

Contract Number: CBCVF/00201

**AMENDMENT No. 2 to
AIRCRAFT CARRIER
MANUFACTURING PHASE
ALLIANCE AGREEMENT**

DATED 30 June 2010

THE SECRETARY OF STATE FOR DEFENCE	(1)
and	
BABCOCK MARINE (ROSYTH) LIMITED	(2)
and	
BAE SYSTEMS MARINE LIMITED	(3)
and	
BAE SYSTEMS INTEGRATED SYSTEM TECHNOLOGIES LIMITED	(4)
and	
BAE SYSTEMS SURFACE SHIPS LIMITED	(5)
and	
THALES NAVAL LIMITED	(6)

MAA AMENDMENT NO. 2

BETWEEN

- (1) **THE SECRETARY OF STATE FOR DEFENCE** of Whitehall, London, SW1 (the "**Authority**");
- (2) **BABCOCK MARINE (ROSYTH) LIMITED** (company registration number: SC333105) whose registered office is situate at Rosyth Business Park, Rosyth, Dunfermline, Fife, KY11 2YD ("**Babcock**");
- (3) **BAE SYSTEMS MARINE LIMITED** (company registration number: 00229770) whose registered office is situate at Warwick House, PO Box 87, Farnborough Aerospace Centre, Farnborough, Hampshire, GU14 6YU ("**BAES MARINE**");
- (4) **BAE SYSTEMS INTEGRATED SYSTEM TECHNOLOGIES LIMITED** (company registration number: 03456325) whose registered office is situate at Warwick House, PO Box 87, Farnborough Aerospace Centre, Farnborough, Hampshire, GU14 6YU ("**BAES INSYTE**");
- (5) **BAE SYSTEMS SURFACE SHIPS LIMITED**, (formerly BVT SURFACE FLEET LIMITED) (company registration number: 06160534) whose registered office is situate at Warwick House, PO Box 87, Farnborough Aerospace Centre, Farnborough, Hampshire, GU14 6YU ("**BAES SS**"); and
- (6) **THALES NAVAL LIMITED** (company registration number: 03957722) whose registered office is situate at 2 Dashwood Lang Road, The Bourne Business Park, Addlestone, Nr Weybridge, Surrey, KT15 2NX ("**Thales**").

(together the "**Parties** ")

WHEREAS

- (A) The Parties entered into the Aircraft Carrier Manufacturing Phase Alliance Agreement, dated 3 July 2008 which was amended by agreement of the Parties in MAA Amendment No 1 dated 12 February 2010 (the "**MAA**").
- (B) The Parties have now agreed that BAES Marine will novate its rights, obligations and liabilities under the MAA to BAES SS on the terms and subject to the conditions contained in this MAA Amendment No 2

- (C) The Authority and Remaining IPs have agreed a number of changes to the Key Project Agreements by this amendment to the MAA (this "**MAA Amendment No. 2**"), and by an amendment to the MFTC (the "**MFTC Amendment No. 2**") and an amendment to each of the IP MFTC Sub-Contracts (together the "**IP MFTC Sub-Contract Amendments No. 2**"), each of even date herewith.
- (D) Any change to the MAA is governed by clause 26 of, and the Change Procedure set out in schedule 16 to, the MAA.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 Definitions and Interpretation

- 1.1 In this MAA Amendment No. 2 unless the context otherwise requires:

"BAES Marine MFTC Sub-Contract" means the agreement relating to the Manufacturing Phase entered into between BVT Surface Fleet Limited (now BAES SS) and BAES Marine on 3 July 2008 and as amended by the parties thereto from time to time;

"Other Remaining IPs" means Babcock, BAES INSYTE and Thales; and

"Remaining IPs" means BAES SS and the Other Remaining IPs.

- 1.2 Schedule 1 and annexes A and B to this MAA Amendment No.2 are an integral part of it and any reference to this MAA Amendment No. 2 shall include the schedule and annexes to it.
- 1.3 All terms which are defined in schedule 1 to the MAA, or which apply to the MAA pursuant to paragraph 1.7 of schedule 1 to the MAA, shall have the same meaning when used in this MAA Amendment No. 2 and its recitals unless otherwise defined in this MAA Amendment No. 2 or the context otherwise requires.
- 1.4 Headings to clauses of this MAA Amendment No. 2 are inserted for convenience only and shall not affect the interpretation or construction of this MAA Amendment No. 2.

2 Novation

- 2.1 With effect from 23:59 on 30 June 2010 (the "**Novation Date**") and in consideration of the Parties' respective rights and obligations in this MAA Amendment No 2:

- (a) Save as set out in Clause 2.2, BAES Marine hereby transfers all its rights, obligations and liabilities under the MAA to BAES SS and BAES SS agrees with BAES Marine, the Authority and the Other Remaining IPs to assume all the obligations and liabilities of BAES Marine to the Authority and the Other Remaining IPs under or arising from or in connection with the MAA except to the extent that such obligations and liabilities have been fully and properly discharged before the Novation Date and undertakes to perform and be bound by the MAA in every way as if BAES SS had been an original party to the MAA in place of BAES Marine;
- (b) the Parties agree that the BAES Marine MFTC Sub-Contract is hereby terminated by agreement of BAES SS and BAES Marine, being the parties to it, and without prejudice to the rights accrued as at the date of this termination and provided that those provisions of the BAES Marine MFTC Sub-Contract which are expressly or by implication intended to come into or continue in force and effect following this termination shall so come into or continue in force;
- (c) BAES Marine releases and discharges the Authority and the Remaining IPs from all their obligations and liabilities to BAES Marine under or arising from or in connection with the MAA and from all (if any) liability to BAES Marine (whether in contract or in tort or otherwise) arising from any act or omission of the Authority and the Remaining IPs in the discharge or purported discharge of all or any of the Authority and the Remaining IPs' obligations to BAES Marine under or arising from or in connection with the MAA and BAES Marine MFTC Sub-Contract, in each such case whether such obligations or liabilities arise before, on or after the Novation Date;
- (d) save as set out in Clause 2.2, the Authority and the Remaining IPs release and discharge BAES Marine from all its obligations and liabilities to the Authority and the Remaining IPs under or arising from or in connection with the MAA which BAES SS has agreed to assume under Clause 2.1(a) and from all (if any) liability to the Authority and the Remaining IPs (whether in contract or in tort or otherwise) arising from any act or omission of BAES Marine in the discharge or purported discharge of all or any of BAES Marine's obligations to the Authority and the Remaining IPs under or arising from or in connection with the MAA, in each such case whether such obligations or liabilities arise before, on or after the Novation Date; and
- (e) the Authority and the Other Remaining IPs agree with BAES SS to be bound by their obligations under the MAA (to the extent that they have not been fully and properly discharged prior to the Novation Date) in every way as if BAES SS had been an original party to the MAA in place of BAES Marine.

2.2 BAES Marine agrees that any obligations and liabilities of BAES Marine owed to the Authority and the Remaining IPs under the terms of Clause 15 and Schedule 9 (Confidentiality) of the MAA which remain undischarged at the Novation Date shall not be deemed to be waived by the Authority and the Remaining IPs by virtue of this Agreement and hereby agrees and undertakes that its obligations and liabilities under Schedule 9 (Confidentiality) of the MAA shall continue in full force and effect following the Novation Date.

2.3 The Parties acknowledge and agree that:

(a) any obligations and liabilities of BAES Marine owed to the Authority and the Other Remaining IPs under the terms of or arising from or in connection with the MAA which remain undischarged at the Novation Date shall not be deemed to be waived by the Authority and the Other Remaining IPs by virtue of this Agreement, but subject to Clause 2.2 shall be performed by BAES SS in accordance with Clause 2.1(a); and

(b) any obligations and liabilities of the Authority and the Other Remaining IPs owed to BAES Marine under the terms of or arising from or in connection with the MAA which remain undischarged at the Novation Date shall not be deemed to be waived by BAES SS by virtue of this Agreement, but shall be performed by the Authority and the Other Remaining IPs in accordance with Clause 2.1(e).

2.4 The Parties acknowledge and agree that for the purposes of MAA Schedule 8 (Intellectual Property Rights) paragraphs 3.5, 3.6 and 3.12, any Technical Information which is held or has been held by BAES Marine as 'Technical Information Controller' shall with effect from and after the Novation Date be deemed to be held by BAES SS as 'Technical Information Controller'. BAES Marine undertakes to the Remaining IPs to pass all such Technical Information over to BAES SS as required by BAES SS and to make such information available to BAES SS for onward transfer to the Remaining IPs if required by them under and in accordance with paragraph 3.12, but free of charge.

3 Amendment to the MAA

3.1 With effect on and from the Novation Date, the MAA shall be amended as set out in schedule 1 and annexes A and B to this MAA Amendment No. 2 and the Authority and the Remaining IPs agree to be bound by the terms of the MAA as so amended.

- 3.2 The Authority and the Remaining IPs agree that, other than the amendments referred to in this MAA Amendment No. 2, (including Schedule 1 and Annexes A and B attached hereto), the MAA shall continue in full force and effect and otherwise without prejudice to all subsisting rights and obligations under it.
- 3.3 The Authority and the Remaining IPs agree that, in accordance with paragraph 14.2 of Schedule 16 to the MAA, the provisions of this MAA Amendment No. 2 shall be enforceable in all respects as if executed as a deed.
- 3.4 The Authority and the Remaining IPs do not intend this MAA Amendment No. 2 to become legally binding on any of them until the date of this MAA Amendment No. 2 is written at its head, notwithstanding that any or all of them may have signed this MAA Amendment No. 2 prior to that date being inserted.

4 Agreement to alteration of Key Project Agreements

- 4.1 In accordance with clause 26.2 of the MAA, the Parties hereby agree to the alterations and variations to the MAA, to the termination of the BAES Marine MFTC Sub-Contract and to the proposed alterations and variations to the other Key Project Agreements, as set out or referred to in this MAA Amendment No.2.

5 Dispute Resolution

- 5.1 Any dispute or claim arising out of or in connection with this MAA Amendment No. 2 shall be resolved in accordance with clause 40 of and Schedule 17 (Dispute Resolution Procedure) to the MAA (the Dispute Resolution Procedure).
- 5.2 With effect from the Novation Date and notwithstanding that BAES Marine shall have ceased to be a Manufacturing Alliance Participant, BAES Marine hereby agrees and accepts that BAES Marine shall be bound by the outcome of any dispute resolution process under the Dispute Resolution Procedure as if it was a Manufacturing Alliance Participant.

6 Third Party Rights

- 6.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this MAA Amendment No. 2. No person who is not a party to this MAA Amendment No. 2 (including any member of the Relevant Group of any Industrial Participant, any employee, officer, agent, representative, sub-contractor, Sub-Contractor or Indemnified Sub-Contractor of any Manufacturing Alliance Participant or, in relation to any Industrial Participant, of any

member of its Relevant Group) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of this MAA Amendment No. 2 which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Manufacturing Alliance Participants which agreement must refer to this clause 6.1.

7 Severability

7.1 If at any time any part of this MAA Amendment No. 2 (including any one or more of the clauses of this MAA Amendment No. 2 or paragraphs of the schedule or of any annex to this MAA Amendment No. 2 or any part of one or more of the clauses of this MAA Amendment No. 2 or paragraphs of the schedule or any annex to this MAA Amendment No. 2) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this MAA Amendment No. 2 and replaced by provisions which shall be determined in accordance with the Change Procedure.

8 Law

8.1 This MAA Amendment No. 2 and any Dispute arising out of or in connection with it, whether such Dispute is contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise, shall be governed by, and construed in accordance with, the laws of England.

9 Jurisdiction

8.1 Subject to clause 40 of and Schedule 17 to the MAA (the Dispute Resolution Procedure), the Parties hereby submit to the exclusive jurisdiction of the English courts.

10 Counterparts

10.1 This MAA Amendment No. 2 may be entered into in the form of two or more counterparts each signed by one or more of the parties but, taken together and provided that each party duly signs such a counterpart, each of the signed counterparts, when duly exchanged, shall be deemed to be an original, but, taken together, they shall constitute one instrument.

Signed for and on behalf of **THE SECRETARY OF STATE FOR DEFENCE**

Signed: [REDACTED]

Name: [REDACTED]

Signed for and on behalf of **BABCOCK MARINE (ROSYTH) LIMITED**

Signed: [REDACTED]

Name: [REDACTED]

Signed for and on behalf of **BAE SYSTEMS MARINE LIMITED**

Signed: [REDACTED]

Name: [REDACTED]

Signed for and on behalf of

BAE SYSTEMS INTEGRATED SYSTEM TECHNOLOGIES LIMITED

Signed: [REDACTED]

Name: [REDACTED]

Signed for and on behalf of **BAE SYSTEMS SURFACE SHIPS LIMITED**

Signed: [REDACTED]

Name: [REDACTED]

Signed for and on behalf of **THALES NAVAL LIMITED**

Signed: [REDACTED]

Name: [REDACTED]

SCHEDULE 1 TO MAA AMENDMENT NO. 2

AMENDMENTS TO AIRCRAFT CARRIER MANUFACTURING PHASE ALLIANCE AGREEMENT

A. All references to BAE Systems Marine Limited or BAES Marine shall be replaced with references to BAE Systems Surface Ships Limited or BAES SS as appropriate.

B. CLAUSE 36 - NOTICES

Sub Clause 36.3.(C)

DELETE: Existing Sub Clause 36.3(C) in entirety.

INSERT:

(C) Deleted – not used.

C. SCHEDULE 1 - DEFINITIONS AND INTERPRETATION

DELETE: Existing meanings of the following defined words and expressions in entirety

INSERT: The following revised meanings

"BAES"	means together, BAES INSYTE and BAES SS;
"Industrial Participants"	means Babcock, BAES SS, BAES INSYTE and Thales and "Industrial Participant" means any one of them and any permitted successors and assigns;
"CAS"	means the Authority's Cost Assurance Service known as Cost Assurance and Analysis Service (CAAS);
"IP MFTC Sub-Contracts"	<p>means the agreements relating to the Manufacturing Phase entered into between BVT Surface Fleet Limited (now BAES SS) and each of:</p> <ul style="list-style-type: none"> (a) Babcock; (b) BAES INSYTE; and (c) Thales <p>on 3 July 2008, and as amended by the parties thereto from time to time, and "IP MFTC Sub-Contract" means any one of them;</p>

<p>“Manufacturing Alliance Participants” or “MAPS”</p>	<p>means subject to the provisions of Clause 24 (Exclusion, Step-In, Novation and Termination):</p> <ul style="list-style-type: none"> (a) the Authority; (b) Babcock; (c) BAES INSYTE; (d) BAES SS; and (e) Thales <p>and “Manufacturing Alliance Participant” means any one of the above;</p>
<p>“Phase 1”</p>	<p>means the period which starts on the Commencement Date and which ends at 23:59 on 31 December 2010 or on such other date after 30 June 2010 as the Manufacturing Alliance Participants may agree provided that Phase 1 shall end no later than 30 June 2011;</p>
<p>“Phase 1 Mark Up”</p>	<p>means an amount equal to ■% of the aggregate Allowable Costs incurred by all the Industrial Participants and by BAES Marine during the period which starts on the Commencement Date and which ends at 23:59 on 30 June 2010;</p>
<p>“Phase 2”</p>	<p>means the period which starts on the day following the end of Phase 1 and ends on the later of the D3B Clearance Date for CVF 01 or the D3B Clearance Date for CVF 02;</p>

D. **SCHEDULE 2 – ALLIANCE MANAGEMENT**

PART 1 – Alliance Management Board

15 Members and Alternate Members

DELETE: existing Paragraph 15.4(a)

INSERT:

"15.4(a) BAES INSYTE and BAES SS shall together be entitled to appoint and remove one Member of the Alliance Management Board."

E. **SCHEDULE 3 – OPEN BOOK**

Annex 3 QEC Confidentiality Undertaking

DELETE: Existing Annex 3 to Schedule 3.

INSERT: Revised Annex 3 to Schedule 3 as attached at Annex A

F. **SCHEDULE 4 - RISK AND REWARD INCENTIVE ARRANGEMENT**

DELETE: Existing paragraphs 4.1 and 4.2 in entirety

INSERT: Revised paragraphs 4.1 and 4.2 as attached at Annex B

G. **SCHEDULE 7 – EXCLUDED RISKS AND ASSUMPTIONS**

Part C – Assumptions

Paragraph 1 v b.

DELETE: Existing paragraph in entirety

INSERT: Not used - deleted

H. **SCHEDULE 14 – LIABILITY/INDEMNITY/INSURANCE**

DELETE: Existing Paragraph 4.2

INSERT:

4.2 Without prejudice to Paragraph 4.3, the Authority agrees that the aggregate liability of each Industrial Participant to the Authority for all Claims by the Authority under the provisions referred to in Paragraphs 4.1(b) to 4.1(d), inclusive, shall be subject to the cap on the aggregate liability of such Industrial Participant as set out next to such Industrial Participant's name below:

<u>Name of Industrial Participant</u>	<u>Cap on Aggregate Liability</u>
BAE Systems Surface Ships	██████████
BAES INSYTE	██████████
Babcock	██████████
Thales	██████████
TOTAL	██████████

I **Paragraph 11.3 (e) (iii):**

DELETE: "... as detailed at Paragraphs 4.2 or 5.2 of Schedule 4..."

INSERT: "... as detailed at Paragraph 3.2 of Schedule 4..."

J **Paragraph 11.3 (f):**

DELETE: "... as set out in Paragraph 6.1 of Schedule 4..."

INSERT: "... as set out in Paragraph 4.1 of Schedule 4..."

ANNEX B SHIPBUILDERS' RISK INDEMNITY POLICY

A. SCHEDULE

- K DELETE: "(iv) Rolls-Royce Naval Power Engineering p.l.c. (company number: 01305027);"
INSERT: "(iv) Rolls-Royce Power Engineering p.l.c. (company number: 01305027);"
- L ADD: "(vii) Cammell Laird Shiprepairers & Shipbuilders Limited (company number 04211637).
(viii) Wincanton Group Limited (company number 00441712)."

Annex 3 to Schedule 3
QEC Confidentiality Undertaking

THIS UNDERTAKING is made this _____ day of _____

BY

Name

Address

Alliance role

And

Employing Industrial Participant name

Employing Industrial Participant address

.....

TO:

Babcock Marine (Rosyth) Ltd, BAE Systems Integrated System Technologies Ltd, , BAE Systems Surface Ships Ltd and Thales Naval Ltd (the "**Industrial Participants**")

WHEREAS:

- A. The United Kingdom Ministry of Defence (the "**Authority**") has entered into a Manufacturing Phase Alliance Agreement dated 3 July 2008 with the Industrial Participants and a Manufacturing Flow Through Contract dated 3 July 2008 with BAE Systems Surface Ships Limited for the Manufacturing Phase, and BAE Systems Surface Ships Limited has entered into individual IP MFTC Sub-Contracts with each of the Other Industrial Participants.
- B. It is recognized that, in a number of cases, the Industrial Participants are potential competitors on other projects and therefore it is necessary to protect certain commercially sensitive information whilst sharing sufficient information to meet the Manufacturing Phase Objective.

- C. In pursuance of the Manufacturing Phase Works Contracts the AMT has been established to manage the Manufacturing Phase on a day-to-day basis.
- D. A process, as set out at Schedule 3 (Open Book) of the Manufacturing Phase Alliance Agreement, has been agreed between the Industrial Participants and put in place for allowing access to Category 2 Open Book Data ("the Process").
- E. The Industrial Participants wish to ensure that the Category 2 Open Book Data submitted to the Alliance, that is accessible by the undersigned, is not made available to that individual's employing company or other third parties outside of the bounds of the confidentiality obligations contained in the Manufacturing Phase Alliance Agreement, "the Process" or any other confidentiality agreements between the Industrial Participants.

UNDERTAKING:

- 1 The undersigned hereby acknowledges that he is aware of the Process for handling of Category 2 Open Book Data and the need to comply with competition law and in consideration of the disclosure of such Category 2 Open Book Data by the disclosing Industrial Participant hereby undertakes:
 - 1.1 not to divulge the Category 2 Open Book Data to any Industrial Participant's personnel or other Alliance personnel other than to such personnel who have a need to access such Category 2 Open Book Data for the Manufacturing Phase Objective and have signed a Confidentiality Undertaking in this form or to any other third parties unless prior written authorisation has been received from the disclosing Industrial Participant;
 - 1.2 to use such Category 2 Open Book Data solely for the purpose of the Project;
 - 1.3 to handle such Category 2 Open Book Data in accordance with the Process; and
 - 1.4 to return the Category 2 Open Book Data and any copies thereof within the possession or control of the undersigned to the disclosing Industrial Participant at any time upon request.

- 2 This Confidentiality Undertaking shall remain in full force and effect throughout the duration of the confidentiality obligations contained in the Manufacturing Phase Alliance Agreement or any other confidentiality agreements between the Industrial Participants relating to the Project.
- 3 This Confidentiality Undertaking is entered into solely in favour of each of the Industrial Participants set out in Recital A of this Confidentiality Undertaking, and is for the benefit of the Industrial Participants and is not intended to confer any rights on any third parties.
- 4 This Confidentiality Undertaking constitutes a personal commitment by the undersigned. In addition the Industrial Participant who employs the undersigned or for whom the undersigned is acting as an agent (the "Employing Industrial Participant") hereby undertakes in consideration of the disclosure of such Category 2 Open Book Data to the undersigned to observe the terms of the Process and to procure the observance by the undersigned of the terms of this Confidentiality Undertaking.
- 5 The Industrial Participants have agreed that the personal liability of the undersigned to the Industrial Participants in damages in respect of any breach or breaches of this Undertaking shall not exceed £500 in aggregate. For the avoidance of doubt the foregoing limitation does not apply to the liability of the Employing Industrial Participant under this Confidentiality Undertaking.
- 6 This Confidentiality Undertaking shall be governed by and construed in accordance with the laws of England and Wales. Any dispute arising out of or in connection with this Confidentiality Undertaking shall be referred to the Alliance Management Board and be resolved in accordance with Clause 40 Dispute Resolution Procedure and Schedule 17 (Dispute Resolution Procedure) of the Manufacturing Phase Alliance Agreement.

Signed

Name: _____

Title: _____

Date: _____

Signed

for and on behalf of..... (the employing Industrial Participant)

Name: _____

Title: _____

Date: _____

SCHEDULE 4 - RISK AND REWARD INCENTIVE ARRANGEMENT

- 4.1 Any Gain Share or Pain Share allocated between the Industrial Participants pursuant to the provisions of this Schedule 4 or schedule 6 (Price and Payment) to the Manufacturing Flow Through Contract or schedule 6 (Price and Payment) of any of the IP MFTC Sub-contracts shall be allocated between the Industrial Participants in the following proportions:

Industrial Participant	Proportion
BAES SS	57%
BAES INSYTE	10%
Babcock	19%
Thales	14%

- 4.2 The amount of Fixed Fee at April 2006 economic conditions payable to BAES SS pursuant to the provisions of schedule 6 (Price and Payment) to the Manufacturing Flow Through Contract or payable by BAES SS pursuant to schedule 6 (Price and Payment) of any of the IP MFTC Sub-Contracts shall be allocated between the Industrial Participants at the amounts set out below which shall be Indexed. The Authority and the Remaining IPs acknowledge that the calculation of an amended aggregate Fixed Fee and its allocation between the Remaining IPs, will (amongst other things) be agreed as part of negotiation and agreement by the Manufacturing Alliance Participants of the Final Target Cost.

Industrial Participant	Amount at April 2006 economic conditions
BAES SS	██████████
BAES INSYTE	██████████
Babcock	██████████
Thales	██████████
Total (as at Amendment No2)	██████████

The numbers in the above table are calculated by reference to ACA document identifier CVF-10065144 (CVF Manufacturing Phase – IP % Cost Split) and the ACA document identifier CVF-10114255 (Contract Change List).