



AWE Aldermaston  
Reading  
Berkshire  
RG7 4PR

01/02/2023

Dear [**Organisation name**]

AWE Plc (Atomic Weapons Establishment) is seeking to purchase two e-beam physical vapour deposition coaters.

The successful bidder will be required to design and manufacture the coaters in adherence to technical requirements set out by AWE. The bidder will also be required to deliver and install the coaters and provide through-life maintenance (the **Purpose**).

We refer to the Purpose. Either party may disclose Confidential Information to the other party for it to be used strictly for the Purpose in accordance with the terms set out in this letter (the **Agreement**) as follows:

## 1 Definitions

For the purposes of this Agreement:

**AWE** means AWE PLC, a company incorporated in England and Wales under number 02763902 whose registered office is at Room 20, Building F161.2 Atomic Weapons Establishment, Aldermaston, Reading, England, RG7 4PR;

**Authorised Person** means, in relation to a Recipient, any of the officers, directors, members, partners, employees, consultants, agents, representatives or professional advisers of that Recipient and any other persons whom a Discloser has previously designated in writing as authorised;

**Confidential Information** means all information of a confidential nature (in whatever form) which relates to the Purpose and is disclosed directly or indirectly by a Discloser to a Recipient, or a Recipient's Authorised Persons including:

- (a) any know-how, trade secrets, financial, commercial, technical, tactical or strategic information of any kind;
- (b) all information produced, developed or derived from information disclosed pursuant to this Agreement;
- (c) all information agreed to be, or marked as, confidential; and

- (d) any information a Recipient knows, or its Authorised Persons know, or could reasonably be expected to know, is confidential,

but excluding any information which:

- (a) is, or was already known or available to a Recipient, otherwise than pursuant to or through breach of any confidentiality obligation owed to a Discloser;
- (b) is, or becomes, in the public domain other than through any breach of the terms set out in this Agreement;
- (c) is disclosed to a Recipient without any obligation of confidence to a Discloser by a third party who is not itself under or in breach of any obligation of confidentiality;
- (d) is developed by or on behalf of a Recipient in circumstances where the developing party has not had direct or indirect access to the information disclosed, subject to a Recipient providing satisfactory evidence of the same to a Discloser; or
- (e) a Discloser agrees in writing does not constitute Confidential Information;

**Discloser** means the party who discloses or otherwise provides Confidential Information directly or indirectly to a Recipient or to an Authorised Person of the Recipient;

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

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

**Recipient** means the party who receives or on whose behalf an Authorised Person receives Confidential Information directly or indirectly from a Discloser; and

**Request for Information** means a request for information or an apparent request under FOIA or EIR.

## 2 Provision and use of Confidential Information

2.1 In consideration of a Discloser disclosing Confidential Information to a Recipient and subject to paragraphs 2.4 - 2.6, a Recipient undertakes that it will, and will procure that its Authorised Persons will:

2.1.1 keep the Confidential Information confidential at all times;



- 2.1.2 not disclose the Confidential Information or allow it to be disclosed in whole or in part to any third party;
- 2.1.3 take and maintain proper and all reasonable measures to ensure the confidentiality of the Confidential Information, including any reasonable security measures requested in writing from time to time by the Discloser;
- 2.1.4 not use or seek to derive benefit or commercial advantage from the Confidential Information in whole or in part other than strictly for the Purpose; and
- 2.1.5 not copy or reproduce in any form the Confidential Information except to the extent strictly necessary for the Purpose (provided that each Recipient acknowledges that any such copies or reproductions are the property of the Discloser).
- 2.2 No Discloser, nor their directors, officers, agents, employees, consultants, subcontractors, or advisers make any representation or give any warranty concerning the accuracy, efficacy, completeness or capabilities of the Confidential Information.
- 2.3 The parties agree that nothing contained in this Agreement and no Confidential Information supplied by a Discloser to a Recipient shall oblige either party to enter into any further agreement or negotiation with the other or to refrain from entering into any agreement or negotiation with any third party.
- 2.4 A Recipient may disclose Confidential Information to those of its Authorised Persons who need to know it for the Purpose, provided that the Recipient:
  - 2.4.1 informs the Authorised Persons beforehand of the duties of confidence under this Agreement;
  - 2.4.2 agrees that it will be liable for any breach, actions or omissions of its Authorised Persons; and
  - 2.4.3 advises a Discloser immediately upon becoming aware of any potential or actual breach by an Authorised Person.
- 2.5 A Recipient shall not be in breach of its obligations under this Agreement where it discloses any Confidential Information that it is required to disclose by law, or by any court, governmental, regulatory or supervisory authority (including any securities exchange), or by any other authority of competent jurisdiction. In the event that a Recipient is required to disclose any of the Confidential Information in such circumstances, to the extent permitted by law, a Recipient will give a Discloser prompt written notice of the fact so that a Discloser may take such steps to prevent such disclosure as it deems appropriate and the Recipient shall co-operate with a Discloser in such manner as it may reasonably require for this purpose.
- 2.6 The parties acknowledge and agree that:



2.6.1 AWE may disclose any Confidential Information provided to it under this Agreement to a central UK Government body (including, but not limited to, the UK Government Cabinet Office and HM Treasury) and to the UK Parliament and/or any UK Government parliamentary committee; and

2.6.2 AWE may be required under FOIA and EIR to disclose Confidential Information without consulting or obtaining consent from the other party. AWE shall take reasonable steps to notify the other party of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) AWE shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with FOIA and/or the EIR.

2.7 A Recipient acknowledges that ownership of the Confidential Information including, without limitation, all intellectual property rights and moral rights in it and any copies thereof remains vested in and shall vest in the Discloser and that no licence, right or interest of whatever nature is granted other than to the extent expressly set out in this Agreement.

### **3 Security**

Notwithstanding any other provision of this Agreement, the parties agree that, in the event any Confidential Information is the subject of national or international security control, the parties shall accord such Confidential Information 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. The Discloser shall notify the Recipient of the security grading (if any) of the Confidential Information disclosed to the Recipient under this Agreement.

### **4 Term and termination**

4.1 Without prejudice to the confidentiality obligations under this Agreement, this Agreement shall terminate on the earliest to occur of the following dates or events:

4.1.1 the date specified in a written notice of termination served by one party on the other, being a date not less than one month following the date of service of such a notice;

4.1.2 immediately upon service of a written notice served by one party on another party following a material breach of this Agreement by that other party; or

4.1.3 the date falling [one year] after the date of this Agreement, subject to any extension agreed by the parties in writing.



- 4.2 Upon termination of this Agreement or upon receipt by a Recipient of an earlier written demand from the Discloser and without prejudice to paragraph 4.3 of this Agreement, a Recipient shall return or procure the return to the Discloser or, as the Discloser may require, destroy or procure the destruction of any and all materials containing the Confidential Information together with all copies; and not make any further use of the Confidential Information.
- 4.3 A Recipient's obligations under this Agreement shall continue in full force and effect during the term of the Agreement and for a period of [five (5)] years from the date of termination of this Agreement.

## **5 Miscellaneous**

- 5.1 A Recipient recognises that any breach or threatened breach of this Agreement may cause a Discloser irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages a Recipient agrees that a Discloser is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 5.2 Each of the parties agree that this Agreement constitutes the entire agreement between them and supersedes all previous agreements in respect of its subject matter.
- 5.3 Neither party shall (without the other's prior written consent) assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part.
- 5.4 The rights and remedies provided for in this Agreement are cumulative with, and not exclusive of, any rights or remedies otherwise provided by law or in equity. No exercise by either party of any one right or remedy shall operate so as to hinder or prevent the exercise of any other right or remedy.
- 5.5 Except as expressly provided for in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.
- 5.6 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law. Any dispute or conflict arising out of or in connection with this Agreement, including a dispute or conflict as to the validity or existence of this Agreement and/or this Clause shall be referred to and finally resolved through arbitration under the LCIA Rules by a single arbitrator. The seat of arbitration shall be London, England, and the proceedings shall be conducted in the English language.

If you are in agreement with this letter please indicate your agreement by signing, dating and returning to us the enclosed duplicate of this letter.

Yours faithfully



Aldermaston ■ Reading  
Berkshire ■ RG7 4PR  
[www.awe.co.uk](http://www.awe.co.uk)

Signed \_\_\_\_\_

Director/Authorised Signatory for and on behalf of **AWE PLC**

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### **Acknowledgment and Agreement**

We acknowledge receipt of your letter dated as above, of which this is a true copy, and we agree to that letter.

Signed \_\_\_\_\_

Director/Authorised Signatory for and on behalf of [*insert name of the Recipient Organisation*]

Date \_\_\_\_\_