

Grant Terms & Conditions

Flexible Workforce Development Fund



Skills
Development
Scotland

1. Definitions and Interpretation

1.1 In the Agreement (as defined below), unless the context otherwise requires, the following expressions will have the following meanings assigned to them:

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1.1.1 **"Agreement"** means the binding agreement comprising the various documents set out in the Letter of Award, and the Recipient's acceptance thereof, as varied or novated (in each case, other than in breach of the provisions of the Agreement) from time to time.

1.1.2 **"Application"** means the application for the Contribution referenced in the Letter of Award, being the application completed and submitted by the Recipient to SDS setting out how the Contribution is to be used for the Funding Purposes.

1.1.3 **"Approved Activity"** means all the activities being performed by or on behalf of the Recipient in order to meet the Funding Purposes, as set out in the Application subject to any amendment thereto referred to in the Letter of Award or otherwise in accordance with Clause 2.2.

1.1.4 **"Approved Costs"** means the costs of the Approved Activity subject to any amendment thereto in accordance with Clause 2.2;

1.1.5 **"Confidential Information"** means information of the parties to this Agreement from time to time (in whatever medium stored or whether disclosed orally) including, but without limitation, all business, financial, operational, customer and marketing information, intellectual property rights, know-how and trade secrets in relation to the business of those parties and all information in respect of which those parties are bound by an obligation of confidence to a third party.

1.1.6 **"Contract Documents"** means all guidance documentation issued by SDS in relation to the Workforce Development Fund, as may be amended by SDS from time to time;

1.1.7 **"Contribution"** means a grant of up to the maximum set out in the Letter of Award;

1.1.8 **"Controller", "Data Controller", "Data Subject", "Personal Data"**, take the meaning given in the Data Protection Legislation.

1.1.9 **"Data"** has the meaning set out in Part 2 to the Schedule;

1.1.10 **"Data Subject Access Request"** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

- 1.1.11 **“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the GDPR; DPA 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;
- 1.1.12 **“DPA 2018”** means the Data Protection Act 2018;
- 1.1.13 **“DP Purposes”** means the purposes set in SDS’s Privacy Notice for the Workforce Development Fund published on SDS’s website;
- 1.1.14 **“European Commission”, “European Court of Auditors” and “Competition and Markets Authority”** for the purposes of this Agreement means the respective body or as applicable, any successor organisation responsible for the respective functions and arrangements that may replace that body in the UK, following the UK withdrawal from the European Union.
- 1.1.15 **“Funding Purposes”** means the delivery of eligible training to meet the high level objectives described in the Contract Documents;
- 1.1.16 **“GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679);
- 1.1.18 **“Insolvency Event”** means the occurrence of any of the following events (or any event in a jurisdiction other than Scotland or England and Wales that has an equivalent effect to any of the following) in relation to the relevant entity:-
- (a) a liquidator (including an interim liquidator or provisional liquidator), administrator, receiver or administrative receiver is appointed to the Recipient or if a moratorium is obtained in respect of the Recipient’s indebtedness or if the Recipient is made bankrupt enters into a company voluntary arrangement within the meaning of section 1 of the Insolvency Act 1986 or if the Recipient commences negotiations with its creditors to reschedule its debts.
 - (b) if the Recipient is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or stops payments or ceases or threatens to cease to carry on its business.
 - (c) if any diligence, distress, execution or similar process is levied, enforced or affected on or against any of the Recipient’s property or assets and is not satisfied or discharged within 7 days.
 - (d) if any of the Recipient’s indebtedness, present or future, becomes repayable before maturity by reason of default on the part of the Recipient or is not repaid when due or within any period of grace.
 - (e) any analogous procedure or step is taken in any relevant jurisdiction.

- 1.1.29 “**LED**” means Law Enforcement Directive (Directive (EU) 2016/680);
- 1.1.30 “**Letter of Award**” means SDS’ formal offer of funding to support the Recipient in respect of the Funding Purposes, incorporating these terms and conditions and such other documents as are referred to in the letter;
- 1.1.31 “**Public Sector Contribution**” means any contribution to the Funding Purposes either in cash or in kind from any public sector body (including the European Union, any government body, local authority, statutory undertaking or other body wholly or substantially funded by public money), other than the Contribution.
- 1.1.32 “**Recipient Supply Chain Entity**” means each of those third party organisations that supply goods or services to the Recipient from time to time, and that are identified by the Recipient in the Application as recipients of the specified training comprised in the Approved Activity.
- 1.1.33 “**Schedule**” means the Schedule in 4 parts, annexed to these terms and conditions.
- 1.1.34 “**Supporting Evidence**” has the meaning set out in Clause 12;
- 1.1.35 “**VAT**” means value added tax chargeable under the Value Added Tax Act 1994 or under the Sixth Council Directive of the Council of the European Communities (77/388/EC) or under any rule, regulation, order or instrument authorised to be made by that Act or by that Directive or any identical or substantially similar tax which may replace such Value Added Tax.
- 1.1 Clause, Schedule and paragraph headings shall not affect the interpretation of the Agreement.
- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assignees.
- 1.3 The Schedule forms part of the Agreement and shall have effect as if set out in full in the body of the Agreement. Any reference to the Agreement includes the Schedule.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assignees.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended,

extended or re-enacted from time to time.

- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.10 A reference to writing or written excludes e-mail.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.13 Any reference to 'approval' or 'consent' (or similar) shall mean that such approval or consent (or similar), as applicable, shall be given entirely at the discretion of the relevant party.
- 1.14 References in these terms and conditions to a clause or condition shall, unless the context otherwise requires, be a reference to a clause or condition of these terms and conditions.
- 1.15 Where there is any conflict or inconsistency between or among the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following descending order of priority:
 - 1.15.1 any document signed by SDS strictly in accordance with the terms of the Agreement, confirming or approving any variations or dispensations;
 - 1.15.2 the Letter of Award;
 - 1.15.3 the main Conditions;
 - 1.15.4 any attachment to the main Conditions (including the Schedule);
 - 1.15.5 the Contract Documents;
 - 1.15.6 the Application (including all required associated documents and information).

2 Purposes and use conditions of the Contribution

- 2.1 The Contribution shall be used by the Recipient solely for the purpose of meeting the Approved Costs confirmed in the Letter of Award in connection with the Approved Activity, and strictly as outlined in the Contract Documents and the Application and for no other purpose whatsoever.
- 2.2 The Recipient shall not make any changes to the Approved Activity without the prior written approval of SDS. Where any changes are so approved, the Application will with effect from the approved date, be deemed to be amended accordingly. SDS shall be entitled to reduce the Approved Costs,

where the Approved Activity is reduced in scope, and/or the associated costs are reduced. SDS shall not increase the Approved Costs nor the associated Contribution in any circumstances.

- 2.3 No part of the Contribution shall be used to fund any activity or material which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.
- 2.4 The Contribution shall not include VAT and no VAT shall be added to the Contribution.
- 2.5 The Recipient shall not, without the prior written consent of SDS, dispose of any asset funded, in whole or in part, with any part of the Contribution.
- 2.6 For the avoidance of doubt, the Recipient shall remain liable for the full Contribution notwithstanding that the benefit of any of the Contribution is deemed to be for any third party, including any Recipient Supply Chain Entity.

3 Not Used

4 Payment of the Contribution

- 4.1 The following provisions apply as regards the advance of the Contribution:-
 - 4.1.1 The Contribution will be advanced in accordance with the Agreement on SDS being satisfied that:-
 - (a) the Approved Activity has been implemented fully in accordance with the descriptions and undertakings set out in the Agreement, including for the avoidance of doubt, the Application;
 - (b) the Recipient (whether on its own or in conjunction with any other party or as a member of a partnership) is not and has not been in breach of this Agreement or any other agreement with SDS;
 - (c) the Recipient has been invoiced by, and made full payment to, all third party suppliers performing the Approved Activity, in respect of the Approved Activity and corresponding costs set out in the Application, and provided all Supporting Evidence as SDS shall require; and
 - (d) the Recipient continues to satisfy the terms of the Agreement, including the provision of such Supporting Evidence as SDS may reasonably require to demonstrate the Recipient's compliance with the Agreement, including the Recipient's ongoing obligations set out in the Contract Documents to co-operate in the provision of information to SDS for the purposes of evaluating the value of the Flexible Workforce Development Fund.
 - 4.1.2 SDS shall only pay the Contribution on receipt of a valid claim from the Recipient. In respect of such claim, the Recipient shall:

- (a) submit to SDS at fwdf@sds.co.uk a fully completed Claim Form, including required declarations and supporting evidence as set out in the Flexible Workforce Development Fund - Guidance Document, Sections 38, 67-70 and 76-82 comprised in the Contract Documents.
- (b) maintain full records and a written audit trail of all payments of the Approved Activity and receipt of the Contribution all in accordance with Clause 12.

4.1.3 When making payment of the Contribution SDS shall rely on such banking details for payment as are provided by the Recipient in the Application. SDS shall not be responsible for the Recipient failing to receive any funds as a result of such banking information being inaccurate, and SDS shall accordingly not be liable to make any further payment of any such funds.

4.1.4 The Recipient shall not be entitled:

- (a) to apply the Contribution for any purpose other than the Approved Activity.
- (b) to combine the Contribution with any other public sector related relief, grant, intervention or other measure which results in the Recipient receiving more than one benefit/relief for any purpose materially similar to the Funding Purposes.

4.2 SDS shall not be obliged to advance or procure the advance of, and the Recipient shall have no claim against SDS in respect of, any unpaid part of the Contribution claimed on or after the date occurring 4 weeks after the date on which the training referred to in the relevant claim form was completed.

4.3 In the event that the Recipient receives any reimbursement of any of the Approved Costs (whether directly or indirectly, for example but without limitation, by credit or receipt of other benefits) at any time whether during or after the period of the Agreement, the Recipient shall immediately notify fwdf@sds.co.uk of same, providing such additional information as SDS may request. SDS shall be entitled to deduct such sums from the Approved Costs, and amend the Contribution rate accordingly, and if requested, the Recipient shall pay to SDS immediately on demand, the balance between the original Contribution paid, and the revised Contribution sum.

5 Public Sector Funding

5.1 If the Recipient should receive any Public Sector Contribution, SDS shall be entitled to terminate this Agreement with immediate effect and the Recipient shall immediately repay to SDS the whole of the Contribution paid by SDS.

5.2 The Recipient shall notify SDS by email at fwdf@sds.co.uk immediately if it receives notification that it will receive, or receives an offer of, any Public Sector Contribution or any Public Sector Contribution is received by the Recipient.

5.3 Such notification shall give full details of the Public Sector Contribution offered or received as the case may be.

6 Default and Recovery

- 6.1 Without prejudice to SDS' other rights and remedies, the occurrence of any of the following shall be an event of default:
- 6.1.1 any information given to SDS by or on behalf of the Recipient is found to be false or misleading, including any information in relation to any Approved Activity being provided by any third party, for which the Recipient shall remain liable;
 - 6.1.2 the occurrence of an Insolvency Event;
 - 6.1.3 the Recipient harms the reputation of SDS in its dealings, publicity or communications, or where the Recipient and/or any of its directors, staff, sub-contractors or representatives (including any Recipient Supply Chain Entity) conducts themselves in a manner which, in the reasonable opinion of SDS, brings or is likely to bring SDS, any Scottish Minister, or the funding scheme operated by SDS into disrepute. This shall be deemed to include any instance where the Recipient and/or any of its directors, staff, sub-contractors or representatives (including any Recipient Supply Chain Entity) is charged with any criminal offence deemed to be a serious criminal offence by SDS, at SDS' entire discretion;
 - 6.1.4 the Recipient is in breach of its obligations to SDS in terms of the Agreement;
 - 6.1.5 in the reasonable opinion of SDS, the objectives of the Funding Purposes are unlikely to be, or have not been, met by the Recipient;
 - 6.1.6 in the reasonable opinion of SDS, the Recipient's progress in carrying out the Approved Activity is not satisfactory; or
 - 6.1.7 in the reasonable opinion of SDS, the Recipient
 - (a) takes undue advantage of the offer of grant; or
 - (b) fails to act with integrity in relation to the grant.
- 6.2 In the event of default, and at SDS' entire discretion:-
- 6.2.1 SDS shall be entitled to suspend and/or terminate the Agreement (or any part thereof) and any other contract the Recipient has with SDS, immediately on notice; and/or
 - 6.2.2 SDS shall be entitled to demand that the Recipient repay the Contribution, or such proportion thereof as SDS may reasonably determine, to SDS within 14 days of demand; or
 - 6.2.3 SDS may as an alternative give the Recipient written notice confirming details of the default, giving the Recipient a period of time

as SDS may reasonably determine within which the Recipient is to remedy the default. In such circumstances, if the Recipient shall fail to remedy the default within such period of time, SDS shall be entitled to rely on any or all of the remedies referred to in clauses 6.2.1 and 6.2.2.

- 6.3 SDS shall be entitled to deduct from any payments due to the Recipient under this Agreement, any sums due to SDS by the Recipient howsoever and whensoever arising, and any sums due to SDS by any person to whom the undertaking of the Recipient has been transferred.
- 6.4 In the event that either party is in material breach of its respective data protection obligations contained in clause 12.9 or the Schedule, the party not in breach shall (without prejudice to its other rights and remedies) be entitled to terminate the Agreement immediately on notice.
- 6.5 Without prejudice to SDS's other rights and remedies, the Recipient must immediately inform The Growth and Inward investment Service Development team by email (fwdf@sds.co.uk) in the event that there is any material change in the Recipient's circumstances, including without limitation, circumstances:-
- 6.5.1 where the Recipient ought reasonably to be aware that the information provided in its Application submitted to SDS, was inadequate, incomplete or materially misleading or inaccurate, or is no longer adequate, complete, representative, accurate or likely to be fulfilled;
- 6.5.2 which are likely to impact the Recipient's ability to perform any of the requirements of the Agreement;
- providing all detail that SDS may reasonably require.
- 6.6 The Recipient shall repay to SDS any money incorrectly paid to it in error. This includes (without limitation) situations where either an incorrect sum of money has been paid or where any payment has been paid in error before all conditions attaching to the Contribution payment have been complied with by the Recipient.

7 Subsidy Control

- 7.1 Subject to clause 7.4, in full reliance on the accuracy of the Recipient's application for the Contribution, the Contribution is exempt from the subsidy control provisions set out in the UK/EU Trade and Co-operation Agreement, ("UK/EU TCA") agreed on 24 December 2020 under Article 3.2 paragraph 4 of Chapter 3 of that agreement. There is a ceiling of 325,000 Special Drawing Rights for all subsidy provided to any single economic actor (as defined in the UK/EU TCA) over a 3-year fiscal period. ('Special Drawing Rights' is defined by the International Monetary Fund, which organisation also publishes the exchange rate of Special Drawing Rights with currencies including Euros and Sterling from time to time). Any Contribution awarded to the Recipient in terms of the Agreement will be relevant if the Recipient wishes to apply, or has applied, for any other subsidy. It is strongly

recommended that the Recipient retains this offer for 3 fiscal years from the date on this offer and produces it on any request by the UK public authorities. (The Recipient may need to keep this offer for longer than three years for other purposes.) In this clause 7.1 "Recipient" includes a single economic actor of which the Recipient is part.

- 7.2 SDS may withhold payment of any instalment(s) of the Contribution and/or reclaim any instalment(s) of the Contribution either (a) to the extent necessary to ensure that any assistance given under the Agreement, taken together with any other assistance which has been or is likely to be received towards the project for which the Contribution is required, is within the rules on subsidy control laid down in the UK/EU TCA or otherwise implemented within the UK, or (b) if required to so do by any duly authorised UK body. Any amount reclaimed as aforesaid shall be payable by the Recipient within fourteen days of notification to the Recipient of any such decision.
- 7.3 SDS reserves the right, if required so to do, to provide any such duly authorised UK body with information about the subject matter of the Agreement. In respect that any such body is empowered in certain circumstances to require SDS to supply it with any information it deems necessary to enable it to determine that the Agreement complies with the terms of the UK/EU TCA and/or any other rules on subsidy control implemented within the UK, the Recipient shall so far as lawfully obliged to and within its power supply SDS with such information related to the Agreement as may be required, as intimated by SDS.
- 7.4 As at the date of this offer, the provisions of the UK/EU TCA remain subject to clarification, further government guidance and additional regulation. Without prejudice to any of SDS's other rights and remedies, SDS reserves the right under this clause 7.4 to vary the terms and conditions of this Agreement to the extent reasonably required to meet the requirements and/or recommendations of any such guidance and/or regulation, as applicable. The Recipient agrees to comply with any such variation.
- 7.5 Non-compliance with the requirements of the applicable subsidy control requirements may, without prejudice to any rights of SDS under the Agreement, result in the Recipient and or the Recipient Supply Chain Entity being under a legal obligation to repay the Contribution to SDS together with interest.

8 Interest

Interest will accrue and be payable by the Recipient to SDS on all sums due to SDS in terms of the Agreement at the rate of four per centum per annum above the Base Rate or Rates for the time being of the Bank of Scotland plc from the date of demand until payment is made in full.

9 Publicity and Confidentiality

- 9.1 All publicity and marketing materials to be used by SDS or the Recipient which refer to the other party to the Agreement or contain any of the logos, trade marks or other intellectual property of the other party, shall be submitted to the other party for prior approval. Approval may be given in advance of

release and the parties shall not require approval for each subsequent use of the approved materials. All such materials shall be accurate and shall not contain inappropriate or misleading comparisons with other third party programmes, derogatory statements about third parties, misleading statements or advice about recognition of academic awards and/or statements that could reasonably bring either of the parties into disrepute.

- 9.2 Each party shall immediately cease to use in any manner whatsoever such materials and the logos, trade marks or other intellectual property of the other party upon termination or expiry of the Agreement for any reason.
- 9.3 Each party shall not, during the term of the Agreement or at any time thereafter, disclose to any third party any Confidential Information of the other party or their partners or make use of any such confidential information except as necessary to fulfil its obligations under this agreement. This Clause 9.3 shall not apply to any information which: (i) becomes generally known to the public, other than by reason of an act or omission of the recipient; (ii) is required to be disclosed pursuant to any applicable laws or to any competent governmental, statutory or supervisory body to which the relevant party is subject; (iii) is required to be disclosed pursuant to any court order; or (iv) is disclosed by a party to its professional advisers.

10 Repayment of the Contribution

- 10.1 In respect of any amount of the Contribution which is to be repaid by the Recipient to SDS under this Agreement, SDS shall (without prejudice to its other rights and remedies) be entitled to deduct the amount of such repayment from any payments due to the Recipient under any other contract the Recipient entered into with SDS.

11 Freedom of Information

- 11.1 The Recipient shall assist SDS without charge in meeting (within a reasonable time) any requests for information in relation to the Agreement which are made to SDS by any individual or organisation in connection with the Freedom of Information (Scotland) Act 2002 (FOISA) or the Environmental Information (Scotland) Regulations 2004 ("the EIRs") or any related guidelines or codes of practice.
- 11.2 The Recipient acknowledges that SDS may be required to release information relating to the Agreement (including for the avoidance of doubt, the Contract Documents) in response to a request under FOISA, the EIRs or any related guidelines or codes of practice.

12 Monitoring, Audit, Evaluation and Data Protection

- 12.1 The Recipient shall retain full and accurate records and accounts of the operation of the Agreement including details of the Approved Activity performed, the amounts requested and paid by the Recipient to its suppliers and agents, and the amounts paid by SDS until the date occurring 3 years after the date of the last payment made to the Recipient by SDS under the Agreement.
- 12.2 The Recipient shall keep all such records, evidence and accounts referred to in this clause 12 ("Supporting Evidence") in accordance with good

accountancy practice.

- 12.3 The Recipient shall afford SDS and/or such representatives, public appointed auditors (including representatives of the European Commission, the European Court of Auditors or the Competition and Markets Authority) (as applicable) (in any case, "Auditor") immediate and unlimited access to such Supporting Evidence as may be requested from time to time. Such access shall be at the Recipient's premises (or the premises of the Recipient's agents, if such Supporting Evidence is ordinarily stored there) or, if requested by Auditor, at premises identified by the Auditor within Scotland. For the avoidance of doubt, Auditors may require to access Supporting Evidence containing personal data of employees, and the Recipient's financial Information.
- 12.4 The Recipient shall provide such Supporting Evidence during the term of the Agreement and for the relevant period referred to in clause 12.1 to SDS and/or the Auditor promptly on request by SDS or the Auditor (as applicable). Such provision shall be made at the Recipient's premises (or the premises of the Recipient's agents, if applicable) or, if requested by Auditor, at premises within Scotland or by electronic submission to such portal or email address as the Auditor may specify.
- 12.5 The Recipient shall on demand provide SDS and the Auditor with all reasonable co-operation and assistance in relation to each review / audit, including:-
 - 12.5.1 providing unlimited access to the Supporting Evidence as requested by SDS and/or the Auditor including the names and designated contact details (either an applicable telephone number or email address) of any staff or other personnel engaged in the activities relating to the Agreement, including those in receipt of training forming part of the Approved Activity for the purposes of enabling SDS (or an SDS agent) to verify relevant claims made by the Recipient under the Agreement.
 - 12.5.2 providing unlimited access to sites controlled by the Recipient and to any equipment and/or training materials (including digital and hard copies) used in relation to the Approved Activity;
 - 12.5.3 providing SDS and the Auditor with unlimited access to Recipient staff, agents, representatives; and
 - 12.5.4 providing SDS and the Auditor with suitable oral or written explanation as requested.
- 12.6 The Recipient shall bear its own costs and expenses incurred in respect of compliance with its obligations under this clause 12.
- 12.7 Where the Agreement is terminated prior to the last date for submission of claims for payment of the Contribution, or SDS otherwise requests, the Recipient shall immediately forward to SDS such Supporting Evidence as SDS may request.
- 12.8 Not used.
- 12.9 SDS and the Recipient agree that they are each a "Data Controller" in terms

of the Data Protection Legislation and that any sharing of Personal Data between them relating to this Agreement and the Funding Purposes will be on a Data Controller to Data Controller basis. The Recipient shall comply with the provisions of the Data Protection Legislation and shall ensure that it has obtained all permissions required pursuant to the Data Protection Legislation to enable it to comply with the requirements of the Agreement. The provisions in the Schedule (Data Sharing) shall apply in respect of the sharing of any Personal Data pursuant to the Agreement.

12.10 The Recipient agrees to co-operate with SDS and Scottish Ministers and to provide such additional information as SDS and/or Scottish Ministers may request relating to the Agreement, any and all claims and the use of the payments made, promptly on request and no later than one working day following any request.

12.11 The Recipient shall ensure that it has in place enforceable rights to enable Auditors to exercise the same rights set out in this clause 12 against any Recipient Chain Supply Entity.

13 Notices

13.1 Any notice from either SDS to the Recipient, or the Recipient to SDS, shall be considered valid under the Agreement if:-

- (a) it is sent in email format;
- (b) (for notices from SDS to the Recipient), it is sent from The Growth and Inward Investment Service Development Team (fwdf@sds.co.uk) to the email address for correspondence provided by the Recipient in the Application;
- (c) (for notices from the Recipient to SDS), it is sent from the email address for correspondence provided by the Recipient in the Application, to The Growth and Inward Investment Service Development Team (fwdf@sds.co.uk).

13.2 The email will be deemed to have been served 72 hours after the time stamp for the email shown on the sender's official records, or sooner where the other party acknowledges receipt of such email.

13.3 In the event that the Recipient wishes to amend the email address for receiving or submitting notices, from the email address set out above, it shall email fwdf@sds.co.uk informing SDS of the amended email address. The changed address shall be deemed to apply 72 hours after the time stamp for the email shown on the sender's official records, or sooner where SDS acknowledges receipt of such email.

14 Information Sharing

14.1 The Recipient agrees and accepts that SDS may require to share some or all of the Recipient's records and information (or information relating to such records and information) relating to the Flexible Workforce Development

Fund, with other bodies that may at any time be providing any similar relief, grant, intervention or other measures to the Recipient.

15 Variations

15.1 SDS reserves the right to review/amend these Conditions or any other part or parts of the Agreement from time to time, and/or implement further variations as required.

16 Law

16.1 The Agreement shall be governed by and construed in accordance with the laws of Scotland.

16.2 The parties hereby submit to the exclusive jurisdiction of the Scottish courts in relation to any dispute or claim arising out of or in connection with the Agreement or in relation to its existence or validity.

17 Entire Agreement

17.1 The Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

17.2 Each party acknowledges that, in entering into the Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Agreement. The Recipient accepts that SDS has relied on the Recipient's Application in agreeing to make the offer of Contribution, and the Recipient hereby warrants and affirms the accuracy of such Application.

18 Assignment

18.1 The Recipient shall not be entitled to assign its rights or obligations under the Agreement to any other party without the prior written consent of SDS. SDS shall be entitled to assign its rights and obligations in terms of the Agreement to any body.

19 Corrupt Gifts and Payments of Commission

19.1 The Recipient shall not offer or give, or agree to give, to any employee or representative of SDS any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with SDS or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Recipient is drawn to the criminal offences created by the Bribery Act 2010.

20 Waiver

20.1 Any failure by SDS or the Recipient to seek redress for breaches, or to insist on strict performance, of any terms, conditions or provisions of the Agreement (which includes for the avoidance of doubt, the Application), or the failure of SDS or the Recipient to exercise any right or remedy to which it

is entitled in terms of the Agreement shall not constitute a waiver thereof, and shall not for the avoidance of doubt, infer that SDS has satisfied itself as to the accuracy or completeness of any information or evidence provided by or on behalf of the Recipient.

20.2 A waiver of any default shall not constitute a waiver of any subsequent default.

21 Blacklisting Regulations

21.1 The Recipient must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 2018 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this condition is a material default which shall entitle SDS to terminate the Agreement with immediate effect.

22 Counterparts

22.1 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this agreement, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until SDS has received the executed counterparts from the Recipient, and has confirmed SDS's counterpart signature.

23 Signature

23.1 This Agreement shall be executed in accordance with such method of signature as SDS may advise in our Letter of Award from time to time, as an alternative option to 'wet' signature.

**This is the Schedule referred to in the preceding
Flexible Workforce Development Fund Terms and Conditions**

Schedule

Part 1 - Data Sharing

1. The Data

- 1.1 Data means all Personal Data that is disclosed by one party to the other exclusively for the purposes of the delivery of the Agreement and the Approved Activity.

2. Sharing of the Data

- 2.1 The Recipient agrees to disclose to SDS the Data in accordance with the transfer arrangements detailed in Part 4 of this Schedule.
- 2.2 The parties agree that the nature of the relationship between them is such that the disclosure of Personal Data is on a Data Controller to Data Controller basis. The parties agree that each party is responsible for complying with the obligations incumbent on a Data Controller under the Data Protection Legislation (including responding to Subject Access Requests and other requests from a Data Subject under Data Protection Legislation) in relation to the Personal 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 neither joint data controllers nor data controllers in common.
- 2.3 Without prejudice to the generality of paragraph 2, SDS shall make available a privacy notice to the Data Subjects following the disclosure of any Personal Data from the Recipient to SDS.
- 2.4 The Recipient shall make its own privacy notice available to the Data Subject in relation to its own processing activities in respect of the Approved Activity and the Agreement.

3. SDS's Assurances

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

Part 2 – The

Data

The Data comprises:-

All Personal Data that the Recipient discloses to SDS pursuant to the terms of the Agreement which shall include:-

- Recipient and/or Recipient Supply Chain Entity (as applicable) contact information; and
- Names and work email addresses of those employees of Recipient and/or Recipient Supply Chain Entity (as applicable) referred to in the Application who are undertaking training funded by the Agreement

Further details of SDS's uses of such personal data are available in the relevant Privacy Notice available on the SDS web pages.

Part 3 - The Purposes and Bases of Sharing

The Purposes and the legal bases for sharing are set out in SDS's Privacy Notice relating to the Funding Purposes and derive from SDS's powers and obligations which include the powers conferred upon the Scottish Government by section 2 of the Employment and Training Act 1973. Without limitation to that, the purposes shall include:-

- reconciling the names of Recipient and/or Recipient Supply Chain Entity personnel (as applicable) confirmed in the Application as undertaking the training funded wholly or partially by the Contribution, with those confirmed as

- having completed the training;
- contacting all such Recipient and/or Recipient Supply Chain Entity personnel (as applicable) to undertake equalities monitoring directly with SDS through Qualtrics (or such alternative equalities monitoring system as SDS may advise);
 - contacting all such Recipient and/or Recipient Supply Chain Entity personnel (as applicable) to undertake an evaluation of the training funded wholly or partially by the Contribution and in which the individual has participated, to determine the extent to which the Funding Purposes have been met;
 - investigating potential duplicate funding of employee training from other sources of public funding.

Part 4 - Data Transfer Arrangements

Subject to SDS introducing any alternative or additional arrangements the Data is intended to be transferred to SDS in the following manner:-

- The Data will be provided to SDS in the Application, by email and by the payment claim form, all submitted to SDS by the Recipient in accordance with the Contract Documents.