

# **Ministry of Defence**

**Contract No:  
709012450**



**Contract for:**

**The Provision of End Point Assessment Services to Service Personnel  
of the Royal Electrical and Mechanical Engineers, Royal Marines, Royal  
Logistic Corps and Infantry Undertaking a Level 3 Engineering  
Technician Apprenticeship Standard**

**Contract No. 709012450 for the Provision of End Point Assessment Services to Service Personnel of the Royal Electrical and Mechanical Engineers, Royal Marines, Royal Logistic Corps and Infantry Undertaking a Level 3 Engineering Technician Apprenticeship Standard**

This Contract shall come into effect on the date of signature by both parties.

**For and on behalf of the Contractor:**

Name and Title	Redacted – Personal Information
Signature	Redacted – Personal Information
Date	08/04/24

**For and on behalf of the Secretary of State for Defence:**

Name and Title	Redacted – Personal Information
Signature	Redacted – Personal Information
Date	10/04/24

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## **MINISTRY OF DEFENCE**

**Tender Number:  
709012450**

**PROVISION OF END POINT ASSESSMENT SERVICES TO  
SERVICE PERSONNEL OF THE ROYAL ELECTRICAL AND  
MECHANICAL ENGINEERS, ROYAL MARINES, ROYAL  
LOGISTIC CORPS AND INFANTRY UNDERTAKING THE L3  
ENGINEERING TECHNICIAN APPRENTICESHIP STANDARD**

### **SCHEDULE 1**

### **STATEMENT OF REQUIREMENT**

**SCHEDULE 1**  
**STATEMENT OF REQUIREMENTS**

**THE PROVISION OF END POINT ASSESSMENT SERVICES TO SERVICE PERSONNEL**  
**OF THE ROYAL ELECTRICAL AND MECHANICAL ENGINEERS, ROYAL MARINES,**  
**ROYAL LOGISTIC CORPS AND INFANTRY UNDERTAKING THE L3 ENGINEERING**  
**TECHNICIAN APPRENTICESHIP STANDARD**

**Introduction**

1. Recognised as one of the top 100 employers offering apprenticeships, the Army has one of the largest employer provided apprenticeship programmes in the country, with over 90% of new soldiers taking part, and more than 6,500 completing their apprenticeship training each year. In some cases Army EPA contracts may also provide for assessment of personnel from the Royal Navy, Royal Marines and Royal Air Force.

**Governance**

2. The Army Apprenticeship Programme (AAP) is managed by a team in Learning & Development (L&D) Branch, Personnel Policy (Army) (Pers Pol (A)), Army Headquarters (HQ), Andover. L&D Branch, Pers Pol (A) is responsible for apprenticeship strategy and policy. Delivery of Apprenticeships across the Field Army is the responsibility of Education Branch (Ed Br), Army Personnel Services Group (APSG), Home Command, Andover. There are 14 separate Capbadge apprenticeship programmes, for each of which there is a Capbadge Designated Officer (CBDO). Delivery of these apprenticeship programmes is supported by contracted Service Providers (SPs) (the SPs are the Army's contracted Apprenticeship training providers)<sup>1</sup>.

3. Each CBDO runs their Apprenticeship Programme on behalf of their Regimental or Corps Colonel. The CBDO chairs a Working Group meeting, usually monthly, which reviews apprenticeship performance and forecasts EPA requirements. These monthly management meetings feed into a bi-annual Steering Group meeting chaired by the Capbadge Regimental or Corps Colonel (or a representative from the Regimental or Corps HQ).

4. The Authority's Representative (AR) or Designated Officer (DO) for EPA contracts will be SO1 Apprenticeships, L&D Branch, Pers Pol (A), Army HQ, Andover. Most aspects of managing EPA delivery will be delegated to others, principally Ed Br, CBDOs and SPs. A Contract Manager will be assigned from Commercial Branch, Army HQ.

5. The EPAO shall work to the AR (Ed Br, CBDO, SPs)<sup>2</sup>. It is the policy of the AR (Pers Pol) that EPA delivery will be required within 3 months of Gateway Assessment (unless the Assessment Plan provides otherwise). The EPA requirement forecast will be refined by the AR (SPs) on a monthly basis, and the AR (SPs) will liaise with the EPAO to book apprentices for EPA once Gateway is completed.

6. The Army is the lead for this EPA contract, and thus the governance arrangements described above relate to the Army. Other Defence organisations using this EPA contract to assess their personnel will have their own, equivalent, governance arrangements, though the Army remains the overall lead for this contract.

**Detailed SOR**

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<sup>1</sup> Note that, in most cases, the Army (or Defence) delivers the majority of the Off-the-Job Training.

<sup>2</sup> See the Glossary for definitions of "the Authority" and "the Authority's Representative". Where the Authority's Representative is stated in this SOR, an indication is given, where possible, of who (in priority order) might be acting on behalf of the Authority's Representative. Please note that this is based on current expectations and may change.

7. This SOR comprises 3 further elements:
  - a. Section 1 – General Requirements for the Delivery of EPA to the Army.
  - b. Section 2 – Specific Programme Information.

Enclosure:

1. Glossary.

**SECTION 1 – GENERAL REQUIREMENTS FOR THE DELIVERY OF EPA TO THE ARMY**

As an EPAO operating from 1 Jan 23, you will already have achieved Ofqual recognition (as an organisation, and for the Apprenticeship Standards for which you deliver EPAs) and met the requirements of the ESFA to join the RoEPAO. You will also be required to meet the requirements of the IfATE's EQA Framework. This SOR will therefore focus on how you will work with Army (and MOD) stakeholders to deliver EPA in a way that is appropriate to the needs of the Army and its Capbadges (and, possibly, other parts of Defence).

Requirements for delivery by the EPAO include, but are not limited to:

Ser	Requirement
1.	<p><b>Assessment Design and Delivery:</b></p> <ul style="list-style-type: none"> <li>a. Provide the SPs with EPA briefing materials, practice papers, mock assessments and exemplar assessments (e.g. paper/online assessments, videos of sample assessments and examples of “what good looks like”) to prepare apprentices for Gateway and EPA.</li> <li>b. Provide generic IT equipment as needed (e.g. laptops, webcams) to enable all EPA elements to be conducted, either in person at assessment locations or remotely (depending on the requirement). (In some cases, the AR (Units, SPs) may be able to provide IT equipment for online assessment, however this may not always be possible or desirable).</li> <li>c. Liaise with the Employer and SPs to ensure that assessors have a clear understanding of Defence terminologies and protocols, noting that there may be minor differences between the Services and Industry. This is to ensure that Service learners are not disadvantaged during EPA. (Note: Whilst the AR (CBDOs) will be able to provide Defence and Capbadge/Branch context, the EPAO is required to develop all assessment and other materials needed for the successful delivery of this contract).</li> <li>d. Ensure, from contract start, that the number of staff is sufficient to deliver the requirement, and that all staff involved in the delivery of EPA are fully occupationally competent and qualified to deliver EPA in accordance with the requirements of the EQA Provider, with DBS checks as appropriate. The EPAO's staff must also be competent to deliver EPAs which are appropriate for the Army's requirements, including the specific military context of the relevant Capbadges.</li> <li>e. Be prepared to cater for reasonable adjustments in accordance with IfATE policy and Joint Service Publication 822 (available online).</li> <li>f. Have in place a business continuity plan to ensure that apprentices can access timely EPA.</li> <li>g. Be prepared to adapt EPA delivery to meet future amendments to the Standards and Assessment Plans which are relevant to this EPA contract. When the Standards and Assessment Plans which are relevant to this EPA contract are amended, ensure that you are still able to assess them (e.g. Ofqual recognition, RoEPAO, adapt EPA delivery as appropriate).</li> </ul>
2.	<p><b>Governance, Quality Assurance and Continual Improvement:</b></p> <ul style="list-style-type: none"> <li>a. The EPAO must have robust Governance, Quality Assurance and Continual Improvement processes in place. These processes must cover any other organisations you may work with to deliver this contract, or individuals not directly employed by the EPAO.</li> </ul>

	<p>b. The EPAO shall deliver and internally quality assure the EPA in accordance with the requirements of the Institute for Apprenticeships and Technical Education (IfATE), the Education and Skills Funding Agency (ESFA) and the EQA Provider.</p> <p>c. The EPAO must retain Ofqual recognition, as an organisation and for the apprenticeship Standard in this contract, and remain on the RoEPAO for this apprenticeship Standard for the duration of the contract.</p> <p>d. Make internal Quality Assurance records available to the AR, as required. Inform the AR (CBDOs, Ed Br) of quality and quality assurance issues. Address such issues with the AR (CBDOs, Ed Br) as they arise.</p> <p>e. Ensure that the assessment programme is compliant with current Government regulations and requirements, and that it adopts national best practice in all aspects of quality of delivery. This includes, but is not limited to, H&amp;S, D&amp;I, Safeguarding regulations and PREVENT.</p> <p>f. Ensure that EPAO personnel have appropriate insurance in place in order to visit and work at MOD establishments and use any equipment (including vehicles) which may be required for EPAs.</p> <p>g. Assist the AR (Pers Pol, Ed Br, CBDOs) in preparations for and execution of ESFA, NAO, DIA and other internal audits and inspections and the provision of statistics/reports relating to the Contract.</p>
3.	<p><b>Communications with Stakeholders:</b></p> <p>a. Maintain communications about EPA with the AR (SPs, CBDOs, Ed Br), at intervals set by the AR (CBDOs, Ed Br). Provide a manager to attend CBDO management meetings by invitation. Attend bi-annual KIT meetings with the AR (Ed Br). Attend Army HQ and Army Apprenticeship Programme strategic level meetings as required.</p> <p>b. Maintain communications for apprentices, which may be via the AR (SPs, CBDOs), from registration through Gateway to EPA.</p> <p>c. Provide detailed performance feedback for the apprentices undertaking EPA (irrespective of outcome) via the CBDOs and SPs.</p> <p>d. Support the AR (SPs, CBDOs) in scheduling EPA for apprentices. Ensure that the AR (SPs, CBDOs) is informed of any changes to EPA scheduling.</p> <p>e. Provide the AR (Ed Br, CBDOs) with a monthly feedback report on the EPA process. To include, but not be limited to, information and analysis against all elements of EPA:</p> <ol style="list-style-type: none"> <li>(1) Numbers registered for EPA.</li> <li>(2) Numbers who have passed Gateway and are awaiting EPA.</li> <li>(3) Numbers who have taken their EPA.</li> <li>(4) Numbers who have passed their EPA (including the result, e.g. pass/merit/distinction, as appropriate for the Standard).</li> <li>(5) Numbers who have failed their EPA.</li> <li>(6) Numbers who have missed an EPA element (all cancellations, candidate changes or failures to attend which incur a cost).</li> <li>(7) Numbers awaiting Resit/Retake.</li> </ol> <p>f. Provide the AR (Ed Br, CBDOs) with biannual feedback at EPAO KIT meetings. To include, but not be limited to, information and analysis about:</p> <ol style="list-style-type: none"> <li>(1) Issues identified.</li> </ol>



	<p>(2) Recommendations/improvements.</p> <p>(3) Analysis of apprentice performance.</p> <p>g. Ensure that the AR (Pers Pol, Ed Br, CBDOs) is kept up to date of any changes to the Standard(s) in this SOR, or the Assessment Plan(s), including any COVID-19 related or other flexibilities.</p>
4.	<p><b>Learner Management:</b></p> <p>a. Notify SPs of candidates' results following completion of each EPA element, and on completion of the whole EPA.</p> <p>b. Claim apprenticeship certificates and arrange for them to be sent via secure delivery to the AR (CBDOS, SPs or other delegated POC) for each apprentice.</p>
5.	<p><b>Contract End and Transition:</b></p> <p>a. In liaison with the AR and incoming EPAO, ensure that before the contract end date, all learner records have been transferred to the incoming EPAO and/or the AR (SP, CBDOS, Ed Br) to enable continuity for all learners awaiting an EPA.</p> <p>b. Work with the AR (Pers Pol, Ed Br, CBDOS) to produce a workable transition plan prior to when the EPA contract ends.</p>
6.	<p><b>Complaints, Appeals, Re-sits and Re-takes:</b></p> <p>a. Process complaints and appeals, liaising with the AR (CBDOS, Ed Br, Pers Pol) and Apprentices as appropriate.</p> <p>b. Deliver re-sits and re-takes in line with the EPA plan, at the request of the AR (CBDOS, Ed Br, Pers Pol). Note: The IfATE distinguishes between re-sits and re-takes as follows: "A re-take involves a need for further learning before an assessment is taken, while a re-sit does not". Where Army apprentices fail an EPA element, or fail the overall EPA, it is unlikely that a re-sit will take place immediately, as time may be needed to ascertain the reason for failure, decide the appropriate corrective action and confirm that funding is available.</p>

## SECTION 2 – SPECIFIC PROGRAMME INFORMATION – L3 ENGINEERING TECHNICIAN

### Programme Information

1. The EPAO shall deliver EPA for the L3 Engineering Technician (ST0457) Apprenticeship Standard in accordance with ESFA regulations and in line with the EQA Provider's regulations. This EPA will be contracted by the Army as described below, for personnel in the Royal Electrical and Mechanical Engineers (REME), Royal Marines (RM), Royal Logistic Corps (RLC) and Infantry (specifically the Royal Gurkha Rifles (RGR)). This SOR is for one Standard for 3 years, with the option of an extension of up to one year plus a further extension of up to one year (maximum contract length of 5 years).
2. REME personnel will start the L3 Engineering Technician Apprenticeship Standard during Initial Trade Training (ITT) at the Defence School of Electrical and Mechanical Engineering (DSEME), Lyneham. This applies to RM and RGR personnel, too. RLC Marine Engineers (from 17 Port & Maritime Regt RLC) now conduct their training at HMS Sultan rather than DSEME, though some legacy RLC learners from DSEME may be assessed under this EPA contract. Learners will all continue their learning in their Field Army or RM units. In addition to the core element, this Standard has 13 Options. The REME will use:
  - a. Option 3 – Aircraft Maintenance Fitter/Technician (Fixed and Rotary Wing). This option will be used by REME Aircraft Technicians and Avionics Technicians.
  - b. Option 10 – Mechatronics Maintenance Technician. This option will be used by REME Electronics Technicians. It will also be used by a small number of RM personnel (Electronics Technicians).
  - c. Option 13 – Technical Support Technician. This option will be used by REME Vehicle Mechanics. It will also be used by a small number of personnel in the RM (Vehicle Mechanics), RLC (Marine Engineers) and RGR (Vehicle Mechanics).
3. Any information given below on demographics for this requirement is based upon the current occupancy and forecast future recruitment. Future recruitment, occupancy, levels of suspension and successful Gateway achievement cannot be guaranteed by the DO and any data provided in this respect is strictly indicative only.

### Details of EPA to be delivered

4. Once steady state has been reached, the learner throughput for EPA in this contract is anticipated at approximately 560 apprentices per Academic Year (AY)<sup>3</sup>. Further information about assessment locations and forecast EPA numbers is provided in para 8 and Annex A. This information has been estimated by the REME, RM, RLC and Infantry, and reflects the recruiting and training requirement situation as at May 23. It is intended to be used by tendering companies as an indicative guide for costing purposes and cannot be guaranteed by the DO. Continual liaison is required with the SP prior to EPA for the apprentice to work on the elements specified by the EPAO.
5. The EPA numbers overleaf reflect the expected total averaged over the 5 contract years<sup>4</sup>:

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<sup>3</sup> Note that predicted EPA numbers are being estimated by Apprenticeship AY, i.e. Aug-Jul, rather than calendar year, contract year, financial year or training year.

<sup>4</sup> This forecast averages the total expected EPA requirement over the maximum contract period of 5 years. Please note that there may be small differences, due to rounding, compared to the exact calculation of the mean annual EPA forecasts based on table in Annex A, para 2.

Ser	L3 Engineering Technician	Mean EPA forecast for pricing purposes for each Contract Year
1.	Option 3 – Aircraft Maintenance Fitter/Technician (Fixed and Rotary Wing)	71
2.	Option 10 – Mechatronics Maintenance Technician	161
3.	Option 13 – Technical Support Technician	263
4.	<b>Total</b>	<b>495</b>

6. **Approximate timelines to EPA.** The IfATE indicates that the typical duration to Gateway for this Standard is 42 months (not including the EPA period). Because of the nature of their training and employment, it is expected that Service learners will generally take 42-45 months to complete this apprenticeship. Service learners started using this Standard in Sep 20 (and are therefore using v1.1 onwards of the Standard), and the first EPAs are expected from Apr 24. It is stressed that this is an estimate, and dates may change for a range of Service reasons.

7. **EPA structure.** L3 Engineering Technician has On Programme Assessment during its Foundation Phase (leading to Gateway 1) and Development Phase (leading to Gateway 2). The Army's requirement is for EPA to be completed during the 3 months following Gateway 2. EPA comprises the following stages:

- a. **Stage 1.** A Portfolio based Occupational Competence Validation Interview (Viva). The IfATE has agreed that this interview may be conducted by the EPAO (although the Assessment Plan has not yet been updated to reflect this, and indicates that the interview will be undertaken by the employer). The Army's requirement is for the interview to be conducted by the EPAO.
- b. **Stage 2a.** The Professional Engineering Institution (PEI) or Military Independent Assessment Authority (MIAA) quality assures the Viva and checks that the mandatory qualifications have been achieved.
- c. **Stage 2b.** The PEI confirms competence against the requirements of the internationally recognised professional standard for an Engineering Technician (or the MIAA confirms competence against the Military Professional Competence requirements).
- d. **Stage 3.** This is the final overall apprentice sign-off from the employer (or the EPAO, if appropriate). Also, the PEI or MIAA applies for the apprenticeship completion certificate.

The EPAO will be required to deliver all 3 stages of the EPA.

8. **EPA locations.** Most EPA candidates will be based in England, with some being based in Scotland, Wales, Northern Ireland and overseas. The preference is for Vivas to take place online, though exceptionally some may be required in-person at UK locations. The EPAO is required to prepare a programme, in consultation with the AR (SPs, CBDOs, Ed Br), to deliver EPAs for personnel at these locations. Numbers in each location may fluctuate. EPAs for individual apprentices will be confirmed at least 6 weeks in advance by the AR (SPs, CBDOs), and grouped together where appropriate. A selection of dates and locations should be made available by the EPAO for each booking.

9. **EPA materials.** As indicated in Section 1, Ser 1a, the EPAO is required to provide the SP with a range of materials to prepare apprentices for Gateway and EPA. Also, in accordance with

the Assessment Plan, the EPAO will be required to deliver supporting materials, including the following IQA process and EPA recording documents:

- a. The Occupational Competence Validation Interview (Viva) Recording Form and supporting guidance (including how to prepare and undertake an effective and robust Viva interview and the technical requirements for employer assessors). (This will be needed to support formative assessment).
- b. The Engineering Technician (EngTech) or Military Professional Competence (MPC) Performance Indicators Recording Form and supporting guidance.
- c. A register of employer and PEI approved Awarding Organisation qualifications.

These materials must be available no later than 8 weeks after the contract start date.

10. **Security clearance.** EPAO staff will not need security clearance. Whilst some learners may work on classified equipment, the material seen by the EPAO should not need to include anything classified. The Authority's expectation is that candidates should be working at a level of security classification no higher than OFFICIAL throughout all EPA elements. If necessary, some material in the portfolio may be redacted.

#### **Provision of Infrastructure/Facilities for EPA**

11. It is expected that EPAs will be conducted at the Employer-Provider location (online or in-person). The AR (Units, SPs) will provide real estate, assets and equipment (to include, but not limited to, a suitable venue for the Viva).

#### **External Quality Assurance**

12. The EQA Provider for this Apprenticeship Standard is Ofqual.

Annex:

A. EPA Forecast – L3 Engineering Technician.

**EPA FORECAST – L3 ENGINEERING TECHNICIAN**

1. Predicted EPA numbers are for the Apprenticeship Academic Year (AY), i.e. Aug-Jul. All figures are approximate, based on Apr 23 forecasts:

Ser	Option	AY 23/24	AY 24/25	AY 25/26	AY 26/27	AY 27/28	Remarks
<b>REME</b>							
1.	Option 3 – Aircraft Maintenance Fitter/Technician (Fixed and Rotary Wing)	69	101	58	96	30	Figures reflect School of Army Aeronautical Engineering (SAAE) output.
2.	Option 10 – Mechatronics Maintenance Technician	14	85	104	100	439	EPAs from 2027 onward tbc, depending on the number of starts as Vehicle Mechanics transition to Option 10 from 2024.
3.	Option 13 – Technical Support Technician	150	339	339	339	50	From 2024, Vehicle Mechanics will transition to Option 10.
<b>REME Total</b>		<b>233</b>	<b>525</b>	<b>501</b>	<b>535</b>	<b>519</b>	
<b>RLC</b>							
4.	Option 13 – Technical Support Technician	6	0	0	0	0	
<b>RLC Total</b>		<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>RGR</b>							
5.	Option 10 – Mechatronics Maintenance Technician	0	0	0	0	2	
6.	Option 13 – Technical Support Technician	1	2	2	2	0	From 2024, Vehicle Mechanics will transition to Option 10.
<b>RGR Total</b>		<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	
<b>RM</b>							
7.	Option 10 – Mechatronics Maintenance Technician	5	8	8	8	32	
8.	Option 13 – Technical Support Technician	10	24	24	24	5	From 2024, Vehicle Mechanics will transition to Option 10.
<b>RM Total</b>		<b>15</b>	<b>32</b>	<b>32</b>	<b>32</b>	<b>37</b>	

2. **Grand Total.** The estimated total number of EPAs per AY is therefore:

Ser	Option	AY 23/24	AY 24/25	AY 25/26	AY 26/27	AY 27/28
1.	Option 3 – Aircraft Maintenance Fitter/Technician (Fixed and Rotary Wing)	69	101	58	96	30
2.	Option 10 – Mechatronics Maintenance Technician	19	93	112	108	473
3.	Option 13 – Technical Support Technician	167	365	365	365	55
<b>Grand Total</b>		<b>255</b>	<b>559</b>	<b>535</b>	<b>569</b>	<b>558</b>

**ENCLOSURE 1 – GLOSSARY**

<b>Abbreviation/Term</b>	<b>Meaning</b>	<b>Remarks</b>
AAP	Army Apprenticeship Programme	Managed by the AAP Team in Pers Pol (A).
Apprentice	All apprentices on the AAP (or other Service equivalents) are military personnel.	Apprentices may also be referred to as “soldiers” or “learners”, depending on the context. Note that this EPA SOR also includes non-military personnel (notably the MOD Police).
APSG	Army Personnel Services Group	Part of the Army’s 3* Home Command.
The Authority	The definition of the Authority is included in DEFCON 501: “the Authority’ means the Secretary of State for Defence, acting on behalf of the Crown”.	This is supplemented by additional wording in Schedule 3 of this contract: “In addition to the definition set out in DEFCON 501, the Authority is an employer-provider of Apprenticeships and an ESFA contractor”.
Authority’s Representative (AR)	The definition of the Authority’s Representative is included in Schedule 3 of this contract: “The ‘Authority’s Representative’ means the Designated Officer as defined at sub-clause 2.18 or such other nominated individual who may be appointed by the Authority in accordance with the provisions of the Contract”.	There are a number of AAP stakeholders, e.g. Pers Pol (A), Ed Br, Commercial Br, Corps Colonels, CBDOs, unit chains of command, SPs. Where the contract includes EPA for the RN and/or RAF, there may be similar equivalent RN and/or RAF stakeholders. (Whilst the soldiers who are the learners/apprentices are key stakeholders, and must be at the heart of EPA delivery, they are unlikely to act on behalf of the Authority’s Representative).
BT	Basic Training	Formerly known as Phase 1 Training.
CBDO	Capbadge Designated Officer	Responsible for the Capbadge Apprenticeship programme, on behalf of the Regimental or Corps Colonel. Note that the CBDO is not the same as the DO for EPA contracts.
Corps Colonel	Each Corps has a Corps Colonel who acts as the professional head of the Corps.	Corps Colonel’s responsibilities include leading on the Corps’ apprenticeship programme.
D&I	Diversity and Inclusion	
DIA	Defence Internal Audit	
DIO	Defence Infrastructure Organisation	

Abbreviation/Term	Meaning	Remarks
DO	Designated Officer	Note that the DO for EPA contracts is not the same as the CBDO.
DPA 18	Data Protection Act 2018	UK legislation. See also GDPR.
DSAT	Defence Systems Approach to Training	Explained in JSP 822, which is available via <a href="http://www.gov.uk">www.gov.uk</a> .
DSEME	Defence School of Electrical and Mechanical Engineering	Located at Lyneham, Wiltshire.
Ed Br	Education Branch	Part of the APSG. Responsible for delivery of Apprenticeships across the Field Army.
EPA	End-Point Assessment	
EPAO	End-Point Assessment Organisation	
EQA	External Quality Assurance	
EQAP	EQA Provider	
ESFA	Education and Skills Funding Agency	
FS	Functional Skills	
GDPR	General Data Protection Regulation	The provisions of the EU GDPR were incorporated directly into UK law at the end of the Brexit transition period. The UK GDPR sits alongside the DPA 2018 with some technical amendments so that it works in a UK-only context which now incorporates the principles of the EU GDPR.
H&S	Health and Safety	
ICE	Instructions for Conducting Examinations	
IfATE	Institute for Apprenticeships and Technical Education	
ILR	Individual Learner Record	
IQA	Internal Quality Assurance	
ITT	Initial Trade Training	Formerly known as Phase 2 Training.
JCQ	Joint Council for Qualifications	
JSP 822	Joint Service Publication 822	Defence Direction and Guidance for Training and Education (including DSAT). Available on the <a href="http://www.gov.uk">www.gov.uk</a> website.

Abbreviation/Term	Meaning	Remarks
KIT	Keeping In Touch	KIT meetings are currently run by Ed Br and held biannually.
L&D	Learning and Development	One of the Pillars in Pers Pol (A). Responsible for apprenticeship strategy and policy.
LRS	Learning Records Service	
MIAA	Military Independent Assessment Authority	
MOD	Ministry of Defence	
NAO	National Audit Office	
NCSC	National Cyber Security Centre	
Ofqual	Office of Qualifications and Examinations Regulation	Ofqual is a non-ministerial government department that regulates qualifications, exams and tests in England. Ofqual is now the EQAP for all EPA (less for integrated higher and degree apprenticeships, and any exemptions which may be agreed).
OfS	Office for Students	The OfS is the independent regulator of higher education in England. The OfS is now the EQAP for all EPA of integrated higher and degree apprenticeships.
Ofsted	Office for Standards in Education, Children's Services and Skills	Ofsted is responsible for inspecting services providing education and skills for learners of all ages.
Pers Pol (A)	Personnel Policy (Army)	A 1* Branch of the Army's Personnel Directorate. Part of Army HQ in Andover.
PEI	Professional Engineering Institution	
PREVENT	PREVENT is part of the UK's Counter Terrorism Strategy.	Safeguarding and supporting those vulnerable to radicalisation, and preventing them from becoming terrorists or supporting terrorism.
POC	Point of Contact	
QAA	Quality Assurance Agency for Higher Education	
RAF	Royal Air Force	
RM	Royal Marines	
RN	Royal Navy	



Abbreviation/Term	Meaning	Remarks
RoEPAO	Register of End-Point Assessment Organisations	
ROR	Requirements of Response	
SO1	Staff Officer Grade 1	A managerial appointment within the MOD. For Army personnel this is a Lieutenant Colonel, for civil servants a C1 grade.
SO2	Staff Officer Grade 2	A managerial appointment within the MOD. For Army personnel this is a Major, for civil servants a C2 grade.
SOP	Standard Operating Procedure	
SOR	Statement of Requirement	
SP	Service Provider	The SPs are the Army's contracted Apprenticeship training providers. They provide administrative support and deliver FS, support to apprentices and EPA preparation. Where required they deliver training to bridge the gap between Army training delivery and the requirements of the Apprenticeship Standards.
STT	Subsequent Trade Training	Formerly known as Phase 3 Training.

# **Ministry of Defence**

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## **SCHEDULE 2**

### **PRICING**

## Variation of Price

- 1.1 All Services in the Statement of Requirements shall be FIRM Priced for a period of three (3) years from the Contract Implementation Date (the "**FIRM Price Period**") and the prices stated in Schedule 2 shall be the price payable for the Services delivered in accordance with the terms of the Contract.
- 1.2 All Services in the Statement of Requirements shall be FIXED Priced for Years four (4) and five (5) from the Contract Implementation Date. The FIXED prices shall be based on their corresponding Year 1 price as stated in this Schedule 2. As such these prices do not include provision beyond this date for increases or decreases in the market price of the Services being purchased. Any such variation shall be calculated in accordance with the following formula:
- 1.3 
$$V = P (a+b(O_i/ O_o)) - P$$

*Where:*

V represents the variation of price;

P represents the Fixed Price as stated in Paragraph 1.2 (Variation of Price)

O represents the indices: I392 – Education Services

O<sub>o</sub> represents the 12-month average OUTPUT Price Index for the base period (first year of contract)

O<sub>i</sub> represents the 12-month average OUTPUT Price Index figure at the payment date period (the year being calculated)

a represents the Non-Variable Element (NVE) of 0; and

b represents the Variable Element of 1,

and:  $a+b=1$
- 1.4 The OUTPUT Price Index referred to in Paragraph 1.3 above shall be taken (as specified by the Authority) from the:
  - (a) ONS Publication MM22 Table 2 'Price Indices of UK OUTPUT: All Manufacturing and Selected Industries'; or
  - (b) Table 4 'Price Indices of Products Manufactured in the UK'.
- 1.5 Indices published with a 'B' or 'F' marker or a suppressed value, in the last 4 years are not valid for the purposes of this Paragraph 1 (Variation of Price) and shall not be used. Where Indices have an 'F' marker or suppression applied to them during the Contract Term, the Authority and the EPAO shall agree appropriate replacement Indices. The replacement Indices shall cover, to the maximum extent possible, the same economic activities as the original Indices.
- 1.6 In the event that any material changes are made to the Indices (for example, a revised statistical base date) during the Contract Term and before final adjustment of the final

Contract Price, then the re-basing methodology outlined by the Office for National Statistics (as the series providers) to match the original Indices to the new series shall be applied.

- 1.7 In the event the agreed Indices cease to be published (for example, because of a change in the standard industrial classification), the Authority and the EPAO shall agree appropriate replacement Indices, which shall cover to the maximum extent possible the same economic activities as the original Indices. The methodology outlined by the Office for National Statistics (as the series providers) to match the original Indices to the new series shall be applied.
- 1.8 Notwithstanding Paragraphs 1.5, 1.6 and 1.7 above, any extant Indices agreed pursuant to this Contract shall continue to be used as long as they are available, and subject to the application of the methodology outlined by the Office for National Statistics (as the series providers) to match the original Indices to the new series. Payments calculated using the extant Indices (during the period in which they apply to this Contract) shall not be amended retrospectively as a result of any change to the Indices.
- 1.9 The EPAO shall promptly notify the Authority in writing of any significant changes in the EPAO's Proposal, or in any of its purchasing proposals, or of any other factor, having a material bearing on the operation of the provisions of this Paragraph 1 (Variation of Price), and the Parties shall consider whether a Contract Change would be appropriate.
- 1.10 Prices shall be adjusted taking into account the effect of the variation of price mechanism set out in Paragraph 1.3 above as soon as possible after publication of the relevant Indices, or at such later date if so agreed between the Authority and the EPAO.
- 1.11 Claims under this Paragraph 1 shall be submitted to the CP&F (Contracting, Purchasing and Finance), certified to the effect that the requirements of this Paragraph 1 have been met.
- 1.12 Any changes to the Indices used shall be agreed in writing with the Authority in accordance with Paragraphs, 1.6, 1.7, 1.8 above.

Schedule 2 – Part 1

Redacted – Commercially Sensitive Information

Schedule 2 – Part 2

Redacted – Commercially Sensitive Information

# **Ministry of Defence**

**Contract No:  
709012450**



**The Provision of End Point Assessment Services to Service Personnel  
of the Royal Electrical and Mechanical Engineers, Royal Marines, Royal  
Logistic Corps and Infantry Undertaking a Level 3 Engineering  
Technician Apprenticeship Standard**

**SCHEDULE 3**

**TERMS AND CONDITIONS**

**INDEX TO CONDITIONS OF CONTRACT**

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## **TERMS & CONDITIONS OF CONTRACT**

### **GENERAL CONDITIONS**

#### **1 DEFENCE CONTRACT CONDITIONS (DEFCONs)**

1.1 The following DEFCONs in respect of general and other matters shall apply:-

DEFCON 5J (Edn 18/11/16)	Unique Identifiers (Clause 4 is not applicable)
DEFCON 76 (Edn 06/21)	Contractor's Personnel at Government Establishments <sup>5</sup>
DEFCON 90 (Edn 06/21)	Copyright
DEFCON 129J (Edn 18/11/16)	The Use of The Electronic Business Delivery Form
DEFCON 501 (Edn 10/21)	Definitions and Interpretations
DEFCON 503 (Edn 06/22)	Formal Amendments to Contract
DEFCON 507 (Edn 07/21)	Delivery
DEFCON 513 (Edn 04/22)	Value Added Tax (VAT) and Other Taxes
DEFCON 514 (Edn 08/15)	Material Breach
DEFCON 515 (Edn 06/21)	Bankruptcy and Insolvency
DEFCON 516 (Edn 04/12)	Equality
DEFCON 518 (Edn 02/17)	Transfer
DEFCON 520 (Edn 08/21)	Corrupt Gifts and Payments of Commission
DEFCON 522 (Edn 11/21)	Payment and Recovery of Sums Due
DEFCON 524 (Edn 12/21)	Rejection
DEFCON 526 (Edn 08/02)	Notices
DEFCON 527 (Edn 09/97)	Waiver
DEFCON 529 (Edn 09/97)	Law (English)
DEFCON 530 (Edn 12/14)	Dispute Resolution (English Law)
DEFCON 531 (Edn 09/21)	Disclosure of Information
DEFCON 532B (Edn 09/21)	Protection of Personal Data (Where Personal Data is being processed on behalf of the Authority)
DEFCON 534 (Edn 06/21)	Subcontracting and Prompt Payment
DEFCON 537 (Edn 12/21)	Rights of Third Parties
DEFCON 538 (Edn 06/02)	Severability
DEFCON 539 (Edn 01/22)	Transparency
DEFCON 550 (Edn 02/14)	Child Labour & Employment Law
DEFCON 565 (Edn 07/23)	Supply Chain Resilience and Risk Awareness

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<sup>5</sup> The total liability of the EPAO in respect of damage to Government property is unlimited – Clause 3 & 4 on this DEFCON refer.

DEFCON 566 (Edn 10/20)	Change of Control of Contractor
DEFCON 602B (Edn 12/06)	Quality Assurance (without Deliverable Quality Plan)
DEFCON 604 (Edn 06/14)	Progress Reports
DEFCON 608 (Edn 07/21)	Access and Facilities to be Provided by the Contractor
DEFCON 609 (Edn 07/21)	Contractor's Records
DEFCON 620 (Edn 06/22)	Contract Change Control Procedure
DEFCON 625 (Edn 06/21)	Co-Operation on Expiry of Contract
DEFCON 632 (Edn 11/21)	Third Party Intellectual Property – Rights and Restrictions
DEFCON 642 (Edn 07/21)	Progress Meetings
DEFCON 643 (Edn 12/21)	Price Fixing (Non-qualifying Contracts)
DEFCON 656B (Edn 08/16)	Termination for Convenience – £5M and Over
DEFCON 658 (Edn 09/21)	Cyber
DEFCON 660 (Edn 12/15)	Official-Sensitive Security Requirements
DEFCON 670 (Edn 02/17)	Tax Compliance <sup>6</sup>
DEFCON 671 (Edn 10/22)	Plastic Packaging Tax
DEFCON 674 (Edn 03/21)	Advertising Subcontracts (Public Contract Regulations 2015 Only)
DEFCON 678 (Edn 09/19)	SME Spend Data Collection
DEFCON 694 (Edn 07/21)	Accounting for Property of The Authority

## 1.2 DEFENCE FORMS (DEFFORMs)

DEFFORM 10B (Edn 06/22)	Acceptance Of Offer Of Amendment To Contract
DEFFORM 111 (Edn 07/21)	Appendix – Addresses and Other Information
DEFFORM129J (Edn 09/17)	The Use of the Electronic Business Delivery Form
DEFFORM 532 (Edn 10/19)	Personal Data Particulars
DEFFORM 539A (Edn 01/22)	Tenderer's Commercially Sensitive Information Form
DEFFORM 539B (Edn 01/22)	Publishable Performance Information – KPI Data Report
DEFFORM 565 (Edn 08/23)	Supply Chain Resilience and Risk Awareness Mapping Template

For copies of DEFCONs/DEFFORMs refer to 'Note' on the DEFFORM 111 Enclosure to this Schedule 3 (Ts & Cs).

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<sup>6</sup> DEFCONs applicable to Contracts with estimated value exceeding £5M.

## SPECIAL CONDITIONS

### 2 NOTES & FURTHER DEFINITIONS

- 2.1 For the purposes of Condition 1 and in addition to the provisions of DEFCON 501 (refer to Condition 1):
- 2.1.1 where appropriate to the work to be performed under the Contract, in the Standard Conditions and the DEFCONs, references to “Article” and “Articles” shall be read as meaning “Service” and “Services” and all other terms shall generally be interpreted in the context of the delivery of such a Service or Services as opposed to the delivery of goods of the Contractor’s manufacture;
  - 2.1.2 in the DEFCONs, any references to the “Project Manager”, “Project Desk Officer”, “Quality Assurance Manager” and the like shall be interpreted as being a reference to the Authority’s ‘Designated Officer’ as defined at sub-Clause 2.1.25 of this Condition and identified in Box 2 of the DEFFORM 111 Enclosure to this Schedule 3 (Ts & Cs);
  - 2.1.3 in the DEFCONs, any references to “Contractor” shall be interpreted as being reference to the End Point Assessment Organisation;
  - 2.1.4 ‘Apprenticeship Start Date’ shall mean the date that the apprentice begins training towards an Apprenticeship Standard;
  - 2.1.5 ‘Apprenticeship Standards’ are endorsed by the Institute for Apprenticeships (an executive non-departmental public body, sponsored by the Department for Education) and comprise of initial assessment, on programme training and learning (including Functional Skills), Gateway assessment and End-Point Assessment. Standards are tailored to each individual profession, designed by employers and include an Assessment Plan and assessments and grading of behaviours.
  - 2.1.6 ‘Army Apprenticeship Programme’ shall mean the Army managed apprenticeship programme in which all Education Skills Funding Agency (ESFA) and Apprenticeship Levy funded apprenticeship provision is delivered under the Single Army Contract (SAC);
  - 2.1.7 ‘Army Apprenticeship Standard Operating Procedure (SOP)’ shall mean the working instructions produced, and amended as necessary, by the Authority, and which set out the policies and procedures to be followed in respect of Army Apprenticeships. A list of extant SOPs is attached at Annex A to this Schedule 3 (Ts & Cs). All SOPs can be obtained by request from the Army’s Personnel Policy (Pers Pol) Branch.

- 2.1.8 'The Authority'. In addition to the definition set out in DEFCON 501, the Authority is an employer-provider of apprenticeships and an ESFA contractor;
- 2.1.9 the 'Authority's Representative', means the 'Designated Officer' as defined at sub-Clause 2.1.20 or such other nominated individual who may be appointed by the Authority in accordance with the provisions of the Contract;
- 2.1.10 'Authority's Commercial Desk Officer' means the individual/post identified in Box 1 of the DEFFORM 111 Enclosure to this Schedule 3 (Ts & Cs);
- 2.1.11 The 'Bill Paying Authority' means the Bill paying Authority whose name and address is given in Box 11 of the DEFFORM 111 to the Contract;
- 2.1.12 'Cap Badge' means the Army organisation with devolved responsibility for running Apprenticeships for personnel under their command. For Example: Royal Engineers (RE), Defence Medical Services (DMS), etc.
- 2.1.13 'Conditions' means the Terms and Conditions (Ts & Cs) set out in this Schedule 3 (Ts & Cs);
- 2.1.14 'Confidential Information' means all information (including data in electronic form, computer programs, designs, plans, drawings, analyses, studies and other documents or material) designated as such by either Party in writing together with all such other information of a technical, commercial or financial nature received from a Party to this Contract, its agents, servants, employees, representatives or advisors (including, without limitation, any and all documents and information supplied in the course of proceedings under Schedule 4 (Dispute Resolution Procedure));
- 2.1.15 'Consents' means permission and agreement to conduct an activity or make changes to procedure;
- 2.1.16 'Contract Award Date' means the day on which Contract Award is confirmed, which shall be 10 days after the standstill period commences following notification of award decision, or 14 days after the completion of any legal challenge;
- 2.1.17 'Contract Implementation Date' means the day upon which the End Point Assessment Organisation assumes responsibility for the provision of all of the Services required in Schedule 1 (SOR);
- 2.1.18 'Contract Price' for the purposes of the definition set out in DEFCON 501 means the amount set out in Schedule 2 (Price);

- 2.1.19 'Day(s)' means 'working day(s) unless specifically expressed as calendar day(s);
- 2.1.20 "Designated Officer" is the principal Representative of the Authority appointed to monitor the End Point Assessment Organisation performance in respect of the Contract and to certify receipt of satisfactory performance. The Authority's Designated Officer may, at their sole discretion and by notice to the End Point Assessment Organisation, delegate certain functions to other Representatives of the Authority. The address of the Designated Officer is contained in Box 2 of the DEFFORM 111 to the Contract;
- 2.1.21 'Education and Skills Funding Agency (ESFA)' is an executive agency of the Department for Education. The Secretary of State for Education, via the ESFA, sets the rules and guidance for apprenticeships. The Authority is an ESFA contractor;
- 2.1.22 'Employer-Provider' means any organisation that delivers some, or all, of the training element of an apprenticeship to their own staff and holds a contract with the ESFA. The Authority is an employer-provider and thus an ESFA contractor;
- 2.1.23 'End-Point Assessment' (EPA) is a holistic and independent assessment of the knowledge, skills and behaviours of the Learner which have been learnt throughout an Apprenticeship Standard;
- 2.1.24 'End Point Assessment Organisation' (EPAO) means an organisation that must be on the ESFA's Register of EPAO, and has been appointed by the Authority, to undertake the End Point Assessments;
- 2.1.25 'EPAO Representative' means a person or persons employed by the EPAO in connection with the provisions of the deliverables and in connection with this Contract;
- 2.1.26 'FIRM Price' means a price (excluding VAT) which is not subject to variation;
- 2.1.27 'FIXED Price' means a price (excluding VAT) which is agreed at the outset but varies over time using an agreed Variation of Price (VOP) formula.
- 2.1.28 'Gateway Assessment' or 'Gateway Requirements' means the requirements set out in the Assessment Plan that must be met by the apprentice prior to undertaking EPA of the Apprenticeship Standard;
- 2.1.29 'Good Industry Practice' means the exercise of such degree of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced person, seeking to comply with its contractual obligations

and seeking to avoid liability arising under any duty of care that might reasonably apply to, or to be expected, from that person complying with all applicable laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions as the EPAO;

- 2.1.30 'Learners' shall mean all individuals registered on the ESFA funded or apprentice levy funded programmes supported by this Contract;
- 2.1.31 'L&D' means the Authority's Learning & Development Branch which is responsible for the management and oversight of the Army Apprenticeship programme;
- 2.1.32 'Management Information' means any information acquired or generated by the EPAO for the purpose of managing the Contract which may be provided to the Authority and/or the ESFA during the term of the Contract;
- 2.1.33 'Ofsted' means the Office for Standards in Education, Children's Services and Skills;
- 2.1.34 'Parties' means the EPAO and the Authority, and Party shall be construed accordingly;
- 2.1.35 'Personal Data' means personal information and data relating to a specific individual who can be identified by such information and data;
- 2.1.36 'Re-competition' means where the Authority re-competes its requirement for either the whole or part of the Services or their replacement or equivalent;
- 2.1.37 'Register of End Point Assessment Organisations' (RoEPAO) means the Register held by the ESFA of organisations that the employer-provider can contract with for the delivery of End-Point Assessments;
- 2.1.38 'Replacement Contract' means any contract entered into by the Authority with a Successor EPAO for the provision of some or all of the Services;
- 2.1.39 'Service Provider' (a.k.a 'Delivery Subcontractor') means the organisation who, under separate Contract, undertakes to support the Army, as Employer-Provider, in their administration and delivery of Apprenticeships. All Service Providers are the service delivery subcontractor of the ESFA.
- 2.1.40 'Service Provider's Representative' means a person or persons employed by the Service Provider in connection with the provisions of the deliverables and in connection with their Contract;
- 2.1.41 'Services' means the services which are to be provided by the EPAO throughout the Contract term in accordance with the terms of this Contract and Schedule 1 (SOR);

2.1.42 'Single Army Contract (SAC)' shall mean the Army arrangement to draw funding directly from the ESFA or the Employer Levy Account for Apprenticeships and Functional Skills;

2.1.43 'Statement of Requirements (SOR)' means the Services specified in Schedule 1 (SOR) which are to be performed by the EPAO and the minimum standards to be achieved;

2.1.44 'Transition' means the period between the Contract Award Date and the Contract Implementation Date;

### 3 NOTICES

3.1 For the purposes of DEFCON 526 (Notices), any notice given under or pursuant to the Contract shall be sent or transmitted to the addresses of the parties to the Contract at sub-Clauses 3.1.1 and 3.1.2:

3.1.1 Authority Commercial Desk Officer Address:

Army Commercial Branch  
Blenheim Building,  
Army HQ, Marlborough Lines,  
Monxton Road, ANDOVER,  
Hampshire SP11 8HT  
Email: [ArmyComrcl-Procure-AAP-Mailbox@mod.gov.uk](mailto:ArmyComrcl-Procure-AAP-Mailbox@mod.gov.uk)

3.1.2 End Point Assessment Organisation Address:

Explosive Learning Solutions Ltd  
4 The Terraces  
Library Avenue  
Harwell Science and Innovation Campus  
Didcot  
OX11 0SG

### 4 ENTIRE AGREEMENT

4.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.



- 4.2 The EPAO's Technical Submission filed in response to the Authority's Requirement of Response will be inserted in Schedule 7 (Service Delivery Plan) to this Contract and its content therefore enforceable as part of the entire agreement.

5 GOVERNING LAW

- 5.1 Subject to Clause 5.4, the Contract shall be considered as a contract made in England and subject to English Law.
- 5.2 Subject to Clause 5.4 and Condition 56 (Dispute Resolution Procedure) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- 5.3 Subject to Clause 5.4 any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 5 and for the enforcement of any judgment, order or award given under English jurisdiction.
- 5.4 If the Parties pursuant to the Contract agree that Scots Law should apply, then the following amendments shall apply to the Contract:
- 5.4.1 Clause 5.1, 5.2 and 5.3 shall be amended to read:
- a) The Contract shall be considered as a contract made in Scotland and subject to Scots Law.
  - b) Subject to Condition 56 (Dispute Resolution Procedure) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of Scotland to resolve, and the laws of Scotland to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
  - c) Any dispute arising out of or in connection with the Contract shall be determined within the Scottish jurisdiction and to the exclusion of all other jurisdictions save that other jurisdictions may apply solely for the purpose of giving effect to this Condition 5 and for the enforcement of any judgment, order or award given under Scottish jurisdiction.
- 5.5 Each Party warrants to each other that entry into the Contract does not, and the

performance of the Contract will not, in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under, any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.

- 5.6 Each Party agrees with each other Party that the provisions of this Condition 5 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.

## 6 WAIVER

- 6.1 No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- 6.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

## 7 ASSIGNMENT OF CONTRACT

- 7.1 Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.

## 8 THIRD PARTY RIGHTS

- 8.1 Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a Party to the Contract to enforce any term of the Contract in its own right and the Parties to the Contract declare that they have no intention to grant any such right.

## 9 TRANSPARENCY

- 9.1 Notwithstanding any other term of this Contract, including DEFCON 531 (Disclosure of Information), the Contractor understands that the Authority may publish the Transparency Information and Publishable Performance Information to the general public.
- 9.2 Subject to Clause 9.3 of this Condition the Authority shall publish and maintain an up-to-date version of the Transparency Information and Publishable Performance Information in a format readily accessible and reusable by the general public under an open licence where applicable.
- 9.3 If, in the Authority's reasonable opinion, publication of any element of the Transparency Information and Publishable Performance Information would be contrary to the public

interest, the Authority shall be entitled to exclude such Information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information and Publishable Performance Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information and Publishable Performance Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.

- 9.4 The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information and Publishable Performance Information, in accordance with the principles set out above, including through compliance with the requirements relating to the preparation of Publishable Performance Information set out in Clause 9.5 to 9.9 of this Condition. Where the Authority publishes Transparency Information, it shall:
- 9.4.1 before publishing, redact any Information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR), for the avoidance of doubt, including Sensitive Information;
  - 9.4.2 taking account of the Sensitive Information set out in DEFFORM 539A, consult with the Contractor where the Authority intends to publish Information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA and/or the EIR; and
  - 9.4.3 present information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Contract is being performed.

#### **Publishable Performance Information**

- 9.5 Within three (3) months of the effective date of Contract the Contractor shall provide to the Authority for its approval (such approval shall not be unreasonably withheld or delayed) a draft Publishable Performance Information KPI Data Report consistent with the content requirements of Schedule 6 (Performance Monitoring).
- 9.6 If the Authority rejects any draft Publishable Performance Information the Contractor shall submit a revised version of the relevant KPI Data Report for further approval by the Authority

with five (5) business days of receipt of any notice or rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. This process shall be repeated until the parties have an agreed version of the Publishable Performance Information.

9.7 The Contractor shall provide an accurate and up-to-date version of the KPI Data Report to the Authority for each quarter at the frequency referred to in the agreed Schedule 6 (Performance Monitoring).

9.8 Any dispute in connection with the preparation and/or approval of Publishable Performance Information, other than under Clause 9.6 of this Condition, shall be resolved in accordance with Condition 54 (Dispute Resolution Procedure) of this Schedule 3 (Ts & Cs).

9.9 The requirements of this Condition are in addition to any other reporting requirements in this Contract.

## 10 ESFA COMPLIANCE

10.1 Both Parties shall fully comply with all ESFA funding rules and policies, as updated from time-to-time.

## 11 DURATION OF CONTRACT

11.1 Without prejudice to any other Term or Condition of the Contract and subject at all times to the continued availability of ESFA Funding / Apprenticeship Levy funding, the duration of Contract in accordance with Schedule 2 (Price) shall be 3 years. The Contract Implementation date shall be 17 April 2024. Subject to the termination provisions of the Contract, the Contract duration shall be from 17 April 2024 to 16 April 2027 inclusive.

11.2 There are Options to extend the period of the contract for a period up of 24 months in 12-month periods.

## 12 LEGAL AND STATUTORY RESPONSIBILITIES

12.1 Whilst attention is drawn herein and in the SOR to specific legislation, it shall be the sole responsibility of the EPAO to ensure that they comply with all legal requirements and statutory instruments and any local by-laws, as appropriate to the nature of the services being provided in so far as such legal requirements, statutory instruments and by-laws are applicable to the geographic areas where the Contract is being performed.

## 13 CHANGES IN LAW

13.1 Changes to statutory legislation shall be dealt with on a case-by-case basis.

- 13.2 The EPAO shall not be relieved of its obligations to supply the Services in accordance with the terms of this contract as the result of a Specific Change in Law provided always that the costs of complying with the Specific Change in Law which cannot clearly be anticipated as at the Effective Date shall be agreed pursuant to the DEFCON 620 (Contract Change Control Procedure).
- 13.3 Without prejudice to the rest of this Condition, the EPAO shall use all reasonable endeavours to minimise any disruption caused by any Specific Change in Law.
- 13.4 For the purpose of this Condition:

DfE Funding Band shall mean the maximum capped funding band against which each apprenticeship is allocated by the DfE. Additional information on the DfE Funding Bands can be found at: <https://www.gov.uk/government/publications/apprenticeship-funding-bands>

#### 14 RELATIONSHIPS BETWEEN THE PARTIES

- 14.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the EPAO.
- 14.2 The EPAO will be treated as an independent entity and will be responsible for all taxation, National Insurance contributions and similar liabilities arising in relation to the fees payable for the work.
- 14.3 The EPAO shall not place or cause to be placed any orders with suppliers or incur liabilities in the name of the Authority or any representative of the Authority.
- 14.4 The Authority shall not have any additional liability or responsibility for payments to any of the EPAO's creditors, employees, partners, sponsored tutors, in respect of any materials purchased, premises costs incurred, or services provided by the EPAO in the delivery of the requirement in Schedule 1 (SOR).

#### 15 OTHER CONTRACTS WITH THE CROWN

- 15.1 If the EPAO shall enter into any other contract with the Crown relating in any way to the subject matter of the Contract, then, no breach by the Crown of that other contract nor any other act or omission nor any written or oral statement nor representation whatsoever of or by the Crown its servants or agents or other service providers relating to or connected with any other contracts as aforesaid shall, regardless of any negligence on its or their part:

- 15.1.1 Give the EPAO any right under this Contract to an extension of time or otherwise or additional payment or damages or any other relief or remedy whatsoever against the Authority, or
- 15.1.2 Affect, modify, reduce or extinguish either the obligations of the EPAO or the rights or remedies of the Authority under this Contract;
- 15.1.3 Be taken to amend, add to, delete or waive any Term or Condition of this Contract.

## 16 AMENDMENTS

- 16.1 Subject to sub-Clause 16.3.3 of this Condition, the Contract may only be amended by the written agreement of the Parties (or their duly authorised representatives acting on their behalf). Such written agreement shall consist of:
  - 16.1.1 the Authority's offer set out in a serially numbered amendment letter issued by the Authority to the Contractor; and
  - 16.1.2 the Contractor's unqualified acceptance of the contractual amendments as evidenced by the DEFFORM 10B duly signed by the Contractor.
- 16.2 Where required by the Authority in connection with any such amendment, the Contractor shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the Contractor's liabilities and obligations under and in connection with the Contract (as amended by such amendment) or provide a revised Parent Company Guarantee with such DEFFORM 10B to achieve the same purposes.
- 16.3 Where the Authority wishes to amend the Contract to incorporate any work that is unpriced at the time of amendment:
  - 16.3.1 if the Contract is not a Qualifying Defence Contract, the Authority shall have the right to settle with the Contractor a price for such work under the terms of DEFCON 643; or
  - 16.3.2 if the Contract is a Qualifying Defence Contract, the Contract Price shall be redetermined on amendment in accordance with the Defence Reform Act 2014 and Single Source Contract Regulations 2014 (each as amended from time to time).
  - 16.3.3 Changes to the Specification
- 16.4 The Specification forms part of the Contract and all Contract Deliverables to be supplied by the Contractor under the Contract shall conform in all respects with the Specification.
- 16.5 The Contractor shall use a configuration control system to control all changes to the

Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in the Contract.

## 17 ENVIRONMENTAL REQUIREMENTS

17.1 The Contractor shall in all their operations to perform the Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of their supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.

## 18 AUTHORITY RESPONSIBILITIES

18.1 The Authority shall be responsible for:

18.1.1 providing details of the mandatory training courses required for personnel working on a MOD site and notifying both the individual and the Service Provider of these requirements within fourteen calendar days of the Service Provider notifying the Authority of an individual's Apprenticeship Start Date;

18.1.2 where required, Baseline Personnel Security Standard (BPSS) clearance checks and/or Security Clearance at or above Security Check (SC) level.

## 19 EPAO RESPONSIBILITIES

19.1 The EPAO shall also be responsible for:

19.1.1 ensuring that contracted personnel complete any mandatory training required by the MOD for personnel working on an MOD site within the first three months of starting work on the MOD site. and

19.1.2 ensuring that contracted personnel maintain any essential skills, qualifications or accreditation required for their role, at no cost to the Authority.

19.2 The EPAO shall ensure the continuity in post of skilled staff, in so far as this lies within their control. They shall maintain sufficient employees to carry out the Contract and ensure that all of their employees are adequately trained, qualified and experienced to achieve the required End Point Assessment.

19.3 The EPAO shall keep the Authority (Designated Officer) informed on any industrial relations problems or other impending difficulties likely to delay or impede the performance of the Contract and use all reasonable endeavours to avoid industrial disputes or stoppages involving staff employed for the purposes of the Contract. Notwithstanding the foregoing, such disputes and industrial stoppages are strictly a matter for the EPAO and the Authority will grant no relief under the terms of the Contract in such event.

- 19.4 The EPAO's staff must ensure the staff that come into unsupervised face-to-face contact with apprentices have enhanced Disclosure and Barring Service (DBS) clearance before carrying out their duties. The EPAO must inform the Authority immediately of any EPAO staff referred to DBS following a complaint. Additional responsibilities are contained within Condition 36 (Security) of this Schedule 3 (Ts & Cs).

## 20 EPAO RECORDS

- 20.1 The EPAO shall maintain all records in connection with the Contract (expressly or otherwise), and without prejudice to Condition 39 (Confidentiality of Information) of this Schedule 3 (Ts & Cs), make them available to be examined or copied, by or on behalf of the Authority, as the Authority may require. It is an ESFA requirement that these records shall be retained for a period of at least seven (7) years from:
- 20.1.1 the end of the Contract term or;
  - 20.1.2 termination of the Contract; whichever occurs latest; or
  - 20.1.3 the end of a Learner's Apprenticeship if this occurs during the contract period.
- 20.2 The EPAO shall maintain such records in respect of the matter comprised in the Contract as the ESFA and/or Authority may reasonably require (including any specified elsewhere in the Contract) and shall upon request produce such records for inspection by the Authority (including all statistical information gathered for the purposes of performance requirements and quality assurance monitoring); such records will be the property of the Authority and will not be released, published or disposed of without the approval of the Authority (Designated Officer);
- 20.3 The EPAO shall give the Authority ready access to all work in progress and completed work. Inspections by the Authority may be made on a "no notice" basis.

## 21 PRECEDENCE

- 21.1 In performing its obligations under this Contract, the EPAO shall:
- 21.1.1 Provide the Services and carry out all other obligations under this Contract, in accordance with the terms of this Contract, all relevant Legislation, ESFA Rules, L&D Standard Operating Procedures (SOPs), and Good Industry Practice;
  - 21.1.2 In consultation with the Authority, and where appropriate, develop such policies and procedures, which are likely to improve/enhance the provision of the Service and shall comply with such policies and procedures once they have been agreed with the Authority; and
  - 21.1.3 Obtain and maintain all necessary Consents.



- 21.2 In the event of any inconsistency or conflict between the obligations of the EPAO referred to in sub-Clause 21.1.1 of this Condition the following order of precedence shall apply:
- 21.2.1 Statutory Legislation;
  - 21.2.2 Education and Skills Funding Agency (ESFA) Rules;
  - 21.2.3 This Schedule 3 (Ts & Cs);
  - 21.2.4 Schedule 1 - Statement of Requirements (SOR);
  - 21.2.5 Standard Operating Procedures (SOPs) subject to regular review/update;
  - 21.2.6 Schedule 2 – Price;
  - 21.2.7 Schedule 7 – Service Delivery Plan (Technical Tender Submission) at contract award;
  - 21.2.8 All other Schedules;
  - 21.2.9 Other ancillary documents referred to in this Contract;
  - 21.2.10 Good Industry Practice.
- 21.3 In the event of any conflict between the General Conditions of the Contract and the Special Conditions of the Contract then the Special Conditions of the Contract shall prevail.
- 21.4 Each Party is to notify the other in writing forthwith upon the Authority's Representative or the EPAO's Representative becoming aware of any discrepancy, inconsistency or divergence between the documents referred to in Clause 21.2 of this Condition. The Parties must seek to resolve such discrepancy, inconsistency or divergence as soon as practicable. Where they fail to do so and either Party considers the discrepancy, inconsistency or divergence to be material, then the matter may be referred to Schedule 4 (Dispute Resolution Procedure).
- 22 PRICE
- 22.1 The prices for delivery of the End-Point Assessments (EPA) programmes shall be FIRM (i.e. non-variable) for years 1-3 of the contract and FIXED priced (i.e. variable) for years 4-5 of the contract as specified in Schedule 2 (Price) and relate to Schedule 1 (SOR).
- 22.2 The overall cost for delivery of an EPA to the Authority, which shall be negotiated between both Parties, shall not exceed the guideline % of the funding cap identified in the Apprenticeship Standard.

22.3 Where pricing for delivery of the End-Point Assessments (EPA) of a Standard has not already been agreed and incorporated into the Contract from the outset of contract delivery, these prices shall be agreed between the Authority and the EPAO at the point when the relevant Standards become known, and shall be agreed in accordance with the pricing principles set out herein:

22.3.1 the Authority shall formally invite the EPAO to provide a price quotation for the delivery of the End-Point Assessments (EPA) under the DfE-defined Standards-based approach;

22.3.2 Any price quotation submitted by the EPAO to the Authority shall be supported by clear supporting written evidence that fully justifies the price(s) proposed. This evidence shall include a full cost breakdown of the proposed Price per Apprentice together with underpinning assumptions. Where the proposed Price per Apprentice includes elements of risk pricing, the EPAO must fully articulate the basis of such risks;

22.3.3 Any prices proposed by the EPAO shall form the basis of detailed pricing negotiations with the Authority, which shall aim to determine a contractually-agreed Contract Price for delivery of the End-Point Assessments under a “Standards-based” approach. In this context, the profit rate proposed by the EPAO to commence pricing negotiations shall be the Government Single Source profit rate for single source procurements in force at the time of commencement of such negotiations.

23 PAYMENT & CP&F - THE AUTHORITY’S ELECTRONIC PAYMENT SYSTEM:  
CONTRACTING, PURCHASING & FINANCE

23.1 Payment for Contractor Deliverables will be made by electronic transfer and prior to submitting any claims for payment under Clause 23.2 the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

23.2 The Contractor shall submit claims for payment monthly in arrears to the Authority (Designated Officer).

23.3 Where the Contractor submits an invoice to the Authority in accordance with Clause 23.2, the Authority will consider and verify that invoice in a timely fashion.

23.4 The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is

valid and undisputed.

- 23.5 Where the Authority fails to comply with Clause 23.3 and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of Clause 23.4 after a reasonable time has passed.
- 23.6 The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under the Contract.
- 23.7 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.
- 23.8 No claim by the EPAO for additional payment will be allowed on the grounds of any misunderstanding or misinterpretation of the SOR or any instruction given. The EPAO shall not be released from any risks or obligations imposed on or undertaken by him under the Contract on any such grounds or on the grounds that they did not, or could not, foresee any matter which might affect or have affected proper execution of the Contract.
- 23.9 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time by the EPAO to the Authority against any amount payable by the Authority to the EPAO under the Contract, or under any other contract with the Authority, or with any other Government Department.

## 24 STUDENT DEMAND

- 24.1 The actual levels of student demand from the Apprenticeship programme under the Contract may be lower or higher than any estimated level of demand given by the Authority at the outset. The Authority accepts no liability for, nor offers any guarantee to the EPAO in respect of, the accuracy of projections of estimated student demand for the programmes as detailed in Schedule 1 (SOR).

## 25 TRAVEL & SUBSISTENCE

- 25.1 When EPAO personnel are required to travel, either within UK (including Wales & Northern Ireland) or overseas, for the purposes of delivery of end point assessments or assessments under the requirements of the Contract, all hotel accommodation, transport and supporting travel arrangements, including purchase of visas, vaccinations/ preventative medical treatment and health insurance will be the responsibility of the EPAO. The Contract prices

shall therefore fully define the travel and subsistence costs incurred by the EPAO's personnel in connection with the delivery of end point assessments.

- 25.2 For the avoidance of doubt, no other allowances shall be paid by the Authority to the EPAO.

26 EPAO'S PERSONNEL

- 26.1 Where specific personnel have been proposed by the EPAO for the performance of the Contract, the EPAO shall take all reasonable steps to avoid changes to such personnel and any changes which are unavoidable shall be brought to the immediate attention of the Authority which reserves the right, acting reasonably, to reject such alternative personnel as the EPAO may then propose. The agreement by the Authority, whether notified or otherwise, to any personnel shall not prejudice the requirement upon the EPAO to perform the Contract.
- 26.2 If in the opinion of the Authority, acting reasonably, any of the EPAO's employees associated with the performance of the Contract shall misconduct themselves or be incapable of efficiently performing their duties or it shall not be in the public or National interest for any such person to be employed or engaged by the EPAO in the performance of the Contract then the EPAO shall remove such person without delay on being required to do so by the Authority (Designated Officer) and, subject to Clause 26.1 of this Condition, shall cause the work to be performed by such other person or persons as may be necessary in default.
- 26.3 The EPAO shall notify the Authority immediately of any circumstances where the EPAO becomes aware of an actual or potential conflict of interest which would affect either the EPAO or any of its personnel engaged in the performance of work under this Contract. In the event of any actual or potential conflict, the Authority shall deal with it in accordance with the provisions of Clause 26.2 of this Condition.

27 SAFEGUARDING LEARNERS

- 27.1 The EPAO shall comply fully with SOP 12 and shall co-operate with, and provide information to, the Army Safeguarding lead as requested; to give assurance that adequate arrangements exist for Learner Safeguarding to enable the Authority and the ESFA to review Learner incidents.

28 DIVERSITY AND INCLUSION

- 28.1 The MOD and its agencies are committed to and operate a policy of diversity and inclusion for its entire staff and recruits.

- 28.2 The Authority, in line with the Education Inspection Framework (EIF), aims to promote equality and diversity, tackle discrimination and narrow the achievement gap. The EPAO shall cooperate with the Authority and reinforce the achievement of these aims.

29 QUALITY ASSURANCE

- 29.1 The EPAO shall undertake the services in accordance with the quality requirement set out in schedule 1 SOR and associated SOPs.

30 PROVIDER FINANCE ASSURANCE

- 30.1 The EPAO shall provide the L&D Army Apprenticeships Team with appropriate Learner records to satisfy the Provider Finance Assurance Team (PFAT), which has a statutory responsibility for the provision of audit services to the ESFA.
- 30.2 The EPAO shall provide the necessary records to the L&D Army Apprenticeships Team no later than seven calendar days following receipt of a formal request.
- 30.3 The EPAO shall be subject to regular Provider Finance Assurance (PFA) audits and shall adhere to SOP 5 (PFA).

31 ACCOUNTING PRINCIPLES

- 31.1 The EPAO shall at all times maintain a full record of particulars of the costs of conducting its business including all books of account kept in accordance with generally accepted UK accounting principles, showing in detail:
- 31.1.1 administrative overheads;
  - 31.1.2 capital and revenue expenditure;
  - 31.1.3 such other cost items as the Authority may reasonably require from time to time in order to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purposes of this Contract.

32 MONITORING AND COMPLIANCE

- 32.1 For the purposes of ensuring compliance with this Contract the Army Apprenticeship Management Board and Steering Group Management Board shall be entitled to monitor the delivery of the end point assessments. Any concerns over the Contract performance shall be dealt with in accordance with DEFCON 530 – Dispute Resolution (English Law) utilising the process within Schedule 4 (Dispute Resolution Procedure).

- 32.2 The Designated Officer may inspect, or arrange for the inspection of, the delivery of the End Point Assessments or any part thereof at any reasonable time during the period of the Contract.

33 PERFORMANCE

- 33.1 The EPAO shall provide and maintain an organisation of a standard commensurate with the performance of all of their obligations under the Contract (as defined in Schedules 1 to 8 inclusive) and have facilities and employees of appropriate qualifications and experience to undertake the said obligations with all due care, skill and diligence.
- 33.2 The EPAO shall be expected to show flexibility in order to meet the demands of a continually changing student population and student availability. The student population is dependent upon the Army's recruitment of soldiers and thus student numbers cannot be guaranteed.
- 33.3 Only persons with appropriate qualifications and competence for the tasks on which they are engaged shall be employed by EPAO under this Contract. The EPAO shall ensure that persons employed on this Contract meet the Awarding Body and ESFA requirements.
- 33.4 It is an express requirement of the Authority that the EPAO must be listed on the ESFA's Register of End-Point Assessment Organisations (RoEPAO), and that they remain registered on the RoEPAO from the Contract Award date until the end of Contract. Should the ESFA remove the EPAO from the register for any reason, the EPAO shall inform the Authority within 1 working day of their removal. This will be considered a Fundamental Breach of Contract, and the Authority reserves the right to immediately re-let the Contract under such circumstances.
- 33.5 If the Authority considers that any service provided by the EPAO has not been delivered in accordance with the Contract, they shall (without prejudice to any other remedy available) require the EPAO to undertake rectification action as stipulated by the Authority, within an agreed period, and to the Authority's satisfaction. Such action shall be undertaken at no additional cost to the Authority.
- 33.6 If at the end of the agreed period the rectification action undertaken by the EPAO does not remedy the problem, the Authority shall determine whether:
- 33.6.1 the period may reasonably be extended, and progress will be reviewed again in accordance with this Clause 33.6; or
- 33.6.2 the EPAO must produce and submit to the Designated Officer a detailed Recovery Plan as per Clause 33.7 below.

- 33.7 Recovery Plan – the requirement for a Plan can be triggered by Clause 33.6 of this Schedule 3 (Ts & Cs), or by Schedule 6 (Performance Monitoring). The Plan shall detail the EPAO's proposals (including timescales which must be agreed with the Authority) to resolve the poor performance and restore performance in accordance with Schedule 1 (SOR) and Schedule 6 (Performance Monitoring). Notwithstanding the Authority's other contractual rights, the Authority may request the EPAO.
- 33.8 EPAO to propose further amendments to their proposed Recovery Plan so that it becomes acceptable to the Authority. For the avoidance of doubt, comment and discussion by the Authority on the remedial plan does not, and shall not, be interpreted as express or implied acceptance of the contents of the Recovery Plan. The responsibility remains that of the EPAO.
- 33.9 Implementation and progress on the actions introduced by the EPAO as a result of the Recovery Plan shall be reviewed at the next Working Group Management Board in accordance with the requirements of Schedule 1 (SOR).
- 33.10 If the achieved performance level remains below the required standard at the monthly review meeting following the end of the agreed timescale for the implementation of the Recovery Plan, then the Authority shall treat this as a contractual default and may apply the remedies detailed in Condition 47 (Default/Step in Rights) of this Schedule 3 (Ts & Cs) for contractual breaches caused by the EPAO.
- 33.11 If Clauses 33.4 to 33.7 of this Condition have been exhausted to their fullest extent, and the EPAO fails to deliver any of the services under the Contract to a satisfactory standard and fails at the monthly progress meeting to provide a reasonable response to the failure(s), the Authority shall be entitled to withhold payment in respect of those services, pending resolution of the unsatisfactory work. Once the residual work has been signed off by the Authority (Designated Officer) as having met the required satisfactory standard, the EPAO shall be entitled to claim payment for the withheld payments.

#### 34 REPORTS & MEETINGS

- 34.1 The EPAO shall, as required by the Designated Officer, provide the reports detailed in Schedule 1 (SOR) and Annex F (Governance and Meetings) to this Schedule 3 (Ts & Cs).
- 34.2 The EPAO shall make such Reports at such a frequency and in such a format as the Authority may reasonably require in order to confirm or otherwise monitor performance under the Contract. The submission by the EPAO and receipt by the Authority of these reports shall not prejudice any rights of the Authority or the EPAO under the Contract.

34.3 If the Designated Officer considers that the content of the report does not meet the requirements of the Army Apprenticeship Programme Management Board and/or Maxi-Board, they shall meet with the EPAO to discuss his concerns and reach agreement on any additional work that is necessary. The detailed procedure shall apply until such time as the Designated Officer is content with the information provided.

34.4 In addition to meetings covered by DEFCON 642, Progress Meetings, the Designated Officer and the EPAO shall meet as and when required to discuss matters arising under the Contract as the Designated Officer may reasonably require to or otherwise monitor performance under the Contract.

## 35 DATA MANAGEMENT

35.1 The Authority or the Authority's Service Provider, in conjunction with the EPAO, shall be responsible for entering all the apprentice data onto the IfATE portal, to confirm the EPA result and claim the certificate for the candidate for EPA.

## 36 SECURITY

36.1 The EPAO shall be required to ensure that any staff provisioned to deliver any part of the Services detailed in Schedule 1 (SOR) shall submit themselves to MOD security clearance procedures as required by the Designated Officer.

36.2 The EPAO shall comply with any reasonable security measures requested by the Authority and shall comply with extant security procedures prevalent in the establishments.

36.3 The EPAO shall provide the Authority (Designated Officer) with:

36.3.1 Personal details of any of the EPAO employees requiring access to the Authority site(s) (or any other Government establishment); the Authority reserves the right to refuse entry to any individuals, or to require that they be removed from an Authority site at any time without explanation;

36.3.2 No employee of the EPAO is to be allowed access to classified information or material unless prior clearance to receive information of the appropriate security classification has been authorised by the Authority's security officer, and the employee holds an appropriate level of personal security clearance.

36.4 The EPAO shall additionally be responsible for:

36.4.1 Ensuring that no classified material held by the EPAO in connection with this Contract is removed from the Establishment unless express prior permission has been given, in writing, by the Authority (Designated Officer). Similarly, no classified



information stemming from lectures, discussions or other activities arising from this Contract is to be passed to any unauthorised person or anyone outside of the Contract or is to be used for any purpose outside of the Contract unless express prior permission has been given, in writing, by the Authority (Security Officer).

- 36.5 The EPAO shall ensure that the highest standards of privacy and confidentiality are maintained by their employees in relation to documents which bear privacy markings, whether classified or not, with which they are entrusted. The same standards of privacy and confidentiality shall be applied to information acquired orally. Unauthorised divulgence of Protected Material or information (including, for example, Reportable OFFICIAL and OFFICIAL- SENSITIVE) can damage the reputation of an individual, of the EPAO, of the Authority or of the Establishment. The EPAO shall be aware that the Authority attaches great importance to the protection of such information.
- 36.6 The EPAO's employees working in or visiting the Establishment must display security passes issued by the Authority at all times when the employees are present on the Establishment site. Such passes shall remain the property of the Authority and shall be surrendered on demand.
- 36.7 The Authority shall be responsible for:
- 36.7.1 Issue of vehicle passes to those of the EPAO's employees who have been authorised to bring vehicles into the grounds of the Establishment;
- 36.7.2 Notification and briefing of security alert states as necessary;
- 36.7.3 The provision, maintenance and checking of approved security furniture.
- 36.8 The EPAO's employees shall consent to the servants or officers of the Authority searching any vehicles, containers, equipment, work bags and other chattels (together "the chattels") owned by the EPAO and/or their employees whilst the chattels are on the Establishment and/or as a condition of their access to the Establishment. Routine checks may be carried out on any person within, entering or leaving the Establishment (and any other Government establishment), and such a person must be prepared to accept as a condition of entry the obligations to be stopped and searched and to have their vehicle(s) and chattels examined. The Authority reserves the right to deny access to, or expel from, the Establishment (and any other Government establishment) any persons who do not consent to their being searched.
- 36.9 The EPAO shall accept (without prejudice to any other remedies which the Authority may have) full responsibility for any loss or delay in performance of the Contract caused directly

or indirectly by the expulsion of or refusal to allow entry to a EPAO employee and the like who does not consent to being searched.

- 36.10 In addition to the requirements of other Conditions of the Contract, security requirements or other local procedures as laid down in Establishment Standing Orders/Instructions shall be stringently enforced by the EPAO.
- 36.11 The EPAO shall appoint one of their employees as the EPAO's Security Officer who will be responsible, in consultation as necessary with the Authority (Designated Officer and the Garrison/Unit Security Officer) for the implementation of all security arrangements concerning the EPAO's employees together with the area(s) in which they are employed, their offices and equipment.
- 36.12 The EPAO shall provide the Authority (Designated Officer and Garrison/Unit Security Officer) with:
- 36.12.1 Full personal details of all of the EPAO's employees and visitors sponsored by the EPAO, and will not be permitted to introduce any such employees or visitors to the Establishment (or any other Government establishment) until they have been given prior security clearance by the Authority; the Authority reserves the right to refuse entry to any individuals, or to require that they be removed at any time without explanation;
  - 36.12.2 With the assistance of the Authority (Garrison/Unit Security Officer) as appropriate, details of all of the EPAO's employees requiring access to classified information and materials for their work at the Establishment; no employee of the EPAO is to be allowed access to classified information or material unless prior clearance to receive information of the appropriate security classification has been authorised by the Authority (Garrison/Unit Security Officer).
- 36.13 The EPAO shall additionally be responsible for:
- 36.13.1 Making arrangements for their new employees to be briefed on their security responsibilities at the Establishment; they will also arrange for continuation security training of their employees as required by the Authority (Garrison/Unit Security Officer);
  - 36.13.2 All classified documents, and other material held, including the library department(s);
  - 36.13.3 The proper disposal or destruction of classified material held by them;

- 36.13.4 Where a post has been identified as DBS, the EPAO shall ensure that all personnel are DBS checked and have enhanced clearance prior to commencement of work on the contract.

37 CYBER SECURITY

- 37.1 Further to DEFCON 658, the Cyber Risk Level of the Contract is assessed as Moderate as defined in Def Stan 05-138. Reference: RAR 321963961.
- 37.2 The EPAO shall reassess the cyber security controls that they have in place every year, on the anniversary of the date of commencement of the Contract and shall inform the Authority's Designated Officer if the status of their cyber security rating changes. Where necessary, the EPAO shall devise and implement a Cyber Implementation Plan (CIP) to address any shortcomings in their cyber security controls.
- 37.3 Where an agreed Cyber Implementation Plan (CIP) is required, or becomes required in the course of the Contract, the EPAO shall provide the details of their CIP to the Authority (Pers Pol) who shall arrange for the CIP to be inserted into the Contract Documentation as a Schedule to the Contract; and the EPAO shall then meet the agreed timescales set out within the CIP for implementation of the necessary security controls.

38 DATA PROTECTION

- 38.1 The EPAO shall ensure that any Personal Data is protected in accordance with DEFCONs 531 and 532B. Annex D (DEFFORM 532) to this Schedule 3 (Ts & Cs) defines the Personal Data concerned, the source of the data and the processes to be applied to it and the intended disposal of the Personal Data after processing. Personal Data held on any portable device shall be encrypted in accordance with Defence policy (the current Defence policy will be made available via the Army Apprenticeship Team's E-Platform Site).
- 38.2 The EPAO shall ensure that any e-mail transmissions containing Personal Data are protected in accordance with Schedule 1 (SOR). The password shall be communicated to the address separately from the e-mail containing the encrypted material. No single transmission shall contain the Personal Data for more than 1000 individuals without permission of the Authority. (This is an evolving MOD data protection policy and latest changes to this policy will be notified to the EPAO where appropriate).
- 38.3 The EPAO shall report at the earliest opportunity all security breaches and actual or suspected losses of data to the L&D Security Officer. Such losses shall be subject to formal investigation by the relevant MOD organisation, Ministry of Defence Police (MDP), Royal

Military Police (RMP) or Military Intelligence (MI) section, depending on the location and the circumstances.

- 38.4 The Authority will enable the EPAO to purchase specialist IT consumables, i.e., colour coded and/or encrypted Removable Media, from authorised MOD suppliers if requested to do so.
- 38.5 The EPAO shall ensure that all employees who handle any Personal Learner Data shall complete the Authority's mandatory data protection training, which the Authority shall make available to the EPAO. The EPAO shall ensure that all employees complete this training and the associated assessment on an annual basis. The EPAO shall maintain a register of all employees successfully completing the assessment and this register shall be made available to the Authority on demand for inspection.

39 CONFIDENTIALITY OF INFORMATION

- 39.1 Any and all information together with any documentation, specification or computer software and the like which contain it, and which is provided by the Authority to the EPAO for the purposes of the Contract (together "the information") shall be treated as received "in confidence" and used only for the purposes of the Contract.

The EPAO agrees that they shall not:

- 39.1.1 Copy the information in any manner;
- 39.1.2 Remove the information from the Establishment in any material form;
- 39.1.3 Disclose the information, or any part of it, to a third party or use the information for any purpose other than for the purpose of performing work for the Authority pursuant to the Contract without the express permission of either the Authority (Commercial Team) or, if appropriate, the IPR owner.
- 39.2 The restrictions and obligations set out at Clause 39.1 of this Condition shall not apply to any of the information which the EPAO can show to the satisfaction of the Authority (Commercial Desk Officer):
- 39.2.1 was already known to the EPAO prior to their examination of it at the Establishment and otherwise than by communication from the Authority;
- 39.2.2 Is rightfully received by the EPAO from a third party without any obligations or confidence; or
- 39.2.3 Has been generated independently by the EPAO prior to its being made available by the Authority pursuant to the Contract.

- 39.3 The restrictions and obligations at Clause 39.2 of this Condition shall cease to apply to any of the information, which is the subject of this Condition and which, subsequent to its being made available by the Authority for examination by the EPAO comes into the public domain otherwise than through a breach of this Condition or any other contract.
- 39.4 Nothing in this Condition or any other Condition of the Contract shall be interpreted as constituting or implying a transfer, assignment or licence of rights in any of the information made available by the Authority.
- 39.5 The EPAO shall at all times hereafter indemnify, and keep indemnified, the Authority in respect of any claim against the EPAO or the Authority arising out of the failure to discharge fully their responsibilities under this Condition.
- 39.6 Information deriving from, or relating to the Contract, and the services provided under the Contract, the Establishment or the Ministry of Defence as a whole may not be communicated to a third party without the prior specific permission to do so, in writing, from the Authority (Designated Officer).
- 39.7 The provisions of this Condition shall survive indefinitely notwithstanding the termination of the Contract.

40 CONTROLLED INFORMATION

- 40.1 This Condition shall apply in addition to and notwithstanding DEFCON 531 (Disclosure of Information) or any other confidentiality Condition of the Contract.
- 40.2 For the purposes of this Condition 'Controlled Information' shall mean any information in any written or tangible form which is disclosed to the EPAO by or on behalf of the Authority under or in connection with the Contract, and which is identified by the legend 'Controlled Information' or other approved legend notified to the EPAO. Controlled Information shall exclude information provided by oral communication.
- 40.3 The EPAO shall:
- 40.3.1 hold the Controlled Information and not use it other than for the purpose of discharging its obligations under the Contract;
  - 40.3.2 not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under the Contract;
  - 40.3.3 not disclose the Controlled Information to any third party unless so authorised in writing beforehand by the Authority;

40.3.4 protect the Controlled Information diligently against unauthorised access and against loss; and,

40.3.5 act diligently to ensure that:

40.3.6 Controlled Information is disclosed to its employees only to the extent necessary for the purpose of discharging its obligations under the Contract;

40.3.7 employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Condition.

40.3.8 Where Controlled Information is provided to the EPAO, it shall:

40.3.9 compile a register of that Controlled Information, which shall include explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information, including access to any copies of the Controlled Information;

40.3.10 maintain this register for the duration of the Contract and for two years following completion of the Contract;

40.3.11 make the register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under this Condition; and,

40.3.12 at the completion of the Contract, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.

40.4 This Condition shall not diminish or extinguish any right of the EPAO to copy, use or disclose any other information to the extent that it can show:

40.4.1 that the information concerned was or has become published or publicly available for use without breach of any provision of the Contract or any other agreement between the parties;

40.4.2 that the information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with the Contract;

40.4.3 that the information concerned was lawfully provided by a third party without restriction on use or further disclosure; or

40.4.4 from its records, that the information was derived independently of the Controlled Information;

40.4.5 to the extent that copying use or disclosure of this other information shall not disclose its relationship to any Controlled Information.

41 INSURANCE

- 41.1 The EPAO will be required to maintain adequate insurance and professional indemnity cover for all of their activities in the performance of the Contract and any liabilities arising there from.
- 41.2 The Authority reserves the right, acting reasonably, to require the EPAO to provide evidence of the method used to affect such cover, at any time during the period of the Contract. Any such request shall not in any way constitute the Authority's approval or acceptance of either the chosen method or the extent of the cover afforded. The EPAO will be required to ensure that their personnel travelling overseas have appropriate medical insurance.
- 41.3 Without prejudice to the requirements of DEFCON 76, the EPAO shall take out and maintain insurance against their liabilities under the Contract; and when required to do so by the Authority, shall produce for inspection by the Authority documentary evidence that the insurance required by this Condition has been taken out and is being maintained. This obligation is without prejudice to, and does not limit, the obligations of the EPAO under the Contract. In particular, inspection of documents in accordance with this Condition shall not be taken as acceptance by the Authority that the insurance which the EPAO holds is suitable for or sufficient to meet all their liabilities under the Contract.
- 41.4 The Authority shall be at liberty, subject to the agreement of the EPAO and the EPAO Insurers to settle any claim against the Authority or any servant of the Crown coming within the scope of the indemnities given by the EPAO in this Condition, by payment as a matter of grace of a sum to be agreed with the EPAO and the EPAO's Insurers by way of compensation, and the said indemnities shall cover any payment so made.
- 41.5 The indemnities contained in this Condition shall extend to all claims which are not legally enforceable against the Crown or the Authority but would be so enforceable if the Crown were a private person or if the Authority or the servant or agent were not a representative of or in the employment of the Crown and to all sums properly payable by the Crown to or in respect of any servant of the Crown in connection with any injury or loss arising in connection with the Contract, being sums which are payable under any statute, warrant, order, scheme, regulation or condition of service, for the benefit of the servant or their family or dependants, whether or not these are enforceable against the Crown.

## 42 LIMITATIONS ON LIABILITY

### Definitions

42.1 In this Condition 42.1 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

42.1.1 “**Charges**” means any of the charges for the provision of the Services, Contractor Deliverables and the performance of any of the Contractor’s other obligations under this Contract, as determined in accordance with this Contract;

42.1.2 “**Data Protection Legislation**” means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to:

- (1) UK GDPR;
- (2) DPA 2018; and
- (3) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended, each to the extent that it relates to the processing of personal data and privacy;

42.1.3 “**Default**” means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or an activity to be carried out by the Authority or its representatives in accordance with the Contract be considered a Default;

42.1.4 “**DPA 2018**” means the Data Protection Act 2018;

42.1.5 “**Law**” means any applicable law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body.

42.1.6 “**Term**” means the period commencing on 17 April 2024 and ending 16 April 2024 or on earlier termination of this Contract.

42.1.7 “**UK GDPR**” means the General Data Protection Regulation (Regulation (EU)



2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

### **Unlimited liabilities**

42.2 Neither Party limits its liability for:

42.2.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

42.2.2 fraud or fraudulent misrepresentation by it or its employees;

42.2.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

42.2.4 any liability to the extent it cannot be limited or excluded by law.

42.3 The financial caps on liability set out in Clauses 42.4 and 42.5 below shall not apply to the following:

42.3.1 for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:

42.3.1.1 the Contractor's indemnity in relation to Schedule 5 (TUPE);

42.3.2 for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:

42.3.2.1 the Authority's indemnity in relation to Schedule 5 (TUPE);

42.3.3 breach by the Contractor of DEFCON 532B and Data Protection Legislation; and

42.3.4 to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

### **Financial limits**

42.4 Subject to Clauses 42.2 and 42.3 and to the maximum extent permitted by Law:

42.4.1 throughout the Term the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:

42.4.1.1 in respect of DEFCON 76 £50,000.00 in aggregate;

42.4.1.2 in respect of DEFCON 514 £200,000.00in aggregate;

42.4.1.3 in respect of DEFCON 611 £0 in aggregate;

42.4.1.4 in respect of DEFCON 612 £0 in aggregate and;

42.4.1.5 in respect of Other £50,000.00in aggregate;

42.4.2 without limiting sub-Clause 42.4.1 and subject always to Clauses 42.2, 42.3 and sub-Clause 42.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities, arising under warranty, under statute or otherwise under or in connection with this Contract shall be £300,000.00 in aggregate.

42.4.3 on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in sub-Clauses 42.4.1 and 42.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in sub-Clauses 42.4.1 and 42.4.2 of this Contract.

42.5 Subject to Clauses 42.2, 42.3 and 42.6, and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

42.6 Clause 42.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

### **Consequential loss**

42.7 Subject to Clauses 42.2, 42.3 and 42.8, neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

42.7.1 indirect loss or damage;

42.7.2 special loss or damage;

42.7.3 consequential loss or damage;

42.7.4 loss of profits (whether direct or indirect);

42.7.5 loss of turnover (whether direct or indirect);

42.7.6 loss of business opportunities (whether direct or indirect); or

42.7.7 damage to goodwill (whether direct or indirect),

even if that Party was aware of the possibility of such loss or damage to the other Party.

42.8 The provisions of Clause 42.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:

42.8.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:

42.8.1.1 to any third party;

42.8.1.2 for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and

42.8.1.3 relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

42.8.2 any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;

42.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);

42.8.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;

42.8.5 damage to the Authority's physical property and tangible assets, including damage under DEFCONs 76 and 611;

42.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;

42.8.7 any additional costs incurred by the Authority in relation to the Authority's contracts

with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such contracts);

42.8.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or

42.8.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.

### **Invalidity**

42.9 If any limitation or provision contained or expressly referred to in this Condition 42 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Condition 42.

### **Third party claims or losses**

42.10 Without prejudice to any other rights or remedies the Authority may have under this Contract, the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third-party claim:

42.10.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and

42.10.2 is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

### **No double recovery**

42.11 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor.

43 PUBLIC RELATIONS AND PUBLICITY

- 43.1 Responsibility for communicating with representatives of the press, both popular and technical, radio, television, and other communication media on all matters concerning this Contract and the Sites as a whole is borne solely by the Authority. The EPAO or their agents shall not communicate with any such representatives in relation to any aspect of this Contract, the Sites or the Authority's operations without the prior consent of the Designated Officer.
- 43.2 The EPAO shall not, and shall ensure that their agents shall not, without the prior written consent of the Authority's Project Manager, other than to fulfil its obligations to the Authority under this Contract, take photographs or video recordings of the provision of the Services, and shall take all necessary steps to ensure that no photographs or video recordings shall at any time be taken or published or otherwise circulated by any third party including, but not limited to, any visitors to the Sites.
- 43.3 The Authority reserves the right to publish information about the performance of the EPAO and/or any other information as it may deem appropriate (acting reasonably) in order to comply with its statutory obligations.

44 ARMY BRANDING

- 44.1 Full instructions on how the images, obtained under this Condition, shall be used are contained in paragraphs 9 to 24 of the 'British Army Brand Identity Instructions' (BABII) which is accessed on the Defence Brand Portal. On award of Contract the EPAO shall register for use of the Defence Brand Portal on <http://www.defencebrandportal.mod.uk>. Electronic versions of the permitted brands shall then be provided by the Authority once the necessary permissions have been granted.
- 44.2 The EPAO must not use any MOD or Corps Brands/Logos without prior written permission from the Authority (Directorate of Intellectual Property Rights).

45 CONFIDENTIALITY

- 45.1 Neither party shall without the written consent of the other (save as required by this agreement) disclose any of the contents of this Contract to any Third Party save: (in the case of both parties) for any necessary disclosure to professional advisers of that party;
- 45.1.1 (in the case of the Authority) to the ESFA or other organisation required to monitor its performance, including but not limited to, Awarding Bodies, Ofsted, Sector Skills Councils;
- 45.1.2 (in the case of both parties) when required to do so by a Statutory Body.

- 45.2 This Contract shall be subject to inspection and audit by the ESFA, Ofsted and other Government Agencies. The EPAO shall be identified in any reports subsequently published in the public domain.

46 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)

- 46.1 Where the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) is applicable to any of the EPAO's employees, the Terms and Conditions in Schedule 5 (TUPE) shall apply.

47 DEFAULT/STEP IN RIGHTS

- 47.1 Should the EPAO fail or neglect to render any service required of them under the Contract, or fail or neglect to perform any obligation imposed on them thereby, the Authority shall (without prejudice to any other remedy for breach of Contract) be at liberty to exercise 'Step-In Rights' and make such other arrangements as it may think proper for the rendering of that service or the performance of that obligation and to recover from the EPAO the extra costs, if any, thereby incurred from the EPAO in accordance with DEFCON 514. Where the Authority is obliged to reintroduce its own personnel for the rendering of that service, the costs for their provision will be established at full repayment cost.
- 47.2 In the event that the Authority exercise Step-In Rights under Clause 47.1 of this Condition then the Authority shall use all reasonable endeavours to obtain the rendering of alternative services as economically as is possible in the prevailing circumstances.

48 DEFAULT & RECTIFICATION

- 48.1 The Authority's Commercial Desk Officer may, by notice in writing, summarily determine the Contract (without prejudice to its rights and remedies in respect of a breach by the EPAO of any of the provisions hereof) in whole or part without compensation if in the opinion of the Authority the services or facilities provided by the EPAO are not in all respects satisfactory and the EPAO shall not have provided satisfactory services or facilities within the period as agreed between the parties, after notice has been given to the EPAO specifying the matters in respect of which such services or facilities are regarded as unsatisfactory and have therefore resulted in the issue of the termination notice to the EPAO.
- 48.2 If the EPAO rectifies the EPAO Default within the time period specified in the termination notice, the termination notice will be deemed to be revoked and the Contract will continue.
- 48.3 In the case of a termination notice specifying a EPAO Default which in the sole opinion of the Authority is capable of remedy the EPAO shall be invited to put forward a rectification programme, within ten (10) Working Days of the date of the termination notice, for

remedying the EPAO Default (the "Rectification Programme") and detailing the timescales within which the EPAO shall remedy the specified EPAO Default. If the Rectification Programme provides for the EPAO to remedy the EPAO Default to the Authority or ESFA's satisfaction (as to which the Authority or ESFA shall be the sole judge) the Authority/ESFA shall accept the Rectification Programme and shall not be entitled to terminate the Contract (in whole or in part) in respect of the EPAO Default for which the Termination Notice was originally served while the EPAO is complying with the Rectification Programme in all material respects.

- 48.4 If, in the reasonable opinion of the Authority, the EPAO fails to fulfil their full Contract obligations, which shall include the requirements of Schedule 1 (SOR), the Authority may issue a notice (a "**Notified Defect Notice**") to the EPAO giving details of the relevant event or circumstances giving rise to the failure (a "**Notified Defect**") and, subject to Clause 48.7 below, specifying a reasonable time within which the EPAO must remedy the Notified Defect or take the necessary steps to ensure that it does not recur.
- 48.5 Subject to the Authority's right to take immediately such steps as it reasonably considers necessary in order to prevent, mitigate or eliminate an immediate and serious risk to health, safety, the environment, national security or to ensure the proper discharge of its statutory functions, the EPAO must either:
- 48.5.1 Remedy the Notified Defect or take the necessary steps to ensure that it does not recur within the period specified in the Notified Defect Notice, or
- 48.5.2 Within five (5) Working Days of the date of the Notified Defect Notice agree with the Authority (both Parties acting reasonably) an alternative period of time for rectification of the Notified Defect.
- 48.6 If the EPAO fails to remedy the Notified Defect or take the necessary steps to ensure that it does not recur within the time specified in the Notified Defect Notice or any agreed alternative time period for rectification, the Authority may step-in in respect of the Notified Defect and:
- 48.6.1 without thereby avoiding or terminating this Contract or releasing the EPAO from any pre-existing liabilities, suspend performance by the EPAO of the Contract obligations, which shall include Schedule 1 (SOR), as relate to the Notified Defect until the Authority has remedied the default; and
- 48.6.2 take or employ a EPAO to take such steps in relation to the performance of the full Contract obligations as relate to the Notified Defect Notice as it may think fit in order to procure the performance of the obligations in accordance with the provisions of this Contract.

48.7 In exercising its step-in rights, the Authority shall:

48.7.1 use reasonable endeavours to procure that such rights are exercised in a manner causing as little disruption as reasonably possible to the EPAO in its performance of its other obligations under this Contract; and

48.7.2 exercise such rights for no longer than is reasonably necessary to remedy the Notified Defect; and

48.7.3 promptly following rectification of the Notified Defect or the Authority being reasonably satisfied that the EPAO is able to resume full responsibility for all Contract obligations, give written notice to the EPAO of the Authority's intention to step-out specifying a date (which shall be as soon as reasonably practicable) from which the EPAO will resume responsibility for performance of all of its obligations under this EPAO.

48.8 The EPAO shall reimburse to the Authority such costs as are reasonably and properly incurred by the Authority in exercising its step-in rights together with a premium of 5% of such costs to reflect the Authority's administrative and management costs.

48.9 If the Authority exercises its step-in rights, it shall be entitled, for the period of such step-in by the Authority, to reduce the payments by such amount as is fair and reasonable to reflect the non-performance of the relevant obligations by the EPAO (due account being taken of any sum recoverable from the EPAO under Clause 48.8 of this Condition.

48.10 For the avoidance of doubt, the exercise by the Authority of its step-in rights in relation to any aspect of the Contract shall not relieve the Parties from performance of any obligations under this Contract relating to any other part of the Contract.

#### 49 TERMINATION ESFA

49.1 The Authority and the EPAO agree that the Contract shall be regarded as terminated if, at any time during the period in which the Contract subsists, there is a material adverse change in the amount or nature of the funding provided by ESFA, or if funding is no longer available from the ESFA or via the Defence Apprenticeship Levy account. In the event of any material adverse change or any cessation of funding, the Authority shall endeavour to provide the EPAO with as much notice as that provided to the Authority by the ESFA/Defence Resources.

49.2 In the event of termination under the provisions of Clause 49.1 of this Condition, the Authority and the EPAO agree that all costs of termination shall lie where they fall, and that



neither the Authority nor the EPAO shall have any claim against the other in respect of the termination.

- 49.3 Termination under the provisions of Clause 49.1 of this Condition shall be entirely without prejudice to the rights of the Authority and the EPAO that have accrued under the Contract up to the date of termination.
- 49.4 In the event that the ESFA requirements for the assessment of Apprenticeships against Standards changes to the extent that it has a material change or impacts on the way in which the Contract is being delivered, the Authority will take a view on whether this would be a sufficiently substantial, material or adverse change necessitating re-negotiation or re-competition of the contract; and in such circumstances, the Authority shall endeavour to provide the EPAO with as much notice as that provided to the Authority by the ESFA.
- 49.5 In the event that a change to the Army career development strategy renders any or all of the Apprenticeship programmes covered by this Contract inappropriate for the career needs of the soldiers, the Authority shall have the right to require the EPAO to cease enrolment of Learners onto any or all of the apprenticeship programmes. The cessation of enrolment shall be effective from the next intake of Soldiers into their Phase 2 Military training or at the end of the relevant academic year (31 July), at the discretion of the Authority. The EPAO shall continue to support Learners already on programme to completion in accordance with the provisions of this Contract.
- 49.6 Upon expiry or termination of the Contract, no liability to make payments by way of redundancy liability, wherever statutory or otherwise, shall accrue to the Authority.
- 49.7 On expiry or termination of the Contract, and following consultation with the Designated Officer, all personal information provided by the Authority or acquired by the EPAO during the course of the Contract must either be returned to the Authority or else destroyed in accordance with directions issued by the Authority (whereby the Authority will require proof of destruction immediately on completion of the activity) within one month of the completion/termination date of the Contract.

## 50 TERMINATION FOR INSOLVENCY OR CORRUPT GIFTS

### **Insolvency:**

- 50.1 The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written Notice of such termination to the Contractor at any time after any of the following events:
- 50.2 Where the Contractor is an individual or a firm:

- 50.2.1 the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
- 50.2.2 the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
- 50.2.3 the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with them or their creditors; or
- 50.2.4 the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- 50.2.5 the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
- 50.2.6 where the Contractor is either unable to pay their debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay their debts if:
- 50.2.6.1 they have failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within twenty-one (21) days of service of the Statutory Demand on them; or
  - 50.2.6.2 execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.
- 50.2.7 the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- 50.2.8 the court making an award of sequestration in relation to the Contractor's estates.
- Where the Contractor is a company registered in England:
- 50.2.9 the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
- 50.2.10 the court making an administration order in relation to the company; or

50.2.11 the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or

50.2.12 the company passing a resolution that the company shall be wound-up; or

50.2.13 the court making an order that the company shall be wound-up; or

50.2.14 the appointment of a Receiver or manager or administrative Receiver.

Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which they are subject, are similar in nature or effect to those specified in sub-Clauses 50.2.7 to 50.2.14 inclusive above.

50.3 Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

#### Corrupt Gifts:

50.4 The Contractor shall not do, and warrants that in entering the Contract they have not done any of the following (hereafter referred to as 'prohibited acts'):

50.4.1.1 offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;

50.4.1.2 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other Contract with the Crown; or

50.4.1.3 for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.

50.4.2 enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by them or on their behalf, or to their knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

50.5 If the Contractor, their employees, agents or any Subcontractor (or anyone acting on their behalf or any of their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:

50.5.1 to terminate the Contract and recover from the Contractor the amount of any loss

resulting from the termination;

50.5.2 to recover from the Contractor the amount or value of any such gift, consideration or commission; and

50.5.3 to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.

50.6 In exercising its rights or remedies under this Condition, the Authority shall:

50.6.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;

50.6.2 give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):

50.6.2.1 requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on their behalf;

50.6.2.2 requiring the Contractor to procure the dismissal of an employee (whether their own or that of a Subcontractor or anyone acting on their behalf) where the prohibited act is that of such employee.

50.7 Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

## 51 TERMINATION FOR CONVENIENCE

51.1 The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least twenty (20) Business Days written notice. Upon expiry of the notice period the Contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the Contract is being terminated, the Authority and the Contractor shall owe each other no further obligations in respect of the part of the Contract being terminated but will continue to fulfil their respective obligations on all other parts of the Contract not being terminated.

51.2 Following the above notification, the Authority shall be entitled to exercise any of the following rights in relation to the Contract (or part being terminated) to direct the Contractor to:

51.2.1 not start work on any element of the Contractor Deliverables not yet started;

51.2.2 complete in accordance with the Contract the provision of any element of the

Contractor Deliverables;

51.2.3 as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;

51.2.4 terminate on the best possible terms any subcontracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under sub-Clauses 51.2.2 and 51.2.3 of this Condition.

51.3 Where this Condition applies (and subject always to the Contractor's compliance with any direction given by the Authority under Clause 51.2):

51.3.1 The Authority shall take over from the Contractor at a fair and reasonable price all unused and undamaged materiel and any Contractor Deliverables in the course of manufacture that are:

51.3.1.1 in the possession of the Contractor at the date of termination; and

51.3.1.2 provided by or supplied to the Contractor for the performance of the Contract,

except such materiel and Contractor Deliverables in the course of manufacture as the Contractor shall, with the agreement of the Authority, choose to retain;

51.3.2 the Contractor shall deliver to the Authority within an agreed period, or in absence of such agreement within a period as the Authority may specify, a list of:

51.3.2.1 all such unused and undamaged materiel; and

51.3.2.2 Contractor Deliverables in the course of manufacture,

that are liable to be taken over by, or previously belonging to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority;

51.3.3 in respect of Services, the Authority shall pay the Contractor fair and reasonable prices for each Service performed, or partially performed, in accordance with the Contract.

51.4 The Authority shall (subject to Clause 51.5 below and to the Contractor's compliance with any direction given by the Authority in Clause 51.2 above) indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, subject to:

51.4.1 the Contractor taking all reasonable steps to mitigate such loss; and

51.4.2 the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part.

- 51.5 The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.
- 51.6 Claims for payment under this Condition shall be submitted in accordance with the Authority's direction.

## 52 MATERIAL BREACH

52.1 In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written Notice to the Contractor where the Contractor is in material breach of their obligations under the Contract.

52.2 Where the Authority has terminated the Contract under Clause 52.1 the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:

52.2.1 carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or

52.2.2 obtaining the Contractor Deliverable in substitution from another supplier.

## 53 CONSEQUENCES OF TERMINATION

53.1 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued prior to termination. The Conditions that expressly or by implication have effect after termination shall continue to be enforceable even after termination.

## 54 DISPUTE RESOLUTION PROCEDURE

54.1 The Parties agree to adopt the Dispute Resolution Procedure detailed at Schedule 4 (Dispute Resolution Procedure) for any dispute arising under this Contract.

55 CO-OPERATION ON EXIT: AUDIT

- 55.1 Upon termination or natural expiry of this Contract, the EPAO shall be subject to a full audit by the Authority's or their representative. The EPAO shall cooperate fully with the Authority's staff and with ESFA staff in the completion of such an audit.

56 TRANSITION

- 56.1 In addition to Schedule 5 (TUPE), in the event of a transfer of responsibility of the Contract task from the EPAO at the expiry or termination of the Contract or due to the EPAO withdrawing from this Contract or goes into liquidation or administration, the EPAO shall co-operate in the transfer under arrangements to be notified to him by the Authority. If such transfer of responsibility extends beyond the Contract period, the EPAO shall undertake to provide, at fair and reasonable prices to be agreed in accordance with Condition 17 (Amendments) of this Schedule 3 (Ts & Cs), any such services regarded as a "Change" as may be required arising from the transfer of responsibility always provided that such services are within the capacity of the EPAO's organisation.
- 56.2 The transfer of responsibility shall be arranged so as to reduce to a minimum any interruption in the availability of services provided under the Contract and shall be undertaken in accordance with the agreed Transition Plan. The Transition Plan will be agreed between the EPAO and the Authority and will and will be incorporated at Annex C.
- 56.3 In the event the EPAO is no longer able to provide all the deliverables in Schedule 1 (SOR) due to, but not limited to, financial difficulties, the Authority reserves the right to temporarily request another EPAO to Step In to deliver the Services in Schedule 1 (SOR) while the Authority commences the re-let of this Contract. See Condition 47 (Default/Step In Rights) of this Schedule 3 (Ts & Cs) in addition. In such circumstances, the transfer of responsibility will be conducted in accordance with the agreed Transition Plan.

57 EXIT MANAGEMENT

- 57.1 The initial exit Plan shall be drafted by the EPAO, agreed by both parties, and incorporated into the Contract at Annex E to this Schedule within 12 Months of the Contract Implementation Date. The Exit plan shall be reviewed annually by the EPAO; any changes agreed by the Authority shall be incorporated into Annex E.
- 57.2 In the event that Exit is triggered, the parties shall follow the Exit Plan as detailed in Annex E (Exit Plan) to this Schedule 3.

**Annex A to  
Schedule 3 (Ts & Cs)**

Army Apprenticeships Standard Operating Procedures (SOP's)

<b>SOP Number</b>	<b>Title</b>	<b>Directs EPAO task</b>	<b>EPAO to comply</b>
1	Required Standardised Apprenticeship Paperwork	No	No
2	Governance	No	No
3	RPL	No	No
4	AGG	No	No
5	Funding Assurance Review	No	No
7	MIS	No	No
8	Apprenticeship Delivery Contract Transition Activities and Checks	No	No
11	Health & Safety Policy – No longer used	Refer to Army Health and Safety Direction	Refer to Army Health and Safety Direction
12	Army Safeguarding and Prevent Directive	Yes	Yes
14	Army Self-Assessment Report and Quality Improvement Plan	No	No
15	Ofsted	No	No
16	Application For Delivery Of Apprenticeship Standard	No	No
17	Quality Framework for Observing Programme Delivery	No	No
18	Functional Skills	No	No
20	EPA	Yes	Yes
21	Suspension of learners on Apprenticeship	No	No



Not Used

**Annex C to Schedule 3**

[Contract Transition Plan to be inserted]

Contract transition declaration

Incoming and outgoing EPAO's confirm that all aspects of the Transition Plan have been completed satisfactorily and that no outstanding issues remain open.

Signature..... Signature.....

Date Date

Name (Blocks) ..... Name (Blocks) .....

Position..... Position.....

Organisation..... Organisation.....

**Personal Data Particulars**

<b>Data Controller</b>	The Data Controller is the Secretary of State for Defence (the Authority). The Personal Data will be provided by: EPAO receive Personal Data from the Authority's representative.
<b>Data Processor</b>	The Data Processor is the Contractor. The Personal Data will be processed at: Military premises or the EPAO's offices
<b>Data Subjects</b>	The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects: Apprentices undertaking EPA on the Army apprenticeship programme
<b>Categories of Data</b>	The Personal Data to be processed under the Contract concern the following categories of data: Category A - Name, DOB, Service Number. Category B - National Insurance Number, Unique Learner Number, Apprenticeship start date, Cap Badge, Unit. Category C - Gender, Ethnicity, SpLD Details
<b>Special Categories of data (if appropriate)</b>	The Personal Data to be processed under the Contract concern the following Special Categories of data: Gender, Ethnicity, Learning Difficulties
<b>Subject matter of the processing</b>	The processing activities to be performed under the contract are as follows: Received Personal Data is used by the EPAO for Apprenticeship EPA enrolment, funding, and compliance adherence.
<b>Nature and the purposes of the Processing</b>	The Personal Data to be processed under the Contract will be processed as follows: In accordance with Condition 35 (Data Management). In accordance with Condition 38 (Data Protection). In accordance with DEFCON 532B.
<b>Technical and organisational measures</b>	The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract: Secure processes for the handling of data are in place. Robust methods for the security of data on site and in transit are in place. Clear processes are in place with regards to the handling of data (who has authority to handle data and how data is to be handled). Clear procedures to be followed in the event of a security breach.
<b>Instructions for disposal of Personal Data</b>	The disposal instructions for the Personal Data to be processed under the Contract are as follows (where Disposal Instructions are available at the commencement of Contract): In accordance with Condition 38 (Data Protection)
<b>Date from which Personal Data is to be processed</b>	Where the date from which the Personal Data will be processed is different from the Contract Implementation Date this should be specified here: N/A

The capitalised terms used in this form shall have the same meanings as in the General Data Protection Regulations.

EXIT PLAN

## 1. DEFINITIONS

- a. In this Annex E to Schedule 3 (Ts & Cs), the following definitions shall apply:
  - i. 'Emergency Exit' shall mean any termination of this Agreement which is a:
    - 1. termination of the whole or part of this Agreement in accordance with Conditions 49-51 (Termination), except where the period of notice given under that Clause is greater than or equal to 6 months;
    - 2. termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Conditions 49-51 (Termination); or
    - 3. wrongful termination or repudiation of this Agreement by either Party.
  - ii. 'Ordinary Exit' shall mean any termination of the whole or part of this Agreement which occurs:
    - 1. pursuant to Conditions 49-51 (Termination) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or
    - 2. as a result of the expiry of the Initial Term.

## 2. EXIT PLAN

- a. The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:
  - i. sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on Partial Termination, expiry or termination of this Agreement;
  - ii. complies with the requirements set out in Paragraph 2.2; and
  - iii. is otherwise reasonably satisfactory to the Authority.
- b. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working

Days of its submission, then such Dispute shall be resolved in accordance with Schedule 4 (Dispute Resolution Procedure).

- c. The Exit Plan shall set out, as a minimum:
- i. how the Exit Information is obtained;
  - ii. separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its subcontractors to provide the Services;
  - iii. a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;
  - iv. the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
  - v. the management structure to be employed during the Termination Assistance Period;
  - vi. a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
  - vii. how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
  - viii. the scope of the Termination Services that may be required for the benefit of the Authority;
  - ix. a timetable and critical issues for providing the Termination Services;
  - x. any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if

such Services were being treated as a Contract Change), together with a capped estimate of such charges;

- xi. how the Termination Services would be provided (if required) during the Termination Assistance Period;
  - xii. procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 5 (TUPE); and
  - xiii. how each of the issues set out in this Schedule 3 (Ts & Cs) will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- d. The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- e. The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Clause in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update, the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

#### Finalisation of the Exit Plan

- f. Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Annex E to this Schedule 3 (Ts & Cs) and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.

- g. The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule 3 and the last approved version of the Exit Plan (insofar as relevant).

**Governance and meetings requiring EPAO attendance.**

1. The Army Apprenticeship programme has a strong governance regime that starts at Cap Badge level and feeds in the 4\* Army headquarters Army Apprenticeship management board. The Corps Colonels (CC) are responsible for apprenticeship standard requirement and the performance of their programme at Cap Badge level. They must nominate a suitable officer 4 (Major or equivalent) to conduct the duty of a Cap Badge Apprenticeship Lead (CAL) to manage their programme and act as the interface between the Pers Pol, Fd Army units and SP. The key meetings that EPAO's are to attend are detailed below.

**Authority Meetings**

2. **The Steering Group Management Board (SGMB).** The meetings, formerly referred to as Maxi Boards, should be chaired by the CC or their approved nominee. The frequency of these meetings varies, but they should not be held less than bi-annually, or more frequently as required. This is a strategic level meeting and typically the meeting is attended by the DO, representatives from initial trade training, Field Army representatives (CO/2IC level), Ed Br DACOS/SO1 Skills, the BSS Quality Mentor (QM) and senior management from the SP. The EPAO may be invited at the discretion of the CC.

3. **The Working Group Management Board (WGMB).** The Working Group MB, formerly referred to as a Mini Board, is an operational level meeting chaired by the CAL. It deals with the day-to-day management of the programme, monitoring how well cohorts of learners and individual apprentices are progressing on their apprenticeships and identifying action to be taken to overcome delivery issues. The meeting reviews performance and quality and progress against the CC's Performance Targets and the Quality Improvement Plan (QIP). The frequency of the meeting will depend upon the needs of the programme but usually it would be no less than every 6 weeks. Typical attendance will include the Service provider contract manager and if required the SP quality manager and the BSS QM and other key stakeholders. The EPAO may be invited to attend.

4. **Contract Transition meetings.** The structure and format and frequency of Contract Transition meetings will be defined in the Transition Plan in accordance with (iaw) Condition 56 of this Schedule 3 (Ts & Cs). Their purpose is to maintain the learner journey for all apprentices and ensure a smooth transition between providers. These meetings will, as a minimum, facilitate agreement of: funding draw down; carry in of learners; and transfer of EPAO learner files and portfolios as required. If the existing provider is re engaged the full transition process will take place to ensure any issues or errors are not carried over to the new contract.

5. **Exit meetings.** The structure and format of Exit meetings will be defined in the Exit Plan in accordance with Condition 57 (Exit Management) of, and Annex E (Exit Plan) to, this Schedule 3



(Ts & Cs). Typical attendance will include Army Commercial, Pers Pol, Ed Branch, BSS team and EPAO Contract Manager as well as other key stakeholders.

6. **Kick Start meetings** (for Main and EPAO Contracts). These will be held at the start of new contracts to set the base line and ensure all parties have a common understanding of the contract and the Army delivery model. Typical attendance will include the EPAO; Contract Manager; the BSS QM and other key stakeholders.

7. **Keeping in Touch (KIT) meetings**. KIT meetings are chaired by Ed Branch, APSG, the aim of the meeting is to develop and enhance an effective partnering relationship between the Army and the EPAO. Where necessary real or perceived contractual failings will be raised and, where appropriate, a separate commercial contract review meeting will be initiated. Typical attendance will include Ed Branch, Pers Pol, EPAO contract manager and other key stakeholders.

8. **Contract Management Meeting (CMM)**. These meetings will be held on a case-by-case basis to respond to and resolve specific areas of contractual concern such as issues with KPIs or BSS Financial Audit findings.

9. Summary table of meetings requiring Service Provider/EPAO representation.

Meeting	Lead	Frequency	Indicative Location
Steering Group Management Board (SGMB)	CC	Minimum 2 per year	Cap badge locations
Working Group Management Board (WGMB)	CBDO	At least every 4-6 weeks.	Cap badge locations
Contract Transition meetings	BSS	As required. (iaw Transition Plan)	Cap badge locations or AHQ Andover
Exit meetings	Pers Pol	As required (iaw Exit Plan)	BSS offices, Netheravon
Keeping in Touch (KIT)	Pers Pol	Minimum 2 per year	Army HQ, Andover
Kick Start	Pers Pol	Once within 6 weeks of Start of each contract	Army HQ, Andover
Contract Management Meeting	Army Cmcl	As required on a case-by- case basis	Army HQ, Andover

**Appendix - Addresses and Other Information****1. Commercial Officer**

Redacted – Personal Information

**8. Public Accounting Authority**

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

☎ 44 (0) 161 233 5394

**2. Project Manager, Equipment Support Manager or PT Leader** (from whom technical information is available)

Name:

Address

**9. Consignment Instructions**

The items are to be consigned as follows:  
n/a

**3. Packaging Design Authority**

Organisation &amp; point of contact:

n/a

(Where no address is shown please contact the Project Team in Box 2)

**10. Transport.** The appropriate Ministry of Defence Transport Offices are:

**A. DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

**B. JSCS**

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

Users requiring an account to use the MOD Freight Collection Service should contact

[UKStratCom-DefSp-RAMP@mod.gov.uk](mailto:UKStratCom-DefSp-RAMP@mod.gov.uk) in the first instance.

**4. (a) Supply / Support Management Branch or Order Manager:**

Branch/Name: n/a

**5. Drawings/Specifications are available from**

n/a

**11. The Invoice Paying Authority**

Ministry of Defence ☎ 0151-242-2000

DBS Finance

Walker House, Exchange Flags

Fax:

0151-242-2809

Liverpool, L2 3YL

**Website is:**

<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement>

<b>6. Intentionally Blank</b>	<b>12. Forms and Documentation are available through *:</b> Ministry of Defence, Forms and Pubs Commodity Management PO Box 2, Building C16, C Site Lower Arcott Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824) <b>Applications via fax or email:</b> <a href="mailto:Leidos-FormsPublications@teamleidos.mod.uk">Leidos-FormsPublications@teamleidos.mod.uk</a>
<b>7. Quality Assurance Representative:</b>  <b>AQAPS</b> and <b>DEF STANs</b> are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <a href="http://dstan.gateway.isg-r.r.mil.uk/index.html">http://dstan.gateway.isg-r.r.mil.uk/index.html</a> [intranet] or <a href="https://www.dstan.mod.uk/">https://www.dstan.mod.uk/</a> [extranet, registration needed].	<b>* NOTE</b> <b>1.</b> Many <b>DEFCONs</b> and <b>DEFFORMs</b> can be obtained from the MOD Internet Site: <a href="https://www.kid.mod.uk/maincontent/business/commercial/index.htm">https://www.kid.mod.uk/maincontent/business/commercial/index.htm</a>  <b>2.</b> <u>If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.</u>

# **Ministry of Defence**

**Contract No:  
709012450**



**The Provision of End Point Assessment Services to Service Personnel  
of the Royal Electrical and Mechanical Engineers, Royal Marines, Royal  
Logistic Corps and Infantry Undertaking a Level 3 Engineering  
Technician Apprenticeship Standard**

## **SCHEDULE 4**

### **DISPUTE RESOLUTION PROCEDURE**

## **Dispute Resolution Procedure**

### **A. PERSONNEL POLICY BRANCH DISPUTE RESOLUTION GROUP**

- a. If a disagreement arises whether before or after termination of the Contract and it cannot be resolved at the operational level, then the matter must first be referred to the Personnel Policy Branch Dispute Resolution Group (Pers Pol DRG). The Pers Pol DRG must meet in accordance with Annex A to this Schedule.
- b. If the disagreement is resolved by the Pers Pol DRG, the resolution of the disagreement must be recorded in writing in an appropriate legally binding form and such form must bear the signature of two Authority Representatives and two EPAO Representatives, and such resolution shall be final and binding on the Parties.
- c. If discussions in the Pers Pol DRG result in or, if implemented would result in a proposed change to the Contract or commitment to additional expenditure or any other matter affecting the Contract the proposed change must be submitted to the EPAO and the Authority for approval.
- d. Any recommendations made by the Pers Pol DRG and approved in the manner identified in Clause 1.3 of this Schedule must be complied with by the Parties.
- e. If the Pers Pol DRG is unable to resolve the disagreement the matter shall be deemed to be a dispute and shall be dealt with in accordance with the Adjudication Procedure at Clause 2 of this Schedule.

### **B. REFERRAL TO ADJUDICATION**

- a. If the Pers Pol DRG is unable to resolve the Dispute, then either Party may refer the matter to adjudication in accordance with the provisions set out below.
- b. The Adjudicator nominated to consider a Dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of experts appointed in accordance with Condition 3 of this Schedule.

### **C. SELECTION OF THE ADJUDICATION PANEL**

- a. There shall be a panel of experts who shall be wholly independent of the EPAO, the Authority, any End Point Assessors and any of the major competitors of the EPAO. The panel shall be agreed to by the Parties within one month of the Contract signature.

- b. If any member of the panel resigns during the Contract, a replacement expert shall be appointed jointly by the EPAO and the Authority as soon as practicable.
- c. If the Authority and the EPAO are unable to agree on the identity of the experts to be appointed to the panel, the President of the Chartered Institute of Arbitrators shall appoint such expert(s) within thirty (30) days of any application for such appointment by either Party.
- d. If the Adjudicator is either unwilling or unable to accept such appointment, then the next Adjudicator on the Panel will be appointed. The process will be repeated until an Adjudicator is found who accepts the appointment. If none of the Adjudicators on the relevant Panel accepts the appointment, then unless the Parties are able to agree upon the appointment of another Adjudicator the Chairman of the Chartered Institute of Arbitrators will be requested to make an appointment within five (5) days of receiving a request to do so.

#### **D. ADJUDICATION PROCEDURE**

- a. Within seven (7) days of appointment in relation to a particular dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments. The Adjudicator shall, in their absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- b. In any event, the Adjudicator shall provide to both Parties their written decision on the dispute, within twenty-eight (28) days of appointment (or such other period as the Parties may agree after the reference, or forty-two (42) days from the date of reference if the Party which referred the dispute agrees). Unless requested by either Party the Adjudicator shall not state any reasons for their decision. Unless and until revised, cancelled or varied by the Arbitrator, the Adjudicator's decision shall be binding on both Parties who shall forthwith give effect to the decision.
- c. The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- d. The Adjudicator shall be deemed not to be an arbitrator but shall render their decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or their determination or the procedure by which they reached their determination.

- e. The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.
- f. All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with their appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's work.
- g. The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of their functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
- h. If:
  - i. either Party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision and the Dispute has a value in excess of £200K; or
  - ii. both Parties disagree unequivocally with the Adjudicator's decision,

then either Party may (within sixty (60) days of receipt of the Adjudicator's decision, where appropriate) notify the other Party of its intention to refer the dispute to arbitration. Such notification shall invite the other Party to concur in the appointment of a sole arbitrator who shall be a solicitor, barrister or arbitrator recognised by the Chartered Institute of Arbitrators of not less than 10 years' standing (the Arbitrator). If the Parties are unable within fourteen (14) days to agree the identity of the Arbitrator either Party may request the Chairman of the Chartered Institute of Arbitrators to make the appointment.

- i. The Arbitrator's decision shall be final and binding on the Parties, subject to below.
- j. If the Arbitrator's decision results in, or if implemented would result in, a proposed change to the Contract or commitment to additional or reduced expenditure or any other matter affecting the Contract the proposed change must be submitted to the EPAO and the Authority for approval.

## **E. CONTINUING WITH CONTRACT OBLIGATIONS**

- a. Unless the Contract has already been terminated, the EPAO shall, notwithstanding the existence of any disagreement (whether or not it is deemed to be a Dispute), in every case continue to proceed with the Services and meeting the Contract obligations, including the requirements of Schedule 1 (SOR) (except insofar as both Parties agree that it would not be in the best interests of the Contract as a whole for the EPAO so to continue) with all due diligence, and the Parties must continue to comply with all their obligations under the Contract, regardless of the nature of the disagreement or Dispute and notwithstanding the referral of the disagreement or Dispute for resolution according to the procedures permitted under this Schedule 4 (Dispute Resolution Procedure).
- b. The continued performance by each Party of its obligations as aforesaid shall not constitute nor be relied upon by the other Party as a waiver of any alleged rights or operate as acquiescence or estoppel in relation to or otherwise prejudice or diminish such rights to the extent that they are the subject of the disagreement or Dispute.



**STANDARD OPERATING PROCEDURES OF THE PERSONNEL POLICY BRANCH DISPUTE RESOLUTION GROUP****1. FUNCTION**

a. The Personnel Policy Branch Dispute Resolution Group (Pers Pol DRG) is a forum for the resolution of Disputes arising between the Authority and the EPAO in accordance with the provisions of Schedule 4 (Dispute Resolution Procedure). It has no powers in relation to this Contract or any of the Contract documents save as provided below.

**2. PROCEDURES**

b. Either Party is entitled by written notice to require the Pers Pol DRG to meet within five (5) Working Days of receipt of the notice with a view to resolving the disagreement.

c. The EPAO and the Authority agree that:

i. a quorum of the Pers Pol DRG consists of two of the Authority's Representatives (one of whom must be the Authority's Commercial Manager and one to be either the DO or SO) and two of the EPAO's Representatives (one of whom must be the EPAO's Commercial Manager). All of the Authority's Representatives and the EPAO's Representatives are authorised to attend any such meeting;

ii. if a quorum will not be present at a particular meeting of the Pers Pol DRG must be reconvened within five (5) Working Days after the date of the inquorate meeting. The Authority and the EPAO must each use reasonable endeavours to ensure that all meetings are quorate;

iii. the Chairman of the Pers Pol DRG will always be an Authority Representative;

iv. an agenda of items to be discussed by the Pers Pol DRG must be notified to the Authority's and EPAO 's Representatives at the time the meeting is called by the Party that called the meeting;

v. representatives of third parties may attend the Pers Pol DRG meeting or any part thereof with the consent of any of the Authority's Representatives and the EPAO 's Representatives such consent not to be unreasonably withheld or delayed;

vi. for the purposes of taking minutes of the meetings the EPAO's Representatives shall be entitled to be accompanied by a secretarial assistant;

vii. all meetings of the Pers Pol DRG shall be held at Andover unless the Parties agree otherwise.

d. If it is not possible for the Pers Pol DRG to resolve the disagreement at the initial meeting either Party is entitled by written notice to require the Pers Pol DRG to meet again within ten (10) Working Days of receipt of the original notice.

e. During the period of such notice, the representatives of the EPAO and the Authority must seek, from the Party by which they are appointed, the power and authority to resolve the disagreement.

f. The EPAO shall ensure that minutes of each Pers Pol DRG meeting are prepared and circulated to all attendees within one week of the date of the relevant meeting.

g. Two copies of each set of minutes are to be signed by one of the Authority's Representatives and one of the EPAO's Representatives to acknowledge that the minutes are a true reflection of the business conducted at that meeting and one copy of the minutes will be retained by each of the Authority and the EPAO.

h. For the avoidance of doubt, the presence of such signatories on any such minutes will not render such minutes "an appropriate legally binding form", for the purposes of Clause 1.2 of this Schedule 4 and will not bind the Authority or the EPAO.

### 3. COSTS

i. The EPAO and Authority agree that all direct costs of their respective Representatives and invitees (including in the case of the EPAO, the cost of secretarial support) of attending such meetings shall be borne by the Party incurring the cost.

# **Ministry of Defence**

**Contract No:  
709012450**



**The Provision of End Point Assessment Services to Service Personnel  
of the Royal Electrical and Mechanical Engineers, Royal Marines, Royal  
Logistic Corps and Infantry Undertaking a Level 3 Engineering  
Technician Apprenticeship Standard**

## **SCHEDULE 5**

**TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)**

## PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

### 1 DEFINITIONS

1.1 In this Schedule 5 Part 1, save where otherwise provided, words and terms defined in Schedule 3 (Ts&Cs), Condition 2 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 3 (Ts&Cs), Condition 2 (Definitions) of the Contract.

1.2 Without prejudice to Schedule 3 (Ts&Cs), Condition 2 (Definitions) of the Contract, in this Schedule 5 Part 1 unless the context otherwise requires:

**"Data protection legislation"** means all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to:

(i) the General Data Protection Regulation ((EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the "UK General Data Protection Regulation" or "UK GDPR");

(ii) the Data Protection Act 2018;

(iii) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and

(iv) all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy and the guidance and codes of practice issued by the Information Commissioner's Office which apply to a party;

**"Employing Sub-Contractor"** means any sub-contractor of the Contractor providing any part of the Services who is or is to be the employer of a Previous Contractor Employee;

**"New Provider"** means any replacement EPAO, or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

**"Previous Contractor"** means [to be inserted];

**"Previous Contractor Employee"** means an employee of a Previous Contractor who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;

**"Relevant Transfer"** means a transfer to the Contractor or an Employing Sub-Contractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;

**"Relevant Transfer Date"** means the date on which a Relevant Transfer is effected for Previous Contractor Employees;

**"Relevant Statutory Scheme"** has the same meaning as in Regulation 8 of the Transfer Regulations;

**"Services"** shall have the meaning specified in Schedule 1 (SOR)

**"Transfer Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change

(Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

## **2 PREVIOUS CONTRACTOR EMPLOYEES**

### **2.1 Employee Information**

- 2.1.1 No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of this Schedule 5 Part 1 in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.2 The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.3 The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.1.4 Paragraph 2.1.1 is subject to the Authority and any Previous Contractor's obligations in respect of the Data Protection Legislation and any data provided by the Authority in accordance with paragraph 2.1.1 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph 2.1.1 above, the Authority shall provide full data no later than 28 days prior to the Relevant Transfer.
- 2.1.5 The Authority does not warrant the accuracy of the information provided under paragraph 2.1.1.

### **2.2 Obligations in respect of Previous Contractor Employees**

- 2.2.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.
- 2.2.2 The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.
- 2.2.3 The Contractor agrees that it will comply with its obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.
- 2.2.4 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Contractor

Employees with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

## **2.3 Indemnities**

2.3.1 The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:

- (a) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
- (b) any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this sub-Clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and
- (c) any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.
- (d) Any variations or proposed variations to any Previous Contractor Employee’s terms and conditions of employment pursuant to regulations 4(5) and 4(5B).

## **3 GENERAL PROVISIONS APPLICABLE TO PREVIOUS CONTRACTOR EMPLOYEES AND CONTRACTOR PERSONNEL**

### **3.1 Contractor Indemnity**

3.1.1 The Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Contractor or any Employing Sub-Contractor of any person (including the Previous Contractor Employees) engaged in connection with the provision of the Services during the term of this Agreement.

### **3.2 Post Transfer Reporting**

3.2.1 The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:

- (a) any proposed, agreed or imposed changes to terms and conditions of service;
- (b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- (c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;

- (d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- (e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

**PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT****PART A**

1. Pursuant to paragraph 2.1.1 of this Schedule 5 Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:
  - 1.1 Personal, Employment and Career
    - a) Age;
    - b) Security Vetting Clearance;
    - c) Job title;
    - d) Work location;
    - e) Conditioned hours of work;
    - f) Employment Status;
    - g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
    - h) Details of training or sponsorship commitments;
    - i) Standard Annual leave entitlement and current leave year entitlement and record;
    - j) Annual leave reckonable service date;
    - k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
    - l) Information of any legal proceedings between employees and their employer within the previous two years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
    - m) Issue of Uniform/Protective Clothing;
    - n) Working Time Directive opt-out forms; and
    - o) Date from which the latest period of continuous employment began.
  - 1.2 **Performance Appraisal**
    - a) The current year's Performance Appraisal;
    - b) Current year's training plan (if it exists); and
    - c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;
  - 1.3 **Superannuation and Pay**
    - a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;
    - b) Annual salary and rates of pay band/grade;



- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

**1.4 Medical**

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

**1.5 Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

**1.6 Further information**

- a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff that may have been granted special leave for public duties such as a School Governor; and
- d) Information about any current or expected maternity or other statutory leave or other absence from work.

Part B

1.1 Information to be provided 28 days prior to the Relevant Transfer Date:

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

## **PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT**

### **1. DEFINITIONS**

- 1.1 In this Schedule 5 Part 2, save where otherwise provided, words and terms defined in Schedule 3 (Ts&Cs), Condition 2 (Definitions) or Schedule 5 Part 1 of the Contract shall have the meaning ascribed to them in Schedule 3 (Ts&Cs), Condition 2 (Definitions) or Schedule 5 Part 1 of the Contract.
- 1.2 Without prejudice to Schedule 3 (Ts&Cs), Condition 2 (Definitions) of the Contract or Schedule 5, Part 1, in this Schedule 5 Part 2 unless the context otherwise requires:

**"Employee Liability Information"** has the same meaning as in Regulation 11(2) of the Transfer Regulations;

**"Employing Sub-Contractor"** means any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;

**"Subsequent Relevant Transfer"** means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

**"Subsequent Transfer Date"** means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

**"Subsequent Transferring Employee"** means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-Contractor to a New Provider;

**"Transfer Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

### **2. EMPLOYMENT**

#### **2.1 Information on Re-tender, Partial Termination, Termination or Expiry**

2.1.1 No earlier than [two] years preceding the termination, partial termination or Expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

- (a) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
- (b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule 5 Part 2 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer;

- (c) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
  - (d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;
  - (e) inform the Authority of any changes to the information provided under paragraph 2.1.1(a) or 2.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.
- 2.1.2 Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:
  - (a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Schedule 5 (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
  - (b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
  - (c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.
- 2.1.3 No later than 28 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of Part 2 of this Schedule 5 (Personnel Information) relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.
- 2.1.4 Within 14 days following the relevant Subsequent Transfer Date the Contractor shall provide to the Authority and/or any New Provider the information set out in Part C of Appendix 2 of this Schedule 5 in respect of Subsequent Transferring Employees.
- 2.1.5 Paragraphs 2.1.1 and 2.1.2 of this Schedule 5 are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. Notwithstanding this paragraph 2.1.5, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.

2.1.6 On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:

- (a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
- (b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
- (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
- (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3, 2.1.4 or 2.1.6 of this Schedule 5 Part 2.

2.1.7 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule 5 Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

## **2.2 Obligations in Respect of Subsequent Transferring Employees**

2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

- (a) before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and
- (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

## **2.3 Unexpected Subsequent Transferring Employees**

- 2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an **"Unexpected Subsequent Transferring Employee"**) that they have or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:
- (a) the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
  - (b) if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with their contract of employment; and
  - (c) the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:
    - (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b);
    - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
    - (iii) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
      - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
      - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
      - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;

- (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
- (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
- (vi) legal and other professional costs reasonably incurred;

2.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

#### 2.4 **Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract**

2.4.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

2.4.2 If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

- (a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;
- (b) subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.

- 2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent

2.4.4 Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

## 2.5 **Contracts (Rights of Third Parties) Act 1999**

- 2.5.1 A New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 2.5.3 Nothing in this paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

## 2.6 **General**

- 2.6.1 The Contractor shall not recover any Costs and/or other losses under this Schedule 5 where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.



**CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON  
RETENDERING WHERE THE TRANSFER REGULATIONS APPLIES**

1. Pursuant to paragraph 2.1.1(b) of Part 2 of this Schedule 5, the following information will be provided:
  - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;
  - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
  - c) The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
  - d) Total redundancy liability including any enhanced contractual payments;
2. In respect of those employees included in the total at 1(a), the following information:
  - a) Age (not date of Birth);
  - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
  - c) Length of current period of continuous employment (in years, months) and notice entitlement;
  - d) Weekly conditioned hours of attendance (gross);
  - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
  - f) Pension Scheme Membership;
  - g) Pension and redundancy liability information;
  - h) Annual Salary;
  - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
  - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
  - k) Regular/recurring allowances;
  - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Subsequent Transfer Date.
4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

## Appendix 2

### PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

#### Part A

1. Pursuant to paragraph 2.1.2 of this Schedule 5, part 2, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

#### 1.1 **Personal, Employment and Career**

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard Annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

#### 1.2 **Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;

- f) Details of outstanding loan, advances on salary or debts;
- g) Pension Scheme Membership;
- h) For pension purposes, the notional reckonable service date;
- i) Pensionable pay history for three years to date of transfer;
- j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- ki Percentage of pay currently contributed under any added years arrangements.

**1.3 Medical**

- a) Details of any period of sickness absence of 3 months or more in the preceding period of 12 months; and
- b) Details of any active restoring efficiency case for health purposes.

**1.4 Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

**1.5 Further information**

- a) Information about specific adjustments that have been made for an individual under the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff that may have been granted special leave for public duties such as a School Governor; and
- d) Information about any current or expected maternity or other statutory leave or other absence from work.

**Part B**

**1.6 Information to be provided 28 days prior to the Subsequent Transfer Date:**

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

**PART C**

**1.7 Information to be provided within 14 days following a Subsequent Transfer Date:**

**1.7.1 Performance Appraisal**

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

**1.7.2 Superannuation and Pay**

- a) Cumulative pay for tax and pension purposes;
- b) Cumulative tax paid;
- c) National Insurance Number;
- d) National Insurance contribution rate;
- e) Other payments or deductions being made for statutory reasons;
- f) Any other voluntary deductions from pay.

# **Ministry of Defence**

**Contract No:  
709012450**



**The Provision of End Point Assessment Services to Service Personnel  
of the Royal Electrical and Mechanical Engineers, Royal Marines, Royal  
Logistic Corps and Infantry Undertaking a Level 3 Engineering  
Technician Apprenticeship Standard**

## **SCHEDULE 6**

### **Performance Monitoring**

**Key Performance Indicators (KPIs)**

**1. DEFINITIONS**

- 1.1 In this Schedule 6 (Performance Monitoring), the following definitions shall apply:

**Contract Management Meeting (CMM)** means the terms of reference as set out at Annex F to Schedule 3 (Ts & Cs).

**Management Status Report (MSR)** means as set out in Paragraph 4 below.

**Key Performance Indicators (KPIs)** the key performance indicators set out in Annex A of this Schedule 6 (Performance Monitoring).

**Key Performance Indicator (KPI) Failure** where a Key Performance Indicator is measured as Red: Performance Failure.

**Keep In Touch (KIT) Meeting** means the terms of reference as set out at Annex F to Schedule 3 (Ts & Cs).

**Recovery Plan (RP)** as detailed at Clause 33.7 of Schedule 3 (Ts & Cs).

**Working Group Management Board (WGMB)** means the terms of reference as set out at Annex F to Schedule 3 (Ts & Cs).

**Performance Indicators (PIs)** the performance indicators set out in Annex A of this Schedule 6 (Performance Monitoring).

**Steering Group Management Board (SGMB)** means the terms of reference as set out at Annex F to Schedule 3 (Ts & Cs).

**2. PERFORMANCE INDICATORS AND KEY PERFORMANCE INDICATORS**

- 2.1 Table 1 Annex A sets out the KPIs which both Parties agree shall be used to measure the EPAO 's performance of the Services: as well as the definitions for KPI ratings.

**3. MONITORING AND REPORTING**

- 3.1 Table 2 Annex A below sets out the Party responsible for producing the data against each KPI, and the reporting and review periods.

**4 Management Status Report**

- 4.1 A MSR for the relevant meeting for each KPI as set out at Table 2 Annex A below shall be provided by the EPAO.
- 4.2 The MSR shall be in such format, as agreed between the Parties from time to time, and contain, as a minimum, the following information:

**Information in respect of the period just ended.**

- 4.2.1 for each KPI, the actual performance achieved over the relevant period.
- 4.2.2 a summary of all KPI Failures that occurred during the relevant period.
- 4.2.3 which KPI Failures remain outstanding and progress in resolving them.

4.2.4 the cause or likely cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence.

4.2.5 the status of any outstanding RP processes, including:

- (a) whether or not a RP has been agreed; and
- (b) where a RP has been agreed, a summary of the EPAO's progress in implementing that RP.

4.2.6 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence.

4.2.7 such other details as the Authority may reasonably require from time to time.

4.3 The MSR shall reflect any Authority feedback and any instances of failure to provide the requirements of the contract to the standard required by the KPIs, which are either identified by the Contractor or by the Designated Officer which relate to each review period.

## **5. Performance Meetings**

5.1 Each MSR that has been finalised shall then be submitted for consideration to the next relevant meeting as set out at Table 2 Annex A below.

5.2 As part of each meeting:

5.2.1 The Authority shall inform the EPAO of any additional feedback received which has not been included in the MSR and which indicates that the content of the report may be inaccurate.

5.2.2 The Authority and the EPAO shall consider and discuss the content of the MSR and any additional feedback.

5.2.3 The EPAO shall provide any evidence of where the Authority has not met its obligations which have resulted in a failure of performance.

5.2.4 The Authority and the EPAO shall agree any amendments to be made to the MSR.

5.2.5 Following the meeting, within three (3) working days the EPAO shall update the MSR to reflect the agreed amendments and issue the Authority with a revised report.

5.2.6 The Authority shall confirm its approval of the revised MSR.

5.3 The Authority reserves the right to downgrade a KPI RAG performance level following discussion at the relevant meeting.

5.4 The Authority shall have the final decision on whether a KPI has been rectified or not.

5.5 In the event of disagreement, the matter shall be dealt with in accordance with the Schedule 4 Dispute Resolution.

## **6 MEASURING PERFORMANCE FAILURES**

### **6.1 Amber: Requires Improvement (RI)**

6.1.1 Where a KPI is measured as being Amber: Requires Improvement (RI), the EPAO shall:

- (a) receive an AMBER grading against such KPI; and
- (b) discuss within the relevant meeting measures put in place to improve performance

- 6.1.2 Once the Authority has deemed that the EPAO has rectified the Services measured as Amber: RI, then the relevant KPI shall be measured as being Green: Good for the month in which it is rectified, and no further action shall be required by the EPAO.
- 6.1.3 If a KPI measured as Amber: RI has not been rectified within the time period agreed within the relevant meeting, to the reasonable satisfaction of the Authority, then that month's KPI will be measured as Red: Inadequate Threshold (IT).
- 6.1.4 If a KPI is measured as Amber: RI three times in a rolling six-month period, on the third occasion such KPI shall be measured as Red: IT.
- 6.1.5 Where KPI 4 is measured as Amber: RI the Authority reserves the right to require the EPAO to produce a RP as detailed at Clause 33.6 of Schedule 3 (Ts & Cs). Where an RP is required the actions at 6.2.2 – 6.2.4 shall be followed.

## **6.2 Red: Inadequate Threshold (IT)**

- 6.2.1 Where a KPI is measured as being Red: IT, the EPAO shall receive a RED grading against such KPI.
- 6.2.2 The EPAO shall produce a RP as detailed at Clause 33.6 of Schedule 3 (Ts & Cs) within 5 Working Days.
- 6.2.3 The RP shall be submitted to the relevant meeting as set out at Table 2 Annex A below.
- 6.2.4 If the RP is agreed with the Authority, then the EPAO shall deliver the actions within the agreed timescales. If the plan is insufficient, then the Authority shall request a revised plan to be provided promptly and no later than 5 Working Days.
- 6.2.5 The EPAO shall carry out the RP immediately from the date on which the RP is agreed by the Parties (or such date set out in the RP) and the EPAO shall complete the actions set out in the RP within the agreed timescales.
- 6.2.6 Once a KPI is measured as Red: IT shall stay as RED on the MSR until the relevant Service is rectified (pursuant to the rectification process) to the Authority's reasonable satisfaction, at which point it will return to GREEN.
- 6.2.7 Where a KPI does not return to GREEN at the end of the timescales set out in the RP the matter shall be referred to a CMM where future actions will be considered.
- 6.2.8 The CMM shall where performance cannot be restored to GREEN apply the processes set out in Clauses 33.7-33.9 of Schedule 3 (Terms and Conditions).



Table of Key Performance Indicators

KPI Description	Rating Description			Performance Review			
	Good	Requires Improvement	Inadequate Threshold	Performance Achieved	Rating Assigned	Authority Comments	EPAO comments
KPI 1 - Booking the EPA promptly once the post gateway request is received by the EPAO from the Authority	At least 85% of EPAs to be booked within 2 working days and 95% booked within 3 working days.	At least 85% of EPAs to be booked within 2 working days and less than 95% booked within 3 working days.	Less than 85% of EPAs are booked within 3 working days.				
KPI 2 - The EPAO shall set a date for the Viva that is within 6 weeks of receiving the apprentices' detail	99% of Viva's are booked within 6 weeks	n/a	n/a				

Table of KPI Data Requirements

KPI	Data Produced By	Reporting Frequency	Review Period and Meeting
KPI 1 Booking the EPA once the post gateway request is received by the EPAO from the Authority	Service Provider to indicate GW date and request to EPAO. EPAO to confirm timescale met.	Monthly	Quarterly by Ed Branch.
KPI 2 The EPAO will set a date for the Viva element within 6 weeks of receiving the apprentices' detail.	EPAO	Monthly	Quarterly by Ed Branch.

**Publishable Performance Information - Key Performance Indicator Data Report (i.a.w. Condition 9 of Schedule 3 (Ts & Cs) for Contract No: 709012450**

KPI Description*	Rating Thresholds	Frequency of Measurement	Quarter and Year*	Average for Reporting Period	Rating*	Comment*
KPI 1 Booking the EPA once the post gateway request is received by the EPAO from the Authority	<b>Good</b>  At least 85% of EPAs to be booked within 2 working days and 95% booked within 3 working days.	Monthly	[Contractor to insert the relevant Quarter and Year for the period being reported on.]	[Contractor to insert the average Rating for the period being reported. This should show the actual performance achieved during the period. The format must be consistent with 'Rating Thresholds'.]	[Contractor to insert the Rating for the period being reported. The Rating must correspond to the appropriate 'Rating Thresholds'.]	[Contractor to insert a comment as appropriate]
	<b>Requires Improvement</b>  At least 85% of EPAs to be booked within 2 working days and less than 95% booked within 3 working days.					
	<b>Inadequate Threshold</b>  Less than 85% of EPAs are booked within 3 working days.					

KPI Description*	Rating Thresholds	Frequency of Measurement	Quarter and Year*	Average for Reporting Period	Rating*	Comment*
KPI 2 The EPAO will set a date for the Viva element within 6 weeks of receiving the apprentices' detail.	<b>Good</b>  99% of Viva's are booked within 6 weeks	Monthly	[Contractor to insert the relevant Quarter and Year for the period being reported on.]	[Contractor to insert the average Rating for the period being reported. This should show the actual performance achieved during the period. The format must be consistent with 'Rating Thresholds'.]	[Contractor to insert the Rating for the period being reported. The Rating must correspond to the appropriate 'Rating Thresholds'.]	[Contractor to insert a comment as appropriate]
	<b>Requires Improvement</b>  n/a					
	<b>Inadequate Threshold</b>  n/a					

\*Publishable fields. Please note, of the three Rating Thresholds, only the 'Good' threshold is published.

Please see the [DEFFORM 539B Explanatory Notes](#) for guidance on completing the KPI Data Report.

# **Ministry of Defence**

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## **SCHEDULE 7**

**Service Delivery Plan (Technical Tender Submission)**

Redacted – Commercially Sensitive Information