



MINISTRY OF DEFENCE

Contract Number:

701538378

**THE PROVISION OF A CHARTERED MANAGER DEGREE APPRENTICESHIP FOR THE
ARMY**

18th August 2021

**Contractor:
Staffordshire University**

Table of Contents

Schedule 1	Statement of Requirement
Schedule 2	Pricing
Schedule 3	Terms and Conditions Annex A – NOT USED Annex B – DEFFORM 532 – Personal Data Particulars Annex C – Exit Plan DEFFORM 111 – Appendix- Address and other Information
Schedule 4	Dispute Resolution Procedure
Schedule 5	TUPE
Schedule 6	Note Used – Cyber Implementation Plan
Schedule 7	Technical Tender Response



MINISTRY OF DEFENCE

Contract Number:

701538378

**THE PROVISION OF A CHARTERED MANAGER DEGREE APPRENTICESHIP FOR THE
ARMY**

SCHEDULE 1

STATEMENT OF REQUIREMENT

SCHEDULE 1
STATEMENT OF REQUIREMENTS

THE PROVISION OF A CHARTERED MANAGER DEGREE APPRENTICESHIP FOR THE
ARMY

Introduction

Purpose

The purpose of this document is to describe the requirements for a development pathway for the Army's senior soldiers (Non-Commissioned Officers (NCOs) and Warrant Officers (WOs)), as well as civilian personnel working in the Army, to provide intellectual development and knowledge, skills and experience applicable in the workplace. This demonstrates investment in our senior soldier cohort and closes the gap between the educational offer available to career stage (CS) 1 and 2 officers and NCOs/WOs.

Background

The Army's Apprenticeship Programme currently offers apprenticeships at Levels 2, 3 and 4. In 2018 a Level 6 apprenticeship, the Chartered Manager Degree Apprenticeship (CMDA), was offered on a trial basis to the NCO and WO cohort. 90 places have been provided, across 3 cohorts of 30 apprentices and 2 different learning providers. On successful completion of the programme (approx 42 months) apprentices achieve an honours degree in leadership and management and Chartered Manager status from the Chartered Management Institute (CMI).

The Civil Service Apprenticeship Programme offers leadership schemes at Levels 3 and 5. It also includes a Level 6 CMDA scheme and a Level 7 Senior Leaders' Master's degree. Including civilian personnel working in the Army within this statement of requirement offers Civil Servants the opportunity to learn alongside their military colleagues, on a programme geared towards the organisation they are part of.

Army Command Plan 20 highlights the requirement to attract and retain the right people, as well as maximising talent and improving organisational culture. The CMDA trial has contributed to the achievement of these objectives. The establishment of an enduring CMDA programme for the NCO and WO cohort will deliver a fully-funded pan-Army degree in leadership and management, alongside professional accreditation as chartered managers, to our senior soldiers and civilian personnel working in the Army. This represents a significant investment in their development and provides an opportunity comparable to that offered to the officer cohort through the Army Higher Education Pathway (AHEP).

Objectives

- Provision of up to 100 places per academic year¹ on a CMDA programme (at least 36 months long) for NCOs, WOs and civilian personnel working within the Army.
- A blended learning solution which provides a nationally recognised degree qualification in leadership and management, Chartered Manager status and flexibility for completion to take into account operational deployments and other workplace commitments.
- Training provider engagement with line managers, mentors and the chain of command in supporting apprentices through their studies and ensuring the transfer of learning to the workplace.

¹ The Authority does not guarantee minimum numbers on programme and reserves the right to terminate the programme if changes to funding rules make it unaffordable.

Scope

Army Apprenticeship Programme (AAP). The CMDA will provide progression to the existing AAP which delivers apprenticeships at Levels 2, 3 and 4. The AAP is currently delivered by the Army as an employer-provider. The CMDA will be delivered by the Supplier as a main training provider.

Funding rules. This is a competitive tender process. The Authority will not consider tenders that go above the max cap for the standard. Potential training providers should note that the funding rules for apprenticeships allow all Armed Forces personnel to undertake a statutory English apprenticeship wherever they are based in the United Kingdom. To ensure parity of opportunity for our senior soldiers, the Authority commits to fund individuals who apply and are selected for the CMDA programme but are ineligible for levy funding under current rules. Civilian personnel who apply and are selected for the CMDA programme will be funded separately from the Civil Service levy account.

Attendance Constraints. Operational commitments, overseas deployments, other military career courses, workforce requirements and individual personal circumstances will impact on availability to attend specific courses. Any programme must be flexible, allowing individuals to move between cohorts, to suspend their studies or request submission extensions at short notice. This will affect group sizes for any residential courses and the training provider must be prepared to deal with a broad range of group sizes and to provide access to alternative delivery mechanisms where possible.

Blended delivery. Delivery must be primarily through distance learning, but should include some face-to-face delivery, although this must be flexible to accommodate the unpredictable work demands and geographically dispersed nature of the apprentices. Training providers must also have a resilience plan for full remote delivery (eg contingency plan for COVID restrictions).

- Face-to-face delivery should be during the working week (Mon-Fri) and cannot exceed more than 5 days in a row and 20 days in total throughout the academic year.
- Remote delivery should be during the working day (Mon-Fri 0900-1700) but must also be available as a recording to maximise flexibility of access for students.
- Tutor engagement may need to take place face to face, via video conferencing, telephone or email.
- Apprentices will generally have internet access and IT, although flexibility is required in delivery of teaching and method of submission of assignments for those deployed on exercise or operations, particularly for those serving overseas.

Prior learning. Some apprentices will have conducted military education and training courses that will lead to recognition of prior learning (RPL). Training providers will be expected to provide RPL based on an assessment of the prior learning conducted by different ranks of NCOs/WOs, with pricing schedules to reflect this. An indicative list of current accreditation options is at Annex A. If significant changes are made to these courses the Authority will inform the training provider to enable RPL to be reassessed.

Programme length. Whilst Training Providers will be expected to provide RPL where appropriate, the programme must also be a minimum of 36 months long. The Authority's CMDA programme is designed to upskill the workforce and maximise transfer of learning to the workplace. There must be sufficient time to reflect on the course content and to apply the knowledge and skills in the workplace.

20% off the job (OTJ) training. The training provider must support the Authority to identify and evidence OTJ training conducted by the apprentices. E.g. attendance on professional development courses not eligible for RPL.

Functional skills (FS). The majority of apprentices will have Level 2 qualifications in Maths and English. However, some of these qualifications do not meet the Education and Skills Funding Agency (ESFA) requirements. The training provider must provide access to FS provision for apprentices who require the qualifications, although apprentices may also be able to access FS support at their local Army Education Centre (AEC).

Bespoke requirements. Modules and/or assignments should be tailored to maximise relevance to the workplace and transfer of learning to the workplace.

Intentions for possible future expansion. This SoR is limited to the provision of a Level 6 CMDA programme. In the future the Army may seek to expand provision to include Level 7 apprenticeships, or Level 6 apprenticeships in different subjects. However, this would be subject to a separate, competitive contracting process.

Requirements

The following section will outline the essential and non-essential requirements for the CMDA programme. Non-essential requirements will not affect delivery of the objectives outlined in this SoR but will enhance the apprentice experience and the transfer of learning to the workplace. Non-essential requirements will have a moderate weighting during the tender evaluation.

Essential requirements

1. Apprentice numbers and cohorts.

- Provision of up to 100 places per academic year on a CMDA programme for NCOs, WOs and civilian personnel working in the Army.
- Minimum programme length of 36 months.
- Minimum of 2 cohorts per academic year. The training provider must ensure that staff to apprentice ratios are sufficient to provide the support required.
- First cohort to start in Jan 22.
- Contract for 3 years of new starts (academic years 21/22, 22/23, 23/24). Apprentices have 5 years to complete their studies. Total contract length of 7 years.
- Two +1 option years of new starts are provided for in the contract (academic years 24/25, 25/26), total contract length of 9 years if both were invoked. The Authority is under no obligation to invoke these.
- Cohorts may be Army-only or mixed with other apprentices. Where cohorts are mixed the training provider must provide military community sessions to promote a peer support network (minimum of 3 sessions per year). Where cohorts are Army-only, the training provider must ensure that diverse perspectives are introduced.

2. Programme qualifications. Successful CMDA apprentices will achieve the following in line with the Institute for Apprenticeships and Technical Education standards:

- A nationally recognised Level 6 honours degree in a management-related degree.
- Chartered Manager status.

3. Delivery mechanism. Delivery must be primarily through distance learning, but should include some face-to-face delivery, although this must be flexible to accommodate the unpredictable work demands and geographically dispersed nature of the apprentices.

- Training providers must also have a resilience plan for full remote delivery (eg contingency plan for COVID restrictions).
- Face-to-face delivery should be during the working week (Mon-Fri) and cannot exceed more than 5 days in a row and 20 days in total throughout the academic year.
- Where face-to-face delivery is used the training provider will work with the Authority to provide apprentices with an Administrative Instruction at least 4 weeks in advance of the residential session.

- Remote delivery should be during the working day (Mon-Fri 0900-1700) but must also be available as a recording to maximise flexibility of access for apprentices.
- Tutor engagement may need to take place face to face, via video conferencing, telephone or email.
- Flexibility is required in delivery of teaching and method of submission of assignments for those deployed on exercise or operations, particularly for those serving overseas.
- Apprentices must have access to the full range of training provider resources and support services offered to other apprentices (eg. campus and library access, study support services).
- Course materials must be available to download and use offline to enable apprentices to study whilst deployed.
- The training provider is to provide all training facilities (for face to face delivery) and materials required.

4. Funding. The CMDA will be delivered by a main training provider.

- This is a competitive tender process.
- The Authority will not consider tenders that go above the max cap for the standard.
- The tender submitted by potential training providers must include End Point Assessment, provision of FS, graduation, registration of apprentices for Chartered Manager status and any other administrative costs incurred by the training provider.

5. ESFA funding regulations. The training provider must adhere to ESFA funding regulations in all aspects of the delivery. ESFA regulations are subject to periodic change and amendments. The provider must adhere to the most current regulations.

6. Recognition of Prior Learning (RPL). The training provider will be expected to provide RPL based on an assessment of the prior learning conducted by different ranks of NCOs/WOs, with pricing schedules to reflect this. If significant changes are made to these courses the Authority will inform the training provider to enable RPL to be reassessed.

- RPL must be agreed between the Authority and the training provider prior to the start of the first cohort.

7. 20% Off the Job training. The training provider must support the Authority to identify and evidence off the job training conducted by the apprentices. E.g. attendance on professional development courses not eligible for RPL. Off the job training will be different for each apprentice.

8. End point assessment and degree awarding powers. The training provider must hold and maintain registration on the Register of Apprenticeship Training Providers (RoATP). All providers on the RoATP will need to reapply from May 21.

- All training providers must be partnered with an End Point Assessment Organisation (EPAO) which holds and maintains registration on the EPAO Register. Where a training provider is not a university, they must be linked with a partner university that has degree awarding powers.
- The Contractor will be responsible for any separate contract requirements between itself and the independent apprentice assessment organisation and have a written agreement in place with the assessment organisation to make payment to them for conducting the EPA in line with ESFA funding rules. The written agreement must set out the arrangements for sharing relevant information about the apprentice so EPA and certification can take place, including arrangements for any re-takes and payments. The independent apprentice assessment organisation used by the Contractor must be approved by the Authority.
- The Contractor will ensure that the costs of the EPA, costs associated with the completion certification and costs of external quality assurance involving an external body are included within the total cost of delivering the CMDA Standard.

- 9. Bespoke requirements.** Modules and/or assignments should be tailored to maximise relevance to the workplace and transfer of learning to the workplace.
- Bespoke requirements must be agreed between the Authority and the training provider prior to the start of the first cohort.
- 10. Functional Skills (FS).** The training provider will be expected to provide a FS pathway to Level 2 maths and English qualifications for apprentices who do not hold qualifications which meet ESFA requirements.
- 11. Management of Information.**
- The training provider will have a management of information system (MIS) and is responsible for inputting apprentice details onto the Apprenticeship Service.
 - Data for apprentices who are ineligible for levy funding may have to be entered onto a separate MIS and invoicing system.
 - The training provider will provide the Authority with personalised apprentice data to monitor progress and enable interventions in the learning journey by the Authority before the apprentice is permitted to withdraw/suspend/fail.
 - The training provider will hold quarterly performance review meetings with the Authority to discuss:
 - Apprenticeship Service funding withdrawals/suspensions
 - Apprentice progress
 - Line manager and Chain of Command engagement
 - Contract performance against Service Level Agreements (SLAs)
 - Module evaluations and quality assurance
 - The training provider will provide the Authority with an annual report (31 Aug annually) summarising the bullet points above and linked to a quality improvement plan (QIP).
 - The training provider will provide the Authority with responses to ad hoc requests for information (RFIs) such as ministerial questions or data required for the chain of command.
 - The training provider will provide the Authority with a copy of apprentices' final Work-Based Learning projects and any other assignment the Authority requests.
- 12. Programme director.** The training provider will provide a nominated Programme Director who will act as a focal point for all liaison between the training provider and the Authority.
- 13. Line Manager, mentor and chain of command engagement.** The training provider will engage with line managers, mentors and the chain of command in supporting apprentices through their studies and ensuring the transfer of learning to the workplace. Apprentices' line managers will change a number of times throughout the CMDA due to military posting cycles.
- As a minimum engagement should include employer guides to the CMDA (available electronically) explaining employer roles and responsibilities.
 - Annual progress reviews sent to line managers (copied to the Authority's Designated Officer).
- 14. Key user requirements (KURs).** KURs are available at Annex B. Measures of success in the KURs are provisionally set around apprentice numbers, cohorts and RPL. These measures may be amended depending on the proposals offered by suppliers. E.g. if significant RPL of courses can be offered this may reduce the additional learning required and therefore either cost per apprentice is reduced / apprentice numbers per annum are potentially increased or a mix of both. The final measures of success will be included in the Full Business Case for approval between contract award notification and contract start date.

15. Apprentice selection process. The training provider will support to the Authority as required during the selection of apprentices for each cohort to ensure that suitably motivated and prepared apprentices are identified.

Additional requirements

1. Line Manager, mentor and chain of command engagement. The training provider will develop line managers, mentors and the chain of command through interactive resources and training sessions to effectively support apprentices through their studies and to ensure the transfer of learning to the workplace.

Intellectual Property (IP) Rights (Known as IPR)

The Authority will retain IPR of student assignments. Where apprentices wish to use classified information as part of their assignment, the following policy must be adhered to:

USE OF CLASSIFIED INFORMATION IN CMDA ASSIGNMENTS

1. Apprentices who intend to use sensitive information to complete one or more of their CMDA assignments must consider the direction provided by JSP 440, Leaflet 10 (para 167 onwards) before starting their assignment.
2. In general apprentices should avoid using sensitive information as part of their assignment or should seek to declassify it. Where this is not possible officers must engage with the Information Asset Owner (IAO). The IAO is a senior individual who is best placed to understand and manage the risk to a specific information asset or assets.
 - a. The IAO will provide advice and guidance on the use of the information, as well as confirming whether there are any restrictions on who at the Learning Provider can access and mark the assignment.
 - b. Apprentices may have to change their assignment content if the IAO deems it too sensitive for external audiences. Therefore, apprentices are advised to engage with the IAO at the earliest opportunity.
3. Apprentices who have permission from the IAO to use sensitive information as part of their assignment must inform the CMDA Designated Officer.

Payment

Payment will be drawn by the training provider directly from the Apprenticeship levy fund. This usually occurs on a monthly basis if the correct monthly data upload has been made by the provider.

The Authority will fund individuals who apply and are selected for the CMDA programme but are ineligible for levy funding under current rules through a separate funding stream. This will require a separate MIS and invoicing arrangement between the Authority and the provider.

Contract management arrangements

The training provider will hold quarterly performance review meetings with the Authority to discuss:

- Apprenticeship Service funding withdrawals
- Apprentice progress
- Line manager and Chain of Command engagement

- Contract performance against Service Level Agreements (SLAs)
- Module evaluations and quality assurance

The training provider will provide the Authority with responses to ad hoc RFIs such as ministerial questions or data required for the chain of command.

The training provider will produce minutes and a record of decision log for each meeting.

The training provider will provide the Authority with an annual report (31 Aug annually) summarising the areas discussed at the quarterly performance review meetings and linked to a quality improvement plan (QIP).

The training provider shall not introduce any changes that will alter the content of the academic programmes and/or require additional resources to be provided by the Authority without the approval of the Authority.

End of contract/Exit strategy

- The Authority reserves the right to terminate the contract if changes to funding rules make it unaffordable.
- Apprentices who have not completed their CMDA programme by the end date of the contract should be provided with a transcript of their progress to enable accreditation of prior learning with another training provider if necessary.

COMMAND, LEADERSHIP AND MANAGEMENT (CLM) COURSES ACCREDITATION

Rank	Course	Qualification	Awarding body
Senior Non-Commissioned Officer	SNCO CLM Part 3	Level 5 (Affiliateship - AfCGI) Professional Recognition Award in Leadership and Management	City & Guilds (C&G)
		Level 3 Diploma First Line Management	Chartered Management Institute (CMI)
		Level 4 Diploma Management and Leadership	CMI
		Level 5 Certificate Leadership and Management	Institute of Leadership and Management (ILM)
Warrant Officer	WO CLM Part 3	Level 6 (Graduateship – GCGI) Professional Recognition Award in Leadership and Management	C&G
		Level 5 Diploma First Line Management	CMI
		Level 6 Diploma Management and Leadership	CMI
		Level 7 Award Leadership and Management	ILM

CMDA KEY USER REQUIREMENTS

KUR No	Title	Description	Threshold MOE	Objective MOE	Justification	Validation
						Analysis Demonstration Test
1	CMDA programme	Provision of a fully-funded CMDA programme for NCO/WO/civilian personnel within the Army cohort	75 new starts per year. Leadership and management-related honours degree and professional accreditation. Min 2 cohorts per year	100 new starts per year. 3 cohorts per year. 36 month minimum programme length. Sufficient staff to apprentice ratio to enable support required.	Provides a comparable offer to the AHEP pathway for CS1 officers. Programme length allows time for reflection and workplace application. Cohort numbers allow flexibility for learners to suspend and re-join another cohort without a long break in study.	Required number of places/cohorts/staff provided, management of information system in place to manage invoicing, tracking of levy spending and apprentice progress, programme at least 36 months long.
2	Accreditation	Recognition of Prior Learning (RPL) for CLM/ALDP	RPL for SNCO ALDP/CLM (minimum 4 units at L4)	Additional RPL for WO ALDP/CLM for eligible learners.	The current CMDA trial includes RPL for 4 units at L4 from SNCO CLM which reduces the workload for the apprentices and reduces completion timelines.	Confirmation from the training provider of minimum levels of RPL for all learners.
3	Blended learning solution	Mix of face to face and distance delivery	Face to face delivery – max 20 days per year, no more than 5 days in a row.	Delivery should be during the working day/week (Mon-Fri 0900-1700)	This contributes to the 20% off the job training time required as part of the apprenticeship.	Confirmation from the training provider of learning schedule.
4	Diverse perspectives	Delivery to include exposure to non-military perspectives	Engagement with a wide variety of apprentices, SMEs, learning provider staff		During the CMDA trial apprentices highlighted the benefits of non-military perspectives to challenge their thinking.	Confirmation from the training provider of how diversity of perspectives will be achieved. Include in InVal feedback from apprentices.

5	Military cohort community	Delivery which is not in military-only cohorts must develop military communities for mutual support.	Military communities to enable sharing of best practice, challenges and provide feedback to DO. Min 3 sessions per year.		Withdrawal rates from the mixed cohort CMDA trial are much greater, with reduced mutual support and feeling of community affecting this cohort.	For non-military cohorts, confirmation from the learning provider of military community sessions to facilitate a support network.
---	---------------------------	--	--	--	---	---



MINISTRY OF DEFENCE

Contract Number:

701538378

**THE PROVISION OF A CHARTERED MANAGER DEGREE APPRENTICESHIP FOR THE
ARMY**

SCHEDULE 2

Pricing

Schedule 2**1. SCHEDULE OF REQUIREMENTS****Pricing****SCHEDULE OF REQUIREMENT**

Name and Address of Tenderer: Staffordshire University, College Road, Stoke on Trent, ST4 2DE	MINISTRY OF DEFENCE	Contract Number: 701538378
	THE PROVISION OF A CHARTERED MANAGER DEGREE APPRENTICESHIP FOR THE ARMY	
Issued With: Contract Documentation	On 18/08/2021	Previous Contract No: Not Applicable

Item Number	Description	Notes to Supplier	Price £ (ex-VAT)
1	Chartered Manager (Degree) – L6	Price per student	Redacted - Pricing Information



MINISTRY OF DEFENCE

Contract Number:

701538378

**THE PROVISION OF A CHARTERED MANAGER DEGREE APPRENTICESHIP FOR THE
ARMY**

SCHEDULE 3

Terms and Conditions

Contents

GENERAL CONDITIONS	18
1. DEFENCE CONTRACT CONDITIONS (DEFCONs)	18
SPECIAL CONDITIONS	20
2. NOTES & FURTHER DEFINITIONS	20
3. NOTICES	25
4. ENTIRE AGREEMENT	26
5. ESFA COMPLIANCE	26
6. DURATION	26
7. SUB CONTRACTING	27
8. LEGAL AND STATUTORY RESPONSIBILITIES	27
9. CHANGES IN LAW	27
10. RELATIONSHIPS BETWEEN THE PARTIES	27
11. OTHER CONTRACTS WITH THE CROWN	28
12. AMENDMENTS	28
13. AUTHORITY RESPONSIBILITIES	29
14. SERVICE PROVIDER RESPONSIBILITIES	29
15. SERVICE PROVIDER RECORDS	29
16. PRECEDENCE	30
17. PRICE	32
18. PAYMENT & CP&F - THE AUTHORITY'S ELECTRONIC PAYMENT SYSTEM:	
CONTRACTING, PURCHASING & FINANCE	32
19. STUDENT DEMAND	33
20. TRAVEL & SUBSISTENCE	34
21. SERVICE PROVIDER'S PERSONNEL	34
22. SAFEGUARDING LEARNERS	35
23. EQUALITY AND DIVERSITY	35
24. QUALITY ASSURANCE	36
25. PROVIDER FINANCE ASSURANCE	36
26. ACCOUNTING PRINCIPLES	36
27. MONITORING AND COMPLIANCE	36
28. PERFORMANCE	37
29. REPORTS & MEETINGS	39
30. SECURITY	39
31. CYBER SECURITY	41
32. DATA PROTECTION	42
33. PROTECTION OF PERSONAL DATA (Where Personal Data is being processed On behalf of the Authority)	42
35. CONFIDENTIALITY OF INFORMATION	48
35. CONTROLLED INFORMATION	50
37. LIMITATIONS ON LIABILITY	52
37. INSURANCE	56
37. PUBLIC RELATIONS AND PUBLICITY	56
39. ARMY BRANDING	57
39. CONFIDENTIALITY	57
41.. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)	58
41. DEFAULT/STEP IN RIGHTS	58
43.. DEFAULT & RECTIFICATION	58
43. TERMINATION	61
45.. DISPUTE RESOLUTION PROCEDURE	62
45. CO-OPERATION ON EXIT: ESFA AUDIT	63
47.. TRANSITION	63
47. EXIT MANAGEMENT	63
Appendix - Addresses and Other Information	65

TERMS & CONDITIONS OF CONTRACT

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 129J (Edn18/11/16)	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 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 643. (Edn 06/14)	Progress Meetings
DEFCON 643 (Edn 12/14)	Price Fixing (Non-qualifying Contracts)
DEFCON 656B (Edn 08/16)	Termination for Convenience - £5M and Over
DEFCON 658 (Edn 10/17)	Cyber
DEFCON 670 (Edn 02/17)	Tax Compliance ²
DEFCON 674 (Edn 03/21)	Advertising Subcontracts (Public Contract Regulations 2015 Only)
DEFCON 678 (Edn 09/19)	SME Spend Data Collection

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 Schedule 3 (Ts&Cs).

² DEFCONs applicable to Contracts with estimated value exceeding £5M.

SPECIAL CONDITIONS

2. NOTES & FURTHER DEFINITIONS

2.1 For the purposes of Condition 1 and in addition to the provisions of DEFCON 501 (refer to Condition 1):

2.1.1 where appropriate to the work to be performed under the Contract, in the Standard Conditions and the DEFCONs, references to “Article” and “Articles” shall be read as meaning “Service” and “Services” and all other terms shall generally be interpreted in the context of the delivery of such a Service or Services as opposed to the delivery of goods of the Contractor’s manufacture;

2.1.2 in the DEFCONs, any references to the “Project Manager”, “Project Desk Officer”, “Quality Assurance Manager” and the like shall be interpreted as being a reference to the Authority’s “Designated Officer” as defined at sub-clause 2.1.22 of this Condition and identified in Box 2 of the DEFFORM 111 to Schedule 3 (Ts&Cs);

2.1.3 in the DEFCONs, any references to “Contractor” shall be interpreted as being reference to the “Service Provider”;

2.1.4 ‘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 Service Provider, to undertake the End Point Assessments;

2.1.6 ‘Apprenticeship Standards’ are endorsed by the Institute for Apprenticeships (an executive non-departmental public body, sponsored by the Department for Education) and comprise of initial assessment, on-programme training and learning (including Functional Skills), Gateway assessment and End-Point Assessment. Standards are tailored to each individual profession, designed by employers and include an Assessment Plan and assessments and grading of behaviours;

2.1.7 ‘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);

2.1.8 '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. A list of extant SOPs is attached at Schedule 3 (Ts&Cs), Annex A. All SOPs can be obtained by request from the Army's Personnel Policy.

2.1.9 'The Authority'. In addition to the definition set out in DEFCON 501, the Authority is an employer of apprenticeships and an ESFA contractor;

2.1.10 the 'Authority's Representative', means the Designated Officer as defined at sub-clause 2.1.22 or such other nominated individual who may be appointed by the Authority in accordance with the provisions of the Contract;

2.1.11 Awarding Body or 'Awarding Organisation' means the body nominated by the Service Provider, and approved by the Authority, to undertake external verification of the qualifications attained by the Learners and to provide external test papers and certification where necessary;

2.1.12 the 'Authority's Commercial Desk Officer' means the individual/post identified in Box 1 of the DEFFORM 111 Appendix to Schedule 3 (Ts&Cs);

2.1.13 The 'Bill Paying Authority' means the Bill paying Authority whose name and address is given in Box 11 of the DEFFORM 111 to the Contract;

2.1.14 'Conditions' means the Terms and Conditions (Ts&Cs) set out in this schedule;

2.1.15 'Confidential Information' means all information (including data in electronic form, computer programs, designs, plans, drawings, analyses, studies and other documents or material) designated as such by either Party in writing together with all such other information of a technical, commercial or financial nature received from a Party to this Contract, its agents, servants, employees, representatives or advisors (including, without limitation, any and all documents and information supplied in the course of proceedings under Schedule 4 - Dispute Resolution Procedure);

2.1.16 'Consents' means permission and agreement to conduct an activity or make changes to procedure.

2.1.17 'Contract Award Date' means the day on which Contract Award is confirmed, which shall be 10 days after the standstill period commences following notification of award decision, or 14 days after the completion of any legal challenge;

2.1.18 'Contract Implementation Date' means the day upon which the Service Provider assumes responsibility for the provision of all of the Services required in Schedule 1 - Statement of Requirement (SOR);

2.1.19 'Contract Price' for the purposes of the definition set out in DEFCON 501 means the amount set out in Schedule 2 – Pricing;

2.1.20 'Day(s)' means 'working day(s)' unless specifically expressed as calendar day(s);

2.1.21 'Delivery Subcontractor' means any organisation contracted through the Service Provider to deliver the apprenticeship, English or maths or planned on-programme assessment;

2.1.22 "Designated Officer" is the principal Representative of the Authority appointed to monitor the Service Provider'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 Service Provider, delegate certain functions to other Representatives of the Authority. The address of the Designated Officer is contained in Box 2 of the DEFFORM 111 to the Contract;

2.1.23 '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>

2.1.24 '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;

2.1.25 'Employer' means an organisation that has a contract of service and an apprenticeship agreement with an apprentice. The Authority is an employer;

2.1.26 'End-Point Assessment' (EPA) is a holistic and independent assessment of the knowledge, skills and behaviours of the Learner which have been learnt throughout an Apprenticeship Standard;

2.1.27 'Functional Skills' means the applied practical skills in English, maths and, if required, ICT;

2.1.28 'Gateway Assessment' or 'Gateway Requirements' means the requirements set out in the Assessment Plan that must be met by the apprentice prior to undertaking EPA of the Apprenticeship Standard;

2.1.29 'Good Industry Practice' means the exercise of such degree of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced person, seeking to comply with its contractual obligations and seeking to avoid liability arising under any duty of care that might reasonably apply to, or to be expected, from that person complying with all applicable laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions as the Service Provider;

2.1.30 'Individualised Learner Record (ILR)' means the primary data collection requested from learner providers for further education and work-based learning in England. Data is used by ESFA/Government to monitor policy implementation and the performance of the sector;

2.1.31 'Learners' shall mean all individuals registered on the ESFA funded, Army funded or apprentice levy funded programmes supported by this Contract;

2.1.32 'L&D' means the Authority's Learning & Development Branch which is responsible for the management and oversight of the Army Apprenticeship programme;

2.1.33 'Main Provider' means any organisation holding a contract with the ESFA through which the ESFA directly route funds from an employer's apprenticeship service account or government-employer co-investment.

2.1.34 'Management Information' means any information acquired or generated by the Service Provider for the purpose of managing the Contract which may be provided to the Authority and/or the ESFA during the term of the Contract;

2.1.35 'Ofsted' means the Office for Standards in Education, Children's Services and Skills;

2.1.36 'OfS' means the Office for Students;

2.1.37 'Parties' means the Service Provider and the Authority, and Party shall be construed accordingly;

2.1.38 'Personal Data' means personal information and data relating to a specific individual who can be identified by such information and data;

2.1.39 'Planned End Date' means date entered onto the individualised learner record (ILR) when the learner is expected to complete their learning;

2.1.41. 'Re-competition' means where the Authority re-competes its requirement for either the whole or part of the Services or their replacement or equivalent;

2.1.41 'Register of Apprenticeship Training Providers' (RoATP) means the Register held by the ESFA of Training Providers who have passed tests on due diligence, financial health and tests of quality, capacity and capability. Service Providers must be registered on the RoATP throughout the duration of the Contract;

2.1.43. 'Register of Apprentice Assessments Organisations' means the Register held by the ESFA of organisations that the Service Provider can contract with for the delivery of End-Point Assessments;

2.1.43 'Replacement Contract' means any contract entered into by the Authority with a Successor Service Provider for the provision of some or all of the Services;

2.1.45. 'Service Provider' means the organisation who, under this Contract, undertakes to provide the Contract deliverables detailed in Schedule 1 (SOR). The Service Provider is a Main Provider of the ESFA.

2.1.45 'Service Provider's Representative' means a person or persons employed by the Service Provider in connection with the provisions of the deliverables and in connection with this Contract;

2.1.47. 'Services' means the services which are to be provided by the Service Provider throughout the Contract term in accordance with the terms of this Contract and Schedule 1 (SOR);

2.1.47 'Start of Learning' means the date on which learning begins and not the date of enrolment, induction, diagnostic assessment or prior assessment to be part of learning;

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

2.1.49 'Sub-Contractor' means a legal entity that has a contractual relationship with the Authority to deliver apprenticeship training – also known as the Service Provider (see clause 2.1.45.);

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

3. NOTICES

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

3.1.1 Authority Commercial Desk Officer Address:

Army Commercial Branch
IDL 437, Zone 8, 2nd Floor, Ramillies Building,
Army HQ, Marlborough Lines, Monxton Road, ANDOVER,
Hampshire SP11 8HJ

3.1.2 Service Provider Address:

Staffordshire University,
College Road,
Stoke on Trent,
ST4 2DE

4. ENTIRE AGREEMENT

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

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

5. ESFA COMPLIANCE

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

6. DURATION

6.1 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 of new starts, and 7 years of on-programme support. Subject to the termination provisions of the Contract, the Contract duration shall be from 1st September 2021 to 31st August 2028 inclusive.

7. SUB CONTRACTING

7.1 The Service Provider may sub-contract any part of the apprenticeship training delivery, or on-programme assessment, with the express prior agreement of the Authority's Commercial Desk Officer.

8. LEGAL AND STATUTORY RESPONSIBILITIES

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

9. CHANGES IN LAW

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

9.2 The Service Provider 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).

9.3 Without prejudice to the rest of this Condition, the Service Provider shall use all reasonable endeavours to minimise any disruption caused by any Specific Change in Law.

10. RELATIONSHIPS BETWEEN THE PARTIES

10.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Service Provider.

10.2 The Service Provider will be treated as an independent Service Provider and will be responsible for all taxation, National Insurance contributions and similar liabilities arising in relation to the fees payable for the work.

10.3 The Service Provider shall not place or cause to be placed any orders with suppliers or incur liabilities in the name of the Authority or any representative of the Authority.

10.4 The Authority shall not have any additional liability or responsibility for payments to any of the Service Provider's creditors, employees, partners, sponsored tutors, in respect of any materials purchased, premises costs incurred, or services provided by the Service Provider in the delivery of the requirement in Schedule 1 – SOR.

11. OTHER CONTRACTS WITH THE CROWN

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

11.1.1 Give the Service Provider any right under this Contract to an extension of time or otherwise or additional payment or damages or any other relief or remedy whatsoever against the Authority, or

11.1.2 Affect, modify, reduce or extinguish either the obligations of the Service Provider or the rights or remedies of the Authority under this Contract;

11.1.3 Be taken to amend, add to, delete or waive any term or Condition of this Contract.

12. AMENDMENTS

12.1 Amendments to any part of this Contract may only be amended or varied through the written approval of the Authority's Commercial Desk Officer detailed at Box1 of DEFFORM 111 – Appendix to this Schedule 3.

12.2 The Service Provider 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 12.1 above has been issued.

13. AUTHORITY RESPONSIBILITIES

13.1. The Authority shall be responsible for:

13.1.1 where required, Security Clearance at or above Security Check (SC) level.

14. SERVICE PROVIDER RESPONSIBILITIES

14.1 The Service Provider shall also be responsible for:

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

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

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

14.1.5 The Service Provider shall contact the Designated Officer at the earliest opportunity to organise residential training periods.

15. SERVICE PROVIDER RECORDS

15.1 The Service Provider shall maintain all records in connection with the Contract (expressly or otherwise), and without prejudice to Condition 36 (Confidentiality of Information), make them available to be examined or copied, by or on behalf of the Authority, as the Authority may require. It is an ESFA requirement that these records shall be retained for a period of at least seven (7) years from:

15.1.1 the end of the Contract term or;

15.1.2 termination of the Contract; or

15.1.3 the final payment,

whichever occurs latest.

15.2 The Service Provider shall maintain such records in respect of the matter comprised in the Contract as the Authority may reasonably require (including any specified elsewhere in the Contract) and shall upon request produce such records for inspection by the Authority (including all statistical information gathered for the purposes of performance requirements and quality assurance monitoring); such records will be the property of the Authority and will not be released, published or disposed of without the approval of the Authority (Designated Officer);

15.3 The Service Provider shall give the Authority ready access to all work in progress and completed work. Inspections by the Authority may be made on a “no notice” basis.

16. PRECEDENCE

16.1 In performing its obligations under this Contract, the Service Provider shall:

16.1.1 Provide the Services and carry out all other obligations under this Contract, in accordance with the terms of this Contract, all relevant Legislation, ESFA Rules, L&D Standard Operating Procedures (SOPs), Service Provider Responsibilities in Clause 14 and Good Industry Practice;

16.1.2 In consultation with the Authority, and where appropriate, develop such policies and procedures, which are likely to improve/enhance the provision of the Service and shall comply with such policies and procedures once they have been agreed with the Authority; and

16.1.3 Obtain and maintain all necessary Consents.

16.2 In the event of any inconsistency or conflict between the obligations of the Service Provider referred to in Clause 3.1.1 the following order of precedence shall apply:

16.2.1 Statutory Legislation;

16.2.2 Education and Skills Funding Agency (ESFA) Rules;

16.2.3 Schedule 3 (Ts&Cs); Terms and Conditions of this Contract in Schedule 3;

16.2.4 Schedule 1 - Statement of Requirements (SOR);

16.2.5 Schedule 2 – Pricing;

16.2.6 Schedule 6 – Technical Tender Submission at contract award;

16.2.7 Standard Operating Procedures (SOPs) subject to regular review/update;

16.2.8 All other Schedules;

16.2.9 Other ancillary documents referred to in this Contract;

16.2.10 Good Industry Practice.

16.3 In the event of any conflict between the General Conditions of the Contract and the Special Conditions of the Contract then the Special Conditions of the Contract shall prevail.

16.4 Each Party is to notify the other in writing forthwith upon the Authority's Representative or the Service Provider's Representative becoming aware of any discrepancy, inconsistency or divergence between the documents referred to in Clause 3.2. 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.

17. PRICE

17.1 The prices for delivery of the apprenticeship programme shall be FIRM (i.e. non-variable) as specified in Schedule 2 (Pricing) and relate to Schedule 1 the Statement of Requirements.

17.2 Prices in Schedule 2 shall cover;

17.2.1 an apprentice with no prior learning necessary to achieve the CMDA;

17.2.2 an apprentice with varying degrees of prior learning.

If apprentices have prior learning, the content and price shall be reduced by negotiation with the Authority in line with ESFA funding rules.

17.3 The overall cost for delivery of an Apprenticeship to the Authority shall not exceed the maximum-capped price for the relevant DfE Funding Band for each Apprenticeship.

18. PAYMENT & CP&F - THE AUTHORITY'S ELECTRONIC PAYMENT SYSTEM: CONTRACTING, PURCHASING & FINANCE

18.1 Payment for Service Provider Deliverables under the Contract shall be made via the Contracting, Purchasing & Finance (CP&F) electronic purchasing tool in accordance with DEFCON 522.

18.2 The Authority shall pay all valid and undisputed claims for payment submitted by the Service Provider to DBS Finance in accordance with DEFCON 522.

18.3 The Service Provider shall prepare full supporting documentation (including copies of receipts) relating to delivery of Stand Alone Functional Skills training in support of each claim in order that sums invoiced can be linked directly to the Statement of Requirements and the price agreed at the start of each Academic Year as described at Schedule 3 (Ts&Cs), Annex B, Payment. Approval for payment of the Service Provider's invoice shall not be given until the Authority (Designated Officer) has formally certified that the work to which the invoices refers has been undertaken and has been completed to a satisfactory standard. All records will be made available to L&D in advance of the claim for payment

being submitted.

18.4 No claim by the Service Provider for additional payment will be allowed on the grounds of any misunderstanding or misinterpretation of the SOR or any instruction given. The Service Provider shall not be released from any risks or obligations imposed on or undertaken by him under the Contract on any such grounds or on the grounds that he did not, or could not, foresee any matter which might affect or have affected proper execution of the Contract.

18.5 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time by the Service Provider to the Authority against any amount payable by the Authority to the Service Provider under the Contract, or under any other contract with the Authority, or with any other Government Department.

18.6 The total price for each Apprenticeship Standard does not include:

18.6.1 Value Added Tax (VAT).

18.6.2 The cost of delivering English or maths up to Level 2 - see para 18.7.

18.7 As per existing practice, payment for English and maths up to Level 2 will be at a set rate of 90% of funding earned for eligible qualifications. Eligible qualifications are listed on the ESFA Hub and referred to in the ESFA Funding Rules.

18.8 Monthly instalments. The Contractor's earnings will be based on monthly instalments. There is a completion element for the apprenticeship of 20% of the agreed price. The monthly instalments are calculated from the remaining 80% and spread evenly over the planned duration of the apprenticeship, based on whether the apprentice is in learning on the last calendar day of every month. If an apprentice leaves early, for example they withdraw from the programme, the monthly instalments stop. There will not be a monthly instalment for the final month if the apprentice withdraws before the last day of the month in which the learning stops.

19. STUDENT DEMAND

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

19.2 The Service Provider shall be expected to show flexibility in order to meet the demands of a continually-changing student population and student availability. Student numbers cannot be guaranteed.

20. TRAVEL & SUBSISTENCE

20.1 When Service Provider personnel are required to travel, either within UK (including Wales & NI) or overseas, for the purposes of delivery of apprenticeship training or assessments under the requirements of the Contract, all hotel accommodation, transport and supporting travel arrangements, including purchase of visas, vaccinations/ preventative medical treatment and health insurance will be the responsibility of the Service Provider.

21. SERVICE PROVIDER'S PERSONNEL

21.1 Where specific personnel have been proposed by the Service Provider for the performance of the Contract, the Service Provider shall take all reasonable steps to avoid changes to such personnel and any changes which are unavoidable shall be brought to the immediate attention of the Authority which reserves the right, acting reasonably, to reject such alternative personnel as the Service Provider may then propose. The agreement by the Authority, whether notified or otherwise, to any personnel shall not prejudice the requirement upon the Service Provider to perform the Contract.

21.2 If in the opinion of the Authority, acting reasonably, any of the Service Provider's employees associated with the performance of the Contract shall misconduct themselves or be incapable of efficiently performing their duties or it shall not be in the public or National interest for any such person to be employed or engaged by the Service Provider in the performance of the Contract then the Service Provider shall remove such person without delay on being required to do so by the Authority (Designated Officer) and, subject to Clause

20.1 of this Condition, shall cause the work to be performed by such other person or persons as may be necessary in default.

21.3 The Service Provider shall notify the Authority immediately of any circumstances where the Service Provider becomes aware of an actual or potential conflict of interest which would affect either the Service Provider or any of its personnel engaged in the performance of work under this Contract. In the event of any actual or potential conflict, the Authority shall deal with it in accordance with the provisions of Clause 21.2 of this condition.

22. SAFEGUARDING LEARNERS

22.1 The Service Provider shall comply fully with SOP 11 and shall co-operate with, and provide information to, the L&D Army Apprenticeships Team as requested; to give assurance that adequate arrangements exist for Learner Health & Safety to enable the Authority and the ESFA to review Learner incidents, and to assist the ESFA with regard to its policy on Learner Health & Safety.

22.2 The Service Provider shall comply fully with the Safeguarding and Prevent Directive and all Authority and other statutory requirements for safeguarding Learners including child protection and protection of vulnerable adults.

23. EQUALITY AND DIVERSITY

23.1 The MOD and its agencies are committed to and operate a policy of equality and diversity for its entire staff and recruits.

23.2 The Authority, in line with the Common Inspection Framework (CIF), aims to promote equality and diversity, tackle discrimination and narrow the achievement gap. The Service Provider shall cooperate with the Authority and reinforce the achievement of these aims.

23.3 The Service Provider shall maintain and operate equality and diversity policy and procedures and will be expected to collect and analyse data to conform to any Equality and Diversity Impact Measures (EDIM's) agreed between the ESFA, L&D Army Apprenticeships Team and the Apprenticeship Management Board (AMB).

24. QUALITY ASSURANCE

24.1 The Service Provider shall undertake the services in accordance with the quality requirement set out in SOP 12 (Quality Improvement Framework) as detailed in the Schedule 1 - SOR, and in addition to the current and any future ESFA guidelines, prevalent Awarding Body standards and any applicable extant and future SOPs.

25. PROVIDER FINANCE ASSURANCE

25.1 The Service Provider shall provide the L&D Army Apprenticeships Team with appropriate Learner records to satisfy the Provider Finance Assurance Team (PFAT), which has a statutory responsibility for the provision of audit services to the ESFA.

25.2 The Service Provider shall provide the necessary records to the L&D Army Apprenticeships Team no later than seven calendar days following receipt of a formal request.

25.3 The Service Provider shall be subject to regular Provider Finance Assurance (PFA) audits and shall adhere to SOP 5 (PFA).

26. ACCOUNTING PRINCIPLES

26.1 The Service Provider shall at all times maintain a full record of particulars of the costs of conducting its business including all books of account kept in accordance with generally accepted UK accounting principles, showing in detail:

26.1.1 administrative overheads;

26.1.2 capital and revenue expenditure;

26.1.3 such other cost items as the Authority may reasonably require from time to time in order to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purposes of this Contract.

27. MONITORING AND COMPLIANCE

27.1 For the purposes of ensuring compliance with this Contract the Army Apprenticeship Management Board and Maxi-Boards (see SOP 12) shall be entitled to monitor the apprenticeship programme. 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.

27.2 The Designated Officer may inspect, or arrange for the inspection of, the delivery of the apprenticeship programme or any part thereof at any reasonable time during the period of the Contract. This shall include, but not be limited to, access to all learner administration files, records of completion of apprenticeship competences and units and Learner portfolios (whether paper or electronic). When the Authority wishes to exercise its rights of inspection under this Condition, the Contractor shall give to the Designated Officer and any other person nominated by the L&D Army Apprenticeships Team full and free access to the apprenticeship programme.

28. PERFORMANCE

28.1 The Service Provider shall provide and maintain an organisation of a standard commensurate with the performance of all of his obligations under the Contract (as defined in Schedules 1-7 inclusive) and have facilities (unless provided by the Authority under the Terms of the Contract) and employees of appropriate qualifications and experience to undertake the said obligations with all due care, skill and diligence.

28.2 Only persons with appropriate qualifications and competence for the tasks on which they are engaged shall be employed by the Service Provider under this Contract. The Service Provider shall ensure that persons employed on this Contract meet the Awarding Body and ESFA requirements.

28.3 Should the ESFA remove the Service Provider from the RoATP for any reason, this will be considered a Fundamental Breach of Contract, and the Authority reserves the right to immediately terminate the Contract under such circumstances. In this event, the Service Provider shall comply with its obligations in relation to the Exit Plan and Transition Activity Checklist.

28.4 If the Authority considers that any service provided by the Service Provider has not been delivered in accordance with the Contract, they shall (without prejudice to any other

remedy available) require the Service Provider to undertake rectification action by performing the service again to the Authority's satisfaction, at no additional cost to the Authority.

28.5 Recovery Plan - If at the end of the next Contract-month the rectification action undertaken by the Service Provider does not remedy the problem, the Service Provider must produce and submit to the Designated Officer a detailed Recovery Plan that will. The Plan shall detail the Service Provider's proposals (including timescales which must be agreed with the Authority) to resolve the poor performance and restore performance in accordance with Schedule 1, SOR and to the standards required in Performance Indicators in SOP No: 12. Notwithstanding the Authority's other contractual rights, the Authority may request the Service Provider to propose further amendments to their proposed Recovery Plan so that it becomes acceptable to the Authority. For the avoidance of doubt, comment and discussion by the Authority on the remedial plan does not, and shall not, be interpreted as express or implied acceptance of the contents of the Recovery Plan. The responsibility remains that of the Service Provider.

28.6 Implementation and progress on the actions introduced by the Service Provider as a result of the Recovery Plan shall be reviewed at the next Monthly Review Meeting (Mini Management board) in accordance with the requirements of Schedule 1 - SOR.

28.7 Emergency Recovery Plan - If the achieved performance remains below the required standard at the end of the agreed timescale allowed for implementation of the Recovery Plan, the Service Provider shall submit an Emergency Recovery Plan for comment to the Designated Officer or his nominated representative. For the avoidance of doubt, comment by the Authority on the acceptability or otherwise of the Emergency Recovery Plan does not imply acceptance by the Authority of the suitability or otherwise of the Emergency Recovery Plan. The Service Provider shall remain responsible for the adequacy, or otherwise, of the Emergency Recovery Plan.

28.8 Subject to the Authority's contractual remedies as detailed within the Contract, the Service Provider shall implement the Emergency Recovery Plan presented to the Designated Officer or his authorised representative in accordance within the timescales detailed within the Emergency Recovery Plan.

28.9 If the achieved performance level remains below the required standard at the monthly review meeting following the end of the agreed timescale for the implementation of the Emergency Recovery Plan, then the Authority shall treat this as a contractual default and may apply the remedies detailed in the Default/Step in Rights clause for contractual breaches caused by the Service Provider.

29. REPORTS & MEETINGS

29.1 The Service Provider shall, as required by the Designated Officer, provide the reports detailed in Schedule 1 - SOR and SOP 12 and/or undertake oral presentation of the services provided under the Contract.

29.2 In addition, the Designated Officer and the Service Provider 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.

30. SECURITY

30.1 The Service Provider 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.

30.2 The Service Provider shall comply with any reasonable security measures requested by the Authority and shall comply with extant security procedures prevalent in the establishments.

30.3 The Service Provider shall provide the Authority (Designated Officer) with:

30.3.1 Personal details of any of the Service Provider 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;

30.3.2 No employee of the Service Provider 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.

30.4 The Service Provider shall additionally be responsible for:

30.4.1 Ensuring that no classified material held by the Service Provider 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).

30.5 The Service Provider shall ensure that the highest standards of privacy and confidentiality are maintained by their employees in relation to documents which bear privacy markings, whether classified or not, with which they are entrusted. The same standards of privacy and confidentiality shall be applied to information acquired orally. Unauthorised divulgence of Protected Material or information (including, for example, Reportable OFFICIAL and OFFICIAL- SENSITIVE) can damage the reputation of an individual, of the Service Provider, of the Authority or of the Establishment. The Service Provider shall be aware that the Authority attaches great importance to the protection of such information.

30.6 The Service Provider's employees 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.

30.7 The Authority shall be responsible for:

30.7.1 Issue of vehicle passes to those of the Service Provider's employees who have been authorised to bring vehicles into the grounds of the Establishment;

30.7.2 Notification and briefing of security alert states as necessary;

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

30.7 The Service Provider'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 Service Provider and/or his 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.

30.8 The Service Provider shall accept (without prejudice to any other remedies which the Authority may have) full responsibility for any loss or delay in performance of the Contract caused directly or indirectly by the expulsion of or refusal to allow entry to a Service Provider employee and the like who does not consent to being searched.

30.9 In addition to the requirements of other Conditions of the Contract, security requirements or other local procedures as laid down in Establishment Standing Orders/Instructions shall be stringently enforced by the Service Provider.

31. CYBER SECURITY

31.1 Further to DEFCON 658, the Cyber Risk Level of the Contract is assessed as LOW, as defined in Def Stan 05-139.

31.2 The Service Provider shall reassess the cyber security controls that they have in place every year, on the anniversary of the date of commencement of the Contract and shall inform the Authority's Designated Officer if the status of their cyber security rating changes. Where necessary, the Service Provider shall devise and implement a Cyber Implementation Plan (CIP) to address any shortcomings in their cyber security controls.

31.3 Where an agreed Cyber Implementation Plan (CIP) is required, or becomes required in the course of the Contract, the Service Provider shall provide the details of their CIP to the Authority (L&D Army) who shall arrange for the CIP to be inserted into the Contract Documentation as a Schedule to the Contract; and the Service Provider shall then meet the

agreed timescales set out within the CIP for implementation of the necessary security controls.

32. DATA PROTECTION

32.1 The Service Provider shall ensure that any Personal Data is protected in accordance with DEFCONs 531 and Clause 33. Schedule 3 (Ts&Cs), Annex D (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 can be made available on request to the Authority's Commercial Officer contained in Box 2 of the DEFFORM 111 to the Contract).

32.2 The Service Provider shall ensure that any e-mail transmissions containing Personal Data are protected using *WinZip 10* (or later versions) which shall be protected by a password of at least 10 characters (alpha-numeric containing a mix of letters, numbers, upper case and symbols). The password shall be communicated to the address separately from the e-mail containing the WinZip'd material. No single transmission shall contain the Personal Data for more than 1000 individuals without permission of the Authority. (This is an evolving MOD data protection policy and latest changes to this policy will be notified to Service Providers where appropriate).

32.3 The Service Provider shall report at the earliest opportunity all security breaches and actual or suspected losses of data to the L&D Security Officer. Such losses shall be subject to formal investigation by the relevant MOD organisation, Ministry of Defence Police (MDP), Royal Military Police (RMP) or Military Intelligence (MI) section, depending on the location and the circumstances.

33. PROTECTION OF PERSONAL DATA (Where Personal Data is being processed On behalf of the Authority)

Definitions

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

33.1.1 'Contractor Personnel' means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under the Contract;

33.1.2 'Data Loss Event' means any event that results in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach;

33.1.3 "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 2003/243.6) 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;

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

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

33.1.6 'DPA 2018' means the Data Protection Act 2018;

33.1.7 'UK GDPR' means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 ;

33.1.8 'Law' means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory

guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

33.1.9 'Protective Measures' means appropriate technical and organisational measures which may include (as appropriate):

- (i) pseudonymising and encrypting Personal Data;
- (ii) ensuring confidentiality, integrity, availability and resilience of systems and services;
- (iii) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
- (iv) regularly assessing and evaluating the effectiveness of such measures adopted by it, including those set out in DEFFORM 532;

33.1.10 'Sub-processor' means any third Party appointed to process Personal Data on behalf of the Contractor related to the Contract;

33.1.11 The following expressions shall have the same meanings as in Article 4 of the UK GDPR:

- (i) Controller;
- (ii) Processor;
- (iii) Data Subject;
- (iv) Personal Data;
- (v) Personal Data Breach; and
- (vi) Data Protection Officer.

Data Protection

33.2 In connection with the Personal Data received under the Contract, each Party undertakes to comply with its obligations under Data Protection Legislation and in particular, but without limitation, each Party shall take appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data provided to it by the other Party, and against accidental loss, alteration, unauthorised disclosure or destruction of or damage to that Personal Data.

33.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in DEFFORM 532 by the Authority and may not be

determined by the Contractor. The completed DEFFORM 532 shall form part of the Specification for the Contract.

33.4 The Contractor shall notify the Authority without undue delay if it considers that any of the Authority's instructions infringe the Data Protection Legislation. The Authority agrees that the Contractor shall not be required to provide legal advice to the Authority and that no notification (or absence of notification) by the Contractor will be construed as legal advice or a representation by the Contractor.

33.5 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing that is likely to result in a high risk to the rights and freedoms of Data Subjects. Such assistance may, at the discretion of the Authority, include:

33.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;

33.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the services provided under the Contract;

33.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

33.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

33.6 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under the Contract:

33.6.1 process that Personal Data only in accordance with DEFFORM 532, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;

33.6.2 ensure that it has in place Protective Measures, including those set out in DEFFORM 532, as appropriate to protect against a Data Loss Event, which the Authority may acting reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;

- (iii) state of technological development; and
- (iv) cost of implementing any measures;

33.6.3 ensure that:

- (i) subject to clause 33.6.1, the Contractor Personnel do not process Personal Data except in accordance with the Contract (and in particular DEFFORM 532);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data by ensuring that they undertake the Government's Baseline Personnel Security Standard or other standard as specified in the Contract and ensure that they:

33.6.4 are aware of and comply with the Contractor's duties under this clause;

33.6.5 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by the Contract; and

33.6.6 have undergone adequate training in the use, care, protection and handling of Personal Data; and

33.6.7 not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

- (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 47. or DPA 2018 Article 73) as determined by the Authority;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
- (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

33.6.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

33.7 Subject to clause 33.6, the Contractor shall notify the Authority without undue delay if, in connection with Personal Data processed under the Contract, it:

33.7.1 receives a Data Subject Request (or purported Data Subject Request);

33.7.2 receives a request to rectify, block or erase any Personal Data;

33.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

33.7.4 receives any communication from the Information Commissioner or any other regulatory authority;

33.7.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

or

33.7.6 becomes aware of a Data Loss Event.

33.8 The Contractor's obligation to notify under clause 33.7 shall include the provision of further information to the Authority in phases, as details become available.

33.9 Taking into account the nature of the processing, the Contractor shall provide the Authority with assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 33.7 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

33.9.1 the Authority with full details and copies of the complaint, communication or request;

33.9.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

33.9.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

33.9.4 assistance as requested by the Authority following any Data Loss Event;

33.9.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

33.10 The Contractor shall maintain complete and accurate records and information as necessary to fulfil its obligations under clause 33.9.

33.11 The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor as required to demonstrate the Authority's compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in the Contract.

33.12 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.

33.13 Before allowing any Sub-processor to process any Personal Data related to the Contract, the Contractor must:

33.13.1 notify the Authority in writing of the intended Sub-processor and processing;

33.13.2 obtain the written consent of the Authority;

33.13.3 enter into a written Contract with the Sub-processor which give effect to the terms set out in this Condition such that they apply to the Sub-processor;

and

33.13.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

33.14 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

33.15 The Contractor may, at any time on not less than 30 Working Days' notice, revise this Condition by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).

33.16 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

33.17 Any Contract amendments resulting from clause 33.15 and/or 33.16 shall be conducted in accordance with any change control procedure as set out in the Contract.

34. CONFIDENTIALITY OF INFORMATION

34.1 Any and all information together with any documentation, specification or computer software and the like which contain it, and which is provided by the Authority to the Service Provider 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.

34.2 The Service Provider agrees that they shall not:

34.2.1 Copy the information in any manner;

34.2.2 Remove the information from the Establishment in any material form;

34.2.3 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.

34.3 The restrictions and obligations set out at Clause 33.2 of this Condition shall not apply to any of the information which the Service Provider can show to the satisfaction of the Authority (Commercial Desk Officer):

34.3.1 was already known to the Service Provider prior to his examination of it at the Establishment and otherwise than by communication from the Authority;

34.3.2 Is rightfully received by the Service Provider from a third party without any obligations or confidence; or

34.3.3 Has been generated independently by the Service Provider prior to its being made available by the Authority pursuant to the Contract.

34.4 The restrictions and obligations at Clause 33.2 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 Service Provider comes into the public domain otherwise than through a breach of this Condition or any other contract.

34.5 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.

34.6 The Service Provider shall at all times hereafter indemnify, and keep indemnified, the Authority in respect of any claim against the Service Provider or the Authority arising out of the failure to discharge fully his responsibilities under this Condition.

34.7 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).

34.8 The provisions of this Condition shall survive indefinitely notwithstanding the termination of the Contract.

35. CONTROLLED INFORMATION

35.1 This Condition shall apply in addition to and notwithstanding DEFCON 531 (Disclosure of Information) or any other confidentiality condition of the Contract.

35.2 For the purposes of this Condition 'Controlled Information' shall mean any information in any written or tangible form which is disclosed to the Service Provider by or on behalf of the Authority under or in connection with the Contract, and which is identified by the legend 'Controlled Information' or other approved legend notified to the Service Provider. Controlled Information shall exclude information provided by oral communication.

35.3 The Service Provider shall:

35.3.1 hold the Controlled Information and not use it other than for the purpose of discharging its obligations under the Contract;

35.3.2 not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under the Contract;

35.3.3 not disclose the Controlled Information to any third party unless so authorised in writing beforehand by the Authority;

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

35.3.5 act diligently to ensure that:

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

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

35.3.8 Where Controlled Information is provided to the Service Provider, it shall:

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

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

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

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

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

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

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

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

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

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

36. LIMITATIONS ON LIABILITY

Unlimited liabilities

Neither Party limits its liability for:

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

fraud or fraudulent misrepresentation by it or its employees;

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

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

The financial caps on the Contractor's liability set out in Clause 36.4 below shall not apply to the following:

the Contractor's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and DEFCON 632 (Third Party IP - Rights and Restrictions);

the Contractor's indemnity in relation to TUPE at Schedule 5;

breach by the Contractor of Clause 33 joint controller provisions set out at Annex B and Data Protection Legislation; and

The financial caps on the Authority's liability set out in Clause 36.5 below shall not apply to the following:

the indemnity given by the Authority in relation to TUPE under Schedule 5 shall be unlimited; and

Financial limits

Subject to Clauses 36.10 and 36.2 and to the maximum extent permitted by Law:

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:

in respect of DEFCON 76 (£500,000.00) in aggregate;

in respect of DEFCON 514 (£5,300,000.00) in aggregate;

without limiting Clause 36.4.1 and subject always to Clauses 36.1, 36.2, and 36.4.3, 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 (£7,950,000.00) in aggregate.

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 36.4.1 and 36.4.2 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 36.4.1 and 36.4.2 of this Contract.

Subject to Clauses 36.1, 36.3, 36.3.3 and 36.6, 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.

Clause 36.5 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

Consequential loss

Subject to Clauses 36.1, 36.2 and 36.8, 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:

indirect loss or damage;

special loss or damage;
consequential loss or damage;
loss of profits (whether direct or indirect);
loss of turnover (whether direct or indirect);
loss of business opportunities (whether direct or indirect); or
damage to goodwill (whether direct or indirect),
even if that Party was aware of the possibility of such loss or damage to the other Party.

The provisions of Clause 36.7 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:

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

to any third party;

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

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

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

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);

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;

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

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;

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);

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

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

If any limitation or provision contained or expressly referred to in this Clause 35 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 36.

Third party claims or losses

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:

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

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

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.

37. INSURANCE

37.1 The Service Provider will be required to maintain adequate insurance and professional indemnity cover for all of their activities in the performance of the Contract and any liabilities arising there from.

37.2 The Authority reserves the right, acting reasonably, to require the Service Provider to provide evidence of the method used to affect such cover, at any time during the period of the Contract. Any such request shall not in any way constitute the Authority's approval or acceptance of either the chosen method or the extent of the cover afforded. The Service Provider will be required to ensure that their personnel travelling overseas have appropriate medical insurance.

37.3 Without prejudice to the requirements of DEFCON 76, the Service Provider shall take out and maintain insurance against their liabilities under the Contract; and when required to do so by the Authority, shall produce for inspection by the Authority documentary evidence that the insurance required by this Condition has been taken out and is being maintained. This obligation is without prejudice to, and does not limit, the obligations of the Service Provider 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 Service Provider holds is suitable for or sufficient to meet all their liabilities under the Contract.

38. PUBLIC RELATIONS AND PUBLICITY

38.1 Responsibility for communicating with representatives of the press, both popular and technical, radio, television, and other communication media on all matters concerning this Contract and the Sites as a whole is borne solely by the Authority. The Service Provider or their agents shall not communicate with any such representatives in relation to any aspect of

this Contract, the Sites or the Authority's operations without the prior consent of the Designated Officer.

38.2 The Service Provider shall not, and shall ensure that their agents shall not, without the prior written consent of the Authority's Project Manager, other than to fulfil its obligations to the Authority under this Contract, take photographs or video recordings of the provision of the Services, and shall take all necessary steps to ensure that no photographs or video recordings shall at any time be taken or published or otherwise circulated by any third party.

38.3 The Authority reserves the right to publish information about the performance of the Service Provider and/or any other information as it may deem appropriate (acting reasonably) in order to comply with its statutory obligations.

39. ARMY BRANDING

39.1 If required by the Authority, and subject to obtaining prior permissions from the Directorate of Intellectual Property Rights, the Authority shall authorise the Service Provider to use Ministry of Defence and Corps Brands/Logos, for the purposes of promoting the Army Apprenticeship Programme, subject to any instructions concerning their use that might be given from time to time by the Designated Officer.

39.2 Full instructions on how the images, obtained under the above condition, shall be used are contained in paragraphs 9 to 24 of the 'British Army Brand Identity Instructions' (BABII) which is accessed on <http://www.defencebrandportal.mod.uk>. On award of Contract the Service Provider shall log on to www.army.mod.uk/brandportal to register for use. Electronic versions of the permitted brands shall then be provided by the Authority once the necessary permissions have been granted.

39.3 The Service Provider must not use any MOD or Corps Brands/Logos without prior written permission from the Authority (Directorate of Intellectual Property Rights).

40. CONFIDENTIALITY

40.1 Neither party shall without the written consent of the other (save as required by this agreement) disclose any of the contents of this Contract to any Third Party save:

(in the case of both parties) for any necessary disclosure to professional advisers of that party;

40.1.1 (in the case of the Authority) to the ESFA or other organisation required to monitor its performance, including but not limited to, Awarding Bodies, Ofsted, Sector Skills Councils;

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

40.2 This Contract shall be subject to inspection and audit by the ESFA, Ofsted, OfS and other Government Agencies. The Service Provider shall be identified in any reports subsequently published in the public domain.

41. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)

41.1 Where the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) is applicable to any of the Service Provider's employees, the terms and conditions in Schedule 5 attached shall apply.

42. DEFAULT/STEP IN RIGHTS

42.1 Should the Service Provider fail or neglect to render any service required of them under the Contract, or fail or neglect to perform any obligation imposed on them thereby, the Authority shall (without prejudice to any other remedy for breach of Contract) be at liberty to exercise 'Step-In Rights' and make such other arrangements as it may think proper for the rendering of that service or the performance of that obligation and to recover from the Service Provider the extra costs, if any, thereby incurred from the Service Provider in accordance with DEFCON 514. Where the Authority is obliged to reintroduce its own personnel for the rendering of that service, the costs for their provision will be established at full repayment cost.

42.2 In the event that the Authority exercise Step-In Rights under Clause 42.1 of this Condition then the Authority shall use all reasonable endeavours to obtain the rendering of alternative services as economically as is possible in the prevailing circumstances.

43. DEFAULT & RECTIFICATION

43.1 The Authority's Commercial Desk Officer may, by notice in writing, summarily determine the Contract (without prejudice to its rights and remedies in respect of a breach by the Service Provider of any of the provisions hereof) in whole or part without compensation if in the opinion of the Authority the services or facilities provided by the Service Provider are not in all respects satisfactory and the Service Provider shall not have provided satisfactory services or facilities within the period as agreed between the parties, after notice has been given to the Service Provider specifying the matters in respect of which such services or facilities are regarded as unsatisfactory and have therefore resulted in the issue of the termination notice to the Service Provider.

43.2 If the Service Provider rectifies the Service Provider Default within the time period specified in the termination notice, the termination notice will be deemed to be revoked and the Contract will continue.

43.3 In the case of a termination notice specifying a Service Provider Default which in the sole opinion of the Authority is capable of remedy the Service Provider shall be invited to put forward a rectification programme, within ten (10) Working Days of the date of the termination notice, for remedying the Service Provider Default (the "Rectification Programme") and detailing the timescales within which the Service Provider shall remedy the specified Service Provider Default. If the Rectification Programme provides for the Service Provider to remedy the Service Provider Default to the Authority or ESFA's satisfaction (as to which the Authority or ESFA shall be the sole judge) the Authority/ESFA shall accept the Rectification Programme and shall not be entitled to terminate the Contract (in whole or in part) in respect of the Service Provider Default for which the Termination Notice was originally served while the Service Provider is complying with the Rectification Programme in all material respects.

43.4 If, in the reasonable opinion of the Authority, the Service Provider fails to fulfil their full Contract obligations, which shall include the requirements of Schedule 1 (SOR), the Authority may issue a notice (a "**Notified Defect Notice**") to the Service Provider giving details of the relevant event or circumstances giving rise to the failure (a "**Notified Defect**") and, subject to 43.7 below, specifying a reasonable time within which the Service Provider must remedy the Notified Defect or take the necessary steps to ensure that it does not recur.

43.5 Subject to the Authority's right to take immediately such steps as it reasonably considers necessary in order to prevent, mitigate or eliminate an immediate and serious risk to health, safety, the environment, national security or to ensure the proper discharge of its statutory functions, the Service Provider must either:

43.5.1 Remedy the Notified Defect or take the necessary steps to ensure that it does not recur within the period specified in the Notified Defect Notice, or

43.5.2 Within five (5) Working Days of the date of the Notified Defect Notice agree with the Authority (both Parties acting reasonably) an alternative period of time for rectification of the Notified Defect.

43.6 If the Service Provider fails to remedy the Notified Defect or take the necessary steps to ensure that it does not recur within the time specified in the Notified Defect Notice or any agreed alternative time period for rectification, the Authority may step-in in respect of the Notified Defect and:

43.6.1 without thereby avoiding or terminating this Contract or releasing the Service Provider from any pre-existing liabilities, suspend performance by the Service Provider of the Contract obligations, which shall include Schedule 1, as relate to the Notified Defect until the Authority has remedied the default; and

43.6.2 take or employ a Service Provider to take such steps in relation to the performance of the full Contract obligations as relate to the Notified Defect Notice as it may think fit in order to procure the performance of the obligations in accordance with the provisions of this Contract.

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

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

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

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

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

43.9 If the Authority exercises its step-in rights, it shall be entitled, for the period of such step-in by the Authority, to reduce the payments by such amount as is fair and reasonable to reflect the non-performance of the relevant obligations by the Service Provider (due account being taken of any sum recoverable from the Service Provider under Clause 36.10 above).

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

44. TERMINATION

44.1 The Authority and the Service Provider 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 Service Provider with as much notice as that provided to the Authority by the ESFA/Defence Resources.

44.2 In the event of termination under the provisions of Condition 44.1 above, the Authority and the Service Provider agree that all costs of termination shall lie where they fall, and that neither the Authority nor the Service Provider shall have any claim against the other in respect of the termination.

44.3 Termination under the provisions of Condition 44.1 shall be entirely without prejudice to the rights of the Authority and the Service Provider that have accrued under the Contract up to the date of termination.

44.4 In the event that the ESFA requirements for the assessment of Apprenticeships against either Frameworks or 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 Service Provider with as much notice as that provided to the Authority by the ESFA.

44.5 In the event that a change to the Army career development strategy renders any or all of the Apprenticeship programmes covered by this Contract inappropriate for the career needs of the soldiers, the Authority shall have the right to require the Service Provider to cease enrolment of Learners onto any or all of the apprenticeship programmes. The cessation of enrolment shall be effective from the next cohort of CMDA students or at the end of the relevant academic year, at the discretion of the Authority. The Service Provider shall continue to support Learners already on programme to completion in accordance with the provisions of this Contract.

44.6 For the purposes of DEFCON 656B, the Authority shall give the Service Provider 6 months' notice of Termination for Convenience.

44.7 Upon expiry or termination of the Contract, no liability to make payments by way of redundancy liability, wherever statutory or otherwise, shall accrue to the Authority.

44.8 On expiry or termination of the Contract, and following consultation with the Designated Officer, all personal information provided by the Authority or acquired by the Service Provider during the course of the Contract must either be returned to the Authority or else destroyed in accordance with directions issued by the Authority (whereby the Authority will require proof of destruction immediately on completion of the activity) within one month of the completion/termination date of the Contract.

45. DISPUTE RESOLUTION PROCEDURE

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

46. CO-OPERATION ON EXIT: ESFA AUDIT

46.1 Upon termination or natural expiry of this Contract, the Service Provider shall be subject to a full audit by the Authority's Provider Finance Assurance Team on behalf of the ESFA. The Service Provider shall cooperate fully with the Authority's staff and with ESFA staff in the completion of such an audit.

47. TRANSITION

47.1 In addition to Schedule 5 TUPE, in the event of a transfer of responsibility of the Contract task from the Service Provider at the expiry or termination of the Contract or due to the Service Provider withdrawing from this Contract or goes into liquidation or administration, the Service Provider shall co-operate in the transfer under arrangements to be notified to them by the Authority. If such transfer of responsibility extends beyond the Contract period, the Service Provider shall undertake to provide, at fair and reasonable prices to be agreed in accordance with Condition 15, any such services regarded as a "Change" as may be required arising from the transfer of responsibility always provided that such services are within the capacity of the Service Provider's organisation.

47.2 The transfer of responsibility shall be arranged so as to reduce to a minimum any interruption in the availability of services provided under the Contract and shall be undertaken in accordance with the agreed Transition Plan. The Transition Plan will be agreed between the Service Provider and the Authority.

47.3 In the event the Service Provider is no longer able to provide all the deliverables in Schedule 1 (SOR) due to, but not limited to, financial difficulties, the Authority reserves the right to temporarily request another Service Provider to Step-In to deliver the Services in Schedule 1 while the Authority commences the re-let of this Contract. See Clause 43 in addition.

48. EXIT MANAGEMENT

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

Appendix - Addresses and Other Information

1. Commercial Officer

Name: Redacted – Personal Information
Address: Redacted – Personal Information
Email: Redacted – Personal Information
☎ Redacted – Personal Information

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
☎ Redacted – Personal Information

3. Packaging Design Authority

Organisation & point of contact:

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



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

Branch/Name:



(b) U.I.N.

5. Drawings/Specifications are available from

6. Intentionally blank

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

9. Consignment Instructions

The items are to be consigned as follows:

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

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

Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

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

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

B. JSCS

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

JSCS Fax No. 01869 256837

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

DESWATERGUARD-ICS-Support@mod.gov.uk in the first instance.

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>

12. Forms and Documentation are available through *:

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site

Lower Arncoth

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

Applications via fax or email: Leidos-FormsPublications@teamleidos.mod.uk

7. Quality Assurance Representative:

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

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

* NOTE

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:

<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

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.

NOT USED

Personal Data Particulars

DEFFORM 532

Edn 10/19

This Form forms part of the Contract and must be completed and attached to each Contract containing DEFCON 532B.

<p>Data Controller</p>	<p>The Data Controller is the Secretary of State for Defence (the Authority).</p> <p>The Personal Data will be provided by:</p> <p><i>This needs to be provided by the Data Controller.</i></p> <p><i>However, this contract will provide for a two-way Data Controller/Data Processor relationship. The University, as the academic institution will be the Controller of Student Data which may be processed by the Authority as a Data Processor and the Authority will be the controller for Employee data, which will be processed by the University as a Data Processor, predominantly in the tri-partite reviews and other EFSA regulatory requirements.</i></p>
<p>Data Processor</p>	<p>The Data Processor is the Contractor.</p> <p>The Personal Data will be processed at:</p> <p><i>Staffordshire University,</i></p> <p><i>College Road,</i></p> <p><i>Stoke-on-Trent ST4 2DE</i></p> <p><i>As with the Data Controller narrative above, this needs to be provided by the Data Controller.</i></p> <p><i>However, this contract will provide for a two-way Data Controller/Data Processor relationship. The University, as the academic institution will be the Controller of Student Data which may be processed by the Authority as a Data Processor and the Authority will be the controller for Employee data, which will be processed by the University as a Data Processor, predominantly in the progress reviews and other EFSA regulatory requirements.</i></p>

Data Subjects	<p>The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects:</p> <p>1) Authority Staff who are also Apprentice Students at Staffordshire University.</p> <p>2) University Students at Staffordshire University who are also employees of the Authority.</p>
Categories of Data	<p>The Personal Data to be processed under the Contract concern the following categories of data:</p> <p><i>The exact nature of the data to be processed will be discussed post contract award. At this stage, the data is identified, as required, to be processed as part of the Apprentice Agreement under relevant EFSA and OFS Regulations. It is also in accordance with our duty to the apprentices, as students, at the University.</i></p>
Special Categories of data (if appropriate)	<p>The Personal Data to be processed under the Contract concern the following Special Categories of data:</p> <p><i>Staffordshire University, as processor, would not ask the Authority to share any special category data as part of this contract nor would the University request or accept any operational data from the Authority or apprentices. The University do, however, capture special category data as required to conduct the contract with the student and, again, this data will not be shared with the Authority in line with current OFS and other governing regulations. However, where it is required in regulation or legislation to deliver the apprenticeship programme, such data is captured and processed by the University.</i></p>
Subject matter of the processing	<p>The processing activities to be performed under the contract are as follows:</p> <p><i>For the relationship outlined within the formal contract, only activities involving apprenticeship such as progress reviews will be conducted, where the Authority and University will share data to deliver against that contract.</i></p>
Nature and the purposes of the Processing	<p>The Personal Data to be processed under the Contract will be processed as follows:</p> <p><i>To be formally determined as part of post contract award but limited to the data that is required by regulation or legislation to conduct the delivery of Apprenticeships.</i></p>

<p>Technical and organisational measures</p>	<p>The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract:</p> <p><i>As a matter of course, Staffordshire University will conduct a Data Privacy Impact Assessment once the specific data for sharing is identified post contract award. As part of that DPIA, the relevant Technical and Organisational measures are determined and either validated as in place or put in place.</i></p> <p><i>Staffordshire University operate a strict regime of DPIA, Data Sharing Agreement placement and Information Asset Registry entry.</i></p> <p><i>Any breaches or potential breaches of data must be reported immediately to the University DPO using an online breach report form. All reported breaches are investigated and, where relevant, reported to the ICO in accordance with their guidance.</i></p> <p><i>Staffordshire University would also notify the relevant Controller/Processor, in this case, the Authority, in the event that a breach or potential breach of Authority data had been reported.</i></p>
<p>Instructions for disposal of Personal Data</p>	<p>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):</p> <p><i>Staffordshire University rely upon a Retention of Records Policy within which will be determined the length of time that data is to be retained for and the policy under which that data is to be protected and destroyed when no longer required, (Data Category and Protective Marking Policy). In the event that the Authority has any additional or different requirements in this regard, these can be discussed post contract award.</i></p>
<p>Date from which Personal Data is to be processed</p>	<p>Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here:</p> <p><i>Contract Start Date.</i></p>

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

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 5 (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).



MINISTRY OF DEFENCE

Contract Number:

701538378

**THE PROVISION OF A CHARTERED MANAGER DEGREE APPRENTICESHIP FOR THE
ARMY**

SCHEDULE 4

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 Contractor 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 Contractor 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 Contractor, the Authority, any End Point Assessors and any of the major competitors of the Contractor. 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 Contractor and the Authority as soon as practicable.

3.3 If the Authority and the Contractor 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 43

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 44

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 Contractor and the Authority for approval.

5. CONTINUING WITH CONTRACT OBLIGATIONS

5.1 Unless the Contract has already been terminated, the Contractor 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 Contractor 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 Contractor 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 Contractor 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 EPAO's Representatives (one of whom must be the Contractor's Commercial Manager). All of the Authority's Representatives and the EPAO'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 Contractor 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 Contractor '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 EPAO's Representatives such consent not to be unreasonably withheld or delayed;
 - 2.2.6 for the purposes of taking minutes of the meetings the Contractor'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 EPAO and the Authority must seek, from the Party by which they are appointed, the power and authority to resolve the disagreement.
- 2.5 The Contractor 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 Contractor '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 Contractor.
- 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 Contractor.



MINISTRY OF DEFENCE

Contract Number:

701538378

**THE PROVISION OF A CHARTERED MANAGER DEGREE APPRENTICESHIP FOR THE
ARMY**

SCHEDULE 5

TUPE

Schedule 5

TRANSFER REGULATIONS

EMPLOYEE TRANSFER ARRANGEMENTS ON EXIT

1. DEFINITIONS

1.1 In this Schedule 5, 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;

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

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

2. EMPLOYMENT

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

2.1.1 No earlier than six months 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 5 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 5 (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 5 (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 5 in respect of Transferring Employees.
- 2.1.5 Paragraphs 2.1.1 and 2.1.2 of this Appendix 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 2.1.4, 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,

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

- 2.1.7 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule 5 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),

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 5 where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES

1. Pursuant to paragraph 2.1.1(b) of this Schedule 5, the following information will be provided:
 - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;
 - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
 - c) The preceding 12 months total pay costs – (Pay, benefits employee/employer 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

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

1.1 Personal, Employment and Career

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

1.2 Superannuation and Pay

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- b) Annual salary and rates of pay band/grade;

- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Pension Scheme Membership;
- h) For pension purposes, the notional reckonable service date;
- i) Pensionable pay history for three years to date of transfer;
- j) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- k) Percentage of pay currently contributed under any added years arrangements.

1.3 Medical

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

1.4 Disciplinary

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

1.5 Further information

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

Part B

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

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

PART C

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

1.7.1 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;



MINISTRY OF DEFENCE

Contract Number:

701538378

**THE PROVISION OF A CHARTERED MANAGER DEGREE APPRENTICESHIP FOR THE
ARMY**

SCHEDULE 6

Cyber Implementation Plan – Not Applicable



MINISTRY OF DEFENCE

Contract Number:

701538378

**THE PROVISION OF A CHARTERED MANAGER DEGREE APPRENTICESHIP FOR THE
ARMY**

SCHEDULE 7

Technical Tender Response

Technical Tender Response