

Schedule 12
Bank or Parent Company Guarantee



MINISTRY OF DEFENCE

**AIR SUPPORT TO DEFENCE OPERATIONAL TRAINING
(ASDOT)**

CONTRACT NO. UKMFTS/2017/03

This is Schedule 12 (Bank or Parent Company Guarantee) referred to in the ASDOT Contract between the Secretary of State for Defence and [*Insert name of Contractor*].

Specimen - For Drafting Purposes Only

THIS DEED OF GUARANTEE AND INDEMNITY GIVEN BY A PARENT COMPANY IN RESPECT OF A SUBSIDIARY

is made the [] day of [] 20[]

BETWEEN:

- (1) [Insert the name of the name of the Guarantor] [[a company incorporated in England and Wales with number [] whose registered office is at []] or [a company incorporated under the laws of [insert country] registered in [insert country] with number [] at [insert place of registration] whose principal office is at []] (“the **Guarantor**”); in favour of
- (2) THE SECRETARY OF STATE FOR DEFENCE (“the **Authority**”)

WHEREAS:

- (A) The Authority proposes to award contract number [insert number] (“the **Contract**”) to [insert Contractor’s full corporate name] [insert company registration number] whose registered office is at [insert details] (“the **Contractor**”).
- (B) It is a condition precedent of the Authority entering into the Contract with the Contractor that the Guarantor must first execute and deliver this Deed of Guarantee and Indemnity to the Authority.

Now in consideration of the Authority entering into the Contract, the Guarantor hereby irrevocably and unconditionally agrees with the Authority as follows:

1. The Guarantor shall provide all resources and facilities whether financial or otherwise to enable the Contractor duly to fulfil its obligations in and arising from the Contract subsisting between the Authority and the Contractor at the date of this deed or which shall be entered into at any time after the date of this deed between the Authority and the Contractor (the '**Indemnified Obligations**');
2. If:
 - a) the Contractor shall fail in any respect duly to perform and observe, or shall otherwise be in breach of, any of the Indemnified Obligations; or
 - b) any of the Indemnified Obligations are or become void, voidable, unenforceable or otherwise ineffective; or
 - c) the Contract is terminated owing to a breach or an event of default on the part of the Contractor; or
 - d) a receiver, administrative receiver, administrator, liquidator or similar officer is appointed over any or all of the Contractor's undertaking or assets;

then, forthwith on demand from the Authority the Guarantor shall, as a primary obligation, indemnify the Authority against all losses, claims, liabilities, damages, expenses and costs which may be incurred, met or suffered by the Authority and which arise from or in connection with (whether directly or indirectly) any such matters save that, subject to the

other provisions of this deed, the liability of the Guarantor under this clause shall not exceed the liability of the Contractor to the Authority under the Contract.

3. The Guarantor irrevocably and unconditionally undertakes that all sums received or recovered by the Authority:

- a) by way of dividend, composition or payment arising from the liquidation, bankruptcy or otherwise of the Contractor may be taken and applied by the Authority in part satisfaction of the losses, claims, liabilities, damages, expenses and costs referred to in paragraph 2 above, and the Guarantor's obligations under this deed shall stand good in respect of the balance;
- b) under this deed, may be credited to a suspense account and held in such account for so long as the Authority thinks fit pending the application of such monies towards the payment of the Indemnified Obligations;
- c) from the Contractor in respect of any of the Indemnified Obligations, may be applied by the Authority in any manner and in any order towards any debts owed by the Contractor to the Authority (whether or not relating to the Indemnified Obligations) as the Authority may determine (notwithstanding any appropriation or purported appropriation by any person);

4. The Guarantor shall have no right to be subrogated to the Authority and shall not make any claim against the Contractor (unless instructed so to do by the Authority, in which event the Guarantor shall make such a claim) in respect of the Guarantor's performance under this deed, until the Authority has received payment in full of its claim against the Contractor;

5. This deed shall not be affected by any insolvency (including, without limitation, winding up, administration, receivership or administrative receivership), amalgamation, reconstruction, change of name, ownership, control or status or any legal limitation relating to, by or of the Contractor or any other person or, where the Contractor is a partnership, by any change in the partners;

6. The Guarantor shall not be discharged or released from its obligations under this deed:

- a) by any arrangement or agreement made between the Authority and the Contractor or a receiver, administrative receiver, administrator, liquidator or similar officer of the Contractor: or
- b) by any renegotiation, substitution, alteration, amendment or variation (however fundamental) and whether or not to the Guarantor's disadvantage, to or of, the obligations imposed upon the Contractor or any other person; or
- c) by any forbearance granted by the Authority to the Contractor or any other person as to payment, time, performance or otherwise; or
- d) by any release or variation (however fundamental) of, any invalidity in, or any failure to take, perfect or enforce any other indemnity, guarantee or security in respect of the obligations to which this deed relates; or
- e) by any other matter or thing which but for this provision might exonerate the Guarantor and this notwithstanding that such arrangement, agreement, renegotiation, substitution, alteration, amendment, variation, forbearance, matter or thing may have been made, granted or happened without the Guarantor's knowledge or assent;

7. No failure to exercise or any delay in exercising on the Authority's part any right or remedy under this deed or under the Contract or any other agreement shall operate as a waiver of such right or remedy;
8. Any certificate or determination by the Authority of the amount due under this deed or under the Contract shall be, in the absence of manifest error, conclusive evidence of the matters to which it relates;
9. No settlement or discharge between the Authority and the Guarantor or the Contractor shall be effective if any payment to the Authority in respect of the Contractor's or the Guarantor's obligations to the Authority is avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, liquidation or similar laws of general application from time to time and if such payment is so avoided or reduced, the Authority shall be entitled to recover from the Guarantor the amount of such payment as if such settlement or discharge had not occurred;
10. The Authority shall not be obliged, before exercising any of its rights under this deed, to take any action against, or make any demand from, the Contractor or any other person;
11. The Guarantor's obligations under this deed are continuing obligations and shall not be considered satisfied, settled or terminated by the Authority giving any approvals, or taking delivery of any goods, or accepting any performance under the Contract and no single, cumulative or partial exercise by the Authority of any right or remedy under or arising from this deed shall prevent any further exercise;
12. All payments under this deed shall be made without set-off, counter-claim or other deduction;
13. The Guarantor shall be bound by all court judgments or arbitration awards relating to the Contract or any dispute or matter between the Authority and the Contractor;
14. This deed shall be governed by and construed in accordance with English law. The parties irrevocably submit to English jurisdiction to the exclusion of all foreign jurisdiction, save that foreign jurisdictions may apply solely for the purposes of giving effect to this paragraph and for the enforcement of any judgment, order or award given under English jurisdiction.

[The following clause should only be used where the Guarantor is a company incorporated outside of England and Wales]

15. The Guarantor irrevocably appoints Messrs [insert name and address of firm of Solicitors in England or Wales], Solicitors as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Guarantor in connection with this Deed or any related matter.

Delivered as a deed on the date of this document.

Executed as a deed by [insert corporate name].

in the presence of Director

..... Director or Company Secretary

Specimen - For Drafting Purposes Only**BOND GIVEN BY A BANK AS A DEED IN RESPECT OF A SINGLE CONTRACT**

Name of Issuing Bank:

Address:

To: The Secretary of State for Defence

We refer to the contract number [insert number] (the 'contract'), as may be amended at any time, to be awarded / awarded on [insert contract date] to [insert contractor's full corporate name] whose registered number is [insert company registered number] (the 'Contractor') and we hereby irrevocably and unconditionally agree:

1. to pay you any amount or amounts not exceeding in aggregate the sum of £[insert sum] upon receipt by us at [insert address] of your first demand in writing certifying that any one or more of the following has occurred:
 - a) the Contractor has failed in any respect duly to perform and observe, or is otherwise in breach of any of its obligations in and arising from the Contract; or
 - b) any of the Contractor's obligations in and arising from the Contract are or become void, voidable, unenforceable or otherwise ineffective; or
 - c) the Contract has been terminated owing to a breach or an event of default on the part of the Contractor; or
 - d) a receiver, administrative receiver, administrator, liquidator or similar officer is appointed over any or all of the Contractor's undertaking or assets;

For the purposes of this bond any such demand and certification(s) shall be conclusive evidence (and admissible as such) of the statements and the amounts claimed therein;

2. that this bond shall not be affected by any insolvency (including, without limitation, winding up, administration, receivership or administrative receivership), amalgamation, reconstruction, change of name, ownership, control or status or any legal limitation relating to, by or of the Contractor or any other person or, where the Contractor is a partnership, by any change in the partners;
3. that we shall not be discharged or released from our obligations under this bond by any arrangement or agreement made between you and the Contractor or a receiver, administrative receiver, administrator, liquidator or similar officer of the Contractor, or by any renegotiation, substitution, alteration, amendment or variation (however fundamental) and whether or not to our disadvantage, to or of, the obligations imposed upon the Contractor or any other person or by any forbearance granted by you to the Contractor or any other person as to payment, time, performance or otherwise or by any release or variation (however fundamental) of, any invalidity in, or any failure to take, perfect or enforce any other indemnity, guarantee or security in respect of the obligations to which this bond relates or by any other matter or thing which but for this provision might exonerate us and this notwithstanding that such arrangement, agreement, renegotiation, substitution, alteration, amendment, variation, forbearance, matter or thing may have been made, granted or happened without our knowledge or assent;

4. that no failure to exercise or any delay in exercising on your part any right or remedy under this bond or under the Contract or any other agreement shall operate as a waiver of such right or remedy;

5. that no settlement or discharge between you and us or the Contractor shall be effective if any payment to you in respect of the Contractor's or our obligations to you is avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, liquidation or similar laws of general application from time to time and if such payment is so avoided or reduced, you shall be entitled to recover from us the amount of such payment as if such settlement or discharge had not occurred;

6. that you shall not be obliged, before exercising any of your rights under this bond, to take any action against, or make any demand from, the Contractor or any other person;

7. that our obligations under this bond are continuing obligations and shall not be considered satisfied, settled or terminated by your giving of any approvals, or taking delivery of any goods, or accepting any performance under the Contract and no single, cumulative or partial exercise by you of any right or remedy under or arising from this bond shall prevent any further exercise;

8. that any demand(s) complying with all the requirements hereof must be received by us on or before [insert date];

9. that all payments under this bond shall be made without set-off, counter claim or other deduction;

10. that this bond shall be governed by and construed in accordance with English law. The parties irrevocably submit to English jurisdiction to the exclusion of all foreign jurisdiction, save that foreign jurisdictions may apply solely for the purposes of giving effect to this paragraph and for the enforcement of any judgment, order or award given under English jurisdiction.

(The following clause should only be used where the bank is outside of England and Wales)

11. we irrevocably appoint Messrs [insert name and address of firm of Solicitors in England or Wales], Solicitors as our agents to accept on our behalf service of all process and other documents of whatever description to be served on us in connection with this bond or any related matter.

Dated this [] day of [] 20[]

Executed as a deed by [full name of party] as Attorney and on behalf of [bank]¹ in the presence of:

.....[signature of party]

.....[Signature of Witness (Bank Official)]
[Address of Witness]
[Occupation of Witness]

¹ This execution clause should be changed if the bank or other corporate entity giving the bond is executing it in one of the other methods listed in the accompanying guidance (see Execution).