedule in force, notwithstanding the fact that the cumulative value of all respective claims under any amended Payment Plan may exceed those values. We accordingly reserve the right (i) not to accept claims into FIPS that (aggregated with the value of all of your other claims) exceed the relevant value set out in the Contract Schedule, and/or (as applicable) (ii) to reject any such claims. We are not obliged to amend the respective values within the Contract Schedule to reflect updated Payment Plans, where such amendment would result in any of the respective Contract Schedule values increasing. To the extent that the Payment Plan is amended at any time under any of the Conditions, each reference to the Payment Plan within the MA Contract, and any operational documents referenced within the MA Contract shall be deemed to be to the duly amended version with effect from the date of amendment. The contribution rates payable for the Services shall be as stated in the Contract Documents and (subject only to any express provisions relating to any additional expenses or uplift) shall be deemed to be inclusive of any and all expenses and charges. Subject to section 4.3.4 of the Specification, and to this Condition 9.1, we will pay you within 30 days of our receipt from you of each claim that you submit to us fully in accordance with the terms of the MA Contract.

9.2 Each claim for payment must be submitted in accordance with the FIPS requirements and must also be submitted no later than the date occurring 90 days after the date of Achievement of the Milestone to which the claim relates (and for expenses claims and any applicable rural uplift, within the period set out in the Specification). For the purposes of this Condition, 'Achievement' means:-

9.2.1 for each Milestone relating to a Summary of Achievement Record (SOAR), the latest date of signature on the SOAR;

9.2.2 for each Milestone relating to a Quarterly Progress Review (QPR), the latest date of signature on the QPR; and

9.2.3 for each Milestone relating to a MA outcome, the date the awarding body confirms to you that the MA certificate has been approved.

9.2.4 so, where FIPS asks you to 'Select the evidence date of the claim…" you require to enter the date corresponding to the above.

9.3 To be clear, SDS reserves the right not to pay any claim that is submitted outwith the requirements of Condition 9.2 (including any requirements in the Specification that are referred to in that Condition). You should also note that Condition 9.2 does not cancel or reduce or otherwise supersede the performance level set out in Condition 0 (inactivity measured by period between claims), which is a separate measure.

9.4 Where a Provider submits any claim for payment later than the date permitted under Condition 9.2 (or referred to in the Specification), SDS reserves the right to withhold payment of all or part of the claim, or where the claim (or part of the claim) has been paid, recover all or part of such payment.

9.5 Where we approve the transfer of an Apprentice under paragraph 4.8 of the Specification (approval to transfer an Apprentice to a replacement provider), we may adjust the contribution rate (to a lower rate) and associated Payment Plan for each Milestone that can be claimed by the replacement provider during the remainder of the Apprentice's apprenticeship. Any adjustment is intended to reflect the extent of Services required to be performed by the replacement provider, relative to the Services already provided by the original provider, to enable the Apprentice to achieve the relevant Milestone. To be clear, where you are the replacement Provider under the MA Contract, the rate, as adjusted, shall apply in respect of the remaining Milestones. Our decision on any such adjustment shall be final.

9.6 Subject to any variations we may agree under the variation procedures set out in these Conditions, and to Condition 9.1, you shall throughout the period of the MA Contract, provide the Services in the volumes, outputs of activity, financial profiles, minimum achievement rate and quality of delivery set out in the MA Contract.

9.7 You shall ensure that any measures applied to comply with your Workforce Matters obligations are not directly or indirectly detrimental to any employee's other entitlements, benefits and conditions. We may examine appropriate evidence of your compliance with your Workforce Matters obligations including the activity you undertake to promote the benefits of Workforce Matters to MA Employers. You shall make all relevant evidence available to us promptly following any request from us.

9.8 If we include any expenses in the MA Contract, you must not exceed those expenses without our prior written approval. Any approval we give shall only be valid if it is set out in an email from your Contract Executive or confirmed by us within FIPS. Your attention is drawn to paragraph 2.8.3 of the Specification which sets out the period within which all claims for travel and subsistence must be submitted to SDS and to our rights set out in this Condition 9 if you fail to claim any expenses within the permitted period.

9.9 You shall pay us the charge that applies for each User Access we make available to you. The charges, terms and conditions, guidance and other information relating to User Access are available on the FIPS pages of Apprenticeships.scot. We may withdraw FIPS from service temporarily when we need to undertake maintenance or upgrading work. We are entitled to invoice you for each User Access at any time after we assign the User Access to you and thereafter invoices shall be issued annually for the period 1 April to 31 March in each year. You must pay each invoice within 30 days of the date of issue of the invoice. If you fail to pay any invoice (or part of any invoice) in accordance with this Condition 9.9, we may offset the shortfall against any sums we owe you.

9.10 You must promptly and without undue delay, obtain and collate all supporting evidence required under the MA Contract, including all signatures required on documents. You cannot submit any claim until you are in possession of all the evidence set out in the Specification and the Conditions for that claim. For Milestone claims, you must also have properly fulfilled all required Services relating to the Milestone. You must submit all claims for payments through FIPS. Where you have not made all the required evidence available to us (or our agents) on request, and/or you are unable to demonstrate to our reasonable satisfaction that all of the required evidence was in your possession at the date you submitted the claim on FIPS, we shall not be obliged to pay you for the claim to which that required evidence relates and we may recover any payment that we have made in relation to such a claim. We shall not accept any evidence other than the evidence referred to in the Specification and the Conditions as support of a claim.

9.11 We shall be entitled to withhold any payment claimed until we are satisfied that the supporting evidence is authentic, accurate and suitable. We may therefore conduct an audit of the supporting evidence and we may require you to submit additional evidence where reasonably required, to demonstrate the authenticity and/or accuracy of the evidence you have made available. Any audit will be conducted in a manner we believe to be appropriate, and we may use agents. Payment of any claim (whether an audit is undertaken or not) does not mean that we have satisfied ourselves that the supporting evidence is authentic, accurate or suitable. Where we are not satisfied that the evidence meets these requirements you will be in breach of the Conditions and we reserve our rights (including our right to recover any payments made) in that regard. To the extent that any required evidence is missing, incomplete or illegible, (and irrespective of whether such evidence is in original or where applicable, copy format), such evidence shall not meet the requirements of the MA Contract, and SDS reserves the right to reclaim any and all payments made in reliance on any such evidence, or to reject any unpaid claim to which any such evidence relates.

9.12 You must at all times be a financially viable organisation and have robust financial systems in place. If we ask you at any time, you must:-

9.12.1 provide all financial and/or other information we may request, which may include the latest set of your audited accounts or such other information as we may reasonably require to enable us to assess your continuing financial viability and your ability to continue to perform your obligations under the MA Contract;

9.12.2 get any financial and/or other information that you provide to us under the MA Contract certified by an independent accountant or equivalent and provide evidence to us of that certification, or equivalent;

9.12.3 obtain and provide to us, industry recognised credit reports relating to you to enable us to assess your continuing financial viability and your ability to continue to perform your obligations under the MA Contract; and

9.12.4 obtain and provide to us a report, by an independent accountant or equivalent, on the financial systems and controls you operate in respect of monies you receive for the purposes of the MA Programme.

9.13 Provided always that you have met and continue to meet all your obligations under the MA Contract, and that the relevant Apprentice confirmation/validation referred to in paragraph 4.3.4 (Validation) of the Specification has been received by us in accordance with our requirements, we will pay you the sums due in accordance with the provisions set out in the MA Contract. All payments made under the MA Contract are inclusive of any VAT that applies.

9.14 We do have rights to withhold and recover payments from you. These are set out in Condition 23.

9.15 You cannot make any charge of any nature to any Apprentice or proposed Apprentice, or former Apprentice, in respect of the MA Programme, whether before, during or after the individual's participation in the MA Programme. (To be clear, this means you cannot charge any Apprentice any charge for, or costs or losses incurred as a result of, an Apprentice's early departure from their MA Programme).

9.16 You are requested to address complaints regarding late payment of claims to procurement@sds.co.uk or such alternative address as we may specify from time to time.

10 Performance and Award

10.1 You must meet the minimum Performance Levels set out in Condition 10.5 below when performing the Services. Where you fail to meet any Performance Level, the consequences (if any) set out in Condition 10.5 below shall apply. Your attention is drawn to Condition 33.3 which provides that the consequences set out below represent only one option available to us, and do not prevent or restrict us from exercising any other right or remedy that we may have, (including any reallocation and/or further award under this Condition 10).

10.2 You shall promptly provide all information we may request from you from time to time, in order to measure your compliance with the Performance Levels.

10.3 We will from time to time evaluate the number of Apprentices that have Started under your current applicable Contract Schedule against the number of Apprentices contracted to Start under that Contract Schedule. Where there is a shortfall we may reallocate the volumes in accordance with the variation provisions within these Conditions.

10.4 You shall provide all the records and management reports summarising your achieved Performance Levels that we may request from time to time. You shall do this within the timescales that we state.

10.5 The Performance Levels set out in this condition 10.5 apply.

10.5.1 Performance Level No.1 – Fulfilment of Contracted Starts

Performance level Action / Measurement Period	You shall ensure that at the end of each of the following Measurement Periods, the number of Apprentices entered onto FIPS as new Starts, measured as a percentage of the total number of the new Starts awarded for each whole Contract Schedule, exceeds the following: **Measurement Periods** Active Financial Period 1-5 (inclusive of periods 1 to 5) – 28% Active Financial Period 1-7 (inclusive of periods 1 to 7) – 60% Active Financial Period 1-10 (inclusive of periods 1 to 10) – 86% Active Financial Period 1-12 (inclusive of periods 1 to 12) – 100% When calculating the number of new Starts, only those that have been entered:- - fully in accordance with the requirements of the MA Contract, and - since the commencement of the applicable Contract Schedule shall be included. If the total volume of new Starts awarded to you under the applicable Contract Schedule is amended in accordance with the variation procedure set out in these Conditions, the formula in this Condition 10.5 will be applied to the volumes, as amended, from the relevant amendment date.
Failure by you to meet Performance Level – Consequences	If you fail to meet the relevant Performance Level requirements in any Measurement Period we may remove volumes of potential new Starts awarded pursuant to the applicable Contract Schedule which are not already registered as 'Starts' under FIPS.

10.5.2 Performance Level No.2 – Fulfilment of Contracted Spend

Performance level Action / Measurement Period	You shall ensure that at the end of each of the following Measurement Periods, the total value of payments claimed by you (including expenses), measured as a percentage of the overall contracted value set out in the Contract Schedule (including expenses), meets the following minimum requirements: **<u>Measurement Periods</u>** Active Financial Period 1-5 (inclusive of periods 1 to 5) – 37% Active Financial Period 1-7 (inclusive of periods 1 to 7) – 55% Active Financial Period 1-10 (inclusive of periods 1 to 10) – 80% Active Financial Period 1-12 (inclusive of periods 1 to 12) – 100% When calculating the total value of payments claimed by you, only those claims that have been made:- - fully in accordance with the requirements of the MA Contract, and - since the commencement of the applicable Contract Schedule, shall be included. If the total contracted value set out in the applicable Contract Schedule (including expenses) is amended in accordance with the variation procedure set out in these Conditions, the formula in this Condition 10.5 will be applied to the total contracted value (including expenses) for the whole of your applicable Contract Schedule, as amended, from the relevant amendment date. You are reminded that Condition 9.1 provides that aggregate claims under each Contract Schedule are capped at the contract value set out in your Contract Schedule. Nothing in this Performance Level or any other Condition entitles you to exceed that cap.
Failure by you to meet Performance Level – Consequences	If you fail to meet the relevant Performance Level requirements in any Measurement Period we shall be entitled to reduce the total contracted value (including expenses) payable to you pursuant to the whole of the applicable Contract Schedule.

10.5.3 Performance Level No.3 - Achievement Rates – Modern Apprenticeships

Performance level Action / Measurement Period	You shall ensure that at the end of each of the following Measurement Periods, the Achievement Rate of Apprentices who have left their Apprenticeship since the commencement of the applicable Contract Schedule is (i) in respect of all Apprentices who were aged 16-19 (i.e. under 20) as at their Start date, not less than 70%, and (ii) in respect of all Apprentices who were aged 20+ (i.e. aged at least 20) as at their Start date, not less than 75%. To be clear, Achievement Rate is calculated by dividing the total number of those Apprentices within the relevant age category who have, since the commencement of the applicable Contract Schedule, successfully completed their Apprenticeship, by the total number of Apprentices within the relevant age category who have since the commencement of the applicable Contract Schedule, left their apprenticeship for any reason. When calculating the number of Apprentices within the relevant age category who have left, you must include Apprentices within the relevant age category who left having completed their apprenticeship and Apprentices within the relevant age category who left without completing their apprenticeship. Other than for the purpose of determining whether an Apprentice falls within measurement category (i) or (ii), the start date of each Apprentice is irrelevant for the calculations under this Performance Level, and may pre-date the commencement date of the applicable Contract Schedule. **Measurement Periods** Active Financial Period 5 (inclusive of periods 1 to 5) Active Financial Period 7 (inclusive of periods 1 to 7) Active Financial Period 10 (inclusive of periods 1 to 10) Active Financial Period 12 (inclusive of periods 1to 12)
Failure by you to meet Performance Level – Consequences	If you fail to meet the relevant Performance Level requirements in any Measurement Period we may require you to enter into an Improvement plan in accordance with Condition 23 (Other Remedies).

10.5.4 Performance Level No.4 – Inactivity Measured by Period Between Claims – Modern Apprenticeships

Performance level Action / Measurement Period	You shall ensure that for each Apprentice, the period between valid payment claims submitted is never greater than 9 calendar months. We shall measure the number of failures within each of the following Measurement Periods:- Active Financial Period 1/5 (inclusive of periods 1 to 5) Active Financial Period 6/7 (inclusive of periods 6 to 7) Active Financial Period 8/10 (inclusive of periods 8 to 10) Active Financial Period 11/12 (inclusive of periods 11 to 12) **NOTE THAT THIS PERFORMANCE LEVEL DOES NOT CANCEL OR REDUCE YOUR REQUIREMENT TO SUBMIT CLAIMS WITHIN THE PERIOD SET OUT IN CONDITION 9.2.**
Failure by you to meet Performance Level – Consequences	If you fail to meet the relevant Performance Level requirements in any Measurement Period, SDS reserves the right to withhold payment of all or part of each such non-compliant claim, or where the claim (or part of the claim) has been paid, recover all or part of such payment.

10.5.5 Not used

11 Application to Complete MA (or part of MA)

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

12 Warranties and Representations

12.1 You warrant and represent to us that:-

12.1.1 you have full capacity and authority and all necessary consents (including, where your procedures require, the consent of your Parent Company) to enter into and to perform your obligations under the MA Contract;

12.1.2 the MA Contract (and any ancillary documentation) is executed by your duly authorised representative;

12.1.3 in entering into the MA Contract, you have not committed and shall not commit any Fraud;

12.1.4 as at the commencement of the MA Contract, all information, statements and representations contained in the documents submitted in respect of the relevant ITT Response are true, accurate and not misleading except as you may have specifically disclosed in writing to us prior to the execution of the MA Contract and you will promptly advise your SDS assigned Contract Executive in writing of any fact, matter or circumstance of which you may become aware which would render any of that information, or statement or representation to be false or misleading;

12.1.5 you have not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the conditions on which any tender is made in respect of the MA Contract;

12.1.6 you have not caused or induced any person to enter any arrangement referred to in Condition 12.5.1;

12.1.7 you have not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for the performance of Services relating to MA Programmes under the MA Contract.

12.1.8 you have not committed any offence under the Bribery Act 2010;

12.1.9 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of your knowledge and belief, pending or threatened against you or any of your assets which will or might affect your ability to perform your obligations under the MA Contract;

12.1.10 you are not required to comply with any contractual obligation, compliance with which is likely to impact your ability to perform your obligations under the MA Contract;

12.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of your knowledge, are threatened) for your winding up or for your dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of your assets or revenue; and

12.1.12 in the three (3) years prior to the date of the MA Contract:-

12.1.12.1 you have conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to you in any country where you file accounts;

12.1.12.2 you have been in full compliance with all applicable securities laws and regulations in the jurisdiction in which you are established; and

12.1.12.3 you have not performed any act or omission with respect to your financial accounting or reporting which could have an adverse effect on your position as an ongoing business concern or your ability to fulfil your obligations under the MA Contract.

13 Prevention of Bribery and Anti-Slavery and Human Trafficking Laws and Offences

13.1 You must not do anything that gives or offers any kind of inducement or reward to any of our employees or contractors in relation to the MA Contract including, offering any kind of corporate hospitality. Doing so may be a criminal offence.

13.2 Without cancelling or reducing or otherwise superseding our rights under Condition 13.1 above, you will and will procure that all your personnel, Permitted Sub-contractors, agents, directors, and representatives will:-

13.2.1 comply with all rules and regulations applicable in the UK relating to anti-bribery and anti-corruption including the Bribery Act 2010;

13.2.2 not engage in any practice, activity or conduct which is an offence under the Bribery Act 2010 or which would constitute such an offence if such practice, activity or conduct had been carried out in the UK; and

13.2.3 notify us (in writing) if you become aware of any breach of this Condition 13.2.

13.3 In performing your obligations under the MA Contract, you shall:

13.3.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;

13.3.2 not engage in any activity, practice or conduct that would constitute an offence under the Human Trafficking and Exploitation (Scotland) Act 2015 if such activity, practice or conduct were carried out in the UK;

13.3.3 include in contracts with your Permitted Sub-contractors provisions which are at least as onerous as those set out in this Condition;

13.3.4 notify us as soon as you become aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the MA Contract; and

13.3.5 maintain a complete set of records to trace the supply chain of all Services provided to us in connection with the MA Contract and provide us and our third party representatives access to such records.

13.4 You represent and warrant that you have not been convicted of any offence involving slavery and human trafficking nor have you been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

13.5 You must not commit or attempt to commit any offence: (i) of fraud, uttering or embezzlement at common law or (ii) of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.

13.6 Any breach of this Condition 13 shall be deemed a material breach which is not capable of being remedied.

13.7 In the event that we terminate the MA Contract due to your breach of this Condition 13, we may also terminate any other contract we have with you, immediately and without incurring any liability.

14 Statutory and other Requirements

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

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

14.3 Where in relation to any of the activities performed, or to be performed by you pursuant to the MA Contract, any of your employees and/or agents is carrying out (or has been offered or supplied for) a 'regulated role' under section 91 of the Protection of Vulnerable Groups (Scotland) Act 2007 (the 2007 Act) with either children (Schedule 2 of the 2007 Act) or adults, (Schedule 3 of the 2007 Act), (as each term 'child' and 'adult' is defined in the 2007 Act), by entering into this MA Contract you agree that you (and shall procure that each of your agents) meet and shall continue to meet for the period of the MA Contract, all legal requirements of the 2007 Act.

14.4 Where any individual carrying out, or being offered or supplied for, a 'regulated role' as referred to in Condition 14.3 above, is the subject of a report made by you (or your agents, as applicable) to Scottish Ministers pursuant to sections 3, 4, 5 or 8 of the 2007 Act, you will advise your Skills Investment Adviser as soon as reasonably practicable that you (or your agents, as applicable) had cause to make the report.

14.5 Where any individual is carrying out, or being offered or supplied for, a 'regulated role' as referred to in Condition 14.3 above you will, (and shall procure that your agents will) if requested by us, immediately make available all of your (or as applicable, your agents') relevant policies and procedures to your Skills Investment Adviser. If we tell you to provide them to someone else instead, you will (and shall as applicable, ensure that your agents will,) provide them to that other person.

14.6 Not used.

14.7 You shall not, and shall use reasonable endeavours to ensure that your Staff and representatives shall not, do anything which:-

14.7.1 shall, or may, bring SDS, the Scottish Ministers, the MA programme, and/or any aspect of SDS's or any Scottish Minister's business into disrepute;

14.7.2 may expose SDS, any Scottish Minister or the MA Programme or any aspect of SDS's or any Scottish Minister's business to disrepute, scandal, ridicule or contempt, or would tend to shock, insult or offend the public in Scotland;

14.7.3 reflects unfavourably on the reputation of SDS, any Scottish Minister or the MA Programme or any of our or any Scottish Minister's services, interests or activities; or

14.7.4 might affect the supply and/or exploitation of the services, activities and interests of SDS, any Scottish Minister or the MA Programme.

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

14.8.1 the posting or publishing on social media or elsewhere of any content that promotes bigotry, racism or discrimination based on race, sex, gender reassignment, religion, nationality, disability, sexual orientation or age or any other Protected Characteristics (as defined under the Equality Act 2010);

14.8.2 the expression of any political views in a context that could give rise to an association with our or any Scottish Minister's business;

14.8.3 the use of, trade in, or other association with, illegal drugs.

15 Signatures, SDS Documents, Forms and Processes

15.1 Except to the extent that any document is described in any of the Contract Documents as being a mandatory document, (in which event this Condition 15.1 shall not apply, and the mandatory document must be used by you in the prescribed form) where any document, form or process relating to the MA Programme has been provided by SDS, you may use your own alternative document, form or process, provided that the document, form or process you use conforms fully at all times with the minimum requirements set out in the Specification and Conditions, and the document, form or process published by SDS (in each case, as amended from time to time), and is presented in a readable format that is satisfactory to us. For the avoidance of doubt, you must ensure that your alternative document, form or process is at all times kept up to date and reflects the SDS Specification and Conditions, document, form or process (as applicable) published by us at the time you are required to complete the document or form to apply the process (as applicable).

15.2 Where the MA Contract refers to a requirement for a signature, the signature will require to be made in accordance with paragraph 3.9 of the Specification.

16 Conflicts of Interest

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

16.2 You shall immediately email or write to your assigned Skills Investment Adviser, to provide full details if any conflict referred to in Condition 16.1 above arises or is likely to arise.

16.3 We may:-

16.3.1 terminate the MA Contract (or any part of the contract) without penalty to us, immediately by giving notice in writing to you; and/or

16.3.2 take any other steps we deem necessary

where in our reasonable opinion, there is or may be an actual conflict, or a potential conflict, between your financial or personal interests and the duties owed to us under the provisions of the MA Contract.

17 Safeguard Against Fraud

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

18 Data Protection

18.1 Subject to Condition 18.2, the parties agree that they are each a "Data Controller" in terms of the Data Protection Legislation and that any sharing of Personal Data between you and us relating to the MA programme will be on a Data Controller to Data Controller basis. You shall comply with the Data Protection Legislation and shall ensure that you have obtained all permissions required in relation to the Data Protection Legislation to enable you to comply with the requirements of the MA Contract. Appendix 2 (Data Sharing) applies in respect of all Personal Data that is shared between you and us, (under exception of Processed Data) in relation to the MA Contract.

18.2 In relation to the collection and processing of Processed Data only, the parties agree that we shall be the Data Controller and you will be the Data Processor. You will act only on our instructions and ensure that there are appropriate technical and organisational measures in place to ensure the security of the personal data comprised in the Processed Data in accordance with the Data Protection Principles set out in Data Protection Legislation and shall not use any Personal Data comprised in the Processed Data for any other purpose nor shall you disclose the same to any third person. You will comply with the provisions of Appendix 3 (Processed Data) in respect of the Processed Data.

18.3 You shall, at all times during and after the MA Contract, indemnify us and keep us indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by us arising from any breach of your obligations under this Condition 18 (and the corresponding appendices) except and to the extent that such liabilities have resulted directly from our instructions.

18.4 We acknowledge that you rely on us alone for direction as to the extent you are entitled to use and process the Personal Data where you are a Data Processor under the MA Contract. Subject to paragraph 4 of Appendix 3 to these Conditions, you shall be entitled to relief from liability in circumstances where the Data Subject makes a claim or complaint with regards to your actions to the extent that such actions directly result from instructions received from us in connection with the Processed Data.

19 Freedom of Information

19.1 To the extent that either party ("FOISA Party") is subject to the requirements of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (together 'FOISA') in relation to a request for Information relating to the MA Contract between the parties, the other party shall assist and cooperate with the FOISA Party to enable the FOISA Party to comply with its Information disclosure obligations.

19.2 The other party shall and shall procure that its sub-contractors and agents shall at its cost:-

19.2.1 where the request has been sent to the other party by the requester but requires to be addressed by the FOISA Party, transfer to the FOISA Party all such requests for Information that it receives as soon as practicable and in any event within four calendar days of receiving a request for Information;

19.2.2 provide the FOISA Party with a copy of all Information in its possession or power in the form that the FOISA Party reasonably requires, within 7 calendar days (or such other period as we may specify) of the FOISA Party's request; and

19.2.3 provide all necessary assistance as reasonably requested by the FOISA Party to enable the FOISA Party to respond to the request for Information within the relevant time for compliance set out in FOISA.

19.3 The FOISA Party shall be responsible for determining in its absolute discretion and notwithstanding any other provision in or relating to the MA Contract or any other agreement, whether the Information and/or any other Information is exempt from disclosure in accordance with the provisions of FOISA, and may at its absolute discretion disclose to a third party any Information relating to or provided by or on behalf of the other party.

19.4 In no event shall the other party respond directly to a request for information unless expressly authorised to do so by the FOISA Party.

20 Insurance

20.1 You shall have in force and shall require any sub-contractor to have in force for the period of the agreement:

20.1.1 employer's liability insurance in accordance with all legal requirements that apply during the period of the agreement, and

20.1.2 public liability insurance for such sum and range of cover as we may specify in our invitation to tender and/or Specification. If we have not specified any requirements, public liability insurance for the sum and range of cover as you deem to be appropriate, covering as a minimum all matters which are the subject of indemnities or compensation obligations relating to the MA Contract in total.

20.2 The policy or policies of insurance referred to in Condition 20.1 shall be shown to us whenever we request, together with satisfactory evidence of payment of all premiums due by the date of our request.

21 Termination

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

21.1.1 where, in our opinion, you have failed to comply with any terms of the MA Contract,

21.1.2 where, in our opinion, you are unable to perform your obligations in terms of the MA Contract,

21.1.3 in the event that we cease to be engaged in the performance or support of the MA Programme;

21.1.4 where you have any accreditation from any Awarding Body withdrawn (in each case whether temporarily or permanently), or where it is not renewed;

21.1.5 where you fail to

21.1.5.1 notify us of any hold placed on any accreditation by an Awarding Body;

21.1.5.2 notify us of any sanction which may impact on an Apprentice achievement; or

21.1.5.3 provide us with a copy of any Awarding Body External Verifier's report containing any action,

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

21.1.6 where you and/or any of your directors or Staff has committed a crime which we consider to be serious;

21.1.7 where an Insolvency Event as described in Condition 38 has occurred in relation to you;

21.1.8 where we terminate any other contract we entered into with you as a consequence of your breach;

21.1.9 where we become aware of any breach of any other agreement we entered into with you at any time (irrespective of whether the agreement has expired or is still in operation, and irrespective of whether the breach occurred before or after the date of the MA Contract), which breach (or breaches) would entitle (or would have entitled) SDS to terminate the agreement that was breached;

21.1.10 if we reasonably consider that the MA Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of The Public Contracts (Scotland) Regulations 2015 (as may be amended or replaced from time to time);

21.1.11 if you fail to comply with legal obligations in the fields of environmental, social and employment law when performing the MA Contract;

21.1.12 if at any time, we have reasonable cause to believe that at the time of awarding the MA Contract to you, (or, if the MA Contract has been assigned or novated to you, the party assigning or novating to you), you (or the assigning or novating party) were in one of the situations referred to in regulation 58(1) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and that you (or the assigning or novating party) should therefore have been excluded from the procurement procedure;

21.1.13 if we have reasonable cause to believe that you (or, if the MA Contract has been assigned or novated to you, the party assigning or novating to you), have committed an act or engaged in an activity listed in regulation 58(8) of The Public Contracts (Scotland) Regulations 2015, as read with regulation 58 paragraphs (13) – (17), in which case we shall also consider and apply any relevant guidelines or policy notes which may be issued by the Scottish Government from time to time (which shall include, but not be limited to, any guidelines or policy notes relating to blacklisting practices); or

21.1.14 where you are individual and you shall die or be adjudged incapable of managing your affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003.

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

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

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

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

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

21.4 If we terminate the MA Contract (or any part of the MA Contract) for breach, we shall be entitled to terminate any other contract we have entered into with you, without penalty to us, by serving written notice on you with effect from the date we specify in the notice.

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

21.6 In order to avoid any doubt, we shall be entitled to rely on any evidence that we consider appropriate, acting reasonably, from any source, that you have not complied with any provision within the MA Contract.

21.7 You may without penalty to us, terminate the MA Contract by serving written notice on us if we make any material change to these Conditions, or the Specification. Where we make any change that materially increases the costs you incur when providing the Services, this will be considered to be a material change. The date of termination shall be the date which we confirm as the date on which the relevant change to the Conditions (or the Specification) takes effect (or the date occurring 4 weeks after the date on which the date of the relevant change is confirmed, whichever is the later), and you must serve your notice (in accordance with Condition 32 (Notices)) prior to that date. Your right to terminate under this condition shall cease on that date, and shall not be extended.

21.8 SDS shall be entitled to require the Provider at any time, to deliver to SDS immediately on demand, all the evidence required under the MA Contract to support all outstanding claims and payments under the MA Contract. SDS shall be entitled to satisfy itself, acting reasonably, that all supporting evidence is available, complete and accurate before SDS makes any such payment, in addition to SDS's right to recover any payments made where the required supporting evidence has not been made available.

22 Business Continuity

22.1 You will ensure that you and your permitted Sub-contractors have in place, maintain and, if required, implement plans and procedures to ensure business continuity, and no disruption to the provision of the Services, both in relation to general day-today disruptions and disaster recovery.

23 Other Remedies

23.1 Your attention is drawn to Condition 33.3.

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

23.2.1 If you have received payment from us which you were not due to receive under the terms of the MA Contract we are entitled to recover up to the full amount of the funding paid to you, from you. We may also be entitled to recover additional losses that we have incurred. We may deduct any sums due to us (whether under this MA Contract or otherwise), from any payments you are due to receive from us, or, if we request, you must pay the sums to us immediately following our request. To be clear, where the MA Contract has been assigned or novated to you by another party, and liability under this MA Contract and any additional contracts (whether extant or expired) entered into between SDS and that party, transfers to you pursuant to the terms of the assignation or novation, you shall be liable to SDS for all such overpayments made to that party.

23.2.2 If you fail to provide any part of the Services entirely as set out in the MA Contract, this shall be a breach of the MA Contract as set out in Condition 21.1. This shall include any failure by you to provide the required evidence, or any failure by you to demonstrate that you met required timescales set out in the MA Contract. Where you are in breach, we shall be entitled to:-

23.2.2.1 suspend any or all payments under the MA Contract and any other contract you have entered into with us, until we have concluded a full investigation of your activities. Except where it may not, in our reasonable opinion, be appropriate to do so, we will give you written notice if we are going to suspend payment, and shall set out the date the payment suspension will start. We may also include details of the anticipated duration of the payment suspension in the notice, or advise you about that separately in writing. We may extend the duration of the payment suspension if we have good reason to do so in order to complete a full investigation.

23.2.2.2 suspend your appointment under the MA Contract and any other contract you have entered into with us. Except where it may not, in our reasonable opinion, be appropriate to do so, we will give you written notice if we are going to suspend your appointment, and shall set out the date the suspension will start. We may also include details of the anticipated duration of the suspension in the notice, or advise you about that separately in writing. We may extend the duration of the suspension if we have good reason to do so in order to complete a full investigation. You should note that this would include a right for SDS to suspend issuing any Contract Schedule to you in the event of any extension of the MA Contract;

23.2.2.3 suspend your right to access FIPS under the MA Contract and any other contract you have entered into with us, until we have concluded a full investigation of your activities. Except where it may not, in our reasonable opinion, be appropriate to do so, we will give you written notice if we are going to suspend FIPS, and shall set out the date the FIPS suspension will start. We may also include details of the anticipated duration of the suspension in the notice, or advise you about that separately in writing. We may extend the duration of the FIPS suspension if we have good reason to do so in order to complete a full investigation.

23.2.2.4 recover from you up to the full amount of all the funding we have paid to you under the MA Contract, which you shall pay immediately. Any funds we recover shall not be repaid to you;

23.2.2.5 permanently withhold any or all future payments which we may otherwise require to pay to you, in respect of each Apprentice under the MA Contract, and under any other contract you have entered into with us;

23.2.2.6 reduce the volume of Starts and corresponding value we awarded to you under the applicable Contract Schedule (in which event you shall require to promptly sign your acceptance of appropriate amendments to the applicable Contract Schedule as we set out);

23.2.2.7 serve a notice on you requiring you to fully correct the breach (if it is capable of being fully corrected). The notice will set out the period for fully correcting the breach, which period shall not be longer than 28 calendar days. If the breach has not been fully corrected by the end of the specified period, we may then terminate the MA Contract and/or any other contract you have entered into with us (or part of the MA Contract, or any other contract) under Condition 21; and/or

23.2.2.8 require you to agree to an action / improvement plan (or Quality Action Plan, whichever we indicate) setting out corrective actions you require to take, and the required timescale for completing the corrective actions. If the corrective actions have not been properly completed within the required timescale, or if during the specified period, we are of the reasonable opinion that there is no reasonable prospect of you properly completing the corrective actions within the stated timescale, we may terminate the MA Contract and/or any other contract you have with us.

23.3 If an Apprentice fails for any reason to validate all required information in accordance with the requirements set out in paragraph 4.3.4 of the Specification within the timeframe we have specified, we may suspend the Apprentice's registration as a Start until the validation requirements have been fulfilled. We may require the relevant validation to be completed within an extension period, if we set one. If the relevant validation is not made within the extended period or if we do not consider it appropriate to extend the period for completing the validation, we shall be entitled to cancel the Apprentice's registration as an Apprentice. To be clear, we have no obligations to you under the MA Contract in respect of (i) any individual until the individual is registered and validated as an Apprentice in terms of the MA Contract, and (ii) any registered Apprentice whose registration as an Apprentice has been suspended or cancelled for any reason. This is the case even if you have provided MA training to that individual.

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

23.5 We shall be entitled to deduct from any payments that are due to you under the MA Contract or any other contract you have with us:-

23.5.1 any sums you owe us, however and whenever these sums arise; and

23.5.2 any sums due to us by any person to whom you have transferred your undertaking except to the extent that SDS has expressly limited your liability in relation to such transfer;

or if you are not due to make any further claims, or if we otherwise request, you will immediately repay those sums to us.

23.6 Where we discover that you have submitted any inaccurate claims for payment to us, we shall be entitled, in addition to requiring repayment of those amounts, to apply extrapolation at the rate of inaccuracy identified and to demand repayment of a proportion of claims which are deemed to have been paid erroneously on the basis of the extrapolation.

23.7 Not used.

23.8 Where we become aware of any breach of any other agreement which we entered into with you at any time for the provision by you of services relating to modern apprenticeships, and where we believe that you may be committing a similar breach of your MA Contract, we may require you to agree to an action/improvement plan. The process for that is set out in Condition 23.2.2.8;

23.9 If you had an MA Contract in force as at 31 March 2026, and an action/improvement plan was in operation or had been requested or otherwise agreed under that contract at the end of that contract, that action/improvement plan undertaking shall continue to apply to you under this MA Contract, unless you receive an email from your SDS assigned Skills Investment Adviser telling you that the action/improvement plan shall no longer apply.

23.10 We shall also be entitled to exercise the powers set out in Condition 23.2.2.1 - 23.2.2.3 (SDS rights of suspension) where we reasonably suspect that you are in breach of the MA Contract.

24 Consequences of Termination and Expiry

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

24.2 We shall not require to pay you for activity you perform after the date of termination, unless you have the prior written agreement of your Skills Investment Adviser that we will make such payments.

24.3 Each condition and associated requirement under the MA Contract which states specifically or otherwise implies that it is intended to remain in force after the termination/expiry date shall remain in force after the termination or expiry of the MA Contract. This includes all provisions entitling us to recover sums paid, Condition 13 (in so far as it relates to the prevention or commission of bribery) (Prevention of Bribery and Anti-Slavery and Human Trafficking Laws and Offences), Condition 17 (Safeguard Against Fraud), Condition 18 (Data Protection), Condition 19 (Freedom of Information), Condition 21 (Termination), Condition 23 (Other Remedies), Condition 24 (Consequences of Termination and Expiry), Condition 25 (Liability), Condition 28 (Records, Audit Access and General Assistance), Condition 29 (Confidentiality), Condition 35 (Marketing, Branding and Publicity), Condition 36 (Intellectual Property Rights) and Condition 37 (Transfer of Undertakings), and in each case, all associated provisions set out in any appendices.

24.4 On the expiry or earlier termination of the MA Contract or any part of the contract for any reason, you shall provide all assistance that we request. We may include within our request, a requirement for you to delete and/or deliver to any person we identify all documents and data (including all Personal Data you process as a Data Processor under Condition 18, except where applicable UK or EU law requires that you must continue to store the Personal Data in your possession, custody or control relating to the performance of your obligations under the MA Contract), so as to facilitate a smooth and swift winding up of business between you and us.

24.5 Following expiry or earlier termination of the MA Contract, you shall not represent that you are contracted to provide training under the MA Programme and you shall not, even if previously permitted to do so, use or continue to use any SDS branding.

25 Liability

25.1 Except to the extent that we have limited our liability in Condition 25.2, our total liability to you for any costs and/or losses you incur or suffer in relation to the MA Contract shall be capped at the total charges due to you for performing the Services under the relevant Contract Schedule(s) in relation to which the costs and/or losses have arisen.

25.2 In no event shall we limit our liability under the MA Contract for:-

25.2.1 Death or personal injury caused by the negligence of us or our staff;

25.2.2 Fraud or fraudulent misrepresentation by us, our staff or representatives.

26 Not used

27 Equal Opportunities

27.1 You must ensure that in providing the Services no person receives unlawful treatment contrary to the Equality Act 2010. You will also make sure that anyone acting on your behalf and your employees and Permitted Sub-contractors involved in the MA Contract do not act contrary to the Equality Act 2010, and that those involved in the management or operation of the MA Contract have at all times received appropriate training on anti-discrimination legislation and associated good practice in relation to equality, diversity and inclusion.

27.2 You must carry out appropriate monitoring of your equality, diversity and inclusion policies and employment practices and provide us with evidence of this, if we ask.

27.3 You will take all reasonable steps to ensure that all Services supplied under the MA Contract are produced and/or performed in accordance with all employment rules and regulations applicable in the UK, and all International Labour Organisation conventions that have been ratified by the country of their origin, in particular (but without limitation) in relation to working conditions and the use of child labour.

27.4 Should part or all of the Services be performed at your premises, you will ensure that your premises comply fully with the requirements of the Equality Act 2010.

27.5 Nothing in this Condition 27 cancels or reduces your obligations relating to equality set out in paragraph 3.1 of the Specification.

28 Records, Audit Access and General Assistance

28.1 Not used

28.2 Not used.

28.3 You shall retain, and you shall ensure that your Permitted Sub-contractors retain, full and accurate records and accounts of your operation of the MA Contract including the Services provided under it, and the amounts we pay you, and that you pay your Permitted Sub-contractors under and in relation to the MA Contract. All of these records and accounts shall include the documents, forms and processes that evidence completion of all requirements in the Specification.

28.4 Where the records relate to the provision of Services in relation to any Apprentice, you will do this (and ensure that your Permitted Sub-contractors do this), from the start date of the Apprentice until the date occurring 3 years after the expiry of the Contract Schedule that you have in place at the date the Apprentice is registered on FIPS as having left their MA framework (or any alternative date that we may tell you).

28.5 You shall retain, and shall ensure that your Permitted Sub-contractors shall retain, all other records from the start date of the MA Contract until the date occurring 3 years after the expiry of the MA Contract (as extended, if applicable).

28.6 To be clear, where any previous contract for MA services you have with SDS requires you (and any Permitted Sub-contractors) to retain any then current records, these records must still be retained in accordance with that contract but all such records relating to the provision of Services in connection with any Apprentice will require to continue to be retained by you and your Permitted Sub-contractors until the date occurring 3 years after the expiry of the Contract Schedule that you have in place at the date the Apprentice is registered on FIPS as having left their MA framework (or any alternative date that we may tell you).

28.7 You shall, and shall ensure that each Permitted Sub-contractor shall, keep the records, evidence and accounts referred to in this Condition 28 in accordance with good accountancy practice, the Specification (3.8) and this Condition 28. All records must be retained in an accessible and ordered format. You are permitted (but not required) to destroy any and all Original Records once you are satisfied that each Original Record has been copied and securely retained by you in accordance with SDS's records requirements. Where you elect to retain such copy records rather than Original Records, you shall ensure that you have in place all necessary controls to ensure the quality, legibility, accuracy and completeness of each such copy, and you warrant and undertake to SDS that each copy record you submit or otherwise make available to SDS is a true and accurate copy of the Original Record. Your attention is drawn to Condition 9.11 as regards reliance on such copy records, and to your obligations to ensure that all Processed Data is at all times processed in accordance with SDS's instructions, including instructions relating to destruction of such data which obligation is not affected by this Condition 28.7.

28.8 You shall, and shall ensure that your Permitted Sub-contractors shall, allow us and/or (as the case may be) our Auditors immediate and unlimited access to all the records, evidence and accounts the Auditor may request from time to time for the purpose of auditing your compliance with your obligations under the MA Contract. This access shall at the Auditor's entire discretion, be at:-

28.8.1 your premises (or the premises of your agents or your own auditors, if the records, evidence and/or accounts are ordinarily stored there); or

28.8.2 premises within Scotland identified by the Auditor.

28.9 You shall at your entire cost, provide the records, evidence and accounts (together with copies of your published accounts) requested by the Auditor, during the term of the MA Contract and for the further required retention period to the Auditor immediately on request by the Auditor. The provision shall, at the Auditor's entire discretion, be made at your premises (or the premises of your agents, if applicable) or, at such premises within Scotland as the Auditor may specify.

28.10 You shall, and shall ensure that your Permitted Sub-contractors shall, immediately following the Auditor's request, provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:-

28.10.1 providing unlimited access to all information requested by the Auditor;

28.10.2 providing unlimited access to sites you or your Permitted Sub-contractors control and to equipment you, or your Staff use in performing the Services;

28.10.3 providing unlimited access to your Staff, representatives, Apprentices, and proposed and former Apprentices; and

28.10.4 providing the Auditor with suitable oral or written explanation as requested.

28.11 You shall bear your own costs and expenses incurred in respect of your compliance with your obligations under this Condition 28. If the audit reveals a material breach by you of any of your obligations, and if we request, you shall reimburse us and/or our agents' or representatives' (as applicable) all reasonable costs incurred in relation to the audit.

28.12 Where we request, you shall forward all related records, evidence, accounts and supporting documentation you and your Permitted Sub-contractors are required to retain, to us for retention, and you shall complete and sign any documentation that we may reasonably require, confirming the details of the records provided. All records must be in an ordered format, and if requested by SDS or any other Auditor, you must, and shall ensure that your Permitted Sub-contractor (as applicable) shall, complete and deliver the records, and an inventory of the records in such format as shall be provided to you. Where any of the records are in electronic format, you shall, and shall ensure that your Permitted Sub-contractor shall (at your expense) secure any licence for us (and/or our Auditors) that may be required to enable access to the records. Where for any reason, you and/or your Permitted Sub-contractor fail to forward any records, accounts and/or supporting documentation in accordance with any request from us, we shall be entitled to arrange for the transfer and storage directly, and all costs incurred by us in that respect shall be payable by you immediately on demand. Your attention is drawn to Condition 33.3 which provides that this Condition 28.12 does not restrict the options available to us and does not prevent or restrict us from exercising any other right or remedy that we may have, including recovering our costs in the event that SDS exercises any rights under this Condition as a result of your or your Permitted Sub-contractor failure to meet your current (or inability to meet your future) retention obligations under the MA Contract.

28.13 Where at any time during the period of the MA Contract, or any subsequent retention period, you are unable to fulfil any of your retention obligations (including your obligations to ensure compliance of Permitted Sub-contractor retention obligations) you shall immediately email your SDS assigned Skills Investment Adviser providing a detailed explanation of the provisions you are unable to fulfil, and the reasons why. This neither cancels nor reduces your obligation to comply with these provisions, nor prevents or restricts us from exercising our rights and remedies as set out in Condition 33.3.

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

28.14.1 assist us in responding to requests for information relating to service providers and/or provider services that the Scottish Ministers (or their agents) may request from time to time; and/or

28.14.2 assist us and/or the Scottish Ministers (or their representatives) in developing policy for modern apprenticeships or similar programmes.

28.15 You shall and shall ensure that your Permitted Sub-contractors shall:-

28.15.1 permit our authorised representatives unlimited access to interview Apprentices and to examine all records and all other supporting documentation in particular, evidence of assessment relating to the delivery of training;

28.15.2 provide us with suitable oral or written explanation if requested; and

28.15.3 provide us with access to your Staff for interviews on matters covered by the MA Contract.

28.16 The Auditor is entitled at its entire discretion to request you and/or your Permitted Sub-contractors to either:-

28.16.1 upload/scan (as appropriate) the requested records, evidence and/or accounts onto FIPS in accordance with any instructions the Auditor may make available; or

28.16.2 email the requested records, evidence and/or accounts to the Auditor at an email address provided by the Auditor.

28.17 You shall and shall ensure that your Permitted Sub-contractors shall comply with any request referred to in Condition 28.16 promptly, and within any timeframe required by the Auditor, and ensure that all such records are clear, legible, accurate and complete.

28.18 Your obligation to comply with Condition 28.16 does not remove or limit your, or your Permitted Sub-contractor obligation to (i) retain all records, evidence and accounts as required under the Conditions, and (ii) make the original or as applicable, copy records, otherwise available in accordance with this Condition 28.

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

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

29 Confidentiality

29.1 The MA Contract will not be treated as confidential information and may be disclosed without restriction.

29.2 Unless we give you prior written permission to disclose the information in the form of an email from your SDS assigned Skills Investment Adviser confirming the extent of the permission, all information which you obtain from us or which becomes known to you in connection with the MA Contract must be kept secret and only used by you to perform your obligations under the MA Contract. This does not apply to information which is already known to the public.

30 Assignation and Sub-contracting

30.1 You shall not assign, novate, sub-contract or otherwise dispose of any of your rights or obligations under the MA Contract without our prior written consent in the form of an email setting out the details of the consent from procurement@sds.co.uk. We will not unreasonably withhold our consent. Any assignation or novation will not become effective until the assignation/novation agreement is signed by and a copy delivered to, all relevant parties. All requests for our consent should be sent by you to procurement@sds.co.uk.

30.2 Where we grant consent to you to sub-contract in accordance with Condition 30.1, we reserve the right to withdraw our consent where we have reasonable grounds no longer to approve of the Permitted Sub-contractor or the sub-contracting arrangement.

30.3 In respect of any sub-contracting we have consented to under Condition 30.1:-

30.3.1 without cancelling or reducing or otherwise superseding your express obligations to include specific provisions set out in this Condition 30 or otherwise under these Conditions, you shall ensure that so far as is possible, the terms of the MA Contract are properly and reasonably reflected in the terms of each contract you have with a Permitted Sub-contractor and that so far as is possible each Permitted Sub-contractor shall at all times be bound by obligations equivalent to those that apply to you under the MA Contract;

30.3.2 you shall include and maintain provisions in a written contract with each Permitted Sub-contractor:-

30.3.2.1 which provide that the Permitted Sub-contractor cannot assign the sub-contract to another party without your consent (and you shall not grant that consent without our prior written consent in the form of an email from procurement@sds.co.uk setting out the details of the consent provided);

30.3.2.2 requiring you to pay the Permitted Sub-contractor all sums due by you to the Permitted Sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements;

30.3.2.3 stating that where we have paid you in respect of any of the Services and the Permitted Sub-contractor's invoice relates to those Services then, to that extent, the invoice must be treated as valid and provided you are not exercising a right of retention or set-off in respect of a breach of contract by the Permitted Sub-contractor or in respect of a sum otherwise due, payment must be made to the Permitted Sub-contractor without deduction;

30.3.2.4 which notify the Permitted Sub-contractor that the sub-contract forms part of a larger contract for SDS's benefit and that should the Permitted Sub- contractor have any difficulty in securing timely payment of an invoice, that matter may be referred by the Permitted Sub-contractor to SDS;

30.3.2.5 in the same terms set out in Conditions 30.3.2.3 and 30.3.2.4 and this Condition 30.3.2.5, to ensure that similar provisions are included as between Permitted Sub-contractor and further sub-contractor modified to refer to the correct designation of the equivalent party as you and the Permitted Sub-contractor as the case may be; and

30.3.2.6 as required under Condition 13.3.3 and anywhere else in these Conditions.

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

30.5 No sub-contracting by you whether under this Condition 30 or otherwise, and no approval or consent by us in relation to any sub-contracting shall relieve you of any liability or obligation under the MA Contract.

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

30.6.1 a right for you to terminate that Permitted Sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law, or if any of the termination events (involving substantial modification of the MA Contract or contract award despite the existence of exclusion grounds) specified in Condition 21 occur;

30.6.2 a requirement that the sub-contractor includes a provision having the same effect as Condition 30.6.1 above in any sub-contract which it awards.

30.7 For the purposes of Condition 30.3 only, "Permitted Sub-contract" means a contract between two or more suppliers, at any stage of remoteness from us in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the MA Contract.

30.8 In order to avoid any doubt, you cannot substitute or permit the substitution of a Permitted Sub-contractor without our prior written consent and as a condition of giving such consent we can require the incoming sub-contractor to enter into a sub-contract on the same basis.

30.9 In the event that SDS confirms in writing to you that the MA Contract (or any part of the MA Contract) requires to transfer to the Scottish Funding Council for the purposes of the Tertiary Education and Training (Funding and Governance) (Scotland) Act 2025 , you hereby consent to the novation of the MA Contract (or, as applicable, such part of the MA Contract as specified by SDS) to the Scottish Funding Council with effect from such date as SDS shall specify. Without prejudice to the foregoing, if SDS requests, you shall promptly enter in a written novation agreement to that effect.

30.10 In order to avoid any doubt and without cancelling or reducing or otherwise superseding the scope of the preceding provisions of this Condition 30, the requirements of this Condition 30 shall apply even where you intend to delegate or sub-contract any of your rights or obligations under the MA Contract to a Group Company.

30.11 We reserve the right to charge an administration charge to reflect our costs incurred in considering, approving and/or agreeing the terms of any assignation or novation agreed, or (as applicable) considering and/or consenting to any sub-contract arrangement requested after the commencement date of the MA Contract which you shall pay within 28 calendar days of our request. Such costs may include the costs of any compliance checks we require to undertake.

31 Change of Your Name

31.1 You shall, no later than 10 calendar days following any change in the name of your company, or your trading name, inform us by emailing procurement@sds.co.uk providing full details of the change.

32 Notices

32.1 No notice from either us to you, or you to us, shall be valid under the MA Contract unless it is made in writing by or on behalf of the party sending the communication (which shall include pdf). The only exception to this is where any paragraph in the Specification or any Condition specifically states otherwise, in which event that alternative statement shall apply in relation to that paragraph/Condition only.

32.2 Any notice which is to be given by either us to you or you to us shall be sufficiently served if given by letter (sent by hand, first class registered post by the recorded delivery service, or by email). These letters shall be addressed to the other party in the manner referred to in Condition 32.3. Under exception of notices sent by email, provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given (i) if delivered by hand, at the time the notice is left at the proper address or (ii) if sent by first class registered or recorded delivery post, two Business Days after the date of posting, or in each case, sooner where the other party acknowledges receipt of such letter. Any email notice that has been sent in accordance with this Condition 32 shall be deemed to be delivered at 9am on the first Business Day after sending (or sooner where the other party acknowledges receipt of such email) notwithstanding that it may be returned as undelivered, or blocked or otherwise not received by the addressee.

32.3 For the purposes of Condition 32.2 the respective address for each party shall be as follows:-

32.3.1 For hand delivered and postal notices to us, at our registered postal address posted on the UK Companies House website as at the date of the notice, or for email notices at procurement@sds.co.uk;

32.3.2 For hand delivered and postal notices to you where you are a UK registered company, your registered postal address posted on the UK Companies House website as at the date of the notice, and for email notices, at each and all of the following email addresses identified in your ITT response under Part 1, section 2 'Contacts' (in each case as amended by you in accordance with Condition 32.5):-

32.3.2.1 Contract Signatory

32.3.2.2 Contact to discuss proposal/Alternate Contact; and

32.3.2.3 Person responsible for management of the contract value (both addresses if more than one was provided by you in your response).

32.3.3 For hand delivered and postal notices to you where you are not a UK registered company, your postal address set out in our award letter to you for this MA Contract or for email notices at each and all of the following email addresses identified in your ITT response under Part 1, Section 2 'Contacts' (in each case as may be amended by you in accordance with Condition 32.5):-

32.3.3.1 Contract Signatory;

32.3.3.2 Contact to discuss proposal/Alternate Contact; and

32.3.3.3 Person responsible for management of the contract value (both addresses if more than one was provided by you in your response).

32.4 Where you are not a UK registered company, you may only change your postal address for service of notices by serving a notice on us confirming the change of address, in accordance with this Condition 32. For email addresses, you may change the email addresses set out in your ITT response Part 1, Section 2 'Contacts' in accordance with Condition 32.5.

32.5 Where you wish to amend any contact information set out in your ITT response under Part 1, Section 2 'Contacts' you must email NTPContracts@sds.co.uk with the updated details. Such details shall be deemed to be effective from the day occurring 5 Business Days after the date of receipt of the email by SDS, or sooner, where SDS proactively acknowledges receipt. Any auto generated email response from SDS (e.g. an out of office response) will not constitute a proactively acknowledged receipt.

32.6 We shall not require to send any notice to any person or position to the extent that any information in Part 1, section 2 'Contacts' provided by you in relation to that person or position is missing, incomplete, inaccurate or has not been updated in accordance with the terms of this Condition 32.

33 General

33.1 No failure or delay by you or us to exercise any right or remedy provided under the MA Contract or by law shall constitute a waiver of that, or of any other right or remedy nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

33.2 If any provision or part-provision of the MA Contract is found by any court or other authority of competent jurisdiction to be invalid, illegal, ineffective or unenforceable, or is suspended or the subject of an equivalent order, that provision or part-provision shall, to the extent required, be deemed not to form part of the MA Contract and you and we shall each use reasonable endeavours in good faith to modify the MA Contract so that the intent of the MA Contract can be legally carried out.

33.3 Except to the extent expressly stated otherwise in these Conditions, any rights, remedies and/or stated consequences provided under the MA Contract are in addition to, and not instead of, any other rights or remedies provided under the MA Contract or provided by law. Each remedy or consequence may therefore be applied alongside any other remedy (or remedies) available. If either you or SDS applies any one remedy, that shall not be deemed to be a decision to apply that remedy to the exclusion of other remedies that may be available.

33.4 Unless it expressly states otherwise, the MA Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of the Contract.

34 Entire Agreement

34.1 Except to the extent any provision contained within the MA Contract clearly states otherwise the MA Contract constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes or cancels out any previous agreement between the parties in relation to such matters;

34.2 You agree that in entering into the MA Contract you do not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as specifically stated in the MA Contract.

34.3 Nothing in this Condition 34 shall operate to exclude liability for fraud or fraudulent misrepresentation.

35 Marketing, Branding and Publicity

35.1 You must conform to all marketing and brand guidelines and standard marketing literature that we may issue in relation to the MA Programme at apprenticeships.scot (or such alternative location as we may advise from time to time).

35.2 You will use only approved programme names in communications with targeted Apprentices and actual Apprentices in relation to the MA Programme. You are not permitted to vary the programme naming conventions or use independent branding.

35.3 You may only use the SDS branding, trademark and other intellectual property rights for the purposes of the MA Contract and shall not use any of our branding, trademark or other intellectual property after the termination or expiry of the MA Contract.

35.4 You must supply case study information if requested by us at any time during the period of the MA Contract.

35.5 Not used.

35.6 You shall use best endeavours to promptly post all MA vacancies on www.apprenticeships.scot.

35.7 You shall use best endeavours to promote Foundation Apprenticeship and Graduate Apprenticeship programmes to employers you engage with in relation to the MA programme.

35.8 Unless we direct you otherwise you shall not make any press announcements or publicise the MA Contract in any way without our prior written consent in the form of an email from your SDS assigned Skills Investment Adviser.

35.9 We shall be entitled to publicise details of the MA Contract in any way we choose to do (including any examination of the MA Contract by any Auditor(s) or otherwise).

36 Intellectual Property Rights

36.1 All intellectual property rights in any material solely produced by you in the performance and during the currency of the MA Contract shall vest in you. You shall grant to us a perpetual, royalty-free licence to use, copy and modify these materials and shall deliver these materials to us if we request them for such purposes. You warrant to us that neither those materials, nor any use of any of them by us will infringe the Intellectual Property Rights of any third party.

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

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

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

37.2.1 the employment or engagement: and/or

37.2.2 the claimed employment or engagement: and/or

37.2.3 the termination of the employment or engagement: and/or

37.2.4 the claimed termination of employment or engagement

of any such current or former employee by any such new provider where such Employment Losses are attributable to the period prior to the date of the relevant transfer of such employee to any such replacement provider for the purposes of TUPE.

37.3 If we ask, you shall promptly enter into an appropriate agreement with any new provider on the same terms as those in Condition 37.2 in order to give effect to Condition 37.2 and you shall indemnify us and keep us indemnified for and against any losses incurred by us which arise from a failure by you to do so, including any losses which may arise under any agreement with or undertaking we give to any new provider which would give the new provider the benefit of Condition 37.2 above.

37.4 Nothing in these Conditions will give rise to the inference that we accept any liability for any person employed by you.

38 Insolvency

38.1 You shall notify us in writing (and email your SDS assigned Skills Investment Adviser and SDS assigned Compliance Officer) immediately in the event that any of the following events ("Insolvency Events") occur during the period of the MA Contract:-

38.1.1 where you are an individual, if you become apparently insolvent within the meaning of Section 16 of the Bankruptcy (Scotland) Act 2016 as amended (or equivalent in any other jurisdiction);

38.1.2 where you are a firm or a number of individuals acting together in any capacity, and where such firm or any partner of the firm or any of those persons acting together becomes apparently insolvent within the meaning of Section 16 of the Bankruptcy (Scotland) Act 2016 as amended (or equivalent in any other jurisdiction);

38.1.3 where you are a company:-

38.1.3.1 and in relation to your company a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, your creditors;

38.1.3.2 and a shareholders' meeting is convened for the purpose of considering a resolution that you be wound up or a resolution for your winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

38.1.3.3 and a petition is presented for your winding up (which is not dismissed within 14 calendar days of its service) or an application is made in relation to your company for the appointment of a provisional liquidator or a creditors' meeting is convened in relation to your company pursuant to applicable winding up legislation in Scotland;

38.1.3.4 and a receiver, administrative receiver or similar officer is appointed over the whole or any part of your business or assets;

38.1.3.5 and in relation to your company, an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

38.1.3.6 and you are or become insolvent within the meaning of Section 123 of the Insolvency Act 1986;

38.1.3.7 and, being a "small company" within the meaning of Section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Part A1 of the Insolvency Act 1986; or

38.1.3.8 in relation to your company, any event similar to those listed in Conditions 38.1.3.1 to 38.1.3.7 occurs under the law of any other jurisdiction.

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

39 Blacklisting Regulations

39.1 You must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Legislation by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Condition is a material default which shall entitle us to terminate the MA Contract with immediate effect.

40 Law and Jurisdiction

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

Appendix 1 - Definitions

"Apprenticeship Approvals Group (AAG)"	means representatives of SDS, Scotland's Colleges, Scottish Qualification Authority, Scottish Training Federation, Scottish Trades Union Congress and Scottish Government, and/or such alternative group;
"Active Financial Period"	means the applicable active financial period as identified within FIPS or by us on the NTP pages of Apprenticeships.scot (as we shall determine);
"Apprentice"	has the meaning set out in paragraph 4.2 of the Specification;
"Apprentice Progress Review" or "APR"	means the process whereby you, the Apprentice, and where applicable, the employer, review the progress being made against the Learning Plan;
"Audit"	means an audit referred to in Condition 28 of the Conditions;
"Auditor"	means SDS and each auditor undertaking any audit or investigation, whether at the request of SDS or under any other authority (which include our agents and third party auditors, which in turn includes representatives of Audit Scotland);
"Awarding Body"	means the relevant awarding body for the approved Qualification identified within the Learning Plan;
"Business Day"	a day, other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business;
"Care Experienced"	means a person who is or was formally looked after by a local authority, in the family home (with support from social services or a social worker) or elsewhere, for example, in foster care, residential/secure care, or kinship care (with family friends or relatives).
"Change of Control"	has the meaning set out in Condition 21.3;
"Conditions"	means these SDS terms and conditions for the provision of Services including the appendices and all other documentation referred to in these conditions and appendices, (in each case as may be varied by the Letter of Award) and 'Condition' shall be construed accordingly;
"Contract Documents"	means the Specification, the ITT, the ITT Response, the Conditions, the Letter of Award and any other document expressly incorporated by reference into the MA Contract, under exception of the Contract Schedules;
"Contract Executive"	means your SDS allocated point of contact for managing your contract volumes and values;
"Contract Schedule"	means each schedule forming part of the MA Contract, which sets out:- • the volume of new Starts (if any) who shall commence their respective MA frameworks during the period specified in the Contract Schedule;

- the total permitted value of expenses claimable under the terms of the MA Contract during the period specified in the Contract Schedule); and
- the total value of the Contract Schedule for all Services to Starts and In-training Apprentices, and all expenses, for the period specified in the Contract Schedule.

"Controlling Interest" means:

- the ownership or control (directly or indirectly) of more than fifty per cent (50%) of the voting share capital of the relevant undertaking; or
- the ability to direct the casting of more than fifty per cent (50%) of the votes exercisable by the partners, members or shareholders of the relevant undertaking;
- the right to appoint or remove directors of the relevant undertaking holding a majority of the voting rights at meetings of the board on all, or substantially all, matters

"Core skills" means collectively, all of the following:

- Communication
- Numeracy
- Problem solving
- Working with others
- Information Technology

"Data Controller" has the meaning set out in the Data Protection Legislation from time to time;

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by you under the MA Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the MA Contract, including any Personal Data Breach;

"Data Processor" or "Processor" has the meaning set out in the Data Protection legislation from time to time;

"Data Protection Impact Assessment" means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party;

"Data Subject" has the meaning set out in the Data Protection Legislation from time to time;

"Disabled" has the meaning set out in section 6 of the Equality Act 2010, as amended from time to time, and 'Disability' shall be construed accordingly;

"Employment Losses"	means actions, proceedings, liabilities, costs, losses, damages, claims, demands and expenses (including, without limitation, all legal and professional fees and expenses, on a full indemnity basis);
"EII Additional Payment"	means an additional payment of £1,000 made to Providers under the EII Scheme in respect of each eligible Apprentice recruited (with a maximum of five payments per Provider per year).
"EII Scheme"	means the Ethnic Intersectionality Incentive Scheme described in the MA Specification.
"FIPS"	means the SDS Funding Information and Processing System portal through which information relating to the MA Programme is recorded by and made available to each of the parties;
"FOISA"	means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 and any subordinate legislation made under each such set of provisions from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant Government department in relation to such legislation;
"Fraud"	means any offence under any laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the MA Contract or defrauding or attempting to defraud or conspiring to defraud us;
"Group Company"	means the employer, its Subsidiaries or Holding Companies from time to time and any Subsidiary of any Holding Company from time to time;
"Information"	has the meaning set out in the Freedom of Information (Scotland) Act 2002;
"Initial Assessment or IA"	has the meaning set out in paragraph 4.3.6 of the MA Specification;
"Insolvency Event"	means any of the events described in condition 38 of the conditions;
"Intellectual Property Rights"	means any patent, trade mark (registered or unregistered), registered design, unregistered design right, copyright, database right, domain name, invention, know how or other similar right or any application for any of the foregoing;
"In-training Apprentice"	means each Apprentice who has not completed their MA framework as at the expiry of a Contract Schedule and who, as at that date, (i) remains registered as an Apprentice on FIPS all in accordance with the MA Contract and (ii) is expected to continue without any interruption with their designated apprenticeship;
"Invitation to Tender" or "ITT"	means our invitation to bidders to tender for the Services;
"ITT response"	means all information you or your agent supplies to us in response to our Invitation to Tender for the provision of the Services to be provided under the MA Contract, including the ITT response section, the volume bid

	documentation and all supporting documentation requested by us in the MA Programme procurement process;
"Learning Plan"	means a learning plan which satisfies the minimum content requirements detailed in the Specification;
"Letter of Award"	means the letter issued by us to you containing our offer to contract with you for the provision of Services to us, the signed duplicate copy of which is returned to us;
"MA Contract"	means the agreement we have entered into with you by virtue of and subject to the provisions contained within the Contract Documents, and each applicable Contract Schedule (if any) and any formal variations to any of these documents to the extent only that they are implemented in accordance with the variation provisions set out in the Specification and the Conditions;
"Milestone"	means a measurable and auditable benchmark against which to measure an Apprentice's progress towards the achievement of their learning plan, and which may be referred to as a start, milestone or outcome, as applicable;
"Month"	means the period of time between the same dates in successive calendar months;
"National Training Programme" or "NTP"	means the Modern Apprenticeship Programme and Graduate Apprenticeship programme;
"New Scots & Ethnic Intersectionality Incentive (EII) Additional Payment Application Form 2026/27"	means the application for the respective New Scots Incentive Additional Payment scheme and EII Scheme available here
"Original Record"	means (i) each hard copy record where you either (a) created the original record of the information in that hard copy form or as applicable, or (b) received the original record of the information in that hard copy form from a third party. This would include: - • a document received by you in print format, (with a wet signature, if a signature is required) and which document is not a copied or scanned version. • a printed template that has been completed in ink, including any required wet signature. It does not include: - • a record (whether electronic or hard copy) that has been further forwarded or copied by you. • any document where the signature is not a wet signature (ii) each electronic record where you either (a) created the original record of the information in that electronic form or as applicable, (b)

received the original record of the information in that electronic form from a third party. This would include: -

- a document with an electronic employer signature inserted as a pdf, which has been received by you electronically.
- a document that is first created in soft copy form.

It does not include: -

- any electronic record that has been further forwarded or copied by you.
- a record that is a copy of an original hard copy record described in (i) above.

"Outcome"	means full achievement of the Apprenticeship;
"Parent Company"	means any company which is your ultimate Holding Company and which is either responsible directly or indirectly for your business activities or is engaged in the same or similar business as you. The term "**Holding Company**" shall have the meaning ascribed in Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment of that Act;
"Payment Plan"	means the claims dates profile for an individual Apprentice (entitled 'Payment Plan' on FIPS), which is based on a nationally agreed breakdown of each MA framework for payment purposes, based on an agreed cluster of activity as set out in FIPS; as such plan may be amended from time to time either by SDS, or as required by you, in accordance with the Conditions;
"Performance Level"	means the performance level to which the relevant part of the Services is to be provided, as set out in Condition 10.5;
"Permitted Sub-contractor"	means a party to which you have sub-contracted certain rights and obligations under the MA Contract and where the identity of that sub-contractor and the sub-contracting arrangement has been approved by us in accordance with Condition 30 of the Conditions, and "Permitted Sub-contract" shall be construed accordingly;
"Personal Data"	has the meaning set out in the Data Protection Legislation from time to time;
"Personal Data Breach"	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data, whether accidental or deliberate;
"Processed Data"	has the meaning set out in Appendix 3 to the Conditions;
"Protected Characteristic"	means the protected characteristics set out in section 4 of the Equality Act 2010;
"Protective Measures"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and

	services, ensuring that availability of an access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted by it;
"Provider"	if used, means the economic operator identified as such in the Letter of Award;
"Qualification"	means the qualifications (identified by the awarding body qualification number) in the Apprentice's Learning Plan / TA, which will be at level two or above;
"Quality Standards"	means the minimum quality standards identified within the SDS Quality Assurance Arrangements available on Apprenticeships.scot, (as may be amended by SDS from time) which the Provider must meet when performing the Services, and includes the SDS quality standards, and any optional alternative quality standards that may be expressly referenced in the SDS Quality Assurance Arrangements
"Quarterly"	means the period of three calendar months commencing on 1 January, 1 April, 1 July and 1 October respectively;
"Reportable Incident"	means any incident or accident impacting an Apprentice while undergoing the MA Programme which is reportable pursuant to The Reporting of Injuries, Disease and Dangerous Occurrences Regulations 2013 (SI 2013/1471);
"SDS", "Skills Development Scotland","we", "us" or "our"	means The Skills Development Scotland Co. Limited, registered in Scotland under company number SC202659, having its registered office at Floor 1, Monteith House, 11 George Square, Glasgow G2 1DY, and includes any successors thereto with legal responsibility for the distribution of public funding for Scottish apprenticeships and other associated work-based learning and training for employment to the extent appointed pursuant to the Tertiary Education and Training (Funding and Governance) (Scotland) Bill, as amended and brought into force;
"SDS Provider Web Pages"	means the web pages available through Apprenticeships.scot specifically for providers, or such alternative web address as we may advise under Condition 6. As at the commencement date of the MA Contract the web pages are entitled 'Learning Providers', but this name may change from time to time;
"Services"	means all services that you are required to perform in relation to the MA Contract as set out in the Specification;
"Skills Investment Adviser" or "SIA"	means your SDS allocated point of contact for delivery;
"Specification"	means the specification of the Services set out, or otherwise referred to in, the Invitation to Tender subject to any specific provision in the Letter of Award;
"QA"	means the Qualifications Scotland, or any replacement body carrying out the same or similar functions;
"Staff"	means all persons employed by you together with your servants, agents, suppliers and sub-contractors used in the performance of your obligations under the MA Contract;

"Start"	means the entry of a proposed Apprentice into FIPS and approved by us;
"Sub-processor"	means any third party appointed to process Personal Data on your behalf comprised in Processed data;
"Subsidiary or Holding Company"	in relation to the employer means "subsidiary" and "holding company" as defined in section 1159 of the Companies Act 2006;
"SVQ"	means 'Scottish Vocational Qualification' (or its replacement, as applicable) prescribed from time to time by Qualifications Scotland;
"Targeted Groups"	means the communities listed in part 1 of the EII Application section of the New Scots & Ethnic Intersectionality Incentive (EII) Additional Payment Application Form 2026/27 ;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended from time to time;
"Training Agreement" or "TA"	means a document agreed by the Apprentice, you and, where applicable, the Apprentice's employer, on an individual basis at the start of training;
"UK GDPR"	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
"User Access"	means the right to access and use the FIPS system in accordance with the terms and conditions for user access available on the FIPS pages of Apprenticeships.scot, as amended from time to time;
"VQ"	means vocational qualification;

Appendix 2 - Data Sharing

1. The Data

1.1. Data means all Personal Data that is disclosed by one party to the other for the purposes of the delivery of the MA Contract with the exception of the Processed Data. The Data you shall disclose to us is further described in Part 1 to this Appendix 2 below.

2. Sharing of the Data

2.1. You agree to disclose the Data to us in accordance with the transfer arrangements detailed in Part 3 of this Appendix 2.

2.2. As set out in Condition 18.1, the parties agree that the nature of the relationship between them is such that the disclosure of Data is on a Data Controller to Data Controller basis and that each party is responsible for complying with the obligations incumbent on a Data Controller under the Data Protection Legislation (including responding to Subject Access Requests and other requests from a Data Subject under Data Protection Legislation) in relation to the Data that it Processes and that neither party is liable for any actions of the other party which might breach those obligations. The parties agree that they are not joint data controllers of any of the Personal Data processed under the MA Contract.

2.3. You shall make your own privacy notice available to the Data Subject in relation to your own processing activities relating to the MA Programme.

3. SDS's Assurances

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

Appendix 2, Part 1 - The Data

1. All Data that you disclose to us in relation to the terms of the MA Contract (with the exception of any Processed Data) including: -

1.1 information about the Apprentice input by you into FIPS or otherwise made available by you to SDS (under exception of information provided on SDS hard copy forms or SDS editable PDF forms (or Training Provider equivalent forms that require to be approved by SDS), that each Apprentice or their employer provides to you about the Apprentice's personal circumstances including Apprentice registration information, qualifications and prior employment information, leaving information and destination and outcome information;

1.2 information about the Apprentice input by you into FIPS or otherwise made available by you to SDS (under exception of information provided on SDS hard copy forms), of an Apprentice's achievements and progress, destination and outcomes from their apprenticeship training; and

1.3 contact information relating to your staff and agents.

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

1. The purposes for sharing the Data are as follows: -

1.1. to monitor SDS's compliance with SDS's conditions of funding related to the MA programme and to ensure that SDS is properly spending and is accountable for those monies;

1.2. to assist Apprentices find and retain suitable employment;

1.3. to monitor, audit and evaluate the quality of the training and assessment Services and the MA Programme both individually (in relation to individual Apprentices), and generally in relation to the MA Programme;

1.4. to monitor your compliance with your contractual obligations and your performance including validating your claims for payment;

1.5. to provide information to Apprentices about working life, Fair Work First and the services and benefits you can access from SDS and other government and public sector bodies in Scotland and / or the UK;

1.6. where applicable, to ensure the smooth transition of an Apprentice to another learning provider for the purposes of the Apprentice completing their MA training;

1.7. to ensure the Apprentice's progress and outcomes are properly recorded and assessed for the purposes of awarding certification;

1.8. to monitor and evaluate the training against applicable educational standards;

1.9. to undertake statistical research regarding the value and impact of the MA Programme and to assist with policy development;

1.10. to conduct the Apprentice employer to alert them to discuss any additional services offered by SDS from time to time;

1.11. for SDS representatives to liaise with your representative, and those of your agents (as applicable) for the purpose of contract managing and enforcing the terms of the MA contract (including verification of evidence submitted to SDS to support claims);

1.12. to request Apprentice Employers to complete any questionnaire issued by or behalf of SDS or Scottish Ministers to help evaluate the MA Programme; and

1.13. to contact Apprentice Employers (directly or through agents) to discuss matters associated with the training of the apprentices generally.

2. Lawful Basis

2.1 The lawful bases for SDS processing the Personal Data are :-

2.1.1 Article 6(1)(c) of the UK GDPR – 'processing is necessary for the compliance with a legal obligation to which the controller is subject'; and

2.1.2 Article 6(1)(e) of the UK GDPR – process is necessary for the performance of a task carried out in the public interest'.

2.2. SDS: -

40.1.1 2.2.1 requires to meet obligations under the Public Finance & Accountability (Scotland) Act 2000 and take cognisance of the associated guidance and the Scottish Public Finance Manual, as applicable from time to time

2.2.1. is tasked with the provision and management of Scottish modern apprenticeships under the powers conferred on SDS by the Scottish Ministers pursuant to section 2 of the Employment and Training Act 1973;

Appendix 2, Part 3 - Data Transfer Arrangements

1. Subject to us introducing any alternative arrangements (which may include use of our FIPS portal), the Data is intended to be transferred to us in the following manner: -

1.1. where FIPS is set up to receive the Data, Data must be input by the Controller into FIPS in accordance with the requirements set out in the MA Contract,

1.2. for Data which we require you to deliver other than through FIPS, in accordance with the requirements set out in the MA Contract, and/or such additional arrangements as we may advise from time to time.

Appendix 3 - Processing of Processed Data

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

    1.1. all Personal Data input by you into all SDS hard copy/editable PDF forms (or Training Provider equivalent forms) that you require to retain under the terms of the MA Contract, for delivery and/or inspection by SDS;
    1.2. all Personal Data input by you into the SDS Modern Apprenticeships Equality Monitoring Forms (“Equalities Monitoring Data”);
    1.3. all Personal Data input by you into the New Scots & Ethnic Intersectionality Incentive (EII) Additional Payment Application Form 2026/27; and
    1.4. all Personal Data input by you into the Enhanced Funding for Disabled and/or Care Experienced Apprentices Application Form

2. The parties acknowledge that for the purposes of the Data Protection Legislation, we are the Controller and you are the Processor in respect of the Processed Data. The only processing that you are authorised to do in respect of the Processed Data is to process it in accordance with the requirements (including the purpose and manner) set out in the Specification and Conditions, and where it requires to be delivered to us, to submit the Processed Data to us in accordance with those provisions, including this Appendix 3 and any written guidance or instructions that we may issue from time to time.

3. You shall delete and/or destroy:-

    3.1. each populated SDS Modern Apprenticeships Equality Monitoring Form, as soon as you have received payment from us in respect of the registration of the relevant Apprentice as a Start and you shall not retain any copy of Part A of the populated form (including on a digital/computer system and hard copy version) or retain or use any information contained in any such form for any other purpose, Part B of the form must be retained for audit purposes
    3.2. all other Processed Data in accordance with the terms of the MA Contract and such additional instructions as SDS may advise from time to time in writing.

4. You shall notify us immediately if you consider that any of our instructions infringe the Data Protection Legislation.

5. You shall provide all reasonable assistance to us in the preparation of any Data Protection Impact Assessment promptly on request, particularly in relation to the Equalities Monitoring Data. Such assistance may, at our discretion, include: -

    5.1. a systematic description of the envisaged processing operations and the purpose of the processing;
    5.2. an assessment of the necessity and proportionality of the processing operations in relation to the services, or any applicable legal requirements:
    5.3. an assessment of the risks to the rights and freedoms of Data Subjects: and
    5.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of the Processed Data.

6. You shall, in relation to the Processed Data processed in connection with your obligations under the MA Contract:

    6.1. process that Processed Data only in accordance with the terms of this Appendix 3 to these Conditions, unless you are required to do otherwise by any applicable law. If you are required to do otherwise as a result of any applicable law, you shall promptly notify your Skills Investment

Advisor before processing the Processed Data unless you are prohibited by law from doing so;

6.2. ensure that you have in place Protective Measures, which have been reviewed and approved by us as appropriate to protect against a Data Loss Event having taken account of the:-

6.2.1. nature of the data to be protected;
6.2.2. harm that might result from a Data Loss Event;
6.2.3. state of technological development; and
6.2.4. cost of implementing any measures;

6.3. ensure that:
6.3.1. your Staff do not process Processed Data except in accordance with the MA Contract (and in particular Appendix Part 4 to these Conditions (Information Security Policy);
6.3.2. you take all reasonable steps to ensure the reliability and integrity of all of your Staff who have access to the Processed Data and ensure that they:
6.3.2.1. are aware of and comply with your duties under this paragraph;
6.3.2.2. are subject to appropriate confidentiality undertakings with you or any Sub-processor;
6.3.2.3. are informed of the confidential nature of the Processed Data and do not publish, disclose or divulge any of the Processed Data to any third party unless directed in writing to do so by us or as otherwise permitted by the MA Contract; and
6.3.2.4. have undergone adequate training in the use, care, protection and handling of personal data; and

6.4. not transfer Processed Data outside of the EU unless you have obtained our prior written consent and the following Conditions are fulfilled:
6.4.1. we or you have provided appropriate safeguards in relation to the transfer (whether in accordance with Data Protection Legislation) as determined by us;
6.4.2. the Data Subject has enforceable rights and effective legal remedies;
6.4.3. you comply with your obligations under Data Protection Legislation by providing an adequate level of protection to any Processed Data that is transferred (or, if it is not so bound, use your best endeavours to assist us in meeting our obligations); and
6.4.4. you comply with any reasonable instructions we notify to you in advance with respect to the processing of the Processed Data;

6.5. on our written direction, delete or return Processed Data (in the relevant forms) (and any copies of it) to your Skills Investment Advisor on termination of the MA Contract (or, as applicable, any part of the MA Contract) unless you are required by applicable law to retain the Processed Data;

6.6. draw the Data Subject's attention to our privacy notice relating to MA Apprenticeships available at Privacy - Skills Development Scotland at the point of collection of any Personal Data comprised in the Processed Data . A copy of the applicable Privacy Notice currently in force at any given time shall be available on that site.

7. Subject to paragraph 8 of this Appendix 3, you shall notify the SDS Data Protection Officer at dpo@sds.co.uk (or such alternative address as we may advise from time to time) immediately if you:-

7.1. receive a Data Subject Access Request (or purported Data Subject Access Request) in respect of the Processed Data;
7.2. receive a request to rectify, block or erase any Personal Data comprised in the Processed Data;
7.3. receive any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
7.4. receive any communication from the Information Commissioner or any other regulatory

authority in connection with the Processed Data processed under the MA Contract;

7.5. receive a request from any third party for disclosure of Personal Data comprised in the Processed Data where compliance with such request is required or purported to be required by law; or

7.6. become aware of a Data Loss Event relating to the Processed Data.

8. Your obligation to notify under paragraph 7 shall include the provision of further information to us in phases, as details become available.

9. Taking into account the sensitive nature of any of the processing relating to the Processed Data, you shall provide us with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 7.3 (and insofar as possible within the timescales we reasonably require) including by promptly providing:

   9.1. us with full details and copies of the complaint, communication or request;

   9.2. such assistance as we may reasonably request to enable us to comply with a Data Subject Access Request relating to the Processed Data within the relevant timescales set out in Data Protection Legislation;

   9.3. us, at our request, with any Personal Data you hold in relation to a Data Subject in relation to the Processed Data;

   9.4. assistance as we may request following any Data Loss Event relating to the Processed Data;

   9.5. assistance as we may request with respect to any request from the Information Commissioner's Office, or any consultation by us with the Information Commissioner's Office in relation to the Processed Data.

10. You shall maintain complete and accurate records and information to demonstrate your compliance with the terms of this Appendix 3 of the MA Contract.

11. You shall allow for audits of your Data Processing activity in relation to this Appendix 3 by us or our designated auditor.

12. You shall designate a Data Protection Officer if required by the Data Protection Legislation.

13. Before allowing any Sub-processor to process any Personal Data comprised in the Processed Data, you must:

   13.1. notify your Skills Investment Advisor in writing of the intended Sub-processor and processing;

   13.2. obtain the prior written consent of SDS from your Skills Investment Advisor;

   13.3. enter into a written agreement with the Sub-processor which gives effect to the terms set out in Condition 18.2 and Appendix 3 to these Conditions such that they apply to the Sub-processor; and

   13.4. provide us with all the information regarding the Sub-processor as we may reasonably require.

14. You shall remain fully liable for all acts or omissions of any Sub-processor.

15. We may, at any time on not less than 30 days' notice, revise this Appendix 3 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the MA Contract).

Appendix 4 - Information Security Policy

SDS Information Security Policy for NTP Providers

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

Responsibility
All organisations contracted to deliver National Training Programmes are responsible for implementing, enforcing and adhering to the provisions of this policy.
All contract signatories are responsible for ensuring this policy is adhered to.
All company employees are responsible for ensuring visitors are also aware of this policy and are supervised appropriately.

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

Policy Statements

1 SDS IT System Access

1.1 The SDS IT systems are accessed using your own individual SDS login id and password. Do not leave clues or evidence of passwords near to your computer. Encryption passwords must comply with the password complexity listed below. Passwords should be minimum of 8 characters and include at least 3 of the following:
- Capital letter
- Small letter
- Number character
- Special characters (?$%&*)

1.2 Using another person's login id is not permitted under any circumstances.

1.3 All SDS IT systems require the use of Multi Factor Authentication (MFA). SDS requires all Providers to use Microsoft Authenticator App for Multifactor Authentication. The Authenticator App is available from the Android Play Store and Apple Appstore. This relies on additional security of a separate device / system such as a mobile phone or email account. In the event that the mobile phone that you have used for MFA is compromised or lost you must notify SDS immediately.

1.4 Passwords must not be saved on any login screen, e.g. do not tick 'Save Password' or 'Remember Me' options if these appear.

1.5 Never leave a logged-in computer unattended when using SDS IT systems. Use the Windows (or operating system equivalent) 'Lock Workstation' facility (Windows key + L) or logout.

1.6 Protect against accidental compromise of SDS and Apprentice information; ensure information cannot be observed by unauthorised people.

1.7 Deliberate, unauthorised entry to SDS IT systems, entry of false data and unauthorised changes to information are strictly forbidden.

1.8 Providers must report all security incidents. In the first instance please contact your SDS assigned Skills Investment Advisor immediately who will ensure the correct handling of the incident.

1.9 Data extracted or originating from SDS IT systems must be encrypted or transferred in a secure manner when forwarding to SDS.

1.10 Providers must promptly inform SDS if they no longer need access to SDS systems.

1.11 Providers are required to comply with the terms of the User Access arrangements in place between them and SDS.

2. Electronic Data Transfer – Mandatory Data Encryption

2.1 At the start of every contract year, SDS will issue the provider with a password that should be used when preparing a file(s) for emailing or when opening file(s) that have been received. Note, this password must never be transmitted in the same method that the encrypted file(s) are being sent – if the file(s) are being sent by email, the password must be sent via another method such as in an SMS text, voice call, WhatsApp, etc. The password must **never** be included in the same email as the zipped and encrypted file(s).

2.2 You must ensure Zipped files are;

- zipped
- password protected
- encrypted

2.3 **The encryption standard that must be used at all times is the industry standard AES-256.** There are various encryption providers which utilize AES-256-bit encryption, SDS use 7-zip. The AES-256 can be seen in a drop-down within 7-Zip.

2.4 The Provider must ensure that all portable devices such as laptops, tablets or mobile phones, that are used to store, transfer or receive encrypted file(s) must themselves be encrypted. It is not possible to provide any guide for this due to the wide variety of devices in use.

2.5 Due to the nature and sensitivity of the data being shared between SDS and providers, and vice versa, the encryption of **all data is a mandatory requirement.** The simplest way to achieve the encryption of data is to use an application that creates a zipped, password protected and encrypted version of the file(s) to be transferred. There are various tools available that will provide this functionality e.g. SDS uses the 7-Zip application which is free to download and use. If file(s) have been zipped and encrypted with one zipping tool, they can be opened without issue using other applications i.e. if zipped with 7-Zip it can be opened using other applications such as WinZip, WinRAR, etc. if required. SDS suggest that providers use 7-Zip as this is an application that SDS knows. SDS are unable to assist with other applications.

3. Handling Hardcopy Documents and Electronic Media containing Personal Information

3.1 Providers are required to collect and store both personal information and special category personal information as defined by the Data Protection Act (2018) and the UK GDPR. This information must be securely protected and handled in line with UK Data Protection legislation to avoid the risk of data loss and unauthorised exposure.

4. Collecting

4.1 Personal information, and particularly special category information must only be gathered from Apprentices in an environment that respects their privacy and limits the opportunity for the trainees to be overlooked.

5. Processing

5.1 When a Provider processes an Apprentice's personal data it should be done in a way to limit the opportunity for unauthorised access to the information.

5.2 Providers should consider protecting Apprentice's information from unauthorised viewing by:

- observing a clear desk policy;
- handling hardcopy in a non-transparent folder (opaque);
- Ensuring that documents are not left at printers and copiers and
- Ensuring only authorised Staff have access to the information.

6. Storage

6.1 When not in use hardcopy files with personal information must be stored in lockable filing cabinet or drawers.

6.2 At the end of the working day the filing cabinets and drawers containing the Apprentice's personal information must be locked.

6.3 Any files containing personal information held electronically must be held securely and in compliance with Data Protection Legislation.

6.4 Providers must ensure that, for both hard copy and electronically stored personal information, only colleagues who have a legitimate business purpose to access the personal information of apprentices can do so.

7. Sending

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

8. Disposal

8.1 Prior to disposal of information providers should check the retention and archiving requirements.

8.2 Hardcopy documents that are no longer required should be shredded or disposed of via a confidential waste contractor.

8.3 For electronic storage media these should be destroyed or overwritten sufficient that the data cannot be retrieved.

- CD/DVD's shredded
- Memory sticks – destroyed or formatted in a way that data cannot be recovered.

9. Personal Data Breach

9.1 Any Personal Data Breach must be reported immediately to SDS in accordance with Condition 7 of Appendix 3.