



Ministry  
of Defence

## Army Commercial BFG Team

**Contract No: CB/BFG/0138**

**For:**

# Provision of Agency Fuel Cards by British Forces Germany (BFG) on behalf of the UK MOD

Between Secretary of State for Defence of the  
United Kingdom of Great Britain and Northern  
Ireland

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**The Schedules that apply to this Contract are:**

Schedule 1	Definitions of Contract
Schedule 2	Schedule of Requirements Annex A to Schedule 2
Schedule 3	Contract Data Sheet Annex A to Schedule 3
Schedule 4	Contract Change Process Procedure (i.a.w. clause A2.b)
Schedule 5	Specification
Schedule 6	Contractor's Commercially Sensitive Information Form
Schedule 7	Pricing Matrix

# **MOD Conditions for the Provision of Services:**

## **Contract No: CB/BFG/0138**

### **A General Contract Provisions**

#### **A1. Interpretation**

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. Unless the context otherwise requires:
  - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
  - (2) The words "include", "includes", "including" and "included" are to be construed as if they were immediately followed by the words "without limitation", except where explicitly stated otherwise.
  - (3) The expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
  - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
  - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
  - (6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or their nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.
  - (7) Unless excluded within the terms of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

#### **A2. Amendments to Contract**

- a. All amendments to this Contract shall be serially numbered, in writing, issued only by the Authority's Representative (Commercial), and agreed by both Parties.
- b. Where the Authority or the Contractor wishes to introduce a change which is not Minor or which is likely to involve a change to the Contract Price, the provisions of Schedule 4 (Change Process) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause A2.a above has been issued.

#### **A3. Variations to Specification**

- a. The Authority's Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition A2 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority's Notice, unless otherwise specified.
- b. Any variations that cause a change to:
  - (1) fit, form, function or characteristics of the Contractor Deliverables;
  - (2) the cost;
  - (3) Delivery Dates;
  - (4) the period required for the production or completion; or
  - (5) other work caused by the alteration,

shall be the subject to condition A2 (Amendments to Contract). Each amendment under condition A2 shall be classed as a formal change.

#### **A4. Precedence**

a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:

- (1) Sections A - H (and J - L, if sections J - L are included in this Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
- (2) Schedule 2 (Schedule of Requirements) and, where included, Schedule 8 (Acceptance Procedure);
- (3) the remaining Schedules; and
- (4) any other documents expressly referred to in the Contract.

b. If either Party becomes aware of any inconsistency, within or between the documents referred to in clause A4.a such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause A4.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with condition A21 (Dispute Resolution).

#### **A5. Severability**

If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:

- a. such provision shall (to the extent that it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and
- b. the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

#### **A6. Assignment of Contract**

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

#### **A7. Waiver**

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

#### **A8. Third Party Rights**

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

#### **A9. Governing Law**

To the extent that the Overriding International Treaty Provisions or the text of the Contract do not explicitly provide otherwise, these Terms and Conditions are governed by, and will be interpreted in accordance with, the laws of the Federal Republic of Germany.

#### **A10. Entire Agreement**

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

#### **A11. Disclosure of Information**

- a. Subject to clauses A11.d, A11.e, A11.h and A14 each Party:

- (1) shall treat in confidence all Information it receives from the other;
  - (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
  - (3) shall not use any of that Information otherwise than for the purpose of the Contract; and
  - (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.
- b. The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:
- (1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
  - (2) is treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any subcontract.
- c. The Contractor shall ensure that its employees are aware of the Contractor's arrangements for discharging the obligations at clauses A11.a and A11.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- d. Clauses A11.a and A11.b shall not apply to any Information to the extent that either Party:
- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
  - (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
  - (3) can show:
    - (a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
    - (b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
    - (c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
    - (d) from its records that the same Information was derived independently of that received under or in connection with the Contract;
- provided that the relationship to any other Information is not revealed.
- e. Neither Party shall be in breach of this condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this condition.
- f. The Authority may disclose the Information:
- (1) on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
  - (2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

(3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(4) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with this Contract;

(5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or

(6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this condition.

g. Before sharing any Information in accordance with sub-clause A11.f above, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

h. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

i. Nothing in this condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

#### **A12. Publicity and Communications with the Media**

The Contractor shall not, and shall ensure that any employee or Subcontractor shall not, 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.

#### **A13. Protection of Personal Data**

a. The Contractor shall fully indemnify the Authority, his servants or agents against the cost of dealing with any claims made in respect of information subject to the Data Protection Act 1998 (or any successor legislation) or the German equivalent (*Bundesdatenschutzgesetz* the relevant *Länder* data protection legislation, or any successor legislation) whichever provides the higher standard, to the extent that such claim(s) would not have arisen but as a consequence of any act, omission or negligence on the part of the Contractor, his employees, agents or sub-contractors.

#### **A14. Transparency**

a. Subject to clause A14.b but notwithstanding condition A11, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

b. Before publishing the Transparency Information to the general public in accordance with clause A14.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 6 (Contractor's Commercially Sensitive Information).

c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause A14.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise

its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

d. For the avoidance of doubt, nothing in this condition A14 shall affect the Contractor's rights at law.

#### **A15. Equality**

a. The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.

b. Without prejudice to the generality of the obligation in clause A15.a, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent Legislation in the country where the Contract is being performed.

c. The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this condition A15 by any of its employees, agents, or other persons acting under its direction or Control who are engaged in the performance of the Contract.

d. The Contractor agrees to take reasonable efforts to reflect this condition A15 in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this condition A15 in their subcontracts that they enter into to satisfy the requirements of the Contract.

#### **A16. Child Labour and Employment Law**

a. In performing the Contract, the Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.

b. The Contractor agrees to use reasonable efforts to reflect this Condition in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

#### **A17. Subcontracting and Prompt Payment**

a. Subcontracting any part of the Contract shall not relieve the Contractor of any obligation, duty or liability attributable to the Contractor under the Contract.

b. The Contractor shall ensure, to the extent that they are applicable, that the Conditions of the Contract are reflected in any subcontracts for any part of the Contractor Deliverables.

c. In all circumstances the Contractor shall ensure that all subcontracts in relation to this Contract include:

(1) a requirement that either party to the subcontract may release to the Authority any of those parts of the subcontract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of the Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the subcontract; and

(2) a term which requires payment to be made to the Subcontractor within a specified period not exceeding thirty (30) calendar days from receipt of a valid and undisputed invoice as defined by the subcontract requirements.

d. Where the Contractor places any subcontract with a value of more than £50,000 in connection with this Contract, it shall ensure that it has the right to terminate that subcontract for convenience giving twenty (20) Business Days' notice (or such other notice period as the Authority shall give under this Contract).

e. When placing subcontracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Subcontractors that are Supported Businesses. The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX (Telephone: 01204 880733) or <http://business.base-uk.org/procurement>.

f. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, the Contractor shall use reasonable endeavours to incorporate in each

subcontract the terms set out in Schedule 5 to this Contract. Where it is not practicable to include the terms set out in Schedule 5, the Contractor shall report that fact and the circumstances to the Authority.

### **Change of Control of Contractor**

- a. The Contractor shall inform the Mergers & Acquisitions section, Supplier Relations Team, Poplar Level 1 # 2119, MOD Abbey Wood South, Bristol BS34 8JH as soon as practicable of any intended, planned or actual change of Control. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the change of Control of the Contractor in the UK or other jurisdictions. The Authority's Representative shall consider the potential change of Control and advise the Contractor in writing of any concerns that the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.
- b. Each notice of change of Control shall be taken to apply to all contracts with the Authority.
- c. The Authority may, acting reasonably, terminate the Contract by giving written notice to the Contractor within six (6) months of the Authority being notified or becoming aware that the Contractor has undergone a change of Control where the Contractor has failed to address the Authority's concerns to the Authority's satisfaction in accordance with clause A18.a, or has failed to supply or withheld the Information required under clause A18.a.
- d. If the Authority exercises its right to terminate in accordance with clause F1.a.(4) the Contractor shall be entitled to request the Authority to consider making a payment to represent any commitments, liabilities or expenditure which are reasonable and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any request for payment under this clause A18.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

### **A18. Termination for Insolvency or Corrupt Gifts**

The Authority may terminate the Contract with immediate effect, without compensation, by giving written Notice to the Contractor at any time after any of the following events:

#### **Insolvency:**

- a. where the Contractor is an individual:
  - (1) the application by the Contractor for an interim order pursuant to Section 252 of the Insolvency Act 1986 (the "IA 86") or the court making an interim order pursuant to Section 253 of the IA 86;
  - (2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;
  - (3) a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002 (the "DAAS Act") is approved in respect of a Contractor, an application is made by a Contractor to the Debt Arrangement Scheme (DAS) Administrator under the DAAS Act for approval of a debt payment programme or a Contractor gives written intimation to the DAS Administrator of their intention to make such an application;
  - (4) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;
  - (5) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

(6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:

- (a) it has failed to comply with or to set aside a statutory demand under section 268 of the Insolvency Act 1986 or section 7 of the Bankruptcy (Scotland) Act 1985 within twenty-one (21) Business Days of service of the statutory demand on it;
- (b) an execution or other process to enforce a debt due under a judgment or order of the court has been returned unsatisfied in whole or in part;
- (c) a charge for payment of a debt has been served on the Contractor and has not been satisfied, returned or avoided within fourteen (14) Business Days of service; or
- (d) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or

(7) any analogous procedure or step is taken in any jurisdiction;

b. where the Contractor is a firm:

(1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court, in each case in respect of a moratorium on creditor action under schedule A1 of IA 86 in respect of the Contractor;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;

(3) any event listed in clause A19.a occurs in respect of any partner of the Contractor who is an individual in connection with a liability or debt of the Contractor;

(4) any event listed in clause A19.c occurs in respect of any partner of the Contractor which is a company or limited liability partnership registered in England and Wales or Scotland in connection with a liability or debt of the Contractor;

(5) an event listed in clause A19.e in respect of any partner of the Contractor which is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland in connection with a liability or debt of the Contractor;

(6) any event listed in this clause A19.b occurs in respect of any partner of the Contractor which is itself a firm in connection with a liability or debt of the Contractor;

(7) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(8) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

(9) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;

(10) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:

(a) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or

(b) it is unable to pay its debts in terms of section 221 of IA 86; or

(11) any analogous procedure or step is taken in any jurisdiction;

c. where the Contractor is a company or limited liability partnership registered in England and Wales or Scotland:

- (1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court in each case in respect of a moratorium on creditor action under schedule A1 of IA 86;
- (2) any composition, compromise, assignment, assignation or arrangement is made with any of its creditors (including, without limitation, a company voluntary arrangement under IA 86) or a moratorium on any of the Contractors indebtedness comes into force;
- (3) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;
- (4) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;
- (5) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;
- (6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if the Contractor is unable to pay its debts in terms of section 123 of IA 86; or
- (7) any analogous procedure or step is taken in any jurisdiction;

d. where the Contractor is unable or admits inability to pay its debts as they fall due or is deemed to be or declared to be unable to pay its debts, suspends or threatens to suspend making payments or any of its debts or, by reason of actual or anticipated financial difficulties, or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

e. where the Contractor is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified above;

#### **Corrupt Gifts**

f. where the Authority becomes aware that the Contractor, its employees, agents or any Subcontractor (or anyone acting on its behalf or any of its or their employees):

- (1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:
  - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this Contract or any other contract with the Crown; or
  - (b) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;
- (2) commits or has committed any prohibited act or any offence under the Prevention of Corruption Acts 1889 – 1916, under sub sections 108 – 109 of the Anti-Terrorism or Crime and Security Act 2001 before these Acts or sub sections are revoked or an offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;
- (3) has entered into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

g. In exercising its rights or remedies to terminate the Contract under A19 f. the Authority shall:

- (1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;
- (2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
  - (a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;
  - (b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

h. Where the Contract has been terminated under clause A19 f. of this Condition, the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

#### **A19. Consequences of Termination**

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

#### **A20. Dispute Resolution**

- a. Subject to (b) below, all disputes, differences or questions between the Parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, shall after written notice by either Party to the Contract to the other of them, be subject to the exclusive jurisdiction of the German Courts.
- b. The arbitration and adjudication procedures described in the Condition above shall not apply on issues when the decision of the Authority is deemed under the Contract to be final and conclusive.

#### **A21. Termination for Convenience**

- a. The Authority shall have the right at any time to terminate the Contract in whole or in part by giving the Contractor written Notice to expire at the end of the period specified in Schedule 3 (Contract Data Sheet) or if no such period is specified at the end of twenty (20) Business Days.
- b. In the event that the Authority exercises its rights in accordance with clause A22.a, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of termination of the Contract or the relevant part thereof.
- c. The Authority's total liability under clause A22.b shall be limited to the total price of the Contractor Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to the Contractor at the date of termination.

#### **A22. Contractor's Records**

The Contractor shall maintain all records in connection with the Contract (expressly or otherwise), and without prejudice to condition A11 (Disclosure of Information), make them available to be examined or copied, by or on behalf of the Authority, as the Authority may require. These records shall be retained for a period of at least six (6) years from:

- (1) the end of the Contract term;
- (2) termination of the Contract; or
- (3) the final payment,

whichever occurs latest.

## **A23. Duration of Contract**

This Contract comes into effect on the Effective Date of Contract and will expire automatically on the date identified in Schedule 3 (Contract Data Sheet) unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

## **A24. Contractor's Warranties**

- a. The Contractor warrants and represents, that:
- (1) it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under, the Contract;
  - (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;
  - (3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, 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;
  - (4) for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.

## **B The Contractor Deliverables**

### **B1. Supply of Contractor Deliverables and Quality Assurance**

- a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.
- b. The Contractor shall:
- (1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables;
  - (2) comply with all applicable Legislation; and
  - (3) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.
- c. The provisions of clause B1.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.
- d. The Contractor shall:
- (1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;
  - (2) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and
  - (3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

### **B2. Environmental Requirements**

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

### **B3. Disruption**

- a. 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.
- b. 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.
- c. The Contractor shall have robust contingency plans in place to ensure that, in the event of industrial action by the Contractor's Team, provision of the Contractor Deliverables is maintained and such 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 contract period.

### **C Price**

#### **C1. Contract Price**

- a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet)

### **D Intellectual Property**

#### **D1. Third Party Intellectual Property – Rights and Restrictions**

- a. The Contractor and, where applicable any Subcontractor, shall promptly notify the Authority as soon as they become aware of:
  - (1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
  - (2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything Delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;
  - (3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

Clause D1.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a commercial off the shelf (COTS) item or service.

- b. If the Information required under clause D1.a has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.
- c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This clause shall not apply if:

- (1) the Authority has made or makes an admission of any sort relevant to such question;
- (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;

- (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
- (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
- d. The indemnity in clause D1.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
- e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.
- f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of the Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.
- g. If, under clause D.1a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:
- (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
- (2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.
- h. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
- (1) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property; or
- (2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause D1.a.
- k. Where authorisation is given by the Authority under clause D1.e, D1.f or D1.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs

Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

- (1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and
  - (2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.
- l. The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
  - (2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
  - (3) provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of the Contract.
- m. The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:
- (1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
  - (2) alleged misuse of any confidential information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that information is for the purposes intended when it was disclosed by the Authority.
- n. The general authorisation and indemnity is:
- (1) Clauses D1.a – D.1.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;
  - (2) Neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;
  - (3) A Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Condition by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice;
  - (4) The Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;
  - (5) Following a notification under clause D1.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;
  - (6) The Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace

the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.

p. Nothing in condition D1 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

## **E Facilities And Assets**

### **E1. Access to Contractor's Premises**

The Contractor shall provide to the Authority's Representatives following reasonable notice, relevant accommodation / facilities, at no direct cost to the Authority, and all reasonable access to its premises for the purpose of monitoring the Contractor's progress and quality standards in performing the Contract.

## **F Delivery**

### **F1. Authority's Remedies for Breach of Contract**

a. If the Contractor:

- (1) fails to provide the Contractor Deliverables (or any part thereof) by the relevant date specified in Schedule of Requirements and / or the Specification;
- (2) provides Contractor Deliverables (or any part thereof) that are not in accordance with, or the Contractor fails to comply with, any terms of the Contract;
- (3) supplies Contractor Deliverables that do not comply with clause B1.b;
- (4) fails to address the Authority's concerns to the Authority's satisfaction in accordance with condition A18, or fails to supply or withholds the Information required under clause A18.a;
- (5) NOT USED

or

- (6) otherwise commits a material breach of its obligations under the Contract,

the Authority shall have the right to exercise one or more of the following remedies:

- (7) where the breach is material in accordance with clause F1.a.(6), to terminate the Contract or the relevant part thereof, with immediate effect and without liability to the Authority, by giving written Notice to the Contractor;
- (8) refuse to accept the provision of any further Contractor Deliverables by the Contractor and the Contractor shall refund to the Authority any sums paid in respect of the Contractor Deliverables that fail to comply with the terms of the Contract;
- (9) give the Contractor the opportunity at the Contractor's expense to carry out such remedial services as is necessary to correct the Contractor's failure or otherwise to rectify the breach within the Authority-specified time limits;
- (10) purchase substitute services from elsewhere;
- (11) claim such damages as may have been sustained as a result of the Contractor's breach or breaches of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
  - (a) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
  - (b) obtaining the Contractor Deliverables in substitution from another supplier.

b. In addition to the Authority's rights in clause F1.a., if the Authority reasonably believes at any time before the Contract Implementation Date that the Contractor will not be able to achieve Full Service Provision by the Contract Implementation Date then the Authority shall be entitled to terminate the Contract in whole or in part with immediate effect and without liability by giving written Notice to the Contractor.

c. In the event that the Authority terminates the Contract in whole or in part pursuant to clause F1.a.(7) or F1.b. or for any other lawful reason, the Authority shall also have the right to require the Contractor to transfer any or all of the Assets to the Authority, wherever they are located, upon the payment of a sum representing the market value of those Assets which the

Contractor has purchased but not recovered the cost of from the Authority.

d. This condition F1 shall also apply to any remedial services carried out by the Contractor in accordance with clause F1.a.(9).

e. The Authority's rights and remedies under this condition F1 are in addition to its rights and remedies implied by statute and common law.

## **G Payment And Receipts**

### **G1. Payment and Recovery of Sums Due**

a. Payment for Contractor Deliverables under the Contract shall be made via the Contracting, Purchasing & Finance (CP&F) electronic procurement tool.

b. The Authority shall pay all valid and undisputed claims for payment submitted by the Contractor to DBS Finance on or before the day which is thirty (30) days after the later of:

(1) the day upon which a valid request for approval of payment is received by the Authority; and

(2) the date of completion of the part of the Contract to which the request for approval of payment relates.

c. The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract.

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

### **G2. Value Added Tax**

a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the provision of any Contractor Deliverables by the Contractor to the Authority.

b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, the Contractor shall include separately in any claim for payment a sum equal to any VAT chargeable at the prevailing rate on the Contract Price claimed and the Authority shall pay it. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HM Revenue and Customs (HMRC).

c. The Contractor is responsible for the determination of VAT liability. In cases of doubt, the Contractor shall consult HMRC and not the Authority's Representative. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under this Contract, when the liability is other than at the standard rate of VAT, and any changes to it.

d. Where the provision of any Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables.

e. Where Contractor Deliverables are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables.

### **G3. Debt Factoring**

Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition A6 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ('the Act')). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this condition G3 shall be subject to:

- (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause G1.d;
  - (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
  - (3) the Authority receiving notification under both clauses G3.b and G3.c.(2).
- b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause G3.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- c. The Contractor shall ensure that the Assignee:
- (1) is made aware of the Authority's continuing rights under clauses G3.a.1 and G3.a.2; and
  - (2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with sub-clauses G3.a.(1) and G3.a.(2).
- d. The provisions of condition G1 (Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

## **H Contract Administration**

### **H1. Progress Monitoring, Meetings and Reports**

- a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that its Contractor's Representatives are suitably qualified to attend such meetings.
- b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:
- (1) performance/Delivery of the Contractor Deliverables;
  - (2) risks and opportunities;
  - (3) any other information specified in Schedule 3 (Contract Data Sheet); and
  - (4) any other information reasonably requested by the Authority.

### **H2. Authority Representatives**

- a. Any reference to the Authority in respect of:
- (1) the giving of consent;
  - (2) the delivering of any Notices; or
  - (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,

shall be deemed to be references to the Authority's Representatives in accordance with this condition H2.

b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.

c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with condition A2 (Amendments to Contract).

### **H3. Notices**

- a. A Notice served under the Contract shall be:
- (1) in writing in the English Language;
  - (2) authenticated by signature or such other method as may be agreed between the

Parties;

- (3) sent for the attention of the other Party's representative, and to the address set out in Schedule 3 (Contract Data Sheet);
- (4) marked with the number of the Contract; and
- (5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), by electronic mail.

b. Notices shall be deemed to have been received:

- (1) if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery;
- (2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
- (3) if sent by facsimile or electronic means:
  - (a) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
  - (b) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of transmission from the receiving instrument.

**J. The project specific DEFCONS and DEFCON SC variants that apply to this Contract are:**

DEFCON 630 (SC) (Edn 03/15) Framework Agreements

**Definitions**

1. In this Condition:

- a. "Framework Agreement" means an agreement or other arrangement between the Authority or the Authority and one or more other contracting authorities, and one or more contractors that establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the contractor(s) will enter into one or more contracts with the Authority in the period during which the Framework Agreement applies.
- b. "Authorised Demander" means the person(s) authorised by the Authority to place orders or tasks being the person(s) listed in the Framework Agreement.

**Standing Offer**

2. In consideration for the payment of the sum of £1 (one pound – for the purposes of this Contract – 1€ one euro) by the Authority to the Contractor, the Contractor shall not for the duration of the Framework Agreement withdraw from or amend in any way the standing offers contained in the Framework Agreement except by agreement in accordance with Conditions of Contract Condition A2.

**Duration Period**

3. The duration period of this Framework Agreement was stated in the Contract Notice and shall start from the date that the Framework Agreement entered into force. This period, shall be the period in which Contractor Deliverables may be ordered and / or tasks authorised by the Authority under the Framework Agreement. The fulfilment of such orders or tasks may take place after the end of the duration period in accordance with the terms of the orders or tasks.

**Estimated Quantities**

4. Where applicable, the quantities referred to in Schedule 2, the Schedule of Requirements (SOR) are estimates only. The Authority may order more or less than the estimated quantities and shall not be bound to place orders or tasks for any of the Contractor Deliverables referred to in the SOR. The Authority shall not be bound to accept or pay for any Contractor Deliverables other than those actually ordered and/or authorised under the terms of the Framework Agreement.

## **Alternative Sourcing of Contractor Deliverables**

5. The Contractor(s) accept that, subject to the Authority having necessary rights, the Authority has the right to award contracts separate from this Framework Agreement for any or all of the Contractor Deliverables listed in the SOR during the period of the Framework Agreement.

## **Orders or Tasks (Contracts) for Contractor Deliverables placed or awarded under the Framework Agreement**

6. A Contract for the Contractor Deliverables shall only be created when either the Authorised Demander(s) places an order for each requirement, communicating an unqualified acceptance of the Contractor's standing offer or when the Contractor communicates its unqualified acceptance to the Authority for any tasks awarded by the Authorised Demander(s) under the Framework Agreement by the means specified in the Framework Agreement.

7. Where the Framework Agreement does not specify the means by which the Authority will place orders and / or award tasks (contracts) under the Framework Agreement, the Authority will comply with:

a. the procedures for the award of contracts set out at Regulation 20 of the Defence and Security Public Contracts Regulations (DSPCR) 2011 or any successor, where applicable;

b. the procedures for the award of contracts set out at Regulation 33 of the Public Contracts Regulations (PCR) 2015 or any successor, where applicable; or

c. if the PCR and DSPCR do not apply, the principles of non-discrimination and equal treatment for any Contractor party to the Framework Agreement subject to any essential security measures that the Authority may adopt under Article 346 Treaty on the Functioning of the European Union.

8. Occasionally, and subject to the agreement of both parties to the Framework Agreement, an order or task may contain specific terms or conditions additional to those contained in the Framework Agreement or which are at variance to those contained in the Framework Agreement.

9. The order or task shall expressly reference the Framework Agreement, and shall be in the format specified in the Framework Agreement.

10. The Contractor shall deliver the Contractor Deliverables within the times specified in the Framework Agreement or as otherwise agreed between the parties in accordance with the provisions of the Framework Agreement. If it becomes obvious that the Contractor Deliverables will not be delivered within the specified timescale, the Contractor shall immediately notify the Authority of the cause of the delay together with a forecast delivery date. Such information shall be supplied without prejudice to the Authority's rights under the Framework Agreement.

11. In the event that the Authority agrees to a revised delivery date it shall immediately issue an amendment to the applicable order in accordance with the provisions of Standardised Contracting Templates 2 and 3 Condition A2.

12. All correspondence issued by the Contractor shall be directed to the addressee specified in the Framework Agreement or, if no addressee is specified, to the project manager, equipment support manager or project team leader named in Annex A to Schedule 3 appended to the Framework Agreement. In each case, a copy shall be sent to the applicable commercial officer.

13. The Contractor shall either accept or reject an order or task within the period specified in the Framework Agreement or, if no period is specified in the Framework Agreement, within ten business days.

14. Where an order or task has been rejected by the Contractor, the Contractor shall specify in writing the reason for the rejection.

15. Each order or task issued by the Authority and each quotation, order, task acceptance and rejection issued by the Contractor shall be issued in the manner specified in the Framework Agreement. If the Framework Agreement does not specify the means by which an order or task

is to be issued then the provisions of Clause A1 b.(7) of Standardised Contracting Templates 2 and 3 shall apply.

**K. The special conditions that apply to this Contract are:**

**General Contract** To ensure an Enabling Contract is legally binding the payment of the sum of €1 (one euro), as consideration must be made by MOD to the contractor using the Bills Direct system. This includes Enabling Contracts (or their equivalent) administered using the CP&F system.

**Overriding International Treaty Provisions** If any provision of the Contract is inconsistent with any provision of an international treaty to any extent, then:

Such provision shall (to the extent that it is inconsistent with such international treaty) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and

The Parties shall endeavour to replace the relevant provision with a substitute provision which is not inconsistent with the international treaty in question and the effect of which is as close as possible to the intended effect of the provision deemed not to be included in the Contract.

**Duties and Taxes** The contractor shall avail himself of all duty and tax concessions of any type (including concessions granted by virtue of the SOFA) whatsoever applicable to the Services provided under this Contract and the price quoted shall be exclusive of such duty or tax.

**L. The processes that apply to this Contract are:**

**D-U-N-S Number** The successful Tenderer will be required to obtain a Dun and Bradstreet Data Universal Number System (D-U-N-S) number. This is a unique nine digit identification number for the physical location of your business. This can be acquired free of charge from [www.dnb.co.uk](http://www.dnb.co.uk) (or for German suppliers from <https://www.bisnode.de/category/duns/> in German.)

**Rebate Reconciliation** Rebate reconciliation shall take place in the month of May following the completion of the specified Contract periods at Schedule 7 of this Contract.

The rebate proposal accepted at contract award will apply to the volume of fuel supplied in the preceding 12 months (5 months for year 1.)

## Schedule 1 - Definitions of Contract

### Core Definitions

<b>Assets</b>	means items / materials which the Contractor has acquired for the purposes of performing their obligations under the Contract;
<b>Authority</b>	means the Secretary of State for Defence acting on behalf of the Crown;
<b>Authority's Representative(s)</b>	shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of clause H2.b;
<b>Business Day</b>	means any day excluding: <ul style="list-style-type: none"><li>a. Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;</li><li>b. privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; and</li><li>c. such periods of holiday closure of the Contractor's premises of which the Authority is given written Notice by the Contractor at least ten (10) Business Days in advance;</li></ul>
<b>Central Government Body</b>	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"><li>a. Government Department;</li><li>b. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>c. Non-Ministerial Department; or Executive Agency.</li></ul>
<b>Child Labour Legislation</b>	means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract.
<b>Conditions</b>	means the terms and conditions set out in this document;
<b>Consignee</b>	means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be supplied;
<b>Contract</b>	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition A2 (Amendments);
<b>Contract Implementation Date</b>	means the day upon which the Contractor is fully responsible for the provision of all of the Contractor Deliverables required;
<b>Contract Price</b>	means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract;

<b>Contractor</b>	means the person who, by the Contract, undertakes to provide the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
<b>Contractor Commercially Sensitive Information</b>	means the Information listed in the completed Schedule 6 - Contractor's Commercially Sensitive Information Form, which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;
<b>Contractor Deliverables</b>	means the services and, where appropriate the documents, which the Contractor is required to provide under the Contract in accordance with the Schedule of Requirements and the Specification;
<b>Contractor's Representative</b>	means a person or persons employed by the Contractor in connection with the provision of the Contractor Deliverables and in connection with this Contract;
<b>Contractor's Team</b>	means all employees, consultants, agents and Subcontractors which the Contractor engages in relation to the Contract;
<b>Control</b>	<p>means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:</p> <p>a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or</p> <p>b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor;</p> <p>and a change of Control occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor;</p>
<b>Crown Use</b>	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;
<b>DEFFORM</b>	means the MOD DEFFORM series which can be found at <a href="https://www.gov.uk/acquisition-operating-framework">https://www.gov.uk/acquisition-operating-framework</a> ;
<b>DEF STAN</b>	means Defence Standards which can be accessed at <a href="https://www.dstan.mod.uk">https://www.dstan.mod.uk</a> ;
<b>Deliver</b>	means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with SC3 Condition "Delivery / Collection" and Delivered and Delivery shall be construed accordingly;
<b>Delivery Date</b>	means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables, or the relevant portion of them are to be Delivered or made available for Collection;
<b>Design Right(s)</b>	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
<b>Effective Date of Contract</b>	means the date specified on the Authority's acceptance letter. For example the DEFFORM 159, or where the standstill period applies, the relevant Notice of Entry into Contract letter;
<b>Firm Price</b>	means a price (Excl. VAT) which is not subject to variation;

<b>Full Service Provision</b>	means the provision by the Contractor of all of the Contractor Deliverables in accordance with the Conditions of this Contract;
<b>Information</b>	means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract, including information provided in the tender or negotiations which preceded the award of the Contract;
<b>Key Performance Indicators</b>	<del>means the agreed method of monitoring and measuring the Contractor's performance against the Contract as set out in Section L (Processes) where this Contract includes Core Plus condition "Key Performance Indicators and Performance Management";</del>
<b>Legislation</b>	means in relation to the United Kingdom: <ul style="list-style-type: none"> <li>a. any Act of Parliament;</li> <li>b. any subordinate Legislation within the meaning of section 21 of the Interpretation Act 1978;</li> <li>c. any exercise of the Royal Prerogative; or</li> <li>d. any enforceable community right within the meaning of section 2 of the European Communities Act 1972;</li> </ul>
<b>Minor Change</b>	means any change that does not significantly/materially affect the nature of the Contractor Deliverables;
<b>Notices</b>	shall mean all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
<b>Parties</b>	means the Contractor and the Authority, and Party shall be construed accordingly;
<b>Schedule of Requirements</b>	means Schedule 2 (Schedule of Requirements) and Annex A to Schedule 2, which identifies, either directly or by reference, Contractor Deliverables to be provided, the performance dates involved and the price or pricing terms in relation to each Contractor Deliverable;
<b>Specification</b>	means Schedule 5 (Specification) which provides the detailed description of the Contractor Deliverables and sets out any performance dates by which the Contractor shall provide such Contractor Deliverables;
<b>Subcontractor</b>	means any person engaged by the Contractor from time to time as may be permitted by the Contract to provide the Contractor Deliverables (or any part thereof);
<b>Supported Businesses</b>	means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market;
<b>Transparency Information</b>	means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract.

## **Appendix A to Schedule 1 – Core+ Definitions of Contract**

### **Core+ Definitions**

<b>Articles</b>	means the Contractor Deliverables (goods and / or the services), including packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. <b>(This definition only applies to Core Plus Schedule “Hazardous Articles, Materials or Substances supplied under the Contract” and any DEFCONs if either are included in this Contract);</b>
<b>Collect</b>	means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause K14.c and Collected and Collection shall be construed accordingly;
<b>Consignor</b>	means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;
<b>CPET</b>	means the UK Government’s Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy
<b>Denomination of Quantity (D of Q)</b>	means the quantity or measure by which an item of material is managed;
<b>Diversion Order</b>	means the Authority’s written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);
<b>Employee</b>	shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given. <b>(This definition only applies to the narrative condition “Security Measures”);</b>
<b>Evidence</b>	means either: <ol style="list-style-type: none"><li>a. an invoice or delivery note from the timber supplier or subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or</li><li>b. other robust evidence of sustainability or FLEGT licensed origin, as advised by CPET;</li></ol>
<b>FLEGT</b>	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
<b>Hazardous Contractor Deliverable</b>	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;
<b>Independent Verification</b>	means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to “BS EN ISO / IEC 17065: 2012 Conformity assessment - Requirements for bodies certifying products, processes and services”, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to “ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent”;

<b>Legal and Sustainable</b>	means production and process methods, also referred to as timber production standards, as defined by the document titled "UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the contract documents are issued by the Authority shall apply;
<b>Military Level Packaging</b>	Packaging that by the nature of the packaged items nature, or envisaged transport / movement or handling within the military supply chain and requires enhanced protection beyond that which commercial Packaging normally provides;
<b>Military Packaging Accreditation Scheme (MPAS)</b>	is a MOD sponsored scheme to accredit military packaging designers capable of producing SPIS designs acceptable to the MOD by meeting its requirements and thereby assure good Military Level Packaging. MPAS supersedes MPCAS/DR14. MPAS detail is available from <a href="mailto:DESJSCSCM-EngTLS-Pkg@mod.uk">DESJSCSCM-EngTLS-Pkg@mod.uk</a> ;
<b>MPAS Registered Organisation</b>	is a packaging organisation having one or more MPAS Certificated Designers capable of Military level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;
<b>MPAS Certificated Designer</b>	shall mean an experienced Packaging Designer trained and certified to MPAS requirements;
<b>NATO</b>	means the North Atlantic Treaty Organisation which is an intergovernmental military alliance based on the North Atlantic Treaty which was signed on 4 April 1949;
<b>Overseas</b>	shall mean non UK or Foreign
<b>Packaging</b>	Verb. The operations involved in the preparation of materiel for: transportation, handling, storage and Delivery to the user;  Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;
<b>Packaging Design Authority (PDA)</b>	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3. The PDA should be MPAS registered or accepted as having an equivalent certification;
<b>Primary Packaging Quantity (PPQ)</b>	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
<b>Recycled Timber</b>	means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers: <ul style="list-style-type: none"> <li>a. pre-consumer reclaimed wood and wood fibre and industrial by products but excluding sawmill co-products which fall within the category of Virgin Timber;</li> <li>b. post-consumer reclaimed wood and wood fibre, and driftwood;</li> <li>c. reclaimed timber abandoned or confiscated at least ten years previously;</li> </ul> it excludes sawmill co-products;
<b>Short-Rotation Coppice</b>	means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber

policy;

**STANAG 4329**

means the publication NATO Standard Bar Code Symbologies which can be sourced from Information at [www.dstan.mod.uk/faqs.html](http://www.dstan.mod.uk/faqs.html);

**Subcontractor**

means any subcontractor of the Contractor or associated company at any level of the supply chain who provides contractor deliverables wholly or substantially in connection with this contract.

**Timber and Wood-Derived Products**

means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;

**Virgin Timber**

means Timber and Wood-Derived Products that do not include Recycled Timber.

**Schedule 2 - Schedule of Requirements for Services for Contract No: CB/BFG/0138**

**For: Provision of Transport Fuel in Europe**

<b>Item Number</b>	<b>Contractor Deliverables</b>	<b>Notes to Supplier</b>	<b>Firm Price € (ex-VAT)</b>
1	Administration Fee	To include provision of Management Information System	
2	Supply of Fuel	Pump price less any proposed rebate to be applied	
3	Other charges		

Note: Any associated goods shall be covered at Annex A to Schedule 2

**Annex A to Schedule 2 (Schedule of Requirements for Associated Goods) for Contract No:  
For:**

**Contractor Deliverables**

Item Number	MOD Stock Reference No.	Part No. (where applicable)	Specification	Consignee Address Code (full address is detailed in DEFFORM 96)	Packaging Requirements inc. PPQ and DofQ (as detailed in DEFFORM 96)	Delivery Date	Total Qty	Firm Price (£) Ex VAT	
								Per Item	Total inc. packaging (and Delivery if specified in Schedule 3 (Contract Data Sheet))
			<b>NOT USED</b>						
<b>Total Firm Price</b>									

Item Number	Consignee Address (XY code only)

**Schedule 3 - Contract Data Sheet for Contract No: CB/BFG/0138**

<p><b>Condition A9 Governing Law</b></p>	<p>To the extent that the Overriding International Treaty Provisions or the text of the Contract do not explicitly provide otherwise, these Terms and Conditions are governed by, and will be interpreted in accordance with, the laws of the Federal Republic of Germany.</p>
<p><b>Condition A22 Termination for Convenience</b></p>	<p>The Notice period for terminating the Contract shall be 45 Business Days.</p>
<p><b>Condition A24 Contract Period</b></p>	<p>The Contract period shall be 1 November 2017-31 March 2019.</p> <p>In addition to the Contract Period specified above, the Contractor hereby grants to the Authority the irrevocable option to extend the Contract for a one year period, or parts thereof, at the Firm Prices specified in Schedule 7 and in accordance with the terms and conditions of the Contract. The option to extend the Contract will be exercised in writing by no later than 31 December 2018.</p> <p>Option Year 1 – 01 April 2019-31 March 2020 or parts thereof.</p>
<p><b>Clause B1.b.(1) Contractor's Obligations – Quality Assurance</b></p>	<p>Is a Deliverable Quality Plan required for this Contract?</p> <p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> <p><del>If Yes the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within _____ Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times, solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.</del></p> <p><b>Other Quality Assurance Requirements:</b></p>
<p><b>Condition C1 Contract Price (Excl. Vat)</b></p>	<p>All Schedule 2 line items shall be Firm Price other than those stated below:</p> <p>Line Items 2 – Actual fuel price when supplied.</p> <p>The price paid for fuel drawn will be the pump price less any proposed rebate at the time of supply or any other proposed rebate method agreed at Contract award.</p>
<p><b>Clause H1.a Progress Monitoring</b></p>	<p>The Contractor shall be required to attend the following meetings:</p> <p>Type: Review Meetings</p> <p>Frequency: 6 monthly</p> <p>Location: Catterick Barracks, Detmolderstr. 440, 33605 Bielefeld.</p>
<p><b>Clause H1.b Progress Reports</b></p>	<p>The Contractor is required to submit the following Reports:</p> <p>Type: _____</p>

	<p>Frequency: _____</p> <p>Content: _____ (to include but not be limited to: costs incurred to date against work undertaken)</p> <p>Method of Delivery: _____</p> <p>Delivery Address: _____</p>
<b>Clause H2.b Authority's Representatives</b>	<p>The Authority's Representatives for the Contract are as follows:</p> <p>Commercial: [REDACTED]</p> <p>Project Manager: [REDACTED]</p> <p>Payment: DBS Liverpool</p>
<b>Clause H3.a.(3) Notices</b>	<p>Notices served under the Contract shall be sent to the following address:</p> <p>Authority: [REDACTED]</p> <p>Contractor:</p>
<b>Clause H3.a.(5) Notices</b>	<p>Notices served under the Contract can be transmitted by electronic mail:</p> <p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p>
<b>Condition K1 Certificate of Conformity (Core+ Only)</b>	<p>Is a Certificate of Conformity Required for this Contract?</p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Line Items: _____</p> <p>If Yes does the Contractor Deliverables require Traceability throughout the supply chain?</p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>Line Items: _____</p>
<b>Condition K2 Marking of Contractor Deliverables (Core+ Only)</b>	<p>Special Marking requirements:</p> <p>_____</p>
<b>Condition K3 Supply of Data for Hazardous Contractor Deliverables, Materials and Substances (Core+ Only)</b>	<p>A completed <del>SC3 Core Plus</del> Schedule "Hazardous Articles, Materials or Substance Statement", and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:</p> <p><del>a) The Authority's Representative (Commercial)</del>  <del>b) <u>DSA-DLSR-MovTpt-DGHSIS@mod.uk</u></del>  or if only a hardcopy is available to:</p> <p>a) The Authority's Representative (Commercial)</p>

	<p>b) <del>Hazardous Stores Information System (HSIS)</del>  <del>Defence Safety Authority (DSA)</del>  <del>Movement Transport Safety Regulator (MTSR)</del>  <del>Hazel Building Level 1, #H019</del>  <del>MOD Abbey Wood (North)</del>  <del>Bristol, BS34 8QW</del></p> <p><del>DSA-DLSR-MovTpt-DG-HSIS (MULTIUSER)</del></p> <p><del>to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date: _____</del></p>
<p><b>Clause K4.i Timber and Wood-Derived Products (Core+ Only)</b></p>	<p>A completed <del>SC3 Core Plus Schedule "Timber and Wood-Derived Products Supplied under the Contract: Data Requirements"</del>, is to be provided by e-mail with attachments in Adobe PDF or MS WORD format to:</p> <p>The Authority's Representative (Commercial)</p> <p>or, if only a hardcopy is available to:</p> <p>The Authority's Representative (Commercial)</p> <p>to be Delivered by the following date: _____</p>
<p><b>Clause K5.b Rejection (Core+ Only)</b></p> <p>(Note: If no period is inserted here the time period shall be 20 Business days)</p>	<p>Time limit for rejection of the Contractor Deliverables shall be 20 Business Days.</p>
<p><b>Clause K6.a Delivery (for Schedule 2, Appendix A items) (Core+ Only)</b></p>	<p>The transport requirements shown below are applicable:</p> <p>Line Items _____</p> <p>To be Delivered by the Contractor (See box "Delivery by the Contractor" below)</p> <p>Line Items _____</p> <p>To be Collected by the Authority (See box "Collection by the Authority" below)</p>
<p><b>Clause K6.b Delivery by the Contractor (for Schedule 2, Appendix A items) (Core+ Only)</b></p>	<p>(Where applicable, see box "Delivery" above.)</p> <p>Special Delivery Instructions:  _____</p> <p>Each consignment of the Contractor Deliverables to be accompanied by:</p> <p>Line Items _____ Delivery Note  Line Items _____ Delivery Note</p>
<p><b>Clause K6.c Collection by the Authority (for Schedule 2, Appendix A items) (Core+ Only)</b></p>	<p>(Where applicable, see Box "Delivery" above)</p> <p>Special Collection Instructions:  _____</p>

	<p>Each consignment of the Contractor Deliverables to be accompanied by:</p> <p>Line Items: _____ Delivery Note</p> <p>Line Items: _____ Delivery Note</p> <p>Consignor Address:</p> <p>Line Items: _____ Address: _____</p> <p>Line Items: _____ Address: _____</p> <p>Consignee Address Details:</p> <p>Line Items: _____ Address Details: _____</p> <p>Line Items: _____ Address Details: _____</p> <p>Line Items: _____ Address Details: _____</p>
<p><b>Condition K7 Self to Self Delivery (Core+ Only)</b></p>	<p>Is Self to Self Delivery required:</p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If Yes, Delivery address applicable: _____</p>
<p><b>Clause K16.a Limitation of Contractor's Liability</b></p>	<p>The Contractor's liability under, or in relation to, the contract shall be limited in respect of the following risks as set out below:</p> <ul style="list-style-type: none"> <li>a. [loss of, or damage to Issued Property - EXM];</li> <li>b. [loss of, or damage to, Contractor Deliverables - EXM];</li> <li>c. [Third Party claims - EXM];</li> <li>d. [death, personal injury, or damage to property arising from maritime claims - EXM];</li> <li>e. [Default - EXM];</li> <li>f. [negligence - EXM];</li> </ul> <p>[consequential/indirect costs - EXM].</p>
<p><b>Other Addresses and Other Information</b> (Covers forms and publications addresses and official use information)</p>	<p>See Annex A to Schedule 3 (DEFFORM 111)</p>

## Appendix - Addresses and Other Information

**1. Commercial Officer**

Name: [REDACTED]  
 Address: Bldg 5, Catterick Barracks, Detmolderstr. 440, 33605  
 Bielefeld, Germany.

Email: [REDACTED]

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

Name: [REDACTED]

Address Bldg 5, Catterick Barracks, Detmolderstr. 440, 33605  
 Bielefeld, Germany.

Email: [REDACTED]

**3. Packaging Design Authority**

Organisation & point of contact:

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

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

Tel No:

(b) U.I.N. A1719A

**5. Drawings/Specifications are available from****6. THIS BOX IS INTENTIONALLY BLANK****7. Quality Assurance Representative:**

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

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

**8. Public Accounting Authority**

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
 ☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD  
 ☎ 44 (0) 161 233 5394

**9. Consignment Instructions**

The items are to be consigned as follows:  
 N/A

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

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

Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

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

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

**B. JSCS**

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

JSCS Fax No. 01869 256837

[www.freightcollection.com](http://www.freightcollection.com)

**11. The Invoice Paying Authority**

Ministry of Defence ☎ 0151-242-2000

DBS Finance

Walker House, Exchange Flags Fax: 0151-242-2809

Liverpool, L2 3YL

**Website is:**

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

**12. Forms and Documentation are available through \*:**

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site

Lower Arcott

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

**Applications via fax or email: DESLCSLS-**

OpsFormsandPubs@mod.uk

**NOTE**

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

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

## **Schedule 4 - Contract Change Process (i.a.w. clause A2.b) for Contract No: CB/BFG/0138**

### **1. Authority Changes**

a. Subject always to condition A2 (Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a "Change") in accordance with this Schedule 4.

### **2. Notice of Change**

a. If the Authority requires a Change, it shall serve a Notice (an "Authority Notice of Change") on the Contractor.

b. The Authority Notice of Change shall set out the change required to the Contractor Deliverables in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with condition 3 below.

### **3. Contractor Change Proposal**

a. As soon as practicable, and in any event within fifteen (15) Business Days (or such other period as the Parties may agree) after having received the Authority Notice of Change, the Contractor shall deliver to the Authority a Contractor Change Proposal.

b. The Contractor Change Proposal shall include:

- (1) the effect of the Change on the Contractor's obligations under the Contract;
- (2) a detailed breakdown of any costs which result from the Change;
- (3) the programme for implementing the Change;
- (4) any amendment required to this Contract as a result of the Change, including, where appropriate, to the Contract Price; and
- (5) such other information as the Authority may reasonably require.

c. The price for any Change shall be based on the prices (including all rates) already agreed for the Contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change.

### **4. Contractor Change Proposal – Process and Implementation**

a. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:

- (1) evaluate the Contractor Change Proposal;
- (2) where necessary, discuss with the Contractor any issues arising and, following such discussions, the Authority may modify the Authority Notice of Change and the Contractor shall, as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.

b. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:

- (1) indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with condition A2 (Amendments to Contract); or
- (2) serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.

c. If the Authority rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.

d. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with clause 4.b.(1).

### **5. Contractor Changes**

a. If the Contractor wishes to propose a Change, it shall serve a Contractor Change Proposal on the Authority, which shall include all of the information required by clause 3.b, and the process at condition 4 shall apply.

**Schedule 5 - Specification for Contract No: CB/BFG/0138**

**Statement of Requirement**

**Provision of Agency Fuel Cards by British Forces Germany (BFG) on behalf of the MoD.**

**General**

1. Within British Forces Germany (BFG), military and civilian vehicles are used by the Force. In addition these vehicles are used in other countries across mainland Europe. Furthermore, UK based British Forces will travel through mainland Europe.
2. The vehicle fleets obtain some of the fuel required from installations within British Army barracks in Germany. However, there is a need for access to fuel points away from these barrack locations.
3. Bidders should be aware that BFG is in a drawdown phase which is due to conclude with final closure of all stations by 31 Mar 2020, when it is planned that all BFG units will have left Germany. The requirement, for the contract period, will therefore be a diminishing one for BFG usage but UK based units will continue to require fuel when moving through mainland Europe.

**Requirements**

4. The service requirement is for roadside access to transport fuel in the countries listed at Appendix 1 to this SOR, 24 hours per day, 7 days per week, 52 weeks per year.
5. The commodities required are mainly diesel, with a small requirement for unleaded petrol (Super 95).
6. The indicative range of quantities required by year are shown below, noting that these are planning figures which are likely to go up or down. In addition, the most likely quantity of access devices (eg fuel cards) is included:

	2017/18 (5 months <sup>3</sup> )	2018/19
Diesel (litres)	476,000	1,140,000
Unleaded Petrol (litres)	9,500	22,900
Quantity of Access Devices	1500	1500

7. The contractor must be able to supply the fuel when procured in Germany free from tax and duty under the conditions of the Supplementary Agreement to the Status of Forces Agreement. It is anticipated that 35 to 40% of the above fuel quantities will be procured in Germany.
8. A vehicle user must be able to easily gain roadside access to fuel in the countries listed in Appendix 1 with a process that is readily accepted at fuel outlets.
9. There is a requirement for the provider to produce a monthly invoice to the Authority, retrospectively and by the 7<sup>th</sup> day of the following month, for the fuel consumed, any additional additives (eg AdBlue<sup>®</sup>) purchased. This invoice is to be bespoke to the requirement of the Authority in order to identify units that use the service and facilitate an assurance process to prevent or identify fraud. It must include, but is not limited to:
  - a. The identification of the purchaser. For example if a card is the solution then this is to be the card serial number.
  - b. The transaction date, time and location.
  - c. The commodity purchased.

<sup>3</sup> 1 Nov 17 to 31 Mar 19.

- d. The quantity of the commodity purchased.
- e. The pump price at the time of purchase.
- f. The price, less sales (*Mehrwertsteuer*) and mineral oil taxes, when the fuel is purchased in Germany.

10. A real-time Management Information System (MIS) facility is required that can be used by the Authority to:

- (1) Electronically (via an internet portal) allow the Authority to add a Unit Identification Number (UIN) to an on-line database so as to link an authorised Unit against the serial number, as described in 9.a above. This would allow the Authority to accurately identify users and subsequently raise bills for fuel purchased.
- (2) Provide an electronic facility that will allow the solution (eg a fuel card or other access device) to be activated when issued to users and deactivated when withdrawn.
- (3) Allow the Authority to set the limit in Euros, or the limit of the number of transactions per day (eg for when groups of vehicles are being refilled when in a military convoy), whilst remaining within the accepted and standard limits of the service provider.
- (4) Allow the Authority to set password security settings to purchase fuel. For example, if a card is the solution, this is to be the PIN.
- (5) Allow the Authority to electronically terminate the ability to purchase fuel, should it be necessary (eg if a card or access device is lost or stolen).
- (6) Allow the Authority to store transaction records for up to 5 years so as to meet MOD financial requirements.

#### **Financial**

11. The eventual service provider must be able to accept the use of the electronic ordering and payment which will utilise the MoD's Contracting Purchasing and Finance (CP&F) system and specifically via an "Exostar" account.

#### **Contract Implementation**

12. A seamless transition will be required and liaison with the outgoing provider will be necessary to ensure an uninterrupted service between the outgoing and incoming service. An Implementation Plan will be required to be produced between the Authority and the Supplier.

#### **Contract Period**

13. The service is required at full operating capability from 1 Nov 17 with the intention to run until 31 Mar 19 (17 months), with an option to extend by up to 12 months, or parts thereof.

### Locations Where Access to Fuel Could be Required

Detailed below is a list of countries where roadside access to fuel could be required.

Country	Essential	Desirable	Remarks
ANDORRA		✓	
AUSTRIA	✓		
BELGIUM	✓		
BOSNIA-HERZ.		✓	
BULGARIA	✓		
CZECH REPUBLIC	✓		
CROATIA	✓		
DENMARK	✓		
ESTONIA		✓	
FINLAND		✓	
FRANCE	✓		
GERMANY	✓		
GIBRALTAR		✓	
GREAT BRITAIN			Not essential.
GREECE	✓		
HUNGARY	✓		
IRELAND		✓	
ITALY	✓		
LATVIA	✓		
LIECHTENSTEIN		✓	
LITHUANIA	✓		
LUXEMBOURG		✓	
MACEDONIA	✓		
NETHERLANDS	✓		
NORWAY	✓		
POLAND	✓		
PORTUGAL	✓		
ROMANIA	✓		
RUSSIA		✓	
SERBIA		✓	
SPAIN	✓		
SWEDEN		✓	
SLOVAKIA		✓	
SLOVENIA	✓		
SWITZERLAND	✓		
TURKEY	✓		
UKRAINE	✓		

**Schedule 6 - Contractor's Commercially Sensitive Information Form  
(i.a.w Condition A14)**

Contract No: CB/BFG/0138
Description of Contractor's Commercially Sensitive Information:
Cross Reference(s) to location of sensitive information:
Explanation of Sensitivity:
Details of potential harm resulting from disclosure:
Period of Confidence (if applicable): Indefinite
Contact Details for Transparency / Freedom of Information matters: Name: Position: Address: Telephone Number: Email Address:

**Schedule 7 - Pricing Matrix to Contract No CB/BFG/0138**

Item No	Volume per year	Year 1			Year 2			Option Year		
		1 <sup>st</sup> November 2017 – 31 <sup>st</sup> March 2018 (5 months only)			1 <sup>st</sup> April 2018 – 31 <sup>st</sup> March 2019			1 <sup>st</sup> April 2019 – 31 <sup>st</sup> March 2020		
1. Fees <sup>1</sup>		€			€			€		
		Germany Tax Free Price. per Litre	Pan Europe Price per litre	Rebate <sup>3</sup> per litre	Germany Tax Free Price. per Litre	Pan Europe Price per litre	Rebate per litre	Germany Tax Free Price. per Litre	Pan Europe Price per litre	Rebate per litre
2. Diesel Fuel Costs	> 700,000 Litres	€	€		€	€		€	€	
	600,000 to 699,999 Ltrs									
	500,000 to 599,999 Ltrs	Pump Price at time of Refuelling	Pump Price at time of Refuelling	€	Pump Price at time of Refuelling	Pump Price at time of Refuelling	€	Pump Price at time of Refuelling	Pump Price at time of Refuelling	€
	400,000 to 499,999 Ltrs									
	300,000 to 399,999 Ltrs									
	200,000 to 299,999 Ltrs									
100,000 to 99,999 Ltrs										
0 Ltrs to 99,999 Ltrs										
3. Unlead Fuel Costs	> 700,000 Litres	€	€		€	€		€	€	
	600,000 to 699,999 Ltrs									
	500,000 to 599,999 Ltrs	Pump Price at time of Refuelling	Pump Price at time of Refuelling	€	Pump Price at time of Refuelling	Pump Price at time of Refuelling	€	Pump Price at time of Refuelling	Pump Price at time of Refuelling	€
	400,000 to 499,999 Ltrs									
	300,000 to 399,999 Ltrs									
	200,000 to 299,999 Ltrs									
100,000 to 99,999 Ltrs										
0 Ltrs – 99,999 Ltrs										

Notes:

1 Fees are to include all support functions including but not limited to the provision of the Management Information System (MIS) and fees in delivering the means of the service provided.

Rebate prices will be Firm and not subject to negotiation..