



**CONTRACT NUMBER: DFAP/0013**

**FOR**

**THE DEFENCE FUELS GLOBAL RESUPPLY  
CAPABILITY (DFGRC)**

**BETWEEN**

**THE SECRETARY OF STATE FOR DEFENCE**

**AND**

**JAMES FISHER EVERARD LTD**

**Code word for this Charter Party**  
**“SHELLTIME 4”**

Issued December 1984 amended December 2003 and by Rider Clauses

**TIME CHARTER PARTY**  
**LONDON**  
**8 May 2019**

IT IS THIS DAY AGREED between JAMES FISHER EVERARD LIMITED 1  
of LONDON (hereinafter referred to as "Owners"), being owners 2  
of the good motor vessel called Fisher Raleigh 3  
(hereinafter referred to as "the vessel") described as per [Clause 1](#) hereof and the Secretary of State for Defence 4  
of the United Kingdom (hereinafter referred to as "Charterers"): 5

**Description And Condition of Vessel**

1. At the date of delivery of the vessel under this charter and throughout the charter period: 6  
(a) she shall be classed by a Classification Society which is a member of the International 7  
Association of Classification Societies; 8  
(b) she shall be in every way fit to carry the petroleum products specified in the Statement of Requirements; 9  
(c) she shall be tight, staunch, strong, in good order and condition, and in every way fit for the 10  
service, with her machinery, boilers, hull and other equipment (including but not limited to hull 11  
stress calculator, radar, computers and computer systems) in a good and efficient state; 12  
(d) her tanks, valves and pipelines shall be oil- tight; 13  
(e) she shall be in every way fitted for burning, in accordance with the grades specified in [Clause](#) 14  
[29](#) hereof: 15  
(i) at sea, fuel oil for main propulsion and fuel oil/marine diesel oil\* for auxiliaries; 16  
(ii) in port, fuel oil/marine diesel oil\* for auxiliaries; 17  
(f) she shall comply with the regulations in force so as to enable her to pass through the Suez and 18  
Panama Canals by day and night without delay; 19  
(g) she shall have on board all certificates, documents and equipment required from time to time by 20  
any applicable law to enable her to perform the charter service without delay; 21  
(h) she shall comply with the description in the OCIMF Harmonised Vessel Particulars Questionnaire appended 22  
hereto as Appendix A, provided however that if there is any conflict between the provisions of 23  
this questionnaire and any other provision, including this [Clause 1](#), of this charter such other 24  
provisions shall govern; 25  
(i) her ownership structure, flag, registry, classification society and management company shall 26  
not be changed; See also Rider Condition 8 Nationality. 27

**Safety Management**

(j) Owners will operate: 28  
(i) a safety management system certified to comply with the International Safety 29  
Management Code ("ISM Code") for the Safe Operation of Ships and for 30  
Pollution Prevention; 31  
(ii) a documented safe working procedures system (including procedures for the 32  
identification and mitigation of risks); 33  
(iii) a documented environmental management system; 34  
(iv) documented accident/incident reporting system compliant with flag state 35  
requirements; 36  
(k) Owners shall submit to Charterers a monthly written report detailing all accidents/incidents and 37  
environmental reporting requirements, in accordance with the "Shell Safety and Environmental 38  
Monthly Reporting Template" appended hereto as Appendix B; 39  
(l) Owners shall maintain Health Safety Environmental ("HSE") records sufficient to demonstrate 40  
compliance with the requirements of their HSE system and of this charter. Charterers reserve 41  
the right to confirm compliance with HSE requirements by audit of Owners. 42  
(m) Owners will arrange at their expense for a SIRE inspection to be carried out at intervals of six 43  
months plus or minus thirty days. 44

## Shipboard Personnel And their Duties

2. (a) At the date of delivery of the vessel under this charter and throughout the charter period: 45
- (i) she shall have a full and efficient complement of master, officers and crew for a 46
- vessel of her tonnage, who shall in any event be not less than the number required 47
- by the laws of the flag state and who shall be trained to operate the vessel and her 48
- equipment competently and safely; 49
- (ii) all shipboard personnel shall hold valid certificates of competence in accordance 50
- with the requirements of the law of the flag state; 51
- (iii) all shipboard personnel shall be trained in accordance with the relevant 52
- provisions of the International Convention on Standards of Training, Certification 53
- and Watchkeeping for Seafarers, 1995 or any additions, modifications or 54
- subsequent versions thereof; 55
- (iv) there shall be on board sufficient personnel with a good working knowledge of 56
- the English language to enable cargo operations at loading and discharging places 57
- to be carried out efficiently and safely and to enable communications between the 58
- vessel and those loading the vessel or accepting discharge there from to be 59
- carried out quickly and efficiently; 60
- (v) the terms of employment of the vessel's staff and crew will always remain 61
- acceptable to The International Transport Worker's Federation and the vessel 62
- will at all times carry a Blue Card; 63
- (vi) the nationality of the vessel's officers crew and shipboard personnel shall be in accordance with Rider Condition 8 64
- Nationality Details given in the OCIMF Vessel Particulars 64
- Questionnaire referred to in [Clause 1\(h\)](#) will not change without Charterers' prior 65
- agreement. 66
- (b) Owners guarantee that throughout the charter service the master shall with the vessel's officers 67
- and crew, unless otherwise ordered by Charterers; 68
- (i) prosecute all voyages with the utmost despatch; 69
- (ii) render all customary assistance; and 70
- (iii) load and discharge cargo as rapidly as possible when required by Charterers or 71
- their agents to do so, by night or by day, but always in accordance with the laws 72
- of the place of loading or discharging (as the case may be) and in each case in 73
- accordance with any applicable laws of the flag state. 74

## Duty to Maintain

3. (a) Throughout the charter service Owners shall, whenever the passage of time, wear and tear or 75
- Maintain any event (whether or not coming within [Clause 27](#) hereof) requires steps to be taken to 76
- maintain or restore the conditions stipulated in [Clauses 1](#) and [2\(a\)](#), exercise due diligence so to 77
- maintain or restore the vessel. 78
- (b) If at any time whilst the vessel is on hire under this charter the vessel fails to comply with the 79
- requirements of [Clauses 1](#), [2\(a\)](#) or [10](#) then hire shall be reduced to the extent necessary to 80
- indemnify Charterers for such failure. If and to the extent that such failure affects the time taken 81
- by the vessel to perform any services under this charter, hire shall be reduced by an amount 82
- equal to the value, calculated at the rate of hire, of the time so lost. 83
- Any reduction of hire under this [sub-Clause \(b\)](#) shall be without prejudice to any other remedy 84
- available to Charterers, but where such reduction of hire is in respect of time lost, such time 85
- shall be excluded from any calculation under [Clause 24](#). 86
- (c) If Owners are in breach of their obligations under [Clause 3\(a\)](#), Charterers may so notify Owners 87
- in writing and if, after the expiry of 30 days following the receipt by Owners of any such notice, 88
- Owners have failed to demonstrate to Charterers' reasonable satisfaction the exercise of due 89
- diligence as required in [Clause 3\(a\)](#), the vessel shall be off-hire, and no further hire payments 90
- shall be due, until Owners have so demonstrated that they are exercising such due diligence. 91
- (d) Owners shall advise Charterers immediately, in writing, should the vessel fail an inspection by, 92
- but not limited to, a governmental and/or port state authority, and/or terminal and/or major 93
- charterer of similar tonnage. Owners shall simultaneously advise Charterers of their proposed 94
- course of action to remedy the defects which have caused the failure of such inspection. 95
- (e) If, in Charterers reasonably held view: 96
- (i) failure of an inspection, or, 97
- (ii) any finding of an inspection, 98
- referred to in [Clause 3 \(d\)](#), prevents normal commercial operations then Charterers have the 99
- option to place the vessel off-hire from the date and time that the vessel fails such inspection, or 100
- becomes commercially inoperable, until the date and time that the vessel passes a re-inspection 101
- by the same organisation, or becomes commercially operable, which shall be in a position no 102

less favourable to Charterers than at which she went off-hire. 103  
 (f) Furthermore, at any time while the vessel is off-hire under this [Clause 3](#) (with the exception of 104  
[Clause 3\(e\)\(ii\)](#)), Charterers have the option to terminate this charter by giving notice in writing 105  
 with effect from the date on which such notice of termination is received by Owners or from any 106  
 later date stated in such notice. This [sub-Clause \(f\)](#) is without prejudice to any rights of 107  
 Charterers or obligations of Owners under this charter or otherwise (including without limitation 108  
 Charterers' rights under [Clause 21](#) hereof).

#### **Period, Trading Limits and Safe Places**

4. (a) Owners agree to let and Charterers agree to hire the vessel for the period set out in Condition 5 of the Rider 109  
Conditions 110

plus or minus ~~(INSERT)~~ days in Charterers' option, commencing from the time and date of delivery 111  
 of the vessel, for the purpose of carrying all lawful merchandise (subject always to [Clause 28](#)) 112

in any part of the world, as Charterers shall direct, subject to the limits of the current British 113  
 Institute Warranties and any subsequent amendments thereof. Notwithstanding the foregoing, 114  
 but subject to [Clause 35](#), Charterers may order the vessel to ice-bound waters or to any part of 115  
 the world outside such limits provided that Owner's consent thereto (such consent not to be 116  
 unreasonably withheld) and that Charterers pay for any insurance premium required by the 117  
 vessel's underwriters as a consequence of such order. 118

(b) Any time during which the vessel is off-hire under this charter may be added to the charter 119  
 period in Charterers' option up to the total amount of time spent off-hire. In such cases the rate 120  
 of hire will be that prevailing at the time the vessel would, but for the provisions of this Clause, 121  
 have been redelivered. 122

(c) Charterers shall use due diligence to ensure that the vessel is only employed between and at safe 123  
 places (which expression when used in this charter shall include ports, berths, wharves, docks, 124  
 anchorages, submarine lines, alongside vessels or lighters, and other locations including 125  
 locations at sea) where she can safely lie always afloat. Notwithstanding anything contained in 126  
 this or any other clause of this charter, Charterers do not warrant the safety of any place to 127  
 which they order the vessel and shall be under no liability in respect thereof except for loss or 128  
 damage caused by their failure to exercise due diligence as aforesaid. Subject as above, the 129  
 vessel shall be loaded and discharged at any places as Charterers may direct, provided that 130  
 Charterers shall exercise due diligence to ensure that any ship- to-ship transfer operations shall 131  
 conform to standards not less than those set out in the latest published edition of the 132  
 ICS/OCIMF Ship- to-Ship Transfer Guide. 133

(d) Unless otherwise agreed, the vessel shall be delivered by Owners ~~dropping outward pilot at a~~ 134  
~~port in~~ at a pilot station at a port in the range: United Kingdom or Continent: Gibraltar/Hamburg/Mediterranean 135  
 (not east of Cyprus) range 136  
 at Owners' option and redelivered to Owners dropping outward pilot at a port in 137  
 the United Kingdom (UK) 138  
 at Charterers' option. 139

(e) The vessel will deliver ~~with~~ in accordance with Rider Condition 9 Vessel Delivery and Redelivery 140  
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(f) ~~Owners are required to give Charterers days prior notice of delivery and Charterers are~~ 142  
~~required to give Owners days prior notice of redelivery.~~ 143

#### **Laydays/ Cancelling**

5. ~~The vessel shall not be delivered to Charterers before~~ Per Condition 5 144  
Contract Charter Duration of the Rider Conditions 145

~~and~~ Charterers shall have the option of cancelling this charter if the vessel is not ready and at their 146  
 disposal ~~on or before~~. 147

#### **Owners to Provide**

6. Owners undertake to provide and to pay for all provisions, wages (including but not limited to all 148  
 overtime payments), and shipping and discharging fees and all other expenses of the master, officers 149  
 and crew; also, except as provided in [Clauses 4](#) and [34](#) hereof, for all insurance on the vessel, for all 150  
 deck, cabin and engine-room stores, and for water; for all drydocking, overhaul, maintenance and 151  
 repairs to the vessel; and for all fumigation expenses and de-rat certificates. Owners' obligations under 152  
 this [Clause 6](#) extend to all liabilities for customs or import duties arising at any time during the 153  
 performance of this charter in relation to the personal effects of the master, officers and crew, and in 154

relation to the stores, provisions and other matters aforesaid which Owners are to provide and pay for 155  
and Owners shall refund to Charterers any sums Charterers or their agents may have paid or been 156  
compelled to pay in respect of any such liability. Any amounts allowable in general average for wages 157  
and provisions and stores shall be credited to Charterers insofar as such amounts are in respect of a 158  
Period when the vessel is on-hire. 159

#### Charterers to Provide

7. (a) Charterers shall pay for all fuel (except fuel used for domestic services), towage 160  
and pilotage and shall pay agency fees, port charges, commissions, expenses of loading and 161  
unloading cargoes, canal dues and all charges other than those payable by Owners in 162  
accordance with [Clause 6](#) hereof, provided that all charges for the said items shall be for 163  
Owners' account when such items are consumed, employed or incurred for Owners' purposes or 164  
while the vessel is off-hire (unless such items reasonably relate to any service given or distance 165  
made good and taken into account under [Clause 21](#) or [22](#)); and provided further that any fuel 166  
used in connection with a general average sacrifice or expenditure shall be paid for by Owners. 167  
See also Condition 10 of the Rider Conditions.  
(b) In respect of bunkers consumed for Owners' purposes these will be charged on each occasion 168  
by Charterers on a "first-in- first-out" basis valued on the prices actually paid by Charterers. 169  
(c) If the trading limits of this charter include ports in the United States of America and/or its 170  
protectorates then Charterers shall reimburse Owners for port specific charges relating to 171  
additional premiums charged by providers of oil pollution cover, when incurred by the vessel 172  
calling at ports in the United States of America and/or its protectorates in accordance with 173  
Charterers orders. 174

#### Rate of Hire

8. Subject as herein provided, Charterers shall pay for the use and hire of the vessel as per Rider Condition 11, Pricing 175  
~~States Dollars~~ in UK Pounds Sterling per day, and pro rata for any part of a day, from 176  
the time and date of her delivery (local time) to Charterers until the time and date of redelivery (local 177  
time) to Owners. 178

#### Payment of Hire

9. Subject to [Clause 3 \(c\)](#) and [3 \(e\)](#), payment of hire shall be made in accordance with Rider Clause 15 179

to: Owner's designated Bank Account  
[REDACTED-COMMERCIALLY SENSITIVE]

in UK Pounds Sterling per calendar month in advance, less: 185  
(i) any hire paid which Charterers reasonably estimate to relate to off-hire periods, and; 186  
(ii) any amounts disbursed on Owners' behalf, any advances and commission thereon, and 187  
charges which are for Owners' account pursuant to any provision hereof, and; 188  
(iii) any amounts due or reasonably estimated to become due to Charterers under [Clause 3 \(c\)](#) 189  
or [24](#) hereof, 190  
any such adjustments to be made at the due date for the next monthly payment after the facts 191  
have been ascertained. Charterers shall not be responsible for any delay or error by Owners' 192  
bank in crediting Owners' account provided that Charterers have made proper and timely 193  
payment.  
In default of such proper and timely payment: 195  
(a) Owners shall notify Charterers of such default and Charterers shall within seven days of receipt 196  
of such notice pay to Owners the amount due, including interest, failing which Owners may 197  
withdraw the vessel from the service of Charterers without prejudice to any other rights Owners 198  
may have under this charter or otherwise; and; 199  
(b) Interest on any amount due but not paid on the due date shall accrue from the day after that date 200  
up to and including the day when payment is made, at a rate per annum which shall be in accordance with the Late  
Payments of Commercial Debts (Interest) Act 1998.

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#### Space Available to Charterers

10. The whole reach, burthen and decks on the vessel and any passenger accommodation (including 206

Owners' suite) shall be at Charterers' disposal, reserving only proper and sufficient space for the vessel's master, officers, crew, tackle, apparel, furniture, provisions and stores, provided that the weight of stores on board shall not, unless specially agreed, exceed [insert] tonnes at any time during the charter period.	207 208 209
<b>Segregated Ballast</b>	210
11. In connection with the Council of the European Union Regulation on the Implementation of IMO Resolution A747(18) Owners will ensure that the following entry is made on the International Tonnage Certificate (1969) under the section headed "remarks":	211 212 213
"The segregated ballast tanks comply with the Regulation 13 of Annex 1 of the International Convention for the prevention of pollution from ships, 1973, as modified by the Protocol of 1978 relating thereto, and the total tonnage of such tanks exclusively used for the carriage of segregated water ballast is The reduced gross tonnage which should be used for the calculation of tonnage based fees is "	214 215 216 217 218
<b>Instructions And Logs</b>	
12. Charterers shall from time to time give the master all requisite instructions and sailing directions, and the master shall keep a full and, correct log of the voyage or voyages, which Charterers or their agents may inspect as required. The master shall when required furnish Charterers or their agents with a true copy of such log and with properly completed loading and discharging port sheets and voyage reports for each voyage and other returns as Charterers may require. Charterers shall be entitled to take copies at Owners' expense of any such documents which are not provided by the master.	219 220 221 222 223 224
<b>Bills of Lading</b>	
13. (a) The master (although appointed by Owners) shall be under the orders and direction of Charterers as regards employment of the vessel, agency and other arrangements, and shall sign Bills of Lading as Charterers or their agents may direct (subject always to <a href="#">Clauses 35 (a)</a> and <a href="#">40</a> ) without prejudice to this charter. Charterers hereby indemnify Owners against all consequences or liabilities that may arise;	225 226 227 228 229
(i) from signing Bills of Lading in accordance with the directions of Charterers or their agents, to the extent that the terms of such Bills of Lading fail to conform to the requirements of this charter, or (except as provided in <a href="#">Clause 13 (b)</a> ) from the master otherwise complying with Charterers' or their agents' orders;	230 231 232 233
(ii) from any irregularities in papers supplied by Charterers or their agents.	234
(b) If Charterers by telex, facsimile or other form of written communication that specifically refers To this Clause request Owners to discharge a quantity of cargo either without Bills of Lading and/or at a discharge place other than that named in a Bill of Lading and/or that is different from the Bill of Lading quantity, then Owners shall discharge such cargo in accordance with Charterer's instructions in consideration of receiving the following indemnity which shall be deemed to be given by Charterers on each and every such occasion and which is limited in value to 200% of the CIF value of the cargo carried on board;	235 236 237 238 239 240 241
" (i) Charterers shall indemnify Owners and Owners' servants and agents in respect of any liability loss or damage of whatsoever nature (including legal costs as between attorney or solicitor and client and associated expenses) which Owners may sustain by reason of delivering such cargo in accordance with Charterers' request.	242 243 244 245
(ii) <del>If any proceeding is commenced against Owners or any of Owners' servants or agents in connection with the vessel having delivered cargo in accordance with such request, Charterers shall provide Owners or any of Owners' servants or agents from time to time on demand with sufficient funds to defend the said proceedings.</del>	246 247 248 249
(iii) If the vessel or any other vessel or property belonging to Owners should be arrested or detained, or if the arrest or detention thereof should be threatened, by reason of discharge in accordance with Charterers instruction as aforesaid, Charterers shall provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such vessel or property and Charterers shall indemnify Owners in respect of any loss, damage or expenses caused by such arrest or detention whether or not same may be justified.	250 251 252 253 254 255
(iv) Charterers shall, if called upon to do so at any time while such cargo is in Charterers' possession, custody or control, redeliver the same to Owners.	256 257
(v) As soon as all original Bills of Lading for the above cargo which name as discharge port the place where delivery actually occurred shall have arrived and/or come into Charterers' possession, Charterers shall produce and deliver the same to Owners whereupon Charterers' liability hereunder shall cease.	258 259 260 261
Provided however, if Charterers have not received all such original Bills of Lading by 24.00	262

hours on the day 36 calendar months after the date of discharge, that this indemnity shall	263
terminate at that time unless before that time Charterers have received from Owners written	264
notice that:	265
aaa) Some person is making a claim in connection with Owners delivering cargo pursuant to	266
Charterers request or,	267
bbb) Legal proceedings have been commenced against Owners and/or carriers and/or	268
Charterers and/or any of their respective servants or agents and/or the vessel for the same	269
reason.	270
When Charterers have received such a notice, then this indemnity shall continue in force until	271
such claim or legal proceedings are settled. Termination of this indemnity shall not prejudice	272
any legal rights a party may have outside this indemnity.	273
(vi) Owners shall promptly notify Charterers if any person (other than a person to whom	274
Charterers ordered cargo to be delivered) claims to be entitled to such cargo and/or if the vessel	275
or any other property belonging to Owners is arrested by reason of any such discharge of cargo.	276
vii) This indemnity shall be governed and construed in accordance with the English law and	277
each and any dispute arising out of or in connection with this indemnity shall be subject to the	278
jurisdiction of the High Court of Justice of England”.	279
(c) Owners warrant that the Master will comply with orders to carry and discharge against one or	280
more Bills of Lading from a set of original negotiable Bills of Lading should Charterers so	281
require.	282
<b>Conduct of Vessel's Personnel</b>	
14. If Charterers complain of the conduct of the master or any of the officers or crew, Owners shall	283
immediately investigate the complaint. If the complaint proves to be well founded, Owners shall,	284
without delay, make a change in the appointments and Owners shall in any event communicate the	285
result of their investigations to Charterers as soon as possible.	286
<b>Bunkers at Delivery and Redelivery</b>	
15. Charterers shall accept and pay for all bunkers on board at the time of delivery, and Owners shall on	287
redelivery (whether it occurs at the end of the charter or on the earlier termination of this charter)	288
accept and pay for all bunkers remaining on board, at the price actually paid, on a “first-in- first-out”	289
basis. Such prices are to be supported by paid invoices. <u>All bunker invoices shall be paid within thirty (30) days of the</u>	290
<u>Invoice date. See Rider Conditions 10 and 13.</u>	
Vessel to be delivered to and redelivered from the charter with, at least, a quantity of bunkers on board	291
sufficient to reach the nearest main bunkering port.	292
Notwithstanding anything contained in this charter all bunkers on board the vessel shall, throughout the	293
duration of this charter, remain the property of Charterers and can only be purchased on the terms	294
specified in the charter at the end of the charter period or, if earlier, at the termination of the	295
charter.	296
<b>Stevedores, Pilots, Tugs</b>	
16. Stevedores, when required, shall be employed and paid by Charterers, but this shall not relieve Owners	297
from responsibility at all times for proper stowage, which must be controlled by the master who shall	298
keep a strict account of all cargo loaded and discharged. Owners hereby indemnify Charterers, their	299
servants and agents against all losses, claims, responsibilities and liabilities arising in any way	300
whatsoever from the employment of pilots, tugboats or stevedores, who although employed by	301
Charterers shall be deemed to be the servants of and in the service of Owners and under their	302
instructions (even if such pilots, tugboat personnel or stevedores are in fact the servants of Charterers	303
their agents or any affiliated company); provided, however, that;	304
(a) the foregoing indemnity shall not exceed the amount to which Owners would have been	305
entitled to limit their liability if they had themselves employed such pilots, tugboats or	306
stevedores, and;	307
(b) Charterers shall be liable for any damage to the vessel caused by or arising out of the use of	308
stevedores, fair wear and tear excepted, to the extent that Owners are unable by the exercise of	309
due diligence to obtain redress therefor from stevedores.	310
<b>Super- Numeraries</b>	
17. Charterers may send representatives in the vessel's available accommodation upon any voyage made	311
under this charter, Owners finding provisions and all requisites as supplied to officers, except alcohol.	312
Charterers paying at the rate of United States Dollars 15 (fifteen) per day for each representative while	313
on board the vessel.	314



### **Sub-letting/ Assignment/ Novation Final Voyage**

18. Charterers may sub-let the vessel, but shall always remain responsible to Owners for due fulfilment of this charter. Additionally Charterers may assign or novate this charter to any company of the Ministry of Defence.	315 316 317
19. If when a payment of hire is due hereunder Charterers reasonably expect to redeliver the vessel before the next payment of hire would fall due, the hire to be paid shall be assessed on Charterers' reasonable estimate of the time necessary to complete Charterers' programme up to redelivery, and from which estimate Charterers may deduct amounts due or reasonably expected to become due for;	318 319 320 321
(a) disbursements on Owners' behalf or charges for Owners' account pursuant to any provision hereof, and;	322 323
(b) bunkers on board at redelivery pursuant to <a href="#">Clause 15</a> .	324
Promptly after redelivery any overpayment shall be refunded by Owners or any underpayment made good by Charterers.	325 326
If at the time this charter would otherwise terminate in accordance with <a href="#">Clause 4</a> the vessel is on a ballast voyage to a port of redelivery or is upon a laden voyage, Charterers shall continue to have the use of the vessel at the same rate and conditions as stand herein for as long as necessary to complete such ballast voyage, or to complete such laden voyage and return to a port of redelivery as provided by this charter, as the case may be.	327 328 329 330 331

### **Loss of Vessel**

20. Should the vessel be lost, this charter shall terminate and hire shall cease at noon on the day of her loss; should the vessel be a constructive total loss, this charter shall terminate and hire shall cease at noon on the day on which the vessel's underwriters agree that the vessel is a constructive total loss; should the vessel be missing, this charter shall terminate and hire shall cease at noon on the day on which she was last heard of. Any hire paid in advance and not earned shall be returned to Charterers and Owners shall reimburse Charterers for the value of the estimated quantity of bunkers on board at the time of termination, at the price paid by Charterers at the last bunkering port.	332 333 334 335 336 337 338
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### **Off-hire**

21. (a) On each and every occasion that there is loss of time (whether by way of interruption in the vessel's service or, from reduction in the vessel's performance, or in any other manner);	339 340
(i) due to deficiency of personnel or stores; repairs; gas- freeing for repairs; time in and waiting to enter dry dock for repairs; breakdown (whether partial or total) of machinery, boilers or other parts of the vessel or her equipment (including without limitation tank coatings); overhaul, maintenance or survey; collision, stranding, accident or damage to the vessel; or any other similar cause preventing the efficient working of the vessel; and such loss continues for more than three consecutive hours (if resulting from interruption in the vessel's service) or cumulates to more than three hours (if resulting from partial loss of service); or;	341 342 343 344 345 346 347 348
(ii) due to industrial action, refusal to sail, breach of orders or neglect of duty on the part of the master, officers or crew; or;	349 350
(iii) for the purpose of obtaining medical advice or treatment for or landing any sick or injured person (other than a Charterers' representative carried under <a href="#">Clause 17</a> hereof) or for the purpose of landing the body of any person (other than a Charterers' representative), and such loss continues for more than three consecutive hours; or;	351 352 353 354
(iv) due to any delay in quarantine arising from the master, officers or crew having had communication with the shore at any infected area without the written consent or instructions of Charterers or their agents, or to any detention by customs or other authorities caused by smuggling or other infraction of local law on the part of the master, officers, or crew; or;	355 356 357 358 359
(v) due to detention of the vessel by authorities at home or abroad attributable to legal action against or breach of regulations by the vessel, the vessel's owners, or Owners (unless brought about by the act or neglect of Charterers); then;	360 361 362
without prejudice to Charterers' rights under <a href="#">Clause 3</a> or to any other rights of Charterers hereunder, or otherwise, the vessel shall be off-hire from the commencement of such loss of time until she is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which such loss of time commenced; provided, however, that any service given or distance made good by the vessel whilst off-hire shall be taken into account in assessing the amount to be deducted from hire.	363 364 365 366 367 368
(b) If the vessel fails to proceed at any guaranteed speed pursuant to <a href="#">Clause 24</a> , and such failure arises wholly or partly from any of the causes set out in <a href="#">Clause 21(a)</a> above, then the period for	369 370



which the vessel shall be off-hire under this [Clause 21](#) shall be the difference between; 371  
 (i) the time the vessel would have required to perform the relevant service at such 372  
 guaranteed speed, and; 373  
 (ii) the time actually taken to perform such service (including any loss of time arising from 374  
 interruption in the performance of such service). 375  
 For the avoidance of doubt, all time included under (ii) above shall be excluded from any 376  
 computation under [Clause 24](#). 377  
 (c) Further and without prejudice to the foregoing, in the event of the vessel deviating (which 378  
 expression includes without limitation putting back, or putting into any port other than that to 379  
 which she is bound under the instructions of Charterers) for any cause or purpose mentioned in 380  
[Clause 21\(a\)](#), the vessel shall be off-hire from the commencement of such deviation until the 381  
 time when she is again ready and in an efficient state to resume her service from a position not 382  
 less favourable to Charterers than that at which the deviation commenced, provided, however, 383  
 that any service given or distance made good by the vessel whilst so off-hire shall be taken into 384  
 account in assessing the amount to be deducted from hire. If the vessel, for any cause or 385  
 purpose mentioned in [Clause 21 \(a\)](#), puts into any port other than the port to which she is 386  
 bound on the instructions of Charterers, the port charges, pilotage and other expenses at such 387  
 port shall be borne by Owners. Should the vessel be driven into any port or anchorage by stress 388  
 of weather hire shall continue to be due and payable during any time lost thereby. 389  
 (d) If the vessel's flag state becomes engaged in hostilities, and Charterers in consequence of such 390  
 hostilities find it commercially impracticable to employ the vessel and have given Owners 391  
 written notice thereof then from the date of receipt by Owners of such notice until the 392  
 termination of such commercial impracticability the vessel shall be off-hire and Owners shall 393  
 have the right to employ the vessel on their own account. 394  
 (e) Time during which the vessel is off-hire under this charter shall count as part of the charter 395  
 period except where Charterers declare their option to add off-hire periods under [Clause 4 \(b\)](#). 396  
 (f) All references to "time" in this charter party shall be references to local time except where 397  
 otherwise stated. 398

#### **Periodical Drydocking**

22. (a) Owners have the right and obligation to drydock the vessel in accordance with the Vessel 399  
Docking and Maintenance Schedule detailed at Annex B to the Rider Conditions. 400  
 On each occasion Owners shall propose to Charterers a date on which they wish to drydock the 401  
 vessel, not less than before such date, and Charterers shall offer a port for such 402  
 periodical drydocking and shall take all reasonable steps to make the vessel available as near to 403  
 such date as practicable. 404  
 Owners shall put the vessel in drydock at their expense as soon as practicable after Charterers 405  
 place the vessel at Owners' disposal clear of cargo other than tank washings and residues. 406  
 Owners shall be responsible for and pay for the disposal into reception facilities of such tank 407  
 washings and residues and shall have the right to retain any monies received therefor, without 408  
 prejudice to any claim for loss of cargo under any Bill of Lading or this charter. 409  
 (b) If a periodical drydocking is carried out in the port offered by Charterers (which must have 410  
 suitable accommodation for the purpose and reception facilities for tank washings and 411  
 residues), the vessel shall be off-hire from the time she arrives at such port until drydocking is 412  
 completed and she is in every way ready to resume Charterers' service and is at the position at 413  
 which she went off-hire or a position no less favourable to Charterers, whichever she first 414  
 attains. However; 415  
 (i) provided that Owners exercise due diligence in gas-freeing, any time lost in gas- 416  
 freeing to the standard required for entry into drydock for cleaning and painting the hull 417  
 shall not count as off-hire, whether lost on passage to the drydocking port or after arrival 418  
 there (notwithstanding [Clause 21](#)), and; 419  
 (ii) any additional time lost in further gas- freeing to meet the standard required for hot work 420  
 or entry to cargo tanks shall count as off-hire, whether lost on passage to the drydocking 421  
 port or after arrival there. 422  
 Any time which, but for [sub-Clause \(i\)](#) above, would be off-hire, shall not be included in any 423  
 calculation under [Clause 24](#). 424  
 The expenses of gas-freeing, including without limitation the cost of bunkers, shall be for 425  
 Owners account. 426  
 (c) If Owners require the vessel, instead of proceeding to the offered port, to carry out periodical 427  
 drydocking at a special port selected by them, the vessel shall be off-hire from the time when 428  
 she is released to proceed to the special port until she next presents for loading in accordance 429  
 with Charterers' instructions, provided, however, that Charterers shall credit Owners with the

time which would have been taken on passage at the service speed had the vessel not proceeded to drydock. All fuel consumed shall be paid for by Owners but Charterers shall credit Owners with the value of the fuel which would have been used on such notional passage calculated at the guaranteed daily consumption for the service speed, and shall further credit Owners with any benefit they may gain in purchasing bunkers at the special port.  
(d) Charterers shall, insofar as cleaning for periodical drydocking may have reduced the amount of tank-cleaning necessary to meet Charterers' requirements, credit Owners with the value of any bunkers which Charterers calculate to have been saved thereby, whether the vessel drydocks at an offered or a special port.

### Ship Inspection

23. Charterers shall have the right at any time during the charter period to make such inspection of the vessel as they may consider necessary. This right may be exercised as often and at such intervals as Charterers in their absolute discretion may determine and whether the vessel is in port or on passage. Owners affording all necessary co-operation and accommodation on board provided, however:  
(a) that neither the exercise nor the non-exercise, nor anything done or not done in the exercise or non-exercise, by Charterers of such right shall in any way reduce the master's or Owners' authority over, or responsibility to Charterers or third parties for, the vessel and every aspect of her operation, nor increase Charterers' responsibilities to Owners or third parties for the same; and;  
(b) that Charterers shall not be liable for any act, neglect or default by themselves, their servants or agents in the exercise or non-exercise of the aforesaid right.

### Detailed Description and Performance

The Owner is not entitled to claim against the Authority over performance and description of the vessel

24. (a) Owners guarantee that the speed and consumption of the vessel shall be as follows:-  
Average speed **12 Knots** Maximum average bunker consumption per day  
in knots 12 main propulsion auxiliaries  
~~fuel oil/ diesel oil~~ Heavy Fuel Oil (HFO) Marine Gas Oil (MGO) ~~fuel oil/ diesel oil~~  
Laden **[REDACTED-COMMERCIALLY SENSITIVE]**

Ballast **[REDACTED-COMMERCIALLY SENSITIVE]**

The foregoing bunker consumptions are for all purposes except cargo heating and tank cleaning and shall be pro-rated between the speeds shown.

The service speed of the vessel is knots laden and knots in ballast and in the absence of Charterers' orders to the contrary the vessel shall proceed at the service speed. However if more than one laden and one ballast speed are shown in the table above Charterers shall have the right to order the vessel to steam at any speed within the range set out in the table (the "ordered speed").

If the vessel is ordered to proceed at any speed other than the highest speed shown in the table, and the average speed actually attained by the vessel during the currency of such order exceeds such ordered speed plus 0.5 knots (the "maximum recognised speed"), then for the purpose of calculating a decrease of hire under this [Clause 24](#) the maximum recognised speed shall be used in place of the average speed actually attained.

For the purposes of this charter the "guaranteed speed" at any time shall be the then-current ordered speed or the service speed, as the case may be.

The average speeds and bunker consumptions shall for the purposes of this [Clause 24](#) be calculated by reference to the observed distance from pilot station to pilot station on all sea passages during each period stipulated in [Clause 24 \(c\)](#), but excluding any time during which the vessel is (or but for [Clause 22 \(b\) \(i\)](#) would be) off-hire and also excluding "Adverse Weather Periods", being;

(i) any periods during which reduction of speed is necessary for safety in congested waters or in poor visibility;

(ii) any days, noon to noon, when winds exceed force 8 on the Beaufort Scale for more than 12 hours.

(b) If during any year from the date on which the vessel enters service (anniversary to anniversary) the vessel falls below or exceeds the performance guaranteed in [Clause 24 \(a\)](#) then if such

shortfall or excess results;	487
(i) from a reduction or an increase in the average speed of the vessel, compared to the speed guaranteed in <a href="#">Clause 24 (a)</a> , then an amount equal to the value at the hire rate of the time so lost or gained, as the case may be, shall be included in the performance calculation;	488
(ii) from an increase or a decrease in the total bunkers consumed, compared to the total bunkers which would have been consumed had the vessel performed as guaranteed in <a href="#">Clause 24 (a)</a> , an amount equivalent to the value of the additional bunkers consumed or the bunkers saved, as the case may be, based on the average price paid by Charterers for the vessel's bunkers in such period, shall be included in the performance calculation.	489
The results of the performance calculation for laden and ballast mileage respectively shall be adjusted to take into account the mileage steamed in each such condition during Adverse Weather Periods, by dividing such addition or deduction by the number of miles over which the performance has been calculated and multiplying by the same number of miles plus the miles steamed during the Adverse Weather Periods, in order to establish the total performance calculation for such period.	490
Reduction of hire under the foregoing <a href="#">sub-Clause (b)</a> shall be without prejudice to any other remedy available to Charterers.	491
(c) Calculations under this <a href="#">Clause 24</a> shall be made for the yearly periods terminating on each successive anniversary of the date on which the vessel enters service, and for the period between the last such anniversary and the date of termination of this charter if less than a year.	492
Claims in respect of reduction of hire arising under this Clause during the final year or part year of the charter period shall in the first instance be settled in accordance with Charterers' estimate made two months before the end of the charter period. Any necessary adjustment after this charter terminates shall be made by payment by Owners to Charterers or by Charterers to Owners as the case may require.	493
(d) Owners and Charterers agree that this <a href="#">Clause 24</a> is assessed on the basis that Owners are not entitled to additional hire for performance in excess of the speeds and consumptions given in this <a href="#">Clause 24</a> .	494

#### Salvage

25. Subject to the provisions of <a href="#">Clause 21</a> hereof, all loss of time and all expenses (excluding any damage to or loss of the vessel or tortious liabilities to third parties) incurred in saving or attempting to save life or in successful or unsuccessful attempts at salvage shall be borne equally by Owners and Charterers provided that Charterers shall not be liable to contribute towards any salvage payable by Owners arising in any way out of services rendered under this <a href="#">Clause 25</a> .	515
All salvage and all proceeds from derelicts shall be divided equally between Owners and Charterers after deducting the master's, officers' and crew's share.	516

#### Lien

26. <del>Owners shall have a lien upon all cargoes and all freights, sub-freights and demurrage for any amounts due under this charter; and Charterers shall have a lien on the vessel for all monies paid in advance and not earned, and for all claims for damages arising from any breach by Owners of this charter.</del>	522
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#### Exceptions

27. (a) The vessel, her master and Owners shall not, unless otherwise in this charter expressly provided, be liable for any loss or damage or delay or failure arising or resulting from any act, neglect or default of the master, pilots, mariners or other servants of Owners in the navigation or management of the vessel; fire, unless caused by the actual fault or privity of Owners; collision or stranding; dangers and accidents of the sea; explosion, bursting of boilers, breakage of shafts or any latent defect in hull, equipment or machinery; provided, however, that <a href="#">Clauses 1, 2, 3 and 24</a> hereof shall be unaffected by the foregoing. Further, neither the vessel, her master or Owners, nor Charterers shall, unless otherwise in this charter expressly provided, be liable for any loss or damage or delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantine restrictions, strikes, lock-outs, riots, restraints of labour, civil commotions or arrest or restraint of princes, rulers or people.	523
(b) The vessel shall have liberty to sail with or without pilots, to tow or go to the assistance of vessels in distress and to deviate for the purpose of saving life or property.	524
(c) <a href="#">Clause 27(a)</a> shall not apply to, or affect any liability of Owners or the vessel or any other relevant person in respect of;	525
(i) loss or damage caused to any berth, jetty, dock, dolphin, buoy, mooring line, pipe or	526

crane or other works or equipment whatsoever at or near any place to which the vessel may proceed under this charter, whether or not such works or equipment belong to Charterers, or; 543  
 (ii) any claim (whether brought by Charterers or any other person) arising out of any loss of or damage to or in connection with cargo. Any such claim shall be subject to the Hague-Visby Rules or the Hague Rules or the Hamburg Rules, as the case may be, which ought pursuant to [Clause 38](#) hereof to have been incorporated in the relevant Bill of Lading (whether or not such Rules were so incorporated) or, if no such Bill of Lading is issued, to the Hague-Visby Rules unless the Hamburg Rules compulsorily apply in which case to the Hamburg Rules. 544  
 (d) In particular and without limitation, the foregoing [subsections \(a\)](#) and [\(b\)](#) of this Clause shall not apply to or in any way affect any provision in this charter relating to off-hire or to reduction of hire. 545

### Injurious Cargoes

28. No acids, explosives or cargoes injurious to the vessel shall be shipped and without prejudice to the foregoing any damage to the vessel caused by the shipment of any such cargo, and the time taken to repair such damage, shall be for Charterers' account. No voyage shall be undertaken, nor any goods or cargoes loaded, that would expose the vessel to capture or seizure by rulers or governments. 556  
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### Grade of Bunkers

See Rider Condition 10, Bunkers

29. Charterers shall supply fuel oil with a maximum viscosity of [\[insert\]](#) centistokes at 50 degrees centigrade and/or marine diesel oil for main propulsion and fuel oil with a maximum viscosity of [\[insert\]](#) centistokes at 50 degrees centigrade and/or diesel oil for the auxiliaries. If Owners require the vessel to be supplied with more expensive bunkers they shall be liable for the extra cost thereof. 560  
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 Charterers warrant that all bunkers provided by them in accordance herewith shall be of a quality complying with ISO Standard 8217 for Marine Residual Fuels and Marine Distillate Fuels as applicable. 565  
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### Disbursements

30. Should the master require advances for ordinary disbursements at any port, Charterers or their agents shall make such advances to him, in consideration of which Owners shall pay a commission of two and a half per cent, and all such advances and commission shall be deducted from hire. 568  
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### Disbursements

#### Laying-up

31. Charterers shall have the option, after consultation with Owners, of requiring Owners to lay up the vessel at a safe place nominated by Charterers, in which case the hire provided for under this charter shall be adjusted to reflect any net increases in expenditure reasonably incurred or any net saving which should reasonably be made by Owners as a result of such lay up. Charterers may exercise the said option any number of times during the charter period. 571  
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#### Requisition

32. Should the vessel be requisitioned by any government, de facto or de jure, during the period of this charter, the vessel shall be off-hire during the period of such requisition, and any hire paid by such governments in respect of such requisition period shall be for Owners' account. Any such requisition period shall count as part of the charter period. 576  
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#### Outbreak of War

33. If war or hostilities break out between any two or more of the following countries: U.S.A., the countries or republics having been part of the former U.S.S.R (except that declaration of war or hostilities solely between any two or more of the countries or republics having been part of the former USSR shall be exempted), P.R.C., U.K., Netherlands, then both Owners and Charterers shall have the right to cancel this charter. 580  
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#### Additional War Expenses

34. If the vessel is ordered to trade in areas where there is war (de facto or de jure) or threat of war, 585

Charterers shall reimburse Owners for any additional insurance premia, crew bonuses and other expenses which are reasonably incurred by Owners as a consequence of such orders, provided that Charterers are given notice of such expenses as soon as practicable and in any event before such expenses are incurred, and provided further that Owners obtain from their insurers a waiver of any subrogated rights against Charterers in respect of any claims by Owners under their war risk insurance arising out of compliance with such orders.

Any payments by Charterers under this clause will only be made against proven documentation. Any discount or rebate refunded to Owners, for whatever reason, in respect of additional war risk premium shall be passed on to Charterers.

### War Risks

35. (a) The master shall not be required or bound to sign Bills of Lading for any place which in his or Owners' reasonable opinion is dangerous or impossible for the vessel to enter or reach owing to any blockade, war, hostilities, warlike operations, civil war, civil commotions or revolutions.

(b) If in the reasonable opinion of the master or Owners it becomes, for any of the reasons set out in [Clause 35\(a\)](#) or by the operation of international law, dangerous, impossible or prohibited for the vessel to reach or enter, or to load or discharge cargo at, any place to which the vessel has been ordered pursuant to this charter (a "place of peril"), then Charterers or their agents shall be immediately notified in writing or by radio messages, and Charterers shall thereupon have the right to order the cargo, or such part of it as may be affected, to be loaded or discharged, as the case may be, at any other place within the trading limits of this charter (provided such other place is not itself a place of peril). If any place of discharge is or becomes a place of peril, and no orders have been received from Charterers or their agents within 48 hours after dispatch of such messages, then Owners shall be at liberty to discharge the cargo or such part of it as may be affected at any place which they or the master may in their or his discretion select within the trading limits of this charter and such discharge shall be deemed to be due fulfilment of Owners' obligations under this charter so far as cargo so discharged is concerned.

(c) The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any other wise whatsoever given by the government of the state under whose flag the vessel sails or any other government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or local authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations anything is done or is not done, such shall not be deemed a deviation. If by reason of or in compliance with any such direction or recommendation the vessel does not proceed to any place of discharge to which she has been ordered pursuant to this charter, the vessel may proceed to any place which the master or Owners in his or their discretion select and there discharge the cargo or such part of it as may be affected. Such discharge shall be deemed to be due fulfilment of Owners' obligations under this charter so far as cargo so discharged is concerned.

Charterers shall procure that all Bills of Lading issued under this charter shall contain the Chamber of Shipping War Risks Clause 1952.

### Both to Blame Collision Clause

36. If the liability for any collision in which the vessel is involved while performing this charter falls to be determined in accordance with the laws of the United States of America, the following provision shall apply:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the cargo carried hereunder will indemnify the carrier against all loss, or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said cargo, paid or payable by the other or non-carrying ship or her owners to the owners of the said cargo and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier."

"The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of



a collision or contact." 644  
 Charterers shall procure that all Bills of Lading issued under this charter shall contain a provision in 645  
 the foregoing terms to be applicable where the liability for any collision in which the vessel is 646  
 involved falls to be determined in accordance with the laws of the United States of America. 647

#### **New Jason Clause**

37. General average contributions shall be payable according to York/Antwerp Rules, 1994, as amended 648  
 from time to time, and shall be adjusted in London in accordance with English law and practice but 649  
 should adjustment be made in accordance with the law and practice of the United States of America, 650  
 the following position shall apply: 651  
 "In the event of accident, danger, damage or disaster before or after the commencement of the 652  
 voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the 653  
 consequence of which, the carrier is not responsible by statute, contract or otherwise, the cargo, 654  
 shippers, consignees or owners of the cargo shall contribute with the carrier in general average to the 655  
 payment of any sacrifices, losses or expenses of a general average nature that may be made or 656  
 incurred and shall pay salvage and special charges incurred in respect of the cargo." 657  
 "If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said 658  
 salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem 659  
 sufficient to cover the estimated contribution of the cargo and any salvage and special charges 660  
 thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the 661  
 carrier before delivery." 662  
 Charterers shall procure that all Bills of Lading issued under this charter shall contain a provision in 663  
 the foregoing terms, to be applicable where adjustment of general average is made in accordance 664  
 with the laws and practice of the United States of America. 665

#### **Clause Paramount**

38. Charterers shall procure that all Bills of Lading issued pursuant to this charter shall contain the 666  
 following: 667  
 "(1) Subject to [sub-clause \(2\)](#) or [\(3\)](#) hereof, this Bill of Lading shall be governed by, and have 668  
 effect subject to, the rules contained in the International Convention for the Unification of Certain 669  
 Rules relating to Bills of Lading signed at Brussels on 25th August 1924 (hereafter the "Hague 670  
 Rules") as amended by the Protocol signed at Brussels on 23rd February 1968 (hereafter the 671  
 "Hague-Visby Rules"). Nothing contained herein shall be deemed to be either a surrender by the 672  
 carrier of any of his rights or immunities or any increase of any of his responsibilities or liabilities 673  
 under the Hague-Visby Rules." 674  
 "(2) If there is governing legislation which applies the Hague Rules compulsorily to this Bill of 675  
 Lading, to the exclusion of the Hague-Visby Rules, then this Bill of Lading shall have effect subject 676  
 to the Hague Rules. Nothing therein contained shall be deemed to be either a surrender by the carrier 677  
 of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the 678  
 Hague Rules." 679  
 "(3) If there is governing legislation which applies the United Nations Convention on the Carriage 680  
 of Goods by Sea 1978 (hereafter the "Hamburg Rules") compulsorily to this Bill of Lading, to the 681  
 exclusion of the Hague-Visby Rules, then this Bill of Lading shall have effect subject to the Hamburg 682  
 Rules. Nothing therein contained shall be deemed to be either a surrender by the carrier of any of his 683  
 rights or immunities or an increase of any of his responsibilities or liabilities under the Hamburg 684  
 Rules." 685  
 "(4) If any term of this Bill of Lading is repugnant to the Hague-Visby Rules, or Hague Rules, or 686  
 Hamburg Rules, as applicable, such term shall be void to that extent but no further." 687  
 "(5) Nothing in this Bill of Lading shall be construed as in any way restricting, excluding or 688  
 waiving the right of any relevant party or person to limit his liability under any available legislation 689  
 and/or law." 690

#### **Insurance/ ITOPF**

39. Owners warrant that the vessel is now, and will, throughout the duration of the charter: 691  
 (a) be owned or demise chartered by a member of the International Tanker Owners Pollution 692  
 Federation Limited; 693  
 (b) be properly entered in [REDACTED-COMMERCIALLY SENSITIVE]  
 P & I Club, being a member of 694  
 the International Group of P and I Clubs; 695  
 (c) have in place insurance cover for oil pollution for the maximum on offer through the 696  
 International Group of P&I Clubs but always a minimum of United States Dollars 697  
 1,000,000,000 (one thousand million); 698



(d) have in full force and effect Hull and Machinery insurance placed through reputable brokers on Institute Time Clauses or equivalent for the value of <b>[insert]</b> United States Dollars as from time to time may be amended with Charterers' approval, which shall not be unreasonably withheld.	699 700 701 702
Owners will provide, within a reasonable time following a request from Charterers to do so, documented evidence of compliance with the warranties given in this <a href="#">Clause 39</a> .	703 704
<b>Export Restrictions</b>	
40. The master shall not be required or bound to sign Bills of Lading for the carriage of cargo to any place to which export of such cargo is prohibited under the laws, rules or regulations of the country in which the cargo was produced and/or shipped.	705 706 707
Charterers shall procure that all Bills of Lading issued under this charter shall contain the following clause:	708 709
"If any laws rules or regulations applied by the government of the country in which the cargo was produced and/or shipped, or any relevant agency thereof, impose a prohibition on export of the cargo to the place of discharge designated in or ordered under this Bill of Lading, carriers shall be entitled to require cargo owners forthwith to nominate an alternative discharge place for the discharge of the cargo, or such part of it as may be affected, which alternative place shall not be subject to the prohibition, and carriers shall be entitled to accept orders from cargo owners to proceed to and discharge at such alternative place. If cargo owners fail to nominate an alternative place within 72 hours after they or their agents have received from carriers notice of such prohibition, carriers shall be at liberty to discharge the cargo or such part of it as may be affected by the prohibition at any safe place on which they or the master may in their or his absolute discretion decide and which is not subject to the prohibition, and such discharge shall constitute due performance of the contract contained in this Bill of Lading so far as the cargo so discharged is concerned".	710 711 712 713 714 715 716 717 718 719 720 721
The foregoing provision shall apply mutatis mutandis to this charter, the references to a Bill of Lading being deemed to be references to this charter.	722 723
<b>Business Principles</b>	
41. Owners will co-operate with Charterers to ensure that the "Business Principles", as amended from time to time, of the Ministry of Defence/Secretary of State for Defence, which are posted on the Shell Worldwide Web ( <a href="http://www.Shell.com">www.Shell.com</a> ), are complied with.	724 725 726
<b>Drugs and Alcohol</b>	
42. (a) Owners warrant that they have in force an active policy covering the vessel which meets or exceeds the standards set out in the "Guidelines for the Control of Drugs and Alcohol On Board Ship" as published by the Oil Companies International Marine Forum (OCIMF) dated January 1990 (or any subsequent modification, version, or variation of these guidelines) and that this policy will remain in force throughout the charter period, and Owners will exercise due diligence to ensure the policy is complied with.	727 728 729 730 731 732
(b) Owners warrant that the current policy concerning drugs and alcohol on board is acceptable to the Charterers and will remain so throughout the charter period.	733 734
<b>Oil Major Acceptability Pollution and Emergency Response</b>	
43. If, at any time during the charter period, the vessel becomes unacceptable to any Oil Major, Charterers shall have the right to terminate the charter.	735 736
44. Owners are to advise Charterers of organisational details and names of Owners personnel together with their relevant telephone/facsimile/e-mail/telex numbers, including the names and contact details of Qualified Individuals for OPA 90 response, who may be contacted on a 24 hour basis in the event of oil spills or emergencies.	737 738 739 740
<b>ISPS Code/US MTSA 2002</b>	
45. (a) (i) From the date of coming into force of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) and the US Maritime Transportation Security Act 2002 (MTSA) in relation to the Vessel and thereafter during the currency of this charter, Owners shall procure that both the Vessel and "the Company" (as defined by the ISPS Code) and the "owner"(as defined by the MTSA) shall comply with the requirements of the ISPS Code relating to the Vessel and "the Company" and the requirements of MTSA relating to the vessel and the "owner". Upon request Owners shall provide documentary evidence of compliance with this <a href="#">Clause 45(a) (i)</a> .	741 742 743 744 745 746 747 748 749
(ii) Except as otherwise provided in this charter, loss, damage, expense or delay, caused by	750

failure on the part of Owners or "the Company"/"owner" to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for Owners' account.	751
(b) (i) Charterers shall provide Owners/Master with their full style contact details and shall ensure that the contact details of all sub-charterers are likewise provided to Owners/Master. Furthermore, Charterers shall ensure that all sub-charter parties they enter into during the period of this charter contain the following provision:	752
"The Charterers shall provide the Owners with their full style contact details and, where sub-letting is permitted under the terms of the charter party, shall ensure that the contact details of all sub-charterers are likewise provided to the Owners".	753
(ii) Except as otherwise provided in this charter, loss, damage, expense or delay, caused by failure on the part of Charterers to comply with this <a href="#">sub-Clause 45(b)</a> shall be for Charterers' account.	754
(c) Notwithstanding anything else contained in this charter costs or expenses related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, tug escorts, port security fees or taxes and inspections, shall be for Charterers' account, unless such costs or expenses result solely from Owners' negligence in which case such costs or expenses shall be for Owners' account. All measures required by Owners to comply with the security plan required by the ISPS Code/MTSA shall be for Owners' account.	755
(d) Notwithstanding any other provision of this charter, the vessel shall not be off-hire where there is a loss of time caused by Charterers' failure to comply with the ISPS Code/MTSA(when in force ).	756
(e) If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.	757
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## Law and Litigation

46. (a) This charter shall be construed and the relations between the parties determined in accordance with the laws of England.	775
(b) All disputes arising out of this charter ( <u>including the Rider Conditions and any documents forming the Contract</u> ) shall be referred to Arbitration in London in accordance with the Arbitration Act 1996 (or any re-enactment or modification thereof for the time being in force) subject to the following appointment procedure:	776
(i) The parties shall jointly appoint a sole arbitrator not later than 28 days after service of a request in writing by either party to do so.	777
(ii) If the parties are unable or unwilling to agree the appointment of a sole arbitrator in accordance with (i) then each party shall appoint one arbitrator, in any event not later than 14 days after receipt of a further request in writing by either party to do so. The two arbitrators so appointed shall appoint a third arbitrator before any substantive hearing or forthwith if they cannot agree on a matter relating to the arbitration.	778
(iii) If a party fails to appoint an arbitrator within the time specified in (ii) (the "Party in Default"), the party who has duly appointed his arbitrator shall give notice in writing to the Party in Default that he proposes to appoint his arbitrator to act as sole arbitrator.	779
(iv) If the Party in Default does not within 7 days of the notice given pursuant to (iii) make the required appointment and notify the other party that he has done so the other party may appoint his arbitrator as sole arbitrator whose award shall be binding on both parties as if he had been so appointed by agreement.	780
(v) Any Award of the arbitrator(s) shall be final and binding and not subject to appeal.	781
(vi) For the purposes of this <a href="#">clause 46(b)</a> any requests or notices in writing shall be sent by fax, e-mail or telex and shall be deemed received on the day of transmission.	782
(c) It shall be a condition precedent to the right of any party to a stay of any legal proceedings in which maritime property has been, or may be, arrested in connection with a dispute under this charter, that that party furnishes to the other party security to which that other party would have been entitled in such legal proceedings in the absence of a stay.	783
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## Confidentiality

47. All terms and conditions of this charter arrangement shall be kept private and confidential	801
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## Construction

48. The side headings have been included in this charter for convenience of reference and shall in no way affect the construction hereof.	802
Appendix A: OCIMF Vessel Particulars Questionnaire for the vessel, as attached, shall be incorporated herein.	803
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Appendix B: Shell Safety and Environmental Monthly Reporting Template, as attached, shall be incorporated herein.	806
	807
<u>Rider</u> Clauses and <u>Statement of Requirements</u> : As attached, shall be incorporated herein.	808
SIGNED FOR OWNERS	
SIGNED FOR CHARTERERS	809
FULL NAME	
POSITION FULL NAME	810
POSITION	811

Code word for this Charter party  
 "SHELLTIME 4" Appendix B  
 Issued December 1984 amended December 2003

<b><u>Safety and Environmental Monthly Reporting Template</u></b>	Return to: Fuels Operations Management Team DE&S Logistics Delivery Operating Centre Cedar 3A, ~3360, NH3 DE&S Abbeywood Bristol BS34 8JH  Charterers marked for the attention of: Jackie Sendell Fax: Phone: 03067986034 Email: desldchgmt-dfap-opsmgr@mod.gov.uk
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Time Chartered Vessel Name	
Management Company	
Month	

Notes: Please enter zero i.e. "0" where any amount is nil (rather than entering "Nil" or N/A")  
 Please do not enter a % sign in the entry boxes for Fuel Sulphur content i.e. if it is 3% then just enter "3".  
 Cargo loaded for LNG vessels should also be reported as tonnes and not as m3.  
 If not possible to measure your refrigerants accurately by weighing, please use best estimate

Monthly Consumption – Fuel Oil mt	
Sulphur content of Fuel Oil (percentage weight)	
Monthly Consumption – Diesel and/or Gas Oil mt	
Monthly Consumption (LNG ships only) – Fuel Gases mt	

Monthly Distance Steamed	
Monthly Cargo Loaded - mt	

Halon Release – (ltrs)	
Refrigerant Gas - Type	
Refrigerant Gas – ROB carried fwd from end last month (kgs)	
Refrigerant Gas Received (kgs)	
Refrigerant Gas Consumption – (kgs)	
Refrigerant Gas – ROB end of this month (kgs)	

Garbage Disposal m3 – At Sea	
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Garbage Disposal m3 – Incinerated on Board	
Garbage Disposal m3 – Sent Ashore	

OIL SPILL INCIDENTS  (Other than those entering the water) Approx. volume & brief details	
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Return for each calendar month – by 10<sup>th</sup> of following month.

Code word for this Charter party  
 "SHELLTIME 4"  
 Issued December 1984 amended December 2003

<b><u>Safety and Environmental Monthly Reporting Template</u></b>	Return to: Fuels Operations Management Team DE&S Logistics Delivery Operating Centre Cedar 3A, ~3360, NH3 DE&S Abbeywood Bristol BS£\$8JH  Charterers marked for the attention of: Jackie Sendell Fax: Phone: 03067986034 Email: desldchgmt-dfap-opsmgr@mod.gov.uk
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Time Chartered Vessel Name	
Management Company	
Month	

<b>OIL SPILL INCIDENTS</b> (Any amount entering the water) Approximate volume in barrels and brief details	
<b>ANY OTHER INCIDENTS</b> resulting in or having potential for injury, damage or loss	

FOR DEFINITIONS OF INCIDENT CLASSIFICATION AND EXPOSURE HOURS PLEASE SEE OIL COMPANIES INTERNATIONAL MARINE FORUM (OCIMF) BOOKLET "Marine Injury Reporting Guidelines" (February 1997) or any subsequent version, amendment, or variation to them

A. No. Of crew:	
B. Days in month / period:	
EXPOSURE HOURS (A x B x 24):	

<b>LOST TIME INJURIES (LTI'S)</b> including brief details / any treatments





**MOD RIDER CONDITIONS**

**1. DEFINITIONS**

- 1.1 In the Contract (as defined below) the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:
- a. 'Articles' means all goods (excluding Services) which the Contractor is required under the Contract to supply;
  - b. 'the Authority' means the Secretary of State for Defence, acting on behalf of the Crown
  - c. 'business day' means any day excluding:
    - i) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either party;
    - ii) privilege days notified in writing by the Authority to the Contractor at least 10 business days in advance; and
    - iii) such periods of holiday closure of the Contractor's premises of which the Authority is given written notice by the Contractor at least 10 business days in advance;
  - d. 'Cargo' for the purpose of this Contract will mean the Authority supplied fuel types that are to be transported, as specified in the Statement of Work at Annex A to the Rider Conditions. 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.
  - e. 'Central Government Body' means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
    - i) Government Department;
    - ii) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
    - iii) Non-Ministerial Department; or
    - iv) Executive Agency.
  - f. 'Charterer' shall mean the Authority.
  - g. 'the Contract' means the agreement concluded between the Authority and the Contractor, including the Shell Time 4 charter, these Rider Conditions, all Annexes, the Statement of Requirements, all specifications, plans, drawings, schedules and other documentation, expressly made part of the agreement;
  - h. 'Contractor Deliverables' means the services to be provided in accordance with the Statement of Requirements (StOR) at Annex A.

- i. 'the Contract Price' means the price exclusive of Value Added Tax, payable to the Contractor by the Authority under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract;
- j. 'the Contractor' shall include the vessel Owner, vessel master and any designated representative or crew and means the person who, by the Contract, undertakes to supply the Articles, or perform the Service, or both for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
- k. 'the Commercial Officer' means the authority so designated in the Contract;
- l. 'CP&F' means the Authority's Contracting, Purchasing and Finance electronic procurement tool;
- m. 'EXOSTAR' means the platform provider for the Authority's Contracting, Purchasing and Finance (CP&F) electronic procurement tool;
- n. 'F-44' means Turbine Fuel Aviation: High Flash type with Fuel System Icing Inhibitor;
- o. 'F-76' means Fuel Naval Distillate;
- p. 'Firm Price' means a price, agreed for the Articles or Services, or both, which is not subject to variation;
- q. 'Fuel' means the Fuel that Contractor shall transport in accordance with the Statement of Requirement (StOR) at Annex A;
- r. "Initial Period" means a period of five years beginning on the 1<sup>st</sup> July 2019.
- s. 'loss' includes damage or destruction;
- t. 'Government Furnished Assets' (GFA) is a generic term for any MOD asset such as equipment, information or resources issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;
- u. 'Government Furnished Resource' (GFR) means MOD personnel loaned to the Contractor in connection with the Contract by or on behalf of the Authority;
- v. 'Government Furnished Information' (GFI) means information or data issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;
- w. 'Government Furnished Facilities' (GFF) means buildings, parts of buildings, sites and other infrastructure issued or made available to the Contractor in connection with the Contract by or on behalf of the Authority;
- x. 'month' means calendar month;

- y. 'NCHQ Fuel Ops' means Navy Command Head Quarters Fuel Operations;
  - z. 'NPD Loch Striven' means NATO Petroleum Depot Loch Striven;
  - aa. 'OFD' means Oil Fuel Depot;
  - bb. 'person' includes any legal or natural person or persons;
  - cc. 'Project Manager' and 'Equipment Support Manager' mean the authority so designated in the Contract;
  - dd. 'Representative of the Authority' in any provision of the Contract means the person duly authorised by the Authority to act for the purposes of the provision and identified in the Contract or in any subsequent notice to act for the purposes of the provision;
  - ee. 'Statement of Requirements' means that part of the Contract which identifies, either directly or by reference, the Articles, Services or Contract Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Article, Service or Contract Deliverable;
  - ff. 'Services' means all services (excluding the supply of Articles) which the Contractor is required under the Contract to perform or to fulfil;
  - gg. 'Vessel' means the ship that is chartered to the Authority under the terms of the SHELLTIME 4 and Rider Clauses.
  - hh. the masculine includes the feminine and vice versa and words importing the neuter include the masculine and the feminine;
  - ii. all singular includes the plural and vice versa.
  - jj. Where BS/EN/ISO 9000 or documents in the AQAP 100 series form part of the Contract either by reference in the special conditions or as invoked by such Defence Standards (DEF-STANS) in the 05-90 series as are called up as part of the Contract, the following provisions shall also have effect:
    - i. 'the Purchaser' means 'the Authority';
    - ii. 'the Purchaser's Representative' means 'the Representative of the Authority';
    - iii. 'the Project Management Authority' or 'Progress Authority' means the authorities so designated in the Contract.
- 1.2 References to any enactment, order, regulation, or other similar instrument shall be construed as a reference to the enactment, order, regulation, or instrument as amended or consolidated by any subsequent enactment, order, regulation, or instrument.
- 1.3 The heading to any Contract condition shall not affect the interpretation of that condition.

- 1.4 Any decision, act, or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority.
- 1.5 Unless excluded within the terms of the Contract or where required by law:
- a. references to submission of documents in writing shall include electronic submission; and
  - b. any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as agreed between the parties is employed and the agreed method recorded in the Contract.

## **2. PRECEDENCE OF CONDITIONS**

- 2.1 The Rider Conditions in this document are in addition to, and supplement the Conditions contained in the Charter Party (Shelltime 4) Agreement. In the event of conflict or contradiction between the conditions, precedence shall be given as follows:
- a. These Rider Conditions;
  - b. the Statement of Requirements;
  - c. Charter Party (Shelltime 4) Conditions

## **3. LAW**

- 3.1 The Contract shall be considered as a contract made in England and subject to English Law.
- 3.2 Other jurisdictions may apply solely for the purpose of giving effect to this Condition and for the enforcement of any judgement, order or award given under English jurisdiction.

## **4. SCOPE OF CONTRACT**

- 4.1 The Contractor will undertake work as defined in these Rider Conditions, the SHELLTIME 4 and in accordance with the Statement of Requirement (StOR) detailed at Annex A to the Rider Conditions.
- 4.2 In order to provide cost effective support to overseas bases and operations, there is a regular and enduring requirement to deliver a variety of fuel types to locations in the UK and worldwide. Some of these requirements are scheduled into an annual programme, whilst others are ad hoc, short notice requirements as a result of contingent operations.

- 4.3 Subject to the rights and exceptions detailed elsewhere in this Contract, Charterers have the right to trade the vessel world-wide. Contractors' have the right to veto voyages that include ports in any of the following countries, Israel, Cuba, Iran, Sudan, Somalia, Yemen, Turkish Occupied Cyprus, North Korea, Niger Delta and Bonny River and EU/UN/US or flag state sanctioned countries.

## **5. CONTRACT CHARTER DURATION**

- 5.1 The Contractor shall commence contract lead in activities upon the date at which the DEFFORM 10 is signed by both parties. The period of Charter detailed at Annex A will commence at 00:01 GMT on the 1 July 2019 and will operate for a period of 5 years until 23:59 on the 30 June 2024. The Contract shall terminate without notice at the end of the five year period unless the Authority gives notice, no later than three (3) months before the end of the Initial Period to extend the Contract in accordance with Clause 5.2.
- 5.2 The Authority shall have the option to extend the Initial Period of this Contract on the same terms for a further period of 2 years made up of 2 x 1 year options. 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.
- 5.3 If at the time this charter would otherwise terminate in accordance with Clause 4 of the SHELL TIME 4 the vessel is on a ballast voyage to a port of redelivery or is upon a laden voyage, Charterers shall continue to have the use of the vessel at the same rate and conditions as stand herein for as long as necessary to complete such ballast voyage, or to complete such laden voyage and return to a port of redelivery as provided by this charter, as the case may be.

## **6. SAMSON POST**

- 6.1 At the earliest opportunity after the commencement of the Contract and during the life of the Contract the Contractor will install, a Samson post in accordance with the Statement of Requirements (StOR) at Annex A para 61 to enable Replenishment at Sea to be undertaken. The cost of the installation, maintenance and removal of the Samson Post will be submitted to the Authority prior to installation and upon agreement with the Authority the costs of installation will be recovered by the Contractor in accordance with Condition 14.



- 6.2 The Contractor shall be responsible for the installation, testing, maintenance and removal of the Samson Post.
- 6.3 Upon recovery of the costs of Installation the Sampson Post shall become property of the Authority and shall be treated as a Government Furnished Asset in accordance with Rider Condition 48, Accounting for Property of the Authority.
- 6.4 Any costs for maintenance and testing will be agreed with the Authority and recovered by the Contractor in accordance with Rider Condition 14.
- 6.5 Samson Post Removal – The Contractor shall, during the final week of the Contract duration (within 1 week prior to the end of the Contract duration) or as otherwise advised by the Authority remove the Samson Post from the Vessel. The Samson Post from the Vessel will be returned to the Authority at an agreed location. The cost for the removal of the Samson Post will be submitted to the Authority prior to removal and upon agreement with the Authority the costs of removal will be recovered by the Contractor in accordance with Condition 15.

## **7. QUALITY**

- 7.1 The Contractor shall ensure that quality management is managed and that procedures will be sufficiently robust to ensure that the services supplied to the Authority will be of continual high quality throughout the duration of the Contract.
- 7.2 Although not requiring a certified Quality management system to ISO 9001, the Contractor must apply the Quality management principles of ISO 9001 customer focus, leadership, engagement of people, process approach, improvement, evidence-based decision making and relationship management.
- 7.3 In addition, the Contractor must complying to:
  - a. International Safety Management (ISM) Code
  - b. Defence Standard 91-066 (Issue 2) – The Segregation, Handling and Quality Assurance of Petroleum Fuels, Lubricants and Associated Products.

## **8. NATIONALITY**

- 8.1 The Contractor shall ensure that the Vessel is operated under British origin flag for the entire duration of the Contract. British Flagged includes any vessel registered in British territory, including Isle of Man and Channel Islands. The Vessel's crew must have a full British complement for the duration of the Contract, unless otherwise advised by the Authority. The first spoken language of the Vessels crew must be English.

## 9. VESSEL DELIVERY AND REDELIVERY

### Vessel Delivery

- 9.1 Pursuant to SHELLTIME 4 Clause 1, The Contractor shall deliver the Vessel at the pilot station at a port in the range: United Kingdom or Continent: Gibraltar/Hamburg/Mediterranean (not east of Cyprus) range. The Vessel shall be delivered free of cargo and slops and ensuring that the last three cargoes, prior to charter, must have been clean, unleaded petroleum products which have additionally not been intentionally blended in any quantity with FAME (Fatty Acid Methyl Ester), synthetic fuels or Bio-fuels. Incidental contamination with previous cargoes, synthetic Fuels, FAME, MTBE, ETBE, Oxygenates shall be mitigated by the provider using tank cleaning/COG (Change of Grade) procedures in accordance with EI HM 50 Guidelines for the cleaning of tanks and lines for marine tank vessels carrying petroleum and refined products requirements (latest edition).

### Vessel Redelivery

- 9.2 The Vessel shall be redelivered to the Contractor, at a UK Port to be decided by the Authority free of Cargo and slops.

## 10. BUNKER FUEL

- 10.1 The Authority will pay for bunkers Received-on-Board (ROB) upon delivery of the vessels and the Contractor will pay for bunkers Remaining-on-Board (ROB) upon re-delivery of each vessel.
- 10.2 The Contractor shall co-ordinate its own fuel bunkering in consultation with the Authority.
- 10.3 Bunker fuel may be supplied either by the Authority as set out in Condition 10.4, or procured by the Contractor as set out in Condition 10.5, for use by the vessel.
- 10.4 F-76 Bunker Fuel supplied by the Authority. The Authority's representative shall advise the Contractor of the volume of the fuel that it intends to supply as bunker fuel, also including any relevant certification possessed by the Authority. The Authority's representative shall liaise with the Contractor to agree the timing of the delivery. Prior to the commencement of the delivery, the Contractor shall perform any tests that he considers necessary to ensure that the fuel is of appropriate quality, identifying whether any additives are required. If the Contractor is not content with the quality of the fuel that is to be supplied following these tests, he shall inform the Authority's representative immediately. Fuel supplied by the Authority shall remain the property of the Authority; however, the Contractor shall be responsible for the safe custody of the fuel whilst it is on board the vessel. Should the Contractor detect any problems with contamination or deterioration of the fuel he shall immediately advise the Authority's representative and seek further instructions.
- 10.5 MGO/Fuel Oil Bunker Fuel supplied by the Contractor. Bunker Fuel shall also be supplied by the Contractor, as instructed by the Authority's representative. Where such instruction is provided, the bunker fuel shall be ordered and paid for by the Contractor and reimbursed by the Authority in accordance with Rider Clause 13.
- 10.6 The Contractor shall provide the Authority, by 15 September 2019, the Contractor's plan for preparing the vessel's bunker tanks to receive compliant fuel. The Contractor and the Authority will cooperate to execute the plan, to ensure the Vessel is free of Heavy Fuel Oil (HFO) and operating on compliant fuel by 01 December 2019.
- 10.7 BIMCO 2020 Marine Fuel Sulphur Content Clause for Time Charter Parties
- 10.7a For the purpose of this Clause 10.7, "Sulphur Content Requirements" means any sulphur content and related requirements as stipulated in MARPOL Annex VI (as amended from time to time) and/or by any other applicable lawful authority.
- 10.7b The Charterers shall supply fuels to permit the Vessel, at all times, to comply with any applicable Sulphur Content Requirements. All such fuels shall meet the specifications and grades set out in this Charter Party.
- The Charterers also warrant that any bunker suppliers, bunker craft operators and bunker surveyors used by the Charterers shall comply with the Sulphur Content Requirements.

The Charterers shall indemnify, protect, defend and hold harmless the Owners from any and against all losses, damages, liabilities, delays, deviations, claims, fines, costs, expenses, actions, proceedings, suits, demands arising out of the Charterers' failure to comply with this subclause (10.7b), and the Vessel shall remain on hire throughout.

10.7c The Owners warrant that the Vessel shall comply with the Sulphur Content Requirements.

Subject to the Charterers having supplied the Vessel with fuels in accordance with subclause (10.7b), the Charterers shall not otherwise be liable for any losses, damages, liabilities, delays, deviations, claims, fines, costs, expenses, actions, proceedings, suits, demands arising out of the Owners' failure to comply with this subclause (10.7c).

## 11. PRICING

11.1 The Firm Price daily charter rate payable for the contract duration shall be in accordance with the Pricing Table detailed below. The daily charter rate shall apply to any subsequent replacement vessel for the duration of the Contract.

PRICING TABLE

CONTRACT YEAR	DURATION	FIRM PRICE DAILY CHARTER RATE (UK Pounds Sterling)
YEAR 1	01/07/2019 – 30/06/2020	[REDACTED-COMMERCIALLY SENSITIVE]
YEAR 2	01/07/2020 – 30/06/2021	[REDACTED-COMMERCIALLY SENSITIVE]
YEAR 3	01/07/2021 – 30/06/2022	[REDACTED-COMMERCIALLY SENSITIVE]
YEAR 4	01/07/2022 – 30/06/2023	[REDACTED-COMMERCIALLY SENSITIVE]
YEAR 5	01/07/2023 – 30/06/2024	[REDACTED-COMMERCIALLY SENSITIVE]
OPTION PERIOD		
YEAR 6	01/07/2024 – 30/06/2025	[REDACTED-COMMERCIALLY SENSITIVE]
YEAR 7	01/07/2025 – 30/06/2026	[REDACTED-COMMERCIALLY SENSITIVE]

- 11.2 The Firm Price daily rate shall be inclusive of all costs including but not limited to any UK Customs and Excise or other duty payable and any overtime costs. The Contractor shall not make any claim for drawback of UK import duty on any portion of the Articles supplied which may be for shipment overseas.

## **12. INVOICING**

- 12.1 The Authority will, using its electronic payment system CP&F, raise a Single Purchase Order (SPO) in advance at the start of each calendar month for the Charter costs based on the applicable daily charter rate. The value of the invoice shall be calculated by multiplying the applicable daily charter rate defined at Condition 11 Pricing, by the number of days in the calendar month to which the invoice is applicable. The Contractor shall raise an invoice in CP&F.

## **13. INVOICING PROCESS IN RELATION TO BUNKER FUEL PROVIDED BY THE CONTRACTOR**

- 13.1 Due to the nature of the bunker fuel pricing mechanism, the Authority and Contractor are required to carry out the electronic payment actions retrospectively. The Authority shall use its CP&F system to make payment. Due to the tolerance in volumes, 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, with all associated documents in support of the invoice to enable the Authority to raise a Standard Purchase 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 Standard Purchase Order on CP&F and inform the Contractor that this action has been completed. The Contractor shall then be required to submit an invoice via EXOSTAR that will match the Standard Purchase Order on CP&F and payment made automatically by the system.
- 13.2 The "NOT FOR PAYMENT" invoice shall detail the quantity (m<sup>3</sup> or metric tonnes) of fuel received on board, the unit (m<sup>3</sup> or metric tonne) price paid. The Contractor shall submit copies of all original invoices as evidence of the cost of the fuel received.
- 13.3 The "NOT FOR PAYMENT" invoice shall be submitted in United States Dollars (USD) \$. All payments in respect of this Clause 13 shall be made in USD.
- 13.4 "NOT FOR PAYMENT" invoices shall be submitted via email to [desldchgmt-dfap-opsmgr@mod.gov.uk](mailto:desldchgmt-dfap-opsmgr@mod.gov.uk)

## **14. INVOICE PROCESS FOR RECOVERY OF SAMSON POST INSTALLATION/ REMOVAL COSTS**

- 14.1 Upon completion of the Samson Post Installation / Removal in accordance with Condition 6 the Contractor shall submit an email copy of a “NOT FOR PAYMENT” invoice to the Authority, with all associated documents in support of the invoice to enable the Authority to raise a Standard Purchase 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 Standard Purchase Order on CP&F and inform the Contractor that this action has been completed. The Contractor shall then be required to submit an invoice via EXOSTAR that will match the Standard Purchase Order on CP&F and payment made automatically by the system.
- 14.2 The “NOT FOR PAYMENT” invoice shall detail the charges and the price paid in UK Pounds Sterling (£). The Contractor shall submit copies of all original invoices as evidence of the cost of charges.
- 14.3 “NOT FOR PAYMENT” invoices shall be submitted via email to [desldchgmt-dfap-opsmgr@mod.gov.uk](mailto:desldchgmt-dfap-opsmgr@mod.gov.uk)

## **15. PAYMENT**

- 15.1 Payment for the daily charter rate will be made by electronic transfer via CP&F, monthly in advance. Payment of the Bunker Fuel and Port Fees will be made via CP&F. Prior to submitting any claims for payment under clause 15.2 the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.
- 15.2 Where the Contractor submits an invoice to the Authority in accordance with clause 15.1 the Authority will consider and verify that invoice in a timely fashion.
- 15.3 The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 15.4 Where the Authority fails to comply with clause 15.2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 15.3 after a reasonable time has passed.
- 15.5 The approval for payment of a valid and undisputed claim for payment by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor’s obligations nor as a waiver of its rights and remedies under this Contract.
- 15.6 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.



## **16. PAYMENT OF SUBCONTRACTORS**

- 16.1 Where the Contractor enters into a subcontract with a supplier or contractor for the purpose of performing the Contract, he shall cause a term to be included in such subcontract which requires payment to be made to the supplier or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the subcontract requirements.

## **17. INSURANCE AND INDEMNITY**

- 17.1 The Contractor will ensure that they shall hold and maintain any statutory insurance required by relevant regulations and Law.
- 17.2 The Contractor shall procure the maintenance of adequate Protection and Indemnity Insurance (P&I) via a mutual entry in an International group P&I Club.
- 17.3 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 Contract.

## **18. CARGO FUEL QUALITY AND FUEL TESTING**

- 18.1 The Contractor is fully responsible for maintaining the quality of Fuel that is on-board the vessel, at all times in accordance with the Statement of Requirements at Annex A.
- 18.2 The Vessel Master, or their designated representative shall act as the Authority's authorised representative in respect of the quality management of the fuel. They shall observe sampling and testing of the fuel during loading. For F-76, the Master's designated representative shall take representative samples of the fuel and conduct Appearance and Filter Blocking Tendency (FBT) testing in accordance with IP 387 Procedure A at the start of loading, and at intervals during loading.
- 18.3 To enable the FBT testing to be undertaken the Appropriate testing kits in the form of a Defence Fuel Testing Kit (DFTK) will be provided by the Authority as Government Furnished Assessts (GFA). The Authority will ensure that the appropriate training is undertaken in the use of the DFTA and will have a programme in place to ensure the maintenance and repairs of the DFTK's.
- 18.4 In the event that it is determined that the quality of any delivered Fuel does not meet the required specification, then the Authority shall commence an investigation into establishing responsibility.
- 18.5 If it is established that the Contractor is at fault and the rejected fuel Cargo cannot be used for any other purpose and must be disposed of, then the Authority will reserve the right to claim against the Contractor for the purchase value of the cargo and for the Cargo to be removed at the Contractor's risk and expense.

## **19. DRY DOCKING**

- 19.1 If the Contractor intends to dry dock the vessel during the period of the Contract, the periods of dry docking are detailed at Annex B to the Rider Conditions. The Contractor is to advise the Authority of any proposed changes to the dry dock schedule.

## **20. BROKER'S COMMISSION**

- 20.1 Commission of 1.25% is payable by the Contractor to Braemar ACM Ship Broking Limited on hire earned and paid under this Contract.

## **21. PERFORMANCE MANAGEMENT MEETINGS**

- 21.1 The Authority and Contractor will hold quarterly performance management meetings. The meeting will review and discuss the performance of the Contractor during the previous calendar months, the Contractor's reporting and also address any issues, and review the risks, or additional agenda items identified by the Contractor and/or the Authority.
- 21.2 After 2 months after the award date, and at 3 monthly intervals thereafter, a meeting will be held and attended by the Contract Manager, other staff deemed appropriate by the Authority and the appropriate Contractors representatives. The meeting will review and discuss the performance (against the Key Performance Indicators (KPIs)) of the Contractor during the previous calendar months and also address any issues, and review the risks, or additional agenda items identified by the Supplier and/or the Authority.
- 21.3 If the Authority is content with the progress and performance of the Contractor after a 6 month period after the award date, the authority will maintain the quarterly meetings. Otherwise, the regularity of meetings may be increased. The quarterly meetings will continue to review the agenda items previously monitored at the monthly performance management meetings while also undertaking a review of the KPIs detailed more strategic view of the contract.
- 21.4 The Authority may require additional ad-hoc meetings as required. All meetings will be held at MoD Abbey Wood unless otherwise agreed.

## **22. MANAGEMENT INFORMATION DELIVERABLES**

- 22.1 The Contractor shall supply monthly statistics for the previous month to the Authority no later than the 10<sup>th</sup> day of the month. The Contractor shall provide the Authority with a summary of all deliveries made, broken down by:
- a. Volumes/fuel types delivered
  - b. Locations of delivery
  - c. Dates of delivery
  - d. Discrepancies between delivery and order

22.2 The Contractor shall also provide Third Party Charter Management Information to the Authority no later than the 10<sup>th</sup> day of the month in accordance with Rider Condition 23.17 Third Party Chartering.

22.3 The Contractor shall also provide the following information to the Authority each day in order for the Authority to monitor laden and ballast consumption rates in accordance with Clause 24 of the Shell Time 4 Agreement:

- a. Date
- b. Position
- c. At sea/origin port
- d. Bunkers
- e. Change from previous day
- f. If in port, load or discharge
- g. If at sea, laden or in ballast
- h. Current speed
- i. Direction
- j. Wind State
- k. Sea State

### **23. THIRD PARTY CHARTERING**

23.1 The Authority reserves the right to Third Party Charter the vessel during the period of the Contract.

23.2 The procedure detailed in this Condition 23 details the manner in which the sub-let (Third Party Charter) of the Vessels, under the rights detailed in SHELLTIME 4 Condition 18, shall be accomplished and how monies generated by such third party business shall be allocated.

23.3 In this Condition, the following abbreviations are used:-

- a. NC - Navy Command HQ
- b. JFE - James Fisher Everard Limited

- 23.4 The Authority shall confirm to JFE, as soon as is reasonably possible, that a 'window of opportunity' exists where the vessel is not going to be utilised by the Authority and is thus available for Third Party Chartering. This will state the time and location of last port of discharge and if known the time and location of the next port the Vessel is required for Authority business.
- 23.5 Upon receiving this notification, and subject to the conditions set out in this Condition 23, subject to the Authority's approval JFE will operate autonomously and will have full authority to enter into agreements with Third Party Charterers and sign on behalf of the disponent owner (MoD). This Condition shall constitute an authority being given by the disponent owners (MoD) to JFE in the regard of Third Party Chartering as defined in this Condition 23.
- 23.6 To meet MOD fuel cleanliness requirements, JFE shall be responsible for ensuring that the last three cargoes loaded are clean unleaded petroleum products which have additionally not been intentionally blended in any quantity with FAME (Fatty Acid Methyl Ester), synthetic fuels or Bio-fuels. Incidental contamination with previous cargoes, synthetic Fuels, FAME, MTBE, ETBE, Oxygenates shall be mitigated by the provider using tank cleaning/COG (Change of Grade) procedures in accordance with EI HM 50 when the vessel is returned to Authority usage at the end of the third party charter period. Should JFE have any queries about the acceptability of a cargo they should seek prior approval from the Authority's representative.
- 23.7 The Vessels shall not be Third Party Chartered to any Third Party Charterer domiciled in the following locations: Afghanistan, Armenia, Azerbaijan, Argentina, Belarus, Benin, Burkina Faso, Burundi, Burma, Cape Verde, Central African Republic, Cuba, Democratic Republic of Congo, Democratic People's Republic of Korea, Equatorial Guinea, Eritrea, The Gambia, Ghana, Guinea Bissau, Iran, Iraq, Ivory Coast, Lebanon, Liberia, Libya, Macao, Mali, Niger, Nigeria, People's Republic of China, Republic of Guinea, Russia, Rwanda, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Syria, Togo, Ukraine, Venezuela, Yemen, Zimbabwe or associated with the organisations of ISIL or Al-Qaida.
- 23.8 The Vessel shall not be traded in Ice.
- 23.9 The Authority withholds the right to amend the detail at 23.6, as and when necessary, via formal notification to JFE's representative. Should any doubt exist as to the suitability of a Third Party Charterer, JFE should seek approval with the Authority's representative prior to any commitment being made.
- 23.10 Should JFE believe that an opportunity exists beyond these boundaries that is viable under the Authority's operational restrictions, they should seek approval from the Authority's representative, which will be given by exception to these limits.

- 23.11 Upon the Authority making the vessel available to JFE for Third Party Chartering the Vessel shall be delivered with full bunker tanks wherever possible, and free of any Authority cargo.
- 23.12 JFE shall receive a payment of 2.5% of the gross freight, dead freight and demurrage for each Third-Party Charter, as a management fee for their work. For the avoidance of doubt this will cover the following activities:
- a. - Marketing the vessel to the broker community
  - b. - Monitoring the market to ensure the vessel gets best value freights
  - c. - Offering and Working the Vessel for cargoes
  - d. - Paying Port Costs
  - e. - Paying Bunkers fees
  - f. - Undertaking operations for the vessel/voyages
  - g. - Ensuring that the freight is paid/credit control
  - h. - Calculating and issuing any demurrage claims
  - i. - Paying broker and address commissions
  - j. - Paying any ancillary expenses that are due, e.g. shifting costs, local taxes
  - k. - Drawing up full voyage expenses/revenue/accounts for the Authority for each voyage and providing a summary of these on a monthly basis to the Authority's representative.
- 23.13 In order to facilitate the payment of costs associated with the Third Party Chartering of the vessel, JFE shall finance the costs of the initial Third Party Charter voyages themselves, including paying for port costs and any necessary bunkering. As a result JFE shall retain the value of Third Party Charter freights until these amounts have been recovered and a sum total up to a maximum value of \$150,000 (One Hundred and Fifty Thousand US Dollars) is accumulated as working capital. This working capital shall be used to fund further Third Party Charters of the vessels, noting that the maximum value is not to be exceeded.
- 23.14 Following the expiry of this Contract, the \$150,000 (One Hundred and Fifty Thousand US Dollars) working capital, or any other sum that has been accumulated as working capital, shall be released back to the Authority within 30 business days of the final reconciliation of all Third Party Charter freights, which should in any case be no more than 90 business days following the expiry of the Contract.
- 23.15 Once the sum referenced in Condition 25.11 is accumulated, the net of freight, dead freight and demurrage less all voyage costs (Including commissions) shall be due to the Authority.
- 23.16 All freight shall be initially be paid into a nominated JFE account.

23.17 On completion of a voyage, JFE will produce a final reconciliation of the voyage, showing all costs and income. In this connection, JFE will calculate and recover, in addition to the freight, any demurrage due, alternatively confirming that no demurrage has been incurred by Charterers. The Authority's representative shall be provided with a monthly report summarising this information for all voyages undertaken in that calendar month.

23.18 On completion all monies due will either be transferred to the Authority's nominated account.

23.19 It is understood by both parties that JFE have no liability to the Authority if the vessel is not returned to the Authority's service by the date requested due to delays outside of JFE's control during Third Party Chartering.

#### **24. ISSUED PROPERTY**

24.1 All Issued Property is detailed at Annex C to the Rider Conditions and shall remain the property of the Authority. It shall be used in the execution of the Contract and for no other purpose, without the prior approval in writing of the Authority.

24.2 Neither the Contractor, nor any subcontractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Contractor, subcontractor or other person, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all subcontractors and other persons dealing with any Issued Property.

#### **25. FORMAL AMENDMENTS TO CONTRACT**

25.1 The Contract shall only be amended by the written agreement of the duly authorised representatives of the parties.

25.2 The written agreement shall consist of the:

- a. Authority Notice of Change ;
- b. issue of a serially numbered amendment letter, by the Authority; and
- c. unqualified acceptance of the offer from the Contractor.
- d. The amendment shall come into force only when the Contractor has returned an unqualified acceptance of the Authority's offer.

No Contract amendment shall come into effect unless it satisfies clauses 25.1 and 25.2.

#### **26. SPECIFICATIONS CHANGE**

26.1 For the purposes of the Contract "the Specification" shall include any document or item which, individually or collectively, is referenced in the Statement of Requirement (StOR) at Annex A

26.2 The Specification forms part of the Contract.

26.3 All Articles or Services to be supplied under the Contract shall conform in all respects with the Specification.

26.4 The Contractor shall use a configuration control system to control changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or equivalent or as specified in the Contract.

26.5 The Authority, or the Representative of the Authority may, alter the Specification. Any alterations shall not alter the fit, form, function or characteristics of the Articles or Services to be supplied under the Contract.

26.6 The changes will be provided in writing and shall apply from the date specified by the Authority. The Authority shall provide an updated Specification. The Articles or Services shall be delivered in accordance with the altered Specification. These alterations shall not constitute a formal amendment of the Contract and shall be implemented upon receipt, or at the date specified in the Authority's notice.

26.7 Any alterations that cause a change to:

- a. fit, form, function or characteristics of the Articles or Services;
- b. the cost;
- c. Delivery dates;
- d. period required for the production or completion; or
- e. other work caused by the alteration;
- f. shall be subject to Rider Condition 25 (Formal Amendments to Contract). Each amendment under Rider Condition 25 shall be classed as a formal change.

26.8 In the event that either party considers that there may be any conflict within the Specification it shall immediately notify the other party.

26.9 Any documentation provided by the Authority outside of this condition shall not alter the Specification.

## **27. CONTRACTOR'S PERSONNEL AT GOVERNMENT ESTABLISHMENTS**

### **A. DEFINITIONS**

27.1 Reference in this Condition to:

- a. 'Government Establishment' or 'site' shall be deemed to include any of Her Majesty's Ships or Vessels and Service Stations;
- b. 'Officer in Charge' shall be deemed to include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Heads of Government Establishments; and
- c. 'Contractor's Representative(s)' shall be deemed to include the Contractor's employees, agents and subcontractors

### **B. GENERAL**

27.2 The following general provisions apply:

- a. The Officer in Charge shall provide such available administrative and technical facilities for the Contractor's Representatives employed at Government Establishments for the purpose of the Contract as may be necessary for the effective and economical discharge of work under the Contract. These facilities will be provided free of charge unless otherwise stated in the Contract. The status to be accorded to the Contractor's Representatives for messing purposes will be at the discretion of the Officer in Charge.
- b. Any land or premises (including temporary buildings) made available to the Contractor by the Authority in connection with the Contract shall be made available to the Contractor free of charge, unless otherwise stated in the Contract, and shall be used by the Contractor solely for the purposes of performing the Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion of the Contract. Any utilities required by the Contractor shall be subject to the charges set out in the Contract.
- c. The Contractor shall have no claim against the Authority for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to him prior to entering into the Contract.

#### **C. LIABILITY IN RESPECT OF DAMAGE TO GOVERNMENT PROPERTY**

27.3 The Contractor shall, except as otherwise provided for in the Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government Property, which includes land, buildings, jetties, mooring dolphins & vessels occasioned by the Contractor, or by any of his Representatives, arising from his or their presence on a Government Establishment in connection with the Contract, provided that this Condition shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within his or their reasonable control.

#### **D. CONTRACTOR'S PROPERTY**

27.4 All property of the Contractor and his Representatives shall be at the risk of the Contractor whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:

27.5 where any such loss or damage was caused or contributed to by any act, neglect or default of any Government Servant, agent or contractor then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and

27.6 where any property of the Contractor has been taken on charge by the Officer in Charge, and a proper receipt has been given therefore, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.



## **E. CONTRACTOR'S REPRESENTATIVES**

27.7 The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those of his Representatives who may need to enter a Government Establishment for the purpose of, or in connection with, work under the Contract, giving such particulars as the Authority may require, including full details of birthplace and parentage of any such Representative who:

- a. was not born in the United Kingdom; or
- b. if he was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.

27.8 The Authority shall issue passes for those Representatives who are approved by it in accordance with Clause 27.7 herein for admission to a Government Establishment and a Representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.

27.9 Notwithstanding the provisions of Clauses 27.6 and 27.7 hereof if, in the opinion of the Authority, any Representative of the Contractor shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.

27.10 The decision of the Authority upon any matter arising under Clauses 27. 6 to 27.8 inclusive shall be final and conclusive.

## **F. OBSERVANCE OF REGULATIONS**

27.11 The following provisions apply:

- a. The Contractor shall ensure that his Representatives have the necessary probity (by undertaking the Government's Baseline Personnel Security Standard) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment.
- b. Where the Contractor requires information on the Government's Baseline Personnel Security Standard (the Standard) or security clearance for his Representatives or is not in possession of the relevant rules, regulations or requires guidance on them, he shall apply in the first instance to the Project Manager.
- c. On request, the Contractor shall be able to demonstrate to the Authority that the Contractor's processes to assure compliance with the standard have been carried out satisfactorily. Where that assurance is not already in place, the Contractor shall permit the Authority to inspect the processes being applied by the Contractor to comply with the Standard.
- d. The Contractor shall comply and shall ensure that his Representatives comply with the rules, regulations and requirements that are in force whilst at that Establishment which shall be provided by the Authority on request.  
When on board ship, compliance with the rules, regulations, and requirements shall be in accordance with the Ship's Regulations as interpreted by the Officer in Charge. Details of those rules, regulations and requirements shall be provided to the Authority on request by the Officer in Charge.

## **G. TRANSPORT OVERSEAS**

27.12 Where the Contractor's Representatives are required by the Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided free of charge by the Authority whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Contractor shall make such arrangements through the Project Manager named for this purpose in the Contract. When such transport is not available within a reasonable time, or in circumstances where the Contractor wishes his Representatives to accompany materiel for installation which he is to arrange to be delivered, the Contractor shall make his own transport arrangements. The Authority shall reimburse the Contractor's costs for such transport of his Representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Contractor's Representatives locally overseas which is necessary for the purposes of the Contract shall be provided wherever possible by the Authority and, where so provided, will be free of charge.

## **H. MEDICAL TREATMENT OVERSEAS**

27.13 Out-patient medical treatment given to the Contractor's Representatives by a Service Medical Officer or other Government Medical Officer at a Government Establishment overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Establishment, and transportation of the Contractor's Representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Contractor at the appropriate local rate.

## **I. INJURIES, DISEASE AND DANGEROUS OCCURENCES**

27.14 The Contractor shall report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) to the Officer in Charge of the relevant Government Establishment. This would be in addition to any report, which the Contractor may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).

## **J. DEPENDANTS OF CONTRACTORS REPRESENTATIVES**

27.15 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Contractor's Representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current MOD rates.

## **K. HEALTH AND SAFETY HAZARD CONTROL**

27.16 Where the Contractor enters a Government Establishment for the purpose of performing work under the Contract:

- a. The Contractor shall notify the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract of:
  - i) any health and safety hazards associated with the work to be performed by him or any of his Representatives;
  - ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and
  - iii) any precautions to be taken by him as well as any precautions which, in his opinion, ought to be taken by the Authority, in order to control such risks.
- b. The Authority shall notify the Contractor of:
  - i. any health and safety hazards which may be encountered by the Contractor or any of his Representatives on the Government Establishment;
  - ii. any foreseeable risks to the health and safety of the Contractor or any of his Representatives, associated with such hazards; and
  - iii. any precautions to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks.
- c. The Contractor shall notify his Representatives of and, where appropriate, provide adequate instruction in relation to:
  - i. the hazards, risks and precautions notified by him to the Authority under sub-Clause 27.16.a);
  - ii. the hazards, risks and precautions notified by the Authority to the Contractor under sub-Clause 27.16.b); and
  - iii. the precautions which, in his opinion, ought to be taken by his Representatives in order to control those risks.
- d. The Contractor shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract with:
  - i. copies of those sections of his own and, where appropriate, his Representatives' Safety Policies which are relevant to the risks notified under sub-Clause 27.16.a);
  - ii. copies of any related risk assessments; and Contractor's Personnel At Government Establishments
  - iii. copies of any notifications and instructions issued by him to his Representatives under sub-Clause 27.16.c).
- e. The Authority shall provide the Contractor with:

- i. copies of those sections of its own Safety Policies which are relevant to the risks notified under sub-Clause 27.16.b);
- ii. copies of any related risk assessments; and
- iii. copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under sub-Clause 27.16.c).

## **28. ACCESS AND FACILITIES TO BE PROVIDED BY THE CONTRACTOR**

- 28.1 The Contractor shall provide to the Authority's Representatives, following reasonable notice, relevant accommodation / facilities, at no direct cost to the Authority, and all reasonable access to its premises for monitoring the Contractor's progress and quality standards in performing the Contract.
- 28.2 As far as reasonably practical, the Contractor shall ensure that the provisions of clause 1 are included in their subcontracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such subcontractors.

## **29. PUBLICITY**

- 29.1 Unless expressly permitted in writing by the Authority, the Contractor shall not publish or permit to be published either alone or in conjunction with any other person any information, articles, photographs or other illustrations relating to the business of the Authority, their servants or employees.

## **30. MATERIAL BREACH**

- 30.1 In addition to any other rights and remedies, the Authority shall have the right to terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Contractor where the Contractor is in material breach of its obligations under the Contract.
- 30.2 Where the Authority has terminated the Contract under Clause 30.1, the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
- a. carrying out any work that may be required to make the Contractor deliverables comply with the Contract; or
  - b. obtaining the Contractor Deliverable in substitution from another supplier.

## **31. BREAK**

- 31.1 The Authority shall have the right to terminate the Contract or the charter of the vessel chartered under the terms of the Contract by giving the Contractor three (3) calendar months written notice of the termination. Upon the expiry of the three calendar months the Contract shall terminate without prejudice to the rights of the parties already accrued up to the date of termination.
- 31.2 In the event of the Authority terminating the Contract pursuant to Clause 31.1, the Authority shall [subject to the Contractor taking all reasonable steps to mitigate such loss] compensate the Contractor for loss of expected income from the point of termination for the remaining duration of the Contract. Any compensation payments shall not exceed the daily hire rate in accordance with Clause 11 multiplied by the remaining days of hire which have been lost following the termination. However, the Authority shall not be liable to compensate the Contractor for payment for bunkers or any other costs.
- 31.3 If any particular case hardship to the Contractor should arise from the operation of this Clause it shall be open to the Contractor to refer the circumstances to the Authority who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Authority on any matter or thing arising out of this Clause shall be final and conclusive.

## **32. VALUE ADDED TAX**

- 32.1 The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supplies of Articles and/or Services by the Contractor to the Authority.
- 32.2 If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Authority shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supplies of Articles and/or Services, and all other payments under the Contract according to the law at the relevant tax point. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HMRC.
- 32.3 The Contractor is responsible for the determination of VAT liability. The Contractor is to consult his local VAT office (and not the Commercial Officer) in cases of doubt. The Contractor shall notify the Commercial Officer of the Authority's VAT liability under the Contract, and any changes to it, when the liability is other than at the standard rate of VAT.

- 32.4 Where supplies of Articles and/or Services come within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Articles and/or Services.
- 32.5 Where Articles and/or Services are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non- EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Articles and/or Services.
- 32.6 In relation to the Articles and/or Services supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (and/or similar EU and non-EU input taxes). However, these input taxes will be allowed where it is proven to the Authority that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so

### **33. BANKRUPTCY AND INSOLVENCY**

- 33.1 The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written notice of such termination to the Contractor at any time after any of the following events:

Where the Contractor is an individual or a firm

- a. the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
- b. the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
- c. the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors; or
- d. the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within 3 working days from the date on which the Contractor is notified of the presentation; or
- e. the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
- f. where the Contractor is either unable to pay his debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay his debts if:

(1) he has failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within 21 days of service of the Statutory Demand on him; or

(2) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.

- g. the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within 3 working days from the date on which the Contractor is notified of the presentation; or
- the court making an award of sequestration in relation to the Contractor's estates.
- h. Where the Contractor is a company registered in England the presentation of a petition for the appointment of an administrator; unless it is withdrawn within 3 working days from the date on which the Contractor is notified of the presentation; or
- i. the court making an administration order in relation to the company; or
- j. the presentation of a petition for the winding-up of the company unless it is withdrawn within 3 working days from the date on which the Contractor is notified of the presentation; or
- k. the company passing a resolution that the company shall be wound-up; or
- l. the court making an order that the company shall be wound-up; or
- m. the appointment of a Receiver or manager or administrative Receiver.

33.2 Where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified in sub- Clauses 33.1 h. to m. inclusive above.

33.3 Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and the Contractor.

#### **34. EQUALITY**

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

34.2 Without prejudice to the generality of the obligation in Clause 34.1 above, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where the Contract is being performed.

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

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

## **35. TRANSFER**

- 35.1 Neither party to the Contract shall give, bargain, sell, assign, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part thereof, without the prior consent in writing of the other party.
- 35.2 Subject to the Contractor obtaining the prior written consent of the Authority in accordance with clause 35.1 above, the Contractor may assign to a third party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest incurred by the Authority under any Contract clause concerning the late payment of debts).
- 35.3 Any assignment of the right to receive payment of the Contract Price (or any part thereof) under clause 35.2 above shall be subject to:
- a) reduction of any sums in respect of which the Authority exercises its right of recovery under Rider Condition 15 'Payment', or any narrative clause concerning recovery of sums due;
  - b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
  - c) the Authority receiving notification under both clause 35.4 and sub-clause 35.5(b) below.
- 35.4 In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause 35.2 above, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 35.5 The Contractor shall ensure that the Assignee:
- a) is made aware of the Authority's continuing rights under sub-clauses 35.3(a) and 35.3(b) of this Rider Condition; and
  - b) notifies the Authority of the Assignee's contact information and bank account details, to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with sub-clauses 35.3(a) and 35.3(b) above.
  - c) The provisions of the Contract, including any clauses concerning payment, shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

## **36. CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

- 36.1 The Contractor shall not do, and warrants that in entering the Contract it has not done any of the following (hereafter referred to as 'prohibited acts'):
- a. offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
    - (1) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or
    - (2) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.



- c. enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- 36.2 If the Contractor, its employees, agents or any subcontractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
- a. to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
  - b. to recover from the Contractor the amount or value of any such gift, consideration or commission; and
  - c. to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.
- 36.3 In exercising its rights or remedies under this Condition, the Authority shall:
- a. act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act or committing of any offence under the Bribery Act 2010;
  - b. give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
    - (1) requiring the Contractor to procure the termination of a subcontract where the prohibited act or committing of any offence under the Bribery Act 2010 is that of a subcontractor or anyone acting on its or their behalf;
    - (2) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a subcontractor or anyone acting on its behalf) where the prohibited act or committing of any offence under the Bribery Act 2010 is that of such employee.
- 36.4 Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Condition.

### 37. **WAIVER**

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

## **38. DISCLOSURE OF INFORMATION**

38.1 'Information' means any information in any written or other tangible form disclosed to one party by or on behalf of the other party under or in connection with the Contract, including information provided in the tender or negotiations which preceded the award of the Contract.

38.2 Subject to Clauses 38.5 to 38.9 each party:

- a. shall treat in confidence all Information it receives from the other;
- b. shall not disclose any of that Information to any third party without the prior written consent of the other party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
- c. shall not use any of that Information otherwise than for the purpose of the Contract; and
- d. shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

38.3 The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:

- a. is disclosed to its employees and sub-contractors, only to the extent necessary for the performance of the Contract; and
- b. is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any sub-contract under it.

38.4 The Contractor shall ensure that his employees are aware of his arrangements for discharging the obligations at Clauses 38.2 and 38.3 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

38.5 Clauses 38.2 and 38.3 shall not apply to any Information to the extent that either party:

- a. exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
- b. has the right to use or disclose the Information in accordance with other conditions of the Contract; or
- c. can show:
  - i. that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties;
  - ii. that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the Contract;
  - iii. that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or

- iv. from its records that the same information was derived independently of that received under or in connection with the Contract; provided the relationship to any other Information is not revealed.

38.6 Neither party shall be in breach of this Condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the parties under this Condition.

38.7 The Authority may disclose the Information:

- a. on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
- b. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- c. to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- d. on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in the 'Primary Condition of Contract' (including benchmarking organisation) for any purpose relating to or connected with this Contract;
- e. on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- f. on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;
- g. and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Rider Condition.

38.8 Before sharing any Information in accordance with clause 38.7 above, the Authority may redact the Information. Any decision to redact information made by the Authority shall be final.

38.9 The Authority shall not be in breach of the Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 ("the Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this Condition shall affect the Contractor's rights at law.

38.10 Nothing in this Condition shall affect the parties' obligations of confidentiality where information is disclosed orally in confidence.

### **39. SEVERABILITY**

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

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

### **40. RIGHTS OF THIRD PARTIES**

40.1 Except as provided in Clause 40.2 of this Condition and notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a party to the Contract to enforce any term of the Contract in his own right and the parties to the Contract declare that they have no intention to grant any such right.

40.2 Where, and only where, either by a term in a Condition which has been expressly included in the Contract or by another term which specifically refers to this Condition, the Contract expressly states that a third party shall be entitled to enforce a term of the Contract:

- a. the said third party shall be entitled to enforce that term in his own right;
- b. the Contractor shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Condition) relevant to the exercise of that right; and
- c. the third party's rights shall be subject to any provision in the Contract:
  - i. that provides for the submission of disputes under the Contract generally or the said rights in particular to arbitration (as detailed in the Law and Litigation Condition within the SHELLTIME 4 Charter Party Agreement); and
  - ii. that stipulates the law and jurisdiction that will govern the Contract (as detailed in the Law and Litigation Condition within the SHELLTIME 4 Charter Party Agreement).

#### **41. CHANGE OF CONTRACTOR CONTROL**

- 41.1 The Contractor shall notify the Representative of the Authority at the address given in clause 41.3, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.
- 41.2 For the purposes of this Condition 'control' means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:
- a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or
  - b. by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor.
  - c. and a change of control occurs if a person who controls the Contractor ceases to do so or if another person acquires control of the Contractor.
- 41.3 Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:
- Mergers & Acquisitions Section  
Supplier Relations Team  
Poplar 1 # 2119  
MOD Abbey Wood,  
Bristol, BS34 8JH
- 41.4 The Representative of the Authority shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award.
- 41.5 The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with clause 41.1. The Authority shall act reasonably in exercising its right of termination under this Condition.

- 41.6 If the Authority exercises its right to terminate in accordance with clause 41.5 the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this clause 41 must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.
- 41.7 Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Condition.

## **42. CONTRACTOR'S RECORDS**

- 42.1 The Contractor shall maintain all records specified in and in connection with the Contract (expressly or otherwise), and make them available to the Authority when requested on reasonable notice.
- 42.2 Subject to the provisions of Rider Condition 38 'Disclosure of Information', the Contractor shall permit all records referred to in this Condition to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.
- 42.3 Unless the Contract specifies otherwise the records referred to in this Condition shall be retained for a period of at least 6 years from:
- a. the end of the Contract term;
  - b. the termination of the Contract; or
  - c. the final payment,
- whichever occurs latest.

## **43. TAX COMPLIANCE**

- 43.1 In this Condition, unless the context otherwise requires, the following words and expressions have the following meanings:
- a. "DOTAS" means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to:
    - i. tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and
    - ii. provide prescribed information on those arrangements or proposals within set time limits as:
      - (1) contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and as

(2) extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

- b. "General Anti-Abuse Rule" means:
  - i. the legislation in Part 5 of the Finance Act 2013; and
  - ii. any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.
- c. "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others.
- d. "Relevant Tax Authority" means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.
- e. "Occasion Of Tax Non-Compliance (OOTNC)" means:
  - i. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
    - (1) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
    - (2) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or
  - ii. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date this Contract came into effect or to a civil penalty for fraud or evasion.

## **WARRANTY**

- 43.2 The Contractor represents and warrants that at the date this Contract came into effect, it has notified the Authority in writing of any OOTNC or any litigation that it is involved in that is in connection with any OOTNC.

## **DUTY OF THE CONTRACTOR TO NOTIFY OOTNC**

- 43.3 If, at any point during the performance of this Contract, an OOTNC occurs, the Contractor shall:
- a. notify the Authority in writing of such fact within 20 Working Days of its occurrence; and
  - b. promptly provide to the Authority:
    - i. details of the steps which the Contractor is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - ii. such other information in relation to the OOTNC as the Authority may reasonably require.

- 43.4 For the avoidance of doubt, the obligation at Clause 43.3 also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions, so the Authority can understand the nature and seriousness of the OOTNC.
- 43.5 Further to the provision of Rider Condition 30 'Material Breach', the Authority shall be entitled to terminate the Contract in the event that:
- a. the warranty given by the Contractor pursuant to Clause 43.2 is materially untrue; or
  - b. the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 43.3; or
  - c. the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.
- 43.6 In the event that the Authority terminates the Contract under Clause 43.5, the Authority shall be entitled to recover from the Contractor:
- a. the amount of any loss resulting from the termination; and
  - b. any other loss sustained in consequence of any breach of this Condition, where the Contract has not been terminated.

#### **DUTIES OF THE AUTHORITY**

- 43.7 In exercising its rights or remedies under this Condition, the Authority shall:
- a. act in a reasonable and proportionate manner taking into account, among other things:
    - i. the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
    - ii. any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC.
  - b. Without prejudice to Clause 43.7, seriously consider, where appropriate, action other than termination of the Contract to deal with the failure by the Contractor to comply with this Condition.
- 43.8 The Authority shall not in any case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed the total price of the Contract Deliverables payable under the Contract.



#### **44. TASKING**

- 44.1 During the time charter, the Authority will Task the Contractor to undertake work as detailed in the Statement of Requirements at Annex A to the Rider Conditions. The Authority will not accept liability for any additional costs incurred in the event of the Contractor not following the procedures and process for tasking.
- 44.2 Upon receipt of a Task, the Contractor shall inform the Authority immediately if there are any issues likely to affect the successful delivery of the Task.
- 44.3 The Authority may require, at short notice, to change the Task which may be due to events outside of the Authority's control. The Authority will provide as much notice as possible to the Contractor and will amend the Task accordingly on receipt of the amended Task, the Contractor will notify the Authority of the impact of the amendment.
- 44.4 Where the Contractor has evidence to show that they could not have foreseen a matter which affected the execution of the Task, then the Contractor shall provide such evidence to the Authority for its review.
- 44.5 The Contractor is fully responsible for the delivery of cargo under the Task.

#### **45. PROTECTION OF PERSONAL DATA**

- 45.1 In this Condition the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:
- a) 'Contractor Personnel' means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under the Contract;
  - b) 'Data Loss Event' means any event that results in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach;
  - c) 'Data Protection Legislation' means
    - 1. the GDPR, the LED and any applicable national implementing Laws as amended from time to time;
    - 2. the DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; and
    - 3. all applicable Law about the processing of personal data and privacy;
  - d) 'Data Protection Impact Assessment' means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
  - e) 'Data Subject Access Request' means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
  - f) 'DPA 2018' means the Data Protection Act 2018;
  - g) 'GDPR' means the General Data Protection Regulation (Regulation (EU) 2016/679);
  - h) 'Law' means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the

meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

- i) 'LED' means the Law Enforcement Directive (Directive (EU) 2016/680);
- j) 'Protective Measures' means appropriate technical and organisational measures which includes:

- 1. pseudonymising and encrypting Personal Data; ensuring confidentiality, integrity, availability and resilience of systems and services;
- 2. ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
- 3. regularly assessing and evaluating the effectiveness of the such measures adopted by it;

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

l) The following expressions shall have the same meanings as in Article 4 of the GDPR:

- 1. Controller;
- 2. Processor;
- 3. Data Subject;
- 4. Personal Data;
- 5. Personal Data Breach; and
- 6. Data Protection Officer.

## **DATA PROTECTION**

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

45.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in DEFFORM 532, Annex D to Rider Conditions, by the Authority and may not be determined by the Contractor. The completed DEFFORM 532 shall form part of the Specification for the Contract.

45.4 The Contractor shall notify the Authority without undue delay if it considers that any of the Authority's instructions infringe the Data Protection Legislation. The Authority will not consider such notification to constitute formal legal advice.

- 45.5 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- a. a systematic description of the envisaged processing operations and the purpose of the processing;
  - b. an assessment of the necessity and proportionality of the processing operations in relation to the services provided under the Contract;
  - c. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - d. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 45.6 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under the Contract:
- a. process that Personal Data only in accordance with DEFFORM 532, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
  - b. ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
    1. nature of the data to be protected;
    2. harm that might result from a Data Loss Event;
    3. state of technological development; and
    4. cost of implementing any measures;
  - c. ensure that:
    1. the Contractor Personnel do not process Personal Data except in accordance with the Contract (and in particular DEFFORM 532);
    2. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
      - a. have the necessary probity by undertaking the Government's Baseline Personnel Security Standard or other standard as specified in the Contract;
      - b. are aware of and comply with the Contractor's duties under this clause;
      - c. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by the Contract; and
      - d. have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - d. not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
    - (1) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;

- (2) the Data Subject has enforceable rights and effective legal remedies;
- (3) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
- (4) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

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

45.7 Subject to clause 45.8, the Contractor shall notify the Authority without undue delay if, in connection with Personal Data processed under the Contract, it:

- a. receives a Data Subject Access Request (or purported Data Subject Access Request);
- b. receives a request to rectify, block or erase any Personal Data;
- c. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- d. receives any communication from the Information Commissioner or any other regulatory authority;
- e. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- f. becomes aware of a Data Loss Event.

45.8 The Contractor's obligation to notify under clause 45.7 shall include the provision of further information to the Authority in phases, as details become available.

45.9 Taking into account the nature of the processing, the Contractor shall provide the Authority with assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 45.7 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- a. the Authority with full details and copies of the complaint, communication or request;
- b. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- c. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- d. assistance as requested by the Authority following any Data Loss Event;
- e. assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

The Contractor shall maintain complete and accurate records and information as necessary to fulfil its obligations under this clause 45.9.

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

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

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

- a. notify the Authority in writing of the intended Sub-processor and processing;
- b. obtain the written consent of the Authority;
- c. enter into a written Contract with the Sub-processor which give effect to the terms set out in this Condition such that they apply to the Sub-processor; and
- d. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

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

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

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

45.16 Any Contract amendments resulting from clause 45.14 and/or 45.15 shall be conducted in accordance with any change control procedure as set out in the Contract.

## **46. UNIQUE IDENTIFIERS**

46.1 For the purposes of this Condition, Unique Identifiers comprise the following:

- a. Unique Order Identifier (UOI) generated by the Contracting, Purchasing & Finance (CP&F) electronic procurement tool for non inventory purchase orders;
- b. Unique Receipt Reference Identifier (URRI), generated by CP&F for inventory purchase orders; or
- c. Electronic Business Capability (EBC) Unique Package Identifier (EUPI) generated for EBC contractor logistic support contracts. EUPIs comprise two parts, the first part being the identifier allocated by the Authority and the second part being the identifier generated by the Contractor.

## **USE**

- 46.2 For CP&F purchase orders, the Contract or an order issued under a Contract will reference UOIs or URRIs, or both. The application of UOIs and URRIs is at the line item level. The Contractor must quote the applicable Unique Identifier in any communication concerning a line item.
- 46.3 For EBC contractor logistic support contracts, the Contractor will generate EUPIs in fulfilling demands raised under a contractor logistic support contract. A EUPI applies for each package and the Contractor must quote it in any communication concerning a package. Where a delivery includes more than one package, each package must have a separate EUPI.
- 46.4 Confirmation of receipt of deliveries by Unique Identifiers shall not be construed as an acceptance of the Articles.

## **47. CHILD LABOUR AND EMPLOYMENT LAW**

- 47.1 In this Condition, "Child Labour Legislation" means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract.
- 47.2 The Contractor shall comply in all material respects with Child Labour, Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.
- 47.3 The Contractor agrees to take reasonable efforts to reflect this Condition in any subcontract that it enters into to satisfy the requirements of the Contract and to require its subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

## **48. ACCOUNTING FOR PROPERTY OF THE AUTHORITY**

- 48.1 The Contractor shall:
- a. maintain a Public Store Account (PSA), as defined in DEFSTAN 05-099, which shall include a complete list of all property of the Authority, as in Clause 2, and record for that property all transactions or other accounting information specified at Annex C to these Rider Conditions;
  - b. supply to the Authority quarterly reports on the current PSA holdings. At least one report in any twelve-month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in DEFSTAN 05-099. The other three reports submitted in the period may be un-reconciled advisory reports. The submission by the Contractor and receipt by the

Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under the Contract;

- c. ensure that the PSA is available for inspection by the Authority at any reasonable time;
- d. on being given two months' notice or any other period as has been stated in the Contract permit, and co-operate with, the Authority to conduct audits of the PSA in a manner to be determined by the Authority; where the Authority has reasonable grounds to doubt the integrity of the PSA to the extent that the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;
- e. retain the PSA for a period of three years after disposal of the last item of the property of the Authority, or for any other period as may be specified in the Contract;
- f. if the Authority agrees that a subcontractor at whatever level of subcontracting shall have responsibility in the subcontractor's PSA for property of the Authority issued in aid of the Contract, the Contractor shall include in any subcontract with those subcontractors only the provisions corresponding to those set out in this Condition that apply to property of the Authority issued in aid of the subcontract, in particular Clauses 48.1, 4.2, 48.4 and 48.7; and
- g. manage the Government Furnished Assets (GFA) component of the PSA in accordance with the provisions of DEFSTAN 05-099; and implement any new edition of or amendment to DEFSTAN 05-099 subject to Rider Condition 26 – Specification Changes within three months of the publication date of the new edition. These amendments shall not have retrospective effect.

48.2. For the purposes of this Condition 'property of the Authority' means GFA and fixed assets, including property issued under Rider Condition 24 Issued Property and property of the Authority issued to the Contractor under any other authorising document except for property vested in the Authority

48.3. For the avoidance of doubt, it is a condition of this Contract that this Condition shall apply to all property issued to the Contractor from the date of this Contract, whether in aid of the Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the date of this Contract may be subject to separate contractual arrangements.

48.4. The obligations of the Contractor arising under this Condition in respect of property of the Authority issued in aid of the Contract shall survive completion of the Contract and shall not be completed until all such obligations are fulfilled including the provisions of sub-Clause 48.1.e).

48.5. The obligations of the Contractor arising, under this Condition, in respect of property of the Authority unconnected with the Contract, shall survive completion of the Contract and shall not be completed until all those obligations are fulfilled. Including the provisions of sub-Clause 48.1.e) unless and until a subsequent contract containing Accounting for the Property of the Authority Condition is placed with the Contractor, at which time obligations, in respect of any remaining property of the Authority, unconnected with the Contract, shall be subsumed in the subsequent contract.

48.6. If, after completion of the Contract, no subsequent contract is placed containing Accounting for the Property of the Authority Condition within the period detailed at sub-Clause 48.1.e), then the obligations of the Contractor arising under this Condition in respect of property of the Authority unconnected with the Contract shall cease on expiry of the period detailed at sub-Clause 48.1.e).

48.7. The Authority reserves the right to amend Annex C to these Rider Conditions without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. For the purposes of this Clause, Annex A shall be regarded as a Specification and subject to the terms of Rider Condition 26 Specifications Change. If the Authority exercises this right:

- a. the Contractor shall implement the amendment to Annex C to these Rider Conditions at the commencement of the Authority's next accounting year provided that a notice of six months or such other period as may expressly be agreed between the Authority and Contractor is given to the Contractor. These amendments shall not have retrospective effect; and
- b. the Contractor shall inform the Authority as soon as practicable, but in any event within three months of notice having been given, if the Contractor cannot comply with the amendment to Annex C to these Rider Conditions.

48.8 The Contractor is not obliged to maintain and report on his PSA records in a format that is different from his original records. Electronic formats are the preferred format for reporting under Clause 48.1.b) of this Condition. If electronic formats are used for reporting, the following formats are acceptable:

- a. Single MS Access Table
- b. Unformatted MS Excel Spreadsheet

48.9 Other electronic formats may be suitable, subject to agreement with DBS Finance ADMT - see Box 8 of DEFFORM 111 for points of contact. Reports required under Clause 48.1.b) of this Condition are to be submitted to DBS Finance ADMT - see Box 8 of DEFFORM 111.

## **49. CYBER**

### **Definitions**

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

**“Associated Company”** means:

- a. any associated company of the Contractor from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and
- b. any parent undertaking or subsidiary undertaking of the Contractor from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;



**“Contractor Deliverables”** means the works, goods and / or the services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract;

**“Cyber Risk Level”** means the level of Cyber Risk relating to this Contract or any Sub-contract assessed in accordance with the Cyber Security Model;

**“Cyber Security Implementation Plan”** means the plan referred to in Clause 49.4 of this Condition including but not limited to any risk-balance case and mitigation measures required by the Authority;

**“Cyber Security Incident”** means an event, act or omission which gives rise or may give rise to:

- a. unauthorized access to an information system or electronic communications network;
- b. disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network;
- c. destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
- d. removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
- e. the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so.

**“Cyber Security Instructions”** means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the Contractor;

**“Cyber Security Model”** and **“CSM”** mean the process by which the Authority ensures that MOD Identifiable Information is adequately protected from Cyber Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire;

**“CSM Risk Assessment Process”** means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Level for this Contract and any Sub-contract;

**“CSM Supplier Assurance Questionnaire”** means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Contractor to demonstrate compliance with this Condition;

**“Data”** means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media.

**“DEFSTAN 05-138”** means the Defence Standard 05-138 as amended or replaced from time to time;

**“Electronic Information”** means all information generated, processed, transferred or otherwise dealt with under or in connection with the Contract, including but not limited to Data, recorded or preserved on any information system or electronic communications

network;

**“Good Industry Practice”** means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;

**“ISN”** means Industry Security Notices issued by the Authority to the Contractor whether directly or by issue on the gov.uk website at:  
<https://www.gov.uk/government/publications/industry-security-notices-isns>;

**“JSyCC WARP”** means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;

**“MOD Identifiable Information”** means all Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure.

**“NSA/DSA”** means, as appropriate, the National or Designated Security Authority of the Contractor that is responsible for the oversight of the security requirements to be applied by the Contractor and for ensuring compliance with applicable national security regulations;

**“Sites”** means any premises from which Contractor Deliverables are provided in connection with this Contract or from which the Contractor or any relevant Sub-contractor manages, organises or otherwise directs the provision or the use of the Contractor Deliverables and/or any sites from which the Contractor or any relevant Sub-contractor generates, processes, stores or transmits MOD Identifiable Information in relation to this Contract;

**“Sub-contract”** means any sub-contract at any level of the supply chain, whether awarded directly by the Contractor or indirectly by any lower tier Sub-contractor or Associated Company, which is entered into as a consequence of or in connection with this Contract;

**“Sub-contractor”** means a sub-contractor of the Contractor or any Associated Company whether a direct Sub-contractor or at any lower level of the supply chain who provides any Contractor Deliverables in connection with this Contract;

**“Supplier Cyber Protection Service”** means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

### **Authority Obligations**

49.2 The Authority shall:

- a. determine the Cyber Risk Level appropriate to this Contract and, where the Contractor has not already been notified of the Cyber Risk level prior to the date of this Contract, shall provide notification of the relevant Cyber Risk level and the appropriate Cyber Security Instructions to the Contractor as soon as is reasonably practicable; and
- b. notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract.

## Contractor Obligations

49.3 The Contractor shall, and shall procure that its Sub-contractors shall:

- a. comply with DEFSTAN 05-138;
- b. complete the CSM Risk Assessment Process in accordance with the Authority's ensuring that any change in the Cyber Risk Level is notified to any affected Sub-contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain which has or may have an impact on the Cyber Risk Level of this Contract or on receipt of any reasonable request by the Authority;
- c. carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;
- d. having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Condition in accordance with Good Industry Practice *provided always that* where there is a conflict between the Contractor's obligations under a) above and this d) the Contractor shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
- e. comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
- f. notify the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the Contractors NSA/DSA, and in the case of a Sub-contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;
- g. in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives and its NSA/DSA to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Contractors NSA/DSA in the circumstances and taking into account the Cyber Risk Level; and
- h. consent to the Authority recording and using information obtained in relation to the Contract for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service or elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the Contractor and / or Sub-contractor as appropriate; and
- i. include provisions equivalent to 49.8 of this Condition in all Sub-contracts imposing provisions equivalent to this Condition 49.4 (the "equivalent provisions") and, where a Sub-contractor breaches terms implementing this Condition in a Sub-contract, the Contractor shall, and shall procure that its Sub-contractors shall, in exercising their rights or remedies under the relevant Sub-contract: i). notify the Authority of any such breach and consult with the Authority regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Authority's views into consideration; and
- j. have regard to the equivalent provisions.

*PROVIDED ALWAYS THAT* where the Contractor has notified the Authority that it or one or more of its Sub-contractors cannot comply with a) to j) above the Authority and Contractor will seek to agree a Cyber Security Implementation Plan and where the Authority has agreed a Cyber Security Implementation Plan with the Contractor, the Contractor shall, and shall procure that its Sub-contractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon 49.3 a) to 49.3 j) above shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the provisions of any agreed alternative dispute resolution procedure shall apply.

#### **Management Of Sub-Contractors**

- 49.4 The Authority agrees that the Contractor shall be entitled to rely upon the self-certification by a Sub-contractor of its compliance with its obligations pursuant to Condition 49.3. In the event that a Sub-contractor is found to be in breach of its obligations in Condition 49.3, and where the Contractor has relied upon the Sub-contractor's self-certification, the Contractor shall not be held to be in breach of this Condition.
- 49.5 Where the Contractor becomes aware that a Sub-contractor is not complying with its obligations, the Contractor shall notify the Authority and provide full details of the Sub-contractor's non-compliance as soon as reasonably practicable and shall consult with the Authority as to the appropriate course of action which may include but not be limited to the agreement of a remedial plan or termination of the Sub-contract having regard to Condition 49.1 j).
- 49.6 Having regard to the Authority's views, the Contractor shall take all reasonable measures to address any non-compliance of a Sub-contractor in accordance with the reasonable timescales required by the Authority. Where the Contractor fails to do so, this shall amount to a breach of this Condition and the provisions of 49.17 or 49.18 as appropriate shall apply.
- 49.7 The Contractor shall, and shall procure that its Sub-contractors shall, include provisions equivalent to this Condition Management of Sub-Contractors in all Sub-contracts which flow down the obligations set out in Condition 49.3 of this Contract.

#### **Records**

- 49.8 The Contractor shall keep and maintain, and shall ensure that any Sub-contractor shall keep and maintain, until 6 years after termination or expiry of this Contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:
- a) details of all MOD Identifiable Information relating to the Contractor Deliverables provided under this Contract; and
  - b) copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Condition, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-contractor.

49.9 The Contractor shall and shall ensure that any Sub-contractor shall on request provide the Authority, the Authority's representatives and/or the Contractors NSA/DSA such access to those records as may be required in connection with this Contract.

#### **Audit**

49.10 Except where an audit is imposed on the Authority by a regulatory body or there is a Cyber Security Incident in which case the Contractor agrees, and shall procure that its Sub-contractors agree, that the Authority and its representatives, in coordination with the Contractors NSA/DSA or the NSA/DSA on behalf of the Authority, may conduct such audits as it considers in its absolute opinion necessary, the Authority, its representatives and/or the Contractors NSA/DSA may, not more than twice in any calendar year and for a period of 6 years following the termination or expiry of this Contract, whichever is the later, conduct an audit for the following purposes:

- a. to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;
- b. to review the Contractor's and/or any Sub-contractor's compliance with its obligations under this Condition; and
- c. to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of 49.9 a and 49.9 b above.

49.11 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-contractor or delay the provision of the Contractor Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.

49.12 The Contractor shall, and shall ensure that any Sub-contractor shall on demand provide the Authority and any relevant regulatory body, including the Contractor's NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:

- a. all information requested by the Authority within the permitted scope of the audit;
- b. reasonable access to any Sites controlled by the Contractor or any Associated Company and any Sub-contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Contract and, where such Sites and/or equipment are outwith the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
- c. access to any relevant staff.

49.13 The Authority shall endeavour to (but is not obliged to) provide at least 15 calendar days' notice of its intention to conduct an audit.

49.14 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Condition, unless the audit identifies a material breach of the terms of this Condition by the Contractor and/or Sub-contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

### **Breach of Obligations**

49.15 In exercising its rights or remedies under this Condition, the Authority shall:

- a. act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of this Contract; and
- b. give all due consideration, where appropriate, to action other than termination of the Contract, including but not limited to a remedial period if this is appropriate in all the circumstances.

49.16 Where the Cyber Risk Level of this Contract is assessed to be a **moderate or high**, and the Contractor breaches the terms of this Condition, the Authority shall be entitled:

- a. to terminate the Contract (whether in whole or in part) and to claim damages in accordance with Rider Condition 30 Material Breach as though such breach is a material breach; and
- b. where the Contract has not been terminated, to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, subject to any provision which is agreed elsewhere in this Contract.

49.17 Where the Cyber Risk Level of this Contract is assessed to be **very low or low**, and the Contractor breaches the terms of this Condition, the Authority shall be entitled:

- a. to recover from the Contractor the amount of any loss sustained in consequence of any breach of this Condition, subject to any provision which is agreed elsewhere in this Contract; and
- b. where the Contractor does not comply with any reasonable instructions issued by the Authority or the Contractors NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with Rider Condition 30 Material Breach as though such breach is a material breach.

49.18 Where the Contractor commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Condition the Authority shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages in accordance with Rider Condition 30 Material Breach as though such breach is a material breach.

### **General**

49.19 On termination or expiry of this Contract the provisions of this Condition excepting 49.3 a and 49.3 b above shall continue in force so long as the Contractor and/or Sub-contractor holds any MOD Identifiable Information relating to this Contract.

- 49.20. Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Condition that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 49.21 The Contractor agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 and/or the Cyber Risk Level. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Level, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the Contractor may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Level *provided always that* the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and *further provided that* such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.
- 49.22 Subject to 49.21 above, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with any agreed change control procedure to determine the request for adjustment or extension. The Contractor must deliver a Contractor Change Proposal to the Authority within 8 weeks of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Level or such longer period as may be agreed by the Parties, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Authority shall not be required to withdraw any Authority Notice of Change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Level whether or not the Contractor Change Proposal is rejected. In the event that the Contractor does not agree with the Authority's determination, then the provisions of this Clause or any agreed alternative dispute resolution procedure shall apply.
- 49.23 The Contractor shall not recover any costs and/or other losses under or in connection with this Condition where such costs and/or other losses are recoverable or have been recovered by the Contractor elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Contractor is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or losses in other contracts between the Contractor and the Authority or with other bodies.

## SCHEDULE 1 TO MOD RIDER CONDITIONS

### 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:

i. **"Data Protection Legislation" means:**

(i) 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");

(ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and

(iii) all applicable Law about the processing of personal data and privacy;

**"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 1Part 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.

**PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT**

**PART A**

1. Pursuant to paragraph 2.1.1 of this Schedule 1Part 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 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 current or expected maternity or other statutory leave or other absence from work.

## Part B

### 1.7 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

### 2. DEFINITIONS

2.1 In this Schedule 1Part 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.

2.2 Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule 1,Part 1, in this Schedule 1Part 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.

### 3. EMPLOYMENT

#### 3.1 Information on Re-tender, Partial Termination, Termination or Expiry

3.1.1 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 application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
- b. supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule 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 3.1.1a or 3.1.1(b) up to the Subsequent Transfer Date as soon as reasonably practicable.

3.1.2 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 3.1.2 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.

3.1.3 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.

3.1.4 Within 14 days following the relevant Subsequent Transfer Date the Contractor shall provide to the Authority and/or any New Provider the

information set out in Part C of Appendix 2 of this Schedule 1 in respect of Subsequent Transferring Employees.

- 3.1.5 Paragraphs 3.1.1 and 3.1.2 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 3.1.1 and 3.1.2. Notwithstanding this paragraph 3.1.4, 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 3.1.1 or 3.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.
- 3.1.6 On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:
- a. materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
  - b. replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
  - c. reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
  - d. terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any



reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 3.1.1, 3.1.2, 3.1.3, 3.1.4 or 3.1.6 of this Schedule 1 Part 2.

- 3.1.7 The Authority may at any time prior to the period set out in paragraph 3.1.5 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.

### 3.2 Obligations in Respect of Subsequent Transferring Employees

- 3.2.1 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.

### 3.3 Unexpected Subsequent Transferring Employees

- 3.3.1 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 3.1.3 (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 3.3.1(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;

- 3.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 3.3.1c 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 3.3.

- 3.4 Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract
- 3.4.1 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.
- 3.4.2 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 3.4.1 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.
- 3.4.3 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 3.4.3, 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.

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

- 3.5.1 A New Provider may enforce the terms of paragraph 3.3 and 3.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 3.5.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 3.5.3 Nothing in this paragraph 3.5 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

### 3.6 General

- 3.6.1 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 3.1.1(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

4. Pursuant to paragraph 3.1.2 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:

4.1 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.

4.2 Superannuation and Pay

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

#### 4.3 Medical

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

#### 4.4 Disciplinary

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

#### 4.5 Further information

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

### **Part B**

#### 4.6 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.

### **PART C**

#### 4.7 Information to be provided within 14 days following a Relevant Transfer Date:

##### 4.7.1 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;

##### 4.7.2 Superannuation and Pay

- a. Cumulative pay for tax and pension purposes;
- b. Cumulative tax paid;
- c. National Insurance Number;

- d. National Insurance contribution rate;
- e. Other payments or deductions being made for statutory reasons;
- f. Any other voluntary deductions from pay;



## **50. DISPUTE RESOLUTION**

- 50.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract through negotiations between the respective representatives of the parties having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution (ADR) procedure on which the parties may agree.
- 50.2 In the event that the dispute or claim is not resolved by negotiation, or where the parties have agreed to use an ADR procedure, by the use of such procedure, the dispute shall be referred to arbitration.
- 50.3 The party initiating the arbitration shall give a written Notice of Arbitration to the other party. The Notice of Arbitration shall specifically state: that the dispute is referred to arbitration; and the particulars of the Contract out of or in relation to which the dispute arises.
- 50.4 Unless otherwise agreed in writing by the parties, the arbitration and this Condition shall be governed by the provisions of the Arbitration Act 1996.
- 50.5 It is agreed between the parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.
- 50.6 For the avoidance of doubt it is agreed between the parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the parties to the arbitration.

## **51. BIMCO EU Advance Cargo Declaration Clause for Time Charter Parties 2012**

- 51.1 If the Vessel loads cargo in any EU port or place destined for a port or place outside the EU ("Exported") or loads cargo outside the EU destined for an EU port or place or passing through EU ports or places in transit ("Imported"), the Charterers shall, for the purposes of this Clause, comply with the requirements of the EU Advance Cargo Declaration Regulations (the Security Amendment to the Community Customs Code, Regulations 648/2005; 1875/2006; and 312/2009) or any subsequent amendments thereto and shall, in their own name, and in their time and at their expense:
- (i) Have in place an EORI number (Economic Operator Registration and Identification);
  - (ii) Provide the Owners with a timely confirmation of (i) above as appropriate; and
  - (iii) Where the cargo is being:

- 51.2 Exported: Submit, or arrange for the submission of, a customs declaration for export or, if a customs declaration or a re-export notification is not required, an exit summary declaration; or
- 51.3 Imported: Submit, or arrange for the submission of, an entry summary declaration.
- 51.4 Unless otherwise permitted by the relevant customs authorities, such declarations shall be submitted to them electronically.
- 51.5 The Charterers assume liability for and shall indemnify, defend and hold harmless the Owners against any loss and/or damage and/or any expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Charterers' failure to comply with any of the provisions of sub-clause 51.1. Should such failure result in any delay then, notwithstanding any provision in this Charter Party to the contrary, the Vessel shall remain on hire.

## **52. BIMCO Piracy Clause for Time Charter Parties 2013**

- 52.1 The Vessel shall not be obliged to proceed or required to continue to or through, any port, place, area or zone, or any waterway or canal (hereinafter "Area") which, in the reasonable judgement of the Master and/or the Owners, is dangerous to the Vessel, cargo, crew or other persons on board the Vessel due to any actual, threatened or reported acts of piracy and/or violent robbery and/or capture/seizure (hereinafter "Piracy"), whether such risk existed at the time of entering into this Charter Party or occurred thereafter. Should the Vessel be within any such place as aforesaid which only becomes dangerous, or may become dangerous, after entry into it, the Vessel shall be at liberty to leave it.
- 52.2 If in accordance with sub-clause 52.1 the Owners decide that the Vessel shall not proceed or continue to or through the Area they must immediately inform the Charterers. The Charterers shall be obliged to issue alternative voyage orders and shall indemnify the Owners for any claims from holders of the Bills of Lading or third parties caused by waiting for such orders and/or the performance of an alternative voyage. Any time lost as a result of complying with such orders shall not be considered off-hire.
- 52.3 If the Owners consent or if the Vessel proceeds to or through an Area exposed to the risk of Piracy the Owners shall have the liberty:
- (i) to take reasonable preventative measures to protect the Vessel, crew and cargo including but not limited to re-routeing within the Area, proceeding in convoy, using escorts, avoiding day or night navigation, adjusting speed or course, or engaging security personnel and/or deploying equipment on or about the Vessel (including embarkation/disembarkation).
  - (ii) to comply with the requirements of the Owners' insurers under the terms of the Vessel's insurance(s);
  - (iii) to comply with all orders, directions, recommendations or advice given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group (including military authorities) whatsoever acting with the power to compel compliance with their orders or directions; and
  - (iv) to comply with the terms of any resolution of the Security Council of the United

Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;

and the Charterers shall indemnify the Owners for any claims from holders of Bills of Lading or third parties caused by the Vessel proceeding as aforesaid, save to the extent that such claims are covered by additional insurance as provided in sub-clause 52.4 (iii).

#### 52.4 Costs

(i) If the Vessel proceeds to or through an Area where due to risk of Piracy additional costs will be incurred including but not limited to additional personnel and preventative measures to avoid Piracy, such reasonable costs shall be for the Charterers' account. Any time lost waiting for convoys, following recommended routeing, timing, or reducing speed or taking measures to minimise risk, shall be for the Charterers' account and the Vessel shall remain on hire;

(ii) If the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an area which is dangerous in the manner defined by the said terms, then the actual bonus or additional wages paid shall be reimbursed to the Owners by the Charterers;

(iii) If the Vessel proceeds to or through an Area exposed to the risk of Piracy, the Charterers shall reimburse to the Owners any additional premiums required by the Owners' insurers and the costs of any additional insurances that the Owners reasonably require in connection with Piracy risks which may include but not be limited to War Loss of Hire and/or maritime K&R.

(iv) All payments arising under Sub-clause 52.4 shall be settled within fifteen (15) days of receipt of Owners' supported invoices or on redelivery, whichever occurs first.

52.5 If the Vessel is attacked by pirates any time lost shall be for the account of the Charterers and the Vessel shall remain on hire.

52.6 If the Vessel is seized by pirates the Owners shall keep the Charterers closely informed of the efforts made to have the Vessel released. The Vessel shall remain on hire throughout the seizure and the Charterers' obligations shall remain unaffected, except that hire payments shall cease as of the ninety-first (91st) day after the seizure until release. The Charterers shall pay hire, or if the Vessel has been redelivered, the equivalent of Charter Party hire, for any time lost in making good any damage and deterioration resulting from the seizure. The Charterers shall not be liable for late redelivery under this Charter Party resulting from the seizure of the Vessel.

52.7 If in compliance with this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charter Party. In the event of a conflict between the provisions of this Clause and any implied or express provision of the Charter Party, this Clause shall prevail.

52.8 Charterer shall have the option, where the vessel is scheduled to transit the Gulf of Aden, or other areas of known piracy risk, and subject always to clause (a) hereof, to require Owner to (a) extend existing war risk insurance; and/or (b) purchase off-hire insurance, adding Charterer as co-assured, the cost of which shall be reimbursed by Charterer, provided always that (i) the terms of cover and cost have been disclosed to, and agreed by, Charterer prior to the purchase of such insurance; and (ii) that following the exercise of such option, and notwithstanding the provisions of clause (f) hereof, the vessel shall go off-hire for

any time lost as a result of a capture by pirates, except in respect of any applicable deductibles.

**DFAP/0013**

**DEFENCE FUELS GLOBAL  
RESUPPLY CAPABILITY (DFGRC)**

**STATEMENT OF REQUIREMENTS**

## ABBREVIATIONS & DEFINITIONS

ALARP	As Low as Reasonably Practicable
ANSI	American National Standards Institute
COG	Change of Grade
Def Stan	Defence Standard
DFAP	Defence Fuels Acquisition Programme
DIO	Defence Infrastructure Organisation
DSFA	Defence Strategic Fuels Authority
DFGRC	Defence Fuels Global Resupply Capability
DIO	Defence Infrastructure Organisation
DWT	Deadweight
EI	Energy Institute
EI	Energy Institute
ERO	Emergency response organisation
ETBE	Ethyl Tert-Butyl Ether: an oxygenate petrol additive
FAME	Fatty Acid Methyl Ester: the biofuel component added to diesel fuels
FLC	Front Line Command
FY	Financial Year
HMNB	Her Majesty's Naval Base
IAW	In Accordance With
IELTS	International English Language Testing System
ISGOTT	International Safety Guide for Oil Tankers and Terminals
ISPFS	International Ship and Port Facility Security
ITOPF	International Tanker Owners Pollution Federation
JEF(M)	Joint Expeditionary Force (Maritime)
JFC	Joint Forces Command
JOFS	Joint Operational Fuel System
KPI	Key Performance Indicator
LOA	Length Overall
LTOS	Long Term Operating Schedule
MTBE	Methyl Tert-Butyl Ether: the lead replacement additive for unleaded petrol
MOD	Ministry of Defence
MPRT	Multi-Product Resupply Tanker
MR	MV MAERSK RALEIGH
NCHQ	Navy Command Headquarters
NPD	NATO Petroleum Depot
OFD	Oil Fuel Depot
OPA	Oil and Pipelines Agency
OT	Ocean Tanker
PJOB	Permanent Joint Operating Base
PSD	Petroleum Supply Depot
QMS	Quality Management System
RAS	Replenishment at Sea
RDD	Required Delivery Date
RFA	Royal Fleet Auxiliary
SOLAS	Safety of Life at Sea Regulations
SPM	Single Point Mooring

STANAG	Standardisation Agreement
TFHE	Tactical Fuels Handling Equipment
TLB	Top Level Budget
TG	Task Group
UK	United Kingdom

## Introduction

53. Bulk marine, aviation and ground fuels for UK Armed Forces are required to be supplied to but not limited to the Permanent Joint Operating Bases (PJOBS) in the Falkland Islands, and Cyprus, to the UK leased bulk fuel storage facility at Souda Bay, Crete, and to the 6 UK based Navy Oil Fuel Depots (OFDs). Delivery by ocean tanker is an integral part of the supply chain.

## Fuel Types and Specifications

54. **The fuel types required to be collected and delivered are:**

- F-76 Naval Distillate Fuel (DIESO), to be supplied to Def Stan 91-004 (latest issue).
- F-35 Aviation Fuel (AVTUR), to be supplied to Def Stan 91-091 (latest issue).
- F-44 Marine Aviation Fuel (AVCAT FSII), to be supplied to Def Stan 91-086 (latest issue).
- F-54 MT DIESO FAME Free (DIESO MT), to be supplied to BS EN 590 (latest issue).
- F-67 Unleaded Petrol (ULGAS), to be supplied to BS EN 228 (latest issue).

## Locations of Fuel Delivery and/or Collection

55. **The key locations to which fuel needs to be delivered and/or collected on a scheduled and ad hoc basis are but not limited to:**

a. Overseas Permanent Joint Operating Bases:

- (1) Falkland Islands – Mare Harbour Port or Single Point Mooring.
- (2) Cyprus – Subsea pipeline at RAF Akrotiri.

b. UK Oil Fuel Depots:

- (1) Gosport
- (2) Thankses
- (3) Loch Ewe
- (4) Loch Striven
- (5) Garelochhead
- (6) Campbelltown

There is also a requirement to collect fuel from OFDs in order to re-distribute it to other OFDs (intra-OFD transfers). The Supplier shall meet volume requirements. Indicative volumes are 5,000m<sup>3</sup> to 35,000m<sup>3</sup>.

c. Other overseas locations:

- (1) Hellenic Naval Base Souda Bay, Crete
- (2) Sembawang, Singapore.

56. Additionally, there is a requirement to provide contingent support to the Fleet Tankers when deployed as part of the Joint Expeditionary Force (Maritime) (JEF(M)) concept. This will require a solution that is capable of Replenishment at Sea (RAS), transferring fuel to a RFA Tanker vessel whilst making way. The JEF(M) requirement will be a short notice requirement and will require a capability to collect fuel from either storage or refinery locations and deliver it to the Fleet Tankers outside the Area of Operations. It will be the link between assured fuel supplies and the Fleet Tankers.

#### Requirement to Maintain Command and Control

57. The Authority has a requirement to maintain strategic command and control of the vessel. The Authority will require the ability to re-task the vessel in line with operational requirements. This might require a change to the short term schedule in order to support an urgent operational task. Additionally, the Authority will require the ability to communicate directly with the vessel to ensure that information is passed efficiently and swiftly to minimise delays to changes in the schedule. All changes in the schedule will be communicated to the ship owner/broker in addition to the ship itself.

58. The Contractor shall adhere to the following constraints at the following locations:

#### a. Falkland Islands

<b>Vessel Constraints:</b>	a. <b>F-76, F-35 &amp; F-54</b> – Alongside in Mare Harbour	a. The maximum draft entering port is 8.5m. b. The maximum vessel LOA is 200m.  Note: There are two tug-boats (twin screw) with a 45t bollard pull.
	b. <b>F-76, F-35 &amp; F-54</b> – Using Single Point Mooring	a. The maximum draft on SPM is 10m. b. The maximum vessel LOA is 200m. c. Vessel must have a 10-tonne crane.
<b>Pumping Rates:</b>	<b>Issue Rate:</b> Can issue F-76 to vessels (dependant on size and at risk due to no recognised formal training) at 8 bar via the Navy matrix pumps (being replaced) at a rate of 700m <sup>3</sup> /hr.  Can issue F-76 to vessels (again size dependant) via the temporary TFHE pipeline at 6 bar via JOFS pump set at a rate of 84m <sup>3</sup> /hr to West Jetty and 72m <sup>3</sup> /hr to East Cove Main Jetty.  <b>Receipt Rate:</b> The PSD receives fuel via an 16" – 12" (for F-76) and 12" (for F-35) pipeline/hose both at a max pump rate of 8 bar. This equates to 1000m <sup>3</sup> /hr for F-76 Dieso and 750m <sup>3</sup> /hr for F-35 AVTUR.	



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**Table 1**

b. Cyprus

Vessel Constraints:	<p>F-35 - Using sub-sea pipeline at RAF Akrotiri</p> <p>a. The maximum draft is 9.75m.</p> <p>b. Vessel must have a 10 tonne crane located adjacent to the Vessel's manifold, with a 3m minimum outreach. This is required to lift the flexible submarine pipeline from the water up to the Vessel's manifold and then support its weight during the receipt, lowering it on completion. The crew shall assist the DIO contractor during connecting/disconnecting of the single 8" flexible hose to their manifold, as required. As the flexible hoses are connected to the Vessel's manifold via a camlock fitting, the Vessel is to provide raised-face flanges of at least 28.4mm thickness, in accordance with American National Standards Institute (ANSI) 16.5. At no time during the pumping operation shall air be introduced to the ship to shore pipeline.</p> <p>c. Vessel must have bow thrusters (stern thrusters are also desirable)</p> <p>d. Deck winches (Double) located as follows: Bow – x2 Stbd Waist – x1 Stern – x3</p> <p>The vessel is required to have one double drum winch on the forecastle and either three double drum winches on the poop deck, or two double drum winches on the poop deck and one double drum winch on the main deck Stbd Aft.</p> <p>e. Nylon Mooring lines (at 220m) as follows: Bow – x2 Stbd Waist – x2 Stern – x6</p> <p>Floating mooring lines made of nylon, polyester or composite equivalent materials are required for berthing the vessel at RAF Akrotiri. Under no circumstances are non-floating mooring lines to be used. Mooring arrangements require that 8 mooring lines are required, 220 metres in length, to attach to the 4 mooring buoys (2 lines per buoy); the vessel is required to carry an addition 4 spare mooring lines. In addition, a 2.5m x 25mm lashing rope is to be attached to each rope lowered. A work boat is provided by the Port Authority to assist with the operation of securing the mooring lines to the buoys.</p>
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<b>Pumping Rates:</b>	<p><b>Issue Rate:</b></p> <p>The PSD can issue fuel to OT by way of removing non-return valves, if this were to be achieved they could issue fuel at a rate of 200 m<sup>3</sup> per hour.</p> <p><b>Receipt Rate:</b></p> <p>The PSD receives fuel from OT via an 8" pipeline/hose which restricts our pumping rate to 9bar max approx. 1,000m<sup>3</sup>.</p>
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Table 2

c. UK Oil Fuel Depots

OFD Locations	Deliveries	Minimum and Maximum Volumes per Delivery (indicative estimates)	Constraints	Pumping Rates
<b>Gosport</b> <b>F-76</b>  <b>F-44</b>	14,000m <sup>3</sup> x 3 per year  8,000 (6,528 tonnes) m <sup>3</sup> annually	6,000m <sup>3</sup> & 35,000m <sup>3</sup>	a. The maximum draft is 11m. b. The maximum LOA is 210m. c. The maximum beam of 30m. d. Vessel must have a 10-tonne crane. e. The maximum DWT is 50,000MT. f. The delivery vessel must have a slab-side minimum of 61m x 8m.	<p><b>Issue Rate:</b></p> <p>Two pipelines (F-44 and F-76) Which have the following restrictions:  Issue = 410 m<sup>3</sup>/hr  5 bar (75 PSI)</p> <p><b>Receipt Rate:</b></p> <p>350 m<sup>3</sup>/hr  5 bar (75 PSI)</p>
<b>Thanckes</b> <b>F-76</b>  <b>F-44</b>	24,000m <sup>3</sup> x 3 per year  10,000m <sup>3</sup> annually	7,500m <sup>3</sup> & 35,000m <sup>3</sup>	a. The maximum vessel LOA is 220m. b. The minimum under keel. clearance should be not less than 1m. c. The maximum draft is 10.6m. d. The maximum DWT is 40,000MT. e. The delivery vessel must have a slab-side of a minimum of 61m x 8m.	<p><b>Issue Rate:</b></p> <p>F-76 (NATO pipeline) up to 1600cz/hr</p> <p>Loading arms with a maximum flow-rate of 850m<sup>3</sup>/hr per arm</p> <p>2½" hoses - 150m<sup>3</sup> per hour</p>

				<p>Flexible 6" hose connection points with a maximum flow rate of 450m<sup>3</sup>/hr.</p> <p><b>Receipt Rate:</b></p> <p>F-76 (NATO pipeline) up to 2000cz/hr</p> <p>Loading arms with a maximum flow-rate of 850m<sup>3</sup>/hr per arm</p> <p>2½" hoses - 150m<sup>3</sup> per hour</p> <p>Flexible 6" hose connection points with a maximum flow rate of 450m<sup>3</sup>/hr.</p>
Loch Ewe F-76	5,000m <sup>3</sup> every 2-3 years	5,000m <sup>3</sup> & 10,000m <sup>3</sup>	<p>a. The maximum LOA is 245m.</p> <p>b. Vessel must have a 10-tonne crane.</p> <p>c. The maximum draft is 10.3m.</p> <p>d. The maximum DWT is 52,000MT.</p>	<p>Issue Rate:</p> <p>2,500cz/hr to commercial tanker 1,500cz/hr max. to RFA</p> <p>Receipt Rate:</p> <p>3,200cz/hr max</p>
Loch Striven F-76  F-44	<p>35,000m<sup>3</sup> x 4 per year</p> <p>12,000m<sup>3</sup> annually</p>	10,000m <sup>3</sup> & 35,000m <sup>3</sup>	<p>a. The maximum vessel LOA is 242m, Min is 80m.</p> <p>b. The maximum draft is 11.8m.</p> <p>c. The maximum DWT is 52,000MT.</p>	<p>Issue Rate:</p> <p>2,500cz/hr to commercial tanker 1,500cz/hr max. to RFA</p> <p>Receipt Rate:</p> <p>3,200cz/hr max.</p>
Garelochhead F-76	15,000m <sup>3</sup> x 2 per year	5,000m <sup>3</sup> & 24,000m <sup>3</sup>	<p>a. The maximum draft is 10.3m.</p> <p>b. The maximum LOA is 220m.</p>	<p>Issue Rate:</p> <p>250czs/hr</p> <p>Receipt Rate:</p>

			c. Vessel must have a 10-tonne crane. d. The maximum DWT is 40,000MT.	1000cz/hr
Campbelltown F-76	5,000m3 every year	5,000m3 & 10,000m3	a. The maximum vessel LOA is 210m. b. The maximum draft is 11m. c. Beam restrictions: Max 35m. d. The maximum DWT is 52,000MT.	Issue Rate:  Tank 1 = 1000/1200 cz/hr via 1 x 8" hose Tanks 2-6 = 2000/2,200cz/hr via 2 x 8" hoses Tanks 7-14 = 800 - 1,000cz/hr via 1x8"hose  Receipt Rate:  Tanks 1-6 = 2,000cz/hr via 2 x 8" hoses Tanks 7-14 = 800 - 1,000cz/hr via 1 x 8" hose

**Table 3**

d. Souda Bay

Vessel Constraints:	Alongside in Hellenic Naval Base – Souda Bay Berth K-10	a. The maximum draft 10.5m. b. The maximum LOA 260m. c. The jetty has two 8" hoses for F-76 and two 8" hoses for F-44  d. The supplier shall comply with the requirement to provide the Hellenic Navy High Command with the vessel's name and crew details in advance. These details will be supplied via DSFA. The Supplier shall send these details at least 45 calendar days in advance of arrival to: [REDACTED-COMMERCIALY SENSITIVE]
Pumping Rates	Issue Rate:  K-10 – 1000m3 per hour  Receipt Rate:  K-10 – 1000m3 per hour	

**Table 4**e. Singapore

Vessel Constraints:	<p>a. Maximum beam – 30 metres</p> <p>b. Berth S7 can receipt F-76 &amp; F-44, its maximum draft is 11.5m, but an additional 0.5 m is required for entry and therefore the Vessel's overall draft cannot exceed 11 metres.</p> <p>Notes:</p> <p>Wharf length - 533m (in three distinct berths) Minimum maintained depth alongside varies from 11.5m to 8.7m</p> <p>Berth S6 (F-44 receipt only) has a maximum draft of 10.2 metres.</p> <p>Berth S6 has one 8" line used for discharge. There is a vessel freeboard maximum limit of 10.5m</p> <p>Berth S7 has two diesel lines are available for discharge; one 12" line (there is a vessel freeboard maximum limit of 10.5m) and one 8" line connected via a 6" hose.</p>
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**Table 5**

## Training Requirements

59. The Contractor must ensure that their personnel have the necessary training to conduct all necessary operations in a safe and assured manner. All supplier vessels and crew must comply with International Ship and Port Facility Security (ISPFs), International Safety Guide for Oil Tankers and Terminals (ISGOTT) and the Safety of Life at Sea Regulations (SOLAS). Loss, damages, expenses or delay caused by failure on the part of the Supplier's vessel or crew to comply with the requirements of ISPFs, ISGOTT and SOLAS, and any new or amended regulations, shall be for the Supplier's account and shall count as Demurrage, if appropriate.
60. The Authority has an ongoing training requirement for two of its Fuel instructors and up to eight students on fuels courses to embark periodically on the ship and observe operations as part of the necessary training.

## Compliance

58. The Contractor shall:
- a. Be a Member of International Tanker Owners Pollution Federation (ITOPF) Ltd and will retain such membership for the duration of the Contract.
  - b. By maintaining accordance with ITOPF standards, participate in a programme covering oil pollution avoidance, carry adequate oil pollution prevention material to deal with a Tier 1 Incident (spills where the clean up is entirely within the establishment) and hold Oil Pollution Insurance throughout the period of charter.
  - c. Maintain full compliance with all extant international conventions and applicable laws, regulations for the duration of the Contract.
  - d. In the event of a spillage, initiate emergency pollution control and contact the Authority's emergency response organisation (ERO) immediately, by both telephone and email, informing the nature of the incident and providing as a minimum the following information:
    - i. Time of incident Location of incident
    - ii. Nature of incident
    - iii. Volume of Fuel involved
    - iv. Details of any casualties
    - v. Details of emergency action taken
    - vi. Supplier's point of contact
  - e. Ensure that chartered ships comply fully with local security arrangements and requirements at MOD facilities.
  - f. To prove initial and ongoing suitability for the task, provide a copy of the most recent Q88 for the vessel to the Authority at any time throughout the contract period.
59. The Supplier shall comply with the following legislation and regulations:
- The Environmental Protection Act 1990
  - The Storage of Flammable Liquid in tanks – HSE 176

60. The Supplier shall meet the requirements of EI Hydrocarbon Management HM 50 Guidelines for the cleaning of tanks and lines for marine tank vessels carrying petroleum and refined products (latest edition).

### **Samson Post**

61. The Contractor shall install a samson post as follows;

- The samson post, to be used as a stump mast for replenishment at sea (RAS), must have a safe working load of 8 tonnes. It will be load tested to 2 x safe working load (i.e. 16 tonnes) before a RAS takes place. The samson post fitted must be designed in accordance with the Lloyds Register – Naval Ship Rules Volume 3 Part 1 Chapter 5.
- The samson post / stump mast shall be located midships position on the port side of the ship.
- The samson post / stump mast shall be located minimum of 5 metres forward of the capstan – see Figure 1 below. Please note the direction of the forward arrow.
- Eyeplates shall be fitted to the deck, as illustrated in Figure 1 below
- in order to undertake the RAS evolution.

62. RAS Dump Area

a) The minimum size of the dump area is to be determined as follows (see Figure 2)  
1) Dimension A. Distance of the samson post / stump mast from the deck edge is to be a minimum of 3.2 metres to accommodate outboard RAS hose and coupling arrangement.

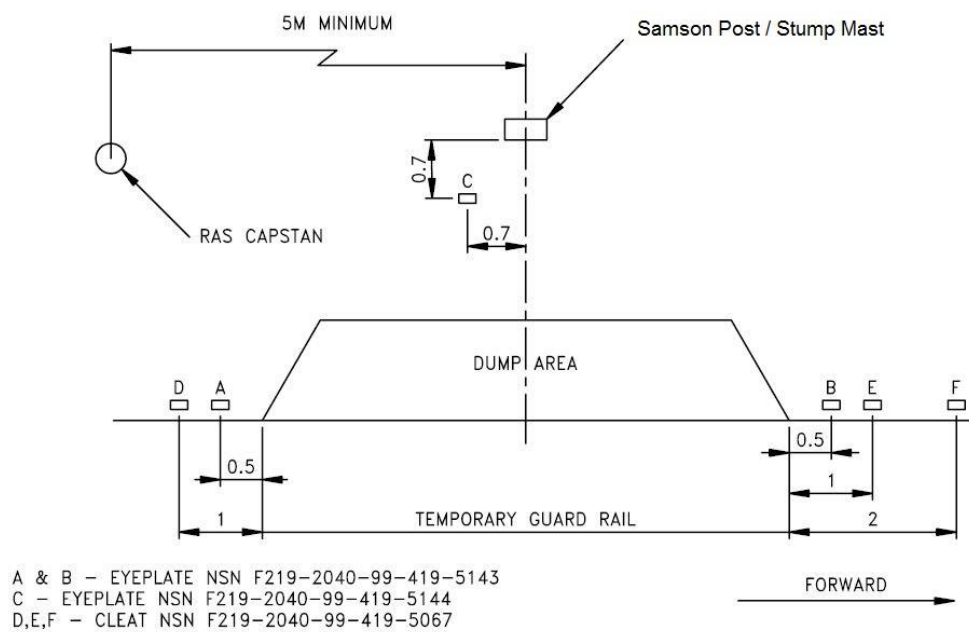
2) Dimension B. A 30° angle fore and aft is to be projected from the samson post / stump mast to allow for the operational envelope;

3) Dimension C. A distance of 1 metre is to be added each side to allow for clearance at the operational envelope;

4) Dimension D. A distance of 1 metre is to be added each side to allow for safety area.

63. The Contractor shall provide Fall arrest safety nets capable of temporary removal or dropping down to side of hull

**FIGURE 1**  
**RAS Station Area**

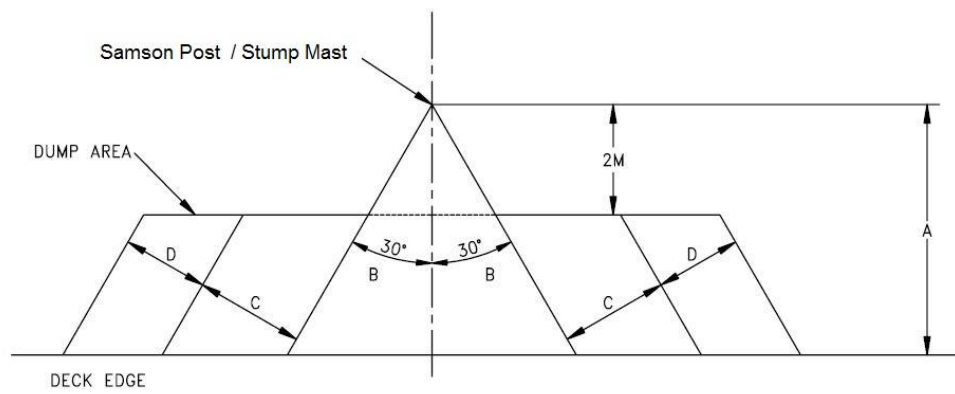


EYEPLATES A & B AND ALL CLEATS TO BE SITED  
0.2M INBOARD OF GUARD RAIL.

DIMENSIONS IN METRES



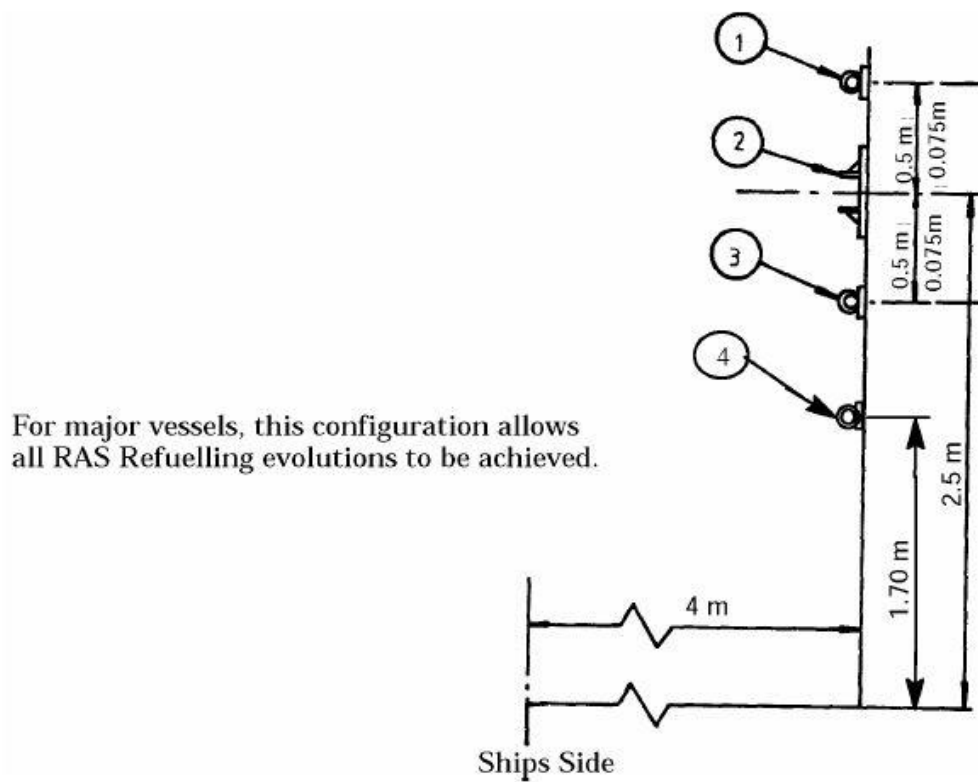
FIGURE 2  
RAS DUMP AREA



**RAS Dump Area**

FIGURE 3

SAMSON POST STUMP MAST HEIGHT AND FITTINGS



ANNEX B TO RIDER CONDITIONS

DRY DOCKING AND MAINTENANCE SCHEDULE

**Other than the dates detailed in this Annex B, there are no other scheduled periods where the Vessel will need to be off-hire during the charter duration.**

**[REDACTED-COMMERCIALLY SENSITIVE]**

[REDACTED-COMMERCIALLY SENSITIVE]

ANNEX C TO RIDER CONDITIONS  
GOVERNMENT FURNISHED ASSETS

**Item Record Information**

A record is required for each item of GFA held by the Contractor from information available to the Contractor provided by the Authority and from the Contractor's own inventory management systems.

Serial	Name	Description	Comments
<b>KEY DATA FIELDS</b>			
1a	NATO Stock Number (NSN)	NOT APPLICABLE	
2	Contract Number	Contract Number under DFAP/0013	NONE
3	Terms of Issue / Loan Type	Contract Support Item (CSI)	Contractor holding assets for purposes of testing fuel.
4	<u>Unit 1</u> Model No: MFT 91600-3 Serial No: 1033235 <u>Unit 2</u> Model No: MFT 91600-3 Serial No: 1033234	X2 Filter Testing Kits	
<b>GENERAL DATA FIELDS</b>			
5	Domestic Management Code/Inventory Management Code (DMC/IMC)	NOT APPLICABLE	
6	Description	To Be completed	
7	Unit Of Measure	Each	
8	Preceding Contract No		

9	JTTE Indicator	NOT APPLICABLE	
10	Prime Contractor	NOT APPLICABLE	
11	Disposal Indicator	NOT APPLICABLE	
12	Asset Location	ON Board Vessel	
13	Remarks		Any remarks pertinent to the item or that will better identify ownership

**Personal Data Particulars**

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

<b>Data Controller</b>	The Data Controller is the Secretary of State for Defence (the Authority). The Personal Data will be provided by: <i>James Fisher Everard Ltd</i> <i>68 Cornhill</i> <i>London</i> <i>EC3V 3QX</i>
<b>Data Processor</b>	The Data Processor is the Contractor. The Personal Data will be processed at: <i>The applicable Naval Base and/or Oil Fuel Depot and;</i> <i>Navy Command Head Quarters Fuel Operations Section</i> <i>Navy Command HQ</i> <i>Logistics &amp; Infrastructure Division, MP4-4, Leach Building,</i> <i>Whale Island, Portsmouth PO2 8BY</i>
<b>Data Subjects</b>	The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects: <i>Vessel Crew</i>
<b>Categories of Data</b>	The Personal Data to be processed under the Contract concern the following categories of data: <i>[please specify]</i> <i>The photo page and detail containing name, nationality, Date of Birth etc.</i>
<b>Special Categories of data (if appropriate)</b>	The Personal Data to be processed under the Contract concern the following Special Categories of data: <i>N/A</i>
<b>Subject matter of the processing</b>	The processing activities to be performed under the contract are as follows: <i>[please specify]</i> The personal data will be used to review the nationality of the crew to ensure the nationality of crew meet the requirements of the Contract.
<b>Nature and the purposes of the Processing</b>	The Personal Data to be processed under the Contract will be processed as follows: <i>[please specify]</i> <i>The personal data will be reviewed by NCHQ Fuel Operations and the appropriate Oil Fuel Depot and/or Naval Base.</i>
<b>Technical and organisational measures</b>	The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract: <i>[please specify]</i> <i>The personal data will only be reviewed by the required personnel and will be held electronically.</i>

<b>Instructions for disposal of Personal Data</b>	The disposal instructions for the Personal Data to be processed under the Contract are as follows (where Disposal Instructions are available at the commencement of Contract): <i>[please specify]</i> <i>The data held will be held for as long as the individual crew member remains a member of the ship's crew under the duration of the Contract.</i>
<b>Date from which Personal Data is to be processed</b>	Where the date from which the Personal Data will be processed is different from the Contract commencement date this should be specified here: <i>N/A</i>

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



## APPENDIX TO MOD Rider Conditions – DEFFORM 111

### Addresses and Other Information

#### 1. Commercial Officer

DES LDOC DFAP  
Commercial Manager  
DE&S Logistics Delivery Operating Centre  
Commercial Fuels Team  
Cedar 3A, #3360, NH3  
DE&S Abbeywood  
Bristol BS34 8JH

Tel: 030 679 83562 / 030 679 83561  
Email: DES Commodities-Comrci-Fuel@mod.Gov.uk

#### 2. Project Manager, Equipment Support Manager or PT Leader

(from whom technical information is available)

[desldchgmt-dfap-opsmgr@mod.gov.uk](mailto:desldchgmt-dfap-opsmgr@mod.gov.uk)

Fuels Operations Management Team  
DE&S Logistics Delivery Operating Centre  
Cedar 3A, #3360, NH3  
DE&S Abbeywood  
Bristol BS34 8JH

Tel: 030 679 86034

Email: [desldchgmt-dfap-opsmgr@mod.gov.uk](mailto:desldchgmt-dfap-opsmgr@mod.gov.uk)

#### 3. Packaging Design Authority

NOT APPLICABLE

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

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

Tel No:

(b) U.I.N.

#### 5. Drawings/Specifications are available from

#### 8. Public Accounting Authority

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

☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

☎ 44 (0) 161 233 5394

#### 9. Consignment Instructions

The items are to be consigned as follows:  
NOT APPLICABLE

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

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

Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

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

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

**B. JSCS**

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

JSCS Fax No. 01869 256837

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

#### 11. The Invoice Paying Authority (see Note 1)

Ministry of Defence ☎ 0151-242-2000

DBS Finance

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

Liverpool, L2 3YL

**Website is:**

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

**6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to**

N/A

(where no address is shown the mauve copy should be destroyed)

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

**\***:

Ministry of Defence, Forms and Pubs Commodity Management  
PO Box 2, Building C16, C Site  
Lower Arncott  
Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

**Applications via fax or email:** [DESLCSLS-OpsFormsandPubs@mod.uk](mailto:DESLCSLS-OpsFormsandPubs@mod.uk)

**Quality Assurance Representative:**

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

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

**NOTES**

**1. Forms.** Hard copies, including MOD Form 640 are available from address in Box 12., All other invoicing forms e.g. AG Forms 169 and 173, are available from the website address shown at Box 11.

**2.\*** Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:  
<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>