

**AWE PLC**  
**PURCHASE ORDER TERMS AND CONDITIONS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The following terms have the following meanings:

**"Acceptance Conditions"** has the meaning given to it in Clause 4.1;

**"Agreement"** means a contract consisting of the Purchase Order and these terms and conditions;

**"Applicable Laws"** means all applicable laws, regulations, regulatory requirements, directives, orders, AQAPS, codes of practice in any relevant jurisdiction, and all relevant British, European and other international standards as in force from time to time;

**"AQAPS"** means the Allied Quality Assurance Publications issued by NATO or any successor body which replaces it;

**"Average Price"** means in relation to the Equivalent Deliverables provided by a Comparison Sample, the mean price of the relevant deliverables over the previous 12 month period;

**"AWE Group"** means any holding company of AWE and any holding company or subsidiary of such holding company and any subsidiary of AWE for the time being (as these terms are defined in section 1159 of the Companies Act 2006);

**"AWE Materials"** has the meaning given to that term in Clause 12.2(a);

**"AWE Policies"** means the policies detailed in the AWE Supplier Handbook, as updated by AWE from time to time, including, but not limited to the Modern Slavery Policy and any AWE policies relating to anti-bribery, health and safety, information security and site security;

**"AWE Site"** means AWE Aldermaston, AWE Burghfield, AWE Blacknest and The Royal Naval Armament Depot (RNAD) at Coulport and Faslane or such other site as AWE may notify to the Supplier from time to time;

**"AWE Standards"** means the Standard Requirements for Suppliers detailed in the AWE Supplier Handbook, as updated by AWE from time to time;

**"AWE Supplier Handbook"** means the AWE document available at [Supplier Assurance – AWE](#) ;

**"Benchmark Review"** means any benchmarking of any or all of the Price, the Deliverables and the KPI's which may be requested by AWE pursuant to Clause 28 (Benchmarking);

**"Benchmarked Deliverables"** means in relation to a Benchmark Review, the Deliverables that AWE elects to include in that Benchmark Review;

**"Benchmarking Report"** means the report produced by the AWE following a Benchmark Review;

**"Best Industry Practice"** means the exercise of the degree of skill, competence, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person complying with Applicable Laws and practice engaged in the same type of undertaking under the same or similar circumstances as the Supplier;

**"Bribery Laws"** means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption from time to time;

**"Business Day"** means a day other than a Saturday, Sunday or bank or public holiday in England;

**"Change of Control"** means, in relation to either party, a change in management, ownership or control whereby the ultimate power to control or determine the direction of the management policies of the party, either directly or indirectly and whether through the ownership of voting securities, by contract or otherwise (including that meaning as provided in section 574 of the Capital Allowances Act 2001) is transferred to a third party;

**"Claim"** has the meaning given to it in Clause 23.6;

**"Commencement Date"** has the meaning given to it in Clause 20.1;

**"Comparison Sample"** means a sample of organisations providing Equivalent Deliverables;

**"Confidential Information"** means any commercial, financial or technical information, information relating to the Services and/or Goods, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by AWE in performing its obligations under, or otherwise pursuant to the Agreement;

**"Contact Data"** has the meaning given to it in Clause 17.5;

**"Contracts Finder"** means the UK Government's publishing portal for public sector procurement opportunities;

**"Counterfeit Goods"** means the Goods that are or contain unlawful or unauthorised reproductions, substitutions or alterations that have been knowingly mislabeled, misidentified or otherwise misrepresented to be

an authentic, unmodified part from the original manufacturer or any third party with the express written authority of the original manufacturer. Unlawful or unauthorised substitution includes Goods represented as new, or the false identification of any grade, serial number, lot number, data code or performance characteristics;

**"Crown"** means the government of the United Kingdom (including Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons and government agencies;

**"Data Protection Laws"** means:

(a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of personal data to which a party is subject, including the UK Data Protection Laws; and

(b) any code of practice or guidance published by the ICO or the European Data Protection Board (or any other Regulator with respect to the processing of personal data) from time to time;

**"Deliverables"** means the Goods or Services or both the Goods and Services as the case may be;

**"Design Rights Agreement"** means the agreement to be entered into between the MoD and the Supplier in the form provided to the Supplier from time to time;

**"DPA"** means the UK Data Protection Act 2018 and the rules and regulations made or having effect under it;

**"EIRs"** means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the ICO or relevant government department in relation to such regulations;

**"Employment Laws"** means all Applicable Laws relating to the employment of individuals and the associated rights of employees and the responsibilities of employers including, but not limited to the Equality Laws, the Modern Slavery Act 2015 and any Applicable Laws relating to the use of child labour;

**"Equality Laws"** means the Equality Act 2010, any statutory code issued under it and any supplements to it as well as associated guidance published by the Equality and Human Rights Commission and all other applicable UK legislation, statutory instruments and regulations in relation to equality and diversity from time to time;

**"Equivalent Deliverables"** means deliverables that are identical, or similar in all material respects, to the Benchmarking Deliverables (including in terms of scope, specification, volume and quality of performance) that are generally available within the UK and are supplied by a provider of relevant deliverables to a customer similar in size to AWE over a similar period, in particular, and where available, including deliverables purchased by AWE from any other service provider that are identical or similar to the Deliverables (including in terms of scope, specification, volume and quality of performance);

**"FOIA"** means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the ICO or relevant government department in relation to such legislation;

**"Force Majeure"** means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care and subject to implementation of any applicable Business Continuity Plan) preventing or delaying it from performing its obligations under this Agreement or any Purchase Order including an act of God, fire, flood, lightning, earthquake or other natural disaster; epidemic or pandemic (but only once declared by any relevant governmental authority), war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of this Agreement; strike, lockout or boycott or other industrial action except strikes or other industrial disputes involving the Supplier's or its suppliers' workforce;

**"GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;

**"Goods"** means the equipment and related accessories, spare parts and documentation and other physical material more particularly described in the Purchase Order;

**"Government Establishment"** means an AWE Site or any other UK Government site including any of Her Majesty's ships or vessels and service stations;

**"ICO"** means the UK Information Commissioner's Office, or any successor body which replaces it;

**"Insolvency Event"** means in respect of a party:

- (a) suspending, or threatening to suspend, payment of its debts or being unable to pay its debts as they fall due or admitting inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123(1) if the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) had any partner to whom any of the foregoing apply; or
- (b) if the value of its assets is less than the amount of its liabilities as defined in section 123(2) of the Insolvency Act 1986; or
- (c) commencing negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or making a proposal for or entering into any voluntary arrangement, composition of debts or a scheme of arrangement (other than for the sole purpose of a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
- (d) having a petition filed, a notice given, a resolution passed, or an order made, for or on connection with its winding up (other than the passing of a resolution for voluntary winding-up with a declaration of solvency under section 89 of the Insolvency Act 1986); or
- (e) if it files a notice of intention to appoint an administrator, a notice of appointment of an administrator or an application to court for the appointment of an administrator or it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986); or
- (f) being an individual, is the subject of a bankruptcy petition or order; or
- (g) having a floating charge holder over its assets becoming entitled to appoint or on the appointment of an administrative receiver or having possessions taken, by or on behalf of the holders of any debentures secured by a floating charge or any property comprised in or subject to the floating charge; or
- (h) having a person becoming entitled to appoint a receiver or manager of its property or a receiver or manager being appointed over its property; or
- (i) having a creditor or encumbrancer of it attaching or taking possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; or
- (j) being subject to any analogous arrangement, event or proceedings in any other jurisdiction to those set out in paragraphs (a) to (i) (inclusive); or
- (k) additionally in the case of a partnership) having any partner the subject of an individual arrangement or any other event or proceeding referred to in paragraphs (a) to (j) (inclusive); or
- (l) suspending or ceasing, or threatening to suspend or cease, to carry on all or a substantial part of its business;

**"Intermediary"** means any entity through which a Resource is contracted, other than the Supplier and any PSC;

**"IPR"** means any and all intellectual property rights as may now or in the future exist including patents, trade marks, design rights, moral rights, copyright and related rights, rights in databases, domain names, topography rights, know-how, look and feel, rights in confidential information and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with the right to apply for registration of and/or register such rights any and all goodwill relating or attached thereto and all extensions and renewals thereof;

**"ITEPA"** means the Income Tax (Earnings and Pensions) Act 2003;

**"KPIs"** means the key performance indicators set out in the Purchase Order;

**"MOD"** means the Ministry of Defence;

**"Modern Slavery Offence"** has the meaning given to that term in Clause 18.6(a)(i);

**"Modern Slavery Policy"** means AWE's anti-slavery and human trafficking policy;

**"New Supplier"** means any alternative supplier appointed by AWE to supply the Deliverables or any equipment and/or services in replacement for all or part of the Deliverables;

**"Price"** has the meaning given to that term in Clause 5.1;

**"PSC"** means a limited company or partnership which meets the conditions specified in sections 610 or 61P, as applicable, of ITEPA, (or such other conditions as may apply from time to time for the purpose of determining whether a company or partnership is of a type which is potentially subject to the legislation concerning provision of workers' services through intermediaries);

**"Purchase Order"** means a document bearing that name which has been issued by AWE to the Supplier and under the terms of which the Supplier shall commence its provision of the Deliverables;

**"Quality Requirements for Suppliers"** means the latest version of a document bearing that title as published from time to time by AWE;

**"Records"** has the meaning given to that term in Clause 22.1;

**"Regulatory Body"** means the MOD, the Health and Safety Executive (including the Office of Nuclear Regulations), the Environment Agency, and such other entities which, whether under statute, regulations, codes of practice, or otherwise, are entitled to regulate, investigate, or influence the business or activities undertaken by AWE;

**"Resource"** means any individual who is involved in the provision of the Services (including, without limitation, any individual named in the Purchase Order) or any individual that AWE is able to specify as being involved in the provision of the Services);

**"Request for Information"** means a request for information or an apparent request under the FOIA or the Environmental Information Regulations;

**"Restricted & Prohibited Substances List"** means the list of substances which the Supplier must not use in the provision of the Services and/or Goods, as updated by AWE from time to time;

**"RFP"** has the meaning given to that term in Clause 28.9;

**"Security Aspects Letter"** means any letter described as such by AWE, as issued by AWE from time to time;

**"Services"** means the services more particularly described in the Purchase Order;

**"Sub-Contract"** has the meaning given to that term in Clause 5.6;

**"Supplier Materials"** means those elements of the Deliverables that were created by the Supplier prior to or independently of the provision of the Deliverables;

**"Suspect Counterfeit Goods"** means any Goods provided to AWE for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that such Goods is authentic.

**"Term"** has the meaning given to that term in Clause 20.1;

**"Transfer Event"** means an event where, after the effective date of the Purchase Order, the identity of the Supplier of the Deliverables (or any part of the Deliverables) changes, resulting in the transfer of all or part of the Deliverables to a new supplier;

**"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or re-enacted from time to time);

**"UK Data Protection Laws"** means the Privacy and Electronic Communications Regulations 2003 (as amended by SI 2011 no. 6), the Data Protection Act 2018 and the GDPR as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) and incorporated into UK law under the UK European Union (Withdrawal) Act 2018;

**"UK GDPR"** shall have the meaning given to that term in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586);

**"VAT"** means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the provision of the Deliverables; and

**"Warranty Period"** means a period of twelve (12) months commencing on AWE's acceptance of a particular delivery of Goods in accordance with Clause 4.1.

1.2 In this Agreement:

- (a) any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders including the neuter gender;
- (b) any reference to a person shall, unless the context otherwise requires, include individuals, partnerships, companies and all other legal persons (in each case whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence);
- (c) the words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context; and

- (d) any reference to Applicable Law or to any statute, statutory instrument, directive, regulation, order or other enactment shall mean that instrument as amended, enacted, re-enacted, replaced, extended, modified, consolidated or repealed from time to time.
- 2. THE SERVICES**
- 2.1 The Supplier shall:
- (a) provide the Services in a diligent manner with reasonable care and skill and in accordance with this Agreement, all Applicable Law, Best Industry Practice and the AWE Policies; and
- (b) not do anything to bring the name or reputation of AWE or any member of the AWE Group into disrepute or prejudice the interests of the business of the whole or any part of the AWE Group.
- 3. DELIVERY AND PERFORMANCE**
- 3.1 The Goods shall be delivered by the Supplier to the Location on the date(s) specified in the Purchase Order. Unless otherwise specified in the Purchase Order, the Goods shall be deemed delivered by the Supplier only on completion of unloading of the Goods at the Location and the Goods shall be unloaded by AWE unless otherwise specified in the Purchase Order.
- 3.2 The Supplier shall deliver any Goods via DDP (as defined in INCOTERMS 2020 or any subsequent version of INCOTERMS) to the place of delivery as specified in the Purchase Order.
- 3.3 The Goods shall not be delivered in instalments unless specified in the Purchase Order.
- 3.4 If the Supplier fails to deliver any of the Deliverables by the date specified in the Purchase Order, AWE shall (without prejudice to its other rights and remedies) be entitled at AWE's sole discretion do all or any combination of the following:
- (a) procure the same or similar Deliverables from a supplier other than the Supplier; and
- (b) recover from the Supplier all costs and losses resulting to AWE, including the amount by which the price payable by AWE to acquire the same or similar Deliverables from another supplier exceeds the price payable under the Purchase Order and any loss of profit.
- 3.5 The Supplier acknowledges and agrees that where it is required to deliver the Deliverables on location at a Government Establishment:
- (a) neither AWE nor the MOD accepts any liability for any loss or damage to any of the Supplier's property or equipment, except where such loss or damage was caused directly by AWE or the MOD;
- (b) the Supplier shall provide AWE with a written list of the Supplier's personnel who need to access the Government Establishment for approval prior to commencement of its delivery of the Deliverables. The Supplier may not use any personnel not notified to AWE without AWE's prior written consent;
- (c) the Supplier shall comply with all relevant AWE Standards; and
- (d) the Supplier shall indemnify AWE against all claims arising from the death of or any injury to any individual arising from the Supplier's act or omission or the Supplier's provision of the Deliverables at the Government Establishment, save where and to the extent that such claim arises as a direct result of the negligence, act, omission or default of either AWE or the MOD.
- 4. ACCEPTANCE, REJECTION AND INSPECTION**
- 4.1 AWE shall not have accepted, or be deemed to have accepted, the Goods until the following conditions (the "**Acceptance Conditions**") have been fulfilled:
- (a) the Goods have been delivered to or at the Location; and
- (b) AWE has had twenty (20) Business Days (or such longer time as may be reasonable in the circumstances) to inspect the Goods following delivery; and/or
- (c) AWE has notified the Supplier in writing that the Goods have been delivered in full compliance with the terms of the Purchase Order.
- 4.2 The Supplier shall ensure that on delivery to AWE and throughout the Warranty Period the Goods shall comply with all Applicable Laws.
- 4.3 In addition to its obligations under Clause 4.2, the Supplier shall, where applicable and where notified by AWE to the Supplier, also comply with the Quality Requirements for Suppliers.
- 4.4 If the Supplier delivers Goods which are not in full compliance with this Agreement and any relevant Purchase Order, AWE may in its sole discretion and without prejudice to any of its other rights under this Agreement or otherwise:
- (a) reject the Goods; or
- (b) require that the Supplier promptly either repairs or replaces the Goods at the Supplier's cost; or
- (c) itself undertake all necessary inspection of and / or repairs to the Goods and deduct from the Price payable by AWE under the relevant Purchase Order the reasonable costs incurred by AWE in carrying out such inspection and / or repairs.
- 4.5 Any receipt by AWE of defective, late or incomplete Goods or any payment made in respect thereof, shall not constitute a waiver of any of AWE's rights and remedies, including its right to subsequently reject the Goods.
- 4.6 If the Supplier supplies Goods to AWE in volumes which exceed the tolerances (if any) specified in a Purchase Order, AWE may, in its sole discretion, either:
- (a) reject the relevant Goods in their entirety and the Supplier shall promptly and at its own cost arrange for redelivery of the correct volume; or
- (b) accept the volume of Goods up to the agreed tolerances and reject the remainder of the Goods and the Supplier shall promptly and its own cost arrange for collection of such rejected Goods.
- 4.7 Any rejected Goods may be returned to the Supplier by AWE at the Supplier's cost and risk. The Supplier shall pay to AWE a reasonable charge for storing and returning any of the Goods over-delivered or rejected.
- 4.8 AWE may, at its sole option, require that acceptance tests are performed in relation to some or all of the Goods, either by AWE or the Supplier. Where any such tests are to be carried out by the Supplier, the results of those tests shall promptly be made available to AWE.
- 4.9 AWE may inspect and test the Goods during manufacture or processing prior to despatch, and the Supplier shall provide AWE with all access and facilities that it may reasonably require in order to carry out any such inspection.
- 4.10 Inspection or testing of the Goods shall not constitute acceptance of the Goods or a waiver of any of AWE's rights and remedies, including its right to reject the Goods.
- 4.11 The rights of AWE in this Clause 4 are without prejudice to AWE's rights under Clause 8 (Warranties).
- 5. PRICE AND PAYMENT**
- 5.1 The price for the Deliverables shall be set out in the Purchase Order ("**Price**"). Unless otherwise stated, the Price shall be expressed exclusive of VAT.
- 5.2 The Price is inclusive of all costs, expenses, disbursements, printing and overheads of every kind incurred by the Supplier.
- 5.3 The Supplier agrees that it shall not and shall procure that its sub-contractors do not claim any grant from any funds made available by the UK Government in respect of any cost to the Supplier of any jigs, tools, moulds, dies, manufacturing gauges or test equipment used by the Supplier or any relevant sub-contractor.
- 5.4 The Supplier shall invoice AWE for the applicable Price no sooner than:
- (a) in the case of Goods, on completion of delivery of the Goods or, if later, AWE's acceptance of the Goods in accordance with Clause 4; and
- (b) in the case of Services, following performance of the Services to AWE's reasonable satisfaction.
- 5.5 Where the Supplier submits an invoice to AWE in accordance with Clauses 5.4 and 5.7, AWE will consider and verify that invoice in a timely fashion. AWE shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which AWE has determined that the invoice is valid and undisputed. If AWE unduly delays in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed after a reasonable time has passed.
- 5.6 Where the Supplier enters into a Sub-Contract (as defined below), the Supplier shall include in that sub-contract:
- (a) provisions having the same effect as Clause 5.5; and
- (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards, provisions having the same effect as Clause 5.5.

- For the purposes of this Clause 5.6 “**Sub-Contract**” means a contract between two or more suppliers, at any stage of remoteness from AWE in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Deliverables
- 5.7 For an invoice to be held as valid, it must be submitted by the Supplier within three (3) months of:
- in the case of Goods, the Goods being delivered or AWE's acceptance of the Goods, whichever is later; and
  - in the case of Services, following performance of the Services to AWE's reasonable satisfaction.
- 5.8 AWE will accept and process for payment an electronic invoice submitted for payment by the Supplier where such invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this Clause 5.8, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 5.9 Time of payment is not of the essence to the Purchase Order. Where sums due under the Purchase Order are not paid in full by the due date, to compensate the Supplier for all loss from AWE's breach, AWE shall pay on the sum overdue interest (before and after judgment) on a daily basis until payment in full at the rate of two (2) per cent per annum above the Official Bank Rate from time to time of the Bank of England. The Supplier acknowledges that this is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.10 VAT shall be charged by the Supplier and paid by AWE at the then applicable rate.
- 6. COUNTERFEIT GOODS**
- 6.1 The Supplier shall not deliver any Counterfeit Goods or Suspect Counterfeit Goods to AWE.
- 6.2 The Supplier shall only purchase products to be delivered or incorporated as Goods to AWE directly from the original component or equipment manufacturer or any authorised third party distributor. The Supplier may use another source only if:
- the foregoing sources are unavailable;
  - the Supplier's inspection and other counterfeit risk mitigation processes shall be employed to ensure the authenticity of the Goods; and
  - the Supplier obtains AWE's prior written approval.
- 6.3 The Supplier shall maintain counterfeit risk mitigation processes in accordance with Best Industry Practice and in accordance with any other specific requirements identified in the Purchase Order.
- 6.4 The Supplier shall immediately notify AWE if the Supplier becomes aware that it has delivered Counterfeit Goods or Suspect Counterfeit Goods. When requested by AWE, the Supplier shall provide any original component or equipment manufacturer documentation that authenticates traceability of the affected items to the applicable manufacturer. The Supplier shall, at its own expense, provide reasonable cooperation to AWE in conducting any investigation regarding the delivery of Counterfeit Goods or Suspect Counterfeit Goods under the Purchase Order.
- 6.5 This Clause 6 applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flow down, or other provision included in the Purchase Order addressing the authenticity of the Goods.
- 6.6 If the Goods delivered under the Purchase Order constitutes or includes any Counterfeit Goods, the Supplier shall, at its expense, promptly replace such Counterfeit Goods with genuine Goods conforming to the requirements of the Purchase Order. Notwithstanding any other provision in the Purchase Order, the Supplier shall be liable for all costs relating to the removal and replacement of Counterfeit Goods, including without limitation AWE's costs of removing Counterfeit Goods, of installing replacement Goods and of any testing necessitated by the reinstallation of the Goods after the Counterfeit Goods have been exchanged. The remedies contained in this Clause 6.6 are in addition to any remedies AWE may have at law, equity or under any other provision of the Purchase Order.
- 6.7 The Supplier shall include this Clause 6 or equivalent provisions in any subcontracts it enters into for the delivery of the Goods to AWE.
- 7. TITLE AND RISK**
- 7.1 Unless otherwise specified in the Purchase Order, risk in the Goods shall pass to AWE at the point at which the Supplier makes the Goods available for unloading by AWE.
- 7.2 Title to the Goods shall pass to AWE on the sooner of:
- payment by AWE for the Goods; or
  - delivery of the Goods to AWE in accordance with Clause 3.1.
- 7.3 The passing of title to the Goods shall not prejudice any other of AWE's rights and remedies, including its right to reject the Goods.
- 7.4 Where title in any Goods has transferred to AWE prior to delivery under Clause 3:
- neither the Supplier, nor any other person, shall have a lien on, right of stoppage in transit or other rights in or to any such Goods or any related specifications or materials of AWE, and the Supplier shall ensure that any relevant third parties accept the exclusion of such lien and rights;
  - the Supplier shall keep all such Goods separate from any other goods that it or its sub-contractors may hold, appropriately labelled and identifiable as belonging to AWE; and
  - the Supplier shall, at its expense, promptly deliver to AWE all such Goods held by it or on its behalf at the date of termination of this Agreement or at the date upon which the Supplier becomes insolvent and if under any such circumstances, relevant Goods are not delivered sufficiently promptly, AWE shall be entitled to enter the Supplier's premises or any other location within which the Goods are stored in order to inspect and retrieve the Goods concerned, such actions being carried out at the Supplier's cost and risk.
- 7.5 The Supplier warrants and represents that it:
- has at the time the Goods are delivered to AWE, full, clear and unencumbered title to the Goods, and the full, clear and unencumbered right to sell and deliver the Goods to AWE; and
  - shall hold such title and right to enable it to ensure that AWE shall acquire a valid, unqualified title to the Goods and shall enjoy quiet possession thereof.
- 8. WARRANTIES**
- 8.1 The Supplier warrants and represents that the Deliverables shall:
- conform in all material respects to any sample, their description and to the Specification;
  - be free from material defects in design, material and workmanship;
  - comply with all Applicable Laws and Best Industry Practice;
  - be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
  - if Services, be provided in accordance with the KPI's;
  - be fit for purpose and any purpose held out by the Supplier and set out in the Purchase Order and as otherwise required to meet AWE's needs; and
  - if Services involving the provision of Deliverables in any media format, the media on which the output of the Services are supplied shall be free from defects in materials and workmanship and shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 8.2 AWE may reject any Deliverables that do not comply with Clause 8.1 and the Supplier shall, at AWE's option, promptly remedy, repair, replace, correct or refund the Price of any such Deliverables.
- 8.3 This Agreement shall apply to any Deliverables that are remedied, repaired, replaced, re-performed or corrected with effect from the date of the delivery of the remedied, repaired, replaced re-performed or corrected Deliverables.
- 8.4 AWE's rights under this Agreement are in addition to, and do not exclude or modify, the rights and conditions contained in the Supply of Goods and Services Act 1982, s12 to 16 and the Sale of Goods Act 1979, s13 to 15.
- 8.5 AWE shall be entitled to exercise its rights under this Clause 8 regardless of whether the Goods have been accepted under the Acceptance Conditions and notwithstanding that the Goods were not rejected following their initial inspection under Clause 4.1.
- 8.6 The Supplier agrees that the approval by AWE of any design or Specification provided by the Supplier shall not relieve the Supplier of any of its obligations under this Clause 8.

9. **PROHIBITED SUBSTANCES**

- 9.1 The Supplier must ensure that none of the substances listed in the Restricted & Prohibited Substances List are incorporated within the Goods or used in the supply of the Deliverables.
- 9.2 The Restricted & Prohibited Substances List is available to the Supplier on request from AWE and the Supplier's failure to request a copy of that list shall not relieve it of its obligations under this Agreement.

10. **MONTREAL PROTOCOL**

- 10.1 As a signatory to the Montreal Protocol, the UK Government is committed to the reduction in the production and consumption of those substances controlled under the Montreal Protocol.
- 10.2 Upon request, the Supplier shall promptly provide AWE with an up to date list specifying all substances controlled under the Montreal Protocol which are contained in any Goods (including the packaging thereof, whether or not specified in the Purchase Order) or any materials used in the provision of the Deliverables that at the relevant time are the subject of the Purchase Order and which have not been delivered, together with details of:
- (a) the quantity of each of the substances controlled under the Montreal Protocol contained in any such Goods or materials used in the provision of the Deliverables; and
  - (b) where in any such Goods (including any packaging) or materials used in the provision of the Deliverables the substances controlled under the Montreal Protocol are contained.
- 10.3 The Supplier shall provide a "nil return" under Clause 10.2 if applicable.
- 10.4 If at any time during its supply of the Goods to AWE, the Supplier is aware of any changes to any submission previously made under Clause 10.2, the Supplier shall immediately provide AWE with a suitably amended version of that submission.

11. **PLACE OF MANUFACTURE**

- 11.1 The Supplier shall not and shall procure that its sub-contractors do not, change the place of manufacture of any or all of the Goods without AWE's prior written consent. Any change of place of manufacture of any or all of the Goods shall not relieve the Supplier of its obligations in respect of the manufacture and/or delivery of such Goods.

12. **MATERIALS AND COMPONENTS**

- 12.1 The Supplier shall provide AWE with such information as AWE may from time to time reasonably require as to the materials and components which the Supplier will purchase or lease or otherwise use in connection with the supply of the Services and / or Deliverables.
- 12.2 The Supplier shall:
- (a) hold all materials, equipment and tools, drawings, specification and data supplied by AWE to the Supplier ("**AWE Materials**") in safe custody at its own risk;
  - (b) maintain the AWE Materials in good condition until returned to AWE; and
  - (c) not dispose or use the AWE Materials other than in accordance with AWE's written instructions or authorisation.

13. **DISPOSAL OF GOODS**

- 13.1 Following acceptance by AWE of any Goods, the Supplier shall apply to AWE for disposal arrangements for all equipment and consumable items identified for sale or disposal and consumable items certified as redundant, unserviceable or scrap (whether or not they have market value) purchased or otherwise sourced by the Supplier in relation to its provision of the Deliverables.

14. **INDEMNITIES AND INSURANCE**

- 14.1 The Supplier shall fully indemnify and hold AWE and each member of the AWE Group harmless from and against any and all losses, damages, claims, costs and expenses (including reasonable legal expenses) suffered or incurred by or awarded against AWE and/or any member of the AWE Group as a result of or in connection with any:
- (a) breach by the Supplier of Clause 16 (Confidentiality and Freedom of Information);
  - (b) breach by the Supplier of Clause 17 (Data Protection);
  - (c) breach by the Supplier of Clause 18 (Compliance); and
  - (d) fines imposed by a Regulatory Body on AWE or any member of the AWE Group arising as a direct result of a breach of the Purchase Order by the Supplier.
- 14.2 The exclusions and limitations of liability in Clause 15 (Limitation of Liability) shall not apply to the indemnities set out in Clause

14.1, nor to any other indemnities granted by the Supplier elsewhere in this Agreement.

- 14.3 The Supplier shall at all times maintain at its own cost sufficient insurance policies with a reputable insurance company to cover potential liabilities which the Supplier may have to AWE, members of the AWE Group and the MOD under this Agreement, including:
- (a) employer's liability insurance for not less than [five million pounds sterling (£5,000,000)] in respect of each claim;
  - (b) public liability insurance for not less than [five million pounds sterling (£5,000,000)] in respect of each claim;
  - (c) professional indemnity insurance for not less than [five million pounds sterling (£5,000,000)] in respect of each claim; and
- 14.4 On request, the Supplier shall:
- (a) provide AWE with reasonable evidence of the maintenance of any such insurance;
  - (b) provide AWE with copies of all terms and conditions as may from time to time apply to any such insurance policies; and
  - (c) assign to AWE the benefit of any such insurance.

15. **LIMITATION OF LIABILITY**

- 15.1 Subject to Clauses 14, 15.2 and 15.3, neither party's total aggregate liability to the other in respect of all causes of action arising out of or in connection with this Agreement (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) shall exceed:
- (a) in the case of AWE, the total of the Price due under this Agreement; and
  - (b) in the case of Supplier, the greater of:
    - (i) three (3) times the total of the Price due under this Agreement; and
    - (ii) ten million pounds sterling (£10,000,000).
- 15.2 Subject to Clauses 14.2 and 15.3, neither party shall be liable to the other for any indirect or consequential loss or damage.
- 15.3 Nothing in this Agreement shall limit or exclude:
- (a) the Supplier's liability for wilful default;
  - (b) the Supplier's liability under any indemnity granted by the Supplier; or
  - (c) either party's liability for:
    - (i) death or personal injury resulting from negligence;
    - (ii) fraud or fraudulent misrepresentation;
    - (iii) damage suffered by the other party as a result of any breach by the other party of the conditions as to title and quiet enjoyment implied by Applicable Law; or
    - (iv) any other liability the exclusion or limitation of which is not permitted by Applicable Law.

16. **CONFIDENTIALITY AND FREEDOM OF INFORMATION**

- 16.1 Each party shall keep confidential all of the other party's Confidential Information and shall only use the same as required to perform its obligations under this Agreement. The provisions of this Clause 16 shall not apply to:
- (a) any information which was in the public domain at the date of this Agreement;
  - (b) any information which comes into the public domain subsequently other than as a consequence of any breach of this Agreement;
  - (c) any information which is independently developed by the disclosing party without using information supplied by the other party; or
  - (d) any disclosure required by law or a regulatory authority or otherwise by the provisions of this Agreement.
- 16.2 The Supplier acknowledges and agrees that AWE and the MOD may disclose any Confidential Information provided to AWE by the Supplier:
- (a) to a central UK Government body, including, but not limited to, the UK Government Cabinet Office and HM Treasury;
  - (b) to the UK Parliament and/or any UK Government parliamentary committee; and
  - (c) in the case of the MOD, where the MOD is required to do so in accordance with the performance of its role.
- 16.3 The Supplier acknowledges that AWE is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by AWE to enable AWE to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to AWE all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;

- (c) provide AWE with a copy of all Information belonging to AWE requested in the Request For Information which is in its possession or control in the form that AWE requires within 5 Business Days (or such other period as AWE may reasonably specify) of AWE's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by AWE.
- 16.4 The Supplier acknowledges that AWE may be required under the FOIA and EIRs to disclose Confidential Information without consulting or obtaining consent from the Supplier. AWE shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) AWE shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 16.5 This Clause 16 shall remain in force for a period of ten (10) years from the Commencement Date and, if longer, three (3) years after termination of this Agreement.
- 16.6 The Supplier shall not advertise that it carries out business with AWE or is otherwise associated with AWE in any way without first obtaining AWE's express written permission to do so. This restriction includes (without limitation) the use of AWE's logo, the advertisement of any AWE projects or contracts or advertisement on any Supplier documentation or web pages.
- 16.7 The Supplier shall not and shall ensure that any employee or sub-contractor shall not communicate with representatives of the press, television, radio or other media on any matter concerning this Agreement unless AWE has given its prior written consent or as otherwise required to comply with legislation, a court order or an order by a regulatory authority.
- 16.8 The Supplier shall notify AWE of any occurrence in relation to this Agreement that, in the reasonable opinion of the Supplier, could be expected to cause adverse publicity to AWE or the MOD. Such notification shall be given by the Supplier to AWE as soon as reasonably practicable and in any event, no less than twenty-four (24) hours after the occurrence.
- 17. DATA PROTECTION**
- 17.1 The expressions "**controller**", "**processor**", "**processing**", "**data subject**", "**personal data**" and "**personal data breach**" have the meanings given to them in the Data Protection Laws, and "**process**" and "**processed**" shall be construed accordingly.
- 17.2 Under this Agreement, the parties shall each act as independent controllers in respect of the processing of Contact Data for each party's representatives. Other than in respect of the processing activities detailed in Clause 17.5, AWE does not anticipate that the Supplier will act as its processor and the Supplier is not authorised to act in that capacity unless the parties put in place written processor terms that comply with the Data Protection Laws.
- 17.3 In relation to any activities carried out pursuant to this Agreement, the parties each agree to comply with the Data Protection Laws in the performance of their obligations.
- 17.4 When providing the other party with personal data under the terms of this Agreement, each party shall also ensure that it is not subject to any prohibition or restriction which would:
- prevent or restrict that party from disclosing or transferring the personal data to the other party; or
  - prevent or restrict that party from processing the personal data as envisaged under this Agreement.
- 17.5 The parties each acknowledge and agree that they may need to process personal data relating to each party's representatives such as names, email and contact details ("**Contact Data**") (in their respective capacities as controllers) in order to (as appropriate):
- administer this Agreement;
  - supply or receive the Deliverables;
  - manage this Agreement and resolve any disputes relating to it;
  - respond and/or raise general queries relating to this Agreement; and
  - comply with their respective legal and regulatory obligations.
- 17.6 Each party shall process such personal data relating to each party's representatives for the purposes set out in Clause 17.5 in accordance with their respective privacy policies. The parties acknowledge that they may be required to share personal data with their affiliates, group companies (which in the case of AWE shall mean the AWE Group) and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in Clause 17.5, and in doing so each party will ensure that the sharing and use of such personal data complies with applicable Data Protection Laws.
- 18. COMPLIANCE**
- 18.1 For the purposes of this Clause 18 the expressions "**adequate procedures**" and "**associated with**" shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 18.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that:
- all of that party's personnel;
  - all others associated with that party; and
  - all of that party's sub-contractors; involved in performing this Agreement.
- 18.3 Without limitation to Clause 18.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 18.4 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in Clauses 18.2 or 18.3.
- 18.5 The Supplier shall:
- promptly report to AWE any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Master Agreement;
  - immediately notify AWE (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Master Agreement);
  - within three months of the date of the Master Agreement Effective Date, and annually thereafter, certify to AWE in writing signed by an officer of the Supplier, compliance with Clauses 18.2 to 18.4 (inclusive) by the Supplier and all persons associated with it under Clause 18.2. The Supplier shall provide such supporting evidence of compliance as AWE may reasonably request; and
  - ensure that any person associated with the Supplier who is performing Services or providing Goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in Clauses 18.2 to 18.4 (inclusive). The Supplier shall be responsible for the observance and performance by such persons of these terms and shall be directly liable to AWE for any breach by such persons of these terms.
- 18.6 The Supplier undertakes, warrants and represents that:
- neither the Supplier nor any of its officers, employees, agents or sub-contractors has:
    - committed an offence under the Modern Slavery Act 2015 (a "**Modern Slavery Offence**"); or
    - been notified that it is subject to an investigation relating to an alleged Modern Slavery Offence or prosecution under the Modern Slavery Act 2015; or
    - is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged Modern Slavery Offence or prosecution under the Modern Slavery Act 2015;
  - it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;
  - it shall notify AWE immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-contractors have breached or

- potentially breached any of the Supplier's obligations under Clause 18.6(a). Such notice must set out the full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.
- 18.7 The Supplier shall ensure that it and each person referred to in Sub-Clauses 18.8(a) to (c) (inclusive) does not, by any prohibited act or omission, place AWE in breach of the Criminal Finances Act 2017.
- 18.8 The Supplier shall comply with the Criminal Finances Act 2017 in connection with the performance of this Agreement, ensure that it has in place adequate procedures to prevent any breach of Clause 18.7 and ensure that:
- all of the Supplier's employees and all direct and indirect sub-contractors, suppliers, agents and other intermediaries of the Supplier;
  - all others associated with the Supplier; and
  - each person employed by or acting for or on behalf of any of those persons referred to in Sub-Clauses 18.8 (a) and 18.8 (b) above,
- involved in performing services for or on behalf of the Supplier so comply.
- 18.9 The Supplier shall comply with all applicable Equality Laws (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise), including ensuring that all:
- Supplier personnel; and
  - sub-contractors appointed by the Supplier;
- in either case, involved in performing this Agreement, similarly comply.
- 18.10 Without prejudice to the specific requirements set out in Clauses 18.8 and 18.9, the Supplier shall comply with applicable Employment Laws including ensuring that:
- all Supplier personnel; and
  - sub-contractors appointed by the Supplier;
- in either case involved in performing this Agreement, similarly comply.
- 18.11 The Supplier shall immediately notify AWE as soon as it becomes aware of a breach or possible breach of any of the requirements in Clauses 18.6 to 18.10 (inclusive).
- 18.12 Any breach of this Clause 18 by the Supplier shall be deemed a material breach of this Agreement that is not remediable and shall entitle AWE to immediately terminate either this Agreement.
19. **FORCE MAJEURE AND BUSINESS CONTINUITY**
- 19.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- promptly notifies the other of the Force Majeure event and its expected duration; and
  - uses its best endeavours to minimise the effects of that event, including by promptly implementing the Business Continuity Plan or such other business continuity arrangements as the relevant party may have previously developed in accordance with Best Industry Practice.
- 19.2 If, due to Force Majeure, a party:
- is or shall be unable to perform a material obligation; or
  - is delayed in or prevented from performing its obligations for a continuous period exceeding fourteen (14) days or a total of more than thirty (30) days in any consecutive period of sixty (60) days;
- the other party may terminate this Agreement with immediate effect.
- 19.3 The Supplier warrants that it shall maintain adequate business continuity or disaster recovery procedures so that it can continue to supply the Deliverables with the minimum of delay in the event of disruption (including disruption caused by a Force Majeure) and that these procedures are regularly tested and maintained.
20. **TERM & TERMINATION**
- 20.1 This Agreement shall begin on the commencement date stated in the Purchase Order ("**Commencement Date**") and shall continue for the duration of time stated in the Purchase Order (the "**Term**").
- 20.2 AWE may at its sole discretion, terminate this Agreement with immediate effect by notice in writing to the Supplier if the Supplier commits a material breach of this Agreement which in the case of a breach capable of remedy, is not remedied within ten (10) Business Days of receipt of written notice giving full particulars of the breach and requiring it to be remedied.
- 20.3 AWE may terminate this Agreement with immediate effect by notice in writing to the Supplier;
- if the Supplier suffers an Insolvency Event;
  - if there is a Change of Control of the Supplier without AWE's written consent (which may be withheld in its absolute discretion);
  - does something, or is alleged to have done something which could damage or has damaged AWE's reputation or goodwill; or
  - pursuant to Clause 19.2.
- 20.4 Where AWE terminates this Agreement for a material breach under Clause 20.2, it shall be entitled to rely on a single material breach or on a number of breaches or repeated breaches that, taken together, constitute a material breach of this Agreement. Without limitation, the parties agree that any breach by the Supplier of Clauses 2.1 (The Services), 4 (Acceptance, Rejection and Inspection), 8 (Warranties), 16 (Confidentiality), 17 (Data Protection), 18 (Compliance) or any failure by the Supplier to respond to any Security Aspects Letter in the form and within the time specified in such letter, shall be treated as a material breach of the Supplier's obligations under this Agreement.
- 20.5 The Supplier may terminate this Agreement, in each case with immediate effect by notice in writing to AWE if AWE commits a material breach of this Agreement which in the case of a breach capable of remedy is not remedied within ten (10) Business Days of receipt of written notice giving full particulars of the breach and requiring it to be remedied.
- 20.6 The Supplier may terminate this Agreement by written notice to AWE if AWE fails to pay any material amount due under this Agreement and all of the following conditions are met:
- the amount due is not disputed in good faith by AWE;
  - the amount has been overdue for more than forty (40) Business Days; and
  - following the expiry of such forty (40) Business Day period the Supplier has notified AWE in writing that the amount is overdue, that the Supplier intends to terminate this Agreement if AWE fails to pay it within twenty (20) Business Days after AWE's receipt of such notice and AWE has still not paid the overdue amount by the expiry of that twenty (20) Business Day period.
- 20.7 AWE shall be entitled to terminate this Agreement for convenience at any time, in whole or in part, by giving not less than one (1) month's prior written notice.
- 20.8 On termination of this Agreement, the Supplier shall:
- cease using and return to AWE, all AWE Materials, data and other materials belonging to AWE which relate to this Agreement concerned (and all media of any nature containing such information and data) and shall confirm to AWE its full compliance with this requirement; and
  - unless otherwise instructed by AWE, ensure that all Deliverables ordered but undelivered under this Agreement as at the date of termination, are delivered to AWE forthwith.
- 20.9 On termination of this Agreement by AWE pursuant to Clause 20.3(a), no further sums shall become due to the Supplier under this Agreement and AWE need not pay any sum that has already become due, save that AWE shall make a final payment to the Supplier within twenty (20) Business Days of receipt by AWE of the Supplier's certification of compliance with Clause 20.8(a) and the provision of the outstanding Deliverables from any third party. This final payment shall be the amount due for the Deliverables that have been supplied in accordance with this Agreement which have not already been paid for less any amounts payable to AWE or arising as a result of any breach of this Agreement.
- 20.10 If this Agreement expires and is not terminated early in accordance with any of the provisions of this Clause 19, AWE shall make a final payment to the Supplier within twenty (20) Business Days of receipt by AWE of the Supplier's certification of compliance with Clause 20.8(a). This final payment shall be the amount due for the Deliverables that have been supplied in accordance with this Agreement which have not already been paid for less any amounts payable to AWE under this Agreement as a result of any breach by the Supplier.
- 20.11 On termination of this Agreement pursuant to Clauses 20.2, 20.3, 20.5 or 20.7, AWE shall make a final payment to the Supplier within twenty (20) Business Days of receipt by AWE of the Supplier's certification of compliance with Clause 20.8(a). This

- final payment shall be the amount due for the Deliverables that have been supplied in accordance with this Agreement which have not already been paid for, less any amount payable to AWE under this Agreement arising as a result of any breach by the Supplier.
- 20.12 The Supplier shall have no further entitlement either in respect of any Deliverables delivered or in respect of the termination of this Agreement including claims against AWE for breach of contract, loss of profit, loss of expectation or otherwise arising from the termination of this Agreement.
- 20.13 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after the termination or expiry of this Agreement shall survive and shall continue to have effect notwithstanding such termination or expiry.
- 20.14 Except where expressly stated to the contrary in this Agreement, the termination or expiry of this Agreement shall not affect any accrued rights or liabilities of either party.
21. **DISPUTE RESOLUTION**
- 21.1 The parties shall negotiate in good faith in relation to any dispute between them with the intention of resolving the dispute in a manner which is satisfactory to both parties.
- 21.2 Any dispute between the parties shall be dealt with as follows:
- in the first instance, the parties shall work together at an operational level in an attempt to resolve the dispute;
  - if the parties fail to resolve the dispute at an operational level, within ten (10) Business Days of the dispute arising, or such other period as they may agree in writing, the parties shall refer the dispute to AWE's Chief Procurement Officer (or that person's nominee) and a person of equal seniority of the Supplier (or that person's nominee); and
  - if the persons to whom the matter is escalated under Clause 21.2(b) fail to resolve the dispute within (10) Business Days (or such other period as they may agree), of it being referred to them, then the provisions of Clause 21.3 shall apply.
- 21.3 Any reference to mediation shall be made in accordance with the procedures of the Centre for Effective Dispute Resolution (CEDR). The mediation shall be conducted by a single mediator appointed by the parties or, if the parties are unable to agree on the identity of the mediator within fourteen (14) days after the date of the request that the dispute be resolved by mediation, or if the person appointed is unable or unwilling to act, the mediator shall be appointed by CEDR on application by the parties. The mediation shall be conducted in English at the offices of CEDR in London. Mediation is without prejudice to the rights of the parties in any future proceedings. Such mediation to be completed within twenty (20) Business Days of signature of the CEDR mediation agreement, or such longer period as the parties may agree.
- 21.4 Any dispute or conflict arising out of or in connection with this Agreement, which is not settled in accordance with Clause 21.3, shall be referred to and finally resolved through arbitration under the LCIA Rules by a single arbitrator. The seat of arbitration shall be London, England and the proceedings shall be conducted in the English language.
- 21.5 If a court action has been initiated by the Supplier at the time that AWE chooses to submit the matter to arbitration, then it is agreed that such court action is to be discontinued.
- 21.6 The parties shall continue performing their respective obligations under this Agreement while the dispute is being resolved, unless and until this Agreement expires or is terminated in accordance with its terms.
22. **AUDIT**
- 22.1 The Supplier shall maintain, in line with Best Industry Practice, complete, accurate and up to date records and supporting documents in connection with this Agreement (including the Supplier's compliance with this Agreement and any amounts payable by AWE thereunder) ("**Records**"). The Supplier shall retain the Records for the Term and thereafter for a period of six (6) years (or such longer period as may be specified elsewhere in this Agreement in respect of particular records) following termination and/or expiry of this Agreement.
- 22.2 Subject to AWE giving the Supplier at least five (5) Business Days' notice (except for the purposes of audits carried out to confirm compliance with Applicable Laws or the AWE Policies where no notice will be required) the Supplier shall provide AWE and its representatives (provided that such representatives are subject to binding confidentiality obligations), at no charge, with all reasonable:
- access to and copies of the Records;
  - access to all relevant information, premises, data, representatives and assets at all premises from which the Supplier's obligations are being carried out (including any premises where Goods or raw materials are manufactured, processed, packaged, stored or collated) for the purposes of carrying out an audit of the Supplier's compliance with this Agreement; and
  - assistance in carrying out such audit.
- 22.3 When carrying out an audit, AWE shall use reasonable endeavours to avoid material disruption to the Supplier's business. If an audit reveals:
- any non-compliance with this Agreement, the Supplier shall promptly carry out such action as AWE reasonably requires to correct that non-compliance, at no additional cost to AWE; or
  - any non-compliance with the AWE Policies, AWE can terminate this Agreement immediately, without liability to the Supplier except to pay the Price for any Deliverables provided in accordance with this Agreement which AWE has accepted (unless, as a result of the non-compliance, AWE subsequently chooses to reject the Deliverables concerned); or
  - any overcharge, the Supplier shall repay the amount of the overcharge to AWE within ten (10) Business Days of receipt of any AWE demand for repayment.
- 22.4 Each party shall be solely liable for its own costs and expenses in respect of any audit carried out in accordance with this Clause 22, save that if it is found that, after completion of the audit, AWE has been overcharged by more than five percent (5%) on any one invoice or five percent (5%) of the total charges payable in relation to any particular Deliverables, AWE shall, without prejudice to its other rights and remedies, be entitled to recover its costs in relation to such audit from the Supplier.
23. **INTELLECTUAL PROPERTY**
- 23.1 The Supplier must, if requested by AWE, enter into a Design Rights Agreement in relation to the Deliverables to be provided by the Supplier and the Supplier acknowledges and agrees that in accordance with the terms of the Design Rights Agreement and subject to the rights of any third party and/or the Crown, all right, title and interest (including all IPR) in and to the Deliverables (including any data, software, reports, drawings, specifications, designs, inventions or other materials produced or acquired in the course of providing the Deliverables, and any copyright therein), shall be the exclusive property of and shall vest in the MOD upon creation. The Supplier must as soon as reasonably practicable provide to AWE three (3) signed copies of the fully executed Design Rights Agreement. The Supplier shall not be entitled to use the whole or any part of the Deliverables or any information which it gathers in the course of providing the Deliverables except as permitted by the Design Rights Agreement and/or this Agreement. In the case of any conflict between a Design Rights Agreement and this Agreement, the Design Rights Agreement shall be given primacy. The Supplier acknowledges that the MOD reserves the right to determine whether any patent shall be applied for in respect of any Deliverables or whether any aspect of the Deliverables shall be published and, if so, on what conditions.
- 23.2 All right, title and interest in and to the AWE Materials shall be the property of AWE. The Supplier shall be entitled to use the whole or any part of the AWE Materials only during the term of this Agreement for the sole purpose of and to the extent necessary to perform its obligations under this Agreement and AWE hereby grants to the Supplier a non-exclusive, revocable, limited licence (including the right to grant sub-licences to its sub-contractors engaged in the provision of the Deliverables to AWE) for the Supplier to use the AWE Materials in accordance with the terms of this Clause 23.2.
- 23.3 All right, title and interest in and to the Supplier Materials shall be the property of the Supplier. AWE may use the Supplier Materials in accordance with the licence granted by the Supplier to the MOD under the terms of the Design Rights Agreement.
- 23.4 The Supplier shall, at the request of AWE or the MOD, sign and execute all assignments, instruments and other documents, and shall procure the signature and execution of all third party assignments, instruments and other documents, and shall do and

shall procure the doing of all acts (including the waiver of moral rights in copyright), as in each case may be necessary or desirable to give effect to Clause 23.1 and/or assist AWE or the MOD and/or their respective nominees to protect, maintain and enforce the rights acquired by AWE and the MOD pursuant to Clause 23.1.

- 23.5 The Supplier warrants that the provision and use of the Deliverables will not infringe the IPR of any third party and that it owns or has obtained valid licences of all IPR, consents or permissions which are necessary to supply the Deliverables and perform its other obligations under this Agreement.
- 23.6 The Supplier agrees to indemnify AWE and the MOD against all costs, expenses (including reasonable legal costs), damages and losses resulting from or arising in connection with any claim brought against AWE for actual or alleged infringement of any third party's IPR in any of the Deliverables supplied to AWE under this Agreement (a "Claim").
- 23.7 Where there is a Claim and such Claim causes use of the Deliverables (or any part thereof) in accordance with this Agreement to be disrupted or materially impaired, the Supplier shall, in the following order of priority and at its own expense following consultation with AWE:
- (a) procure for the benefit of AWE (and any relevant member of the AWE Group) and the MOD the right to continue to use and possess the infringing or potentially infringing Deliverables; or
  - (b) modify or replace the infringing or potentially infringing Deliverables, so that there is no infringement or potential infringement and shall ensure that such modification or replacement shall be effected by the Supplier with minimal interruption to the business of AWE and the MOD; or
  - (c) if neither of the foregoing alternatives is or would be available on a basis that AWE finds commercially reasonable and practical, then the Supplier shall remove the infringing Deliverables and refund that proportion of the Price which is attributable to the Deliverables concerned, based upon the loss suffered by AWE by the removal of the Deliverables (or part thereof).
- 23.8 The Supplier must and must ensure that any sub-contractor shall include the following wording on the front page of all paper documentation prepared for or on behalf of AWE in relation to the provision of the Deliverables:

"© British Crown Copyright [YEAR]/AWE

*This document is of United Kingdom origin and contains proprietary information which is the property of the Secretary of State for Defence. It is furnished in confidence and may not be copied, used or disclosed in whole or in part without prior written consent of Defence Intellectual Property Rights DGDCDIPR-PL-Ministry of Defence, Abbey Wood, Bristol, BS34 8JH, England."*

#### 24. NOTICES

- 24.1 Any notice given by a party under this Agreement or the Purchase Order shall:
- (a) be in writing and in English;
  - (b) be signed by, or on behalf of, the party giving it; and
  - (c) be sent to the relevant party at the address set out in the Purchase Order.
- 24.2 Notices may be given, and are deemed received:
- (a) by hand: on receipt of a signature at the time of delivery;
  - (b) by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
  - (c) by Royal Mail International Tracked & Signed or Royal Mail International Signed post: at 9.00 am on the fourth Business Day after posting; and
  - (d) by e-mail to [insert address] (or such other e-mail address as AWE may notify to the Supplier): when transmitted (without "bounce-back" or other error message).
- 24.3 Any change to the contact details of a party as set out in the Purchase Order shall be notified to the other party in accordance with Clause 24.1 and shall be effective:
- (a) on the date specified in the notice as being the date of such change; or
  - (b) if no date is so specified, ten (10) Business Days after the notice is deemed to be received.
- 24.4 All references to time are to the local time at the place of deemed receipt.

24.5 This Clause 24 does not apply to notices given in legal proceedings or arbitration.

#### 25. TUPE

- 25.1 TUPE might apply on termination of the relationship between AWE and the Supplier if the Supplier is not mainly supplying Goods but provides Services to AWE. If TUPE applies so as to transfer the contracts of employment of any Resource to AWE or a New Supplier, the Supplier shall indemnify AWE and any New Supplier against all costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) in connection with or as a result of:
- (a) any claim or demand brought by any Resource (or on their behalf by a trade union or other representative) arising directly or indirectly from any act, fault or omission of the Supplier at any time including, but not limited to, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination, equal pay, a protective award, or any claim in respect of industrial injuries or illnesses or other liabilities arising from incidents affecting service personnel or any claim in tort or otherwise;
  - (b) any claim brought by any Resource (or on their behalf by any trade union or other representative) in respect of a failure by the Supplier to comply with its obligations under TUPE;
  - (c) the transfer to AWE or a New Supplier of any right under or in connection with an occupational pension scheme which relates to any matter, right or claim otherwise in relation to old age, invalidity or survivors' benefits under such a scheme;
  - (d) any claim (including any individual entitlement of such a person under or consequent on such claim) by any trade union or other body or person representing Resource (or any of them) arising from or connected with any failure to comply with any legal obligation to such trade union, body or person;
  - (e) any claim of any kind by any employee of the Supplier other than any Resource who argues that they should have transferred to AWE or a New Supplier under TUPE; and
  - (f) the Supplier's breach of Clause 25.2 below.
- 25.2 From the first date on which the Supplier receives written notification of a Transfer Event or on which a termination notice is issued by either party in accordance with Clause 20, if TUPE applies, the Supplier must not (and in the event that the Supplier has appointed a sub-contractor to provide the Services, will ensure that the relevant sub-contractor will not):
- (a) increase the total number of employees who are providing the Services;
  - (b) make or agree to make any changes to the terms and conditions of employment of any of the employees who are providing the Services;
  - (c) increase the proportion of working time spent by any employees working on the Services; or
  - (d) introduce any new contractual or customary right to any payment to employees working on the Services on the termination of their employment or otherwise.
- 25.3 During the provision of any Services by the Supplier, the Supplier will provide to AWE any information that AWE may reasonably require relating to any individual employee, assigned to or engaged in providing the Services.
- 25.4 The parties acknowledge that it is the policy of AWE to only engage Resource where payments in respect of such Resource are fully taxable through PAYE, or where the criteria listed in Sub-Clause (b) below are met. Accordingly, the Supplier warrants that with effect from the Commencement Date, Deliverables will only be supplied by Resource:
- (a) in relation to which the Supplier is able to comply with Clause 25.5; or
  - (b) where the Services which the Resource is involved in providing meet each of the following criteria:
    - (i) there are discrete key milestones linked to the Deliverables which are measurable and have repercussions if not met;
    - (ii) there is an overall fixed project Price for a fixed project scope or service and if the project scope or service changes, any such change must be agreed in writing between the parties;

- (iii) the Resource concerned is not named in the Purchase Order, nor specifically requested by AWE to perform the Deliverables;
  - (iv) the Purchase Order does not include any provisions which prevent substitution of personnel used to provide the Deliverables, either by the Resource or the Supplier;
  - (v) the Purchase Order does not include any provisions implying that there is mutuality of obligation as between AWE and any Resource, nor any suggestion of AWE having day to day control over work carried out by Resource; and
  - (vi) the Supplier is responsible for provision of all equipment required in order to perform the Services, other than any laptop computer where this is used ad hoc in addition to the Supplier's own equipment as it is essential for security purposes.
- 25.5 The Supplier shall procure that any payment made to or in respect of Resource (other than Resource which complies with Clause 25.4(b) above) is fully taxable (and subjected to tax and National Insurance deductions under PAYE): (i) as earnings from the Resource's employment with the Supplier or a sub-contractor previously approved in writing by AWE; or (ii) as earnings from the Resource's employment with an Intermediary; or (iii) under Part 2, Chapter 7 of ITEPA (workers individually engaged by agency). This shall apply whether the payment is made by the Supplier, by a Supplier sub-contractor or by an Intermediary.
- 25.6 The Supplier shall indemnify AWE and keep AWE indemnified in full against any and all liability arising on or after 6 April 2021 to account for deductions of income tax and/or employee National Insurance contributions, or payment of employer National Insurance contributions and/or apprenticeship levy (together in each case with any associated interest and/or penalties), in respect of any Resource.
- 25.7 The parties acknowledge that the provisions in Clauses 25.4 to 25.6 (inclusive) are intended to address tax liabilities which may arise from the enactment of draft legislation published in July 2019 regarding off-payroll working, noting that amendments may be made to such draft legislation prior to it being enacted and taking effect. When the relevant legislation is enacted, and/or additional guidance published by HM Revenue & Customs, the parties agree to each use all reasonable endeavours to develop and finalise such modifications as may reasonably be required to reflect any changes from the draft legislation published, whilst continuing to give effect to the principles outlined above.
26. **BENCHMARKING**
- 26.1 AWE may, by written notice, undertake a Benchmark Review of any or all of the Price, the Deliverables and the KPI's.
- 26.2 The first Benchmark Review may be requested by AWE to occur at any time following the first anniversary of the Master Agreement Effective Date. AWE may not request a subsequent Benchmark Review until a period of twelve months has expired from the date of the last Benchmarking Report.
- 26.3 Subject to Clause 26.4 if any Benchmark Review determines that any or all of the Price, the Deliverables and the KPI's do not represent Good Value (as defined in Clause 26.4) , AWE may require the Supplier to reduce the Price and/or implement improvements to Deliverables or KPI's in accordance with the relevant Benchmarking Report within three months of receipt of the Benchmarking Report.
- 26.4 A Benchmarked Deliverable shall be deemed to be good value, or the Benchmarked Deliverables as a whole shall be "**Good Value**":
- (a) in relation to the Price, if the Price attributable to a Benchmarked Deliverable or Benchmarked Deliverables are, having regard to the KPI's, less than or equal to the Average Price for Equivalent Deliverables provided by a Comparison Sample; and
  - (b) in relation to the KPI's, if the KPI's attributable to Benchmarked Deliverables are, having regard to the Price, equal to or better than the median KPI's for Equivalent Deliverables provided by a Comparison Sample.
- 26.5 If the Supplier reasonably believes that AWE has not complied with the provisions of Clause 26.6 in any material respects, or that AWE has made a manifest error in determining the results of the Benchmark Review, the Supplier may dispute the Benchmarking Report and the matter shall be dealt with in accordance with Clause 21 (Dispute Resolution).
- 26.6 AWE shall conduct the Benchmark Review by applying the following general principles and criteria:
- (a) benchmarking shall be carried out in an independent and objective manner;
  - (b) benchmarking shall be truly comparative in respect of the technology, services and service levels; and
  - (c) benchmarking shall be structured and undertaken in a way that causes the minimum disruption possible.
- 26.7 The costs and expenses of the Benchmark Review shall be borne by AWE.
- 26.8 Benchmark Reviews shall not result in any increase to the Price (either individually or in aggregate) or any decrease in the delivery of any Deliverables or KPI's.
- 26.9 Any amendment to the Price, Deliverables or KPI's in accordance with any Benchmarking Report shall be documented in writing between the parties without cost to AWE.
27. **SUB-CONTRACTING**
- 27.1 The Supplier shall not sub-contract (or purport to sub-contract) any of its obligations or liabilities under this Agreement without the prior written consent of AWE. In making any request to sub-contract, the Supplier must provide AWE with full details of the sub-contractor concerned, together with details of the obligations which the Supplier intends to sub-contract and an estimate of the value of the sub-contract concerned, together with any further detail reasonably requested by AWE. The Supplier shall ensure that any contract between it and each sub-contractor contains provisions which are the same as or which are materially similar to the provisions contained in this Agreement. The Supplier acknowledges that any consent given by AWE under this Clause 27.1 shall not relieve the Supplier of any of its obligations or liabilities under this Agreement.
- 27.2 In addition to its obligations under Clause 27.1, the Supplier shall:
- (a) advertise on Contracts Finder all sub-contract opportunities arising from or in connection with the provision of the Deliverables above a minimum threshold of £25,000 that arise during the Term;
  - (b) within 90 days of awarding a sub-contract to a sub-contractor, update the notice on Contracts Finder with details of the successful sub-contractor;
  - (c) monitor the number, type and value of the sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
  - (d) provide reports on the information at (c) to AWE in the format and frequency as reasonably specified by AWE; and
  - (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 27.3 Each advert referred to at Clause 27.2(a) above shall provide a full and detailed description of the sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 27.4 Notwithstanding Clause 27.2, AWE may by giving its prior written approval, agree that a sub-contract opportunity is not required to be advertised on Contracts Finder.
28. **GENERAL**
- 28.1 No variation of this Agreement or the Purchase Order shall be effective unless it is in writing and agreed by AWE and the Supplier.
- 28.2 The Supplier shall not assign, mortgage, charge, declare a trust over, transfer or deal in any other way with this Agreement or any of its rights under such documents (or purport to do any of the foregoing) without AWE's prior written consent (acting in its absolute discretion).
- 28.3 AWE shall be entitled at any time to assign, mortgage, charge, declare a trust over, transfer or deal in any other way with its rights under this Agreement to any third party without the prior consent of the Supplier. AWE shall be entitled to transfer its liabilities and obligations under this Agreement to the MOD or any member of the AWE Group at any time on notice to the Supplier. The Supplier shall forthwith enter into a novation agreement to put such transfer into effect in a form to be agreed between the parties (both acting reasonably). AWE shall not be entitled to transfer any such liabilities or obligations to any other third party without the prior written consent of the Supplier (which shall not be unreasonably withheld or delayed).

- 28.4 Either party may at any time and from time to time, without notice to the other party, set off any liability of the other party against any liability of the first party, whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination. Any exercise by a party of its rights under this Clause 28.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.
- 28.5 Neither party shall, without the other party's prior written approval (such approval not to be unreasonably withheld or delayed), at any time during the Term and for a period of two (2) years commencing on the termination of this Agreement, on its own behalf or on behalf of or in conjunction with any other person, solicit or entice away or endeavour to solicit or to entice away from the other party, any employee, or individual who may be rendering services to the first party under this Agreement (other than an individual already in the employment of or already lawfully contracted to render services to the first party) whether or not any such individual would commit a breach of contract by reason of ceasing to provide or varying the provision of services to the other party.
- 28.6 Unless this Agreement expressly states otherwise, the rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 28.7 Each party shall at the request of the other party, and at its own cost, do all acts and execute all documents which are necessary to give full effect to this Agreement.
- 28.8 The parties agree that this Agreement issued under it constitute the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 28.9 Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement concerned. Notwithstanding the foregoing, the Supplier acknowledges and agrees that where AWE has issued a Request for Proposal ("**RFP**"), AWE has entered into this Agreement concerned in reliance upon the Supplier's RFP response and the representations made by the Supplier during AWE's supplier selection process.
- 28.10 The parties are independent persons and are not partners, principal and agent or employer and employee and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for therein. Neither of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 28.11 Both parties recognise that any breach or threatened breach of this Agreement may cause the other party irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to each party, each party acknowledges and agrees that the other party is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 28.12 If any provision of this Agreement (or part of any such provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.
- 28.13 If any provision of this Agreement (or part of any such provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith and use all reasonable endeavours to agree the terms of a mutually acceptable alternative provision.
- 28.14 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 28.15 No single or partial exercise of any right, power or remedy provided by law or under this Agreement by either party shall prevent any future exercise of it or the exercise of any other right, power or remedy by that party.
- 28.16 A waiver of any term, provision, condition or breach of this Agreement by either party shall only be effective if given in writing and signed by that party, and then only in the instance and for the purpose for which it is given.
- 28.17 Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to therein).
- 28.18 Subject to Clauses 28.19 and 28.20, no term in this Agreement shall be enforceable by any person other than the parties.
- 28.19 Where any term in this Agreement provides a right to or confers any benefit on any Regulatory Body or any member of the AWE Group, such term shall be enforceable by such Regulatory Body or the relevant member of the AWE Group as though it were a party to this Agreement concerned. However, the consent of such Regulatory Bodies or the AWE Group shall not be required to any variation, waiver, termination or rescission of this Agreement, whether in whole or in part.
- 28.20 Notwithstanding any other provisions of this Agreement, the MOD shall, pursuant to the Contracts (Rights of Third parties) Act 1999, be entitled to enforce any of AWE's rights under this Agreement. Any term in this Agreement which directly or indirectly prevents or attempts to prevent the MOD from exercising such rights shall have no legal effect.
- 28.21 This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 28.22 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with this Agreement (including non-contractual disputes or claims).