



Headquarters  
New Zealand Defence Force  
Defence House  
Private Bag 39997  
Wellington Mail Centre  
Lower Hutt 5045  
New Zealand

OIA-2022-4547

16 December 2022

Dan

[fyi-request-20953-959825f0@requests.fyi.org.nz](mailto:fyi-request-20953-959825f0@requests.fyi.org.nz)

Dear Dan

I refer to your email of 25 November 2022 requesting, under the Official Information Act 1982 (OIA), *a copy of the Government Syndicated Retail Fuel Contract that the New Zealand Defence Force is the lead agency responsible for.*

As at Enclosure 1, please find attached the Government Syndicated Retail fuel contract. The names, phone numbers and email addresses of key contacts have been withheld in accordance with section 9(2)(a) of the OIA to protect their privacy. Costs regarding the procurement of fuels, the third schedule, and the seventh schedule have been withheld in accordance with sections 9(2)(b)(ii) and 9(2)(j) of the OIA. The public interest in providing this information does not outweigh the reasons to withhold it in this instance.

You have the right, under section 28(3) of the OIA, to ask an Ombudsman to review this response to your request. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Please note that responses to official information requests are proactively released where possible. This response to your request will be published shortly on the NZDF website.

Yours sincerely

**AJ WOODS**

Air Commodore  
Chief of Staff HQNZDF

**Enclosure:**

1. Retail Fuel Agreement



**HER MAJESTY THE QUEEN**

**NEW ZEALAND DEFENCE FORCE  
TE OPE KĀTUA O AOTEAROA**

**AND**

**BP OIL NEW ZEALAND LIMITED**

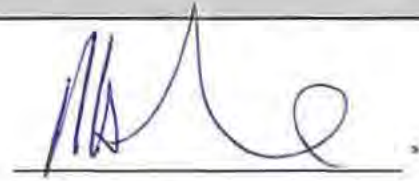
**AGREEMENT TO VARY  
CONTRACT 11708  
FOR  
RETAIL FUEL AND SERVICES**

**VARIATION FIVE**

**SIGNING PAGE**

**SIGNED** by **RS KRUSHKA, MNZM**  
Brigadier  
Chief Joint Defence Services  
for and on behalf of Chief of Defence Force

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)  
)



**SIGNED** for and on behalf of  
**BP OIL NEW ZEALAND LIMITED**  
by **MATT ELLIOTT**  
being the Director

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)  
)  
)

DocuSigned by:  
*Matt Elliott*  
B21AFA7C451B48E

**CONTRACT VARIATION**

THIS AGREEMENT is made on the 28<sup>th</sup> day of April 2022

**BETWEEN HER MAJESTY THE QUEEN** in right of Her Government in New Zealand acting by and through the Chief of Defence Force ("NZDF") **AND**

**BP OIL NEW ZEALAND LIMITED** (Company Number 5068) a duly incorporated company with its registered office at Watercare House, 73 Remuera Road, Remuera, Auckland, 1050 ("BP").

**BACKGROUND**

NZDF and BP entered into a contract in the year 2012 for the supply of retail fuel and services (the Contract).

NZDF wishes to exercise the second option to renew the Contract in its entirety in accordance with clause 5.1 of the Conditions of Contract.

The parties have agreed to vary the Contract as set out in this Variation Five.

**IT IS AGREED**

1. NZDF has exercised its right to renew the Contract, in accordance with clause 5.2, for a further period of five years, to 30 April 2025.
2. The parties agree to amend and restate the Contract as attached at **Annex A**, with effect from 01 May 2022.
3. The amendment and restatement described in clause 2 will not affect the rights and obligations of the parties under the Contract accruing and owing in the period up to 30 April 2022.
4. Additional amendment to the Agreement under this Variation Five are:
  - a. Sub clause 1.1a under **Eligible Agency** has been deleted and replaced with "each Public Service Agency specified in section 10 of the Public Service Act 2020, or".
  - b. Clause 4.1 has been amended by deleting "01 May 2012" and replacing with "the Commencement Date".
  - c. The contact details in the **Fourth Schedule** have been updated.

**ANNEX A – CONTRACT EFFECTIVE FROM 01 MAY 2017**

**CONDITIONS OF CONTRACT****1 Definitions**

1.2 In this Contract, unless the context otherwise requires or specifically otherwise stated:

**Business Day** means a calendar day other than any Saturday, Sunday, any public holiday in Wellington or any day falling within the period from 24 December to 5 January both inclusive.

**Commencement Date** means 1 May 2012.

**Confidential Information** means any information:

- a. relating to the terms of this Contract;
- b. disclosed by either party to the other party on the express basis that such information is confidential; or
- c. which might reasonably be expected by either party to be confidential in nature, provided that, where information relates exclusively to one party, nothing in this Contract will require that party to maintain confidentiality in respect of that information.

**Contract** means these terms and conditions upon which BP and NZDF have agreed to do business.

**Contract Support Services** means the provision of the associated services described in the **First Schedule** (but not the Fuels) and the services described in the **Second Schedule** to facilitate the acquisition of Fuels.

**Deliverables** mean the provision of Fuels and Contract Support Services.

**Defence Area** has the meaning set out in s.2 of the Defence Act.

**Expiry Date** means the date on which this Contract will expire if not renewed.

**FuelCard** means a card issued by BP to NZDF for use by NZDF personnel and NZDF Supply Contractors on the terms and conditions of this Contract and FuelCard standard terms and conditions.

**Fuels** means the fuels described in the **First Schedule**.

**Eligible Agency** means:

- a. each Public Service Agency specified in section 10 of the Public Service Act 2020, or
- b. the New Zealand Police, the New Zealand Security Intelligence Service, the Parliamentary Counsel Office, the Clerk of the House of Representatives and the Parliamentary Corporation, or
- c. each Crown Entity, as defined in section 7 of the Crown Entities Act 2004, or
- d. each organisation listed in the fourth schedule to the Public Finance Act 1989, or
- e. the Reserve Bank of New Zealand, or
- f. the Office of the Controller and Auditor-General, the Office of the Ombudsmen, and the Office of the Parliamentary Commissioner for the Environment, or

- g. each corporation listed in the first schedule to the State Owned Enterprises Act 1986, or
- h. each local authority, as defined in section 5 of the Local Government Act 2002, or
- i. a School Boards of Trustees under the Education Act 1989, or
- j. an agency associated with a Ministerial Portfolio, or
- k. The New Zealand Railways Corporation as constituted under the New Zealand Railways Corporation Act 1981, or
- l. a tertiary education provider under the Education Act 1989, or
- m. the Australian Defence Force (ADF).

**Intellectual Property** means all copyright, patents, designs, trademarks (registered or unregistered), confidential information, know-how or other protectable rights.

**Key Performance Indicator (KPI)** means the key performance indicators set out in the **Sixth Schedule** and any variations to them as agreed and signed by all parties.

**Lead Agency** means NZDF.

**Lead Agency Agreement (LAA)** means this Contract between NZDF and BP relating to the Deliverables.

**NZDF Supply Contractor** means any contractor providing deliverables under an agreement to NZDF that has been authorised by NZDF to use any Fuel provided under this Contract.

**Participating Agency** means an Eligible Agency, other than NZDF, that enters into an agreement with BP by way of clause 6 Syndicated Procurement.

**Participating Agency Agreement (PAA)** means the agreement between a Participating Agency and BP relating to the Deliverables, in the form set out in **Annex A** of the **Fifth Schedule**.

**Representative** means the representative for NZDF or BP appointed in accordance with clause 9 and set out in the **Fourth Schedule**.

**Sub-Contractor** means any person and their employees who contracts with BP to carry out or supply any Deliverables on behalf of BP in connection with this Contract.

## 2 General

- 2.1 New Zealand law governs this Contract. New Zealand courts have exclusive jurisdiction. References to legislation and any other form of law are to New Zealand law, including as amended or re-enacted.
- 2.2 Singular includes plural and vice versa.
- 2.3 References to a party or a person include any form of entity and their respective successors, assigns and representatives.
- 2.4 Amounts are in New Zealand Dollars unless otherwise stated. New Zealand time and dates apply.
- 2.5 Each Schedule, annex and any other attachment is part of this Contract.

2.6 All correspondence and documentation in relation to this Contract and the Deliverables is to be in English.

2.7 Where there is any inconsistency in the interpretation of the documents comprising this Contract, such documents will be interpreted in the following order of priority:

- a. the **First Schedule**,
- b. Conditions of Contract and the other Schedules,
- c. any other documentation in relation to the provision of the Deliverables and referenced in any Schedule,
- d. FuelCard standard terms and conditions,
- e. FuelCard application form, and
- f. credit application form referenced in the FuelCard application form

### 3 Entire Contract

3.1 This Contract and its schedules record the entire contract between the parties concerning its subject matter. It supersedes all previous contracts and understandings between the parties on its subject matter.

### 4 Term

4.1 This Contract will remain in force for a period of five years from ~~4 May 2012~~ the Commencement Date unless earlier terminated under these conditions.

### 5 Renewal

5.1 NZDF has two subsequent rights of renewal, each for a further period of five years.

5.2 If NZDF wishes to exercise its rights of renewal the following will apply:

- a. NZDF will give BP written notice of its wish to renew this Contract under the current terms and conditions at least six months before the Expiry Date;
- b. BP will, within 30 Business Days of receipt of NZDF's notice, propose changes to the price and any additional or amended terms and conditions it proposes would apply if this Contract is renewed;
- c. NZDF will give written notice to BP of its acceptance or otherwise of BP's proposed price and other changes at least three months before the Expiry Date;
- d. if NZDF accepts BP's proposed price and other changes or the parties otherwise agree on amended terms for the renewal period, then this Contract will be renewed for a further period of five years by way of a variation signed by both parties; and
- e. NZDF will not be bound to accept any price or other changes submitted by BP or give any reason for its rejection.

### 6 Syndicated Procurement

6.1 Subject to clause 6.2, at any stage during the term of this Contract any Eligible Agency may utilise the provisions of this Contract for the balance of its term in accordance with the provisions detailed in the **Fifth Schedule**.



- 6.2 BP will not enter into an agreement with any of the following Eligible Agencies unless the applicable Eligible Agency has been approved by the Ministry of Business, Innovation and Employment to participate by contacting 'procurement@med.govt.nz':
- a. each local authority;
  - b. each School Board of Trustees;
  - c. each agency associated with a Ministerial Portfolio; and
  - d. a subsidiary or other agency provided that the subsidiary or agency can demonstrate that:
    - (1) it is wholly owned by, or its membership wholly consists of, a state sector agency or local authority; and
    - (2) it is not, and is not able to be, in competition with private sector organisations.
- 6.3 No guarantee is given that any Eligible Agency will participate during the term of this Contract.
- 6.4 BP acknowledges that government agencies are subject to change. NZDF and Participating Agencies usage patterns and volumes may change and in some cases Participating Agencies will have the option to terminate their participation in this Contract, if they are being restructured due to disestablishment or merger with a non-Participating Agency.
- 7 NZDF Supply Contractors**
- 7.1 BP acknowledges that NZDF has entered into contracts with NZDF Supply Contractors to provide goods and services to NZDF.
- 7.2 At any stage during the term of this Contract any NZDF Supply Contractor may purchase Fuels at the prices detailed in the **Third Schedule**, subject to the NZDF Supply Contractor first:
- n. obtaining consent from both BP and NZDF; and
  - o. submitting and being approved for credit in accordance with BP's standard credit application form; and
  - p. entering into a separate commercial arrangement with BP in relation to the supply and purchase of such fuels.
- 7.3 NZDF will instruct the NZDF Supply Contractor that the Fuels sourced against this Contract are solely to be used for delivering services to the NZDF.
- 8 Supply**
- 8.1 BP must supply each Deliverable to NZDF in the manner set out in this Contract and for the price specified in the **Third Schedule**. BP will keep NZDF informed of progress. If any delivery may be, or is, late, BP will make delivery within the price and at no additional cost to NZDF by the fastest method and will be responsible for any increased costs.
- 8.2 Time is of the essence when delivering any Deliverable under this Contract.
- 9 Relationship Management Governance**
- 9.1 NZDF will appoint and maintain during the term of this Contract a Representative who will be the primary point of contact with BP. NZDF's Representative will be responsible for issuing to BP's Representative all instructions, requests and approvals for this Contract.

- 9.2 BP will appoint and maintain during the term of this Contract a Representative who will be the primary point of contact with NZDF. In the provision of the Deliverables the BP's Representative will:
- a. comply with all reasonable instructions issued by NZDF's Representative and any person authorised by NZDF's Representative to give instructions.
  - b. act as BP's prime representative to the NZDF.
- 9.3 Should a person designated by either party to be a Representative no longer be available, the party responsible for the appointment will designate a replacement, as soon as possible, which is acceptable to the other party.
- 9.4 BP may at its discretion consent to requests from Participating Agencies to establish direct relationship management to oversee the operation and performance of this Contract in relation to that Participating Agency's specific requirements.
- 9.5 NZDF will not be involved in the operational administration or day-to-day activity of the contracts between Participating Agencies and BP. NZDF will aid issue resolution where a Participating Agency or BP requests the involvement of NZDF.

## 10 Security

- 10.1 BP and any personnel of BP when requiring access to any NZDF property will be required to pass a NZDF security check prior to undertaking any services contained within this Contract.
- 10.2 BP acknowledges the importance of meeting NZDF security requirements and that if BP or any BP personnel requiring access to any Defence Area or NZDF property for the purposes of this Contract fail to meet the NZDF security requirements, NZDF may, at its discretion choose to exercise its rights under the Termination clause 30.
- 10.3 BP will ensure that each of its Representatives and visitors comply with NZDF's security and operational requirements where it has access to any Defence Area, NZDF property or information. BP must at all times keep secure any Defence Area, NZDF property and information in its possession or within its control that is militarily or commercially sensitive or confidential.
- 10.4 BP will end the direct and indirect involvement with this Contract of any person as requested by NZDF if, in the NZDF's opinion, that person does not satisfy any NZDF security or operational requirement or is not appropriate.

## 11 BP's Obligations

- 11.1 In providing the Deliverables BP will:
- a. exercise the degree of skill, care and diligence reasonably to be expected of suppliers in similar circumstances and measured against the Key Performance Indicators;
  - b. comply with all NZDF rules, regulations, codes of practice and all NZDF orders or regulations which NZDF has disclosed to BP with reasonable notice in writing;
  - c. ensure that while it is in any Defence Area, take all reasonable care in providing the Deliverables, in particular complying with all directions and instructions given to them by NZDF personnel, whether given verbally or in writing and including signage, provided such directions and instructions are not in conflict with the terms of this Contract;

- d. comply with the provisions of all statutes, regulations and bylaws of any government, or any local or other public authority, that may be applicable to the supply of the Deliverables, provided that nothing in this Contract requires BP to comply with the requirements of any resource or other consent obtained by or for NZDF and relevant to delivery or access to a Defence Area or NZDF property unless BP has been specifically notified in writing by NZDF of such terms a reasonable period in advance of the requirement applying;
  - e. at its own expense, give all notices and obtain all licences, approvals, consents, permits and other authorisations of any government or any local or other public authority, which may be required for the supply of the Deliverables from BP managed sites and equipment;
  - f. report to NZDF as specified in the **Second Schedule** and comply with any other reasonable requests for reporting requirements made by NZDF;
  - g. comply with any reasonable requests or instructions issued by NZDF in relation to this Contract;
  - h. fulfil all its obligations under the terms of this Contract; and
  - i. notify NZDF as soon as possible if it becomes aware of a reason for a delay in order for NZDF and BP to agree some form of work around at no additional cost to NZDF, unless NZDF is solely responsible for or is likely to be the sole cause for delay.
- 11.2 Where NZDF is exempt from complying with any statutory or regulatory obligations such exemption will not apply to BP by virtue of BP having entered into this Contract.
- 11.3 If NZDF requests, BP will deliver to NZDF all documents necessary to prove the issue of the authorisations for which BP is responsible under this clause.
- 11.4 For the purposes of this clause, a legislative requirement is any statute, regulation or bylaw of any government or local or other public authority in relation to the transport, delivery, handling, dispensing or storage of Fuels. Nothing in this Contract requires BP to do anything that would cause BP to be in breach of any legislative requirement. BP will not be in breach of any supply or delivery obligations if to do so would be likely to, cause it to be in breach of any legislative requirement. In particular, and without limiting the above, NZDF:
- a. will provide safe access to Defence Areas and NZDF property (which in this clause includes NZDF vehicles, marine vessels and aircraft) to which BP requires access for the purposes of making delivery of Fuels;
  - b. will comply with BP's reasonable health and safety requirements;
  - c. will report any actual or suspected leakage of Fuels supplied by BP and stored at a Defence Area or NZDF property to which BP makes deliveries, immediately to BP; and
  - d. will comply with any directions of BP in relation to the same to prevent or minimise any contamination or leakage at the relevant Defence Area or NZDF property.
- 11.5 The New Zealand Government (Government) is committed to sustainable and inclusive government procurement that delivers for New Zealand and New Zealanders.
- 11.6 The Supplier Code of Conduct detailed in the **Eighth Schedule** (and available at [www.procurement.govt.nz/broader-outcomes/supplier-code-of-conduct](http://www.procurement.govt.nz/broader-outcomes/supplier-code-of-conduct)) outlines the expectations Government and NZDF has of its suppliers. BP must make its sub-contractors aware of this Code.

## 12 Changes to Fuel Types and Specifications

- 12.1 BP will give prior written notice to NZDF's Representative of any changes to the specifications of Fuel provided under this Contract.
- 12.2 BP is to ensure that it is reasonably informed of any pending changes prior to their implementation by participation in regulatory groups and committees, both locally and globally.
- 12.3 NZDF may terminate this Contract in accordance with the Termination clause 30 at their sole discretion if they decide the altered Fuel specifications do not meet its needs.

### 13 Preferred Supplier

- 13.1 BP is NZDF's preferred supplier of the Deliverables. However, nothing in this Contract will prevent NZDF from using any other supplier to supply Fuels, if after consulting BP, NZDF considers (in its sole discretion) that BP cannot meet the needs of NZDF.
- 13.2 All NZDF decisions to use alternative suppliers for the provision of Fuels within New Zealand are to be minuted at the annual review meetings.

### 14 Variation

- 14.1 This Contract may only be varied in writing and signed by an authorised representative of each party.

### 15 Quality Assurance

- 15.1 BP will maintain a BP New Zealand Quality Plan in accordance with clause 7 in the **First Schedule**.
- 15.2 NZDF may carry out any quality assurance test it wishes in accordance with this clause.
- 15.3 If requested by NZDF, BP must promptly ensure that a reasonable number of its representatives with appropriate qualifications and expertise are available to be consulted, and test equipment is available, while NZDF carries out appropriate tests.

### 16 Price is all Inclusive

- 16.1 The price for the Deliverables is set out in the **Third Schedule**. All materials, labour, packaging, storage, freight and other costs of delivery, and every tax and duty, are BP's responsibility and are included in the price(s) except any GST (if any) payable for the Deliverables.

### 17 Payment

- 17.1 All FuelCard purchases will be invoiced electronically and paid via Direct Debit or Electronic Funds Transfer (EFT).
- 17.2 On receipt of an itemised GST invoice from BP which includes the relevant credit terms, NZDF will pay BP in accordance with this Schedule.
- 17.3 NZDF will pay BP for the Fuels and other Deliverables provided in the following manner:
- a. Payment shall be for the amount specified in the invoice less any deductions NZDF is entitled to make under this Contract or required by law.

- b. Payment shall be in accordance with the prices and pricing calculation formulae contained in this Schedule. Any adjustments to the amount payable to BP by NZDF, for the Deliverables, following an annual review, shall take effect on the anniversary of this Contract each year.
  - c. Extraordinary reviews to adjust prices, due to factors outside the control of BP, can be raised for consideration by NZDF.
  - d. All amounts payable under this Contract shall be payable in New Zealand.
- 17.4 Where BP has not received payment it will give NZDF notice of non-payment before exercising any rights BP may have under this Contract.

## **18 Disputed Invoices**

- 18.1 NZDF will assess each invoice submitted by BP. If NZDF disputes the invoice, or any part of the invoice, NZDF will, within seven Days of the completion of the assessment, notify BP of the reasons why the invoice is disputed. BP acknowledges that NZDF cannot make any payment until the parties' representatives have resolved the dispute. Should resolution of the dispute confirm that:
- a. BP has incorrectly overcharged NZDF, BP will issue NZDF with a credit note for the overcharged amount, ensuring that the credit note includes NZDF's Purchase Order number. NZDF will make payment within seven days of receipt of the invoice or in accordance with the payment terms detailed in the Contract; or
  - b. BP is entitled to be paid more than the amount detailed in NZDF's Purchase Order, NZDF will email BP an amended Purchase Order, with NZDF ensuring that the amended Purchase Order matches BP's total invoiced amount. NZDF will make payment within seven days of receipt of the invoice or in accordance with the payment terms detailed in the Contract; or
  - c. BP has incorrectly undercharged NZDF, BP will issue NZDF with an additional invoice which will match the amount detailed in NZDF's Purchase Order. BP will ensure that the additional invoice includes NZDF's Purchase Order number. NZDF will make payment within seven days of receipt of the invoice or in accordance with the payment terms detailed in the Contract.

In the event of the parties' representatives being unable to resolve the issue, the Dispute Resolution clause will apply.

## **19 Set Off**

- 19.1 NZDF is entitled at any time without notice to set off any amount BP owes it (and which is not in dispute) against any amount that NZDF owes BP under this Contract.

## **20 Title**

- 20.1 Title to the Deliverables purchased by NZDF will pass to NZDF on payment in full.

## **21 Risk**

- 21.1 Every risk to each Deliverable remains with BP until completion of delivery to NZDF.

## **22 Intellectual Property**

- 22.1 NZDF and BP acknowledge that each party has existing Intellectual Property, including their respective business processes, procedures and systems, at the date of this Contract which Intellectual Property rights will remain and be unaffected by this Contract.

## 23 Warranties

- 23.1 BP warrants to NZDF that (except to the extent a failure under this clause is caused by a breach of this Contract or a negligent act or omission by NZDF):
- a. all Deliverables will be provided promptly:
    - (1) with due diligence care and skill by appropriately trained, qualified, experienced and supervised persons; and
    - (2) to the best standards in the applicable industry.
  - b. Fuels will be delivered in accordance with this Contract;
  - c. all Deliverables will be free from any defect and any latent defect;
  - d. clear title to each good that is a Deliverable will pass to NZDF in accordance with the Title clause;
  - e. each Deliverable complies with applicable specification, instruction, rating and limit specified or required by any manufacturer or authority involved, or by New Zealand law;
  - f. each Deliverable will satisfy NZDF's requirements in the **First Schedule**;
  - g. all information provided or to be provided to NZDF by BP is accurate, complete and true; and
  - h. no form of inducement or reward has been or will be directly or indirectly provided to any representative of NZDF in respect of this Contract.
- 23.2 To the extent permitted by law, no warranties other than those expressly set out in this Contract are given by BP. BP will, to the extent possible, pass on to NZDF the benefit of any warranty or guarantee received from any other person in respect of a Deliverable and its components to the intent that NZDF may have recourse against those persons through BP for a defect.
- 23.3 The parties acknowledge that the purchase of goods and services under this Contract is not a supply of goods to a consumer as defined in the Consumer Guarantees Act 1993 and therefore agree that the Consumer Guarantees Act 1993 does not apply to this Contract.

## 24 Warranty Claims

- 24.1 BP will promptly remedy each warranty claim to NZDF's satisfaction and in any event within 10 Business Days. If any defect results in NZDF not receiving the expected value or performance from the Deliverable, BP, will at its cost, if required by NZDF, promptly replace the Deliverable with a new and compliant Deliverable with a full warranty.

## 25 Failure or Delay to Remedy

- 25.1 If BP fails to remedy a warranty claim, or if NZDF determines that an urgent or other situation so justifies, the Disputes Resolution clause to this Contract will apply.

## 26 BP Indemnity

- 26.1 Subject to clause 0 Limitations on Liability, unless prohibited by law, BP indemnifies NZDF for any direct damage, loss or cost (including legal costs) to NZDF or any other person, and will protect NZDF from any claim or proceedings against NZDF, in each case to the extent directly caused or contributed to by BP as a result of a breach of this Contract, or by a Deliverable prior to completion of delivery.

## 27 Limitations on Liability

- 27.1 A party (first party) will not be liable to the other party:
- a. for any liability, damages, costs, loss or expenses (collectively, loss) whether under the law of contract, equity or tort (including negligence), or under statute, indemnity or otherwise arising out of or in connection with this Contract (however arising or connected, including as a result of the first party's or any third party's performance, non-performance or delay in performance) other than direct loss. For the purposes of this clause, direct loss includes damage to property, the replacement cost for lost or contaminated Fuel, costs of remediation of contamination and environmental clean-up and costs of any regulatory investigation (including any fines and penalties which may be imposed and are permitted by law to be recovered);
  - b. for the failure to perform or delay in performing any of its obligations under this Contract to the extent that such failure or delay is due to an act or omission solely or materially attributed to the other party, its employees, agents or subcontractors;
  - c. for indirect or consequential loss; or
  - d. for loss of profits, loss of production, loss of anticipated savings or loss of business.
- 27.2 Nothing in clauses 27.1 or 27.4 limits NZDF's liability for payment of the price for Deliverables provided by BP as set out in the **Third Schedule**.
- 27.3 BP's liability under this Contract will not exceed the sum of **s. 9(2)(b)(ii), s. 9(2)(j)** in respect of any single event or series of related events.
- 27.4 Subject to clause 27.2 NZDF's maximum liability under this Contract will not exceed the sum of **s. 9(2)(j)** in respect of any single event or series of related events.

## 28 Health and Safety

- 28.1 When performing work in New Zealand, BP will ensure, as far as reasonably practicable, that it and its Sub-Contractors at all times comply with the Health and Safety at Work Act 2015 and without limiting such obligations, will ensure that each Sub-Contractor:
- a. has policies and procedures in place to ensure compliance with all health and safety legislation;
  - b. supplies and maintains all safety equipment used in relation to the Deliverables to minimise the risk of injury;
  - c. takes the responsibility for any loss or injury that may occur if its safety equipment or procedures fail or are unavailable;
  - d. provides all information in accordance with obligations under the Health and Safety Act 2015 including, as applicable, the duties under sections 39 and 43;
  - e. in respect of the Deliverables (including equivalent deliverables not subject to this Contract and whether or not owned by NZDF and any place of work at any NZDF property to which BP or its invitees have access) promptly notifies NZDF in writing once it is aware of:
    - (1) any hazard that may or does exist, or any situation that may or has arisen, where any person may not be safe or may suffer harm;
    - (2) an accident or notifiable event; or
    - (3) any improvement or prohibition notice is likely to be, or has been, issued.



## **29 Resource Management and Hazardous Substances**

- 29.1 BP and NZDF each warrant to the other that they have policies and procedures in place to comply with the Resource Management Act 1991 and the Hazardous Substances and New Organisms Act 1996.
- 29.2 BP and NZDF each, insofar as each is responsible for delivery or storage of Fuels under this Contract, will:
- a. not allow any discharge of any contaminant, or making of excessive noise, by any of its property, employees, representatives or visitors at any NZDF property which is not in compliance with, or is not authorised by, the relevant District Plan or requirements of the relevant authority having jurisdiction;
  - b. establish and maintain appropriate procedures to promptly:
    - (1) identify any unauthorised discharge of any contaminant or other environmental accident at each relevant NZDF property;
    - (2) avoid, mitigate and remedy every adverse effect of them; and
    - (3) inform NZDF's contact person of them and consult NZDF as to how to deal with them;
  - c. not sell any ozone depleting substance to NZDF without having the necessary exemption in each case.
- 29.3 Where BP engages a Sub-Contractor, then these requirements also apply to the Sub-Contractor and BP will ensure that the Sub-Contractor complies with them.

## **30 Termination**

- 30.1 NZDF may terminate this Contract immediately by notice in writing if BP:
- a. gives or attempts to give short weight or measurement or quantity in any delivery of Deliverables; or
  - b. commits or permits any act or omission which in NZDF's reasonable opinion creates any immediate unacceptable risk to the health and safety of NZDF personnel or members of the public that is detrimental or harmful to the good name, goodwill or reputation of NZDF.
- 30.2 If any breach of this Contract by BP relates to a particular Deliverable and BP has failed to remedy such breach or provide a solution to the breach, acceptable to NZDF, within 20 Business Days of receiving written notice of such breach, NZDF may elect to suspend or terminate the particular Deliverable concerned or any part of the Deliverable, by notice in writing. In such case this Contract (and any part of a Deliverable not suspended or terminate) will otherwise remain in full force and effect.
- 30.3 NZDF may terminate this Contract immediately by notice in writing to BP if BP becomes or threatens to become or is in jeopardy of becoming subject to any form of insolvency administration.
- 30.4 If notice is given to terminate this Contract under any of the previous sub-clauses, in addition to terminating this Contract, NZDF:
- a. must pay BP for any Deliverables supplied and/or ordered up to and including the date of termination, and

- b. must arrange for the withdrawal and return of all FuelCards on issue to NZDF and oversee their return to BP and must pay for any Fuel supplied on a FuelCard due to use of the FuelCard by the holder after termination.
- 30.5 NZDF may terminate or suspend this Contract, or any part of it, immediately by notice in writing if the New Zealand Government makes any policy or legislative change that, in the reasonable opinion of NZDF, affects the continuation or scope of this Contract.
- 30.6 BP may terminate or suspend this Contract or any part of it immediately by notice in writing if NZDF commits or permits any act or omission which in BP's reasonable opinion creates any immediate unacceptable risk to the health and safety of BP's Personnel or members of the public that is detrimental or harmful to the good name, goodwill or reputation of BP.
- 30.7 Termination of this Contract is without prejudice to:
- a. any other rights or remedies the parties may have under this Contract or at law arising out of any default which occurs before the termination; and
  - b. any claim for moneys payable as at the termination date or in respect of Deliverables performed or liabilities incurred before the termination.

### **31 Disputes Resolution**

- 31.1 If any dispute between the parties arises under this Contract, either party may invoke the dispute resolution procedure provided by this clause by giving written notice. The notice will:
- a. state that a dispute exists and that notice is given in terms of this clause,
  - b. state the details of the dispute with reasonable particularity, and
  - c. designate a person with authority to settle the dispute.
- 31.2 The party to whom such notice is given will promptly designate a person with authority to settle the dispute. The persons designated by the parties will within 20 Business Days of the designation follow whatever investigations each considers appropriate, in order to resolve the dispute.
- 31.3 If the dispute is not resolved within 20 Business Days from commencement of the investigations mentioned in the previous sub-clause the parties will within a further 10 Business Days seek to agree on the following matters:
- a. the process for resolving the whole or part of the dispute through means other than litigation or arbitration, such as negotiation, mediation, conciliation, independent expert appraisal or mini-trial;
  - b. the procedure and timetable for any exchange of documents and other information relating to the dispute;
  - c. procedural rules and a timetable for the conduct of the selected mode of proceeding; and
  - d. a procedure for the selection and compensation of any neutral person who may be employed by the parties to resolve the whole or part of the dispute.
- 31.4 After the expiration of the time for agreement on a dispute resolution process, either party may by notice in writing terminate the dispute resolution process and may then refer the dispute to arbitration or commence litigation in relation to the dispute.

- 31.5 Where the dispute is referred to arbitration, it will be referred to a single arbitrator if the parties can agree on one, or, if not, a person nominated by the President of the New Zealand Law Society, and their decision will be final and binding on the parties. Such reference will be deemed to be a submission under the Arbitration Act 1996 and unless the parties otherwise agree the reference will proceed in accordance with the provision of that Act.
- 31.6 Each party will bear their own costs relating to the resolution of any dispute. The parties will share equally the costs or fees of any mediator or arbitrator.
- 31.7 Pending resolution of the dispute, the parties will continue to perform all their obligations under this Contract except where it is impractical to continue performing any obligations, being the subject of the dispute and such obligations will be suspended during the dispute.

## 32 Force Majeure

- 32.1 NZDF or BP will promptly notify the other party if it considers that:
- circumstances have arisen which are reasonably beyond its control (in the case of BP, this includes, but is not limited to, failure or delay in any part of the supply chain of Fuels into any region in New Zealand (including at the New Zealand Refinery or supplies of Fuel at a port declared to be on industry co-ordination), contamination of Fuels, disruption or damage to supply, storage or port infrastructure, government regulation or other government intervention),
  - there were no reasonable steps that could be taken to avoid or mitigate those circumstances or the consequences, and
  - those circumstances will cause a failure or delay in the notifying party performing the whole or part of its obligations under this Contract. For the purposes of this clause, BP shall be deemed to be unable to meet its delivery obligations if there is insufficient Fuels available to BP within a region to meet the whole of BP's supply requirements for that region.
- 32.2 Performance of this Contract or the relevant part of it (except any obligation to pay the price for Deliverables as set out in **Third Schedule**) will be suspended from the time the circumstances of which notification is given under clause 32.1 commenced, until the circumstances no longer apply, and such non-performance will not constitute a breach of or give rise to a remedy under this Contract. A party shall notify the other party as soon as reasonably practicable if at any time it becomes aware of an event which gives rise to that party seeking to rely on clause 32.1 and shall also notify the other party upon such event ceasing to have effect.
- 32.3 For the purpose of these force majeure provisions, a circumstance reasonably beyond the control of the party relying on this clause 32 will not include:
- the inability on the part of that party to obtain supplies or materials due to disputes with its third party suppliers,
  - that party or its suppliers not having taken all reasonable steps to ensure systems do not fail due to digital date recognition errors, or
  - any obligation in clauses 16 and 17 in the **Second Schedule**.
- 32.4 If the period of suspension referred to exceeds one month, either party may terminate this Contract on giving 20 Business Days' notice to the other party, provided that the circumstance has not been remedied before the end of the notice period.

## 33 Notices

33.1 Notices are to be in writing and delivered either by hand, post or email to the addresses in the **Fourth Schedule**.

33.2 Notice will be deemed given if it is:

- a. delivered, when it is left at the relevant address; or
- b. sent by post, two Business Days after it is posted; or
- c. sent by email, if the recipient acknowledges receipt (whether by way of an automated message or otherwise).

33.3 If a notice is delivered after the normal business hours of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

#### **34 Sub-Contracting**

34.1 With prior written notification to the NZDF and subject to clause 10.1, BP may engage Sub-Contractors to perform any of its obligations under this Contract provided that BP will remain liable to NZDF for the due and proper performance of its obligations and BP must ensure that such Sub-Contractors comply with the requirements of the security clause as if they were personnel of BP.

#### **35 No Advertising**

35.1 BP must not directly or indirectly advertise, without prior NZDF approval, in any newspaper, magazine, journal or other advertising medium or broadcast on radio or television, or the Internet that it supplies goods and services to NZDF.

#### **36 Confidentiality**

36.1 Each party will maintain as confidential at all times, and will not at any time, directly or indirectly:

- a. disclose or permit to be disclosed to any person;
- b. use for itself; or
- c. use to the detriment of the other party or provided for in this Contract;

any Confidential Information except:

- a. as required by law or by the listing rules of any relevant stock exchange;
- b. as is already or becomes public knowledge, otherwise than as a result of a breach, by the party disclosing or using that Confidential Information, of any provision of this Contract;
- c. as authorised in writing by the other party;
- d. NZDF may disclose details of the terms and conditions (including pricing) and any KPIs of this Contract to any requesting Eligible Agency for the purposes of option evaluation;

to the extent reasonably required by this Contract (and, without limiting the effect of this clause, a party may disclose Confidential Information only to those of its officers, employees or professional advisers, on a "need to know" basis, as is reasonably required for the implementation of this Contract).

**37 Relationships**

- 37.1 BP is an independent supplier and nothing in this Contract creates or evidences any partnership, joint venture, agency or employer/employee relationship between the parties.

**38 Severance**

- 38.1 If any provision in this Contract is held invalid, unenforceable or illegal for any reason, the remaining provisions of this Contract will remain enforceable, provided that the severance does not materially affect the purpose of, or frustrate, this Contract.

**39 Waiver**

- 39.1 No delay or failure to enforce any of the provisions of this Contract is a waiver of any future rights of enforcement. No waiver is effective unless it is in writing and signed by each party. A waiver of a breach is not a waiver of any other breach.

**40 Costs**

- 40.1 Each party is responsible for its own costs in relation to this Contract, except a party may recover its costs from the party at fault to the extent incurred due to a breach.

**41 Assignment**

- 41.1 BP will not, without the prior written agreement of NZDF transfer or assign any of the BP's benefits (other than money) or obligations under this Contract.
- 41.2 Any transfer of shares, increase of capital or issue of new shares in the company (where any person who is not an existing shareholder obtains control of the company, by means of voting power or otherwise) will be deemed to be an assignment for the purposes of the previous sub-clause.

**42 Sustainability requirements**

- 42.1 The New Zealand Government is committed to sustainable development. The parties agree to work together, where practical, to support environmentally sustainable business practices.

**43 Survival**

- 43.1 The clauses re warranties, Intellectual Property, advertising and publicity and confidentiality will survive termination or expiry of this Contract.

**FIRST SCHEDULE – FUELS AND ACCESS****2. Introduction**

- 2.1 The purpose of this Schedule is to detail the Fuel and access to be provided under this Contract.

**3. Fuel Types and Specifications**

- 3.1 Fuel types to be supplied by BP are:

- a. 91 Octane Petrol (Regular).
- b. 95 Octane Petrol (Premium).
- c. 96 and or 98 Octane Petrol (Ultimate).
- d. Diesel.
- e. Ultimate Diesel.
- f. Autogas (LPG).

- 3.2 BP does not represent or guarantee that all Fuel types will be available at all outlets.

- 3.3 BP will provide Technical Data Sheets for the above fuels on request by NZDF.

**4. Other Services**

- 4.1 BP may supply additional non Fuel goods and services at its outlets such as carwashes and LPG.

**5. Network**

- 5.1 BP will provide NZDF with a national network of outlets that supply a range of fuels that accept FuelCard at the Contract rates.

- 5.2 On request by NZDF to facilitate Fuel supplies in an area which represents a gap in BP's national network of outlets, BP will either:

- a. advise NZDF of existing supply arrangements with alternative non BP outlets; or
- b. negotiate with an alternative supplier on terms and conditions acceptable to BP (acting reasonably) to accept FuelCard to be used as the method of payment so ensuring normal data integration into FuelCard reporting. As BP will negotiate the merchant agreement on a site by site basis:
  - (1) BP cannot guarantee acceptance of the merchant agreement at the competitor site;
  - (2) the Fuel discount will need to be reviewed;
  - (3) costs will be deducted from the BP discount offered for those specific FuelCards; or

- c. engage a third party card provider. BP will integrate transactional data into the Fuelcard reporting system to allow reporting processes and back office administration to be aligned. Any costs associated with the use of a third party provider would be deducted from the BP discount offered for those specific FuelCards; or
  - d. advise NZDF to organise its own Fuel supplies from that non BP outlet.
- 5.3 NZDF reserves the right to organise its own Fuel supplies from non BP outlets should BP's proposed solution in 5.2 above not meet NZDF needs.

## **6. Volume Adjustment**

- 6.1 NZDF acknowledges that it must give BP reasonable notice of any significant change in demand compared to historical patterns of demand.

## **7. Quality Plan**

- 7.1 The BP New Zealand Quality Plan will be maintained by BP with a copy provided to NZDF on request.
- 7.2 The BP New Zealand Quality Plan will cover terminal supply location audits and product quality focussed workshops with terminal staff.
- 7.3 Delivery documentation will be supplied with all product deliveries and will form the basis of BP's product traceability.
- 7.4 BP will be responsible for ensuring that BP assets are maintained to the standard required by applicable laws and regulations in order to deliver Fuel.
- 7.5 Product supply will be monitored by BP to ensure that the Fuel supplied conforms to the required specifications.
- 7.6 BP will advise all exceptions to NZDF's Representative.

**SECOND SCHEDULE – SUPPORT SERVICES****1. Introduction**

- 1.1 The purpose of this Schedule is to detail the support services to be undertaken by BP to ensure the Deliverables are procured efficiently and the terms of this Contract are adhered to.

**2. FuelCard**

- 2.1 Payment for Fuel purchases will be via FuelCards.
- 2.2 FuelCards loaded with a Personal Identification Number (PIN) will be accepted at BP's nationwide network of outlets during hours of operation.
- 2.3 BP's FuelCard will provide appropriate security features.
- 2.4 BP will provide a dedicated toll-free call facility for card enquiries, customer enquiries and/or cancellation of cards. The contact details are in the **Fourth Schedule**.
- 2.5 NZDF FuelCard administrators will be able to speak to BP customer service representatives directly (at the cost of a local call) between the hours of 7am- 6pm for card / customer enquiries and card orders / cancellations.
- 2.6 BP Fuelcard Online will be available 24 hours a day to place enquiries, seek 'frequently asked questions' and cancel cards.
- 2.7 The following purchase restriction options include:
- a. FuelCards will have the option to hard code nominated purchase limits. Purchases that exceed these limits will be declined by the Eftpos system when attempting a transaction that breaches their allowed limits.
  - b. FuelCard's will allow for a number soft coded purchase limits to be placed on the cards. These limits will not stop a transaction at the Eftpos terminal, however they will display in exception reports when a transaction breaches the set limit.
  - c. Limits will be able to be placed on FuelCards at any time without the need to re-issue a card and will be able to be used for security purposes to monitor expenditure.
  - d. NZDF FuelCard administrators will be able to place product restrictions on each of their cards to limit the products a card holder can purchase. For example:
    - (1) Fuel only – Diesel, ULP, Premium Unleaded, Autogas, all Fuels or just a limited selection of fuel products as required by the purchaser.
    - (2) Fuel and Oil Only – fuel products, or a limited selection of fuel products, and oil.
    - (3) All products – all Fuel products and a selection of non-fuel products such as shop items, repairs, tyres, parts, batteries, bottled gas, and café.
  - e. If a card holder attempts to place a product on a card that is restricted, the transaction will be refused at the point of sale. Product restrictions will be coded into the magnetic stripe on the card.



- f. In the event of electronic failure at a manned site BP will have other restrictions in place.
  - g. BP may also have motifs on the back of cards showing transactional restrictions.
  - h. The service attendant will be expected to check the relevant driver name or vehicle registration, depending on what type of card it is (either vehicle or person specific).
- 2.8 FuelCard PINs are to be encrypted to bank standards.
- 2.9 NZDF FuelCard administrators are to be able to have three options for managing PINs:
- a. System generated PINs. These will allow the BP Fuelcard system to randomly generate PINs for newly ordered cards. When a card is ordered, the system will randomly generate a PIN and dispatch it separately to the new card (for security reasons).
  - b. Online Card Level PIN Management. This will set the PIN of a card to a nominated four digit number of their choosing using BP Fuelcard Online. Only NZDF FuelCard administrators with the required level of BP Fuelcard Online access will have the ability to do this for security purposes.
  - c. Online Account Level PIN Management. This will set a PIN number at account level using BP Fuelcard Online. If an account level PIN is set, all cards under that account will have the nominated PIN set. Only NZDF FuelCard administrators with the required level of BP Fuelcard Online access will have the ability to do this for security purposes.
- 2.10 NZDF FuelCard administrators can request BP to provide enhanced FuelCard security in conjunction with New Zealand technology company EROAD. Costs and service requirements to be negotiated on a case by case basis.
- 2.11 BP will provide a "Special Operations" FuelCard. This will include the applications and FuelCard requests being handled by a minimum number of staff to provide confidentiality and ensure there is no reference to NZDF on the FuelCards. BP will also ensure the "Special Operations" FuelCards are not separated from other FuelCards, or easily identifiable in BP's Fuelcard system.
- 2.12 BP will ensure that:
- a. NZDF FuelCard administrators can set up cost centres and allocate cards to each cost centre with cost centres able to be individually reported on while still receiving reports on an account as a whole.
  - b. NZDF FuelCard administrators can mandate drivers to enter the odometer at the point of sale.
- 2.13 BP will provide the additional option of a FuelCard featuring both BP and government branding ("Government FuelCard"), as follows:
- a. Once the FuelCard is available or when Participating Agencies join this Contract the Participating Agencies will select either the Government FuelCard or the standard BP FuelCard as the base stock for all new FuelCards, or re-issued FuelCards. Any existing FuelCards will only be replaced as they expire.
  - b. Participating Agencies may opt to change base stock design, a maximum of once per Contract period, with any exceptions at BP's discretion.

- c. NZDF will supply BP with the logo to be included in the branding on the Government FuelCard.

### 3. Alternative FuelCard

- 3.1 BP agrees to develop options for an alternative FuelCard solution which offers Participating Agencies FuelCard acceptance at non-BP sites, where required, due to BP network limitations.
- 3.2 In the development of the options for an alternative FuelCard, BP will consult with and consider input from NZDF and selected Participating Agencies.
- 3.3 The options to be identified will be ready to be presented at the 2017 syndicated Relationship Focus Group meeting.
- 3.4 For any identified option to be implemented it will need to satisfy all of the following criteria:
  - a. Maximises on-contract Fuel purchase and promotes Contract volume growth.
  - b. Has a known price impact, which is understood and accepted by both parties.
  - c. Functionality to only permit acceptance at non-BP sites in agreed blackspots.
  - d. Functionality to reflect differing cost of Fuel purchase at BP and non-BP sites.

### 4. Emissions Trading Scheme (ETS)

- 4.1 The Emissions Trading Scheme is part of the Governments primary response to global climate change.
- 4.2 BP will pass on carbon pricing at market rates. The Carbon price calculation and benchmarking process is detailed in the **Third Schedule**.
- 4.3 As the future carbon market and legislative requirements are uncertain, the process for managing carbon will be reviewed from time to time.
- 4.4 BP will support NZDF's participation in the ETS.
- 4.5 NZDF may source its own ETS carbon emission units and the parties will separately agree trading terms and conditions.

### 5. Transition-In

- 5.1 It is essential that implementation of this Contract occur with least possible interference to the NZDF's operation. This means continuity in support and timeliness of supply and distribution.
- 5.2 To facilitate transition-in, BP will:
  - a. develop and implement a management of change (MOC) plan;
  - b. work with NZDF to implement processes, ascertain reporting needs, review FuelCard requirements and set up invoicing structures;
  - c. appoint a dedicated BP Representative and a dedicated back office support person to be on hand to facilitate the transition;
  - d. work with NZDF to ensure fleet listings are compiled correctly;

- e. ensure FuelCards are ordered (includes bulk card ordering) and delivered to users in a timely manner; and
- f. provide all new users with a welcome pack with instructions, location map and 'frequently asked questions' to help card users get the most out of their new FuelCard.

## **6. Transition-Out**

- 6.1 BP will co-operate fully with NZDF prior to the expiry or termination of this Contract to effect an efficient transition to new service arrangements.
- 6.2 BP will upon NZDF's request, co-operate with NZDF to develop a detailed transition-out plan that is practical and flexible. This high level transition-out plan will specify the approach that BP will adopt to ensure that NZDF receives full continuity of services during the transition-out period without any disruption attributable to BP.
- 6.3 Key components of BP's transition-out plan will include:
  - a. establishment of an agreed transition plan with the new supplier and NZDF giving them access to premises and staff under agreed protocols, prior to commencement of the new contract;
  - b. training offered to the new supplier's staff in areas where knowledge of NZDF systems, requirements and protocols is necessary, prior to commencement of the new contract, the prior approved cost of such training to be reimbursed to BP by NZDF;
  - c. the availability of all NZDF documents, manuals, records and other items necessary for the effective delivery of services to NZDF and return of all documents to NZDF;
  - d. completion of all outstanding services in progress or negotiate suitable alternative arrangements;
  - e. complete final processing of outstanding claims, invoices and accounts;
  - f. the offer of any other assistance to NZDF and the new supplier that may be required that could reasonably be expected from a professional customer focused organisation; and
  - g. the willingness to negotiate with NZDF and the new supplier to provide a continuation of BP's resources if necessary, after the expiry of this Contract.
- 6.4 BP will continue supplying Fuels until the termination or expiry of this Contract, and cooperate with the incoming supplier and NZDF through the transition.
- 6.5 During transition upon termination or expiry of this Contract, NZDF will have at their sole discretion the option to continue using FuelCards at the contract rates while transitioning to the new supplier.

## **7. Continuous Business Improvement**

- 7.1 NZDF expects BP to engage in continuous process improvement by contributing to innovative development and practical consideration of:
  - a. cost reduction;

- b. the options for Deliverables that best fit NZDF's strategic plans and objectives throughout the term of this Contract;
  - c. means of improving business processes for increased efficiency and quality to meet customer expectations;
  - d. managing change; and
  - e. keeping up to date with market characteristics and customer dynamics.
- 7.2 BP will, at the annual review meeting under clause 14.3 of this Schedule, highlight areas of opportunity to progress for the coming year.

## 8. Electronic Integration

- 8.1 BP and NZDF will share data using an electronic interface.
- 8.2 On request, BP's Representative will work with NZDF to find enhancements in invoicing, payments, and reporting, to the mutual benefit of both parties, the goal being to drive simplification, standardisation, integration, and automation.
- 8.3 The cost of this service is detailed in the **Third Schedule**.

## 9. Key Performance Indicators

- 9.1 BP will work with NZDF to review and develop the KPIs detailed in the **Sixth Schedule** as a part of the annual review to ensure that they are informative and mutually beneficial to all parties.

## 10. Performance Corrective Process

- 10.1 The successful resolution of issues is an important success factor.
- 10.2 NZDF will utilise a Corrective Action Request (CAR) process to bring any maintenance or corrective actions to BP's attention for remediation. BP must respond within two Business Days to any matter raised by NZDF following the CAR process agreed with BP.
- 10.3 BP will implement customer relationship management software to track all customer contact queries and actions.
- 10.4 Reporting will be available to NZDF through this tool, enabling BP's Representative to provide a summary of the issues logged, actions taken, and improvements identified across all aspects of the relationship.

## 11. Syndicated Relationship Management

- 11.1 In order to manage the relationship between BP and the Participating Agencies, the following engagement schedule is to be met:
- a. All Participating Agencies with a volume exceeding 500,000 litres per year are to be offered six monthly meetings with the BP Commercial Business Manager.
  - b. All Participating Agencies with a volume less than 500,000 litres per year are to have at least one phone contact per year with the BP FuelCard team or Commercial Fuels Business Manager, whose details are specified in the **Fourth Schedule**.

## 12. Meetings

- 12.1 In order to facilitate the relationship between BP and NZDF, a regular schedule of meetings of the parties' Representatives and other personnel as required by each party will be held. As a minimum this will include:
- a. an annual review meeting in each year in accordance with the annual review requirements in the Annual Review clause of this **Schedule**. The purpose of these meetings is to oversee the relationship and to ensure that the spirit and intent of the relationship is being maintained. Matters of strategic importance will be discussed;
  - b. quarterly meetings to manage and review implementation objectives and other matters in relationship to the performance of this Contract; and
  - c. meetings at the request of either party to discuss the KPIs or urgent issues relating to the provision of the Deliverables, any alleged defaults or alleged breaches.
- 12.2 Each party will provide the other notification of issues and copies of relevant reports and documentation at least 10 Business Days prior to any meeting (or as soon as possible if a meeting is called on shorter notice).
- 12.3 NZDF will minute such meetings, and copies of minutes will be distributed to and agreed to by Representatives of both parties. The decisions arising from these meetings are policy issues and will not be binding on either party until both parties agree those actions in writing.

## 13. Annual Report

- 13.1 BP will provide an annual report to NZDF 10 Business Days prior to the annual review that details:
- a. expenditure with BP itemised by Participating Agency inclusive of Fuel types and quantities; and
  - b. market input data in the format of an excel spread sheet including the variable price build-up data for the period.

## 14. Annual Review

- 14.1 In April each year, NZDF and BP will carry out an annual review of the provision of the Deliverables.
- 14.2 NZDF may invite other parties to contribute in an informal capacity.
- 14.3 At each annual review the parties will discuss and agree:
- a. the success of the relationship in meeting NZDF's expectations of quality of operations, quality of support, quality of solutions, results and generally the overall efficiencies to NZDF;
  - b. the success of BP in meeting the KPI's;
  - c. the success of syndication to Participating Agencies including an overview, update, issues experienced, and objectives for the next year;
  - d. expected changes to contract Fuel volumes;
  - e. any required changes to the KPI's;

- f. the parties' business plan for the management of this Contract for the next year incorporating goals and objectives;
- g. potential cost saving initiatives;
- h. the performance of NZDF in supporting BP to achieve the goals set out in the KPIs;
- i. the Fuel price structure option to be utilised for the next year;
- j. changes to the prices and fees payable by NZDF for the next year to BP for the Deliverables;
- k. the adequacy of resources dedicated by BP and NZDF to facilitate the provision of the Deliverables;
- l. the introduction and or improvement of processes, systems and practices, as applicable; and
- m. whether the provision of market intelligence was timely and accurate during the year.

## 15. Reporting

15.1 The availability of quality information is critical to effectively manage the Deliverables. The Reporting must be timely, flexible and available to meet all the management needs, e.g. financial control, performance monitoring of KPI's, volumes by Fuel type, expenditure by Fuel type and sustainability.

15.2 Reporting capability is to include, but is not limited to:

- a. Fuel usage;
- b. expenditure incurred;
- c. initiatives and recommendations for consideration under this Contract;
- d. testing, compliance and quality assurance reports;
- e. complaints/ issues and actions/resolutions;
- f. transaction Reports;
- g. weekly retail price updates;
- h. ad Hoc Reports;
- i. availability of online report access; and
- j. delivery against the Participating Agency engagement schedule in clause 11.1 of this Schedule.

15.3 BP is to send the following reports on a monthly basis to the NZDF Representative:

- a. FuelCard.
- b. Consolidated and Participating Agency volumes.
- c. Payment performance against terms of payment.

- 15.4 To enable BP to carry out the investigation set out in clause 3.3 of this Schedule, BP and the significant Participating Agencies agree to undertake the following reporting and analysis of non-BP network Fuel expenditure. Significant Participating Agencies are those with an annual total Fuel purchase volume exceeding 500,000 litres (including non-BP volume).
- 15.5 Significant Participating Agencies will be requested to provide BP with the non-BP network Fuel purchase information, which needs to include at least the date, site, volume and Fuel type. BP will use this information to:
- a. Provide feedback to the Significant Participating Agencies on missed opportunities, including but not limited to:
    - (1) Spend at a non-BP site, where there is a BP site in designated close proximity; and
    - (2) Spend at a site that accepts the BP FuelCard where the purchase used is a non-BP FuelCard;
  - b. Inform BP's network infrastructure team; and
  - c. Provide feedback to NZDF on potential infrastructure projects.
- 15.6 On request by NZDF, BP is to provide market input data in the format of an excel spread sheet including the variable price build-up data for the period.
- 15.7 BP will provide an online reporting system for the FuelCards that:
- a. is available 24 hours a day, seven days a week;
  - b. provides a range of customised FuelCard transaction reports that are able to be scheduled to run automatically on a daily, weekly or monthly basis and sent to the requestor directly by email; and
  - c. will provide NZDF with the flexibility to export detail into a comma separated value file (CSV file) which can be uploaded into NZDF's own proprietary programs.
- 15.8 The BP Representative will, on request, provide guidance on the use of the BP Fuelcard Online system.
- 15.9 BP Fuelcard Online customised reports will:
- a. be simple to create and flexible in their construction;
  - b. have the capacity to sort the data according to a number of pre-set formats and specify restrictions on data output, where appropriate;
  - c. be provided at no charge;
  - d. be made available to all BP Fuelcard Online users; and
  - e. include a library of customised reports comprising as a minimum:
    - (1) Fleet Control Report - The Fleet Control Report is created and displayed in panels within an Adobe Acrobat file. If several levels of information are available (e.g. multiple fleet accounts, cost centres, etc.) for reporting via the one report, customers may switch between fleets and cost centres by clicking on the bookmarks in the panel to the left of the reports.

- (2) Cost Centre List - displays cost centre codes in use on a particular account and provides a description of each code, where one has been stored.
- (3) Cost Centre Summary - allows purchasers to view a summary of the different cost centres within an account.
- (4) Vehicle Analysis Report - displays details of card usage for the card(s) selected.
- (5) Litres/100km - provides information on the Fuel consumed per 100kms travelled, based upon the odometer records and card-based Fuel sales for that particular vehicle.
- (6) Odometer Audit - for tracking vehicle usage, auditing fuel purchase history and completing Fringe Benefits Taxation returns. Data returned are in the format of a list of odometer readings for vehicles within the account as at a specified date.
- (7) Exceptions Report - detail non-authorized transactions that have been processed on cards within the chosen fleet e.g. purchases in excess of any \$/litre limit set for exception reporting or transactions where the odometer has not been supplied.
- (8) Export transaction files. In the Export Transaction Files (EFT) screen customers may create one-off reports or configure automatic recurring reports. These reports are available as either CSV or text files to ensure compatible fit with NZDF's system. The reports include all transactions data and are emailed to the specified email address when they have been generated.
- (9) Active Cards - provides a list of cards on the selected account with an active status. The report shows the customer and card delivery details, as well as the card, security and limitations information on all active cards.

## 16. Essential Government Services

16.1 BP will maintain an:

- a. Incident Management Plan and Business Support Plan; and
- b. Oil Emergency Response Strategy plan;

and share these plans with NZDF.

16.2 BP will comply with all of its legal requirements under the Ministry of Business, Innovation and Employment's "Oil Emergency Response Strategy".

16.3 BP will participate in the Ministry of Civil Defence and Emergency Management planning and exercises.

16.4 In the event of civil, or other formally declared emergencies and national disasters, BP will prioritise supplies to essential government services as directed by the Ministry of Civil Defence and Emergency Management.

16.5 In the event of BP giving NZDF personnel emergency access to BP installations, then NZDF and its personnel must comply with BP's current rules, regulations and directions.



- 16.6 BP's on-site directions will be made available to NZDF for access to BP's Fuel installations to upload Fuel in emergency situations.
- 16.7 BP will ensure back-up Fuel extraction methods are available from outlets in key national locations and suitable equipment is available for pumping fuel at BP terminal facilities around New Zealand.
- 16.8 BP will work with its suppliers and contractors to re-establish the supply chain as soon as practical.
- 17. Supply Constraints**
- 17.1 BP will ensure that NZDF is aware of any impending or actual Fuel product supply constraints.
- 17.2 NZDF and BP will work together to ensure that available domestic fuel stocks stored by BP do not impact NZDF's ability to respond to any threat, emergency or humanitarian response.

<b>FOURTH SCHEDULE – KEY CONTACTS</b>
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**1. Representatives**

<p><b>NZDF:</b></p> <p>Defence Fuels Management Group - Lead          Defence Logistics Command (Land)          Messines Defence Centre          Somme Road          Private Bag 901          UPPER HUTT 5014</p> <p><b>Attention:</b> s. 9(2)(a) [REDACTED]</p> <p>Telephone: s. 9(2)(a) [REDACTED]          Email: s. 9(2)(a) [REDACTED]</p>	<p><b>BP:</b></p> <p>BP Oil New Zealand Limited          Watercare House          73 Remuera Road          Newmarket 1050          AUCKLAND</p> <p><b>Attention:</b> Commercial Fuels Business Manager          s. 9(2)(a) [REDACTED]</p> <p>Telephone: s. 9(2)(a) [REDACTED]          Email: s. 9(2)(a) [REDACTED]</p>
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**2. Notices**

<p><b>NZDF:</b></p> <p>Capability and Logistics          Defence Commercial Services          National Service Centre          Cnr Dante and Alexander Roads          Private Bag 902          UPPER HUTT 5014</p> <p><b>Attention:</b> Procurement and          Commercial Specialist</p> <p>Telephone: s. 9(2)(a) [REDACTED]          Email: [REDACTED]</p>	<p><b>BP:</b></p> <p>BP Oil New Zealand Limited          Watercare House          73 Remuera Road          Newmarket 1050          AUCKLAND</p> <p><b>Attention:</b> Managing Director          Matt Elliott</p> <p>Telephone: s. 9(2)(a) [REDACTED]          Email: [REDACTED]</p>
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**3. Enquiries**

Customer and FuelCard Enquiries	Call 0800 800 027
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**FIFTH SCHEDULE - SYNDICATED PROCUREMENT**

- 1. Becoming a Participating Agency**
  - 1.1 In accordance with clause 6 Syndicated Procurement of the Conditions of Contract, NZDF and BP agree that this Contract (known as a Lead Agency Agreement (LAA)) may be utilised as a syndicated procurement contract through the procedures set out in this Schedule.
- 2. Effect of Becoming a Participating Agency**
  - 2.1 Each Participating Agency will be bound by the provisions of this LAA with BP as if it were party to the LAA instead of NZDF.
  - 2.2 BP agrees to be bound by all the provisions of the LAA as if the Participating Agency were the other party to this LAA instead of NZDF, once the Participating Agency Agreement in **Annex A** to this Schedule (PAA) has been signed and subject to any amendments to the Deliverables specified by the Participating Agency.
  - 2.3 The obligations of each Participating Agency under the LAA are owed to BP both severally and separately (not jointly).
  - 2.4 The obligations of BP under this LAA are owed to each Participating Agency both severally and separately (not jointly).
  - 2.5 No Participating Agency will be liable to BP for the obligations of another Participating Agency.
  - 2.6 The provisions of clauses 10.1, 11.1b, and 11.1c of the LAA's Conditions of Contract do not apply to any Participating Agency except to the extent specified in the PAA with BP.
- 3. Process for Joining the LAA**
  - 3.1 Any Eligible Agency may become a Participating Agency for the balance of the term of the LAA by signing the PAA in accordance with clause 2.2 of this Fifth Schedule.
  - 3.2 BP may only decline to enter into a PAA with an Eligible Agency if BP can demonstrate that there are objective and sound commercial reasons to do so, such as unacceptable credit risk.
  - 3.3 The Eligible Agency will become a Participating Agency with effect from the date agreed by both parties.
  - 3.4 If any term in this LAA conflicts with a term in a PAA, the term in the PAA will prevail.
  - 3.5 NZDF and BP consent to details of the terms and conditions (including pricing) and any Key Performance Indicator of this LAA to be disclosed to any requesting Eligible Agency for the purposes of option evaluation.
- 4. Account Management**
  - 4.1 BP may at its discretion accept requests from Participating Agencies to establish direct account relationship management to oversee the operation and performance of the LAA in relation to that Participating Agency's specific requirements.
- 5. Fuel Price Structure Options (FPSO)**
  - 5.1 The Participating Agencies will utilise the FPSO agreed between NZDF and BP at the annual review meeting.

**6. Variations**

- 6.1 Any amendment to, or variation of, this LAA will be in writing and signed by the appropriate authority of both BP and NZDF.
- 6.2 Any changes to this LAA, including the Schedules, will be deemed to apply to all Participating Agencies.

**7. Liability**

- 7.1 Each Participating Agency will be separately liable for the payment of any debts that Participating Agency has incurred.
- 7.2 Neither NZDF nor Participating Agencies will be liable for any debts or liabilities of any other party to this LAA.
- 7.3 For the avoidance of doubt, the caps set out in clause 0 Limitations on Liability in the LAA's Conditions of Contract apply in relation to each Participating Agency and also to anyone else who uses the goods and/or services provided to that agency (together). The caps set out in clause 0 Limitations on Liability of the LAA's Conditions of Contract are not intended to apply to BP's total liability to NZDF and all Participating Agencies (together).

**8. Dispute Resolution**

- 8.1 When a dispute is between a Participating Agency and BP, NZDF is willing, if requested, to mediate in order to assist a mutually agreeable resolution.

**9. Termination**

- 9.1 Upon any subsequent withdrawal under the terms of this LAA by any Participating Agency, this LAA will continue for the remaining Participating Agencies under the existing terms and conditions.
- 9.2 Should NZDF terminate this LAA for any reason and in accordance with Termination clause 30 of the LAA's Conditions of Contract, Participating agencies may continue using this LAA. However NZDF will no longer administrate the LAA terms and conditions and the remaining Participating Agency will be required to appoint a new Lead Agency.

**10. Notices**

- 10.1 Participating Agencies will notify the appropriate details within their respective PAA.

**ANNEX A TO THE FIFTH SCHEDULE - PARTICIPATING AGENCY AGREEMENT**

**[INSERT NAME OF PARTICIPATING AGENCY]**

**AND**

**BP OIL NEW ZEALAND LIMITED**

**[insert Contract number]**

**PARTICIPATING AGENCY AGREEMENT**

**FOR THE PROVISION OF**

**RETAIL FUEL AND SERVICES**

**SIGNATURE PAGE**

**THIS PARTICIPATING AGENCY AGREEMENT** is made on the      day of      20YY

**BETWEEN [INSERT NAME OF PARTICIPATING AGENCY]** ("Participating Agency"), **AND**

**BP OIL NEW ZEALAND LIMITED** (Company Number 5068) a duly incorporated company with its registered office at BP House, 20 Customhouse Quay, Wellington, New Zealand ("BP")

**IT IS AGREED** that BP will provide the retail fuel and services to [Insert Government Agency] upon the terms and conditions set out in the attached Conditions of Agreement.

**SIGNED for GOVERNMENT AGENCY**      )  
by **INSERT NAME**      )  
being the Insert Position      )  
in the presence of:      )

\_\_\_\_\_

**Witness**

Signature:  
Name:  
Occupation:  
Address:

**SIGNED for and on**      )  
behalf of **BP OIL NEW ZEALAND LIMITED**      )  
by **Insert Signee Name**      )  
being the Insert Appointment Title      )  
in the presence of:      )

\_\_\_\_\_

**Witness**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Address: \_\_\_\_\_

**CONDITIONS OF AGREEMENT****1. Background**

- 1.1 NZDF and BP have entered into a Lead Agency Agreement (LAA) for the provision of retail fuel and services.
- 1.2 Pursuant to clause 6 Syndicated Procurement of the LAA, BP has agreed that [insert name of agency] may become a Participating Agency under the LAA with effect from [insert Commencement Date].

**2. Definitions**

- 2.1 The terms defined in the LAA will have the same meaning in this Participating Agency Agreement (PAA), unless the context otherwise requires.

**3. Amendments to the LAA**

- 3.1 The LAA is amended, as between BP and the Participating Agency in accordance with Schedule One of this PAA.

**4. Effect of this Agreement**

- 4.1 The Participating Agency and BP each agree to be bound by the provisions of the LAA as though the Participating Agency was NZDF except where specified otherwise in this PAA, but this PAA is a separate contract.

**5. Transition-In**

- 5.1 To facilitate transition - in, BP will work with the Participating Agency to implement processes, ascertain reporting needs, review FuelCard requirements, set up invoicing structures and ensure fleet listings are compiled correctly.

**6. NZDF Leadership**

- 6.1 The Participating Agency is required to comply with all directives and requests for information from NZDF as they apply to the LAA or PAA.

**7. Termination**

- 7.1 The Participating Agency may terminate this PAA by giving BP at least one month's prior written notice if the Participating Agency:
- a. is to be disestablished.
  - b. is to be merged with a non-Participating Agency.
  - c. no longer qualifies as an Eligible Agency.

**8. Notices**

8.1 For the purpose of clause 33 Notices of the LAA, the Participating Agency's details are as follows:

8.2 Insert Details

**9. Credit**

9.1 BP may impose or change a credit limit for the Participating Agency or suspend or terminate the Participating Agency's ability to purchase Deliverables on credit terms, or suspend or terminate any FuelCard account or FuelCard held by the Participating Agency, on written notice to the Participating Agency, if the Participating Agency is in breach of its payment obligations.

9.2 BP will advise NZDF of any intent to enact the terms of clause 9.1.



**SCHEDULE ONE - AMENDMENTS TO CONTRACT**

*Only if required, insert agreed specific requirements of the Participating Agency and BP*

**1. Account Management**

- 1.1 BP will appoint a BP Client Manager to work with the Participating Agency to oversee the operation and performance of the Agreement in relation to the Participating Agency's specific requirements.
- 1.2 The scope and frequency of the Participating Agency's meetings is \_\_\_\_\_

**2. Invoicing and Payment**

- 2.1 All FuelCard, bulk and/or consignment delivery volume will be invoiced electronically and paid via Direct Debit or Electronic Funds Transfer (EFT).
- 2.2 On receipt of an itemised GST invoice from BP which includes the relevant credit terms, the Participating Agency will pay BP within \_\_\_\_\_.

<b>SIXTH SCHEDULE – KEY PERFORMANCE INDICATORS (KPI)</b>
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**1. Key Performance Indicators (KPIs)**

- 1.1 BP will work with NZDF to produce a range of KPIs that will be informative and mutually beneficial to all parties.
- 1.2 The BP Representative will be the primary point in ensuring compliance across all areas of this Schedule.
- 1.3 BP may seek the agreement of the NZDF Representative to move outside the KPI's in the event of unforeseen eventualities.
- 1.4 The initial KPIs to be used during the term of this Contract are.

Serial	KPI	Standard	Measure	Data Capture	Reporting
1.	Monthly Reporting	Reports are available at designated date.	+/- 2 Business Days	BP	Reported at NZDF meetings.
2.	Fuel Card management	Card requests satisfied within five Business Days	98%	NZDF / BP	Reported at NZDF meetings.
3.	Network Coverage Management	Requests for additional non BP network coverage actioned within two weeks	+/-5 Business Days	BP	Reported at NZDF meetings.
4.	Invoicing Accuracy	BP will achieve not less than a 98% invoicing accuracy per month.	> 98% per month	BP	Reported at NZDF meetings.
5.	Payment timeliness	NZDF will achieve not less than a 95% payment timeliness per month .	> 95% per month	BP	Reported at NZDF meetings.
6.	Corrective Action Request (CAR) process	BP must respond within two Business Days to any matter raised by NZDF following the CAR process agreed with BP.	+/- 1 Business Days	BP	Reported at NZDF meetings

## EIGHTH SCHEDULE SUPPLIER CODE OF CONDUCT



## Supplier Code of Conduct

### Statement of Government Expectations

The Government is committed to sustainable and inclusive government procurement that delivers for New Zealand and New Zealanders. This Supplier Code of Conduct outlines the expectations we have of our suppliers. Suppliers must make their subcontractors aware of this code.

### Ethical behaviour

The Government expects its suppliers to:

- › manage their activities and affairs, and conduct themselves, with integrity in accordance with applicable laws, regulations and ethical standards
- › not engage in any form of corruption
- › be transparent about their ethical policies and practices.

### Labour and human rights

The Government expects its suppliers to:

- › adhere to international human rights standards in their workplace and monitor and address these standards within their supply chain
- › comply with New Zealand employment standards and maintain a workplace that is free from unlawful discrimination.

### Health, safety and security

The Government expects its suppliers to:

- › comply with workplace health and safety laws and regulations and maintain healthy and safe work environments
- › comply with any security requirements notified to them by the Government
- › adequately protect any information, assets, tools and materials provided by the Government and return these promptly when requested.

### Environmental sustainability

The Government encourages suppliers to establish environmentally responsible business practices and proactively improve their environmental performance. The Government expects its suppliers to:

- › conduct their business in accordance with applicable laws, regulations and standards regarding the mitigation of impacts on, and protection of, the environment
- › work to improve their environmental sustainability and reduce their environmental impacts.

### Corporate social responsibility

The Government encourages its suppliers to be good corporate citizens and contribute positively to their communities. Some positive things suppliers could do are:

- › pay their subcontractors promptly
- › consider including local, Māori, and Pasifika businesses to deliver the contract.

