



Standard Terms and Conditions

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AWE DOCUMENT APPROVAL

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Name: Title:	Name: Title:	Name: Title:
Date :	Date:	Date:

DOCUMENT ISSUE RECORD

Issue	Description	Date	Originator

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ARTICLES OF AGREEMENT

DATE OF CONTRACT [●]

PARTIES

- 1 **AWE PLC** whose registered office is Aldermaston, Reading, Berkshire, RG7 4PR (Company No. 02763902) ("AWE")
- 2 [●] [of] [(Company Number [●]) [whose registered office is at] [●]] ("Contractor")

INTRODUCTION

- A The Contractor has represented to AWE that it has the skill and experience to provide the Goods/Services (as defined below).
- B In reliance on this skill and experience, AWE wishes to appoint the Contractor to provide the Goods/Services.
- C The Contractor is willing to provide the Goods/Services and AWE is willing to acquire such Goods/Services from the Contractor on the terms and conditions of contract set out in this document.

IN WITNESS of which the parties have signed the Contract on the date set out above.

Signed by **[NAME OF INDIVIDUAL]** for and on behalf of **[NAME OF COMPANY]**

[signature]

Signed by **[NAME OF INDIVIDUAL]** for and on behalf of **AWE PLC**

[signature]

GENERAL**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:

"Acceptance Certificate" means the acceptance certificate or other document confirming acceptance of the Software as such a certificate or document is described in paragraph 1.3(e) of Schedule 6;

"Acceptance Plan" means the document which the Contractor must submit to AWE prior to performing the Acceptance Tests which shall include the proposed acceptance criteria in relation to the Software;

"Acceptance Procedure" means the procedure set out in paragraphs 1.3(e) to 1.3(g) of Schedule 6;

"Achieved Service Levels" in respect of any Goods/Services performed in any Measured Period means the standard of performance actually achieved by the Contractor in the provision of the Goods/Services in the Measured Period in question (calculated and expressed in the same way as the Service Level for that Goods/Services is calculated);

"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" 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);

"ANM" means Accountable Nuclear Material which is defined as single items of the following material at quantities equal to or greater than the weight given. This includes waste:

Neptunium, 0.1g

Plutonium, 0.1g

Thorium, 1g

Tritiated material (Tritium weight, not weight of Tritiated material), 0.01g

Uranium of any enrichment, 1g

U233, 0.1g

"AQAPs" means the Allied Quality Assurance Publications as set out in the North Atlantic Treaty Organisation website e-Library (<http://nso.nato.int/nso/nsdd/listpromulg.html>);

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

"AWE's Materials" has the meaning given in Clause 58.3;

"AWE Network" means the AWE information technology systems;

“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 in the document entitled “AWE Standard Requirements” supplied by AWE to the Contractor 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;

“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 Contract Data;

“Contract” means the terms and conditions set out in this document and the Contract Documents;

“Contract Data” means the information set out in Schedule 1 and/or the Order;

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

“Contractor Owned Software” means any software, firmware or computer code or language delivered or due to be delivered by or on behalf of the Contractor or his subcontractor to AWE under or pursuant to the Contract and which the Contractor retains ownership;

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

“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 subcontractor of whatever tier or otherwise);

“Contractor's Property” has the meaning given in Clause 52.1;

“Convenience Termination Period” means the period set out under that title in the Contract Data (if any) or, if no such period is specified, shall mean 15 Business Days;

“Critical Date” means the date(s) detailed as such in the Project Plan;

“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;

“Default” means any breach of a Party’s obligations under the Contract for which it is not

excused from liability under 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/>);

“**Deliverables**” means all documents, products and materials developed by the Contractor or any of the Contactor Parties as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programmes, data, specifications and reports (including drafts).

“**Equipment**” means any plant, machinery, equipment, jigs, tools and test equipment (or any part thereof) that is purchased under this Contract and/or issued to the Contractor on loan terms by AWE;

“**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**” means the goods (or any part of them) to be provided by the Contractor under the Contract as set out in the Goods Specification;

“**Goods/Services**” means any Goods and/or Services (as appropriate);

“**Goods Specification**” means any specification for the Goods, including any related plans and drawings, set out in Schedule 2;

“**Gross Negligence**” means any act or omission of a Director, Company Secretary, or officer of similar standing of the Contractor, based on his actions as an individual rather than the actions of his subordinates or any other person, which falls substantially below the standard of diligence which could reasonably be expected of a competent and conscientious person in the same position and under the same circumstances as such Director, Company Secretary, or office of similar standing of the Contractor, but only if it would have been obvious to such a competent and conscientious person that such act or omission would cause, or would be highly likely to cause, an Occurrence;

“**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 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 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); 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;

"IT Project Specification" means the IT project specification attached in substantially the form of Schedule 2 as varied or amended by the parties from time to time, which IT project specification includes (i) the start date and estimated duration of the IT Services; (ii) a scope of work describing the IT Services to be performed by the Contractor; (iii) the applicable fees charged by the Contractor for the IT Services and payment schedule; (iv) project assumptions and responsibilities; (v) the timetable; (vi) training services to be performed by the Contractor and (vi) such other information as may be agreed to by the Parties;

"IT Services" means the IT professional services which relate to the provision of Software under the Contract;

“Key Date” means each key date set out in the Contract Data;

“Key Date Event” means those elements of the Goods/Services or other obligations of the Contractor that are required to be completed by a particular Key Date as set out in the

Contract Data;

“Key Personnel” means the persons identified as such in the Contract Data together with the Contractor’s Representative (if any), each as varied from time to time in accordance with the Contract;

“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;

“Liquidated Delay Damages” means the amount of liquidated delay damages for the relevant Goods/Services set out in the Contract Data;

“Measured Period” shall mean the periods over which the Service Levels shall be measured as set out in the Contract Data or, if it is not set out in the Contract Data, shall mean each four week period, the first of which shall start on the Service Commencement Date;

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

“Montreal Protocol” means the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer as amended from time to time;

“Nuclear Matter” shall have the meaning defined in Section 26 of the Nuclear Installations Act 1965 and shall also include any nuclear fuel and any explosive nuclear assembly or nuclear component thereof;

“Occurrence” shall have the meaning as defined in Section 26(1) of the Nuclear Installations Act 1965;

“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 Agreement or any other contract with AWE, its Affiliates or the Crown;

d) engaging in any activity, practice or conduct which is not in the spirit of AWE's Ethics, Anti-bribery and 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 Anti-corruption Policies; or

f) defrauding or attempting to defraud or conspiring to defraud AWE, its Affiliates of the Crown.

"Project Plan" means the timetable and sequence of events agreed by the Parties for the delivery and implementation of the IT Services as annexed to Schedule 6, as the same may be amended from time to time by agreement between the Parties in accordance with the terms of the Contract.

"Radioactive Material" shall have the meaning defined in Section 1 of the Radioactive Substances Act 1993;

"Radioactive Waste" shall have the meaning defined in Section 2 of the Radioactive Substances Act 1993 and shall include any other nuclear waste and nuclear waste from the combustion of any nuclear fuel and nuclear waste from explosive nuclear assembly or nuclear component thereof;

"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;

"Reports" means the reports to be prepared and presented by the Contractor in accordance with the Contract as described in the Contract Data;

"Representative" means the persons appointed in accordance with Clause 19 (Contractor Personnel) from time to time to carry out the representative function set out in the Contract Data;

"Release" means any improved modified or corrected version or release of the Software or any re-release of the Software made available to AWE by the Contractor;

"Security Aspects Letter" means any letter described as such in its terms, in AWE's standard format applicable from time to time, and issued by AWE from time to time;

"Service Commencement Date" means the date specified under that title in the Contract Data or, if no such date is specified, the date notified in writing by AWE to the Contractor as being the date on which the Services are to commence;

"Service Credits" means the services credits (if any) payable by the Contractor to AWE from time to time as set out in and calculated pursuant to Clause 17 (Payment);

“Service Incentive Payments” means the service incentive payments (if any) payable by AWE to the Contractor from time to time as set out in and calculated pursuant to Clause 17 (Payment);

“Service Levels” means the performance standard set out in the Contract Data;

“Services” means the services, including without limitation any Deliverables, to be provided by the Contractor under the Contract as set out in the Services Specification;

“Services Specification” means the description or specification for Services set out in Schedule 2;

“Software” means any software, firmware or computer code or language delivered or due to be delivered by or on behalf of the Contractor or his subcontractor to AWE under or pursuant to the Contract, which shall include any Contractor Owned Software as applicable;

“Source Code Materials” means the source code of the Contractor Owned Software and all technical information and documents (including User Guides) required to enable AWE or the MOD to modify and operate the Contractor Owned Software;

“Specially Identified Confidential Information” means the information (if any) identified under that title in the Contract Data;

“Termination Compensation” if applicable, is the sum calculated in accordance with the formula identified in the Contract Data (if any) provided that if no such formula is specified in the Contract Data, the Termination Compensation shall be zero;

“Transfer Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“User Guide(s)” means the documentation issued by the Contractor to AWE to enable AWE to install, configure and manage the Software as necessary;

“Warranty Period” in respect of each Goods/Services means the period starting on the date of delivery of the Goods/Services concerned and ending on the expiry of period specified in the Contract Data (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 Except where the context otherwise requires:

- a) words denoting the singular include the plural and vice versa;
- b) words denoting any gender include all other genders; and
- c) any reference to "persons" includes individuals, bodies corporate, companies, partnerships, unincorporated associations, firms, trusts and all other legal entities.

2.2 Any reference to "writing", "written" or any similar expression shall include fax and email, but shall not include Short Message Service (“SMS”) or any other similar informal manner of electronic communication.

2.3 Any reference to any Law, British or European Standard, binding code of conduct or AQAP shall be construed as referring to that Law, British or European Standard, binding code of conduct or AQAP as amended, modified, consolidated, re-enacted or replaced and in force from time to time, whether

before or after the date of the Contract.

- 2.4 Any reference to a Party shall include its permitted successors and permitted assigns.
- 2.5 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 4 (DEFCONS Interpretation and Application).
- 2.6 Any reference to a statutory provision shall be construed as including references to all statutory instruments, orders, regulations or other subordinate legislation made pursuant to that statutory provision.
- 2.7 Clause and Schedule headings and the table of contents of the Contract are for convenience only and shall not affect the interpretation of the Contract.
- 2.8 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.9 Any reference to a document or agreement (including a reference to the Contract and any part of it) is to the agreement or document as amended, varied, supplemented, novated or replaced except to the extent prohibited by the Contract or that other agreement or document.
- 2.10 Subject to 2.11, the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract.
- 2.11 Any conflict or 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) the Contract Data;
 - d) the Schedule to the Contract;
 - e) the DEFCONS referred to in the Contract;
 - f) all documents other than DEFCONS referred to in the Contract;
 - g) each Order; and
 - h) 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.

- 2.12 Any obligation not to do something shall include an obligation not to permit it to be done.

3 NON EXCLUSIVITY

- 3.1 The Contractor acknowledges and agrees that no form of exclusivity or volume guarantee has or will be given by AWE in respect of any Goods/Services and AWE is at all times entitled to enter into other contracts

and agreements with other suppliers for the provision of any Goods/Services or similar goods or services.

4 DEFCON INTERPRETATION AND APPLICATION

4.1 The following shall apply to all DEFCONS referred to in the Contract:

- (i) "Articles" means Goods/Services;
- (ii) "Authority" means AWE;
- (iii) "Contract Branch" means AWE;
- (iv) "Contractor's Representative" means the Contractor's employees, agents and sub-contractors (of whatever tier) and any Contractor Parties;
- (v) "Government Establishment" or "site" means the AWE Site;
- (vi) "Government Property" shall extend to all property of AWE or AWE's Affiliates;
- (vii) "Government Servant" means AWE;
- (viii) "materiel" is a generic term meaning equipment (including fixed assets), stores, supplies and spares;
- (ix) "Project Manager" means AWE;
- (x) "Equipment Support" manager means AWE;
- (xi) "Representative of the Authority" means AWE; and
- (xii) "Schedule of Requirements" means the requirements for the Goods 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.

4.2 In addition to the other obligations set out in the Contract, the Contractor shall comply with the following DEFCONS:

- (i) DEFCON 23 Edition 08/09 (Special Jigs, Tooling & Test Equipment) except the DEFCON shall not apply to:
 - a) ordinary general purpose tooling and test gear provided by the Contractor or its sub-contractors without direct charge, as normal 'tools of the trade'; and
 - b) 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;
- (ii) DEFCON 76 Edition 12/06 (Contractor's Personnel At Government Establishments)
- (iii) DEFCON 516 Edition 06/04 (Racial Discrimination);
- (iv) DEFCON 528 Edition 10/04 (Overseas Expenditure And Import Licences);
- (v) DEFCON 601 Edition 10/04 (Redundant Materiel);
- (vi) DEFCON 611 Edition 07/10 (Issued Property) (except that Clause

12(a) of that DEFCON shall not apply); and

(vii) DEFCON 624 Edition 04/00 (Use of Asbestos in Arms, Munitions or War Materials)

PERFORMANCE

5 QUALITY AND SERVICE LEVELS

5.1 The Contractor shall provide the Goods/Services and carry out its other obligations under the Contract in accordance with:

- a) the Contract;
- b) the Law;
- c) Good Industry Practice;
- d) AWE's Standard Requirements; and
- e) the instructions of AWE.

5.2 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 (including the applicable Service Levels and/or Services Specification and/or Goods Specification (as appropriate)) 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 (subject to any limitations specifically set out in Schedule 2) 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;

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.

5.3 The Contractor shall ensure that:

a) it has full title to the Goods/Services and that 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.

5.4 The Contractor shall provide records of and Reports summarising the Achieved Service Levels as provided for in Clause 15 (Information and Reports) and the Contract Data.

5.5 The Contractor shall ensure that all Goods/Services are new and legitimately CE marked where CE marking is required for the lawful use of the Goods/Services concerned pursuant to the product safety requirements applicable in the European Economic Area.

5.6 AWE and the MOD reserve the right to conduct audits of any elements of the Contractor's and/or the Contractor Parties' quality system to determine compliance with the Contract.

6 TIME

6.1 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 Contract Data (unless extended in accordance with the terms of the Contract), at which point it shall terminate.

6.2 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 be deemed to apply to such Goods/Services.

6.3 If the Contract Data sets out that the Commencement Date and/or the Services Commencement Date is to be set out in an Order, AWE shall not be liable to make any payment to the Contractor under the Contract unless and until such and 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.

6.4 The Contractor shall proceed regularly and diligently and in a timely manner with the performance of the Goods/Services and ensure any Key Date Event is completed by the relevant Key Date.

6.5 The Contractor shall:

a) commence the Services on the Services Commencement Date;

- b) complete the Services within the period set out in the Contract Data; and
- c) use all reasonable endeavours to prevent any delay and disruption howsoever caused to the progress of the Services.

7 INSPECTION

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 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 in order that AWE or its authorised representative shall be entitled to inspect or test them for compliance with the Contract.
- 7.5 The Contractor shall promptly provide documentary evidence that the test have been carried out and any certificates of conformity or other test results or certificates as AWE may reasonable require.
- 7.6 If, following such 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.
- 7.7 If the Contractor does not comply with this Clause 7 (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.
- 7.8 No inspection or testing by AWE under this Clause 7 (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 7 (Inspection).

8 DELIVERY

- 8.1 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 as specified in the Contract Data or or as instructed by AWE before delivery, between the hours of 08.00 and 18.00 Monday to Friday (please note there is closure daily between 13:00 – 14:00). AWE operate on a 9 day fortnight working pattern therefore alternate Fridays will not be available for receipt of deliveries.

- 8.2 Delivery to a carrier for transmission to AWE shall not constitute delivery to AWE.
- 8.3 The date on which the Contractor shall deliver such Goods/Services shall be as specified in the Contract Data, 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 Contract Data 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.
- 8.4 Without prejudice to the generality of Clause 10.1 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 Clause 8 (Delivery).
- 8.5 The Contract shall include within the Contract Price all costs and expenses necessary to comply with all AWE off-loading/stacking instructions specified in the Contract Data. Where the Contract Data 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/Service at the place of delivery.
- 8.6 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.
- 8.7 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.
- 8.8 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.
- 8.9 All packages shall be clearly marked with the Contractor's name and the Contract number.

- 8.10 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.
- 8.11 Where the Contractor is supplying Goods/Services which include a mains electrical plug the Contractor shall label the packaging and advice note as "ELECTRICAL".
- 8.12 If the Goods/Services are not delivered on (or where early delivery has been agreed, before) the date for delivery specified in the Contract Data or if the Contractor otherwise fails to comply with Clause 6 (Time) or this Clause 8 (Delivery), then without prejudice to any other rights which AWE may have, AWE shall be entitled to:
- (i) terminate the Contract;
 - (ii) omit part of the Goods/Services, such part being at AWE's discretion;
 - (iii) refuse to accept any subsequent performance or delivery of the Goods/Services which the Contractor attempts to make;
 - (iv) recover from the Contractor any additional expenditure reasonably incurred by AWE in obtaining substitute goods and/or services from a third party; and
 - (v) 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.
- 8.13 Unless otherwise specified in the Contract Data, AWE shall not be obliged to return to the Contractor any packaging or packing materials used in the delivery of the Goods/Services.
- 8.14 Insofar as AWE does exercise its discretion under Clause 8.12(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.
- 8.15 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.
- 9 ACCEPTANCE AND REJECTION**
- 9.1 AWE shall not be deemed to have accepted any Goods/Services until it has had 20 Business 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.
- 9.2 If any of the Goods/Services do not comply with Clause 5 (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:

(i) 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

(ii) 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

(iii) 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.

9.3 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).

9.4 If AWE elects to exercise AWE's rights under Clause 9.2 (i) and the Contractor fails to promptly repair or replace rejected Goods/Services in accordance with Clause 9.2 (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.

9.5 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.

10 RISK

10.1 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.

11 TITLE

11.1 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 allocated 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 payment being made by AWE in relation to the Goods/Services or material for the Goods/Services.

11.2 If title to the Goods/Services or materials acquired for the 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 property stored, protected and insured against all risks and clearly identified as AWE's property.

11.3 The Contractor shall transfer title in the Goods/Services to AWE with full title guarantee and free from all charges, liens and other encumbrances.

11.4 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 11 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 11 are brought to the notice of all Contractor Parties and other third parties dealing with any such Goods/Services or materials.

11.5 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 11. 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.

12 GOVERNMENT GRANTS FOR EQUIPMENT

12.1 The Contractor shall not claim any grant from UK Government funds towards the cost of any jigs, tools, moulds, dies, manufacturing gauges or test equipment for which the Contractor is to bear the cost under the Contract.

13 INTELLECTUAL PROPERTY RIGHTS

13.1 The Contract is conditional on the Contractor agreeing to enter an arrangement with the MOD using DEFFORM 177 and providing two (2) signed copies of that DEFFORM back to AWE.

13.2 Subject to the rights of third parties and to any rights of the Crown, all rights in the results of the work undertaken by or on behalf of the Contractor for the purpose of the Contract, including any data, software, reports, drawings, specifications, designs, inventions or other materials produced or acquired in the course of such work, and any copyright therein, shall vest in and be the property of the MOD, which reserves the right to determine whether any patent shall be applied for or the results of the work published and, if so, on what conditions; and the Contractor shall ensure, where necessary, that it secures the right to effect such vesting.

13.3 The Contractor if requested, and at the expense of AWE, shall do all things necessary to enable AWE or the MOD to obtain patent or similar protection as AWE may require.

13.4 The Contractor shall not use the results of, or the information gained under, the Contract for purposes other than Government purposes without the prior written agreement of AWE.

13.5 AWE grants the Contractor, and gives the Contractor the right to grant to their sub-contractors, free of charge a non-exclusive non transferable licence to use any and all Intellectual Property Rights of AWE solely for the purposes of the Contractor and their sub-contractors carrying out their duties under the

Contract.

14 PARENT COMPANY GUARANTEE

- 14.1 Where a parent company guarantee is specified in the Contract Data as being required, the Contractor will procure a guarantee of the Contractor's performance from such member of the Contractor's group as AWE specifies in the form set out in the Contract Data. The Contractor shall ensure that the guarantee is executed and delivered to AWE prior to the Commencement Date. AWE will not be obliged to make any payment or carry out any other obligation under this Contract until such a guarantee has been provided.

15 INFORMATION AND REPORTS

- 15.1 The Contractor shall ensure that any information provided by the Contractor under the Contract is true, complete, accurate and not misleading in any respect.
- 15.2 The Contractor shall:
- a) provide AWE with any additional information in connection with the Contract or its performance as and when reasonably requested by AWE from time to time;
 - b) provide AWE with Reports in the format and frequency set out in the Contract Data; and
 - c) provide AWE with details of subcontractors to be used in completion of the Goods/Services in the format set out in the Contract Data.

PRICING AND PAYMENT

16 PRICING

- 16.1 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.
- 16.2 The Contractor hereby acknowledges receipt of the sum stated in the Contract Data (if any) as being paid on account of the Contract Price prior to the date of the Contract.
- 16.3 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 Contract Data.
- 16.4 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.

17 PAYMENT

17.1 Unless otherwise specified in the Contract Data, 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.

17.2 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. Where any expenses are recoverable from AWE in accordance with the Contract Data 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.

17.3 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

17.4 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.

17.5 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.

17.6 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.

17.7 Service Credits

Where the Contract Data provides for the calculation and payment of Service Credits and/or Service Incentive Payments, then:

a) within the period stated in the Contract Data after the end of each Measured Period, the Contractor shall calculate and provide AWE with details

of the Service Credits and/or Service Incentive Payments accrued during that Measured Period together with such additional information as AWE reasonably requires;

b) AWE shall be entitled to recover any Service Credits accruing in any Measured Period by, in AWE's sole discretion:

(i) offsetting any such Service Credits against any Contract Price payable under the Contract; or

(ii) invoicing the Contractor for any such Service Credits at any time after the end of the Measured Period concerned and the Contractor shall pay such invoice within 30 days after the date of any such invoice; and

c) AWE shall pay the Contractor any Service Incentive Payments accrued in respect of the previous Measured Period within 30 days after the end of the Measured Period to which it relates.

17.8 For the avoidance of doubt, the Service Credits are in addition to AWE's other rights and remedies under the Contract and shall not operate to limit any right that AWE might otherwise have to recover damages under the Contract notwithstanding that such damage may exceed the Service Credits. However, where AWE elects to seek damages in respect of any breach in respect of which Service Credits have already been recovered then such Service Credits shall operate to reduce the amount of damages that AWE shall be entitled to recover.

17A PAYMENT (CONSTRUCTION CONTRACTS)

17A.1 In accordance with the Contract Price, the Contractor will give to AWE an application for payment at monthly intervals or other intervals (as may be specified in the Contract Data) from the Commencement Date setting out the amount the Contractor claims is due to be calculated in accordance with clause 17A.3 for work executed (including any works or goods and materials supplied as part of the Goods/Services) and materials up to the date of the application for payment.

17A.2 The due date for payment is the date the applications for payment is received by AWE.

17A.3 AWE will inform the Contractor not later than 5 days after the payment becomes due of the sum that AWE considers due to the Contractor at the payment due date and the basis on which the sum is calculated. That sum shall be:

a) the total value of the elements of the Goods/Services separately identified in the Contract and properly executed and completed in accordance with the Contract; and

b) additions to the Goods/Services instructed under the Contract; less:

c) any amounts previously paid; and

d) any amounts which may become due to AWE from the Contractor.

- 17A.4 The final date for payment will be 30 days after payment becomes due to the Contractor.
- 17A.5 No less than one day before the final date for payment (the “prescribed period”), the Employer may issue a notice that it intends to pay less than the notified sum and any pay less notice must specify:
- a) the sum that the payer considers to be due on the date the pay less notice is served; and
 - b) the basis on which that sum is calculated.
- 17A.6 Subject to clause 17A.8 and unless AWE has served a notice under clause 17A.5, AWE shall pay the Contractor the sum referred to in the Employer’s notice under clause 17A.3 (or, if the Employer has not served notice under clause 17A.3, the sum referred to in the application for payment referred to in clause 17A.1) on or before the final date for payment.
- 17A.7 If an amount due to the Contractor under the Contract is not paid in full by the final date for payment and no notice is given under clause 17A.5, the Contractor may suspend performance of any or all of its obligations under this Contract by giving not less than 7 days’ notice to the Employer stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance will end when the Employer makes payment of the amount due. The period set out in the Contract for completion of the Goods/Services will be extended to take account of the consequences of any valid suspension by the Contractor further to this clause 17A.7 and AWE shall pay to the Contractor a reasonable amount in respect of costs and expenses reasonably incurred by the Contractor as a result of such valid suspension.
- 17A.8 If the Contractor is subject to an Insolvency Event, no further sum shall become due to the Contractor under the Contract other than any amount that may become due to him under clause 28.3 and AWE need not pay any sum that has already become due either:
- a) insofar as AWE has given or gives a pay less notice under clause 17A.5; or
 - b) if the Contractor, after the last date upon which such notice could have been given by AWE in respect of that sum, has become insolvent (as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996).

18 AUDIT

- 18.1 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, 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 ('Availability of Information'), 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).

18.2 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 the breach of any security requirement of the Contract has occurred, AWE shall be entitled to provide 1 hour's notice. Such access shall be provided for the purpose of:

(i) verifying the Contractor's or its sub-contractors' compliance with the Contract;

(ii) inspecting any part of the Goods/Services (including inspecting any part of the processes used to produce any Goods/Services);

(iii) confirming the accuracy of any amounts paid or payable by AWE under the Contract;

(iv) identifying suspected fraud; and/or

(v) 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.

Any inspection carried out pursuant to this Clause 18 shall not relieve the Contractor of any of its obligations under the Contract.

18.3 Should any audit or inspection carried out by AWE reveal that AWE has been overcharged, the Contractor shall reimburse to AWE the amount of the overcharge within 10 Business Days of the date that AWE notifies the Contractor of the overcharge.

18.4 Should the Contractor disagree with the notified overcharge, and should the parties fail to reach agreement as to the amount of the overcharge concerned within 10 Business Days of AWE notifying the Contractor of the overcharge, the matter shall be referred to dispute resolution in accordance with Clause 36 (Dispute Resolution).

18.5 Each Party shall be solely liable for its own costs and expenses in respect of any audit carried out in accordance with this Clause 18, save that if it is found that, after completion of the audit, AWE has been overcharged by more than 5% on any one invoice or 5% of the total charges payable in relation to any particular Goods/Services, AWE shall, without prejudice to its other rights and remedies, be entitled to recover its costs in relation to such audit from the

Contractor.

- 18.6 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 18, whilst AWE and its auditor will protect any Confidential Information obtained in the course of such audit concerning the Contractor's business in accordance with Clause 22 (Confidentiality).

PEOPLE

19 CONTRACTOR PERSONNEL

- 19.1 The Contractor undertakes to provide sufficient personnel at all times to ensure the performance and completion of the Goods/Services in accordance with the provision of the Contract.
- 19.2 All personnel employed in support of this Contract shall, for the work which they are required to perform, be competent, properly qualified, skilled and experienced in accordance with Good Industry Practice and the Contractor shall provide any details reasonably required by AWE of the relevant qualification of such personnel.
- 19.3 The Contractor shall ensure that the Key Personnel carry out their respective roles in the provision of the Goods/Services as specified in the Contract Data. The Contractor shall obtain the prior approval in writing of AWE before any Key Personnel are removed or replaced during the term of the Contract. The Contractor shall ensure that any Key Personnel are not removed or replaced during the term of the Contract other than for reasons of gross misconduct, termination of employment, long-term absence from work, or where required by AWE under the Contract. Where possible, at least 3 months' written notice must be provided by the Contractor of its intention to replace Key Personnel.
- 19.4 AWE shall not unreasonably delay, withhold or condition its consent to the appointment of a replacement for any relevant Key Personnel by the Contractor or a Contractor Party.
- 19.5 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Contractor's obligations to AWE. The Contractor shall ensure that the role of any Key Personnel is not vacant for any longer than 10 Business Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced. The appointment of a replacement Key Personnel shall be subject to AWE's consent (to be exercised in its absolute discretion).
- 19.6 Each Party shall appoint a Representative to fulfil the functions set out in the Contract Data. The Contractor shall not change its Representative without prior consultation with AWE and the appointment of a replacement Representative shall be subject to AWE's consent (to be exercised in its absolute discretion). AWE shall be entitled to change its Representative at any time on notice to the Contractor.
- 19.7 The Representatives shall meet in accordance with the Contract Data. The Contractor shall, at each meeting, present its previously circulated Reports in the format set out in the Contract Data.

19.8 The Contractor shall provide CV's for any Key Personnel or Representative on request by AWE.

20 BEHAVIOUR OF PERSONNEL ON SITE

20.1 The Contractor shall ensure that at all times whilst at the AWE Site the Contractor Personnel:

a) comply with all Laws, all AWE's site policies and procedures notified to the Contractor from time to time together with AWE's Standard Requirements and any instructions of AWE;

b) do not cause any damage to or loss of the AWE Site or any property at or on the AWE Site or cause any pollution, nuisance or risk to the health of any person; and

c) cooperate with other personnel at the AWE Site and do not obstruct them in the performance of their duties.

20.2 Notwithstanding any other provision of the Contract, AWE shall be entitled at any time (in its absolute discretion) to instruct the Contractor to remove and replace (or procure the removal and replacement of) any Contractor Personnel from the performance of the Contract.

20.3 The Contractor shall, immediately following receipt of an instruction given by AWE pursuant to Clause 20.2 ensure that the person the subject of such instruction shall have no further involvement in the performance of the Contract and any other agreements between the Contractor and AWE.

20.4 AWE shall not be liable for any costs claims liabilities or losses of the Contractor arising from or related to the removal and/or replacement of any Contractor Personnel pursuant to Clause 20.2.

20.5 In addition to AWE's other rights and remedies, AWE shall be entitled, without liability, to remove or to refuse admission to the AWE Site to any person at any time for any reason in AWE's sole discretion.

20.6 The Contractor shall indemnify AWE in full and on demand against all losses, liabilities, costs, claims and expenses arising out of any claim by any person removed or refused access under this Clause 20 (Behaviour of Personnel on Site).

21 EMPLOYMENT OF CONTRACTOR PERSONNEL AND TRANSFER REGULATION

21.1 The Contract is for the provision of Goods/Services and is not a contract of employment with the Contractor or any of the Contractor Personnel. Accordingly the Contractor shall be fully responsible for the Contractor's and the Contractor Personnel's income tax and National Insurance and Social Security contributions and any other liability, assessment or claim relating to taxation (other than value added tax) arising from or made in connection with the performance by the Contractor of its obligations under the Contract. The Contractor shall indemnify AWE in full and on demand against all losses, liabilities, costs, claims and expenses incurred or payable by AWE in connection with any such liability, assessment or claim.

- 21.2 The Contractor shall take such steps as are necessary to ensure that the Contractor Personnel do not become employees of AWE at any time during the term of the Contract or on the termination of the Contract. The Contractor shall at all times be liable for all matters relating to the engagement or employment of the Contractor Personnel including terms of employment or engagement, benefits, health and safety and pay (the "Employment Terms") and including all liabilities, costs and claims (including any liability to taxation, redundancy costs and dismissal costs and any other claims) made or threatened by, on behalf of or in connection with, the Contractor Personnel (the "Claims") arising from their employment or its termination. The Contractor agrees to indemnify and keep AWE indemnified in respect of any and all losses, liabilities, costs, claims and expenses which AWE may suffer or incur as a consequence of any breach of this Clause 21.2 or relating to the Employment Terms or any Claims.
- 21.3 The Parties do not anticipate that the Transfer Regulations will apply at any time during the performance of the Contract or upon the Contractor ceasing to provide the Goods/Services or any part of them. The Contractor undertakes to organise the performance of the Goods/Services and utilisation of the Contractor Personnel such that the Transfer Regulations do not apply in respect of any Contractor Personnel during the term of the Contract or on the termination (in whole or in part) of the Services or their transfer to AWE or to any new provider (a "New Provider") during the terms of the Contract or on the termination or expiry of the Contract. The Contractor shall indemnify AWE and any New Provider against any losses, liabilities, costs, claims and expenses arising as a result of or in connection with:
- a) any breach of the Contractor's obligations under this Clause 21.3 and any losses, liabilities, costs, claims or expenses incurred by AWE or any New Provider as a result of the application of the Transfer Regulations on the termination (in whole or in part) of the Goods/Services or their transfer from the Contractor to AWE or to any New Provider or the termination or expiry of the Contract; and/or
 - b) any losses, liabilities, costs, claims and expenses resulting from any breach or alleged breach of the Transfer Regulations, whether by the Contractor, AWE or any New Provider in connection with the termination (in whole or in part) of the Goods/Services or their transfer from the Contractor to AWE or to any New Provider or the termination or expiry (in whole or in part) of the Contract.
- 21.4 If any Contractor Personnel claim that their employment has at any time transferred to either AWE or to any New Provider, whether pursuant to the Transfer Regulations or otherwise (save where AWE or the New Provider have offered to employ and do employ any such Contractor Personnel) then, as between the Parties, AWE and any New Provider shall be entitled to terminate any such employment forthwith and the Contractor shall indemnify AWE and the New Provider in full and on demand against:
- a) any termination payment and any other amounts payable to such Contractor Personnel, whether by way of remuneration or otherwise (including but not limited to notice pay, any pension liability, arrears of wages, accrued

holiday pay and redundancy pay); and

b) any losses, liabilities, costs (including but not limited to legal costs and expenses on an indemnity basis), claims and expenses (including any settlement sums) arising out of or in connection with the employment of such Contractor Personnel and/or its termination (including but not limited to any claims for unfair dismissal).

INFORMATION AND SECURITY

22 CONFIDENTIALITY

22.1 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 22.

22.2 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 22.4 and 22.5 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.

22.3 The provisions of this Clause 22 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;

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.

22.4 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.

22.5 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.

22.6 Without prejudice to the generality of this Clause 22, 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 22 and use its best endeavours to ensure that

such persons comply with the provisions of this Clause 22; and

c) shall be liable for any breaches by such persons as if they had been committed by the receiving party itself.

22.7 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.

22.8 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.

22.9 The Contractor shall, and shall procure that any Contractor Party shall, enter into a confidentiality agreement with AWE in the form set out at Schedule 3 within 7 days of a written request from AWE specifying the parties who are to enter into the confidentiality agreement. AWE shall not be liable to make any payment under this Contract if the Contractor is in breach of the requirements of this Clause 22.9.

22.10 The Contractor shall at all time comply with Schedule 5 of the Contract.

22.11 The provisions of this Clause 22 shall survive termination of the Contract for any reason.

23 DATA PROTECTION

23.1 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.

23.2 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.

24 IT SYSTEMS

24.1 The Contractor shall comply with AWE's Standard Requirements in relation to IT systems and the submission of data to AWE. Without prejudice to the generality of the foregoing, 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.

25 WORKING ON THE AWE SITE

25.1 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.

26 SOFTWARE LICENCE AND COMPUTER COMPLIANCE

26.1 Either:

a) All Software licenses for Software due for delivery under this Contract shall be made between the MOD and the Contractor (the Licensor). The licences shall be negotiated by the MOD where Software is supplied. This entire Contract is subject to the satisfactory negotiation/agreement of Software licences for all deliverable Software with the exception of bespoke Software. In the event that licenses are not negotiated AWE reserves the right to determine this Contract upon written notice

or;

b) In performing this Contract, the Contractor hereby warrants and represents that he has the right either as owner or licensee to provide Software and license the Software as required under this Contract and in accordance with the terms of this Contract.

26.2 All Software shall be provided to AWE on the following terms:

a) Software provided under this Contract shall be licensed in the name of the MOD but may be used by the Contractors and subcontractors of the MOD solely for the purpose of fulfilling agreements placed by or on behalf of the AWE or the MOD. All Contractors and subcontractors will be required to abide by the terms of the relevant Software licence. No charge shall be made by the MOD or the Licensor for the use of the Software by a contractor or subcontractor in fulfilling a contract placed by or on behalf of AWE or the MOD; or

b) The Software under this Contract shall be deemed to have been licensed to the MOD under the terms and conditions of MOD agreement The provision of this Contract shall take precedence over that of any other licence agreement.

In the event of any conflict:

a) if agreed by the Contractor and AWE in writing, on the terms and conditions of MOD agreement.....; or

b) if agreed by the Contractor and AWE in writing, on the terms and conditions of any Software licence negotiated or to be negotiated and agreed between the Contractor and the MOD as applicable to the relevant Software provided that at any time until such Software licence is agreed by the Contractor and the MOD, AWE may terminate the Contract immediately upon notice to the Contractor without compensation to the Contractor or any subcontractor, and without any liability on the part of AWE; or

c) in the absence of agreement in accordance with clause 26.2 a) or b) above, on a non-exclusive, worldwide, royalty free, perpetual and irrevocable basis, to enable AWE to receive the full benefit of the Contract and the full benefit of the Services, to take delivery of and use the Goods and otherwise to use the Software for the purposes of their business or operations (which in the case of AWE and shall be solely its business and operations in the performance of contracts with the MOD); and

d) in all circumstances on the basis (and without further change) that the permitted use of the Software may be by the MOD and each of its Contractors

including and AWE.

26.3 Notwithstanding any other contractual or licence term to the contrary in relation to any Software the provisions of this Clause 26 shall have precedence.

26.4 All bespoke Software supplied shall be provided to AWE on appropriate media as both source and object code together, with appropriately annotated hard copy listings, enabling structure and logic of the bespoke Software to be understood by AWE.

CONTROL OF CONTRACT

27 CHANGE CONTROL

27.1 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.

27.2 If the Contractor:

(i) is instructed by AWE to vary the Goods/Services required pursuant to the Contract; and/or

(ii) considers that any instruction of AWE requires a variation of the Goods/Services required pursuant to the Contract,

the Contractor shall, within a reasonable time (and in any event not more than 5 Business Days after receipt of AWE's instruction), and without further charge to AWE, provide a written quotation to AWE setting out:

(iii) the time required to implement the variation to the Goods/Services;

(iv) any necessary addition to the Contract Price that the Contractor seeks for carrying out the variation to the Goods/Services or specifying the reduction to the Contract Price to take into account any requested omission from the Goods/Services. Where any Contract Price for Goods/Services is calculated on a time and materials basis or on the basis of any agreed price list or rate card then any increase or decrease in the Contract Price shall be calculated in the same manner;

(v) the effect of the variation to the Goods/Services on any other Goods/Services to be provided under the Contract; and

(vi) any other impact of the variation to the Goods/Services on the terms of the Contract.

27.3 AWE shall be entitled to withdraw any instruction (whether before or after receipt of the quotation referred to above) and the Contractor shall have no claim or entitlement arising out of or in connection with such instruction.

27.4 The Contractor shall not be entitled to any addition to the Contract Price where an instruction to vary the Goods/Services arises from or is contributed to by the Contractor's default or negligence, or the default or negligence of any of the Contractor Parties.

27.5 If AWE wishes the Contractor to proceed with the instruction, the Contractor shall do so immediately on receipt of AWE's written agreement given by a duly authorised member of AWE's Supply Chain Management team to the

Contractor's quotation given pursuant to Clause 27.2 (or to any proposed amendments thereto). Save that, if no agreement on the Contractor's quotation is reached, AWE (acting by a duly authorised member of AWE's Supply Chain Management team only) may instruct the Contractor to proceed with the variation and for the variation to be valued on a fair and reasonable basis.

27.6 Subject to Clause 27.5, if the Contractor carries out or purports to carry out any variation to the Goods/Services without AWE's written agreement to the Contractor's quotation (or any proposed amendments thereto) given by a duly authorised member of AWE's Supply Chain Management team, AWE shall have no liability to the Contractor for any addition to the Contract Price or any losses, damages, fees, costs or expenses incurred by the Contractor.

28. TERMINATION

28.1 Termination for cause

a) 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) by written notice to the Contractor in the following circumstances:

(i) an Insolvency Event affecting the Contractor occurs;

(ii) the Contractor is in material Default of the Contract and such Default is not remedied within 10 Business Days of receipt of a notice to do so;

(iii) the Contractor is in material Default of the Contract, which is irremediable;

(iv) 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);

(v) if a Force Majeure Event occurs that affects the Contractor's performance and which continues for more than 20 Business Days; or

(vi) as provided for in Clauses 7, 8, [26.2] and 47 (where such clauses apply to the Contract).

b) Where AWE is terminating the Contract for a material Default, it shall be entitled to rely on a single material Default or on a number of Defaults or repeated Defaults that, taken together, constitute a material Default. Without limitation, the Parties agree that any breach by the Contractor of Clauses 5, 9, 20, 22, 24, 25, 47 and Schedule 5 (where such clauses apply to the Contract) and any failure by the Contractor to respond to any Restricted Aspects Letter or Security Aspects Letter in the form and within the time specified in such letters shall be treated as a material Default for the purposes of the Contract.

c) Any notice given pursuant to 28.1 a) shall specify whether termination occurs immediately or on the expiry of a specified notice period.

d) The Contractor shall only be entitled to terminate this Contract if AWE fails to pay any material amount due under this Contract and all of the following conditions are met:

- (i) the amount due is not disputed in good faith by AWE;
- (ii) the amount has been overdue for more than 40 Business Days; and
- (iii) following the expiry of such 40 Business Day period the Contractor has notified AWE in writing that the amount is overdue, that the Contractor intends to terminate the Contract if AWE fails to pay it within 20 Business Days after AWE's receipt of such notice and AWE has still not paid the overdue amount by the expiry of that 20 Business Day period.

In such circumstances the Contractor shall be entitled to terminate the Contract by written notice to AWE.

28.2 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 of not less than the Convenience Termination Period.

28.3 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 end of termination, are deliverables to AWE forthwith and the Contractor's Representative shall certify full compliance with this Clause 28.3 a).

b) On termination of the Contract, AWE may employ other persons to supply and/or provide the Goods/Services and (subject to obtaining any necessary third party consent) may use all Contractor's Equipment for those purposes.

c) On termination of the Contract pursuant to Clause 28.1 a), 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 28.3 a) 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 28.3 a) 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 Clauses 28.1 d) or 28.2, 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 28.3 a) 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 together with the Termination Compensation less any amount 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 shall continue to have effect notwithstanding such termination or expiry. For the avoidance of doubt, Clauses 9, 10, 11, 12, 13, 18, 20.5, 22, 23, 28.3, 29, 30-37, 39-51, 55-56, 58-64 and Schedules 4-5 (where such Clauses apply to the Contract) 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 effect any accrued rights or liabilities of either Party.

29 COMMUNICATION

29.1 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 Contract Data or such other address or number as either Party may specify in writing from time to time.

29.2 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 inbox 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.

29.3 Notwithstanding Clause 29.2, 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 Contract Data; 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.

RISK MANAGEMENT AND DISPUTE RESOLUTION

30 INSURANCES

- 30.1 The Contractor shall effect and maintain the insurances as stated in the Contract Data in relation to the performance of (and its liability in connection with) the Contract.
- 30.2 The Contractor shall ensure that none of the insurances held by it as required by the Contract are subject to any unusual exclusions or material excesses having regard to the cover which is available in the EU insurance market to competent Contractors or suppliers with a good claims record of the same discipline as the Contractor and shall ensure that all such insurance is held with recognised, reputable insurers trading in the EU who are acceptable to AWE.
- 30.3 Any excess or deductibles under the insurances required by the Contract shall be the sole and exclusive responsibility of the Contractor.
- 30.4 If any payments are made to the Contractor in respect of any insurance arising as a consequence of a claim made by AWE against the Contractor, they shall be received and held by the Contractor on trust for AWE and shall be paid to AWE without set-off or deduction.
- 30.5 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under the Contract.
- 30.6 The Contractor shall produce to AWE, on request, copies of all insurance policies referred to in this Clause 30 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 30.7 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Contract then AWE shall be entitled, in addition to AWE's other rights and remedies, to make alternative arrangements to protect its interests and shall be entitled recover the costs of so doing from the Contractor on demand.
- 30.8 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 Contract Data) 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.

31 REMEDIES

31.1 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.

32 INDEMNITY

32.1 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 5.3 (e).

32.2 The liability of the Contractor under Clause 32.1 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.

32.3 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.

32.4 The indemnity in Clause 32.3 shall not apply to any claim that arises solely due to:

a) any misuse or neglect by AWE (or any other permitted user of the items concerned); or

b) 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.

- 32.5 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, cooperate with all reasonable requests of the Contractor at the Contractor's expense.

33 NUCLEAR INDEMNITY

- 33.1 Notwithstanding anything contained in any other provision of the Contract to the contrary, AWE shall at all times hereafter indemnify and keep the Contractor indemnified from and against, including cost of litigation:

a) any loss or contamination of, or damage to, any property belonging to or leased or licensed to, or hired by, or otherwise in the control, custody or possession of the Contractor (other than property in respect of which the waiver under Clause 33.5 is applicable) and any loss of use thereby suffered by the Contractor and any reasonable expenses (but not loss of profit) unavoidably incurred as a direct result of such loss, contamination or damage which are not otherwise recoverable from AWE; or

b) any action, claim or proceedings brought by a third party (including employees of the Contractor and employees of AWE) in respect of death or personal injury or of loss or contamination of, or damage to, any property which belongs to such third party,

insofar as such loss, damage, contamination, loss of use, action, claim or proceedings as aforesaid ("**Liability**") shall arise out of or result from the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties of any Nuclear Matter, Radioactive Material or Radioactive Waste which is intended to be used or handled, is being used or handled or has been used or handled in connection with the research, design, development, manufacture, maintenance or withdrawal from service of nuclear warheads at AWE Sites, and all other operations and work carried on at AWE Sites or elsewhere for the MOD pursuant to the Contract.

- 33.2 Provided always that:

a) this indemnity shall cover any Liability which arises out of or results from the acts or omission of the Contractor or any servant or agent of the Contractor, BUT NOTHING HEREIN shall oblige AWE to indemnify the Contractor in respect of any liability to the extent it arises out of or results from Gross Negligence or a deliberate and malicious act or omission on the part of a Director, Company Secretary, or officer of similar standing of the Contractor; and

b) this indemnity shall not apply to the extent to which:

(i) the separate indemnity given by AWE to the Contractor under Clause 33.6 (NIA Risks) in respect of cover required for the purposes of complying with the requirements of the Nuclear Installations Act 1965 applies; or

(ii) the Contractor is indemnified under any other provision of the

Contract; or

(iii) the Contractor is insured in respect of such liability.

33.3 The Contractor shall:

a) allow AWE to have control of all actions, proceedings and claims under Clause 33.1 b) above and the exclusive right to determine the conduct of such actions and proceedings, including the right to appoint Counsel and Solicitors;

b) forthwith upon sustaining any loss or damage or being notified of any claim or demand by a third party furnish in writing to AWE particulars thereof and thereafter afford to AWE such assistance and furnish such particulars and information as AWE may from time to time require; and

c) not without the prior written consent of AWE pay, compound or settle any action, proceeding or claim within the scope of this indemnity nor do nor permit anything to be done which may prejudice or adversely affect the defence or disposal thereof.

33.4 The indemnity hereby given shall extend to any Liability which the Contractor may, with the prior consent in writing of AWE, assume (whether or not legally required so to do), or incur by reason of any indemnity given by the Contractor.

33.5 AWE hereby waives any claim against the Contractor in respect of any death of, or personal injury suffered by, any officer, servant or agent of AWE or the MOD or any loss or contamination of, or damage to real or personal property or loss of use thereof arising out of or resulting from the radioactive properties, or any combination of those and any toxic, explosive or other hazardous properties of any Nuclear Matter, Radioactive Material or Radioactive Waste in any of the circumstances referred to in Clause 33.1 above provided always that this Clause 33.5 shall not have effect in relation to any death, personal injury, loss, contamination or damage arising out of or resulting from Gross Negligence or a deliberate and malicious act or omission on the part of any Director, Company Secretary or officer of similar standing of the Contractor.

33.6 **Nuclear Installation Act Risks**

AWE hereby undertakes to indemnify the Contractor in respect of claims arising out of or in connection with the use by the Contractor of the AWE Site being claims for satisfaction of which the Contractor is required by subsection (1) of section 19 of the said Act of 1965 (as amended) to make provision.

34 FORCE MAJEURE OR ACT OF PREVENTION

34.1 Subject to the remaining provisions of this Clause 34, 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..

34.2 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:

a) 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;

b) 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

c) 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.

34.3 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 and or Key Date delayed by the Force Majeure Event and/or Act of Prevention.

34.4 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 34.2.

34.5 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.

34.6 During the continuance of any Force Majeure Event, no part of the Contract Price shall be due and payable.

34.7 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.

35 SET OFF

35.1 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 35 shall be without prejudice to any other rights or remedies available to it under the Contract or otherwise.

36 DISPUTE RESOLUTION

- 36.1 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.
- 36.2 Any dispute between the parties in relation to, or arising out of, the Contract shall be dealt with as follows:
- (i) in the first instance, the parties will work together at an operational level in an attempt to resolve the dispute;
 - (ii) 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
 - (iii) if the persons to whom the matter is escalated under Clause 36.2 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 36.3 shall apply.
- 36.3 Subject to Clause 36.2 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 22 (Confidentiality) of the Contract. Insofar as there is any conflict between Clause 22 of the Contract and the CIMAR Rules, Clause 22 shall prevail.
- 36.4 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.
- 36.5 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.

36A ADJUDICATION

- 36A.1 Notwithstanding Clause 36, if a dispute or difference arises under the Contract which either Party wishes to refer to adjudication, Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 shall apply and the nominating body shall be the

Technology and Construction Solicitors Association.

GENERAL OBLIGATIONS

37 GOVERNING LAW

37.1 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.

38 VARIATION

38.1 Subject to the provisions of Clause 27 (Change Control), no variation of the Contract shall be effective unless it is in writing and agreed by the Contractor and a representative of AWE's Supply Chain Management department.

39 WAIVER

39.1 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.

40 ASSIGNMENT

40.1 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.

40.2 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 the Contract to any third party without the prior consent of the Contractor. AWE shall be entitled to transfer its liabilities and obligations under the Contract to the MOD or any successor in title to AWE at any time on notice to the Contractor. The Contractor 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 these liabilities and obligations to any other third party without the prior written consent of the Contractor (which shall not be unreasonably withheld or delayed).

41 FURTHER ASSURANCE

43.1 At its own expense, each Party shall promptly execute and deliver such documents and perform such acts as may reasonably be required for the

purpose of giving full effect to the Contract.

42 NO PARTNERSHIP

42.1 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, nor 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.

43 SEVERANCE

43.1 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.

44 CONTRACTS (RIGHT OF THIRD PARTIES) ACT 1999

44.1 Subject to Clause 44.2, no term in the Contract shall be enforceable by any person other than the Parties.

44.2 Where any term in the Contract provides a right to 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.

45 ENTIRE AGREEMENT

45.1 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.

45.2 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).

45.3 Nothing in this Clause 45 shall operate to limit or exclude AWE's liability for fraud (including fraudulent misrepresentation).

46 CONFLICT OF INTEREST

46.1 The Contractor agrees that no Contractor Personnel supplied under this Contract shall place work of AWE with the Contractor, or any organisation in

which the Contractor has an interest.

47 PREVENTION OF CORRUPTION AND BRIBERY

- 47.1 The Contractor represents and undertakes to AWE that it has not (and none of the Contractor Parties has) committed any Prohibited Act.
- 47.2 If any of the Contractor Parties or any of its or their agents or shareholders commits any Prohibited Act, then AWE shall be entitled to act in accordance with 47.3 to 47.7 (inclusive) below.
- 47.3 If a Prohibited Act is committed by the Contractor or its Affiliates or their officers, agents or shareholders, then AWE shall be entitled to terminate the Contract by giving notice to the Contractor.
- 47.4 If the Prohibited Act is committed by an employee of the Contractor or its Affiliates acting independently of the Contractor and its Affiliates, then AWE may give notice to the Contractor of termination and the Contract will terminate, unless within 10 Business Days of receipt of such notice the Contractor terminates (or procures the termination of) the employee's employment and ensures that the performance of that employee's obligations are performed by another person.
- 47.5 If the Prohibited Act is committed by a sub-contractor or by an employee of that sub-contractor not acting independently of that sub-contractor, then AWE may give notice to the Contractor of termination and the Contract will terminate, unless within 10 Business Days of receipt of such notice the Contractor terminates the relevant sub-contract and ensures that the performance of the contractor's obligations are performed by another person.
- 47.6 If the Prohibited Act is committed by an employee of a sub-contractor acting independently of that sub-contractor, then AWE may give notice to the Contractor of termination and the agreement will terminate, unless within 10 Business Days of receipt of such notice the sub-contractor terminates the employee's employment and ensures the performance of that employee's obligations are carried out by another person.
- 47.7 If the Prohibited Act is committed by any other person not specified in 47.2 to 47.6 (inclusive) above, then AWE may give notice to the Contractor of termination and the Contract will terminate unless within 10 Business Days of receipt of such notice, the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or any relevant sub-contractors and (if necessary) ensures the performance of that person's obligations are performed by another person.
- 47.8 Any notice of termination under this Clause 47 shall specify:
- a) the general nature of the Prohibited Act;
 - b) the identity of the party whom AWE believes has committed that Prohibited Act; and
 - c) the date on which the agreement will terminate, in accordance with the applicable provision of this Clause 47.

- 47.9 Without prejudice to AWE's other rights and remedies, the Contractor shall indemnify AWE in full and on demand against all losses, liabilities, costs, claims and expenses incurred directly or indirectly by AWE as a result of the performance of any Prohibited Act by any Contractor Parties in connection with the Contract, its subject matter or any agreements (including any sub-contracts of whatever tier) relating to it.
- 47.10 Without prejudice to the other provisions of this Clause 47, the Contractor shall ensure that:
- a) each of the Contractor Parties are fully aware of AWE's Ethics, Anti-bribery and Anti-corruption Policies notified to the Contractor from time to time and that all sub-contractors and agents (of whatever tier) are engaged upon terms which contain provisions in relation to prevention of bribery and corruption which is no less protective than this Clause 47; and
 - b) it has and shall maintain in place throughout the currency of this Contract its own policies and procedures, (including adequate procedures under the Bribery Act 2010), to ensure compliance with the Bribery Act 2010 and AWE's Ethics, Anti-bribery and Anti-corruption Policies, and will enforce them where appropriate.
- 47.11 Notwithstanding Clauses 36 (Dispute Resolution) and Clause 37 (Governing Law) any dispute relating to:
- a) the interpretation of this Clause 47; or
 - b) the amount or value of any gift, consideration or commission,
- shall be determined by AWE (acting in its absolute discretion) and AWE's decision shall be final and conclusive.
- 48 LONG TERM PRODUCT SUPPORT**
- 48.1 Subject to the further terms of this Clause 48 and specifically Clauses 48.2 and 48.3, the Contractor agrees that if AWE requires:
- a) it will continue to supply replacement Goods/Services, together with their associated spare parts, components and technical support for the same, promptly upon order by AWE for, or continued requirement for, replacement of such Goods/Services, together with their associated spare parts, components and technical support, and/or
 - b) it will make spare parts available for all Goods/Services (as applicable) supplied to AWE,
- in each case at fair and reasonable prices having regard to the price paid for such Goods/Services described in the Contract and for a period of [25] years from acceptance of such Goods/Services pursuant to the Contract. The Contractor shall obtain the same commitment for long-term support from the Contractor Parties, failing which the Contract shall find alternative solutions or sources.
- 48.2 If the Contractor proposes to cease to observe the provision of Clause 48.1 it will give to AWE not less than [12 calendar months] prior written notice of such cessation specifying the affected Goods/Services or components or spare parts (as applicable) and will offer AWE a priced proposal to make an

"all time buy" of the estimated future support requirements for the Goods/Services to include components and spares required for such future support.

48.3 In the event that AWE considers the Contractor is unable or unwilling to supply at reasonable prices, technical support, spares, components or additional Goods/Services to the same design as those forming the subject matter of the Contract within the period defined in Clause 48.2 above, then, the Contractor agrees to:

a) provide a manufacturing data pack to include all design drawings, CAD/CAM manufacturing files, Software source code, executable code, tooling and test equipment and any other then existing information, or know how that may reasonably be required to enable AWE to manufacture, modify and support the Goods/Services, and

b) provide a royalty free, non-exclusive, worldwide perpetual licence to use such data for the manufacture of additional Goods/Services or spare parts, either by AWE or a third party, solely for application on AWE's Site.

48.4 If, during the period detailed in Clause 48.1 above, AWE does not order one particular component of the Goods/Services in a rolling 12 month period then the Contractor will be entitled to request AWE's written permission to cease supply of such component of the Goods/Services. The Contractor shall not be entitled to cease supply of such component of the Goods/Services until it has provided AWE with written notice of not less than 2 months of its intent to cease supply of such component of the Goods/Services and obtained AWE's prior written permission.

48.5 In the event that AWE provides its consent in accordance with Clause 48.4 above, AWE may notify the Contractor that it wishes to make an "all time buy" at prices not higher than the prices paid for such Goods/Services under this Contract. The Supplier will be obliged to fulfil the "all time buy" upon the terms of this Contract.

49 COMMERCIAL RISK

49.1 The Contractor acknowledges that any risk assessment which has been, or may be, undertaken in connection with this Contract has been, or will be, a project management function only. Such risk assessment does not affect the legal relationship between the Parties.

49.2 The issuing of any risk assessment questionnaire and the process of risk assessment generally, including without limitation the identification of (or failure to identify):

i) particular risks and their impact; or

ii) risk reduction measures, contingency plans and remedial actions,

shall not in any way limit or exclude the Contractor's obligation under this Contract and shall be entirely without prejudice to AWE's rights, privileges and powers under this Contract.

49.3 The risks identified as a result of any risk assessment questionnaire and risk assessment process generally remain the risk of the Contractor and are not

assumed by AWE except to the extent that AWE expressly and unequivocally accepts those risks under this Contract. Any risk assessment questionnaire released was, or will be, issued by AWE solely on this basis.

50 ACCOUNTABLE NUCLEAR MATERIALS

50.1 Ownership of Accountable Nuclear Materials (ANM)

i) ANM either issued in aid of, stored, or produced under the terms of the Contract shall remain under the ownership of the MOD at all times.

ii) Under no circumstances shall any ANM be transferred onto International Safeguards, including EURATOM without written permission from the MOD.

iii) The Contractor shall ensure that details of ANM, including accountancy information shall not be divulged to any International Safeguards Organisation, including EURATOM.

iv) Where the Contractor has produced ANM waste as part of the terms of the Contract, permission shall be sought from AWE before placing the said waste into the Contractor's ANM waste disposal stream.

50.2 Accountancy and Control of ANM

i) For the purpose of, and in addition to, the requirements stated in DEFCON 123 and DEFCON 611 07/10, the Contractor shall take appropriate measures, including the formulation of appropriate site procedures, to monitor and control the receipt, use and issue of MOD owned ANM. The Contractor shall maintain accountancy standards that conform to the minimum mandatory requirements of the AWE Nuclear Material Accountancy and Control (NMA&C) manual.

ii) The Contractor shall put in place a Materials Accountancy Plan that ensures the ANM be controlled at least to the minimum requirements set out in the AWE NMA&C manual. The plan shall cover any sub-contracts placed by the Contractor in relation to the MOD ANM issued as part of this Contract. The plan shall be agreed between AWE Nuclear Material Management (NMM) Team, the MOD and the Contractor prior to any work being carried out.

iii) The plan shall reference all relevant site manuals, procedures and instructions concerned with the accounting and control of ANM. The plan shall also detail the submission of accountancy reports for the ANM held as part of the Contract.

iv) The plan shall also include the provision to record and report any Reportable Errors that may occur. The definition of a Reportable Error shall be in accordance with the NMA&C manual or determined at the time of the creation of the Materials Accountancy Plan and be agreed by the Contractor, NMM and SWPT.

v) Any changes to the Accountancy Procedures, Systems, or Policies which affect the accountability, stock takes and/or control of the MOD owned ANM issued as part of this Contract shall be notified NMM in writing for prior approval.

50.3 Access

i) The Contractor shall, and shall ensure that its sub-contractors allow AWE and/or MOD to enter the premises for the purpose of auditing the accounts, procedures, systems and to carry out Physical Inventory Verification on MOD owned ANM issued in aid of, stored, or produced under the terms of this Contract.

51 EXPORT CONTROLS

51.1 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 supplier 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 by MOD.

51.2 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 suppliers' 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 is identified sufficiently early in the schedule to enable alternative sources of supply and clearance of the requisite documentation.

WORKING AT AWE'S SITE**52 CONTRACTOR'S PROPERTY**

52.1 The Contractor shall ensure that property belonging to the Contractor or any Contractor Parties engaged in the performance of the Contract (including plant, equipment and tools etc) brought onto an AWE Site (**Contractor's Property**), is safe, used in accordance with AWE Site rules and procedures and shall be marked with the Contractor's name (or the name of the owner of the plant in the case of hired plant). Any equipment not marked in accordance with this condition may be deemed to be the property of AWE.

52.2 Subject to Clause 33 (Nuclear Indemnity), all property of such persons while at the site of AWE shall be at the risk of the Contractor and/or the Contractor Parties and AWE shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby.

52.3 Neither the Contractor nor the Contractor Parties shall remove, procure, arrange or otherwise facilitate the removal of property from the AWE Site (unless with the prior written consent of AWE) other than property belonging to the Contractor or the Contractor Parties and engaged in the performance of the Contract.

53 ACCESS AND FACILITIES

53.1 AWE shall provide such available facilities for the Contractor and Contractor Parties working at AWE Sites as may be necessary for the effective and economical discharge of work under the Contract. These facilities will be agreed on a task by task basis between AWE and the Contractor.

54 AUTHORITY OWNED LIFTING GEAR

54.1 The following provision shall apply in respect of Lifting Gear owned by AWE or MOD and used at an AWE Site by the Contractor pursuant to the Contract. Attention is drawn to the statutory requirement for the testing and periodic examination of lifting gear contained in the Factories Act 1961 and Regulations arising from the Health and Safety at Work Act (1974). The term "Lifting Gear" includes any assembly of items loaned to the Contractor by AWE such as chain and/or rope lifting slings, spreaders, gantries, beams, shackles, thimbles, blocks, eyebolts, clamps etc., or such items used separately and designed for the application of raising or lowering equipment supplied by AWE in aid of the Contract:

i) any Lifting Gear owned by AWE or MOD and issued to the Contractor will be accompanied by a valid certificate of test and examination;

ii) after receipt of any item of such Lifting Gear the Contractor shall be regarded as being in control of it. In those instances where the Contractor holds Lifting Gear owned by AWE or MOD at any time which coincides with the requirement for a periodic examination, it is then the Contractor's responsibility to ensure that such examination, necessary repair or replacement and a consequent test of the gears or part of the gear is carried out in the prescribed manner;

iii) a copy of the report and/or test certificate issued as a result of such examination, repair or replacement, shall be kept in the approved manner by the Contractor and a copy is to be provided to AWE;

iv) unless otherwise agreed the cost of the periodic examination of Lifting Gear owned by AWE or MOD in the possession of the Contractor shall be the liability of the Contractor. AWE will however reimburse the Contractor for the necessary repair or replacement costs, as allowable costs, of any part of the Lifting Gear together with the cost of any resulting examination and test of such repair or replacement where this arises from resulting wear and tear, to meet the statutory requirements;

v) the cost of any replacement and/or repair and any examination and test of Lifting Gear as a result of negligence, malpractice or misuse shall be paid by the Contractor at no cost to AWE. All such repair and/or replacement shall restore the Lifting Gear to a condition that satisfies AWE's requirements or the statutory requirement for raising and lowering equipment (whichever is more onerous); and

vi) on expiry or earlier termination of this Contract, any Lifting Gear that has been issued to the Contractor by AWE pursuant to this Clause 54 shall be returned to AWE forthwith accompanied by a valid certificate of test and examination.

- 54.2 Notwithstanding Clause 54.1 above, the Contractor shall ensure, acting in accordance Good Industry Practice, that the Lifting Gear is in good working order, appropriate for the task the Contractor intends to use it for and is safe to use for the purposes required by the Contractor under the Contract. AWE shall not be responsible for any costs of the Contractor incurred and 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 breach by the Contractor of this Clause 54.2.

MATERIALS AND WORKMANSHIP

55. PROHIBITED SUBSTANCES

- 55.1 No substances listed on AWE's Company Restricted & Prohibited Substances List must be used under the Contract. This list is available on request from AWE. The Contractor's failure to request a copy shall not relieve it of his obligations hereunder.

56. MONTREAL PROTOCOL

- 56.1 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.

- 56.2 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 in the Goods/Services; and

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 56.2a) and 56.2b) if this is the case.

If at any time during the Contract the Contractor is aware of any changes to this list, an amended version is to be provided to AWE.

57. PLACE OF MANUFACTURE

- 57.1 The Contractor or his major subcontractors shall not change the place of manufacture of any or all of the Goods/Services during the duration of the Contract without the prior written consent of AWE. Any change of place of manufacture of any or all of the Goods/Services shall not relieve the Contractor of his obligations in respect of the manufacture and/or delivery of such Goods/Services.

58. MATERIALS AND COMPONENTS

- 58.1 The Contractor shall furnish to AWE such information as AWE may from time to time reasonably require as to the materials and components which the Contractor will purchase or lease or otherwise use in connection with the

execution of the Contract.

- 58.2 Subject to Clause 4 (DEFCON Interpretation and Application), the Contractor shall hold all materials, equipment and tools, drawings, specification and data supplied by AWE to the Contractor (**AWE's Materials**) in safe custody at its own risk, maintain AWE's Materials in good condition until returned to AWE, and not dispose or use AWE's Materials other than in accordance with AWE's written instructions or authorisation.

59. DISPOSAL OF EQUIPMENT

- 59.1 On completion of the Contract, the Contractor 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 under this Contract or provided under loan terms.

FOREIGN PURCHASES

60 LAW AND JURISDICTION (FOREIGN PURCHASES)

- 60.1 The Contract shall be governed by and interpreted in accordance with English law.
- 60.2 Any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all foreign jurisdictions save that a foreign jurisdiction may apply solely for the purposes of giving full effect to Clause 36 (Dispute Resolution) and for the enforcement of any judgement order or award given under English jurisdiction. Each party to the Contract irrevocably submits to the jurisdiction provided for under this Clause 60.
- 60.3 Each Party hereby warrants to each other that entry into the Contract does not and performance thereof will not in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it; and that the Contract does not conflict with or result in a breach of termination of any provision of, or constitute a default under any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- 60.4 Each Party hereby agrees that the provisions of Clause 36 (Dispute Resolution) shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- 60.5 The Contractor irrevocably appoints the solicitors or other Persons in England and Wales, specified in the Contract as his agents to accept on his behalf services of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction arising out of or relating to the Contract or any issue connected therewith.

61 CUSTOMS DUTY DRAWBACK

- 61.1 The Contract Price shall be inclusive of any UK Customs and Excise or other duty payable. The Contractor shall not make any claim for drawback of UK

import duty on any portion of the Goods/Services supplied which may be for shipment overseas.

MISCELLANEOUS

62 COUNTERFEIT GOODS

62.1 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 Goods represented as new, or the false identification of any grade, serial number, lot number, data 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.

62.2 The Contractor shall not deliver any Counterfeit Work or Suspect Counterfeit Work to AWE under this Contract.

62.3 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:

(i) the foregoing sources are unavailable,

(ii) the Contractor's inspection and other counterfeit risk mitigation processes will be employed to ensure the authenticity of the Goods, and

(iii) the Contractor obtains the advance written approval of AWE.

62.4 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.

62.5 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.

62.6 This Clause 62 applies in addition to and is not altered, changed, or superseded by any quality provision, specification, statement of work, regulatory flowdown, or other provision included in this Contract addressing the authenticity of the Goods.

62.7 In the event that the Goods delivered under this Contract constitutes or includes any Counterfeit Work, the Contractor shall, at its 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.

62.8 The Contractor shall include this Clause 62 or equivalent provisions in any subcontracts for the delivery of the Goods to AWE.

63 IT PROFESSIONAL SERVICES

63.1 Schedule 6 shall apply to this Contract.

64 ADDITIONAL TERMS

64.1 The additional clauses and modifications to these terms and conditions set out in Schedule 7 are hereby incorporated into the Contract and the provisions of these terms and conditions shall have effect as so modified.

65 PUBLICITY

65.1 The Contractor shall not advertise that they do business or are associated with AWE in any way without seeking AWE's express written permission to do so. For the avoidance of doubt this includes (without limitation) the use of AWE's logo, the advertisement of any AWE projects or contracts or advertisement on any Contractor documentation or web pages.

65.2 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's Representative as soon as reasonably practicable (and, if possible, within twenty-four hours (24)) after the occurrence.

66 ATTENDANCE AT GOVERNMENT ESTABLISHMENTS

66.1 In addition to DEFCON 76 (Contractor's Personnel Government Establishment), the provision of Clause 69.2 shall apply if the Contractor or any of the Contractor Parties attend a Government Establishment or is on board HM Vessels for the erection, installation or supervision thereof, of Goods/Services, of trials of such Goods/Services, or for any other purpose.

66.2 Save as otherwise set out in the Contract, the Contractor shall indemnify AWE and all officers, servants and agents of AWE against all claims resulting from the death of, or injury to, any of the Contractor Parties, or from loss of or damage to any effects or apparatus belonging to the Contractor or any of the Contractor Parties whilst such personnel are employed on work in connection with the Contract wherever such work may be performed, except where such death or injury or loss or damage results from the negligence, omission, or default of AWE and officers, servants and agents of AWE. The provisions of the indemnities given in Clause 33 (Nuclear Indemnity) shall override the

provisions of this Clause 69.

67 USE OF SUBCONTRACTORS

67.1 The Contractor shall ensure that all of 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 Clause applies. For the avoidance of doubt Clauses 4, 5, 18, 47 and 65 must be included in every subcontract.

SCHEDULE 1

CONTRACT DATA

KEY INFORMATION		
Description of Requirement		
Total Contract Price (ex VAT)		
Sum paid on account of the Contract Price (ex VAT) prior to the date of the contract		
Pricing Mechanism	Firm/Fixed/TCIF/Time & Materials/Cost Plus/Target Cost Not to Exceed	
Expenses recoverable in addition to the Contract Price	Expenses shall be in accordance with AWE Expenses Policy for Non-AWE Staff (CPP 3224)	
Due Date for Delivery		
Delivery Location		
Keys Points of Contact for Communication	Contractor	AWE
	Name:	Name:
	Tel:	Tel:
	Email:	Email:
	Address:	Address:
Requirements for email communications		
Additional Contract Documents		

COMMENCEMENT AND DURATION	
Commencement Date	
Service Commencement Date	
Contract Duration	
Right to extend Contract	
Key Date	
Key Date Event	

PAYMENT MILESTONES		
Milestone Description	Due Date	Payment

PEOPLE AND COMMUNICATION		
Key Personnel Names and Roles (if any)	Name:	Role:
Representative Function:		
Contractor Representative	Name:	Name:
	Tel:	Tel:
	Email:	Email:
	Address:	Address:
AWE Representative	Name:	Name:
	Tel:	Tel:
	Email:	Email:

	Address:	Address:
Period for Representatives to meet		

SUBCONTRACTOR DECLARATION		
Name of subcontractor	Value of work to be subcontracted	Details of work to be subcontracted

DELIVERY	
Delivery Location and Delivery Location Opening Times	
AWE off-loading/stacking instructions	
Packaging or packing materials used in the delivery of the Goods	[AWE shall not be obliged to return to the Contractor any packaging or packing materials used in the delivery of the Goods.][Contractor shall be responsible for removing all [·] used in the delivery of the Goods. Such [·] shall be collected from [·] not later than [·].]

WARRANTY AND TERMINATION	
Warranty Period	
Convenience Termination Period	
Termination Compensation	

INSURANCES		
Required insurance	Limit of Indemnity	Additional requirements

		including any period for which insurance is to be held if the period is to be different from that specified in Clause 30 (Insurances)
General third party liability insurance against liability for loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with the Contract.	For a sum not less than [·] or the amount required by law (whichever is greater) for each and every claim.	The Contractor shall ensure that the appropriate noting of AWE's interest has been recorded on the policy.
Employer's liability insurance	For a sum not less than the minimum required by law from time to time.	With no aggregate limit
Professional indemnity insurance.	For a sum not less than [·] for each and every claim.	With no aggregate limit
Product liability insurance.	for a sum not less than [·] for each and every claim.	With no aggregate limit
Motor third party liability insurance against liability arising from the use of motor vehicles.	Third party cover for a sum not less than the minimum required by law from time to time.	The Contractor shall ensure that the policy contains a waiver of subrogation in favour of AWE.

REPORTING AND SERVICE LEVELS

Reports Format and Frequency		
Service Level	Measurement Period:	Description of Service Level:

Service Credits/Interim Service Payments	
Period for calculation of Service Credits and/or Service Incentive Payments	

SITE INFORMATION

Normal Hours of Work	
Planned Site Closures	
AWE Standard Requirements	

SECURITY

Specially Identified Confidential Information	
Restricted Aspects Letter/Security Aspects Letter Date and Reference Number	

PARENT COMPANY GUARANTEE

Required	Yes/No
Guarantor	
Form of PCG	

LIQUIDATED DAMAGES FOR DELAY

Liquidated Delay Damages	£[] week or part thereof in respect of the supply of []
---------------------------------	---

LIQUIDATED DAMAGES FOR PERFORMANCE

Performance Tests	
--------------------------	--

Performance Tests Procedure	
Period for completion of Performance Tests	
Acceptance Limits	
Liquidated Performance Damages	

SCHEDULE 2

DESCRIPTION OF REQUIREMENT

Goods Specification and/or Services Specification and/or IT Project Specification
<Insert relevant information>

SCHEDULE 3

FORM OF CONFIDENTIALITY AGREEMENT

AWE Form 31

(Edn 11/09)

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made the [] day of [enter date] between AWE plc., trading under the name of AWE, having its registered office at Aldermaston, Reading, Berkshire, RG7 4PR and [enter name of supplier] having its registered office at [enter address of supplier] hereinafter the "Parties").

WHEREAS:

Recital A) AWE have provided [] with Proprietary Information that [] will use in producing []'.

NOW IT IS HEREBY AGREED AS FOLLOWS:

- 1 The term "Proprietary Information" shall mean all data and information indicated or marked as such, regardless of form or characteristic, and shall include, but not be restricted to, drawings, files, tapes, specifications or related performance or design type documents, or commercial or price information or data of any kind, whether or not patentable, disclosed orally (if confirmed in writing by the originating Party within 30 days of disclosure as being proprietary), in writing or howsoever by one Party to the other Party under this Agreement.
- 2 In consideration of the disclosure of Proprietary Information both prior to the date hereof and at any time hereafter, each Party agrees that all Proprietary Information received from the other Party shall be kept in confidence for a period of 10 years from the date of receipt of the Proprietary Information.
- 2 Neither Party may assign or transfer any of its rights or obligations hereunder to any third party without the prior written consent of the other Party.
- 2
- 3 Each Party agrees that it shall use the same degree of care in protecting such Proprietary Information as it uses to protect its own, and any Proprietary Information received from the other Party shall be disclosed only to personnel of the receiving Party on a need to know basis. Each Party shall be responsible for the performance of the obligations set out in Clause 2 above on the part of its personnel to whom the Proprietary Information is disclosed.
- 4 Any Proprietary Information disclosed may only be used by the receiving Party for the purposes referred to in Recital () and shall not be reproduced without the written authority of the originating Party except as may be reasonably necessary for the purposes of the said role. No disclosure of Proprietary Information to a third party shall be made without the prior written agreement of the originating Party and then only after obtaining from the third party written confidentiality undertakings equivalent in all respects to those contained within this Agreement.

5 The restrictions and conditions of Clauses 2, 3 and 4 shall not apply if such information is:-

a.in or comes into the public domain without breach of this Agreement or is made available to the general public without restrictions by the originating Party;

b.known to the receiving Party at the time of disclosure;

c.rightfully received from a third party without restriction and without breach of any obligation of confidentiality; or

d.independently developed by an employee of the receiving Party to whom no disclosure of any such Proprietary Information has been made.

It shall be the responsibility of the receiving Party to show that the above reliefs apply.

6 Neither the execution of this Agreement, nor the disclosure of any Proprietary Information shall be construed as granting to the receiving Party, either expressly or by implication, estoppel or otherwise, any right or licence under any intellectual property right now or hereafter owned or controlled by the Party furnishing the information, except to the extent necessary for the purposes referred to in Recital (A). In any event the copyright in any Proprietary Information shall always remain vested in the originating Party.

7 Notwithstanding anything herein contained, any Proprietary Information which is the subject of national or international security control shall be accorded by the Parties a degree of protection no less than required by national or international regulations. Such regulations shall remain in force until lifted by appropriate government authority. Each Party shall notify the other of the security grading (if any) of all Proprietary Information disclosed by it hereunder.

8 This Agreement shall come into force upon its execution by both Parties hereto. Either Party may terminate this Agreement by 60 days' prior written notice to the other Party.

1 Termination of this Agreement shall not abrogate the Parties' obligations set out in Clauses 2, 3 and 4 above with regard to Proprietary Information disclosed by either Party prior to the effective date of termination.

8 Upon termination of this Agreement either Party may require the other to return forthwith all Proprietary Information (and copies thereof) supplied under this Agreement.

2

9 This Agreement shall be governed and construed in accordance with English Law and all disputes shall if not amicably settled between the Parties be referred to the English courts to whose exclusive jurisdiction the Parties each submit.

IN WITNESS WHEREOF the Parties have executed this Agreement the date and year first written above

Signed for and on behalf of AWE

Signed for and on behalf of

By:.....

By:.....

Name: P HOGG

Name:

Title: Chief Procurement Officer and Head of Supply Chain Management

Title:

SCHEDULE 4 - NOT USED

Not applicable

SCHEDULE 5

SECURITY - OFFSITE

General

(a) The Contractor shall at all time comply with the applicable provision of this Schedule and the documents referred to herein.

(b) The applicability of the provision of this Schedule and the documents referred to herein is dependant upon the classification of protectively marked assets the Contractor will have access to.

(c) The Contractor will be informed of the classification of protectively marked assets it will have access to in a Security Aspects Letter.

(d) If the Contractor does not receive a Security Aspects Letter then, for the purposes of the Contract, the classification of protectively marked assets it will have access to will be OFFICIAL.

(e) If during the currency of the Contract the Contractor receives a Security Aspects Letter which changes the classification of protectively marked assets it will have access to, it shall comply with any provisions of this Schedule which become applicable at no additional cost to AWE.

Protection of Assets

(a) Any asset (including information assets such as documents) may attract protective marking.

(b) Protective markings used by AWE are:

- (i) OFFICIAL;
- (iii) OFFICIAL-SENSITIVE/RESTRICTED;
- (iv) CONFIDENTIAL;
- (v) SECRET; and
- (vi) TOP SECRET.

(c) The applicability of Schedule 1.2(e) to (k) is determined by reference to paragraph (d).

(d) The provisions of this Schedule	The classification of protectively marked assets the Contractor has access to
--	--

The Official Secrets Act applies (paragraph Schedule 1.2(e) below).	OFFICIAL;OFFICIAL-SENSITIVE/RESTRICTED;CONFIDENTIAL;SECRET; TOP SECRET
Clearance Eligibility Statement applies (paragraph (f) below).	OFFICIAL-SENSITIVE/RESTRICTED;CONFIDENTIAL;SECRET;TOP SECRET
Security Conditions applies (paragraph (g) below).	OFFICIAL-SENSITIVE/RESTRICTED
Security Aspects Letter applies (paragraph (h) below).	OFFICIAL-SENSITIVE/RESTRICTED
Security Aspects Letter applies (paragraph (i) below).	CONFIDENTIAL;SECRET;TOP SECRET
DEFCON 659A applies (paragraph (j) below).	CONFIDENTIAL;SECRET;TOP SECRET
Industry Security Notice 2010/04 applies (paragraph (k) below).	OFFICIAL;OFFICIAL-SENSITIVE/RESTRICTED;CONFIDENTIAL;SECRET;TOP SECRET

(e) The Official Secrets Act

(i) The Contractor and any Contractor Parties are subject to the Official Secrets Act 1911, as amended by The Official Secrets Act 1989 during and after the currency of the Contract The Contractor shall ensure that all such Contractor Parties do comply with these Acts at all times.

(ii) Without prejudice to the generality of the foregoing the Contractor undertakes and represents to AWE that all Contractor Parties who may have access to information or materials supplied or made available by or on behalf of AWE in connection with the Contract or who may have access to the AWE Sites or any of AWE’s systems have read and understood the relevant sections of the Official Secrets Act 1911, as amended by The Official Secrets Act, 1989 (including sections 2 and 3).

(f) Clearance Eligibility Statement

(i) *“Because of the nature of the work undertaken by AWE Plc, all Contractor Personnel are required to meet special nationality rules. Therefore to be eligible to work under this contract all personnel shall normally be required to be British citizens unless otherwise authorised by AWE. All Contractor Personnel requiring frequent access to the AWE Site or who will have access to protectively marked information will be required to*

undergo national security vetting and should normally have resided continuously in the UK immediately before their application for a security clearance for the periods stated below:

Security Check (SC) – 5 years

Developed Vetting (DV) – 10 years”

(g) Security Conditions

The document entitled “Protection of AWE Information Classified at OFFICIAL & OFFICIAL-SENSITIVE” attached to the Security Aspects Letter shall apply.

(h) Security Aspects Letter

Paragraph 1.3 of this Schedule shall apply.

(i) Security Aspects Letter

Paragraph 1.3 of this Schedule shall apply.

(j) DEFCON 659A

DEFCON 659A shall apply.

(k) Industry Security Notice

The Contractor shall, and shall ensure any Contractor Parties comply with Industry Security Notice Number 2010/04 (available at <http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/SecurityandIntelligencePublications/ISS/IndustrySecurityNoticesisns.htm>) amended as follows:

(i) the definition of “MOD Information” shall be extended to include any HMG and/or AWE information that has been supplied by the MOD or AWE or generated by the Contractor as a consequence of a MOD or AWE contract or Programme.”; and

(ii) delete paragraph 26 (“Point of Contact”); and

for the purposes of Industry Security Notice 2010/04 only:

(iii) “MOD” shall mean the Secretary of State for Defence and shall include a reference to AWE where the context requires; and

(iv) reference to “contractor” or “HMG contractors” shall be reference to the Contractor.

The Security Aspects Letter

(a) In respect of any Security Aspects Letter it receives, the Contractor warrants that

(i) it understands and will implement the requirements of such letter; and

(ii) It shall carry out its obligations under the Contract so as to always comply with the requirements of such letter; and

(iii) it has and will continue to bring to the attention of those person(s) responsible for the security arising from or related to the Contract the relevant contents of such letter including the classification of any assets.

(b) Without prejudice to Paragraph 1.3 (a), if the Contractor has not done so at the date of the Contract, It shall immediately acknowledge receipt of any Security Aspects Letter in writing, such acknowledgment to set out any confirmations or other information as required

AWE

Standard Terms and Conditions

by any such letter.

SCHEDULE 5a**SECURITY - ONSITE (OFFICIAL)****1.1 General**

- (a). The Contractor shall at all times comply with the applicable provision of this Schedule and all documents referred to herein.
- (b). The applicability of the provision of this Schedule and the documents referred to herein is dependant upon the classification of protectively marked assets the Contractor will have access to.
- (c). The Contractor will be informed of the classification of any protectively marked assets.
- (d). If the Contractor is not informed of the classification of any protectively marked assets it will have access to, it will be OFFICIAL.
- (e). If during the currency of the Contract the Contractor is informed of a change to the classification of any protectively marked assets, it shall comply with any provisions of this Schedule which become applicable at no additional cost to AWE.

1.2 Protection of Assets

- (a). Any asset (including information assets such as documents) may attract protective marking.
- (b). Protective markings used by AWE are:
 - (i) OFFICIAL
 - (ii) OFFICIAL-SENSITIVE/RESTRICTED
 - (iii) CONFIDENTIAL
 - (iv) CONFIDENTIAL ATOMIC
 - (v) SECRET ATOMIC
 - (vi) SECRET ATOMIC PRINCIPAL
 - (vii) TOP SECRET
 - (viii) TOP SECRET ATOMIC
 - (ix) TOP SECRET ATOMIC PRINCIPAL

SCHEDULE 5b**SECURITY - ONSITE (OFFICIAL-SENSITIVE/RESTRICTED)****1.1 General**

- (a). The Contractor shall at all times comply with the applicable provision of this Schedule and all documents referred to herein.
- (b). The applicability of the provision of this Schedule and the documents referred to herein is dependant upon the classification of protectively marked assets the Contractor will have access to.
- (c). The Contractor will be informed of the classification of any protectively marked assets.
- (d). If the Contractor is not informed of the classification of any protectively marked assets it will have access to, it will be OFFICIAL.
- (e). If during the currency of the Contract the Contractor is informed of a change to the classification of any protectively marked assets, it shall comply with any provisions of this Schedule which become applicable at no additional cost to AWE.

1.2 Protection of Assets

- (a). Any asset (including information assets such as documents) may attract protective marking.
- (b). Protective markings used by AWE are:
 - (i) OFFICIAL
 - (ii) OFFICIAL-SENSITIVE/RESTRICTED
 - (iii) CONFIDENTIAL
 - (iv) CONFIDENTIAL ATOMIC
 - (v) SECRET ATOMIC
 - (vi) SECRET ATOMIC PRINCIPAL
 - (vii) TOP SECRET
 - (viii) TOP SECRET ATOMIC
 - (ix) TOP SECRET ATOMIC PRINCIPAL

1.3 Security Waiver

- (a) The requirement for the provision of a Security Aspects Letter is waived, as all work on the contract will be carried out on Government premises only. Work under the contract will involve access to information marked (OFFICIAL-SENSITIVE/RESTRICTED). Persons working on this Contract will be required to hold (SC) from the outset of the contract.

- (b) The following shall also apply:

1. Official Secrets Acts

2. DEFCON 531

3. Clearance Eligibility Statement:

(i) *“Because of the nature of the work undertaken by AWE Plc, all Contractor Personnel are required to meet special nationality rules. Therefore to be eligible to work under this contract all personnel shall normally be required to be British Citizens unless otherwise authorised by AWE. All Contractor Personnel requiring frequent access to the AWE Site or who will have access to protectively marked information will be required to undergo national security vetting and should normally have resided continuously in the UK immediately before their application for a security clearance for the periods stated below:*

Security Check (SC) – 5 years

Developed Vetting (DV) – 10 years”

4. Security Conditions UK

(i) The document entitled “Protection of AWE Information Classified at OFFICIAL & OFFICIAL-SENSITIVE” shall apply.

SCHEDULE 5c**SECURITY - ONSITE (CONFIDENTIAL OR ABOVE)****1.1 General**

- (a). The Contractor shall at all times comply with the applicable provision of this Schedule and all documents referred to herein.
- (b). The applicability of the provision of this Schedule and the documents referred to herein is dependant upon the classification of protectively marked assets the Contractor will have access to.
- (c). The Contractor will be informed of the classification of any protectively marked assets.
- (d). If the Contractor is not informed of the classification of any protectively marked assets it will have access to, it will be OFFICIAL.
- (e). If during the currency of the Contract the Contractor is informed of a change to the classification of any protectively marked assets, it shall comply with any provisions of this Schedule which become applicable at no additional cost to AWE.

1.2 Protection of Assets

- (a). Any asset (including information assets such as documents) may attract protective marking.
- (b). Protective markings used by AWE are:
 - (i) OFFICIAL
 - (ii) OFFICIAL-SENSITIVE/RESTRICTED
 - (iii) CONFIDENTIAL
 - (iv) CONFIDENTIAL ATOMIC
 - (v) SECRET ATOMIC
 - (vi) SECRET ATOMIC PRINCIPAL
 - (vii) TOP SECRET
 - (viii) TOP SECRET ATOMIC
 - (ix) TOP SECRET ATOMIC PRINCIPAL

1.3 Security Waiver

- (a) The requirement under DEFCON 659A for the provision of a Security Aspects Letter is waived as all work on the contract will be carried out on Government premises only.
- (b) Work under the Contract will involve access to information marked (**DELETE AS APPLICABLE**: CONFIDENTIAL, CONFIDENTIAL ATOMIC, SECRET ATOMIC, SECRET ATOMIC PRINCIPAL, TOP SECRET, TOP SECRET ATOMIC, TOP SECRET ATOMIC PRINCIPAL).

(c) Persons working on this contract will be required to hold (insert level of security clearance required) from the outset of the contract.

(d) The following shall also apply:

1. Official Secrets Acts
2. DEFCON 531
3. DEFCON 659A

SCHEDULE 6**IT PROFESSIONAL SERVICES****1. Project Plan**

1

a) At least 20 Business Days prior to the commencement of the applicable IT Services, the Contractor must submit an initial Project Plan for the provision of the IT Services to AWE for approval. Upon agreement, the initial Project Plan shall be annexed to this Schedule 6.

b) The Contractor shall use best endeavours to meet the Critical Dates.

c) The Contractor shall use all reasonable endeavours to meet the timescales set out in the Project Plan which are not Critical Dates.

1. IT Project Specification

2

a) The Contractor must submit the IT Project Specification to AWE for approval. AWE shall have the right to amend the IT Project Specification upon consultation with the Contractor.

b) The Contractor shall carry out the IT Services as set out in the IT Project Specification and accordance with the provision of the Contract.

c) AWE's approval of the IT Project Specification or of any other documents prepared by the Contractor in relation to the Software shall (i) not prejudice or affect any rights of AWE under the Contract or at law or (ii) relieve the Contractor of any obligations whether arising under the Contract or otherwise at law.

1. Acceptance

3

a) All obligations in relation to development, configuration, installation and testing of the IT Services shall be performed in accordance with the dates, times and periods specified for those activities in the relevant IT Project Specification.

b) Prior to undertaking Acceptance Tests (as defined below), the Contractor must submit to AWE an Acceptance Plan which shall include proposed acceptance criteria for the Acceptance Tests, in relation to the Software. Prior to the Contractor performing Acceptance Tests (as per below) AWE must first agree the proposed acceptance criteria, which criteria may change throughout the term of the Contract, any agreed changes using the change control procedure, but there shall be no charge for this.

c) The Contractor shall test the Software (in the presence of an AWE representative) in accordance with the acceptance tests set out in the Acceptance Plan (**Acceptance Tests**).

d) The Contractor shall (i) run the Acceptance Tests set out in the Acceptance Plan as many times as is necessary; and (ii) make all the necessary alteration and/or modifications to the Software, until the Software meets the acceptance criteria.

- e) When the Contractor considers that the Software has passed the Acceptance Tests, it shall provide AWE with a signed Acceptance Certificate. AWE shall either (i) sign and return the Acceptance Certificate to the Contractor or (ii) notify the Contractor in writing, stating in reasonable detail and in a consolidated manner the reasons for non-acceptance.
- f) If AWE notifies the Contractor pursuant to paragraph 3.1(e)(ii) above, the Contractor shall forthwith make such corrections or adjustments to the Software so that the Software will pass the Acceptance Tests. The Contractor shall, within fifteen (15) Business Days after receipt of such notice pursuant to paragraph 1.3(e)(ii) above, either fix all faults and problems identified in such or present AWE with a plan to repair and remedy such faults or problems. If approved by AWE, the Contractor shall implement such plan within a period of time that is reasonable under the circumstances. All such repairs and remedies to be carried out at no cost to AWE.
- g) When the Contractor considers that all faults and/or problems have been repaired and remedied, the Contractor shall re-present the Software for acceptance and follow the procedure from paragraph 1.3(e) above.
- h) If the Software still fails the Acceptance Tests after a second application of the Acceptance Procedure, AWE may on written notice to the Contractor reject the Software and terminate the Contract without AWE having any further liability to the Contractor. The Contractor shall, upon termination pursuant to this paragraph 1.3(h), immediately collect any rejected Software from AWE at its sole expense.
- i) Acceptance of any Software shall in no way prejudice or affect any other rights of AWE.
- j) If the Goods/Services fail to meet the Acceptance Criteria by the Acceptance Date, AWE may by written notice to the Contractor, elect at its option to accept the Software subject to a reduction of the Contract Price, such reduction to be such amount as, taking into account the circumstances, is reasonable. In the absence of a written agreement as to a reasonable reduction of the Contract Price, AWE may, within fourteen (14) Business Days after the date of such written notice pursuant to this paragraph 1.3(j), be entitled to reject the Software and initiate the procedure to terminate the Contract for material breach under Clause 28.1 (a)(ii).

1.
4 **Software Warranties**

The Contractor warrants and represents that:

- a) it has obtained, and will maintain for the duration of the Contract, all permissions, licences and consents necessary for the Contractor to provide the Software and/or perform the IT Services (including third party Goods/Services) pursuant to the Contract.
- b) it will perform the IT Services in such a way as not to cause any interruption to the business processes of AWE, any information technology system of AWE or the AWE Network (other than any agreed and unavoidable interruption which is required in order to perform the IT Services in a proper and efficient manner).

The Contractor further warrants and represents that the Software will:

- a) comply with the Software Specification;

- b) not contain any disabling programmes or devices;
- c) not contain any viruses, Trojan horses, worms or other computer programming routines that may damage or detrimentally interfere with the Software or any other software, any Equipment, computer hardware or telecommunications network and that the Contractor has used its best endeavours to check for the most commonly known viruses, Trojan horses and worms prior to delivery of the Software; and
- d) not cause any interruption to the business processes of AWE, any information technology systems of AWE or the AWE Network (other than any agreed and unavoidable interruption which is required for the installation of the Software).

1.
5 **Escrow**

- a) Within fourteen [14] days of Acceptance of any Contractor Owned Software (which may form part of the Software), the Contractor undertakes to execute an escrow agreement with NCC Escrow International Limited under the current version of NCC's standard form software escrow agreement (**Escrow Contract**) in relation to the Source Code Materials of such Contractor Owned Software.
- b) The Contractor will undertake to procure that the escrow agent executes the Escrow Contract within the period as per paragraph 1.5 a) above.
- c) Thereafter, the Contractor shall supply the Source Code Materials for all Contractor Owned Software (including modifications and new Releases) to the escrow agent within fourteen (14) days of delivery of the same to AWE.
- d) The Contractor will abide by the terms of the Escrow Contract.
- e) The escrow agent's fees payable under the Escrow Contract shall be borne by the Contractor and AWE in equal proportions.
- f) AWE may at any time and subject to paying the escrow agent fees, request a full verification of the code held in escrow to confirm that the same is in accordance with this Contract. If the code held in escrow does not comprise the up to date source code as required by this Contract, the Contractor shall promptly repay or credit against the Contract Price the amount of the escrow agent's fees for such verification.

1.
6 **User Guides, Backing Up and Replacement Copies**

The Contractor shall:

- a) provide to AWE, at no extra cost to AWE, three (3) written copies of all relevant User Guides for the operation of the Software on or before the date for delivery specified in the Contract Data;
- b) (i) back-up copies of any work that it performs in accordance with Good Industry Practice and no less than once every Business Day during the term of this Contract; and (ii) store copies of each such back-up in a safe and secure environment which is appropriate for such back-up copies and in a location other than that at which the Contractor is undertaking any work for AWE;
- c) maintain two (2) replacement copies of all the Software and User Guides delivered to AWE pursuant to any Contract for a period of five (5) years following the date for delivery specified in the Contract Data in a safe and secure environment which

is appropriate for such replacement copies and in a location other than that at which the Contractor is undertaking any work for AWE; and

d) at AWEs request at any time during the period of five (5) years following the date for delivery specified in the Contract Data, deliver to AWE a free replacement copy of any Software and User Guide that AWE may designate as soon as practicable but in any event within five (5) Business Days of AWE's request.

SCHEDULE 7

ADDITIONAL TERMS

<Insert relevant information>

SCHEDULE 8 - NOT USED

Not applicable
