



Contract No: 701547457 (Formerly referred to as
FsASTC/00138)

For: C17 Synthetic Training Service

CONTRACT
TERMS AND CONDITIONS
Final Version

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1 SCHEDULE OF REQUIREMENTS

Name and Address of Contractor Boeing Defence UK Limited Dakota House Building 630 Bristol Business Park Coldharbour Lane Bristol, BS16 1EJ	MINISTRY OF DEFENCE	Contract No 701547457
	Schedule of Requirements for C17 Synthetic Training Service	
Issued With DEFFORM 47ST	On	Previous Contract No FsASTC/00111

REQUIREMENTS

Item Number	Description	Price £ (ex-VAT)
1	To provide Pilot Courses in accordance with the Statement of Work at Schedule A and the annual throughput defined within the Statement of Training Requirement (SOTR).	In accordance with the Monthly Core Pricing at Schedule P – Annex A
2	To provide Loadmaster Courses in accordance with the Statement of Work at Schedule A and the annual throughput defined within the SOTR.	
3	To provide Maintainer Courses in accordance with the Statement of Work at Schedule A and the annual throughput defined within the SOTR.	
4	Provision of Additional Tasks shall follow the change process outlined in Condition 8.15 and Schedule P of the Contract.	Priced on a case by case basis in accordance with agreed BDUK-ICOP rates specified in Schedule P – Annex B

Item Number	Description	Price £ (ex-VAT)
5A	Provision of Maintainer STE, Facility Access and new Maintainer Courses at the International Training Centre (ITC) in accordance with the Statement of Work at Schedule A – Annex F Appendix 1 and the annual throughput defined within the SOTR.	Priced in accordance with Schedule P – Annex A

2 DEFENCE CONDITION (DEFCONS), DEFENCE FORMS (DEFFORMS) AND STANDARDS

2.1 The following DEFCONS shall apply to this Contract:

DEFCON	EDITION	TITLE
DEFCON 5J	(Edn. 18/11/16)	Unique Identifiers
DEFCON 14	(Edn. 11/05)	Inventions and Designs Crown Rights and Ownership of Patents and Registered Designs
DEFCON 76	(Edn. 12/06)	Contractor's Personnel at Government Establishments
DEFCON 90	(Edn. 11/06)	Copyright Note: For the purposes of this Contract, DEFCON 90 (Edn 11/06) applies to all the reports required within the SoW and student notes and copies of syllabus as required.
DEFCON 129J	(Edn. 18/11/16)	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 525	(Edn. 10/98)	Acceptance
DEFCON 526	(Edn. 08/02)	Notices
DEFCON 527	(Edn. 09/97)	Waiver
DEFCON 528	(Edn. 07/17)	Import and Export Licences
DEFCON 529	(Edn. 09/97)	Law (English)
DEFCON 530	(Edn. 12/14)	Dispute Resolution (English Law)

DEFCON 531	(Edn. 11/14)	Disclosure of Information
DEFCON 532B	(Edn. 04/20)	Protection of Personal Data (Where Personal Data is being processed on behalf of the authority)
DEFCON 534	(Edn. 06/17)	Subcontracting and Prompt Payment
DEFCON 537	(Edn. 06/02)	Rights of Third Parties
DEFCON 538	(Edn. 06/02)	Severability
DEFCON 539	(Edn. 08/13)	Transparency
DEFCON 550	(Edn. 02/14)	Child Labour and Employment Law
DEFCON 566	(Edn. 12/18)	Change of Control of Contractor
DEFCON 602A	(Edn. 12/17)	Quality Assurance (With Deliverable Quality Plan)
DEFCON 604	(Edn. 06/14)	Progress Reports
DEFCON 606	(Edn. 06/14)	Change and Configuration Control Procedure
DEFCON 608	(Edn. 10/14)	Access and Facilities to be Provided by the Contractor
DEFCON 609	(Edn. 08/18)	Contractor's Records
DEFCON 611	(Edn. 02/16)	Issued Property
DEFCON 620	(Edn. 05/17)	Contract Change Control Procedure
DEFCON 624	(Edn. 11/13)	Use of Asbestos
DEFCON 625	(Edn. 10/98)	Co-Operation on Expiry of Contract
DEFCON 627	(Edn. 12/10)	Quality Assurance - Requirement for a Certificate of Conformity
DEFCON 632	(Edn. 08/12)	Third Party Intellectual Property - Rights and Restrictions
DEFCON 638	(Edn. 12/16)	Flights Liability and Indemnity
DEFCON 642	(Edn. 06/14)	Progress Meetings
DEFCON 647	(Edn. 04/19)	Financial Management Information
		Note against DEFCON 647 Annex A 1a and 1b: The frequency of financial reporting will be on an annual basis and adhoc as requested by the Authority. Note against DEFCON 647 Annex A 3a: The Contractor is to propose the contract Schedule lines for which the reporting will be provided. Note against DEFCON 647 Annex A 4b and 4c: EVM requirements not applicable, reference section 8.2.
DEFCON 656B	(Edn. 08/16)	Termination for Convenience (Contracts £5M and over)
DEFCON 658	(Edn. 10/17)	Cyber
		Note: The risk level is deemed as Low following internal assessment.
DEFCON 660	(Edn. 12/15)	Official-Sensitive Security Requirements
DEFCON 670	(Edn. 02/17)	Tax Compliance

DEFCON 684	(Edn. 01/04)	Limitation Upon Claims in Respect of Aviation Products
DEFCON 694	(Edn. 07/18)	Accounting for Property of the Authority
DEFCON 800	(Edn. 12/14)	Qualifying Defence Contract
DEFCON 801	(Edn. 12/14)	Amendments to Qualifying Defence Contracts – Consolidated Versions
DEFCON 802	(Edn. 12/14)	QDC: Open Book on Sub-Contracts that are not Qualifying Sub-Contracts (QSC) Note: The Parties acknowledge that neither (a) the indefinite duration indefinite-quantity services agreement between the Contractor and The Boeing Company dated 12 December 2014, nor (b) the contract between BDUK and FSI, is a Material Single Source Sub-Contract (Non-Qualifying) under DEFCON 802
DEFCON 804	(Edn. 03/15)	QDC: Confidentiality of Single Source Contract Regulations Information

2.2 The following DEFFORMs and MOD Forms shall apply to this Contract:

DEFFORM	EDITION	TITLE
DEFFORM 10	(Edn. 07/18)	Acceptance of Offer of Contract
DEFFORM 10B	(Edn. 03/14)	Acceptance of Offer of Amendment to Contract
DEFFORM 111	(Edn. 05/19)	Addresses and Other Information (Appendix to Contract)
DEFFORM 316	(Edn. 05/98)	Government Furnished Information
DEFFORM 528	(Edn. 12/17)	Import and Export Controls (Copy of Schedule J)
DEFFORM 532	(Edn. 10/19)	Personal Data Particulars
MOD Form 650	n/a	Advice and Receipt Note (used to deliver and return GFA)

2.3 The following Allied Quality Assurance Publications (AQAP); Defence Standards and Other Standards shall apply to this Contract:

APPLICABLE STANDARD	ISSUE	DESCRIPTION
AQAP 2070	Edn. B Ver 4	NATO Mutual Quality Assurance
AQAP 2105	Edn. C Ver 1 (Promulgated)	NATO Requirements for Deliverable Quality Plans
AQAP 2110	Edn. D Ver 1 (Promulgated)	NATO Quality Assurance Requirements for Design, Development and Production
AQAP 2210	Edn A V2	NATO Supplementary Software Quality Assurance Requirements
Def Stan 05-057	Issue 7- 28/07/2018	Configuration Management of Defence Material
Def Stan 05-135	Issue 2	Avoidance of Counterfeit Material
Def Stan 05-138	Issue 2 (Extant) Issue 3 (Draft)	Cyber Security for Defence Suppliers
Def Stan 00-251	PART 0-3: All at Issue 1 (05/02/2016)	Human Factors Integration
Def Stan 01-005	Issue19 (14/02/2020)	Fuels, Lubricants and Associated Products
Def Stan 00-055	Issue 4 (29/04/2016)	Requirements for Safety of Programmable Elements (PE) in Defence Systems
Def Stan 00-056	Part 1: Issue 7 (28/02/17) Part 2: Issue 5 (28/02/2017)	Safety Management Requirements for Defence Systems
Def Stan 05-099	Part 1: Issue 1 (14/07/2017) Part 2: Issue 1 (14/07/2017)	Managing Government Furnished Equipment in Industry
ISO 9001: 2015	Edition 5	Quality Management Systems

2.4 In addition to the publications specified above and its obligations specified in Condition 4.12, the Contractor shall comply with each Joint Service Publication (JSP) and Military Airworthiness Authority Regulatory Article (RA) identified in the Schedules to this Contract, each in the form in which it takes effect from time to time.

3 GENERAL

3.1 PARTIES

3.1.1 This Contract is entered into between (1) The Secretary of State for Defence (the "Authority"), and (2) Boeing Defence United Kingdom Ltd, whose registered offices are at Dakota House having a place of business at Building 630 Bristol Business Park, Coldharbour Lane, BS16 1EJ (the "Contractor").

3.2 DEFINITIONS AND INTERPRETATIONS

3.2.1 In this Contract, the definitions set out in DEFCON 501 shall apply. Additionally, the definitions set out in Schedule G (Glossary of Standard Terms and Abbreviations) shall also apply.

3.2.2 Reference in this Contract to a Condition is a reference to the whole of that Condition unless stated otherwise.

3.2.3 Reference in this Contract to Conditions and Schedules shall refer to the Conditions and Schedules to this Contract unless stated otherwise.

3.2.4 References in this Contract to any DEFCON shall refer to the version of such condition identified in Condition 2.1;

3.2.5 The words "**include**", "**includes**" and "**including**" in this Contract are to be construed as if they were immediately followed by the words "**without limitation**".

3.2.6 References in this Contract to a "day" or "days" are references to calendar day(s) unless specified as being Business Day(s).

3.2.7 The singular in this Contract includes the plural and vice versa, unless stated otherwise.

3.2.8 The masculine in this Contract includes the feminine and vice versa and words importing the neuter include the masculine and the feminine.

3.2.9 A reference to this or the Contract or to any other agreement or document is a reference to this agreement or such other agreement or document, in each as varied from time to time.

3.3 PRECEDENCE

3.3.1 In the event of any discrepancy, inconsistency, divergence or anomaly arising between the provisions of this Contract, the order of descending priority shall be as follows, save where expressly provided in this Contract to the contrary:

3.3.1.1 the provisions of this Contract (other than the provisions identified in Conditions 3.3.1.2 to 3.3.1.5 (inclusive));

3.3.1.2 DEFCONS;

3.3.1.3 Schedule A (Statement of Work);

3.3.1.4 the Schedules (other than Schedule A); and

3.3.1.5 appendices, annexes or documents referred to in the Schedules of this Contract.

3.3.2 If either Party become(s) aware of any conflict or inconsistency between any contractual or other provision or document identified in Condition 3.3.1, it shall as soon as reasonably practicable, but within 10 (ten) Business Days after becoming aware of such conflict or inconsistency, notify the other Party accordingly. Resolution of any such conflict shall be considered jointly between the Authority and the Contractor and the matter resolved by the Authority (acting reasonably). Upon such matter's resolution an amendment to the Contract shall (as appropriate) be made in accordance with DEFCON 620.

3.4 **CONTRACTOR WARRANTIES AND REPRESENTATIONS**

3.4.1 The Contractor warrants and represents that:

- a. where applicable, it is properly constituted and incorporated under the Laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- b. it has the power to enter into and to exercise its rights and perform its obligations under this Contract;
- c. all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has been taken or, in the case of any such document executed after the date of this Contract, shall be taken before such execution;
- d. the obligations expressed to be assumed by the Contractor under this Contract shall be, legal, valid, binding and enforceable to the extent permitted by the Laws and this Contract are in the proper form for enforcement in England;
- e. the execution, delivery and performance by it of this Contract, does not contravene any provision of:
 - i. any existing Laws binding on the Contractor;
 - ii. the memorandum and articles of association of the Contractor;
 - iii. any order or decree of any court or arbitrator which is binding on the Contractor; or
 - iv. any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- f. no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against it or any of its assets which shall or might have an adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- g. it is not the subject of any other obligation, compliance with which shall or is likely to have an adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- h. no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiry, threatened)

for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues (or any equivalent procedure);

i. it has not either in relation to this Contract or otherwise committed a Prohibited Act; and

j. there is not and nor has there been any infringement or alleged infringement of any Third Party's Intellectual Property Rights, which may affect the ability of the Contractor to comply with its obligations provided in this Contract.

and the Authority relies upon such warranties and representations

3.5 CONTRACTOR UNDERTAKINGS

The Contractor undertakes that for so long as this Contract remains in full force:

a. it shall give the Authority notice of any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Sub-Contractor which would adversely affect, the Contractor's ability to perform its obligations under this Contract, unless such notice is precluded by the rules of the relevant authority, provided that notice shall be given within 20 (twenty) Business Days of the Contractor becoming aware such proceedings may be threatened or pending, and immediately after the commencement thereof;

b. it shall not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor;

c. it shall not cease its business and shall have and maintain all necessary resource, skills and other assets as required by this Contract to enable it to perform its obligations herein for the duration of the Contract.

3.6 STATUS OF CONTRACTOR WARRANTIES AND UNDERTAKING

All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

3.7 ENTIRE AGREEMENT

3.7.1 This Contract constitutes the entire agreement between the Parties in relation to its subject matter and supersedes all prior arrangements, understandings, agreements or undertakings of any nature made by the Parties, whether oral or written, in relation to such subject matter. Each Party acknowledges that it is not relying on and shall have no remedy in respect of any statements, warranties, representations given or made by the other Party regarding the subject matter of this Contract, except for those expressly set out in this Contract.

3.7.2 Notwithstanding Condition 3.7.1, nothing shall exclude or restrict the liability of either Party arising out of fraud or fraudulent misrepresentation.

3.8 SUB-CONTRACTS

3.8.1 In addition to the provisions of DEFCON 534, in the event that the Contractor enters into any Sub-Contract in connection with this Contract, it shall:

3.8.1.1 remain fully responsible for the performance of its obligations and the discharge of its liabilities under and in connection with this Contract, notwithstanding such appointment of any Sub-Contractor;

3.8.1.2 ensure that all Sub-Contracts impose on the Sub-Contractors such terms as are required to enable the Contractor to fulfil its obligations under this Contract and the Contractor shall enforce the same;

3.8.1.3 be responsible for the acts and omissions of the Sub-Contractors as though such acts or omissions are its own;

3.8.1.4 provide relevant Information at no charge to the Authority, where the Contractor is contractually and legally capable, in order to support a reasonable request of the Authority in regard to the Sub-Contractor's fulfilment of obligations to the Contract.

3.9 MONTREAL PROTOCOL SUBSTANCES

3.9.1 The Contractor shall identify which (if any) of the substances listed at Schedule M (the "**Montreal Protocol Substances**") are contained in any item or used in connection with any Service to be provided by the Contractor under the Contract.

3.9.2 The Contractor has provided a list to the Authority specifying:

3.9.2.1 any substances listed at Schedule M (Montreal Protocol Substances) to be used in the execution of any task defined under the Contract;

3.9.2.2 the quantity of any such Montreal Protocol Substance; and,

3.9.2.3 where Montreal Protocol Substances shall be used or contained.

3.9.3 If at any time during the Term the Contractor Changes its use of any Montreal Protocol Substances, the Contractor shall promptly provide to the Authority an amended version of the Information provided under Conditions 3.9.2.1 to 3.9.2.3 (inclusive).

3.9.4 If appropriate, the Contractor shall provide confirmation of a 'Nil Return' in respect of Conditions above.

3.9.5 The Contractor shall provide the list detailed at Condition 3.9.2. prior to the Contract Award.

3.10 TUPE

3.10.1 In the event of Termination, partial Termination or on expiry of the Contract, the terms of Schedule O (Transfer Regulations) shall apply.

3.11 CONTRACT DURATION

3.11.1 This Contract shall commence on the Contract Award and shall expire at 23:59 (UK time) on 31 March 2040, unless (i) extended by the Authority or (ii) terminated in accordance with the provisions of the Contract (such Term so commencing, extended and expiring or terminating being the "**Term**").

3.11.2 Expiry or Termination of this Contract shall not affect the continuance in force of any provision of this Contract which is expressly or by implication intended to continue in

force on or after such expiry or Termination, including, but not limited to, any indemnification provisions, limits of liability, confidentiality provisions and Intellectual Property Rights.

3.11.3 The Contract shall comprise four (4) Pricing Periods (“PP”). PP 2-4 shall be determined in accordance with Schedule P (Pricing and Payment) and will be provided for (once the relevant pricing has been agreed in accordance with Condition 8.15) through an amendment effected in accordance with DEFCON 503.

3.12 LIMIT OF LIABILITY

3.12.1 The Contractor's liability to the Authority in connection with this Contract:

3.12.1.1 under clause 2 of DEFCON 514 shall not exceed [REDACTED] in aggregate whereby any substitute Contractor Deliverables for the purpose of paragraph 2b shall be limited to a comparable scope as delivered in this Contract.

3.12.1.2 under clause 3 of DEFCON 76 shall not exceed [REDACTED] in aggregate

3.12.2 Subject to Conditions 3.12.5 and 3.12.6, neither Party shall be liable to the other Party for:

3.12.2.1 any indirect or consequential loss (whether or not arising from negligence); and/or

3.12.2.2 any loss of use, loss of profit, turnover, business opportunities or damage to goodwill (whether direct or indirect) arising from any breach of the Contract.

3.12.3 Without prejudice to DEFCON 638, nothing in the Contract shall operate to limit or exclude either Party's liability for:

3.12.3.1 death or personal injury caused by its negligence or the negligence of (in the case of the Authority) any Authority Personnel or (in the case of the Contractor) the Contractor (or any officer, employee or agent of the Contractor) and/or any Sub-Contractor (or any officer, employee or agent of any Sub-Contractor); and/or

3.12.3.2 fraud or fraudulent misrepresentation.

3.12.4 Condition 3.12.2 shall not operate:

3.12.4.1 to exclude the Authority's obligation to pay any Monthly Performance Payment or milestone payment where due and payable by the Authority to the Contractor pursuant to Schedule P (Pricing and Payment), such payment being at all times subject to the application of any deduction or deductions under and in accordance with Schedule K (Key Performance Indicators and Performance Measures); nor

3.12.4.2 to exclude the Contractor's right to take action to recover from the Authority any Monthly Performance Payments or milestone payments (where overdue and not paid by the Authority to the Contractor) in accordance with the provisions of this Contract.

3.12.5 Nothing in Condition 3.12.2 shall operate to limit the Contractor's liability to pay for costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier in the event that the Contract is terminated for material breach in accordance with clause 2 of DEFCON 514 (Material Breach).

3.12.6 Nothing in Condition 3.12.2 shall operate to limit the Authority's entitlement to deduct or withhold any amount pursuant to Schedules K (Key Performance Indicators and Performance Measures) and P (Pricing and Payment).

3.13 BDUK would not seek to make any insurance claim from any policy made available by The Boeing Company for any liability resulting from an indirect or consequential loss suffered by the Authority

4 SPECIFICATIONS & REQUIREMENTS

4.1 CONTRACTOR'S OBLIGATIONS

4.1.1 The Contractor shall provide to the Authority the Contractor Deliverables and shall ensure that the Contractor Deliverables are provided in accordance with:

- 4.1.1.1 the provisions of the Contract including;
 - 4.1.1.1.1 the Statement of Work at Schedule A; and,
 - 4.1.1.1.2 the requirements of Condition 4.12 (Quality Assurance) and,
- 4.1.1.2 Good Industry Practice;
- 4.1.1.3 all Necessary Consents; and,
- 4.1.1.4 all applicable Laws.

4.1.2 The Contractor shall at its own expense obtain and maintain all Necessary Consents.

4.2 SCOPE OF CONTRACT

4.2.1 The Contractor shall undertake all work under the Contract in accordance with the terms and conditions of the Contract, including but not limited to the Statement of Work at Schedule A. All work shall be carried out to the satisfaction of the Authority in accordance with the acceptance criteria in Condition 4.7 (Course Review and Acceptance) and 4.8 (Deliverable Documentation Acceptance Process) to this Contract.

4.3 NATURE OF RELATIONSHIP

4.3.1 Nothing in this Contract or in any agreement entered into between the Parties in connection with its terms shall give rise to or constitute a partnership (whether or not as defined under the Partnership Act 1890) or a joint venture between the Authority and the Contractor, and the Contractor will not act or hold themselves out as the agent of the Authority.

4.3.2 Neither Party shall be under any obligation to perform any of the other's obligations under the Contract. Neither the Authority nor the Contractor has any authority to commit the other Party to any liability, relationship or arrangement except as expressly provided herein.

4.4 DISCLOSURE OF INFORMATION

4.4.1 In addition to the provision of DEFCON 531, the Contractor shall ensure that the highest standards of privacy and confidentiality are maintained by its servants, employees or agents and Sub-Contractors in relation to any documents disclosed or generated in connection with this Contract bearing privacy markings, whether classified or not. The same standards of privacy and confidentiality shall be applied to information acquired verbally.

4.4.2 The Contractor shall not (and shall ensure that none of its servants, employees or agents nor any Sub-Contractor shall) communicate with representatives of the press, television, radio or other media on any matter concerning the Contract, unless the Authority has given its prior written consent expressly referring to such communication.

4.5 SECURITY CLEARANCE

4.5.1 The Contractor shall ensure that each of its servants, employees or agents (and shall procure that each servants, employees or agents employed or (as the case may be) engaged by each or any Sub-Contractor) holds the correct level of security clearance, as defined in the Security Aspects Letter at Schedule Q, in order to comply with all security provisions of the Contract including (but not limited to) DEFCON 660 and Schedule Q (Security Aspects Letter). The Contractor shall ensure and procure that the security clearances of each such servant, employee or agent remain valid throughout the Term.

4.6 CYBER

4.6.1 Further to DEFCON 658 the Cyber Risk Level of the Contract is Low as defined in Def Stan 05-138. The Cyber Security Implementation Plan shall be submitted by the Contractor for the Parties' review in accordance with the Security Management Plan as part of the PMP.

4.7 COURSE ACCEPTANCE AND REVIEW

4.7.1 The Authority shall review the Courses identified in the Course Catalogue in accordance with the processes detailed within Schedule A (Statement of Work) to the Contract.

4.7.2 Each Course will go through the acceptance strategy defined in the Integrated Test, Evaluation and Acceptance Plan (ITEAP), the final stage of this strategy is known as Course Zero. This will comprise the full completion of the Course in accordance with the Contract and agreed Formal Training Statements (Appendices 1-5 to Annex A to Schedule A (Statement of Work)). KPI 2 will monitor the quality of courses as they follow the acceptance strategy. In the event that courses are delivered prior to acceptance, they will be subject to annual review by the training requirement authority against extant Formal Training Statements and the performance shortfall metrics in 4.7.3.2 shall apply.

4.7.3 The acceptance levels are defined as follows:

4.7.3.1 **Unqualified Acceptance:** Where Course Zero completion is supported by satisfactory evidence which is evaluated as having fully met the Formal Training Statements with no Performance Shortfalls. This shall be referred to as Unqualified Acceptance.

4.7.3.2 **Qualified Acceptance:** Course Zero has been delivered, but there is evidence of Performance Shortfalls against the Formal Training Statements. Where there is a Performance Shortfall (known as a Discrepancy Report (DR)) this will be categorised by the Authority according to the following discrepancy guidelines:

4.7.3.2.1 **DR Priority 1 (P1): Course not Ready for Training (RFT):** Course is not currently usable (e.g. Training Output is affected) without corrections. There are no acceptable instructor/operator procedures to circumvent the problem, or a problem that impacts on any safety or threshold measure of performance as specified in Annex B to Schedule A of the Statement of Work. This must be rectified and ready to be demonstrated to the Authority within thirty (30) Business Days commencing on the first day after Course Zero is completed, or as alternatively agreed in writing by the Authority.

4.7.3.2.2 DR Priority 2 (P2): Training Course RFT (with workarounds): Course Instructor/training procedures are available to circumvent problems; or the problems do not severely limit the Training Output. This is a temporary easement to allow training to begin, but it must be rectified within 60 (sixty) Business Days commencing on the first day after Course Zero is completed, or as alternatively agreed in writing by the Authority.

4.7.3.2.3 DR Priority 3 (P3): Training Course RFT (with minor deficiency): Non-Critical problem or problem of no influence on the Training Output (e.g. poor husbandry). This is a temporary easement to allow training to continue, but it should be rectified within 180 (One Hundred and Eighty) Business Days commencing on the first day after Course Zero is completed or as alternatively agreed in writing by the Authority.

4.7.3.3 In certain cases, the combined impact of two or more P2 shortfalls (that could be tolerated in isolation), may have a combined impact that would constitute a P1 shortfall and they should then be classified as operationally critical. In these circumstances, in the Authority's reasonable judgement, the impact of the Course not commencing to the standard expected will impact the operational capability of the C17 fleet. This assessment will be made by the Authority on a case by case basis and the ultimate decision will be at the reasonable discretion of the Authority. If a P3 is not rectified in 180(One Hundred and Eighty) Business Days commencing on the first day after Course Zero is completed, or as alternatively agreed in writing by the Authority, then it shall become a P2.

4.7.3.4 Qualified Acceptance may also occur where the Authority agrees to accept a Course with a Permanent Concession. A Permanent Concession against the requirement may be requested by the Contractor due to partial inability to meet the Training Output. Requests for a Permanent Concession will be considered by the Authority on a case by case basis provided that there is no impact on any safety or threshold measure of performance as specified in Annex B to Schedule A of the Statement of Work.

4.7.3.5 A Permanent Concession will result in a reduction to the monthly core payment. This will be negotiated and agreed between both parties based upon a value commensurate with the shortfalls and the potential cost that the Authority anticipates incurring by meeting the training deficiencies through alternative means. If the Authority and the Contractor cannot reach agreement on the value of the reduction in the monthly core payment, this matter shall be referred for discussion at the next Integrated Test Evaluation and Acceptance Working Group.

4.7.4 The Authority shall conduct assessments of courses and the STE used to deliver courses. The Authority shall conduct course reviews in accordance with JSP 822. Where evidence indicates there is a Performance Shortfall, the process at 4.7.3 shall be followed to resolve discrepancies. KPI 3a monitors the quality of courses delivery. The Authority shall conduct reviews of STE in accordance with RA2375. KPI 3b monitors the accreditation of STE device in accordance with its initial baseline.

4.8 DELIVERABLE DOCUMENTATION ACCEPTANCE PROCESS

4.8.1 No documentary Contractor Deliverable shall be deemed accepted for the purposes of this Contract until such document has been received by the Authority and the Authority has indicated to the Contractor in writing that the Authority is satisfied that such deliverable meets the requisite quality standards specified in accordance with Condition 2.3. The Authority shall review each such document and provide any comments in relation to such compliance to the Contractor within 60 (sixty) Business Days after confirming to the Contractor receipt of the document. The document will be deemed acceptable if there is no response made by or on behalf of the Authority within 60 (sixty) Business Days. The Contractor shall upon receipt of such comments incorporate those comments within a revised document which shall be issued to the Authority within 10 (ten) Business Days after receiving such comments.

4.8.2 Following receipt of the revised document the Authority shall notify the Contractor in writing of any errors or omissions within 10 (ten) Business Days after such receipt. The Contractor shall correct these errors and/or omissions and submit the corrected document to the Authority within five (5) Business Days after the Contractor's receipt of such notice.

4.9 CONTRACT DATA DELIVERABLES

4.9.1 The Contractor shall provide those items specified in Schedule D (Contract Data Deliverables List) including the relevant Management Information identified therein. The Authority shall accept or reject such items in accordance with Condition 4.8 (Deliverable Documentation Acceptance Process). Where the Authority rejects any item, the Contractor shall resubmit it to the Authority in accordance with the period timescales identified in the final sentence of Condition 4.8.1.

4.10 SAFETY AND THE ENVIRONMENT

4.10.1 The Contractor shall afford the Authority's appointed Independent Safety Auditor reasonable access to such records in respect of the Facility and programme, including any Sub-Contractor records relating to C17 Synthetic Training Service to facilitate such auditor to carry out safety audits and other assessment activities to meet the quality standards in accordance with Condition 2.3. The Contractor shall comply with the site Health and Safety regulations and procedures whilst working on Government Establishments.

4.10.2 The Contractor shall be responsible for providing all personal protective Equipment necessary to ensure the safety of its employees in the performance of its obligations under this Contract.

4.10.3 The Contractor shall ensure that Training Service complies with the Health and Safety at Work Act 1974 and corresponding "Enabling Regulations", Environmental Protection Act 1990, the Environment Act 1995 and other relevant statutory provisions and any additional requirements arising from international treaties and protocols to which the UK is a signatory.

4.10.4 The Contractor shall ensure the Training Service operates in accordance with the Environmental Management Requirements for defence Equipment as stated in Schedule A (Statement of Work).

4.11 RISK AND OPPORTUNITY MANAGEMENT

4.11.1 The Contractor shall manage risk and opportunities in accordance with the PMP at Annex C to Schedule A (Statement of Work). This plan shall outline the risk architecture, protocols and process.

4.11.2 The risk and opportunities register shall be maintained by the Contractor during the Term. This register shall be in the form of a matrix and detail all risks and opportunities that are associated with the work under the Contract. The risk and opportunities register shall give a clear indication of the Contractor's risk exposure at both current and target levels but also assure the Authority that the risk management process chosen is being demonstrated. All such risks (including Sub-Contract risks) shall be attributed in the matrix to where they can be best managed. Each risk identified in the register shall be categorised (whether the risk is high, medium or low), have an action plan by way of mitigation and under which the risk is to be managed and monitored.

4.11.3 The risk and opportunities register shall be a living document, and risks and opportunities identified in this document shall be reviewed by the Parties as an item of the Quarterly Progress Meetings. Where any risk no longer exists, it can be removed from such register by the Parties (having agreed the same). New risks and costed opportunities can be added to the register as soon as they are identified, attributed and mitigation action agreed.

4.11.4 The Contractor acknowledges that any risk assessment which has been, or may be, undertaken in connection with this Contract has been, or will be, a project management function only. Such risk assessment does not affect the legal relationship between the Parties. The issuing of any risk assessment questionnaire and the process of risk assessment generally, including without limitation, the identification of (or failure to identify):

4.11.4.1 particular risks and their impact; or

4.11.4.2 risk reduction measures, contingency plans and remedial actions shall not in any way limit or exclude the Contractor's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Contract. The risks identified as a result of any risk assessment questionnaire and risk assessment process generally remain the risks of the Contractor and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under the Contract. Any risk assessment questionnaire released was or will be issued by the Authority solely on this basis.

4.12 QUALITY ASSURANCE

4.12.1 The Contractor shall establish and maintain a Quality Management System ("QMS") compliant with AQAP 2105 Edn. C Ver 1 (Promulgated), the QMS shall complete the following:

4.12.1.1 maintain a clear demarcation of ownership between Contractor and Authority responsibilities. The QMS shall be detailed in the Quality Management Plan as per DID 3 within Schedule A (Statement of work) – Annex C.

4.12.2 The application of the standards identified in this Contract shall be monitored throughout the Term.

4.12.3 Joint Authority / Contractor Quality Assurance Group discussions (QAG) shall be held within the Quarterly Progress Meetings. The objective of the discussions is to

mutually discuss and progress any quality issues, concerns and corrective, preventative actions.

4.12.4 The Contractor shall notify the Authority of the Contractor's nominated Quality Assurance Representative on the Contract Award.

4.12.5 Details of the Authority's Quality Assurance Representative are set out in Box 7 of DEFFORM 111 (Appendix to Contract).

4.12.6 The Contractor shall comply with the Allied Quality Assurance Publications, Defence Standards and Regulatory Articles.

4.12.7 As part of any investigation or audit that requires relevant Information regarding the Contract, the Contractor shall grant the Authority access as defined in DID 3 to relevant Facilities, personnel and Information (including test certificates and documentation) relating to the C17 Synthetic Training Service Program within the constraints of ITAR and GDPR.

MILITARY AIRWORTHINESS AUTHORITY (MAA) REQUIREMENTS

4.12.8 The Contractor shall comply with the following MAA Regulatory Publications ("MRP") issued by the Military Aviation Authority ("the Regulator"):

RA	RA Description
RA2101	Aircrew Qualifications
RA2125	Aircrew Instructor Training
RA2130	Safety Equipment and Survival Drills Trg
RA2375	Approval of Flight Simulator Trg Devices (FSTDs)
RA2401	Trg Records
RA4806(5)	Personnel Competencies and Authorization (MRP145. A.30(e))
RA4009	Unit Aviation Standing Orders
RA4213	Control of Air System Components used in Ground Test Facilities
(MAM-P)	Manual of Airworthiness Maintenance – Processes

4.12.9 Overarching documents:

4.12.9.1 MAA01: MAA Regulatory Policy

4.12.9.2 MAA02: MAA Master Glossary

4.12.9.3 MAA03: Regulatory Processes

4.12.10 MAA Manuals:

4.12.10.1 Manual of Air Safety;

4.12.10.2 Manual of Maintenance and Airworthiness Processes and Supplement MAP-01/02.

4.12.11 The Contractor shall comply with the regulations set out in the above RAs by following:

4.12.11.1 the Acceptable Means of Compliance (“AMC”) prescribed therein;

4.12.11.2 where there is more than one AMC, an AMC or AMCs agreed by the Contractor with the Authority/Regulator; or,

4.12.11.3 other alternative means as may be agreed by the Contractor with the Authority/Regulator.

4.12.12 Complying with the MRP does not reduce or limit any statutory or other legal obligation of the Contractor.

4.13 **NOT USED**

4.14 **SUSTAINABILITY LEGISLATION**

4.14.1 The Contractor shall take reasonable steps to procure the observance of the economic, social and environmental legislation related to the subject matter or the execution of the contract by any servants, employees or agents of the Contractor and any Sub-Contractors engaged in the performance of the Contract.

4.14.2 If the Contractor becomes aware of any prosecution or proceedings, for criminal breaches of the economic, social and environmental legislation related to the subject matter or the execution of the Contract, against the Contractor, any servants, employees or agents of the Contractor and any Sub-Contractors engaged in performance of the Contract, the Contractor shall notify the Authority as soon as reasonably practicable and in any event within 10 (ten) Business Days of becoming aware of such prosecution or proceedings, at the address specified in the Contract.

4.15 **HEALTH AND SAFETY MANAGEMENT**

4.15.1 The Contractor shall throughout the Term of the Contract have full and proper regard to the health and safety of all persons entitled to enter the Facility and shall keep the establishment in such a manner so as to keep to a minimum any danger and/or hazard to such persons including any health and safety and or environmental risks to such persons in line with all relevant legislation.

4.15.2 The Contractor shall ensure that during the Term:

4.15.2.1 the Equipment/system is safe to operate and maintain;

4.15.2.2 the requirements stipulated in this Contract (including Schedule A (Statement of Work)) for the safety of the Equipment/system are met; and

4.15.2.3 the Project Engineering Management Plan (PEMP) at Annex C to Schedule A (Statement of Work) is followed and reviewed on at least an annual basis. PEMP to include Authority operation of Contractor owned STE.

5 PRICING & PAYMENT

5.1 In consideration of the Contractor's performance and delivery of its obligations under this Contract, the Authority shall pay monthly in arrears to the Contractor an amount equal to the Monthly Performance Payment and any milestone payments due in accordance with Schedule P (Pricing and Payment) together with an amount equal to any VAT applicable in accordance with DEFCON 513 (Edn. 11/16).

5.2 The price for the initial Pricing Period (PP1) is set out in Schedule P (Pricing and Payment). Prices for all subsequent Pricing Periods will be determined in accordance with Schedule P (Pricing and Payment).

5.3 For all Additional Tasks, pricing shall be agreed in accordance with Condition 8.15, (Contract Change).

5.4 All payments under this Contract shall be made via the Contracting, Purchasing and Finance (CP&F) electronic procurement tool, and in accordance with DEFCON 522.

5.5 Any rebate due to the Authority as a result of Third-Party usage of the training facility shall be calculated and paid in accordance with Schedule P (Pricing and Payment).

5.6 The Contractor shall ensure that all claims for payment reflect the Contract prices determined in accordance with this Schedule P (Pricing and Payment) and the Payment Plan at Annex C to this Schedule. Any claim for payment that does not accord with this Schedule P (Pricing and Payment) shall not be regarded as a valid claim for payment, unless otherwise agreed.

6 INTELLECTUAL PROPERTY RIGHTS

6.1 TECHNICAL PUBLICATION CONDITION

6.1.1 The Contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any technical publication called for under the Contract or any part thereof including any such part when incorporated in any amended or extended version of such technical publication, and to circulate, use or have used said technical publication including any amended or extended version and any copies thereof for MoD Training Output needs. Prior to making the technical publication(s) available to any Third Party other than a MOD Technical Support Contractor, the Authority shall give the Contractor the opportunity to enter into a confidentiality agreement with the proposed recipient. Under circumstances where a Third Party is an active competitor of supplying simulated training the Contractor would not be required to pass any proprietary material, even under confidentiality arrangements to such a supplier.

6.2 SUB-CONTRACTS

6.2.1 The Contractor shall ensure that the rights conferred on and required by the Authority by this Contract (Contract Number 701547457) are given effect where necessary through the flow down of the requirement within the applicable Sub-Contracts to this Contract (Contract Number 701547457).

6.3 STEP IN RIGHTS

In the event of:

6.3.1 Termination or expiry of the Contract for Material Breach in accordance with Condition 8.9 (Termination), or

6.3.2 the Contractor being unwilling or unable either to continue with the Contract or accept a follow-on agreement from the Authority on fair and reasonable terms for the continuing provision of the Services, or

6.3.3 the Contractor permanently discontinuing its business because of bankruptcy, receivership, dissolution, or other form of permanent business disruption and such business is not continued by a successor in interest to the Contractor to whom the relevant Intellectual Property Rights have been transferred, the Authority has the right to obtain from the Contractor, or from the authorised trustees or receivers acting on behalf of the Contractor, sufficient of the Contractor's Management Information as to permit the Authority to continue the efficient operation of the Contract during the period until a replacement arrangement can be established by the Authority for the provision of Services which are subject to the Contract. The Contractor shall deliver this information within four (4) calendar weeks following request from the Authority. The Authority shall have the right for the period of one calendar year from the date when the Management Information is received by the Authority, to use or have used the Management Information for this purpose.

6.3.4 Within three (3) calendar months from the expiry of the period in Paragraph 6.3.1 above, the Authority shall return to the Contractor or to the authorised trustees or receivers acting on behalf of the Contractor as appropriate, the Management Information received by the Authority and all copies e.g. fax, email, soft copy etc., or certify its destruction thereto.

6.4 USE OF AUTHORITY INFORMATION

6.4.1 For the avoidance of doubt all Information including but not limited to documentation provided by the Authority to the Contractor under the Contract, and all Information made available by Authority Subject Matter Experts (SME's) to the Contractor in whatever form, are to be used solely for the purpose of developing or delivering training and providing training for Authority Personnel and shall not be used to develop training for any Third Party or for any other purpose not detailed in the Contract. The Contractor shall not copy, alter or remove, in whole or in part, any Information provided by the Authority under the Contract without the express written permission of the Authority. The Authority may agree licence terms with the Contractor for the commercial exploitation of Authority data made available to the Contractor under this contract.

6.5 TECHNICAL ASSISTANCE AGREEMENTS

6.5.1 Where:

6.5.1.1 a new Technical Assistance Agreement is required under the International Traffic In Arms Regulations (ITAR) for delivery of this Contract and such Technical Assistance Agreement requires the Authority to be a signatory; or, for the delivery of the Contract, a material amendment is required to an existing Technical Assistance Agreement to which the Authority is a signatory.

6.5.2 The Contractor shall provide the Authority with the opportunity to comment on the Technical Assistance Agreement or amendment before it is submitted for approval to the relevant US Government department. The Authority shall provide comments in a timely manner such that the approval of the Technical Assistance Agreement or amendment does not impact delivery of the Contract.

6.6 AUTHORISATION BY THE CROWN FOR USE OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS

6.6.1 Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

7 LOANS

7.1 GOVERNMENT FURNISHED ASSETS (GFA)

7.1.1 The Authority shall be responsible for the provision of Government Furnished Assets as detailed at Schedule F during the Term.

7.1.2 All GFA issued by the Authority to the Contractor shall be managed in accordance with the requirements of DEFCON 611, DEFCON 694 and DEFSTAN 05-099. Any Changes (once approved by the Parties) to the GFA list at Schedule F (Government Furnished Assets) shall only take effect once an amendment to the Contract has been made to such effect in accordance with DEFCON 503.

7.1.3 If the Authority fails to comply with its obligations set out in Schedule F (Government Furnished Assets (GFA)), the arrangements set out in Condition 8.7 (Relief Event) shall apply. This relief shall be presented by the Contractor in accordance with 8.7.9 The Contractor shall take reasonable measures to mitigate the consequences of any such failure or delay (in respect of cost and impact on the C17 STS) and shall agree with the Authority in advance what measures are to be taken.

7.1.4 It is the responsibility of the Authority to notify the Contractor of any special Conditions that apply to items of GFA supplied.

8 CONTRACT MANAGEMENT, PERFORMANCE & CHANGE

8.1 KEY PERFORMANCE INDICATORS AND REMEDIES

8.1.1 Key Performance Indicators (KPI), as described at Schedule K (KPI), shall be used to assess the Contractor's performance. KPIs shall be measured in accordance with the frequencies stated for each respective KPI in Schedule K (KPI).

8.1.2 Where one or more of the KPIs specified within Schedule K (KPI) is assessed as not achieved within any Performance Report, the remedies set out in Schedule K shall apply.

8.2 COST PERFORMANCE REPORTING

8.2.1 The Contractor shall report performance, time and cost Information in accordance with Schedule A (Statement of Work) and specifically DID 14 (Cost Performance Report) and DID 15 (Monthly Progress Report).

8.3 CONTRACT ADMINISTRATION

8.3.1 The Contractor shall meet with the Authority on a periodic basis as set out in the Schedule A (Statement of Work) Annex D (meetings), to discuss the Contractor's performance and other aspects of the Contract. Attendance requirements are specified in Schedule A (Statement of Work).

8.3.2 Discussions and decisions taken at such meetings shall have no contractual effect unless agreed by both parties and incorporated in accordance with Condition 8.15 (Contract Change); DEFCON 503 and DEFCON 620. The Contractor shall not take actions arising from any progress meeting, the nature of which requires a contract amendment to be issued by the Authority's commercial department team engaged in relation to this Contract in accordance with the provisions of DEFCON 503, without authorisation from the Authority's commercial department. The Authority shall not be held liable for any such action by the Contractor in anticipation of any authorisation and any related cost, however incurred, in the event that authorisation is not provided.

8.3.3 Ad-hoc meetings may be called by either the Authority or the Contractor throughout the Term where a specific need (not otherwise resolved) relating to this Contract arises. Agreement to attend such meetings shall not be unreasonably withheld.

8.4 DISPUTE RESOLUTION

8.4.1 Dispute Resolution shall be carried out in accordance with the procedure outlined in 8.4.2-8.4.6 and DEFCON 530 and, where applicable, the SSCR (the Single Source Contract Regulations 2014 (SI 3337), as amended from time to time).

8.4.2 The Authority and the Contractor recognise the importance of a good long-term working relationship which will seek to minimise the possibility of dispute arising and the importance of fast, efficient and cost-effective procedures to resolve any disputes that do arise under this Contract.

8.4.3 The Authority and the Contractor will each engage reasonable efforts to resolve any dispute or claim arising out of or relating to this Contract through negotiations between the respective representatives of the Authority Delivery Team (including the commercial team) and the Contractor at the point at which they first occur.

8.4.4 In the event that the dispute is not resolved by such negotiations, or where it is agreed between the Parties, the dispute or claim shall be escalated to the Training Service Capability Manager (for the Contractor) in consultation with the Head of Commercial and Head of ASET (for the Authority) in consultation with Head of ASET Commercial, for resolution.

8.4.5 If the Parties fails to reach agreement on this issue within 90 (ninety) Business Days the dispute or claim shall be escalated to the Managing Director of MoD Services (for the Contractor) in consultation with the Commercial Director and Head of ASET (for the Authority) in consultation with Head of ASET Commercial for resolution.

8.4.6 Any dispute or claim not resolved by negotiation arising out of or relating to this Contract shall be dealt with using Alternative Dispute Resolution ("ADR") Procedures in accordance with DEFCON 530, such as mediation in a final attempt to resolve the dispute or claim. In the event it is not resolved by such procedures, the dispute shall be referred to arbitration in accordance with DEFCON 530.

8.4.7 Notwithstanding the provisions of Conditions 8.4.1 to 8.4.6 (inclusive), the Authority or the Contractor may resort to arbitration in accordance with DEFCON 530 following a

period of 65 (sixty five) Business Days from commencement of negotiations and an additional period of 90 (ninety) Business days, if ADR procedures are adopted.

8.4.8 The Authority and the Contractor shall continue to comply with, observe and perform all of their obligations in this Contract regardless of the nature of any dispute or claim which arises and notwithstanding referral of any such dispute for resolution and shall give effect forthwith to any decision of the arbitrator delivered.

8.5 MEASURES IN A CRISIS

8.5.1 Subject always to the operation of Condition 8.7 in relation to the occurrence of a COVID 19 Relief Event or a Relief Event and subject always to the provisions of Condition 8.6 (Force Majeure), the Contractor shall continue to provide the Services in peacetime and during periods of crisis, tension, emergencies, transition to war and during hostilities.

8.5.2 If at any time, the Authority believes, in its sole opinion, that the circumstances identified in Condition 8.5.3 apply, it may issue a notice in writing to the Contractor of such belief.

8.5.3 The circumstances referred to in Condition 8.5.2 are that, in view of:

8.5.3.1 the national interests of the United Kingdom and its territories, or a threat to their national security and defence, or the occurrence of a state of war, crisis, state of tension or other emergency (whether or not involving hostilities);

8.5.3.2 a request to the Authority by a local authority, public body or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster; and/or,

8.5.3.3 a request by NATO, the European Union or the United Nations or other country or organisation(s) for support or assistance in relation to international obligations,

8.5.4 Once a notice issued under Condition 8.5.2 is received by the Contractor the provisions of Schedule E (Measure in a Crisis) shall apply.

8.5.5 Steps taken pursuant to the provisions of Schedule E (Measures in a Crisis) shall remain in force and shall immediately cease to apply when the Authority issues a written notice to that effect to the Contractor and thereafter the Contractor shall continue to be bound by the provisions of this Contract.

8.5.6 Any action or measures which the Authority may, or is required to, take pursuant to the provision of this Condition may validly be taken by the Authority acting through the Authorised Representative or such other person or persons as the Authority may from time to time authorise in writing for that purpose and notify to the Contractor.

8.6 FORCE MAJEURE

8.6.1 Neither Party (the “**Affected Party**”) shall be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure result from a “Force Majeure Event”. For the purposes of this Contract a Force Majeure Event is defined as one of the following:

8.6.1.1 acts of nature, including but not limited to; natural catastrophes or disasters such as earthquake, landslide, drought, cyclones, typhoons,

hurricane, tsunamis, perils of sea, lightning, induction caused by lightning, subsidence, mud flow, other earth or water movement, floods, epidemic or volcanic activity

8.6.1.2 fire at any of the Contractor's premises or those of its suppliers except to the extent that the fire was caused by their own negligence

8.6.1.3 theft or criminal act towards the Contractor and or its property which impinges on the delivery of the Contract

8.6.1.4 Any strikes or industrial action affecting the delivery of the Contract

8.6.1.5 Loss of power or other utilities to be provided by the Authority that has a material effect on the delivery of the Contract

8.6.1.6 war;

8.6.1.7 hostilities;

8.6.2 The Affected Party shall immediately notify the other Party in writing, on becoming aware of the occurrence of a Force Majeure Event. Within five (5) business days after this notification the Affected Party shall confirm in writing details of the Force Majeure Event, its effect on the its obligations under this Contract, and the actions proposed to mitigate its effect.

8.6.3 Subject to Condition 8.6.4 below:

8.6.3.1 the Affected Party shall be entitled to an appropriate extension of time for performing such obligations provided always that it has used, to the satisfaction of the other Party, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract; and

8.6.3.2 in particular (and without limitation to Condition 8.6.3.1) the Contractor (where it is the Affected Party) shall be entitled to claim KPI relief in accordance with and subject to the provisions of Condition 8.7.

8.6.4 The maximum extension of time granted under this Condition shall be limited to 90 (ninety) Business Days after which time, where either or both Parties is/are (an) Affected Party or Affected Parties and is/are unable to discharge all or a material part of its or their respective obligations provided in this Contract for a period of 60 (sixty) or more Business Days due to the occurrence of one or more Force Majeure Events, the Authority (whether or not it is an Affected Party) may, on giving written notice to the Contractor, terminate this Contract with immediate effect on such basis.

8.6.5 Neither Party shall have any right to claim any amount by way of compensation or otherwise from the other in connection with this Contract's Termination pursuant to Condition 8.6.4 (subject to Condition 8.9.5.1).

8.7 RELIEF EVENT

8.7.1 In this condition 8.7:

- (a) **COVID 19 Event:** the outbreak of the COVID 19 pandemic in the year 2020;

- (b) **COVID 19 Regulatory Change:** the introduction and imposition after, and with effect after (but not before), Contract Award of any measure(s) or guidance on businesses operating in the United Kingdom by or on behalf of the government of the United Kingdom, and/or any of its devolved administrations, or a foreign government, with the intention of mitigating the effects of the COVID 19 Event;
- (c) **COVID 19 Related Failure:** (in the case of either Party) a failure to comply with any of its respective obligations provided in this Contract where and to the extent that: (i) such failure arises out of the occurrence of the COVID 19 Event (and not a Relief Event or Relief Events); and (ii) the occurrence of such failure arises and/or (as the case may be) shall arise from a COVID Regulatory Change and could not reasonably have been foreseen by the Parties at or about Contract Award;
- (d) **C-19 Relief Period** has the meaning given in Condition 8.7.7;
- (e) **Party A** has the meaning given in Condition 8.7.2(a);
- (f) **Relief Event:** each or any of the following events:
 - (i) any failure by the Authority to comply with any of its obligations provided in Schedule F (Government Furnished Assets (GFA));
 - (ii) the issue of a notice by the Authority under Condition 8.7.2 of this Contract;
 - (iii) any disruption caused by the Authority in the exercise of its right provided in Condition 8.20.2 of this Contract;
 - (iv) the occurrence of a Force Majeure Event; or
 - (v) any other event the Contractor believes could not be mitigated.
- (g) **Relief Event Failure:** a failure by the Contractor to comply with one or more of its obligations provided in this Contract where and to the extent that such failure arises out of the occurrence of a Relief Event; and
- (h) **Relief Event Period** has the meaning given in Condition 8.7.14.

Treatment of COVID 19 Related Failures

8.7.2 Where at any time during the Term (unless the Parties (acting reasonably having regard for the ongoing effects of the COVID 19 Event on the Contractor and/or any of its Sub-Contractors) agree in writing to extend the arrangements set out in this Condition 8.7) either Party (the **C-19 Affected Party**) believes that a COVID 19 Related Failure is occurring and/or (as the case may be) is reasonably likely to occur in respect of any of its own obligations provided in this Contract, such party shall use all reasonable endeavours and take practicable measures to mitigate the consequences of the COVID 19 Related Failure upon such obligation(s) and shall promptly and in any event within ten (10) Business Days after first becoming aware of such failure:

- (a) notify the other Party (**Party A**) in writing of the occurrence and/or future occurrence of the COVID 19 Related Failure, specifying (where the Contractor is the C-19 Affected Party) the performance of which

obligation(s) is/are and/or (as the case may be) shall be adversely affected, including in respect of any Contractor Deliverables, and which KPI(s) is/are and/or shall be adversely affected or (where the Authority is the C-19 Affected Party) the performance of which of its obligation(s) provided in this Contract is/are and/or shall be adversely affected; and

(b) demonstrate to the reasonable satisfaction of Party A that:

- (i) the COVID 19 Event is and/or (as the case may be) shall be the cause of the C-19 Affected Party's failure to perform its obligations provided in this Contract;
- (ii) such failure arises and/or (as the case may be) is reasonably likely to arise from a COVID 19 Regulatory Change and could not reasonably have been foreseen by the Parties at or about Contract Award; and
- (iii) the C-19 Affected Party has continued and is continuing to perform its obligations under the Contract to the extent such performance is not prevented by the COVID 19 Event.

8.7.3 Party A shall (acting reasonably) assess and confirm in writing to the C-19 Affected Party within five (5) Business Days after Party A's receipt of such notice:

- (a) whether the C-19 Affected Party has discharged its obligations under Condition 0; and
- (b) whether Party A agrees that a COVID 19 Related Failure is occurring and/or (as the case may be) is reasonably likely to occur.

8.7.4 Where in accordance with Condition 8.7.3 Party A notifies the C-19 Affected Party that Party A does not believe that the C-19 Affected Party has discharged its obligations under Condition 8.7.2(b) and/or disagrees that a COVID 19 Related Failure is occurring and/or (as the case may be) is reasonably likely to occur, the Parties shall promptly meet to endeavour to resolve such matter(s) in good faith. If the Parties are unable to resolve such dispute in good faith, the dispute shall be resolved in accordance with the Dispute Resolution Procedure.

8.7.5 Where in accordance with Condition 8.7.3 the Authority as Party A notifies the Contractor as the C-19 Affected Party that the Authority agrees that the Contractor has discharged its obligations under Condition 8.7.2(b) and that a COVID 19 Related Failure is occurring and/or (as the case may be) is reasonably likely to occur, the Authority may (in its sole discretion):

- (a) take action to mitigate or remedy the COVID 19 Related Failure; and/or
- (b) require that the Contractor provides and shall provide assistance in remedying the COVID 19 Related Failure (including requiring the Contractor to obtain a replacement for any Government Furnished Asset(s) and/or vary any Contractor Deliverable(s) so as to reduce or eliminate the impact of the COVID 19 Related Failure).

For the avoidance of doubt, nothing in this Condition 8.7.5 shall operate to impose any obligation on the Authority to take any steps to remedy any COVID 19 Related Failure.

8.7.6 If pursuant to Condition 8.7.5 the Authority requires that the Contractor provides and shall provide assistance in remedying the COVID 19 Related Failure:

- (a) the Contractor shall use reasonable endeavours to comply and/or procure compliance with such instruction; and
- (b) the Contractor shall be reimbursed by the Authority in accordance with the provisions of Schedule P (Pricing and Payment) for any additional costs reasonably incurred (and demonstrated as having been incurred) in providing and/or procuring such assistance to the extent that such assistance is provided and exceeds the scope of its obligations provided in Schedule A (Statement of Work), provided that:
 - (i) the Contractor shall have first in advance of providing such assistance provided to the Authority an estimate of such costs in writing prepared with accordance with Good Industry Practice;
 - (ii) the Authority has confirmed to the Contractor in writing that the Authority is content with such estimate; and
 - (iii) the Contractor shall not be entitled to recover any amount to the extent that it substantially exceeds the amount so estimated.

8.7.7 Provided that the C-19 Affected Party has complied with Condition 8.7.5 and it is agreed or determined that there is and/or is reasonably likely to be a COVID 19 Related Failure, then from and including:

- (a) (where the COVID 19 Related Failure is occurring on the date of such notice) in respect of such failure the date on which Party A shall have been notified pursuant to Condition 8.7.3 or
- (b) (where the COVID 19 Related Failure is not occurring on the date of such notice, but occurs thereafter) the date of its first occurrence,

until such time as the Parties (acting reasonably) agree in writing having regard for the adverse impact of the COVID 19 Event on the C-19 Affected Party's ability to perform such obligation(s) (such period being the **C-19 Relief Period**) such failure shall:

- (c) (where the C-19 Affected Party is the Contractor) be disregarded for the purpose of assessing in accordance with Schedule K (Key Performance Indicators and Performance Measures) the Contractor's performance against the KPIs by:
 - (i) (where more than one training Course has been scheduled to be delivered by or on behalf of the Contractor in each or any Reporting Period wholly coinciding with the C-19 Relief Period) disregarding in such assessment any training Course(s), the provision of which has been directly and solely affected adversely by the occurrence of the COVID 19 Event (and not a Relief Event or Relief Events), where and to the extent that the occurrence of such failure shall have arisen from a COVID Regulatory Change and could not reasonably have been foreseen by the Parties at Contract Award; and

(ii) (where only one training Course has been scheduled to be delivered by or on behalf of the Contractor in any Reporting Period wholly coinciding with the C-19 Relief Period and the provision of such course has been directly and solely affected adversely by the occurrence of the COVID 19 Event) the Contractor's performance in relation to that reporting period shall in relation to each KPI and for the purposes of such assessment be deemed to "Green".

- (d) (where either Party or both Parties is/are the C-19 Affected Party or the C-19 Affected Parties) not give rise to any liability of the C-19 Affected Party to the other Party for breach of the Contract.

8.7.8 Notwithstanding any other provision in this Contract but save to the extent set out in Condition 8.7.8:

- (a) the Contractor shall not be entitled to any additional sum or sums; and
- (b) neither Party shall be entitled to any relief from its obligations provided in this Contract,

as a result of the COVID 19 Event.

Treatment of Relief Events and Relief Event Failures

8.7.9 Whenever at any time during the Term a Relief Event occurs, the Contractor shall use reasonable endeavours and take practicable measures to mitigate its adverse impact upon its obligations provided in this Contract and shall promptly and in any event within ten (10) Business Days after the occurrence of the Relief Event:

- (a) notify the Authority in writing of the nature and extent of any Relief Event Failure occurring or reasonably likely to occur, specifying the performance of which obligation(s) is/are adversely affected, including in respect of any Contractor Deliverables, and which KPI(s) is/are and/or shall be adversely affected; and
- (b) demonstrate to the reasonable satisfaction of the Authority that:
- (i) the occurrence of the relevant Relief Event is the sole and direct cause of the Contractor's failure or likely failure to perform its obligations provided in this Contract; and
- (ii) the Contractor has continued and is continuing to perform its obligations under the Contract to the extent such performance is not prevented by the occurrence of the Relief Event.

8.7.10 The Authority shall (acting reasonably) assess and confirm in writing to the Contractor within five (5) Business Days after the Authority's receipt of such notice:

- (a) whether the Contractor has discharged its obligations under Condition 8.7.9; and
- (b) whether the Authority agrees that a Relief Event Failure has occurred or is reasonably likely to occur.

8.7.11 Where in accordance with Condition 8.7.10 the Authority notifies the Contractor that the Authority does not believe that the Contractor has discharged its obligations under Condition 8.7.9 and/or disagrees that a Relief Event Failure has occurred or is reasonably likely to occur, the Parties shall promptly meet to endeavour to resolve

such matter(s) in good faith. If the Parties are unable to resolve such dispute in good faith, the dispute shall be resolved in accordance with the Dispute Resolution Procedure.

8.7.12 Where in accordance with Condition 8.7.10 the Authority notifies the Contractor that the Authority agrees that the Contractor has discharged its obligations under Condition 8.7.9 and that a Relief Event Failure has occurred or is reasonably likely to occur, the Authority may (in its sole discretion):

- (a) take action to mitigate or remedy any such Relief Event Failure; and/or
- (b) require that the Contractor provides and shall provide assistance in remedying such Relief Event Failure (including requiring the Contractor to obtain a replacement for any Government Furnished Asset(s) and/or vary any Contractor Deliverable(s) so as to reduce or eliminate the impact of the Relief Event).

For the avoidance of doubt, but without prejudice to its obligations provided in Schedule F (Government Furnished Assets (GFA)), nothing in this Condition 8.7.12 shall operate to impose any obligation on the Authority to take any steps to remedy any Relief Event Failure.

8.7.13 If pursuant to Condition 8.7.12 the Authority requires that the Contractor provides and shall provide assistance in remedying any Relief Event Failure:

- (a) the Contractor shall use reasonable endeavours to comply and/or procure compliance with such instruction; and
- (b) the Contractor shall be reimbursed by the Authority in accordance with the provisions of Schedule P (Pricing and Payment) for any additional costs reasonably incurred (and demonstrated as having been incurred) in providing and/or procuring such assistance to the extent that such assistance is provided and exceeds the scope of its obligations provided in Schedule A (Statement of Work), provided that:
 - (i) the Contractor shall have first, in advance of providing such assistance, provided to the Authority an estimate of such costs in writing prepared with accordance with Good Industry Practice;
 - (ii) the Authority has confirmed to the Contractor in writing that the Authority is content with such estimate; and
 - (iii) the Contractor shall not be entitled to recover any amount to the extent that it substantially exceeds the amount so estimated.

8.7.14 Provided that a Relief Event has occurred, and the Contractor has complied with its notification obligation provided in Condition 8.7.9, then from and including:

- (a) (where any Relief Event Failure is occurring on the date of such notice) in respect of such failure the date on which Party A shall have been notified pursuant to Condition 8.7.9; or
- (b) (where no Relief Event Failure is occurring on the date of such notice, but occurs thereafter) the date of its first occurrence,

until such time as the Parties (acting reasonably) agree in writing having regard for the adverse impact of the Relief Event on the Contractor's ability to perform such obligation(s) (such period being the **Relief Event Period**) any Relief Event Failure(s) occurring during the Relief Period shall be disregarded for the purpose of assessing in accordance with

Schedule K (Key Performance Indicators and Performance Measures) the Contractor's performance against the KPIs by:

(c) (where more than one training Course has been scheduled to be delivered by or on behalf of the Contractor in each or any Reporting Period wholly coinciding with the Relief Period) disregarding in such assessment any training Course(s), the provision of which has been directly and solely affected adversely by the occurrence of the Relief Event; and

(d) (where only one training Course has been scheduled to be delivered by or on behalf of the Contractor in any Reporting Period wholly coinciding with the Relief Period where the provision of such course has been directly and solely affected adversely by the occurrence of the Relief Event) the Contractor's performance in relation to that reporting period shall in relation to each KPI and for the purposes of such assessment be deemed to "Green".

Save to the extent otherwise expressly stated in this Condition 8.7, the Contractor shall not be entitled to any additional sum or sums and/or relief from any of its obligations provided in this Contract as a result of the occurrence of a Relief Event.

8.8 DISRUPTION

8.8.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other Contractor employed by the Authority.

8.8.2 The Contractor shall inform the Authority of any actual or potential industrial action which affects or might affect its ability at any time to perform its obligations under the Contract as soon as it becomes aware of the actual or potential industrial action and certainly no later than seven (7) Business Days before the action is due to take place, whether such action be by its own employees or others.

8.8.3 In the event of industrial action by any employee(s) of the Contractor and/or any Sub-Contractor(s), provision of the Contractor Deliverables is to be maintained and contingency plans shall be available for the Authority to inspect and / or comment on at any reasonable time and shall be updated and revised as necessary by the Contractor throughout the Term.

8.9 TERMINATION

8.9.1 Except where expressly provided in this Contract:

8.9.1.1 Termination under this Contract (or any part thereof) shall be without prejudice to any accrued rights or obligations under this Contract as at the date of Termination;

8.9.1.2 Termination or expiry of this Contract (or any part thereof) shall not affect the continuing rights and obligations of the Contractor and the Authority arising from this Contract including any provision of this Contract which is expressed to survive Termination or which is required to give effect to such Termination or the consequences of such Termination, including, but not limited to Condition 8.10, Condition 4.4, Condition 5, Condition 6.4, Condition 8.9.3, Condition 3.10, Condition 8.4, DEFCON 522, DEFCON 526, DEFCON 529, DEFCON 530, DEFCON 625, DEFCON 632.

8.9.2 In addition to the Authority's rights and remedies set in this Contract (including, but not limited to, under the DEFCONs incorporated under Condition 2.1 of this Contract) and without limitation to application of DEFCON 514 and the scope and application of the term "material breach" under its terms in accordance with general law, the Authority may terminate this Contract (in whole or in part) in accordance with DEFCON 514 (Edn. 08/15) where such rights have been afforded to the Authority in Schedule K.

8.9.3 For the purposes of DEFCON 514 a "Material Breach" may arise from a single Material Breach or a number of breaches or repeated breaches (whether of the same or different obligations and regardless of when such breaches occurred and whether such breaches are cured).

8.9.4 Consequences of Termination by Material Breach

8.9.4.1 Without prejudice to the Authority's rights under DEFCON 514, in the event of Termination for Material Breach the Contractor shall be entitled to payments only in respect of unpaid charges under Schedule P (Pricing and Payment) for Services received by the Authority up to and including the date of Termination and any charges that may be payable in respect of those Services provided in accordance with Condition 8.10 (Exit Requirements). The Authority may deduct from such payments any charges it has paid to the Contractor in advance in respect of those Services not provided as at the date of Termination.

8.9.5 Consequences of Termination by Force Majeure

8.9.5.1 In the event that the Authority terminates the Contract in accordance with Condition 8.6 (Force Majeure) the Contractor shall be entitled to payments only in respect of unpaid charges under Schedule P (Pricing and Payment) for Services received by the Authority up to and including the date of Termination and charges that may be payable in respect of Services provided in accordance with Condition 8.10 (Exit Requirements). The Authority may deduct from such payments any charges it has paid to the Contractor in advance in respect of Services not provided as at the date of Termination.

8.9.6 Consequences of Termination for Convenience

8.9.6.1 In the event that the Authority terminates for convenience in accordance with DEFCON 656B, subject to Condition 8.9.6.3, the Contractor shall be entitled to payments, only in accordance with DEFCON 656B and charges that may be payable in respect of Services provided in accordance with Condition 8.10 (Exit Requirements).

8.9.6.2 The Parties agree that paragraph 5 of DEFCON 656B (Edn. 08/16) shall for the purposes of this Contract be amended so as to read:

8.9.6.3 The Authority's total liability under the provisions of this Condition shall be limited to:

8.9.6.3.1 (if the Authority gives to the Contractor the Authority's written notice identified in paragraph 1 of DEFCON 656B (Edn. 08/16) in PP1) an amount equal to [REDACTED] minus any sums already paid or due and payable by the Authority to the Contractor under this Contract in respect of the Contractor's performance of the Services

and the delivery of any and all Contractor Deliverables on or prior to the Termination Date, irrespective of whether or not the Termination Date occurs in PP1 or PP2;

8.9.6.3.2 (if the Authority gives to the Contractor the Authority's written notice identified in paragraph 1 of DEFCON 656B (Edn. 08/16) in PP2) an amount equal to [REDACTED] minus any sums already paid or due and payable by the Authority to the Contractor under this Contract in respect of the Contractor's performance of the Services and the delivery of any and all Contractor Deliverables in the period commencing at the beginning of PP2 and terminating on the Termination Date, irrespective of whether or not the Termination Date occurs in PP2 or PP3;

8.9.6.3.3 (if the Authority gives to the Contractor the Authority's written notice identified in paragraph 1 of DEFCON 656B (Edn. 08/16) in PP3) an amount equal to [REDACTED] minus any sums already paid or due and payable by the Authority to the Contractor under this Contract in respect of the Contractor's performance of the Services and the delivery of any and all Contractor Deliverables in the period commencing at the beginning of PP3 and terminating on the Termination Date, irrespective of whether or not the Termination Date occurs in PP3 or PP4; or

8.9.6.3.4 (if the Authority gives to the Contractor the Authority's written notice identified in paragraph 1 of DEFCON 656B (Edn. 08/16) in PP4) an amount equal to [REDACTED] minus any sums already paid or due and payable by the Authority to the Contractor under this Contract in respect of the Contractor's performance of the Services and the delivery of any and all Contractor Deliverables in the period commencing at the beginning of PP4 and terminating on the Termination Date.

8.9.6.4 Otherwise the provisions of DEFCON 656B (Edn. 08/16) shall remain unamended.

8.9.6.5 During the period in which the Parties negotiate the firm price for any follow-on Pricing Period, the amounts stated in Conditions 8.9.6.3.1 to 8.9.6.3.4 shall be amended to be proportionate to the respective agreed firm price as follows:

8.9.6.5.1 For PP2: [REDACTED] of the agreed firm price;

8.9.6.5.2 For PP3: [REDACTED] of the agreed firm price;

8.9.6.5.3 For PP4: [REDACTED] of the agreed firm price.

8.9.6.5.4 Any agreed changes to this Condition shall be managed in accordance with the Contract Change Process at Condition 8.15 (Contract Change).

8.9.7 In the event of a partial Termination of this Contract the Parties shall take steps to agree the effect of any changes required to give effect to such partial Termination in respect of any Service(s) in accordance with the terms of DEFCON 620 and Condition 8.15 (Contract Change), including the effect the partial Termination may have on any other Service(s), provided that:

8.9.7.1 the Contractor shall not be entitled to any increase in the Contract Price in respect of the Services that have not been terminated; and,

8.9.7.2 any adjustment to the Contract Price must be in accordance with the SSCR.

8.10 EXIT REQUIREMENTS

8.10.1 On expiry of the Contract or in the event that the Authority notifies the Contractor of the Authority's intention to terminate the Contract under or in connection with its terms, the Parties shall give effect to the Contract Exit and Transition Management Plan in accordance with DID 11 (Contract Exit and Transition Management Plan) and DID 1 (PMP) within Schedule A – Annex C and the provisions of DEFCON 625.

8.10.2 If the Contractor fails to comply with the agreed Contract Exit and Transition Management Plan, unless as a result of a direct act or omission of the Authority, the Authority, acting reasonably, reserves the right to withhold any outstanding payments connected with the agreed Contract Exit and Transition Management Plan until full compliance with the agreed Contract Exit and Transition Management Plan has been achieved, unless otherwise mutually agreed. In the event that a dispute arises regarding either Party's compliance with the Contract Exit and Transition Management Plan and any associated payments or retentions related to this the Dispute Resolution Procedure outlined within Condition 8.4 (Dispute Resolution) shall apply.

8.11 NOT USED

8.12 DUTY TO CO-OPERATE

8.12.1 Without prejudice to the provisions of Condition 8.1 (Key Performance Indicators and Remedies), the Contractor shall use reasonable endeavours so as to facilitate the smooth transfer of responsibility for provision of the C17 STS (or any part thereof) to an incoming Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during the term of this Contract or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

8.12.2 On and within 20 (twenty) Business Days after the end of the Term the Contractor shall, with the Authority's consent (not to be unreasonably withheld), be allowed reasonable access to land, Facilities, assets, personnel and Information owned or controlled by the Authority in order to perform the Contract Exit and Transition Management Plan in accordance with DID 11 within Schedule A (Statement of Work) – Annex C.

8.13 NOVATION

8.13.1 Definitions

8.13.1.1 The following definitions in this paragraph 8.13.1 shall apply in this Condition 8.13 (Novation):

Articles: means the whole training devices (and not any component or sub-component thereof) and the housing facility for those devices only.

Asset Register: has the meaning given in paragraph 8.13.4.1;

Assets: those Articles which are used by the Contractor and/or a Sub-Contractor in connection with the provision of the Services and/or the provision and delivery of any Contractor Deliverable(s) and Asset shall be construed accordingly;

Novation: the novation of any Sub-Contract pursuant to this Condition 8.13 (Novation) on the following terms:

- (a) on the Termination Date the Outgoing Party shall transfer (other than in each case with respect to matters occurring before the Termination Date) all its rights and obligations under that contract to the Authority or (where the Authority has elected pursuant to Condition 8.13.6 that any Third Party New Provider shall take over such rights and obligations of the Outgoing Party) any Third Party New Provider;
- (b) on and from the Termination Date the Authority or (as the case may be) any Third-Party New Provider shall enjoy (other than with respect to matters occurring before the Termination Date) all the rights and benefits of the Outgoing Party under that contract;
- (c) on the Termination Date the Authority or (as the case may be) any Third Party New Provider agrees to perform that contract and be bound by its terms in every way as if it were the original party to it in place of the Outgoing Party (other than with respect to matters occurring before the Termination Date);
- (d) on the Termination Date the Sub-Contractor being a party to that contract immediately prior to the Termination Date and on and from the Termination Date continuing to participate in that contract (the Continuing Party) agrees to perform that contract and be bound by its terms in every way as if the Authority or (as the case may be) any Third Party New Provider were the original party to it in place of the Outgoing Party (other than in each case with respect to matters occurring before the Termination Date);
- (e) on and from the Termination Date all references to the Outgoing Party in that contract shall be read and construed as references to the Authority or (as the case may be) any Third-Party New Provider; and
- (f) no claim or demand that the Outgoing Party or the Continuing Party may have against each other under or in connection with that contract shall in any way be affected or prejudiced with respect to matters occurring before the Termination Date,

and Novated shall be construed accordingly;

Outgoing Party: The party to a Sub-Contract being the Contractor, whose rights and obligations under that contract are to transfer on and with effect from the Termination Date in accordance with the novation of that contract pursuant to this Condition 8.13 (Novation);

Replacement Services: The Services (or any part thereof) or substantially similar services (or any part thereof) and the provision and delivery of articles substantially similar to the Contractor Deliverables after partial termination or termination of this Contract; and

Third Party New Provider: A New Provider other than the Authority.

8.13.2 Government Furnished Assets, Intellectual Property and Transfer Regulations

8.13.2.1 Nothing in this Condition 8.13 (Novation) shall operate to limit or exclude the operation or effect of, and (accordingly) the provisions of this Paragraph 8.13.2 shall be construed as supplementing, any provision of the Contract in relation to:

- (a) Government Furnished Assets;
- (b) Intellectual Property Rights;
- (c) or the content of the Contract Exit and Transition Management Plan; and
- (d) the operation of the Transfer Regulations.

In the event of any inconsistency between (on the one hand) (i) any provision of this Contract (other than this Condition 8.13 (Novation)) in relation to any of the matters specified in (a) to (d) (inclusive) immediately above and (ii) any provision of this Condition 8.13 (Novation), such provision or content identified in (i), to the extent of such inconsistency, shall prevail.

8.13.3 General Principle of No Additional Payment

8.13.3.1 The Contractor shall discharge its obligations provided in this Condition 8.13 (Novation) at no additional cost, charge and/or expense to the Authority (such obligation being without prejudice to any licence royalty arrangements agreed between the Parties pursuant to paragraph 8.13.5).

8.13.4 Exit Preparation – Articles and Sub-Contracts

8.13.4.1 The Contractor shall:

- (a) within the period of 20 (twenty) Business Days after Contract Award provide the Authority with a full and accurate register of all Articles as at the commencement of the Term, such register (being the Asset Register).
- (b) promptly (i) inform the Authority of any addition of any Article(s) during the Term and (ii) provide to the Authority a copy of an updated Asset Register reflecting such addition;

8.13.5 Licence

8.13.5.1 In the event that either Party issues a notice to the other effecting the early termination of this Contract in accordance with DEFCON 514 (Material Breach) or Condition 8.6 (Force Majeure) to the Terms and Conditions, within 10 (ten) Business Days after the commencement of the Termination Period the Authority may notify the Contractor that the Authority and/or (a) Third Party New Provider(s) require(s) access to and use of any of the Articles (having regard to the Asset Register in its latest form) on and from the end of the Term in order for the Authority or (a) Third Party New Provider(s) to provide the Replacement Services.

8.13.5.2 If the Authority notifies the Contractor in accordance with paragraph 8.13.5.1 that the Authority and/or (a) Third Party New Provider(s) require(s) access to and use of any of the Articles on and from the end of the Term in order for the Authority and/or a Third Party New Provider to provide the Replacement Services:

- (a) the Contractor shall:
 - (i) use reasonable endeavours only to provide or procure a non-exclusive, royalty-free licence for the Authority and/or any Third-Party New Provider(s) to use any Asset(s) in connection with the performance and delivery of the Replacement Services; and
- (b) if:
 - (i) the Contractor is able to provide or procure such licence identified in paragraph 8.13.5.2(a)(ii) for the Authority and/or any Third Party New Provider(s), the Contractor shall notify the Authority in writing promptly and in any event no less than 10 (ten) Business Days before the end of the Term of such fact, whereupon the Parties shall promptly meet to discuss and (acting reasonably) agree the terms of such licence, including the duration of such licence and any end of licence delivery arrangements; or
 - (ii) the Contractor despite having used reasonable endeavours is unable to provide or procure such licence identified in paragraph 8.13.5.2(a)(ii) for the Authority and/or any Third Party New Provider(s), the Contractor shall notify the Authority in writing promptly and in any event no less than 10 (ten) Business Days before the end of the Term of such fact, whereupon the Parties shall promptly meet to discuss and (acting reasonably) agree alternative arrangements with a view to supporting the Authority and/or any Third Party New Provider(s) in the provision of the Replacement Services from and including the end of the Term.

8.13.6 Novation of Sub-Contracts

8.13.6.1 In the event that the Authority issues a notice to the Contractor effecting the early termination of this Contract in accordance with DEFCON 514 (Material Breach) or Condition 8.6 (Force Majeure) to the Terms and Conditions, within 10 (ten) Business Days after the commencement of the Termination Period the Authority may notify the Contractor in writing whether or not the Authority and/or (a) Third Party New Provider(s) require(s) any Sub-Contract(s) to be Novated in order for the Authority or (a) Third Party New Provider(s) to provide the Replacement Services.

8.13.6.2 If the Authority notifies the Contractor in writing in accordance with paragraph 8.13.6.1 that the Authority and/or (a) Third Party New Provider(s) require(s) any Sub-Contract(s) to be Novated in order for the Authority or (a) Third Party New Provider(s) to provide the Replacement Services, the Contractor shall use reasonable endeavours only to procure such Novation so as to take effect on and from the end of the Term.

8.14 INSURANCE

8.14.1 Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule I (Insurance Provisions) take out and maintain or procure the taking out and maintenance of the insurances as set out under this Condition 8.14 (Insurance) and Schedule I (Insurance Provisions) and any other insurances as may be required by law (together the "Required Insurances"). The Contractor shall ensure that each of these Required Insurances are effective in each case not later than the date on which the relevant risk commences.

8.14.2 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.

8.14.3 The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.

8.14.4 The Authority may elect (but shall not be obliged) where notice has been provided to the Contractor to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.

8.14.5 The Contractor shall, within 20 (twenty) Business Days of Contract Award and within 15 (fifteen) days after the renewal of any of the Required Insurances, provide evidence, in the form of an in date insurance certificate, that the Required Insurances are in force and effect and meet the requirements of this Condition 8.14 (Insurance) and Schedule I (Insurance Provisions). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Condition 8.14 (Insurance) shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract nor be a waiver of the Contractor's liability under this Contract. The Authority reserves the right to clarify information contained in the insurance certificate provided by the Contractor.

8.14.6 The Contractor shall notify the Authority at least 10 (ten) days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.

8.14.7 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.

8.14.8 Where any Required Insurance referred to in this Condition 8.14 (Insurance) and Schedule I (Insurance Provisions) is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.

8.15 CONTRACT CHANGE

8.15.1 Changes shall be managed in accordance with Conditions 8.15.2 to 8.15.7 (inclusive) and as outlined within the process flow chart at Annex E to Schedule A (Statement of Work).

8.15.2 Only the Authorised Representative acting on behalf of the Authority is authorised to amend this Contract. Such variation shall only take effect once agreed in

writing with the Authorised Representative of the Contractor in accordance with the process detailed in DEFCON 503. Only then does the Contractor have approval to proceed to enact the Change.

8.15.3 Changes to the Contract may be proposed by either Party notifying the other Party by serving a written Notice of Change in accordance with DEFCON 620. The Authority shall maintain a register of all Notices of Change, regardless as to whether a formal amendment is made.

8.15.4 Upon agreement of any Change proposal (following process and implementation in line with DEFCON 620), the Authority shall issue an amendment to the Contract.

8.15.5 All proposed Changes (including proposals for Additional Tasks) shall be discussed and agreed by both Parties at the Quarterly Progress Meeting as detailed in Annex D (Meetings) to Schedule A (Statement of Work) as a standard agenda item or ad hoc as required.

8.15.6 Should any Change to this Contract require agreed adjustment to the Contract Price, it shall be recognised that, the Contract is a Qualifying Defence Contract and the obligations under the Defence Reform Act 2014 (DRA) and Single Source Contract Regulations (SSCR) shall continue to apply. In agreeing such Changes particular attention shall be paid to the DRA Section 20 (Allowable Costs) and SSCR Clause 23 (Contract Pricing Statement)

8.15.7 The Contractor withholds the right to accept or reject the proposed Change as per clause 8.15.5

8.16 NO IMPACT, NO VARIATION

8.16.1 In addition to the provisions of DEFCON 503, nothing said, done or written, by any person, nor anything omitted to be said, done or written by any person, including, but without limitation, any servant or agent of the Authority, shall in any way affect the rights of the Authority, modify, affect, reduce or extinguish the obligations and liabilities of the Contractor under the Contract, or be deemed to be a waiver of the rights of the Authority, unless stated in writing and signed by the Authority's Commercial Branch at the Appendix to Contract (DEFFORM 111).

8.17 MANAGING FREEDOM OF INFORMATION REQUESTS

8.17.1 The Contractor acknowledges that the Authority is subject to the requirements FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its information disclosure requirements in the manner provided in Conditions 8.17.2 to 8.17.5.

8.17.2 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf under the Contract, the Contractor shall, if requested by the Authority:

8.17.2.1 provide the Authority's Authorised Representative with a copy of all such Information, within 15 (fifteen) Business Days and in the form that the Authority requires; and

8.17.2.2 provide all reasonable assistance as requested by the Authority's Authorised Representative in connection with any such Information, to enable the Authority to respond to a Request for Information

within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations 2004.

8.17.3 Following notification under Condition 8.17.2 and up until such time as the Contractor has provided the Authority's Authorised Representative with all the Information specified in Condition 8.17.2, the Contractor may make representations to the Authority's Authorised Representative as to whether or not or on what basis the Information requested should be disclosed, and whether further Information should be provided in order to identify and locate the Information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

8.17.3.1 whether the Information is exempt from disclosure under the FOIA and/or the EIR;

8.17.3.2 whether Information is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly, or allow its Sub-Contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Authority's Authorised Representative.

8.17.4 The Contractor acknowledges that any Information provided identified as Confidential Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose such Information in accordance with the requirements of the FOIA and the EIR.

8.17.5 The Authority's point of contact for all Request for Information related issues is the Authority's Authorised Representative.

8.18 BUSINESS CONTINUITY

8.18.1 In order to support the Authority's business continuity and emergency planning obligations, the Contractor shall have documented arrangements in the form of a Business Continuity and Disaster Recovery Plan, that meet the requirement at Annex C of the Schedule A (Statement of Work). Such arrangements must fully integrate with the Authority's own business continuity arrangements and include plans for restoring and maintaining the delivery of the goods, Services, and/or works which are the subject of the Contract and for maintaining communication with the Authority.

8.18.2 It shall be delivered in accordance with the contract data deliverables at Schedule D (Contract Data Deliverables List).

8.18.3 The Contractor shall undertake a test of their business continuity arrangements no less than once every consecutive 12 (twelve) months from Service Commencement Date; or more frequently if reasonably requested by the Authority.

8.18.4 The Contractor shall inform the Authority when such tests or exercises are Scheduled, providing at least one (1) calendar months' notice, and, if requested to do so, provide outcomes of these tests or exercises to the Authority in writing no later than five (5) Business Days after the conclusion of such tests or exercises.

8.18.5 The Authority reserves the right to attend any business continuity test or exercise undertaken by the Contractor and to invite the Contractor to any relevant exercises held by the Authority.

8.18.6 The Authority reserves the right to audit the Contractor's business continuity arrangements, but will accept audits that cover the works/goods/Services carried out by a

United Kingdom Accreditation Service ("UKAS") accredited auditor, provided that the scope of the audit covers the Services delivered by the Contract.

8.18.7 The Contractor shall promptly, and in any case within three (3) calendar months, implement all reasonable actions or remedial measures which the Contractor or the Authority considers to be necessary as a result of audits; tests or exercises; business interruptions; emerging risks; a Change to the goods, Services and/or works covered by this Contract or any underlying business processes.

8.19 **CONTRACTOR'S PERSONNEL**

8.19.1 The Contractor shall procure that all personnel employed or engaged by the Contractor or any Sub-Contractor in connection with this Contract are suitably qualified and experienced for the tasks on which they are engaged.

8.19.2 Where so required, details of Key Personnel to be employed on the Contract to occupy posts within the organisational breakdown structure contained within the Project Management Plan at Annex C to Schedule A (Statement of Work) shall be made available to the Authority's Project Manager within ten (10) Business Days following any request by the Authority.

8.19.3 The Contractor shall take reasonable measures to avoid changes of Key Personnel assigned to and accepted for work under this Contract. The Contractor shall notify the Authority in writing of any proposed change of Key Personnel no later than five (5) Business Days prior to the date that such change is to take effect. The Contractor may temporarily replace such personnel, for a period not to exceed 30 (thirty) days, with a qualified person without the Authority's approval due to temporary leave, sickness etc, or until a permanent replacement has been identified.

8.20 **ACCESS**

8.20.1 Further to DEFCON 608, Following the Authority's request the Contractor shall arrange for the Authority's Project Manager or its Authorised Representative to have reasonable access, with advance warning of five (5) days, at any time to the premises where the work under the Contract is being undertaken, and to reasonable Information relevant to the Contract for the purposes of monitoring and overseeing progress of the work and ensuring compliance with the provisions of Schedule A (Statement of Work). Approval of such time and access must be given by the Contractor in order to ensure the granted access shall not prohibit or constrain any of the operational Services as provided by the Contractor.

8.20.2 In exceptional and urgent circumstances, the Authority may request access in accordance with Condition 8.20.1 at a minimum of 24 (twenty-four) hours' notice. Such a request shall be subject to Contractor approval at all times, which shall not be unreasonably withheld. The Authority shall indemnify the Contractor against any additional costs incurred and directly attributed to, and grant reasonable performance-related relief for, disruption of the operational Services provided by the Contractor, as a result of access arranged in accordance with this Condition 8.20.2 and relief shall be granted in accordance with and subject to the provisions of Condition 8.7

8.21 **PLACE OF WORK**

8.21.1 In the event that there is a Change in the Contractor's or any of its Sub-Contractor's places of work during the Term, the Contractor shall notify the Authority's Authorised Representative promptly (in writing) with a copy to the Authority's Project Manager.

8.22 INFORMATION TRANSFER

8.22.1 The Contractor shall make available upon request by the Authority, in both hard and soft copy and in a format, that can be accessed by Microsoft Office applications, any Information relating to UK Authority Personnel and/or Courses that is held on any system that is used for the management of or in relation to the delivery of the Contract.

8.22.2 The Contractor shall make all such data and/or documentation available to the Authority within one calendar month after a request from the Authority.

8.23 CONTINUOUS IMPROVEMENT AND INNOVATION

8.23.1 The Contractor shall ensure that it embraces a continuous improvement approach to the delivery of the training Courses and Services provided by this Contract. The Authority reserves the right to gather student feedback from Courses and discuss this feedback as a tool for continuous improvement within a standing agenda item within the QPM and if appropriate at the Annual Programme Board.

8.23.2 The Contractor is encouraged to use innovative delivery techniques in order to satisfy Schedule A (Statement of Work) and Innovation will be discussed at the QPM and if appropriate at the Annual Programme Board.

8.24 DEPENDENCIES, ASSUMPTIONS, RISKS, EXCLUSIONS

8.24.1 The Dependencies, Assumptions, Risks and Exclusions relating to this Contract are detailed in Schedule N (Dependencies, Assumptions, Risks and Exclusions).