



6.2 The Transformation Milestones contained within the Level 0 Plan above are described in the table below:

No	Milestone	Date	Who	Explanation
	A. Governance			
1.	ToBA Signed	March 2010	Joint	The contractual completion and signing of the Contract.
2.	AcMT Established	April 2010	Joint	AcMT established and operational
3.	[REDACTED]	October 2011	Joint	[REDACTED]
4.	[REDACTED]	December 2012	Joint	[REDACTED]
	1. Structural			
5.	[REDACTED]	June 2010	Joint	[REDACTED]
6.	[REDACTED]	November 2010	Babcock Marine	[REDACTED]
7.	MoD to confirm additions to Schedule 3	November 2010	MoD	MoD recommendations for legacy contracts requiring action/closure additional to Clause 6.4 Report to Steering Group
8.	Agreement of legacy contract review scope	December 2010	Joint	MoD BM agreement of approach to both Clause 6.4 list and Babcock Marine and MoD recommendations Report to Steering Group
9.	Proposal on ToBA/SODA relationship	July 2010	Babcock Marine	BM review on the inter-relationship between ToBA and SODA as required by Clauses 6.5.7 and 6.5.8.
10.	Review Proposal	October 2010	MoD	MoD review BM Proposal at Milestone 9. Report to SG.
11.	Agreement on ToBA/SODA relationship	December 2010	Joint	SG/POG to agree amendments to ToBA arising from Milestones 9 and 10.
12.	[REDACTED]	June 2011	Babcock Marine	[REDACTED]

No	Milestone	Date	Who	Explanation
				<p>[REDACTED]</p> <p>[REDACTED]</p> <p>Report to Steering Group</p>
13.	[REDACTED]	September 2011	Babcock Marine	<p>[REDACTED]</p> <p>Report to Steering Group</p> <p>[REDACTED]</p>
14.	[REDACTED]	January 2013	Babcock Marine	<p>[REDACTED]</p> <p>Presentation to the Steering Group</p>
2. Financial and Commercial				
15.	Business Improvement Proposal (BIP) (cost avoidance benefits realisation)	May 2010	Babcock Marine	<p>The making and considering of Business Improvement Proposals (BIP). Babcock Marine submission to include suggestions for: scope over which BIPs would be considered, the process by which they would be considered a fee to give an appropriate return for Babcock Marine effort and any proposed amendment to this Contract. Paragraph 4 of Schedule 6 outlines concept.</p> <p>Reporting to ToBA Steering Group.</p>
16.	Steering Group agree BIP process	August 2010	Joint	Steering Group agreement on BIP process for inclusion in the Contract.
17.	Update of Benefits Realisation Plan	October 2010 and every six months thereafter (each update to be considered a separate	Babcock Marine	<p>The update and presentation of the Benefits Realisation Plan</p> <p>Report to the ToBA Steering Group</p> <p>To deliver the Guaranteed Benefits Babcock Marine will provide a BRP in accordance with</p>

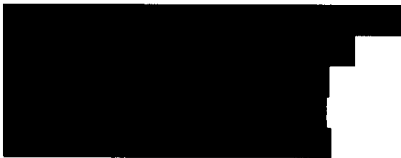
No	Milestone	Date	Who	Explanation
		BM Transformation Milestone)		Clause 14
18.	Decision on Contracting Basis	December 2010	Joint	Parties to agree specification and timetable for ToBA Rates Model development in accordance with Clause 30A.2. Report to Steering Group Enables the development of pricing models and other work streams leading to the re base lining.
19.	[Not used]			

20.	Presentation on ToBA Rates Model	December 2011	Babcock Marine	Presentation of the outcome of the development against the specification at Transformation Milestone 15 Report to the Steering Group Babcock report and presentation on pricing basis options
21.	MoD agreement to ToBA Rates Model	2 January 2012	MoD	MoD verification and validation of ToBA Rates Model completed and accepted.
22.	Presentation of ToBA Rates Model governance process	February 2011	Babcock Marine	Presentation of ToBA Rates Model governance process to replace Schedule 11B
23.	Agreement to ToBA Rates Model governance process	March 2011	MoD	Agree ToBA Rates Model governance process
24.	Preliminary Financial Data Presented	October 2012	Babcock Marine	Presentation of Preliminary data Report to MoD Finance Group 
25.	Agreed Re baseline Data	October 2012	Joint	 Agreement by Steering Group in accordance with Paragraph 3.2 of Part 1 of Schedule 12. Preliminary data provided above agreed

26.	[REDACTED]	March 2013	Joint	[REDACTED] Report to Steering Group Through the Benefits Realisation Schedule 12
	3. Submarine			
27.	Babcock Marine FOM Team Established	April 2010	Babcock Marine	Babcock Marine FOM team established and operational Report to D (SM) for Steering Group information Milestone in accordance with FOM level 0 plan
28.	SEPP initial documentation agreed	May 2010	Joint	SEPP initial documentation agreed and published and implementation Report to D (SM) For Steering Group Information Milestone in accordance with SEPP level 0 plan
29.	FOM Business Case Presented	June 2011	Joint	[REDACTED] [REDACTED] [REDACTED]
30.	[REDACTED]	October 2012	Joint	[REDACTED] [REDACTED] [REDACTED]
31.	[REDACTED]	March 2013	MoD	[REDACTED] [REDACTED] [REDACTED]
	4. Naval Bases			
32.	MEWS Source Plan Approved	September 2010	MoD	MEWS source plan approved Reporting to MCP for Steering Group information. Milestone in accordance with

				MEWS plan.
33.	Babcock Marine Report on MEWS Initiative	June 2011	Babcock Marine	Babcock Marine to provide "Summary of Proposals" report on the MEWS initiative. Report to Steering Group
34.	MoD/Babcock Marine agree MEWS Business Case Information requirement	February 2012	Joint	MoD and Babcock Marine agrees the scope of information required to be provided to support the MEWS Business Case Reporting to MEWS TL For ToBA Steering Group Information Milestone in accordance with MEWS Plan.
35.	Babcock Marine Business Case Information MEWS/WSMi Replacement Provided	May 2012	Babcock Marine	Babcock Marine to provide information and data for the completion of the MEWS business case for IAB approval Reporting to MEWS TL Milestone in accordance with MEWS Plan.
36.	[REDACTED]	March 2013	Joint	[REDACTED]
	5. Surface Ships			
37.	CASE Strategy Presented	April 2010	Babcock Marine	Presentation of Babcock proposed Strategy for Centre for Amphibious Support Excellence (CASE) Devonport Reporting to Capital Ships Team Leader Babcock presentation of its proposals to deliver the MCP Head-mark, namely; the optimisation centre of excellence for Amphibious Support at Devonport.
38.	Deep Maintenance Proposal Presented	September 2010	Babcock Marine	Presentation of Babcock Proposal for centre of excellence Deep Maintenance at Devonport. Reporting to NBC(D) and D Ships Platform Team Leaders Babcock presentation of its

				proposals to deliver the MCP head-mark, namely; the optimisation centre of excellence for Deep Maintenance
39.	CASE Joint Project Office Established	January 2011	Joint	<p>As a result of the CASE strategy presentation CASE-JPO established to jointly drive the implementation of the CASE work streams.</p> <p>Reporting to Capital Ships Team Leader</p> <p>CASE-JPO operational to deliver the MCP Head-mark, namely; the Centre of excellence for Amphibious Support at Devonport.</p>
40.	SSSA Phase 2 Start	May 2011	Joint	<p>SSSA Period 2 start date</p> <p>Reporting to SSS Alliance board</p> <p>This Milestone taken from the Published SSSA Programme.</p>
41.	MoD/Babcock Marine agree Business Case Information requirement	February 2012	Joint	<p>MoD and Babcock Marine agrees the scope of information required to be provided to support the CASE Business Cases as appropriate</p> <p>Reporting to Capital Ships Team Leader For ToBA Steering Group Information</p>
42.	CASE Business Case Information Presented	April 2012	Babcock Marine	<p>As a result of the CASE strategy presentation information provided for CASE work stream business cases.</p> <p>Reporting to Capital Ships Team Leader</p>
43.	CASE Business Cases submitted for Approval	April 2012	MoD	<p>Submission of Business Cases for appropriate approval.</p> <p>Reporting to ToBA Steering Group For Information</p> <p>For the nominated role for centre of excellence for Amphibious Support at Devonport.</p>
44.	SSSA Phase 3 Implementation	April 2013	Joint	<p>Implementation of SSSA phase three complete.</p> <p>Reporting to SSS Alliance Management Board For ToBA Steering Group Information</p>

				This Milestone taken from the Published SSSA Programme.
	6. Process			
45.	Draft Strategic Plan	June 2010	Babcock Marine	Babcock Marine to deliver draft Strategic Plan Report to the Steering Group
46.	Delivery of final Strategic Plan	July 2010	Babcock Marine	Babcock Marine to deliver final Strategic Plan in accordance with Clause 26.4 (<i>Babcock Marine to Provide information</i>).
47.	Output Based Supply Chain Process Report Presented	June 2010	Babcock Marine	Babcock Marine report of strategy proposal to develop support Babcock Marine supply chain (inc GFX) optimisation. Presented to ToBA Steering Group
48.	IKM TDMS (Ships /Subs Convergence Programme Established	July 2010	Joint	TDMS (Ships/Subs) Convergence Programme set up. Reporting to SSS AMT For ToBA Steering Group Information Joint Development of the Nominated Role under section 10 convergence of the Technical Data Management Services for Surface Ships and Submarines
49.	KIC Review Process	September 2010	MoD	MoD to inform and consult Babcock Marine on criteria relating to Sector wide KIC Review process pursuant to Clause 33. Reporting to Babcock Marine for Steering Group information This enables the Sector Wide KIC Review
50.	Best Practice Comparators Parameters agreed	September 2010	Joint	MoD and Babcock Marine agree scoping and parameters for the development of the Best Practice Comparator work streams. Reporting to the ToBA Steering Group 

51.	Babcock Best Practice Comparisons Approach Published	December 2010	Babcock Marine	<p>Babcock Marine agreed approach on "Best Practice Comparisons" to be undertaken in support of Business Cases and structural reform as defined in the MoD scoping report.</p> <p>Reporting to ToBA Steering Group</p> <p>Babcock plan for the delivery of the agreed Best Practice Comparisons work to be undertaken.</p>
52.	Sector Wide KIC Review	Starts April 2011	MoD	<p>Sector wide KIC Review completed.</p> <p>Reporting to MCP For ToBA Steering Group Information</p> <p>This milestone is derived from MCP level 0 plan</p>
53.	Report on Rolling Integrated Supply Chain Plan	June 2011	Joint	<p>FOM/COM Support Supply Chain (delivery Plan) operational on a rolling basis.</p> <p>Report to ToBA Steering Group</p> <p>Babcock Marine (FOM/COM) Supply Chain, Integrated Supply/Demand Plans effective and Key Suppliers supporting it.</p>
54.	PI for continuous improvement	December 2012	Joint	<p>Develop continuous improvement performance indicator for pilot use during [REDACTED]</p>
55.	Proposal for continuous improvement KPI	Second Major Review	Babcock Marine	<p>Present proposed changes to the Contract to develop a continuous improvement KPI and to link to the ARP incentivisation regime in Clause 22 and Schedule 12.</p>
56.	Agreement of continuous improvement KPI	Second Major Review	Joint	<p>Agree the continuous improvement KPI and the link to ARP incentivisation regime in Clause 22 and Schedule 12 and effect a corresponding Change to the Contract in accordance with Clause 36 (<i>Change</i>).</p>
57.	[REDACTED]	Third Major Review	Joint	[REDACTED]
7. Strategic Rationalisation				

58.	[REDACTED]	November 2010	Joint	[REDACTED] Reporting to Steering Group
59.	Liabilities	November 2010	Babcock Marine	Propose the list of liabilities of MoD in accordance with paragraph 3.2(b) of Part 2 of Schedule 6 (<i>Transformation</i>).
60.	[REDACTED]	November 2010	Joint	[REDACTED] [REDACTED]

Part 2 – Draft [REDACTED] Overview

1 Introduction

- 1.1 This Part 2 sets out the matters referred in Clause 18.1 [REDACTED] in relation to the [REDACTED] that is to form part of the Transformation Plan.
- 1.2 The [REDACTED] shall have at least the contents set out in this Part 2.

2 Minimum contents of [REDACTED]

- 2.1 The [REDACTED] shall contain at least either:
- (a) All reasonable steps required by MoD to implement the MCP Headmark and Maritime Support Principles and relevant Key MCP Decisions within the timescale reasonably required by MoD. In this context, MoD plans to concentrate its Sector activity in Portsmouth, Devonport and on the Clyde. The [REDACTED] shall be designed such that MoD and Babcock Marine shall each work as appropriate towards these Key Decisions over the Initial Term in all their activity; and
 - (b) Equitable provision in relation to the cost and other consequences of implementation of the [REDACTED]; or
 - (c) To the extent that the plan does not fully address the matters referred to in paragraphs 2.1(a) and (b) above, a process and timetable by which those matters shall be established.
- 2.2 The [REDACTED] shall, as soon as it is practicable for it to do so, also contain:
- (a) detailed site-specific plans for implementation of the proposed Strategic Rationalisation. In this context, without prejudice to Schedule 4 (*Scope*), Clause 10 (*Scope Allocation*) or Clause 11 (*No obligation to procure work*), MoD currently envisages that, after implementation of Strategic Rationalisation, MoD's requirement in relation to each Babcock Marine Business will be that it shall, to the extent determined by MoD, undertake each of the following principal engineering types of ToBA Work/have the following principal engineering ToBA Work role:
 - (i) Clyde Business – Fleet Time Engineering for Submarines and surface ships;
 - (ii) Devonport Business (HMNB and DRD):
 - (aa) Deep Maintenance and Decommissioning of Submarines;
 - (bb) Fleet Time Engineering of surface ships;
 - (cc) centre of excellence for Amphibiosity; and
 - (dd) centre of excellence for Deep Maintenance of surface ships (as described in Key MCP Decision 7) and Submarines; and
 - (iii) Rosyth Business – [REDACTED] MoD funded overhead commensurate with the emerging Queen Elizabeth Class support solution;
 - (b) One or more agreed Business Case Proposal(s) in support of the proposed rationalisation prepared and established in accordance with Clause 19 (*Business Case Proposals*); and

- (c) a workplan and timetable in relation to the implementation of each item of Strategic Rationalisation provided for in the [REDACTED]

3 Other contents of the [REDACTED]

3.1 In addition, the initial focus of the [REDACTED] shall be on delivering the following:

- (a) the Key MCP Decisions on items such as submarine base-porting, development of Centres of Excellence for Deep Maintenance and Amphibiosity at Devonport;
- (b) the emerging Submarine Dismantling Programme; and
- (c) the emerging support solution provision for the Queen Elizabeth Class.

3.2 Without prejudice to the generality of paragraph 2 above, the [REDACTED] shall also contain the following work streams:

- (a) **Planning and Governance.** Identifying and putting in place the procedures to share information on programmes with implications for Strategic Rationalisation and to develop a coherent programme of activity. These shall be consistent with Clause 25 (*Governance*) and Schedule 10 (*Governance*);
- (b) **Liabilities.** To identify, scope, cost and agree the liabilities falling to MoD as a consequence of implementing the [REDACTED] and pursuant to relevant BM Contracts. Babcock Marine shall provide the MoD with a statement in relation to such liabilities including the matters referred to in the [REDACTED] in the agreed form by 30 November 2010 in accordance with the Transformation Plan (it being recognised that this memorandum is not necessarily an exhaustive list of such liabilities);
- (c) **Scenario Modelling.** To develop cost, programme and other models as necessary to support enterprise-wide and sector-wide decision making in relation to the [REDACTED] and [REDACTED];
- (d) **Post Queen Elizabeth Class Build Business Model.** The development of a business model that provides a suitable business solution for the Rosyth site post completion of Queen Elizabeth Class build.

Schedule 7 – Best Practice Comparison

1 Best Practice Comparison

- 1.1 MoD and Babcock Marine shall from time to time conduct such studies (**Best Practice Comparisons**) as they determine are necessary in connection with:
- (a) the processes and initiatives set out in the Transformation Plan that Babcock Marine is implementing or intends to implement in accordance with the Transformation Plan; and
 - (b) potential additional or alternative processes and initiatives that Babcock Marine could implement,
- to transform its business to meet or exceed the Transformation Milestones and MoD Transformation Milestones and to achieve the Commercial Purpose.
- 1.2 MoD and Babcock Marine may also agree to use such Best Practice Comparisons to:
- (a) compare the progress and performance of the relevant aspects of the Babcock Marine Group's activities under this Contract and the BM Contracts against the Best Practice Comparators (as defined in paragraph 2 below);
 - (b) compare (without limitation) the people, facilities, overheads and processes of the Babcock Marine Group against the Best Practice Comparators;
 - (c) identify potential improvements in efficiency, productivity, utilisation of assets or performance of the Babcock Marine Group; and
 - (d) assess progress in implementing recommendations from any relevant Best Practice Comparison previously carried out under this Contract.
- 1.3 The Best Practice Comparisons shall be conducted by one or more independent experts (the **Best Practice Experts**) appointed by Babcock Marine and the MoD as agreed by the Steering Group.

2 Best Practice Comparators

- 2.1 The "**Best Practice Comparators**" means the businesses, organisations and other comparators in appropriate business sectors (which may include a number of different business sectors in addition to the defence sector and may be located, without limitation, in the United States, France, Spain and Germany) that specialise in the provision of services that are comparable to some or all of the services performed by the Babcock Marine Group that the AcMT determines from time to time shall be used to compare:
- (a) the performance of the Babcock Marine Group as a whole; and
 - (b) the performance of individual members of the Babcock Marine Group,
- over the relevant comparison period as part of one or more of the Best Practice Comparisons. Such Best Practice Comparators shall be selected by agreement between the Parties.

3 Conduct of Best Practice Comparisons

- 3.1 Each Best Practice Comparison shall:

- (a) review and consider the general business performance of the Babcock Marine Group (or specific aspects of this performance, where applicable) by providing comparisons which are objective, qualitative and quantitative (wherever possible), between:
 - (i) the relevant aspects of Babcock Marine Group's surface ship, Submarine and Naval Base support activities carried out in the United Kingdom;
 - (ii) the Best Practice Comparators; and
 - (iii) where applicable, the outcome of any previous Best Practice Comparisons.
- (b) identify and recommend steps the Babcock Marine Group or MoD might take to achieve improvement in their efficiency, productivity and utilisation of assets and to achieve the Transformation Milestones, and Commercial Purpose; and
- (c) conclude with a report being issued by the relevant Best Practice Comparison Consultant(s) to the parties for consideration and action in accordance with Clause 20 (*Best Practice Comparison*).

4 Best Practice Experts

- 4.1.1 The Parties may agree to appoint one or more Best Practice Experts (who shall be funded as agreed by the Steering Group) to undertake the Best Practice Comparisons.
- 4.1.2 Each Best Practice Comparison Consultant shall be tasked and managed as agreed by the Steering Group that shall agree terms of appointment, reference, scopes of work and reporting timescales.

5 Future requirements

In accordance with the aim of continuous improvement and Schedule 9 (*Partnering*), either Babcock Marine or the MoD shall be entitled to propose additional Best Practice Comparison comparison or performance improvement initiatives at any time during the Contract Period. The Parties acknowledge that, once agreed, such Best Practice Comparisons may be commissioned in advance of specific benefits being identified.

6 Information

- 6.1 Both the MoD and Babcock Marine agree that where they have agreed to appoint Best Practice Comparison Consultant(s), subject to Clauses 27 (*Annual Review*), 28 (*Major Reviews*), 31 (*Babcock Marine Records*) and 39 (*Confidentiality and Freedom of Information*), they shall each disclose to the Best Practice Experts all information that the Best Practice Experts may reasonably require in order to conduct a full and open assessments of the performance of Babcock Marine and the MoD in accordance with this Schedule 7 (*Best Practice Comparison*) having regard at all times to confidentiality and secret matters and provided that any Best Practice Comparison Consultant appointed may be required to enter into a confidentiality agreement with the MoD and Babcock Marine, as applicable.
- 6.2 The disclosure at paragraph 6.1 above shall include relevant existing Best Practice Comparison material the Parties may hold, subject to any confidentiality and intellectual property restrictions that may apply to such information.

Schedule 8 – Performance Management

1 Scope of this Schedule

1.1 This Schedule sets out:

(a) the approach to measuring performance in respect of KPIs and the consequences of meeting or failing to meet the BM KPIs under this Contract (Paragraph 1);

(b) the BM KPIs (Paragraph 2) in respect of:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(c) the Joint KPI(s) in respect of the health of the strategic relationship between Babcock Marine and MoD (Paragraph 3); and

(d) the process for establishing Performance Indicators (PIs) (paragraph 4), which may:

(i) inform the measurement of particular BM KPIs or the Joint KPI; or

(ii) measure other aspects of Babcock Marine's and MoD's performance of this Contract.

1.2 The following "traffic light" assessment system shall be used to indicate performance against KPIs over the relevant period of time:

	Forecast (indicative only)	Actual
GREEN	Forecast on track for KPI to be met or exceeded	KPI met or exceeded
AMBER	Data collected or other information indicates risk that KPI will not be met	Not Applicable
RED	KPI forecast significant risk of not being met	KPI not met

1.3 The AcMT shall monitor performance against each KPI and PI and shall report on performance against each KPI and PI (and make recommendations for any changes to KPIs or PIs) to the Steering Group as referred to in Clause 21.5 (*Performance and Key Performance Indicators*) and the terms of this Schedule, in whatever format is agreed to be appropriate from time to time.

1.4 The consequences of achievement or failure to achieve any BM KPIs in respect of any Financial Year shall be as set out or referred to in Clause 22 (*Incentivisation*), Schedule 12 (*Pricing and Incentivisation*) and Clause 0 (*Failure to achieve BM KPIs*).

2 BM KPIs

2.1 BM KPI #1 - [REDACTED]

Purpose of BM KPI #1

2.1.1 BM KPI #1 shall measure the success of Babcock Marine [REDACTED]

[REDACTED]

Measurement of BM KPI #1

2.1.2 BM KPI #1 shall be measured by comparing:

[REDACTED]

Performance Levels

GREEN	[REDACTED] equal or exceed (or are forecast to equal or exceed) the [REDACTED] for the relevant Financial Year, successive Financial Years or [REDACTED] Period (as applicable)
AMBER	[REDACTED] are forecast to fall below the [REDACTED] for the relevant Financial Year, successive Financial Years or [REDACTED] Period (as applicable)
RED	<p><i>First Period</i></p> <p>Cumulative [REDACTED] for the first [REDACTED] Period fall below the cumulative level of [REDACTED] for the First Period</p> <p><i>Second Period and all subsequent Periods</i></p> <p>[REDACTED] fall below the [REDACTED] for the relevant Financial Year, successive Financial Years or [REDACTED] Period (as applicable)</p>

Data Collection and Reporting

2.1.3 The actual and forecast data needed to determine performance against BM KPI #1 shall be collected and collated by the AcMT on a ongoing basis, using the Master Table, based on inputs and information provided by Babcock Marine which has been certified by CAAS and

(where applicable) audited by a representative of MoD in accordance with the requirements of Schedule 12 (*Pricing and Incentivisation*).

The AcMT shall report on Babcock Marine's performance against BM KPI #1 to the Steering Group in accordance with paragraph 1.3 in whatever format it determines is appropriate from time to time.

2.2 BM KPI #2 - [REDACTED]

Purpose of BM KPI #2

[REDACTED] BM KPI #2 measures the success of Babcock Marine's [REDACTED]
[REDACTED]

2.2.2 The [REDACTED] referred to at paragraph 2.2.1 as at the date of this Contract are listed in Annex 1 of this Schedule (the [REDACTED]). The list of [REDACTED] contained in Annex 1 of this Schedule shall be updated annually by the AcMT and approved by the Steering Group.

2.2.3 in updating the list of [REDACTED] pursuant to paragraph 2.2.2 the AcMT shall include all [REDACTED] for ToBA Work existing at the time provided that the AcMT may recommend to the Steering Group that a particular [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

in which case it shall not become a [REDACTED] if approved by the Steering Group.

Measurement of BM KPI #2

2.2.4 MoD shall provide the AcMT with a copy of the results of the [REDACTED] under each [REDACTED] as soon as reasonably practicable after such results are finalised.

2.2.5 Prior to each Annual Review, the AcMT shall:

[REDACTED]
[REDACTED]
[REDACTED]

and shall provide that information to the Steering Group.

Performance Levels

GREEN	The percentage calculated pursuant to paragraph 2.2.5(b) is [REDACTED] or more
AMBER	The percentage calculated pursuant to paragraph 2.2.5(b) is forecast to be less than [REDACTED]
RED	The percentage calculated pursuant to paragraph 2.2.5(b) is less than [REDACTED]

2.3 BM KPI #3 - [REDACTED]

Purpose of BM KPI #3

2.3.1 BM KPI #3 measures [REDACTED]

Measurement of BM KPI #3

[REDACTED] The achievement of BM KPI #3 in respect of each Financial Year will be measured by determining whether or not Babcock Marine has achieved the [REDACTED]

Performance Levels

GREEN	[REDACTED] or greater of the [REDACTED] due to be completed within a Financial Year are achieved in accordance with the [REDACTED] within that Financial Year
AMBER	Fewer than [REDACTED] of the [REDACTED] due to be completed within a Financial Year are forecast to be achieved in accordance with the [REDACTED] within that Financial Year
RED	Fewer than [REDACTED] of the [REDACTED] due to be completed within a Financial Year are achieved in accordance with the [REDACTED] within that Financial Year

Data Collection and Reporting

2.3.3 Performance against BM KPI #3 will be monitored throughout each Financial Year by the AcMT. The AcMT shall be responsible for obtaining the information required to determine whether or not a [REDACTED] has been achieved.

The AcMT shall report Babcock Marine's performance against BM KPI #3 to the Steering Group in accordance with paragraph 1.3 of this Schedule in whatever format it determines is appropriate from time to time.

2.4 BM KPI #4 - [REDACTED]

Purpose of BM KPI #4

2.4.1 BM KPI #4 measures the success of Babcock Marine [REDACTED]

Measurement of BM KPI #4

2.4.2 The achievement of BM KPI #4 in respect of each Financial Year will be measured by determining whether or not Babcock Marine has achieved [REDACTED]

Performance Levels

GREEN	[REDACTED] or greater BM [REDACTED] due to be completed within the relevant
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	Financial Year are achieved in accordance with the requirements of the [REDACTED]
AMBER	Fewer than [REDACTED] of the BM [REDACTED] due to be completed within the relevant Financial Year are forecast to be achieved in accordance with the requirements of the [REDACTED]
RED	Fewer than [REDACTED] of the BM [REDACTED] due to be completed within the relevant Financial Year are achieved in accordance with the requirements of the [REDACTED]

Data Collection and Reporting

2.4.3 Performance against BM KPI #4 will be monitored throughout each Financial Year by the AcMT. The AcMT shall be responsible for obtaining the information required to determine whether or not [REDACTED]

The AcMT shall report Babcock Marine's performance against BM KPI #4 to the Steering Group in accordance with paragraph 1.3 of this Schedule in whatever format it determines is appropriate from time to time.

3 Joint KPI

3.1 Health of the Strategic Relationship

Purpose of the Joint KPI

3.1.1 The Joint KPI measures improvements in the strategic relationship between MoD and Babcock Marine.

Measurement of the Joint KPI

3.1.2 At each Annual Review, taking into account the activities of any Independent Partnering Adviser, the AcMT shall:

- (a) consider the health of the strategic relationship over the previous Financial Year and determine whether the health of the strategic relationship has been sufficient to meet the target set in the previous Financial Year; and
- (b) shall set a target against which the health of the strategic relationship shall be measured in the current Financial Year,

and submit such information to the Steering Group for approval.

Performance Levels

GREEN	The health of the strategic relationship has been deemed to have met the target for that Financial Year
AMBER	The health of the strategic relationship is forecast not to meet the target for that Financial Year
RED	The health of the strategic relationship has been deemed not to have met the target for that Financial Year

Data Collection and Reporting

3.1.3 Monitoring and reporting of the strategic relationship KPI shall be in accordance with paragraph 1.3 of this Schedule and by the AcMT, taking into account the activities of the Independent Partnering Adviser.

4 Performance Indicators

- 4.1 MoD and Babcock Marine may establish and utilise such Performance Indicators (PIs) that the AcMT determines from time to time are necessary to:
- (a) support and/or inform the measurement of the BM KPIs or the Joint KPI; or
 - (b) measure any other aspects of the performance of Babcock Marine or MoD under this Contract that the Parties require to be measured.
- 4.2 Any PIs established in accordance with paragraph 4.1 shall be monitored and reported on in accordance with paragraph 1.3 of this Schedule.

5 Rounding

- 5.1 Where the calculation of the threshold for the number of:
- (a) in relation to KPI#3 [REDACTED]; or
 - (b) in relation to KPI#4 [REDACTED]

to be achieved to declare the relevant KPI to be green, amber or red does not result in a whole number of milestones, the Steering Group shall have the discretion to determine the appropriate whole number of milestones that must be achieved.

- 5.2 The Steering Group shall determine the number of BM RMP Milestones and BM Transformation Milestones (as applicable) to declare the relevant KPI to be green, amber or red prior to the start of each Financial Year to which it relates.
- 5.3 In the event the Steering Group fail to agree under this paragraph 5, the conventions of mathematical rounding shall apply.

6 Review

The AcMT shall review this Schedule 8 at each Annual Review in accordance with Clause 27.3(b). In addition, either Party may report to the Steering Group separately with suggested changes to this Schedule.

Annex 1 - Measured BM Contracts

IPT	Contract No.	Description	Contractee	Duration
[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 9 – Partnering

Part 1 – Partnering Principles and Partnering Behaviours

1 General

- 1.1 Each Party shall establish arrangements within its own organisation which make it the personal responsibility of the personnel deployed in the management of this Contract and the relationship between the Parties to discharge their functions in the manner best calculated to achieve the Commercial Purpose.
- 1.2 From time to time, the Parties may agree joint “vision” or “mission statements”. These shall:
- (a) always be consistent with this Contract;
 - (b) not amend or alter this Contract or any part of it;
 - (c) not bind the Parties; and
 - (d) be disseminated within the Parties’ organisations as agreed between them.
- 1.3 The Parties will seek to establish joint working arrangements and arrangements for their respective personnel to be co-located wherever this is agreed to be appropriate.

2 Principles

- 2.1 The Parties will seek to implement the following principles: (the Partnering Principles):
- (a) openness and honesty in their dealings with one another and shall share all relevant information;
 - (b) working in a collaborative and proactive way to resolve issues and problems;
 - (c) seeking to establish an enthusiasm for the relationship within both organisations;
 - (d) seeking to set right people, right behaviours in the right place and shall for example include succession planning, training and placing the most appropriate people within roles identified in this Contract;
 - (e) making efforts to appreciate and understand each other's parameters and drivers and be cognisant of these when making decisions;
 - (f) working towards establishing a positive rapport in their dealings with one another;
 - (g) recognising that the quality of the relationship between the Parties depends on each Party feeling it is benefiting from the arrangements between them such that there is a sense of equitable ‘give and take’;
 - (h) ensuring the pursuit of good governance; and
 - (i) seeking to achieve visible progress to provide confidence that important decisions *are* being made.

3 Behaviours

3.1 In order to promote the implementation of the Partnering Principles, the Parties shall seek to implement the following collaborative behaviours within their organisations (the **Partnering Behaviours**):

A. Information exchange:

- openness and sharing of information;
- informing each other in good time;
- willingness to work jointly and openly rather than behind closed doors;
- not keeping anything back;
- having meaningful dialogue about the substantial issues; and
- bringing ideas to the table.

B. Listening:

- pursuing listening;
- taking notice of what the other party has to say;
- seeking to understand; and
- doing something as a result.

C. Delivering on promises:

- Not making promises that cannot be kept;
- Doing what you have said you would do;
- Delivering your part on time; and
- Not trying to wriggle out of it.

D. Reciprocation:

- going the extra mile for others;
- looking for ways to be helpful;
- fairness and honesty in dealings with others; and
- demonstrating an ethos of 'how can I help you?'.

E. Solving problems together as partners:

- working with others to find better solutions;
- not seeking to blame, but getting on with finding a way forward;
- taking part rather than sitting on the sidelines; and
- asking for help (and accepting it).

F. Acting in good faith:

- act first to help rather than to seek to gain advantage;
- persevering, not tuning out because of the occasional incident;
- say what you mean, say what you feel;
- give the benefit of any doubt in a situation (and warrant this being given);
- act your way to a new way of working: 'walk the talk';
- encouraging each other; and
- accepting reasonable challenges (and taking on the risks these entail).

4 Unacceptable Behaviour

If, in the reasonable opinion of either of the Parties, any of Babcock Marine's or MoD's personnel are unable or unwilling genuinely to accept or embrace the Partnering Principles or Partnering Behaviours, then it may be necessary to seek to moderate the behaviours of those individuals in accordance with the relevant Party's normal procedures.

5 Independent Partnering Adviser

5.1 The Parties have agreed to appoint one or more Independent Partnering Adviser(s) (who shall be jointly funded by the MoD and Babcock Marine) to conduct such activities as the Parties, acting through the Steering Group, determine are necessary in connection with:

- (a) monitoring the health of the partnering relationship between MoD and Babcock Marine at regular intervals including comparisons to an initial baseline, as determined by the Independent Partnering Adviser including any recommendations for remedial action;
- (b) the processes and initiatives set out in the Relationship Management Plan that Babcock Marine and MoD are implementing or intend to implement in accordance with the Relationship Management Plan; and
- (c) potential additional or alternative processes and initiatives that Babcock Marine and MoD could implement,

to further the implementation of the Partnering Principles and Partnering Behaviours and to achieve the Commercial Purpose.

5.2 MoD and Babcock Marine may also agree to use the Independent Partnering Adviser to:

- (a) assess the performance of the Partnering Principles and Partnering Behaviours within any Babcock Marine Group Member and MoD; and
- (b) assess progress in implementing recommendations from any relevant partnering activities previously carried out under this Contract.

Part 2 – Relationship Management Plan

1 Intention

To implement the Relationship Management Plan with the intention of:

- (a) developing the relationships necessary to deliver the Commercial Purpose;
- (b) promoting:
 - (i) enthusiasm and passion for the success of this Contract;
 - (ii) management drive and people engagement;
 - (iii) collaborative behaviours;
 - (iv) leadership;
 - (v) knowledge between the Parties; and
 - (vi) equitable outcomes.
- (c) promulgating the Partnering Principles and Partnering Behaviour throughout both Parties' organisations; and
- (d) enabling the modification of unsatisfactory behaviour,
the **Relationship Intent**.

2 Scope and Content

2.1 Scope

The Relationship Management Plan should seek to address the following questions:

- (a) What are we seeking to achieve and why?
- (b) What strengths and successes do we have to build on, what do we have going for us and what obstacles and barriers must we overcome?
- (c) What direction do we need to give others and what milestones should we set? (Milestones should be written to create a drum-beat for the change process)
- (d) How should we deploy our resources to get the results we want?
- (e) What actions are to be taken? (Action planning should be conducted on a rolling basis in line with milestones)
- (f) How do our milestones and actions come together in a coherent plan?
- (g) What control measures and governance must we put in place?

2.2 Content

- 2.2.1 The Relationship Management Plan shall include information on significant events timetabled to occur during the five years following the date of the latest agreed version of the Relationship Management Plan, which in each case are meant to result in or contribute to the achievement of the Relationship Intent (the **RMP Milestones**).

2.2.2 In addition to the RMP Milestones, the Relationship Management Plan may include the following matters:

- (a) purpose;
- (b) objectives;
- (c) the intent for the Relationship Management Plan;
- (d) relationship principles;
- (e) behaviours to be adopted;
- (f) governance arrangements;
- (g) Independent Partnering Adviser;
- (h) identifying and dealing with relationship issues;
- (i) any recommendations arising out of the MoD's annual supplier performance review;
- (j) Stakeholder management;
- (k) Implementation; and
- (l) monitoring and reporting.

3 The Plan

3.1 The Relationship Management Plan as at the date of this Contract is set out at Annex 1 to Part 2 of this Schedule 9.

3.2 The AcMT shall be responsible for maintaining and updating the Relationship Management Plan throughout the Contract Period, submitting updated versions of the Relationship Management Plan to the Steering Group for its approval as necessary, but at least no later than the date of each Major Review and such update shall include as a minimum proposals in relation to additional RMP Milestones for the continued achievement of the Relationship Intent.

3.3 The RMP Milestones (as updated from time to time) shall be the only part of the Relationship Management Plan that is incorporated into this Contract.

4 Dependency

If a BM RMP Milestone is not achieved in accordance with the timescales set out in the Relationship Management Plan due to the non achievement of a MoD RMP Milestone or a Joint RMP Milestone (except to the extent this was due to the actions of Babcock Marine), Babcock Marine shall not be liable for the failure to meet the BM RMP Milestone and such BM RMP 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 comply with MoD's responsibilities in respect of a MoD RMP Milestone or a Joint RMP Milestone. Failure by MoD to achieve a MoD RMP Milestone or a Joint RMP Milestone shall be reported in accordance with the terms of this Contract but shall have no consequences and accordingly MoD shall have no liability to Babcock Marine in respect of such failure other than as stated in this Part 2 of Schedule 9 (*Partnering*).

Annex 1 – Relationship Management Plan

Schedule 10 – Governance

1 Scope of this Schedule

- 1.1 This Schedule sets out the bodies and procedures by means of which the Parties will exercise governance of this Contract, and provide leadership, direction and accountability to facilitate achievement of the Commercial Purpose.
- 1.2 In particular, this Schedule sets out:
- (a) the aims and principles of the governance arrangements (Paragraph 2);
 - (b) the powers exercised by each Governance Body (Paragraph 3);
 - (c) the attribution of costs in connection with the operation of the Governance Bodies (Paragraph 4); and
 - (d) the management structures through which governance will be exercised (Paragraph 6)

2 General Aims and Principles

2.1 Aims

The aim of the governance arrangements is to facilitate the achievement of the Commercial Purpose, including by:

- (a) providing leadership and direction for the performance of this Contract;
- (b) optimising the management arrangements of this Contract to achieve the effective operation of Clause 6 (*Relationship governed by this Contract and Interface with other Contracts*) in a manner that is consistent with the achievement of the Commercial Purpose;
- (c) providing for effective and timely decision making and dispute resolution;
- (d) appointing suitably skilled, knowledgeable and experienced individuals from MoD and the BM Opcos to each Governance Body to be established pursuant to this Schedule, in each case who have been empowered with the necessary authority to fully participate as a member or alternate member of such Governance Body; and
- (e) ensuring that the governance arrangements accord with best practice and command the confidence of MoD and BM Opco stakeholders alike.

2.2 Principles

2.2.1 The key principles which will inform the functioning of the governance arrangements are:

- (a) key stakeholder representation;
- (b) provision of transparent decision making, taking into account all relevant circumstances; and
- (c) embodiment of the partnering requirements of this Contract.

2.2.2 Without prejudice to any express requirements set out elsewhere in this Contract, the Parties shall establish and maintain a cycle for the delivery of all reports and the timing of the related

meetings that enables all members of each of the Governance Bodies to be kept effectively informed to support the successful governance of this Contract.

3 Power of Governance Bodies

- 3.1 Subject to Paragraph 3.2, where this Contract expressly provides a requirement for the agreement, consent or approval of or to any matter by either Babcock Marine or MoD (other than merely by reference to a Governance Body) then that agreement, consent or approval may be provided on behalf of Babcock Marine or MoD (as applicable) by:
- (a) the respective Co-Chair of a particular Governance Body (or AcMT Leader in the case of the AcMT) appointed by Babcock Marine or MoD (as applicable) in respect of all decisions within the Terms of Reference of such Governance Body; or
 - (b) the respective Babcock Marine Representative and/or MoD Representative (as applicable) in all other cases.
- 3.2 Amendments to this Contract shall be authorised in accordance with the process set out in Clause 36 (*Change*).
- 3.3 Decisions of each Governance Body shall be taken as follows:
- (a) a decision of the AcMT requires agreement by the respective AcMT Team Leaders appointed by MoD and Babcock Marine;
 - (b) a decision of the SG requires agreement by the respective Co-Chairs of the SG appointed by MoD and Babcock Marine; and
 - (c) a decision of the POG requires agreement by the respective Co-Chairs of the POG appointed by MoD and Babcock Marine.
- 3.4 Paragraph 3.3 shall be without prejudice to the right of either MoD or Babcock Marine to refer to the Dispute Resolution Procedure any Dispute relating to the right of MoD or Babcock Marine to withhold agreement, consent or approval to a matter requiring the agreement consent or approval of MoD or Babcock Marine respectively under the terms of this Contract.
- 3.5 Any decision of a Governance Body in accordance with the terms of Paragraph 3.3 shall be binding on both Parties.
- 3.6 If the AcMT is unable to reach a decision on any matter under the Governance arrangements, the matter shall be referred to SG. If the SG is unable to reach a decision on any matter under the Governance arrangements, the matter shall be referred to the POG. If the POG is unable to reach a decision on any matter under the Governance arrangements, then except as expressly provided otherwise in this Contract, either Party may refer the matter to the Dispute Resolution Procedure.
- 3.7 The Terms of Reference of each Governance Body shall govern the following issues and such other issues as MoD and Babcock Marine may determine from time to time are necessary for the operation of such Governance Body:
- (a) quorum requirements applying to meetings of the Governance Body;
 - (b) Babcock Marine and MoD's right to call ad hoc / emergency meetings;
 - (c) notice requirements for calling normal and ad-hoc / emergency meetings;
 - (d) requirements to keep formal minutes recording all agreed decisions, actions and issues and to approve and circulate copies of these minutes to the Parties;

- (e) the right of either Party to invite others to attend meetings; and
- (f) the process by which each Party may appoint alternate or replacement members who hold the necessary authorities to fully participate as members / alternate members of such Governance Body.

4 Costs

- 4.1 Each Party shall bear all its own costs relating to the operation of the governance process described in this Schedule.
- 4.2 The costs of any facilities (including use of buildings and infrastructure) provided for the purpose of the operation of the governance process described in this Schedule shall be borne by the Party making the provision.

5 Independent Transformation Advisor

- 5.1 The following provisions shall apply in relation to the Independent Transformation Advisor (ITA) function:
 - 5.1.1 any person or organisation appointed as an ITA shall:
 - (a) be an independent person or organisation of good standing and high reputation in such matters and shall owe a duty of care to each Party in relation to the ITA's appointed functions;
 - (b) be appointed by the Steering Group on the basis of terms of reference agreed by the Steering Group in the light of tasking recommendations from the AcMT; and
 - (c) notwithstanding Paragraph 5.1.1 above, any ITA appointed shall have the function of challenging each of the Parties to better and more ambitiously perform their obligations pursuant to this Contract and in particular the Commercial Purpose, and to reinforce a culture of continuous improvement;
 - 5.1.2 an ITA may be appointed for such period as the Parties agree and the Parties may agree to dispense with the services of any ITA at any time;
 - 5.1.3 any ITA shall report to DSM (MoD) and Chief Executive (Babcock Marine) and work with the Steering Group, Business Champions and the AcMT in each case as directed by the Steering Group in respect of matters such as:
 - (i) independent assurance and validation of benefits delivery;
 - (ii) independent challenge to the transformation agenda and delivery plans;
 - (iii) identifying opportunities for further improvements; and
 - (iv) facilitation of issue resolution up to the point that any Dispute arising in connection with such issue is referred to external dispute resolution under Paragraph 6 (*Alternative Dispute Resolution*) or Paragraph 7 (*Arbitration*) of Schedule 15 (*Dispute Resolution Procedure*); and
 - 5.1.4 the Independent Transformation Adviser shall be funded by Babcock Marine, subject to Clause 32.6 (*Clarification*).
- 5.2 If the Parties are unable to agree any matter referred to in this Paragraph 5, the matter shall not be capable of being referred to the Dispute Resolution Procedure. However, this shall not limit the right of either Party to refer any matter considered by the ITA in connection with

Paragraph 5.1.3 to the Dispute Resolution Procedure where this matter relates to the rights or obligations of one or more other Parties under any other provision of this Contract.

6 Management Structures

6.1 Governance

Governance of this Contract shall be exercised through the following joint management bodies comprising, in descending order of authority:

- (a) the Project Owners Group (**POG**);
- (b) the Steering Group (**SG**); and
- (c) the Account Management Team (**AcMT**).

6.2 The Project Owners Group

6.2.1 The POG is an executive board providing top level strategic vision for the relationship between MoD and Babcock Marine across the Sector, meeting as required by either MoD or Babcock Marine to:

- (a) confirm the direction of the relationship between Babcock Marine and MoD in a manner consistent with the achievement of the Commercial Purpose and to provide direction on effective engagement with Government bodies and other participants within the Sector;
- (b) resolve any issues which have been escalated for resolution or decision by the Steering Group;
- (c) act as the second point of internal dispute resolution in accordance with the Dispute Resolution Procedure set out in Schedule 15 (*Dispute Resolution Procedure*) if either Party serves a notice of Dispute; and
- (d) make decisions and discharge such other functions as are expressly provided for the POG in this Contract or the POG's Terms of Reference.

6.2.2 The POG shall initially consist of the following personnel:

MoD Personnel	Babcock Marine Personnel
DE&S Chief Operating Officer (COO) (Co-Chair)	Babcock Marine Chief Executive (Co-Chair)
DE&S Chief of Materiel (Fleet) (COM(F))	Babcock Marine Corporate Services Director
DE&S Director Submarines (DSM)	Babcock Marine Managing Director Strategic Development
DE&S Director Ships (D Ships)	

6.2.3 Each Party may, by notice in writing to the other Party, change its respective personnel on the POG and shall (as far as practicable) consult with the other Party prior to the appointment of any replacement POG personnel. 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 the other Party in the execution of its obligations under this Contract.

6.2.4 Each meeting of the POG shall be co-chaired by the MoD and Babcock Marine personnel identified in Paragraph 6.2.2 as Co-Chair and shall be attended by all the other members listed in Paragraph 6.2.2 (or any such Co-Chair's or member's nominated alternate in his or her absence).

6.2.5 Secretariat to the POG shall be provided by the AcMT.

6.3 The Steering Group

6.3.1 The Steering Group is a director level board the principal function of which is to drive the implementation of the Contract in accordance with the Commercial Purpose.

6.3.2 The principal responsibilities of the Steering Group are to:

- (a) monitor achievement of the Commercial Purpose and identify how best each of the Commercial Purpose and Strategic Planning Objective may be achieved pursuant to the strategic risk plan approved under Paragraph 6.3.2(d) or otherwise, in light of the information exchanged under Clause 26 (*Strategic Planning Framework*);
- (b) review and approve:
 - (i) any changes to the Transformation Objectives, the Benefits Realisation Plan, and the Relationship Management Plan pursuant to Part 4 (*Benefits*), Part 5 (*Transformation*) and Part 7 (*Partnering and Governance Arrangements*), together with any related KPIs and PIs; and
 - (ii) review performance against the BM KPIs, Joint KPIs and MoD KPIs (as referred to in Clause 21.5 (*Performance and Key Performance Indicators*)) and progress against the Benefits Realisation Plan, the Transformation Plan and the Relationship Management Plan;
- (c) review and assess the impact and risks associated with the programme of Work allocated to Babcock Marine under BM Contracts for ToBA Work;
- (d) agree and review the strategic risk plan setting out the strategic risks in respect of this Contract, prepared by the AcMT in accordance with Paragraph 6.4.3(a)(ii);
- (e) examine any proposal to extend the original term of the Contract and provide recommendations on this matter;
- (f) consider and endorse proposed Changes in accordance with Clause 36.2 (*Change Procedure*) (other than those of a routine administrative nature that are considered and endorsed by the AcMT);
- (g) endorse Actual Authority Benefits and the incentive level to be applied where Babcock Marine meets or exceeds the Guaranteed Benefits in a Period in accordance with Parts 4 and 5 of Schedule 12 (*Pricing and Incentivisation*);
- (h) consider and endorse proposed changes to the Master Table in accordance with Schedule 12 (*Pricing and Incentivisation*);
- (i) resolve any issues which have been escalated for resolution by the AcMT and act as the first point of internal dispute resolution in accordance with the Dispute Resolution Procedure set out in Schedule 15 (*Dispute Resolution Procedure*) if either Party serves a notice of a Dispute;
- (j) ensure that the AcMT is appropriately resourced with personnel having the right skills, competence and experience and consider and approve proposals to create and/or delete key posts in the AcMT;
- (k) receive reports from the AcMT and report into the POG.
- (l) monitor the achievement of Strategic Rationalisation in accordance with Clause 18 (*Strategic Rationalisation*);

- (m) make decisions on Business Case Proposals in accordance with Clause 19.5 (*Business Case Proposal Decisions*);
- (n) agree a programme of Best Practice Comparisons and monitor the outcomes of Best Practice Comparisons in accordance with Clause 20 (*Best Practice Comparisons*);
- (o) consider the outcome of each Annual Review in accordance with Clause 27 (*Annual Review*);
- (p) consider the outcome of each Major Review in accordance with Clause 28 (*Major Reviews*);
- (q) consider the outcome of any KIC Review in accordance with Clause 33.3 (*KIC Requirements*);
- (r) ensure that compliance with the Parties' obligations under this Contract is monitored and managed; and
- (s) make decisions and discharge such other functions as are expressly provided for the SG in this Contract or the SG's Terms of Reference or which are referred to the SG by the AcMT.

6.3.3 The SG shall initially consist of the following personnel:

MoD Personnel	Babcock Marine Personnel
DE&S DSM (Chair)	
MCP Head	
Transformation & Change Champion	Transformation & Change Champion
Relationship Management Champion	Relationship Management Champion
Performance Management Champion	Performance Management Champion
Strategic Planning Champion	Strategic Planning Champion
Finance Management Champion	Finance Management Champion
Submarine Output Lead	Submarine Output Lead
Surface Ships Output Lead	Surface Ships Output Lead
Naval Base Output Lead	Naval Base Output Lead

6.3.4 Each Party may, by notice in writing to the other Party, change its respective personnel on the SG and shall (as far as practicable) consult with the other Party prior to the appointment of any replacement SG personnel. 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 the other Party in the execution of its obligations under this Contract.

6.3.5 Each meeting of the SG shall be co-chaired by the MoD and Babcock Marine personnel noted in Paragraph 6.3.3 and shall be attended by all the other members listed in Paragraph 6.3.3 (or any such Co-Chair's or member's nominated alternate in his or her absence).

6.3.6 The SG may also be attended in an advisory capacity by the AcMT Leaders and any other personnel that members of the SG require to support the meeting agenda.

6.3.7 Secretariat to the SG shall be provided by the AcMT.

6.4 Account Management Team

6.4.1 The AcMT is a joint Babcock Marine and MoD staffed team responsible for the day-to-day governance of this Contract in accordance with the Commercial Purpose (including the implementation of governance decisions of the SG and POG and the provision of information and recommendations on various issues to the SG).

6.4.2 The AcMT shall be jointly led by a nominated person from each of MoD and Babcock Marine (each an **AcMT Leader**) who shall report to a 1* level person from MoD and a director level person from Babcock Marine.

6.4.3 The key functions of the AcMT are to:

(a) Strategic Plan Implementation:

- (i) understand and promulgate the forward programme of Work, track any changes to it and define the impact on this Contract;
- (ii) identify, document in a strategic risk plan and manage strategic risks in respect of this Contract in accordance with such plan;

(b) Change and Scope Management:

- (i) maintenance and updating of the Transformation Plan and monitoring the Parties' progress against the Transformation Milestones and the Transformation Plan and reporting on this to the SG in accordance with Clause 17 (*Transformation*);
- (ii) support activities relating to the delivery of the Transformation Plan including "proof of concept" studies;
- (iii) prepare/examine proposals for expenditure and specific initiatives and discuss, review and clarify Business Case Proposals and recommend to the Steering Group whether they should be approved or rejected in accordance with Clause 19 (*Business Case Proposals*);
- (iv) provide such support and assistance as MoD reasonably requires to prepare internal MoD business cases in connection with a Business Case Proposal or this Contract;
- (v) maintain, implement and ensure delivery of the Relationship Management Plan and continuously monitor and update and improve over time the effectiveness of the Relationship Management Plan in accordance with Clause 24.2(c) (*General Partnering Obligation*);
- (vi) conduct relationship measurements and assessments in liaison with any Independent Partnering Advisor that is appointed;
- (vii) review the coherence between contracts for current and future ToBA Work and the requirements of this Contract from time to time and make recommendations as to how any issues identified by such reviews should be addressed;
- (viii) monitor and facilitate discussions in relation to matters referred to in Clause 6 (*Relationship governed by this Contract and Interface with other Contracts*);
- (ix) evaluate and endorse any proposed Change to this Contract of a routine administrative nature under Clause 36 (*Change*);
- (x) (in addition to its obligations under Paragraph 6.4.3(a)(ii)) manage all joint risks and issues under this Contract;

(c) Performance Management:

- (i) monitor and report performance by Babcock Marine and MoD against the BM KPIs, Joint KPIs and PIs and report to the SG in accordance with Clause 21 (*Performance and Key Performance Indicators*) and Schedule 8

(Performance Management) and where it appears that a Party is not likely to achieve a BM KPI, Joint KPI and/or PI (as applicable) make recommendations on remedial steps that such Party could take to assist it to improve its performance;

- (ii) if any BM KPI is assessed as amber or red, report this to the SG and (where requested by the SG) assist the SG to conduct a rectification review in accordance with the requirements of Clause 23.1;
 - (iii) identify areas that Best Practice Comparisons should cover and the optimal timing of Best Practice Comparisons;
 - (iv) review any reports by Best Practice Experts on Best Practice Comparisons conducted and provide its recommendations on such reports to the SG pursuant to Clause 20 (*Best Practice Comparison*);
 - (v) conduct Annual Reviews in accordance with Clause 27 (*Annual Reviews*) to assess the performance of the Contract over the previous year;
 - (vi) conduct Major Reviews in accordance with Clause 28 (*Major Reviews*); and
 - (vii) monitor compliance by MoD and Babcock Marine with their respective obligations under this Contract;
- (d) Finance:
- (i) all matters to be agreed or determined pursuant to Schedule 12 (*Pricing and Incentivisation*);
 - (ii) maintain BMECS and develop and (once approved) implement and maintain the ToBA Rates Model in accordance with Clause 30A (*ToBA Rates Model*); and
 - (iii) monitor Babcock Marine's implementation of the Benefits Realisation Plan (BRP), consider Babcock Marine's performance under the BRP (as may be amended) in connection with each Annual Review and Major Review in accordance with Clause 14.9 (*Benefits Realisation Plan*) and (if requested by MoD) consider any changes to the BRP proposed by Babcock Marine;
- (e) Secretariat:
- provide reports to inform the POG and the SG and the wider MoD community of progress under the Contract and provide such other secretariat functions as the POG and SG require from time to time; and
- (f) Other
- Discharge such other functions as are expressly provided for the AcMT in the Contract, the AcMT's Terms of Reference or as otherwise required by the SG.

Schedule 11A – BMECS Governance

1 BMECS Governance

- 1.1 The Parties, working by agreement, shall jointly oversee:
- (a) provision by Babcock Marine of accounting and other supporting data in accordance with Clause 31 (*Babcock Marine Records*) as necessary to demonstrate to MoD that the BMECS fully and accurately reflects the ToBA Starting Baseline and that the way in which Babcock Marine's Actual Costs within the ToBA Starting Baseline are categorised can be reconciled to Babcock Marine's published accounts;
 - (b) the updating of the BMECS in accordance with this Schedule; and
 - (c) implementation of any changes to the BMECS as agreed between the Parties.
- 1.2 MoD shall appoint a MoD: Babcock Marine ToBA Business Manager as the MoD Lead (the **MoD Lead**). Babcock Marine shall appoint its Business Improvement Director as the Babcock Marine Lead (the **Babcock Marine Lead**) (together "**BMECS Leads**"). Either Party may at any time by written notice to the other Party change their BMECS Lead. Any such notice shall specify the date on which such change or substitution shall have effect.
- 1.3 If the parties cannot agree any matter regarding BMECS, the matter shall be escalated to the SG.

2 BMECS User Manual

- 2.1 Babcock Marine has delivered to MoD on the Commencement Date, a copy of the draft BMECS User Manual:
- (a) containing detailed documentation (including operations manuals, user guides and specifications) describing in full how to run and otherwise use the BMECS; and
 - (b) detailing the functionality, operation and structure of the BMECS.
- 2.2 Babcock Marine shall review and (if necessary) update the BMECS User Manual promptly following any Approved Change in accordance with paragraph 3 of Schedule 11A (*BMECS Governance*) below.

3 Approval process for changes to the BMECS

- 3.1 A Party (the **Proposer**) may propose a change to the BMECS (a **BMECS Proposal**) at any time by written notice to the other Party's BMECS Lead (the **Approver**). Such notification must be accompanied by:
- (a) a document detailing the nature of the BMECS Proposal and the rationale for the change; and
 - (b) an electronic file containing a copy of the draft BMECS, incorporating the proposed changes.
- 3.2 Following receipt of a notification under paragraph 3.1 above, the Approver must respond in writing to the Proposer within three Business Days, stating either:
- (a) that the BMECS Proposal is agreed; or

- (b) that the BMECS Proposal is not agreed, stating the reasons for not agreeing and proposing any changes to the Proposal the Approver deems appropriate.
- 3.3 If the Proposer receives a notification under paragraph 3.2(b) above, they may submit a revised Proposal, by repeating the process under paragraph 3.1 above.
- 3.4 The Proposer may call a meeting of BMECS Leads to consider whether to approve or reject a BMECS Proposal either:
 - (a) once the BMECS Leads have agreed a BMECS Proposal and a notice has been issued under paragraph 3.2(a) above; or
 - (b) in any event, if agreement has not been reached between the BMECS Leads within 15 Business Days of delivery of the first notification of the BMECS Proposal under paragraph 3.1.
- 3.5 At least seven Business Days prior to a meeting of BMECS Leads called following paragraph 3.4, the Proposer must provide the other BMECS Lead with:
 - (a) a document detailing:
 - (i) the nature of the BMECS Proposal;
 - (ii) the rationale for the change; and
 - (iii) whether the Proposal has been agreed by the Approver; and
 - (b) an electronic file containing a copy of the draft BMECS, incorporating the proposed changes.
- 3.6 At the meeting called following paragraph 3.4, the Parties shall use all reasonable endeavours to:
 - (a) agree the BMECS Proposal is approved;
 - (b) reject the BMECS Proposal; or
 - (c) recommend that the BMECS Proposal is approved, subject to specified amendments.

4 Recording Changes to the BMECS

The BMECS Leads shall maintain a change log for the BMECS. The change log shall:

- (a) contain details of all changes to the Master Copies throughout the Contract Term;
- (b) indicate the reason for the change;
- (c) record the calculation; and
- (d) specify the cost or revenue categories affected.

Schedule 11B – ToBA Rates Model

Explanatory note

The Parties acknowledge that the provisions set out in this Schedule 11B are not binding on the Parties as at the Commencement Date and instead shall form the basis of more detailed discussions between the Parties relating to the provisions required relevant to the governance, change, update and maintenance of the ToBA Rates Model which shall take place during Transformation (in accordance with Clause 30A.4.2 of this Contract). The result of such discussions shall be a schedule addressing the matters referred to above which shall (a) be binding on the Parties on and from the date on which it is agreed; and (b) supersede the provisions set out in this Schedule 11B as at the Commencement Date.

Part 1 – ToBA Rates Model Governance

1 ToBA Rates Model Governance

1.1 The ToBA Rates Model Panel (**TRMP**) shall oversee:

- (a) provision by Babcock Marine of accounting and other supporting data in accordance with Clause 31 (*Babcock Marine Records*) as necessary to demonstrate to MoD that the ToBA Rates Model fully and accurately reflects:
 - (i) the Babcock Marine Cost Base and that the way in which they are categorised can be reconciled to Babcock Marine's published accounts
 - (ii) that, subject to paragraph 3.4 of Part 3 of Schedule 12 (*Pricing and Incentivisation*), the Babcock Marine Cost Base is allocated in line with the QMACs; and
 - (iii) the operation of the provisions of Schedule 12 (*Pricing and Incentivisation*);
- (b) the updating of the ToBA Rates Model in accordance with this Schedule; and
- (c) implementation of any changes to the ToBA Rates Model as agreed between the Parties.

1.2 MoD shall appoint [******] as the MoD Lead (the **MoD Lead**). Babcock Marine shall appoint [******] as the Babcock Marine Lead (the **Babcock Marine Lead**). Either Party may at any time by written notice to the other Party change their ToBA Rates Model Lead. Any such notice shall specify the date on which such change or substitution shall have effect.

1.3 TRMP Composition

The TRMP shall consist of the following members:

- (a) [*insert role* (MoD Lead (Chair))];
- (b) [*insert role* (MoD Representative)];
- (c) [*insert role* (BM Lead)]; and
- (d) [*insert role* (BM Representative)].

1.4 Quorum:

To be quorate, a meeting of the TRMP shall be attended by all its members, or their designated proxies.

1.4.1 Frequency of meetings:

- (a) **Regular meetings:** the TRMP shall meet quarterly during the Contract Period.
- (b) **Ad hoc meetings:** the TRMP shall meet (1) as and when business to be transacted by TRMP requires and/or (2) at such other times as any Party may require. The TRMP chair, or any Party, may call a meeting by serving written notice on all members of the TRMP.
- (c) At least 15 days' notice shall be given for routine meetings. Reduced notice may be given, as is reasonable in all the circumstances.

1.4.2 Decision procedures:

All decisions of the TRMP will be made by unanimous agreement of all members. Any matter which is not resolved by the TRMP shall be escalated for resolution by the Steering Group.

1.4.3 Minutes

The Chair shall ensure that all meetings of the TRMP are formally minuted and copies provided to each Party. The minutes shall include a record of all agreed decisions, actions and issues.

1.4.4 Reporting

The TRMP shall be responsible to the Steering Group and members of the TRMP shall attend Steering Group meetings as required by the Steering Group to report on activities of the TRMP. Any reports which the TRMP produces shall be provided to the AcMT for the AcMT to provide to the Steering Group.

2 ToBA Rates Model User Manual

2.1 Babcock Marine shall submit to the TRMP by no later than [2 January 2012], for the TRMP's approval:

2.1.1 a copy of the draft ToBA Rates Model User Manual developed and documented by Babcock Marine:

- (a) containing detailed documentation (including operations manuals, user guides and specifications) describing how to run and otherwise use the ToBA Rates Model; and
- (b) detailing the functionality, operation and structure of the ToBA Rates Model; and

2.1.2 a certificate from an independent Auditor acceptable to MoD certifying that the ToBA Rates Manual fully and accurately reflects operation of the ToBA Rates Model.

2.2 The TRMP shall, within a reasonable time, provide its comments to Babcock Marine on the draft ToBA Rates Model User Manual. The parties will discuss the TRMP's comments and Babcock Marine shall then prepare a revised draft ToBA Rates Model User Manual within a reasonable time which addresses the TRMP's comments and submit it to the TRMP for approval.

- 2.3 Once the TRMP has finally approved the ToBA Rates Model User Manual, it shall form part of this Agreement, to be included in Appendix 3 of this Schedule 11B (*ToBA Rates Model*), and Babcock Marine shall run the ToBA Rates Model in accordance with it.
- 2.4 Babcock Marine shall review and (if necessary) update the ToBA Rates Model User Manual within a reasonable time following any Approved Change in accordance with paragraph 3 of Schedule 11B (*ToBA Rates Model*) below.
- 2.5 Paragraph 2.3 shall apply to each version of the ToBA Rates Model User Manual updated in accordance with paragraph 2.4.

3 Approval process for changes to the ToBA Rates Model

- 3.1 A Party (the **Proposer**) may propose a change to the ToBA Rates Model (a **ToBA Rates Model Proposal**) at any time by written notice to the other Party's ToBA Rates Model Lead (the **Approver**). Such notification must be accompanied by:
- (a) a document detailing the nature of the ToBA Rates Model Proposal and the rationale for the change; and
 - (b) an electronic file containing a copy of the draft ToBA Rates Model, incorporating the proposed changes.
- 3.2 Following receipt of a notification under paragraph 3.1 above, the Approver must respond in writing to the Proposer within three Business Days, stating either:
- (a) that the ToBA Rates Model Proposal is agreed; or
 - (b) that the ToBA Rates Model Proposal is not agreed, stating the reasons for not agreeing and proposing any changes to the Proposal the Approver deems appropriate.
- 3.3 If the Proposer receives a notification under paragraph 3.2(b) above, they may submit a revised Proposal, by repeating the process under paragraph 3.1 above.
- 3.4 The Proposer may call a meeting of the TRMP to consider whether to approve or reject a ToBA Rates Model Proposal either:
- (a) once the ToBA Rates Model Leads have agreed a ToBA Rates Model Proposal and a notice has been issued under paragraph 3.2(a) above; or
 - (b) in any event, if agreement has not been reached between the ToBA Rates Model Leads within 15 Business Days of delivery of the first notification of the ToBA Rates Model Proposal under paragraph 3.1.
- 3.5 At least seven Business Days prior to a meeting of the TRMP called following paragraph 3.4, the Proposer must provide each member of the TRMP with:
- (a) a document detailing:
 - (i) the nature of the ToBA Rates Model Proposal;
 - (ii) the rationale for the change; and
 - (iii) whether the Proposal has been agreed by the Approver; and
 - (b) an electronic file containing a copy of the draft ToBA Rates Model, incorporating the proposed changes.

- 3.6 At the meeting called following paragraph 3.4, the TRMP must decide to:
- (a) approve the ToBA Rates Model Proposal;
 - (b) reject the ToBA Rates Model Proposal; or
 - (c) approve the ToBA Rates Model Proposal is approved, subject to specified amendments.
- 3.7 If the TRMP approves any Proposal (an **Approved ToBA Rates Model Proposal**), it must notify Babcock Marine in writing within 5 Business Days of such approval.
- 3.8 Within a reasonable period of time following receipt of the notification of an Approved ToBA Rates Model Proposal under paragraph 3.7 (having regard to the nature of the changes contained in the Approved ToBA Rates Model Proposal), Babcock Marine shall:
- (a) prepare new versions of each of the Model Items [**change of name of "defined term "Escrow Items"**] incorporating the Approved ToBA Rates Model Proposal (and any amendments required by paragraph 3.6(c)) and deliver them or cause them to be delivered to the TRMP; and
 - (b) contemporaneously with the delivery of the Model Items to the TRMP under paragraph 3.8(a) above, deliver to MoD complete and accurate copies of each of the items so delivered.
- 3.9 Babcock Marine shall provide (and shall procure that every other Babcock Marine Group Member provides) such information as CAAS reasonably required to discharge the audit requirements relating to CAAS under this Contract.
- 3.10 Any Run of the ToBA Rates Model that is required for the purposes of this Contract shall be performed after making any Approved Change and utilising the [Revised Inputs] and shall be performed by:
- (a) Babcock Marine promptly on receiving notification of the Revised Inputs [**definition currently links to BMECS**] and any Approved Change from the TRMP pursuant to paragraph 3.7; or
 - (b) MoD if Babcock Marine fails to do so.

4 Updating the ToBA Rates Model

4.1 TRMP Responsibilities

For the purposes of updating the ToBA Rates Model, the TRMP shall be responsible for the following:

- (a) [Update Pricing Rates with inclusion of Actual Rates: annually in accordance with the timescales set out in Schedule 12 (*Pricing and Incentivisation*) to ensure that relevant actual data is included for the purposes of recording Actual Costs and Actual Rates]; and
- (b) Update ToBA Rates Model User Manual: within [**] update any changes to the ToBA Rates Model User Manual.

4.2 Babcock Marine Proposals

For the purpose of Re-baselining, Babcock Marine must submit a ToBA Rates Model Proposal pursuant to paragraph 3 of Schedule 11B (*ToBA Rates Model*) at each Re-Baselining Point in accordance with Clause [] (*Re-Baselining Process*).

4.3 MoD Proposals

MoD may propose updates to the ToBA Rates Model at any time during the Contract Period by submitting a ToBA Rates Model Proposal pursuant to paragraph 3 of Schedule 11B (*ToBA Rates Model*) to amend the ToBA Rates Model so that it reflects the current Illustrative Programme.

5 Recording Changes to the ToBA Rates Model

Babcock Marine shall maintain a change log for the ToBA Rates Model. The change log shall:

- (a) contain details of all changes to the Master Copies throughout the Contract Term;
- (b) indicate the reason for the change;
- (c) record the calculation; and
- (d) specify the cost or revenue categories affected.

6 Audit, verification and validation of the ToBA Rates Model

6.1 MoD may audit or may appoint a representative to audit the output of the ToBA Rates Model at any time and expects to do so every three years to ascertain, validate and verify:

- (a) [the integrity of the ToBA Rates Model] [*what does this mean? To be further defined if it is to be retained*]; or
- (b) that its outputs are consistent with the terms of this Contract and enable the correct calculation of the Pricing Rates.

6.2 Babcock Marine shall provide MoD or its appointed representative with all such information and co-operation as the MoD may request to enable it to perform any audit. Each party shall bear its own costs in relation to an audit pursuant to this paragraph 6.

Part 2 – Custody Arrangements⁴

[Note Babcock Marine does not believe escrow is required]

7 Delivery and Custody of Escrow Items

- 7.1 Babcock Marine shall make available the Escrow Items to the MoD Lead, as professional advisor and agent of MoD.
- 7.2 The MoD Lead shall, together with the BM Lead, verify the identity of the Escrow Items.
- 7.3 Following the verification of any Escrow Items, Babcock Marine shall deliver or cause to be delivered to the Custodian such item within ten Business Days together with details of the Escrow Items deposited (including full filename and version details and any details required to access the Escrow Items including media type, backup command/software used, compression used, archive hardware and operating system details).
- 7.4 The Custodian shall hold in safe custody on behalf of MoD and Babcock Marine and subject to the joint instructions of MoD and Babcock Marine the items delivered to it pursuant to paragraph 7.3. The Custodian shall have the right to make such copies of such items as may be necessary solely for the purposes of carrying out its obligations in respect of the items held in its custody.
- 7.5 The Custodian shall bear no obligation or responsibility to any person, firm, company or entity whatsoever to determine the existence, relevance, identity, completeness, accuracy, effectiveness or any other aspect of the items delivered to him pursuant to paragraph 7.3.
- 7.6 Babcock Marine warrants to MoD that the items delivered to the Custodian pursuant to paragraph 7.3 shall have been verified and identified by, or on behalf of, Babcock Marine as being the items so described in paragraph 7.1 and MoD warrants to Babcock Marine that the copies of the items delivered pursuant to paragraph 7.3 shall have been verified and identified by the MoD Lead on behalf of MoD as being the items so described in paragraph 1.1.
- 7.7 Upon the initial delivery of the Master Copy of ToBA Rates Model to the Custodian pursuant to paragraph 7.3, MoD and Babcock Marine shall deliver to the Custodian sample copies of the signatures of their ToBA Rates Model Lead for subsequent verification purposes pursuant to paragraph 9.1.

8 Costs of Custody Arrangements

- 8.1 MoD and Babcock Marine shall share the costs associated with depositing and retrieving ToBA Rates Model from the Custodian (including any pre-agreement fees charged by the Custodian) equally except [**].
- 8.2 Where the ToBA Rates Model is retrieved as part of a Dispute, or the Dispute Resolution Procedure, then the liability of the Parties for the costs associated with its retrieval and return to deposit will follow the liability for costs in respect of the relevant Dispute as awarded pursuant to the Dispute Resolution Procedure and failing such an award shall be borne as provided in [**].
- 8.3 Where ToBA Rates Model is retrieved in circumstances where Babcock Marine has made an error in making any adjustments to ToBA Rates Model then the costs associated with its retrieval and return to deposit shall be paid by Babcock Marine.

⁴ Note – a separate custody arrangement will need to be put in place to reflect these terms.

9 Release

- 9.1 In relation to the items delivered to it pursuant to paragraph 7.3, the Custodian shall honour the instructions and signatures of:
- (a) the MoD Lead for and on behalf of MoD; and
 - (b) the BM Lead for and on behalf of Babcock Marine.
- 9.2 The Custodian shall, upon receiving instructions signed by both ToBA Rates Model Leads, examine the signatures of the ToBA Rates Model Leads against the sample signatures provided to the Custodian in accordance with paragraph 7.7. If the Custodian is satisfied (acting reasonably) as to the authenticity of the signatures received, he shall release one copy of the item requested to the person either named in such instructions or previously identified in writing by the MoD Lead and BM Lead.
- 9.3 MoD and Babcock Marine each agree that they shall give joint instructions to the Custodian for the release of any item in accordance with paragraph 9.2 on each occasion that any such item is required to be released pursuant to this Contract except when the Parties agree not to effect the release of such item.
- 9.4 Notwithstanding the generality of paragraph 7.3 the Custodian shall release any items delivered pursuant to paragraph 7.3 to MoD's Lead if any of the following events occur:
- (a) any [Babcock Marine Default (as defined in Clause 42)]; or
 - (b) any breach by Babcock Marine of any of its obligations under Clause 30A (*ToBA Rates Model*).

10 Liability

- 10.1 The Custodian shall not be liable for any loss or damage caused to MoD or Babcock Marine either jointly or severally in connection with its custody of the items delivered to it under paragraph 7.3 or otherwise.
- 10.2 The Custodian shall in no circumstances be liable to MoD or Babcock Marine for indirect or consequential loss of any nature whatsoever whether for loss of profit, loss of business or otherwise.
- 10.3 The Custodian shall be protected in acting upon any written request, waiver, consent, receipt or any other document furnished to it pursuant to this Contract, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information contained in it, which the Custodian in good faith believes to be genuine and what it purports to be.

11 Indemnity

Babcock Marine shall assume all liability and shall at all times indemnify and hold harmless the Custodian from and against any and all liability, loss, damages, and reasonable costs, legal costs, professional and other expenses and any other liabilities of whatever nature, awarded against or agreed to be paid or otherwise suffered, incurred or sustained by the Custodian, whether direct, indirect or consequential, as a result of or in connection with any claim by any third party for alleged or actual infringement of Intellectual Property arising out of or in connection with all and any acts or omissions of the Custodian in respect of those items delivered to it under paragraph 7.3.

Schedule 12 – Pricing and Incentivisation

PART 1 – GENERAL INTRODUCTION AND INTERPRETATION

1.1 Introduction

1.1.1 Purpose of Schedule 12

1.1.1 This Schedule 12 records the Parties' agreement in relation to certain financial arrangements between them which are central to this Contract. These are:

- (a) the financial relationship between this Contract and Existing Project Contracts, during the Initial Term. In particular, the effect of entering into this Contract on the prices established in Existing Project Contracts. The general rule here is that the prices established in Existing Project Contracts remain unaffected by the entry into of this Contract. However, Actual Authority Benefits will flow through Existing Project Contracts;
- (b) the financial relationship between this Contract and Project Contracts entered into during the Initial Term, in particular:
 - (i) the pricing structure and methodology to be adopted in order to establish the pricing arrangements for future Project Contracts;
 - (ii) the Pricing Rates to be used to establish prices within that structure and the processes for rebaselining those Pricing Rates for each Period; and
 - (iii) how Actual Authority Benefits will accrue to MoD through those Project Contracts;
- (c) arrangements for calculating Authority Benefits and Actual Authority Benefits against a baseline (established and modified in accordance with this Schedule 12), and for determining the extent to which Babcock Marine has achieved, failed to achieve or exceeded achievement of the Guaranteed Benefits by reference to agreed periods of time;
- (d) arrangements for determining certain incentive payments which may become payable by MoD to Babcock Marine through Project Contracts, and the methodology for their calculation and payment, in relation to achieving Actual Authority Benefits in excess of the Guaranteed Benefits;
- (e) arrangements for the development of a working protocol and a process for the agreement or determination of the component elements of pricing, achievement of Actual Authority Benefits and incentivisation payments to ensure the effective operation of this Schedule 12; and
- (f) the method and format to be used to record key financial information which is calculated, agreed or determined in accordance with the provisions of this Schedule 12.

1.1.2 Accordingly, this Schedule 12 provides for the matters referred to in column 2 of the following table in the locations specified in column 1 of that table.

1. Location in This Schedule 12	2. Substance of relevant provisions
Part 1	Definition of terms used in this Schedule 12 and rules for its administration.
Part 2 and Annexes 3-7 (inclusive) and	The methodology for pricing individual Project

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1. Location in This Schedule 12	2. Substance of relevant provisions
Annex 9	Contracts.
Part 3 and Annexes 1-7 (inclusive) and Annex 9	The methodology for determining the Pricing Rates to be used in the Project Contracts (other than the Exceptional Contracts) and the circumstances and processes through which those Pricing Rates may be varied.
Part 4 and Annex 6	The methodology to be used for ascertaining what level of Actual Authority Benefits has been achieved by Babcock Marine and whether Babcock Marine has achieved, exceeded or fallen short of achieving the Guaranteed Benefits.
Part 5 and Annex 6	The methodology to be used in ascertaining whether Babcock Marine is entitled to payment of an ARP and determining the level of any ARP which may become payable.

1.1.2 What this Schedule 12 applies to

1.2.1 This Schedule 12 shall apply in relation to all Project Contracts extant during the Initial Term and to all ToBA Work carried out by Babcock Marine for MoD pursuant to:

- (a) all Existing Project Contracts; and
- (b) all Project Contracts entered into during the Initial Term.

1.2.2 The Parties shall ensure that all Project Contracts entered into during the Initial Term are drafted on terms such that any changes to those Contracts:

agreed by any Governance Body; or
 required to implement any decision of any Governance Body
 under this Contract are adopted and implemented by the parties to that Project Contract.

1.1.3 Periods

1.3.1 This Schedule 12 divides the Initial Term into four Periods. It then provides for:

- (a) Pricing Rates to be set for each Period. They are set (or provision is made for their determination) for the First Period in this Schedule 12. They are set or determined for subsequent Periods in the Financial Year immediately before each Period commences in the manner prescribed by this Schedule 12. The Pricing Rates set or determined in this way must then be used for the pricing of Project Contracts, other than Exceptional Contracts, entered into during the relevant Period in the manner prescribed by this Schedule 12;
- (b) calculation of Actual Authority Benefits and the extent to which Babcock Marine has achieved, failed to achieve or exceeded the achievement of the Guaranteed Benefits for each Financial Year within a Period and in respect of a Benefits Measurement Period as a whole. It also provides for the consequences of each of those circumstances; and
- (c) provided that in the delivery of Actual Authority Benefits over a Benefits Measurement Period Babcock Marine achieves or exceeds the Guaranteed Benefits, the methodology for calculating the level of ARP to which Babcock Marine

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shall be entitled. This ARP then forms a component element of the Target Price of all Project Contracts placed in the Period immediately following that in which the calculation is made.

1.1.4 *Worked Examples*

- 1.4.1 For ease of reference there are worked examples in Annex 8 to illustrate how certain parts of this Schedule 12 are intended to work in practice. The Parties acknowledge that the provisions of Annex 8 are not binding at the date of this Contract and that Annex 8 may contain content which the Parties may consider using as a starting point for the development of the Schedule 12 Operating Protocol.
- 1.4.2 In the event of any inconsistency between the provisions in Parts 1–5 of this Schedule 12 and the worked examples in the Annexes, the provisions of Parts 1–5 of this Schedule 12 shall have precedence.
- 1.2 Interpretation

Definitions

In this Schedule, the following expressions have the following meanings except where the context otherwise requires:

"**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 this Schedule 12;

"**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 this Schedule 12;

"**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 this Schedule 12 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 this Schedule 12;

"**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 this Schedule 12 and agreed or determined in accordance with paragraph 3.2 of Part 1 of this Schedule 12;

"**Adjusted Current Baseline**" has the meaning ascribed to it in paragraph 3.5.1(a) of Part 3 of this Schedule 12;

"**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;

"**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 this Schedule 12;

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"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 this Schedule 12;

"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 this Schedule 12;

"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 this Schedule 12;

"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 this Schedule 12;

"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 this Schedule 12 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, [REDACTED]

[REDACTED] shall not be regarded as MoD third party costs for the purposes of this definition;

"Babcock Marine Group Members" means the list of companies set out in Part 2 of Schedule 16 ([REDACTED]) and any other subsidiary [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;

"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:

Financial Years [REDACTED] (the **"first Benefits Measurement Period"**);

(a) Financial Years [REDACTED] (the **"second Benefits Measurement Period"**);

(b) Financial Years [REDACTED] (the **"third Benefits Measurement Period"**); or

(c) Financial Years [REDACTED] (the **"fourth Benefits Measurement Period"**), Agreed

as the context requires;

"[REDACTED]" means [REDACTED] and the [REDACTED] Subsidiaries;

"[REDACTED] Group Company" means any company within the [REDACTED] Group;

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"**Subsidiaries**" means any subsidiary of [REDACTED] from time to time, including any Babcock Marine Group Member;

"**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);

"**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 this Schedule 12;

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

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

the adoption, modification, consolidation, re-enactment or repeal of any Legislation;

the adoption, modification, issuance, consolidation, re-enactment or repeal of any regulations or legally binding standards; or

any applicable judgment of a relevant court of law which changes a binding precedent;

"**Clyde 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 Clyde Sites;

"**Clyde Sites**" means, for the purposes of this Schedule 12 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;

"**Commencement Date**" has the meaning ascribed to it in Clause 2.1;

"**Competed Work**" means any Work to be carried out by a [REDACTED] Group Company which has been awarded by MoD following a competitive process;

"**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);

"**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;

"**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 Sites**" means, for the purposes of this Schedule 12 only, the sites at which the Devonport Business is carried out which, as at the Commencement Date, are Plymouth

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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;

"Directly Charged Overhead Cost" has the meaning ascribed to it in paragraph 2.5.6 of Part 2 of this Schedule 12;

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

"Engineering Contract" means, for the purposes of this Schedule 12 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;

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

the Projected ToBA Workload for each Financial Year in that Period; and

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 this Schedule 12;

"Exceptional Contracts" means the Project Contracts referred to in paragraph 2.4.1 of Part 2 of this Schedule 12;

"Exceptional Load Shortfall or Increase" has the meaning ascribed to it in paragraph 5.2.3 of Part 3 of this Schedule 12;

"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;

"Financial Year" means, for the purposes of this Schedule 12, the period from 1 April in the relevant calendar year to 31 March in the following calendar year;

"First Period" means the period from [REDACTED]

"First Period Baseline" means the baseline setting out:

[REDACTED]

[REDACTED]

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

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

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"**Forecast Cost Base**" has the meaning ascribed to it in paragraph 3.5.1(d) of Part 3 of this Schedule 12;

"**Forecast Variable Rate**" means the rate calculated in accordance with paragraph 4.1 of Part 3 of this Schedule 12 and agreed or determined in accordance with paragraph 3.2 of Part 1 of this Schedule 12 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]

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

"**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:

the total cost incurred by Babcock Marine in performing that Project Contract; and

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;

"**Government Profit Formula**" has the meaning ascribed to it in the Yellow Book;

"**Governance Body(ies)**" means the Project Owners Group, the Steering Group and the AcMT;

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

"**HHP% (Fourth Period)**" means the Hold Harmless Point percentage for the Fourth Period calculated in accordance with paragraph 4.3 of Part 5 of this Schedule 12;

"**HHP% (Second Period)**" means the Hold Harmless Point percentage for the Second Period calculated in accordance with paragraph 2.3 of Part 5 of this Schedule 12;

"**HHP% (Third Period)**" means the Hold Harmless Point percentage for the Third Period calculated in accordance with paragraph 3.3 of Part 5 of this Schedule 12;

"**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 this Schedule 12;

"**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 this Schedule 12;

"**Initial Term**" has the meaning ascribed to it in Clause 2.1 (*Term*);

"**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);

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"Legislation" means in relation to the United Kingdom:

any Act of Parliament; or

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

in each case in the United Kingdom;

"Master Table" means the table set out in Annex 6 of this Schedule 12, updated as provided for in this Schedule 12. For information, the Master Table contains, as at the Commencement Date:

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);

- (i) a summary of the Continuous Improvement Guarantee in each Financial Year of the Initial Term;
- (j) provision to record the Authority Benefits incorporated within the Pricing Rates in each Financial Year of the Initial Term;
- (k) provision to record Actual Authority Benefits at each Site in each Financial Year of the Initial Term; and
- (l) provision to record the appropriate amount of ARP for each Financial Year of the Initial Term;

"MoD's Representative" means the person or persons appointed pursuant to Paragraph 6.1 of Schedule 10 (*Governance*);

"Non-engineering Contract" means, for the purposes of this Schedule 12 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-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:

Non-MoD Work;

- (m) Competed Work;
- (n) any Work relating to any CVF;
- (o) the Devonport FNF Capital Works Contract; and
- (p) non-Sector work;

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"Normalisation" means the process set out in paragraph 3 of Part 4 of this Schedule 12 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:

costs due to a Change in Law; and/or

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 this Schedule 12;

"Notional Value" has the meaning ascribed to it in paragraph 5.4.2 of part 3 of this Schedule 12;

"Pegged Items" means those items determined in accordance with paragraph 6 of Part 3 of this Schedule 12;

"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;

"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 this Schedule 12) will be set out in Annex 5 of this Schedule 12 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 this Schedule 12;

"Project Contract" means a BM Contract in respect of ToBA Work;

"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 this Schedule 12;

"Project Owners Group" means the joint management body of that name, the composition and functions of which are set out in Schedule 10 (*Governance*);

"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 this Schedule 12;

"Provisional Rates" has the meaning given in paragraph 3.5.1(e) of Part 3 of this Schedule 12;

"Provisional Shortfall Claim" has the meaning ascribed to it in paragraph 5.4.3 of Part 3 of this Schedule 12;

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"**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);

"**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 this Schedule 12;

"**Rebaselining 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 this Schedule 12) are conducted, being such of the final Financial Year of the First Period, Second Period or Third Period as the context requires;

"**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 this Schedule 12 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;

"**Schedule 12 Operating Protocol**" means the protocol to be developed and implemented pursuant to paragraph 3.3 of Part 1 of this Schedule 12;

"**Second Period**" means the period from [REDACTED]

"**Second Period Baseline**" means the baseline setting out:

[REDACTED]

[REDACTED]

and which is used for the purposes of determining the Third Period Pricing Rates in accordance with paragraph 3 of Part 3 of this Schedule 12, the form of which baseline shall be based on Annexes 3, 4 and 5 of this Schedule 12, and which baseline shall be agreed or determined pursuant to paragraph 3.2 of Part 1 of this Schedule 12;

"**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;

"**Sector**" has the meaning given in paragraph A of the section entitled "Background" on page 1 of this Contract;

"**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 at each of the Sites;

"**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 this Schedule 12 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;

"**Steering Group**" means the joint management body of that name, the composition and functions of which are set out in Schedule 10 (*Governance*);

"**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;

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"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 this Schedule 12);

"Target Cost Basis" means, in respect of the pricing arrangements included or to be included in a Project Contract, a structure which involves:

the agreement in the Project Contract of a Target Cost; and

(q) 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 this Schedule 12;

"Third Period" means the period from [REDACTED]

"Third Period Baseline" means the baseline setting out:

[REDACTED]

[REDACTED]

and which is used for the purposes of determining the Fourth Period Pricing Rates in accordance with paragraph 3 of Part 3 of this Schedule 12, the form of which baseline shall be based on Annexes 3, 4 and 5 of this Schedule 12 and agreed or determined in accordance with paragraph 3.2 of Part 1 of this Schedule 12;

"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;

"ToBA Rates Model" has the meaning given in Clause 30A.1 (ToBA Rates Model);

"ToBA Work" means all Work which is awarded to Babcock Marine by MoD other than Non-ToBA Work;

"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 [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 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 this Schedule 12;

"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;

"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 this Schedule 12;

"Variable Rate Structure" has the meaning ascribed to it in paragraph 4.1.2(a) of Part 3 of Schedule 12;

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[REDACTED]

"Work" means the undertaking of any work of maintenance, support, engineering, re-fitting, overhaul, servicing or design, planning, jurisdiction or any other work of any kind 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;

"WSMI Contracts" means the Faslane WSMI and the Devonport WSMI;

"WSMI Services" means:

in respect of the Clyde Sites, 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

(s) in respect of the Devonport Sites, 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; and

"Yellow Book" means the General Review Board for Non-Competitive Government Contracts, which outlines Government accounting conventions, as amended from time to time.

1.2.2 *Cross references*

2.2.1 References in this Schedule 12 to:

- (a) Parts are to Parts of this Schedule 12;
- (b) Annexes are to Annexes to this Schedule 12;
- (c) paragraphs are to paragraphs of this Schedule 12; and
- (d) Clauses are to Clauses in the main body of this Contract.

1.3 Schedule 12 Administration

1.3.1 *Supporting material*

3.1.1 Without prejudice to the generality of Clause 31 (*Babcock Marine Records*) or Schedule 13 (*Open Book Accounting Procedures*), whenever making a proposal, estimate or calculation in relation to any matter to be determined or agreed pursuant to this Schedule 12, Babcock Marine shall:

- (a) supply to MOD in electronic format (wherever reasonably possible) all such supporting material or evidence as is available to it to support, explain, illustrate and justify its proposal, estimate or calculation, including details of all calculation methods;
- (b) in the case of estimates, provide a reasonable estimate, taking into account all relevant circumstances and stating all assumptions made; and
- (c) supply a certificate signed by its finance director that the matters concerned have been produced in compliance with this Contract.

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1.3.2 Schedule 12 process

- 3.2.1 Save in relation to any matter which falls to be calculated, estimated, determined or agreed pursuant to paragraph 2.5.1-2.5.9 (inclusive) or 2.5.11-2.5.16 (inclusive) of Part 2 of this Schedule 12, the following process shall apply where any matters fall to be calculated, estimated, determined or agreed pursuant to this Schedule (including, by way of illustration but without limitation, the items listed in paragraph 3.2.2 below):
- (a) Babcock Marine shall propose the item concerned to MOD in accordance with any specification of time or format contained in this Schedule 12 or otherwise promptly and in such reasonable written (electronic and hard copy) form as may be required by MOD;
 - (b) when making its proposal pursuant to paragraph 3.2(a) above, Babcock Marine shall comply with its obligations in Clause 31 (*Babcock Marine Records*), Schedule 13 (*Open Book Accounting Procedures*) and paragraph 3.1 above;
 - (c) the Parties shall use all reasonable endeavours to agree the matter concerned pursuant to MoD's usual process for the approval of financial or commercial matters (or, in the absence of such agreement, pursuant to Schedule 10 (*Governance*)). In doing so, any provisions of this Schedule 12 which apply specifically to the matter in question shall be applicable;
 - (d) either Party may involve advisers in the process, subject to appropriate confidentiality arrangements;
 - (e) once agreed in accordance with Clause 30A (*ToBA Rates Model*), the Parties shall use the ToBA Rates Model for the purposes of this Schedule 12; and
 - (f) any matter not resolved within two weeks of being referred to the Steering Group may be declared as a dispute pursuant to paragraph 2 of Schedule 15 (*Dispute Resolution Procedure*).
- 3.2.2 Without prejudice to the generality of paragraph 3.2.1, the following items shall be determined in accordance with that paragraph: Actual Costs; Actual Productivity Levels; Actual Rates; Actual Variable Rate; Adjusted Current Baseline; ARP; ARP Expiry Payment; Authority Benefits; Actual Authority Benefits; Bought In Costs; Directly Charged Overhead Costs; Estimated Total Workload; Estimated Volume of Non-ToBA Work; First Period Baseline; Forecast Cost Base; Forecast Variable Rate; Guaranteed Benefits Table changes; Labour Hours; Master Table changes; Normalisation Cost Items; Normalised Rates; Pricing Rates for all Periods after the First Period; Projected ToBA Workload; Provisional Claims; Provisional Rates; Second Period Baseline; Shortfall; Third Period Baseline; ToBA Workload; Total Workload; Variable Rate Structure; all items calculated pursuant to paragraphs 3.6 and 3.7 of Part 3; items calculated pursuant to paragraph 2.3 and 2.4 of Part 4; and all items calculated or referred to in paragraph 4 of Part 4.

1.3.3 Schedule 12 Operating Protocol

- 3.3.1 The Parties shall within 3 months of the date of this Contract, agree a Schedule 12 Operating Protocol setting out how they shall work together to ensure that this Schedule 12 operates satisfactorily. Once agreed, the protocol shall be implemented by the Parties. It shall be reviewed annually and may be modified by agreement. It shall not amend this Contract and shall be without prejudice to any right or obligation in this Schedule 12.
- 3.3.2 The Schedule 12 Operating Protocol shall set out (in respect of each Financial Year and each Period) at least the following:
- (a) the information each Party is expected to provide to the other to facilitate the operation of this Schedule generally, including the (hard copy and electronic) format in which it is to be provided;

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- (b) the estimates, calculations, proposals and determinations to be made by each Party;
- (c) the supporting information and evidence to be provided in connection with the items referred to in paragraph 3.3.2(b); and
- (d) a work plan to achieve agreement of each matter to be agreed which (1) identifies dependencies between activities and (2) so far as not already specified in this Schedule 12, specifies target dates for each relevant activity.

1.3.4 Application of formulae to calculations

3.4.1 Wherever there is a calculation to be performed pursuant to this Schedule 12 which:

- (a) is expressed as a formula; and
- (b) would in practice be carried out more easily by the execution of multiple calculations addressing different aspects of that formula (for example, if three separate calculations need to be performed (one for each Site) rather than a single calculation, due to differing conditions prevailing at each Site),

then the Parties shall agree the appropriate method of executing the calculation at the time of executing it, as a part of the process of agreeing or determining the underlying process or value to which the calculation relates.

3.4.2 The Parties shall record any method of executing a given calculation agreed in accordance with paragraph 3.4.1 in the Schedule 12 Operating Protocol.

3.4.3 For avoidance of doubt, no agreement reached under paragraph 3.4.1 shall operate to vary the relevant provisions in this Schedule 12.

1.3.5 Schedule 12 errors

3.5.1 Subject to paragraph 3.5.2, if at any time it comes to light that any error has been made in the operation of this Schedule, that error shall be corrected as soon as reasonably practicable (and in any event within 60 days) and such provision shall be made for amendment to items agreed, estimated, determined or calculated pursuant to this Schedule 12 as may be requisite to correct the error concerned and secure that neither party is financial disadvantaged as a result of the error having been made.

3.5.2 Except in cases of fraud, paragraph 3.5.1 shall apply only in respect of errors which have come to light and notified by one Party to the other within six (6) years after the date on which the error was made.

PART 2 –PRICING PROJECT CONTRACTS

Introduction to Part 2

- I.1 The Parties have agreed that all Project Contracts entered into during the Initial Term, other than Exceptional Contracts, shall be priced on the basis set out in this Part 2 of this Schedule 12.
- I.2 The provisions of this Part 2 do not affect Existing Project Contracts.
- I.3 Certain of the elements required in order to price a Project Contract (for example, Pricing Rates and ARP) are determined periodically in accordance with provisions set out in other Parts of this Schedule 12.
- I.4 Each Party shall ensure that its representative(s) responsible for pricing Project Contracts is provided with a copy and generally made aware of (1) the agreed approach to pricing Project Contracts set out in this Schedule 12 and (2) each of the items to be agreed or determined pursuant to this Schedule 12 which have been so agreed or determined from time to time, so that such representatives are able to price Project Contracts in accordance with this Part 2 of this Schedule 12.
- I.5 The provisions of this Part 2 of Schedule 12 are designed to enable the Parties to determine a pricing structure and a price for individual Project Contracts. However, nothing in this Part 2 (or in this Schedule 12 generally) (1) shall be taken to determine the appropriate Target Cost of any Project Contract (which shall be a matter for negotiation between the parties pricing the Project Contract, within the framework set out in this Part 2), nor (2) shall oblige either Party to enter into any Project Contract. Accordingly, this Part 2 (and Schedule 12 generally) is without prejudice to Clause 11.1 (*No Obligation to Procure Work*) of this Contract.

Pricing of Existing Project Contracts

- 1.1.1 The pricing arrangements (in particular, any Target Cost, Target Price, Gainshare and incentives provisions) set out in all Existing Project Contracts shall remain in full force and effect, subject only to:
 - (a) amendment (if any) provided for in Clause 6 of this Contract;
 - (b) any amendment agreed by the Parties which is required in order for the delivery to MoD from time to time of Actual Authority Benefits; and
 - (c) a requirement that any extension of either of the WSMI Contracts shall be effected such that the provisions of this Schedule 12 shall apply in full to any such extension.
- 1.4 Pricing of Project Contracts entered into during the Initial Term

1.4.1 General

This paragraph 2 sets out the methodology (including in relation to productivity and Pricing Rates) which shall be applied for the pricing of individual Project Contracts. All tenders or proposals by Babcock Marine in respect of ToBA Work pursuant to Clause 10 (*Scope Allocation*) of this Contract shall accordingly include only pricing proposals made in accordance with this paragraph 2.

1.4.2 Target Cost Pricing

Subject only to paragraph 2.4 below, all Project Contracts to be entered into during the Initial Term shall be priced on a Target Cost Basis, with 50:50 Gainshare above and below the Target Cost. Once so priced, if the Project Contract is entered into, it shall be entered into at the appropriate Target Price.

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1.4.3 Record of savings built into Target Cost of Project Contracts

The Parties shall agree and record for each Project Contract entered into during the Initial Term the value of anticipated Authority Benefits which will accrue to MoD for the purposes of this Schedule 12 if the total cost of executing the Project Contract charged by Babcock Marine to MoD precisely equals the Target Cost provided for in the Project Contract.

1.4.4 Exceptional Contracts

2.4.1 The following Project Contracts are Exceptional Contracts and may be priced otherwise than in accordance with paragraphs 2.1 and 2.2 above:

- (a) contracts for the provision by Babcock Marine of consultancy services to MoD up to a maximum value of [REDACTED] per contract;
- (b) Project Contracts which have an anticipated total cost to MoD of no more than [REDACTED]
- (c) Project Contract Bulwark-10-DP1;
- (d) the following Project Contracts:
[REDACTED]
[REDACTED]
[REDACTED]
- (e) any other Project Contract which the Steering Group determines, recognising that the Parties intend those circumstances to be truly exceptional.

2.4.2 The Parties shall record in any Exceptional Contract how that Exceptional Contract shall be taken into account for the purposes of Parts 3, 4 and 5 of this Schedule 12. For the purposes of Part 4 of this Schedule, the Parties shall calculate Actual Authority Benefits which the Exceptional Contract in question realises by remodelling (for the purposes of accounting treatment only) the pricing in that Exceptional Contract such that it conforms to the pricing structure set out in this Part 2.

2.4.3 The Parties agree that the pricing of the Exceptional Contracts referred to in paragraph 2.4.1(d) above shall be negotiated based on the pricing rates and pricing methodologies which were used to agree the pricing of the Existing Project Contract [REDACTED] and Exceptional Contract [REDACTED]

1.4.5 Components of Target Cost

2.5.1 The components of the Target Cost to be included in an individual Project Contract are as set out in this paragraph 2.5. The quantum of each such component shall be agreed between the parties to the Project Contract in question as part of its finalisation.

2.5.2 Subject to paragraph 1.1.1 above, the Parties have agreed that the methodology set out in paragraphs 2.5.3-2.5.15 (inclusive) below shall be adopted for the pricing of Project Contracts.

Location assumptions

2.5.3 The Parties shall discuss and agree where (i.e. at which Site or Sites), for the purposes of pricing each Project Contract, it shall be assumed that Babcock Marine shall undertake the ToBA Work which is to be the subject of that Project Contract. If Babcock Marine is to be assumed to undertake ToBA Work at more than one Site, Babcock Marine shall, in proposing its pricing for the Project Contract pursuant to this Part 2, specify separately the items listed in

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paragraphs 2.5.4–2.5.15 (inclusive) below attributable to each Site. If no agreement is reached, MoD shall specify the Site(s) at which the ToBA Work shall be undertaken.

Labour Costs

2.5.4 Babcock Marine shall:

- (a) estimate the number of Labour Hours required to implement the specification in the relevant Project Contract on the assumptions as to where the ToBA Work concerned will be undertaken agreed pursuant to paragraph 2.5.3 above. In doing so, it shall:
 - (i) use [REDACTED] Actual Productivity Levels for the relevant Business or Businesses for Project Contracts being priced in the First Period;
 - (ii) use [REDACTED] Actual Productivity Levels for the relevant Business or Businesses for Project Contracts being priced in the Second Period;
 - (iii) use [REDACTED] Actual Productivity Levels for the relevant Business or Businesses for Project Contracts being priced in the Third Period; and
 - (iv) use [REDACTED] Actual Productivity Levels for the relevant Business or Businesses for Project Contracts being priced in the Fourth Period;
- (b) apply the Continuous Improvement Guarantee set out in the final column of the table in Clause 12.2 (as replicated in paragraph 2.1 of Part 4 of this Schedule 12) to each of the numbers of Labour Hours referred to in paragraph 2.5.4(a) to the effect that MoD shall enjoy the benefit of the Continuous Improvement Guarantee; and
- (c) calculate the value of the number of Labour Hours referred to in paragraph 2.5.4(b) at the Pricing Rates applicable to Project Contracts to be priced during that Financial Year pursuant to this Schedule 12.

Bought In Costs

2.5.5 Babcock Marine shall, acting reasonably, estimate the level of its Bought In Costs in each case to the extent required to meet the specification in the relevant Project Contract.

Directly Charged Overhead Costs

2.5.6 Where the agreed QMAC relevant to a Site identifies overhead costs which are to be charged directly to a specific Project Contract or Project Contracts (as opposed to that cost being absorbed within the Pricing Rates) ("**Directly Charged Overhead Costs**"), then such costs shall be allocated to the relevant Project Contract and will form part of the Project Contract Target Cost.

2.5.7 In respect of the First Period, the required allocation of all such Directly Charged Overhead Costs to each relevant Project Contract is set out in the Pricing Rates contained in Annexes 3 and 4 (and, in respect of Project Contracts to be entered into as part of the Rosyth Business, will be included in Annex 5) of this Schedule 12. In respect of subsequent Periods, any such Directly Charged Overhead Costs shall be identified and allocated to relevant Project Contracts by the relevant QMAC at the point at which the Pricing Rates are rebaselined for the relevant Period (as set out in Part 3 of this Schedule 12).

Additional Risk Factor

2.5.8 Babcock Marine shall be entitled to an additional risk factor to the costs identified in paragraphs 2.5.4 to 2.5.7 above, if and to the extent that MoD proposes that Babcock Marine assumes risk in the Project Contract over and above the risks in respect of which the standard risk rate of profit determined under the Government Profit Formula for the relevant Site remunerates Babcock Marine. The amount of the additional risk factor shall be commensurate

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with the additional risk to be assumed by Babcock Marine over and above the risks in respect of which the standard risk rate of profit determined under the Government Profit Formula for the relevant Site remunerates Babcock Marine. It is acknowledged that the value of this additional risk factor could be zero, depending on the circumstances.

Warranty

2.5.9 Babcock Marine shall be entitled to add a fee for any warranty provided by it to MoD in respect of ToBA Work:

in respect of Project Contracts entered into during the First Period, in an amount (if any) provided for in any Existing Project Contract in respect of the relevant Site; and

in respect of Project Contracts entered into during the Second and each subsequent Period, in an amount (if any) provided for in any Warranty Agreement reached pursuant to paragraph 2.5.10 below.

2.5.10 In the final Financial Year of each Period, MoD shall determine whether or not it requires Babcock Marine to make available to it a ToBA Work Warranty in Project Contracts entered into during the next Period, and if so, in relation to which Site or Sites and/or which type or types of Project Contract. If MoD determines that it does require such ToBA Work Warranty to be made available, the following provisions shall apply:

MoD shall notify Babcock Marine of the Site or Sites and/or type or types of Project Contract in respect of which it requires a ToBA Work Warranty to be made available;

in respect of the Site or Sites and/or type or types of Project Contracts notified under paragraph 2.5.10(a) above, Babcock Marine shall provide to MoD:

- (i) the terms of the ToBA Work Warranty which it is prepared to make available to MoD in Project Contracts entered into during the next Period; and
- (ii) details of the fee it proposes to add to the Target Cost of Project Contracts which include such terms;

upon receipt of the items referred to in paragraph 2.5.10(b) above by MoD, the parties shall meet and discuss the same and record any agreement reached as to those items (a "**Warranty Agreement**");

if a Warranty Agreement is reached in respect of the application of a ToBA Work Warranty to a certain type or types of Project Contract, or at a specific Site or Sites, then Babcock Marine shall:

- (iii) provide the relevant ToBA Work Warranty in the relevant Project Contracts; and
- (iv) be entitled to add the relevant fee therefor agreed pursuant to paragraph 2.5.9(b) to the Target Cost for each relevant Project Contract entered into during the next Period; and

if the Parties fail to reach a Warranty Agreement, then Babcock Marine shall not be obliged to provide any warranty in relation to Project Contracts entered into (and shall not be entitled to add any amount into the Target Cost for such Project Contracts in respect of warranty) in the upcoming Period.

Profit

2.5.11 To the cost estimates referred to in paragraphs 2.5.4 – 2.5.10 (inclusive) above, Babcock Marine shall apply a rate of profit, determined in accordance with the provisions of paragraphs 2.5.12 and 2.5.13.

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[REDACTED]

[REDACTED]

ARP

2.5.14 Any ARP to which Babcock Marine is entitled pursuant to this Schedule 12 shall be added to the Target Cost calculated in accordance with this paragraph 2 to the extent permitted in accordance with Part 5 of this Schedule 12.

Target Price calculation

2.5.15 The Target Price for the relevant Project Contract shall be the aggregate of the amounts established pursuant to paragraphs 2.5.4 – 2.5.14 (inclusive) above.

PART 3 –CALCULATION OF PRICING RATES DURING THE INITIAL TERM

Introduction to Part 3

- I.1 Crucial to the determination of the appropriate Target Cost for each Project Contract is the application of suitable Pricing Rates to projected workload. The Parties have agreed that firm Pricing Rates are to apply in respect of the pricing of each Project Contract (other than Exceptional Contracts) throughout the Initial Term. The Pricing Rates will be revised at the end of each Period in order to determine the Pricing Rates for the next Period. The Parties have agreed to use each set of Pricing Rates so established for the duration of the relevant Period.
- I.2 This Part 3 sets out the methodology and processes through which the firm Pricing Rates referred to above are to be determined.
- I.3 The agreed Pricing Rates for the First Period are set out in Annexes 3 and 4 (and, in respect of the Rosyth Business, will be included in Annex 5). The Pricing Rates for subsequent Periods are to be established as prescribed in this Part 3.
- I.4 The Pricing Rates for the Second Period and each subsequent Period at each Site are determined in the Rebaselining Year immediately preceding that Period. They are a function of Babcock Marine's Forecast Cost Base for the coming Period (which is based on Actual Costs at the relevant Site in the Rebaselining Year, adjusted for projected workload variations at the relevant Site throughout the new Period) and the Estimated Total Workload at the relevant Site for the new Period.
- I.5 The manner in which the proportion of the Forecast Cost Base referable to ToBA Work is charged through the Pricing Rates is determined in accordance with the QMAC for each Site. Each QMAC is designed to reflect the appropriate allocation of costs within Babcock Marine's cost base to the contracts undertaken by Babcock Marine. Part 3 includes a process (at paragraph 3.4) for the Parties to revise the QMACs to ensure that any changes to Babcock Marine's cost base or management structure since the last Rebaselining Year are taken into account before new Pricing Rates are determined.
- I.6 As part of the process of calculating the applicable Pricing Rates, the Parties shall also determine the Forecast Variable Rate, which is used to value the impact on Babcock Marine's cost base (and so the Pricing Rates) of changes in costs which are variable with workload. The Forecast Variable Rate is the element of costs within the Pricing Rates which is variable with workload. The process for calculating this rate is set out in paragraph 4 of this Part 3.
- I.7 In addition to the calculation of Pricing Rates, this Part 3 sets out the process to be followed to change the Pricing Rates to cater for significant changes in workload brought about by changes to the Illustrative Programme in the Second Period and subsequent Periods. Such changes impact the Pricing Rates since the Pricing Rates are set on the basis of agreed estimates of workload at each Site during the Period; hence changes of workload can lead to an over- or under-recovery of costs through the set Pricing Rates. Paragraph 5 of this Part 3 sets out the procedure to ensure that neither Party is unduly prejudiced by the impact on the Pricing Rates of changes to the Illustrative Programme.
- I.8 Finally, not all cost items to be recovered through Project Contracts are necessarily incorporated within the Pricing Rates. There may be some cost items which the Parties may agree to address outside the agreed Pricing Rates. Paragraphs 6 and 7 of this Part 3 both set out specific agreements in this regard.

Pricing Rates for the First Period

1.4.6 Illustrative Programme: First Period

The Illustrative Programme which was used to set the Pricing Rates for the First Period is:

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- (a) in respect of the Devonport Business, that which is referred to in the section headed "Summary" in Annex 3;
- (b) in respect of the Clyde Business, the scope of the WSMI Services to be performed under the Faslane WSMI during the First Period (as set out in the Faslane WSMI); and
- (c) in respect of the Rosyth Business, the agreed Illustrative Programme which will be included in Annex 5 when the Pricing Rates in respect of the Rosyth Business have been agreed.

1.4.7 Pricing Rates in the First Period

- 1.2.1 The Pricing Rates for Project Contracts placed (for ToBA Work to be undertaken in the Devonport Business) during the First Period are set out in Annex 3.
- 1.2.2 The Pricing Rates for Project Contracts placed (for ToBA Work to be undertaken in the Clyde Business) during the First Period are set out in Annex 4.
- 1.2.3 The Pricing Rates for Project Contracts placed (for ToBA Work to be undertaken in the Rosyth Business) during the First Period have not been agreed as at the Commencement Date. However, details of the ToBA Starting Baseline (as the same is relevant to the Rosyth Business) are set out in Annex 5 at the Commencement Date. During the First Period, the existing practice for determining pricing rates for Existing Project Contracts in the Rosyth Business shall apply to Project Contracts to be entered into in the Rosyth Business in the First Period, unless the Parties agree Pricing Rates relevant to Project Contracts placed in the Rosyth Business during the First Period.

1.4.8 Baked-in savings in First Period

- 1.3.1 The Pricing Rates set out in Annexes 3, 4 and 5 incorporate Authority Benefits against the ToBA Starting Baseline. The Master Table summarises the extent of these Authority Benefits, and the breakdown of the Authority Benefits by Project Contract is set out in Annex 3 (in respect of the Devonport Business) and Annex 4 (in respect of the Clyde Business) and will be set out in Annex 5 following the process referred to in paragraph 1.2.3 above (in respect of the Rosyth Business). The relevant Pricing Rates have been (or will be) based on the QMAC for the relevant Business for Financial Year [REDACTED]
- 1.3.2 When any Project Contract is awarded, the Parties shall record their agreed estimate of the Authority Benefits incorporated within the Target Price, noting any material differences from the value recorded in accordance with paragraph 2.3 of Part 2 of this Schedule 12.
- 1.5 Potential Changes to Costing Methodology

1.5.1 MoD option

- 2.1.1 The following provisions of this Part 3 assume that the costing and pricing methodology in this Schedule 12 as at the date of this Contract will continue throughout the Initial Term. However, MoD reserves the right to require that the existing arrangements be changed (in line with the alternative pricing methodology referred to in paragraphs 2.1.2(b) below) in respect of subsequent Periods in accordance with the provisions of this paragraph 2.1.
- 2.1.2 MoD shall have the option exercisable by notifying Babcock Marine in writing by no later than [REDACTED] either that:
 - (a) the existing costing and pricing arrangements will continue throughout the Second Period; or
 - (b) the existing arrangements are to be changed such that a single Babcock Marine costing regime (using a single QMAC common to all Babcock Marine Businesses)

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applies with Pricing Rates separated into fixed and variable costs, with Engineering Contracts being priced on the basis of variable costs.

- (c) In the absence of any such notification by such deadline, MoD shall be deemed to have elected to continue the existing costing and pricing arrangements for the Second Period.

1.5.2 Consequences of exercise of MoD option

If MoD determines that it wishes to adopt the methodology referred to in paragraph 2.1.2(b) above, the Parties will work together and use all reasonable endeavours to agree and adopt as soon as reasonably practicable a single fixed and variable pricing rates methodology, encapsulating the relevant principles set out in this Schedule 12, to take effect on and from the beginning of the Second Period and for the remainder of the Initial Term, utilising the BMECS or the ToBA Rates Model. Unless and until an alternative pricing structure is agreed, the provisions of this Schedule 12 shall continue to apply to the setting of Pricing Rates for Project Contracts.

1.5.3 Further MoD options

- 2.3.1 If MoD does not elect to change existing costing and pricing arrangements for the Second Period and the then remainder of the Initial Term pursuant to paragraph 2.1.2, it shall again have the right to elect to change the costing and pricing arrangements on and from the commencement of the Third Period and (if that right is not exercised) on and from the commencement of the Fourth Period, in each case on the terms as set out in paragraph 2.1.2 and 2.2 above (*mutatis mutandis*), save that:

- (a) the deadline for notifying Babcock Marine of the election to change the costing and pricing arrangements on and from the commencement of the Third Period shall be [REDACTED]; and
- (b) the deadline for notifying Babcock Marine of the election to change the costing and pricing arrangements on and from the commencement of the Fourth Period shall be [REDACTED].

- 1.6 Pricing Rates for Second (and subsequent) Periods

1.6.1 Illustrative Programme and Projected ToBA Workload for the Second (and subsequent) Periods

- 3.1.1 By no later than [REDACTED], MoD will deliver to Babcock Marine an amended Illustrative Programme for the Second Period. The Parties shall discuss the content of the Illustrative Programme by no later than 1 month after the date of delivery of the Illustrative Programme by MoD to Babcock Marine.
- 3.1.2 Following the discussion referred to in paragraph 3.1.1, the Parties shall discuss and agree a Projected ToBA Workload for the Second Period:
- (a) based on the amended Illustrative Programme for the Second Period; and
- (b) in accordance with each relevant QMAC; and
- (c) at productivity levels agreed or determined in accordance with paragraph 2.5.4 of Part 2 of this Schedule 12.

If the Parties do not agree the Projected ToBA Workload by [REDACTED], then the matter shall be escalated for consideration by the Steering Group, which shall agree the Projected ToBA Workload by no later than [REDACTED].

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3.1.3 The process set out in paragraphs 3.1.1 and 3.1.2 shall be repeated before commencement of each of the Third Period and the Fourth Period, save that the deadlines set out in those paragraphs shall occur on the same dates in:

Financial Year [REDACTED] (in respect of the Third Period); and

(d) Financial Year [REDACTED] (in respect of the Fourth Period).

1.6.2 Non-ToBA Work for Second (and subsequent) Periods

3.2.1 Babcock Marine shall provide to MoD by no later than each of [REDACTED] and [REDACTED] its Estimated Volume of Non-ToBA Work.

3.2.2 The Parties shall discuss and by no later than 2 months of delivery of Babcock Marine's Estimated Volume of Non-ToBA Work pursuant to paragraph 3.2.1 above agree the volume of the Non-ToBA Work which Babcock Marine might reasonably be expected to undertake in the Second Period and the remainder of the Initial Term thereafter. In default of agreement, the matter shall be determined pursuant to the Dispute Resolution Procedure.

1.6.3 Determining Pricing Rates for the Second (and subsequent) Periods

General

3.3.1 The remaining provisions of this paragraph 3 (and certain provisions of paragraph 4) set out the process which the Parties shall follow before the end of the First Period and each Period thereafter, in order to set the firm Pricing Rates for the next following Period.

Process to be followed

3.3.2 Revised Pricing Rates to apply from the start of each new Period shall be established in advance of the commencement of that new Period. Such Pricing Rates shall:

(a) be based upon financial information derived from the current Baseline (for example, the Pricing Rates for the Second Period shall be based upon the financial information derived from the First Period Baseline, and so on) in the manner prescribed in this paragraph 3.3;

(b) be established according to the following process:

(i) there shall be a review of each relevant QMAC in accordance with paragraph 3.4;

(ii) Babcock Marine shall calculate Provisional Rates in accordance with paragraph 3.5;

(iii) Babcock Marine shall calculate the Forecast Variable Rate in accordance with paragraph 4.1;

(iv) Babcock Marine shall adjust the Provisional Rates so calculated in accordance with paragraphs 3.6 – 3.7 to reflect the matters referred to in those paragraphs;

(v) Babcock Marine shall notify MoD of its calculations by no later than each of:

(aa) [REDACTED] in respect of the calculation of Pricing Rates for the Second Period;

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- (bb) [REDACTED] in respect of the calculation of Pricing Rates for the Third Period; and
- (cc) [REDACTED] in respect of the calculation of Pricing Rates for the Fourth Period.

- 3.3.3 The processes set out in paragraph 3.3.2 shall be carried out so as to have been completed:
- by [REDACTED], in respect of the calculation of Pricing Rates applicable to the Second Period;
 - (c) by [REDACTED], in respect of the calculation of Pricing Rates applicable to the Third Period; and
 - (d) by [REDACTED], in respect of the calculation of Pricing Rates applicable to the Fourth Period.

1.6.4 QMAC reviews

- 3.4.1 For the purpose of setting Pricing Rates for the Second (and subsequent) Periods, it is important that each applicable QMAC reflects the appropriate allocation of costs within the relevant business of Babcock Marine. Accordingly, there shall be a review of the QMACs in each Rebaselining Year in accordance with this paragraph 3.4. The purpose of the review shall be that each QMAC (and the QMACs collectively) shall, to the extent agreed or determined in accordance with paragraph 3.2 of Part 1 of this Schedule 12, be adjusted such that they do reflect the appropriate allocation of cost base within the relevant business of Babcock Marine.
- 3.4.2 Either Party may propose changes to the rules under which the QMACs allocate costs within the Businesses at any time during the Initial Term. The process for requesting a review, and the consequences of agreeing changes to the QMACs, are set out in paragraphs 3.4.3 to 3.4.7 below.
- 3.4.3 During any Period either Party may propose, by written notice to the other Party, changes to the then current QMAC(s), in particular to ensure that the new QMAC(s) map directly to Babcock Marine's then existing management and cost structure.
- 3.4.4 The Parties shall meet as soon as reasonably practicable following the service of a notice pursuant to paragraph 3.4.3 to discuss and (if appropriate) agree the principal commercial principles of the relevant changes required to be made to the QMAC(s). If the Parties do not agree the changes within 2 months after the date on which the notice pursuant to paragraph 3.4.3 was served, then the matter shall be escalated as a dispute in accordance with Schedule 10 (*Governance*).
- 3.4.5 All changes agreed or determined in accordance with paragraph 3.4.4 shall be logged by the AcMT.
- 3.4.6 All changes agreed or determined in accordance with paragraph 3.4.4 on or before 31 August in a Rebaselining Year shall form the basis of detailed amendments to be made by Babcock Marine to the relevant QMACs in advance of the implementation of the processes set out in this paragraph 3. In addition, if the Parties are aware of changes to Babcock Marine's management or cost structure which will take effect in the upcoming Period but which have not yet been logged by the AcMT, then if the Parties so agree, Babcock Marine shall also draft changes to the QMACs to take those changes into account.
- 3.4.7 Babcock Marine shall deliver the updated QMACs to MoD for review by no later than 15 September in each Rebaselining Year. MoD shall notify Babcock Marine within 10 Business Days either:
- that the QMACs are agreed as drafted; or

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of the areas of the QMACs where MoD disagrees with the update, together with reasons for such disagreement. In such event, the Parties shall use all reasonable endeavours to finalise the QMACs by 30 September of that Financial Year. If the Parties do not agree the final form of the QMACs within this deadline, the matter shall be escalated immediately to the Steering Group, which shall agree the final form of the QMACs by no later than 10 October of that Financial Year.

The updated QMACs agreed by the Parties pursuant to this paragraph 3.4.7 shall form the basis of the rebaselining exercise set out in the remaining provisions of this paragraph 3.

- 3.4.8 Without prejudice to the foregoing, if at any time Babcock Marine intends to change its management or cost structure and the effect of such change would be to distort the application of the then current QMACs to Babcock Marine's cost base, then Babcock Marine shall notify MoD of its proposal in advance and shall deliver to MoD details of how it intends to map its revised management or cost base structure to the current QMACs which the proposed changes to management or cost structure would create. The Parties shall discuss the changes and any concerns which MoD may have (and, if necessary, shall escalate MoD's concerns to the Steering Group and/or the Project Owners Group). Any change of this nature that takes place during a Period shall be taken into account at the next QMACs review.
- 3.4.9 On and from the date on which the mapping referred to in paragraph 3.4.8 above is finalised, Babcock Marine shall make available to MoD all tools (e.g. models, spreadsheets, etc) and input and output data used in such mapping, in accordance with the provisions of Clause 31 (*Babcock Marine Records*) and Schedule 13 (*Open Book Accounting Procedures*).

1.6.5 Adjustment of Baseline information and derivation of Provisional Rates

- 3.5.1 In order for the Provisional Rates for each Period after the First Period to be determined, Babcock Marine shall carry out the following steps:
- (a) If the Parties have agreed pursuant to paragraph 3.4 that a change is required to be made to the QMACs in respect of how costs are allocated at the Sites going forward, Babcock Marine will apply that change to the information contained in the then current Baseline, to produce the "**Adjusted Current Baseline**".
 - (b) The Actual Costs within the Adjusted Current Baseline shall constitute the provisional forecast cost base for each Financial Year of the next Period.
 - (c) Babcock Marine shall aggregate the Projected ToBA Workload (determined in respect of the upcoming Period pursuant to paragraph 3.1 above) with the Estimated Volume of Non-ToBA Work, to produce the Estimated Total Workload for each Financial Year in the next following Period, in accordance with appropriate QMACs.
 - (d) In respect of each Financial Year in the next Period, Babcock Marine shall deduct the Total Workload contained in the Adjusted Current Baseline from the Estimated Total Workload for that Financial Year, and multiply the difference (whether positive or negative) by the Forecast Variable Rate contained within the Adjusted Current Baseline. The product of this calculation (whether a positive or negative value) shall be added to the provisional forecast cost base for the relevant Financial Year (determined in accordance with paragraph 3.5.1(b)) to give the forecast cost base for that Financial Year (the "**Forecast Cost Base**").
 - (e) The "**Provisional Rates**" for each Financial Year within the next Period shall then be calculated by dividing the Forecast Cost Base relevant to that Financial Year by the Estimated Total Workload relevant to that Financial Year, in accordance with the agreed QMACs.
- 3.5.2 Where reasonably possible, the Parties shall identify when agreeing or determining the Forecast Cost Base for each Financial Year any costs within that Forecast Cost Base which

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will fall to be considered in the context of Normalisation when determining Actual Authority Benefits at the end of that Financial Year (as set out in paragraph 3 of Part 4 of this Schedule 12).

1.6.6 Adjusting Provisional Rates for realisation of Guaranteed Benefit

3.6.1 If when calculating the Pricing Rates for the next Period it is determined that there is a Shortfall in respect of the Benefits Measurement Period just ended, the following procedure shall apply:

- (a) Babcock Marine shall identify the amount of the Shortfall in accordance with the provisions of paragraph 5 of Part 4 of this Schedule.
- (b) Babcock Marine shall adjust the Guaranteed Benefits Table such that the amount of the Guaranteed Benefits to be achieved in the first Financial Year of the next Period shall be increased by the amount of the Shortfall.
- (c) Babcock Marine shall calculate the cumulative value of the Authority Benefits built in to the Provisional Rates for the next Period in accordance with the following formula:

[REDACTED]

where

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (d) Babcock Marine shall calculate from the Guaranteed Benefits Table the aggregate amount of the Guaranteed Benefits to be delivered during the next Period (including, for avoidance of doubt, the value of the Shortfall included in the first Financial Year of that Period).
- (e) If the amount of the Authority Benefits determined in paragraph (c) above is less than the value of the Guaranteed Benefits determined in paragraph (d) above, Babcock Marine shall adjust the Provisional Rates downwards such that the value of the Authority Benefits built in to the rates matches the amount of the Guaranteed Benefits.
- (f) If the amount of the Authority Benefits determined in paragraph (c) above is equal to or greater than the amount of the Guaranteed Benefits determined in paragraph (d), then subject to paragraph 3.6.2, no adjustment shall be made to the Provisional Rates under this paragraph 3.6.

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- 3.6.2 Without prejudice to the procedure set out in paragraph 3.6.1, Babcock Marine shall in any event ensure that the Provisional Rates for the first Financial Year in a Period are adjusted such that the Authority Benefits built in to those Provisional Rates are at least equal to the value of the Guaranteed Benefits to be delivered in that Financial Year.
- 3.6.3 Any adjustment to the Provisional Rates effected in accordance with paragraph 3.6.1 shall be without prejudice to the obligation of Babcock Marine to provide the Guaranteed Benefits during the next Period in accordance with Clause 12 (*Guaranteed Benefits*) of this Contract and to MoD's other rights and remedies (if any) in respect of the associated breach of this Contract, as set out in Clause 16 (*Failure to Achieve Guaranteed Benefits*).

1.6.7 Inflation and deflation

- 3.7.1 Once the Provisional Rates have been determined pursuant to paragraphs 3.5 and 3.6, MoD and Babcock Marine shall, on a fair and reasonable basis, agree the level of inflation or deflation to be assumed within the Pricing Rates for the next Period. The level of inflation or deflation will represent the Parties' agreed estimate of projected changes to RPI (based on the index RPIX) during the upcoming Period. Babcock Marine shall apply the agreed level of inflation or deflation to the amended Provisional Rates, and the resulting rates shall be the Pricing Rates for the next Period.
- 3.7.2 Save as set out in paragraph 3.7.1, neither party shall otherwise a right to adjust the Pricing Rates to reflect the effects of inflation or deflation on Babcock Marine's costs.

1.6.8 Update of Master Table

The parties will update the Master Table to reflect the results (once determined) of the procedures relating to Pricing Rates in paragraphs 3.1 to 3.7 of this Part 3 for each Financial Year of the Second Period, Third Period or Fourth Period (as appropriate).

1.6.9 Specific treatment for Project Contracts in the final Financial Year of a Period

The Parties have set out in Annex 9 a specific process to be followed in respect of agreeing Pricing Rates to apply to the [REDACTED] due to the fact that the majority of the work which will be performed on that Project Contract shall be carried out in the Period after that in which it is entered into. At MoD's request, the Parties shall discuss the possibility of adopting the approach taken in respect of the [REDACTED] for other Project Contracts to be entered into in the final Financial Year of a given Period and in respect of which the majority of the ToBA Work shall fall to be performed in the next Period.

1.6.10 Management fee

- 3.10.1 The parties acknowledge [REDACTED] charges Babcock Marine an annual management fee (currently of [REDACTED] of the turnover of each BM Opco). Babcock Marine shall accordingly be entitled to charge an annual management fee at each Site referable to the turnover of the relevant BM Opco, which shall form part of the Pricing Rates for that Site for each Period.
- 3.10.2 The level of the management fee to be so charged shall, in respect of each Financial Year in the First Period, be [REDACTED] of the aggregate turnover of each BM Opco. For the avoidance of doubt, nothing in this paragraph 3.10 creates or amends any obligation in relation to the value of, or manner in which, the management fee is payable at each Site in respect of the First Period.
- 3.10.3 The level of the management fee to be so charged in respect of each Financial Year in each subsequent Period:
- (a) shall be determined in each Rebaselining Year (to apply to the following Period);

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- (b) shall be such reasonable fee in respect of management and other services which a parent or Affiliate might reasonably be expected to provide to a subsidiary or Affiliate, taking into account the nature of the Parties and their relationships to each other, the Businesses and the terms of this Contract and all Project Contracts, as such fee and such management and other services may each be identified and agreed or determined pursuant to the Dispute Resolution Procedure;
- (c) may not exceed but may be less than the fee charged ██████ to Babcock Marine;
- (d) shall be Babcock Marine's sole entitlement to recover from MoD any management fee or other overhead charged to it by ██████ any other Babcock Marine Group Member in respect of the items referred to in paragraph 3.10.3(b); and
- (e) shall be incorporated into the Pricing Rates for the relevant Period.

3.10.4 Where Babcock Marine requires specific services ██████ which are directly in relation to ToBA Work in addition to the services the subject of the fee in paragraph 3.10.1, Babcock Marine shall notify MoD and provide a reasonable quotation for agreement. Once agreed such services shall during the Initial Term be charged in the agreed amount as part of Babcock Marine's actual costs recoverable pursuant to Project Contracts and be allocated in accordance with QMACs and will be in addition to the management fee referred to in paragraphs 3.10.1-3.10.3. If the Parties do not agree, the matter shall be escalated to the Steering Group for resolution.

1.7 Calculation of Forecast Variable Rate, Actual Rates and Actual Variable Rate

1.7.1 Calculation of Forecast Variable Rate

4.1.1 Forecast Variable Rate per Site for First Period

The Forecast Variable Rate for each Site in the First Period is (or, in the case of Pricing Rates applicable to the Rosyth Business, will be) set out in the Pricing Rates for the First Period contained in Annexes 3, 4 and 5 of this Schedule 12.

4.1.2 Calculation of Forecast Variable Rate for subsequent Periods

The Forecast Variable Rate in respect of each Financial Year in the Second Period (and each Financial Year in each subsequent Period) shall be calculated using the methodology set out in this paragraph 4.1.2 and agreed or determined in accordance with paragraph 4.1.3 below. It is acknowledged that the calculation process may vary between QMAC groups in respect of each Site, if the Parties so agree.

To determine the Forecast Variable Rate for each Financial Year in a Period, the Parties shall first agree the proportion of the Forecast Cost Base across the Period which might fairly and reasonably be expected to be variable with workload and not fixed costs. They shall do this by agreeing the relevant categories of cost, the proportion within each category that is variable with workload and the weightings between categories, in order to derive a percentage value of variable cost within the Forecast Cost Base to apply across the Period (the "**Variable Rate Structure**"). In agreeing or determining the Variable Rate Structure, the Parties shall have regard to:

- (i) that percentage of Babcock Marine's Actual Costs at the Site concerned which were, on a fair and reasonable view, in the Financial Year before the Rebaselining Year, variable with workload and not fixed costs;
- (ii) the Actual Variable Rate at the Site concerned in the Financial Year before the Rebaselining Year and the comparison between that Actual Variable Rate and the agreed Forecast Variable Rate for that Financial Year;

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- (iii) the Estimated Total Workload for each Financial Year in respect of which the Forecast Variable Rate is to be established;
- (iv) the extent to which different categories of Babcock Marine's Forecast Cost Base at each Site for each Financial Year in the coming Period are and might reasonably be expected to be variable with workload and not fixed costs; and
- (v) an appropriate weighted average of those different categories of costs, reflecting the proportions in which each of those categories of costs make up Babcock Marine's variable cost base.

The categories of costs of which a proportion might reasonably be expected to be variable with workload and not fixed costs may, by way of example include:

- (vi) industrial labour;
 - (vii) overhead materials;
 - (viii) transport;
 - (ix) electricity;
 - (x) gas;
 - (xi) equipment hire;
 - (xii) water;
 - (xiii) sewage and sullage;
 - (xiv) consultancy and professional fees;
 - (xv) training;
 - (xvi) travel and accommodation;
 - (xvii) IT licences and maintenance;
 - (xviii) local authority rates;
 - (xix) Royal Navy staff;
 - (xx) stationary; and
 - (xxi) plant hire,
- as appropriate in respect of each Site.

The Parties shall use the process set out in paragraph 4.1.2(a) to determine a percentage of variable costs within the Forecast Cost Base for each Site for the Period. The Forecast Variable Rate relevant to a Site in a given Financial Year is then calculated as follows:

████████████████████

████████████████████

where:

"FVR" is the Forecast Variable Rate for the Site in the Financial Year in question;

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[REDACTED]

[REDACTED]

"ETW" is the Estimated Total Workload for the Site in the Financial Year in question.

4.1.3 The Forecast Variable Rate in respect of each Site for each Financial Year in the Second Period (and each Financial Year in each subsequent Period) shall be agreed or determined by a review undertaken by the Parties in the Rebaselining Year which immediately precedes the commencement of the Period in respect of which the Forecast Variable Rate is to be established. The provisions of paragraph 3.2 of Part 1 of this Schedule 12 shall apply to each such review.

1.7.2 Actual Rates and Actual Variable Rate

4.2.1 Actual Rates

For the purposes of calculating its Actual Rates, Babcock Marine shall:

- (a) within four months after the end of the Financial Year, calculate its Actual Rates for that Financial Year using the same methodologies and the same QMACs as are used for the Pricing Rates pursuant to paragraph 3 and provide them to MoD, accompanied by a full breakdown of its Actual Rates identifying the Actual Costs charged by each Babcock Marine Company to MoD during that Financial Year and identifying, in each case, which costs are applicable to Non-ToBA Work and which are applicable to ToBA Work.
- (b) within six months after the end of the Financial Year, agree or determine with MoD the calculations referred to in paragraph 4.2.1(a) above.

4.2.2 Actual Variable Rate

For the purposes of calculating the Actual Variable Rate, Babcock Marine shall, in respect of each Site, within six months after the end of each Financial Year:

calculate and provide to MoD the Actual Variable Rate for that Financial Year in respect of that Site using the same Variable Rate Structure that was used to determine the Forecast Variable Rate for that Financial Year in respect of that Site, save that:

[REDACTED]

[REDACTED]

- (c) ensure that the calculation referred to in paragraph (a) above is accompanied by a full breakdown of its Actual Costs and Total Workload.

Adjustments to Pricing Rates for Exceptional Workload Shortfalls or Increases

1.7.3 No application to Existing Project Contracts or Project Contracts entered into during First Period

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5.1.1 The provisions of this paragraph 5 of this Part 3 shall not apply to:

- (a) any Existing Project Contracts; or
- (b) any Project Contracts entered into during the First Period,

but without prejudice to the rights (if any) of the Parties to adjust those Project Contracts in accordance with their terms.

1.7.4 Purpose and functions of this paragraph 5

5.2.1 Paragraph 3 of this Part 3 prescribes how the Pricing Rates for the Second Period and subsequent Periods shall be determined. However, the Parties recognise that:

- (a) these Pricing Rates will be established on the basis of the ToBA Workload projected to be undertaken in the applicable Illustrative Programme (and the dates set out in that Illustrative Programme for the scheduling of that ToBA Workload); and
- (b) the ToBA Workload actually required to progress or complete the individual Project Contracts (and the dates on which that ToBA Workload may be scheduled) may prove to be different in a Financial Year from that projected in the Illustrative Programme.

5.2.2 It is the Parties' intention that there should be no major under or over recovery of costs by Babcock Marine resulting from any differences in the actual ToBA Workload from that projected in the applicable Illustrative Programme used to determine the relevant Pricing Rates.

5.2.3 Accordingly, the Parties have agreed that they shall each have the right to claim for an adjustment to the level of costs to be recovered by Babcock Marine in a given Financial Year, solely in the circumstances set out in paragraph 5.3 below (each circumstance an "**Exceptional Load Shortfall or Increase**").

5.2.4 Paragraphs 5.4 and 5.5 below set out the process to be followed by a Party seeking an adjustment for an Exceptional Load Shortfall or Increase and the consequences of any such claim.

5.2.5 At the time when an adjustment is claimed (and, if appropriate pursuant to paragraph 5.5, settled), it is claimed (and, if appropriate, settled) on a provisional basis. This is because the actual impact of an Exceptional Load Shortfall or Increase on the Total Workload for a Financial Year can only be assessed accurately after the end of that Financial Year, when the actual Total Workload for that Financial Year is known.

5.2.6 The Parties require an accurate settlement of the impact of Exceptional Workload Shortfalls or Increases. They have therefore agreed, at the end of each Financial Year, to compare the actual impact of all changes in workload during that Financial Year against the provisional claims made in respect of Exceptional Load Shortfalls or Increases. Where the comparison shows that there has been an over recovery, there will be a correction to eliminate it. This process is set out at paragraph 5.6 below.

5.2.7 Exceptional Load Shortfalls or Increases may have an impact on any ARP payable to Babcock Marine in a Financial Year. The Parties have agreed to eliminate such impact. They have therefore agreed that, when they assess the need for corrections under paragraph 5.2.3 above, they shall also assess any need to eliminate any such impact on ARP. To do this, they have agreed to make such adjustment (if any) to the amount of ARP that has been paid in respect of the relevant Financial Year, as may be required to eliminate any impact which Exceptional Load Shortfalls or Increases have had on the amount of ARP paid to Babcock Marine in that Financial Year. This is included in the process set out in paragraph 5.6 below.

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- 5.2.8 The Parties intend, where possible, to minimise the impact of Exceptional Load Shortfalls or Increases, and have included (at paragraphs 5.7 and 5.8) processes for identifying and agreeing the treatment of potential Exceptional Load Shortfalls or Increases on a forward looking basis.
- 5.2.9 Any amounts due to either Party as a result of the operation of this paragraph 5 shall be paid or allowed and in either case spread in such a way as to achieve an equitable result, having regard to the anticipated cash flows of each Party.

1.7.5 How Exceptional Load Shortfalls or Increases may arise

- 5.3.1 Subject to paragraph 5.3.2, an Exceptional Load Shortfall or Increase can arise in a given Financial Year (exclusively) because of:

[REDACTED]

[REDACTED]

[REDACTED]

A change in volume is "**Significant**" for the purpose of paragraph 5.3.1(c) if it equals or exceeds [REDACTED] of the volume of Labour Hours estimated for the relevant Project Contract in the Illustrative Programme. Where this threshold is met or exceeded, the adjustment under paragraph 5.4 below shall include the entire change to the volume of Labour Hours, not just those hours in excess of the threshold.

- 5.3.2 The terms "**delay**", "**removal**" and "**significant changes in volume**" used in this paragraph 5.3 shall be deemed to include only those occurrences:

to the extent that they are outside the reasonable control of the relevant Babcock Marine company and shall not apply to the extent they have arisen as a result of action or inaction of Babcock Marine or any default or breach of contract by it; and

- (d) if and to the extent that Babcock Marine has not been or is not entitled to be otherwise compensated.

1.7.6 Exceptional Load Shortfalls or Increases: Calculating the Provisional Claim

- 5.4.1 If an Exceptional Load Shortfall or Increase occurs, either Party may claim an adjustment in respect of it by notice in writing to the other identifying the Exceptional Load Shortfall or Increase.

- 5.4.2 As soon as reasonably possible following a notice pursuant to paragraph 5.4.1, Babcock Marine shall calculate a notional value (the "**Notional Value**") for the Exceptional Load Shortfall or Increase in respect of the then current Financial Year as follows:

[REDACTED]

where:

"**NV**" is the Notional Value;

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In the case of Exceptional Load Shortfalls, the Notional Value is further adjusted as follows:

- (a) in respect of the [REDACTED] Exceptional Load Shortfalls in a Financial Year, the Notional Value is reduced by [REDACTED] (for the [REDACTED] and each subsequent Exceptional Load Shortfall in the Financial Year, there will be no such deduction); and
- (b) in respect of Exceptional Load Shortfalls occurring at the Devonport Sites only, a dislocation fee equal to [REDACTED] of the Notional Value (as reduced in accordance with paragraph 5.4.3(a), if applicable) is added.

This adjusted Notional Value is the value of the provisional claim which can be made by Babcock Marine in respect of the relevant Exceptional Load Shortfall in respect of that Financial Year (the "**Provisional Shortfall Claim**"). It shall be calculated by Babcock Marine and, together with the Notional Value, notified to MoD as soon as reasonably possible.

5.4.3 The Provisional Shortfall Claim is the maximum amount which Babcock Marine may claim in respect of the impact of the relevant Exceptional Load Shortfall in that Financial Year.

5.4.4 In the case of Exceptional Load Increases, the Notional Value in respect of the first [REDACTED] Exceptional Load Increases in a Financial Year is reduced by [REDACTED] (for the [REDACTED] and each subsequent Exceptional Load Increase in the Financial Year, there will be no such deduction). This adjusted Notional Value is the value of the provisional claim which can be made by MoD in respect of the relevant Exceptional Load Increase in that Financial Year ("**Provisional Increase Claim**"). It shall be calculated by Babcock Marine and, together with the Notional Value, notified to MoD as soon as reasonably possible.

5.4.5 An Exceptional Load Shortfall or Increase may have an impact over more than one Financial Year. For example, if a multiple year Project Contract is removed from the Illustrative Programme, there would be an Exceptional Load Shortfall in each Financial Year during which it was envisaged that that Project Contract would be extant. If a Party serves notice pursuant to paragraph 5.4.1:

it shall be established by agreement (or if none pursuant to the Dispute Resolution Procedure), whether or not the Exceptional Load Shortfall or Increase will have impact over more than one Financial Year; and

if it will, the Parties shall agree how to provide for it; and

in the absence of agreement pursuant to paragraph (b) above, the affected Party shall be entitled to serve notice of an Exceptional Load Shortfall or Increase in each Financial Year impacted by the relevant event. Each such claim shall focus solely on the impact of such Exceptional Load Shortfall or Increase during the Financial Year in which the claim is made.

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1.7.7 Processing and settling Provisional Claims

- 5.5.1 Once Babcock Marine has calculated the value of the Provisional Claim (and, in the case of a Provisional Increase Claim, communicated that value to MoD), the affected Party may lodge that Provisional Claim with the other Party using the pro forma set out in Annex 1.
- 5.5.2 As soon as reasonably possible after either Party lodges a Provisional Claim, the Parties shall meet through the Steering Group to discuss the Provisional Claim and how it may best be settled. In such discussion, the Steering Group shall give due regard to:
- (a) the size of the Provisional Claim;
 - (b) the impact on the Parties' cash flows of not settling the Provisional Claim until the end of the Financial Year;
 - (c) potential mitigation of the Provisional Claim;
 - (d) whether the Provisional Claim relates to an Exceptional Load Shortfall or Increase which will impact more than one Financial Year, and if so, how best to mitigate the impact of the Exceptional Load Shortfall or Increase in respect of all affected Financial Years;
 - (e) any relevant taxation or accounting consequences of any proposed settlement structure; and
 - (f) any other factors which either Party raises for consideration in the context of the relevant Provisional Claim.
- 5.5.3 If the Steering Group agrees to settle the claim in a manner other than that set out in paragraph 5.5.4 below, then the Parties shall record the terms of the agreed settlement and shall abide by those terms. In determining the alternative manner of settlement, the Parties shall also agree the impact which such settlement will have on the reconciliation process referred to in paragraph 5.6 below.
- 5.5.4 In the absence of any agreement to the contrary through the Steering Group at the meeting referred to in paragraph 5.5.2 above, a Provisional Claim shall be settled as follows:
- in respect of a Provisional Shortfall Claim net of any identified mitigation impact agreed to be discounted by the Steering Group:
- (i) where the value of that Provisional Shortfall Claim (when aggregated with all other Provisional Shortfall Claims already processed in that Financial Year) is less than ██████████, by consideration in the end of Financial Year reconciliation process referred to in paragraph 5.6 below; and
 - (ii) where the value of that Provisional Shortfall Claim (when aggregated with all other Provisional Shortfall Claims already processed in that Financial Year) is ██████████ or more, by a separate payment made under the relevant Project Contract (or otherwise directly to Babcock Marine), which MoD shall use all reasonable endeavours to pay within 30 days after the date of the meeting referred to in paragraph 5.5.2 above (and in any event as soon as reasonably practicable); and
- (g) in respect of a Provisional Increase Claim, by a reduction to the Pricing Rates applicable to Project Contracts during that Financial Year.

1.7.8 Reconciliation of Provisional Claims against actual impact of Exceptional Load Shortfalls and Increases

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5.6.1 As soon as reasonably practicable after the relevant data becomes available after the end of each Financial Year, the Parties shall meet through the Steering Group:

- (a) to assess the actual impact of all Exceptional Load Shortfalls and Increases which have occurred during the Financial Year just ended; and
- (b) to reconcile the actual value of any Exceptional Load Shortfalls against any Provisional Claims which have been settled during that Financial Year.

In each case, the provisions of this paragraph 5.6 shall apply.

5.6.2 Babcock Marine shall calculate the amount of any correction to Provisional Claims to be made in respect of the Financial Year, using the following formula:

[REDACTED]

where:

"CW" is the aggregate actual value of all changes in workload in the relevant Financial Year;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

It is acknowledged that by utilising the values of [REDACTED] and [REDACTED] [REDACTED] the formula set out in paragraph 5.6.2 takes into account the impact of the following mitigating measures which operate to reduce the impact of Exceptional Load Shortfalls in a given Financial Year:

- all Exceptional Load Increases realised in the relevant Financial Year, including those which are comprised in additional work which MoD agrees to provide to Babcock Marine;
- (c) the actual ToBA Workload being greater than expected during the relevant Financial Year; and
- (d) all Non-ToBA Work received from third parties above the Estimated Volume of Non-ToBA Work for the relevant Financial Year; and
- (e) the amount of any over-recovery of costs by a QMAC group which, despite the removal of the Project Contract from the applicable Illustrative Programme, actually over-recovers costs whether as a result of a deliberate mitigation by either Party or otherwise.

Notwithstanding the above, if MoD can prove (on a balance of probabilities) that Babcock Marine has failed to take all reasonable steps to mitigate the impact of Exceptional Load Shortfalls occurring in a Financial Year, then the amount of Labour Hours represented by that

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failure shall be added to the value of [REDACTED] for the purposes of the calculation performed in paragraph 5.6.2 above.

- 5.6.3 Having calculated the aggregate value of all changes in workload occurring in the Financial Year in accordance with paragraph 5.6.2 above, Babcock Marine shall reconcile that value against the aggregate value of all Provisional Shortfall Claims paid by MoD in accordance with paragraph 5.5.4(a)(ii) above during that Financial Year. If:

the aggregate value of all changes in workload occurring during that Financial Year is less than the aggregate value of all payments made in respect of Provisional Shortfall Claims paid during that Financial Year, then Babcock Marine shall pay to MoD the difference between those two sums within 30 days after that determination is made; and

- (f) the aggregate value of all changes in workload occurring during that Financial Year is equal to or greater than the aggregate value of all payments made in respect of Provisional Shortfall Claims during that Financial Year, then subject to paragraph 5.6.5, no further action shall be taken.

- 5.6.4 Notwithstanding paragraph 5.6.4, if during a Financial Year the aggregate value of all changes in workload occurring is greater than the aggregate value of all payments made in respect of Provisional Shortfall Claims during that Financial Year, then:

MoD shall settle all agreed Provisional Shortfall Claims which have been lodged but not settled in accordance with paragraph 5.5.4(a)(ii) above by a separate payment made under the relevant Project Contract (or otherwise directly to Babcock Marine) which MoD shall use all reasonable endeavours to pay within 30 days after that determination is made (and in any event as soon as reasonably practicable); and

if following the step set out in paragraph (a) above the aggregate value of all changes in workload occurring during the Financial Year is still greater than the aggregate value of all payments made in respect of Provisional Shortfall Claims, then the Parties shall compare the value ascribed to any provisional mitigating activity which was discounted from the value of the Provisional Shortfall Claim against the value of that actual mitigating activity (if it in fact occurred). If the result of this comparison shows that the value ascribed to provisional mitigating activity was greater than the value of that actual mitigating activity, then MoD shall pay to Babcock Marine the value of that difference by a separate payment made under the relevant Project Contract (or otherwise directly to Babcock Marine) which MoD shall use all reasonable endeavours to pay within 30 days after that determination is made (and in any event as soon as reasonably practicable),

provided that in all cases, MoD shall not be required to pay to Babcock Marine any amount in excess of the difference between the value of [REDACTED] (as defined and agreed or determined in accordance with paragraph 5.6.2 above) and the aggregate value of all payments already made in respect of Provisional Shortfall Claims during that Financial Year.

- 5.6.5 In addition to determining the actual impact of Exceptional Load Shortfalls and Increases on cost over or under recovery, the Parties shall use the meeting referred to at paragraph 5.6.1 to determine the impact which the Exceptional Load Shortfalls and Increases over the Financial Year have had on Babcock Marine's entitlement to ARP. The Parties shall review such impact and make an adjustment (either positive or negative) to Babcock Marine's receipt of ARP as may be necessary to reflect the ARP foregone or overpaid (as the case may be) as a result of the Exceptional Load Shortfalls and Increases during that Financial Year. The intention of this adjustment is to neutralise the impact on ARP which Exceptional Load Shortfalls or Increases may have.

- 5.6.6 At the meeting referred to in paragraph 5.6.1, the Parties shall consider and agree how to allocate the actual value of Exceptional Load Shortfalls to Project Contracts for accounting

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purposes. In doing so, the Parties shall take into account any relevant taxation or accounting consequences of any proposed settlement structure.

1.7.9 Workload Realignment

MoD may at any time, and from time to time, propose in writing a Workload Realignment. If MoD does so:

- (a) it shall provide Babcock Marine with a description of the Workload Realignment in terms of the ToBA Work to be advanced or delayed, the Project Contracts to be amended, entered into or not entered into and such other details as may be reasonable for Babcock Marine to assess the proposed Workload Realignment;
- (b) as soon as practicable after MoD's proposal is made, the Parties shall meet and discuss the same;
- (c) as soon as practicable and within 1 month of MoD's proposal, Babcock Marine shall provide to MoD its estimate of the financial and other impacts of the proposed Workload Realignment, including its proposals for Provisional Claims to be made if the Workload Realignment is implemented;
- (d) the Parties shall, if MoD requests this, use all reasonable endeavours to agree the Workload Realignment or any modified Workload Realignment proposed by MoD and the Provisional Claims associated with it;
- (e) any dispute as to the Provisional Claims associated with a Workload Realignment shall be determined pursuant to the Dispute Resolution Procedure; and
- (f) MoD may, at its option, vary the Illustrative Programme to reflect the Workload Realignment and adjust the Pricing Rates to reflect any adjustments agreed or determined in accordance with this paragraph 5.7.

1.7.10 Early warning

Each Party shall notify the other promptly in writing if it becomes aware of a reasonable likelihood of an Exceptional Load Shortfall or Increase occurring.

1.8 Pegged Items

1.8.1 Impact on Pricing Rates

- 6.1.1 Certain cost items exist ("**Pegged Items**") which are agreed as being not fixed within the Pricing Rates as they represent elements of Babcock Marine's cost base which are subject to potentially substantial and unpredictable variation.
- 6.1.2 Accordingly, either Party shall be entitled require an adjustment to the Pricing Rates to reflect the extent (if at all) that:
 - (a) in respect of each Financial Year in the First Period, there is an existing entitlement in respect of Pegged Items; and
 - (b) in respect of each Financial Year in each subsequent Period, Actual Cost incurred in respect of Pegged Items is different than that assumed when setting the Pricing Rates pursuant to this Part 3.
- 6.1.3 Paragraph 6.3 below sets out a list of Pegged Items that apply at each Site as at the Commencement Date, though it is acknowledged that not all items in the list apply to each Existing Project Contract, and that the treatment of each Pegged Item varies between the Existing Project Contracts. Accordingly the Parties shall use all reasonable endeavours to

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establish and agree the existing entitlements in respect of Pegged Items at each Site by no later than 3 months after the Commencement Date.

1.8.2 Process for Adjusting Pricing Rates for Pegged Items

- 6.2.1 Within six months after the start of each Financial Year ("**Financial Year t**"), the costs attributable to each of the Pegged Items shall be reviewed by the Parties and adjustments made to the Pricing Rates for the following Financial Year ("**Financial Year t+1**") to reflect fluctuations in the cost of Pegged Items in Financial Year t, in the manner set out in this paragraph 6.2.
- 6.2.2 The Pricing Rates in Financial Year t+1 (and the subsequent Financial Years in the Period) shall be adjusted for variances between the actual costs incurred by Babcock Marine in respect of each Pegged Item in Financial Year t and the value attributed to such cost items (if any cost was so attributed) in the Pricing Rates for Financial Year t.
- 6.2.3 Any such variance shall be realised through both:
- (a) a one-off adjustment to the forecast cost base used in calculating the Pricing Rates for Financial Year t+; and
 - (b) an addition to or subtraction from the Pricing Rates for Financial Year t+1 and each subsequent Financial Year of the Period so that revised Pricing Rates apply to all Project Contracts with effect from the end of the previous Financial Year.

1.8.3 Pegged Items at Each Site

- 6.3.1 The Pegged Items for the Devonport Business in respect of the First Period are:
- (a) depreciation; and
 - (b) changes in utility rates per unit for gas and/or electricity,
- in each case in accordance with existing custom and practice.
- 6.3.2 There are no Pegged Items for the Clyde Business in respect of the First Period.
- 6.3.3 As at the Commencement Date, there are no Pegged Items for the Rosyth Business in respect of the First Period as Pricing Rates have not been finalised. It is the current intention of the Parties that there will be no Pegged Items in the Rosyth Business when the Pricing Rates for the First Period are agreed.
- 6.3.4 The Pegged items (if any) in respect of each Financial Year in the Second and each subsequent Period shall be agreed in the relevant Rebaselining Year.
- 1.9 No adjustment for Severance Costs
- The Parties acknowledge that the Pricing Rates in respect of the First Period do not include any provision for, or treatment in respect of, Severance Costs and that the provisions of Clause 32 (*Severance and Rationalisation*) shall apply in respect thereof.

PART 4 –CALCULATION OF BENEFITS DURING THE INITIAL TERM

Introduction to Part 4

- I.1 Babcock Marine has agreed to provide Guaranteed Benefits to MoD during each Financial Year and each Period. The method through which Babcock Marine will provide the Guaranteed Benefits is through the realisation of Actual Authority Benefits.
- I.2 This Part sets out the methodology for calculating the Actual Authority Benefits which have been achieved by Babcock Marine during each Financial Year. This data is then used to determine whether or not the Guaranteed Benefits have been achieved or exceeded, per Financial Year and per Benefits Measurement Period.
- I.3 The methodology for determining the value of the Guaranteed Benefits in each Financial Year is set out in paragraph 2 of this Part. The methodology for calculating the Actual Authority Benefits realised in each Financial Year is set out in paragraphs 3 and 4 of this Part. The process to be used in calculating whether the Guaranteed Benefits have been achieved or exceeded, and the consequences which the result has under this Contract, are set out in paragraph 5.
- I.4 Without prejudice to the specific provisions of Clause 16 (*Failure to Achieve Guaranteed Benefits*), paragraph 5 sets out MoD's financial remedy in relation to a failure by Babcock Marine to achieve the Guaranteed Benefits in any Benefits Measurement Period.

Determining the achievement of Guaranteed Benefits

1.9.1 Process to be followed

1.1.1 In order to determine whether or not Babcock Marine has achieved (or exceeded) the Guaranteed Benefits in a given Financial Year, the Parties shall undertake the following processes:

- (a) Babcock Marine shall calculate the value of the Guaranteed Benefits applicable to that Financial Year, in accordance with paragraph 2 below;
- (b) Babcock Marine shall Normalise the Pricing Rates relevant to that Financial Year to derive the Normalised Rates, in accordance with paragraph 3 below;
- (c) Babcock Marine shall calculate the amount of Actual Authority Benefits realised in the Financial Year by:

[REDACTED]

- (d) Babcock Marine shall compare the amount of Actual Authority Benefits to the Guaranteed Benefits to calculate whether or not the Guaranteed Benefits have been

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achieved (or exceeded), and consequences of that calculation are set out in paragraph 5.

1.1.2 In addition to the processes to be followed to determine whether or not the Guaranteed Benefits have been achieved (or exceeded), the Parties will keep the Master Table updated in accordance with paragraph 6.

1.10 Calculation of the Guaranteed Benefits to be achieved or exceeded

1.10.1 The Guaranteed Benefits Table

Clause 12.2 (*Guaranteed Benefits*) of this Contract sets out the Guaranteed Benefits Table, which states the amount of Guaranteed Benefits which Babcock Marine has agreed to provide to MoD in each Financial Year during the Initial Term. For information, the Guaranteed Benefits Table is replicated below:

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]
2022/2023	14	[redacted]	[redacted]
2023/2024	15	[redacted]	[redacted]
2024/25	16	[redacted]	12.75
Total		839.2	

*Note: to have been achieved pre Contract

1.10.2 Guaranteed Benefits for each Financial Year

2.2.1 The Guaranteed Benefits to be achieved or exceeded in each Financial Year are the sum of the Guaranteed Core Benefits (subject to inflation (or deflation) as provided for in paragraph 2.3 and to adjustment in accordance with paragraph 2.6) and the Continuous Improvement Guarantee set against the relevant Financial Year in the Guaranteed Benefits Table.

2.2.2 However, in order to determine the actual value of those summed Guaranteed Benefits, it is necessary to:

- (a) apply inflation (or deflation) to the Guaranteed Core Benefits to determine the accurate representation of those Guaranteed Benefits for the purposes of the

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Financial Year in question. The process to achieve this is set out in paragraph 2.3 below; and

- (b) convert the Continuous Improvement Guarantee from being expressed as a percentage (as it is set out in the Guaranteed Benefits Table) to a monetary value. The process to achieve this is set out in paragraph 2.4 below.

1.10.3 Inflation of the Guaranteed Benefits

2.3.1 The Guaranteed Core Benefits shall be inflated (or deflated) at the commencement of each Financial Year. This shall be by applying the average RPI index for the previous calendar year (Table 18.3 of Monthly Digest of Statistics RPI: Index RPIX) (such that, for example, at the commencement of the 2011/12 Financial Year, the Guaranteed Benefits will be inflated using the relevant information available in respect of calendar year 2010).

2.3.2 In the event that the index referred to in this paragraph 2.3 is unavailable then:

- (a) the Parties shall agree another index, with the intention of putting the parties in no better nor worse position than they would have been had the Index not ceased to be published; or
- (b) in the event that no such agreement is reached, such index as may be determined in accordance with Clause 55 (*Dispute Resolution Procedure*) shall apply.

1.10.4 Evaluation of Continuous Improvement Guarantee

The value of the Continuous Improvement Guarantee for a given Financial Year shall be calculated as follows:

[REDACTED]

where

"CIG" is the value of the Continuous Improvement Guarantee;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Calculation of Guaranteed Benefits for the purposes of this Part 4

Within 6 months after the end of each past Financial Year, Babcock Marine shall calculate the Guaranteed Benefits to be achieved (or exceeded) in respect of that Financial Year by summing the inflated (or deflated) Guaranteed Core Benefits (adjusted in accordance with paragraph 2.6) and the relevant value of the Continuous Improvement Guarantee.

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1.10.5 Alteration of the Guaranteed Benefits Table

- 2.6.1 The Parties acknowledge that the quantum of the Guaranteed Benefits may change over the Initial Term, in accordance with the following provisions:
- (a) Clause 10.3 (*WSMI Services*);
 - (b) Clause 19.5.3 (*Business Case Proposal - Decisions*);
 - (c) Clause 53(a) (*Severability*);
 - (d) paragraph 2.3 of this Part 4 (as regards the inflation (or deflation) of the Guaranteed Core Benefits);
 - (e) the quantum of the Continuous Improvement Guarantee agreed or determined in accordance with paragraph 2.4 of this Part 4; and
 - (f) paragraph 5 of this Part 4 (as regards the carry forward of a Shortfall).
- 2.6.2 Where the quantum of the Guaranteed Benefits is altered in accordance with paragraph 2.6.1, Babcock Marine shall update the Master Table in accordance with paragraph 6 of this Part 4, notify MoD of the adjustment it believes is appropriate to the Guaranteed Benefits Table and the Parties shall agree or determine the appropriate adjustment in accordance with paragraph 3.2 of Part 1 of this Schedule 12. Babcock Marine shall amend the Guaranteed Benefits Table (and the copy thereof set out in paragraph 2.1 above) promptly to reflect the adjustment agreed or determined in accordance with this paragraph.

- 1.11 Normalisation to identify Actual Authority Benefits in Actual Rates

1.11.1 Introduction: the purpose of Normalisation

- 3.1.1 One of the areas which falls to be assessed in determining the Actual Authority Benefits in a given Financial Year is the disparity (if any) between the Pricing Rates and the Actual Rates during that Financial Year. If the Actual Rates are lower than the Pricing Rates, then Babcock Marine will have provided Actual Authority Benefits in achieving those Actual Rates. If the converse is true, then the amount by which the Actual Rates exceed the Pricing Rates needs to be deducted from the Actual Authority Benefits otherwise realised, to reflect the additional cost to MoD contained within those Actual Rates.
- 3.1.2 However, there are certain categories of cost for which an assumption will have been made in determining the Pricing Rates (since the Pricing Rates are necessarily forward looking), or else for which no provision was made in the Pricing Rates. The fact that the Actual Rates are based on Actual Costs means that the actual amounts incurred in respect of all these categories of costs (as opposed to the assumed amounts (or absence thereof) included in the Pricing Rates) are reflected in the Actual Rates. The disparity between the two sets of rates in this regard distorts the assessment of the performance of the Actual Rates against the Pricing Rates. Accordingly, in order for there to be a fair assessment of the disparity between the two sets of rates, the Pricing Rates shall be Normalised.
- 3.1.3 Normalisation is the process by which the Pricing Rates are adjusted to take into account the disparity (if any) between the assumptions used in determining the Pricing Rates and the actual amounts incurred by Babcock Marine in relation to the categories of costs set out in paragraph 3.2.

1.11.2 Normalisation of Pricing Rates

Within 6 months after the end of each past Financial Year, Babcock Marine shall Normalise the Pricing Rates for that Financial Year in accordance with the following provisions.

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3.2.1 Babcock Marine shall calculate the value (positive or negative) of the change to the Forecast Cost Base which is represented by each of the following items, and shall add each such value (which in each case may be a positive or a negative number) to that Forecast Cost Base:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3.2.2 The revised value of the forecast cost base determined through the processes set out in paragraph 3.2.1 above is the "**Modified Cost Base**".

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3.2.3 Once the Modified Cost Base has been determined, Babcock Marine shall calculate the impact of that Modified Cost Base on the Pricing Rates, in accordance with the following formula:

$$R = \frac{MCB}{TW}$$

where:

"R" is the modified set of rates derived from the calculation referred to above;

"MCB" is the Modified Cost Base; and

"TW" is the Total Workload for the relevant Financial Year.

3.2.4 The Parties acknowledge that, whilst Normalisation will take place as set out in this paragraph 3.2 following the end of each Financial Year, there will be an adjustment in respect of the treatment of Normalisation Cost Items at the end of each Benefits Measurement Period in accordance with paragraphs 5.1.1, 5.2.1, 5.3.1 and 5.4.1 of this Part 4.

1.11.3 Product of Normalisation

The modified rates created by Normalising the Pricing Rates in accordance with paragraph 3.2 are described in this Part 4 as the "**Normalised Rates**".

1.12 Calculation of Actual Authority Benefits

1.12.1 Components of Actual Authority Benefits

4.1.1 Within 6 months after the end of each Financial Year, Babcock Marine shall calculate the Actual Authority Benefits realised during that Financial Year, [REDACTED]. The Actual Authority Benefits in any Financial Year shall be calculated as follows:

[REDACTED]

where:

"AAB" is the total Actual Authority Benefits;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.1.2 It is acknowledged that other strategic arrangements are being developed by MoD. However, for the avoidance of doubt, Authority Benefits accruing under all Project Contracts shall be

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included in the calculation of Actual Authority Benefits under this Contract, even if they are the subject of separate strategic arrangements.

- 4.1.3 Without prejudice to paragraph 4.1.2, if at any time during the Initial Term a specific initiative gives rise to an Actual Authority Benefit the value of which, but for the operation of this paragraph 4.1.3, might be counted under more than one Project Contract in the assessment of Actual Authority Benefits under paragraph 4.1.1 above, then the value of the Actual Authority Benefit created by the initiative shall only be counted once in such assessment.

1.12.2 Calculation of Actual Authority Benefits within Actual Rates

- 4.2.1 The value of Actual Authority Benefits realised through the Actual Rates (over and above that contained in the Pricing Rates) shall be determined in accordance with the following formula:

[REDACTED]

where:

"AB" is the Actual Authority Benefits contained within the Actual Rates;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 4.2.2 It is recognised that the value derived from carrying out the calculation set out in paragraph 4.2.1 may be a positive number (if the Actual Rates have out-performed the Pricing Rates) or a negative number (if the converse is true).

1.12.3 Calculation of Actual Authority Benefits realised through efficiency savings in Labour Hours and Bought In Costs

- 4.3.1 Introduction

- (a) Babcock Marine may be able to realise Actual Authority Benefits through the efficient management of Labour Hours and Bought In Costs.
- (b) Project Contracts often run over multiple Financial Years and accordingly Actual Authority Benefits derived from efficiencies in Labour Hours and Bought In Costs may accrue in each Financial Year during which a Project Contract continues.
- (c) Due to the difficulties inherent in determining the amount of Actual Authority Benefits accruing during a Financial Year where a Project Contract continues beyond that Financial Year, the Parties have agreed to simplify the calculation of Actual Authority Benefits in respect of efficiencies in Labour Hours and Bought In Costs by recording Actual Authority Benefits in each Financial Year only in respect of those Project Contracts which have completed during that Financial Year.

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- (d) There are two exceptions to the treatment referred to in paragraph 4.3.1(c) above. First, the treatment is different where the Financial Year in question is a Rebaselining Year. Six months after the end of those Financial Years, the Parties will record Actual Authority Benefits in respect of Project Contract which have completed during the relevant Financial Year and shall also assume an amount of Actual Authority Benefits realised in respect of those Project Contracts extant and continuing beyond that Financial Year.
- (e) The second exception to the treatment referred to in paragraph 4.3(c) is where Babcock Marine's opts to recognise the Actual Authority Benefits accruing in a continuing Project Contract in a given Financial Year. Babcock Marine shall only exercise this option if, at the end of a Financial Year, it needs to recognise the accrued Actual Authority Benefits in order to avoid an adverse consequences under this Contract associated with a failure by Babcock Marine to meet the Guaranteed Benefits in the relevant Financial Year.
- (f) Where the Parties assume a value of Actual Authority Benefits in respect of a Project Contract as envisaged in paragraph 4.3.1(d) or 4.3.1(e), the amount so assumed shall be deducted from the final amount of Actual Authority Benefits determined in respect of that Project Contract in the Financial Year during which it is completed. If the amount assumed is greater than the total amount realised, the difference will be factored in to the Financial Year during which the Project Contract ended (and not, for avoidance of doubt, retrospectively corrected in the Financial Year where the assumption was made).
- (g) All information utilised to determine the Labour Hours and Bought In Costs for the purposes of this paragraph 4.3 shall be based on Babcock Marine's audited records in respect of the same (as agreed or determined in accordance with paragraph 3.2 of Part 1 of this Schedule 12).

4.3.2 Calculation for determining Actual Authority Benefits in completed Project Contracts

The value of Actual Authority Benefits derived from efficiencies in Labour Hours and Bought In Costs in respect of completed Project Contracts shall be calculated as follows:

[REDACTED]

where:

"AE" is the Actual Authority Benefits recognised by the efficiencies;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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4.3.3 Calculation for assuming Actual Authority Benefits in continuing Project Contracts

The value of Actual Authority Benefits derived from efficiencies in Labour Hours and Bought In Costs to be assumed in respect of continuing Project Contracts (in the circumstances envisaged in paragraphs 4.3.1(d) and 4.3.1(e)) shall be calculated as follows:

[REDACTED]

where:

"AE" is the Actual Authority Benefits recognised by the efficiencies;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1.12.4 Calculation of Actual Authority Benefits against Guaranteed Benefits for each Financial Year

Once the processes referred to in paragraphs 2, 3 and 4 above have been followed, the Parties shall be able to determine Babcock Marine's performance in delivering the Actual Authority Benefits against the Guaranteed Benefits in respect of the relevant Financial Year.

1.13 Calculation of Realised Authority Benefits against Guaranteed Benefits in each Period

1.13.1 The First Period

5.1.1 By no later than [REDACTED] Babcock Marine shall calculate the difference in value between:

- (a) the aggregate value of the Guaranteed Benefits referable to the first Benefits Measurement Period (the "**First Period Guaranteed Benefits**"); and
- (b) the aggregate value of the Realised Authority Benefits referable to those [REDACTED] Financial Years (the "**First Period Realised Authority Benefits**"), provided that for the purposes of this calculation, the formula for determining Actual Authority Benefits

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that an amount equal to the Shortfall is added to the Guaranteed Benefits for Financial Year [REDACTED].

1.13.3 The Third Period

5.3.1 By no later than [REDACTED] Babcock Marine will calculate the difference in value between:

- (a) the aggregate value of the Guaranteed Benefits referable to the third Benefits Measurement Period (the "**Third Period Guaranteed Benefits**"); and
- (b) the aggregate value of the Realised Authority Benefits referable to those [REDACTED] Financial Years (the "**Third Period Realised Authority Benefits**") provided that for the purposes of this calculation, the formula for determining Actual Authority Benefits in each relevant Financial Year (as set out in paragraph 4.1.1 above) shall be modified as follows:

[REDACTED]

where:

"**RAB**" means the Realised Authority Benefits; and

"**N**" means the value referable to Normalisation Cost Items to be deducted from the Realised Authority Benefits, calculated in accordance with paragraph 5.3.2.

5.3.2 For the purposes of the calculation in paragraph 5.3.1. above, the value of "**N**" shall be the lesser of:

[REDACTED]; and

the aggregate value of all Normalisation Cost Items occurring during the third Benefits Measurement Period (each as agreed or determined in accordance with paragraph 3.2.1(c) of this Part 4).

5.3.3 If the value of the Third Period Realised Authority Benefits is less than the value of the Third Period Guaranteed Benefits, then Babcock Marine shall adjust the Master Table so that an amount equal to the Shortfall is added to the Guaranteed Benefits for Financial Year [REDACTED].

1.13.4 The Fourth Period

5.4.1 By no later than [REDACTED] Babcock Marine will calculate the difference in value between:

- (a) the aggregate value of the Guaranteed Benefits referable to the fourth Benefits Measurement Period (the "**Fourth Period Guaranteed Benefits**"); and
- (b) the aggregate value of the Realised Authority Benefits referable to those [REDACTED] Financial Years (the "**Fourth Period Realised Authority Benefits**") provided that for the purposes of this calculation, the formula for determining Actual Authority Benefits in each relevant Financial Year (as set out in paragraph 4.1.1 above) shall be modified as follows:

[REDACTED]

where:

"**RAB**" means the Realised Authority Benefits; and

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"N" means the value referable to Normalisation Cost Items to be deducted from the Realised Authority Benefits, calculated in accordance with paragraph 5.4.2.

- 5.4.2 For the purposes of the calculation in paragraph 5.4.1. above, the value of "N" shall be the lesser of:

██████████; and

the aggregate value of all Normalisation Cost Items occurring during the fourth Benefits Measurement Period (each as agreed or determined in accordance with paragraph 3.2.1(c) of this Part 4).

- 5.4.3 If the value of the Fourth Period Realised Authority Benefits is less than the value of the Fourth Period Guaranteed Benefits, then Babcock Marine shall pay to MoD an amount equal to the Shortfall by no later than 31 December 2025.

1.13.5 Intention behind shared sums

It is acknowledged that the reason for modifying the formula to determine the Realised Authority Benefit in the calculations referred to in paragraphs 5.1.1, 5.2.1, 5.3.1 and 5.4.1 above is to reflect the 50:50 Gainshare arrangements under Project Contracts referred to under paragraph 2.2 of Part 2 of this Schedule 12.

1.13.6 General provisions applicable to this paragraph 5

- 5.6.1 The Parties shall ensure that the Guaranteed Benefits Table is kept updated on an annual basis to record the changes to the Guaranteed Benefits produced by the application of the provisions of this Part 4 of this Schedule 12.
- 5.6.2 Clause 16 of this Contract sets out in full the remedies available to MoD in respect of a failure by Babcock Marine to achieve Guaranteed Benefits in any Financial Year or Period.
- 1.14 Update of Master Table
- 6.1.1 Babcock Marine shall ensure that the Master Table is kept updated on an ongoing basis to record, among other things:
- (a) the amount of Authority Benefit included in the Pricing Rates in each Financial Year;
 - (b) the amount of Authority Benefit modelled in any Exceptional Contract in each Financial Year during which that Exceptional Contract continues;
 - (c) the amount of Actual Authority Benefit agreed by the Parties to be estimated in respect of ongoing Project Contracts (in the circumstances set out in paragraph 4.3.1(d) and (e)); and
 - (d) any revision to the Guaranteed Benefits required pursuant to the provisions of this Part 4 of this Schedule 12.
- 6.1.2 Where required in accordance with paragraph 2.6 of this Part 4, Babcock Marine shall update the Master Table to ensure that the quantum of the Guaranteed Benefits recorded in it remains updated.
- 6.1.3 All updates to the Master Table shall be subject to approval in advance by the Steering Group.

PART 5 –ARP

Introduction to Part 5

- I.1 This Part contains details of Babcock Marine's entitlement (if any) to additional incentivisation in respect of the conduct of its obligations under this Contract. Such additional incentivisation takes the form of ARP.
- I.2 In respect of ARP, it is acknowledged that the provisions of this Part are based on the principle that the profit Babcock Marine would have earned on the quantum of Actual Authority Benefits, but has foregone by virtue of delivering the Actual Authority Benefits, will be available as an incentive additional rate of profit chargeable on future ToBA Work.
- I.3 Babcock Marine's entitlement to ARP is determined during the final Financial Year of a Period by reviewing the Actual Authority Benefits delivered to MoD during the Benefits Measurement Period just completed. If Babcock Marine exceeds the Guaranteed Benefits in the Benefits Measurement Period just completed, then Babcock Marine shall be entitled to add an ARP to all Project Contracts awarded during the next following Period. The process for calculating the quantum of an ARP entitlement is set out in paragraphs 1-5 below.
- I.4 Babcock Marine's entitlement to ARP is subject to abatement, depending on how Babcock Marine has performed in respect of certain of the BM KPIs during the relevant Benefits Measurement Period. The method of calculating the appropriate proportion of abatement is included in the calculations of "ARP%" and ARP Expiry Payment, below.

Introduction to ARP; definitions

1.14.2 Entitlement to ARP

- 1.1.1 If through the cumulative delivery of Actual Authority Benefits over a Benefits Measurement Period Babcock Marine exceeds the cumulative Guaranteed Benefits applicable to that Benefits Measurement Period, Babcock Marine shall be entitled to charge an ARP for Project Contracts awarded during the next following Period.
- 1.1.2 The value of the ARP which Babcock Marine may become entitled to charge in accordance with paragraph 1.1.1 above may be subject to abatement, depending on Babcock Marine's performance of the BM KPIs [REDACTED]. A maximum of [REDACTED] of the value of the applicable ARP has been put at risk against Babcock Marine's performance of the relevant BM KPIs during the relevant Benefits Measurement Period. The impact of this performance is taken into consideration in the formulae for determining the value of ARP% (Second Period), ARP% (Third Period), ARP% (Fourth Period) and the ARP Expiry Payment, below.

1.14.3 Outline of ARP calculation process

- 1.2.1 If an ARP is payable in accordance with paragraph 1.1 above, the ARP shall be established by:
 - (a) determining the HHP under paragraph 2.1, 3.1 or 4.1 (as applicable) of this Part. The HHP is a component of the calculations referred to in the rest of this paragraph 1.2;
 - (b) calculating a HHP percentage (the HHP% (Second Period) or HHP% (Third Period)) or HHP% (Fourth Period) under paragraph 2.3, 3.3 or 4.3 (as applicable) of this Part. This is the ARP percentage fee which Babcock Marine would be entitled to if it

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achieves but does not exceed the level of Authority Benefits represented by the HHP; and

- (c) calculating the actual ARP percentage (the ARP% (Second Period) or ARP% (Third Period) or ARP% (Fourth Period)) under paragraph 2.4 or 2.5 or 3.4 or 3.5 or 4.4 or 4.5 (as applicable) of this Part. This calculation is based on the extent to which Babcock Marine has under- or over-achieved against the HHP. It is this ARP percentage that is the ARP that Babcock Marine is actually entitled to through application to Project Contracts awarded during the relevant Period in accordance with paragraph 2.5.13 of Part 2 of this Schedule 12.

1.2.2 At the end of the Initial Term, substantially the same calculation process is conducted in respect of the fourth Benefits Measurement Period. However, any entitlement to ARP is paid through the ARP Expiry Payment, rather than being converted into a percentage to apply to Project Contracts.

1.14.4 Calculation of ARP

By:

- (a) [REDACTED] (in respect of the ARP relevant to the Second Period);
- (b) [REDACTED] (in respect of the ARP relevant to the Third Period);
- (c) [REDACTED] (in respect of the ARP relevant to the Fourth Period); and
- (d) [REDACTED] (in respect of the ARP Expiry Payment).

Babcock Marine will calculate the ARP that will apply for the relevant Period in accordance with this Part.

The Second Period

1.14.5 Hold Harmless Point

2.1.1 If the aggregate of the Actual Authority Benefits for the first Benefits Measurement Period (as calculated in accordance with paragraph 4 of Part 4 of this Schedule 12) exceeds the aggregate of the Guaranteed Benefits specified by this Contract for that Benefits Measurement Period, then a Hold Harmless Point (or HHP) will be established using data from the Financial Years in that Benefits Measurement Period to apply to the Second Period in accordance with this paragraph 2. The Hold Harmless Point shall be a quantum of Actual Authority Benefits calculated in accordance with the following formula:

[REDACTED]

where:

"HHP" is the Hold Harmless Point;

[REDACTED]

[REDACTED]

[REDACTED]

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2.1.2 For the avoidance of doubt, if the aggregate of the Actual Authority Benefits for the first Benefits Measurement Period does not exceed the aggregate of the Guaranteed Benefits specified by this Contract for the first Benefits Measurement Period, then the remaining provisions of this paragraph 2 shall not apply.

1.14.6 Intention of HHP% (Second Period)

The HHP% (Second Period) will be a percentage calculated in accordance with paragraph 2.3. It is acknowledged that the intention is that this percentage would, when applied to all Project Contracts that (in accordance with the Illustrative Programme) will be placed with Babcock Marine in the Second Period, allow Babcock Marine to recover the profit that it would have earned on a quantum of Actual Authority Benefits equal to the HHP over the Second Period.

1.14.7 Calculation of HHP% (Second Period)

The HHP% (Second Period) shall be calculated as follows:

$$\text{HHP\% (Second Period)} = (A/B) \times 100\%$$

where:

"A" is the aggregate profit that would have been payable on a value of Actual Authority Benefits equal to the HHP calculated in accordance with paragraph 2.1. This profit shall be calculated in accordance with the rate applicable under paragraph 2.5.12 of Part 2 of this Schedule 12 for the Second Period; and

"B" is the aggregate of the estimated Target Cost for each Project Contract that (in accordance with the Illustrative Programme) will be placed with Babcock Marine in the Second Period (such estimate to be based on the information used for calculating the Pricing Rates for the Second Period).

1.14.8 Calculation of ARP% (Second Period) where aggregate Actual Authority Benefit does not exceed HHP

If the aggregate of the Actual Authority Benefits for the first Benefits Measurement Period does not equal or exceed the Hold Harmless Point calculated in accordance with paragraph 2.1, then the ARP% (Second Period) shall be calculated as follows:

[REDACTED]

where:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

where:

[REDACTED]

[REDACTED]

[REDACTED]

1.14.9 Calculation of ARP% (Second Period) where aggregate Actual Authority Benefit equals or exceeds HHP

If the aggregate of the Actual Authority Benefits for the first Benefits Measurement Period equals or exceeds the HHP calculated in accordance with paragraph 2.1, then the ARP% (Second Period) shall be calculated as follows:

[REDACTED]

[REDACTED]

where:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1.14.10 Application of ARP% (Second Period)

The ARP% (Second Period) shall be the percentage to be added to the price of Project Contracts placed in the Second Period in accordance with paragraph 2.5.14 of Part 2 of this Schedule 12.

The Third Period

1.14.11 Hold Harmless Point

3.1.1 If the aggregate of the Actual Authority Benefits for the second Benefits Measurement Period (as calculated in accordance with paragraph 4 of Part 4 of this Schedule 12) exceeds the aggregate of the Guaranteed Benefits specified by this Contract for that Benefits Measurement Period, then a Hold Harmless Point will be established using data from the

Schedule 12, Part 5

Financial Years in that Benefits Measurement Period to apply to the Third Period in accordance with this paragraph 3. The Hold Harmless Point shall be a quantum of Actual Authority Benefits calculated in accordance with the following formula:

[REDACTED]

where:

"HHP" is the Hold Harmless Point;

[REDACTED]

[REDACTED]

- 3.1.2 For the avoidance of doubt, if the aggregate of the Actual Authority Benefits for the second Benefits Measurement Period does not exceed the aggregate of the Guaranteed Benefits specified by this Contract for the second Benefits Measurement Period, then the remaining provisions of this paragraph 3 shall not apply.

1.14.12 Intention of HHP% (Third Period)

The HHP% (Third Period) will be a percentage calculated in accordance with paragraph 3.3. It is acknowledged that the intention is that this percentage would, when applied to all Project Contracts that (in accordance with the Illustrative Programme) will be placed with Babcock Marine in the Third Period, allow Babcock Marine to recover the profit that it would have earned on a quantum of Actual Authority Benefits equal to the HHP over the Third Period.

1.14.13 Calculation of HHP% (Third Period)

The HHP% (Third Period) shall be calculated as follows:

$$\text{HHP\% (Third Period)} = (A/B) \times 100\%$$

where:

"A" is the aggregate profit that would have been payable on a value of Actual Authority Benefits equal to the HHP calculated in accordance with paragraph 3.1. This profit shall be calculated in accordance with the rate applicable under paragraph 2.5.13 of Part 2 of this Schedule 12 for the Third Period; and

"B" is the aggregate of the estimated Target Cost for each Project Contract that (in accordance with the Illustrative Programme) will be placed with Babcock Marine in the Third Period (such estimate to be based on the information used for calculating the Pricing Rates for the Third Period).

1.14.14 Calculation of ARP% (Third Period) where aggregate Actual Authority Benefit does not exceed HHP

If the aggregate of the Actual Authority Benefits for the second Benefits Measurement Period does not equal or exceed the Hold Harmless Point calculated in accordance with paragraph 3.1, then the ARP% (Third Period) shall be calculated as follows:

[REDACTED]

[REDACTED]

where:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

where:

[REDACTED]

[REDACTED]

1.14.15 Calculation of ARP% (Third Period) where aggregate Actual Authority Benefit equals or exceeds HHP

If the aggregate of the Actual Authority Benefits for the second Benefits Measurement Period equals or exceeds the HHP calculated in accordance with paragraph 3.1, then the ARP% (Third Period) shall be calculated as follows:

[REDACTED]

where:

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

1.14.16 Application of ARP% (Third Period)

The ARP% (Third Period) shall be the percentage to be added to the price of Project Contracts placed in the Third Period in accordance with paragraph 2.5.14 of Part 2 of this Schedule 12.

The Fourth Period

1.14.17 Hold Harmless Point

4.1.1 If the aggregate of the Actual Authority Benefits for the third Benefits Measurement Period (as calculated in accordance with paragraph 4 of Part 4 of this Schedule 12) exceeds the aggregate of the Guaranteed Benefits specified by this Contract for that Benefits Measurement Period, then a Hold Harmless Point will be established using data from the Financial Years in that Benefits Measurement Period to apply to the Fourth Period in accordance with this paragraph 4. The Hold Harmless Point shall be a quantum of Actual Authority Benefits calculated in accordance with the following formula:

[REDACTED]

where:

"HHP" is the Hold Harmless Point;

[REDACTED]

[REDACTED]

4.1.2 For the avoidance of doubt, if the aggregate of the Actual Authority Benefits for the third Benefits Measurement Period does not exceed the aggregate of the Guaranteed Benefits specified by this Contract for the third Benefits Measurement Period, then the remaining provisions of this paragraph 4 shall not apply.

1.14.18 Intention of HHP% (Fourth Period)

The HHP% (Fourth Period) will be a percentage calculated in accordance with paragraph 4.3. It is acknowledged that the intention is that this percentage would, when applied to all Project Contracts that (in accordance with the Illustrative Programme) will be placed with Babcock Marine in the Fourth Period, allow Babcock Marine to recover the profit that it would have earned on a quantum of Actual Authority Benefits equal to the HHP over the Fourth Period.

1.14.19 Calculation of HHP% (Fourth Period)

The HHP% (Fourth Period) shall be calculated as follows:

$$\text{HHP\% (Fourth Period)} = (A/B) \times 100\%$$

where:

"A" is the aggregate profit that would have been payable on a value of Actual Authority Benefits equal to the HHP calculated in accordance with paragraph 4.1. This profit shall be

Schedule 12, Part 5

calculated in accordance with the rate applicable under paragraph 2.5.13 of Part 2 of this Schedule 12 for the Fourth Period; and

"B" is the aggregate of the estimated Target Cost for each Project Contract that (in accordance with the Illustrative Programme) will be placed with Babcock Marine in the Fourth Period (such estimate to be based on the information used for calculating the Pricing Rates for the Fourth Period).

1.14.20 Calculation of ARP% (Fourth Period) where aggregate Actual Authority Benefit does not exceed HHP

If the aggregate of the Actual Authority Benefits for the third Benefits Measurement Period does not equal or exceed the Hold Harmless Point calculated in accordance with paragraph 4.1, then the ARP% (Fourth Period) shall be calculated as follows:

- 4.4.1 Calculate the aggregate of the Actual Authority Benefits in the third Benefits Measurement Period as a percentage in relation to the corresponding Guaranteed Benefits and HHP in accordance with the following formula:

[Redacted formula]

where:

[Redacted definition]

[Redacted definition]

[Redacted definition]

[Redacted definition]

[Redacted definition]

[Redacted definition]

[Redacted definition]

[Redacted definition]

[Redacted definition]

where:

[Redacted definition]

[REDACTED]

1.14.21 Calculation of ARP% (Fourth Period) where aggregate Actual Authority Benefit equals or exceeds HHP

If the aggregate of the Actual Authority Benefits for the third Benefits Measurement Period equals or exceeds the HHP calculated in accordance with paragraph 4.1, then the ARP% (Fourth Period) shall be calculated as follows:

[REDACTED]

where:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1.14.22 Application of ARP% (Fourth Period)

The ARP% (Fourth Period) shall be the percentage to be added to the price of Project Contracts placed in the Fourth Period in accordance with paragraph 2.5.14 of Part 2 of this Schedule 12.

ARP payment on expiry

1.14.23 Hold Harmless Point

5.1.1 If the aggregate of the Actual Authority Benefits for the fourth Benefits Measurement Period (as calculated in accordance with paragraph 4 of Part 4 of this Schedule 12) exceeds the aggregate of the Guaranteed Benefits specified by this Contract for that Benefits Measurement Period, then MoD will pay Babcock Marine an ARP Expiry Payment. The value of the ARP Expiry Payment shall be calculated in accordance with the provisions of this paragraph 5.

5.1.2 In the circumstances outlined in paragraph 5.1.1 above, a Hold Harmless Point will be established using data from the Financial Years in that Benefits Measurement Period for the purposes of this paragraph 5. The Hold Harmless Point shall be a quantum of Actual Authority Benefits calculated in accordance with the following formula:

[REDACTED]

where:

"HHP" is the Hold Harmless Point;

[REDACTED]

[REDACTED]

5.1.3 For the avoidance of doubt, if the aggregate of the Actual Authority Benefits for the fourth Benefits Measurement Period does not exceed the aggregate of the Guaranteed Benefits specified by this Contract for the fourth Benefits Measurement Period, then the remaining provisions of this paragraph 5 shall not apply.

1.14.24 Calculation of ARP Expiry Payment where aggregate Actual Authority Benefit does not exceed HHP

If the aggregate of the Actual Authority Benefits for the fourth Benefits Measurement Period does not equal or exceed the Hold Harmless Point calculated in accordance with paragraph 5.1, then the ARP Expiry Payment shall be calculated as follows:

[REDACTED]

where:

"£ARP" is the value of the ARP Expiry Payment;

[REDACTED]

where:

[REDACTED]

1.14.25 Calculation of ARP Expiry Payment where aggregate Actual Authority Benefit equals or exceeds HHP

[REDACTED]

where:

"£ARP" is the value of the ARP Expiry Payment;

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[REDACTED]

[REDACTED]

[REDACTED]

1.14.26 Timing and manner of ARP Expiry Payment

Babcock Marine shall provide MoD with its calculation of the ARP Expiry Payment by 31 October 2025. Following receipt of that calculation, the Parties shall meet to discuss the method of payment by MoD of the ARP Expiry Payment. At such meeting, the Parties shall take into account any relevant taxation or accounting consequences of any proposed payment structure. Following agreement of the method of payment of the ARP Expiry Payment, MoD shall pay the ARP Expiry Payment in the manner so agreed.

Extensions to Initial Term

Should the Initial Term be extended the principles of this Part shall apply, based on 2023/24 financial information and the Parties shall agree such amendments to this Annex as are appropriate to reflect the extension.

Schedule 12, Annex 2

- 4 Annex 2**
- 5 Not used.**

Schedule 12, Annex 3

[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]

By QMAC Group

	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Group 1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Group 2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Group 3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Group 4	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Group 5	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Group 6	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Group 7	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Groups 8, 9 & 12	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Group 11	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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Grand Total [Redacted]

WSMI Scope Changes

MoD Work Summary

WSMI [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
DSA [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
SSMG [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
Submarines [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
Ships [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
AGO Recovery [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
Total MoD [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]

Other Work Summary

Yachts [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
Commercial [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
NDA & Faslane [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
AGO Recovery [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
Total Other [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
Grand Total [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]

8 Annex 4

9 Rates for the Clyde Business – First Period

At 08/09 Price Levels £000s	<u>09/10</u>	<u>10/11</u>	<u>11/12</u>	<u>12/13</u>
Target Cost	[REDACTED]			

Notes:

As at contract amendment 58

To be inflated to in year prices when contract inflation agreed.

10 Annex 5

11 Rates for the Rosyth Business – First Period

Note: The position in relation to Pricing Rates in the Rosyth Business is set out in paragraph 1.2.3 of Part 3 of this Schedule 12.

The information relevant to the Rosyth Business in the ToBA Starting Baseline is as set out in the Master Table.

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12 Annex 6

13 Master Table

		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
A	Guarantee - £M																
	Guaranteed Core Benefits																
i)	Total at [REDACTED] Prices																
	RPIX Index - Year Average																
	Inflation %																
ii)	Continuous Improvement																
	Percentage Value in Actual Rates																
iii)	Total at In Year Prices																
B	[REDACTED]																
i)	[REDACTED]																
	Devonport																
	Rosyth																
	Clyde																
	Total																
ii)	[REDACTED]																
	Devonport ¹																
	Rosyth ²																
	Clyde ³																

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[REDACTED]

iii) [REDACTED]

Devonport ¹	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Rosyth ²	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Clyde ³	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

iv) Actual Cost to MoD including Profit

Devonport
Rosyth
Clyde

C Actual Authority Benefits - Including Profit

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Devonport ¹	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Rosyth	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Clyde ⁴	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]
Devonport
Rosyth
Clyde
Total

[REDACTED]

D ARP %

[REDACTED]
[REDACTED]

[REDACTED]



18 Benefit Tracking Mechanism (Financial)

The Parties acknowledge that the provisions of this Annex 8 are not binding at the date of this Contract and that Annex 8 may contain content which the Parties may consider using as a starting point for the development of the Schedule 12 Operating Protocol.

1. Process Overview

1.1 Introduction

This Schedule 12 identifies the steps required to demonstrate savings (Authority Benefits) and Authority Benefits (Actual Authority Benefits) during the period of the ToBA. The purpose of this annex is to document the tracking processes which will be put in place to achieve Schedule 12 requirements.

1.2 Linkage to Schedule 12 Conditions

A chronological listing of activities is set out at Attachment 1, identifying the relevant Schedule 12 condition to which it applies.

BM will prepare and provide data that will be used by the JPO to demonstrate the overall costs and savings based on the requirements of this Schedule 12. In addition, supporting explanations and calculations will be provided by BM in a supporting file for each reporting requirement with mathematical analysis to be provided within Excel sheets (with formulae used to conduct calculations preserved).

2. The Baseline

The baseline has been agreed as the [REDACTED] cost base with the specific exclusion of CVF and FNF, and is projected forward from [REDACTED] based on the forward programme of work to provide baseline costs for the duration of the TOBA. This baseline is stored in BMECS and is at [REDACTED] Economic Conditions (ECs). It will therefore be necessary to account for inflation, amongst other things, when comparing the cost base to this baseline in the future. This will be done through a 'normalisation' process which is detailed in section 3 below.

The information in the BMECs model that forms this baseline has been reconciled to statutory accounts however it also treats fixed costs on a consolidated basis without attributing them to contracts or indeed customers. Comparison of future costs to the MOD from within the BM cost base will require appropriate attribution of the fixed costs in the baseline between non-competitive MOD contracts and other contracts held by BM. This will also be achieved through the normalisation process, using the existing QMAC arrangements.

3. Baseline versus actual comparison ("Strand A")

The comparison between the Baseline and actual cost will determine the total Authority Benefits and Actual Authority Benefits for each year for the purposes of the BM TOBA agreement. The steps required to achieve comparable baseline and actual cost figures are:

[REDACTED]

To ensure that Actual Authority Benefits are calculated following the application of gain-share in the underlying contracts and to apportion fixed costs in a manner consistent with that already agreed and implemented within the pricing mechanism, the steps above will be applied to two phases of the process:

[REDACTED]

3.1 Identifying Actual Authority Benefits through current pricing rates.

This phase of the process normalises the baseline figures to render them comparable to the cost data included in current pricing rates. Subsequent comparison of the pricing rate costs and the normalised baseline data determines the level of savings derived from the application of the current pricing rates to current contracts. This is done for both Authority Benefits (savings in BM cost base) and Actual Authority Benefits (reduction in the cost to MOD of TOBA scope work ie Authority Benefits).

The baseline is stored in BMECS and summarised in the Master Table (Annex 6 of this Schedule 12).

The pricing rates models for each site up to [REDACTED] is summarised at Annexes 3, 4 and 5 of this Schedule 12.

Workload normalisation will be required to reflect changes in cost that are due to movements in the throughput volume rather than savings and efficiencies.

Reconciliation of hours worked to baseline hours for each year by contract

3.1.1 Identifying Authority Benefits via the pricing rates

- a. Inflate the Baseline total cost to rates model ECs by the application of the inflation rate agreed in the pricing rates model (*Appendix 1, Section 1.5.i*).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3.1.2 Identifying Actual Authority Benefits via the pricing rates

[REDACTED]

[REDACTED]

- c. Sum the Total Baseline TOBA Scope Fixed and Variable costs to derive the TOBA Baseline Cost for the current year.
 - d. Apply the agreed profit to produce the TOBA Baseline Price for the current year.
-

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3.2 Identifying Actual Authority Benefits through actual costs with respect to the pricing rates.

This phase of the process normalises the costs within the rates model to render them comparable to the actual costs. Subsequent comparison of normalised rates model and actual costs determines the additional level of Actual Authority Benefits through the actual costs over and above the Actual Authority Benefits through application of the pricing rates.

BM will deliver actual costs for each year in the format set out below by the end of September each year (i.e. six months after the BM year end in line with Statutory Accounts), with fixed costs allocated across the business as agreed in the pricing rates methodology:

3.2.1 Identifying additional Authority Benefits through actual costs with respect to rates model costs

- a. Extract Total Actual Cost for the year in question from the actual cost report above (*Appendix 1, Section 2.1*).

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

3.2.2 Identifying additional Actual Authority Benefits through actual costs with respect to model costs

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

3.3 Calculating the Total Authority Benefits and Delivered in a given year.



It is important to note that the Authority Benefits and Actual Authority Benefits figures will be at current year ECs and so the guarantee figures must be inflated from [REDACTED] ECs in order to determine if the guaranteed benefits have been delivered.

3.4 Presentation

The JPO will prepare a reconciliation of actual costs and savings as set out in pro forma 1 & 2 below and provide a copy of this reconciliation in each quarterly and annual report. [**Agree timescales based on contractual requirement for BM to deliver info within, say, 4 weeks of quarter end and 3 months of year end.**]

The pro forma information below relates to TOBA business only – the non-TOBA, non-MOD business and the reconciliation to the BM financial results are considered in the statutory reconciliation in section 6.

4. Contract Analysis of Actual Authority Benefits

In order to assess the impact of the benefits on individual contracts, BM will present analysis of savings achieved against baseline cost for major contracts. The analysis by contract will total to the overall savings achieved, which may require the inclusion of an “other contracts” line to limit the reporting and analysis requirement. The level of analysis required for the “other contract” number will be determined through discussion in the JPO.

5. Reporting of Information - Reconciliation to BM Statutory Reporting

Based on the 2010 signature timetable, the JPO will receive copies of the relevant statutory accounts by 31 July following the year end (within 4 months of the year end of 31 March).

Relevant supporting documentation and explanations for reconciling and adjusting items (which may be subject to further review and investigation by MOD which will be managed by the JPO) will also be provided.

The pro forma includes the adjustment to exclude non-MOD commercial business allowing reconciliation of the overall BM total to the MOD related figures analysed in more detail through the benefit tracking mechanism.

6. Historical Variance Analysis

On an annual basis, BM will undertake and present a variance analysis comparing the actual cost for the year against the baseline forecast cost for the year highlighting major differences and providing explanation. The variance analysis will initially be provided showing a similar level of detail to that presented

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in the [BMECS cost model], but BM will provide further detail and explanations to individual cost lines if required, in response to additional information requests from MOD co-ordinated by the JPO.

7. **Additional Information Requirements**

In addition to the reporting requirements set out above, MOD may require access to additional analysis and underlying financial records in order to assess the audit trail which may include analysis by a firm of external accountants as part of the annual review of Authority Benefits and delivered. Requests for additional information and access to underlying records and consequential meetings with BM Management will be co-ordinated through the JPO.

8. **Evolution of Benefit Tracking Mechanism**

Both parties recognise that the benefit tracking mechanism proposed above may require change to meet ongoing requirements or where the mechanism fails to provide sufficient confidence for MOD in relation to the TOBA savings. Changes will be agreed between both parties through the TOBA governance structure.

9. **Third Party Review and Dispute Resolution Process**

MOD may utilise an external firm of accountants in considering the savings quantification and reporting set out in this annex. In the unlikely event of a dispute over the calculation of adjustments or the quantification of savings, a firm of independent accountants (agreed upon by both parties) may be appointed to investigate items in dispute.

Appendix 1 to Annex D

Worked Example of Methodology for Calculating Authority Benefits and Delivered

Section 1

- To be agreed and completed prior to TOBA signature and output included in the Master Schedule

1. Guarantees at [redacted] economics, productivity [redacted] levels

	2009/10	[redacted]	[redacted]	[redacted]	[redacted]
Guaranteed Fixed Savings £M	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Productivity %	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Variable saving £M (% x variable cost)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

2. [redacted] Baseline

	£M	Var %	Fixed %	Var £M	Fixed £M
Industrial Labour	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Non-Ind Labour	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Overhead Materials	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Utilities	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Fixed Costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Sub-total	[redacted]			[redacted]	[redacted]
Direct Materials	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total	[redacted]			[redacted]	[redacted]
Workload - 000s hours					
Total	[redacted]				
Non competitive	[redacted]				
Competitive	[redacted]				
Variable Rate £/hr	[redacted]	[redacted]			

3. BMECs

	£M	[redacted]	[redacted]	[redacted]	[redacted]
Ind Labour - Variable	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
- Fixed	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Non Ind Labour - Variable	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
- Fixed	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Overhead Mats - Variable	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
- Fixed	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Utilities - Variable	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
- Fixed	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Fixed costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

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i)	Add Inflation at 4a) levels				
ii)	[REDACTED]				
iii)	[REDACTED]				
iv)	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
ii)	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
iii)	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
	[REDACTED]				

Identification of Actual Authority Benefits in Pricing Rates

- i) Normalised BMECs
 - Produce Rates, based on current methodology, for BMECs costs (Note 1).

	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
	[REDACTED]				
Total					

Note 1 - To be produced by contract.

[REDACTED]

[REDACTED]

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[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]

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Section 2

Actual Rates Calculation

Assumption: 09/10 and 10/11 actuals have been calculated with performance in line with pricing rates.

	2009/10	2010/11	
Authority Benefits - £M	[REDACTED]	[REDACTED]	(Schedule 5)
Actual Authority Benefits - £M	[REDACTED]	[REDACTED]	(Schedule 6ii)

1. Produce actual rates for 2011/12, on same basis as pricing rates £M

i) Costs	Total	Variable	Fixed
Industrial Labour	[REDACTED]	[REDACTED]	[REDACTED]
Non Industrial Labour	[REDACTED]	[REDACTED]	[REDACTED]
Utilities	[REDACTED]	[REDACTED]	[REDACTED]
Overhead Materials	[REDACTED]	[REDACTED]	[REDACTED]
Fixed	[REDACTED]	[REDACTED]	[REDACTED]
	<hr/>	<hr/>	
Workload 000 hours			
Non competitive	[REDACTED]		
Competitive	[REDACTED]		
Total	[REDACTED]		
Variable Rate £/hr	[REDACTED]		

ii) Recoveries		
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]

2. Normalisation Rates Model Totals to Actual Cost Totals

	[REDACTED]		
i)	[REDACTED]	[REDACTED]	[REDACTED]
ii)	[REDACTED]	[REDACTED]	
iii)	[REDACTED]	[REDACTED]	[REDACTED]
iv)	[REDACTED]	[REDACTED]	
v)	[REDACTED]	[REDACTED]	

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[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Savings Total 2011/12	[REDACTED]

3. Calculation of Authority Benefits

£M

i)	Add inflation difference between Rates Model and actuals	[REDACTED]	[REDACTED]
ii)	Pegged Items	[REDACTED]	Note 1
iii)	[REDACTED]	[REDACTED]	
iv)	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
v)	[REDACTED]	[REDACTED]	[REDACTED]
vi)	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	Benefit variance c.f. Rates Model	[REDACTED]	
	[REDACTED]	[REDACTED]	
vii)	[REDACTED]	[REDACTED]	Note 3
	[REDACTED]	[REDACTED]	
viii)	Authority Benefits 2011/12	[REDACTED]	

Note 1 - Each item treated separately. In this case Utilities are all MoD.

Note 2 - Section 2, Schedule 1.

[REDACTED]

ix) Additional Authority Benefits

Non Competitive Work (by contract)	Contract Earned Value Actual	[REDACTED]	[REDACTED]
	Underspend	[REDACTED]	

Value at actual variable rate £ [REDACTED]

Note:

Contracts are not based on annual performance. Therefore performance is estimated if the contract spans a year end. At contract completion any estimating variance will be corrected. This potential estimating variance is small in absolute terms and should not impact the reporting of performance.

Contract based on pricing rates with built in productivity.

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Section 3

Uses of [REDACTED] Information

1. Performance vs cumulative guarantees

a) Calculate Guarantees at in year economics

	[REDACTED]	[REDACTED]	[REDACTED]
i) Fixed Costs at 2006/07 prices	[REDACTED]	[REDACTED]	[REDACTED]
Cumulative inflation agreed	[REDACTED]	[REDACTED]	[REDACTED]
Fixed cost guarantee at in year prices	[REDACTED]	[REDACTED]	[REDACTED]

Note 1

Note 1 - Will use indices if known, estimate for final year. Not the same inflation rates as agreed in rates (which were agreed at risk).

ii) Productivity

Guarantee %	[REDACTED]	[REDACTED]	[REDACTED]
Actual workload 000 hours	[REDACTED]	[REDACTED]	[REDACTED]
Productivity included (if achieved)	[REDACTED]	[REDACTED]	[REDACTED]
Productivity at actual in year variable rate	[REDACTED]	[REDACTED]	[REDACTED]

iii) Total guarantee at in year prices

[REDACTED]	[REDACTED]	[REDACTED]
------------	------------	------------

b) Sharing of Authority Benefits

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

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3

Net Authority Benefits

[REDACTED]

c) Performance vs Guarantee in Period

	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Guarantee	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Actual Benefit	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

d) Performance in 2011/12 vs Guarantee - Incentive Fee Calculation

Guarantee	[REDACTED]
Actual Benefit	[REDACTED]

[REDACTED]

Schedule 13 – Open Book Accounting Procedures

1 Open Book Accounting

1.1 Babcock Marine shall on an open book basis:

- (a) maintain, on a current, complete and accurate basis, books of account and other records sufficient in all respects to enable the efficient and effective operation of this Contract and so as to achieve the Commercial Purpose and shall afford MoD (acting if determined by MoD through CAAS) with full and unfettered access to the same, and to allow the MoD (acting if determined by MoD through CAAS) to audit:
 - (i) the completeness and accuracy of BMECS in accordance with Clause 30 (*BMECS*);
 - (ii) the ToBA Rates Model in accordance with Clause 30A (*ToBA Rates Model*);
 - (iii) benefits tracking and delivery including supporting information for the calculation of Actual Authority Benefits or Authority Benefits for the purposes of Schedule 12 (*Pricing and Incentivisation*);
 - (iv) the calculation or other establishment of the items listed in paragraph 3.2.2 of Part 1 of Schedule 12 (*Pricing and Incentivisation*); and
 - (v) all other matters which are the subject of this Contract and which ought properly to be the subject of Babcock Marine's records and accounts in order to demonstrate any calculation required by this Contract;
- (b) promptly provide to MoD all financial and other information and evidence which is necessary, or which MoD reasonably requests, in order for MoD to:
 - (i) calculate, assess, validate and agree all matters to be determined in the operation of Schedule 12 (*Pricing and Incentivisation*)
 - (ii) identify any errors which may have occurred in the operation of Schedule 12 (*Pricing and Incentivisation*); and
 - (iii) operate MoD's internal financial processes applicable in respect of each Financial Year and at the end of each Period; and
 - (iv) satisfy itself generally as to the operation of Schedule 12 (*Pricing and Incentivisation*).
- (c) upon request furnish such financial and other information in connection with this Contract as may be reasonably required by the MoD in order reasonably to demonstrate that the actual costs incurred by every Babcock Marine Group Member have been incurred in accordance with this Contract;
- (d) as soon as the same become publicly available, deliver to MoD the Accounts for each Financial Year for [REDACTED] each BM Opco which shall have been audited by Auditors and which may be consolidated Accounts where applicable;
- (e) ensure that all Accounts and other financial information to be delivered by it under this Contract have been prepared in accordance with GAAP and give a true and fair view of, or fairly represent (as applicable), its financial position as at the date to which they were prepared and for the period then ended; and
- (f) inform the MoD immediately if there is any material adverse change during the term of the Contract in the financial condition of [REDACTED] each BM Opco since the relevant

accounts referred to in paragraph 1.1(d) of this Schedule 13, provided that no Party shall be required to inform the MoD of any such changes if this would be in breach of any rules of any relevant stock exchange or governmental or regulatory authority having the force of law.

- 1.2 Without prejudice to the generality of paragraph 1.1(c), whenever making a proposal, estimate or calculation in relation to any matter to be determined or agreed pursuant to Schedule 12, Babcock Marine shall:
- (a) supply to MoD in electronic format all such supporting material or evidence as is reasonably required to support, explain, illustrate and justify its proposal, estimate or calculation, including comprehensive details of all calculation methods;
 - (b) in the case of estimates, provide a reasonable estimate, taking into account all relevant circumstances and stating all assumptions made; and
 - (c) supply a certificate signed by its finance director that the matters concerned have been produced in compliance with this Contract.
- 1.3 Babcock Marine shall provide such further information as may reasonably be required by the Steering Group (or the MoD's representatives on it) in order to:
- (a) permit the MoD to comply fully with its obligations under this Contract;
 - (b) permit the MoD to undertake any review or check that Babcock Marine's compliance with its obligations is in accordance with this Contract; and
 - (c) ensure the efficient and effective operation of this Contract including, in particular, the achievement of the Commercial Purpose and shall provide to MoD copies of Babcock Marine's Strategic Plan.


2 Inspection

Babcock Marine shall provide such assistance as the MoD may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause.

3 Suspected Fraud

Without prejudice to the foregoing provisions of this Schedule, in the event of an investigation into suspected fraudulent activity or other impropriety by Babcock Marine or any third party, MoD reserves for itself, any auditors or legal advisers of MoD and their respective authorised agents the right of immediate access to any sites and/or any other documents or materials relating to the work being carried out under any BM Contract and Babcock Marine agrees to render all necessary assistance to the conduct of such investigation at all times during or after the term of the Contract.

Schedule 14 – Commercially Sensitive Information

1. Babcock Marine has notified MoD that it considers the following to be Commercially Sensitive Information:
 - (a) contents of this Contract;
 - (b) financial information provided in accordance with this Contract;
 - (c) Transformation Plans, Benefits Realisation Plans and Relationship Management Plans;
 - (d) Business Case Proposals and all supporting information; and
 - (e) Babcock Marine's Strategic Plan; and
 - (f) 
or
 - (g) such other information that may be reasonably designated as Commercially Sensitive Information by Babcock Marine to MoD from time to time.

Schedule 15 – Dispute Resolution Procedure

1 Introduction

- 1.1 For the purposes of this Contract a "**Dispute**" shall mean any claim, difference or dispute of whatever nature between the Parties arising under, out of or in connection with this Contract (including without limitation any question regarding its existence, validity, termination or interpretation) or the Parent Company Guarantee.
- 1.2 Notwithstanding any other provision of this Schedule 15, if there is a Dispute under this Contract and a dispute under any BM Contract, Multi-Party Contract or Sale of Dockyard Agreement that both relate (in whole or part) to the same facts or circumstances, then such disputes shall (subject to the application of Clause 6.5.3(b)) be resolved separately in accordance with the relevant procedure for resolving such disputes under this Schedule 15 or that contract (as applicable). However:
- (a) the Parties shall consider in good faith joining such disputes wherever either Party considers that it would be beneficial to resolve the disputes on a joint basis; and
 - (b) the Parties agree and acknowledge that a final determination on a matter that is primarily in Dispute under a BM Contract (for instance, on whether a KPI has been achieved) shall (subject to the application of Clause 6.5.3(b)) be conclusive for the purposes of this Contract).
- 1.3 Where a Dispute involves one or more Babcock Marine Group Members, one Babcock Marine Group Member (the **BM Agent**) can progress the Dispute on behalf of the other Babcock Marine Members that would be otherwise entitled to take action on the following basis:
- (a) the Agent shall be irrevocably appointed to act on behalf of such Babcock Marine Group Member(s) with effect from the date that MoD is notified of this appointment in accordance with the requirements of this paragraph 1.3;
 - (b) such Babcock Marine Group Member(s) hereby agree to be bound in all respects by the actions of the Agent; and
 - (c) the Agent and such Babcock Marine Group Member(s) hereby agree to indemnify MoD against any and all Losses that MoD incurs or suffers as a result of relying on the undertakings in sub-clauses (a) or (b) if a Babcock Marine Group Member subsequently does not comply with, or asserts that it is not bound by, such sub-clauses.
- 1.4 The Parties irrevocably agree to use the Dispute Resolution Procedure set out in this Schedule to resolve Disputes provided that nothing in this Contract shall prevent either Party applying to the courts for interim relief. The aim of the Dispute Resolution Procedure is to enable the resolution of Disputes at the earliest opportunity with the minimum disruption to both Parties.
- 1.5 Before notifying a Dispute, the Parties, acting in good faith, shall make every effort to resolve any issues promptly in discussions at operational level
- 1.6 Any timescales referred to in this Schedule may be increased or decreased in respect of any Dispute by written agreement of the Parties.
- 1.7 The Parties shall continue to comply with, observe and perform all of their obligations under this Contract notwithstanding the referral of the Dispute for resolution under the Dispute Resolution Procedure set out in this Schedule.

2 Dispute arising between the Parties

- 2.1 To declare a Dispute either Party shall send written notice to the other identifying the nature and circumstances of the Dispute (the "**Notice**").
- 2.2 Within five Business Days of a Party serving Notice of a Dispute in accordance with paragraph 2.1, each Party shall appoint a representative from within its organisation as a "**Dispute Owner**" and each Party shall give written notice to the other Party of the name and contact details of its appointed Dispute Owner. Either Party may change the identity of its Dispute Owner by providing written notice to the other Party.
- 2.3 Each Party shall ensure that its appointed Dispute Owner is of an appropriate level and is of sufficient authority within its organisation to enable him to progress the Dispute.
- 2.4 The Dispute Owners shall be responsible to their respective appointing Parties for collating all relevant information relating to the Dispute and for progressing the Dispute through the Dispute Resolution Procedure.

3 Report Procedures

- 3.1 Each Party shall require its Dispute Owner to provide a report on the Dispute (a "**Dispute Report**") to the other Party's Dispute Owner as soon as is reasonably practicable after the commencement of each Stage (as defined below) of the Dispute Resolution Procedure. If either Party has failed to appoint a Dispute Owner the Dispute Report for that Party should be provided directly to the other Party pursuant to Clause 55 (*Representatives*) of the Contract. Each Dispute Report will include:
 - (a) a unique serial number to be provided by the MoD and the date of the Dispute Report;
 - (b) the name, post, and phone number of each Party's Dispute Owner;
 - (c) a synopsis of the Dispute including the findings of any other Stage (as defined below);
 - (d) the output or the decision required from the relevant Stage (as defined below) ;
 - (e) any dates by which the output or the decision is required; and
 - (f) any recommendation for the resolution of the Dispute which the Dispute Owner considers appropriate.
- 3.2 The Parties agree that the Dispute Reports shall be prepared and exchanged on a without prejudice basis, but either Party may subsequently waive any resulting privilege in relation to its own Dispute Report.

4 Stages to the Dispute Resolution Procedure

- 4.1 There are three stages to the Dispute Resolution Procedure which will apply to both Parties (each for the purposes of this Schedule only, a "**Stage**"). The Dispute Owner is responsible for progressing the Dispute in accordance with the Dispute Resolution Procedure and for managing his appointing Party's obligations in respect of the Dispute until it is resolved. If a Dispute is not resolved at a Stage within the relevant time scales for that Stage, as specified in the Dispute Resolution Procedure, (subject to any amendments to the time scales which may be agreed in writing or ordered by the tribunal relevant to that Stage), the Dispute will be escalated, in accordance with the provisions of this Schedule to the next Stage until it is finally resolved. The three possible Stages for Dispute Resolution open to the Parties are:
 - (a) internal review;

- (b) alternative dispute resolution (provided the Parties agree); and
- (c) arbitration.

5 Internal Review

- 5.1 Within twenty Business Days of either Party serving notice of a Dispute under paragraph 2.1:
- (a) the Dispute shall be referred by either Party to the Steering Group (**SG**) for resolution;
 - (b) if the Dispute has not been resolved within twenty Business Days of referral to the SG, either Party may refer the Dispute to the Project Owners Group (**POG**) for resolution. The POG shall meet to attempt to resolve the Dispute as soon as reasonably practicable but in no event later than twenty Business Days of its referral.
- 5.2 If the Dispute is not resolved within twenty Business Days of the meeting of the POG (as convened in accordance with paragraph 5.1 (b)), to the satisfaction of the Parties, the Parties may agree to refer the Dispute to alternative dispute resolution in accordance with paragraph 6 or (if the Parties do not agree to refer the Dispute to alternative dispute resolution) either Party may refer the Dispute to arbitration in accordance with paragraph 7.
- 5.3 The internal review under this clause and anything said, done or produced under or in relation to it shall be treated as without prejudice to the parties' rights and obligations unless the parties agree otherwise in writing, but either Party may subsequently waive any resulting privilege in relation to its own Dispute Report.
- 5.4 Where the subject matter of a Dispute has already been considered by a Governance Body pursuant to Schedule 10 (*Governance*), the Dispute shall not be referred back to such Governance Body for internal review pursuant to this paragraph 5 unless the Parties agree that this would be appropriate.

6 Alternative Dispute Resolution

- 6.1 The parties may agree under paragraph 5.2 to refer a Dispute to any method of alternative dispute resolution, including but not limited to mediation and expert determination.
- 6.2 Where the parties have agreed to use an alternative dispute resolution procedure and the Dispute is not resolved by the use of such procedure within 40 Business Days of such agreement, either party shall (other than in the case of a Dispute that is being resolved by expert determination in accordance with paragraph 6.3) be entitled to refer the Dispute to arbitration in accordance with paragraph 7.
- 6.3 Where the Parties agree to refer a Dispute to expert determination, the following requirements shall apply:
- (a) a single independent expert shall decide the Dispute;
 - (b) each Party may propose a expert to hear the Dispute and the Parties shall try in good faith to agree a jointly appointed expert within ten Business Days after the first Party sends a letter to the other Parties proposing an expert. In the absence of agreement on an expert nominated by a Party within such period, either Party may request the President of the Law Society of England and Wales to nominate an expert on behalf of the Parties as soon as reasonably practicable which the Parties shall be required to jointly appoint;
 - (c) the expert must be suitably qualified to hear the matter in dispute with a least 15 years experience in the relevant subject area. In the case of Disputes in connection

with Schedule 12 (*Pricing and incentivisation*), the expert shall be a senior partner of an international accounting firm of good repute;

- (d) the expert must act as an expert and not as an arbitrator;
- (e) the Arbitration Act 1996 and the law of arbitration shall not apply to the expert, to the determination procedure, or to the expert's decision;
- (f) the expert determination must take place in London;
- (g) once appointed, the expert must deliver a final written decision within 3 months;
- (h) the expert's final written decision must include full detailed reasons to explain his or her findings and decision; and
- (i) the expert's decision is final and binds the Parties unless there is manifest error by the expert or fraud.

7 Arbitration

7.1 Either Party shall initiate arbitration by giving notice to the other party that it intends to commence arbitration in accordance with the terms of this Contract unless otherwise agreed in writing by the Parties (the "**Request**").

7.2 In relation to such arbitration:

- (a) the seat of the arbitration shall be in England;
- (b) the language used in the arbitral proceedings shall be English;
- (c) the rules of the arbitration shall be the rules of the London Court of International Arbitration (**LCIA Rules**), which rules (or any amendment or modification thereof in force at the time of the appointment of the arbitrators) are deemed to be incorporated by reference into this Schedule 15 (*Dispute Resolution Procedure*) but subject to this paragraph 7 which shall take precedence if there is a conflict;
- (d) the number of arbitrators shall be three (unless the Parties otherwise agree);
- (e) (provided that the appointment of experts by the Arbitrators will not prevent the Parties from seeking to use expert evidence themselves in any proceedings), the Arbitrators shall be entitled to use one or more experts to assist with the arbitration process. Any such expert(s) shall be appointed by written agreement of the Parties provided that if the Parties fail to agree within ten Business Days of the Arbitrators' request, the Arbitrators shall be entitled to appoint the expert(s);
- (f) the provisions of the Arbitration Act 1996 shall apply to the arbitration. It is specifically agreed between the parties that, for the purposes of the arbitration, the Arbitrator shall have the power to make provisional awards as provided for by Section 39 of the Arbitration Act 1996; and
- (g) the Arbitrators shall make their award in writing and unless the parties agree otherwise shall state the reasons upon which their award is based. The costs of the arbitration shall be borne by the Parties in the proportion as may be determined by the Arbitrator taking into account the relative merits of each party's case.

7.3 The parties shall give effect forthwith to every decision of the Arbitrators delivered under the Dispute Resolution Procedure unless or until the Dispute is otherwise resolved by agreement.

7.4 The Request shall include the identity of one person it proposes to act as an Arbitrator.

- 7.5 Within ten Business Days of receipt of the Request, the Party receiving the Request shall notify in writing, the Party serving the Request, if he objects to the identity of the proposed Arbitrator and, if so, shall propose one or more alternative Arbitrators. If no such objection is made then the Parties shall jointly request the LCIA Court to appoint the proposed Arbitrator as the Arbitrator.
- 7.6 For the avoidance of doubt, it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties (other than as required by law or stock exchange requirements), except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made to any persons outside of the tribunal, the Parties, their legal representatives or any person necessary to the conduct of the proceedings, without the written agreement of the Parties to the arbitration.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Part 2 – List of Babcock Marine Group Members

Company Name	Company Number	Registered Office
1 Babcock Support Services Limited (Subject to note (3) in Part 1 of this Schedule 16)	SC099884	Rosyth Business Park Rosyth Dunfermline Fife Scotland KY112YD
2 Babcock Marine (Rosyth) Limited	SC333105	Rosyth Business Park Rosyth Dunfermline Fife Scotland KY112YD
3 Rosyth Royal Dockyard Limited	SC101959	Rosyth Business Park Rosyth Dunfermline Fife Scotland KY112YD
4 Babcock Marine (Clyde) Limited	SC220243	Rosyth Business Park Rosyth Dunfermline Fife Scotland KY112YD
5 Babcock Marine (Devonport) Limited	02959785	Devonport Royal Dockyard Devonport Plymouth PL14SG
6 Devonport Royal Dockyard Limited	02077752	Devonport Royal Dockyard Devonport Plymouth PL14SG

Schedule 17 – Certificate of Commencement

TERMS OF BUSINESS AGREEMENT

relating to

**DEVENPORT ROYAL DOCKYARD LIMITED, BABCOCK MARINE (CLYDE) LIMITED AND
BABCOCK MARINE (ROSYTH) LIMITED AND THEIR BUSINESSES**

(Contract No. MCP/002)

CERTIFICATE OF COMMENCEMENT

This is the Certificate of Commencement referred to in Clause 2.1 of the Terms of Business Agreement dated 2010 relating to Devonport Royal Dockyard Limited, Babcock Marine (Clyde) Limited and Babcock Marine (Rosyth) Limited and their business and entered into between such parties, the Secretary of State for Defence of the United Kingdom and Great Britain and Northern Ireland and Babcock International Group plc (the **Contract**).

It is hereby confirmed that the Conditions Precedent (as defined in the Contract) have been satisfied or waived.

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for and on behalf of
**The Secretary of State for Defence of the
United Kingdom of Great Britain and
Northern Ireland**

Dated: 2010

The **CORPORATE SEAL** of
**THE SECRETARY OF STATE FOR
DEFENCE OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN
IRELAND**

hereunto affixed is hereby authenticated by:

Authorised Signatory

Authorised Signatory

Executed and delivered as a Deed by a duly)
appointed attorney for and on behalf of)
BABCOCK INTERNATIONAL GROUP PLC)

Attorney

Witness

Name of Witness

Address of Witness

Executed and delivered as a Deed by)
BABCOCK MARINE (CLYDE) LIMITED)
acting by)

Director

Witness

Name of Witness

Address of Witness

Executed and delivered as a Deed by)
BABCOCK MARINE (ROSYTH) LIMITED)
acting by)

Director

Witness

Name of Witness

Address of Witness

Executed and delivered as a Deed by)
)
DEVONPORT ROYAL DOCKYARD LIMITED)
acting by)

Director

Witness

Name of Witness

Address of Witness

