

~~PROTECT — COMMERCIAL~~ (CONTRACT NO: MCP/002)

Terms of Business Agreement

**THE SECRETARY OF STATE FOR DEFENCE OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND**

and

BABCOCK INTERNATIONAL GROUP PLC

and

DEVONPORT ROYAL DOCKYARD LIMITED

and

**BABCOCK MARINE (CLYDE) LIMITED (FORMERLY KNOWN AS BABCOCK NAVAL
SERVICES LIMITED)**

and

BABCOCK MARINE (ROSYTH) LIMITED

Dated

2010

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Terms of Business Agreement

Dated

Between

(1) **The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (MoD);**

and

(2) **Babcock International Group plc** (Company No. 02342138) whose registered office is at 33 Wigmore Street, London W1U 1QX (**BIG**);

(3) **Devonport Royal Dockyard Limited** (Company No. 02077752) whose registered office is at Devonport Royal Dockyard, Devonport, Plymouth PL1 4SG (**DRDL**);

(4) **Babcock Marine (Clyde) Limited** (formerly known as Babcock Naval Services Limited) (Company No. SC220243) whose registered office is at Babcock Bes, Rosyth Business Park, Rosyth, Dunfermline, Fife KY11 2YD (**BMCL**); and

(5) **Babcock Marine (Rosyth) Limited** (Company No. SC0333105) whose registered office is at Rosyth Business Park, Rosyth, Dunfermline, Fife KY11 2YD (**BMRL**).

(**BMCL**, **BMRL** and **DRDL** are together referred to as "**Babcock Marine**" in this Contract on the basis set out in Clause 1.3 (*Rights and responsibilities of the Parties referred to as Babcock Marine*) and are individually referred to as "**BM Opcos**" in this Contract.

Background

- A The Defence Industrial Strategy White Paper of December 2005 (the **DIS**) set out the Government's policy for the UK's submarine and surface ships Naval Industrial Sector (the **Sector**). It called for the transformation of the Sector, for the maintenance of sovereign capability and for consolidation within the Sector as a means to achieve those things.
- B The Parties recorded their intention to enter into this Contract in the Heads of Terms. This Contract replaces and extinguishes the Head of Terms and satisfies any obligation any of the Parties may have had in relation to the Heads of Terms.
- C Babcock Marine and other members of the Babcock Marine Group are working together as Babcock Marine, with the support [REDACTED] to continue to develop a world class naval support business.
- D This Contract is intended to govern the overall relationship between the Parties within the Sector. It contains commitments on MoD's part, including in relation to scope allocation and to work with Babcock Marine to transform the relationship between the Parties. These commitments are given in exchange for Babcock Marine's obligations, in particular (1) to achieve certain guaranteed financial benefits and (2) to operate and transform its business generally in a way which is calculated to achieve continuous improvements in the operation of the relationship between the Parties including achieving KPIs. These matters are recorded in the commercial purpose provision in Clause 8 (*Purpose*) which is central to this Contract.

It is agreed:

Part 1 – General Provisions

1 Definitions, interpretation and the rights and responsibilities of the parties forming Babcock Marine

1.1 Definitions

In this Contract, capitalised words and expressions shall have the meaning given to them in Schedule 1 (*Definitions*), except where the context requires a different meaning.

1.2 Interpretation

In this Contract the following interpretations apply unless otherwise stated.

- 1.2.1 **Headings and Background:** Headings and the paragraphs under the heading "Background" are for ease of reference and information only and are to be ignored when interpreting this Contract.
- 1.2.2 **This Contract and any other document:** References to this Contract or any other document are references to this Contract or that other document, as amended, varied, novated, supplemented or replaced from time to time and including all Schedules and Annexes.
- 1.2.3 **Clause, paragraph, Annex, Schedule or recital:** References to any Clause, paragraph, Annex, Schedule or recital are to those contained in this Contract. All the Schedules and Annexes are integral parts of this Contract.
- 1.2.4 **This Clause:** The expressions **this Clause**, **this Schedule** or **this Annex** unless followed by the number of a specific part of the Clause, Schedule or Annex, refers to the whole Clause, Schedule or Annex in which it occurs.
- 1.2.5 **References to the Parties:** References to the Parties shall be to MoD and Babcock Marine (unless the context also requires a reference [REDACTED]) and a reference to a Party shall be to either one of them.
- 1.2.6 **Successors in title and transferees:** Reference to any person, including a Party, includes that person's lawful successors in title and transferees (unless the transfer to the successor in title or transferee was in breach of this Contract), whether pursuant to contract, statute or otherwise.
- 1.2.7 **Holding Company and Subsidiary:** The words "**holding company**" and "**subsidiary**" shall have the same meaning in this Contract as their respective definitions in Section 1159 Companies Act 2006.
- 1.2.8 **Gender:** Reference to any gender includes any other.
- 1.2.9 **Obligations of Babcock Marine:** Unless expressly provided otherwise, obligations of Babcock Marine in this Contract, to the extent that they relate to:
- (a) a BM Contract to which a Babcock Marine Group Member is a party; or
 - (b) a part of Babcock Marine's business undertaken by a Babcock Marine Group Member,
- shall, in addition, be obligations on Babcock Marine's part to procure that such relevant Babcock Marine Group Member: (i) does not put Babcock Marine in breach of such obligations; and (ii) complies with such obligations as if that Babcock Marine Group Member was a party to this Contract.

- 1.2.10 **Related words:** Where this Contract defines a word or expression, related words and expressions have a consistent meaning.
- 1.2.11 **Legislation:** References to legislation (including to the defined term "Legislation") include statutes, by-laws, regulations, rules, subordinate or delegated legislation and orders. Any reference to legislation (including to the defined term "Legislation") is to that legislation at the date of this Contract but where the reference relates to an obligation arising or to be performed after the date of this Contract, it refers to any replacement, restatement or variation of that legislation from time to time.
- 1.2.12 **Accounting terms:** Accounting terms shall be construed so as to be consistent with GAAP.
- 1.2.13 **Indemnities and Indirect Losses:** (Save in relation to the indemnity given in Clause 37 (*Measures in a Crisis*) or Clause 45.2.1(a) (*Breakage fees/costs*)), indemnities provided for in this Contract are indemnities which hold the indemnified party harmless against all Direct Losses but shall not include loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, loss of revenue, loss of contract, loss of goodwill or any Claim for consequential loss or for indirect loss of any nature (**Indirect Losses**).
- 1.2.14 **Dates:** Reference to a date is to the day commencing on such date.
- 1.2.15 **Expressions not to limit construction:** The *Ejusdem Generis* rule shall not apply to the interpretation of this Contract. The words "include", "including" and "in particular" indicate examples only. They do not limit the general nature of any preceding words. A phrase starting with the words "or other" or "otherwise" shall not be limited by any preceding words where a wider construction is possible.
- 1.2.16 **MoD reasonableness:** Any reference in this Contract to MoD being required to act "reasonably" or not to act "unreasonably" (or any similar or analogous expression or phrase) shall be construed as if the test of reasonableness was an objective test of the reasonableness (or otherwise) of MoD, and the test shall take into account such questions which might properly be expected to form part of the judgement of MoD including the existence of this Contract and the relationship that it represents.
- 1.2.17 **Agreed form documents:** A document in agreed form is a document which is previously agreed in writing by or on behalf of MoD and Babcock Marine.
- 1.2.18 **Partnering Principles:** Neither the Partnering Principles, nor any other provision of this Contract, shall:
- (a) relieve or be deemed to relieve a Party from any obligation or liability unless expressly provided; or
 - (b) create or be deemed to create any requirement on a Party to obtain the consent or approval of another Party to the carrying out of any act or exercise of any right unless (and only to the extent) expressly provided.
- 1.2.19 **No implied release of Babcock Marine:** Except to the extent expressly provided for in this Contract, the involvement of representatives of MoD in any review or approval of any document or course of action pursuant to joint or collaborative working between Babcock Marine and MoD in relation to this Contract shall not relieve Babcock Marine of any obligation or otherwise prevent or restrict the right of MoD to make any claim in relation to the breach of or failure by Babcock Marine to meet any obligation in which joint or collaborative working has been involved.
- 1.2.20 **No implied release of MoD:** Except to the extent expressly provided for in this Contract, the involvement of representatives of Babcock Marine in any review or approval of any document or course of action pursuant to joint or collaborative working between Babcock Marine and MoD in relation to this Contract shall not relieve MoD of any obligation or otherwise prevent or

restrict the right of Babcock Marine to make any claim in relation to the breach or failure by MoD to meet any obligation in which joint or collaborative working has been involved.

1.2.21 **Governance Body Approval:** Any reference to any matter requiring approval or decision by any Governance Body shall be construed as a reference to the matter in question being determined by that Governance Body or any Governance Body senior to it.

1.2.22 **Month:** Any reference to a month is to a calendar month.

1.3 Rights and responsibilities of the Parties referred to as Babcock Marine

1.3.1 **References to Babcock Marine:** Subject to Clauses 1.3.2 and 1.3.3, all references to Babcock Marine in this Contract shall be deemed to be to the BM Opcos collectively unless:

(a) under this Contract, a BM Contract or Multi-Party Contract, a legislative or Regulatory Body requirement:

- (i) a right may only be exercised;
- (ii) a representation or warranty may only be given; or
- (iii) an obligation may only be performed,

by one BM Opco or some but not all of the BM Opcos; or

(b) the context otherwise requires a reference to some but not all of the BM Opcos,

in which cases it shall only refer to the relevant BM Opco or BM Opcos in each particular case.

1.3.2 **Obligations of Babcock Marine and the BM Opcos: Where this Contract expresses:**

[REDACTED]

[REDACTED]

1.3.3 **Liability of the BM Opcos:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1.3.4 **Invalidity:** [REDACTED]

1.3.5 **Release or compromise:** MoD may (subject to Clauses 1.3.2, 1.3.3 and 45.4.1):

- (a) take action against any one or more of the BM Opcos;
- (b) release or compromise in whole or in part the liability of any one or more of the BM Opcos; or
- (c) extend time or relax terms to any one or more of the BM Opcos

without affecting the liability of the other BM Opcos under or in connection with this Contract.

1.3.6 **Discharge:** Where any liability of one or some but not all of the BM Opcos arising out of an obligation which is both joint and several is discharged:

- (a) in whole or in part; and
- (b) by release,

then the liability of the other BM Opcos shall continue (subject to Clause 45.4.1) except to the extent that the release also expressly releases one or more of the other BM Opcos.

2 Duration

2.1 Term

Subject to Clause 2.3 (*MoD Break*), the initial term of this Contract shall be 15 years (the **Initial Term**) from the later of 1 April 2010 and the date that the Certificate of Commencement is issued (the **Commencement Date**).

2.2 Continuation after Initial Term

The Parties may agree to extend this Contract beyond the end of the Initial Term or beyond the end of any additional term.

2.3 MoD Break

2.3.1 MoD may terminate this Contract at its discretion at any time under its voluntary termination rights under Clause 44 (*Voluntary termination*).

2.3.2 This Contract is otherwise subject to early termination pursuant to Part 11 (*Default and Termination*).

3 Conditions Precedent

3.1 Provisions immediately effective

Clauses 3 (*Conditions Precedent*), 4 (*Precedence of documentation*), 5 (*Representations and warranties*), 6 (*Relationship governed by this Contract and Interface with other Contracts*), 39

(Confidentiality and Freedom of Information), 40 (Data Protection), 42 (Babcock Marine Default), 49 (Public relations and publicity), 50 (Corrupt gifts and payments), Part 12 (), 51 (Change in Ownership), 54 (Dispute resolution), 56 (Notices), 62 (Remedies and waivers) and Schedule 1 (Definitions) of this Contract shall commence on the date of this Contract. The rest of this Contract shall commence on the Commencement Date.

3.2 Obligation to satisfy Conditions Precedent

Babcock Marine shall procure that the Conditions Precedent set out in Schedule 2 (*Conditions Precedent*) for which it is responsible are satisfied to MoD's satisfaction as soon as reasonably practicable after the date of this Contract and in any event by the date falling three months after the date of this Contract (or such later date as may be agreed between the Parties) (the **Drop Dead Date**).

3.3 Certificate of Commencement

On the satisfaction by Babcock Marine or waiver by MoD of all the Conditions Precedent, MoD's Representative shall issue to Babcock Marine the Certificate of Commencement whereupon this Contract shall become unconditional and those parts of it not then effective pursuant to Clause 3.1 (*Provisions immediately effective*) shall become effective.

3.4 Termination if Conditions Precedent not satisfied

If the Conditions Precedent are not all:

- (a) satisfied; or
- (b) waived by MoD,

by the Drop Dead Date, this Contract shall terminate from such date and each Party shall bear its own costs (and any Losses) arising from or in connection with this Contract.

4 Precedence of documentation

4.1 Order of precedence

If there is any inconsistency between the provisions of the body of this Contract and the Schedules, or between any of the Schedules, the conflict shall be resolved according to the following descending order of priority:

- (a) the Clauses, Schedule 1 (*Definitions*), Schedule 4 (*Scope*) and Schedule 12 (*Pricing and Incentivisation*); and
- (b) the Schedules (including Annexes to these Schedules).

4.2 Process to resolve inconsistency

If a Party becomes aware of any inconsistency within or between the documents referred to in Clause 4.1, such Party's Representative shall notify the other's Representative forthwith and the Parties will seek to resolve such inconsistency in accordance with Clause 4.1 (*Order of precedence*). If either Party considers the inconsistency to be material, then the matter shall be determined in accordance with Clause 54 (*Dispute Resolution*).

5 Representations and warranties

5.1 Babcock Marine Warranties

5.1.1 Each BM Opco represents and warrants to MoD that:

Corporate

- (a) as at the date of this Contract, it is a limited liability company, duly incorporated and validly existing under the laws of England and Wales or Scotland (as applicable) and has the corporate power to sue and be sued in its own name and to own assets and to carry on business as it is now being conducted;
- (b) as at the date of this Contract, it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;
- (c) no changes have been made to the Memorandum of Association and Articles of Association of each BM Opco between the respective dates on which these documents were certified in March 2010 and the date of signature of this Contract (inclusive);

Execution and performance of Contract

- (d) as at the date of this Contract, all action necessary to authorise the execution of and the performance of its obligations under this Contract has been taken;

Members of the Babcock Marine Group and [REDACTED]

- (e) as at the date of this Contract;
 - (i) the details of each Babcock Marine Group Member and each member of [REDACTED] set out in [REDACTED] are correct;
 - (ii) each Babcock Marine Group Member (including the BM Opcos) is ultimately a [REDACTED] (other than DRDL and RRD where MoD holds one special share);
 - (iii) [REDACTED] has no subsidiary in addition to the Babcock Marine Group Members that is involved in the provision of Naval Base, Submarine or surface ship support services in each case in favour of the MoD and does not directly or indirectly own or control a minority legal or beneficial interest (by way of minority voting rights, the right to appoint or remove less than a majority of the directors and/or otherwise) in any other company or legal entity (**BM Minority Entity**) that is involved in the provision of Naval Base, Submarine or surface ship support services in each in favour of the MoD (other than as disclosed in the Disclosure Letter);
 - (iv) no BM Minority Entity is a party to a BM Contract (other than as disclosed in the Disclosure Letter); and
 - (v) internal arrangements are in place to allow Babcock Marine to direct each Babcock Marine Group Member (in each case that is a party to a BM Contract or undertakes a part of Babcock Marine's business) to comply with the requirements of this Contract.

Lawful obligations

- (f) as at the date of this Contract, the obligations expressed to be assumed by each BM Opco under this Contract are legal, valid, binding and enforceable to the extent permitted by law;
- (g) as at the date of this Contract, the execution, delivery and performance by each BM Opco of this Contract:

- (i) does not constitute a default under any document or obligation which is binding upon a Relevant BM Entity;
- (ii) does not conflict with the memorandum and articles of association of any Relevant BM Entity; and
- (iii) does not conflict with any law, regulation or official or judicial order applicable to any Relevant BM Entity;

Information

- (h) all information supplied by or on behalf of the BM Opcos to MoD in connection with the negotiations of, and entry into, this Contract (**Information**) was complete, true and accurate in all material respects at the date it was supplied and was not misleading in any respect and the opinions, projections and forecasts in such Information, and the assumptions on which they were based, have been arrived at after due and careful consideration and enquiry and genuinely represent the views of the BM Opcos;

Accounts

- (i) in relation to the latest Accounts of each BM Opco issued prior to the date of this Contract and in relation to each of the Accounts of the BM Opcos required to be delivered under Clause 31 (*Babcock Marine Records*) and Schedule 13 Part 1 (*Open Book Accounting Procedures*), such Accounts were or (where applicable) will be prepared and audited in accordance with GAAP and give a true and fair view, or fairly represent (as applicable) the financial position of such BM Opcos as at the date of their preparation and for the period then ended and (in relation to accounts issued prior to the date of this Contract since that date) no event has occurred which has had or could be reasonably expected to have a material adverse effect on the business or financial condition of any of the BM Opcos;

No threats to business

- (j) as at the date of this Contract, no claim is presently being assessed by any [REDACTED] Group Member and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the BM Opcos (having made all due enquiry), pending or threatened against any Relevant BM Entity or any of the assets of any Relevant BM Entity which might have a material adverse effect on the ability of Babcock Marine to perform its obligations under this Contract;

No insolvency

- (k) as at the date of this Contract, no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the BM Opcos, having made all due enquiry, threatened) for the winding-up or dissolution of any Relevant BM Entity or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues or the assets and revenues of such Relevant BM Entity;

No Prohibited Acts

- (l) in entering into this Contract it has not committed any Prohibited Act;

Babcock Marine Strategic Plan

- (m) each copy of the Babcock Marine Strategic Plan provided by Babcock Marine to MoD under this Contract shall be true and not misleading and shall at all times remain consistent with this Contract;

No IP infringements

- (n) there is no nor has there been any infringement or as at the date of this Contract alleged infringement of any Party's Intellectual Property Rights by a Relevant BM Entity in connection with this Contract;

and MoD relies upon such warranties and representations.

Warranties cumulative

- 5.1.2 All warranties, representations, undertakings and other obligations made, given or undertaken by the BM Opcos in this Contract are cumulative and none shall be given a limited construction by reference to any other.

5.2 Repetition

The warranties and representations set out in Clauses 5.1.1(l) and (n) shall be deemed to be repeated by each BM Opcos by reference to the facts and circumstances then existing on each day during the Contract Period.

6 Relationship governed by this Contract and Interface with other Contracts

6.1 Extent of Relationship governed by this Contract

- 6.1.1 Subject to Clause 6.2.1 and unless otherwise agreed, this Contract is intended to govern the entire relationship between MoD, Babcock Marine and the other members of the Babcock Marine Group in respect of the Sector and in this respect shall apply to:

- (a) the BM Contracts for ToBA Work existing at the Commencement Date;
- (b) the Multi-Party Contracts existing at the Commencement Date, subject to Clause 6.2.1 and in relation to the matters specified in this Contract;
- (c) all future contracts let by MoD to members of the Babcock Marine Group or any other ██████████ in respect of ToBA Work; and
- (d) in addition, for the purposes of transparency and visibility in relation to the Babcock Marine Cost Base:
 - (i) the BM Contracts for Non-ToBA Work existing at the Commencement Date; and
 - (ii) all future contracts let by MoD to Babcock Marine Group Members in respect of Non-ToBA Work,

as provided for in this Contract.

6.2 Multi-Party Contracts

- 6.2.1 Subject to Clause 6.2.2, nothing in this Contract shall have the effect of amending any contract in respect of SSSA, the CVF Contract or any other multi-party contract between MoD, a Relevant BM Entity or any other ██████████ and one or more third parties in respect of any part of the Sector (a **Multi-Party Contract**).
- 6.2.2 Subject to the terms of the Multi-Party Contract, MoD may at its discretion choose to propose a change to the Multi-Party Contract to make the aims and outputs of that Multi-Party Contract more consistent with the Commercial Purpose. Babcock Marine shall (and shall procure that any relevant ██████████ shall) enter into discussions in good faith with MoD and any third parties as required by MoD in relation to the proposed change.

6.3 Maritime Sector Initiatives

MoD may at its discretion propose a change to this Contract, including to roles allocated under this Contract, to make the aims and outputs of this Contract more consistent with any Sector wide initiatives, including any Multi-Party Contract, where such a change would, in the opinion of MoD, be in MoD's wider interests. Babcock Marine shall (and shall procure that any relevant [REDACTED] shall) enter into discussions in good faith with MoD and any third parties as required by MoD in relation to the proposed change.

6.4 Updating of BM Contracts

6.4.1 The Parties agree to work together to discuss potential changes to or replacement of agreements which form part of the Sale of Dockyard Agreements. Accordingly, MoD and Babcock Marine agree that the Parties shall negotiate in good faith to:

- (a) agree in accordance with the Transformation Plan which contracts and provisions of the Sale of Dockyard Agreements have expired or been substantially performed and in particular whether:

[REDACTED]

[REDACTED]

- (b) by the Major Review to be carried out in the Third Period agree the terms and conditions that will apply with respect to the BM Contracts for ToBA Work entered into after the expiry or termination of this Contract in place of the terms and conditions which apply as at the Commencement Date, whether under the Sale of Dockyard Agreements or otherwise; and
- (c) by the Major Review to be carried out in the Third Period address any other outstanding rights and obligations under the Sale of Dockyard Agreements.

6.4.2 It is acknowledged that the matters referred to in Schedule 3 (*Sale of Dockyard Agreements*) are matters identified by MoD for the purposes of Clause 6.4.1(a) as at the date of signature of the Contract and that Babcock Marine intends to review the Sale of Dockyard Agreements and identify whether it agrees with MoD's position referred to in Clause 6.4.1(a) and if there are any other matters it wishes to be considered for the purposes of Clause 6.4.1(a). Accordingly, either Party may propose additional matters to be considered and those matters shall be deemed included in Schedule 3 (*Sale of Dockyard Agreements*) for the purposes of Clause 6.4.1(a).

6.4.3 The Transformation Plan shall include Transformation Milestones relating to progress under this Clause 6.4. The AcMT shall report on the achievements of resolution of the issues referred to in this Clause 6.4 and any other issues relating to the Sale of Dockyard Agreements subsequently identified by the Parties. Progress towards achievement of resolution of these issues shall be measured in accordance with Schedule 8 (*Performance Management*) as part of the Transformation KPI.

6.5 Interface with BM Contracts

6.5.1 Without prejudice to Clause 6.2 (*Multi-Party Contracts*) the Parties consider it to be of paramount importance that the arrangements contemplated by this Contract are fully implemented and are not frustrated by the operation of the Sale of Dockyard Agreements or

BM Contracts relating to ToBA Work (**Relevant Contracts**). Accordingly the Parties have agreed the following provisions of this Clause 6.5:

- (a) the rights and obligations under this Contract, including in particular the rights and obligations under the provisions listed in Clause 6.5.3(a), are supplemental and in addition to the obligations in the Relevant Contracts;
- (b) except in relation to the matters addressed in Clauses 6.5.7 to 6.5.9 (inclusive) in relation to which those Clauses shall apply, to the extent that any of the provisions listed in Clause 6.5.3(a) is inconsistent with any Relevant Contracts, the Relevant Contract is hereby amended so that, to the extent of the inconsistency, the provisions referred to in Clause 6.5.3(a) shall prevail;
- (c) if any of provisions listed in Clause 6.5.3(a), including in particular Clause 6.5.3(a)(i), (ii), (iv), (v), (vii) and (viii) set out any process (as distinct from a commercial or financial right or obligation) (**ToBA Process**) which addresses the same subject matter as a process in a Relevant Contract, the ToBA Process shall apply in replacement of the process in the Relevant Contract for the duration of Contract Period;
- (d) subject to Clause 32 (*Severance and Rationalisation*), the provisions of Annex 4 of the Devonport Enabling Agreement shall be extinguished and of no further force or effect on and from the Commencement Date (but without prejudice to any accrued rights or liabilities arising under that Annex prior to the Commencement Date);
- (e) save as provided in Clauses 6.5.1(b), (c) and (d) and Clauses 6.5.7 to 6.5.9 (inclusive), the rights and obligations under the Relevant Contracts shall remain in place and shall continue to apply in accordance with their terms during and after the Contract Period (unless otherwise agreed under the process described in Clause 6.4.1), including (for the avoidance of doubt), the rights and obligations under the Sale of the Dockyards Agreements (or any other Relevant Contracts) in respect of work (including commitments to work, work placement, work allocation and/or scope); and
- (f) Clauses 6.5.7 to 6.5.9 (inclusive) address specific matters concerning the relationship between the Sale of Dockyard Agreements and this Contract.

6.5.2 If and to the extent that either MoD or Babcock Marine believes it requires an amendment to a Relevant Contract to give effect to Clause 6.5.1 (either in relation to a particular issue or generally):

- (a) the relevant parties shall negotiate in good faith to agree an amendment to give effect to Clause 6.5.1 (to that issue or generally); and
- (b) if and to the extent that, in relation to such Relevant Contract, any counterparty to MoD is a [REDACTED] (that is not a BM Opco), Babcock Marine shall procure that such [REDACTED] also negotiates in good faith to agree and enters into an amendment to give effect to the intent of Clause 6.5.1 (to that issue or generally) and Babcock Marine shall indemnify MoD in respect of any failure of that [REDACTED] to do so.

6.5.3 It is acknowledged that and, in the case of Clause 6.5.3(b), (c) and (d), to the extent necessary, the Relevant Contracts shall be amended so that:

- (a) the provisions referred to in Clause 6.5.1(a), (b) and (c) are the provisions in this Contract in respect of:
 - (i) Transformation, including in relation to the implementation of Approved Business Case Proposals;

- (ii) the pricing and other arrangements in Schedule 12 (*Pricing and Incentivisation*);
 - (iii) scope allocation under Clause 10 (*Scope Allocation*);
 - (iv) Partnering and Governance, pursuant to Part 6 (*Partnering and governance arrangements*);
 - (v) measures in a crisis, pursuant to Clause 37 (*Measures in a Crisis*);
 - (vi) Clauses 39 (*Confidentiality and Freedom of Information*), 40 (*Data Protection*), 41 (*Security*);
 - (vii) achievement of the Strategic Planning Objective;
 - (viii) the conduct and implementation of the outcome of each Major Review; and
 - (ix) the consequences of the termination or expiry of this Contract, pursuant to Clause 45 (*Consequences of termination or expiry*) and Limitation and Liability.
- (b) to the extent that any dispute submitted for formal dispute resolution pursuant to that Relevant Contract relates to any matter which might reasonably be expected to have a material impact on any of the matters referred to in Clause 6.5.3(a) above, the Parties shall use all reasonable endeavours to procure that the provisions of this Contract shall be admitted in evidence and that the person or body charged with determining the dispute shall be obliged to take into consideration the terms of this Contract in relation to those matters;
- (c) all decisions to be made jointly by MoD and a Babcock Marine Group Member under the Relevant Contracts from time to time, whether in relation to amendments to the Relevant Contract or otherwise, which relate to:
- (i) the making or funding by MoD of any investment other than through normal payments through the rate mechanisms;
 - (ii) the implementation of any rationalisation by any member of the [REDACTED];
 - (iii) any matter which might properly be the subject of a Business Case Proposal; and
 - (iv) any matter which might reasonably be expected to affect Babcock Marine's ability to discharge any obligation which may arise under Clause 33 (*Key Industrial Capability*) in relation to Key Industrial Capabilities,
- shall, unless otherwise agreed by the AcMT, be passed to the AcMT or referred to the SG with the right of escalation under the applicable terms of this Contract through the Governance Bodies up to the POG for resolution provided that;
- (v) this Clause 6.5.3(c) shall not change the right of a party to refer such decision to dispute resolution under any Relevant Contracts; and
 - (vi) where such a decision cannot be referred to a third party (including court, arbitration or expert determination) dispute resolution under the applicable Relevant Contract, it shall not be capable of referral to external dispute resolution under this Contract; and
- (d) where a BM Contract for ToBA Work contains a regime for changes to be made:

- (i) changes shall only be effected to the extent that they are not inconsistent with any national, regional or specific guidance issued from time to time by the AcMT where such guidance has been endorsed by the SG (or by the POG if the matter is escalated for resolution); and
 - (ii) changes which might reasonably be expected to have a material effect on any of the matters referred to in Clause 6.5.3(c) above may only be effected if approved by both Representatives under this Contract or by the SG (or by the POG if the matter is escalated for resolution) provided that:
 - (aa) this Clause 6.5.3(d) shall not change the right of a party to refer such decision to dispute resolution under any Relevant Contract; and
 - (bb) where such a decision cannot be referred to a third party (including court, arbitration or expert determination) dispute resolution under the applicable Relevant Contract, it shall not be capable of referral to external dispute resolution under this Contract.
- 6.5.4 When making decisions under this Contract, each Governance Body shall seek and take into account representations from the relevant representatives of MoD and Babcock Marine in relation to Relevant Contracts that will be affected by the decision.
- 6.5.5 If either MoD or Babcock Marine considers that the operation of any Relevant Contract is frustrating the achievement of the Commercial Purpose it may notify the other and in such circumstances the Parties shall negotiate in good faith with a view to amending that Relevant Contract in the manner best calculated to further achievement of the Commercial Purpose.
- 6.5.6 Where realisation of any Approved Business Case Proposal requires any amendment to any Relevant Contract, MoD shall be entitled to require a change to that Relevant Contract under the change procedure prescribed under that Relevant Contract (the **Relevant Contract Change Procedure**) provided that MoD shall only be liable for costs and expenses agreed or determined under the Relevant Contract Change Procedure to the extent those costs and expenses fall within the limits approved in the Approved Business Case Proposal.
- 6.5.7 In relation to surface ship engineering the provisions of this Contract shall, during the Contract Period:
 - (a) prevail over any BM Contract (including the Sale of Dockyard Agreements) in relation to the roles allocated to Babcock Marine; and
 - (b) be conclusive as to the roles allocated to Babcock Marine and shall replace the scope of surface ship engineering under the Sale of Dockyard Agreements.
- 6.5.8 In relation to roles in relation to items of scope other than roles relating to surface ship engineering, the Parties have not, as at the date of this Contract, agreed the relationship between this Contract and the BM Contracts (including the Sale of Dockyard Agreements). They shall accordingly adopt the following process, to be completed by no later than 31 December 2010, in order to establish a conclusive statement of Babcock Marine's allocated roles during the Contract Period in relation to items of scope other than roles in relation to surface ship engineering:
 - (a) Babcock Marine shall as soon as reasonably practicable but within four months from the date of this Contract, propose to MoD revisions to paragraphs 1 and 3 of Schedule 4 (*Scope*) accompanied by a written explanation of all proposed changes thereto;
 - (b) Babcock Marine's proposed changes to paragraphs 1 and 3 of Schedule 4 shall be limited to those necessary to address any inconsistencies between the roles in the BM Contracts (including in relation to the Sale of Dockyard Agreements) and

paragraphs 1 and 3 of Schedule 4 (*Scope*) in respect of the roles in relation to items of scope other than surface ship engineering;

- (c) the Parties shall meet and discuss Babcock Marine's proposal as soon as practicable following MoD's receipt of the same pursuant to Clause 6.5.8(a); and
- (d) The Parties shall as soon as practicable thereafter agree any amendments to paragraphs 1 and 3 of Schedule 4 so as to become a conclusive statement of Babcock Marine's roles in relation to items of scope other than surface ship engineering.

6.5.9 The BM Contracts (including the Sale of Dockyard Agreements) shall:

- (a) insofar as they relate to the roles in relation to items of scope relating to surface ship engineering, be suspended until the Termination Date when, subject to any other agreement reached between the Parties in relation to such matters, they shall revert to their status prior to the entry into of this Contract; and
- (b) insofar as they relate to roles in relation to items of scope other than surface ship engineering, with effect from the date an agreement is reached under Clause 6.5.8, be suspended until the Termination Date when, subject to any other agreement reached between the Parties in relation to such matters, they shall revert to their status prior to the entry into this Contract.

6.5.10 For the purposes of Clauses 6.5.7 to 6.5.9 only (but without affecting the interpretation of the term "BM Contract" in any other provisions) the phrase "BM Contract" shall include all letters of understanding, representations, side agreements and similar documents of whatever nature from, to or between any of the Parties but only to the extent that each such document relates to items of scope and/or role allocation.

6.6 Pricing for New BM Contracts

The terms of Schedule 12 (*Pricing and Incentivisation*) shall apply:

- (a) in relation to the pricing arrangements for any BM Contract for ToBA Work entered into; and
- (b) in respect of any extension of the Devonport WSMI or the Faslane WSMI,
at any time during the Initial Term.

6.7 Assignment of BM Contracts

6.7.1 Neither Babcock Marine nor MoD shall (and Babcock Marine shall also procure that [REDACTED] shall) transfer, sell, assign, novate, create any encumbrance or otherwise dispose of any Relevant Contract or any part thereof, or any benefit, interest or advantage of any Relevant Contract or any part thereof to any other person, including any [REDACTED], without the prior written consent of the other.

6.7.2 The written consent of MoD under this Clause shall be invalid, unless it is signed by a MoD senior commercial manager who is at MoD one star level (or equivalent) or above.

6.8 BSSL/BMRL – Novation Rosyth related Sale of Dockyard Agreements

Babcock Marine and MoD shall novate all rights and obligations of Babcock Support Services Limited under the Rosyth related Sale of Dockyard Agreements to BMRL within three months of the date of this Contract.

7 Payment and adjustment of BM Contracts

- 7.1 Except as expressly provided in the Contract, no payment will be made by MoD to Babcock Marine under this Contract (but without prejudice to any right of Babcock Marine to bring a claim in damages for Losses suffered by it arising as a result of or in connection with any act, omission or breach by MoD of its obligations under this Contract).
- 7.2 To the extent that the operation of this Contract produces an agreed or determined requirement for the adjustment of any payments under any BM Contract for ToBA Work the Parties agree that such BM Contract shall be amended accordingly.

Part 2 – Purpose

8 Purpose

8.1 General

Babcock Marine and MoD shall (and Babcock Marine shall ensure that each Babcock Marine Group Member shall) each take the steps contemplated by this Contract and such other steps within their spheres of competence as shall be reasonably necessary or expedient, in order to secure the achievement of the Commercial Purpose.

8.2 Commercial Purpose

The Commercial Purpose is that:

- (a) this Contract is performed and the relationship between the Parties is managed;
 - (b) the BM Contracts for ToBA Work are performed; and
 - (c) the Parties operate across the full extent of their dealings with each other,
- in all respects in a manner and to the extent necessary or expedient so as to secure that:
- (d) the Guaranteed Benefits are achieved and delivered to MoD in accordance with Part 4 (*Benefits*);
 - (e) Babcock Marine is afforded the rights provided for in Part 3 (*Scope*) on future Work MoD decides to procure within the scope of any Nominated Role or Collaborative Role;
 - (f) the KPIs are met in accordance with Clause 21 (*Performance and Key Performance Indicators*) and Schedule 8 (*Performance Management*);
 - (g) MoD provides strategic planning information to Babcock Marine in accordance with Clause 26 (*Strategic Planning Framework*);
 - (h) Babcock Marine provides MoD with comprehensive and transparent access to information in accordance with Clause 26 (*Strategic Planning Framework*) and Clause 31 (*Babcock Marine Records*);
 - (i) Babcock Marine is afforded a reasonable opportunity to achieve profit commensurate with the services it provides, the risks it takes in doing so and subject to the level of its performance of BM Contracts for ToBA Work and of this Contract;
 - (j) Babcock Marine and MoD work together to:
 - (i) manage and continue to develop and improve their working relationship;
 - (ii) explore in good faith the benefits for each Party of defining and developing the Potential Nominated Roles and allocating these as Nominated Roles or Collaborative Roles;
 - (iii) acting in accordance with the standards required under Clause 9.1, use reasonable endeavours to achieve continuous improvement in performance throughout the Contract Period;
 - (iv) acting in accordance with the standards required under Clause 9.1, use reasonable endeavours to operate as efficiently and economically as possible so as to minimise the Total Cost of Services to MoD in each Contract Year

and over the Contract Period recognising that transformation activities will evolve over the Contract Period;

- (v) implement the Transformation Plan; and
 - (vi) develop and implement the [REDACTED] in accordance with Clause 18 (*Strategic Rationalisation*) and Part 2 of Schedule 6 (*Transformation and Rationalisation*).
- (k) Babcock Marine's business operates coherently in the manner of a single business entity in its dealings with MoD in respect of the Sector;
- (l) the Parties will continue to work together to support the development of SEPP and SSSA (while these continue) in accordance with the principles in Schedule 4 (*Scope*) and such other MoD collaborative initiatives in relation to the Sector as the Parties may agree Babcock Marine should be involved in from time to time;

9 Standard of conduct

9.1 General

In carrying out its obligations under this Contract, each Party shall act in all respects with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced:

- (a) defence maritime engineering naval base, submarine and surface ship contractor having the functions which Babcock Marine has (in the case of Babcock Marine); and
- (b) defence procurement agency and national Ministry of Defence having the functions which the MoD has (in the case of MoD).

9.2 Consistency of approach

9.2.1 Subject to Clause 9.2.2, in taking steps to achieve the Commercial Purpose:

- (a) MoD and Babcock Marine shall each use all reasonable endeavours to ensure that all parts of its organisation shall; and
- (b) Babcock Marine shall use all reasonable endeavours to ensure that all parts of the organisation of each Babcock Marine Group Member and every person acting on each Babcock Marine Group Member's behalf or under its authority or control (including sub-contractors) shall,

act consistently, in the case of MoD within all parts of MoD's organisation and, in the case of Babcock Marine within all parts of its organisation and between all Babcock Marine Group Members, in their assessments of and dealings with subjects for their consideration and their application of, and compliance with, all Relevant Contracts, Multi-Party Contracts and this Contract.

9.2.2 Clause 9.1 shall not prevent either Party changing its approach over time, provided consistency is maintained within MoD (in the case of MoD) and between all Babcock Marine Group Members (in the case of Babcock Marine).

9.3 Babcock Marine advice

In addition to any specific obligation in this Contract or any other agreement, Babcock Marine shall perform its obligations under this Contract to provide information, advice and assistance to MoD acting in good faith and in the capacity and to at least the standard expected of a competent company having functions equivalent to Babcock Marine.

9.4 Standard of Milestone materials

Without limiting the application of this Clause 9 any reports, presentations, analysis and other materials provided by Babcock Marine in order to achieve any BM Transformation Milestone or BM RMP Milestone (or any part thereof) must in order to achieve that BM Transformation Milestone or BM RMP Milestone (or any part thereof) comply with the standards required by this Clause 9 and be signed by the Babcock Marine Representative together with a confirmation from Babcock Marine that such complies with the standards required by this Clause 9.

Part 3 – Scope

10 Scope Allocation

10.1 Roles

The Parties have agreed that there shall be the following categories in relation to roles to be allocated to Babcock Marine under this Contract, as described in this Clause 10 and Schedule 4 (*Scope*):

- (a) Nominated Roles;
- (b) Potential Nominated Roles; and
- (c) Collaborative Roles.

10.2 Nominated Roles

10.2.1 The MoD allocates Nominated Roles to Babcock Marine in respect of Submarines, surface ships and Naval Bases as specified in paragraph 1.1, paragraph 2.1 and paragraph 3 of Schedule 4 (*Scope*), in each case subject to and in accordance with the remaining provisions of this Clause 10 (*Scope Allocation*).

10.2.2 Subject to Clause 10.3.3, if MoD decides to procure Work within the scope of any Nominated Role, it shall procure such Work from Babcock Marine and only Babcock Marine.

10.2.3 The Parties acknowledge that in a complex engineering environment it is sometimes appropriate for specialist elements to be conducted by specialist third parties. Accordingly, Babcock Marine agrees that MoD may, acting reasonably and following consultation with Babcock Marine, appoint third parties to carry out work within the scope of a Nominated Role:

- (i) in order to provide specialist expertise; or
- (ii) to enable MoD to ensure Value for Money through the provision of equipment separately procured by MoD without charge to Babcock Marine,

in each case to the extent consistent with the custom and practice existing between Babcock Marine and MoD as at the date of this Contract.

10.3 WSMI Services

Contract Termination Right for WSMI Default Events

10.3.1 The occurrence of any of the following events prior to 31 March 2013 shall be a Babcock Marine Default for the purpose of Clause 42.1.1(s):

- (a) in respect of the Devonport WSMI:
 - (i) an Event of Default has arisen under the Devonport WSMI entitling MoD to terminate the Devonport WSMI; or
 - (ii) a Partial Termination Event has arisen under the Devonport WSMI in respect of:
 - (aa) the Engineering Support Services (as described at Section 2 of Schedule D to the Devonport WSMI); or
 - (bb) the Waterfront Support Services (as described at Section 3 of Schedule D to the Devonport WSMI);

(where "Event of Default" and "Partial Termination Event" have the meaning set out in the Devonport WSMI),

and MoD has elected either to exercise such termination right or to notify Babcock Marine that it is not prepared to appoint Babcock Marine to provide WSMI Services of the type provided under the Devonport WSMI after expiry of the Devonport WSMI;

- (b) in respect of the Faslane WSMI:
- (i) an Event of Default has arisen under the Faslane WSMI entitling MoD to terminate the Faslane WSMI; or
 - (ii) a Partial Termination Event has arisen under the Faslane WSMI in respect of:
 - (aa) the Engineering Support Services (as described at Section 2 of Part 29 of the Schedule to the Faslane WSMI); or
 - (bb) the Waterfront Support Services (as described at Section 3 of Part 29 of the Schedule to the Faslane WSMI),

and MoD has elected either to exercise such termination right or to notify Babcock Marine that it is not prepared to extend the Faslane WSMI after 2013.

(where "Event of Default" and "Partial Termination Event" have the meaning set out in the Faslane WSMI.)

Withdrawal of Nominated Role in respect of Non-Engineering Services

10.3.2 If any of the following events occur prior to 31 March 2013 MoD shall have the rights specified in Clause 10.3.3:

- (a) a Partial Termination Event has arisen under the Devonport WSMI in respect of any services other than the services referred to in Clause 10.3.1(a)(ii) (whether or not an Event of Default as referred to in Clause 10.3.1(a)(i) has also occurred); or
- (b) a Partial Termination Event has arisen under the Faslane WSMI in respect of any services other than the services referred to in Clause 10.3.1(b)(ii) (whether or not an Event of Default as referred to in Clause 10.3.1(b)(i) has also occurred),

(together **Non Engineering Services**)

and MoD has elected either to exercise its partial termination right or to notify Babcock Marine that it is not prepared to extend the Excluded Services to which such Partial Termination Event relates after 31 March 2013.

10.3.3 If an event has occurred as referred to in Clause 10.3.2 prior to 31 March 2013, MoD shall be entitled to:

- (a) require an amendment to the Nominated Roles to exclude only those services (by type and location) to which the Partial Termination Event directly relates (the **Excluded Services**); and
- (b) request tenders from third parties and Babcock Marine for any part of or all of the Excluded Services, provided that, this Clause 10.3.3 shall not apply to services which are, as at the date of this Contract, performed at the Devonport Dockyard.

10.3.4 Any contract or contracts awarded pursuant to Clause 10.3.3 shall be awarded based on criteria determined by MoD at its sole discretion.

10.3.5 If, following the conclusion of a tender process carried out as referred to in Clause 10.3.3 or otherwise a resultant contract is awarded to a third party during the Contract Period and such contract is awarded for Work to be carried out (or MoD itself carries out such Work) which is within the scope of the services which are contracted by MoD to be supplied by Babcock Marine under the Devonport WSMI or the Faslane WSMI as those contracts exist as at the date of this Contract, the Guaranteed Benefits shall be reduced. The amount of the reduction shall be determined in accordance with the following principles:

- (a) the amount of the reduction in respect of each Financial Year if all of the Non Engineering Services at the relevant Site cease to be contracted is shown in the appropriate column of the table set out below;
- (b) if and to the extent that some but not all of the Non Engineering Services at a Site cease to be contracted, the amount of the reduction in respect of each Financial Year shall be a fair and reasonable proportion of the amount shown in the appropriate column of the table set out below to reflect the proportion of the services which have ceased to be contracted by MoD to be supplied by Babcock Marine under the Devonport WSMI or the Faslane WSMI.

Benefits Reduction Table at 2006/2007 values

	Devonport WSMI	Faslane WSMI	Both Devonport and Faslane WSMI
Financial Year	Reduction in Benefits (£ million)	Reduction in Benefits (£ million)	Reduction in Benefits (£ million)
2009/2010	█	█	█
2010/2011	█	█	█
2011/2012	█	█	█
2012/2013	█	█	█
2013/2014 and thereafter	█	█	█

Note: The amounts set out in the Benefits Reduction Table are subject to indexation in accordance with Paragraph 2.3 of Part 4 of Schedule 12 (*Pricing and Incentivisation*).

Sub-Contracting of Non Engineering Services

10.3.6 Babcock Marine acknowledges that MoD intends that future contracts which include services of the type included in the Non-Engineering Services shall contain requirements for Babcock Marine to compete those services.

10.4 Potential Nominated Roles

10.4.1 Babcock Marine shall work with the MoD to define and develop proposals for the Potential Nominated Roles specified in paragraphs 1.2 and 2.2 of Schedule 4 (*Scope*) to be allocated as a Nominated Role or Collaborative Role. In carrying out definition and development in accordance with this Clause 10.4.1, the Parties:

- (a) shall take account of any relevant Sector wide initiatives, Multi-Party Contracts and other contracts between MoD and third parties in relation to the Sector; and
- (b) may, once initial scoping work has been agreed by Babcock Marine and MoD, involve or consult such third parties as MoD may from time to time reasonably specify.

10.4.2 Following the definition and development in accordance with Clause 10.4.1, MoD may, but shall not be obliged to, allocate any Potential Nominated Role as a Nominated Role or a Collaborative Role for the purposes of this Contract in accordance with and subject to Clause 10.7.

10.4.3 Allocation of any Potential Nominated Role as a Nominated Role or a Collaborative Role in accordance with Clause 10.4.2 shall be subject to the MoD Approval Process.

10.5 Collaborative Roles

10.5.1 MoD allocates to Babcock Marine the Collaborative Roles specified in paragraphs 1.3 and 2.3 of Schedule 4 (*Scope*) in each case subject to and in accordance with the remaining provisions of this Clause 10 (*Scope Allocation*).

10.5.2 Subject to Clause 10.5.3, if MoD decides to procure Work within the scope of any Collaborative Role, it shall procure such Work from Babcock Marine and only Babcock Marine.

10.5.3 It is acknowledged that whilst the Collaborative Roles in Schedule 4 (*Scope*) relate to certain activities or functions that will (subject to the remaining provisions of this Clause 10) be performed by Babcock Marine, the Collaborative Roles form part of wider roles within the Sector. Activities and functions within those wider roles may be performed by MoD or third parties. Accordingly, in carrying out Collaborative Roles, Babcock Marine shall work in accordance with any applicable collaborative agreement or arrangement or Schedule 4 (*Scope*) (where applicable) or otherwise as MoD may from time to time reasonably specify.

10.6 Value for Money

Appointment

10.6.1 The award of any contract for the provision of any Work within the scope of any Nominated Role or Collaborative Role pursuant to this Part 3 shall be subject at all times to Clause 11 (*No obligation to procure work*).

10.6.2 Without limiting the application of Clause 10.6.1, MoD shall not be obliged to award Babcock Marine any contract as referred to in Clause 10.6.1 if the MoD Approval Process does not confirm that the tender or proposal submitted by Babcock Marine for the provision of the relevant Work represents Value for Money but this shall not entitle MoD to procure such Work from a third party in breach of Clauses 10.2.2 or 10.5.2.

10.6.3 Where during the Contract Period MoD decides to procure work within the scope of a Nominated Role or a Collaborative Role the process set out in Part 2 of Schedule 12 (*Pricing and Incentivisation*) shall apply. Accordingly, Babcock Marine shall, in pricing any tender or proposal submitted by Babcock Marine for the relevant ToBA Work comply with the provisions of Schedule 12 (*Pricing and Incentivisation*) and Schedule 13 (*Open Book Accounting Procedures*).

10.7 Additions and Changes to Nominated Roles and Collaborative Roles

Status of Roles

10.7.1 Babcock Marine acknowledges that the roles specified in Schedule 4 (*Scope*) are the only roles allocated to any Babcock Marine Group Member by MoD in relation to surface ships, Submarines and Naval Base services in the Sector under this Contract or, subject to Clauses 6.5.7 to 6.5.9 (inclusive), under any BM Contract.

New Roles

10.7.2 MoD may allocate new Nominated Roles or Collaborative Roles to Babcock Marine, expand the scope of existing Nominated Roles or Collaborative Roles or MoD may also notify

Babcock Marine of any additional Potential Nominated Roles at any time on written notice, including the Potential Nominated Roles referred to in paragraphs 1.2 and 2.2 of Schedule 4 (*Scope*). Without prejudice to MoD's rights under this Clause 10.7.2, it is anticipated that allocation of new Nominated Roles or Collaborative Roles will be subject to agreement between the Parties including potentially in relation to additional Guaranteed Benefits, whether in accordance with Clause 28 (*Major Reviews*) or otherwise.

Withdrawal of Nominated Role or Collaborative Role

10.7.3 MoD shall not have any right to withdraw, cease or reduce the scope of any Nominated Role or Collaborative Role or the allocation of any Nominated Role or Collaborative Role to Babcock Marine except in accordance with this Clause 10 (*Scope Allocation*), on termination of this Contract (it being acknowledged that with effect from the Termination Date the provisions of Clause 6.5.9 shall apply in relation to the reinstatement of the roles in relation to items of scope set out in the BM Contracts (including the Sale of Dockyard Agreements)) or as otherwise agreed, whether in accordance with this Contract or otherwise agreed with Babcock Marine.

10.8 Sector Wide

The MoD reserves the right to propose to Babcock Marine changes to the Nominated Roles or Collaborative Roles in the best interests of the Sector, as the Sector develops and Babcock Marine shall enter into good faith discussions with MoD in relation to the proposed change.

10.9 Allocation of other work

MoD is entitled at any time to allocate to Babcock Marine Work that is outside the scope of any Nominated Role or Collaborative Role with or without competition. Any Work allocated under this provision shall not form part of any existing Nominated Role or Collaborative Roles and nor shall the Work be granted as a new Nominated Role or Collaborative Role. Nothing in this Contract shall prevent Babcock Marine from submitting any proposal to MoD to provide Work, whether or not as part of a competitive tender process.

11 No obligation to procure work

11.1 Subject to Clause 11.2, notwithstanding the provisions of Clause 10 (*Scope Allocation*) Babcock Marine acknowledges that the MoD is under no obligation under this Contract at any time during the Contract Period to procure or Order any Work or any particular volume or value of Work.

11.2 Clause 11.1 shall not affect any right Babcock Marine may have under competition or procurement law.

Part 4 – Benefits

12 Guaranteed Benefits

12.1 Amount of Guaranteed Benefits

12.1.1 The Parties have agreed guaranteed yearly benefits as set out in the Guaranteed Benefits Table at Clause 12.2 (the **Guaranteed Benefits**).

12.1.2 Throughout the Contract Period, there is no limit on the benefits that:

- (a) the Parties may propose; or
- (b) Babcock Marine may deliver to MoD.

12.1.3 The Guaranteed Benefits as at the Commencement Date are made up of the following elements as set out in the Guaranteed Benefits Table:

- (a) the Guaranteed Core Benefits; and
- (b) subject to Clause 12.3 (*Continuous Improvement Guarantee*), the Continuous Improvement Guarantee.

12.1.4 The Parties acknowledge the Guaranteed Benefits as set out in the Guaranteed Benefits Table will change during the Initial Term. The process and parameters for changing the amounts set out in the Guaranteed Benefits Table are set out in Part 4 of Schedule 12 (*Pricing and Incentivisation*).

12.1.5 For each Financial Year during the Initial Term, Babcock Marine shall achieve Actual Authority Benefits which equal or exceed the Guaranteed Benefits for that Financial Year set out in the Guaranteed Benefits Table (as amended from time to time pursuant to Part 4 of Schedule 12 (*Pricing and Incentivisation*) and recorded for information in the Master Table).

12.2 Guaranteed Benefits Table

Guaranteed Benefits (Actual Authority Benefits by reference to the ToBA Starting Baseline)			
Financial Year	No.	Guaranteed Core Benefits (£ million) (at [REDACTED] pricing levels)	Cumulative Continuous Improvement Guarantee (%) (% with reference to [REDACTED] productivity levels)
2009/2010*	1	[REDACTED]	[REDACTED]
2010/2011	2	[REDACTED]	[REDACTED]
2011/2012	3	[REDACTED]	[REDACTED]
2012/2013	4	[REDACTED]	[REDACTED]
2013/2014	5	[REDACTED]	[REDACTED]
2014/2015	6	[REDACTED]	[REDACTED]
2015/2016	7	[REDACTED]	[REDACTED]
2016/2017	8	[REDACTED]	[REDACTED]
2017/2018	9	[REDACTED]	[REDACTED]
2018/2019	10	[REDACTED]	[REDACTED]
2019/2020	11	[REDACTED]	[REDACTED]
2020/2021	12	[REDACTED]	[REDACTED]
2021/2022	13	[REDACTED]	[REDACTED]

		Guaranteed Benefits (Actual Authority Benefits by reference to the ToBA Starting Baseline)	
Financial Year	No.	Guaranteed Core Benefits (£ million) (at [REDACTED] pricing levels)	Cumulative Continuous Improvement Guarantee (%) (% with reference to [REDACTED] productivity levels)
2022/2023	14	[REDACTED]	[REDACTED]
2023/2024	15	[REDACTED]	[REDACTED]
2024/25	16	[REDACTED]	12.75
Total		839.2	

*Note 1: to have been achieved pre Contract.

Note 2: The amounts set out in the Guaranteed Benefits Table are subject to indexation in accordance with Paragraph 2.3 of Part 4 of Schedule 12 (*Pricing and Incentivisation*).

12.3 Continuous Improvement Guarantee

12.3.1 For the purposes of Clause 12.2 (*Guaranteed Benefits Table*), the continuous improvement guarantee in any Financial Year represents the cumulative percentage reduction in the variable costs within the Babcock Marine Cost Base referable to ToBA Work after taking account of and in addition to the Guaranteed Core Benefits (the **Continuous Improvement Guarantee**).

12.3.2 For the purposes of assessing whether Babcock Marine has achieved, failed to achieve or exceeded achievement of the Guaranteed Benefits in respect of any Financial Year, the value of the Continuous Improvement Guarantee shall be calculated and agreed or determined in accordance with the provisions of paragraph 2.4 of Part 4 of Schedule 12 (*Pricing and Incentivisation*).

12.4 No Investment

Other than as expressly provided for in Schedule 12 (*Pricing and Incentivisation*) or as agreed in any Business Case Proposal, Babcock Marine acknowledges that MoD has entered into this Contract on the understanding that Babcock Marine will be able to generate the Guaranteed Benefits without MoD providing any investment funding or financial contribution. Accordingly, subject to Clause 14.7(c), Babcock Marine shall not be relieved from any liability under this Contract in relation to Guaranteed Benefits as a result of any rejection by MoD of any proposal by Babcock Marine for investment by MoD.

13 Exceeding or failing to achieve the Guaranteed Benefits

13.1 Achievement of Actual Authority Benefits in excess of the Guaranteed Benefits shall have the consequences set out in Part 5 of Schedule 12 (*Pricing and Incentivisation*).

13.2 Failure to achieve Actual Authority Benefits at least equal to the Guaranteed Benefits in respect of a Financial Year or a Period shall have the consequences set out in Clause 16 (*Failure to Meet Guaranteed Benefits*).

14 Benefits Realisation Plan

- 14.1 Babcock Marine shall set out its plans for achieving Authority Benefits and the processes by which Babcock Marine expects to achieve the Guaranteed Benefits in the Benefits Realisation Plan.
- 14.2 As at the date of this Contract, the Benefits Realisation Plan sets out Babcock Marine's initiatives for achieving Authority Benefits in the First Period as they exist at that date and the processes by which Babcock Marine expects to achieve the Guaranteed Benefits in the First Period.
- 14.3 A copy of the agreed Benefits Realisation Plan as at the date of this Contract is set out in Schedule 5 (*Benefits Realisation Plan*).
- 14.4 Babcock Marine shall update the Benefits Realisation Plan and submit updated versions to MoD for review at least once every six months during the Contract Period to include any additional initiatives for achieving Authority Benefits identified and identify any initiative removed since the previous version of the Benefits Realisation Plan (the first update to be delivered within six months of the Commencement Date).
- 14.5 Babcock Marine shall use its reasonable endeavours to implement the initiatives identified in the Benefits Realisation Plan (as amended from time to time in accordance with Clause 14.7) but, without prejudice to MoD's specific remedies under this Contract that apply if Babcock Marine fails to achieve the Guaranteed Benefits, shall not be liable for failing to implement any particular initiative.
- 14.6 Babcock Marine shall track the delivery of Actual Authority Benefits using tracking and realisation processes which shall be agreed and set out in the first update of the Benefits Realisation Plan delivered to MoD pursuant to Clause 14.4.
- 14.7 In addition to updating the Benefits Realisation Plan under Clause 14.4, Babcock Marine may change the Benefits Realisation Plan from time to time in accordance with the following provisions:
- (a) Initiatives for achieving Authority Benefits may be added to the Benefits Realisation Plan by Babcock Marine, but MoD shall only be required to provide funding in relation to such initiatives if and to the extent it has agreed to do so pursuant to an Approved Business Case Proposal, in accordance with the process set out in Clause 19 (*Business Case Proposals*);
 - (b) Initiatives for achieving Authority Benefits may be removed from the Benefits Realisation Plan where either Babcock Marine or MoD requests the removal of the initiatives subject to, if required by either party, discussion of the removal of the plans, (together with any potential impact on the Guaranteed Benefits in accordance with Clause 14.7(c)) at the Steering Group, provided that if either party objects to the removal of any initiatives following discussion at the Steering Group that party may refer the matter to the POG and the matter shall be considered by the POG prior to the other party being entitled to require the removal of that initiative.
 - (c) If MoD requires the removal of an initiative from the Benefits Realisation Plan under Clause 14.7(b) and either:
 - (i) the initiative was part of an Approved Business Case Proposal; or
 - (ii) subject to Clause 14.7(d), the initiative did not require any investment funding, financial contribution, or other dependency from MoD,

then, unless (in respect of Clause 14.7(c)(ii) only) the condition set out in Clause 14.7(d) applies, on and from the time of removal of the initiative, the Authority Benefits that would otherwise have reasonably been expected to have been achieved by the

initiative (in all Financial Years) shall be deemed to be Actual Authority Benefits (as calculated and determined in accordance with Part 4 of Schedule 12 (*Pricing and Incentivisation*)).

- (d) The condition referred to in Clause 14.7(c) is that if:
- (i) Babcock Marine includes in the Benefits Realisation Plan an initiative that meets the criteria in Clause 14.7(c)(ii); but
 - (ii) MoD (acting reasonably) can demonstrate that the plan will cause it to incur material additional costs other than in respect of liabilities in relation to Severance Costs incurred in accordance with the arrangements referred to in Clause 32 (Severance and Rationalisation),

then Clause 14.7(c) shall not apply to the plan if MoD requests its removal in accordance with Clause 14.7(b) within the later of 3 months of or at the next quarterly Steering Group meeting following its inclusion in the Benefits Realisation Plan.

- (e) Clause 14.7(d) does not apply to the initiatives included in the Benefits Realisation Plan at the date of this Contract.
- 14.8 Babcock Marine's obligations to achieve the Guaranteed Benefits shall apply notwithstanding the achievement or otherwise of any of the plans set out in the Benefits Realisation Plan.
- 14.9 The AcMT shall consider the performance of Babcock Marine in relation to the Benefits Realisation Plan in the Annual Review and in each Major Review.

15 Determination of Actual Authority Benefits and Achievement of Guaranteed Benefits

- 15.1 The process for determining the amount of Actual Authority Benefits achieved by Babcock Marine, and for comparing those Actual Authority Benefits against the relevant Guaranteed Benefits (and for calculating those relevant Guaranteed Benefits) is set out in Part 4 of Schedule 12 (*Pricing and Incentivisation*).

16 Failure to meet Guaranteed Benefits

- 16.1 Failure to achieve Actual Authority Benefits at the level of the Guaranteed Benefits over the following periods shall entitle MoD to the remedies and to take the action in the remaining provisions of this Clause.
- 16.2 If Babcock Marine has failed to achieve the Guaranteed Benefits in respect of any Financial Year, the provisions of Clause 23.1 and 23.2 (*Failure to achieve BM KPIs*) shall apply.
- 16.3 Additionally, if:
- (a) Babcock Marine fails to achieve the Guaranteed Benefits in respect of any Financial Year; and
 - (b) the test in Clause 42.1.1(o)(ii) is satisfied; and
 - (c) MoD terminates the Contract in accordance with Clause 42.1.1(o)(ii) and Clause 43 (*MoD remedies for Babcock Marine Default*),

MoD's remedy specified in Clause 45.1.2(d) (*Guaranteed Benefits Shortfall*) shall apply.

- 16.4 Additionally, if Babcock Marine has failed to achieve the Guaranteed Benefits in respect of any Benefits Measurement Period:

- (a) the provisions of Clause 23.1 and 23.2 (*Failure to achieve BM KPIs*) shall apply; and
- (b) the provisions of paragraph 5.1.2, 5.2.2, 5.3.2 or 5.4.2 of Schedule 12 (*Pricing and Incentivisation*) (as applicable) shall apply; and
- (c) if:
 - (i) the test set out Clause 42.1.1(o)(i) (*Failure to deliver Guaranteed Benefits*) is satisfied; and
 - (ii) MoD terminates this Contract in accordance with Clause 42.1.1(o)(i) (*Failure to Deliver Guaranteed Benefits*) and Clause 43 (*MoD remedies for Babcock Marine Default*),

MoD's remedy specified in Clause 45.1.2(d) (*Guaranteed Benefits Shortfall*) shall apply.

16.5 The remedies specified in Clauses 16.2 to 16.4 (inclusive) and the termination rights applicable to Clause 42.1.1(o) (*Failure to deliver Guaranteed Benefits*) and Clause 45 (*Consequence of termination or expiry and Limitations on Liability*) shall be:

- (a) cumulative but shall be;
- (b) MoD's sole remedies in relation to any failure by Babcock Marine to achieve any or all of the Guaranteed Benefits or any level of Authority Benefits and the entitlement to exercise (and conferring of) those rights will be to the exclusion of all other rights of the MoD howsoever arising under contract, tort, equity, restitution or otherwise in respect of such failure to achieve Guaranteed Benefits or any level of Authority Benefits pursuant to this Contract; but
- (c) this Clause 16.5 shall operate without prejudice to any right or remedy which MoD may have pursuant to contract, tort, equity, restitution or otherwise in connection with the performance or non-performance by Babcock Marine of any BM Contract or other contract (but excluding this Contract).

Part 5 – Transformation

17 Transformation

17.1 Meaning of Transformation

"Transformation" is the continuing process through which:

- (a) the Parties shall transform their working relationship; and
- (b) Babcock Marine Group shall transform its business and MoD shall transform its operations in each case to the maximum extent reasonably practicable to support the achievement of the Transformation Objectives and the Commercial Purpose in accordance with the Transformation Plan and the requirements of this Contract.

17.2 Transformation Objectives

17.2.1 The Transformation Objectives as at the date of this Contract are:

The MoD Transformation Objectives

- (a) the transformation of the delivery of Submarine Support, Surface Ship Support and Naval Base support by Babcock Marine to MoD to optimise performance, Value for Money and through life considerations;
- (b) to the extent agreed between the Parties, transformation of Babcock Marine's activities in the Sector to support the implementation of SEPP, SSSA and MoD change programmes. The MoD's change programmes as at the date of signature include those described in the MCP Headmark and Maritime Support Principles and the Key MCP Decisions; and
- (c) the transformation of Babcock Marine's business to ensure that it operates coherently in the manner of a single business entity in its dealings with MoD in respect of the Sector;

Babcock Marine Transformation Objectives

- (d) identifying, and implementing transformation opportunities that provide Babcock Marine with a reasonable opportunity to enhance its shareholder value through providing benefits to MoD while being a means of implementing the MoD Transformation Objectives, by successfully implementing new initiatives, carrying out additional Work (following the award of new Nominated Roles to Babcock Marine or otherwise) or becoming entitled to incentives under Clause 22 (*Incentivisation*);
- (e) the transformation of MoD's processes to ensure that it acts coherently in its dealings with Babcock Marine in respect of the Sector.

Joint Transformation Objectives

- (f) MoD and Babcock Marine shall improve the efficiency and effectiveness of their working relationship;
- (g) the development of rationalised and streamlined processes that apply to MoD's and Babcock Marine's activities in the Sector.

17.2.2 The Parties may agree changes to the existing Transformation Objectives or to introduce new Transformation Objectives from time to time where they believe such changes or new Transformation Objectives (as applicable) are necessary to achieve Transformation and to meet the Commercial Purpose.

17.2.3 The Transformation Milestones set out in the Transformation Plan have been developed with the aim of supporting the Transformation Objectives. The Parties shall also use the Transformation Objectives to inform the development of any additional Transformation Milestones proposed in accordance with Clauses 17.3.6(a) and 17.3.8.

17.3 Transformation Plan

17.3.1 A copy of the agreed version of the Transformation Plan as at the date of this Contract is set out in Part 1 of Schedule 6 (*Transformation and Rationalisation*).

17.3.2 Babcock Marine and MoD shall each provide inputs to the Transformation Plan as necessary to enable the Transformation Plan to be maintained and updated in accordance with this Clause 17.

17.3.3 The Transformation Plan sets out and shall continue to set out as a minimum during the Contract Period a rolling programme to achieve Transformation including:

(a) the following:

- (i) the Level 0 Plan for the current Period with:
- (ii) information on significant related events timetabled to occur during the five years following the date of the latest agreed version of the Transformation Plan;
- (iii) no later than the date for each Major Review, the information referred to in (i) and (ii) above in respect of the subsequent Period; and
- (iv) key events planned for the remainder of the Contract Period,

which in each case are intended to result in or contribute to the achievement of the Commercial Purpose and Transformation Objectives (the **Transformation Milestones**).

17.3.4 The Level 0 Plan shall identify each Transformation Milestone as falling within one of the following categories:

- (a) a Transformation Milestone which it is the responsibility of Babcock Marine to achieve and upon which MoD's achievement of a specific MoD Transformation Milestone or an aspect of the delivery of Transformation in general is dependant and against which the achievement of the Transformation KPI(s) will be measured in accordance with Clause 21 (*Performance and Key Performance Indicators*) and Schedule 8 (*Performance Management*) (a **BM Transformation Milestone**);
- (b) a Transformation Milestone which is the responsibility of MoD to take action on and upon which Babcock Marine's achievement of an aspect of a specific BM Transformation Milestone or the delivery of Transformation in general is dependant (a **MoD Transformation Milestone**); or
- (c) a Transformation Milestone which requires action by both MoD and Babcock Marine collectively and may involve third parties and which MoD and Babcock Marine cannot be adequately assigned as a BM Transformation Milestone or a MoD Transformation Milestone (a **Joint Transformation Milestone**).

17.3.5 If a BM Transformation Milestone is not achieved in accordance with the timescales set out in the Transformation Plan due to the non-achievement of a MoD Milestone or a Joint Milestone (except to the extent this was due to the non-achievement of a BM Milestone) Babcock Marine shall not be liable for the failure to meet the BM Transformation Milestone and such BM Transformation Milestone shall be deemed achieved for the purposes of Clauses 22 (*Incentivisation*) and 0 (*Failure to achieve BM KPIs*) to the extent directly due to the failure by

MoD to meet an MoD Transformation Milestone or to comply with MoD's responsibilities in respect of a Joint Transformation Milestone. Failure by MoD to achieve an MoD Milestone or a Joint Milestone shall be reported in accordance with the terms of this Contract but shall have no other consequences, and accordingly MoD shall have no liability to Babcock Marine in respect of any such failure, other than as stated in this Clause 17.3.5.

17.3.6 Babcock Marine shall be responsible for maintaining and updating the Transformation Plan on behalf of the Parties throughout the Contract Period, submitting any updated revision of the Transformation Plan to the AcMT for its review and submitting each updated revision of the Transformation Plan to the Steering Group for endorsement as part of each Annual Review. The Transformation Plan shall include as a minimum:

- (a) proposals in relation to any additional activities and Transformation Milestones for the continued achievement of Transformation;
- (b) proposals for measuring and monitoring any additional inputs and outputs;
- (c) proposals for implementing;
- (d) related updates to the Transformation KPI(s); and
- (e) updates to reflect any Best Practice Comparisons that Babcock Marine and MoD agrees to carry out under Clause 20.1 and any changes, actions and processes that Babcock Marine and MoD agrees to implement in accordance with Clause 20 (*Best Practice Comparison*) and Schedule 7 (*Best Practice Comparison*) including as referred to in Clause 17.3.8.

If the Parties are unable to reach agreement in relation to any matter to which this Clause 17.3.6 applies after escalation to the POG in accordance with the provisions of Schedule 10 (*Governance*) the matter shall not be capable of reference to external dispute resolution.

17.3.7 The Transformation Plan must not divulge any Secret Matter.

17.3.8 If either Party, in the light of an Annual Review and having taken regard to:

- (a) any Best Practice Comparison carried out pursuant to Clause 20.1;
- (b) any recommendations of the Independent Transformation Adviser appointed in accordance with Clause 25 (*Governance*) and Schedule 10 (*Governance*);

is of the view that realisation of the Transformation Milestones provided for in the Transformation Plan may be insufficient to enable the Babcock Marine Group or MoD to meet the Transformation Objectives and the Commercial Purpose, such Party shall notify the other Party and the Parties shall then use all reasonable endeavours to agree how to address the concerns raised by the first Party in the Transformation Plan. If the Parties are unable to reach agreement in relation to any matter to which this Clause 17.3.8 applies after escalation to the POG in accordance with the provisions of Schedule 10 (*Governance*) the matter shall not be capable of reference to external dispute resolution.

17.3.9 Babcock Marine shall comply with the Transformation Plan approved and amended from time to time in accordance with this Contract. Accordingly:

- (a) Babcock Marine shall amend Babcock Marine's Strategic Plan if necessary to ensure there is no conflict between Babcock Marine's Strategic Plan and the Transformation Plan; and
- (b) Babcock Marine shall, where necessary to comply with the Transformation Plan, submit Business Case Proposals in accordance with Clause 19 (*Business Case Proposals*) in relation to proposed measures reflected in the Transformation Plan.

17.3.10 MoD shall:

- (a) use its reasonable endeavours to ensure that its internal plans and actions support the Transformation Plan; and
- (b) consider in good faith Business Case Proposals in relation to proposed measures reflected in the Transformation Plan which are submitted by Babcock Marine to the AcMT, in accordance with the requirements of Clauses 19.4 (*AcMT Review of Business Case Proposal*) and 19.5 (*Business Case Proposal Decisions*).

17.3.11 Progress against the Transformation Milestones and the Transformation Plan shall be monitored by the AcMT which shall report to the Steering Group on progress against the Transformation Milestones and the Transformation Plan in each Annual Review and at each Major Review.

17.3.12 At each Major Review the achievement of the BM Transformation Milestones, the MoD Transformation Milestones and the Joint Transformation Milestones shall be reviewed by the Steering Group which shall determine the BM Transformation Milestones, the MoD Transformation Milestones and the Joint Transformation Milestones for the next Period in accordance with Clause 28 (*Major Reviews*). If the Parties are unable to reach agreement in relation to the BM Transformation Milestones, the MoD Transformation Milestones and the Joint Transformation Milestones for the next Period, the matter shall not be capable of reference to external dispute resolution.

17.4 No obligation to Order new or additional Work or to fund transformation activities

Without prejudice to Clauses 10 (*Scope Allocation*) and 17.3.10 and Schedule 4 (*Scope*), the Parties agree and acknowledge that nothing in this Clause 17 (*Transformation*) or the Transformation Plan shall oblige MoD to:

- (a) Order any new or additional Work;
- (b) allocate any additional Nominated Roles, Collaborative Roles or Potential Roles;
- (c) enter into any new contract; or
- (d) provide funding or any other financial contribution to Babcock Marine to enable it to implement any transformation activities (except where MoD has expressly agreed to fund a particular transformation activity under the agreed Transformation Plan or a BM Contract).

18 Strategic Rationalisation

18.1 Strategic Rationalisation Strategy

18.1.1 Without prejudice to any existing rights or obligations of the Parties as at the date of this Contract, MoD intends to balance its funding of and obligations concerning the infrastructure in the maritime sector, including Babcock Marine's infrastructure within the Sector, with the current and future needs of the Royal Navy.

18.1.2 The Parties acknowledge that, based on current expectations, there is excess infrastructure capacity in the Sector.

18.1.3 MoD's current intentions in this context are reflected in the MCP Headmark and Maritime Support Principles and the Key MCP Decisions. These envisage the increasing concentration over time of activity in specific locations in order to achieve best Value For Money in the provision of infrastructure to support the Royal Navy. This may decrease or increase Babcock Marine's aggregate ToBA Work over time and/or change the balance of ToBA Work between Babcock Marine's Businesses.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18.4 Status of MoD decisions etc

18.4.1 None of the MCP Headmark and the Maritime Support Principles, the Key MCP Decisions or any other contents of the document referred to in the definition of Key MCP Decisions shall in any respect bind MoD or Babcock Marine or be capable of being any representation capable of being relied upon by any Party. No warranty is given in relation to them. MoD may revise any of them and/or act or make decisions inconsistent with them at any time, in its absolute and sole discretion. They are, however, provided for Babcock Marine's information of MoD's current thinking. This Clause 18.4.1 is without prejudice to paragraph 2.4.6 of Schedule 4 (*Scope*).

18.4.2 If and to the extent that MoD revises any of the MCP Headmark and the Maritime Support Principles or the Key MCP Decisions and requires this to be reflected in a change to Transformation Plan or the [REDACTED], it shall inform Babcock Marine and the matter shall be negotiated pursuant to Clause 18.3.

18.5 Status of Transformation Plan and [REDACTED]

Nothing in the Transformation Plan or the [REDACTED] shall be construed as creating, affirming or enhancing any liability of MoD or Babcock Marine over and above that set in BM Contracts as they may from time to time be amended unless and to the extent that

the Parties agree and the Transformation Plan or the [REDACTED] provides otherwise.

19 Business Case Proposals

19.1 Identification of Potential Initiatives

19.1.1 To implement the Transformation Plan and the Transformation Objectives, either Party may at any time and from time to time during the Contract Period propose initiatives to achieve Authority Benefits additional to the then Guaranteed Benefits or other changes or initiatives for the mutual benefit of the Parties.

19.1.2 Any efficiency measures proposed under Clause 19.1.1 shall be in addition to any initiatives already identified for inclusion in the Benefits Realisation Plan as at the date of the proposal.

19.2 Submission of Business Case Proposal

19.2.1 If either Babcock Marine or MoD makes a proposal under Clause 19.1.1, the Parties shall promptly meet to discuss the proposal through the AcMT (including MoD's views as to the MoD's approvals process which will need to be followed in order to secure the Final BC Approval) and in good faith seek to agree:

- (a) whether the proposal should be developed into a Business Case Proposal;
- (b) a reasonable timeframe for Babcock Marine to develop the Business Case Proposal in accordance with Clause 19.3;
- (c) a reasonable timeframe for the Steering Group to review the Business Case Proposal and for the MoD Steering Group representatives to approve or reject the Business Case Proposal, or refer it to a further MoD approvals process, each in accordance with Clause 19.5;
- (d) the contributions each Party should make towards the Business Case Proposal and the timeframes for doing so;
- (e) the format for the Business Case Proposal;
- (f) arrangements for the recovery by Babcock Marine of the costs of development of the Business Case Proposal; and
- (g) any arrangements in relation to the ownership or licence of Intellectual Property Rights in respect of any Business Case Proposal or in relation to the output of the Business Case Proposal,

(a **Business Case Development Decision**).

19.2.2 If a Business Case Development Decision is made in accordance with Clause 19.2.1, Babcock Marine shall develop and submit a Business Case Proposal as agreed in accordance with 19.2.1 containing the information required under 19.3 and in such form (if any) that the AcMT requires, endorsed by one of the directors of Babcock Marine.

19.3 Content of Business Case Proposal

Each Business Case Proposal shall provide an outline of the proposed initiative supported by a 3-point estimate of the estimated benefits that could be generated from the initiative (worse case/most likely/best case) and contain Babcock Marine's proposals in relation to the following (to the extent relevant), together with such other additional information as Babcock Marine considers appropriate, or MoD requires, to be included:

- (a) title;
- (b) originator;
- (c) overview;
- (d) objectives;
- (e) cost base addressed by initiative;
- (f) implementation timetable (with proposed milestones), process and actions;
- (g) an estimate of all costs associated with delivery including any Severance Costs, rationalisation costs or other implementation costs and (if required by the MoD), a fixed price for such costs, together with proposals as to how these costs should be funded;
- (h) the level of projected benefits net of all costs;
- (i) risks (financial or non-financial);
- (j) any other benefits (non financial);
- (k) proposed benefits realisation arrangements;
- (l) linkage/alignment to other initiatives;
- (m) assumptions;
- (n) dependencies (including owners and dates);
- (o) arrangements in relation to the ownership or licence of Intellectual Property Rights in respect of or in relation to the output of the Business Case Proposal;
- (p) the approvals required from both Parties;
- (q) any appropriate Transformation Milestones for inclusion in the Transformation Plan relating to the implementation of that Business Case Proposal;
- (r) proposed measures for benefits tracking;
- (s) stakeholders (and necessary actions);
- (t) contractual arrangements for implementation including suggestions as to: how implementation could be addressed under existing BM Contracts, whether any new contractual arrangements would be required and any proposed arrangements with third parties and highlighting any other contractual issues;
- (u) where any Business Case Proposal proposes any costs to be borne by or recoverable from the MoD, proposals as to the process by which such costs shall be borne by or recovered from the MoD whether under a nominated BM Contract or otherwise;
- (v) anticipated Normalisation for the purposes of Schedule 12 (*Pricing and Incentivisation*); and
- (w) recommendation/summary.

19.4 AcMT Review of Business Case Proposal

- 19.4.1 The AcMT shall review each Business Case Proposal upon receipt from Babcock Marine. As part of this review, the AcMT will (without limitation to such other review steps that it considers appropriate):
- (a) identify and consult with relevant MoD and Babcock Marine Group stakeholders and subject matter experts;
 - (b) identify key issues and/or decisions that Babcock Marine and/or the MoD need to make;
 - (c) identify risks and dependencies associated with the proposal;
 - (d) discuss the MoD's Approval Process that will need to be followed in order to secure the Final BC Approval; and
 - (e) where any Business Case Proposal proposes any costs to be borne by or recoverable from the MoD, review and make a recommendation to the Steering Group on:
 - (i) the process by which such costs shall be borne by or recovered from the MoD whether under a nominated BM Contract or otherwise; and
 - (ii) the contractual arrangements to implement that Business Case Proposal.
- 19.4.2 The AcMT will also consult with CAAS to determine whether the proposal is reasonably likely to derive the projected benefits.
- 19.4.3 Where required by the AcMT, Babcock Marine shall work with the AcMT to clarify and/or amend the Business Case Proposal.

19.5 Business Case Proposal - Decisions

- 19.5.1 On completion of its review under Clause 19.4, the AcMT shall submit the Business Case Proposal to the Steering Group, with its recommendations.
- 19.5.2 Having received the AcMT's report and any AcMT recommendation, the Steering Group shall review each Business Case Proposal and MoD representatives on the Steering Group shall, having taken account of the views of the Steering Group:
- (a) accept the Business Case Proposal; or
 - (b) reject the Business Case Proposal by serving written notice on Babcock Marine (including the reasons for rejecting the Business Case Proposal); or
 - (c) if MoD requires any further MoD Approval Process to be followed, refer the Business Case Proposal into that MoD Approval Process.
- 19.5.3 The following shall constitute a "**Final BC Approval**":
- (a) Acceptance of a Business Case Proposal by the Steering Group pursuant to Clause 19.5.2(a); or
 - (b) A final approval given by MoD pursuant to its further MoD Approval Process referred to in Clause 19.5.2(c).
- 19.5.4 A Final BC Approval may specify a date or a further event or events (such as the future execution of a BM Contract to implement the Business Case Proposal) the occurrence of which shall render the Business Case Proposal an Approved Business Case Proposal. If it does so, the occurrence of that date or event (or the last event) shall have that effect. If it

does not, the Final BC Approval shall render the Business Case Proposal an Approved Business Case Proposal.

19.5.5 Upon a Business Case Proposal becoming an Approved Business Case Proposal under Clause 19.5.4:

- (a) the Guaranteed Benefits shall be amended in accordance with any proposals in the Approved Business Case Proposal to do so;
- (b) any agreed contractual amendments shall be implemented as agreed in the Approved Business Case Proposal;
- (c) any cost to be borne by or recoverable from MoD as agreed in the Approved Business Case Proposal shall be addressed in accordance with the Approved Business Case Proposal; and
- (d) the Approved Business Case Proposal shall be added to the Benefits Realisation Plan.

19.5.6 A Business Case Proposal becoming an Approved Business Case Proposal shall not affect the Nominated Roles and Collaborative Roles which shall be as described in Clause 10 (*Scope Allocation*) and Schedule 4 (*Scope*) unless a change to a Nominated Role or Collaborative Role is agreed as part of an Approved Business Case Proposal.

19.5.7 The reasons that the MoD representatives on the Steering Group may reject a Business Case Proposal may include:

- (a) not being satisfied that any cost benefit resulting from the proposed efficiency measures identified will constitute benefits that are not already benefits to be delivered pursuant to the Benefits Realisation Plan or otherwise through a pre-existing Approved Business Case Proposal; or
- (b) the Business Case Proposal contains unacceptable MoD Dependencies or costs;
- (c) concerns that the efficiency measures proposed may prejudice the ability of Babcock Marine:
 - (i) to meet the Transformation KPI or otherwise further the achievement of the Commercial Purpose; or
 - (ii) maintain its Key Industrial Capabilities or, if no KICs have been agreed pursuant to Clause 33 (*Key Industrial Capability*), maintain its ability to contribute to the MoD's sovereign capability in the Sector as required by MoD from time to time; or
 - (iii) carry out any of its other obligations under this Contract, any BM Contract or any Multi-Party Contract; or
- (d) the Business Case Proposal involves measures which would be, or could have an effect, contrary to the MoD's strategy or policy.

19.5.8 Upon notification that the Steering Group has rejected a Business Case Proposal, Babcock Marine shall be entitled to revise any Business Case Proposal to answer the Steering Group's objections and re-submit the same for consideration afresh as a Business Case Proposal for the purposes of this Clause.

19.5.9 The Steering Group and the AcMT shall be entitled to use the BMECS or ToBA Rates Model (if applicable) to assess any Business Case Proposal but the MoD representatives on the Steering Group shall be entitled to approve or reject a Business Case Proposal pursuant to

Clause 19.5.2 whether or not the BMECS or ToBA Rates Model as applicable demonstrates that the proposed efficiency measure will produce cost savings to the MoD.

20 Best Practice Comparison

- 20.1 The Parties agree that Best Practice Comparisons shall be carried out by one or more Best Practice Expert(s) during the Contract Period in accordance with the processes and other requirements agreed by the Parties from time to time under Schedule 7 (*Best Practice Comparison*).
- 20.2 The Parties shall agree the general scope and purpose of the Best Practice Comparison Programme for each Period in accordance with the Transformation Plan and subsequently Babcock Marine shall propose a programme for Best Practice Comparisons for agreement with MoD (through the Steering Group) in accordance with the Transformation Plan which shall include in respect of each proposed Best Practice Comparison:
- (a) the purpose of the relevant Best Practice Comparison;
 - (b) the scope of the relevant Best Practice Comparison; and
 - (c) the timescale for the completion of the relevant Best Practice Comparison.
- 20.3 Babcock Marine shall maintain and update the programme agreed in accordance with Clause 20.2, shall provide any updated versions to the Steering Group for review and agreement with MoD and shall provide a programme for Best Practice Comparison for the Subsequent Period prior to each Major Review. Babcock Marine shall include any Best Practice Comparisons proposed by the MoD that are acceptable to Babcock Marine in the programmes and updated programmes it issues in accordance with this Clause and shall take into account the Steering Group's recommendations about the areas that Best Practice Comparisons should cover and the optimal timing of particular Best Practice Comparisons.
- 20.4 In any case where such Best Practice Comparisons are carried out in accordance with Clause 20.1 then Babcock Marine shall procure that the Best Practice Expert(s) delivers a report to the AcMT on:
- (a) the results of the Best Practice Comparison; and
 - (b) its or their recommendations as to the proposed changes, actions and processes that could be taken and adopted by Babcock Marine and/or MoD;
- and in conjunction with the delivery of the Best Practice Expert(s) report;
- (c) Babcock Marine shall provide the AcMT with its own assessment of the report and the validity of any recommendations made.
- The AcMT shall then review this report and make any additional recommendations it may have (if any) on the actions that should be taken by Babcock Marine and/or MoD as a result of this report to the Steering Group.
- 20.5 Upon receipt of a Best Practice Expert(s)' report and AcMT's recommendations (if any) under Clause 20.4, MoD and Babcock Marine shall review and use all reasonable endeavours to agree, through the Steering Group, whether the Best Practice Expert(s) and/or AcMT's recommendations should be implemented by Babcock Marine and if so, how and to what extent these recommendations will be implemented (including a timeline for implementing these recommendations).
- 20.6 Babcock Marine's:

- (a) compliance with this Clause 20 (*Best Practice Comparison*) and Schedule 7 (*Best Practice Comparison*); and
- (b) implementation of any change, action and process that Babcock Marine has agreed to take or adopt under Clause 20.5,

shall be measured as part of the Transformation KPI in accordance with the requirements of Schedule 8 (*Performance Management*).

20.7 In addition to any Best Practice Comparisons that may be carried out in accordance with Clause 20.1, the Parties have agreed to carry out relationship comparisons in accordance with Schedule 9 Part 2 (*Relationship Management Plan*) and Schedule 6 (*Transformation and Rationalisation*).

Part 6 – Performance and Incentivisation

21 Performance and Key Performance Indicators

- 21.1 Babcock Marine's performance under this Contract shall be forecast and measured against the Babcock Marine Key Performance Indicators (**BM KPIs**) and Babcock Marine and MoD's performance under this Contract shall be forecast and measured against the joint Key Performance Indicator (**Joint KPI**), in both cases in accordance with the requirements of Schedule 8 (*Performance Management*).
- 21.2 Subject to any changes agreed between the Parties, whether in accordance with Clause 27 (*Annual Review*), Clause 28 (*Major Reviews*) or otherwise, the KPIs, the BM KPIs and the Joint KPI to be measured are as described in Schedule 8 (*Performance Management*) under the headings:

BM KPIs

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Joint KPI

- (e) Improvements in the health of the strategic relationship between Babcock Marine and MoD.
- 21.3 The Parties have agreed to develop an additional (BM) KPI relating to continuous improvement of performance which shall apply during the Third Period and the Fourth Period. Development of this KPI shall be agreed in accordance with the Transformation Plan, including the application of Clauses 22 (*Incentivisation*) and 0 (*Failure to achieve BM KPIs*). The continuous improvement KPI shall be incorporated into the incentivisation and termination regimes to the extent agreed between the Parties, in accordance with that development.
- 21.4 The Parties may agree Performance Indicators from time to time in accordance with Schedule 8 (*Performance Management*).
- 21.5 Performance by Babcock Marine and MoD against the respective BM KPIs, Joint KPI and PIs that apply to them will be:
- (a) monitored by the AcMT on an on-going basis;
- (b) reported on by the AcMT to the Steering Group on a quarterly basis throughout the Contract Period; and
- (c) reported on by the AcMT to the Steering Group at each Annual Review and each Major Review.
- 21.6 Performance by Babcock Marine against the BM KPIs under each of the headings referred to in Clause 21.2 shall, if required by MoD, be subject to third party review as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 Incentivisation

The provisions of Part 5 of Schedule 12 (*Pricing and Incentivisation*) shall apply to determine Babcock Marine's entitlement, if any, to ARP. If Babcock Marine's performance against any one or more BM KPI (excluding the BM KPI #1 [REDACTED]) has been assessed as red in respect of any Financial Year, then the ARP shall be reduced in accordance with the provisions of Part 5 of Schedule 12 (*Pricing and Incentivisation*).

23 Failure to achieve BM KPIs

23.1 If Babcock Marine's performance against any BM KPI is forecast as amber or red or has been assessed as red in relation to any BM KPI this shall be included in the next report to the Steering Group under Clause 21.5 (*Performance and Key Performance Indicators*) and the Steering Group shall conduct a rectification review following which Babcock Marine shall:

- (a) put in place a rectification plan designed to ensure that Babcock Marine achieves a level of performance which is assessed as green for the relevant BM KPI(s) within six calendar months or such other period as the Parties may agree (the **Rectification Period**);
- (b) put in place additional measures to enable the Parties to monitor Babcock Marine's performance over the Rectification Period against the relevant BM KPI(s); and
- (c) report to the Steering Group at the end of the Rectification Period as to whether or not Babcock Marine has achieved a level of performance which is assessed as green for the relevant BM KPI(s), with supporting information as reasonably required by MoD.

23.2 Babcock Marine's performance in respect of the relevant BM KPI shall be assessed as either green or red at the Annual Review in accordance with Schedule 8 (*Performance Management*).

23.3 If in respect of any Period, Babcock Marine's performance in respect of each of the BM KPIs, excluding KPI #1 [REDACTED] and KPI #2 [REDACTED] is assessed as red in accordance with Schedule 8 (*Performance Management*) in respect of more than [REDACTED] of the total potential number of red assessments for that Period, (the **KPI Default Threshold**) this shall be a Babcock Marine Default and MoD shall be entitled to exercise all or any of its rights under Clause 43 (*MoD remedies for Babcock Marine Default*). For the purposes of this Clause 23.3:

- (a) the total potential number of red assessments for a Period shall be the number of Financial Years in the Period, multiplied by the number of BM KPIs, excluding the KPI #1 [REDACTED] and KPI #2 [REDACTED] and
- (b) MoD shall only be entitled to exercise any right which arises under this Clause 23.3 within one year from the later of the date on which the Steering Group is notified under Clause 21.5 (*Performance and Key Performance Indicators*) that the KPI Default Threshold has been reached, and the completion of the Major Review for the relevant Period.

23.4 For the purposes of Clauses 22 (*Incentivisation*) and 23.3 (*Failure to achieve BM KPIs*) and Part 5 of Schedule 12 (*Pricing and Incentivisation*) reference to any BM KPI as red means that BM KPI has achieved actual red (as opposed to forecast red) as indicated in the table in paragraph 1.2 of Schedule 8 (*Performance Management*).

Part 7 – Partnering and governance arrangements

24 Partnering

General Partnering obligations

24.1 In seeking to achieve the Commercial Purpose in accordance with Clause 8 (*Purpose*) the Parties shall each (without limitation):

- (a) comply with the specific partnering obligations set out in Clause 24.2; and
- (b) seek to act at all times and from time to time in accordance with the Partnering Principles set out in Schedule 9 (*Partnering*).

Specific partnering obligations

24.2 The Parties shall each additionally:

- (a) collaborate to the maximum extent possible and consistent with all applicable Legislation;
- (b) establish and maintain within their organisations internal arrangements, including as to the deployment, leadership, training and development of personnel, sufficient at all times to ensure that:
 - (i) the relationship contemplated by this Contract functions fully and efficiently in the manner best calculated to achieve the Commercial Purpose; and
 - (ii) all its personnel engaged in relation to the management of the relationship between the Parties understand and act in accordance with this Contract, in particular the requirements of this Clause 24 (*Partnering*);
- (c) implement the Relationship Management Plan and continuously monitor and improve over time the effectiveness of the Relationship Management Plan in accordance with Part 2 of Schedule 9 (*Partnering*);
- (d) continuously seek to improve the efficiency of the relationship between them in order to achieve Transformation;
- (e) where:
 - (i) this Contract requires any: proposal or decision to be made; Change to be considered; Major Review to take place; plan to be developed; matter to be agreed; or that any administrative process be followed; or
 - (ii) this Contract does not so require but the Parties are considering how to proceed in relation to any matter,

proactively seek to do so in the manner best calculated to achieve the Commercial Purpose;
- (f) operate in all their dealings with each other with the maximum appropriate transparency and openness as necessary to achieve the Commercial Purpose to the extent consistent with compliance with law and (in MoD's case) public policy and MoD's procurement strategy from time to time; and
- (g) in particular, cooperate to demonstrate the extent to which, each and all aspects of the relationship between the Parties, and each BM Contract, delivers Value for Money to the MoD.

- 24.3 The impact of the partnering relationship contemplated by this Clause 24 (*Partnering*) shall be measured in accordance with the performance management provisions at Clause 21 (*Performance and Key Performance Indicators*) and Schedule 8 (*Performance Management*).
- 24.4 The Steering Group shall appoint, subject to the ongoing agreement of the Steering Group, an Independent Partnering Adviser who shall have the role of advising the Parties jointly and individually on the extent to which they are complying with this Clause 24 and Schedule 9 (*Partnering*).

25 Governance

The Parties shall comply with the provisions of Schedule 10 (*Governance*) which (amongst other things):

- (a) establishes the POG, the Steering Group and the AcMT, which shall discharge the functions given to them in this Contract;
- (b) provides for how the Parties shall, through the POG, the Steering Group and the AcMT, transact formal business and make decisions in relation to this Contract; and
- (c) provides for the establishment of an Independent Transformation Adviser (ITA) function reporting to DSM (MoD) and the Chief Executive (Babcock Marine) with the role of advising the Parties jointly and individually on their implementation and governance of this Contract, including the extent to which they are, each and collectively, achieving and might better achieve the Commercial Purpose.

26 Strategic Planning Framework

26.1 General

Babcock Marine and MoD shall undertake joint strategic planning in accordance with the provisions of this Clause 26 (*Strategic Planning Framework*). In addition, each Party shall be entitled to conduct its own strategic planning.

26.2 Strategic Planning Objective

The Strategic Planning Objective is that:

- (a) subject to Legislation and MoD's discretion to apply its procurement strategy and competition strategy from time to time, Babcock Marine should be sufficiently informed as to MoD's maritime strategic plans as to be able to plan the future of its business with a reasonable degree of assurance and to inform Transformation;
- (b) subject to Legislation, MoD should be sufficiently informed as to Babcock Marine's business so as to be able to implement its strategic plans with a reasonable degree of assurance as to the cost and other strategic implications of those strategic plans; and
- (c) MoD and Babcock Marine each use all reasonable endeavours to ensure that, subject to this Clause 26 (*Strategic Planning Framework*), information sharing is as open and transparent as possible.

26.3 MoD to provide information

26.3.1 The MoD shall seek to achieve the Strategic Planning Objective generally and specifically by:

- (a) generally informing Babcock Marine as to its maritime strategic plans;
- (b) providing the following information to Babcock Marine

in the last month of each Contract Year, or at such other time as may be agreed, a general overview of MoD's then current expectations as to substance, process and timing concerning:

- (i) future BM Contracts which may either be awarded to Babcock Marine in accordance with Part 3 (*Scope*), or competed in accordance with the MoD's procurement strategy, including in each case, details of the likely time at which such award may take place;
- (ii) the potential renewal, extension or replacement or other potential strategic decisions which fall to be made in relation to each BM Contract;
- (iii) MoD's view of the status of each existing BM Contract, including any proposals MoD is considering for the rescheduling or substantial amendment of any existing BM Contract; and
- (iv) its medium term expectations as to workflow,

provided that although MoD shall endeavour to provide such information in a manner which shall not preclude Babcock Marine from competing for such works MoD shall assume no liability (legal or otherwise) in the event that Babcock Marine is so precluded; and

- (c) providing Babcock Marine with a medium to long term forward looking indicative workload and programme.

26.3.2 MoD shall be entitled from time to time to withhold from the information supplied pursuant to this Clause 26 (*Strategic Planning Framework*) such information as it sees fit on legal or policy grounds, the fact that information is MoD Confidential Information or for national security reasons.

26.4 Babcock Marine to provide information

Babcock Marine shall seek to achieve the Strategic Planning Objective generally and specifically by:

- (a) providing to MoD in the last month of every Contract Year a complete copy of Babcock Marine's Strategic Plan and, from time to time, a complete copy of every amendment to or replacement of Babcock Marine's Strategic Plan forthwith on the same being adopted; and
- (b) complying with its obligations in Clause 28 (*Major Reviews*).

26.5 Confidentiality of information supplied

26.5.1 Babcock Marine may withhold any information that if disclosed to MoD, would cause Babcock Marine significant commercial disadvantage or material financial loss subject to Babcock Marine's obligations under Clause 30 (*BMECS*), 30A (*ToBA Rates Model*) 31 (*Babcock Marine Records*) and Schedule 13 (*Open Book Accounting Procedures*).

26.5.2 Babcock Marine shall comply with any instructions of MoD in relation to the security and protection of the confidentiality of information supplied by MoD pursuant to this Clause 26.

26.6 Strategic discussion

26.6.1 The Steering Group shall at the first Steering Group meeting in each Contract Year discuss the information supplied by MoD and Babcock Marine pursuant to this Clause 26 (*Strategic Planning Framework*). The discussion shall consider how best each of the Commercial Purpose and Strategic Planning Objective may be achieved, in light of the information exchanged.

26.6.2 The Steering Group may require MoD to amplify or explain in greater detail all or any of the information supplied by MoD pursuant to this Clause 26 (*Strategic Planning Framework*) and MoD shall, to the greatest extent which is consistent with Legislation and which the MoD considers, in its discretion, to be consistent with its procurement strategy and competition strategy from time to time, do so with a view to achieving the Strategic Planning Objective.

26.6.3 The Steering Group may require Babcock Marine to:

- (a) amplify or explain in greater detail all or any of the information supplied by Babcock Marine pursuant to this Clause 26 (*Strategic Planning Framework*);
- (b) analyse and comment and advise MoD on any matter (whether or not contained in information supplied by either Party) which at any time MoD considers to merit further analysis; and
- (c) in particular, advise MoD of the cost and other implications of any potential decision which MoD is considering,

and Babcock Marine shall as soon as reasonably practicable after being required to do so provide its best analysis and advice on that matter in such form as may be required with a view to best:

- (d) achieving the Strategic Planning Objective; and
- (e) establishing how the Commercial Purpose might best be achieved.

26.6.4 Babcock Marine's analysis and advice shall, if required by MoD, be supported by detailed runs of the BMECS, ToBA Rates Model or other relevant models together with a commentary by Babcock Marine on the output of the relevant models, in particular as to the extent to which runs of the model will accurately predict the cost to be borne by MoD of any scenario, if MoD decides to implement that scenario.

26.7 Common tools

MoD and Babcock Marine will work together towards the common aspiration of using common tools, joint workflow and joint cost models in order to achieve the Strategic Planning Objectives.

27 Annual Review

27.1 Subject to Clause 27.6, in each Financial Year, the Annual Review shall be conducted by the AcMT in respect of the previous Financial Year (with the first Annual Review to be conducted in respect of the period 1 April 2009 until 31 March 2010) in accordance with the timings in this Clause 27 (*Annual Review*).

27.2 Each Party shall provide information for each Annual Review as reasonably requested by the AcMT within such timeframes as are necessary to enable each Annual Review to be carried out in accordance with this Clause 27 (*Annual Review*).

27.3 The AcMT, using input provided by the Parties in accordance with Clause 27.2, shall (unless otherwise agreed) by the end of the second quarter of each Financial Year prepare a report which shall set out its recommendations in relation to the following information:

- (a) the Actual Authority Benefits and Realised Authority Benefits in respect of the previous Financial Year;
- (b) the performance of Babcock Marine and MoD against the BM KPIs and the Joint KPIs recommendations for any changes or additions to the KPIs (whether BM KPIs, Joint KPIs, or potential MoD KPIs);

- (c) the performance of Babcock Marine against the cumulative Guaranteed Benefits;
 - (d) the performance of Babcock Marine and MoD in relation to the Relationship Management Plan;
 - (e) the performance of Babcock Marine and MoD in relation to the Transformation Plan and a review of the Transformation Plan for the current Financial Year;
 - (f) the performance of Babcock Marine in relation to the Benefits Realisation Plan; and
 - (g) recommendations for addressing any issues identified in relation to the information provided under paragraphs (a) to (f) above.
- 27.4 The AcMT shall present its findings in relation to each Annual Review to the Steering Group and the Steering Group shall seek additional information and raise any queries and by the end of the seventh calendar month of the relevant Financial Year:
- (a) endorse, if satisfied, any recommendations made; and
 - (b) make any consequential amendments necessary to the report referred to in this Clause 27 (*Annual Review*) and the outputs referred to in Clauses 27.3(a) to 27.3(f).
- 27.5 If the Steering Group is unable to make a decision in relation to any recommendations made by the AcMT by the end of the eighth calendar month of the relevant Financial Year, the matter shall be referred to the POG for resolution and the POG must come to a decision by the end of the ninth month.
- 27.6 In any Financial Year that a Major Review is to be conducted, the AcMT shall not be required in addition to undertake an Annual Review.

28 Major Reviews

28.1 General

28.1.1 A Major Review shall:

- (a) commence at the beginning of the first quarter of the Financial Year [REDACTED] and be completed no later than the end of the third quarter of such Financial Year; and
- (b) thereafter, commence at the beginning of the financial quarter starting on or after commencement of a Re-baselining Year and complete at the end of the second subsequent financial quarter,

(the **Major Review Period**).

28.1.2 Each Party shall provide such information as is reasonably requested by the AcMT for each Major Review within such timeframes as are necessary to enable each Major Review to be carried out in accordance with this Clause 28 (*Major Reviews*).

28.1.3 Inputs for each Major Review as required in accordance with Clause 28.1.4 shall be provided as soon as reasonably practicable and in any event by no later than (i) the start of the fourth calendar month of the Major Review Period for non-financial inputs; and (ii) end of the sixth calendar month for financial inputs, which in the case of the Review to be conducted in [REDACTED] shall be 1 July [REDACTED] and 30 September [REDACTED] respectively.

28.1.4 Inputs for the Major Review shall be as reasonably required by MoD (after consulting with Babcock Marine on any comments it may have on such inputs) in the context of the requirements in this Contract and may include but not be limited to the following:

- (a) the information required under Clause 27 for each Annual Review carried out in respect of the period covered by the Major Review;
- (b) the effective operation of and all relevant information pursuant to Schedule 12 (*Pricing and Incentivisation*);
- (c) any proposed changes to Nominated Roles, Guaranteed Benefits, BM KPIs, Joint KPIs or PIs for the New Period;
- (d) a report on the achievement of the resolution of the issues set out or referred to in Parts 1 and 2 of Schedule 3 (*Sale of Dockyard Agreements*) and any other issues subsequently identified by the Parties together with proposals for addressing any outstanding issues which the Parties agree will be resolved during the New Period;
- (e) a high level review of this Contract, its management, operation and the overall health of the relationship between the Parties and the extent to which it is achieving the Commercial Purpose;
- (f) the details of any changes to be made to this Contract or to any BM Contract;
- (g) the revised Transformation Plan, Benefits Realisation Plan and Relationship Management Plan;
- (h) any Best Practice Comparisons to be carried out in the New Period in accordance with Clause 20 (*Best Practice Comparison*); and
- (i) any other plans in place or being developed.

28.2 Objectives of Major Review

Each Major Review shall be conducted by the AcMT in the manner reasonably determined by the Parties and shall include any of the following:

- (a) a consideration of all items included in each Annual Review delivered to the Steering Group since the Commencement Date or the previous Major Review, as updated by the input provided for the current Major Review in accordance with Clause 28.1.4;
- (b) a consideration of the overall health of the relationship between the Parties which may include:
 - (i) the extent to which this Contract is achieving the Commercial Purpose and the Strategic Planning Objective;
 - (ii) the outcome of any review carried out under any BM Contract since the previous Major Review including, for the 2012 Major Review, the WSMI Reviews;
 - (iii) the output from any Best Practice Comparison carried out since the Commencement Date or the previous Major Review as applicable;
 - (iv) a detailed examination of all strategies, policies, processes and relationships involved in achieving the outcomes specified in this Contract for the period up to the next Major Review;
 - (v) a review of and report of performance against the Transformation Plan, the Benefits Realisation Plan and the Relationship Management Plan; and
 - (vi) a review of any other plans being developed under this Contract;

- (c) a determination of the position under this Contract for the New Period including the following items:
 - (i) such of the matters to be agreed or determined pursuant to Schedule 12 (*Pricing and Incentivisation*) as the Parties may agree to include in the Major Review
 - (ii) the date for the next Major Review in accordance with Clause 28.1.1, including the date for completion of that Major Review;
 - (iii) the requirements for the inputs for any subsequent Major Review which shall, unless otherwise agreed by MoD, include each of the inputs specified in Clause 28.1.4 as applicable to that subsequent Major Review; and
- (d) a consideration of any additional arrangements for the New Period in the light of the Transformation Plan for the New Period, any Business Case Proposals, discussions between the Parties and the then current Illustrative Programme which may include:
 - (i) changes which might be made to the Nominated Roles;
 - (ii) additional Guaranteed Benefits;
 - (iii) changes to the BM KPIs; and
 - (iv) any changes which should be made to this Contract and/or any BM Contract.

28.3 Output of Major Review

28.3.1 The AcMT shall produce a report for the Steering Group as soon as reasonably practicable and in any event no later than the start of the eighth calendar month of the Major Review Period which shall include:

- (a) recommendations in relation to the matters referred to in Clause 28.3.2 (the **Mandatory Outputs**); and
- (b) proposals in respect of the future relationship of the Parties under this Contract, including in respect of the matters listed in Clause 28.2(d), and/or proposals to improve aspects of the operation of (or the Parties' performance under) this Contract and/or BM Contracts in the light of the inputs to the AcMT, the objectives of the Major Review and any discussions between the Parties on such matters (the **Proposals**).

28.3.2 The matters to be included in the Mandatory Outputs shall be:

- (a) the date for the next Major Review, including the date for completion of that Major Review;
- (b) all relevant matters under Schedule 12 (*Pricing and Incentivisation*) as they relate to the New Period; and
- (c) the requirements for the inputs for any subsequent Major Review which shall, unless otherwise agreed, include each of the inputs specified in Clause 28.1.4 as applicable to that subsequent Major Review,

28.3.3 If the AcMT is unable to reach agreement on any of the outputs for any Major Review, it shall indicate in its report to the Steering Group the position reached on each of the output(s) concerned, stating the different views and providing supporting information.

28.4 Consequence of Major Review

28.4.1 The AcMT shall present its findings in relation to each Major Review to the Steering Group and the Steering Group shall no later than the end of the eighth calendar month of each Major Review Period:

- (a) endorse, if satisfied any recommendations made; and
- (b) make any consequential amendments necessary to the Mandatory Outputs and the Proposals including as necessary to address any differences between members of the AcMT identified in accordance with Clause 28.3.3.

28.4.2 If the Steering Group is unable to reach agreement in relation to any of the Mandatory Outputs or Proposals by the end of the Major Review Period, the matter shall be referred to the POG for resolution.

28.4.3 The POG shall decide any outstanding issues in relation to the Mandatory Outputs and the Proposals no later than the end of the Major Review Period. If the POG is unable to reach a decision:

- (a) in relation to the Mandatory Outputs, the matter may be referred by either Party to the Dispute Resolution Procedure; and
- (b) in relation to the Proposals, the matter shall not be capable of reference to external dispute resolution.

28.4.4 The Mandatory Outputs and the Proposals, as determined in accordance with this Clause 28.4 shall apply with effect from the beginning of the New Period.

29 Re-baselining

The provisions of Part 3 of **Schedule 12** (*Pricing and Incentivisation*) shall apply in respect of re-baselining for each Period.

30 BMECS

30.1 BMECS

30.1.1 A compact disc or DVD containing BMECS (as at the Commencement Date) and including the ToBA Starting Baseline finalised by Babcock Marine and initialled on behalf of the MoD and Babcock Marine for identification purposes is incorporated by reference in this Contract and has been handed by Babcock Marine to MoD on the date of this Contract. This also contains:

- (a) a copy of the BMECS Assumptions in respect of the BMECS as at the Commencement Date; and
- (b) a copy of the BMECS User Manual as at the Commencement Date.

30.2 Purposes for which BMECS can be used

30.2.1 The Parties agree and acknowledge that the purposes for which the BMECS can be used are:

- (a) to provide an accurate and complete record of the ToBA Starting Baseline; and
- (b) any other purpose that may be agreed between the Parties from time to time under this Contract.

30.3 Scenario modelling

- 30.3.1 The MoD shall be entitled to conduct Runs of the BMECS jointly with Babcock Marine, or independently for its own purposes.
- 30.3.2 The MoD may require Babcock Marine to provide reasonable assistance and advice in relation to any scenario in relation to which MoD proposes to Run the BMECS and provide reasonable assistance in relation to all related Runs of the BMECS.

30.4 Governance of BMECS

Part 1 of Schedule 11A (*BMECS Governance*) which sets out the provisions relating to the governance of the BMECS, including the arrangements for validating, maintaining, reconciling, updating and changing the BMECS, shall apply.

30.5 BMECS User Manual

Paragraph 2 of Schedule 11A (*BMECS Governance*) sets out the provisions relating to the BMECS User Manual.

30.6 Maintenance of Copies of BMECS

- 30.6.1 The Parties shall at all times each maintain an Approved Copy of the latest BMECS.

30.7 Errors in BMECS

Notwithstanding the foregoing provisions of this Clause 30 (*BMECS*) and the provisions of Schedule 11A (*BMECS Governance*), the Parties have agreed that they shall share and shall each bear the risk of any errors in or omissions from BMECS and shall not be entitled to any compensation from or other redress against the other in relation to any loss or damage that it suffers in consequence of such error or omission.

30A ToBA Rates Model

30A.1 Establishment

The Parties agree to develop and once developed, establish and use for the purposes of this Contract a financial model (the **ToBA Rates Model**) in accordance with the following provisions of this Clause 30A (*ToBA Rates Model*).

30A.2 Development

The ToBA Rates Model may, or may not, as the Parties shall agree in accordance with the Transformation Plan, be based upon BMECS, and in any case shall:

- (a) be developed to meet a specification agreed by the Parties in accordance with the Transformation Plan;
- (b) subject to paragraph (c) below, be developed by Babcock Marine to meet the specification, according to a process and timetable to be agreed between them in writing in accordance within the period specified in the Transformation Plan (it being acknowledged that Babcock Marine's costs of such development shall be subject to Normalisation in accordance with paragraph 3.2.1(c) of Part 4 of Schedule 12 (*Pricing and Incentivisation*));
- (c) be complete, populated with all necessary data, tested, validated and ready for immediate use for the purposes specified in this Clause 30A by no later than 31 March 2012;

- (d) be owned and licensed for use in accordance with the provisions of Clause 38 (*Intellectual Property Rights*);
- (e) be developed, maintained and operated by Babcock Marine for the purpose of supporting the calculation of all things falling to be established pursuant to Schedule 12 (*Pricing and Incentivisation*) and for the following specific purposes:
 - (i) to generate Pricing Rates for each Financial Year from commencement of the Second Period;
 - (ii) to provide an accurate and complete record of (1) Babcock Marine's Actual Costs in all Financial Years from commencement of the Second Period and (2) each Baseline established in respect of the Second Period and all subsequent Periods;
 - (iii) to reflect the Illustrative Programme, Estimated Total Workload and the Projected ToBA Workload (as the same may be amended, agreed and determined from time to time in accordance with Part 3 of Schedule 12 (*Pricing and Incentivisation*), any workload assumptions and the Forecast Cost Base from time to time;
 - (iv) to record accurately and reflect the Actual Costs provided by members of the Babcock Marine Group to MoD for each Financial Year during the Initial Term;
 - (v) to provide an accurate and complete analysis and allocation of costs between each Project Contract and between ToBA Work and Non-ToBA Work;
 - (vi) to support any financial analysis;
 - (vii) to support the achievement of the Commercial Purpose and for the purposes of completeness, accuracy and transparency of information as required by Clause 26 (*Strategic Planning Framework*), Clause 31 (*Babcock Marine Records*) and Schedule 13 (*Open Book Accounting Procedures*); and
 - (viii) any other purpose that may be agreed between the Parties from time to time under this Contract;
- (f) be externally verified and validated to MoD's satisfaction before being used for the purposes of this Contract; and
- (g) be placed into and held in escrow or be subject to other arrangements agreed or determined pursuant to Schedule 11B (*ToBA Rates Model*) (it being acknowledged that Babcock Marine's costs of such arrangements shall be subject to Normalisation in accordance with Paragraph 3.2.1(c) of Part 4 of Schedule 12 (*Pricing and Incentivisation*)).

30A.3 Use of ToBA Rates Model

30A.3.1 Each of the Parties shall be entitled to:

- (a) free and unfettered access to and use of the ToBA Rates Model without charge for the purposes of this Contract; and
- (b) retain and use for its own purposes a copy of ToBA Rates Model.

30A.4 Maintenance, operation and governance of ToBA Rates Model

30A.4.1 Babcock Marine shall manage the ToBA Rates Model and shall, notwithstanding the other provisions of this Clause 30A (*ToBA Rates Model*) and Schedule 11B (*ToBA Rates Model*),

bear responsibility for operating and making changes to the ToBA Rates Model and maintaining each Baseline in accordance with the Contract.

30A.4.2 The Parties shall use all reasonable endeavours to agree and implement by no later than 2 January 2012 arrangements for the custody and governance of the ToBA Rates Model. The starting point for the process to agree such arrangements is set out in Schedule 11B (*ToBA Rates Model*).

30A.5 Scenario modelling

The MoD may require Babcock Marine to provide reasonable assistance and advice to the MoD in relation to any scenario in relation to which MoD proposes to Run the ToBA Rates Model and provide reasonable assistance in relation to all related Runs of the ToBA Rates Model.

30A.6 Errors in ToBA Rates Model

Notwithstanding the foregoing provisions of this Clause 30A (*ToBA Rates Model*) and the provisions of Schedule 11B (*ToBA Rates Model*), the Parties have agreed that they shall share and shall each bear the risk of any errors in or omissions from the ToBA Rates Model and shall not be entitled to any compensation from or other redress against the other in relation to any loss or damage that it suffers in consequence of such error or omission.

31 Babcock Marine Records

31.1 Open book accounting procedures

Schedule 13 (*Open Book Accounting Procedures*) shall apply.

31.2 Records

Without prejudice to its obligations under Schedule 13 (*Open Book Accounting Procedures*), Babcock Marine shall on an open book basis:

- (a) maintain a full record of particulars of the costs of performing its obligations under this Contract and each BM Contract for ToBA Work and an aggregate of the costs in respect of each contract, whether with MoD or any other person, for Non-ToBA Work;
- (b) when requested by MoD, provide a summary of any of the costs referred to in Clause 31.3 in such form and detail as MoD may reasonably require to enable MoD to monitor the performance by Babcock Marine of its obligations under this Contract;
- (c) provide such assistance as MoD may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause;

in each case to the extent necessary or MoD reasonably requests (1) to demonstrate the achievement of Actual Benefits or Authority Benefits, to facilitate or provide supporting evidence for the calculation of Pricing Rates or Actual Rates or any aspect of the ARP, or any other estimate or calculation that is required by this Contract and/or (2) to further the efficient operation of this Contract and the achievement of the Commercial Purpose.

31.3 Standards

31.3.1 Compliance with the above shall require Babcock Marine to keep books of accounts in accordance with best accountancy practice with respect to this Contract showing in detail all relevant costs to the extent necessary or MoD reasonably requests (1) to demonstrate the achievement of Actual Benefits or Authority Benefits, to facilitate or provide supporting evidence for the calculation of Pricing Rates or Actual Rates or any aspect of the ARP, or any

other calculation that is required by this Contract and/or (2) to further the efficient operation of this Contract and the achievement of the Commercial Purpose.

- 31.3.2 Babcock Marine shall have the books of account evidencing the items listed in this Clause 31.3 available for inspection by MoD (and any expert) upon reasonable notice.

31.4 Access for NAO

Babcock Marine shall permit records referred to in this Clause to be examined and copied by the Comptroller and other representatives of MoD, and by the Comptroller and Auditor General and his representatives.

31.5 Period for which records are to be kept

The records referred to in this Clause 31 (*Babcock Marine Records*) shall be retained for a period of at least seven years after creation of the relevant record.

31.6 Other relevant obligations

All information referred to in this Clause is subject to the obligations set out in Clause 39 (*Confidentiality and Freedom of Information*) and Clause 49 (*Public relations and publicity*) and is in addition to any obligation of Babcock Marine in any other agreement.

31.7 Over/under payments

- 31.7.1 Subject to Clause 31.7.2, if, following any inspection of Records either MoD or Babcock Marine can demonstrate that any payment made to any Party by any other under this Contract (**Original Payment**) is greater or less than the payment which should have been payable as calculated in accordance with this Contract, then either Babcock Marine or MoD (as applicable) shall make a correcting payment to the payor or the payee (as applicable) the amount of such over-payment or under-payment.
- 31.7.2 Except in cases of fraud, neither Babcock Marine nor MoD shall be liable to make any correcting payment under Clause 31.7.1 unless the relevant underpayment or overpayment is notified to them within six (6) years of the date of the Original Payment.
- 31.7.3 Babcock Marine may refer to the Steering Group any request for information pursuant to this Contract which it considers to be unreasonable.

32 Severance and Rationalisation

32.1 Severance Liabilities unaffected

Subject to Clause 32.4 and (in the case of the Devonport Letter Agreement) Clause 32.3, the negotiation, preparation, execution and provisions of this Contract shall not add to and shall have no effect on, and shall be without prejudice to, the existing rights, obligations and liabilities of the Parties in relation to the payment of Severance Costs, including under the documents referred to in Clause 32.2 in each such case.

32.2 Identification of liabilities

Without prejudice to the generality of Clause 32.1 and for information only (without adding to or affecting the said rights, liabilities and obligations), the primary source of the rights, obligations and liabilities of the Parties in respect of Severance Costs relating to DRDL is the provisions of the Enabling Agreement applicable to Severance Costs, as varied pursuant to the Devonport Letter Agreement and Clause 32.3 (it being acknowledged that this statement does not affect any rights, obligations or liabilities of the Parties in relation to Severance Costs relating to DRDL that arise from any other source or document, for example arrangements made in relation to individual Project Contracts).

32.3 Devonport Letter Agreement extension

The Parties agree that the principles in the Devonport Letter Agreement (in particular, the commitment that MoD will be obliged to reimburse Severance Costs as provided for in the paragraph numbered 4 of that letter) shall be extended, in relation to the Devonport business, on the terms of the Supplementary Letter until the termination or expiry of this Contract, and for this purpose the Parties agree that all references to [REDACTED] in the Devonport Letter Agreement are amended to refer to the date (**Extension Date**) that is the later of:

- (a) the date of termination or expiry of this Contract; and
- (b) [REDACTED]

The provisions of the Enabling Agreement applicable to Severance Costs shall once again apply in respect of Severance Costs relating to DRDL following the Extension Date (unless otherwise agreed by the Parties).

32.4 No profit on Severance Costs paid directly by MoD

With effect from the Commencement Date, if and when, pursuant to any obligation, MoD is obliged to pay Severance Costs to a Babcock Marine Group Member, the amount of such payments shall:

- (a) be paid directly and not through adjustment of Pricing Rates; and
- (b) not include any element of profit.

[REDACTED]

32.6 Clarification

- (a) The Parties acknowledge and agree that the references in this Contract (including in Clauses 12.4, 14.7(a), 14.7(c) and 17.4 but not including this Clause 32 (*Severance and Rationalisation*)) to any "funding", "investment", "investment funding", "financial contribution" or "other dependency" by MoD do not include the liabilities in relation to Severance Costs referred to in this Clause 32 (*Severance and Rationalisation*), if and to the extent incurred in accordance with the arrangements referred to in this Clause 32 (*Severance and Rationalisation*);
- (b) It is agreed that any payment of Severance Costs by MoD pursuant to the rights, obligations and liabilities referred to in this Clause 32 (*Severance and Rationalisation*) are not payments under this Contract and thus not subject to Clause 45.3 (*Termination General*); and
- (c) Any provision in this Contract that refers to either Babcock Marine (or any Babcock Marine Group Member) bearing a cost or meeting an obligation at its own cost, shall not, unless explicitly agreed between the Parties, preclude the inclusion of that cost in any cost base (including Babcock Marine's Actual Costs) or rates for the purposes of the provisions of Schedule 12 (*Pricing and Incentivisation*) (or the pricing provisions in other BM Contracts) in accordance with those provisions. Similarly, any reference to any "funding", "investment", "investment funding", "financial contribution" or "other dependency" by MoD does not include payments by MoD to Babcock Marine under

such provisions and in the ordinary course of business between MoD and Babcock Marine (or any Babcock Marine Group Member).

Part 8 – Key Industrial Capability

33 Key Industrial Capability

33.1 KIC Review

MoD anticipates that it will carry out a review of its Key Industrial Capability (KIC) requirements across the Sector in the Financial Year 2011/12 and may carry out further such reviews during the Contract Period.

33.2 Babcock Marine Participation in KIC Review

33.2.1 Babcock Marine shall, having been notified by MoD, have the right and obligation to participate in any KIC Review carried out by the MoD in the Contract Period as reasonably required by the MoD.

33.2.2 MoD shall, in advance of any review of the type referred to in Clause 33.1:

- (a) consult Babcock Marine in relation to the criteria MoD plans to adopt in relation to the review; and
- (b) provide Babcock Marine with details of its process and timetable for the review and Babcock Marine's participation in it.

33.2.3 If and to the extent that the Parties agree in any collaborative forum any matter which is the subject of the review referred to in Clause 33.1, that agreement shall form part of the outcome of the review.

33.3 KIC Requirements

33.3.1 MoD shall notify Babcock Marine of:

- (a) the outcome of any KIC Review and MoD's proposed requirements for Babcock Marine to provide and maintain certain specified Key Industrial Capabilities during the Contract Period; and
- (b) any related changes to this Contract and any BM Contracts proposed by the MoD.

33.3.2 If the Parties, acting through the Steering Group, fail to agree to implement the outcome of a KIC Review, any outstanding issues shall be referred to the POG. To the extent Babcock Marine does not agree to implement the outcome of a KIC Review, then the KIC Review, its outcomes and the proposals under Clause 33.3.1 shall have no effect on this Contract or any BM Contract.

33.3.3 To the extent that the Parties agree to implement the outcome of any KIC Review:

- (a) the Parties shall implement any agreed changes to the BM Contracts;
- (b) to the extent agreed by the Parties, Babcock Marine shall provide and maintain the Key Industrial Capability(ies) and any associated key posts required by MoD for so long as MoD requires; and
- (c) to the extent agreed by the Parties, MoD shall have the right to:
 - (i) inspect Babcock Marine's facilities and infrastructure to determine whether it is adequate to enable Babcock Marine to provide and sustain the Key Industrial Capability; and

- (ii) audit Babcock Marine's database of key post workers and the processes for ensuring that such database is up to date and that it is of a standard to ensure that each key post worker at all times has the appropriate skills necessary to enable Babcock Marine to provide and sustain the Key Industrial Capability.

34 [NOT USED]

[REDACTED]

[REDACTED]

Part 9 – Change

36 Change

36.1 Written Agreement

- 36.1.1 This Contract may not be amended except by the written agreement of the duly authorised representatives of MoD and Babcock Marine (but not [REDACTED]), following endorsement by the relevant Governance Body:
- (a) in accordance with Clause 36.2 (*Change Procedure*); or
 - (b) in accordance with Clause 19.5.3 following the approval of a Business Case Proposal in accordance with Clause 19.5.2.
- 36.1.2 Any purported amendment to this Contract which does not satisfy the terms of Clause 36.1.1. (as applicable) shall be of no effect.

36.2 Change Procedure

- 36.2.1 Changes to this Contract (a **Change**) may be proposed by MoD or Babcock Marine (the **Proposer**) notifying the other (the **Recipient**) of a proposed Change in accordance with Clause 36.2.2 or 36.2.3.
- 36.2.2 The Proposer may propose a Change by serving a notice on the Recipient setting out the change in reasonable detail in accordance with the process in this Clause 36.2.
- 36.2.3 The Notice of Change must:
- (a) set out the Change in sufficient detail to enable the Recipient to evaluate it in full;
 - (b) specify the Proposer's reasons for proposing the Change; and
 - (c) indicate if there are any dates by which a decision is critical.
- 36.2.4 The AcMT shall prepare a written evaluation of the proposed Change (an **Evaluation Report**) dealing with the following matters:
- (a) whether the implementation of the Change would contravene any Legislation or would not be feasible or would otherwise prevent, impede or inhibit Babcock Marine from performing its obligations under this Contract;
 - (b) the proposed timetable for the implementation of the Change;
 - (c) an estimate of the costs or savings of implementing (including changes in revenue) the Change and the effect of the Change on the Contract; and
 - (d) any amendment required to this Contract as a result of the Change.
- 36.2.5 Before a Change to this Contract pursuant to any Notice of Change can become valid, it must be endorsed by the relevant Governance Body in accordance with the principles set out in Schedule 10 (*Governance*).
- 36.2.6 Any Notice of Change that requires a formal amendment to this Contract shall become valid only once the written acceptance of the Change has been formally given in accordance with the process set out at Clause 36.1 (*Written Agreement*).
- 36.2.7 The Proposer shall be entitled, at any time prior to the signing of the written acceptance by the Recipient of the Change to withdraw the Notice of Change served by it.

37 Measures in a Crisis

37.1 Notice of Events

If, at any time, MoD believes, in its sole opinion, that there exist circumstances to which Clause 37.2 below applies, it may issue a notice in writing to Babcock Marine of such belief.

37.2 Trigger Events

The circumstances referred to in Clause 37.1 above are, where in view of:

- (a) a material threat to the national security and defence, or a material adverse effect on the national interests, of the United Kingdom, or the occurrence of a state of war, crisis, state of tension or other emergency (whether or not involving hostilities); or
- (b) a request to MoD by a local authority, public body, or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster; or
- (c) a request by NATO, the EU or the United Nations for support or assistance in relation to international obligations,

it is necessary, appropriate, or desirable for MoD to take all or any of the measures described in Clauses 37.3 to 37.6 (inclusive) below.

37.3 Effect of Implementation of Measures in a Crisis

37.3.1 If MoD has issued a notice contemplated in Clause 37.1, MoD may require Babcock Marine, within such period as may be specified by MoD in its sole discretion, to provide such information as MoD may in its sole discretion require, including, without limitation, information relating to all or any of the following matters:

- (a) the services under any BM Contract or any obligation of Babcock Marine under this Contract currently being carried out by Babcock Marine (or due to commence being carried out by Babcock Marine within the period that MoD estimates that the circumstances set out in its notice under Clause 37.1 will continue) for:
 - (i) MoD; and
 - (ii) any third parties;
- (b) Babcock Marine's current deployment of its employees; and
- (c) the committed and uncommitted skills, resources and personnel that Babcock Marine has available to assist the MoD during the period that MoD estimates that the circumstances set out in its notice under Clause 37.1 will continue.

37.4 Good faith discussion

Upon providing MoD with the information requested pursuant to Clause 37.3 above, or upon expiry of the period specified by MoD for the supply of such information, Babcock Marine shall, upon being so requested by MoD, discuss in good faith with MoD any matters which MoD, in its sole opinion, may consider relevant or appropriate to any proposals MoD may have for the reallocation of priorities for, or for the reorganisation of, services under any BM Contract carried out, or to be carried out, by Babcock Marine. These will be in order to deal with the circumstances which gave rise to the issuing of a notice pursuant to Clause 37.1 above, including, without limitation, the following matters:

- (a) the revision (including the early completion or temporary suspension) of the provision of any services under any BM Contract or any obligation of Babcock Marine under this Contract for MoD;
- (b) the early completion or suspension of any services under any BM Contract or any obligation of Babcock Marine under this Contract by Babcock Marine for third parties; and
- (c) the immediate implementation of new services under any BM Contract or any obligation of Babcock Marine under this Contract,

and the Parties shall endeavour, as far as reasonably possible, to reach agreement as a matter of urgency on such matters.

37.5 MoD overriding right

Notwithstanding any provision to the contrary in this Contract and notwithstanding that any of the measures described in Clauses 37.3 and 37.4 above may not have been taken, required to be taken, or have been completed, MoD may (where necessary due to the circumstances described in Clause 37.2), at any time and in its sole discretion, require Babcock Marine to use all reasonable endeavours to comply fully with any written instructions issued by MoD during the period in which such circumstances affect the MoD.

Such instructions may include, without limitation, instructions issued in relation to all or any of the following matters:

- (a) to accelerate to early completion or to temporarily suspend any services under any BM Contract or any obligation of Babcock Marine under this Contract carried out by Babcock Marine for third parties;
- (b) to remove temporarily the property of third parties from the facilities operated or owned by Babcock Marine in connection with any BM Contract or any obligation of Babcock Marine under this Contract and to use all reasonable endeavours to procure that any such action is carried out on terms with such third parties which result in the least possible loss or damage;
- (c) to accelerate to early completion or to temporarily suspend any of the services under any contract for third parties carried out or to be carried out by Babcock Marine;
- (d) to deploy its employees, its stocks of materials, plant, equipment and other supplies and/or to use, or make available for use by MoD or as directed by MoD, the premises, plant and machinery;
- (e) in addition, MoD may instruct Babcock Marine to suspend Transformation occurring through the implementation of an Approved Business Case Proposal; and/or
- (f) to suspend Babcock Marine's rights to undertake work in relation to Nominated Roles or Collaborative Roles where Babcock Marine has insufficient or no capacity to perform the Nominated or Collaborative Roles.

37.6 Notice of Cessation

The provisions of Clauses 37.3 to 37.5 above shall cease to apply when MoD issues a written notice to that effect to Babcock Marine, which MoD shall use its reasonable endeavours to do once the circumstances in Clause 37.2 (*Trigger Events*) cease to require that Babcock Marine endeavour to comply with any MoD instructions issued under Clause 37.5 (*MoD Overriding Right*).

37.7 MoD Authorisation

Any action or measures which MoD may, or is required to, take pursuant to the provision of this Clause may validly be authorised by a MoD Representative (who is at MoD two star level (or equivalent) or above).

37.8 Indemnity for Measures in a Crisis

37.8.1 Subject to Clause 37.8.3 if the Parties agree actions pursuant to Clause 37.4 (*Good faith discussion*) or MoD issues any instructions to Babcock Marine pursuant to Clause 37.5 (*MoD overriding right*) then:

- (a) for so long as such instructions prevent Babcock Marine from complying with any of its obligations under this Contract, Babcock Marine shall be relieved from any action for failure to comply with such obligations; and
- (b) the MoD shall indemnify Babcock Marine [REDACTED] against any and all Direct Losses and Indirect Losses reasonably incurred by such parties arising out of acting pursuant to the agreement under Clause 37.4 (*Good faith discussion*) or arising out of the instructions of the MoD pursuant to Clause 37.5 (*MoD overriding right*). However:
 - (i) there shall be no double recovery where Babcock Marine [REDACTED] receives any payment under an indemnity for Direct Losses or Indirect Losses under any existing BM Contract; and
 - (ii) this indemnity shall not apply to the extent that Direct Losses or Indirect Losses incurred by Babcock Marine [REDACTED] arise as a result of the breach of this Contract by such party; and

[REDACTED] Babcock Marine shall manage all claims under the indemnity in this Clause 37 on behalf of each of the BM Opcos and any other [REDACTED]

37.8.2 Babcock Marine shall and shall procure that all other relevant [REDACTED] shall be required to use all reasonable endeavours to mitigate any liabilities of MoD arising in respect of the indemnity under this Clause 37.8.

37.8.3 The indemnity in Clause 37.8.1 shall not apply to the extent the action agreed or the instructions issued are as required to comply with the terms of this Contract (except this Clause 37) or any BM Contract but without prejudice to the relevant Babcock Marine Group Member's rights under such BM Contract.

Part 10 – Information and Intellectual Property Rights

38 Intellectual Property Rights

38.1 Intellectual Property Rights arising under BM Contracts and new MoD Work

- 38.1.1 Babcock Marine and MoD agree that the Intellectual Property Rights arising under BM Contracts shall continue to be described in and governed by the terms of those contracts and this Clause 38 (*Intellectual Property Rights*) shall not supersede or amend those rights in any way.
- 38.1.2 Babcock Marine and MoD agree that Intellectual Property Rights arising in or as a result of any Work contracted by MoD after the Commencement Date shall be agreed on a case by case between MoD and Babcock Marine and shall be set out in the contracting arrangements for such Work.

38.2 Intellectual Property Rights in BMECS

- 38.2.1 All Intellectual Property Rights in and title to the BMECS shall, as between MoD and Babcock Marine, be owned by and vest in MoD or as otherwise required by MoD.
- 38.2.2 Babcock Marine hereby assigns (to the extent not already owned by MoD or any third party appointed to provide services in relation to BMECS) to MoD or as otherwise required by MoD with full title guarantee by way of present and future assignment of copyright, database right and any other Intellectual Property Rights in the BMECS (to the extent it is able to do so) free from any lien, charge or other encumbrance.
- 38.2.3 Babcock Marine (to the extent it is able to do so) hereby unconditionally and irrevocably waives, or shall ensure that, other than where created by MoD personnel or third party service providers as referred to in Clause 38.2.2, the owner in any moral rights in the BMECS unconditionally and irrevocably waives, all such moral rights as may arise in them.
- 38.2.4 MoD hereby grants to Babcock Marine (to the extent it is able to do so), (with the right to sub-license to any other Babcock Marine Group Member) a royalty-free and non-exclusive licence to copy, use and adapt the BMECS as necessary for the performance by Babcock Marine of its obligations under this Contract or any other contract between MoD and Babcock Marine (or any other Babcock Marine Group Member) in relation to the Sector.

38.3 ToBA Rates Model

- 38.3.1 Nothing in this Contract shall affect the ownership of the Intellectual Property Rights in the ToBA Rates Model, nor the ability of MoD or Babcock Marine to make upgrades or otherwise modify the ToBA Rates Model to produce a new model where such new model is for use by MoD or Babcock Marine for purposes other than in relation to this Contract. Each Party shall ensure that any such new model is then maintained independently of the ToBA Rates Model under this Contract and that the new model is readily distinguished.
- 38.3.2 Babcock Marine hereby grants to MoD a perpetual, irrevocable, non-exclusive, worldwide and free of charge licence (with power to sub-licence) to Use the ToBA Rates Model and to copy, adapt and otherwise use the ToBA Rates User Manual (to the extent such rights are not held by MoD or any third party appointed by MoD to provide services in relation to the ToBA Rates Model), for any purpose and (subject to Clause 39 (*Confidentiality and Freedom of Information*) in the case of Babcock Marine Confidential Information) disclose the same.
- 38.3.3 To the extent MoD owns any Intellectual Property Rights in the ToBA Rates Model, MoD shall grant to Babcock Marine (with the right to sub-license to any other Babcock Marine Group Member) a royalty-free and non-exclusive licence to copy, use and adapt the ToBA Rates Model as necessary for the performance by Babcock Marine of its obligations under this

Contract or any other contract between MoD and Babcock Marine (or any other Babcock Marine Group Member) in relation to the Sector.

- 38.3.4 Release of the ToBA Rates Model and the ToBA Rates Model User Manual to a third party shall be subject to equivalent conditions of confidentiality as set out in this Contract.
- 38.3.5 Babcock Marine warrants that it has (or will have at the time the rights come into existence) the rights to grant the licence provided at Clause 38.3.2 and that use of the ToBA Rates Model and the ToBA Rates Manual in accordance with that licence shall not infringe any third party Intellectual Property Rights.
- 38.4 Intellectual Property Rights in materials produced or commissioned by the Governance Bodies or provided by Babcock Marine**
- 38.4.1 Nothing in this Contract shall affect the ownership of the Intellectual Property Rights in and title to all minutes, reviews, papers, reports, diagrams, designs, charts, databases and other works of authorship and all related drafts and working papers produced by the members of the Governance Bodies or otherwise commissioned by the Governance Bodies (whether individually, collectively or jointly and on whatever media and whether written or prepared before or after the date of this Contract), together, "**Developed Materials**".
- 38.4.2 Subject to Clause 38.4.3, Babcock Marine hereby grants to MoD a perpetual, irrevocable, non-exclusive, worldwide and free of charge licence (with power to sub-licence) to copy, adapt or otherwise use the Developed Materials (to the extent such rights are not held by MoD or any third party appointed by MoD to provide services in relation to this Contract), for any purpose and (subject to Clause 39 (*Confidentiality and Freedom of Information*) in the case of Babcock Marine Confidential Information) disclose the same.
- 38.4.3 In any case where Developed Materials provided by or on behalf of Babcock Marine are subject to third party rights, Babcock Marine shall notify MoD of any restriction on use of the Developed Materials prior to providing such Developed Materials to MoD, Babcock Marine shall use all reasonable endeavours to obtain the rights necessary to grant the MoD licence under Clause 38.4.2 prior to the use by MoD of such Developed Materials, failing which, if required by MoD, Babcock Marine shall provide an appropriate alternative to the relevant Developed Materials which is not subject to third party rights.
- 38.4.4 MoD hereby grants to Babcock Marine, (with the right to sub-licence to any other Babcock Marine Group Member) a royalty-free and non-exclusive licence to copy, use and adapt the Developed Materials (to the extent such rights are held by MoD) as necessary for the performance by Babcock Marine of its obligations under this Contract and any other contract between MoD and Babcock Marine (or any other Babcock Marine Group Member) in respect of the Sector.
- 38.4.5 Where Babcock Marine provides or discloses any information or materials in tangible or intangible form to MoD or any Governance Body, whether at a meeting of a Governance Body or otherwise, in connection with this Contract which do not constitute Developed Materials or MoD Data, Babcock Marine hereby grants to MoD a worldwide, non-exclusive, royalty-free licence (with power to sub-licence) to copy, use and adapt such information and materials and (subject to Clause 39 (*Confidentiality and Freedom of Information*) in the case of Babcock Marine Confidential Information) disclose the same in connection with this Contract.
- 38.4.6 Babcock Marine shall indemnify MoD from and against infringement or alleged infringement by MoD of the Intellectual Property Rights of any other person in any information and materials which are the subject of any licence granted by Babcock Marine under this Clause 38 (*Intellectual Property Rights*), where the infringement or alleged infringement arises as a result of the use by MoD of such information or materials in relation to the Sector.

38.5 MoD Data

- 38.5.1 Subject to Clause 38.5.2, MoD hereby grants to Babcock Marine, so far as it is able to do so, a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the MoD Data.
- 38.5.2 The licence granted in Clause 38.5.1:
- (a) includes (so far as MoD is able to do so) the right to grant sub-licences to Babcock Marine Group Members, provided that any relevant Babcock Marine Group Member has entered into a confidentiality undertaking with Babcock Marine on the same terms as set out in Clause 39 (*Confidentiality and Freedom of Information*); and
 - (b) is granted solely to the extent necessary for the purposes of this Contract and any other work to be carried out by Babcock Marine for MoD. Babcock Marine shall not, and shall procure that the Babcock Marine Group Members do not, use the MoD Data for any other purpose or for the benefit of any person other than MoD.
- 38.5.3 Save for the licence granted in Clause 38.5.1, Babcock Marine shall not acquire any right, title or interest in or to the Intellectual Property Rights of MoD in the MoD Data and where any Babcock Marine Group Member acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with this allocation of title, Babcock Marine shall procure that the relevant Babcock Marine Group Member shall assign in writing such Intellectual Property Rights as it has acquired to MoD on the request of MoD (whenever made).
- 38.5.4 Babcock Marine shall not (and shall procure that no Affiliate of Babcock Marine shall) delete or remove any proprietary notices contained within or relating to the MoD Data.
- 38.5.5 Babcock Marine shall not (and shall procure that no Affiliate of Babcock Marine shall) store, copy, disclose, or use the MoD Data except as necessary for the performance by Babcock Marine of its obligations under this Contract or as otherwise expressly authorised in writing by MoD.
- 38.5.6 Babcock Marine shall ensure that any system on which any Affiliate of Babcock Marine holds any MoD Data, including back-up data, is a secure system that complies with MoD's Security Requirements.
- 38.5.7 If the MoD Data is corrupted, lost or sufficiently degraded as a result of Babcock Marine's default so as to be unusable, MoD may:
- (a) require Babcock Marine (at Babcock Marine's expense) to restore or procure the restoration of the MoD Data and Babcock Marine shall do so as soon as practicable; and/or
 - (b) itself restore or procure the restoration of MoD Data, and shall be repaid by Babcock Marine any reasonable expenses incurred in doing.
- 38.5.8 If at any time Babcock Marine suspects or has reason to believe that MoD Data (that is held by or on behalf of Babcock Marine or any Babcock Marine Group Member) has or may become corrupted, lost or sufficiently degraded in any way for any reason, then Babcock Marine shall notify the MoD immediately.

39 Confidentiality and Freedom of Information

- 39.1 Except to the extent set out in this Clause 39 (*Confidentiality and Freedom of Information*), each of MoD and Babcock Marine agrees, for itself and its respective directors, officers, employees, servants, sub-contractors and agents (and in the case of Babcock Marine, each BM Subsidiary), to keep confidential and not to disclose to any person any of the other's Confidential Information.

- 39.2 Notwithstanding Clause 39.1, and subject to Clause 39.3, the following disclosures of Confidential Information shall be permitted, provided that the relationship to any other Confidential Information is not revealed and in the case of MoD, in so far as it is able to disclose such information:
- 39.2.1 any disclosure of Confidential Information that is reasonably required by persons engaged in the performance of their obligations under this Contract or any BM Contract or any other Contract between the Parties (or MoD and any Babcock Marine Group Member) in respect of the Sector, including disclosure to any Independent Transformation Advisor or Independent Partnering Advisor, professional advisers, insurers and sub-contractors to the extent necessary in connection with this Contract;
 - 39.2.2 any matter which MoD or Babcock Marine can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Contract;
 - 39.2.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure;
 - 39.2.4 any disclosure which is required by any law (including any order of a court of competent jurisdiction), any parliamentary obligation or the rules of any relevant stock exchange or governmental or regulatory authority having the force of law;
 - 39.2.5 any disclosure of Confidential Information which is already in the possession of the receiving Party and is not subject to obligations of confidentiality, prior to its disclosure by the disclosing Party;
 - 39.2.6 any disclosure as may reasonably be required :
 - (a) by the MoD of any Babcock Marine Confidential Information to any person in connection with the carrying out of a Major Review or any Best Practice Comparison to be carried out pursuant to this Contract provided that MoD shall consult Babcock Marine before making any such disclosure;
 - (b) by the MoD of any Babcock Marine Confidential Information to any person conducting an Office of Government Commerce gateway review;
 - (c) by either Party of Confidential Information of the other Party to any other consultant engaged by that Party in connection with this Contract, any BM Contract or any Multi-Party Contract; and
 - (d) by Babcock Marine, in respect of circulation of this Contract to a Babcock Marine Group Member.
 - 39.2.7 any disclosure of Confidential Information, that was received without restriction or further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure.
 - 39.2.8 any disclosure of Confidential Information either party can show from their records that the same information was derived independently of that received under or in connection with this Contract, any BM Contract or any Multi-Party Contract.
 - 39.2.9 any disclosure of Babcock Marine Confidential Information by the MoD to any other department, office or agency of HM Government for any UK Government purpose;
 - 39.2.10 any disclosure by the MoD of any document related to this Contract to which it is a Party and which Babcock Marine (acting reasonably) has agreed with MoD contains no Babcock Marine Confidential Information;
 - 39.2.11 any disclosure for the purpose of:
 - (a) the examination and certification of the MoD's or Babcock Marine's accounts; or

- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the MoD has used its resources.

39.2.12 any use or disclosure of Confidential Information that is otherwise expressly permitted under this Contract, any BM Contract or any Multi-Party Contract.

39.3 Where disclosure is permitted under Clause 39.2, other than Clauses 39.2.2, 39.2.4, 39.2.5, 39.2.7, 39.2.8, 39.2.10 and 39.2.11(a), the relevant Party shall procure that the recipient of the information shall be subject substantially to the same obligation of confidentiality as that contained in this Clause 39 (*Confidentiality and Freedom and Information*) and will if necessary to achieve this obligation sign a confidentiality agreement containing at least equivalent provisions to those contained in this Clause 39.

39.4 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of Babcock Marine and any sub-contractor and may require Babcock Marine and any sub-contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to Babcock Marine is not a function exercisable under this Contract.

39.5 The Parties acknowledge that the National Audit Office has the right to publish details of this Contract (including Confidential Information) in its relevant reports to Parliament.

39.6 Clause 39.3 shall not prevent MoD or any other department, office or agency of HM Government from using or disclosing any information about this Contract as necessary to secure improvements in value for money across HM Government and in any reports as necessary to comply with the objectives of the relevant department, office or agency.

39.7 Babcock Marine shall procure that no Babcock Marine Group Member and no Employee shall make use of any MoD Confidential Information otherwise than for the purpose of this Contract and Babcock Marine's performance of its obligations under this Contract (or any other contract between the Parties or between MoD and any Babcock Marine Group Member in relation to the Sector), except with the written consent of MoD or as permitted under Clause 39.8.

39.8 Neither [REDACTED] nor any [REDACTED] nor any employee of [REDACTED] or any Babcock Marine Group Member shall make use of any MoD Confidential Information otherwise than for the purpose of this Contract and Babcock Marine's performance of its obligations under this Contract, except with the written consent of MoD.

39.9 Babcock Marine acknowledges that MoD is subject to the requirements of the Freedom of Information Act 2000 (FOI Act) and the Environmental Information Regulations and shall assist MoD's compliance with its FOI Information disclosure requirements pursuant to the same in the manner provided for in Clauses 39.10 to 39.11 (inclusive) below.

39.10 Where the MoD receives a Request for Information in relation to FOI Information that Babcock Marine is holding on its behalf under this Contract, Babcock Marine shall at MoD's request to the BM Representative and as soon as is practicable, provide an estimate of the total time for complying with the request to enable MoD, in compliance with the FOI Act, to assess the extent to which it wishes Babcock Marine to provide the MoD with support as set out in this Clause 39.10. Babcock Marine shall then:

39.10.1 provide MoD's Representative with a copy of all such FOI Information in the form that the MoD's Representative requires; and

39.10.2 provide all necessary assistance as reasonably requested by MoD's Representative in connection with any such FOI Information, to enable the to respond to a Request for Information within the time for compliance set out in section 10 of the FOI Act or Regulation 5 of the Environmental Information Regulations.

- 39.11 Following notification under Clause 39.10, and up until such time as Babcock Marine has provided MoD's Representative with all the FOI Information specified in Clause 39.10.1, Babcock Marine may make representations to MoD's Representative as to whether or not or on what basis FOI Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that MoD shall be responsible for determining at its absolute discretion:
- 39.11.1 whether any Confidential Information and/or any other FOI Information is exempt from disclosure under the FOI Act and the Environmental Information Regulations;
- 39.11.2 whether FOI Information is to be disclosed in response to a Request for Information, and in no event shall Babcock Marine respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by MoD's Representative.
- 39.12 Babcock Marine acknowledges that any lists provided by them listing or outlining Commercially Sensitive Information, are of indicative value only and that MoD may nevertheless be obliged to disclose Commercially Sensitive Information in accordance with the requirements of the FOI Act and the Environmental Information Regulations.
- 39.13 Babcock Marine acknowledges that (notwithstanding the provisions of Clauses 39.8 to 39.11) MoD may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOI Act 2000 (the **Code**), be obliged under the FOI Act, or the Environmental Information Regulations to disclose FOI Information concerning Babcock Marine:
- 39.13.1 in certain circumstances without consulting with Babcock Marine; or
- 39.13.2 following consultation with Babcock Marine and having taken its views into account, provided always that where Clause 39.13.1 applies MoD's Representative shall, in accordance with the recommendations of the Code, take reasonable steps, where appropriate to give Babcock Marine advanced notice, or failing that, to draw the disclosure to Babcock Marine's attention after any such disclosure.
- 39.14 The provisions of this Clause 39 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

40 Data Protection

- 40.1 Babcock Marine shall (and shall procure that each Babcock Marine Group Member shall) in relation to Personal Data it receives from MoD pursuant to this Contract and MoD shall in relation to Personal Data it receives from Babcock Marine pursuant to this Contract:
- (a) process any Personal Data obtained pursuant to this Contract only to the extent, and in such manner, as is necessary for the carrying out of its obligations under or in connection with this Contract or as is required by Legislation or any Regulatory Body;
 - (b) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - (c) take reasonable steps to ensure the reliability of any personnel who have access to any Personal Data;
 - (d) ensure that all employees required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 40;

- (e) notify the other (within five Business Days) if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to MoD's and any Babcock Marine Group Member obligations under the Data Protection Legislation;
- (f) provide the other with full cooperation and assistance in relation to any complaint or request made, including by:
 - (i) providing the other with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation; and
 - (iii) providing the other with any Personal Data it holds in relation to a Data Subject (within the timescales reasonably requested by the other party); and
- (g) not process such Personal Data outside the European Economic Area without the prior written consent of the other and, where consents is given, to comply with the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred.

40.2 Both Babcock Marine and MoD shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the other party to breach any of its applicable obligations under the Data Protection Legislation.

41 Security

41.1 The Official Secrets Act

41.1.1 Babcock Marine shall:

- (a) take all reasonable steps to ensure that all Employees engaged on any work in connection with this Contract have notice that the Official Secrets Act 1911-1989 apply to them and will continue so to apply after the completion or termination of this Contract; and
- (b) if directed by MoD, ensure that any Employee shall sign a statement acknowledging that, both during the term of this Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable, any other Legislation).

41.2 Security Aspects Letter

On or before the date of this Contract, MoD has provided each BM Opco with a Security Aspects Letter which each BM Opco has signed and returned.

41.3 Disclosure of Secret Matters

In addition to its obligations pursuant to Clause 39 (*Confidentiality and Freedom of Information*) Babcock Marine shall not without the prior written consent of MoD to do otherwise, either before or after the Termination Date or the expiry of this Contract, do or permit to be done anything which it knows or ought reasonably to know may result in a Secret Matter being disclosed to or acquired by a person in any of the following categories:

- (a) who is not a British citizen;

- (b) who does not hold the appropriate authority for access to the Secret Matter;
- (c) whom MoD has notified Babcock Marine in writing that MoD requires that Secret Matters shall not be disclosed to or acquired by that person;
- (d) who is not an Employee; or
- (e) who is an employee but has no need to know the information for the proper performance of this Contract.

41.4 Access to Secret Matters

In addition to its obligations pursuant to Clause 39 (*Confidentiality and Freedom of Information*) unless it has the prior written consent of MoD to do otherwise, Babcock Marine shall, both before and after the Termination Date or the date of expiry of this Contract take all reasonable steps (including ensuring that all Employees with access to Secret Matters comply with the requirements of this Clause) to ensure that:

- (a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except so far as may be necessary for the proper performance of this Contract; and
- (b) any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework and upon request, is delivered to MoD who shall be entitled to retain it.

The decision of MoD, acting reasonably, on the question whether Babcock Marine has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 41.4 (*Access to Secret Matters*) shall be final and conclusive.

41.5 Persons with Access to Secret Matters

41.5.1 Babcock Marine shall provide to MoD:

- (a) upon request, such records giving particulars of those Employees who have had access to a Secret Matter;
- (b) upon request, such information as MoD may require so as to be satisfied that Babcock Marine and the Employees are complying with this Clause 41, including the measures taken or prepared by Babcock Marine so as to comply with its obligations and to prevent any breach of them; and
- (c) such particulars of any failure by Babcock Marine or any Employee to comply with this Clause 41 immediately on such failure becoming apparent.

41.5.2 Babcock Marine shall ensure that, for the purpose of checking Babcock Marine's compliance with Clause 41.5 (*Persons with Access to Secret Matters*), a representative of MoD shall be entitled at any time to enter and inspect any of the premises used by Babcock Marine connected with this Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of this Contract. Such representative shall be entitled to all such information as he may reasonably require.

41.5.3 Subject to Clause 39 (*Confidentiality and Freedom of Information*) if at any time either before or for two years after the expiry of the Contract Period it comes to the notice of Babcock Marine that any unauthorised person is seeking or has sought to obtain information concerning any Secret Matter, Babcock Marine shall forthwith inform MoD of the matter with full particulars thereof.

41.5.4 Babcock Marine shall place every person employed by it or a sub-contractor who in his opinion has or will have such knowledge of any Secret Matter as to appreciate its significance,

under a duty to Babcock Marine to observe the same obligations in relation to that matter as are imposed on Babcock Marine by Clauses 41.3 (*Disclosure of Secret Matters*) and 41.5 (*Persons with Access to Secret Matters*). Babcock Marine shall, if directed in writing by MoD's Representative, place every person who is specified in the direction or is one of a class of persons so specified, under the like duty in relation to any Secret Matter which may be specified in the direction, and shall at all times use its reasonable endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause 41.5 (*Persons with Access to Secret Matters*) observes the said obligations, and Babcock Marine shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to MoD with all necessary particulars.

41.6 Nothing in this Clause shall be construed as intended to prevent any person from giving any information or doing any thing on any occasion when it is, by virtue of any law or enactment, the duty of that person to give that information or do that thing.

41.7 Breach of Security

If MoD acting reasonably considers:

- (a) that Babcock Marine or any Employee has committed a breach of or failed to comply with any of the foregoing provisions of this Clause; or
- (b) that Babcock Marine or any Employee has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with MoD, or with any department or person acting on behalf of Her Majesty,

(together a **Breach of Security**)

and MoD decides that such Breach of Security presents a continuing material threat to the National security of the United Kingdom and that no other action taken by Babcock Marine (other than as specified in Clause 43.3.1(b)) is sufficient to remedy the breach then, MoD acting by the decision of a Senior Civil Servant (which decision shall be communicated directly to Babcock Marine in writing by such Senior Civil Servant) may serve Babcock Marine a Termination Notice in accordance with Clause 43 (*MoD remedies for Babcock Marine Default*).

41.8 In exercising its rights or remedies under this Clause for a breach of Clause 41.7(a) and/or 41.7(b) MoD shall act in a reasonable and proportionate manner having regard to such matters as the gravity and materiality of, and the identity of the person performing, the Breach of Security.

41.9 A decision of MoD to serve a Termination Notice in respect of Clause 41.7 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which MoD's decision is based. However, to the extent permitted by law and MoD's security policies, MoD shall provide reasonable details of the event or considerations upon which MoD's decision is based.

Part 11 - Default and termination

42 Babcock Marine Default

42.1 Babcock Marine Defaults: Each and any of the following shall be Babcock Marine Defaults:

42.1.1 if any of the following occurs:

Insolvency

- (a) a court makes an order that any Relevant BM Entity [REDACTED] be wound up;
- (b) a trustee, trustee in bankruptcy, liquidator, provisional liquidator, supervisor, receiver, administrator, administrative receiver or encumbrancer or person with similar powers takes possession of or is appointed over (other than for the purposes of a bona fide internal solvent reorganisation or amalgamation previously consented to by the MoD), or any distress, execution or other process is levied or enforced (and is not discharged within five (5) Business Days) upon the whole or any part of the assets of a Relevant BM Entity or [REDACTED];
- (c) a meeting of creditors or any class of shareholders of a Relevant BM Entity [REDACTED] passes a resolution for the winding-up, bankruptcy or dissolution of such Relevant BM Entity [REDACTED] (other than for the purposes of a solvent reconstruction or amalgamation previously consented to by MoD (such consent not to be unreasonably withheld, delayed));
- (d)
 - (i) a Relevant BM Entity [REDACTED] or any of their respective directors resolve that an administration order should be made in respect of it or that an administrator should be appointed to it;
 - (ii) any application is made or notice served or filed, for the making of an administration order in respect of a Relevant BM Entity [REDACTED] or the appointment of an administrator to a Relevant BM Entity [REDACTED] and where (and only where) such an application is made solely by one or more creditors of such Relevant BM Entity [REDACTED], that application is not withdrawn or dismissed within 20 Business Days; or
 - (iii) any other material steps are taken by a Relevant BM Entity [REDACTED] (or the directors of such party) for the making of an administration order in respect of it or the appointment of an administrator over it;
- (e) a petition is presented or other steps are taken for the purpose of the winding up of a Relevant BM Entity [REDACTED] (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by MoD (such consent not to be unreasonably withheld, delayed or made subject to unreasonable conditions)) and such petition is not, or such other steps are not, discharged or withdrawn within 20 Business Days;
- (f) either a Relevant BM Entity [REDACTED] makes an arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986 or scheme of arrangement under the Companies Act 2006);

Ceasing to carry on business

- (g) a Relevant BM Entity [REDACTED] ceases to carry on business, or admits in writing its inability to pay or is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (without in respect of Section 123(i)(e) of the Insolvency Act 1986 the need to prove any fact or matter to the satisfaction of the

court) or suspends payment with respect to all or any class of its debts or becomes insolvent or bankrupt;

Shareholder events

- (h) [REDACTED] that directly or indirectly controls (as defined in Clause 51.2) any Relevant BM Entity shall suffer any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident or such party shall take steps in any jurisdiction for protection from its creditors or for any moratorium or stay of any creditor action;

Corrupt Gifts and Payments and other Prohibited Acts

- (i) MoD is entitled to terminate this Contract in accordance with the terms of Clause 50 (*Corrupt gifts and payments*);

Security

- (j) MoD is entitled to terminate this Contract in accordance with the terms of Clause 41 (*Security*);

Change of Ownership

- (k) MoD is entitled to terminate this Contract in accordance with the terms of Clause 51.6 (*Change in Ownership*);

Material adverse affect

- (l) a breach by Babcock Marine of any of its obligations under this Contract (other than any obligation that is the subject of any other sub-clause of this Clause 42.1.1) that has a material adverse affect on the successful delivery of this Contract or Babcock Marine's performance of its obligations under this Contract where termination is a reasonable and proportionate remedy, having regard to the gravity of the breach and where MoD has given due consideration, where appropriate, to action other than termination;

Breach of [REDACTED]

- (m) a breach or breaches by [REDACTED] of any of its [REDACTED] obligations under the [REDACTED] [REDACTED] which in aggregate exceeds [REDACTED] that is not rectified within 20 Business Days of the date MoD demanded payment under [REDACTED], provided such demand is made on or after the [REDACTED];

Continuing failure to meet BM KPIs

- (n) if MoD is entitled to terminate this Contract in accordance with Clause 23.3 (*Failure to achieve BM KPIs*);

Failure to deliver Guaranteed Benefits

- (o) if Babcock Marine fails to achieve either of the following:
- (i) at least [REDACTED] of the Guaranteed Benefits in any Benefits Measurement Period as assessed at the relevant rebaselining point; or
 - (ii) at least [REDACTED] of the Guaranteed Benefits in each of two consecutive Financial Years in any Benefits Measurement Period after the first Benefits Measurement Period.

Breach of Warranty

- (p) any breach by Babcock Marine ██████ of any of the representations and warranties contained in Clauses 5 (*Representations and warranties*) or 47.1 ██████ that MoD relied on in entering into this Contract where such breach has a material adverse affect on the successful delivery of this Contract, or Babcock Marine's performance of its obligations under the Contract where termination is a reasonable and proportionate remedy and where termination is a reasonable and proportionate remedy, having regard to the gravity of the breach and where MoD has given due consideration, where appropriate, to action other than termination;

Nuclear default

- (q) a material breach by any Relevant BM Entity of any of its nuclear related obligations under any of the BM Contracts, or any nuclear site licences, consents, authorisations or nuclear related insurance policies held by a Relevant BM Entity in connection with the Naval Bases, Dockyards and/or ToBA Work that would entitle:
- (i) the relevant regulatory bodies to (A) terminate such nuclear site licences, consents or other authorisations; or (B) prohibit or significantly restrict the Relevant BM Entities from carrying out nuclear related ToBA Work; or
 - (ii) the relevant insurance provider (if any) to terminate any nuclear related insurance policies that the Relevant BM Entities need to maintain in place in connection with the Naval Bases and Dockyards or to carry out ToBA Work,
- or a major nuclear incident in connection with a Dockyard, a Naval Base or ToBA Work is found to have been caused by the negligence of, or breach of a BM Contract by, a Relevant BM Entity.

Assignment and transfer

- (r) a breach by Babcock Marine of Clause 52 (*Assignment and transfer*) occurs;

WSMI Contract Default

- (s) if MoD is entitled to terminate this Contract in accordance with Clause 10.3 (*WSMI Services*).

BM Contract Default

- (t) if:
- (i) MoD has served a valid notice of termination on the grounds of default by Babcock Marine (howsoever defined) in accordance with the terms of a BM Contract for ToBA Work; or
 - (ii) an event of default has occurred which entitles MoD to terminate a BM Contract for ToBA Work, but within 30 Business Days of becoming aware of the occurrence of such event of default:
 - (aa) MoD has not served a valid notice of termination under that BM Contract;
 - (bb) the only reason that MoD has not served such termination notice is because termination is Seriously Detrimental; and
 - (cc) MoD has within such 30 Business Days period served a Detrimental Effect Notice on Babcock Marine under this Contract,

(for the avoidance of doubt, whether it would be Seriously Detrimental to terminate a BM Contract is a matter which shall be capable of reference by Babcock Marine to the Dispute Resolution Procedure);

in:

- (iii) any [REDACTED], in respect of [REDACTED] or more BM Contracts in respect of ToBA Work, each with a contract value exceeding [REDACTED] (exclusive of VAT and indexed in accordance with RPI from the Commencement Date); or
- (iv) the Contract Period, in respect of [REDACTED] or more BM Contracts in respect of ToBA Work each with a contract term (from commencement until expiry) of [REDACTED] years or more; or
- (v) the Contract Period, in respect of [REDACTED] or more BM Contracts which fall within paragraph (iii) above (in any [REDACTED]) and [REDACTED] or more BM Contracts which fall within paragraph (iv) above (in the Contract Period).

It is acknowledged that a BM Contract may fall within both paragraphs (iii) and (iv) above and, in that case, that a BM Contract shall not be counted twice for the purposes of paragraph (iv) above but MoD shall specify in which category that BM Contract should be counted as falling.

42.2 Notice of Babcock Marine Default

Babcock Marine shall notify MoD of the occurrence and details of any Babcock Marine Default (**BM Default Notice**) including whether, without prejudice to its rights under Clause 43.3.1, Babcock Marine believes that the Babcock Marine Default (or the circumstances giving rise thereto) is capable of being remedied, immediately upon Babcock Marine becoming aware of the Babcock Marine Default.

43 MoD remedies for Babcock Marine Default

43.1 Exercise of MoD Rights

The exercise by MoD of its rights under this Clause 43 (*MoD remedies for Babcock Marine Default*) shall be at its sole discretion, and subject to Clause 45.3, shall be without prejudice to any of its other rights or remedies and to any rights of action which shall accrue or shall have already accrued to the MoD.

43.2 Termination of ToBA

- 43.2.1 Subject to Clause 43.2.2, in the case of any Babcock Marine Default not specified in or which is specified in but has not been remedied in accordance with Clause 43.3.1 (*Remediation requirements*), MoD shall be entitled to terminate this Contract in its entirety by serving a notice on Babcock Marine at any time if the Babcock Marine Default remains subsisting when MoD serves its notice under this Clause 43.2.1.
- 43.2.2 In the case of any Babcock Marine Default other than the events referred to in Clauses 42.1.1(a) to 42.1.1(h) inclusive (*Insolvency*) any proposed exercise by MoD of its right to terminate this Contract under Clauses 43.2.1 or 43.4 shall be referred to the POG for debate or discussion prior to MoD exercising any such right.
- 43.2.3 In the case of any Babcock Marine Default specified in Clauses 42.1.1(a) to (h) (inclusive) (*Insolvency*) MoD shall be entitled to terminate this Contract in its entirety immediately (subject to any time periods provided for in such clauses) by serving a notice on Babcock Marine at any time under this Clause 43.2.3.

43.3 Remediation requirements

43.3.1 In the case of any Babcock Marine Default under Clauses 42.1.1(j) (*Security*), 42.1.1(l) (*Material adverse effect*), 42.1.1(p) (*Breach of Warranty*) and 42.1.1(q) (*Nuclear default*) and 42.1.1(r) (*Assignment and transfer*) or any other Babcock Marine Default that MoD otherwise considers is capable of being remedied MoD may notify BM of such Babcock Marine Default in which case Babcock Marine shall either:

- (a) remedy the breach or breaches (or the circumstances giving rise thereto) referred to in such BM Default Notice (the **Relevant Default**) within 30 Business Days of such BM Default Notice (or such longer period as may be agreed by MoD where the Relevant Default (or the circumstances giving rise thereto) is capable of being remedied within such period); or
- (b) if the Relevant Default (or the circumstances giving rise thereto) is not capable of being remedied within such period, put forward within 30 Business Days of such BM Default Notice a reasonable programme for the remedying of the Relevant Default, such remediation programme to specify in reasonable detail the manner in which the Relevant Default is proposed to be remedied and the latest date by which it is proposed that the Relevant Default shall be remedied and the provisions of Clause 43.3.2 shall apply.

43.3.2 Where Babcock Marine puts forward a remediation programme in accordance with Clause 43.3.1(b)

- (a) the MoD shall have 20 Business Days within which to notify Babcock Marine that it does not accept such programme as being reasonable, failing which the MoD shall be deemed to have accepted such programme;
- (b) where the MoD notifies Babcock Marine that it does not accept such programme as being reasonable:
 - (i) the Parties shall endeavour within the following 10 Business Days to agree any necessary amendments to the remediation programme put forward;
 - (ii) in the absence of agreement within such 10 Business Day period, the question of whether or not the remediation programme (as amended by agreement) is reasonable shall be discussed at the Project Owners Group; and
 - (iii) if agreement is not reached by the Project Owners Group in accordance with this Clause 43.3.2 as to whether the remediation programme is reasonable, MoD may nevertheless terminate this Contract, but without prejudice to Babcock Marine's right to refer to the Dispute Resolution Procedure the question as to whether the remediation programme was reasonable and if it was determined it was reasonable, the termination shall be deemed to be a voluntary termination under Clause 44.

43.4 Termination after remediation failure

Subject to Clause 43.2.2 MoD may terminate this Contract in its entirety by notice to Babcock Marine if the Relevant Default (or the circumstances giving rise thereto) notified in a BM Default Notice served under Clauses 42.2 (*Notice of Babcock Marine Default*) and 43.3 (*Remediation requirements*) is not remedied:

- (a) before the expiry of the period referred to in Clause 43.3.1(a) (if applicable); or
- (b) in accordance with:

- (i) a reasonable remediation programme put forward in accordance with Clause 43.3.1(b) as revised by any agreement under Clause 43.3.2, and
 - (ii) within a reasonable timeframe as included in that remediation programme as revised by any agreement under that Clause 43.3.2; and
- (c) if Babcock Marine has not put forward a remediation programme in accordance with Clause 43.3.1(b) (if applicable).

44 Voluntary termination

44.1 The MoD may terminate this Contract in its entirety voluntarily at its discretion at any time by notice given by an MoD senior commercial manager who is at MoD one star level (or equivalent) or above serving a Termination Notice on Babcock Marine stating that:

- (a) MoD is terminating this Contract voluntarily; and
- (b) this Contract shall terminate on the date following 12 months after the date of receipt of the Termination Notice,

provided that MoD has first discussed this matter with Babcock Marine in a meeting of the Project Owners Group.

44.2 Compensation for termination by the MoD pursuant to this Clause 44 shall be calculated in accordance with Clause 45.2 (*Consequences of voluntary termination*).

45 Consequences of termination or expiry and Limitations on Liability

45.1 General consequences of termination or expiry

45.1.1 Upon the termination of this Contract whether through Babcock Marine Default under Clause 43.2 (*Termination of ToBA*) or 43.4 (*Termination after remediation failure*) or through the MoD exercising its rights under Clause 44 (*Voluntary termination*) or upon the expiry of this Contract, the rights and obligations of the Parties shall cease except for:

- (a) any accrued rights or obligations (including liabilities) that arose prior to the Termination Date (but not from the termination itself) (including any accrued rights or obligations (including liabilities) in respect of Guaranteed Benefits which shall be assessed in accordance with Clause 45.1.2(d) (*Guaranteed Benefits shortfall*));
- (b) any rights or obligations (including liabilities) which are expressed to continue under Clause 60 (*Survival*); and
- (c) any other rights or obligations (including liabilities) which give effect to such termination or the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

45.1.2 Upon termination of this Contract (whether through Babcock Marine Default under Clause 43.2 (*Termination of ToBA*) and Clause 43.4 (*Termination after remediation failure*) or through the MoD exercising its rights under Clause 44 (*Voluntary Termination*) or upon the expiry of this Contract the Parties acknowledge and agree that the following shall apply:

- (a) **BM Contracts** – all BM Contracts entered into prior to the Termination Date or expiry date shall remain unaffected (including in respect of the pricing of such BM Contracts and, for the avoidance of doubt, in respect of BM Contracts for ToBA Work, including where such pricing reflects Guaranteed Benefits realised under Clause 12 (*Guaranteed Benefits*) and Schedule 12 (*Pricing and Incentivisation*) and/or the payment of any ARP pursuant to Schedule 12 (*Pricing and Incentivisation*)).

- (b) **BM Contracts for ToBA Work entered into during the Final Period** - the pricing mechanism set out in Part 2 of Schedule 12 (*Pricing and Incentivisation*) shall, unless otherwise previously agreed whether in accordance with Clause 6.4 (*Updating of BM Contracts*) or otherwise, continue to apply in respect of BM Contracts for ToBA Work to be entered into during the Final Period subject to Clause 45.1.2(d) (*Guaranteed Benefits shortfall*) and Clause 45.2 (*Consequences of voluntary termination*).
- (c) **New BM Contracts for ToBA Work to be entered into after the Final Period** - the Pricing Rates shall be revised taking into account the then Babcock Marine Cost Base as at the end of the Final Period in accordance with the provisions set out in Part 3 of Schedule 12 (*Pricing and Incentivisation*) and thereafter every ■ years unless otherwise agreed between the Parties. The Parties agree that such Pricing Rates shall, unless otherwise agreed be used to price any future BM Contracts for ToBA Work to be entered into after the Final Period.
- (d) **Guaranteed Benefits shortfall** – the following mechanism shall apply to calculate the Guaranteed Benefits Shortfall:

- (i) **Babcock Marine Default under Clause 43**

If this Contract terminates under Clause 43.2 (*Termination of ToBA*) or 43.4 (*Termination after Remediation Failure*) then, the Parties shall by the date which is six months after the end of the Final Period (the **Reconciliation Date**) conduct a reconciliation to determine whether Babcock Marine has delivered Realised Authority Benefits in the period from the Commencement Date to the end of the Final Period that equal or exceed the Guaranteed Benefits Termination Target. To the extent that it is agreed or determined that there is a shortfall between such Realised Authority Benefits and the Guaranteed Benefits Termination Target (the **Termination Shortfall**), then MoD may at its option (such option to be exercised in writing to Babcock Marine within 30 Business Days of the Reconciliation Date) elect to :

- (aa) reduce the agreed price of any new contracts for ToBA Work awarded to Babcock Marine after the Reconciliation Date (the affected new contracts to be expressly identified by MoD in its notice of election); and/or
- (bb) demand payment from Babcock Marine (payable within 30 Business Days from receipt of the notice of election); and/or
- (cc) deduct from any payments due under any one or more BM Contract for ToBA Work over a period of 12 months from the election notice the affected BM Contracts to be expressly identified by MoD in its notice of election,

by or in an amount equal in aggregate to the Termination Shortfall. In determining whether there is a Termination Shortfall, the Realised Authority Benefits achieved in respect of each relevant BM Contract for ToBA Work in force on the last day of the Financial Year ending immediately before the Termination Date shall be calculated on a contract-specific basis, as opposed to by consideration of the whole Babcock Marine Cost Base for the period between the last day of the Financial Year ending immediately before the Termination Date and the end of the Final Period.

Guaranteed Benefits Termination Target means the aggregate of:

- (a) the Guaranteed Benefits that Babcock Marine was required to achieve in the period from the Commencement Date to the last day of the Financial Year ending immediately before the Termination Date; and

- (b) the aggregate of the Authority Benefits projected to be realised through the achievement of the Target Price of all BM Contracts for ToBA Work in force at the last day of the Financial Year ending immediately before the Termination Date. For the purposes of this limb (b) of this definition, the Authority Benefits projected to be realised in respect of each such BM Contract shall be:
 - (i) determined through consideration of the amount of Authority Benefits contained within the Pricing Rates used to price and generate charges in respect of the relevant BM Contract; and
 - (ii) only those which relate to Work to be performed under those BM Contracts during the period between the last day of the Financial Year ending immediately before the Termination Date and the end of the Final Period.

(ii) **Voluntary Termination under Clause 44**

If this Contract terminates under Clause 44 (*Voluntary termination*), this Clause 45.1.2(d)(ii) shall apply in place of Clause 45.1.2(d)(i). Within six months after the Termination Date, the Parties shall conduct a reconciliation to determine whether Babcock Marine has delivered Realised Authority Benefits in the period from the Commencement Date to the last day of the Financial Year ending immediately before the Termination Date that equal or exceed the Guaranteed Benefits Voluntary Termination Target. To the extent that it is agreed or determined that there is a shortfall between such Realised Authority Benefits and the Guaranteed Benefits Voluntary Termination Target (the **VT Shortfall**), then, Babcock Marine may at its option (such option to be exercised in writing to the MoD within 30 Business Days of the Reconciliation Date) elect to:

- (aa) reduce the agreed price of any new contracts for ToBA Work awarded to Babcock Marine within 3 years of the Termination Date, such affected contracts to be expressly identified by Babcock Marine in its notice of election;
- (bb) pay MoD the VT Shortfall in a lump sum within 12 months of the Termination Date; and/or
- (cc) only if the Shortfall is in excess of [REDACTED] pay the MoD the VT Shortfall in equal quarterly instalments over the 3 years following the Termination Date,

by or in an amount equal in aggregate to the VT Shortfall. In each such case, Babcock Marine may set off against such payments any amounts due from MoD under Clause 45.2 but not yet paid.

Guaranteed Benefits Voluntary Termination Target means the aggregate of the Guaranteed Benefits that Babcock Marine was required to achieve in the period from the Commencement Date to the last day of the Financial Year ending immediately before the Termination Date.

- (e) **Agreed changes to BM Contracts** – for the avoidance of doubt, any changes to the BM Contracts implemented by this Contract under Clause 6 (*Relationship governed by this Contract and Interface with other contracts*) which have been expressly documented by agreement between the Parties shall continue to apply.

45.2 Consequences of voluntary termination

45.2.1 Where MoD terminates this Contract in accordance with Clause 44 (*Voluntary termination*) then MoD shall:

- (a) **Breakage fees / costs** – subject to Clause 45.3.1 indemnify Babcock Marine against any commitments, liabilities or expenditure which were reasonably and properly incurred by Babcock Marine on the basis that this Contract would have been continuing, but only to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by Babcock Marine by reason of the determination of this Contract and only to the extent that:
- (i) after Babcock Marine has first been put on notice that MoD is considering exercising its right to voluntarily terminate this Contract under Clause 44 (*Voluntary termination*) Babcock Marine has notified MoD of any material commitments, liabilities or expenditure and requested MoD's consent in advance of entering into or incurring (as applicable) them and either MoD has given its consent (such consent not to be unreasonably withheld and to be given or denied within 25 Business Days of such request) or has failed to respond within such 25 Business Day period;
 - (ii) such commitments, liabilities or expenditure are incurred under arrangements and/or contracts that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
 - (iii) Babcock Marine has used its reasonable endeavours to minimise and mitigate such commitments, liabilities and expenditure.

Babcock Marine shall provide any information reasonably requested by MoD in order to the verify Babcock Marine's commitments, liabilities or expenditure in relation to this Clause. Any amounts to be paid under this Clause shall be paid within 30 Business Days of satisfactory evidence of the amount due being provided;

- (b) **Lost Additional Rate of Profit (Final Period)** – continue to pay Babcock Marine the ARP (if any) payable under BM Contracts in the Final Period;
- (c) **Lost Additional Rate of Profit (next Period)** – pay Babcock Marine the ARP for ToBA Work carried out under BM Contracts for ToBA Work in the next Period at the rate that would have applied to such BM Contracts for ToBA Work under Clause 22 (*Incentivisation*) and Part 5 of Schedule 12 (*Pricing and Incentivisation*) if this Contract had not been terminated and Babcock Marine had achieved the Hold Harmless Point in the Final Period and had achieved a level of KPI performance across the Final Period consistent with that achieved in the Final Period up to the Termination Date;
- (d) **Lost load** – if MoD enters into new contracts for Work with third parties or implements any variations or scope changes under existing contracts with third parties that would (but for the termination of this Contract) have fallen within a Nominated Role or Collaborative Role, pay Babcock Marine a lump sum payment on the date that it enters into or varies or otherwise changes each such contract:
- (i) equal to the net present value of the amount determined under sub-clause (ii) discounted at ■■■ per cent. (■■■■■ per cent.) per annum on an annual basis;
 - (ii) an amount equal to ■■■ per cent. (■■■■■ per cent.) of the Target Cost of undertaking the Work that is scheduled to be performed under such contract(s) in the period up to the fifth anniversary of the Termination Date using as the tools for forecasting such Target Cost, the pricing methodology set out in Part 2 of Schedule 12 (*Pricing and Incentivisation*) and the Projected ToBA Workload as at the Termination Date. For the purposes of

applying the discounting mechanism referred to in Clause 45.2.1(d)(i) only, the amount calculated under this clause 45.2.1(d)(ii) shall be divided into the Financial Years in the period up to the fifth anniversary of the Termination Date in accordance with the Projected ToBA Workload for each such Financial Year,

provided that where a contract is for Work which is partly within and partly outside the scope of a Nominated Role or Collaborative Role the calculation under this sub-clause (d) shall only apply to that part of the Target Price or equivalent that is applicable to the Work within that part of the Nominated Role or Collaborative Role.

45.3 Termination General

45.3.1 Upon termination of this Contract:

- (a) in accordance with Clause 43 (*MoD Remedies for Babcock Marine Default*) no compensation shall be payable by any Babcock Marine Group Member to MoD other than as provided for in Clause 45.1.2(d) (*Guaranteed Benefits Shortfalls*);
- (b) in accordance with Clause 44 (*Voluntary termination*), no compensation shall be payable by the MoD to any Babcock Marine Group Member [REDACTED] other than as provided for in Clause 45.2 (*Consequences of voluntary termination*)

and in each such case such payments shall be in full and final settlement of the relevant Parties' rights and claims against the other Parties in respect of the termination of this Contract whether under contract, tort, equity, restitution or otherwise but without prejudice to the survival of the rights and obligations referred to in Clause 45.1.1.

45.3.2 The rights of each Party under this Part 11 (*Default and Termination*) are in addition to and without prejudice to any other right any Party may have to claim the amount of any Losses suffered by that Party (including, in the case of the rights of MoD, on account of the acts or omissions of any Babcock Marine Group Member) under or in connection with the performance or non-performance of a BM Contract.

45.3.3 Without prejudice to the obligation of the MoD to make any payments due to Babcock Marine under this Clause 45 (*Consequence of termination or expiry and Limitations on Liability*) by the due date for payment, the mechanism for Babcock Marine to apply for such payment shall be in accordance with the MoD's then current payment processing methodology.

45.4 Liability limitation

45.4.1 Subject to Clauses 45.4.4(a) and (b) and 45.4.5, the aggregate liability (both individually and collectively) of the BM Opcos to MoD incurred in connection with this Contract howsoever arising (other than the cost of MoD enforcing Clause 46 [REDACTED]) shall be limited in quantum and in the aggregate to the sum of A minus B where:

A is [REDACTED]; and

B is [REDACTED]

45.4.2 Save for fraudulent representation or fraudulent concealment by [REDACTED] or the cost of MoD enforcing Clause 46 [REDACTED], the aggregate liability of [REDACTED] incurred in connection with this Contract and/or the [REDACTED] howsoever arising shall be limited in quantum and in the aggregate to the sum of A minus B where:

A is [REDACTED]; and

B is [REDACTED]

45.4.4 Nothing in Clause 45.4.1 or Clause 45.4.3 shall exclude, restrict or limit:

- (a) the liability of any Party for:
 - (i) death or personal injury resulting from its negligence; or
 - (ii) any Losses caused by the wilful default of, or fraudulent representation or fraudulent concealment by that Party or its representatives;
- (b) any liability Babcock Marine may have under Clause 45.1.2(d) (*Guaranteed Benefits shortfall*); or
- (c) any liability MoD may have:
 - (i) under Clause 45.2 (*Consequences of voluntary termination*);
 - (ii) under Clause 37 (*Measures in a Crisis*); and/or
 - (iii) for breach of either of Clauses 10.2.2 (*Nominated Roles*) and 10.5.2 (*Collaborative Roles*).

45.4.5 No Party nor any of its officers, employees or agents shall, in any circumstances whatsoever (and whether in contract or in tort, including negligence, or otherwise howsoever arising), be liable to the other Party for any Indirect Loss provided that any Losses claimed by:

- (a) Babcock Marine under Clause 37 (*Measures in a Crisis*) or Clause 45.2 (*Consequences of voluntary termination*);
 - (b) Babcock Marine for breach by MoD of Clauses 10.2.2 (*Nominated Roles*) or 10.5.2 (*Collaborative Roles*);
- or by
- (c) MoD in respect of loss of Guaranteed Benefits under Clauses 13 (*Exceeding or failing to achieve the Guaranteed Benefits*), 16 (*Failure to meet Guaranteed Benefit*) and/or 45.1.2(d) (*Guaranteed Benefits Shortfall*),

shall be deemed not to be Indirect Losses for the purposes of this Contract.

45.5 Interest

Where and to the extent that an undisputed amount is due to be paid by one Party (the **Claiming Party**) to another Party pursuant to this Contract and such debt would otherwise be a "qualifying debt" under the Late Payment of Commercial Debts (Interest) Act 1998 (the **Act**):

- (a) the interest provided for by this Clause 45.5 is a contractual remedy and is not statutory interest. Therefore, to the extent permissible by law, the provisions of the Act relating to statutory interest shall not apply to this Contract;

- (b) from the day after the due date and thereafter until payment is made, simple interest at a rate calculated in accordance with Clause 45.5(c) may be claimed by the Claiming Party on the value of all valid claims for payment (or unpaid parts thereof);
- (c) the rate of interest referred to in Clause 45.5(b) shall be [REDACTED] per annum above the base rate of Barclays Bank plc from time to time; and
- (d) no interest shall be payable for any period of delay attributable to the conduct of the Claiming Party.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (c) no changes have been made to the Memorandum of Association and Articles of Association of [REDACTED] between the date on which these documents were certified in March 2010 and the date of this Contract (inclusive);

Execution and performance of Contract

- (d) all action necessary to authorise the execution of and the performance of its obligations under this Contract has been taken;

[REDACTED]

Lawful obligations

- (f) the obligations expressed to be assumed by it under this Contract are legal, valid, binding and enforceable to the extent permitted by law;
- (g) the execution, delivery and performance of this Contract by it:
- (i) does not constitute a default under any document or obligation which is binding upon it;
 - (ii) does not conflict with its memorandum and articles of association; and
 - (iii) does not conflict with any law, regulation or official or judicial order applicable to it;

No threats to business

- (h) no claim is presently being assessed by [REDACTED] or any [REDACTED] and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of its knowledge (having made all due enquiry), pending or threatened against it or any of the assets of any [REDACTED] which might have a material adverse effect on the ability of [REDACTED] to perform its obligations under this Contract;

No insolvency

- (i) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, having made all due enquiry, threatened) for the winding-up or dissolution of [REDACTED] or any [REDACTED] or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues or the assets and revenues of such Relevant BM Entity;

No Prohibited Acts

- (j) in entering into this Contract it has not committed any Prohibited Act;

Accounts

- (k) in relation to the latest Accounts of [REDACTED] issued prior to the date of this Contract and in relation to each of the Accounts of [REDACTED] required to be delivered under Clause 31 (*Babcock Marine Records*) and Schedule 13 (*Open Book Accounting Procedures*), such Accounts were or (where applicable) will be prepared and audited in accordance with GAAP and give a true and fair view, or fairly represent (as applicable) the financial position of [REDACTED] as at the date of their preparation and for the period then ended and (in relation to accounts issued prior to the date of this Contract since that date) no event has occurred which has had or could be reasonably expected to have a material adverse effect on the business or financial condition of [REDACTED]

Warranties cumulative

47.1.2 All warranties, representations, undertakings and other obligations made, given or undertaken by [REDACTED] in this Clause 47.1 are cumulative and none shall be given a limited construction by reference to any other.

47.2 Repetition

The warranties and representations set out in Clause 47.1(j) shall be deemed to be repeated by [REDACTED] by reference to the facts and circumstances then existing on each day during the Contract Period.

47.3 Additional [REDACTED] undertakings

[REDACTED] separately and additionally undertakes to notify (or to procure that Babcock Marine notifies) MoD within a reasonable period but not more than 3 months of each and every change to the information warranted under Clause 5.1.1(e) (*Members of the Babcock Marine Group* [REDACTED]), other than the information in Part 2 of Schedule 16 ([REDACTED] [REDACTED]) without prejudice to any obligations relating to any such change under the applicable requirements of this Contract and/or any BM Contract.

MoD acknowledges and agrees that a notice issued pursuant to this Clause 47.3 shall also be effective to discharge any comparable notification requirements that [REDACTED] may have under a BM Contract provided that such notice states that [REDACTED] is also giving notice under the relevant BM Contract.

47.4 Without limitation [REDACTED] shall comply with its obligations under Clause 51 (*Change in Ownership*).

48 Special shares

The Parties agree and acknowledge that nothing in this Contract shall limit or change any of the special rights and privileges or obligations in connection with MoD's special shares in DRDL and RRD.

Part 13 – Miscellaneous

49 Public relations and publicity

Babcock Marine shall not (and shall procure that each relevant [REDACTED] and the employees, agents or sub-contractors of Babcock Marine and each relevant [REDACTED] shall not:

- (a) communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract; or
- (b) photograph or film in or upon any MoD sites; or
- (c) erect or exhibit on any part of MoD sites any notice or advertisement,

unless:

- (d) MoD's Representative has given its prior written consent;
- (e) as otherwise required to comply with Legislation or stock exchange requirements; or
- (f) in accordance with a written communication protocol agreed by the Parties.

50 Corrupt gifts and payments

50.1 Babcock Marine shall not do, any of the following (hereafter referred to as **Prohibited Acts**):

50.1.1 offer, give or agree to give to any Crown servant any gift or consideration of any kind as an inducement or reward:

- (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this or any other contract with the Crown; or
- (b) for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown;

50.1.2 enter into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by Babcock Marine, [REDACTED] their behalf, or to their knowledge, unless before the relevant contract 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 the MoD;

50.1.3 commit any offence:

- (a) under the Prevention of Corruption Acts 1889-1916;
- (b) under Legislation creating offences in respect of fraudulent acts; or
- (c) under sub sections 108 -109 of the Anti-Terrorism, Crime and Security Act 2001;
- (d) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown; or

50.1.4 defraud or attempt to defraud or conspire to defraud the Crown.

50.2 If Babcock Marine [REDACTED] or any sub-contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders

commits any Prohibited Act, then the MoD shall be entitled to act in accordance with Clauses 50.2.1 to 50.2.5 below:

- 50.2.1 if a Prohibited Act is committed by Babcock Marine [REDACTED] or by an employee not acting independently of Babcock Marine, then this shall be treated as a Babcock Marine Default for the purposes of Clause 42 (*Babcock Marine Default*) and MoD shall be entitled to terminate this Contract in its entirety in accordance with Clause 43.2;
- 50.2.2 if the Prohibited Act is committed by an employee of Babcock Marine acting independently of Babcock Marine, then this shall be treated as a Babcock Marine Default for the purposes of Clause 42 (*Babcock Marine Default*) and MoD shall be entitled to terminate this Contract in its entirety in accordance with Clause 43.2, unless within 30 Business Days of receipt of a Termination Notice Babcock Marine (or procures that [REDACTED] (as applicable)) terminates the employee's employment;
- 50.2.3 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 this shall be treated as a Babcock Marine Default for the purposes of Clause 42 (*Babcock Marine Default*) and the MoD shall be entitled to terminate this Contract in its entirety in accordance with Clause 43.2, unless within 30 Business Days of receipt of a Termination Notice Babcock Marine terminates the relevant sub-contract;
- 50.2.4 if the Prohibited Act is committed by an employee of a sub-contractor acting independently of that sub-contractor, then this shall be treated as a Babcock Marine Default for the purposes of Clause 42 (*Babcock Marine Default*) and MoD shall be entitled to terminate this Contract in its entirety in accordance with Clause 43.2, unless within 30 Business Days of receipt of a Termination Notice under Clause 43 (*MoD remedies for Babcock Marine Default*), the sub-contractor terminates the employee's employment;
- 50.2.5 if the Prohibited Act is committed by any other person not specified in Clauses 50.2.1 to 50.2.4 above, then this shall be treated as a Babcock Marine Default for the purposes of Clause 42.1 and the MoD shall be entitled to terminate this Contract in its entirety in accordance with Clause 43.2 unless within 30 Business Days of receipt of a Termination Notice Babcock Marine ensures the termination of such person's employment and of the appointment of their employer (where not employed by Babcock Marine or the sub-contractors).
- 50.3 Any Termination Notice in relation to breach of this Clause 50 (*Corrupt gifts and payments*) shall specify:
 - 50.3.1 the nature of the Prohibited Act;
 - 50.3.2 the identity of the Party whom MoD believes has committed the Prohibited Act; and
 - 50.3.3 the date on which this Contract will terminate, in accordance with the applicable provision of this Clause.
- 50.4 In exercising its rights or remedies under this Clause 50 and Clause 43 (*MoD remedies for Babcock Marine Default*), MoD shall:
 - 50.4.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act;
 - 50.4.2 give all due consideration, where appropriate, to action other than termination of this Contract, including (without being limited to):
 - (a) requiring Babcock Marine to procure the termination of a sub-contract where the Prohibited Act is that of a sub-contractor or anyone acting on its or their behalf;

- (b) requiring Babcock Marine to procure the dismissal of an employee (whether its own or that of a sub-contractor or anyone acting on its behalf) where the Prohibited Act is that of such employee.

50.5 Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against Babcock Marine pursuant to this Clause.

51 Change in Ownership

51.1 Babcock Marine [REDACTED] shall inform the MoD in writing, as soon as practicable, but in any event not less than 30 Business Days in advance, of any proposed change in control (as defined in Clause 51.2 below) of any Relevant BM Entity (which term for the purposes of this Clause 51 (*Change in Ownership*) shall also include any holding company in the [REDACTED]). Neither Babcock Marine [REDACTED] shall be required to:

- (a) submit any advice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of [REDACTED] in the UK or other jurisdictions where the relevant entity may be subject to legal sanction arising from issue of such advice; or
- (b) inform MoD of any proposed Change in Control of which it is not aware provided it informs MoD as soon as reasonably practicable after it becomes aware of that proposed Change in Control.

51.2 For the purposes of this Clause 51.2 'control' means the power of a Person or a group of Persons acting in concert (within the meaning of the City Code on Takeovers and Mergers) (**New Owner(s)**) to secure that the affairs of [REDACTED] (as applicable) are conducted in accordance with the wishes of that Person or group of Persons (as applicable):

- (a) by means of holding of shares, or the possession of voting powers in, or in relation to, [REDACTED] (as applicable), or
- (b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating [REDACTED] (as applicable),

and a **Change in Control** occurs if a Person or group of Persons (as applicable) that control [REDACTED] cease to do so or if another Person or group of Persons acquires control of [REDACTED]

51.3 The notification referred to in Clause 51.1 shall be submitted to the MoD Representative and to:

Supplier Relations Team
Mergers and Acquisition
Larch 2 #2211
Ministry of Defence
Abbey Wood
Bristol BS34 8JH

51.4 Advice by [REDACTED] Babcock Marine of any Change in Control shall not prejudice the existing rights of the MoD [REDACTED] under this Contract nor create or imply any rights of either [REDACTED] or the MoD additional to the MoD's right to receive that information.

51.5 Where the MoD objects to the proposed Change in Control of a Relevant BM Entity or [REDACTED] (or where it objects to a proposed or actual Change in Control of a [REDACTED]) that it was not informed about in accordance with Clause 51.1) it shall promptly notify Babcock Marine and [REDACTED] and shall without delay, engage with Babcock Marine and [REDACTED] in detailed discussions to enable Babcock Marine and [REDACTED] to seek to address MoD's concerns.

Where MoD considers that its concerns have been addressed to its satisfaction it shall notify Babcock Marine and [REDACTED] of this fact and withdraw its objection.

51.6 In the event that there is a Change in Control of [REDACTED] notwithstanding the objection of the MoD as set out in Clause 51.5 above (or in the event that MoD's concerns about an actual Change in Control that it was not informed about in accordance with Clause 51.1 are not addressed to MoD's satisfaction) the MoD shall be entitled to terminate this Contract immediately (other than in connection with a Change in Control [REDACTED], unless MoD acting on grounds of national security considers that it is inappropriate for the New Owner(s) [REDACTED] to become involved or interested in the Babcock Marine Group) if:

- (a) MoD, acting in the national interests or on grounds of defence, national security or national interest considers that it is inappropriate for the New Owner(s) to become involved or interested in the Babcock Marine Group; or
- (b) in the opinion of MoD, it is inappropriate for the New Owner(s) to become involved or interested in the Babcock Marine Group and its business because MoD has received specific information from the Serious Fraud Office or the Crown Prosecution Service or any successor to either body about the suitability of the New Owner(s) to act in such capacity in relation to the Babcock Marine Group; or
- (c) any New Owner(s) has within the previous two years:
 - (i) been convicted of a criminal offence relating to the conduct of its business or profession;
 - (ii) been determined by a governmental or regulatory authority to have materially failed to comply with any obligations relating to the payment of any taxes or social security contributions; or
 - (iii) made any serious negligent or fraudulent misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation; or
- (d) any New Owner is currently involved in a Material Dispute with any part of HM Government.

For the purposes of this Clause:

Material Dispute means a dispute that satisfies the following criteria:

51.6.2 the dispute has been referred to a court, arbitration or adjudication process;

51.6.3 the court, arbitrator or adjudicator has not given their final decision in determination of the dispute; and

51.6.4 the value of the dispute is at least £30 million (such value to be indexed in accordance with RPI from the Commencement Date).

52 Assignment and transfer

52.1 The Contract is binding on and shall enure for the benefit of the Parties and their respective successors and permitted assignees.

52.2 Subject to Clause 52.3, no Party to this Contract may transfer, sell, assign, novate, create any encumbrance or otherwise dispose of this Contract or any part thereof, or any benefit, interest or advantage of this Contract or any part thereof to any other person, including any subsidiary, without the other Parties' prior written consent.

- 52.3 [REDACTED] and MoD shall only be required to obtain the prior written consent of each other (and not the BM Opcos) to transfer, sell, assign, novate, create any encumbrances or otherwise dispose of any of their rights, benefits or obligations under the Parent Company Guarantee to any other person.
- 52.4 Babcock Marine shall obtain MoD's consent (not to be unreasonably withheld or delayed) prior to subcontracting any obligations under this Contract, provided that MoD's consent shall not be required for:
- (a) subcontracting functions that are ancillary to this Contract; or
 - (b) the engagement of consultancy or professional advisory services.
- 52.5 Babcock Marine shall remain liable for its obligations under this Contract notwithstanding any sub-contracting.

53 Severability

If any provision of this Contract [REDACTED] is held to be invalid, illegal or unenforceable for any reason then:

- (a) such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in this Contract but without invalidating any of the remaining provisions of this Contract which shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated;
- (b) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision; and
- (c) where the invalidity, illegality or unenforceability of the provision or the effect of this Clause 53 (*Severability*) results in the removal or reduction of a Nominated Role or a Collaborative Role there shall be a fair and reasonable adjustment to the Guaranteed Benefits taking account of any provisions in this Contract which apply in the case of any removal or reduction of a Nominated Role or a Collaborative Role:

54 Dispute resolution

Any Dispute shall be referred for resolution in accordance with the Dispute Resolution Procedure set out in Schedule 15 (*Dispute Resolution Procedure*).

55 Representatives

55.1 MoD's Representative

The MoD shall appoint the person whose name, address and fax number are set out in Clause 56 (*Notices*) as the MoD Representative for the purposes of this Contract.

55.2 Change in MoD's Representative

- 55.2.1 The MoD may, by notice to Babcock Marine change the MoD Representative and MoD shall (as far as practicable) consult with Babcock Marine prior to the appointment of any replacement MoD Representative, taking account of the need for liaising and continuity in respect of this Contract. Any such notice shall specify the date on which such change or substitution shall have effect, which date shall, other than in the case of an emergency, be

such as will not cause serious inconvenience to Babcock Marine in the execution of its obligations under this Contract. If MoD changes its Representative, Clause 56 (*Notices*) shall be updated accordingly.

55.2.2 During any period when the MoD's Representative is unable through illness, incapacity, holidays or any other reason to carry out or exercise his functions under this Contract, the MoD's Representative may delegate his functions to another person by giving Babcock Marine's Representative written notice of the identity of such person and the extent of his authority.

55.3 Babcock Marine's Representative

Babcock Marine shall appoint the person whose name, address and fax number are set out in Clause 56 (*Notices*) as Babcock Marine's Representative for the purposes of this Contract.

55.4 Change in Babcock Marine's Representative

55.4.1 Babcock Marine may, by notice to MoD change Babcock Marine's Representative and Babcock Marine shall (as far as practicable) consult with MoD prior to the appointment of any replacement Babcock Marine Representative, taking into account of the need for liaising and continuity in respect of this Contract. Any such notice shall specify the date on which such change or substitution shall have effect, which date shall, other than in the case of an emergency, be such as will not cause serious inconvenience to MoD in the execution of its obligations under this Contract. If Babcock Marine changes its Representative, Clause 56 (*Notices*) shall be updated accordingly.

55.4.2 During any period when Babcock Marine's Representative is unable through illness, incapacity, holidays or any other reason to carry out or exercise his functions under this Contract, Babcock Marine's Representative may delegate his functions to another person by giving the MoD's Representative written notice of the identity of such person and the extent of his authority.

55.5 Notices to Representatives

Subject to Clause 56 (*Notices*), any notice, information, instructions or public communication given to:

- (a) Babcock Marine's Representative shall be given in writing and shall be deemed to have been given to Babcock Marine; and
- (b) the MoD's Representative shall be given in writing and shall be deemed to have been given to the MoD.

56 Notices

56.1 All notices, orders, or other forms of communication required to be given in writing (**Notices**) under or in connection with this Contract shall:

- (a) be given in writing;
- (b) be authenticated by signature or by such other method as agreed between the Parties;
- (c) be marked for the attention of the appropriate department or officer; and
- (d) be marked in a prominent position with the relevant Contract number.

56.2 Notices should be delivered by:

- (a) hand or recorded delivery;
- (b) first-class prepaid post (or airmail, in the case of Notices to or from overseas);
- (c) facsimile; or
- (d) electronic mail, where such a means of communication is agreed for the purposes of this Contract.

56.3 Notices shall be deemed to have been received:

- (a) if delivered by hand or recorded delivery, on the day of delivery if it is the recipient's Business Day and otherwise on the first Business Day of the recipient immediately following the day of delivery;
- (b) if sent by first-class prepaid post (or airmail, if appropriate), on the third business day (or on the tenth Business Day, in the case of airmail) after the day of posting;
- (c) if sent by facsimile or other electronic means:
 - (i) if transmitted between 09:00 and 17:00 hours on a Business Day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (ii) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

56.4 The addresses (including electronic addresses) of each Party to this Contract to which all Notices shall be sent are those specified in this Contract, or such other address as either Party may by written Notice specify to the other for the purpose of this Clause 56:

(a) **MoD**

[REDACTED]
Maritime Change Programme Team

[REDACTED]
DE&S

[REDACTED]
Bristol BS34 8JH

Attention: [REDACTED]

Fax: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Attention: [REDACTED]

Fax: [REDACTED]

(c) **BMCL**

Babcock Marine (Clyde) Ltd
Rosyth Business Park
Rosyth, Dunfermline
Fife KY11 2YD

Attention: [REDACTED]

Fax: [REDACTED]

(d) **BMRL**

Babcock Marine (Rosyth) Ltd
Rosyth Business Park
Rosyth, Dunfermline
Fife KY11 2YD

Attention: [REDACTED]

Fax: [REDACTED]

(e) **DRDL**

Devonport Royal Dockyard Ltd
Babcock International Marine Division
Devonport, Plymouth PL1 4SG

Attention: [REDACTED]

Fax: [REDACTED]

The Babcock Marine Representative at the date of this Contract is the Commercial Director, Babcock Marine, [REDACTED]

- 56.5 Where either Party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.
- 56.6 The BM Opcos hereby nominate DRDL as the sole recipient of notices to Babcock Marine under this Contract and acknowledge and agree that any notice validly served on such basis shall be deemed to be received by all the BM Opcos.

57 Entire agreement

57.1 Entire agreement replacing Heads of Terms

57.1.1 This Contract together with the other agreements and documents referred to in this Contract (together, the **Transaction Documents**), sets out the entire agreement between the Parties as to the subject matter of this Contract. This Contract supersedes all previous agreements between the Parties on the subject matter of this Contract including, without limitation, the Heads of Terms which are hereby extinguished.

57.1.2 No other term, express or implied, forms part of this Contract. No usage, custom or course of dealing forms part of or affects this Contract.

57.2 Representations and reliance

57.2.1 Without prejudice to Clause 5.1.1, each Party waives all claims, rights and remedies for all representations:

- (a) made to it by any person before entering into this Contract; and
- (b) not set out in this Contract, and

each Party acknowledges that, in deciding to enter into this Contract, it has not relied on any such representation.

57.2.2 This Clause does not exclude or restrict liability for fraudulent misrepresentation or fraudulent concealment.

58 Costs

Each Party shall pay its own costs for the negotiation, preparation, execution and implementation of this Contract.

59 Rights of third parties

59.1 Except as provided in Clause 59.2 and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a Party to this Contract to enforce any term of this Contract in his own right pursuant to this Contracts (Rights of Third Parties) Act 1999 and the Parties to this Contract declare that they have no intention to grant any such right.

59.2 Where, and only where, either by a term which has been expressly included in this Contract or by another term which specifically refers to this Clause, this Contract expressly states that a third party shall be entitled to enforce a term of this Contract:

- (a) the said third party shall be entitled to enforce that term in his own right; and
- (b) the third party's rights shall be subject to any provision in this Contract:
 - (i) that provides for the submission of disputes under this Contract generally or the said rights in particular to arbitration (such as the Dispute Resolution Procedure); and
 - (ii) that stipulates the law and jurisdiction that will govern this Contract.

60 Survival

Save as otherwise expressly provided in this Contract, termination or expiry of this Contract shall:

- (a) be without prejudice to any rights or obligations (including liabilities) which have accrued under this Contract as at the Termination Date; and
- (b) not affect any right or obligation of MoD or Babcock Marine which:
 - (i) is expressed to survive termination or expiry of this Contract, including any continuing rights or obligations of the MoD or Babcock Marine (as applicable) under Clauses 7 (*Payment and adjustment of BM Contracts*), 31 (*Babcock Marine Records*), 38 (*Intellectual Property Rights*), 39 (*Confidentiality and Freedom of Information*), 41 (*Security*), Part 11 (*Default and termination*), 45 (*Consequences of termination or expiry and Limitations on Liability*), 46 (*Parental guarantee*), 54 (*Dispute resolution*), 59 (*Rights of third parties*), 65 (*Governing law and jurisdiction*); or

- (ii) by its nature survives termination or expiry of this Contract or which by its nature is required to give effect to the termination or expiry of this Contract, or the consequences of such termination.

61 Legal relationship between the Parties

61.1 No partnership

The Parties do not intend this Contract to create any partnership between them as a matter of law. Accordingly, nothing in this Contract or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association between the Parties. Nothing in this Contract is intended to and shall not be construed or give rise to the creation or constitution of a partnership as envisaged in the Partnership Act of 1890 or a joint venture or other business organisation or agency arrangement of any kind. Neither Party shall have the authority to bind the other without that other Party's separate prior written agreement in accordance with this Contract.

61.2 Independent Contractor

Babcock Marine shall at all times be an independent contractor and nothing in this Contract shall be construed as creating the relationship of employer and employee between MoD and Babcock Marine or any of Babcock Marine's employees. Neither Babcock Marine, any Babcock Marine Group Member nor any of its sub-contractors nor its or their respective employees shall at any time hold itself or themselves out to be the employee of MoD and neither Babcock Marine nor any of, or any Babcock Marine Group Member its or its sub-contractor's employees shall be entitled to any of the benefits provided by MoD to its established or unestablished officers and staff.

61.3 No delegation

No provision of this Contract shall be construed as a delegation by MoD of any of MoD's statutory authority to Babcock Marine or any [REDACTED]

61.4 No Agency

None of Babcock Marine or any other [REDACTED] shall be or be deemed to be an agent of MoD and Babcock Marine shall procure that neither itself or any other [REDACTED] will hold itself out as having authority or power to bind MoD in any way. Neither Babcock Marine nor any other [REDACTED] shall have the benefit of any immunity of HM Government and, unless otherwise agreed by MoD, Babcock Marine shall (and shall procure that all [REDACTED] shall) apply for and obtain all consents, licences and permissions which Babcock Marine and any other [REDACTED] would otherwise be obliged to obtain under any law on the basis that it does not have the benefit of any immunity of HM Government.

62 Remedies and waivers

62.1 Waiver must be in writing

If a Party breaches a term of this Contract, the rights of each other Party arising from that breach cannot be waived except:

- (a) with the express written consent of such other Parties; and
- (b) to the extent set out in that consent.

Waiver of one breach does not waive or imply waiver of any further or other breach.

62.2 Limited exercise is not a waiver

This Clause applies if a Party becomes entitled to exercise any right or remedy under this Contract or by law or regulation. No failure to exercise, no delay in exercise and no single or partial exercise of that right or remedy shall:

- (a) adversely affect that right or remedy;
- (b) waive it; or
- (c) prevent any further exercise of it or of any other right or remedy,

except to the extent the Parties have expressly agreed otherwise in writing.

62.3 Rights and remedies are cumulative

The rights and remedies arising from this Contract are cumulative. They are not exclusive of any other rights or remedies provided by law or otherwise except to the extent this Contract expressly states otherwise.

63 Number of executed copies

Three copies of this Contract shall be executed by the Parties, each copy of which when executed and delivered shall be an original but together constitute one instrument.

64 Further Assurance

- 64.1 Each of the Parties shall, at its own cost do all further acts and things and execute and deliver all instruments as shall be reasonably necessary for the carrying out of their respective obligations under this Contract.

65 Governing law and jurisdiction

- 65.1 English law governs this Contract, its interpretation and any non-contractual obligations arising from or connected with it.
- 65.2 Subject to the Dispute Resolution Procedure, the Parties irrevocably agree that the English courts are to have jurisdiction to settle any claim or matter arising out of or in connection with this Contract. However, nothing in this Clause shall limit the right of any Party to take any suit, action or proceeding (**Proceedings**) against any other Party in any other court of competent jurisdiction, nor shall the taking of any Proceeding in any one or more jurisdictions prevent Proceedings being taken in any other jurisdiction, whether concurrently or not.
- 65.3 Each Party agrees that a judgment or order of an English court in a dispute falling within Clause 65.2 (without limiting any rights that such Party may have to appeal a judgement or order) is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

IN WITNESS whereof the Parties have executed and delivered this Contract as a Deed on the date first written above.

Schedule 1 – Definitions

In this Contract, the following words and expressions shall have the meaning given to them, except where the context requires a different meaning:

Accounts means, in respect of a company, its audited accounts or audited consolidated accounts (including all additional information and notes to the accounts) together with the relevant directors' report and auditors' report.

AcMT means the Account Management Team as constituted pursuant to Clause 25 (*Governance*) and Schedule 10 (*Governance*).

Actual Authority Benefits means the Authority Benefits actually achieved by Babcock Marine (before the application of Gainshares), as agreed or determined in accordance with paragraph 4 of Part 4 of Schedule 12 (*Pricing and Incentivisation*).

Actual Costs means, in respect of a Financial Year, the aggregate of the costs reasonably and properly incurred by Babcock Marine in the conduct of the businesses run by the BM Opcos, as agreed or determined in accordance with paragraph 3.2 of Part 1 of Schedule 12 (*Pricing and Incentivisation*).

Actual Productivity Levels means, in respect of a Financial Year, the actual productivity level achieved by Babcock Marine in that Financial Year as agreed or determined pursuant to paragraph 3.2 of Part 1 of Schedule 12 (*Pricing and Incentivisation*) and, once agreed or determined, recorded in the Master Table.

Actual Rates means the actual costing rates, being the function of Actual Cost and actual Total Workload in each case to the extent incurred by Babcock Marine in undertaking ToBA Work and/or Non-ToBA Work in any Financial Year, agreed or determined using the methodology set out in paragraph 4.2.1 of Part 3 of Schedule 12 (*Pricing and Incentivisation*).

Actual Variable Rate means the rate contained within a given set of Actual Rates which is referable to that proportion of Babcock Marine's costs which are variable with workload and are not fixed costs (derived using the Variable Rate Structure), calculated in accordance with paragraph 4.2.2 of Part 3 of Schedule 12 (*Pricing and Incentivisation*) and agreed or determined in accordance with paragraph 3.2 of Part 1 of Schedule 12 (*Pricing and Incentivisation*).

Adjusted Current Baseline has the meaning ascribed to it in paragraph 3.5.1(a) of Part 3 of Schedule 12 (*Pricing and Incentivisation*).

Affiliates means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and **holding company** and **subsidiary** shall have the meaning given to them in Section 1159 of the Companies Act 2006.

Alliance Management Team has the meaning given in the SSS Alliance Agreement.

Amphibious Programme means the provision of equipment and services for amphibious capability encompassing current classes (LPH, LPD, LCU, LCVP and LSDA), future ships and classes and waterfront facilities, including the associated support activities (other than the LSDA platform work which, as at the Commencement Date, is executed through the RFA Cluster Contract).

Annual Review means any review of Babcock Marine's performance to be carried out in accordance with Clause 27 (*Annual Review*).

Approved Business Case Proposal means a Business Case Proposal that has become and Approved Business Case Proposal under Clause 19.5.4.

Approved Change means any change approved by the SG in accordance with paragraph 3.1 of Schedule 11A (*BMECS Governance*).

Approved Copy means, in relation to the BMECS or the ToBA Rates Model, any copy of the Master Copy that has been validated or substituted in accordance with the provisions of Schedule 11A (*BMECS Governance*) or Schedule 11B (*ToBA Rates Model*) as applicable.

Approved ToBA Rates Model Proposal has the meaning given in paragraph 3.7 of Schedule 11B (*ToBA Rates Model*).

ARP means the additional rate of profit (if any) payable to Babcock Marine by MoD pursuant to Project Contracts agreed or determined from time to time pursuant to Part 5 of Schedule 12 (*Pricing and Incentivisation*).

ARP Expiry Payment means the payment (if any) to be made by MoD to Babcock Marine on expiry of the Fourth Period in accordance with paragraph 5 of Part 5 of Schedule 12 (*Pricing and Incentivisation*).

ARP% (Fourth Period) means the actual percentage of ARP in respect of Project Contracts to be entered into in the Fourth Period calculated in accordance with paragraph 4.4 or 4.5 (as applicable) of Part 5 of Schedule 12 (*Pricing and Incentivisation*).

ARP% (Second Period) means the actual percentage of ARP in respect of Project Contracts to be entered into in the Second Period calculated in accordance with paragraph 2.4 or 2.5 (as applicable) of Part 5 of Schedule 12 (*Pricing and Incentivisation*).

ARP% (Third Period) means the actual percentage of ARP in respect of Project Contracts to be entered into in the Third Period calculated in accordance with paragraph 3.4 or 3.5 (as applicable) of Part 5 of Schedule 12 (*Pricing and Incentivisation*).

Auditors means any firm of chartered accountants of internationally recognised standing that has been appointed as auditors of Babcock Marine.

Authority Benefit means, in respect of any relevant Financial Year or Period, the reduction (if any) in the costs which are charged to MoD by Babcock Marine in respect of ToBA Work carried out during that Period by comparison with the costs forecast to be charged to MoD by Babcock Marine for ToBA Work during that Period as set out in the ToBA Starting Baseline (together with any profit which would otherwise have been payable by MoD in relation to such reduced costs) in each case as agreed or determined in accordance with paragraph 3.2 of Part 1 of Schedule 12 (*Pricing and Incentivisation*) BUT AFTER DEDUCTING the aggregate in respect of each agreed Business Case Proposal of MoD's third party costs in implementing that agreed Business Case Proposal (excluding the costs of assessing the Business Case Proposal) to the extent that the amount of such third party costs was agreed in that Business Case Proposal, or, if the amount was not so agreed but the treatment of such costs was, those costs that have been incurred in accordance with the agreed treatment as provided for in the relevant Business Case Proposal, PROVIDED THAT (subject in all cases to agreement to the contrary in an agreed Business Case) in calculating Authority Benefits, Severance Costs directly incurred by Babcock Marine and paid for by MoD in relation to the [REDACTED] shall not be regarded as MoD third party costs for the purposes of this definition.

Babcock Marine Confidential Information means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of Babcock Marine and its Affiliates and/or any BM Contract, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.

Babcock Marine Cost Base means, in respect of the relevant Financial Year, the Actual Costs of Babcock Marine.

Babcock Marine Defaults means any of the events identified in Clause 42.1 (*Babcock Marine Default*).

Babcock Marine Group means the BM Opcos, any subsidiary of any BM Opcos and any other Babcock Marine Group Members.

Babcock Marine Group Members means the list of companies set out in Part 2 of Schedule 16 [REDACTED] and any other subsidiary of [REDACTED] from time to time which is or becomes involved in the provision of Naval Base, Submarine or surface ship support services to the MoD.

Babcock Marine's Representative is the person or persons appointed pursuant to Clause 55.3 (*Babcock Marine's Representative*).

Babcock Marine Strategic Plan means Babcock Marine's strategic plan relating to its business containing as a minimum:

- 65.4 Commentary in relation to MoD's strategic plans including any information provided to Babcock Marine under Clause 26 (*Strategic Planning Framework*);
- 65.5 the assumed future ToBA workload for the relevant future Period;
- 65.6 indicative load and example work streams for Non ToBA workload at the Opco sites; in each case in sufficient detail to support the operation of Schedule 12 and to support the strategic direction of ToBA;
- 65.7 key future objectives to support Transformation; and
- 65.8 an overview of ToBA risk and opportunities arising from the workload forecast.

Baseline means any one of the First Period Baseline, the Second Period Baseline or the Third Period Baseline, as the context requires.

Benefits Measurement Period means:

- (a) Financial Years [REDACTED] (the **first Benefits Measurement Period**);
- (b) Financial Years [REDACTED] (the **second Benefits Measurement Period**);
- (c) Financial Years [REDACTED] (the **third Benefits Measurement Period**); or
- (d) Financial Years [REDACTED] (the **fourth Benefits Measurement Period**),

as the context requires.

Benefits Realisation Plan means the Babcock Marine's plan for the achievement of Benefits as set out in Schedule 5 (*Benefits Realisation Plan*) and as developed in accordance with Clause 14 (*Benefits Realisation Plan*).

Best Practice Comparator has the meaning given to it in paragraph 2 of Schedule 7 (*Best Practice Comparison*).

Best Practice Comparison has the meaning given to it in paragraph 1.1 of Schedule 7 (*Best Practice Comparison*).

Best Practice Expert has the meaning given to it in paragraph 1.3 of Schedule 7 (*Best Practice Comparison*).

[REDACTED]

[REDACTED]

[REDACTED]

BM Contract(s) means the Devonport WSMI, the Faslane WSMI, the Sale of Dockyard Agreements, the Pre ToBA Guarantees and any other agreements between MoD and Babcock Marine or any other [REDACTED], [REDACTED] or any other [REDACTED] [REDACTED] in respect of the Sector (other than this Contract and excluding any Multi-Party Contract) that are currently in force or are entered into from time to time (as such agreements may be amended, modified, restated, varied, novated, supplemented or replaced from time to time).

BM Default Notice shall have the meaning in Clause 42.2 (*Notice of Babcock Marine Default*).

BM Key Performance Indicators or **BM KPIs** means the key performance indicators set out in Schedule 8 (*Performance Management*) under the headings set out in Clause 21.2(a) – (d).

BM Lead means the person appointed as such pursuant to paragraph 1.2 of Schedule 11A (*BMECS Governance*) of Schedule 11B (*ToBA Rates Model*) as applicable.

BM Milestone means any milestone identified in the Transformation Plan as a BM Milestone.

BM Minority Entity has the meaning set out in Clause 5.1.1(e).

BM RMP Milestones means any RMP Milestone identified in the Relationship Management Plan as being Babcock Marine's responsibility to achieve.

BM Transformation Milestones has the meaning given in Clause 17.3.4(a).

BMECS means the "Babcock Marine Enterprise Costing System" as populated with data from time to time and including the software (version on the disc referred to in Clause 30.1 and all subsequent versions where the software is upgraded or modified in accordance with paragraph 3 of Schedule 11A (*BMECS Governance*)), and all documentation relating to the software (including, without limitation, the operating manuals).

BMECS Assumptions means the economic and technical assumptions underlying the BMECS (as updated from time to time).

BMECS Lead(s) means the MoD Lead and/or the BM Lead, as applicable.

BMECS Proposal has the meaning given in paragraph 3.1 of Schedule 11A (*BMECS Governance*).

BMECS User Manual means the operations manual relating to the BMECS containing the information described at paragraph 2.1 of Schedule 11A (*BMECS Governance*).

Bought In Costs means any costs reasonably and properly incurred by Babcock Marine in the performance of Project Contracts and/or Non-ToBA Work to the extent relating to goods, works or services supplied by third parties for which recovery is not made by Babcock Marine through the Pricing Rates and agreed or determined in accordance with paragraph 3.1 of Part 1 of Schedule 12 (*Pricing and Incentivisation*).

Breach of Security has the meaning given in Clause 41.7 (*Breach of Security*).

Business Case Proposal means a proposal setting out the matters required by Clause 19.3.

Business Day means any day excluding:

- 65.9 Saturdays, Sundays and public and statutory holidays in the jurisdiction of each Party; and/or
- 65.10 privilege days notified in writing by the MoD's Representative to Babcock Marine's Representative at least ten Business Days in advance.

Businesses means the Clyde Business, the Devonport Business and the Rosyth Business and each is a **Business**.

CAAS means the MoD's Cost Assurance and Analysis Service or its successor.

CADMID Cycle means the MoD acquisition lifecycle consisting of six phases - concept, assessment, demonstration, manufacture, in-service and disposal.

Certificate of Commencement means the certificate in the form as set out in Schedule 17 (*Certificate of Commencement*) issued in accordance with Clause 2.1 by the MoD's Representative.

Certified Copy means an original document which is certified by an officer of the relevant company as being a copy of that document.

Change has the meaning given in Clause 36.2 (*Change Procedure*).

Change of Law means the coming into effect after the date of this Contract of:

- (a) the adoption, modification, consolidation, re-enactment or repeal of any Legislation;
- (b) the adoption, modification, issuance, consolidation, re-enactment or repeal of any regulations or legally binding standards; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent.

Change in Control has the meaning given in Clause 51 (*Change in Ownership*).

Claim means any claim, demand or proceeding, howsoever arising, and whether arising in contract, tort (including negligence), by statute or otherwise.

Class means a class of surface ship or Submarine as designated by MoD from time to time.

Class Management means:

- 65.11 activities associated with development and maintenance of an integrated support programme for the class and individual vessels;
- 65.12 project management and co-ordinations of design, equipment delivery and maintenance activities to meet availability targets;
- 65.13 planning and specification of fleet-time and upkeep maintenance; and
- 65.14 prioritisation and management of class resources to meet agreed outputs.

Class Output Management means the performance of the tasks of the Class Output Manager.

Class Output Manager or **COM** means the party contracted to lead the delivery of agreed levels of output including, if appropriate surface ship availability. The COM shall be responsible for performing Class Management and Design Management and shall manage the integrated delivery of Class Management, Design Management, Equipment Management and maintenance on behalf of the MoD.

Clyde Business means the business of Babcock Marine, being part of its overall business, in [REDACTED]

Clyde Naval Base(s) means the "Naval Base" as defined in the Faslane WSMI.

Clyde Sites means, for the purposes of Schedule 12 (*Pricing and Incentivisation*) only, the sites at which the Clyde Business is carried out which, as at the Commencement Date, are Faslane and Coulport, as the same may from time to time be varied by agreement.

Code has the meaning given to it in Clause 39.13.

Collaborative Role(s) means the Role(s) referred to at Clause 10.5 (*Collaborative Roles*) and paragraphs 1.3, 2.3 and paragraph 4 of Schedule 4 (*Scope*).

Commencement Date has the meaning given to it in Clause 2.1 (*Term*).

Commercial Purpose means has the meaning given to it in Clause 8.2 (*Commercial Purpose*).

Commercially Sensitive Information means the information set out in Schedule 14 (*Commercially Sensitive Information*) comprising the information of a commercially sensitive nature relating to Babcock Marine or its business which Babcock Marine has indicated to the MoD that, if disclosed by the MoD, would cause Babcock Marine significant commercial disadvantage or material financial loss.

Competed Work means any Work to be carried out by a [REDACTED] which has been awarded by MoD following a competitive process.

Complex Warships means Naval Vessels which are complex surface warships including aircraft carriers, amphibious ships, DD/FFs and MCMs.

Conditions Precedent means the conditions referred to in Schedule 2 (*Conditions Precedent*).

Confidential Information means the MoD Confidential Information and/or the Babcock Marine Confidential Information.

Continuous Improvement Guarantee has the meaning ascribed to it in Clause 12.3.1 (*Continuous Improvement Guarantee*) of this Contract.

Contract means this Contract (including its Schedules).

Contract Period means the term of the Contract commencing on the Commencement Date and ending on expiry or earlier termination of the Contract in accordance with its terms.

Contract Year means each period of 12 months falling within the Contract Period commencing on 1 April or as otherwise agreed between the Parties saving that the first Contract Year shall commence on the Commencement Date and the last Contract Year shall end on the date of termination or expiry of this Contract.

Custodian means MoD's Nominee in his capacity as custodian of the Master Copy, or such substitute as may be agreed by the Parties.

CVF(s) means the "Vessels" defined in the CVF Contract.

CVF Contract means the aircraft carrier manufacturing phase alliance agreement dated 3 July 2008 between The Secretary of State for Defence, Babcock Marine (Rosyth) Limited, BAE Systems Marine Limited, BAE Systems Integrated System Technologies Limited, BVT Surface Fleet Limited and Thales Naval Limited.

Data Controller shall have the same meaning as set out in the Data Protection Act 1998.

Data Protection Legislation means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Data Subject shall have the same meaning as set out in the Data Protection Act 1998.

DD/FFs means destroyers and frigates.

Decommission or **Decommissioned** means removing or removed from service.

Decommissioning Defuelling and Lay Up Preparation or **DDLDP** means work required to defuel and Decommission Submarines to prepare for lay up and maintenance in that condition until Disposal.

Deep Maintenance means major invasive engineering tasks.

Design Management means the management of design activities necessary to deliver Class Output Management or FOM. This may include tasks such as the conduct of systems and warship level design tasks in relation to maintaining current capability and introduction of new capability; maintenance and provision of design data (including datum pack and configuration) and technical advice to the support programme.

Detrimental Effect Notice means a notice served by a 2* or above representative from the MoD which states that the only reason why the MoD has elected not to serve a valid notice of termination in respect of the relevant BM Contract for ToBA Work is because such termination is Seriously Detrimental.

Developed Materials has the meaning given in Clause 38.4.1.

Devonport Business means the business of Babcock Marine, being part of its overall business, in relation to Project Contracts carried out by Babcock Marine at the Devonport Sites.

Devonport FNF Capital Works Contract means the partnering agreement relating to the provision of certain services and the carrying out of certain works at Devonport Royal Dockyard (Contract No: NBC(D)CB1/1001) dated December 2006 (as amended).

Devonport Letter Agreement means the letter agreement titled "Severance Arrangements at Devonport" (Ref No CDO1309(OP1/IJ/DR)) dated 12 January 2009 and signed on behalf of DRDL and MoD.

Devonport Naval Base means the naval base known as H.M. Naval Base Devonport.

Devonport Sites means, for the purposes of Schedule 12 (*Pricing and Incentivisation*) only, the sites at which the Devonport Business is carried out which, as at the Commencement Date, are Plymouth Dockyard, Abbey Wood and Keynsham Office, as the same may from time to time be varied by agreement.

Devonport WSMI means the partnering agreement dated 18 June 2002 between (1) MOD and (2) Devonport Royal Dockyard Limited.

Direct Losses means Losses that are not Indirect Losses.

Directly Charged Overhead Cost has the meaning ascribed to it in paragraph 2.5.6 of Part 2 of Schedule 12 (*Pricing and Incentivisation*).

Disclosure Letter means the letter entitled as such and dated the date of this Contract and in the agreed form.

Dismantling means the final break up of a surface ship or Submarine and recycling materials or disposing of resultant waste through approved waste disposal channels.

Disposal means the Dismantling or sale of a Decommissioned surface ship or submarine.

Dispute has the meaning given to it in paragraph 1.1 of Schedule 15 (*Dispute Resolution Procedure*).

Dispute Report has the meaning given in paragraph 3.1 of Schedule 15 (*Dispute Resolution Procedure*).

Dispute Resolution Procedure means the procedure for the resolution of disputes set out in Schedule 15 (*Dispute Resolution Procedure*).

Drop Dead Date has the meaning given to it in Clause 3.2 (*Obligation to satisfy Conditions Precedent*).

Employee shall include any person who is an employee, staff, director or officer of a Babcock Marine Group Member or a sub contractor or any other person who occupies the position of a director or officer of a Babcock Marine Group Member or a sub contractor, by whatever title given, involved with performing obligations under this Contract or the BM Contracts. For the purposes of Clause 41 (*Security*), Employee also includes any employee, staff, director or officer of [REDACTED] or any [REDACTED] that is involved with performing obligations under this Contract or the BM Contract or otherwise has access to a Secret Matter.

Enabling Agreement means the agreement defined in the Devonport Principal Agreement as the "Enabling Agreement", that is referred to in paragraph (a)(ii) of the definition of Sale of Dockyard Agreements.

Engineering Contract means, for the purposes of Schedule 12 (*Pricing and Incentivisation*) only, any contract between Babcock Marine and another party (including MoD) whereby Babcock Marine provides services to that other party priced on the basis of Labour Hours.

Environmental Information Regulations means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations.

Equipment Management means the management of all equipment support including spares, repairs, technical advice, post design services and support data as required by the support programme.

Escrow Items means:

65.15 all Master Copies of the ToBA Rates Model;

65.16 the latest output from the ToBA Rates Model (as updated or replaced from time to time);

65.17 the ToBA Rates Model User Manual.

Estimated Total Workload means, in respect of any Period, the total of:

- (a) the Projected ToBA Workload for each Financial Year in that Period; and
- (b) the Estimated Volume of Non-ToBA Work for each Financial Year in that Period.

Estimated Volume of Non-ToBA Work means, in respect of any Period, Babcock Marine's estimate, taking into account its forward order book, market opportunities and all other relevant circumstances, of the volume of Non-ToBA Work which it might reasonably be expected to undertake (for MoD and other customers) in each Financial Year of that Period, as agreed or determined by the Parties pursuant to paragraph 3.2 of Part 1 of Schedule 12 (*Pricing and Incentivisation*).

Exceptional Contracts means the Project Contracts referred to in paragraph 2.4.1 of Part 2 of Schedule 12 (*Pricing and Incentivisation*).

Exceptional Load Shortfall or Increase has the meaning ascribed to it in paragraph 5.2.3 of Part 3 of Schedule 12 (*Pricing and Incentivisation*).

Existing Project Contract means a Project Contract which was entered into prior to the Initial Term.

Faslane WSMI means the Partnering Agreement dated 29 August 2002 between (1) the Secretary of State for Defence (2) Babcock Naval Services Limited and (3) Babcock International Group PLC.

Final BC Approval has the meaning ascribed to it in Clause 19.5.3.

Final Period means the Period in which the Termination Date falls.

Financial Year means the period from 1 April in the relevant calendar year to 31 March in the following calendar year except when used in Schedule 13 (*Open Book Accounting Procedures*) in relation to Accounts in which case it shall have the meaning given to it in Section 390 of the Companies Act 2006.

First Period means the period from [REDACTED] (inclusive).

First Period Baseline means the baseline setting out:

- (a) the Actual Cost for Financial Year [REDACTED]; and
- (b) the Total Workload in respect of Financial Year [REDACTED]

and which is used for the purpose of determining the Second Period Pricing Rates in accordance with paragraph 3 of Part 3 of Schedule 12 (*Pricing and Incentivisation*), the form of which baseline shall be based on Annexes 3, 4 and 5 of Schedule 12 (*Pricing and Incentivisation*), and which baseline shall be agreed or determined pursuant to paragraph 3.2 of Part 1 of Schedule 12 (*Pricing and Incentivisation*).

First Period Guaranteed Benefits means the aggregate value of the Guaranteed Benefits referable to the Financial Years in the first Benefits Measurement Period.

Fleet Time Engineering means the repair and maintenance of a ship undertaken during fleet time;

Flotilla Output Management or **FOM** means the collaborative structure intended to deliver surety of Submarine output through incentivised performance measures that make the best use of MoD and industry resources.

FOI Information has the meaning given to "Information" under section 84 of the Freedom of Information Act 2000.

Forecast Cost Base has the meaning ascribed to it in paragraph 3.5.1(d) of Part 3 of Schedule 12 (*Pricing and Incentivisation*).

Forecast Variable Rate means the rate calculated in accordance with paragraph 4.1 of Part 3 of Schedule 12 (*Pricing and Incentivisation*) and agreed or determined in accordance with paragraph 3.2 of Part 1 of Schedule 12 (*Pricing and Incentivisation*) as being that proportion of Babcock Marine's costs which are variable with workload and are not fixed costs (derived using the Variable Rate Structure).

Fourth Period means the period from [REDACTED] (inclusive).

Fourth Period Guaranteed Benefits means the aggregate value of the Guaranteed Benefits referable to the Financial Years in the fourth Benefits Measurement Period.

GAAP means generally accepted accounting principles in England and Wales, including, to the extent adopted by Babcock Marine [REDACTED] as applicable, International Financial Reporting Standards (**IFRS**).

Gainshare means, in respect of a Project Contract, provisions in the Project Contract whereby the Parties to it share the burden or benefit of any difference between:

- (a) the total cost incurred by Babcock Marine in performing that Project Contract; and
- (b) the Target Cost provided for in that Project Contract,

in defined proportions set out in the Project Contract and **50:50 Gainshare** shall mean that that difference (whether reflecting an overrun or an under-spend) is shared equally between them.

Governance Body(ies) means the POG, the SG and the AcMT.

Government Profit Formula has the meaning ascribed to it in the Yellow Book.

Guaranteed Benefits has the meaning given in Clause 12.1.1 (*Amount of Guaranteed Benefits*).

Guaranteed Benefits Table means the table set out in Clause 12.2 (*Guaranteed Benefits Table*).

Guaranteed Core Benefits means in respect of any Financial Year, the Benefits Delivered Babcock Marine is required to achieve, as set out in the column entitled "Guaranteed Core Benefits" of the Guaranteed Benefits Table at Clause 12.2 (*Guaranteed Benefits Table*).

Heads of Terms means:

65.18 the Heads of Terms dated 13 September 2007 between (1) MoD and (2) [REDACTED];

65.19 the Process Commitment Document dated 3 October 2008 between (1) Mod [REDACTED]; and

65.20 the letter dated 27 September 2007 with the subject 'MoD Commitments to BAES-VT JV' from MoD to Babcock Engineering Services.

HHP% (Fourth Period) means the Hold Harmless Point percentage for the Fourth Period calculated in accordance with paragraph 4.3 of Part 5 of Schedule 12 (*Pricing and Incentivisation*).

HHP% (Second Period) means the Hold Harmless Point percentage for the Second Period calculated in accordance with paragraph 2.3 of Part 5 of Schedule 12 (*Pricing and Incentivisation*).

HHP% (Third Period) means the Hold Harmless Point percentage for the Third Period calculated in accordance with paragraph 3.3 of Part 5 of Schedule 12 (*Pricing and Incentivisation*).

Hold Harmless Point or **HHP** means the quantum of Actual Authority Benefits calculated in accordance with paragraph 2.1, 3.1 or 4.1 (as applicable) of Part 5 of Schedule 12 (*Pricing and Incentivisation*).

Illustrative Programme means MoD's estimated programme for ToBA Work in respect of the Initial Term established and modified from time to time in accordance with paragraphs 1.1 and 3.1 of Part 3 of Schedule 12 (*Pricing and Incentivisation*).

Independent Partnering Advisor means the person or organisation appointed in accordance with Clause 24.4 (*Partnering*).

Independent Transformation Advisor or **ITA** means the person or organisation in accordance with Paragraph 5 of Schedule 10 (*Governance*).

Indirect Losses has the meaning given at Clause 1.2.13 (*Indemnities and Indirect Losses*).

Information has the meaning given to it under Clause 5.1.1(h) (*Information*).

Information Knowledge Management or **IKM** means the management of activities, systems and services to provide information to enable decisions to be made support the through life management and operation of maritime assets platforms, systems, equipments and facilities). IKM includes the definition of user requirements, the design and development of E2E business processes, support to governance and standards, and may include the supply of information systems.

Information Milestone means any Transformation Milestone identified in the Transformation Plan as an Information Milestone.

Initial Term has the meaning given to it in Clause 2.1 (*Term*).

In Service means in respect of a surface ship or Submarine, the period commencing when the MoD takes control of the surface ship or Submarine, until the commencement of Disposal of the surface ship or Submarine.

Intellectual Property Rights mean patents, trade marks, service marks, domain names, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database right, know how, trade or business names and other similar rights or obligations, whether registrable or not, in any country (including but not limited to the United Kingdom) for the full term of the rights together with any extensions.

Joint Key Performance Indicators or **Joint KPIs** means the key performance indicators set out in Schedule 8 (*Performance Management*) and under the heading set out in Clause 21.2(e).

Joint Transformation Milestone(s) have the meaning given in Clause 17.3.4(c).

Key Industrial Capabilities the facilities and key post workers necessary to maintain an appropriate degree of access to industrial skills, capabilities and technology (including intellectual property and knowhow) within the United Kingdom, and not subject to third party constraints (domestic or international contract or otherwise) to service and undertake maintenance of, complex warships and submarines, which is achieved by, amongst other things:

- 65.21 access to the intellectual property and know-how associated with the design, of key systems and sub-systems;
- 65.22 access to the science, technical and engineering skills and know-how required to design, develop, support, maintain and upgrade key systems and sub-systems;
- 65.23 an assured security of supply of items or components which are critical to key equipment; and
- 65.24 access to key facilities and infrastructure.

Key MCP Decisions means, as at the date of this Contract and subject to change as described in Clause 18 (*Strategic Rationalisation*), the decisions reflecting MoD's current expectations set out and described as "Key Decisions" in the MoD document "Maritime Change Programme Recommendations to Navy Board on Implementation (COMF/03/09 dated 17 Oct 08), namely that:

- (1) 3 TRAFALGAR Class submarines will be incrementally base ported in Faslane no earlier than 2013;
- (2) all FSC will be base ported in Portsmouth from introduction into service in 2019;
- (3) the 3 naval bases will be optimised;
- (4) long term alliancing and industry partnering – MoD must commit to industry in long-term partnering arrangements;

(5) [REDACTED]

[REDACTED]

[REDACTED]

and reference to a numbered Key MCP Decision shall be the relevant number listed in this definition.

KIC Review has the meaning given in Clause 33.1 (*KIC Review*).

Labour Hours means the number of man hours utilised by Babcock Marine, in accordance with the relevant QMAC, in the reasonable and proper performance of ToBA Work and/or Non-ToBA Work (as the context requires).

Lead Contractor means the party identified by MoD as the lead contractor in relation to a particular role.

Lead Industrial Partner means the party which carries out the major part of the Work in relation to a particular Nominated Role or Collaborative Role and engages with other parties in relation to that Nominated Role or Collaborative Role as agreed by MoD.

Legislation means in relation to the United Kingdom:

- 65.25 any Act of Parliament; or

[REDACTED]

- 65.26 any subordinate legislation within the meaning of Section 21 of the Interpretation Act 1978 or Section 126(1) of the Scotland Act 1998; or
- 65.27 any exercise of the Royal Prerogative; or
- 65.28 any enforceable community right within the meaning of Section 2 of the European Communities Act 1972; or
- 65.29 any Act of the Scottish Parliament;

in each case in the United Kingdom.

Level 0 Plan has the meaning given in paragraph 1(e) of Part 1 of Schedule 6 (*Transformation and Rationalisation*).

Losses means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under contract, tort, equity, restitution or otherwise or in connection with judgments, proceedings, internal costs or demands.

Major Review means any review pursuant to Clause 28 (*Major Reviews*).

Mandatory Outputs has the meaning given in Clause 28.3.1(a).

Master Copy means the most current version of the BMECS or of the ToBA Rates Model, as validated from time to time pursuant to paragraph 3 of Schedule 11A (*BMECS Governance*) or of Schedule 11B (*ToBA Rates Model*).

Master Table means the table set out in Annex 6 of Schedule 12 (*Pricing and Incentivisation*), updated as provided for in Schedule 12 (*Pricing and Incentivisation*). For information, the Master Table contains, as at the Commencement Date:

- (a) a summary of the Guaranteed Benefits to be achieved by Babcock Marine in each Financial Year of the Initial Term (and provisions for recording changes to those Guaranteed Benefits);
- (b) a summary of the Continuous Improvement Guarantee in each Financial Year of the Initial Term;
- (c) provision to record the Authority Benefits incorporated within the Pricing Rates in each Financial Year of the Initial Term;
- (d) provision to record Actual Authority Benefits at each Site in each Financial Year of the Initial Term; and
- (e) provision to record the appropriate amount of ARP for each Financial Year of the Initial Term.

MCM(s) means Mine Counter Measure(s).

MCP Headmark and Maritime Support Principles means, as at the date of this Contract and subject to change as described in Clause 18 (*Strategic Rationalisation*), MoD's current intentions set out and described as "Maritime Support Principles" and "MCP Headmark" in the MoD document "Maritime Change Programme Recommendations to Navy Board on Implementation (COMF/03/09 dated 17 Oct 08).

Measured BM Contract(s) means a contract or all of the contracts (as applicable) listed in Annex 1 of Schedule 8 (*Performance Management*) as such list is updated in accordance with paragraph 2.2 of Schedule 8 (*Performance Management*).

MoD Approval Process means the process to obtain the approval from the Investment Approvals Board comprising Initial Gate Approval and Main Gate Approval (in accordance with the latest MoD guidance) or (if applicable) any other replacement, alternative or concurrent internal or external approval processes that the MoD is required to follow in connection with a particular decision or matter from time to time.

MoD Confidential Information means all Developed Materials, Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the MoD and/or any BM Contract, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

MoD Data means:

65.30 the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

65.30.1 supplied to Babcock Marine by or on behalf of MoD under or in relation to this Contract; or

65.30.2 which Babcock Marine is required to generate, process, store or transmit pursuant to this Contract; but excluding;

65.31 any Personal Data.

MoD Dependencies mean any costs or actions to be borne or carried out on the part of the MoD which are described as dependencies in any Business Case Proposal.

MoD Lead means the person appointed as such pursuant to paragraph 1.2 of Schedule 11A (*BMECS Governance*) or of Schedule 11B (*ToBA Rates Model*) as applicable.

MoD's Representative is the person or persons appointed pursuant to Clause 51.1 (*MoD's Representative*).

MoD Transformation Milestone has the meaning given at paragraph 17.3.4(b).

Multi-Party Contract has the meaning given to it in Clause 6.2.1 (*Multi-Party Contracts*).

Naval Bases means the Devonport Naval Base and the Clyde Naval Bases.

Naval Service means the Royal Navy, Royal Marines, Queen Alexandra's Royal Naval Nursing Service, their respective Reserves, the Royal Fleet Auxiliary, the Royal Maritime Auxiliary Services and members of the Civil Service under the direct management of the Navy Board. The United Kingdom Naval Services are the Naval Service and the Merchant Navy.

Naval Vessel means a vessel owned or leased by MoD and operated primarily by uniformed members of the Naval Service excluding those registered as merchant vessels and operated by the Royal Fleet Auxiliary.

New Owners has the meaning given in Clause 51.2 (*Change in Ownership*).

Nominated Role(s) means the roles relating to Submarines, surface ships or Naval Bases referred to at Clause 10.2 (*Nominated Roles*) and paragraphs 1.1, 2.1 and 3.1 of Schedule 4 (*Scope*).

Non-engineering Contract means, for the purposes of Schedule 12 (*Pricing and Incentivisation*) only, any contract between Babcock Marine and another party (including

MoD) whereby Babcock Marine provides services to that other party priced on a charging structure which does not rely on Labour Hours.

Non-Engineering Services means has the meaning given at Clause 10.3.2.

Non-MoD Work means any work carried out by or on behalf of any Babcock Marine Group Member for any end customer other than the MoD.

Non-ToBA Work means all or any of the following:

65.32 Non-MoD Work;

65.33 Competed Work;

65.34 any Work relating to any CVF;

65.35 the Devonport FNF Capital Works Contract; or

65.36 non-Sector work.

Normalisation means the process set out in paragraph 3 of Part 4 of Schedule 12 (*Pricing and Incentivisation*) pursuant to which the Pricing Rates are adjusted to become the Normalised Rates, to take into account the impact of certain specified events, and which Normalised Rates are then used for the purposes of calculating Actual Authority Benefits and **Normalised** shall be construed accordingly.

Normalisation Cost Items means, in any given Financial Year, any of the following types of cost incurred by Babcock Marine:

- (a) costs due to a Change in Law; and/or
- (b) any cost incurred as a result of any incident, activity or event beyond the reasonable control of Babcock Marine other than those set out above which adds to (or subtracts from) the Actual Costs incurred by Babcock Marine in that Financial Year, where the cost of that incident, activity or event is missing from, or is different to the amount included in, the ToBA Starting Baseline;

Normalised Rates has the meaning ascribed to it in paragraph 3.3 of Part 4 of Schedule 12 (*Pricing and Incentivisation*).

Notice of Change means the notice described in Clause 36.2.2 (*Change Procedure*).

Notional Value has the meaning ascribed to it in paragraph 5.4.2 of part 3 of Schedule 12 (*Pricing and Incentivisation*).

Old Results means, in relation to any Approved Change, the results of a Run of the BMECS as produced by the Run of the BMECS in respect of the immediately preceding Approved Change, or, in relation to the first Approved Change the results of a Run of the BMECS as at the date of this Contract.

Order means a legally binding order by the MoD to Babcock Marine for any naval vessel and/or any Work .

Parties means the parties to this Contract.

Partnering Principles means the principles which the Parties shall seek to comply with in their dealings with each other as set out in Schedule 9 (*Partnering*).

Pegged Items means those items determined in accordance with paragraph 6 of Part 3 of Schedule 12 (*Pricing and Incentivisation*).

Performance Indicators means the performance indicators referred to at paragraph 4 of Schedule 8 (*Performance Management*).

Performance Measurement Criteria has the meaning given at paragraph 2.2.1 of Schedule 6 (*Performance Measurement*).

Performance Target means the level of performance required under the Performance Measurement Criteria in that contract that represents neither under nor over performance.

Period means any one of the First Period, the Second Period, the Third Period or the Fourth Period, and **Periods** shall mean such of them together as the context requires.

Personal Data shall have the same meaning as set out in the Data Protection Act 1998.

PIs means Performance Indicators.

Potential Nominated Role(s) means the role(s) referred to at Clause 10.4 (*Potential Nominated Role*) and at paragraph 1.2 of Schedule 4 (*Scope*) in relation to Submarines, paragraph 2.2 of Schedule 4 (*Scope*) in relation to surface ships and paragraph 3.2 of Schedule 4 (*Scope*) in relation to Naval Bases.



Pricing Rates means the pricing rates to be used by Babcock Marine during a given Financial Year for the pricing of Project Contracts (the form of which is as prescribed by the relevant QMAC). The Pricing Rates for the First Period are as set out in Annexes 3 and 4 and (subject to paragraph 1.2.3 of Part 3 of Schedule 12 (*Pricing and Incentivisation*)) will be set out in Annex 5 of Schedule 12 (*Pricing and Incentivisation*) and for the Second Period, Third Period and Fourth Period shall be determined in accordance with the provisions of paragraphs 1 to 4 (inclusive) of Part 3 of Schedule 12 (*Pricing and Incentivisation*).

Prohibited Act means has the meaning given in Clause 50.1.

Project Contract means a BM Contract in respect of ToBA Work.

Project Owners Group or **POG** means the joint management board, the composition and functions of which are set out at Schedule 10 (*Governance*).

Projected ToBA Workload means, in respect of any Period, the Parties' estimate of the aggregate number of Labour Hours which will be needed in each Financial Year of that Period to perform ToBA Work, based on the Illustrative Programme and agreed or determined pursuant to paragraph 3.2 of Part 1 of Schedule 12 (*Pricing and Incentivisation*).

Proposals has the meaning set out in Clause 28.3.1(b).

Proposer has the meaning given to it in Clause 36.2.1.

Provisional Claim means either a Provisional Increase Claim or a Provisional Shortfall Claim, as the context requires.

Provisional Increase Claim has the meaning ascribed to it in paragraph 5.4.5 of Part 3 of Schedule 12 (*Pricing and Incentivisation*).

Provisional Rates has the meaning given in paragraph 3.5.1(e) of Part 3 of Schedule 12 (*Pricing and Incentivisation*).

Provisional Shortfall Claim has the meaning ascribed to it in paragraph 5.4.3 of Part 3 of Schedule 12 (*Pricing and Incentivisation*).

QMAC means the Questionnaire of the Methods of Allocation of Costs for each Site which are used for the purposes of allocating costs (as the same may be amended by the Parties from time to time).

Quarter Date means 31 March, 30 June, 30 September and 31 December in any calendar year.

RD-57 Site means the site at Rosyth dockyard designated as RD-57.

Realised Authority Benefits means the Actual Authority Benefits after the application of Gainshares, as agreed or determined in accordance with paragraph 5 of Part 4 of Schedule 12 (*Pricing and Incentivisation*).

Rebasing Year means a Financial Year in which the calculations to determine the Pricing Rates for the next Period (as set out in paragraph 3 of Part 3 of Schedule 12 (*Pricing and Incentivisation*)) are conducted, being such of the final Financial Year of the First Period, Second Period or Third Period as the context requires.

Recipient has the meaning given to it in Clause 36.2.1.

Regulatory Bodies means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the MoD and **Regulatory Body** shall be construed accordingly.

Relationship Management Plan means the document as set out in Annex 1 to Part 2 of Schedule 9 (*Partnering*) as updated from time to time.

Relevant BM Entity means any BM Opco and any other Babcock Marine Group Member that is a party to a Relevant Contract, provided that for the purposes of Clause 42.1 (*Babcock Marine Default*) and Clause 51 (*Change in Ownership*) the Relevant BM Entities shall refer to:

65.37 each BM Opco; and

65.38 any Babcock Marine Group Member which:

65.38.1 is currently required to hold a nuclear licence in connection with any Naval Base, dockyard and/or ToBA Work; or

65.38.2 holds or owns Strategic Assets (as defined in the Sale of Dockyard Agreements); or

65.38.3 the MoD holds a special share in.

Relevant Contracts has the meaning given to it in Clause 6.5.1.

Relevant Contract Change Procedure has the meaning given to it in Clause 6.5.6.

Representative means either or both of MoD's Representative and Babcock Marine's Representative as the context requires.

Request for Information shall have the meaning set out in the Freedom of Information Act 2000 or the Environmental Information Regulations, as relevant (where the meaning set out for the term "request" shall apply).

Review means any Annual Review or any Major Review.

Revised Inputs means:

65.39 the data that the ToBA Rates Model utilised in order to produce the Old Results, as such data is recorded in the ToBA Rates Model released to either party pursuant to paragraph 3 of Schedule 11B (*ToBA Rates Model*) for the purposes of a run of the ToBA Rates Model; but

65.40 amended, whether by way of increase, reduction or other alterations to such data, (if at all) only pursuant to an Approved Change in order to produce the New Results.

Rosyth Business means the business of Babcock Marine, being part of its overall business, in relation to project Contracts carried out by Babcock Marine for MoD at the Rosyth Site.

Rosyth Site means, for the purposes of Schedule 12 (*Pricing and Incentivisation*) only, the site at which the Rosyth Business is carried out which, as at the Commencement Date, is Rosyth Dockyard, as the same may from time to time be varied by agreement.

RRD means Rosyth Royal Dockyard Limited (Company No. SC101959) of C/O Babcock International, Rosyth Business Park, Rosyth, Dunfermline, Fife, KY11 2YD.

Run means an operation of the Approved Copy of either the BMECS or the ToBA Rates Model.

Sale of Dockyard Agreements means:

65.41 in respect of DRDL:

65.41.1 the Principal Agreement between the Secretary of State for Defence, HHL, BICC, Weir, B&R, Halliburton, DML, DRDL PLC (DRDL Limited at the Commencement Date) and Dorhold dated 11 February 1997 relating to the sale of the Devonport Royal Dockyard to HHL, BICC and Weir (the **Devonport Principal Agreement**); and

65.41.2 the arrangements and transactions contemplated pursuant to and in connection with the Devonport Principal Agreement including those agreements defined therein as the "Assets Sale Agreement", the "Enabling Agreement", the "Operating Agreement", the "Services Agreement", the "Novation Agreement" and the "Share Sale Agreement"; and

65.42 in respect of RRD:

65.42.1 the Principal Agreement between the Secretary of State for Defence, BRDL and BIG dated 12 December 1996 relating to the sale of Rosyth Royal Dockyard to Babcock Rosyth Defence Limited (the **Rosyth Principal Agreement**); and

65.42.2 the arrangements and transactions contemplated pursuant to and in connection with the Rosyth Principal Agreement including, those agreements defined therein as the "Assets Sale Agreement", the "Enabling Agreement", the "Operating Agreement", the "Services Agreement", and the "Share Sale Agreement".

Schedule 12 Operating Protocol means the protocol to be developed and implemented pursuant to paragraph 3.3 of Part 1 of Schedule 12 (*Pricing and Incentivisation*).

Second Period means the period from [REDACTED] (inclusive).

Second Period Baseline means the baseline setting out:

65.43 the Actual Costs for Financial Year [REDACTED] and

65.44 the actual Total Workload in respect of Financial Year [REDACTED]

and which is used for the purposes of determining the Third Period Pricing Rates in accordance with paragraph 3 of Part 3 of Schedule 12 (*Pricing and Incentivisation*), the form of which baseline shall be based on Annexes 3, 4 and 5 of Schedule 12 (*Pricing and Incentivisation*), and which baseline shall be agreed or determined pursuant to paragraph 3.2 of Part 1 of Schedule 12 (*Pricing and Incentivisation*).

Second Period Guaranteed Benefits means the aggregate value of the Guaranteed Benefits referable to the Financial Years set out in the second Benefits Measurement Period.

Secret Matter means any matter connected with this Contract or the performance of this Contract which is designated in writing by the MoD as "Top Secret", "Secret" or "Confidential", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter.

Sector has the meaning given in paragraph A of the section entitled "Background" on page 1 of this Contract.

Security Aspects Letter means a letter issued by the MoD identifying the overarching security obligations of Babcock Marine in relation to this Contract.

Security Policy Framework means the HMG Security Policy Framework v 2.0 as such framework is amended or updated from time to time.

Security Requirements means the requirements of the MoD in relation to the Security aspects of this Contract.

Seriously Detrimental mean it is not reasonably practicable to terminate the relevant BM Contract because, at that time:

- (a) there currently exists a material threat to the national security or defence of the United Kingdom; or
- (b) to so terminate would have an immediate and material detrimental impact upon the safe operation of a naval base or dockyard,

and which, in each case, cannot be addressed by appropriate temporary measures to address such impacts pending replacement of Babcock Marine or the relevant Babcock Marine Group Member.

Severance Costs means the costs associated with the termination of employment of employees, as that concept is defined in, and subject to the terms and conditions in respect thereof contained in, each existing arrangement between the Parties.

Shortfall means, in respect of any Benefits Measurement Period, that the aggregate amount of Realised Authority Benefits calculated in accordance with paragraph 5.1, 5.2, 5.3 or 5.4 of Part 4 of Schedule 12 (*Pricing and Incentivisation*) is less than the corresponding aggregate amount of Guaranteed Benefits.

Site means the Devonport Site, the Clyde Site or the Rosyth Site, as the context requires.

Small Craft means small vessels which are less than 40 metres in length.

SSS Alliance Agreement means the Surface Ship Support Alliance Agreement between the Secretary of State for Defence and Devonport Royal Dockyard Limited and BVT Surface Fleet Support Limited dated 23 September 2009 (Contract number SCMPH/201) and other agreements entered into under SSSA.

Steering Group or **SG** means the joint management body, the composition and functions of which are set out in Schedule 10 (*Governance*).

Strategic Planning Objective has the meaning ascribed to it in Clause 26.2.

Submarine means naval nuclear submarine.

Submarine Dismantling Programme means the Submarine Dismantling programme that is the successor to the Interim Storage of Laid-Up Submarines (ISOLUS) programme.

Submarine Engineering Support Contract or **SESC** means the agreement dated 01 April 2009 between the UK Secretary of State for Defence and Devonport Royal Dockyard Limited with contract reference N/SUB2/70173.

Submarine Enterprise Performance Programme or **SEPP** means the proposed collaborative arrangements in relation to Submarines between the MoD, Babcock Marine, BAE Systems and Rolls Royce as amended from time to time.

Submarine LOP or LOP(R) means a Project Contract for Long Overhaul Period or Long Overhaul Period and Refuel (as those phrases are understood by the Parties at the Commencement Date) in respect of any submarine in MoD's fleet.

Submarine Support means Fleet Time Engineering, Upkeep and Deep Maintenance for Submarines.

Subsequent Period means in respect of a Period the Period which commences the day after the end of that Period.

Supplementary Letter means the letter from Babcock Marine to MoD titled Babcock Terms of Business Agreement dated 18 March 2010.

Surface Ship Support means Fleet Time Engineering, Upkeep and Deep Maintenance for surface ships.

Surface Ship Support Alliance or **SSSA** means the alliance which is the subject of the SSS Alliance Agreement.

Target Cost means, in respect of a Project Contract, an agreed target recorded in the Project Contract and (expressed in £Sterling) for the total estimated cost to be charged by Babcock Marine to MoD for the entire execution and performance of that Project Contract (agreed or determined in accordance with paragraphs 2.5.4 to 2.5.10 (inclusive) of Part 2 of Schedule 12 (*Pricing and Incentivisation*)).

Target Cost Basis means, in respect of the pricing arrangements included or to be included in a Project Contract, a structure which involves:

65.45 the agreement in the Project Contract of a Target Cost; and

65.46 the parties to the Project Contract agreeing Gainshare associated with the Target Cost.

Target Price means Target Cost plus profit and ARP, as set out in paragraph 2.5.15 of Part 2 of Schedule 12 (*Pricing and Incentivisation*).

Technical Data Management Services Contract or TDMS Contract means the agreement dated 14 December 2006 between the UK Secretary of State for Defence and Devonport Royal Dockyard Limited with contract reference N/SUB2/70149, as amended from time to time.

Termination Date means any date of expiry or early termination of this Contract in accordance with Clause 43 (*MoD Remedies for Babcock Marine Default*) or 44 (*Voluntary termination*).

Termination Notice means a notice issued in accordance with Clause 43 (*MoD Remedies for Babcock Marine Default*) or Clause 44 (*Voluntary termination*) under which MoD notifies Babcock Marine that it intends to terminate this Contract.

Terms of Reference means in respect of any Governance Body the terms of reference for that Governance Body as agreed by that Governance Body on the first meeting of such Governance Body and as amended from time to time by such Governance Body (or a higher Governance Body in the case of AcMT or the SG) as referred to in paragraph 3.7 of Schedule 10 (*Governance*).

Third Period means the period from [REDACTED] (inclusive).

Third Period Baseline means the baseline setting out:

65.47 the Actual Costs for Financial Year [REDACTED] and

65.48 the actual Total Workload in respect of Financial Year [REDACTED]

and which is used for the purposes of determining the Fourth Period Pricing Rates in accordance with paragraph 3 of Part 3 of Schedule 12 (*Pricing and Incentivisation*), the form of which baseline shall be based on Annexes 3, 4 and 5 of Schedule 12 (*Pricing and Incentivisation*) and agreed or determined in accordance with paragraph 3.2 of Part 1 of Schedule 12 (*Pricing and Incentivisation*).

Third Period Guaranteed Benefits means the aggregate value of the Guaranteed Benefits referable to the Financial Years set out in the third Benefits Measurement Period.

Tier 1 Supplier means a role where the relevant entity will either:

65.49 contract directly with MoD as lead contractor; or

65.50 have a specified role within a collaborative structure through which contracts are entered into with MoD.

ToBA Rates Model has the meaning given in Clause 30A.1 (*Establishment*).

ToBA Rates Model User Manual means the user manual described in paragraph 2.1 of Schedule 11B (*ToBA Rates Model*).

ToBA Starting Baseline means the baseline of Actual Cost and Total Workload, a summary of which is set out in the Master Table. For information, this was produced from the information for Financial Year [REDACTED] (adjusted to allow for Normalisation) projected forward using the Estimated Total Workload used to calculate the Pricing Rates for the First Period against which Authority Benefits are measured during the First Period.

ToBA Work means all Work which is awarded to Babcock Marine by MoD other than Non-ToBA Work.

ToBA Work Warranty means a warranty to be given by Babcock Marine to MoD on terms requested by MoD and agreed by the Parties in relation to the performance of Project Contracts.

ToBA Workload means the actual number of Labour Hours reasonably and properly required by Babcock Marine to carry out ToBA Work in any Financial Year and agreed or determined in accordance with paragraph 3.2 of Part 1 of Schedule 12 (*Pricing and Incentivisation*).

Total Cost of Services means the aggregate total cost to MoD over time and from time to time of the goods and services supplied by Babcock Marine or any of its Affiliates/other member of Babcock Marine Group to MoD pursuant to every contract between the Parties, including the BM Contracts and any Multi Party Contract.

Total Workload means the actual number of Labour Hours reasonably and properly required by Babcock Marine to carry out ToBA Work and/or Non-ToBA Work in any Financial Year and agreed or determined in accordance with paragraph 3.2 of Part 1 of Schedule 12 (*Pricing and Incentivisation*).

Transaction Documents has the meaning given in Clause 57.1.1.

Transformation has the meaning given to it in Clause 17.1 (*Meaning of Transformation*).

Transformation KPI has the meaning given to it in Clause 21.2 (*Performance and Key Performance Indicators*).

Transformation Milestones means the BM Transformation Milestones, MoD Transformation Milestones and the Joint Transformation Milestones.

Transformation Plan means the transformation plan as set out in Schedule 6 (*Transformation and Rationalisation*) as amended from time to time.

Upkeep means the use of any or all resources required to complete programmed and un-programmed maintenance, programmed capability upgrades and capability upgrades when the vessel is not in fleet-time;

Use means load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, back-up, transmission or display) modify, adapt, enhance, reverse compile, decode, translate or otherwise utilise.

Value Added Tax means any value added tax.

Value for Money means the optimum combination of whole-life cost and quality to meet the MoD's requirements which may not necessarily mean the selection by the MoD of the lowest cost nor the highest performance regardless of the consequences. This is a relative concept which involves the comparison of potential and actual outcomes of alternative procurement options.

Variable Rate Structure has the meaning ascribed to it in paragraph 4.1.2(a) of Part 3 of Schedule 12 (*Pricing and Incentivisation*).

[REDACTED]

Work means the undertaking of any work or services of any kind (including work or services of maintenance, support, engineering, re-fitting, overhaul, servicing, refuelling, defuelling, lay-up, preparation, decommissioning, design, planning or justification) in relation to any naval vessel, any weapons system or other system or sub-system, any dockyard, naval base or any premises of any kind.

Workload Realignment means a re-profiling of ToBA Work, as compared to the Illustrative programme, including all or some of the matters listed in paragraph 5.3.1 of Part 3 of Schedule 12 (*Pricing and incentivisation*).

WSMI Contracts means the Faslane WSMI and the Devonport WSMI.

WSMI Reviews means the performance reviews to be carried out in accordance with clause 31 of the Devonport WSMI and clause 29 of the Faslane WSMI.

WSMI Services means:

65.51 in respect of the Clyde Naval Bases, services which are contracted by MoD to be supplied by Babcock Marine under the Faslane WSMI as that contract exists as at the date of this Contract; and

65.52 in respect of the Devonport Naval Base, services which are contracted by MoD to be supplied by Babcock Marine under the Devonport WSMI as that contract exists as at the date of this Contract.

Yellow Book means the General Review Board for Non-Competitive Government Contracts, which outlines Government accounting conventions, as amended from time to time.

Schedule 2 – Conditions Precedent

MoD has received from Babcock Marine the following in form and substance satisfactory to itself:

- (a) a certified true copy of an extract of the board resolutions of each of the BM Opcos [REDACTED] approving, inter alia, the execution, delivery and performance of this Contract;
- (b) certified true and complete copies of the Memorandum and Articles of Association of each of the BM Opcos [REDACTED] and
- (c) the information relevant to BMECS required to be handed over on signature of this Contract under Clause 30 (*BMECS*).

Schedule 3 – Sale of Dockyard Agreements

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]	[Redacted]
[Redacted]	[Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
[Redacted]	[Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

Schedule 4 – Scope

1 Submarines

1.1 Nominated Roles

The following roles shall be Nominated Roles for the purposes of this Contract in respect of all Submarines:

- (a) Fleet Time Engineering which is contracted by MoD to be supplied by Babcock Marine under the Faslane WSMI and under the Devonport WSMI as those contracts exist as at the date of this Contract;
- (b) Deep Maintenance;
- (c) DDLP;
- (d) Services contracted by MoD to be supplied by Babcock Marine under the SESC Contract;
- (e) Services contracted by MoD to be supplied by Babcock Marine under the TDMS Contract;
- (f) Lead Industrial Partner for:
 - (i) the development of the concept and definition of; and
 - (ii) after successful completion of (i) above and receipt of the relevant MoD Approvals, any implementation of,

Flotilla Output Management.
- (g) Provision of subject matter expertise as advisers to the Submarine Dismantling Programme as a Tier 1 Supplier.

1.2 Potential Nominated Roles

To the extent that it is not a Nominated Role or Collaborative Role, development of Flotilla Output Management beyond the scope of the then existing Nominated Role or Collaborative Role shall be a Potential Nominated Role or Collaborative Role for the purposes of this Contract in respect of all Submarines. This may include:

[REDACTED]

[REDACTED]

to maximise opportunities for efficiencies.

1.3 Collaborative Role

To the extent that the following are not Nominated Roles, the following shall be Collaborative Roles for the purpose of this Contract in respect of all Submarines:

1.3.1 The Tier 1 Supplier for Submarine Support within SEPP.

1.3.2 Subject matter expert advising MoD in relation to Submarine Support throughout the CADMID Cycle. This shall be an enduring role in Submarine design as part of any alliance or collaboration to be carried out under SEPP. Key elements of this role include advising on:

- (a) identifying support requirements for future Submarine projects;
- (b) designing for maintainability as well as “build-ability” and operability;
- (c) development of support solutions; and
- (d) interfacing Submarine platform design with shore infrastructure.

1.3.3 Participating in Submarine Dismantling as agreed with MoD in the light of Babcock Marine’s expertise as an experienced nuclear site licensee and owner of suitable facilities.

1.4 Submarine Enterprise Performance Programme

1.4.1 The MoD intends to implement a collaborative procurement strategy across the submarine enterprise through SEPP. Babcock Marine is a Tier 1 member of SEPP.

1.4.2 Babcock Marine will work collaboratively with MoD to continue to develop SEPP.

1.4.3 This Contract describes the bilateral relationship between MoD and Babcock Marine to underpin SEPP development.

1.4.4 It is intended that the allocation of Work within SEPP shall be made in accordance with the terms of this Contract, including Clause 10 (*Scope Allocation*) and this Schedule 4 (*Scope*).

1.4.5 The Nominated Roles, Potential Nominated Roles and Collaborative Roles referred to in paragraph 1 of this Schedule 4 (*Scope*) shall be subject to SEPP, including any agreements entered into by Babcock Marine as part of or in accordance with SEPP or decisions made under SEPP in accordance with the decision making processes under SEPP (as such processes are agreed by Babcock Marine). If there is any inconsistency between any such agreements entered into as part of or in accordance with the SEPP or such decisions made under SEPP and a Nominated Role, Potential Nominated Role or Collaborative Role, the agreement entered into between the Parties under SEPP shall have precedence for the duration of such agreement or decision.

1.4.6 Subject to the terms of SEPP, the Parties may agree further Nominated Roles or Collaborative Roles within the scope of SEPP in accordance with Clause 10.7 (*Additions and Changes to Nominated Roles and Collaborative Roles*).

1.4.7 Subject to the terms of this Contract and the roles allocated under this Schedule 4 (*Scope*), if and to the extent at any time SEPP does not apply to the allocation of Work in relation to Submarine Support, MoD shall allocate Work in relation to Submarine Support at its discretion

2 Surface Ships

2.1 Nominated Roles

The following roles shall be Nominated Roles for the purposes of this Contract in respect of surface ships:

2.1.1 Fleet Time Engineering which is contracted by MoD to be supplied by Babcock Marine under the Faslane WSMI and under the Devonport WSMI as those contracts exist as at the date of this Contract.

2.1.2 The provision of a centre of amphibious support excellence in respect of through life support through the following roles:

- (a) Class Output Manager for MoD’s two current Landing Platform Docks and for Landing Platform Helicopters (excluding any future Landing Craft Projects, Landing Ship Dock

Auxiliaries and CVFs and CVS operating in the role of Landing Platform Helicopters) under and on the terms of extant SSSA agreements; and

- (b) Continuous engineering support to Landing Craft Utility and Landing Craft Vehicle and Personnel.

2.1.3 Such Deep Maintenance of surface ships as may be allocated to Babcock Marine by the SSSA, subject to paragraph 2.4.

2.2 Potential Nominated Roles

2.2.1 To the extent that the following are not Nominated Roles or Collaborative Roles, the following shall be Potential Nominated Roles in respect of surface ships:

[REDACTED]

[REDACTED]

in each case in order to ensure that appropriate use is made of Babcock Marine's expertise in Surface Ship Support.

2.2.2 Development of the centre of amphibious support excellence into a broader role within the Amphibious Programme, beyond the scope of the then existing Nominated Role referred to in paragraph 2.1.2.

2.3 Collaborative Roles

To the extent that the following are not Nominated Roles, the following shall be Collaborative Roles for the purpose of this Contract in respect of surface ships:

2.3.1 Subject to paragraph (b), the provision of subject matter advice to the MoD, or the lead contractor during the concept, assessment, design and manufacture phases of the CADMID Cycle for new build Complex Warships. The role will be delivered in two ways:

- (a) As a preferred supplier for the provision of expertise to assist MoD and its Lead Contractor in "Design for Supportability"; and
- (b) In Service support solutions. As part of the SSSA, Babcock Marine shall have a formal role in the assurance of proposed Surface Ship Support solutions that are managed under the SSSA. It is the intention of MoD that the SSSA will give assurance that the surface ship support solution is optimised with respect to its integration within the overall Sector where this is the chosen method of support.

2.3.2 The Collaborative Roles allocated under this paragraph 2.3:

- (a) shall not inhibit Babcock Marine's right to bid for any surface ship design and build activity that MoD competes; and
- (b) do not include, but shall not inhibit Babcock Marine's right to bid for any roles for Decommissioning or Disposal of any surface ship that MoD competes.

2.4 Surface Ship Support Alliance

2.4.1 The terms of the SSSA are documented in the SSS Alliance Agreement.

2.4.2 Workload allocation for Surface Ship Support will be as agreed by the Alliance Management Team in accordance with the SSS Alliance Agreement from time to time. As at the date of

this Contract, workload allocation principles for Surface Ship Support as agreed by the Alliance Management Team are underpinned by the Key MCP Decisions.

- 2.4.3 Babcock Marine will work collaboratively with MoD and other industry parties to continue to develop the SSSA, develop and define the overarching Surface Ship Support strategy in order to cover all Complex Warships (legacy and future) and optimise the surface ship support solution with respect to its integration within the overall Sector where this is the chosen method of support.
- 2.4.4 The Nominated Roles, Potential Nominated Roles and Collaborative Roles referred to in paragraph 2 of this Schedule 4 (*Scope*) shall be subject to the SSSA, including any agreements entered into by Babcock Marine as part of or in accordance with the SSSA or decisions made under the SSSA (whether before or after the date of this Contract and including as referred to in paragraph 2.4.2). If there is any inconsistency between any such agreement entered into as part of or in accordance with the SSSA or decision made under the SSSA and a Nominated Role, Potential Nominated Role or Collaborative Role, then to the extent of the inconsistency, the SSSA shall have precedence for the duration of such agreement or decision.
- 2.4.5 Subject to agreement under the SSSA, the Parties may agree further Nominated Roles, Potential Nominated Roles or Collaborative Roles within the scope of SSSA in accordance with Clause 10.7 (*Additions and Changes to Nominated Roles and Collaborative Roles*).
- 2.4.6 Subject to the terms of this Contract and the roles allocated under this Schedule 4 (*Scope*), if and to the extent at any time the SSSA does not apply to the allocation of Work in relation to Surface Ship Support, MoD shall allocate Work in relation to Surface Ship Support at its discretion in accordance with Key MCP Decision 7.
- 2.4.7 Babcock Marine shall, in any event, continue as a member of the Surface Ship Design Support Alliance and continue to participate in the work-share methodology adopted by that Alliance unless and until it is superseded by the SSSA.

3 Naval Bases

3.1 Nominated Roles

Services which are contracted by MoD to be supplied by Babcock Marine at the Clyde Naval Base and the Devonport Naval Base, under the Faslane WSMI and the Devonport WSMI respectively, as those contracts exist as at the date of this Contract, (other than and in addition to Fleet Time Engineering as referred to at paragraphs 1.1 and 2.1) shall, in respect of each such Naval Base, be a Nominated Role for the purposes of this Contract.

3.2 Potential Nominated Roles

To the extent that it is not a Nominated Role or a Collaborative Role, the development of Services which are contracted by MoD to be supplied by Babcock Marine at the Clyde Naval Base and the Devonport Naval Base, under the Faslane WSMI and the Devonport WSMI respectively as those contracts exist as at the date of this Contract, (other than and in addition to Fleet Time Engineering as referred to at paragraphs 1.1 and 2.1) into a broader role within the structure of service provision to the Naval Bases, with the aim of optimising the Parties' relationship, in respect of those Naval Bases shall be a Potential Nominated Role for the purposes of this Contract.

4 Information Knowledge Management Collaborative Roles

The following shall be Collaborative Roles for the purposes of this Contract:

- (a) appropriate membership of the maritime IKM governance framework to ensure Babcock Marine access to management and/or supply of IKM in support of its Nominated Roles, Collaborative Roles and transformation objectives
- (b) the role of a Tier 1 Supplier for Maritime Information Knowledge Management development across the Sector.

5 Proposals for Nominated Roles

Nothing in this Contract prevents Babcock Marine submitting proposals to MoD for the allocation of new Nominated Roles, or the expansion of existing Nominated Roles pursuant to Clause 10.7 (*Additions and Changes to Nominated Roles and Collaborative Roles*).

6 General

References to existing contracts in this Schedule shall be for the purpose of describing the scope of particular roles. The contracting arrangements for any Work allocated under a role shall be as agreed between the parties to the relevant BM Contract at the time that BM Contract is entered into.

Schedule 5 – Benefits Realisation Plan

[Redacted]

[Redacted]



Schedule 6 – Transformation and Rationalisation

This Schedule is organised into two Parts:

Part 1 sets out the Transformation Plan referred to in Clause 17.3 (*Transformation Plan*) together with supporting information.

Part 2 sets out the matters referred in Clause 18.1.5 (*Strategic Rationalisation Strategy*) which the Parties have agreed to address in a [REDACTED] that is to form part of the Transformation Plan.

Part 1 - Transformation Plan

1 Structure of this Part

This Part:

- (a) describes the different types of Transformation Milestones (paragraph 2);
- (b) explains the approach to developing additional Transformation Milestones and plans which are subordinate to the Transformation Plan (paragraph 3);
- (c) sets out the processes relating to Business Improvement Proposals (paragraph 4);
- (d) sets out the scope and content of the Transformation Plan (paragraph 5); and
- (e) the level 0 plan which forms part of the Transformation Plan as at the date of signature of this Contract and which is to be updated in accordance with Clause 17.3 (the **Level 0 Plan**) (paragraph 6).

2 Transformation Milestones

2.1 There are three types of Transformation Milestone in the Transformation Plan:

- (a) **BM Transformation Milestones:** the BM Transformation Milestones are marked in yellow in the Level 0 Plan;
- (b) **MoD Transformation Milestones:** the MoD Transformation Milestones are marked in red in the Level 0 Plan;
- (c) **Joint Transformation Milestones:** the Joint Transformation Milestones are marked in blue in the Level 0 Plan.

3 Subordinate Plans and additional Transformation Milestones

3.1 The Level 0 Plan shall be supported by detailed subordinate plans that shall also form part of the Transformation Plan which shall be developed, maintained and implemented within the appropriate business units and project teams in Babcock Marine and MoD under the oversight and direction of Steering Group. Without prejudice to the provisions of Clause 17 (*Transformation*), the intention of the Parties is that only if lower level Transformation activities are not being conducted in a timely and effective manner, or are not supporting the overall Commercial Purpose or the achievement of the Transformation Milestones or Transformation Objectives, will the Steering Group step in and take responsibility for developing, implementing and maintaining the detailed subordinate plans.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 Scope and Content

5.1 The Level 0 Plan contains Transformation Milestones which are grouped into the categories set out and explained in the table below:

Transformation Plan Structure	Explanation
A. Governance	Provides the performance and key governance reporting dates for the Contract.
1. Structural	Transformation of MoD and Babcock Marine's internal organisational structures including any changes arising from change in ownership or creation of alliances / collaborative arrangements, whilst enabling commercial and financial interfaces to be optimised.
2. Financial and Commercial	Transformation of the accounting and commercial methodology to be applied to BM Contracts, and the information required to ensure that the MoD can be properly informed with respect to performance under this Contract
3. Submarine	Transformation of Submarine Support where the bulk of the change sits within MoD Submarine Operating Centre and appropriate Babcock Business Units. Activities are intended to support SEPP implementation as may be agreed from time to time
4. Naval Bases	Transformation of the provision of services to the Naval Bases where the bulk of the change sits within MoD Com (Fleet) areas and Babcock Naval Bases Business Unit. The Maritime Engineering and Waterfront Support (MEWS) and Unified Engineering Budget (UEB) initiatives are included in this section of the plan.
5. Surface Ships	Transformation of Surface Ship Support where the bulk of the change sits within MoD Ships Operating Centre and appropriate Babcock Business Unit.

Transformation Plan Structure	Explanation
	Activities are intended to support SSSA implementation as may be agreed from time to time
6. Process Changes	Transformation of the business processes that cut across the boundaries of the services provided by Babcock Marine to MoD. These are aimed at aligning the way business is conducted between the Parties at a process level.
7. Strategic Rationalisation	Strategic Rationalisation activities and Milestones included in the [REDACTED], when developed in accordance with Clause 18 and Part 2 of this Schedule.