



Ministry of Defence

**Contract No.:
702737453**

Dated 28th March, 2022

**THE PROVISION OF END POINT ASSESSMENT TO SERVICE
PERSONNEL OF THE ROYAL ENGINEERS AND THE ROYAL
ELECTRICAL AND MECHANICAL ENGINEERS UNDERTAKING THE
LEVEL 2 ENGINEERING OPERATIVE APPRENTICESHIP
STANDARD (ST0537)**

Contractor:

Notebook Assessment Services Ltd.

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(ST0537)**

SCHEDULE 1

STATEMENT OF REQUIREMENT

SCHEDULE 1
STATEMENT OF REQUIREMENTS

THE PROVISION OF END POINT ASSESSMENT TO SERVICE PERSONNEL OF THE RE AND REME UNDERTAKING THE L2 ENGINEERING OPERATIVE APPRENTICESHIP STANDARD (ST0537)

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), Army HQ, Andover. Pers Pol L&D 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).

3. Each CBDO runs their Apprenticeship Programmes on behalf of their Regimental or Corps Colonel. The CBDO chairs a management meeting, usually monthly, which reviews apprenticeship performance and forecasts EPA requirements. The monthly management meetings feed into a biannual senior management board chaired by the Capbadge Regimental or Corps Colonel (or a representative from the Regimental or Corps Headquarters).

4. The Authority's Representative (AR) or Designated Officer (DO) for EPA contracts will be SO1 Apprenticeships, Learning and Development, Personnel Policy (Army), Army HQ, Andover. A Contract Manager will be assigned from Commercial Branch, Army HQ.

5. The EPAO shall work to the AR (Ed Br, the CBDOs and SPs).¹ 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.

Detailed SOR

6. This SOR comprises 4 further elements:

- a. Section 1 – General Requirements for the Delivery of EPA to the Authority.
- b. Section 2 – Specific Programme Information.
- c. Section 3 – Compliance with ESFA Sub Contracting Requirements.
- d. Section 4 – Social Value.

¹ See the Glossary for definitions of 'the Authority' and 'the Authority's Representative'. Where the Authority's Representative is mentioned in the 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.

Enclosure:

1. Glossary.

SECTION 1 – GENERAL REQUIREMENTS FOR THE DELIVERY OF EPA TO THE AUTHORITY

Requirements for delivery include, but are not limited to:

Ser	Requirement
1.	Assessment Design and Delivery: a. Provide the SP(s) with EPA briefing materials, practice papers and mock assessments and exemplar assessments (eg paper/online assessments, videos of sample assessments and examples of ‘what good looks like’) to prepare apprentices for Gateway and EPA. b. In accordance with IfATE EPA requirements, assessments must be designed to be accurate, valid, reliable, consistent, fair and manageable. c. Provide generic IT equipment as needed (eg 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.) Where online assessment is not possible for any reason, a paper based alternative must be available. Where candidates use specialist, role specific, military equipment as part of their job and where they will use this equipment during the assessment, this equipment will be provided by the AR (Units). d. The EPAO must have the ability to provide invigilation when it is needed, either in person at assessment locations or remotely. (In some cases the AR (Units) may be able to support the invigilation process, however, this may not always be possible or desirable. For this to be possible, the Unit(s) in question would need to be willing to comply with all relevant Centre and invigilation requirements, including when Ofqual becomes the EQAP.) e. Liaise with the Employer and SP(s) 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 context, the EPAO is required to develop all assessment and other materials needed for the successful delivery of this contract.) f. Ensure 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. g. Be prepared to cater for reasonable adjustments in accordance with IfATE policy and Joint Service Publication 822 (available online). h. Have in place a business continuity plan to ensure that apprentices can access timely EPA. i. Be prepared to adapt EPA delivery to meet future amendments to the Standards and Assessment Plans which are relevant to this EPA contract.
2.	Governance, Compliance and Quality Assurance: a. The EPAO shall deliver and internally quality assure the EPA in accordance with the regulations laid down by the Institute for Apprenticeships and Technical Education (IfATE) for Standards and in accordance with current (as

	periodically amended) Education and Skills Funding Agency (ESFA) guidelines and EQA Provider requirements. b. The EPAO must have the expectation of meeting Ofqual's requirements as the future EQAP (along with the OfS) for all apprenticeship Standards, and remaining on the RoEPAO for the duration of the contract. c. Quality assure assessments to ensure accuracy, validity, reliability, consistency, fairness and manageability. Make records available to the AR, as required. d. Inform the AR (CBDOS, Ed Br) of quality and quality assurance issues. Address such issues with the AR (CBDOS, Ed Br) as they arise. Provide the AR (CBDOS, Ed Br) with copies of all EQA Provider reports and Action Plans. e. Maintain all records in accordance with ESFA requirements for audit. f. Provide the ESFA audit team and the AR (CBDOS, Ed Br) with learner records on demand and within the timeframe set. g. 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&S, D&I, Safeguarding regulations and PREVENT. h. Ensure that EPAO personnel have appropriate insurance in place in order to visit and work at MOD establishments and using any equipment or vehicles which may be required for EPAs. i. Assist the AR (Pers Pol, Ed Br, CBDOS) in preparations for and execution of ESFA, Ofsted, NAO, DIA and other internal audits and inspections and the provision of statistics/reports relating to the Contract.
3.	Communications with Stakeholders: a. Maintain communications with the AR (SPs,CBDOS,Ed Br) at intervals set by the AR (CBDOS, Ed Br). Provide a manager to attend CBDO Management Boards by invitation. b. Maintain communications with apprentices, via the AR (SPs, CBDOS) from registration, through Gateway to EPA. c. Provide detailed performance feedback for the apprentices undertaking EPA (irrespective of outcome) via the CBDO(s) and SP(s). 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. e. Provide the AR (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: (1) Numbers registered for EPA. (2) Numbers attempted EPA. (3) Numbers failed EPA. (4) Numbers successful at EPA. (5) Numbers missed EPA. (6) Numbers awaiting EPA. (7) Numbers awaiting Resit/Retake (cumulative). (8) Issues identified.

	(9) Recommendations/improvements. (10) Analysis of the apprentice performance. f. Attend Army Headquarters and Army Apprenticeship Programme strategic level meetings as required. 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 flexibilities.
4.	Learner Management: a. Notify SPs of candidates results following completion of each EPA element and on completion of the whole EPA. b. Maintain all learner documentation in accordance with IfATE and EQA Provider requirements and make this available to IfATE, the EQA Provider and the AR (Pers Pol, Ed Br) as required. c. Claim apprenticeship certificates and send them via secure delivery to the AR (SPs, CBDOs, Ed Br) for each apprentice.
5.	Data Handling: a. Ensure that any transfer of data between the EPAO, IfATE, EQA Provider, LRS, ESFA and the MOD shall be fully compliant with the requirements of these bodies (as well as any other relevant Government and NCSC direction). b. Ensure that any transfer of data between the EPAO and other stakeholders shall be encrypted in accordance with the provisions of DEFCON 658. c. All data storage and transfer must be UK based, to meet the MODs data security requirements for Service Personnel. d. All EPA records shall be kept, in accordance with MOD, DfE and ESFA policy for a period of at least 6 years following the end of the relevant Financial Year. e. The EPAO shall be fully compliant with requirements of the GDPR and the UK DPA 18. f. The EPAO shall make available, on request, all records/processes for data handling audits by the AR (Pers Pol, Ed Br) or Information Commissioner's Office.
6.	Contract End and Transition: a. Ensure at the contract end date, that all learner records are handed to the AR (SPs, CBDOs, Ed Br) to enable continuity for all learners awaiting an EPA to an incoming contractor. b. Work with the AR (Pers Pol, Ed Br, CBDOs) to produce a workable transition plan when the EPA contract ends.
7.	Complaints, Appeals, Re-sits and Re-takes: a. Process complaints and appeals, liaising with the AR (CBDOS, Ed Br, Pers Pol) and apprentices as appropriate. b. Deliver re-sits and re-takes in line with the EPA plan, at 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.
8.	Cancellation Terms: See Schedule 3 (Terms and Conditions) for cancellation terms (including rescheduling/cancelling EPA and making late changes to candidate details). ²

² For reference, the cancellation terms in Schedule 3 (the Ts&Cs) are as follows. “The Authority shall have the right to reschedule or cancel EPA at no extra cost by giving a minimum of 10 working days’ notice. The Authority shall also have the right to change candidates for any element of EPA, at no extra cost, by giving a minimum of 2 working days’ notice. Where the assessor requires candidate materials, such as a project or portfolio, in advance of an EPA element, the Authority shall have the right to change candidates for this element of the EPA, at no extra cost, by giving a minimum of 2 working days notice before the deadline for the project or portfolio to be submitted.”

SECTION 2 – SPECIFIC PROGRAMME INFORMATION – L2 ENGINEERING OPERATIVE

Programme Information

1. The EPAO shall deliver the EPA for the L2 Engineering Operative (ST0537) Apprenticeship Standard in accordance with ESFA regulations as detailed in Part 3 of this Schedule 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 Engineers (RE) and The Royal Electrical and Mechanical Engineers (REME). This SOR is for one Standard over 3 years with the option of an extension of up to twelve months plus a further extension of up to twelve months (maximum contract length of 5 years).
2. This Standard will be used by RE Armoured Engineers, Fabricators and Fitters, and REME Recovery Mechanics and Armourers. Military personnel start their apprenticeship during Initial Trade Training. On completion of joint and/or single-Service training, apprenticeship study continues into their initial military roles. Approximately 270 Service personnel will start this apprenticeship Standard during each Academic Year (AY). This total includes RE Armoured Engineers (36), RE Fabricators (40), RE Fitters (79), REME Recovery Mechanics (70) and REME Armourers (70); all numbers are estimated. (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). EPA will be conducted at a range of locations across the UK (see para 8 and Annex A).
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 Authority and any data provided below in respect of these aspects 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 to be approximately 270 apprentices per AY. An average of some 20-25 EPAs per month is envisaged. This information has been estimated by the RE and REME, and reflects the recruiting and training requirement situation as at Nov 21. It is intended to be used by tendering companies as an indicative guide for costing purposes and cannot be guaranteed by the Authority. Continual liaison is required with the AR (SPs) prior to EPA for the apprentice to work on the elements specified by the EPAO.
5. The IfATE indicates that the minimum duration to Gateway for this Standard is 12 months (not including the EPA period). Because of the nature of their training and employment, it is expected that Army learners will generally take 12-18 months to complete this apprenticeship. Army learners started using this Standard in Sep 20, so the first EPAs are likely to be in Sep 21. It is stressed that this is an estimate, and dates may change for a range of Service reasons. EPAO engagement with SPs and learners will be required well in advance of this date to ensure successful preparation for EPA.
6. The EPA comprises, in the following order:
 - a. **Practical Skills Observation.** Observations must be conducted in a realistic work situation under normal conditions. It is anticipated that EPAOs will use the apprentice's normal work environment to carry out the observation, but if this is not possible a suitable alternative area can be used. Observations must be carried out over an assessment time period of 2 hours ($\pm$ 10 minutes). There may be breaks during the observation to allow the apprentice to move from one location to another.
 - b. **Professional discussion.** It is expected that the professional discussion will take place at the candidate's Unit, immediately following the Practical Skills Observation (if needed, it can be conducted at an approved assessment centre or, subject to meeting

certain requirements, remotely). The Professional Discussion must be completed during a 40-minute period (± 2 minutes). At least 2 weeks before the Professional Discussion, the apprentice will submit a Reflective Portfolio, which will be used to inform the Professional Discussion. The Professional Discussion panel may consist of 2 members: an employer representative (if requested to do so, in advance, by the EPAO) and the independent assessor (acting as Chair) appointed by the EPAO. The employer representative must be occupationally competent. The employer representative will be sourced by the apprentice's own employer and will provide technical support, advice and guidance such as confirming company policies, procedures, processes, providing context on technical information or on emerging technologies. Any information provided by the employer technical expert must only be at the request of the End-Point Assessor, who has the final say over the assessment and grade awarded. The employer technical expert must not provide evidence on behalf of the apprentice.

7. The L2 Engineering Operative Standard has 6 options. In addition to the core knowledge and skills, all Engineering Operatives must complete one of these job role options. The options being used by the RE and REME are:

Ser	Option	RE	REME
(a)	(b)	(c)	(d)
1.	Option 1: Engineering Operatives working within a maintenance role.	Armoured Engineers, Fitters	Armourers
2.	Option 4: Engineering Operatives working within a fabrication role.	Fabricators	No
3.	Option 6: Engineering Operatives working within a technical support role.	No	Recovery Mechanics

8. **EPA locations.** Possible EPA locations are listed at Annex A. The EPAO is required to prepare a programme, in consultation with the AR (SPs, CBDOs), 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 and grouped together where practicable. A selection of dates and locations should be made available by the EPAO for each booking.

9. **Remote assessment.** Consideration should be given to remote assessment. This applies particularly during the period when COVID-19 restrictive measures are in force.

10. **EPA materials.** As indicated in Section 1, the EPAO is required to provide the SP with a range of materials to prepare apprentices for Gateway and EPA. These materials must be available no later than 4 weeks after the contract is awarded.

Provision of Infrastructure/Facilities for EPA.

11. The Authority will provide the apprentice with access to online assessment facilities where this is a requirement of EPA. Otherwise, the Authority will authorise Units to release apprentices for EPA at an EPAO run external test centre.

12. Where EPAs are conducted at the Employer-Provider location, the Authority will provide real estate, assets and equipment (to include, but not limited to, office or classroom space, workshop environment).

External Quality Assurance

13. The EQA Provider for the L2 Engineering Operative Standards is the IfATE. Following the IfATE's review of EQA arrangements, it is expected that Ofqual will become the EQA Provider during the course of AY 21/22.

Annex:

A. Possible EPA Locations – L2 Engineering Operative.

SCHEDULE 1 SOR

POSSIBLE EPA LOCATIONS – L2 ENGINEERING OPERATIVE

EPAs may take place at the following UK locations. Predicted EPA numbers are for the Apprenticeship Academic Year (AY), i.e. Aug-Jul. All figures are approximate, based on Nov 21 forecasts:

Ser	Location	AY 20/21	AY 21/22	AY 22/23	AY 23/24	AY 24/25	Remarks
RE							
1.	Tidworth	0	36	36	36	36	Armoured Engineers (it is possible that some EPAs may also be needed in Bovington)
2.	Chatham	0	60	119	119	119	Fabricators and Fitters (there is still some work to do for these two RE trades and thus use of this Standard and probable first EPA dates for these trades are still tbc)
RE Total		0	96	155	155	155	
REME							
3.	Catterick	0	16	16	16	16	1 Bn REME
4.	Leuchers	0	16	16	16	16	2 Bn REME
5.	Tidworth	0	16	16	16	16	3 Bn REME
6.	Tidworth	0	16	16	16	16	4 Bn REME
7.	Lyneham	0	16	16	16	16	5 Bn REME
8.	Tidworth	0	16	16	16	16	6 Bn REME
9.	Wattisham	0	16	16	16	16	7 Bn REME
10.	Keynsham (plus Bridgend, Manchester, Walsall)	0	4	4	4	4	101 Bn REME
11.	Newton Aycliffe (plus East Kilbride, Hollywood, Newcastle, Scunthorpe)	0	4	4	4	4	102 Bn REME
12.	Northampton (plus Ashford, Croydon, Derby, Portsmouth)	0	4	4	4	4	103 Bn REME
13.	Yeovil	0	4	4	4	4	1 AAC Wksp
14.	Larkhill	0	4	4	4	4	19 RA Wksp
15.	Larkhill	0	4	4	4	4	1 RHA Wksp
16.	Larkhill	0	4	4	4	4	47 RA Wksp
REME Total		0	140	140	140	140	
Grand Total		0	236	295	295	295	

SECTION 3 – COMPLIANCE WITH ESFA SUB-CONTRACTING REQUIREMENTS

1. In accordance with the ESFA Apprenticeship Funding Rules for Employer-Providers (Clause EP 195)³, the EPAO must:

- a. Adhere to ESFA Funding Rules.
- b. Provide the AR (Pers Pol) with ILR data so that their data returns to the ESFA accurately reflect delivery information.
- c. Provide the ESFA and any other person nominated by the ESFA access to EPAO premises and to all documents related to the EPAO delivery of apprenticeships.
- d. Give the AR (Pers Pol, Ed Br) sufficient evidence to allow the AR to:
 - (1) Assess EPAO performance against Ofsted's Education Inspection Framework or the requirements of the QAA quality code.
 - (2) Incorporate the evidence the EPAO provides into the Authority's self-assessment report.
 - (3) Guide the judgements and grades within the Authority's self-assessment report.
- e. Always have suitably qualified staff to provide assessment.
- f. Co-operate with the AR (SPs, Ed Br) to ensure that there is continuity of end point assessment if the contract ends for any reason.
- g. Inform the AR (Pers Pol, Ed Br) if evidence of irregular financial or delivery issues arise. This could include, but is not limited to, non-delivery of assessment when funds have been paid, sanctions imposed by an awarding organisation, allegations of fraud, not meeting relevant QAA quality code indicators, allegations or complaints by apprentices, employers, staff members, or other relevant parties.
- h. The EPAO must not use ESFA funding to make bids for, or claims from, any European funding on their own behalf or on the ESFA's behalf.
- i. The EPAO must not use payments made by the ESFA as match funding for ESF projects.

SECTION 4 – SOCIAL VALUE

³ ESFA Apprenticeship Funding Rules for Employer-Providers, August 2021 to July 2022. ESFA regulations are subject to periodic amendment and the EPAO is required to be compliant with the latest version.

In Sep 20, the Government published a new Social Value policy⁴, requiring social value to be explicitly evaluated in all central government procurement.

Tenderers should note that their responses to these Social Value questions will be evaluated and scored separately to the Technical tender evaluation.

Serial	Requirement
1	Health and wellbeing in the workforce. Describe how you take action to support health and wellbeing, including physical and mental health in your workforce.
2	Tackling inequalities in the workforce. Describe how you take action to tackle inequality in employment, skills and pay in your workforce.

⁴ See Procurement Policy Note PPN 06/20.

ENCLOSURE 1 – GLOSSARY

Abbreviation	Meaning	Remarks
AAP	Army Apprenticeship Programme	Managed by the AAP Team in Pers Pol (A).
Apprentice	All apprentices on the AAP are military personnel	Apprentices may also be referred to as 'soldiers' or 'learners' depending on the context.
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 working 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 nominate individual who may be appointed by the Authority in accordance with the provisions of the Contract"	There are a number of stakeholders, eg Pers Pol (A), Ed Br, Commercial Br, Corps Colonels, CBDOs, Unit Chains of Command, SPs. Where the contract includes EPA for 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.)
CBDO	Capbadge Designated Officer	Responsible for the Capbadge Apprenticeship programme, on behalf of the Regimental or Corps Colonel.(Note the CBDO is NOT the same as the DO for EPA contracts.)
D&I	Diversity and Inclusion	
DIA	Defence Internal Audit	
DIO	Defence Infrastructure Organisation	
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.
DSAT	Defence Systems Approach to Training	Explained in JSP 822, which is available via www.gov.uk
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 at the end of the Brexit transition period. The UK GDPR sits alongside the DPA 2018 with some technical amendments so that it workd 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	
ITT	Initial Trade Training	Formerly know 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).
L&D	Learning and Development	One of the Pillars in Pers Pol (A). Responsible for apprenticeship strategy and policy.
LRS	Learner Record System	
NAO	National Audit Office	
Ofqual	Office of Qualifications and Examinations Regulation	Ofqual is a non-ministerial government department that regulates qualifications, exams and tests in England. Following the IfATE's EQA consultation during 2020, Ofqual will become the EQAP for all EPA by 2022 (except for integrated higher and degree apprenticeships).
OfS	Office for Students	The OfS is the independent regulator of higher education in England. Following the IfATE's EQA consultation during 2020, the OfS will become the EQAP for integrated higher and degree apprenticeship EPA by 2022.
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 the Army's Personnel Directorate. Part of Army HQ in Andover.
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	
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/Senior Executive Officer 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.



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LEVEL 2 ENGINEERING OPERATIVE APPRENTICESHIP STANDARD
(ST0537)**

SCHEDULE 2

PRICE

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1. SCHEDULE OF REQUIREMENTS

Name and Address of Contractor Notebook Assessment Services Ltd. C/O Wiltshire College, College road, Trowbridge, BA14 OES	MINISTRY OF DEFENCE	Contract No. 702737453
	THE PROVISION OF END POINT ASSESSMENT TO SERVICE PERSONNEL OF THE ROYAL ENGINEERS AND THE ROYAL ELECTRICAL AND MECHANICAL ENGINEERS UNDERTAKING THE LEVEL 2 ENGINEERING OPERATIVE APPRENTICESHIP STANDARD (ST0537)	
Issued With Contract documentation	On 28/03/2022	Previous Contract No. N/A

Requirements

Item Number	Description	Notes to Supplier	Firm Price £ (ex-VAT) Year 1	Firm Price £ (ex-VAT) Year 2	Firm Price £ (ex-VAT) Year 3	Firm Price £ (ex-VAT) Option Year 4	Firm Price £ (ex-VAT) Option Year 5
1	L2 Engineering Operative (ST0537)	Price per Learner	Redacted – pricing information				

Pricing - Part 2

Detailed Costs for End Point Assessment Delivery

Breakdown of Above EPA Price Per Learner Cost - Costs directly related to the EPA & defined by ESFA as Eligible Costs	Firm Price Per Learner £ (Year 1)	Firm Price Per Learner £ (Year 2)	Firm Price Per Learner £ (Year 3)	Firm Price Per Learner £ (Option Year 4)	Firm Price Per Learner £ (Option Year 5)
Assessment (Including Assessors)	Redacted – pricing information				
Materials					
Premises for delivery of the EPA					
Admin, Registration & Examination					
Certification					
Internal Quality Assurance					
External Quality Assurance					
Other (To be fully defined with Firm Price breakdown)					
Overheads (Please clarify and specify)					
Profit £ and % Rate					
Total Value Per Learner:	Redacted – pricing information				
Total Yearly Value:					
Travel & Subsistence (If separate to the above breakdown. If one flat rate regardless of location in the UK please specify)					

Additional Fees (Firm Prices to be taken up as appropriate on the following activities as they arise)	Firm Price Per Learner £ (Year 1-5)
EPA Resits (Schedule of Requirements (SOR) item 7) online	Redacted – pricing information
EPA Resits (Schedule of Requirements (SOR) item 7) Assessor led	
EPA Retakes (SOR item 7)	
Cancellation Fees (SOR item 8)	
Change of Named Student/Date Change	
Other Fees (to be fully defined with Firm Price breakdown)	

The Assessor Led cost is per Assessor Led assessment. If the Apprentice needs to resit both Assessor Led assessments, and both assessments can be conducted on the same day, the supplier will only charge for one Assessor Led assessment. Where possible and reasonable, both parties agree to schedule in both assessor led assessments for an Apprentice on the same day.

Ministry of Defence

**Contract No.:
702737453**



**THE PROVISION OF END POINT ASSESSMENT TO SERVICE
PERSONNEL OF THE ROYAL ENGINEERS AND THE ROYAL
ELECTRICAL AND MECHANICAL ENGINEERS UNDERTAKING
THE LEVEL 2 ENGINEERING OPERATIVE APPRENTICESHIP
STANDARD (ST0537)**

SCHEDULE 3

TERMS AND CONDITIONS

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GENERAL CONDITIONS

1. DEFENCE CONTRACT CONDITIONS (DEFCONs)

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 12/06)	Contractor's Personnel at Government Establishments
DEFCON 90 (Edn 11/06)	Copyright
DEFCON 127 (Edn 12/14)	Price Fixing Condition for Contracts of Lesser Value
DEFCON 129J (Edn18/11)	The Use of The Electronic Business Delivery Form
DEFCON 501 (Edn 11/17)	Definitions and Interpretations
DEFCON 502 (Edn 05/17)	Specifications Changes
DEFCON 503 (Edn 12/14)	Formal Amendments to Contract
DEFCON 507 (Edn 10/18)	Delivery
DEFCON 513 (Edn 11/16)	Value Added Tax
DEFCON 514 (Edn 08/15)	Material Breach
DEFCON 515 (Edn 02/17)	Bankruptcy and Insolvency
DEFCON 516 (Edn 04/12)	Equality
DEFCON 518 (Edn 02/17)	Transfer
DEFCON 520 (Edn 05/18)	Corrupt Gifts and Payments of Commission
DEFCON 522 (Edn 11/17)	Payment and Recovery of Sums Due
DEFCON 524 (Edn 02/20)	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 11/14)	Disclosure of Information
DEFCON 532B (Edn 04/20)	Protection of Personal Data (Where Personal Data is being processed on behalf of the Authority)

DEFCON 534 (Edn 06/17)	Subcontracting and Prompt Payment
DEFCON 537 (Edn 06/02)	Rights of Third Parties
DEFCON 538 (Edn 06/02)	Severability
DEFCON 539 (Edn 08/13)	Transparency
DEFCON 550 (Edn 02/14)	Child Labour & Employment Law
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 10/14)	Access and Facilities to be Provided by the Contractor
DEFCON 609 (Edn 08/18)	Contractor's Records
DEFCON 620 (Edn 05/17)	Contract Change Control Procedure
DEFCON 625 (Edn 10/98)	Co-Operation on Expiry of Contract
DEFCON 632 (Edn 08/12)	Third Party Intellectual Property – Rights and Restrictions
DEFCON 642 (Edn 06/14)	Progress Meetings
DEFCON 656A (Edn 08/16)	Termination for Convenience – under £5M
DEFCON 658 (Edn 10/17)	Cyber
DEFCON 660 (Edn 12/15)	Official-Sensitive Security Requirements

DEFENCE FORMS (DEFFORMs)

DEFFORM 111 (Edn 03/21)	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

For copies of DEFCONs/DEFFORMs refer to 'Note' on the DEFFORM 111 attached to these Terms & Conditions.

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):
- 2.2. 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 End Point Assessment Organisation’s manufacture;
- 2.3. 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” identified in Box 2 of the DEFFORM 111 to the Ts &Cs;
- 2.4. In the DEFCONs, any references to “Contractor” shall be interpreted as being reference to the “End Point Assessment Organisation (EPAO)”;
- 2.5. ‘Apprenticeship Standards’ are endorsed by the Institute for Apprenticeships and Technical Education (IfATE) (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 knowledge, skills and behaviours.
- 2.6. ‘Army Apprenticeship Management Board (AAMB)’ is chaired by AH Learning and Development, Pers Pol (Army) and is responsible for the overall strategic management of the Army Apprenticeship Programme.
- 2.7. ‘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);

- 2.8. 'Army Apprenticeship Standard Operating Procedure (SOPs)' 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.
- 2.9. 'The Authority'. In addition to the definition set out in DEFCON 501, the Authority is an employer-provider of apprenticeships and an ESFA contractor;
- 2.10. 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;
- 2.11. The 'Authority's Commercial Officer' means the individual/post identified in Box 1 of the DEFFORM 111 to Schedule 3 (Ts&Cs);
- 2.12. 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;
- 2.13. 'Conditions' means the Terms and Conditions (Ts&Cs) set out in this Schedule;
- 2.14. '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);
- 2.15. 'Contract Award Date' means the day on which Contract Award is Confirmed.

- 2.16. 'Contract Price' for the purposes of the definition set out in DEFCON 501 means the amount set out in Schedule 2 Part 1– Schedule of Requirement;
- 2.17. 'Day(s)' means 'working day(s)' unless specifically expressed as calendar day(s);
- 2.18. "Designated Officer" is the principal Representative of the Authority appointed to monitor the EPAO's 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 EPAO, 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;
- 2.19. '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;
- 2.20. '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;
- 2.21. 'End-Point Assessment' (EPA) is a holistic and independent assessment of the knowledge, skills and behaviours of the Apprentice which have been learnt throughout an Apprenticeship Standard;
- 2.22. '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;
- 2.23. 'Personnel Policy, Learning and Development Branch (Pers. Pol L&D)' means the Authority's Personnel Policy, Learning and Development Branch which is responsible for the management and oversight of the Army Apprenticeship programme;

- 2.24. 'Management Information' means any information acquired or generated by the End Point Assessment Organisation for the purpose of managing the Contract which may be provided to the Authority and/or the ESFA during the term of the Contract;
- 2.25. 'Maxi Management Boards' are cap badge specific management boards. These boards are responsible for the operational level management of each of the Army Apprenticeship sub-contracts. Representatives from APSG Education Branch (delivery lead) and Pers Pol (Army) will attend the Maxi Management Boards (note: SO1 Apprenticeships within Pers Pol (Army) is the contract owner with the ESFA on behalf of the Army).
- 2.26. 'Ofsted' means the Office for Standards in Education, Children's Services and Skills;
- 2.27. 'Parties' means the End Point Assessment Organisation and the Authority, and Party shall be construed accordingly;
- 2.28. 'Personal Data' means personal information and data relating to a specific individual who can be identified by such information and data;
- 2.29. 'Register of Apprentice End Point Assessment Organisations' means the Register held by the ESFA of organisations that the employer-provider can contract with for the delivery of End-Point Assessments;
- 2.30. 'Appointed End Point Assessor' means an organisation that must be on the ESFA's Register of Apprentice Assessment Organisations and has been appointed by the Authority, to undertake the End Point Assessments;
- 2.31. 'Services' means the services which are to be provided by the End Point Assessment Organisation throughout the Contract term in accordance with the terms and conditions of this Contract and Schedule 1 (SOR);
- 2.32. '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;

- 2.33. 'Statement of Requirements (SOR)' means the Services specified in Schedule 1 (SOR) which are to be performed by the End Point Assessment Organisation and the minimum standards to be achieved.

3. PRECEDENCE

- 3.1. In performing its obligations under this Contract, the EPAO shall:
- 3.2. 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 and Pers Pol L&D Standard Operating Procedures (SOPs).
- 3.3. 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
- 3.3.1. Obtain and maintain all necessary Consents.
- 3.4. In the event of any inconsistency or conflict between the obligations of the End Point Assessment Organisation referred to in Clause 3 the following order of precedence shall apply:
- 3.4.1. Statutory Legislation;
- 3.4.2. Education and Skills Funding Agency (ESFA) Rules;
- 3.4.3. Terms and Conditions of this Contract (Schedule 3)
- 3.4.4. Schedule 1 - Statement of Requirements (SOR);
- 3.4.5. Schedule 2 – Firm Price Table
- 3.4.6. Standard Operating Procedures (SOPs) subject to regular review/update;
- 3.4.7. All other Schedules;

3.4.8. Other ancillary documents referred to in this Contract.

- 3.5. 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.
- 3.6. 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 the Dispute Resolution Procedures as detailed in Schedule 4.

4. LEGAL AND STATUTORY RESPONSIBILITIES

- 4.1. Whilst attention is drawn herein and in the SOR to specific legislation, it shall be the sole responsibility of the End Point Assessment Organisation to ensure that they comply with all legal requirements and statutory instruments, be they National or European Union 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.

5. CHANGES IN LAW

- 5.1. Changes to statutory legislation shall be dealt with on a case-by-case basis. The End Point Assessment Organisation shall be responsible for Non-Discriminatory change and the Authority shall be responsible for Discriminatory change as affects the End Point Assessment Organisation's performance in meeting the Contract obligations, including the requirements of Schedule 1 (SOR).
- 5.2. The End Point Assessment Organisation 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).

5.3. Without prejudice to the rest of this Condition, the End Point Assessment Organisation shall use all reasonable endeavours to minimise any disruption caused by any Specific Change in Law.

5.4. For the purpose of this Condition:

5.4.1. 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>

6. ENTIRE AGREEMENT

6.1. 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.

7. DURATION

7.1. 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 (Pricing) shall be 3 years. The Contract Implementation date shall be 28th March 2022. Subject to the termination provisions of the Contract, the Contract duration shall be from 28th March 2022 to 27th March 2025 inclusive.

8. TERMINATION

8.1. The Authority and the End Point Assessment Organisation 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.

- 8.2. In the event of termination under the provisions of Condition 8.1 above, 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.
- 8.3. Termination under the provisions of Condition 8.1 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.
- 8.4. 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.
- 8.5. In the event that a change to the Army career development strategy renders any or all of the Apprenticeship EPAs covered by this Contract inappropriate for the career needs of the soldiers, the Authority shall have the right to cease enrolment of Apprentices onto any or all of the Apprenticeships. The cessation of enrolment will be dependent on the Army policy decision and will be discussed with the EPAO. The EPAO shall continue to support apprentices already booked for EPA to completion in accordance with the provisions of this Contract.

9. AMENDMENTS

- 9.1. Amendments to any part of this Contract may only be amended or varied through the written approval of the Authority's Commercial Branch.

- 9.2. The Authority will accept no liability for orders or instructions placed by any person other than an authorised officer in the Authority's Commercial Team, in accordance with DEFCON 503.
- 9.3. The EPAO shall not carry out any work until any necessary change to the Contract (which may include change to Contract Price) has been agreed and a written amendment in accordance with Clause 9.1 above has been issued.
- 9.4. As the Authority is a Contractor of the ESFA, Contract amendments may also arise as a result of ESFA mandated changes, changes to ESFA funding rules or as a result of ESFA reviews/audits and, as a consequence, these changes shall in turn be flowed down to the EPAO through the issue by the Authority of Amendments to the Contract.
- 9.5. The EPAO shall ensure that their employees are suitably dressed whilst on duty as agreed with the Authority (Designated Officer).
- 9.6. The Authority shall have the right to reschedule or cancel EPA at no extra cost by giving a minimum of 10 working days' notice. The Authority shall also have the right to change candidates for any element of the EPA, at no extra cost, by giving a minimum of 2 working days' notice. Where the assessor requires candidate materials, such as a project or portfolio, in advance of an EPA element, the Authority shall have the right to change candidates for this element of the EPA, at no extra cost, by giving a minimum of 2 working days' notice before the deadline for the project or portfolio to be submitted.

10. PRICE

- 10.1. The price for delivery of the End-Point Assessments (EPA) shall be FIRM (i.e. non-variable) as specified in Schedule 2, Part 2 (Firm Price Table) and relate to Schedule 1 the Statement of Requirements.
- 10.2. 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.

10.3. 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:

10.3.1. 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;

10.3.2. 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;

10.3.3. 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.

**11. PAYMENT & THE AUTHORITY’S ELECTRONIC PAYMENT SYSTEM:
“CONTRACTING, PURCHASING & FINANCE (CP&F)”**

11.1. Payment for EPAO Deliverables under the Contract shall be made via the Contracting, Purchasing & Finance (CP&F) electronic purchasing tool⁵ in accordance with DEFCON 522.

⁵ Invoices need to be submitted via the Exostar module of the tool.

- 11.2. The End Point Assessment Organisation shall submit claims for payment monthly in arrears to the Designated Officer.
- 11.3. The Authority shall pay all valid and undisputed claims for payment submitted by the EPAO to DBS Finance in accordance with DEFCON 522.
- 11.4. Payment will be made in accordance with the completed Schedule of Requirement together with any additional costs as agreed within the Firm Price Table (Schedule 2). Payment will be made for completed EPA. The Authority will not make payment for partially completed EPA, unless expressly agreed by the Authority in exceptional circumstances.
- 11.5. Invoices submitted to the Authority must be itemised by EPA outcome denoting Achieved or Failed.
- 11.6. Payment for cancelled/rescheduled EPA, if cancelled/rescheduled at the request of the Authority, will be made in accordance with the price agreed via the Firm Price Table. Invoices for cancelled/rescheduled EPA must be itemised and supported by a list of Apprentices, denoting the reason payment is required.
- 11.7. Payment for Resits & Retakes/partial resits/ retakes⁶ will be in accordance with the price agreed in the Firm Price Table. Invoices submitted must be itemised to show clearly whether a full Resit or Retake has taken place.
- 11.8. 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 End Point Assessment Authority's obligations nor as a waiver of its rights and remedies under this Contract.

12. TRAVEL & SUBSISTENCE

- 12.1. Travel and Subsistence costs are included in the firm price costs indicated in the Firm Price Table.

⁶ A Resit is resitting the EPA in its entirety. A Retake is repeating specific elements of the EPA.

- 12.2. When the staff of the EPAO are required to travel within the UK (including Northern Ireland) (there are no overseas requirements under this contract) for the purposes of delivery of apprenticeship EPA under the requirements of the Contract, all hotel accommodation, transport and supporting travel arrangements and health insurance will be the responsibility of the EPAO, and the Contract Firm Prices shall therefore be fully inclusive of all such travel and subsistence costs incurred by the EPAO's staff in connection with the delivery of EPA.

13. TAXATION AND OTHER PAYMENTS

- 13.1. The Authority shall have no 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 at Schedule 1-SOR.

14. SAFEGUARDING APPRENTICES

- 14.1. The EPAO shall comply fully with the Army Apprenticeship Programme Safeguarding and Prevent Strategy and shall co-operate with, and provide information to, the Personnel Policy Learning and Development Army Apprenticeship Programme Team as requested; to give assurance that adequate arrangements exist for Apprentice Health & Safety to enable the Authority and the ESFA to review Apprentice incidents, and to assist the ESFA with regard to its policy on Apprentice Health & Safety.
- 14.2. The EPAO shall comply fully with the Army Safeguarding and Prevent Directive and all Authority and other statutory requirements for safeguarding Apprentices including child protection and protection of vulnerable adults.
- 14.3. The EPAO is to remain vigilant of their staff displaying extremist political views and/or activities covered by the Counter-Terrorist and Security Act 2015 and, if applicable, inform the Authority immediately.
- 14.4. The EPAO shall ensure that all staffs who have unsupervised direct contact with Apprentices have undergone enhanced Disclosure & Barring Service

(DBS) checks and meet the requirements of the Government's Vetting & Barring Scheme, before carrying out their duties. The EPAO must inform the Authority immediately of any EPAO staff referred to DBS following a complaint.

15. QUALITY ASSURANCE

- 15.1. For the avoidance of doubt, the guidelines, standards and SOPs contained within the SOR, form part of this Contract.

16. EPAO FINANCE ASSURANCE

- 16.1. The EPAO shall provide the Personnel Policy Learning and Development Army Apprenticeship Programme Team with appropriate Apprentice records to satisfy the Funding Assurance Team (FAR), which has a statutory responsibility for the provision of audit services to the ESFA. The EPAO shall provide the necessary records to the Personnel Policy Learning and Development Army Apprenticeship Programme Team no later than seven calendar days following receipt of a formal request.
- 16.2. The EPAO shall be subject to regular Funding Assurance Review (FAR) audits and shall adhere to SOP 5 (FAR).

17. MONITORING AND COMPLIANCE

- 17.1. For the purposes of ensuring compliance with this Contract the Army Apprenticeship Management Board and Maxi-Boards shall be entitled to monitor the delivery of EPA. Any concerns over the Contract performance shall be dealt with in accordance with DEFCON 530 – Dispute Resolution (English Law) utilising Schedule 4 process within the Dispute Resolution Procedure.
- 17.2. The Authority may inspect, or arrange for the inspection of, the delivery of the EPA at any reasonable time during the period of the Contract.

18. PERFORMANCE

- 18.1. The EPAO shall be expected to show flexibility to meet the demands of a continually-changing apprentice population, operational requirements and apprentice availability. The apprentice population is dependent upon the Army's recruitment of soldiers and thus apprentice numbers cannot be guaranteed.
- 18.2. Only persons with appropriate qualifications and competence for the tasks on which they are engaged shall be employed by the EPAO under this Contract. The EPAO shall ensure that persons employed on this Contract meet the DfE, ESFA requirements and those of the External Quality Assurance Organisation.
- 18.3. The Designated Officer reserves the right to reject individual employees, or potential employees, of the EPAO on the grounds of security or national interest at any time prior to, or during the performance of this Contract.
- 18.4. It is an express requirement of the Authority that the End Point Assessment Organisation 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.
- 18.5. The EPAO must adhere to extant and any future DfE or ESFA changes to rules and the Army Apprenticeship SOPs referenced within.
- 18.6. If the Authority (Authorised Representative) 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 by performing the service again to the Authority's (Designated Officer's) satisfaction, at no additional cost to the Authority.

19. REPORTS & MEETINGS

- 19.1. 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.
- 19.2. 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.
- 19.3. 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.

20. REJECTION

- 20.1. The Authority may reject any output arising from the EPAO's delivery of the services (including, but not exclusively, analysis, advice, conclusions, recommendations or deliverables) of the Contract, if, in the opinion of the Authority the EPAO has failed to:
 - 20.1.1. Comply with the requirements of the Contract and/or the ESFA rules in any material way; and/or
 - 20.1.2. Provide services to the ESFA and IfATE standards and quality specified in the Contract. In such circumstances the Authority will issue a notice of rejection to the EPAO within 10 working days of receipt of the output.
- 20.2. When under this condition the Authority rejects any output after delivery, the EPAO shall at their own expense deliver, in the place of each and every rejected output, an output which conforms with the requirements of the Contract and shall do so within a reasonable period of time as the Authority

may allow. The Authority will determine on a case-by-case basis as to what constitutes a “reasonable” period of time and shall notify this in writing to the EPAO on each and every occasion.

- 20.3. If the EPAO consider them self-aggrieved by a rejection under this Condition, they may give the Authority notice of the objection. To be effective such notice shall be given within 10 working days from receipt of notification of rejection. The objection shall constitute a dispute between the parties which, if not otherwise resolved between the parties within a reasonable time, shall be dealt with in accordance with the provisions of the Contract relating to the settlement of disputes (Schedule 4).
- 20.4. In the event of a rejection notice being issued by the Authority (Designated Officer) in respect of the EPAO’s outputs under the Contract, the Authority may withhold part payment.

21. DISPUTE RESOLUTION PROCEDURE

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

22. ARMY APPRENTICESHIP BUSINESS SUPPORT CONTRACTOR'S E-PLATFORM (MOODLE)

- 22.1. The Army Apprenticeships Team shall provide a Knowledge Management System on an E-Platform (Moodle)”. The Authority will grant the EPAO access to this Knowledge Management System at no cost to the EPAO.
- 22.2. The EPAO and any employee of the EPAO shall use this Knowledge Management System solely for the purpose of performing its obligation under this Contract.
- 22.3. The Knowledge Management System is accessed via the internet using a login and password that are issued to specific users by the Authority and are not transferable. Logins and Passwords for Individual authorised users will be issued by the Pers Pol L&D Army Apprenticeships Team. The EPAO

shall be responsible for providing IT equipment to enable its employees to access the Knowledge Management System.

- 22.4. Should any employee of the EPAO who has been granted access to the E-Platform system leave the employment of the EPAO or cease to be involved in the performance of the obligation under this Contract, the EPAO shall immediately inform the Pers Pol L&D Army Apprenticeships Team to enable the login and password to be terminated.

23. DATA MANAGEMENT

- 23.1. 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.

24. SECURITY

- 24.1. 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 (a minimum of BPSS will be required).
- 24.2. The EPAO shall comply with any reasonable security measures requested by the Authority and shall comply with extant security procedures prevalent in the establishments.
- 24.3. The EPAO shall provide the Authority (Designated Officer) with:
- 24.3.1. 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;
- 24.3.2. 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.

24.4. The EPAO shall additionally be responsible for:

24.4.1. 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).

24.4.2. The EPAO shall ensure that the highest standards of privacy and confidentiality are maintained by his 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.

24.4.3. 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.

24.5. The Authority shall be responsible for:

24.5.1. Issue of vehicle passes to those of the EPAO's employees who have been authorised to bring vehicles into the grounds of the Establishment;

24.5.2. Notification and briefing of security alert states as necessary;

24.5.3. The provision, maintenance and checking of approved security furniture.

- 24.6. 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.
- 24.7. 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 an EPAO employee and the like who does not consent to being searched.
- 24.8. In addition to the requirements of DEFCON 660 and 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.
- 24.9. The EPAO shall appoint one of his 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.

24.10. The EPAO shall provide the Authority (Designated Officer and Garrison/Unit Security Officer) with:

24.10.1. 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;

24.10.2. 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).

24.11. The EPAO shall additionally be responsible for:

24.11.1. Making arrangements for his new employees to be briefed on their security responsibilities at the Establishment; they will also arrange for continuation security training of his employees as required by the Authority (Garrison/Unit Security Officer);

24.11.2. All classified documents, and other material held, including the library department(s);

24.11.3. The proper disposal or destruction of classified material held by him;

24.11.4. Where a post has been identified as a DBS check is required the EPAO shall ensure that all personnel are DBS checked and cleared prior to commencement of work on the contract;

24.11.5. DBS Certificates are to be made available to the Authority on request.

24.12. It shall be the responsibility of the EPAO to ensure that physical security measures are undertaken by the EPAO's employees, at the conclusion of their activities.

25. CYBER SECURITY

25.1. Further to DEFCON 658, the Cyber Risk Level of the Contract is assessed as VERY LOW, as defined in Def Stan 05-138. Reference: RAR 2C6R9RBP.

26. DATA PROTECTION

26.1. The EPAO must not disclose, or allow access to, any Personal Data provided by the Authority, or acquired by the EPAO during the course of executing its obligations under the Contract, other than to any employee of the EPAO or to a sub-contractor, save where the information is necessary to enable the EPAO to fully perform his obligations under this Contract.

26.2. Any disclosure or access to Personal Data allowed as specified in condition 26.1 above must be made in confidence and must extend only so far as it is necessary for the purposes of the Contract.

26.3. The EPAO shall ensure that any Personal Data is protected in accordance with DEFCONs 531 and 532B. Schedule 3 (Ts&Cs), Annex C (DEFFORM 532) 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).

26.4. The EPAO shall report at the earliest opportunity all security breaches and actual or suspected losses of data to the Pers Pol 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.

- 26.5. The Authority will enable the EPAOs to purchase specialist IT consumables, i.e. colour coded and/or encrypted Removable Media, from authorised MOD suppliers if requested to do so.
- 26.6. The EPAO shall ensure that all employees who handle any Personal Apprentice 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.

27. CONFIDENTIALITY OF INFORMATION

- 27.1. Any and all information together with any documentation, specification or computer software and the like which contains information 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.
- 27.2. The EPAO agrees that they shall not:
 - 27.2.1. Copy the information in any manner;
 - 27.2.2. Remove the information from the Establishment in any material form;
 - 27.2.3. 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.

- 27.3. The restrictions and obligations set out at Clause 27.2 of this Condition shall not apply to any of the information which the EPAO can show to the satisfaction of the Authority (Commercial Team):
- 27.3.1. Was already known to the EPAO prior to his examination of it at the Establishment and otherwise than by communication from the Authority;
- 27.3.2. Is rightfully received by the EPAO from a third party without any obligations or confidence; or
- 27.3.3. Has been generated independently by the EPAO prior to its being made available by the Authority pursuant to the Contract.
- 27.4. The restrictions and obligations at Clause 27.2 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.
- 27.5. 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.
- 27.6. The EPAO shall at all times hereafter indemnify, and keep indemnified, the Authority in respect of any claim against the End Point Assessment or the Authority arising out of the failure to discharge fully his responsibilities under this Condition.
- 27.7. 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).
- 27.8. The provisions of this Condition shall survive indefinitely notwithstanding the termination of the Contract.

28. LIMITATIONS ON LIABILITY

Unlimited liabilities

- 28.1. Neither Party limits its liability for:
- 28.1.1. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - 28.1.2. fraud or fraudulent misrepresentation by it or its employees;
 - 28.1.3. 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
- 28.1.4. any liability to the extent it cannot be limited or excluded by law.
- 28.2. The financial caps on the Contractor's liability set out in Clause 28.4 below shall not apply to the following:
- 28.2.1. the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and DEFCON 632 (Third Party IP - Rights and Restrictions);
 - 28.2.2. the Contractor's indemnity in relation to TUPE at Schedule 6;
 - 28.2.3. breach by the Contractor of Clause 26 joint controller provisions set out at Annex B and Data Protection Legislation; and
- 28.3. The financial caps on the Authority's liability set out in Clause 28.5 below shall not apply to the following:
- 28.3.1. the indemnity given by the Authority in relation to TUPE under Schedule 6 shall be unlimited; and

Financial limits

- 28.4. Subject to Clauses 28.10 and 28.2 and to the maximum extent permitted by Law:
- 28.4.1. 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:
 - 28.4.1.1. in respect of DEFCON 76 (£1,000,000) in aggregate;
 - 28.4.1.2. in respect of DEFCON 514 (£2,760,000) in aggregate;
 - 28.4.2. without limiting Clause 36.4.1 and subject always to Clauses 28.1, 28.2, and 28.4.3, the Contractor's total liability throughout the Term in respect of all other liabilities, whether in contract, in tort (including

negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be (£4,140,000) in aggregate.

28.4.3. 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 Clauses 28.4.1 and 28.4.2 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 Clauses 28.4.1 and 28.4.2 of this Contract.

28.5. Subject to Clauses 28.1, 28.3, 28.3.3 and 28.6, 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.

28.6. Clause 28.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

28.7. Subject to Clauses 28.1, 28.2 and 28.8, 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:

28.7.1. indirect loss or damage;

28.7.2. special loss or damage;

28.7.3. consequential loss or damage;

28.7.4. loss of profits (whether direct or indirect);

28.7.5. loss of turnover (whether direct or indirect);

28.7.6. loss of business opportunities (whether direct or indirect); or

28.7.7. damage to goodwill (whether direct or indirect),

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

28.8. The provisions of Clause 28.7 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:

- 28.8.1. any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
 - 28.8.1.1. to any third party;
 - 28.8.1.2. for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
 - 28.8.1.3. relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- 28.8.2. any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
- 28.8.3. 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);
- 28.8.4. 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;
- 28.8.5. damage to the Authority's physical property and tangible assets, including damage under DEFCON 76 and 611;
- 28.8.6. 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;
- 28.8.7. 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);
- 28.8.8. 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

28.8.9. 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

28.9. If any limitation or provision contained or expressly referred to in this Clause 28 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 Clause 28.

Third party claims or losses

28.10. Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and 632 or at Law), 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:

28.10.1. 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

28.10.2. 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

28.11. 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.

29. PROFESSIONAL INDEMNITY AND MEDICAL INSURANCE COVER

- 29.1. The End-Point Assessment Organisation will be required to maintain adequate insurance and professional indemnity cover for all of his activities in the performance of the Contract and any liabilities arising there from.
- 29.2. The Authority reserves the right, acting reasonably, to require the End-Point Assessment Organisation to provide evidence of the method used to effect 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.

30. INSURANCE

- 30.1. Without prejudice to the requirements of DEFCON 76, the End-Point Assessment Organisation shall take out and maintain insurance against his 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 his liabilities under the Contract.

31. CONFIDENTIALITY

- 31.1. 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:
- 31.2. (in the case of both parties) for any necessary disclosure to professional advisers of that party;
- 31.3. (in the case of the Authority) to the ESFA or other organisation required to monitor its performance, including but not limited to, Awarding Bodies and Ofsted.

31.4. (in the case of both parties) when required to do so by a Statutory Body.

31.5. 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.

32. TRANSITION PLAN

32.1. The EPAO will develop and provide a transition plan for completing assessments prior to contract end and for the handing over of Apprentices who have not completed their End-Point Assessments in full at the end of the contract.

33. EXIT MANAGEMENT

33.1. In the event that either party triggers Exit, the parties shall follow the Exit Plan as detailed in Annex D – Exit Plan.

Appendix - Addresses and Other Information

1. Commercial Officer

Name: Redacted – personal information

Address: Redacted – personal information

Email: Redacted – personal information

Skype: Redacted – personal information

Mobile 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: Redacted – personal information

Address: Redacted – personal information

Email: Redacted – personal information

9. Consignment Instructions

The items are to be consigned as follows:

3. Packaging Design Authority

Organisation & point of contact:

Not Applicable

(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

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

Branch/Name: N/A

☐

(b) U.I.N.

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

www.freightcollection.com

5. Drawings/Specifications are available from

Not Applicable

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#invoice-processing>

6. Intentionally blank

12. Forms and Documentation are available through *:

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site

Lower Arncott

Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

Applications via fax or email: DESLCSLS-OpsFormsandPubs@mod.uk

7. Quality Assurance Representative:

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

*** NOTE**

1. Many DEFCONs and DEFFORMs can be obtained from the MOD Internet Site:
<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

AQAPS and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.diif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

2. 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.

Annex A to Schedule 3

NOT USED

Annex B to Schedule 3

Transition Activity Checklist

NOT USED.

Annex C to Schedule 3

DEFFORM 532

Edn 05/18

Personal Data Particulars

Data Controller	The Data Controller is the Secretary of State for Defence (the Authority). The Personal Data will be provided by: <i>Notebook Assessment Services Ltd</i> <i>College Road, Trowbridge, United Kingdom, BA14 0ES</i>
Data Processor	The Data Processor is the Contractor. The Personal Data will be processed at: <i>College Road, Trowbridge, United Kingdom, BA14 0ES</i>
Data Subjects	The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects: <i>All staff, including volunteers, agents, and temporary workers, customers and clients, suppliers, students, members of the public, users of www.notebook-epa.co.uk</i>
Categories of Data	The Personal Data to be processed under the Contract concern the following categories of data: <i>Personal information including name, address, telephone number and information associated with past and present educational records, employment records and associated data</i>
Special Categories of data (if appropriate)	The Personal Data to be processed under the Contract concern the following Special Categories of data: <i>Gender, Gender reassignment, Racial or ethnic origin, religious or philosophical beliefs, sexual orientation, disability.</i>
Subject matter of the processing	The processing activities to be performed under the contract are as follows: <i>[please specify]</i> <i>For the purposes of registering and progressing qualifications and achievement through to completion</i>
Nature and the purposes of the Processing	The Personal Data to be processed under the Contract will be processed as follows: <i>[please specify]</i> <i>collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data, for the purpose of registering and progressing qualifications and associated activities through to completion.</i>
Technical and organisational measures	The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract: <i>[please specify]</i> <i>Anonymisation, authorised access, data processed on closed/restricted systems, Encryption</i>

Instructions for disposal of Personal Data	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): <i>[please specify]</i> <i>Data is disposed of after 6 years by a registered data disposal partner, or as specified by awarding bodies or other statutory requirements</i>
Date from which Personal Data is to be processed	Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here: <i>[please specify if applicable]</i> <i>On commencement of contract</i>

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

Annex D to Schedule 3

Exit Plan

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Emergency Exit”	any termination of this Agreement which is a: (a) termination of the whole or part of this Agreement in accordance with Clause 8 (Termination), except where the period of notice given under that Clause is greater than or equal to 6 months; (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 8 (Termination); or (c) wrongful termination or repudiation of this Agreement by either Party;
“Ordinary Exit”	any termination of the whole or part of this Agreement which occurs: pursuant to Clause 8 (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 as a result of the expiry of the Initial Term or any Extension Period;

2. EXIT PLAN

2.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:

- (a) 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;

(b) complies with the requirements set out in Paragraph 2.2;

(c) is otherwise reasonably satisfactory to the Authority.

2.2 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 the

Dispute Resolution Procedure (Schedule 4).

2.3 The Exit Plan shall set out, as a minimum:

(a) how the Exit Information is obtained;

(b) 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;

(c) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;

(d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;

(e) the management structure to be employed during the Termination Assistance Period;

(f) 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;

(g) 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);

(h) the scope of the Termination Services that may be required for the benefit of the Authority;

(i) a timetable and critical issues for providing the Termination Services;

(j) 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;

(k) how the Termination Services would be provided (if required) during the Termination Assistance Period;

(l) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 7 (TUPE); and

(m) how each of the issues set out in this Schedule 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.

2.4 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.

2.5 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

- 2.6 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 Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 2.7 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 and the last approved version of the Exit Plan (insofar as relevant).



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STANDARD (ST0537)**

SCHEDULE 4

DISPUTE RESOLUTION PROCEDURE

Dispute Resolution Procedure

1. PERSONNEL POLICY BRANCH DISPUTE RESOLUTION GROUP

- 1.1 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.
- 1.2 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 Service Provider Representatives, and such resolution shall be final and binding on the Parties.
- 1.3 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 Service Provider and the Authority for approval.
- 1.4 Any recommendations made by the Pers Pol DRG and approved in the manner identified in Clause 1.3 must be complied with by the Parties.
- 1.5 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.

2. REFERRAL TO ADJUDICATION

- 2.1 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.

- 2.2 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 Clause 3 below.

3. SELECTION OF THE ADJUDICATION PANEL

- 3.1 There shall be a panel of experts whom shall be wholly independent of the Service Provider, the Authority, any End Point Assessors and any of the major competitors of the Service Provider. The panel shall be agreed to by the Parties within one month of the Contract signature.
- 3.2 If any member of the panel resigns during the Contract, a replacement expert shall be appointed jointly by the Service Provider and the Authority as soon as practicable.
- 3.3 If the Authority and the Service Provider 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.
- 3.4 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.

4. ADJUDICATION PROCEDURE

- 4.1 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 his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

- 4.2 In any event, the Adjudicator shall provide to both Parties his 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 his 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.
- 4.3 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.
- 4.4 The Adjudicator shall be deemed not to be an arbitrator but shall render his 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 his determination or the procedure by which he reached his determination.
- 4.5 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.
- 4.6 All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his 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.
- 4.7 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

4.8 If:

4.8.1 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

4.8.2 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.

4.9 The Arbitrator's decision shall be final and binding on the Parties, subject to 4.10 below.

4.10 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 Service Provider and the Authority for approval.

5. CONTINUING WITH CONTRACT OBLIGATIONS

5.1 Unless the Contract has already been terminated, the Service Provider 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 Service Provider 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.

- 5.2 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

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

2. PROCEDURES

- 2.1 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.
- 2.2 The Service Provider and the Authority agree that:
- 2.2.1 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 Service Provider's Representatives (one of whom must be the Service Provider's Commercial Manager). All of the Authority's Representatives and the Service Provider's Representatives are authorised to attend any such meeting;
- 2.2.2 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 Service Provider must each use reasonable endeavours to ensure that all meetings are quorate;

- 2.2.3 the Chairman of the Pers Pol DRG will always be an Authority Representative;
 - 2.2.4 an agenda of items to be discussed by the Pers Pol DRG must be notified to the Authority's and Service Provider's Representatives at the time the meeting is called by the Party that called the meeting;
 - 2.2.5 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 Service Provider's Representatives such consent not to be unreasonably withheld or delayed;
 - 2.2.6 for the purposes of taking minutes of the meetings the Service Provider's Representatives shall be entitled to be accompanied by a secretarial assistant;
 - 2.2.7 all meetings of the Pers Pol DRG shall be held at Andover unless the Parties agree otherwise.
- 2.3 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.
 - 2.4 During the period of such notice, the representatives of the Service Provider and the Authority must seek, from the Party by which they are appointed, the power and authority to resolve the disagreement.
 - 2.5 The Service Provider 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.
 - 2.6 Two copies of each set of minutes are to be signed by one of the Authority's Representatives and one of the Service Provider'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 Service Provider.

- 2.7 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 and will not bind the Authority or the Service Provider.

3. COSTS

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



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Schedule 5

CYBER IMPLEMENTATION PLAN – NOT APPLICABLE



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SCHEDULE 6

STATEMENT OF REQUIREMENT COMPLIANCE

Redacted – commercially sensitive information



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SCHEDULE 7

TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)

TRANSFER REGULATIONS

EMPLOYEE TRANSFER ARRANGEMENTS ON EXIT

1. DEFINITIONS

1.1 In this Schedule 7, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract 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;

"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;

"New Provider" means any replacement service provider 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;

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

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

1. **"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;

2. **"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 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 7 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 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 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 this Schedule 7 (Personnel Information) relating to the 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 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 Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Transferring Employees together with the information listed in Part B of Appendix 2 of this Schedule 7 (Personnel Information) relating to the Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Transfer Date.
- 2.1.4 Within 14 days following the relevant 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 7 in respect of Transferring Employees.
- 2.1.5 Paragraphs 2.1.1 and 2.1.2 of this Schedule 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 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,

3. 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 7.

- 2.1.7 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule 7 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 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 Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the 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 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 Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Transferring Employee**") that he has 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 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 Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected 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 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 Transferring Employee's employment in accordance with his 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 Transferring Employee's claim or allegation:
 - (i) any additional costs of employing the Unexpected Transferring Employee up to the date of dismissal where the Unexpected 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 Transferring Employee;
 - (iii) any liabilities relating to the termination of the Unexpected 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 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 Transferring Employee's claim or allegation, subject to a cap per Unexpected 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 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 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 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 Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the 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 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 Transferring Employee at any time on or after the 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 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 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 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 Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

4. 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 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 Transfer Date to the working conditions of any Transferring Employee to the material detriment of any such 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 Pursuant to the terms of DEFCON 537, 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 7 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 RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES

1. Pursuant to paragraph 2.1.1(b) of this Schedule 7, 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 national insurance contributions 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 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.

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

Part A

3. Pursuant to paragraph 2.1.2 of this Schedule 7, 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:

3.1 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.

3.2 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
- k) Percentage of pay currently contributed under any added years arrangements.

3.3 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.

3.4 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.

3.5 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

3.6 Information to be provided 28 days prior to the 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

3.7 Information to be provided within 14 days following a Transfer Date:

3.7.1 Performance Appraisal

The current year's Performance Appraisal;

Current year's training plan (if it exists); and

Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

Superannuation and Pay

Cumulative pay for tax and pension purposes;

Cumulative tax paid;

National Insurance Number;

National Insurance contribution rate;

Other payments or deductions being made for statutory reasons;

Any other voluntary deductions from pay;