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Terms and Conditions

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Terms and Conditions

AWE LOW VALUE/LOW RISK STANDARD TERMS AND CONDITIONS

1 DEFINITIONS

Unless the Contract provides otherwise, the following words and phrases, where they appear in capitalised form in the Contract, shall have the meanings stated below:

"Act of Prevention" means any impediment, prevention or default, whether by act or omission, of a Party or any person for whom that Party is responsible except to the extent caused or contributed to by any default, whether by act or omission, of the other Party or any person for whom the other Party is responsible;

"Affiliates" means in respect of any body corporate means any holding company of that body corporate and any subsidiary of any such holding company of any tier (as those terms are defined in s1159 of the Companies Act 2006);

"AWE" means AWE PLC whose registered office is Aldermaston, Reading, Berkshire, RG7 4PR (Company No 02763902);

"AWE Site" means the AWE's site at Aldermaston, Reading, Berkshire, RG7 4PR or such other site as may be notified by AWE to the Contractor;

"AWE Site Logistics" means the AWE team (+44 (0) 1189 8548710 logistics@awe.co.uk) with whom all deliveries to AWE must be prearranged;

"AWE Standard Requirements" means the standard requirements, policies and procedures identified at Appendix 1 to this document as updated from time to time by written notice from AWE to the Contractor. It also includes any of AWE's other standard requirements, policies and procedures identified by AWE and communicated to the Contractor as AWE Standard Requirements from time to time;

"AQAPs" means the Allied Quality Assurance Publications as set out in the North Atlantic Treaty Organisation website e-Library (www.NATO.int/docu/stanag)

"Business Day" means any day (other than Saturday, a Sunday, English bank or public holidays, and 25th December to 31st December inclusive) during which clearing banks are open for business in the City of London;

"Commencement Date" means the date specified in the Order;

"Contract" means the AWE terms and conditions set out in this document and the Contract Documents;

"Contract Documents" means the documents referred to in these terms and conditions (including the relevant DEFCONS), the relevant Order(s), any Schedules attached to these terms and conditions, the AWE Standard Requirements and any other contract documents listed in the Contract Documents;

"Contractor" means the party providing the Goods/Services as identified in the Order;

"Contractor Parties" means the Contractor's officers, employees and agents and the Contractor's Affiliates, contractors and agents (of whatever tier) and their respective officers, employees and agents;

"Contractor Personnel" means all personnel engaged to provide the Goods/Services from time to time (whether employed directly, supplied by an agency, engaged as or by any sub-contractor of whatever tier or otherwise);

"Contract Price" means the amount payable for the Goods/Services that is specified in the Order, as may be adjusted pursuant to the Contract;

"DEFCON" means the Defence Conditions as set out at the date of the Contract in the commercial toolkit (CMT) section of the UK MOD Acquisition Management Systems website (<http://www.ams.mod.uk/>);

"Force Majeure Event" means any acts of nature, any hostilities and/or any fire at the AWE Site and/or the premises of the Contractor or the Contractor Parties, and/or any act of terrorism, explosion and/or material regulatory delay that can be demonstrated is outside the reasonable control of the Contractor or AWE;

"Good Industry Practice" means all the first class, skill, diligence, care and attention reasonably to be expected of a contractor experienced in fulfilling projects of a similar size, scope, complexity and value as the Contract;

"Goods/Services" means any good or service or deliverable arising from a service (or any combination of these) as defined in the Order to be delivered under the Contract;

"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) of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as 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) has 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 to be approved in accordance with the Companies Act 1986 or the Insolvency Act 1986 as the case may be (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 of 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 14 days; or
 - j) being subject to any analogous arrangement, event or proceedings in any other jurisdiction to those set out in paragraphs (a) - (i) above; 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) - (j) above; or
 - l) suspending or ceasing, or threatening to suspend or cease, to carry on all or a substantial part of its business.

"Intellectual Property Rights (IPR)" means all registered or unregistered trade marks, service marks, patents, registered designs, applications for any of the foregoing copyrights, unregistered designs, know-how or other intellectual property rights subsisting or relating to the subject matter of the Contract;

"ITAR" means International Traffic in Arms Regulations;

"Law" means any law applicable from the time in the United Kingdom or any part of it (as well as any territory which AWE notifies the Contractor in advance that the Goods/Services are to be used within), including common law, all statutory instruments and other subordinate legislation, any enforceable community right, all regulations and binding codes of practice made by Regulatory Bodies, all proclamations, bye-laws, directives, decisions, regulations, rules, orders, notices, rule of courts, directions or guidance (relative to any of the foregoing) issued by any court or Regulatory Body from time to time;

"MOD" means The Secretary of State for Defence and/or the Ministry of Defence as the context requires;

"Order" means the relevant AWE Standard Purchase Order issued by AWE;

"Parties" means AWE and the Contractor and "Party" means either one of them as the context requires;

"Personal Data" has the meaning ascribed to it in the Data Protection Act 1998;

"Prohibited Act" means:

- a) offering giving or agreeing to give to AWE, its Affiliates, the Crown or any persons associated with it or them including its or their officers, employees or agents; and any persons associated with the Contractor or the other persons who are supplying Goods/Services in connection with this Contract, any gift or consideration of any kind as inducement or reward: (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Contract or any other contact with AWE, its Affiliates or the Crown; or (ii) for showing or not showing favour or disfavour to any person in relation to the Contract or any other contract with AWE, its Affiliates or the Crown;
- b) entering into the Contract or any other contract with AWE, its Affiliates, the Crown or any persons associated with it or them where a commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contact is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to AWE;
- c) committing any offence: (i) under the Bribery Act 2010 (or engaging in any activity, practice or conduct which would constitute an offence under this Act if such activity, practice or conduct had been carried out in the UK); (ii) under legislation creating offences in respect of fraudulent acts, or

- (iii) at common law in respect of fraudulent acts in relation to the Contract or any other contract with AWE, its Affiliates or the Crown;
- d) engaging in any activity, practice or conduct which does not comply or is not in the spirit of with AWE's Ethics, Anti-bribery and/or Anti-corruption Policies referred to in AWE's Standard Requirements or as notified to the Contractor from time to time;
- e) doing, or omitting to do, any act that will cause or lead AWE to be in breach of the Bribery Act 2010 and/or AWE's Ethics, Anti-bribery and/or Anti-corruption Policies; or
- f) defrauding or attempting to defraud or conspiring to defraud AWE, its Affiliates of the Crown.

"Regulatory Bodies" means the MOD, the Health and Safety Executive, (including the Office of Nuclear Regulations), the Environment Agency, and those other entities which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of AWE;

"Warranty Period" in respect of each of the Goods/Services means the period starting on the date of delivery of the Goods/Services concerned and ending on the expiry of the period specified in the Order (or, if none is stated, the expiry of the earlier of: (i) 18 months after the date of delivery of the Goods/Services and (ii) 12 months after the date on which the Goods/Services concerned are first put into productive use by or on behalf of AWE).

2 RULES OF INTERPRETATION

- 2.1. Any reference to any Law, British or European Standard, binding code of conduct or AQAP shall be construed as referring to them as amended, re-enacted or replaced and in force from time to time, whether before, on or after the date of the Contract and shall include any subordinate legislation made pursuant to it.
- 2.2. Any phrase introduced by "including", "include", "in particular" or similar expressions shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.3. Any reference to a Party shall include its permitted successors and permitted assigns.
- 2.4. Unless the Contract states otherwise, any reference to a DEFCON shall be construed as referring to the edition of that DEFCON identified or where no edition is identified, the edition of that DEFCON current as at the date of the Contract. Each DEFCON referred to in the Contract shall have effect as amended by Clause 3 (DEFCON Interpretation and Application).
- 2.5. Any inconsistency between documents comprising the Contract shall be resolved according to the following order of priority (highest first):
 - a) these terms and conditions;
 - b) AWE's Standard Requirements;
 - c) all documents referred to in the Contract;
 - d) each Order; and
 - e) any other Contract Documents.
 except that an omission shall not be construed as conflicting with any provision and where there is any conflict between the standards to which an obligation is to be performed the higher standard shall take precedence.
- 2.6. Any obligation not to do something shall include an obligation not to permit it to be done.

3 DEFCONS INTERPRETATION AND APPLICATION

- 3.1. The following shall apply to all DEFCONS referred to in the Contract:
 - a) "Articles" means Goods;
 - b) "Authority" means AWE;
 - c) "Contract Branch" means AWE;
 - d) "Contractor's Representative" means the Contractor and any Contractor Parties;
 - e) "Government Establishment" or "site" means the AWE Site;
 - f) "Government Property" shall extend to all property of AWE or AWE's Affiliates;
 - g) "Government Servant" means AWE;
 - h) "materiel" is a generic term meaning equipment (including fixed assets), stores, supplies and spares;
 - i) "Project Manager" means AWE;
 - j) "Equipment Support" manager means AWE;
 - k) "Representative of the Authority" means AWE; and
 - l) "Schedule of Requirements" means the requirements for the Goods/Services set out in the Contract and AWE's Standard Requirements and any requirements agreed in writing by AWE and the Contractor for the performance of the Contract.
- 3.2. In addition to the other obligations set out in the Contract, the Contractor shall comply with DEFCON 23 Edition 08/09 (Special Jigs, Tooling & Test Equipment) (except the DEFCON shall not apply to ordinary general purpose tooling and test gear provided by the Contractor or its sub-contractors without direct

- charge, as normal 'tools of the trade' or and jigs, tooling and test equipment purchased as line items for direct delivery in accordance with instructions given by AWE under contracts let for that purpose); DEFCON 76 Edition 12/06 (Contractor's Personnel At Government Establishments); DEFCON 516 Edition 06/04 (Racial Discrimination); DEFCON 528 Edition 10/04 (Overseas Expenditure And Import Licences); DEFCON 601 Edition 10/04 (Redundant Materiel); DEFCON 611 Edition 07/10 (Issued Property) (except that Clause 12(a) of that DEFCON shall not apply); and DEFCON 624 Edition 04/00 (Use of Asbestos in Arms, Munitions or War Materials).
- 3.3. DEFCON 76 shall apply to the Contract where any Contractor Parties attend the AWE Site or any other premises owned, occupied or controlled by AWE from time to time.

4 QUALITY AND SERVICE LEVELS

- 4.1. The Contractor shall provide the Goods/Services and perform its obligations under the Contract in accordance with the Contract, the Law, Good Industry Practice, AWE's Standard Requirements and the instructions of AWE.
- 4.2. The Contractor shall ensure that on delivery to AWE and throughout the Warranty Period the Goods/Services:
- a) comply in all respects with the Contract as well as any samples, descriptions, specifications, drawings and other details supplied to the Contractor by AWE or supplied by the Contractor and approved by AWE before the initial supply of the Goods/Services;
 - b) comply with all applicable Laws, requirements of Regulatory Bodies, AQAPs and British, European and other international standards;
 - c) are of satisfactory quality and fit for:
 - (i) the purposes for which they are commonly supplied; and
 - (ii) the purposes specified by AWE to the Contractor prior to the execution of the Contract; and
 - (iii) any other purposes for which the Contractor is, or ought reasonably to have been, aware that they are to be used.
 - d) be free from any defects;
 - e) be safe and without risk to health or property when properly used; and
 - f) include all necessary information about the use of the Goods/Services and all instructions and warnings relating to the Goods/Services as may be necessary for their safe use.
- 4.3. The Contractor shall ensure that:
- a) it has full title to the Goods/Services and that such title to the Goods/Services shall be transferred to AWE on delivery (or payment of that part of the Contract Price that relates to them if earlier);
 - b) it has in its own name (or where necessary in AWE's or the MOD's name) at all times all licences, approvals and consents necessary to enable the Contractor and the Contractor Parties to provide the Goods/Services and for AWE to use and exploit them, except for any licences, approvals and consents specifically identified in writing in the Contract as being AWE's responsibility to obtain;
 - c) it shall not (and shall ensure that the Contractor Parties shall not), through any act or omission, cause AWE to infringe the terms of any licence or any other agreement relating to the provision of the Goods/Services;
 - d) the Contractor provides (or procures the provision of) all tools, equipment plant, machinery and materials necessary for the provision of the Goods/Services (except for any items that AWE expressly agrees that AWE shall provide); and
 - e) all operation or activities carried out by the Contractor or any of the Contractor Parties pursuant to the Contract comply at all times with the Law.

5 TIME

- 5.1. The Contract shall start on the Commencement Date and shall continue, subject to earlier termination in accordance with the terms of the Contract, until the date or expiry of the period specified in the Order (unless extended in accordance with the terms of the Contract), at which point it shall terminate.
- 5.2. AWE and the Contractor acknowledge that insofar as the Contractor has performed a part or parts of the Goods/Services prior to the Commencement Date the Contract shall still be deemed apply to such Goods/Services.
- 5.3. If the Commencement Date is set out in an Order, AWE shall not be liable to make any payment to the Contractor under the Contract unless and until such an Order is provided. AWE shall not be liable for any costs or damages incurred by the Contractor if it commences work without authorisation under the Contract or any individual Order.
- 5.4. The Contractor shall proceed regularly and diligently and in a timely manner with the performance of the Goods/Services and ensure that the Goods/Services are provided within the period set out in the Order.

6 INSPECTION

- 6.1. AWE shall be entitled to inspect and test the Goods/Services at any time, including both prior to and after delivery to AWE, on notice to the Contractor.
- 6.2. Representative samples of materials, finished test pieces, processed materials, parts and complete Goods/Services or developed Software shall be subject to such tests as may be required by the drawings and specifications, or any documents advised by AWE to the Contractor as being applicable to testing, and any additional tests required by AWE upon terms to be agreed. All such samples must be selected, marked and controlled in accordance with the requirements of the Contract or, where not specified in the Contract, as may be reasonably required by AWE.
- 6.3. Except where AWE requires tests to be carried out at a particular test house or laboratory, the tests are to be carried out either at the Contractor's premises on equipment acceptable to AWE, or at a test house or laboratory acceptable to AWE.
- 6.4. The Contractor shall ensure that AWE or its authorised representative shall be granted unrestricted access to any area of any premises where the Goods/Services, or any part of the Goods/Services, are being manufactured or stored so that AWE or its authorised representative may inspect or test them for compliance with the Contract.
- 6.5. The Contractor shall promptly provide documentary evidence that the tests have been carried out and any certificates of conformity or other test results or certificates as AWE may reasonably require.
- 6.6. If, following any inspection or testing, AWE reasonably considers that the Goods/Services do not or will not comply with the Contract, AWE shall inform the Contractor of this and the Contractor shall immediately take such action as is necessary to ensure that the Goods/Services will comply.
- 6.7. If the Contractor does not comply with this Clause (Inspection) to AWE's satisfaction, AWE shall be entitled, without prejudice to any other right or remedy that AWE may have, to terminate the Contract or any part or parts of it in AWE's sole discretion.
- 6.8. No inspection or testing by AWE under this Clause (Inspection) shall imply any acceptance of the Goods/Services by AWE or in any way relieve the Contractor of its obligations and duties under the Contract or otherwise. Nor shall the Contractor be entitled to any increase in its Contract Price or to claim for any loss, damage, expense, or liability in regard to any tests or inspection carried out under this Clause (Inspection).

7 DELIVERY

- 7.1. The Contractor shall deliver any Goods/Services that are not reports, data, documents or similar items DDP (as defined in INCOTERMS 2010) to the place of delivery specified in the Order or as instructed by AWE before delivery or, between the hours of 08.00 and 18.00 Monday to Friday (please note there is closure daily between 13:00 - 14:00).
- 7.2. Delivery to a carrier for transmission to AWE shall not constitute delivery to AWE.
- 7.3. The date on which the Contractor shall deliver such Goods/Services shall be as specified in the Order, or if no such date is specified then the Contractor shall deliver such Goods/Services within 20 Business Days of the Commencement Date. All deliveries must be pre-booked by the Contractor with AWE Site Logistics not later than 24 hours prior to the delivery time. Notwithstanding any agreed date for delivery in the Order or otherwise, failure to book delivery with AWE Site Logistics will entitle AWE to refuse to accept the delivery of the Goods/Services concerned and the Contractor shall bear the costs of any such refusal and redelivery.
- 7.4. The Contractor shall contact the AWE Site Logistics office to obtain the necessary booking form.
- 7.5. Due to the high number of deliveries at AWE, the Contractor will be allocated a delivery slot. If the Contractor arrives outside of their allocated time, they will not be allowed access to the Site and will be required to return at the agreed time. In special circumstances the Contractor may be held until the Site contact is in a position to receive the delivery. The Contractor should be aware that there are no free waiting areas locally to AWE, so the Contractor should stay away until they are within their window and not use local industrial estates around AWE's Site.
- 7.6. The Contractor shall provide a minimum of 3 working days to AWE site logistics for any abnormal loads deliveries.
- 7.7. Without prejudice to the generality of Clause 9.1 below, the Contractor shall ensure that all Goods/Services are appropriately packed so that they are not damaged in transit to the place of delivery as determined in accordance with this Clause 7 (Delivery).
- 7.8. The Contractor shall include within the Contract Price all costs and expenses necessary to comply with all AWE off-loading/stacking instructions specified in the Order. Where the Order does not specify any off-loading/stacking instructions the Contractor shall include within the Contract Price all costs and expenses necessary to off-load and stack the Goods/Services at the place of delivery.
- 7.9. Where Goods/Services are to be un-loaded and/or stacked by AWE and such un-loading and/or stacking cannot safely be performed by Linde Model H35D forklift truck or such other equipment as AWE may specify from time to time, the Contractor shall advise AWE in writing of the equipment

- necessary for safe un-loading and/or stacking and any special storage instructions (if any) at least 10 Business Days before the date for delivery.
- 7.10. The Contractor shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Contract number, the date of the Contract, the number of packages and contents, special storage instructions (if any) and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 7.11. Where Goods/Services are to be un-loaded and/or stacked by the Contractor or any Contractor Parties, the Contractor shall ensure that such personnel are current holders of all appropriate certificates of competency and other qualifications for use of the requisite handling equipment and that they will provide satisfactory documentary evidence of such certification and qualification before commencing unloading or stacking of the Goods/Services.
- 7.12. All packages shall be clearly marked with the Contractor's name and the Contract number.
- 7.13. The Contractor shall ensure that any driver delivering Goods/Services shall be in possession of photographic identification such as a current British passport or a British driver's licence.
- 7.14. Where the Contractor is supplying Goods/Services which include a mains electrical plug the Contractor shall label the packaging and advice note as "ELECTRICAL".
- 7.15. If the Goods/Services are not delivered on (or where earlier delivery has been agreed, before) the date for delivery specified in the Order or if the Contractor otherwise fails to comply with Clause 5 (Time) or this Clause 7 (Delivery), then without prejudice to any other rights which AWE may have, AWE shall be entitled to:
- a) terminate the Contract;
 - b) omit part of the Goods/Services, such part being at AWE's discretion;
 - c) refuse to accept any subsequent performance or delivery of the Goods/Services which the Contractor attempts to make;
 - d) recover from the Contractor any additional expenditure reasonably incurred by AWE in obtaining substitute goods and/or services from a third party; and
 - e) recover from the Contractor as a debt any payment made by AWE in respect of such Goods/Services and any additional costs, loss or expenses incurred by AWE which are in any way attributable to the Contractor's failure to deliver the Goods/Services in accordance with the Contract.
- 7.16. Unless otherwise specified in the Order, AWE shall not be obliged to return to the Contractor any packaging or packing materials used in the delivery of the Goods/Services.
- 7.17. Insofar as AWE does exercise its discretion under Clause 7.15(ii) above then the Contract Price shall be reduced to reflect such omission and no claim by the Contractor for any addition to the Contract Price or loss of profit or overhead or any other claim or entitlement whatsoever for any additional sums or damages will be allowed.
- 7.18. Unless otherwise agreed in writing, AWE will not be responsible for any Goods/Services provided in excess of the quantity required and any excess will be and will remain at the risk of the Contractor and shall be returnable at the Contractor's expense. AWE shall not be bound to pay for the excess.

8 ACCEPTANCE AND REJECTION

- 8.1. AWE shall not be deemed to have accepted any Goods/Services until it has had 20 days (or such longer time as may be reasonable in the circumstances) to inspect them following delivery. Acceptance of Goods/Services shall not affect AWE's other rights and remedies under the Contract including any rights it may have to terminate and recover damage for supply of defective Goods/Services.
- 8.2. If any of the Goods/Services do not comply with Clause 4 (Quality and Service Levels), or are otherwise not in conformity with the terms of the Contract at any time prior to the expiry of the Warranty Period, then, without limiting any other right or remedy that AWE may have, AWE shall be entitled to reject the Goods/Services and:
- a) require the Contractor to repair, replace or reperform (at AWE's option) the rejected Goods/Services at the Contractor's risk and expense promptly and in any event within 20 Business Days of being requested to do so; or
 - b) require the Contractor to repay the price of the rejected Goods/Services in full (whether or not AWE has previously required the Contractor to repair or replace the rejected Goods/Services); and
 - c) recover from the Contractor as a debt any costs, expenses or losses resulting from the Contractor's supply of Goods/Services that are not in conformity with the Contract, including any incurred in removal, re-installation, shutdown and other actions connected with the repair or replacement of the rejected Goods/Services.
- 8.3. The terms of the Contract shall apply to any repaired, replaced or reperformed Goods/Services supplied by the Contractor (and a fresh Warranty Period shall start in respect of them from the date of receipt by AWE of the repaired, replaced or reperformed Goods/Services).
- 8.4. If AWE elects to exercise AWE's rights under Clause 8.2(i) and the Contractor fails to promptly repair or replace rejected Goods/Services in accordance with Clause 8.2(i), AWE shall be entitled, without

affecting its other rights and remedies, to obtain substitute Goods/Services from a third party, or have the rejected Goods/Services repaired by a third party, and the Contractor shall reimburse AWE for the costs it incurs in doing so.

- 8.5. AWE's request for or acceptance of repaired or replacement Goods/Services shall not preclude rejection of the repaired or replacement Goods/Services and/or termination of the Contract if it is not entirely to AWE's satisfaction. Nor shall it affect any right that AWE may have to recover damages for any losses resulting from such defective Goods/Services.

9 RISK

- 9.1. Risk of damage to or loss of the Goods/Services shall remain with the Contractor until completion of delivery (including off-loading and stacking) to AWE in accordance with the Contract.

10 TITLE

- 10.1. Title and ownership of all Goods/Services together with its component parts and equipment so far as incorporated in the Goods/Services and all material that the Contractor acquires or allocates for incorporation in any of the Goods/Services shall pass to AWE upon the earlier of:
- a) delivery of the Goods/Services in accordance with the Contract; or
 - b) any being made by AWE in relation to the Goods/Services or material for the Goods/Services.
- 10.2. If title to the Goods/Services or materials acquired for incorporation in any of the Goods/Services passes to AWE prior to delivery then, until delivery, the Contractor shall hold such Goods/Services as AWE's fiduciary agent and bailee and shall at all times keep the Goods/Services separate from any other goods and properly stored, protected and insured against all risks and clearly identified as AWE's property.
- 10.3. The Contractor shall transfer title in the Goods/Services to AWE with full title guarantee and free from all charges, liens and other encumbrances.
- 10.4. Neither the Contractor, nor any Contractor Parties nor any other third party shall have a lien on any Goods/Services or materials that are the property of AWE under this Clause 10 for any sum due to the Contractor, any Contractor Party or any other third party. The Contractor shall take all reasonable steps necessary to ensure that the provisions of this Clause 10 are brought to the notice of all Contractor Parties and other third parties dealing with any such Goods/Services or materials.
- 10.5. If AWE terminates the Contract, the Contractor shall hand over to AWE any Goods/Services or materials which are the property of AWE under this Clause 10. If the Contractor fails to do so AWE shall have the right to enter the Contractor's premises and retrieve the Goods/Services or materials and recover the cost of doing so from the Contractor.

11 PRICING

- 11.1. In consideration for the supply of the Goods/Services in accordance with the Contract, AWE shall pay the Contractor the Contract Price. The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price. Unless otherwise stated in the Contract, the Contract Price covers all the Contractor's obligations under the Contract and (not by way of limitation) all things necessary for the proper supply of the Goods/Services.
- 11.2. The Contractor hereby acknowledges receipt of the sum stated in the Order (if any) as being paid on account of the Contract Price prior to the date of the Contract.
- 11.3. The Contract Price is inclusive of all costs, expenses, disbursements, printing and overheads of every kind incurred by the Contractor in connection with the performance of the Goods/Services. Accordingly, no additional expenses or other amounts shall be charged by the Contractor for the Goods/Services unless expressly stated in the Order.
- 11.4. The Contract Price is exclusive of any VAT which may be payable if appropriate and supported by a valid VAT invoice from the Contractor. The Contract Price is inclusive of all other taxes and duties of every kind. It is a pre-condition to AWE's liability to pay any part of the Contract Price or any VAT properly chargeable to AWE in respect of the Contract Price that an invoice showing the amount of VAT claimed shall have been submitted previously to AWE by the Contractor.

12 PAYMENT

- 12.1. Unless otherwise specified in the Order, the Contractor shall invoice AWE for the Contract Price payable for each item of the Goods/Services supplied in accordance with the Contract after the end of the month in which they have been provided.

- 12.2. Where any Goods/Services are provided on a time and materials basis then the Contractor shall ensure that all Contractor Parties complete accurate records of time spent on the Goods/Services and shall provide these to AWE immediately on request. The Contractor shall ensure that all records are endorsed by their Chief Financial Officer (or a person with the written delegated authority of the Chief Financial Officer such written authority having been evidenced to AWE) prior to submission to AWE.
- 12.3. AWE shall consider any records of time provided to ensure that all costs have been reasonably and properly incurred by the Contractor or any Contractor Parties. AWE shall have the right to reject any such records and refuse payment for any costs that AWE deems to be unreasonable.
- 12.4. AWE shall have the right to periodically audit the Contractor throughout the term of the Contract to ensure that only appropriate and reasonable costs are being incurred.
- 12.5. Where any expenses are recoverable from AWE in accordance with the Order and the AWE Expenses Policy for Non-AWE Staff (CPP 3224) then only such expenses as have been reasonably and properly incurred shall be recoverable. The Contractor shall provide AWE on demand with receipts and such other reasonable evidence as AWE reasonably requires for any such expenses.
- 12.6. The Contractor shall comply with AWE's standard invoicing policies and procedures notified to the Contractor from time to time. Without prejudice to the generality of this, the Contractor shall note the Contract number on all invoices, which should be submitted for payment in accordance with the terms of the Contract to:
- Accounts Payable
AWE
Aldermaston
Reading
Berkshire
RG7 4PR
- 12.7. AWE shall pay all amounts due to the Contractor under the Contract within 30 days after receipt by AWE of each valid invoice from the Contractor that is submitted to AWE in accordance with the Contract.
- 12.8. Any payment due from AWE to the Contractor under the Contract which is not paid by its last due date for payment shall bear interest at the rate of 4% per annum above the base lending rate of Barclays Bank plc from time to time from the last due date for payment to the date when payment is made.
- 12.9. The payment of any invoice will not be treated as approval or acceptance by AWE of any Goods/Services in respect of which such invoice is issued, and will be without prejudice to AWE's rights and remedies under the Contract or at law in respect of any breach of the Contractor's obligations.

13 CONFIDENTIALITY

- 13.1. For the purposes of the Contract, "Confidential Information" means:
- a) all information (in any form) that a reasonable person in the position of the recipient would regard to be of a confidential nature (whether or not marked as confidential and whether because of the nature of the information, its means of disclosure or otherwise howsoever);
 - b) all information marked as "Confidential" or any oral information or information conveyed by demonstration that is identified as confidential at the time of disclosure;
 - c) any information obtained or observed as result of any visit to the AWE Site;
 - d) all financial information of AWE; and
 - e) all Specifically Identified Confidential Information.
- that in each case is disclosed or obtained in the course of or in connection with the Contract or its performance or the discussions leading up to it or its enforcement. Any Confidential Information developed by the Contractor in the course of performing its obligations under the Contract shall be treated as AWE's Confidential Information and as if it had been disclosed by AWE to the Contractor and the Contractor was the receiving party for the purposes of this Clause 13 (Confidentiality).
- 13.2. Each Party shall, in relation to the other Party's Confidential Information:
- a) keep it confidential;
 - b) not disclose it to any other person except as permitted by Clauses 13.4 and 13.5 below;
 - c) use it solely for the exercise or enjoyment of rights and/or the performance of obligations under the Contract and not otherwise for its own benefit or the benefit of any third party and shall only make such copies of it as are required for such permitted use; and
 - d) take all reasonable precautions to prevent any unauthorised access to, or disclosure or use of it, including taking at least such precautions as it takes in respect of its own confidential information.
- 13.3. The provisions of this Clause 13.3 shall not apply to the whole or any part of the disclosing Party's Confidential Information that can be shown to be:
- a) developed by the receiving party independently from and without use of the disclosing party's Confidential Information;

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- b) obtained without any obligation of confidentiality from a third party who lawfully possessed such Confidential Information and which has not been obtained in a breach of a duty of confidence; or
 - c) in the public domain in the form in which it is possessed by the disclosing party other than through breach of the disclosing Party's obligations.
- 13.4. The receiving party may disclose the disclosing party's Confidential Information:
- a) to such of its officers, employees, agents, sub-contractors or professional advisers who have a reasonable need to know the same for the purposes of the implementation or performance of, or evaluation or enforcement or enjoyment of its rights under the Contract. Provided that no such disclosure of AWE's Confidential Information shall be permitted unless the disclosure is to a British citizen as defined in the British Nationalities Act 1981;
 - b) to the extent required by law (other than under any contract), any court of competent jurisdiction provided that to the extent permitted by law, the receiving party gives the disclosing party (where it is lawful to do so) as much advance notice of the disclosure as is reasonably practicable and takes into account the reasonable requests of the disclosing party in relation to the content of such disclosure; or
 - c) with the prior written consent of the disclosing party.
- 13.5. AWE shall be entitled to disclose the Contractor's Confidential Information to any Regulatory Bodies, AWE Management Limited (company No. 03664571) and its shareholders. AWE shall not be in breach of the Contract where it can show that any disclosure of information is made solely and to the extent reasonably required to comply with the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 ("the Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, AWE shall consult with the Contractor where AWE is considering the disclosure of the Contractor's Confidential Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Contractor's Confidential Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which AWE shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.
- 13.6. Without prejudice to the generality of this Clause 13, the receiving party further undertakes to the disclosing party to:
- a) make all persons to whom it discloses the disclosing party's Confidential Information aware of the confidentiality of the Confidential Information;
 - b) impose obligations of confidence on such persons at least as protective as the terms of this Clause 13 and use its best endeavours to ensure that such persons comply with the provisions of this Clause 13.3; and
 - c) shall be liable for any breaches by such persons as if they had been committed by the receiving party itself.
- 13.7. Each Party agrees to keep the terms of the Contract confidential and no announcement concerning the transactions contemplated by the Contract or any ancillary matter shall be made by either Party without the prior approval of the other Party.
- 13.8. Neither Party shall make use of or make any reference to the name of the other Party or the customers of the other Party for any advertisement, announcement, marketing or publicity without the prior written consent of that Party.
- 13.9. The provisions of this Clause 13 shall survive termination of the Contract for any reason.

14 DATA PROTECTION

- 14.1. Where the Contractor processes Personal Data (as defined in the Data Protection Act 1998 (the "DPA")) on behalf of AWE, the Contractor shall ensure that it has in place appropriate technical, organisational and contractual measures to ensure the security of such Personal Data (and to guard against unauthorised or unlawful processing of that Personal Data and against accidental loss or destruction of, or damage to, that Personal Data), as required under the Seventh Data Protection Principle specified in the DPA.
- 14.2. The Contractor shall only process such Personal Data in accordance with AWE's instructions and shall comply with the obligations imposed on AWE by the DPA in respect of such Personal Data and shall not by any act or omission put AWE in breach of the DPA.

15 IT SYSTEMS

- 15.1. The Contractor will not (and will ensure that the Contractor Parties do not) seek to gain unauthorised access to AWE's IT Systems at any time.

16 CHANGE CONTROL

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- 16.1. AWE may at any time instruct a variation to the Goods/Services, whether by change, increase, omission or alteration in the methodology or timing of the provision of the Goods/Services.
 - 16.2. Any variation instructed under Clause 16.1 shall be valued by AWE on a fair and reasonable basis, with reference, where available and relevant, to rates and prices in the Order.

17 TERMINATION

- 17.1. Termination for cause
AWE shall be entitled to terminate the Contract for cause (either immediately or by giving such period of notice as AWE specifies in writing in AWE's sole discretion and either in whole or in part in AWE's sole discretion) by written notice to the Contractor in the following circumstances:
 - a) an Insolvency Event affecting the Contractor occurs;
 - b) the Contractor is in breach of the Contract and such breach is not remedied within 10 Business Days of receipt of a notice to do so;
 - c) the Contractor is in breach of the Contract, which is irremediable.
 - d) if there is a change of the person with control (as defined in section 574 of the Capital Allowances Act 2001) of the Contractor without AWE's written consent (which may be withheld in its absolute discretion); or
 - e) if a Force Majeure Event occurs that affects the Contractor's performance and which continues for more than 20 Business Days; or
 - f) as provided for in Clause 6 (Inspection), 7 (Delivery) and 26 (Prevention of Corruption and Bribery).
- 17.2. Termination for convenience
AWE shall be entitled to terminate the Contract for convenience at any time, in whole or in part, by giving written notice to the Contractor.
- 17.3. Consequences of termination
 - a) On termination of the Contract, the Contractor shall ensure that:
 - (i) all data and other materials belonging to AWE (including all AWE's Materials) (and all media of any nature containing information and data belonging to AWE); and
 - (ii) unless otherwise instructed by AWE, all Goods/Services completed and all work in progress (including Deliverables) as at the date of termination,
 - b) are delivered to AWE forthwith.
 - c) On termination of the Contract pursuant to Clause 17.1, no further sum shall become due to the Contractor under the Contract and AWE need not pay any sum that has already become due, save that AWE shall make a final payment to the Contractor within 20 Business Days of receipt by AWE of the Contractor's certification of compliance with Clause 17.3a) above and the provision of the outstanding Goods/Services from a third party. This final payment shall be the amount due for the Goods/Services that have been supplied in accordance with the Contract which have not already been paid for less any amounts payable to AWE under the Contract or arising as a result of any breach of the Contract by the Contractor.
 - d) On termination of the Contract by expiry, AWE shall make a final payment to the Contractor within 20 Business Days of receipt by AWE of the Contractor's certification of compliance with Clause 17.3a) above. This final payment shall be the amount due for the Goods/Services that have been supplied in accordance with the Contract which have not already been paid for less any amounts payable to AWE under the Contract or arising as a result of any breach of the Contract by the Contractor.
 - e) On termination of the Contract pursuant to Clause 17.2, AWE shall make a final payment to the Contractor within 20 Business Days of receipt by AWE of the Contractor's certification of compliance with Clause 17.3a) above. This final payment shall be the amount due for the Goods/Services that have been supplied in accordance with the Contract which have not already been paid for less any amounts payable to AWE under the Contract or arising as a result of any breach of the Contract by the Contractor.
 - f) The Contractor shall have no further entitlement either in respect of any Goods/Services delivered or in respect of the termination of the Contract including claims against AWE for breach of contract, loss of profit, loss of expectation or otherwise arising from the termination of the Contract. The final payment made by AWE shall be in full and final settlement of all liabilities of AWE arising out of any termination of the Contract.
 - g) Any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after the termination or expiry of the Contract shall survive and continue to have effect notwithstanding such termination or expiry. For the avoidance of doubt, Clauses 8, 9, 10, 13.6, 14, 15, 17.3 and 18-28 shall continue in force after the termination or expiry of the Contract.
 - h) Except where expressly stated to the contrary in the Contract, the termination or expiry of the Contract shall not affect any accrued rights or liabilities of either Party.

18 COMMUNICATION

- 18.1. All notices and other communications (including any instruction, certificate, submission, proposal, record, acceptance, notification, application and other communication) made under or in respect of the Contract shall be in writing and sent to the relevant party at the relevant postal address or fax number or email address detailed in the Order or such other address or number as either Party may specify in writing from time to time.
- 18.2. Communications shall be treated as having been received:
- a) if sent by pre-paid first class post, 2 Business Days after posting (exclusive of the day of posting);
 - b) if delivered by hand, at the time of delivery;
 - c) if sent by facsimile transmission on a Business Day prior to 4.00pm (or 2.00pm on a Friday), at the time of receipt of confirmation of completion of the transmission and otherwise on the next Business Day; or
 - d) if sent by email when received in the recipient's in-box and is able to be opened by the recipient, provided that such electronic communication shall not be deemed to have been received if the sender receives notification that the email has not been delivered or that the intended recipient is out of the office.
- 18.3. Notwithstanding Clause 18.2, the following communications shall have no effect if made by email:
- a) any notice of termination of the Contract;
 - b) any communication that does not comply with the requirements in relation to emails set out in the Order; or
 - c) any notice of breach of the Contract or relating to any procedure for resolution of disputes or differences under or in connection with the Contract.

19 INSURANCES

- 19.1. The Contractor shall effect and maintain the insurances as stated in the Order in relation to the performance of (and its liability in connection with) the Contract. In addition, the Contractor shall maintain at all times appropriate insurance in respect of the Goods/Services and its obligations under the Contract in accordance with Good Industry Practice.
- 19.2. The Contractor shall ensure that the insurances held by it as required by the Contract are held with recognised, reputable insurers trading in the EU who are acceptable to AWE.
- 19.3. The Contractor shall produce to AWE, on request, copies of all insurance policies referred to in this Clause 19 or a broker's verification of insurance to demonstrate that the appropriate cover is in place.
- 19.4. The Contractor agrees to maintain all insurances required by the Contract at all times until the expiration of 6 years after the termination or expiry of the Contract (or, if different, for the periods specified for the relevant insurance in the Order) provided that such insurance remains generally available in the EU market on commercially reasonable rates and terms to competent contractors or suppliers with a good claims record of the same discipline as the Contractor.

20 REMEDIES

- 20.1. Except where expressly otherwise provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

21 INDEMNITY

- 21.1. The Contractor shall indemnify AWE in full and on demand from and against all and any liabilities, losses, damages, costs and expenses (including legal costs on a full indemnity basis) as a result of or in connection with any claim:
- a) for death or personal injury of any person arising out of or in connection with the supply of the Goods/Services under the Contract, except to the extent that the same is due to any act or neglect of AWE or any person for whom AWE is responsible;
 - b) for loss of or damage to any property arising out of or in connection with any breach of the Contractor's obligations under the Contract or otherwise caused or contributed to by the neglect, act or omission of the Contractor or any of the Contractor Parties;
 - c) by any employee or contractor of AWE arising out of or in connection with any breach of the Contractor's obligations under the Contract or otherwise caused or contributed to by the neglect, act or omission of the Contractor or any of the Contractor Parties;
 - d) made against AWE by any third party arising out of or in connection with any breach of the Contractor's obligations under the Contract or otherwise caused or contributed to by the neglect, act or omission of the Contractor or any of the Contractor Parties; and

- e) arising as a result of any failure by the Contractor to comply with its obligations under Clause 4.3(e).
- 21.2. The liability of the Contractor under Clause 21.1 shall be reduced if and to the extent that the Contractor demonstrates that the negligence or wilful misconduct of AWE or its officers, employees or agents (other than the Contractor or any of the Contractor Parties) has contributed to the matter concerned. The reduction shall be in proportion to the extent that AWE or its officers, employees and agents (other than the Contractor or any of the Contractor Parties) contributed to the matter concerned.
- 21.3. The Contractor shall indemnify AWE in full and on demand against all losses, liabilities, costs, claims and expenses arising out of or in connection with any claim that the Goods/Services (or any part of them or any Intellectual Property Rights in them) or their use or exploitation as permitted by the Contract infringes or allegedly infringes the Intellectual Property Rights of any person.
- 21.4. The indemnity in Clause 21.3 shall not apply to any claim that arises solely due to:
- any misuse or neglect by AWE (or any other permitted user of the items concerned); or
 - any items or information originally supplied by AWE to the Contractor for use under the Contract that themselves infringe the Intellectual Property Rights of any person where the claim relates to such infringement.
- 21.5. AWE shall notify the Contractor in writing as soon as practicable after AWE becomes aware of any claim which may give rise to a claim for indemnification under the Contract. AWE shall, in defending or settling any such third party claim, co-operate with all reasonable requests of the Contractor at the Contractor's expense.

22 FORCE MAJEURE OR ACT OF PREVENTION

- 22.1. Subject to the remaining provisions of this Clause 22.2, neither Party shall be liable to the other for any delay or non-performance of its obligations under the Contract to the extent that such delay or non-performance is due to a Force Majeure Event or Act of Prevention by the other Party.
- 22.2. If either Party is delayed or prevented from performing its obligations under the Contract by a Force Majeure Event or Act of Prevention by the other Party, that Party shall:
- give notice in writing of the Force Majeure Event or Act of Prevention and its impact as soon as reasonably possible (and in any event within 20 days of its occurrence) including its estimated duration;
 - use all reasonable endeavours to mitigate the effects of the Force Majeure Event or Act of Prevention on the performance of its obligations under the Contract; and
 - notify the other Party immediately that the Force Majeure Event or Act of Prevention ceases to apply and resume performance of its obligations as soon as reasonably possible thereafter.
- 22.3. The affected party shall be entitled to a reasonable extension of the time to the relevant date for completion and/or delivery of the relevant Goods/Services delayed by the Force Majeure Event or Act of Prevention.
- 22.4. A Party cannot claim relief if the Force Majeure Event or Act of Prevention is attributable to a wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event or Act of Prevention by that Party or its sub-contractors, suppliers or agents (of whatever tier). The Contractor cannot claim relief if the Force Majeure Event is one where a reasonable contractor should have foreseen and provided for the cause in question or is one in respect of which the Contractor fails to comply with Clause 22.2.
- 22.5. As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event or Act of Prevention and to facilitate the continued performance of the Contract. Where the Contractor is the affected Party, it shall take and/or ensure the taking of all steps available to it to overcome or minimise the consequences of the Force Majeure Event or Act of Prevention.
- 22.6. During the continuance of any Force Majeure Event, no part of the Contract Price shall be due and payable.
- 22.7. Where the Contract Price is payable on a periodic basis, the Contract Price concerned shall be reduced pro-rata to reflect the reduction in service caused by the Force Majeure Event.

23 SET OFF

- 23.1. AWE may at any time and from time to time, without notice to the Contractor set off any liability of the Contractor to AWE against any liability of AWE to the Contractor, whether any such liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract or any other contract and irrespective of the currency of its denomination. If the liabilities to be set off are expressed in different currencies, AWE may convert either liability at the rate of exchange published in the Financial Times as at the date that the set-off is to be made. Any exercise by AWE of its rights

under this Clause 23.3 shall be without prejudice to any other rights or remedies available to it under the Contract or otherwise.

24 DISPUTE RESOLUTION

- 24.1. 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.
- 24.2. Any dispute between the Parties in relation to, or arising out of, the Contract shall be dealt with as follows:
- a) in the first instance, the Parties will work together at an operational level in an attempt to resolve the dispute;
 - b) if the Parties fail to resolve the dispute at an operational level, within 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 Commercial Director (or his nominee) and a person of equal seniority of the Contractor (or his nominee); and
 - c) if the persons to whom the matter is escalated under Clause 24.2(ii) 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 24.3 shall apply.
- 24.3. Subject to Clause 24.2 above, each party hereby irrevocably submits to the exclusive jurisdiction of the courts of England and Wales to determine any dispute or difference (whether contractual or non-contractual) arising out of or in connection with the Contract. Notwithstanding the foregoing, at the sole option of AWE, any dispute or claim arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration. The seat of the arbitration shall be England and Wales. The tribunal shall consist of one arbitrator. The arbitration shall be governed by both the Arbitration Act 1996 and the JCT 2011 edition of CIMAR (the CIMAR Rules). Should the parties be unable to agree on an arbitrator, AWE may, upon giving written notice to the Contractor, apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an arbitrator. Provided that it is hereby agreed that any such arbitrator must be a British citizen as defined in the British Nationalities Act 1981 and that the arbitration procedure will at all times be strictly subject to Clause 13 (Confidentiality) of the Contract. Insofar as there is any conflict between Clause 13 of the Contract and the CIMAR Rules, Clause 13 shall prevail.
- 24.4. If a court action has been initiated by the Contractor at the time that AWE chooses to submit the matter to arbitration, then it is agreed that such court action is to be discontinued.
- 24.5. The parties shall continue performing their respective obligations under the Contract while the dispute is being resolved, unless and until the Contract expires or is terminated in accordance with its terms.

25 GOVERNING LAW

- 25.1. The Contract and any dispute or difference arising out of or in connection with it or its subject matter or formation (whether contractual or non-contractual) shall be governed by and construed in accordance with the laws of England and Wales.

26 PREVENTION OF CORRUPTION AND BRIBERY

- 26.1. The Contractor represents and undertakes to AWE that it has not (and none of the Contractor Parties has) committed any Prohibited Act.
- 26.2. If a Prohibited Act is committed by the Contractor, any of the Contractor Parties or any of the Contractor Personnel, then AWE shall be entitled to terminate the Contract by giving notice to the Contractor.

27 EXPORT CONTROLS

- 27.1. Goods/Services required to meet AWE's specifications may fall within the remit of ITAR regulations, specific national legislation on arms control and export or individual company's ethics policies. AWE complies fully with these requirements and respects contractor ethics policies. Goods/Services falling within such regulations, legislation or policies will require a licence and/or an End User Certificate. The Contractor shall pass certificates to AWE for authorisation.
- 27.2. Where the Goods/Services requires the Contractor to select equipment or design for AWE, then the Contractor shall note that the Contractor is responsible for ensuring that:
- a) no equipment selections or designs are supplied to AWE which are in breach of either end use legislation or contractors' ethical policies, not to trade with AWE;

- b) the requirement for end user certification is identified and that AWE is able to satisfy the requirements of that certification; and
- c) the requirements for end user certification are identified sufficiently early in the schedule to enable alternative sources of supply and clearance of the requisite documentation.

28 OTHER PROVISIONS

- 28.1. Subject to the provisions of Clause 16 (Change of Control), no variation of the Contract shall be effective unless it is in writing and agreed by the Parties (or their authorised representatives).
- 28.2. No delay, indulgence or omission in exercising any right, power or remedy provided by the Contract or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall preclude or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy under the Contract shall not:
 - a) be effective unless given in writing;
 - b) constitute a waiver of any subsequent breach or default; or
 - c) preclude or restrict the further exercise of that or any other right or remedy.
- 28.3. The Contractor shall not assign, mortgage, charge, declare a trust over, transfer or deal in any other way with the Contract or any of its rights under it (or purport to do any of the foregoing) without the prior written consent of AWE (acting in its absolute discretion). Nor shall the Contractor transfer or sub-contract (or purport to do this) any of its obligations or liabilities under the Contract without the prior written consent of AWE.
- 28.4. If any provision of the Contract is held by any competent authority or a court of law to be invalid, illegal or unenforceable in whole or in part, that provision or part-provision (as the case may be) shall to that extent be deemed to be deleted, and the remaining provisions of the Contract shall remain in full force and effect.
- 28.5. Subject to Clause 28.6, no term in the Contract shall be enforceable by any person other than the Parties.
- 28.6. Where any term in the Contract provides a right or confers any benefit on any Regulatory Body or AWE Affiliate, such term shall be enforceable by such Regulatory Body or AWE Affiliate as though it were a Party to the Contract. However, the consent of such Regulatory Bodies or AWE Affiliates shall not be required to any variation, waiver, termination or rescission of the Contract or any of its provisions, whether in whole or in part.
- 28.7. The Contract constitutes the entire agreement and understanding between the Parties relating to the subject matter of the Contract and supersedes any previous agreement, understanding or arrangement between the parties relating to the subject matter of the Contract. Any other terms that the Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing are hereby expressly excluded from the Contract.
- 28.8. The Contractor warrants that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty made or given by AWE or any other person (whether made innocently or negligently) other than the terms set out expressly in writing in the Contract (and the Contractor's remedy in respect of such terms shall be limited to damages for breach of contract). However, nothing in this Clause 28 (Other Provisions) shall operate to limit or exclude AWE's liability for fraud (including fraudulent misrepresentation).
- 28.9. The Contractor shall, and shall ensure that the Contractor Parties shall, keep and maintain a fully documented record of the work done for the purpose of the Contract and the results achieved, including as far as the nature of the work requires, all drawings, specifications and other data necessary to manufacture any Goods/Services the design of which is called for under the Contract and to manufacture any material and operate any process or technique developed under the Contract in accordance with Good Industry Practice for the term of the Contract and for a period of 6 years (or such longer period as may be specified elsewhere in the Contract in respect of particular records) following termination and/or expiry of the Contract. The Contractor shall, and ensure that the Contractor Parties shall, provide AWE with copies of such records as AWE reasonably requests from time to time. Such records must include a record of all items held in the Contractor's (or the Contractor Parties') custody pursuant to paragraph 7 of DEFCON 23 and the items specified in DEFCON 648, provided that the Contractor shall not be obliged to make available to AWE records of costs incurred in supplying the Goods/Services where such costs are not recharged to AWE (whether under time and materials charges or otherwise).
- 28.10. The Contractor will allow AWE (and AWE's own personnel and/or professional consultants) to have escorted access to all of the Contractor's systems, premises, equipment, materials, facilities, staff and relevant records (and shall ensure access to the systems, premises, equipment, materials, staff and relevant records of its sub-contractors). AWE shall give not less than five (5) Business Days' notice in writing of such access except that in the case of any emergency or where AWE reasonably suspects that a fraud or a breach of any security requirement of the Contract has occurred, AWE shall be entitled

- to provide one (1) hour's notice. Such access shall be provided for the purpose of:
- a) verifying the Contractor's or its sub-contractors' compliance with the Contract;
 - b) inspecting any part of the Goods/Services (including inspecting any part of the processes used to produce any Goods/Services);
 - c) confirming the accuracy of any amounts paid or payable by AWE under the Contract;
 - d) identifying suspected fraud; and/or
 - e) verifying that the Contractor's and/or its sub-contractors' systems protect the confidentiality and security of any information, materials or other assets provided or made available by AWE to the Contractor in accordance with the requirements of the contract.
- 28.11. Any inspection carried out pursuant to this Clause 28 shall not relieve the Contractor of any of its obligations under the Contract.
- 28.12. The Contractor shall provide and shall ensure that its sub-contractors' shall provide to AWE all reasonable assistance in the carrying out of any audit under this Clause 28, whilst AWE and its auditors will protect any Confidential Information obtained in the course of such audit concerning the Contractor's business in accordance with Clause 13 (Confidentiality).
- 28.13. Nothing in the Contract shall constitute or be construed as constituting a relationship of landlord and tenant or a tenancy in favour of the Contractor or a partnership or joint venture or relationship of principal and agent (save as expressly provided herein) between AWE and the Contractor or shall authorise either Party to enter into contractual relationships or incur obligations on behalf of the other Party. Neither the Contract, not the Contract in conjunction with any other document or arrangement shall constitute, create or operate as the transfer of a business or of good will.
- 28.14. 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.
- 28.15. Therefore, AWE wishes to know which substances controlled under the Montreal Protocol are contained in the Goods/Services which are the subject of the Contract. Accordingly, on request the Contractor shall provide a list specifying:
- a) all substances controlled under the Montreal Protocol contained in the Goods/Services (including the packaging thereof, whether or not specified in the Contract);
 - b) the quantity of each of the substances controlled under the Montreal Protocol contained the Goods/Services;
 - c) where in the Goods/Services (including packaging) the substances controlled under the Montreal Protocol are contained or confirmation of a "nil return" for Clauses 28.15(a) and 28.14(b) if this is the case.
- 28.16. The Contractor shall notify AWE of any occurrence in relation to the Contract that, in the reasonable opinion of the Contractor, could be expected to cause adverse publicity to AWE, any of AWE's Affiliates or the MOD. Such notification shall be given by the Contractor to AWE as soon as reasonably practicable (and, if possible, with twenty-four (24) hours) after the occurrence.

29 COUNTERFEIT GOODS

- 29.1 The following definitions apply to this clause:
- a) "Counterfeit Work" means the Goods that are or contain unlawful or unauthorised reproductions, substitutions, or alterations that have been knowingly mismarked, 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 used Goods represented as new, or the false identifications of any grade, serial number, lot number, date code or performance characteristics.
 - b) "Suspect Counterfeit Work" 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 are authentic.
- 29.2 The Contractor shall not deliver any Counterfeit Work or Suspect Counterfeit Work to AWE under this Contract.
- 29.3 The Contractor 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 Contractor may use another source only if:
- a) the foregoing sources are unavailable;
 - b) the Contractor's inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the Goods, and
 - c) the Contractor obtains the advance written approval of AWE.
- 29.4 The Contractor shall maintain counterfeit risk mitigation processes in accordance with industry recognised standards and in accordance with any other specific requirements identified in this Contract.
- 29.5 The Contractor shall immediately notify AWE if the Contractor becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by AWE, the Contractor shall provide any original component or equipment manufacturer documentation that authenticates traceability of the

- affected items to the applicable manufacturer. The Contractor shall, at its own expense, provide reasonable cooperation to AWE in conducting any investigation regarding the delivery of Counterfeit Work or Suspect Counterfeit Work under this Contract.
- 29.6 This Clause 29 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 this Contract addressing the authenticity of the Goods.
- 29.7 In the event that the Goods delivered under this Contract constitutes or includes any Counterfeit Work, the Contractor shall, at its own expense, promptly replace such Counterfeit Work with genuine Goods conforming to the requirements of this Contract. Notwithstanding any other provision in this Contract, the Contractor shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation AWE's costs of removing Counterfeit Work, of installing replacement Goods and of any testing necessitated by the reinstallation of the Goods after the Counterfeit Work has been exchanged. The remedies contained in this paragraph are in addition to any remedies AWE may have at law, equity or under other provisions of this Contract.
- 29.8 The Contractor shall include this Clause 29 (or equivalent provisions) in any subcontracts for the delivery of the Goods to AWE.

30 USE OF SUBCONTRACTORS

- 30.1 The Contractor shall ensure that all the Clauses (or equivalent provisions) contained in this Contract shall be included in any subcontracts relating to the provision of the Goods/Services as and when the Clauses applies. For the avoidance of doubt Clauses 3, 4, 13, 26, 28.9, 28.10, 28.11, 28.12, 29, 30, 31, 32 and 33 shall be included in every subcontract.

31 NON-SOLICITATION

- 31.1 The Contractor shall not, without the prior written approval of AWE, at any time during the Contract term 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 AWE, any employees, or individuals who may be rendering services to AWE during the Contract (other than an individual already in the employment of or already lawfully contracted to render services to the Contractor) whether or not such individual would commit a breach of contract by reason of his ceasing to provide or his varying the provision of his services to AWE.
- 31.2 The Contractor shall not, without the prior written approval of AWE at any time during the period of two (2) years commencing on the expiry or earlier termination of this Contract, either on its own behalf or on behalf or in conjunction with any other person, solicit or entice away or endeavour to solicit or to entice away from AWE any employee or any individual who may be rendering services to AWE during the Contract (other than an individual already in the employment of or already lawfully contracted to render services to the Contractor) whether or not any such individual would commit a breach of contract by reason of his ceasing to provide or his varying the provision of his services to AWE.

32 TRANSPARENCY INFORMATION

- 32.1 Subject to clause 32.2, the Contractor understands that AWE may publish the Transparency Information to the general public. The Contractor shall, and shall assist and cooperate with AWE to enable AWE to publish the Transparency Information.
- 32.2 Before publishing the Transparency Information to the general public in accordance with Clause 32.1 AWE shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- 32.3 AWE shall consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 32.2. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which AWE shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Regulations 2004.
- 32.4 For the avoidance of doubt, nothing in the Clause 32 shall affect the Contractors rights at law.

33 MODERN SLAVERY

- 33.1 The Contractor shall (and shall procure compliance by its subcontractors and suppliers as appropriate), at its own cost, comply with its obligations under the Modern Slavery Act 2015 (the MSA 2015), and shall comply with AWE's ethics policy from time to time issued to the Contractor by AWE in accordance

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with its obligations under s54 of the MSA 2015.

APPENDIX 1 - AWE STANDARD REQUIREMENTS

1. PUBLISHING INFORMATION

1.1. The Contractor shall not publish any photographs or any information related to AWE and/or opinions about AWE on the internet, including (but not limited to) forums and social networking sites. The Contractor shall flow this requirement to all personnel who work with/at/on behalf of AWE.

2. ETHICS, ANTI BRIBERY AND ANTI CORRUPTION

2.1. The Contractor shall comply with the AWE Business Ethics Policy, a copy of which is available on the AWE website.

3. SUSTAINABILITY

3.1. AWE is committed to introducing sustainable development into all of its processes and activities and recognises the importance of carrying out its procurement activities in an environmentally and socially responsible manner. AWE is committed, wherever possible, to procuring more sustainable products and services and has embarked upon a programme to integrate sustainability principles throughout its supply chain management activities. This includes:

- a) use of contractors who have adopted or are working towards an externally certified environmental management system such as ISO 14001;
- b) consideration of whole life cycle costs such as standardisation, maintenance, running costs, longevity and disposal;
- c) encouraging innovation;
- d) reductions in energy consumption, carbon emissions and waste;
- e) use of environmentally friendly products e.g. from renewable and sustainable sources;
- f) consideration of the source of supply such as use of local contractor and impact of a contractor's activities on the environment and local community;
- g) social responsibility such as compliance with core labour standards and equal opportunities.