

Service Order

HM REVENUE & CUSTOMS SERVICE ORDER	
A1. HMRC Information Purchase Order to be issued under separate cover	
CD Reference:	SR768227393
Purchase / Limit Order No	TBC
HMRC Commercial Contact	
Name: Contact Telephone No.: email:	
HMRC Work Manager	
Name: Contact Telephone No.: Contact Address:	
email:	
HMRC Authorised Officer: (Sponsor/Budget Approver/Invoicing & timesheets)	

A2. Supplier Information	
Supplier:	Capita Plc
Contact:	
Contact Tel No:	
Contact Address:	
email:	

A3. Contractual Detail	
Special Terms and Conditions: e.g. overtime, expenses, travel & subsistence, notice period.	This agreement will be governed by the terms and conditions as set out within Appendix 1: Authority's Mandatory Clauses.

A4. Project Information	
Project Title	Functional Maths and English Skills
Primary Location: (including full address)	N/A as the service will be delivered virtually.
Services Start Date:	12/08/2022
End Date:	12/08/2025

A5. Commercial Detail	
Registration, certification, and delivery costs per functional skill.	£ [REDACTED] plus VAT total to be charged per learner per [REDACTED] ([REDACTED])
1 re-sit assuming the learner has attended all sessions identified in their learning plan.	[REDACTED]
Cost if the learner produces exemption certificates after attending delivery sessions.	£ [REDACTED] per [REDACTED] per learner per functional skill
Cost if the learner fails to attend workshops or learning activities resulting in non-completion of the functional skill in the 7-month timescale.	£ [REDACTED] per [REDACTED] per learner per functional skill
If more than 25% of learners require additional 1-2-1 support above that already confirmed in the delivery methodology this will be discussed with HMRC and may result in an additional charge.	[REDACTED]
<p>Contract Charges payable by the Customer (including any applicable discount but excluding VAT), payment profile and method of payment (e.g. BACS))</p> <p>The supplier will report on referrals and progress of apprentices on a monthly basis before submitting an invoice each month for the number of apprentices undertaking Maths and English training. The invoice will be paid within 30 days of receipt of a valid invoice and HMRC will claim back the apprenticeship levy from ESFA in retrospect. The charges will be per apprentice undertaking Maths and English training, but the amount will be capped at £ [REDACTED] (excluding VAT) per year and capped at £ [REDACTED] (excluding VAT) over three years. The total amount will be capped at £ [REDACTED] (excluding VAT) over four years in the event that the buyer decides to extend the contract by one year. The customer will reserve the right to refer as many apprentices as need to be referred up to the capped amount.</p>	

Grand Total (£) exclusive of VAT:	£ [REDACTED] (maximum call-off value and not a commitment to spend).
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A6.	Specification
The section below should be used to provide clear details relating to the requirements for delivery of the project/assignment. It should include, where appropriate, milestones / key deliverables with dates, and proposals for skills transfer.	

The Supplier shall:

- Be successfully registered on the [REDACTED]
- Have been awarded [REDACTED].
- Use MS TEAMS for delivery and primary communications with learners, or any other platform as required by HMRC.
- Comply with HMRC security and IT assurances.

The required services shall ensure the key objectives of the Service are maintained, specifically:

- Resources and materials [REDACTED]
- Training and delivery to support learners nationally.
- Referral and personal information to be encrypted in line with cybersecurity regulations.
- Designated HMRC email addresses must be used at all times.
- The Supplier will receive notification from HMRC regarding Service Request Form completion, following which welcome letters and log in details must be issued for the Initial Assessment (within 8 -10 working days of the SRF being submitted). Welcome letter/email must include details of the specific talent coach and links to where all the learning resources are found to determine learning needs.
- Learners are expected to complete the initial assessment (diagnostic) within 5 working days.
- The Supplier shall prompt the learner if they haven't accessed the learning/ initial assessment within 5 working days.
- If there is no response from the learner, the Supplier shall contact the learner's manager to resolve any issue.
- The Supplier must include references to the individual learners' details when submitting the invoice which must be itemised and clearly evidence the respective learner(s) and identify if it is Maths and/ or English Functional Skills.
- Flexibility and ownership – learners must be able to book subsequent meetings with the Functional Skills coach via MS Bookings.
- Regular learner / Coach / Line Manager progress review meetings at a frequency to be agreed; this is to be no less frequent than on a monthly basis.
- Supplier shall provide MI reports outlining the learner's progress, to include rag ratings for discussion with HMRC.
- The learning should include facilitator-led and structured self-study elements as well as Additional Learning Needs (ALN) provision
- The Supplier must progress the completion of each Functional Skills Qualification in line with the learner's gateway period, within a 6–10-week timeline.

Standards

Quality Standards

- The supplier must have been [REDACTED]
- The supplier must be successfully registered on the [REDACTED]

□ The Supplier must conform to Offshoring approvals

Quality Standards are as per clause 13 in the Framework Agreement.

Technical Standards

The supplier must conform with HMRC's security and IT assurances and any additional Technical Standards as per clause 13 in the Framework

Agreement.

Monitoring

Monthly progress reports with a named HMRC representative and quarterly performance reviews every quarter.

The supplier will share referral and personal information to be encrypted in line with cybersecurity regulations.

The Supplier will contact the learner's manager to resolve any issues, if there has been no response from the learner.

The supplier will conduct regular learner / Coach / Line Manager progress review meetings at a frequency to be agreed, recommended on a monthly basis.

It would be desirable for the Supplier to produce MI reports outlining the learner's progress, to include rag ratings to discuss with HMRC.

Management Information

Management Information to be provided in accordance with clause 7 of the Call-Off Terms on The supplier should report monthly on the referrals of apprentices and the progress of the apprentices. insert date/ month for each submission.

The supplier will share referral and personal information to be encrypted in line with cybersecurity regulations.

The Supplier will contact the learner's manager to resolve any issues, if there has been no response from the learner.

The supplier will conduct regular learner / Coach / Line Manager progress review meetings at a frequency to be agreed, recommended on a monthly basis.

It would be desirable for the Supplier to produce MI reports outlining the learner's progress, to include rag ratings to discuss with HMRC.

The Agreement effected by the signing of this Form of Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement and supersedes all prior negotiations, representations or understandings whether written or oral.

Signed for and on behalf of:

	The Commissioners for HM Revenue & Customs:		Capita Plc:
Signature:		Signature:	
Name:		Name:	
Capacity:		Capacity:	
Date:		Date:	
Address:		Address:	

Telephone:		Telephone:	
email:		email:	



HM Revenue
& Customs

Appendix 1 AUTHORITY’S MANDATORY TERMS

- A.** For the avoidance of doubt, references to ‘the Agreement’ mean the attached CallOff Contract between the Supplier and the Authority. References to ‘the Authority’ mean ‘the Buyer’ (the Commissioners for Her Majesty’s Revenue and Customs).
- B.** The Agreement incorporates the Authority’s mandatory terms set out in this Appendix 1.
- C.** In case of any ambiguity or conflict, the Authority’s mandatory terms in this Appendix 1 will supersede any other terms in the Agreement.

1. Definitions

“Affiliate” in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

“Authority (a) the data, text, drawings, diagrams, images or sounds **Data”**
(together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

(i) supplied to the Supplier by or on behalf of the Authority; and/or

(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or

(b) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;

“Charges” the charges for the Services as specified in Clause A5 Commercial Detail;

“Connected Company” means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;

"Control"	the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
"Controller", "Processor", "Data Subject", "Data Protection Legislation"	take the meaning given in the GDPR; (a) the GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time; (b) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (c) all applicable Law about the processing of personal data and privacy;
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679);
"Key Subcontractor"	any Subcontractor: (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract;
"Law"	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
"Personal Data"	has the meaning given in the GDPR;
"Purchase Order Number"	the Authority's unique number relating to the supply of the Services;
"Services"	the services to be supplied by the Supplier to the Authority under the Agreement, including the provision of any Goods;
"Subcontract"	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
"Subcontractor"	

	any third party with whom:
"Supplier Personnel"	<ul style="list-style-type: none"> (a) the Supplier enters into a Subcontract; or (b) a third party under (a) above enters into a Subcontract, or the servants or agents of that third party; all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier's obligations under the Agreement;
"Supporting Documentation"	sufficient information in writing to enable the Authority to reasonably verify the accuracy of any invoice;
"Tax"	<ul style="list-style-type: none"> (a) all forms of tax whether direct or indirect; (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction; (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above, in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;
"Tax NonCompliance"	where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC's "Test for Tax Non-Compliance", as set out in Annex 1, where: <ul style="list-style-type: none"> (a) the "Economic Operator" means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 4.3; and (b) any "Essential Subcontractor" means any Key Subcontractor;
"VAT"	value added tax as provided for in the Value Added Tax Act 1994.

2. Payment and Recovery of Sums Due

2.1 The Supplier shall invoice the Authority as specified in Clause A5 Commercial Detail of the Agreement. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Authority prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:

2.1.1 the Supplier does so at its own risk; and

2.1.2 the Authority shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.

- 2.2** Each invoice and any Supporting Documentation required to be submitted in accordance with the invoicing procedure specified in the Agreement shall be submitted by the Supplier, as directed by the Authority from time to time via the Authority's electronic transaction system.
- 2.3** If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Supplier under the Agreement. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

3. Warranties

- 3.1** The Supplier represents and warrants that:
- 3.1.1** in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established;
 - 3.1.2** it has notified the Authority in writing of any Tax Non-Compliance it is involved in; and
 - 3.1.3** no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue and the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the Effective Date.
- 3.2** If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1.1, 3.1.2 and/or 3.1.3 has been breached, is untrue, or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.
- 3.3** In the event that the warranty given by the Supplier pursuant to Clause 3.1.2 is materially untrue, the Authority shall be entitled to terminate the Agreement pursuant to the Call-Off clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

4. Promoting Tax Compliance

- 4.1** All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 4.2** To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
- 4.3** The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a reasonable request by the Authority for cause, the Supplier shall

not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement, for the purposes of supplying such Services.

4.4 If, at any point during the Term, there is Tax Non-Compliance, the Supplier shall:

4.4.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

4.4.2 promptly provide to the Authority:

(a) details of the steps which the Supplier is taking to resolve the Tax NonCompliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Tax Non-Compliance as the Authority may reasonably require.

4.5 Subject to the Annex 4 Supplier Terms and Conditions, The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.

4.6 Upon the Authority's request, the Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.

4.7 If the Supplier:

4.7.1 fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this may be a material breach of the Agreement;

4.7.2 fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Authority that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or

4.7.3 fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Authority are acceptable this shall be a material breach of the Agreement;

and any such material breach shall allow the Authority to terminate the Agreement pursuant to the Call-Off Clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

4.8 The Authority may internally share any information which it receives under Clauses 4.3 to 4.4 (inclusive) and 4.6, for the purpose of the collection and management of revenue for which the Authority is responsible.

5. Use of Off-shore Tax Structures

5.1 Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall

ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.

- 5.2** The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
- 5.3** In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.
- 5.4** Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

6 Data Protection and off-shoring

- 6.1** The Processor shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:

6.1.1 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (a)** the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
- (b)** the Data Subject has enforceable rights and effective legal remedies;
- (c)** the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal

Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

- (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

6.2 Failure by the Processor to comply with the obligations set out in Clause 6.1 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

7 Commissioners for Revenue and Customs Act 2005 and related Legislation

7.1 The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.

7.2 The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

7.3 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel who will have access to, or are provided with, Authority Data in writing of the obligations upon Supplier Personnel set out in Clause 7.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.

7.4 The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Annex 2. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.

7.5 In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 7, the Authority reserves the right to terminate the Agreement with immediate effect pursuant to the clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

Annex 1 Excerpt from HMRC's "Test for Tax Non-Compliance"

Condition one (An in-scope entity or person)

1. There is a person or entity which is either: ("X")

1) The Economic Operator or Essential Subcontractor (EOS)

2) Part of the same Group of companies of EOS. An entity will be treated as within the same Group of EOS where that entities' financial statements would be required to be

consolidated with those of EOS if prepared in accordance with IFRS 10 Consolidated Financial Accounts¹;

- 3) Any director, shareholder or other person (P) which exercises control over EOS. 'Control' means P can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

Condition two (Arrangements involving evasion, abuse or tax avoidance)

2. X has been engaged in one or more of the following:

- a. Fraudulent evasion²;
- b. Conduct caught by the General Anti-Abuse Rule³;
- c. Conduct caught by the Halifax Abuse principle⁴;
- d. Entered into arrangements caught by a DOTAS or VADR scheme⁵;
- e. Conduct caught by a recognised 'anti-avoidance rule'⁵ being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not effected for commercial purposes. 'Targeted Anti-Avoidance Rules' (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
- f. Entered into an avoidance scheme identified by HMRC's published Spotlights list⁶;
- g. Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

Condition three (Arrangements are admitted, or subject to litigation/prosecution or identified in a published list (Spotlights))

¹ <https://www.iasplus.com/en/standards/ifrs/ifrs10>

² 'Fraudulent evasion' means any 'UK tax evasion offence' or 'UK tax evasion facilitation offence' as defined by section 52 of the Criminal Finances Act 2017 or a failure to prevent facilitation of tax evasion under section 45 of the same Act.

³ "General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions

⁴ "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others ⁵ A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

⁵ The full definition of 'Anti-avoidance rule' can be found at Paragraph 25(1) of Schedule 18 to the Finance Act 2016 and Condition 2 (a) above shall be construed accordingly.

⁶ Targeted list of tax avoidance schemes that HMRC believes are being used to avoid paying tax due and which are listed on the Spotlight website: <https://www.gov.uk/government/collections/tax-avoidance-schemes>
<https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight>

3. X's activity in Condition 2 is, where applicable, subject to dispute and/or litigation as follows:

1. In respect of (a), either X:
 1. Has accepted the terms of an offer made under a Contractual Disclosure Facility (CDF) pursuant to the Code of Practice 9 (COP9) procedure⁷; or,
 2. Has been charged with an offence of fraudulent evasion.
2. In respect of (b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.
3. In respect of (b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
4. In respect of (f) this condition is satisfied without any further steps being taken.
5. In respect of (g) the foreign equivalent to each of the corresponding steps set out above in (i) to (iii).

For the avoidance of doubt, any reference in this Annex 1 to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation.

Annex 2 Form CONFIDENTIALITY DECLARATION

CONTRACT REFERENCE: Virtual Assessment Centres for Tax Specialist Recruitment - SR495898738 ('the Agreement') DECLARATION:

I solemnly declare that:

1. I am aware that the duty of confidentiality imposed by section 18 of the Commissioners for Revenue and Customs Act 2005 applies to Authority Data (as defined in the Agreement) that has been or will be provided to me in accordance with the Agreement.
2. I understand and acknowledge that under Section 19 of the Commissioners for Revenue and Customs Act 2005 it may be a criminal offence to disclose any Authority Data provided to me.

SIGNED:
FULL NAME:
POSITION:
COMPANY:

⁷ The Code of Practice 9 (COP9) is an investigation of fraud procedure, where X agrees to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct that has led to irregularities in their tax affairs following which HMRC will not pursue a criminal investigation into the conduct disclosed.

DATE OF SIGNITURE:

The following Annexes will also apply:

Annex 1 Proposal

[REDACTED]

Annex 2 Security Questionnaire

[REDACTED]

Annex 3 Accessibility

[REDACTED]

Annex 4 Supplier Terms and Conditions

[REDACTED]

Annex 5 Service Levels and Performance Monitoring

[REDACTED]



Capita HMRC Tax Academy Proposal





1 Introduction

Capita is a grade 2 Ofsted provider and is on the Register of Apprenticeship Training providers (RoATP)

1.1 Proposed enrolment process

The proposed process for enrolment is detailed below

1. Service Request Form submitted by HMRC, and Capita allocate a CAP reference number
2. Learner details are entered onto the SRF tracker within 48 hours.
3. Welcome email sent to applicant within 10 working days this includes log in details for Skills Forward (now known as NCFE) to complete initial assessment and diagnostic test and log in details for BUD. If the initial assessment has already been completed within three months of the enrolment date and can be provided, this will just require the completion of the diagnostic.
4. Enrolment and first day in learning is scheduled within 8 weeks of receipt of SRF with functional skills specialist.
5. If the learner has not completed the diagnostic within five working days a prompt is sent to the line manager and learner. If the learner does not complete after this prompt this will be raised again with the line manager and referred to the apprenticeship team via the Client Partner.
6. Line managers will be invited to attend a briefing session on functional skills completion.
7. Secondary eligibility checks will be completed in addition to those provided by HMRC on the SRF. If the learner or the PLR indicates that they are exempt from functional skills, they will be asked to provide certificated evidence prior to the enrolment date. If these are received, then the enrolment will be cancelled and HMRC informed via the Client Partner.
8. The learners will have two attempts to reach the required level 1 IA and or diagnostic assessment result. If this is not achieved this will be referred to HMRC via the Client Partner and actions agreed.
9. If special educational needs are identified at this stage the learner can be referred to the Capita SEND team. This will mean additional monthly 1-2-1 sessions can be accessed by the learner which will be evidenced and invoiced separately to the functional skills. If this is used to solely support the functional skills element of the apprenticeship programme HMRC may not be able to re-claim the funding for this. However, if this is accessed for the main apprenticeship programme, which can be arranged, then subject to funding guidance, this could be funded. If any learner is identified in this category HMRC will be notified and agreement sought prior to the commencement of the support.
10. The Functional Skills Specialist will complete the enrolment and deliver the first day in learning as planned as a cohort workshop.

1.2 Proposed Delivery Methodology

- Learners will be allocated a specific Functional Skill Specialist
- The NCFE platform is used to access learner specific on-line learning materials created from the diagnostic spiky profile. These will form part of the learning plan and will provide self -study activities for the learner.
- MS Bookings is used to schedule the workshop delivery in cohorts of 12 learners
 - For English functional skills delivery will be 4 x 1.5 hours workshop sessions, 2 mocks exam test at 1 hour each and three exams at 4.5 hours. Total of 12.5 hours
 - For maths functional skills 5 x 1.5 hours workshop sessions, 1 mock exam at 2 hours and 1 exam at 2 hours. Total of 11.5 hours
 - Learners are required to attend two workshops per month.
- Line managers will have 24-7 access to BUD to monitor progress with the learner.
- In addition the learner and line manager will have a 30-minute bi-monthly learner contact session with the Functional Skill Specialist to review progress. These will all be scheduled in advance for the duration of the programme to ensure availability and attendance. These will also include any identified 1-2-1 support required by the learner.
- It is planned that the learners will complete their functional skills within 7 months or less dependent on the requirement for 1 or 2 functional skills.
- If a learner does not attend a workshop or an individual session this will be flagged by the tutor to the learner's line manager and will be reported on the system.
- In addition to the workshops and the 1-2-1 sessions with line managers and learners it is anticipated that up to 25% of learners will require some additional 1-2-1 support. This is included in the cost.

1.3 Quality Assurance and Monitoring

- Learners teaching sessions will be observed by the observation of teaching and learning team on a periodic basis. Feedback will be provided to the tutor if any areas for improvement are identified
- Sampling of learner's work will be undertaken by the Capita Business Improvement team.
- Monthly meetings will be held with the designated Client Partner and HMRC teams to review progress and identify any concerns.
- HMRC line managers will have access to BUD to check progress and the HMRC team will have access to the real time data management system - Qlicksense for a range of reports including progression. The client partner will produce monthly summary reports of progress and identify causes for concern.
- Monthly invoicing will include learner details, the functional skills requirement and additional evidence of SEND if required.

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Security Plan Questionnaire - Low

FULL QUESTIONNAIRE REDACTED

ACCESSIBILITY

The Supplier will endeavour to meet the terms within Public Sector Accessibility Regulations 2018 and WCAG 2.1 AA for the aspects of the service being delivered through a web browser or mobile applications. As part of this, the Supplier will ensure that both Bud and NCFE (formerly Skills Forward) systems: -

- 1) Will endeavor to meet the terms within Public Sector Accessibility Regulations 2018 and WCAG 2.1 AA for the aspects of the service being delivered through a web browser or mobile applications, and once full compliance is achieved, provide HMRC confirmation, and;
- 2) Will allow HMRC to conduct internal accessibility audits on the BUD system if requested.
- 3) At HMRC's cost, provide HMRC with an accessibility report upon written request to detail the Supplier's status on accessibility requirements. The cost to be paid upfront prior to commencement of the report.

Capita will ensure that when the learner enrolls on the functional skills programme, questions are asked to identify any SEND requirements. Capita's system will automatically notify Capita's SEND team, who will contact the learner to discuss any SEND requirements further.

Where the supplier is notified that a learner will require specific accessibility adjustments, the supplier will:

- Develop and implement a personalised support plan which will include 12-1 sessions with Capita's specialist team. The support will depend on each individual's requirements, but could include:
 - Organising learning ○ Understanding connections
 - The utilisation of assisted technology, for example, contrasts, dictate and read aloud
 - De-coding words ○ Memory strategies ○ Downloading documents into word or uploading work onto BUD ○ Managing wellbeing

All of Capita's functional skills tutors will be trained on the adaptations for learners who may not want to access the additional support, and information sheets will be provided for adjustments that can be made in the workshops and on a 1-2-1 basis.

The NCFE platform will provide online learning against individual requirements, which are highlighted in the initial assessment and diagnostic. In addition, alternative options can be provided through personal support if required.

BUD is used to keep track of progress, and apprentices upload work against preset activities. If required, the tutor can upload work on the learner's behalf. The records of individual learner reviews are stored on BUD to map progress and this acts as a progression measure. The tutor completes these in conjunction with the apprentice and the line manager. An apprentice usually records their own comments, but this can be dictated and completed by the tutor.



Apprenticeship Training Services Agreement

Private and Confidential

OFFICIAL



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Capita Entity ("Capita")	Capita plc [REDACTED]
Capita Notice Address	Capita plc, [REDACTED].
Services:	The Services to be provided by Capita in relation to the Training Program shall comprise those services set out in the Schedule 1 and 3 which may or may not be Levy funded.
Training Programme	The training and assessment program to be delivered by Capita and the initial profile of learners is set out in Schedule 1. The Training Programme may be varied by agreement in writing between Capita and the Client from time to time.
Off The Job Learning	With effect from August 1 st 2022, there is no longer a 20% requirement for off- the job learning. The minimum hours required for off-the-job learning is 6 hours per week.
Client Commitment	The Client acknowledges that it is committed to ensuring each learner is provided with all possible support to ensure they successfully complete their apprenticeship. The Client recognises that they will need to invest additional time, effort and perseverance in each Learner to enable them to become of fully productive employee.
Fees	The fees set out in Schedule 1 or a Request for Services shall be payable by the Client to Capita in consideration for the Services via the Client's Digital Account. The Fees may be varied by agreement in writing between Capita and the Client from time to time.

SCHEDULE 1 AND 2- DELETED (REPLACED BY HMRC ORDER FORM)



SCHEDULE 3 - RESPONSIBILITIES

1. CAPITA RESPONSIBILITIES

1.1. In accordance with the ESFA Rules, Capita undertakes that it shall:

- 1.1.1. prepare and redistribute the Commitment Statement at the outset of an Apprentice's programme;
- 1.1.2. extend the actual end-date of the Apprenticeship if the working hours of the Apprentice fall below 30 hours a week;
- 1.1.3. check the eligibility of the individual Apprentice at the start of their Apprenticeship programme;
- 1.1.4. only use funds in the Client's Digital Account or government-Client co-investment for those who are eligible;
- 1.1.5. retain evidence of each Apprentice's eligibility for as long as reasonably necessary, subject always to requirements under any applicable law;
- 1.1.6. carry out a thorough assessment to identify the additional learning support the Apprentice needs and if appropriate record in the ILR that an Apprentice has a learning support need;
- 1.1.7. agree and record the outcomes of the additional learning support assessment, deliver support in line with the identified needs, record all outcomes in the evidence pack, and retain evidence of the assessment;

1.2. In relation to the additional payments for 16 to 18 or 19 to 24 year olds, Capita shall:

- 1.2.1. provide the Client with information on eligibility and timescales;
- 1.2.2. promptly submit applications on behalf of eligible Clients once the Client has provided all of the necessary information;
- 1.2.3. make payment to the Client no later than 30 days after receipt of funding from the ESFA;
- 1.2.4. investigate and resolve Client complaints and issues relating funding claims; and
- 1.2.5. promptly inform the Client if it becomes aware that the Client is no longer eligible for the additional payments.
- 1.2.6. conduct a thorough assessment based on the national literacy and numeracy standards if an Apprentice requires further training and funding before being able to achieve a Level 2 Standard
- 1.2.7. contract with an organisation (the "End-Point Assessment Organisation"), which will carry out the final assessment for the Apprentice and agree with it the arrangements for end-point assessments, re-takes and payments and for this purpose the Client shall choose an End-Point Assessment Organisation reasonably acceptable to Capita within 14 days of Capita requiring it to do so.
- 1.2.8. make payment to the End-Point Assessment Organisation for conducting the end-point assessment and keep records of all such payments;
- 1.2.9. directly deliver some of the Apprenticeship training and/or on-programme assessment associated with each Client's Apprenticeship programme and the volume of involvement must have some substance (i.e. be more than nominal)
- 1.2.10. not use a subcontractor for the delivery of the Agreed Services unless it is on the published Register of Apprenticeship Training Providers
- 1.2.11. manage, monitor and regularly assess for quality its delivery subcontractors through visits and face to face interviews to ensure high-quality delivery in accordance with the ESFA Rules;
- 1.2.12. collect Client co-investments every three months (or shorter if less credit being given) and report the value received on the ILR; or

1.3. In accordance with the ESFA Rules if any subcontractor is used by Capita to provide any of the Agreed Services Capita shall ensure the following:

- 1.3.1. it has the knowledge, skills and experience of contracting with, and managing, delivery subcontractors; and



1.3.2. it has not assessed that subcontractor as unsuitable.

1.4. In accordance with the ESFA Rules, Capita shall ensure that it will not:

- 1.4.1. use Client or government account funds for an Apprentice's programme where they or another Party claim funding from another government department or other agency for the same purpose;
- 1.4.2. claim funding for any part of any Apprentice's programme that duplicates provision they have received from any other source;
- 1.4.3. commence an Apprentice's programme if there is no prospect of the Apprentice completing the programme within the amount of time available;
- 1.4.4. enrol an Apprentice without confirmation that they are not enrolled on another Apprenticeship or other funded learning programmes;
- 1.4.5. enrol an Apprentice without ensuring that they meet the eligibility requirements or have permission to work in England;
- 1.4.6. claim funding for individuals who do not meet the eligibility requirements set out in the ESFA Rules;
- 1.4.7. request any Client contribution to the cost of an Apprenticeship up to the maximum value of the funding band if the Client employs fewer than 50 people recruits an eligible Apprentice; or

1.5. Capita may amend this Schedule from time to time in accordance with the ESFA Funding Rules.

CLIENT'S RESPONSIBILITIES

2. In accordance with the ESFA Rules the Client undertakes that it shall:

- 2.1. Ensure the Apprentice must have a contract of employment long enough to complete their Apprenticeship
- 2.2. promptly provide accurate and up to date information to Capita;
- 2.3. provide Capita with all reasonable support and information it requires in relation to the Apprentice and the Apprenticeship;
- 2.4. at all times provide Capita with up to date information on the Apprentice's employment status or breaks in learning;
- 2.5. immediately notify Capita of any changes to the Apprentice's employment status;
- 2.6. promptly provide Capita with such information as it may reasonably require for it to obtain funds from the Client's Digital Account or the government-Client co-investment, including but not limited to evidence:
 - 2.6.1. of the Apprentice's eligibility to receive funding at the start of the Apprenticeship programme;
 - 2.6.2. of the Apprentice's employment by either the Client or a connected company as defined by HM Revenue and Customs;
 - 2.6.3. that the Client permits the Apprentice to spend a minimum of 20% of their time on off-the-job experience directly linked to the Apprenticeship programme;
 - 2.6.4. of the Apprentice's average weekly hours
 - 2.6.5. that the job allows the Apprentice to gain wider employment experience;
 - 2.6.6. that the duration of the Apprenticeship meets the ESFA's minimum duration funding rule if an Apprentice is changing their Apprenticeship Framework/Standard, transfers between providers, or takes a break in learning; and
 - 2.6.7. that the Client employs an average of 49 or fewer employees if the Client is relying on funding from the government.



- 2.7. involve the Apprentice in active learning or monitored workplace practice throughout the Apprenticeship programme to Capita, including, but not limited to, ensuring that the Apprentice works such number of hours per week to undertake sufficient, regular training and on the job activity as Capita may reasonably require and to permit the Apprentice to complete the Apprenticeship within their working hours and provide such evidence of doing so or having done so as Capita may reasonably require;
- 2.8. extend the working hours of the Apprentice as Capita may reasonably require if Capita determines that the Apprentice has worked below the minimum number of hours required to complete the Apprenticeship;
- 2.9. disclose any reason why the Apprentice may not have enough time to complete the Apprenticeship;
- 2.10. ensure that the Apprentice will spend at least 50% of his working hours in England over the duration of the Apprenticeship;
- 2.11. ensure that the Apprentice is not already enrolled on any other Apprenticeship programme;
- 2.12. ensure that each Apprentice is eligible to work in England;
- 2.13. promptly provide Capita with any information it may reasonably require in relation to previous Apprenticeship training or qualifications that any Apprentice may have received;
- 2.14. promptly provide Capita with all information it may reasonably require in relation to Apprenticeship additional payment claims;
- 2.15. promptly pay all sums owed to Capita in relation to the Apprenticeship including the full difference between band maximums and agreed prices, or for any mandatory co-investment;
- 2.16. appoint an End-Point Assessment Organisation to deliver end-point assessment from the Register of End-Point Assessment Organisations.
- 2.17. unless otherwise agreed, appoint Capita to record the required details of the Apprenticeship with the ESFA but if otherwise, it shall promptly record the required details of the Apprenticeship with the ESFA through the Digital Account; and
- 2.18. In accordance with the ESFA Rules, the Client undertakes that it shall not:
 - 2.18.1. require Apprentices to make financial contributions towards the cost of the Apprenticeship programme;
 - 2.18.2. withdraw Apprentices and re-start Apprenticeships that originally commenced before 1 May 2017 when the ESFA Rules came into force.

COMMON RESPONSIBILITIES

3. Each of Capita and the Client undertakes with the other that it shall in accordance with the ESFA rules:
 - 3.1. enter into a written Apprenticeship Agreement and Commitment Statement in relation to each Apprentice at the start of and for the entire length of the Apprenticeship;
 - 3.2. in relation to all Apprenticeships, complete and sign the declaration as required and applicable;
 - 3.3. agree when the Apprentice has obtained sufficient skills, knowledge and behaviours to sit their end-point assessment and for this purpose the Client shall agree a time proposed by Capita within 14 days of Capita requiring it to do so and if the Client shall fail to do so Capita is hereby authorised in the name and on behalf of the Client and Capita to decide that time as Capita thinks fit;
 - 3.4. take the costs of the end-point assessment and any re-takes into account when agreeing the Fees; and
 - 3.4.1. Each of Capita and the Client undertakes to the other that it shall not use funds in the Client's Digital Account or government-Client co-investment for any of the following:
 - Enrolment, main provider (or subcontractor) induction, initial assessment, initial diagnostic testing, or similar activity.



- Travel costs for Apprentices under any circumstances.
- Apprentice wages.
- Personal protective clothing and safety equipment required by the Apprentice to carry out their day-to-day work.
- Development of original teaching materials related to the delivery of a new Apprenticeship offer. By this we mean the first time a provider chooses to deliver a new Apprenticeship standard.
- Off-the-job training delivered only by self-directed distance learning.
- Any training, optional modules, educational trips or trips to professional events in excess of those required to achieve the Apprenticeship. This includes training solely and specifically required for a licence to practise.
- Any fees to third parties associated with a licence to practise. This includes registration, examination and certification costs. This applies even where a licence to practise is specified in the Apprenticeship standard and assessment plan.
- Any fees to awarding bodies for non-mandatory qualifications (qualifications that are not specifically listed in the standard). This includes registration, examination and certification costs.
- Student membership fees that are required by professional bodies, even where linked to mandatory qualifications.
- End-point assessment costs incurred by the main provider. The must be included in the price negotiated between the employer and the end point assessment organisation.
- English and maths up to level 2 (this is funded separately).
- Repeating the same regulated qualification where the Apprentice has previously achieved it, unless it is a requirement of the Apprenticeship or for any GCSE where the Apprentice has not achieved grade C, or 4, or higher.
- Accommodation costs where the Apprentice is resident away from their home base, because of the requirements of their day-to-day work or because this is convenient for the employer or main provider (or subcontractor). Residential costs associated with non-mandatory learning, including qualifications and outward-bound activities, are also excluded.
- Capita purchases including lease agreements. Capita purchases are long-term assets that would have a lifespan beyond the Apprenticeship being funded, such as land, buildings, machinery and ICT equipment (e.g. tablets and similar electronic devices).
- Maintenance of Capita purchases. This includes vehicle parts and labour, insurance and MOT.
- Time spent by employees / managers supporting or mentoring Apprentices, where this is not delivering training required as part of the Apprenticeship (e.g. generic line management responsibilities).
- Specific services not related to the delivery and administration of the Apprenticeship. This includes the recruitment and continuing professional development of staff involved in Apprenticeships, company inductions, managing agents, brokers / referral services (sourcing employer / learner leads) and the costs of memberships or other costs paid to employers, or their representatives, associated with procurement registers or opportunities to secure business.

3.5. However, the above exclusions do not include the following:

3.5.1. Off-the-job training through a main provider or supporting provider, or evidenced costs for employer-provider delivery. This can include:

3.5.1.1. Some or all of the training aspects of a licence to practise or non-mandatory qualification. In both cases there must be a clear overlap between this training and the knowledge, skills and behaviours needed for the Apprenticeship.



3.5.1.2. Self-directed distance learning (where it forms only part of the learning experience), interactive online learning (virtual classrooms) or blended learning relating to the off-the-job training element of an Apprenticeship.

- 3.6. If Capita is to sub-contract all or part of the Agreed Services, Capita shall be entitled to make alternative delivery arrangements for each affected Apprentice as it may reasonably decide in the event that any subcontractor undergoes a change of circumstances that affects its ability to continue to deliver any of the Agreed Services.
- 3.7. It is agreed between Capita and Client that paragraph 1.2 shall be amended from time to time in accordance with the EFSA Funding Rules.

SCHEDULE 4 - THE COMMITMENT STATEMENT

BEFORE THE APPRENTICESHIP STARTS CAPITA MUST ENSURE THAT THE APPRENTICE AND THEIR CLIENT HOLD A SIGNED COPY OF THE COMMITMENT STATEMENT SETTING OUT HOW THEY WILL SUPPORT THE ACHIEVEMENT OF THE APPRENTICESHIP. IT MUST BE SIGNED BY THE APPRENTICE, THEIR CLIENT AND CAPITA, AND ALL THREE PARTIES MUST KEEP A CURRENT SIGNED AND DATED VERSION. THIS MUST BE RETAINED WITH, OR IN, THE WRITTEN AGREEMENT BETWEEN THE CLIENT AND TRAINING PROVIDER, WHICH MUST BE THE CONTRACT FOR SERVICES BETWEEN CAPITA AND CLIENT, ESPECIALLY WHERE FUNDED FROM A CLIENT'S DIGITAL ACCOUNT.

A summary of:


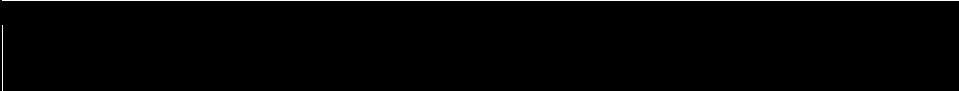
- A. details of the Apprenticeship being followed, including start and end-dates for the Apprenticeship training (must align with the start date in the Apprenticeship agreement and the ILR) and (where applicable) end-point assessment and key milestones for mandatory or other qualification achievements, job role and contracted hours, and the amount of off-the-job training that will be delivered to meet the minimum 20% requirements;
- B. details on which elements are eligible for funding from the Client's Digital Account or government-Client coinvestment and necessary to meet any end-point assessment, those which are extra and not eligible for coinvestment but will be fully funded by the Client, and those fully funded by the ESFA including English and maths; and
- C. the list of all organisations delivering the training including English and maths and the end point assessment organisation (for standards).
- D. roles and responsibilities for the Client, Capita and Apprentice and arrangements for how the three parties will work together; this must include contact details and the expected commitment from each party to ensure the smooth running and day-to-day delivery of the Apprenticeship, including:
 - i. Client; commitment to wages and time off to study in the working day; and
 - ii. Capita (and any deliver subcontractors); delivery of training support and guidance
- E. the process for resolving any queries or complaints regarding the Apprenticeship, including quality; this must include details of the escalation route within Capita's own organisation and the escalation process to the ESFA through the Apprenticeship helpline.

SCHEDULE 5 - DATA PROTECTION PARTICULARS

Under Data Protection Legislation, Capita shall only process Personal Data in accordance with the Client's documented instructions, as regulated in the Data Protection Legislation. This document forms part of the Client's instructions, directing Capita on the scope, nature, and purpose when processing Personal Data on behalf of the Client.



The Client's instructions may be amended in writing by the Client from time to time, as communicated in writing to Capita by authorised representatives of the Client.

Subject matter of the processing	Capita shall process Personal Data hereunder exclusively within the scope of the provision of the Training Services.
Duration of the processing	Personal Data shall not be processed for a period longer than is necessary for serving its purpose. In respect of all processing activities other than storage of the Personal Data, the processing shall cease on expiry or termination of the Training Services. In relation to storage of the Personal Data, the processing shall cease within 7 years following termination or expiry of the Training Services.
Nature and purpose of the processing	The Processor shall process Personal Data only for the purpose of enabling the Client to manage its training of Apprentices in accordance with the ESFA Rules through the Training Service.
Type of personal data processed	
Categories of data subjects	
Special Categories of Data	N/A
Processing Activities	Collection Registration Storing Accessing, reading or consultation Erasure or destruction
Sub-Processors	Bud Systems Limited 40 Berkeley Square, Bristol, BS8 1HP
Location	United Kingdom.

TERMS AND CONDITIONS

:
DEFINITIONS: In this Agreement the following expressions have the following meanings:

Additional Funding	means either funding for Apprentices in need of 'Functional Skills' (defined by the ESFA Rules) or Learning Support; means the Training Services that are agreed pursuant to a Request for Services (RFS) under this Agreement as varied by any applicable Change Control Note or Mandatory Change Notice;	Data Controller	means the person or organisation who determines the purposes for which and the manner in which any Personal Data is processed; means the Data Protection Act 2018 or any replacement legislation applicable in England and Wales from time to time and any other applicable laws relating to the processing of personal data; means the Client's digital account held under the ESFA Rules means the party disclosing Confidential Information to the other party; means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Agreed Services, or any matter where this Agreement directs the parties to resolve an issue by reference to the Dispute Resolution Procedure; means the procedure set out in clause 17;
Agreed Services	means an individual employed by the Client under an Apprenticeship Agreement who is an Apprentice under the Schools Funding Agency (ESFA) Rules and in relation to whom Capita is to provide any of the Agreed Services;	Data Protection Legislation	
Apprentice	means the training of an Apprentice in accordance with the ESFA Rules;	Digital Account	
Apprenticeship	means a standard approved by the ESFA and published by the Secretary of State, and assessed through a standardised exam, more particularly described in the ESFA Rules; means the approved qualification-awarding body for the applicable Apprenticeship Standard; means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business; means the period from 9.00am to 5.00pm on any Business Day; means any equipment, including tools, systems, cabling or facilities, provided by Capita, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Agreed Services including any such items specified in a Request for Services; means all documents, information, items and materials in any form, whether owned by Capita or a third party, which are used by Capita in connection with the Agreed Services; means a Change Control Note pursuant to clause 4;	Dispute	
Apprenticeship Standard		Dispute Resolution Procedure	
Awarding Body		End Point Assessment Organisation	means the Education & Skills Funding Agency, previously the Skills Funding Agency (SFA); means the published (i) Apprenticeship funding: rules and guidance for employers; (ii) Apprenticeship funding: rules for training providers; and (iii) Apprenticeship performance management rules for training providers, as may be updated from time to time.
Business Day		ESFA	
Business Hours		ESFA Rules	means the ESFA's funding rules as contained in: <i>Rules for Training Providers</i> including assent of the rules and/or as amended from time to time; means standards, practice methods and procedures conforming to applicable legal requirements and that degree of care and skill diligence and prudence which would be reasonably expected of an experienced person engaged in providing services similar in nature to the Training Services in a similar type and size of undertaking and under the same or similar circumstances as anticipated by this Agreement; means the terms of this Agreement detailed outlining the main scope and duration of the Agreement stated at the front of the Agreement means the individualised learner record which Capita submits to the ESFA; has the meaning set out in clause 2; means patents, rights to inventions, copyright and moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; means support available for Apprentices with learning difficulties or disabilities;
Capita Equipment		Good Industry Practice	means intended by the Client to be funded in whole or in part with Levy Funding;
Capita Materials		Head Terms of Agreement	
Change Control Note Fees	means the price pursuant to the Payment Schedule specified in a Request for Services for the Agreed Services together with any Mandatory Additional Cost Payment; means any personal data which is transmitted by or on behalf of the Client to, or is otherwise processed by, Capita under this Agreement or which is generated under this Agreement.	ILR	
Client Data	means all documents, information, items and materials in any form, whether owned by the Client or a third party, which are provided by the Client to Capita in connection with the Agreed Services, including the items provided pursuant to clause 9; means any equipment, including tools, systems, cabling or facilities, provided by the Client, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Agreed Services including any such items specified in a Request for Services;	Initial Term	
Client Materials	means the date of execution of this Agreement;	Intellectual Property Rights (IPRs)	
Client's Equipment			
Commencement Date	means the statement in relation to each Apprentice a plan agreed between the Client, Capita and the Apprentice setting out how the Apprentice will develop the skills required under the Apprenticeship Standard between the Parties as set out in Schedule 4;		
Commitment Statement	means 20% of the Payment for each Apprenticeship that under the ESFA Rules, is only paid once an Apprentice has successfully completed the Apprenticeship;		
Completion Payment	means all written or oral information, disclosed, directly or indirectly, by the Disclosing Party to the Receiving Party, related to the business or operations of the Disclosing Party or a third party that has been marked or otherwise identified as confidential or that by the nature of the information or circumstances surrounding its disclosure ought reasonably to be understood as being confidential or proprietary.	Learning Support	means funding provided by the ESFA through either the Client's Digital Account with Digital Apprenticeship Service, the ESFA or through Government-Client co-investment; means losses, liabilities, damages, wasted expenditure, costs and expenses (including legal fees on a solicitor/own Client basis and all other costs related to the investigation, prosecution or defence of legal claims);
Confidential Information	has meaning the meaning given in clause 6;	Levy Funded	
Contract Manager		Levy Funding	
		Losses	

Private and Confidential

Agreement for the Supply of Apprenticeship Training Services

Mandatory Additional Cost Payment	shall have the meaning given in clause 4.7;
Mandatory Change Notice	shall have the meaning given in clause 4.7;
Payment Schedule	means the detail of payments owed by the Client as set out in Schedule 1 and any agreed RFS.
Payments	means the payments that Capita is entitled to, payable in accordance with the Payment Schedule, or if there is no reference in the Payment Schedule, to be allocated in equal monthly instalments, subject always to the 20% that is payable as the Completion Payment;
Personal Data	means data relating to a living individual who can be identified from that data (or from that data and other information in the Data Controller's possession or likely to come into the Data Controller's possession).
Proposed Change Control Note	shall have the meaning given in clause 4;
Receiving Party	means the party receiving Confidential Information from the other party;
Register of Apprenticeship Training Providers	means the list of Apprenticeship training providers who have been approved for Apprenticeship delivery by the Education and Skills Funding Agency.
Request for Services or RFS	means a request for services made in accordance with clause 3;
Services Manager	shall have the meaning given in clause 5;
Training Services	means the services set out in Schedule 1 and available for provision by Capita pursuant to the Request for Services process;
VAT	means value added tax chargeable under the Value Added Tax Act 1994.

1 INTERPRETATION

- 1.1. In this Agreement, except where the context otherwise requires:
- 1.1.1. any gender includes all genders; the singular includes the plural and vice versa; and a reference to a person includes firms, partnerships, LLPs, associations, corporations, and bodies corporate;
- 1.1.2. a party means either the Client or the Training Provider and parties shall be construed accordingly and a reference to a party includes its permitted successors and assigns;
- 1.1.3. a reference to any enactment, order, regulation, statute, statutory provision, code, standard, policy or other instrument shall be construed as a reference to the same as amended, extended, replaced, consolidated or re-enacted from time to time, and shall include all subordinate legislation made from time to time under such statute or statutory provisions;
- 1.1.4. a reference to this Agreement or to any other document shall include any permitted variation, amendment, or supplement to such document and a reference to any clause, Schedule, appendix or paragraph is a reference to such clause, Schedule, appendix or paragraph of this Agreement; and

- 1.1.5. the captions and headings used in this Agreement are used for convenience only and are not to be given any legal effect;
- 1.1.6. examples which follow the word "including" (or similar) shall be construed as illustrative and shall not limit the interpretation of the term or concept of which they purport to be examples; and
- 1.1.7. any obligation not to do anything shall include an obligation not to suffer, permit or cause that thing to be done.

2 TERM

This Agreement shall commence on the Commencement Date and, subject to the provisions for earlier termination set out in this Agreement, shall continue for the "Initial Term" as stated in the Heads Terms of Agreement. This Agreement may be terminated by either party by serving 90 days' written notice on the other. Such notice is to take effect on or after the expiry of the Initial Term or in accordance with clause 13.

3 ORDERING SERVICES

3.1. The Client (Client) may order the Training Services by making a request for services ("RFS") to the Capita in writing. The RFS (the format of which is set out in the template provided at Schedule 2 unless otherwise agreed between the Parties) shall include, but not limited to, the following information:

- (a) the Training Services to be provided by Capita;
- (b) details of the Apprentice/s to receive the Training Services;
- (c) a timetable for Training Services (if applicable);
- (d) the Fees;
- (e) whether the requested Training Services are Levy Funded; and
- (f) any other relevant information,

and Capita shall be responsible for recording the required details of the Apprenticeship with the ESFA.

3.1.1. Once Capita has reviewed the RFS, Capita will either:

- (a) accept the RFS in accordance with clause 3.1.2;
- (b) ask for further information / clarity or provide further information to the Client in accordance with clause 3.1.3; or
- (c) reject the RFS in accordance with clause 3.1.4.

3.1.2. If Capita accepts the RFS, the Training Services requested shall be the Agreed Services to be provided by Capita pursuant to this Agreement.

3.1.3. If Capita asks for further information and/or raise points for clarity then the Client shall provide the requested information / clarity as soon as reasonably practicable (or within any timeframe obliged by ESFA where specified) of any request/s being made. Once Capita has reviewed the information provided and/or the parties have reviewed other relevant information, Capita can either accept the RFS or reject the RFS.

3.1.4. If Capita rejects the RFS, it shall be under no obligation to provide the requested Training Services. Any rejection (together with the reasons

for the rejection) of the RFS to be stated as soon as reasonably practical, and at least 30 days prior to desired start date of Apprentice in question (unless the Client has submitted the RFS less than 45 days prior to the desired start date of the Apprentice in which case this 30 day period shall not apply.)

- 3.2. Capita shall provide the Agreed Services from the date specified in the RFS that relates to the specific Training Services requested and agreed by the parties.
- 3.3. If Capita intends to sub-contract all or part of the Agreed Services, then Capita shall provide the following information prior to agreeing the RFS:
 - 3.3.1. the Apprenticeship training and/or on-programme assessment that will be directly delivered by Capita
 - 3.3.2. the amount of funding to be retained for direct delivery of the Apprenticeship training and/or on-programme assessment that each subcontractor will contribute to the Client's Apprenticeship programme;
 - 3.3.3. the amount of funding payable by Capita to each subcontractor for their contribution;
 - 3.3.4. the amount of funding to be retained by Capita to manage and monitor each subcontractor;
 - 3.3.5. the support that Capita will provide to each subcontractor in exchange for the amount of funding retained;
 - 3.3.6. the monitoring that Capita will undertake to ensure the quality of the Apprentice training and/or on-programme assessment; and
 - 3.3.7. any actual or perceived conflict of interest between Capita and any delivery subcontractors.
- 3.4. The parties shall negotiate in good faith any RFS and without any obligation on either party to agree, both parties shall sign and date the draft RFS once it is agreed.
- 3.5. Each RFS shall form part of this Agreement and shall not form a separate contract.

4 CHANGES TO SERVICES

- 4.1. If the Client or Capita wishes to change this Agreement or the Agreed Services, it may at any time request such change in accordance with the Change Control Procedure set out in this clause 4.
- 4.2. Any discussions which may take place between the Client and Capita in connection with a possible change shall be without prejudice to the rights of either party.
- 4.3. A request to amend this Agreement or the Agreed Services by either Party shall be made in writing to the other in the form of a note ("**Proposed Change Control Note**").
- 4.4. Each Proposed Change Control Note shall state:
 - 4.4.1. the name of the Party requesting the change;
 - 4.4.2. the date of the request;
 - 4.4.3. the reason for the change;
 - 4.4.4. full details of the change;
 - 4.4.5. the price (if any), of the change;

4.4.6. the likely impact of the change on other aspects of this Agreement including:

- (a) the timetable for the provision of the Agreed Services;
- (b) the effect on the Fees;
- (c) the training to be provided;
- (d) the use of sub-contractors;
- (e) working arrangements;
- (f) other contractual issues; and
- (g) a timetable for implementation of the change.

4.5. Capita and Client shall negotiate each Proposed Change Control Note in good faith and without any obligation on either Party to agree. Both Parties shall sign the Proposed Change Control Note once it is agreed.

4.6. A Proposed Change Control Note when signed by Client and Capita shall thereupon become a Change Control Note and shall constitute an amendment to this Agreement.

4.7. Notwithstanding any other provisions of this Agreement, where Capita reasonably considers that a change to this Agreement and/or the Agreed Services is required in order to comply with any requirement of the ESFA including any modification of the ESFA Rules or due to any relevant change in law, Capita shall be entitled by notice in writing to the Client ("**Mandatory Change Notice**") make such changes as it may reasonably decide are necessary to comply with the change in law and/or change to the ESFA requirements. Capita shall advise the Client of the changes and the impact of the change by way of a Mandatory Change Notice, and the Mandatory Change Notice will have effect from the time specified in the notice and the Client shall pay Capita such amount as Capita may reasonably determine to be the additional cost (if any) of providing the Agreed Services as so varied ("**Mandatory Additional Cost Payment**"). Capita shall evidence such cost increases before the Client becomes liable to pay the requested amount.

5 TRAINING PROVIDER RIGHTS AND RESPONSIBILITIES

- 5.1. If the Agreed Services are Levy Funded, Capita shall observe and perform the Capita responsibilities set out in Schedule 3.
- 5.2. If Capita's performance of its obligations under this Agreement is prevented or delayed (either in part or in its entirety) by the Client, its agents, subcontractors, consultants or employees being in breach of this Agreement, then, Capita shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client or further if reasonably required by Capita.
- 5.3. Capita shall (and shall ensure that its sub-contractors shall):
 - 5.3.1. provide the Agreed Services in accordance with an RFS in all material respects;
 - 5.3.2. provide the Agreed Services in accordance with Good Industry Practice;
 - 5.3.3. use reasonable endeavours to meet any agreed performance dates specified in an RFS;
 - 5.3.4. appoint a manager ("**Services Manager**") in respect of the Agreed Services, to act on behalf of Capita on all matters relating to the Agreed Services and is authorised to manage the Change Control Note process and the Mandatory Change Notice process;

- 5.3.5. use reasonable endeavours to ensure that the same person acts as the Services Manager for the duration of the Agreed Services; and
- 5.3.6. observe all health and safety and security requirements that apply at any of the Client's premises that have been communicated to it.
- 5.4. Capita shall at all times for the duration of this Agreement have and maintain the following policies (as amended from time to time): 5.4.1. Data and Privacy Policy; and
- 5.4.2. Complaints Policy.
- 5.5. Capita shall have the following rights:
- 5.5.1. Capita will have the right to vet all Apprentice/s for suitability prior to accepting any RFS, to the extent required by ESFA Rules;
- 5.5.2. Capita shall have the right to review the potential Apprentice's working environment on a case by case basis prior to agreeing any RFS, provided Capita: (i) gives the Client reasonable notice prior to any visit in order for Client to facilitate the RFS, (ii) ensures that the review is conducted on a confidential basis and that any of the Client's Confidential Information obtained as a result of the review is not disclosed to anyone other than those allowed to conduct the review, and (iii) uses reasonable efforts to ensure that reviews are, as far as reasonably possible, conducted in such a way as to keep any disruption to the Client's business generally to a minimum;
- 5.5.3. Capita shall determine the suitability of the Apprentice for the Training Service/s to be provided, in accordance with ESFA Rules. Capita may propose Training Service/s that may be better suited to meet the Apprentice's needs, but the Client is under no obligation to accept Capita's proposal;
- 5.5.4. Capita shall have the right to refuse any service/s to any individual Apprentice if it is deemed, having regard to the ESFA Apprenticeship Funding Performance Management Rules, that the Apprentice is unsuitable for the services being provided by Capita or if the Apprentice's commits an act of gross and/or wilful misconduct; and
- 5.5.5. Capita shall have the right to notification at the earliest opportunity from the Client should an Apprentice's employment with the Client be terminated.

6 CLIENT RESPONSIBILITIES

- 6.1. The Client shall observe and perform Client responsibilities set out in Schedule 3.
- 6.2. The Client shall:
- 6.2.1. provide reasonable co-operation with Capita in all matters relating to the Agreed Services;
- 6.2.2. specify in the RFS a manager ("Contract Manager") in respect of the Agreed Services, to act on behalf of the Client on all matters relating to the Agreed Services (including signing any Proposed Change Control Note);
- 6.2.3. provide Capita at no charge with such access to the Client's premises, data and other facilities as Capita may reasonably require;
- 6.2.4. provide Capita as soon as reasonably practicable with all such documents, information and materials in any form (whether owned by the Client or a third party) as Capita may reasonably require and ensure that they are accurate and complete in all material respects;
- 6.2.5. inform Capita of all health and safety and security requirements and other policies that apply at the Client's premises;

- 6.2.6. ensure that all the Client's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements; and
- 6.2.7. make any complaint to Capita in accordance with Capita's Complaints Policy.
- 6.3. In this Clause 6 any reference to Capita shall include its agents, subcontractors, consultants and employees.
- 6.4. The Client shall:
- 6.4.1. enter into an Apprenticeship Agreement. The Apprenticeship Agreement, inter alia, shall try to fix a minimum fixed term of at least 372 days for at least 30 hours per week, however, the minimum requirement for the 372 days and 30 hours per week may be amended, as discussed and agreed with Capita in accordance with the ESFA Rules;
- 6.4.2. confirm that all Apprentice/s have a genuine job with an accompanying skills development programme;
- 6.4.3. ensure that all Apprentice/s are supported by making sure that each Apprentice spends at least 20% of their time on the 'off-the-job' training and the Client agrees to continue to remunerate the Apprentice for this training time ensure that they fully co-operate with Capita in-order to facilitate the 20% 'off-the-job' training, so that the Apprentice can take full benefit of the training, for the avoidance of doubt this can include, but is not limited to, the Apprentice using some training resources that are available to the Apprentice as any employee of the Client;
- 6.4.4. work with Capita and each Apprentice to agree an Apprenticeship Standard or Commitment Statement for each Apprentice;
- 6.4.5. pay Apprentices at least the minimum wage required by law;
- 6.4.6. assist the Apprentice with his development as much as possible to the reasonable satisfaction of Capita; and in accordance with appropriate Apprenticeship Standard requirements; and
- 6.4.7. permit Capita to apply for additional funding for the benefit of Apprentices.

7 COMMON RESPONSIBILITIES

- 7.1. If the Agreed Services are Levy Funded, each of the Parties shall observe and perform the common responsibilities set out in Schedule 3.

8 INVOICING AND PAYMENT

- 8.1. The Client is responsible for payment of the Fees.
- 8.2. To the extent that Fees are not actually paid by the ESFA from the Digital Account, or the Agreed Services are not Levy Funded, Capita shall invoice the Client for the Fees and the Client shall pay such invoices within 30 days of receipt provided however that Capita shall only be entitled to the Completion Payment once the Apprentice has sat his final exam.
- 8.3. Capita shall be entitled to charge interest on unpaid invoices from the due date of payment to the actual date of payment at a rate of 8% per annum above the Bank of England's base lending rate from time-to-time.
- 8.4. Where the Client disagrees with any amount invoiced for any bona fide reason, it shall notify Capita of the reason or reasons for such disagreement or request such further information within 30 days of the

date of invoice. Any dispute in relation to an invoice shall be dealt with in accordance with the Dispute Resolution Procedure. Notwithstanding the foregoing the Client shall pay any undisputed sums pending resolution of the dispute.

8.5. Capita reserve the right to vary its prices for Training Services where there are changes in Levy Funding, or with 1 months' notice upon agreement with the Client for non-Levy Funded Agreed Services.

9 INTELLECTUAL PROPERTY

9.1. Capita (or its licensors, as applicable) shall retain ownership of all IPRs in the Training Materials.

9.2. Capita;

9.2.1. hereby grants to the Client a non-exclusive, non-transferable, royalty free licence to use the Training Materials for the duration of the Agreed Services;

9.2.2. warrants that the receipt and use in the performance of this Agreement by the Client its agents, subcontractors or consultants of the Training Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party or the Client.

9.2.3. shall keep the Client indemnified against all damages, costs, claims and expenses suffered or incurred by the Client as a result of any actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Training Materials.

9.3. The Client (or its licensors, as applicable) shall retain ownership of all IPRs in the Client Materials.

9.4. The Client:

9.4.1. hereby grants to Capita its agents, subcontractors or consultants, a non-exclusive, non-transferable, royalty free licence to use the Client Materials to the extent necessary to provide the Agreed Services;

9.4.2. warrants that the receipt and use in the performance of this Agreement by Capita, its agents, subcontractors or consultants of the Client Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

9.4.3. shall keep Capita indemnified against all damages, costs, claims and expenses suffered or incurred by Capita as a result of any actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Client Materials.

9.5. If either party (Indemnifying Party) is required to indemnify the other party (Indemnified Party) under this clause 9, the Indemnified Party shall:

9.5.1. notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity (IPRs Claim);

9.5.2. allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

9.5.3. provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and

9.5.4. not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

10 DATA PROTECTION

10.1. With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that in relation to any Client Data the Client is a Data Controller and Capita is a data processor. The terms "data processor", "data subject", "process" or "processing" and "supervisory authority" shall have the meanings attributed under the Data Protection Legislation.

10.2. The parties acknowledge their respective obligations under the Data Protection Legislation and shall give each other such assistance as is reasonable to enable each other to comply with such obligations.

10.3. The Client warrants to Capita that it has lawful grounds for processing the Client Data.

10.4. The parties confirm that the following information has been provided in Schedule 9 (the "Data Protection Particulars"): subject matter and duration of the processing; the nature and purpose of the processing; the type of personal data; the categories of data subjects; the obligations and rights of the Client.

10.5. Where Capita processes Client Data under or in connection with this Agreement, Capita shall:

10.5.1. save as required otherwise by law, only process such Client Data as is necessary to perform its obligations under this Agreement, and only in accordance with the Client's documented instructions.

10.5.2. put in place appropriate technical and organisational measures to meet its own obligations under the Data Protection Legislation.

10.5.3. ensure Capita staff who will have access to Client Data are subject to appropriate confidentiality obligations and have undergone reasonable levels of training in Data Protection Legislation and in the care and handling of Client Data;

10.5.4. not transfer, disclose or grant access to the Client Data to any third party (including, but not limited to, any sub-contractors appointed in accordance with the terms of the Agreement) without obtaining the Client's prior written consent, and, where such consent is given, Capita shall ensure that equivalent requirements to those set out in this clause 10 are imposed on any sub-processor(s), Capita remaining fully liable to the Client for the performance of the subprocessor's obligations and where applicable, providing to the Client reasonable prior notice of any addition, removal or replacement of any such sub-processors;

10.5.5. not process or transfer Client Data outside the United Kingdom and the European Economic Area without the prior documented consent of the Client and where the Client gives such consent, Capita shall provide, in advance of any such process or transfer, a risk assessment which details: (i) where the Client Data will be transferred; (ii) the countries to which the Client Data will be transferred; and (iii) the means by which the Client will ensure an appropriate level of protection and appropriate safeguards in respect of the Client Data that will be transferred to the applicable country so as to ensure the Client's compliance with Data Protection Legislation;

10.5.6. have in place the appropriate technical and organisational security measures to protect the Client Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access;

10.5.7. notify the Client without undue delay after becoming aware of any personal data breach involving Client Data, taking into account the nature of processing and the information available to Capita and will take all reasonable steps to prevent or minimise the effects of the actual or suspected breach and implement any measures necessary to restore the security of compromised Client Data;

10.5.8. promptly record and refer to the Client all requests made by a data subject received by Capita and take appropriate technical and organisational measures, insofar as is possible, to assist the Client in responding to requests for data subjects for access to or rectification, erasure or portability of Client Data or for restriction of processing or objections to processing of Client Data. Capita will not itself respond to any such data subject request except on written instructions from the Client.

10.5.9. Capita will, upon the request of the Client, provide assistance and co-operation to the Client relating to the Client's security of processing (as required under Section 64 of the Data Protection Legislation); performing data protection impact assessments (as required under Section 65 of the Data Protection Legislation); personal data breach reporting requirements to any supervisory authority (as required under Section 67 of Data Protection Legislation); communications to data subjects in response to any personal data breach (as required under Section 68 of the Data Protection Legislation); and data protection or data privacy authority consultation obligations (as required under Section 66 of the Data Protection Legislation) taking into account the information available to Capita. Capita may charge the Client its reasonable costs (or the rates otherwise agreed between the parties) for its time spent and expenses incurred in providing the Client with co-operation and assistance as required by this clause;

10.5.10. will make available to the Client such information as the Client reasonably requests and Capita is reasonably able to provide, and, permit and contribute to such audits, including inspections, conducted by the Client (or the Client's appointed auditors), as is necessary to demonstrate Capita's compliance with the Data Protection Legislation. The Client will give reasonable notice of any audit and will be liable for Capita's reasonable costs incurred in complying with the Client's audit requirements (unless such audit reveals that Capita is in material breach of any Data Protection Legislation, whereupon Client shall not be liable for any of Capita);

10.5.11. save as may be required by law and where the parties have agreed that Capita; in accordance with regulatory requirements (ESFA rules), may need to retain the Client Data for a period of 7 years upon expiry or termination of this Agreement, shall (and shall procure that all relevant sub-contractors similarly) cease processing all Client Data, will not retain any copy, abstract, précis or summary of any Client Data, and will return and/or securely and permanently destroy (as directed in writing by the Client) all Client Data,

provided always that nothing in this clause shall oblige Capita to provide assistance which does not relate directly to the Agreed Services performed pursuant to this Agreement.

10.6. Capita shall inform the Client in writing if, in Capita's opinion, an instruction from the Client infringes the Data Protection Legislation. However, the Client acknowledges that:

10.6.1. any information Capita provides is not legal advice or guidance in anyway whatsoever, and that Capita makes no warranty or representation regarding the information (express or implied); and

10.6.2. this clause shall not relieve the Client of its obligation to ensure that all instructions to Capita comply with the Data Protection Legislation; and

10.6.3. Capita may charge the Client its reasonable costs (or the rates otherwise agreed between the parties) for its time spent and expenses incurred in providing the Client with co-operation and assistance.

11 CONFIDENTIALITY

11.1. Each Receiving Party recognises and agrees that the Confidential Information of the Disclosing Party is critical to the Disclosing Party's business and that neither Party would enter into the Agreement without assurance that such information and its value will be protected as provided in this clause 11 and elsewhere in the Agreement. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

11.1.1. not access or use, or permit the access or use of, Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with the Agreement;

11.1.2. not use or permit the use of any of the Disclosing Party's Confidential Information, directly or indirectly, in any manner to the detriment of the Disclosing Party or to obtain any competitive advantage over the Disclosing Party;

11.1.3. except as may be permitted by and subject to its compliance with clause 11.1.6 below, not disclose or permit access to Confidential Information other than to its personnel and professional and legal advisers ("**Representatives**") who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with the Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this clause 11; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this clause 11;

11.1.4. safeguard the Confidential Information from unauthorised use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;

11.1.5. ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' noncompliance with, the terms of this clause 11; and

11.1.6. notify the Disclosing Party in writing promptly of any unauthorised disclosure or use of the Disclosing Party's Confidential Information and cooperate with the Disclosing Party to protect the confidentiality and ownership of all Intellectual Property Rights, privacy rights, and other rights therein.

11.2. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records:

11.2.1. was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with the Agreement;

11.2.2. was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with the Agreement;

11.2.3. was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or

11.2.4. was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

11.3. If the Receiving Party or any of its Representatives is required to disclose the Disclosing Party's Confidential Information in response to a valid order of a court or other valid governmental or regulatory authority of competent jurisdiction, the Receiving Party agrees to give the Disclosing Party reasonable advance notice of the required disclosure (if legally permitted to do so) in order to afford the Disclosing Party a reasonable opportunity to contest the disclosure or seek a protective order, and the Receiving Party agrees to reasonably cooperate with the Disclosing Party's efforts.

11.4. The Receiving Party's obligations of confidentiality shall apply with respect to any particular Confidential Information of the Disclosing Party while any copy of it remains in the Receiving Party's possession or control, and thereafter for a period of two (2) years.

11.5. Upon the termination of the Agreement, the Receiving Party will cease all use of the Disclosing Party's Confidential Information in the form originally furnished and destroy it or, at the Disclosing Party's direction and expense, return it to the Disclosing Party.

11.6. Notwithstanding anything to the contrary in this clause 11, Capita may:

11.6.1. include the Client's name on Capita's customer list and may describe in general terms the nature of the services provided by Capita to the Client; and

11.6.2. disclose the Client's Confidential Information and the contents of the Agreement with its affiliates and any purchaser or potential purchaser of all or substantially all the assets or shares of Capita, provided such purchaser or potential purchaser has been informed of the confidential nature of the Confidential Information and is bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this clause 11 and providing that Capita has first sought and received the Client's approval to do so.

12 LIABILITY

12.1. Liability which is neither excluded nor limited:

12.1.1. Neither party excludes or limits its liability (if any) to the other:

- (a) for death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- (b) for fraud or fraudulent misrepresentation;
- (c) for personal injury or death caused by its negligence;
- (d) Client's liability to pay the Fees and other sums due to Capita including expenses
- (e) for breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- (f) for any matter for which, at law, a party cannot exclude or limit or to attempt to exclude or limit its liability.

12.2. Subject to clause 12.1 neither party shall be liable to the other party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for Losses which are made up of:

- 12.2.1. Loss of profits;
- 12.2.2. Loss of revenue;
- 12.2.3. Loss of sales or business;

- 12.2.4. Loss of agreements or contracts;
- 12.2.5. Loss of anticipated savings;
- 12.2.6. Loss of use or corruption of software, data or information;
- 12.2.7. Loss due to interruption of business; and
- 12.2.8. Loss of or damage to goodwill, each

whether direct or indirect;

12.2.9. Loss that is indirect or consequential of any act or omission of the other party; or

12.2.10. any voluntary compensation or concession, ex gratia payment, or sum paid in settlement of a claim paid by one party without the prior written approval of the other.

12.3. Subject to clause 12.2, the aggregate liability of each party to the other in respect of all Losses whether in contract, tort (including negligence), equity (including restitution), breach of statutory duty, or otherwise (including those under any indemnity) arising out of or in connection with this Agreement, shall not exceed 100% of the total annual Fees payable.

13 INSURANCE

Capita shall, for the Initial Term and a period of 6 Years after the end of the Initial Term, at its own cost, take out and maintain insurance cover of a sufficient value to cover all of Capita's activities carried out pursuant to or in relation to this Agreement, as well as any other insurance required by law, providing cover for Capita, its directors and employees. Capita shall procure that its subcontractors have and maintain insurance to cover any activities they carry out pursuant to or in relation to this Agreement for the Initial Term and a period of 6 Years after the end of the Term. Capita shall produce evidence in the form of an insurance broker's letter to evidence compliance with this clause 13 to the Client on reasonable request.

14 TERMINATION

14.1. Without affecting any other right or remedy available to it, either party may terminate the Agreed Services and/or this Agreement with immediate effect by giving written notice to the other party if:

- 14.1.1. the other party commits a material breach of any term of this Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 14.1.2. the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 14.1.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 14.1.4. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- 14.1.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party;

- 14.1.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 14.1.7. the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrator;
- 14.1.8. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 14.1.9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 30 days;
- 14.1.10. any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.3 to clause 14.1.9 (inclusive); or
- 14.1.11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 14.2. Without affecting any other right or remedy available to it, Capita may terminate this Agreement with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Agreement on the due date for payment and remains in default 14 days after being notified in writing to make such payment.

15 CONSEQUENCES OF TERMINATION

- 15.1. On termination or expiry of this Agreement:
- 15.1.1. unless expressly stated otherwise in the termination notice any uncompleted Requests for Service shall continue until the applicable Agreed Services are completed;
- 15.1.2. the Client shall immediately pay to Capita all unavoidable Losses including expected profit and unrecovered costs incurred due in respect of the Agreed Services actually provided up to the effective date of termination and whether or not Capita is entitled to be paid those charges or any of them out of the Levy Funding;
- 15.1.3. if and to the extent that Capita receives a payment from the Levy Funding in respect of services for which the Client has already paid pursuant to clause 15.1.2 ('a duplicated payment') Capita shall be entitled to apply that payment first in satisfaction of any other sum which is or may become due owing or incurred by the Client to Capita on any account and thereafter as to any balance in payment to the Client for or towards that duplicated payment;
- 15.1.4. without prejudice to the obligation on the Client to pay the Fees the Client shall use all reasonable endeavours to assist Capita in obtaining any payment to which it may be entitled in respect of the Agreed Services or otherwise pursuant to this agreement under the ESFA Rules;
- 15.1.5. the Client shall promptly return all of Capita's Equipment and if the Client fails to do so, Capita may enter the Client's premises and take possession of Capita's Equipment
- 15.1.6. until Capita's Equipment has been returned or repossessed, the Client shall be solely responsible for its safe keeping; and
- 15.1.7. Capita shall on request return any of the Client Materials not used up in the provision of the Agreed Services.

- 15.2. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

16 FORCE MAJEURE

- 16.1. An "Event of Force Majeure" means any event preventing an affected party from performing any or all of its obligations which arise from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the affected party which may include acts of God, civil disturbance, acts of war or terrorism, but excludes strikes, lockouts or industrial disputes, or the failure of its Subcontractors to perform (other than where the relevant Subcontractor is also affected by analogous events beyond its control)
- 16.2. Neither party will be deemed to be in breach of this Agreement or otherwise liable to the other party for any failure or delay in performing its obligations under this Agreement due to an Event of Force Majeure, provided that it has and continues to comply with its obligations set out in clause 16.4.
- 16.3. Provided Capita complies with the provisions in this clause 15, the Client shall continue to pay Capita the Fees in respect of any Agreed Services.
- 16.4. If a party's performance of its obligations under this Agreement is affected by an Event of Force Majeure:
- 16.4.1. it will give written notice to the other party, specifying the nature and extent of the Event of Force Majeure (including the reasons and likely duration of the delay), within a reasonable time of becoming aware of the Event of Force Majeure; and
- 16.4.2. subject to the provisions of clause 16.5, the date for performance of such obligations will be deemed suspended only for a period equal to the delay caused by such Event of Force Majeure;
- 16.4.3. it will notify the other party as soon as practicable after the Event of Force Majeure ceases or no longer causes it to be unable to perform its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Event of Force Majeure.
- 16.5. If the Event of Force Majeure in question continues for a period of 60 days or more, the party not subject to the Event of Force Majeure may give written notice to the other party to terminate this Agreement.

17 DISPUTE RESOLUTION PROCEDURE

- 17.1. The parties agree to co-operate with each other in an amicable manner with a view to achieving the successful implementation of this Agreement.
- 17.2. The Apprentice and the Client can contact the following Apprenticeship helpline regarding Apprenticeship concerns and queries:
- 17.2.1. Contact Number:
- 17.2.2. Website:
- 17.3. If a dispute arises between Capita and the Client during the Initial Term, in relation to any matter which cannot be resolved by their respective Personnel either party may refer the matter for determination in accordance with the procedure set out in Clause 17.4.

17.4. A dispute referred for determination under Clause 17.2 shall be resolved as follows:

17.4.1. by referral in the first instance to the Services Manager and the Contract Manager;

17.4.2. if the dispute is not resolved within 15 Business Days of its referral pursuant to Clause 17.3.1, such dispute shall be referred to the senior manager of each Party who is accountable for the delivery or receipt of the Agreed Services;

17.4.3. in the event that the dispute is still not resolved within 15 Business Days of its referral pursuant to Clause 17.3.2, the parties will attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution model mediation procedure.

17.5. For the avoidance of doubt neither party shall be prevented from, or delayed in, seeking orders for specific performance or interlocutory or final injunctive relief on an ex parte basis or otherwise as a result of the terms of this clause 17, such provisions not applying in respect of any circumstance where such remedies are sought.

17.6. Both parties reserve the right to seek redress from the courts for disputes which are not suitable or capable of resolution via the escalation procedure set out in this clause 17.

18 SUBCONTRACTING

Capita may subcontract performance of the Agreed Services as set out in Schedule 1 (Training Services) or as otherwise agreed in writing between the parties. Any such subcontracting shall not relieve Capita from and Capita shall remain liable for all of its liabilities, obligations and responsibilities hereunder.

19 ASSIGNMENT

19.1. The Client may not assign, delegate, or transfer the Agreement, in whole or in part, or any of its rights or duties hereunder without the written consent of Capita. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganisation involving the Client (regardless of whether the Client is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under the Agreement for which Capita's prior written consent is required. No assignment, delegation, or transfer will relieve the Client of any of its obligations or performance under the Agreement. Any attempted assignment, delegation or transfer by the Client in violation of this clause 19.1 is void.

19.2. The Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors or permitted assigns.

19.3. Capita may at any time assign, delegate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

20 PUBLICITY

20.1. Neither party shall:

20.1.1. make any public announcement or issue any public circular (including a media or press release) relating to this Agreement or its subject matter without the prior written approval of the other party (on every occasion) but this shall not prevent Capita from issuing documents or announcements which it is required to issue by any regulatory authority; or

20.1.2. use the name or logos of the other party or of any affiliate of the other party, as a reference or in any advertising or promotional materials without the other party's prior written consent (on every occasion), which may be withdrawn at any time if it is given.

21 NON-SOLICITATION

The Client agrees that during the Initial Term of this Agreement, and for twelve (12) months thereafter, it will not, without the prior written consent of Capita, directly or indirectly employ or engage or solicit for employment or engagement any employee of Capita provided that the Client shall not be in breach of this clause 21 if such employment results from a response to a general public advertisement for employment or talent search engagement not specifically targeted at the relevant employee.

22 NOTICES

22.1. Where this Agreement requires notice to be given by one party to the other such notice shall be in writing and shall be delivered by hand, first class post or special delivery (or such other address which the recipient has notified in writing to the other party in accordance with this clause 22, provided that such notification is received by the sender not less than 7 Business Days before the notice is despatched).

22.2. A notice will be deemed to have been duly served if (i) delivered by hand, at the time of delivery or (ii) if delivered by first class post or special delivery post, 48 hours after being posted; and provided that where in the case of delivery by hand such delivery occurs either after 4.00 pm on a Business Day, or on a day other than a Business Day, service will be deemed to occur at 9.00 am on the next following Business Day.

23 FURTHER ASSURANCE

Each party agrees to do all further acts and things and execute and deliver all instruments as shall be necessary or expedient in order to confirm or transfer any rights agreed to be granted or transferred pursuant to this Agreement.

24 WAIVERS & CONSENTS

24.1. No failure or delay by a party to exercise any right of remedy provided under the Agreement or by law shall constitute a waiver of that or any

other rights 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.

24.2. Except as expressly provided in the Agreement, all rights, remedies and powers of the parties hereunder are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all other rights, remedies and powers to which it may be entitled by law.

25 ENTIRE AGREEMENT

The Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous communications, understandings, and agreements concerning the subject matter hereof, whether written or oral. Each party agrees that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

26 VARIATION

No variation of the Agreement shall be effective unless it is in writing and signed by the duly authorised representatives of both parties.

27 INDEPENDENT CONTRACTOR

The relationship of the parties under the Agreement is that of independent contractors. Nothing in the Agreement is intended to or shall be deemed to make Capita and the Client partners, joint ventures or otherwise associated in or with the business of the other. Neither party is authorised to incur debts or other obligations of any kind on the part of or as agent for the other, or to make or enter into any commitments for or on behalf of the other party.

28 TUPE

The parties do not envisage that the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply to the Agreement.

29 SEVERABILITY

If any provision or part provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but shall not affect the validity and enforceability of the other provisions of the Agreement. If any provision or part provision of the Agreement is deemed deleted under this clause 29 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

30 COUNTERPARTS

The Agreement may be executed in separate counterparts, including by electronic or digital signature, and by the different parties on the same or separate counterparts. Any signed copy of the Agreement made by reliable means will be considered an original, and all signed counterparts will constitute one and the same instrument.

31 THIRD PARTY RIGHTS

A person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

32 GOVERNING LAW AND JURISDICTION

32.1. The Agreement and any Dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual Disputes or claims) shall be governed and construed in accordance with the law of England and Wales.

32.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual Disputes or claim

SERVICE LEVELS AND SEVERITY LEVELS

The service levels and severity levels given below are minimum percentages of acceptable delivery. In the event that a service level falls below the minimum percentage level, both parties will be expected to work collaboratively and conduct a deep dive exercise to identify and rectify the root issues. A Critical Service Failure shall mean if a service level should fall below [REDACTED].

		Level achieved			
Service Level		60-70%	71-90%	91-95%	96-100%
1.	Consistent functionality of Customer Service Support and availability, to be operational between the hours of 9:00 and 16:00 on any working weekday (excluding bank holidays)				
2.	Resolution of telephone enquiries - Within 3 days working days of receipt				
3.	Resolution of complaints; within 10 working days of receipt				
4.	Production of RAG rated progress reports by 10 th of each month, sent to a dedicated email account, including successful completions MI.				
5.	Telephone progress reports with dedicated HMRC representatives each month to discuss learner progress and resolution plans				
6.	Quarterly performance measurement review meetings with HMRC representatives to discuss safeguarding, overall progress and queries.				
7.	Contact with individual learners within 5 working days of the receipt of the service request form				

8.	Ensure that all referred learners complete their initial assessment within 5 working days of contact		
9.	For functional skills assessments and qualifications to be		

		Level achieved			
Service Level		60-70%	71-90%	91-95%	96-100%
	completed within 6 and 10 weeks of the initial assessment. Reporting to the HMRC dedicated representative where the learner is at risk of failing to complete.				

