



Ministry  
of Defence

de&s

Defence Equipment & Support

**DFAP/0014 – THE PROVISION OF TRANSPORT  
SERVICES FOR THE MOVEMENT OF FUELS  
WITHIN THE UNITED KINGDOM EXCLUDING  
NORTHERN IRELAND**



Equipping and Supporting our Armed Forces

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## **Provision of Transport Services for the movement of Fuels within the United Kingdom excluding Northern Ireland – DFAP/0014**

THIS CONTRACT dated 20 November 2018 is BETWEEN:

- (1) The Secretary of State for Defence (the “Authority”); and
- (2) The Contractor “Wincanton Group Limited” (the “Contractor”).

### Background

The Authority placed a contract notice (reference 2018/S 129-295411.) on 05 July 2018 in the Official Journal of the European Union (OJEU) seeking expressions of interest, in the form of a Dynamic Pre-Qualification Questionnaire (DPQQ), from potential providers for the provision of Transport Services for the movement of Fuels within the United Kingdom excluding Northern Ireland under a Single Contractor Framework Agreement. Following DPQQ evaluation, the Authority invited potential providers (including the Contractor) on 03 September 2018 to tender for the Provision of Transport Services for the movement of Fuels within the United Kingdom excluding Northern Ireland in the UK.

On the basis of the Contractor's Tender, the Authority selected the Contractor to enter into a Framework Agreement to provide transportation to those Customers who place Orders for movements in accordance with this Framework Agreement.

This Framework Agreement sets out the procedure for ordering movements, the main Terms and Conditions for the provision of Transportation, and the obligations of the Contractor under this Framework Agreement.

IT IS AGREED AS FOLLOWS:

## 1 DEFINITIONS AND INTERPRETATIONS

1.1 In addition to the definitions stated in DEFCON 501 and DEFCON 630 the following definitions shall apply to this Framework Agreement

“Authorised Demanders” means a person nominated by the Authority and authorised to place orders under the Framework Agreement as required. An Authorised Demander may typically have an “authorised representative” authorised to make orders on his behalf. A list of Authorised Demanders is detailed at Annex C. This list is not exhaustive.

“Authority” means the Ministry of Defence (MOD), acting as part of the Crown on behalf of the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, or its Managing Agent.

“Authority’s Representative” means the duly authorised representative appointed by the Authority in the execution of this Framework Agreement.

“Bulk Fuel Installation (BFI)” means an installation where Fuel is stored and subsequently dispensed to the Authority’s customers.

“Certificate of Conformity” means a document certified by a competent authority that the Fuel supplied meets the required specifications.

“Clause(s)” means, except where it is expressly stated to the contrary, the paragraphs detailed in the Terms and Conditions of the Framework Agreement.

“Commercial Officer” means the person identified at Box 1 of the Appendix to Contract, or authorised representative, who will be notified appropriately.

“DEFCON” is a Defence Condition stipulated by the Authority which shall apply to the Framework Agreement. The latest version of the DEFCONS can be viewed at <https://www.gov.uk/guidance/acquisition-operating-framework>.

“DEFFORM” is a Defence Form which the Contractor is required to complete as required. DEFFORMS can be accessed at: <https://www.gov.uk/guidance/acquisition-operating-framework>.

“Service Delivery Team” means the Authority’s Fuels Management Organisation.

“Firm price” means the Contractor’s price which shall be inclusive of all costs and not subject to variation for the duration of the Framework Agreement.

“Framework Agreement” means this agreement incorporating the Terms and Conditions, DEFCONS, DEFFORMS and Clauses together with the associated Annexes and Appendices.

“Framework Agreement Commencement Date” means the date on which this Framework Agreement is signed by both Parties.

“Statement of Requirement (StOR)” means the document at Annex B and associated Appendices detailing the Customer’s requirement.

“Supplier(s)” means any organisation (sub-contractor / Third Party) acting on behalf of the Contractor.

“Contractor’s Representative” means the duly authorised representative appointed by the Contractor in the execution of this Framework Agreement.

“Surge Requirements” means that in the event of unforeseen operations, environmental disasters or new platform requirements, there may be an increase in one or all of the, Number of orders placed; Quantity of Items ordered; Shorter delivery lead-times as opposed to those stated on the contract.

“Termination Date” means the date of expiry or termination of this Framework Agreement.

“Terms and Conditions” means the terms of the Framework Agreement, inclusive of the general conditions (DEFCONs and DEFFORMs), the Special Conditions and the Annexes

“UIN” means a Unit Identity Number. This is a unique number which enables identification of units, sub-units, organisations or grouping of organisations with the Authority. These numbers are linked to the Authority’s Budgeting System. UINs to be used for deliveries on the Contract will be notified to the Contractor by the Authority’s Representatives at each unit.

“Pipeline Operating Authority” – Compañía Logística de Hidrocarburos (CLH-PS)

“Consignment Note” - Supporting document in the form of a single, signed consignment note per movement

## **2 DEFENCE CONDITIONS**

DEFCON 5J (Edn 18/11/16) – Unique Identifiers

DEFCON 68 (Edn 02/17) – Supply of Hazard Data for Articles, Materials and Substances

DEFCON 76 (Edn 12/06) – Contractor's Personnel at Government Establishments

DEFCON 113 (Edn 02/17) – Diversion Orders

DEFCON 129J (Edn 18/11/16) - The Use Of Electronic Business Delivery Form

DEFCON 501 (Edn 11/17) – Definitions and Interpretations

DEFCON 502 (Edn 05/17) – Specification Changes

DEFCON 503 (Edn12/14) – Formal Amendments to Contract

DEFCON 507 (Edn 10/18) – Delivery

DEFCON 513 (Edn 11/16) – Value Added Tax

DEFCON 514 (Edn 08/15) – Material Breach

DEFCON 515 (Edn 02/17) – Bankruptcy and Insolvency

DEFCON 516 (Edn 04/12) – Equality

DEFCON 518 (Edn 02/17) – Transfer

DEFCON 520 (Edn 05/18) – Corrupt Gifts and Payments of Commission

DEFCON 522 (Edn 11/17) – Payment and Recovery of Sums Dues

DEFCON 524 (Edn 10/98) – Rejection

DEFCON 525 (Edn 10/98) – Acceptance

DEFCON 526 (Edn 08/02) – Notices

DEFCON 527 (Edn 09/97) – Waiver

DEFCON 528 (Edn 07/17) – Import and Export Licenses

DEFCON 529 (Edn 09/97) – Law (English)

DEFCON 530 (Edn 12/14) – Dispute Resolution (English Law)

DEFCON 531 (Edn 11/14) – Disclosure of Information

DEFCON 532B (Edn 05/18) – Protection of Personal Data

DEFCON 534 (Edn 06/17) – Subcontracting and Prompt Payment

DEFCON 537 (Edn 06/02) – Rights of Third Parties

DEFCON 538 (Edn 06/02) – Severability

DEFCON 539 (Edn 08/13) – Transparency

DEFCON 550 (Edn 02/14) – Child Labour and Employment

DEFCON 566 (Edn 03/18) – Change of Control of Contractor

DEFCON 602B (Edn 12/06) – Quality Assurance (Without Deliverable Quality Plan)

DEFCON 606 (Edn 06/14) – Change of configuration Control Procedure

DEFCON 608 (Edn 10/14) – Access and Facilities to Be Provided By the Contractor

DEFCON 609 (Edn 08/18) – Contractor’s Records

DEFCON 612 (Edn 10/98) – Loss Of or Damage to the Articles

DEFCON 619A (Edn 09/97) – Customs Duty Drawback

DEFCON 620 (Edn 05/17) – Contract Change Control Procedure

DEFCON 621B (Edn 10/04) – Transport (If contractor is Responsible For Transport)

DEFCON 624 (Edn 11/13) – Use of Asbestos

DEFCON 627 (Edn 12/10) – Requirement for a Certificate of Conformity

DEFCON 630 (Edn 02/18) – Framework Agreements

DEFCON 632 (Edn 08/12) - Third Party Intellectual Property – Rights and Restrictions

DEFCON 642 (Edn 06/14) – Progress Meetings

DEFCON 644 (Edn 07/18) – Marking of Articles

DEFCON 656B (Edn 08/16) – Termination for Convenience - £5 m and Over

DEFCON 658 (Edn 10/17) – Cyber

DEFCON 660 (Edn12/15) – Official Sensitive Security - Please Note: For the purposes of this Framework Agreement there is no requirement for a Security Aspects Letter.

### 3 DEFENCE FORMS

3.1 The following Defence Forms (DEFFORMs) shall apply. DEFFORMs can be accessed via the Commercial Toolkit following registration on the Acquisition System Guidance (ASG) at the following link: <http://www.aof.mod.uk/>

DEFFORM 10	Edn 07/18	Acceptance of Offer of Contract
DEFFORM 10B	Edn 03/14	Acceptance of Offer of Amendment to Contract
DEFFORM 68	Edn 12/16	Hazardous Articles, Materials or Substances Statement by the Contractor (Annex I)
DEFFORM 111	Edn 12/17	Appendix – Addresses and Other Information
DEFFORM 539A	Edn 08/13	Contractor's Commercially Sensitive Information Form (Annex G)

## SPECIAL CONDITIONS OF THE FRAMEWORK AGREEMENT

### 4 SCOPE OF THE FRAMEWORK AGREEMENT

4.1 This Framework Agreement governs the relationship between the Authority and the Contractor in respect of the Provision of Transport Services for the movement of Fuels within the United Kingdom excluding Northern Ireland detailed at Annex C to this Framework Agreement, by the Authorised Demanders from the Contractor, and sets out the terms which govern the Provision of Transport Services for the movement of Fuels within the United Kingdom excluding Northern Ireland.

### 5 ENTIRE AGREEMENT

- 5.1 This Framework Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 5.2 Neither Party has been given, nor entered into this Framework Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Framework Agreement.
- 5.3 Nothing in this Clause [5] shall exclude any liability in respect of misrepresentations made fraudulently.

## **6 DURATION OF FRAMEWORK AGREEMENT**

- 6.1 The Framework Agreement shall take effect on the Framework Agreement Commencement Date 01 June 2019 and shall continue, unless terminated earlier in accordance with the Terms and Conditions of the Framework Agreement, for four (4) years, until 31 May 2023 and shall cover all Orders during this period. The Framework Agreement shall terminate without notice at the end of the four-year period.
- 6.2 The Authority shall have the option to extend the Initial Period of this Framework Agreement on the same terms for a further period of 2 x six (6) months. This option period will be entirely at the discretion of the Authority, and shall be exercisable upon written notification by the Commercial Officer at Box 1 of the DEFFORM 111, to the Framework Provider, no later than three (3) months before the end date of the Initial Period.
- 6.3 Orders placed within the duration of this Framework Agreement may be delivered after the Termination Date of the Framework Agreement. After the Termination of the Framework Agreement only instructions relating to existing Orders, such as reduction of quantities or cancellation, will be issued by the Authority.

## **7 PRECEDENCE**

- 7.1 In the event of conflict between the Terms and Conditions of the Framework Agreement, or any Order, or the Framework Agreement Annexes or any other associated documents, the Terms and Conditions of the Framework Agreement shall take precedence, in accordance with DEFCON 501.
- 7.2 In the event of conflict between the DEFCONs (other than DEFCON 537) and Special Conditions, the Special Conditions shall take precedence.
- 7.3 Where the Contractor believes a conflict exists within the Framework Agreement, he shall bring this to the attention of the Authority at the earliest opportunity for consideration.
- 7.4 In all cases of a conflict between the Terms and Conditions of the Framework Agreement, or any Orders, or the Framework Agreement Annexes or any associated documents the Authority shall discuss these matters with the Contractor with a view to resolving the issues; however, the Authority's decision shall be final and conclusive in all matters.
- 7.5 The Contractor agrees that any other terms and conditions or any general reservations, which may be printed on any of the Contractor's correspondence, shall not be applicable to this Framework Agreement.

## 8 WARRANTIES AND REPRESENTATIONS

- 8.1 The Contractor warrants, represents and undertakes to the Authority that:
- 8.2 It has full capacity and authority and all necessary consents, licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Framework Agreement;
- 8.3 This Framework Agreement is executed by a duly authorised representative of the Contractor;
- 8.4 In entering this Framework Agreement it has not committed any fraud;
- 8.5 In entering this Framework Agreement it has not committed or agreed to commit a prohibited act including any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 8.6 In entering this Framework Agreement it has no knowledge, that:
- 8.7 In connection with it, any money or other inducement has been, or will be, paid to any person working for or engaged by the Authority or any other public body or any person engaged or employed by or on behalf of the Authority in connection with this Framework Agreement; and
- 8.8 An agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Authority before execution of this Framework Agreement;
- 8.9 This Framework Agreement shall be performed in compliance with all Laws (as amended from time to time) and all applicable standards;
- 8.10 As at the Framework Agreement Commencement Date, all information, statements and representations contained in the tender for the Fuel are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority prior to execution of the Framework Agreement and it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the tender shall be deemed repeated in this Framework Agreement;
- 8.11 No claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under this Framework Agreement;

- 8.12 It is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under this Framework Agreement;
- 8.13 No proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 8.14 It owns, has obtained or is able to obtain valid licences for all intellectual property rights that are necessary for the performance of its obligations under this Framework Agreement and shall maintain the same in full force and effect.
- 8.15 The Contractor also warrants, represents and undertakes to the Authority that:
- a) in the three (3) years prior to the Framework Agreement Commencement Date (or from when the Contractor was formed if in existence for less than three (3) years prior to the Framework Agreement Commencement Date);
  - b) It has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and
  - c) It has been in full compliance with all applicable securities and tax Laws and regulations in the jurisdiction in which it is established; and
  - d) It has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under this Framework Agreement; and
- 8.16 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Contractor which constitutes a material breach.
- 8.17 The Contractor acknowledges and agrees that:
- a) The warranties, representations and undertakings contained in this Framework Agreement are material and are designed to induce the Authority into entering into it; and
  - b) The Authority has been induced into entering into this Framework Agreement and in doing so has relied upon the warranties, representations and undertakings contained herein.

## 9 ESTIMATED QUANTITIES

- 9.1 The Estimated Quantities detailed at Annex C is for information only. The Framework Agreement does not guarantee any Fuel volumes/Movements.
- 9.2 The Authority shall not be obliged to receive volumes/movements other than those ordered, or to pay for volumes/movements other than those received and accepted by the Authority.

## 10 COMPLAINTS PROCEDURE

- 10.1 The Contractor shall ensure that the Authority will be able to report complaints by e-mail. For the avoidance of doubt, any contact by a customer relating to the failure of any service shall be treated as a complaint.
- 10.2 The Contractor shall acknowledge complaints and inform the Service Delivery Team of the complaint within three working days of receipt by emailing:  
[DESLDProgMgt-DFAP-FCMO@mod.gov.uk](mailto:DESLDProgMgt-DFAP-FCMO@mod.gov.uk)

## 11 LIABILITY FOR NEGLIGENT DELIVERY

- 11.1 Notwithstanding the rights of the Contractor and the Authority under DEFCONs 524 and 525 and in other Conditions herein the Contractor shall be liable for any remedial work or costs required as a result of negligent delivery, where delivery is made incorrectly into the incorrect fuel tank or other storage, unless the Contractor was acting under specific instructions from the Authority when doing so.

## 12 PRICING

- 12.1 The Framework Agreement is priced in miles depending on distance for movements from collection to delivery locations, using the below Firm rates;

Range	PPLM Rate
>0 and ≤ 50 (Greater than zero miles and less than or equal to fifty miles)	[PRICE REDACTED – COMERCIALY SENSITIVE]
>50 and ≤ 100 (Greater than fifty miles and less than or equal to one hundred miles)	[PRICE REDACTED – COMERCIALY SENSITIVE]
>100 (Greater than one hundred miles)	[PRICE REDACTED – COMERCIALY SENSITIVE]

- 12.2 The rates per mile as detailed in clause 12.1 shall be FIRM and inclusive of all associated costs (not subject to variation) for the duration of the Framework Agreement, other than in accordance with clause 12.3 – 12.6 below and calculated in GBP. The price shall include any tax, except VAT, leviable on the service. The tax element payable under the Contract shall be the rate applicable on the day of delivery. The appropriate rate of VAT shall be shown separately. The prices for Miscellaneous Charges as detailed at Annex D to the Terms and Conditions of Contract shall be FIRM (i.e. not subject to variation) and shall apply for the duration of the Contract.
- 12.3 For Year 2 of the Contract [01 June 2020] Any price increase between Year 1 and Year 2 of the Contract shall be no greater than the Services Producer Price Index (SPPI) “Percentage change, latest year on previous year” as published by the Office for National Statistics (ONS) using index K8RO (Freight Transport by Road) and shall be agreed between the Authority and the Contractor prior to commencement of this period.
- 12.4 For Year 3 of the Contract [01 June 2021] Any price increase between Year 2 and Year 3 of the Contract shall be no greater than the SPPI “Percentage change, latest year on previous year” as published by the Office for National Statistics (ONS) using index K8RO (Freight Transport by Road) and shall be agreed between the Authority and the Contractor prior to commencement of this period.
- 12.5 For Year 4 of the Contract [01 June 2022] Any price increase between Year 3 and Year 4 of the Contract shall be no greater than the SPPI “Percentage change, latest year on previous year” as published by the Office for National Statistics (ONS) using index K8RO (Freight Transport by Road) and shall be agreed between the Authority and the Contractor prior to commencement of this period.
- 12.6 For any option Years/Months of the Contract [01 June 2023] Option Year price will be the year 4 price (which includes SPPI Inflation for year 4). Increased no greater than the SPPI “Percentage change, latest year on previous year” as published by the Office for National Statistics (ONS) using index K8RO (Freight Transport by Road) and shall be agreed between the Authority and the Contractor prior to commencement of this period.
- 12.7 The Authority shall formally request quotations for the periods referred to in Paragraphs 12.3 to 12.6, above, from the Contractor in writing no later than 30 days prior to the commencement of the next period. The Contractor, in response to the Authority’s request for quotations, shall submit quotations in writing no later than 14 days prior to the commencement of the next period. The final prices will be formally incorporated into the Contract by the issue of an amended to contract by the Authority’s Commercial Branch. The price shall include any tax, except Value Added Tax, leviable on the service.

- 12.8 For requirements for fuel to be transported between locations not detailed in Annex C, the Authority will request a quote in miles from the collection point to the delivery point from the Contractor for this journey. On receipt of this mileage quote, if acceptable to the Authority, the price will be calculated in accordance with clause 24.1 (using the applicable PPLM Rate) and a Pricing Letter at Annex F agreeing the price will be issued by the Authority prior to the work being undertaken. A copy of this Pricing Letter should be attached to the invoice documentation on the monthly (MI) when submitted for payment.
- 12.9 The contracted mileage to be used between journeys are detailed in Annex C Column(s) N to P
- 12.10 The PPLM rate according to distance from collection to delivery locations as detailed in 12.1 shall be multiplied by the mileage for that journey as detailed in Annex C and shall constitute the price for that journey. The total sum of the journey's taken place for the month, for all movements delivered and any additional charges in accordance with Annex D plus VAT, shall constitute the total price to be paid to the Contractor for that month.

### 13 MISCELLANEOUS CHARGES

- 13.1 Miscellaneous Charges shall be chargeable at the rates listed in Annex D to the Terms and Conditions of Contract and are FIRM for the entire contract duration and not subject to variation or increase and shall be paid in accordance with Annex B – Condition 6.1 Management Information.
- 13.2 **Demurrage Charges** may be claimed by the Contractor if the loading time exceeds 3 hours and the unloading time exceeds 3 hours and the delay is attributable to the Authority, the Authority shall pay Demurrage to the Contractor in accordance with the hourly rate at Annex D “Demurrage” to the Terms and Conditions of Contract. If the Supplier incurs additional direct costs as a result of the delay, the Contractor shall submit an itemised breakdown of the charges, with supporting evidence and, where applicable, receipts, which will be considered by the Authority. The Authority shall review any claim on a case by case basis for acceptance.
- 13.3 **Cancellation/Postponement** – Where possible, cancellations/postponements shall be notified to the Contractor more than 24 hours in advance of the time/date of collection/delivery. If a cancellation/postponement notification is provided to the Contractor 24 hours or more in advance there will be no charge to the Authority. If, however, notification of a cancellation/postponement is made within the 24-hour notice period, the Contractor will be paid the appropriate journey cost in full for that journey and if applicable re-delivery cost in accordance with the appropriate mileage rate at Condition 12.1 “Pricing”.

- 13.4 **Product Left on Board (LOB)** - Following a delivery, if all of the product cannot be delivered and is subsequently left on board the road tanker wagon, every effort to redeliver the product will be made on the same day. However, in the event that product has to remain on board and only applicable if the product cannot be re-delivered on the same day (within 12/24 hours), an additional charge may be payable for the hire of the road tanker wagon per hour after the initial 12 hour re-delivery period in accordance with the price at Annex D to the Terms and Conditions of Contract. The Authority shall review any LOB claims on a case by case basis for acceptance.

## **14 SUBMISSION OF INVOICES**

- 14.1 The Authority shall use its Contract Purchasing and Finance (CP&F) system to make payment. Due to the tolerance in volumes and movements, the Authority and Contractor are required to carry out the CP&F actions retrospectively. The Contractor shall submit an email copy of a “NOT FOR PAYMENT” invoice to the Authority to enable the Authority to raise an order, retrospectively on CP&F. The Authority will review the invoice. Following agreement between the Authority and Contractor of the value on the “NOT FOR PAYMENT” invoice the Authority shall raise a purchase order on CP&F and inform the Contractor that this action has been completed. The Contractor shall then be required to create an electronic invoice via EXOSTAR that will match the purchase order on CP&F.
- 14.2 The invoice submitted by the Contractor will capture all deliveries made within the month prior to submission of the invoice as per the monthly MI, for example, invoice sent by the 3rd September will detail all movements for the month of August for payment. The Authority will use MI issued by the Contractor and the supporting documentation to capture all the deliveries undertaken in the previous month.
- 14.3 Supporting documentation will be in the form of a signed consignment note per movement relating to the deliveries undertaken in the month to which the MI/invoice relates and shall be submitted to the Authority in electronic format, compatible with MS Office 2013 (or later versions as agreed with the Authority), by the 3rd working day of each month in conjunction with the MI at Annex B Condition 6, or as otherwise required by the Authority, so that the validity of the MI can be verified before payment via CP&F is made. Once the MI has been verified and validated in conjunction with the delivery note/invoice payment will be made via CP&F.

## **15 PAYMENT**

- 15.1 Payment shall be made via CP&F in accordance with the procedure detailed at Clause 14 “Submission of Invoices” and DEFCON 522.
- 15.2 Payment shall be made in POUND (£) Sterling (GBP) to 2 decimal places.

## **16 INSURANCE**

- 16.1 The Contractor will ensure that they and all relevant parties within their supply chain subject to the Framework Agreement shall hold and maintain any statutory insurance required by relevant regulations and Law.

## **17 TITLE/OWNERSHIP**

17.1 All fuel transported under this Contract shall remain the property of the Authority at all times and in all circumstances. The Contractor shall have no title thereto and shall create no lien or charge, nor permit any lien or charge to be created on the property of the Authority.

## **18 INDEMNITY**

18.1 The Contractor shall fully indemnify the Authority against any damage, loss or injury, including loss of life suffered by the Authority, or any third party, howsoever caused by the Contractor in discharging his obligations under the Framework Agreement.

## **19 CHANGE IN LAW**

19.1 The Contractor shall neither be relieved of its obligations to supply the Fuel in accordance with this Framework Agreement, nor be entitled to financial recompense, including by an adjustment to the prices as the result of a change in Law.

## **20 FREEDOM OF INFORMATION**

20.1 The Contractor acknowledges that the Authority is subject to the requirements of the Freedom Of Information Act (FOIA) and the Environmental Information Regulations (EIR). The Contractor shall:

- (a) Provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) Transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;
- (c) Provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Business Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) Not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

20.2 The Contractor acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Contractor. The Authority shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **21 PUBLICITY**

21.1 Unless otherwise directed by the Authority, the Contractor shall not make any press announcements or publicise this Framework Agreement in any way without the Authority's prior written consent.

21.2 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Authority, including any examination of this Framework Agreement by an auditor or otherwise.

21.3 The Contractor shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

## **22 HEALTH AND SAFETY**

22.1 The Contractor shall perform its obligations under this Framework Agreement in accordance with:

- a) All applicable Law regarding health and safety;
- b) The Contractor's own health and safety policies; and
- c) Any reasonable health and safety directions issued from time to time by the Authority to the Contractor.

22.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards of which it becomes aware and which relate to or arise in connection with the performance of this Framework Agreement. The Contractor shall instruct any and all Sub-Contractors to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

22.3 If the Authority's local representative has any health and safety concerns before or during the discharge operation, the Authority reserves the right to halt the operation until such a time that the concern has been investigated and a suitable solution put in place.

## **23 ENVIRONMENTAL**

23.1 The Contractor shall perform its obligations under the Framework Agreement in accordance with all relevant international and national legislation, regulations and industry standards pertaining to environmental protection. The Authority reserves the right, in accepting any service or product offered, to question aspects of its operation or usage in relation to environmental protection.

## **24 EVENT OF A SPILL**

24.1 The Authority will have adequate emergency procedures and will provide immediate assistance to the Contractor or his Sub Contractor in the event of a spill of the product upon delivery at the Authority's premises. If an escape, spillage or discharge of fuel (hereinafter referred to as a 'spill') occurs during delivery discharge to the Authority, the Authority will promptly take such action as is reasonably necessary to remove the spill and mitigate its effects. Any expenses, damages, costs or other such loss or damage arising from the spill, or pollution of fuel shall be paid by the party that caused the spill, or other such loss or damage, by negligent act or omission. If both parties have acted negligently, any expenses or other such loss or damage, shall be divided between the parties in accordance with the respective degree of negligence.

## **25 SUB CONTRACTING**

- 25.1 The Contractor shall not give, Sub-Contract, bargain, sell, assign, sub-let, or otherwise dispose of the Contract or any part thereof without the previous consent in writing of the Authority.
- 25.2 The Contractor shall provide from his own resources sufficient vehicles to undertake all tasks. When the Demanding Authority's requirements for vehicles exceeds the Contractor's ability to provide all of them from his own resources he may obtain the balance by sub-contracting vehicles, subject to obtaining prior written approval from the Authority. Vehicles from not more than one Sub-Contractor may be employed on any one task.
- 25.3 Sub-Contractors are strictly forbidden from further sub-contracting any or all of the tasks that have been allocated to that company.
- 25.4 Any act by a Sub-Contractor shall be deemed to be an act by the Contractor and the Contractor shall in no way be relieved of his obligations and liabilities under the Contract.
- 25.5 The Contractor shall indemnify and keep the Authority indemnified in respect of any claims, costs, demands and liabilities of any kind whatsoever arising from the actions, omissions or negligence of the Sub-Contractor.

## 26 CYBER SECURITY

- 26.1 Further to DEFCON 658 the Cyber Risk Level of the Contract is [VERY LOW], as defined in Defence Standard 05-138.
- 26.2 Details of the Defence Standards can be found at [www.dstan.mod.uk](http://www.dstan.mod.uk)
- 26.3 To ensure the continued compliance with the security controls the Contractor must ensure that a Supplier Assurance Questionnaire (SAQ) is completed on an annual basis. The contractor must ensure that all sub-contractors also complete a SAQ on an annual basis to maintain their compliance. The Supplier Cyber Protection Service (Octavian) will provide notification to account holders to prompt them to take this action.

## 27 KEY PERFORMANCE INDICATORS

- 27.1 The Contract will be subject to Key Performance Indicators (KPIs), which monitor performance of the Contractor. The Authority will use the MI Data Submitted as detailed in Annex B Condition 6.1 to monitor KPIs.
- 27.2 Performance Information relating to each Performance Indicator shall be gathered by the DFAP Service Delivery Team, shown at Box 2 of DEFFORM 111 to Contract, throughout the period of the Contract. This information shall be consolidated by the Authority at the end of each calendar month to determine the Contractor's level of performance against each Performance Indicator (PI).
- 27.3 Urgent problems which arise shall be reported to the DFAP Service Delivery Manager, shown at Box 2 of DEFFORM 111 to Contract. They shall not be retained for the end of month Management Report.
- 27.4 Without prejudice to any other rights or remedies arising under this Contract, if the Contractor fails to achieve any KPI Target as detailed at Annex E to the Terms and Conditions of Contract, the Contractor acknowledges and agrees that the Authority shall have the right to exercise (in its absolute sole discretion) all or any of the following remedial actions –
- a) First KPI Failure - The Authority shall be entitled to require the Contractor, and the Contractor agrees to prepare and provide to the Authority, an improvement plan detailing the reason for the failure and the actions put in place to prevent a repeat occurrence. Such improvement plan shall be submitted to the Authority within ten (10) working days of a written request. The improvement plan shall be subject to approval by the Authority and the Contractor will be required to implement any approved improvement plan, as agreed with the Authority.

- b) Second KPI Failure - The Authority shall be entitled to require the Contractor, and the Contractor agrees to prepare and provide to the Authority, an improvement plan detailing the reason for the failure and the actions put in place to prevent a repeat occurrence. Such improvement plan shall be submitted to the Authority within ten (10) working days of a written request. The improvement plan shall be subject to approval by the Authority and the Contractor will be required to implement any approved improvement plan, as agreed with the Authority. In addition, the Contractor agrees to attend, within a reasonable time one (1) or more meetings at the request of the Authority in order to resolve the issues raised by the Authority in its notice to the Contractor requesting such meetings.
  
- c) Third KPI Failure – If the contractor fails to meet KPI's for a 3-month Period after a second KPI Failure, the Authority will consider this as Material Breach and will have the right to terminate the Contract in accordance with DEFCON 514.

Dated 20 November 2018

## Annex A - DEFFORM 110AL Edn 10/04 – Schedule of Requirements

<b>Wincanton Group Limited, Methuen Park, Chippenham, Wiltshire, SN14 0WT.</b>	<i>MINISTRY OF DEFENCE</i>  <i>SCHEDULE OF REQUIREMENTS</i> <b>Provision of Transport Services for the movement of fuels within the United Kingdom Excluding Northern Ireland</b>	<b>Contract No: DFAP/0014</b>
		<b>Previous Contract Nos: DFFS/5068</b>

Table 1 - Items

Item	NSN/ DMC	Description	Estimated Annual Volumes	Firm Price
1	N/A	<b>Provision of Transport Services for the movement of fuels within the United Kingdom Excluding Northern Ireland</b>	<b>Further details of all locations, estimated quantities are detailed at Annex C to the Contract</b>	<b>Pricing mechanism detailed in Condition 12 to contract DFAP/0014</b>

Item	Start	Rate	Finish	CONDITIONS OF CONTRACT
1	01 June 2019	As Authorised Orders	31 May 2023	This contract is subject to the attached Standard Conditions and Special Conditions of Contract

## **Annex B – Statement of Requirement (StoR)**

### **1 SERVICE SPECIFICATION**

- 1.1 The Authority has a requirement for the provision of scheduled transport services for the collection and delivery of Aviation and Marine fuels within the mainland United Kingdom, excluding Northern Ireland. The required service covers the provision of vehicles and drivers for the transportation (collection and delivery) of:
- a) Aviation fuel from Petroleum Supply Depots (PSDs) to various Ministry of Defence (MOD) and support locations. The types of fuel to be transported are as follows:
- (i) AVTUR F-34 FSII with Fuel System Icing Inhibitor (FSII); the locations and delivery points are listed in Annex C.
  - (ii) AVTUR F-35; the locations and delivery points are listed in Annex C.
  - (iii) AVCAT F-44 FSII from Her Majesty's (HM) Oil Fuel Depots (OFDs), which are listed in Annex C, to MOD establishments, HM Ships and Royal Fleet Auxiliary (RFA) vessels.
- b) Marine Dieso F-76 from HM Oil Fuel Depots, which are listed in Annex C, to MOD establishments, HM Ships and RFA vessels.
- 1.2 Estimated quantities are in Annex C. The Authority may have a requirement to be able to add fuel types to the list in paragraph 12.1 as required, for Urgent Operational Requirements.
- 1.3 The list of locations (and volumes) in Annex C is not an exhaustive list of locations. The Contractor shall allow new locations to be added onto the list as required, within a timescale of a maximum of 5 working days.
- 1.4 The Contractor shall nominate an individual(s) to be responsible for the day-to-day running of the Contract and to act as a focal point with overall responsibility for matters arising out of providing the service.

## 2 TASKING

- 2.1 Requests for transport for all contracted fuel types are to be provided by DFAP-Service Delivery Team to the Contractor, with at least 3 working days' notice (excluding Public Holidays). Weekly Delivery Schedule will be provided by the Service Delivery Team on Tuesday of the preceding week. The Contractor will confirm acceptance of scheduled deliveries within 2 working days.
- 2.2 The Contractor acknowledges that the Authority's delivery schedule is planned around each unit(s) expected fuel usage and mandated fuel stock levels to meet operational demands. The Contractor shall commit to the Authority's delivery schedule and will only amend the delivery schedule by exception with prior agreement with the Service Delivery Team. Under no circumstances should the order, delivery date/time be changed without the prior agreement of Service Delivery Team.
- 2.3 For each Fuel delivery, the Contractor shall produce a unique Consignment Note, in triplicate. Product will not be loaded without production of the Consignment Note. Post filling, this document will also become the Certificate of Conformity (C of C), and used to accompany the consignment.
- 2.4 In the event of operational, infrastructure failures or new platform requirements, there may be an increase in demand in shorter timescales than usual. The Authority shall give prior notice to the Contractor when this occurs, for agreement.
- 2.5 In the event of unforeseen operations, infrastructure failures or environmental disasters, there may be an increase in one or more of the following:
  - a. Number of orders placed;
  - b. Quantity of items ordered;
  - c. Shorter delivery lead-times as opposed to those stated on the Contract (e.g. within 24 hours).
- 2.6 Such increases above predicted levels shall be termed 'Surge'. Surge will be defined and notified by the Authority. The Contractor and the Authority shall work together to satisfy the increased order to meet the Authority's requirements.
- 2.7 On receipt of the request for transport of Aviation Fuels, the Contractor will liaise directly with the pipeline operating authority to arrange the load schedule.
- 2.8 The Contractor shall supply road tankers as demanded by the Authority. Requirements will be notified to the Contractor.
- 2.9 In cases of extreme urgency, telephone demands for Marine Fuels shall be accepted by the Contractor, provided that any other information required by the Contractor is satisfied. Written confirmation of the request by the Authority shall follow by fax/e-mail within 48 hours.

2.10 Where possible, the Authority shall notify the Contractor of cancellations/postponements more than one working day in advance of the time/date of collection indicated in the tasking document. If, however, notification of a cancellation/postponement is made within the one working day notice period by the Authority, a cancellation fee may be applicable, following authorisation by DFAP-Service Delivery Team, in accordance with Annex D Miscellaneous Charges following authorisation.

### 3 TYPES OF VEHICLES AND DRIVERS

- 3.1 The Contractor shall provide a fully qualified class C+E, ADR driver, licensed to carry class 2 and 3 products for each road tanker(s). The road tanker(s) employed on this task shall be single offload variants, fully equipped with PTO (pump) and all other ancillary equipment as determined by ADR regulations. Each road tanker is to be capable of offloading product at a minimum rate of 30,000 litres per hour and be capable of bottom loading. The Contractor is also required to ensure that the following items are fitted to each road tanker:
- a. 2 API female fittings
  - b. 2 x 4" female BSP to 4" male camlock fittings
  - c. 2 x 3" female BSP to 3" male camlock fittings
  - d. 1 x 2.5" female BSP to 3" male camlock fitting
  - e. 2 x 3" male BSP to 3" female camlock fittings
  - f. 2 x 3" BSP connectors
  - g. 1 x API female sample coupling
  - h. 1 x 12 litre stainless steel aviation sample bucket with earthing strap
- 3.2 Army Command Joint Helicopter Command sites (RAF Benson, Credenhill, Middle Wallop, Odiham and Wattisham) may provide NATO high pressure couplings, however an API female sample coupling shall be provided by the driver for a sample collection before loading.
- 3.3 The Contractor shall be responsible for compliance with all relevant UK legislation, regulations, and licensing regarding the carriage of dangerous substances in road tankers.
- 3.4 The Contractor shall advise DFAP-Service Delivery Team immediately in the event of any breakdown, accident or departure from the agreed schedule.
- 3.5 The Contractor shall be responsible for ensuring all of their road tanker(s) are equipped with the appropriate length of hose for the task in hand. To assist in ensuring the smooth and accurate fuel quality assurance checks for all AVTUR F-35 / AVTUR F-34 FSII deliveries, the Contractor shall provide only single compartment road tankers to all MOD sites.
- 3.6 The Contractor shall be responsible for providing auxiliary pumps in case of a requirement for extended hose run/length.
- 3.7 Vehicles shall be bottom-loaded.

## 4 COLLECTIONS/DELIVERIES

- 4.1 The Contractor's road tanker(s) are required to be available between 07:00 – 19:30 on Mondays to Fridays. In unforeseen circumstances or during Surge, the Contractor's road tanker(s) may be required to be available 24 hours a day, 365 days a year, including public and bank holidays. Collections/deliveries shall normally be required during the MOD location/OFD working hours. The Contractor must however, be prepared to collect/deliver outside of normal MOD location/OFD working hours and during weekends should the Service requirement demand it.
- 4.2 Delivery to consignee addresses must be made by the time stipulated on the Request Form/schedule. Deliveries arriving after these times may be refused until the next working day at no additional cost to the Authority. If a loaded road tanker is unable to make a delivery in full, the Authority will advise as to whether the road tanker should return to the loading Depot or an alternative delivery location.
- 4.3 When the Contractor is required to undertake a Surge requirement, prior arrangements shall be made by the Authorised Demander with the Consignee to accept delivery.
- 4.4 It is essential that road tanker(s) report to their nominated MOD locations/depots at the time specified by the Authorised Demander. Annex C lists the normal collection and associated delivery points for Fuels; however, alternative combinations may be required to satisfy operational requirements. To maximise operational flexibility the use of alternative collection points may be selected at the discretion of the Contractor.
- 4.5 To assist the Authority, the Contractor shall provide point of contact details for normal working hours (08:00 to 17:00, Monday to Friday) and for out of office hours and weekends. The Authority has provided a list of users as detailed in Annex C.
- 4.6 All enquiries concerning the operation of this Contract should be directed to:

**DFAP - Service Delivery Team -**

[DESLDProgMgt-DFAP-FCMO@mod.gov.uk](mailto:DESLDProgMgt-DFAP-FCMO@mod.gov.uk)

MoD Abbey Wood

DE&S – LDOC – DFAP

CEDAR 3A # 3360

Bristol

BS34 8JH

- 4.7 If too much fuel is ordered, the Contractor shall liaise with the Authority to resolve the issue. This could include arranging for another unit to take the fuel, or the Contractor returning the fuel to the depot that it was transported from.

## 5 FUEL SPECIFICATIONS

5.1 The specifications of the products to be transported are as follows:

5.1.1 AVTUR F-34 FSII UK Defence Standard 91-087 (latest issue).

5.1.2 AVTUR F-35 UK Defence Standard 91-091 (latest issue).

5.1.3 AVCAT F-44 FSII UK Defence Standard 91-086 (latest issue).

5.1.4 Marine Dieso F-76 UK Defence Standard 91-004 (latest issue).

5.2 The Contractor's attention is drawn to the requirements of the Defence Standard 91-066 (latest issue) which stipulates that no mixed loads may be carried. It is of the utmost importance that no contamination of the fuel takes place at any time during the delivery operation and it shall be the Contractor's responsibility to ensure that no such contamination takes place. The Contractor shall be responsible for ensuring that their road tanker(s) and any of their filling or discharge lines used to transfer the fuel are in a clean condition. All such lines and hoses are to be fitted with blanking ends when not being used for the filling or discharge of tanks. The following precautions shall be taken by the Authority's representatives or the Contractor (as specified below) at the loading depot, without prejudice to the Contractor's rights under the Contract:

### Pre-Filling

- a. Bottom delivery valves of the road tanker(s) shall be opened to ensure complete drainage of previous contents or water by the Authority's representative.
- b. Following a product change and/or tank cleaning, up to 100 litres of product will be provided by the OFD/PSD to flush the pump of the road tanker.

### Post-Filling

- c. For Marine Dieso F-76, a small quantity of product will be drawn by an OFD representative to carry out the necessary quality checks, including appearance, density and filter blocking tendency (Marine Dieso F-76 only). Following completion of compliant tests, the OFD staff representative will produce the Certificate of Conformity (C of C).
- d. For AVTUR F-34 FSII, AVTUR F-35 & AVCAT F-44 FSII, the Contractor will draw a sample of product and test in line with the Authority's quality procedures. Testing will include: appearance, density at 15°C, water, FSII content (AVCAT F-44 FSII and AVTUR F-34 FSII only) and, conductivity (AVTUR F-34 FSII and AVTUR F-35 only). The Contractor will enter the test results on the consignment note, which, on completion, will also be used as the C of C.
- e. Loaded tankers will not be permitted to leave the OFD/PSD without a fully completed and compliant C of C.
- f. All inlets, outlets and hatches shall be sealed by the Authority representative at the Depot concerned, using MOD approved seals.
- g. Any road tanker(s) which is found on presentation to be incapable of being sealed

will not be filled and will be turned away at no cost to the Authority.

- 5.3 On arrival at the Authority's delivery address, further samples will be taken by the Authority's representatives, and tests will be conducted as detailed at paragraph 5.2.c or 5.2.d as appropriate to the fuel type. If the density of the fuel differs by +/- 3 kg/m<sup>3</sup> from that detailed on the C of C, or the fuel is not fit for purpose with respect to other testing conducted by the Authority, then the Authority reserves the right to reject the load at the point of delivery. Final acceptance of the fuel by the Authority shall be post the testing conducted by the Authority.

## 6 MANAGEMENT INFORMATION

- 6.1 The Contractor shall capture and record all information required to enable the Contractor's performance to be measured and reported on, and to enable the Contractor to be paid, including information on delivery quantities, fuel types, locations and financial information with the costs in £s (GBP – Pound Sterling). This information shall be submitted to the Authority in a monthly Management Information (MI) Report in electronic format, by the 3rd working day of each proceeding month. This information shall be supported by the completed and signed consignment notes for each delivery. The report shall include as a minimum for each delivery;
- a. Consignment Note Number
  - b. Consignor
  - c. Consignee
  - d. Details of Load – Actual Quantity Delivered and Fuel Type
  - e. Requested Delivery Date/Time
  - f. Actual Delivery Date/Time
  - g. Mileage
  - h. Mileage Rate (Pence Per Loaded Mile Rate (PPLM))
  - i. Miscellaneous Charges in accordance with Annex D
  - j. Net Cost
  - k. Value Added Tax (VAT)
  - l. Gross Cost
- 6.2 Data captured with the MI will be used to monitor performance in line with KPI's at Annex E.
- 6.3 The Authority reserves the right to develop and amend the content of reports and reporting processes with the Contractor.

## **7 QUALITY MANAGEMENT**

- 7.1 The Contractor is responsible for ensuring that the quality of the work performed and of the articles and materials supplied by him and all his Sub-Contractors conform to the requirements of the Contract. The Contractor shall maintain a quality management system and continually improve its effectiveness in accordance with the terms and conditions of the Contract and all amendments.
- 7.2 The following documents shall be referenced in the Contractor's Quality Management process:
- a. Defence Standard 05-061 (latest issue) - Quality Assurance Requirements, Part 1 Concessions.
  - b. Defence Standard 91-066 (latest issue) - The Segregation, Handling and Quality Assurance of Petroleum Fuels, Lubricants and Associated Products.
  - c. Defence Standard 05-135 (latest issue) - Avoidance of Counterfeit Materiel.

## **8 CONTRACT REVIEW MEETINGS**

- 8.1 The Authority shall be responsible for arranging all Contract Review Meetings (CRM), including:
- a. Identifying all attendees and issuing calling notices at least 30 working days prior to the meeting date.
  - b. Issuing the meeting Agenda 5 working days prior to the meeting date.
- 8.2 The venue of the CRM is to be agreed by both parties quarterly (or at another frequency agreed between the Authority and the Contractor) between the Authority and Contractor's premises or via telephone conference as appropriate.
- 8.3 The Authority shall be responsible for producing minutes/records of decisions for all CRM. These shall be distributed via email to all meeting attendees within 30 working days of the meeting date.

## **9 LEAD IN PERIOD ACTIVITIES**

- 9.1 After Contract Award and prior to the Framework Agreement Commencement Date, the Contractor will contact receiving Units to arrange site access and conduct site visits/risk assessments.

## **10 CONTAMINATION OF FUEL DURING SUPPLY AND RETURN**

- 10.1 The Contractor shall use dedicated road tankers for each fuel type.
- 10.2 Road tankers used for the sole purpose of transportation of Jet fuels, AVTUR F-34 FSII, AVTUR F-35 and AVCAT F-44 FSII, shall not be used to transport diesel fuel. Under exceptional circumstances (such as Surge requirements), the use of non-dedicated road tankers for transportation of Jet fuel shall require authorisation by the Authority. The Contractor shall ensure that there is no cross contamination of fuel between loads.
- 10.3 In the case of diesel fuels, the Contractor shall ensure that dedicated road tankers are used for the sole purpose of transportation of Marine Dieso F-76.
- 10.4 Where possible dedicated loading arms should be used. For loading arms that have previously carried a fuel type other than that to be loaded, the Contractor shall work with and contact the Authority to ensure that these shall have, as a minimum, at least one full flush with the grade to be filled prior to commencement of loading. It should be noted that due to the tight specification requirements for aviation fuel HM50 (Guidelines for the cleaning of tanks and lines for marine tank vessels carrying petroleum and refined products) precludes any admixing by other cargoes except undyed general-purpose kerosene containing no bio components.
- 10.5 The Contractor shall be responsible for maintaining the integrity of the product from the point the fuel is loaded into the Contractors vehicle up to the point the fuel has been accepted by the Authority at the designated MOD/OFD location. Please refer to Annex B paragraph 5.3.
- 10.6 Should contamination of fuel occur between the point the fuel is loaded into the Contractor's vehicle up to the point the fuel has been accepted by the Authority at the designated MOD/OFD location, the Contractor will be liable for any costs borne by the Authority in relation to (including but not limited to) costs of testing the fuel and fuel disposal costs.

## **11 CONTRACTOR'S DRIVERS' RESPONSIBILITY FOR THEIR TANKER**

- 11.1 Air Command – The driver shall be responsible for their tankers and the MOD Fuel Operator shall be responsible for the fuel installation.
- 11.2 Army Command Joint Helicopter Command sites (RAF Benson, Credenhill, Middle Wallop, Odiham and Wattisham) – The driver shall be responsible for their tank and the connection to the BFI. They shall be overseen by qualified F&L and BFI/MTFI Operators who are there to conduct the Quality Assurance testing of the fuel and to receive the receipt into the BFI. The fuel shall be delivered by the driver and facilitated by the MOD representative.

11.3 Manston – The driver shall be responsible for their tanker and connecting up to the loading point but will be advised by an MOD fuel operative as to which tank to connect to.

11.4 Navy Command – The driver shall be responsible for their tank and connecting, and the MOD fuel operator will facilitate it.

## 12 CONTRACTOR'S DRIVERS' ACCESS TO SITES

12.1 Drivers do not require SC (Security Check) security clearances to gain access to sites. Drivers must be escorted at all times on site but can also obtain contractors' passes from units' Main Guardrooms, subject to the direction of the unit/site. Units' fuel operators will be able to assist with this application process. Drivers shall show photographic ID at the Guard room and their delivery note. In accordance with DEFCON 76 at Clause 2 of DFAP/0014 – Terms and Conditions.

### Abbreviations

ADR	European Agreement concerning the International Carriage of Dangerous Goods by Road
AVTUR	Aviation Turbine Fuel
C of C	Certificate of Conformity
DE&S	Defence Equipment and Support
DFAP	Defence Fuels Acquisition Programme
DSFA	Defence Strategic Fuels Authority
FCMO	Fuels Commissioning and Management Organisation
FLC	Front Line Command
FSII	Fuel System Icing Inhibitor
HM50	Guidelines for the cleaning of tanks and lines for marine tank vessels carrying petroleum and refined products
MOD	Ministry of Defence
OFD	Oil Fuel Depot
PSD	Petroleum Supply Depot
RFA	Royal Fleet Auxiliary
SC	Security Check
StOR	Statement of Requirement
TLB	Top Level Budget
UK	United Kingdom

**Annex C – Unit Locations, Fuel Types, Collection Points, Estimated Quantities  
and Journey Mileage.**

PAGE INTENTIONALLY LEFT BLANK – REFER TO SEPARATE EXCEL SPREADSHEET –  
ANNEX C

## **Annex D – Miscellaneous Charges**

### **Demurrage Charges – See Terms and Condition’s Clause 13.2**

Half Hourly Rate chargeable PER LOAD if loading time exceeds 3 hours or unloading time exceeds 3 hours. Charges in hour units, rounded down.

**[PRICE REDACTED – COMERCIALY SENSITIVE]**

### **Product Left on Board (LOB) – See Terms and Condition’s Clause 13.4**

Hourly charge may be payable for the hire of the road tanker wagon per hour after the initial 12-hour re-delivery period. The Authority shall review any LOB claims on a case by case basis for acceptance.

**[PRICE REDACTED – COMERCIALY SENSITIVE]**

## Annex E – Contract Key Performance Indicators (KPI's)

KPI ID	Indicator	Definition	Calculation	Period	Threshold
KPI 1	Integrity of fuel	Fuel is of consistent quality and density whilst in the charge of the contractor between collection and delivery. Fuel will be tested before and after handover in the presence of a representative of the Authority in accordance with the terms of the contract.	Count of loads passing the pre-delivery quality and density tests as a percentage of total deliveries.	Calendar month	Red: <100% (threshold) Green: 100%
KPI 2	Safety, health and environmental	Reportable accidents, incidents and dangerous occurrences in connection with the contractor's activities for the Authority are minimal. Accidents, incidents and near misses are defined as any event reportable to the HSE under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR).	Count of reportable incidents in period.	Calendar month	Red: 1+ (threshold) Green: 0
KPI 3	Schedule agreement	The contractor provides the weekly schedule for deliveries to the Authority within the contractually agreed timescale.	Count of weekly schedule deadlines missed as a percentage of total.	Calendar month	Red: <90% (threshold) Amber: ≤90%, ≥95% Green: >95%
KPI 4	On-time delivery rate	Deliveries are made within the timescales agreed between the contractor and Authority.	Retrospective comparison of due date against delivery date sourced from contractor's management information and supporting consignment notes.	Calendar month	Red: <90% (threshold) Amber: ≥90%, ≤97% Green: >97%
KPI 5	Delivery completion rate	Deliveries agreed between contractor and Authority are made within 5 working days of the due date.	Retrospective comparison of due date against delivery date sourced from contractor's management information and supporting consignment notes.	Calendar month	Red: <100% (threshold) Green: 100%

<b>KPI ID</b>	<b>Indicator</b>	<b>Definition</b>	<b>Calculation</b>	<b>Period</b>	<b>Threshold</b>
KPI 6	Management information provision	Management information reports supported by consignment notes are provided within the contractually agreed timescales.	Count of monthly management information report deadlines met as a percentage of total.	Financial Year	Red: <84% (threshold) Amber: ≥84%, ≤92% Green: >92%
KPI 7	Customer satisfaction	End-users at collection and delivery locations are satisfied with the service provided by the contractor.	Average response out of five stars to single-question customer satisfaction survey: "Overall, how satisfied are you with the service provided by Wincanton Group Limited?"	Calendar month	Red: <3 stars (threshold) Amber: ≥3 stars, <4 stars Green: ≥4 stars

**Annex F – Pricing Letter Template**

XXXX  
DE&S LDOC Fuels Commercial

0306 XXXX 

XXXXXX 

Ministry of Defence  
Defence Equipment & Support  
Cedar 3A #3360  
MOD Abbey Wood  
Bristol BS34 8JH



Date:  
Our Ref :

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**CONTRACT NUMBER: DFAP/0014 – THE PROVISION OF TRANSPORT SERVICES FOR THE MOVEMENT OF FUELS WITHIN THE UNITED KINGDOM (EXCLUDING NORTHERN IRELAND)**

**PRICING LETTER NUMBER: X**

Dear Sirs,

Delivery of [Fuel Type] from [Pick Up Location] to [Delivery Location] on [Date]

1. The Authority hereby accepts your quoted firm price of £X.XX

And requests that you proceed with the task. The breakdowns are detailed as follows:

Miles:	XX
PPLM Rate	£XX.XX
No of deliveries	X
Additional Cost:	£X.XX
Net Cost	£X.XX (Miles Multiplied by PPLM Rate plus Additional Costs)
Value Added Tax (VAT)	£X.XX

---

Total Price on Letter	£X.XX
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2. Please acknowledge receipt of this Pricing Letter by e-mail. This journey can be added to the MI for [Month/Year] as it has been validated and approved.
3. All other Terms, Conditions and Pricing of Contract DFAP/0014 remain unchanged.

Yours Faithfully

**Annex G –DEFFORM 539A – Tenderer’s Commercially Sensitive Information Form**

**[REDACTED – COMERCIALLY  
SENSITIVE]**

**Annex H –DEFFORM 111 - Addresses and Other Information**

**[REDACTED – COMERCIALY  
SENSITIVE]**

**Annex I – DEFFORM 68 (Edn 12/16) - HAZARDOUS ARTICLES, DELIVERABLES, MATERIALS OR SUBSTANCES STATEMENT BY THE SUPPLIER**

**Contract Number:** DFAP/0014

**Contract Title:** THE PROVISION OF TRANSPORT SERVICES FOR THE MOVEMENT OF FUELS WITHIN THE UNITED KINGDOM EXCLUDING NORTHERN IRELAND

**Contractor:** Wincanton Holdings

**Date of Contract:** 20 November 2018

\* To the best of our knowledge there are no hazardous Articles, Deliverables, materials or substances to be supplied.

\* To the best of our knowledge the hazards associated with Articles, Deliverables, materials or substances to be supplied under the Contract are identified in the Safety Data Sheets (Qty:        ) attached in accordance with either:

DEFCON 68  ; or

Clause 17 of Standardised Contract 1 Conditions

Contractor's Signature: [ORIGINAL SIGNED]

Name: Craig Master

Job Title: Business Development Manager

Date: 12/10/2018

\* check box () as appropriate

---

**To be completed by the Authority – N/A**

**DMC:** N/A

**NATO Stock Number:**

**Contact Name:**

**Contact Address:**

Copy to be forwarded to:

Hazardous Stores Information System (HSIS)  
Defence Safety Authority (DSA)  
Movement Transport Safety Regulator (MTSR)  
Hazel Building Level 1, #H019  
MOD Abbey Wood (North)

## **Schedule [1]**

### **TRANSFER REGULATIONS**

#### **PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY**

#### **1 DEFINITIONS**

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

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract, in this Schedule [1] Part 1 unless the context otherwise requires:

"Data Protection Legislation" means: (i) any legislation in force from time to time in the United Kingdom which implements the European Community's Directive 95/46/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; (ii) from 25 May 2018 only, Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "General Data Protection Regulation"); (iii) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the processing of Personal Data; and (iv) any guidance or statutory codes of practice issued by the Information Commissioner or the European Data Protection set up under the General Data Protection Regulation in relation to such legislation;

"Employing Sub-Contractor" means any sub-contractor of the Contractor providing any part of the Services who is or is to be the employer of an Authority Employee, a Previous Contractor Employee or an Unexpected Employee;

"New Provider" means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

"Previous Contractor" means [insert details of any outgoing contractor. Ensure that any sub-contractors from whom employees may transfer are included];

"Previous Contractor Employee" means an employee of a Previous Contractor who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;

"Relevant Transfer" means a transfer to the Contractor or an Employing Sub-Contractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;

"Relevant Transfer Date" means the date on which a Relevant Transfer is effected for Previous Contractor Employees;

"Relevant Statutory Scheme" has the same meaning as in Regulation 8 of the Transfer Regulations;

“Services” shall have the meaning specified in [project team to complete];

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

## **2 PREVIOUS CONTRACTOR EMPLOYEES**

### **2.1 Employee Information**

2.1.1 No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of this Schedule [1] Part 1 in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.

2.1.2 The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.

2.1.3 The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.

2.1.4 Paragraph 2.1.1 is subject to the Authority and any Previous Contractor’s obligations in respect of the Data Protection Legislation and any data provided by the Authority in accordance with paragraph 2.1.1 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph 2.1.1 above, the Authority shall provide full data no later than 28 days prior to the Relevant Transfer.

2.1.5 The Authority does not warrant the accuracy of the information provided under paragraph 2.1.1.

### **2.2 Obligations in respect of Previous Contractor Employees**

2.2.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.

2.2.2 The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.

2.2.3 The Contractor agrees that it will comply with its obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

2.2.4 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation

to the Previous Contractor Employees with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

## 2.3 Indemnities

2.3.1 The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:

- (a) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;
- (b) any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and
- (c) any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.
- (d) Any variations or proposed variations to any Previous Contractor Employee’s terms and conditions of employment pursuant to regulations 4(5) and 4(5B).

## 3 **GENERAL PROVISIONS APPLICABLE TO PREVIOUS CONTRACTOR EMPLOYEES AND CONTRACTOR PERSONNEL**

### 3.1 Contractor Indemnity

3.1.1 The Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Contractor or any Employing Sub-Contractor of any person (including the Previous Contractor Employees) engaged in connection with the provision of the Services during the term of this Agreement.

### 3.2 Post Transfer Reporting

3.2.1 The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:

- (a) any proposed, agreed or imposed changes to terms and conditions of service;
- (b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- (c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- (d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and

- (e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

1. Pursuant to paragraph 2.1.1 of this Schedule [1] Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

1.1 Personal, Employment and Career

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

1.2 Performance Appraisal

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

1.3 Superannuation and Pay

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;

- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

#### 1.4 Medical

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

#### 1.5 Disciplinary

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

#### 1.6 Further information

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff may have been granted special leave as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

## Part B

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

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

## PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT

### 1. DEFINITIONS

1.1 In this Schedule [1] Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule [1] Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Schedule [1] Part 1 of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule [1], Part 1, in this Schedule [1] Part 2 unless the context otherwise requires:

"Employee Liability Information" has the same meaning as in Regulation 11(2) of the Transfer Regulations;

"Employing Sub-Contractor" means any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;

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

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

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

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

### 2. EMPLOYMENT

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

2.1.1 No earlier than [two] years preceding the termination, partial termination or Expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

- (a) supply to the Authority such information as the Authority may reasonably require in order to consider the applicaton of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
- (b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule [1] Part 2 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer;
- (c) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;

- (d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;
  - (e) inform the Authority of any changes to the information provided under paragraph 2.1.1(a) or 2.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.
- 2.1.2 Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:
- (a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Schedule [1] (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
  - (b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
  - (c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.
- 2.1.3 No later than 28 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of Part 2 of this Schedule [1] (Personnel Information) relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.
- 2.1.4 Paragraphs 2.1.1 and 2.1.2 of this Appendix are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. Notwithstanding this paragraph 2.1.4, the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 or 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.
- 2.1.5 On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:
- (a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or

- (b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
- (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
- (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3 or 2.1.5 of this Schedule [1] Part 2.

2.1.6 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule [1] Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

## 2.2 Obligations in Respect of Subsequent Transferring Employees

2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

- (a) before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and
- (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

## 2.3 Unexpected Subsequent Transferring Employees

2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an "Unexpected Subsequent Transferring Employee") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

- (a) the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and

- (b) if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1(c)(iii)), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
- (c) the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:
  - (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b);
  - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
  - (iii) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
    - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
    - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
    - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
  - (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
  - (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
  - (vi) legal and other professional costs reasonably incurred;

2.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

2.4 Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract

2.4.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider

against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

2.4.2 If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

(a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;

(b) subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.

2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

## 2.5 Contracts (Rights of Third Parties) Act 1999

2.5.1 A New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.

2.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.

2.5.3 Nothing in this paragraph 2.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

## 2.6 General

2.6.1 The Contractor shall not recover any Costs and/or other losses under this Schedule [1] where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

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

1. Pursuant to paragraph 2.1.1(b) of Part 2 of this Schedule [1], the following information will be provided:
  - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;
  - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
  - c) The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
  - d) Total redundancy liability including any enhanced contractual payments;
  
2. In respect of those employees included in the total at 1(a), the following information:
  - a) Age (not date of Birth);
  - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
  - c) Length of current period of continuous employment (in years, months) and notice entitlement;
  - d) Weekly conditioned hours of attendance (gross);
  - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
  - f) Pension Scheme Membership;
  - g) Pension and redundancy liability information;
  - h) Annual Salary;
  - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
  - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
  - k) Regular/recurring allowances;
  - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
  
3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Subsequent Transfer Date.
  
4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

Part A

1. Pursuant to paragraph 2.1.2 of this Schedule [1], part 2, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:
  - 1.1 Personal, Employment and Career
    - a) Age;
    - b) Security Vetting Clearance;
    - c) Job title;
    - d) Work location;
    - e) Conditioned hours of work;
    - f) Employment Status;
    - g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
    - h) Details of training or sponsorship commitments;
    - i) Standard Annual leave entitlement and current leave year entitlement and record;
    - j) Annual leave reckonable service date;
    - k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
    - l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
    - m) Issue of Uniform/Protective Clothing;
    - n) Working Time Directive opt-out forms; and
    - o) Date from which the latest period of continuous employment began.
  - 1.2 Performance Appraisal
    - a) The current year's Performance Appraisal;
    - b) Current year's training plan (if it exists); and
    - c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements.

### 1.3 Superannuation and Pay

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

### 1.4 Medical

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

### 1.5 Disciplinary

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

### 1.6 Further information

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff that may have been granted special leave as a School Governor; and

- d) Information about any maternity or other statutory leave or other absence from work.

## Part B

### 1.7 Information to be provided 28 days prior to the Subsequent Transfer Date:

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